

**Post-9/11 Canada-U.S. Border Policy and the Trucking Industry:**

*How Deliberation Councils Can Strengthen the Business-Government Relationship and Promote More Informed and Effective Policymaking*

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## **Abstract:**

This paper examines Canada's post-9/11 border policymaking regime and its effects on the Canadian trucking industry and the larger Canada-U.S. trade relationship. More specifically, it examines post-9/11 policy initiatives such as the Smart Border Accord and the Security and Prosperity Partnership and aims to understand why such policies were unable to mitigate the economic losses being incurred by the trucking industry in the face of tight border controls and a newly securitized Canada-U.S. frontier. In this context, particular attention is devoted to the study of business-government relations and their role in the post-9/11 policymaking process. The degree to which the Canadian trucking industry was involved in the border-related policymaking process is investigated and special focus is given to whether or not the industry was included in private-sector consultations. This paper concludes that post-9/11 border policies were ineffective both in facilitating cross-border trade and mitigating economic losses to the trucking industry precisely because they failed to incorporate private-sector interests in the policymaking process; ineffective consultations, strong international forces, and a weak policymaking structure which failed to institutionalize private-sector interests were all to blame for the trucking industry's exclusion from the policymaking process. Deliberation councils are presented as a solution for improving the business-government relationship and enhancing the policymaking process with respect to the Canada-U.S. border.

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## **I: Introduction**

Canada and the United States of America (U.S.) have enjoyed a successful and increasingly prosperous bilateral relationship for more than two and a half decades. Leveraging common interest, geographic proximity, history, culture and language, the two countries have built a strong political alliance, but perhaps more importantly, have intertwined economically to create a deeply integrated North American market. Canada-U.S. economic integration has been steadily increasing since the 1965 Canada-U.S. Autopact. Following the Autopact, both the 1989 Canada-U.S. Free Trade Agreement (CUSFTA) and the 1994 North American Free Trade Agreement (NAFTA) greatly increased the volume of cross-border trade,<sup>1</sup> building the foundation of what is now the world's largest bilateral trading relationship. More recently, the Canada-U.S. trading relationship has continued to mature, moving toward a more integrative trade model where, in addition to just trading finished goods or services with each other, Canada and the U.S. "make stuff together,...shar[ing] integrated energy markets, ... capital markets, .... roads and railways"<sup>2</sup> to serve the same North American consumer. By creating a North American value chain where intra-firm and intra-industry trade is prevalent, Canada and the U.S. have increased their relative levels of specialization, gained great economic returns from improved productivity, and driven improved standards of living for their citizens.

According to Michael Hart, such intimate integration with the American market has created a situation where "Canada's most basic economic interests have become inextricably bound up with those of the United States".<sup>3</sup> His assertions are supported by trade statistics which show that in 2009, although less dominant than in previous years, 75% of Canadian exports and 51% of Canadian imports were tied to the

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<sup>1</sup> Beine, Michael, & Coulombe, Serge. (2007). Economic integration and the diversification of regional exports: evidence from the Canadian-U.S. Free Trade Agreement. *Journal of Economic Geography*. 7 (1). Pg. 93.

<sup>2</sup> Blank, Stephen. (2005). Three Possible NAFTA Scenarios: It Is Time for Canada to Think Carefully about North America. *Embassy*. Accessed on April 8, 2009 at <http://www.cerium.ca/Three-Possible-NAFTA-Scenarios>. Last modified Sept. 7, 2005.

<sup>3</sup> Hart, Michael. (2007). Canadian Engagement in the Global Economy. *Institute for Research on Public Policy*. August 2007. Pg. 414.

United States.<sup>4</sup> Although scholars and practitioners alike have varying opinions on the appropriateness of such a focused international trade strategy, one can not dispute the fact that the Canada-U.S. trade relationship is of ultimate importance to Canada's prosperity, both now and in the future.

### **September 11, 2001**

Given the high level of economic integration between Canada and the U.S., it is not surprising that the events of September 11, 2001 (9/11) had a profound impact not only on the American economy but also on that of Canada. Following the early morning terrorist attacks, which saw two American airliners crash into, and subsequently destroy, the World Trade Centre in New York City, the U.S. closed its airspace, seaports, and land borders with both Canada and Mexico.<sup>5</sup> Security and the safety of its citizens became the U.S.'s top priority, with the border becoming a focal point in the quest to keep clandestine actors out of the U.S. In the days, months and years following 9/11, it has been this ongoing focus on border security which has threatened the free and efficient movement of goods, services and people between Canada and the U.S. and created a fundamental trade-off between security and economic prosperity. In early September 2001, approximately 50,000 trucks crossed the Canada-U.S. border each day.<sup>6</sup> By 2005, increased costs and disruptions associated with enhanced border security procedures had reduced this figure to 36,000.<sup>7</sup> It was clear that the border had become less porous. A 2008 study by Globerman and Storer confirms this, asserting that "the disruptive impacts of post-9/11 security developments... did have a significant and negative impact on the growth of Canada-U.S. trade".<sup>8</sup>

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<sup>4</sup> Department of Foreign Affairs and International Trade. (2010). *Canada's Merchandise Exports*. Accessed on May 29, 2010 at [http://www.international.gc.ca/economist-economiste/assets/pdfs/PFACT\\_Annual\\_Merchandise\\_Trade\\_by\\_Country-ENG.pdf](http://www.international.gc.ca/economist-economiste/assets/pdfs/PFACT_Annual_Merchandise_Trade_by_Country-ENG.pdf). Last updated May 12, 2010.

<sup>5</sup> Globerman, Steven, & Storer, Paul. (2008). *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto Press Incorporated. Pg. 3.

<sup>6</sup> *Ibid.*, Pg. 4.

<sup>7</sup> Hart, Michael. (2010). Trade, Globalization, and Canadian Prosperity, in John Courtney and David Smith (Eds.) *The Oxford Handbook of Canadian Politics*. Oxford: Oxford University Press. Pg. 410.

<sup>8</sup> Globerman, Steven, & Storer, Paul. (2008). *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto Press Incorporated. Pg. 100.

Anderson and VanWincoop, in their 2003 study, estimate that increased border costs have “reduce[ed] trade between the United States and Canada by 44 percent”.<sup>9</sup> It is clear, therefore, that in a post-9/11 world, fewer goods, services and people were making it across the Canada-U.S. border. This newfound impermeability stunted domestic firms’ productivity and prevented the economic growth associated with cross-border trade and North American value chains. So economically dependent on the U.S., Canada quickly realized the significant cost of the newly securitized U.S. border and vowed to reduce its economic impact through use of smart public policy.

### **Public Policy Responses**

The Canadian government quickly went to work, collaborating with the American government in order to find a public policy solution which would mitigate the economic effects of the emerging security/trade dilemma. On December 12, 2001, the Smart Border Declaration was signed. It aimed to promote 1) the safe flow of goods and people; 2) secure infrastructure; and 3) coordination and information sharing between the two governments in the enforcement of the first two objectives.<sup>10</sup> In the following months and years, numerous other public policies emerged, all with the aim of reducing the economic impact of a newly securitized border. Free and Secure Trade (FAST), Partners in Prosperity (PIP), Security and Prosperity Partnership (SPP) and Automated Commercial Environment e-manifest (ACE e-manifest) are all examples of policy initiatives which were designed to reduce the costs of cross border trade, subsequently improving the productivity of both Canadian and American firms while maintaining a secure border and

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<sup>9</sup> Anderson, James, and VanWincoop, Eric. (2003). Gravity with Gravitas: A Solution to the Border Puzzle. *American Economic Review*. 93(1). Pg. 171.

<sup>10</sup> Department of Foreign Affairs and International Trade. (2003). *The Canada – U.S. Smart Border Declaration*. Accessed on June 5, 2010 at <http://www.dfait-maeci.gc.ca/anti-terrorism/declaration-en.asp>. Last Updated February 7, 2003.

mainland in Canada and the U.S.<sup>11</sup> These various initiatives are exemplary displays of bilateral cooperation and public partnership and many were indeed successful in further facilitating cross-border trade between Canada and the U.S. Today, however, “a wide range of observers continue to express concern that border security issues are seriously damaging international trade between Canada and the United States”.<sup>12</sup> With 2008 two-way trade over the Canada-U.S. border equalling approximately \$US1.7 billion per day,<sup>13</sup> increased time and money spent at the border due to security related regulations continues to significantly add to the cost of doing business. Longer wait times at the border persist and continue to increase variable costs such as fuel, wage, and maintenance expenditures. Greater uncertainty surrounding cross-border shipment times often drive inefficient business practises which minimize uncertainty but also increase costs. These practices might include maintaining higher inventory levels in American warehouses or sending cross-border shipments well in advance, possibly requiring an increase in the size of a firm’s trucking fleet to allow for a buffer stock of additional trucks and drivers.<sup>14</sup> New security related regulations which mandate the use of new technologies also increase costs for firms, requiring that they upgrade internal systems and processes to be technologically compatible with the new border regime. In some cases, the costs associated with migrating to new business systems are so prohibitive they can drive small firms out of business.<sup>15</sup> Overall, the plethora of security related delays and cost increases decrease productivity and economic benefit for both Canadian and American firms. Taking into account the valiant policy response on behalf of both the Canadian and American governments, one is led to question what went wrong in the policymaking process

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<sup>11</sup> Kergin, Michael, & Matthiesen, Birgit. (2008). A New Bridge for Old Allies. *Border Issues Report*. Canadian International Council. Pgs. 4-7.

<sup>12</sup> Globerman, Steven, & Storer, Paul. (2008). *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto Press Incorporated. Pg. 8.

<sup>13</sup> Kergin, Michael, & Matthiesen, Birgit. (2008). A New Bridge for Old Allies. *Border Issues Report*. Canadian International Council. Pg. 1.

<sup>14</sup> Globerman, Steven, and Storer, Paul. (2009). Border Security and Canadian Exports to the United States: Evidence and Policy Implications. *Canadian Public Policy*. 35 (2). Pg. 172.

<sup>15</sup> Bonsor, Norman.(2004). Fixing the Potholes in North American Transportation Systems. *Choices*. 10(8). Pg. 3.

and why such efforts failed to more fully mitigate economic losses stemming from tight border controls and a securitized Canada-U.S. frontier. With more than half a dozen programs aiming to facilitate trade and promote the movement of goods, services and people across the border, why are individual firms still being strangled with prohibitive border related costs which inhibit their ability to conduct effective international business? Was it a lack of private-sector involvement and consultation in the policymaking process? Was it disinterest by firms or failed communications between the private and public sectors? Was it an ineffective business-government relationship confused by Canadian federalism and the multiple levels of governance that regulated the trucking industry? In order to answer these questions one must turn to the study of government-business relations, allowing its theory and practise to draw out the failures in the post-9/11 border policymaking process.

### **Government-Business Relations as a Tool to Better Policymaking**

As part of the existing policy debate, bilateral cooperation and coordination in the public sphere is often noted as the key success factor in good international policymaking. In the case of post-9/11 border policymaking, freer information transfer, greater policy integration, and fair resource sharing between the Canadian and American governments are considered crucial to successful policymaking. Coordination with the private sphere, however, is something that has been less explored. A handful of authors have considered the integration of private actors into the sphere of border policymaking as a means of ensuring a secure border; however, little analysis has been devoted to understanding how improved firm-level involvement in the policymaking process could create a more efficient and productive border. The goal of this paper is to fill this analytical gap. As part of this analysis, it is important to understand to what extent Canadian business and

government cooperated in the post-9/11 border policymaking process, what consultation took place, what the challenges and obstacles to policy related coordination were, and whether or not public-private cooperation led to more informed policymaking. The Canadian federal system and its ability to confuse business-government relations are also important areas of study. In this regard, it is important to examine how the multilevel system of governance and its fragmented regulatory regime affected the post-9/11 border policymaking process and, more specifically, the private-public consultation agenda.

At this point, however, it is important to note that, in the context of the post-9/11 border policymaking process, the private-public consultation agenda is largely unreported. It is also not an area that has been well studied by scholars or practitioners alike. These factors reduce both the primary and secondary sources of information available for this study and, therefore, limit the degree to which hard evidence can be offered as proof of the argument. Given that the subject is largely unreported, however, this analysis presents itself as a valuable introduction to the field of study and sets the stage for further analysis and research.

### **Trucking Cross-Border**

Security-related border issues are diverse in nature and affect Canada-U.S. trade and border policymaking in a multitude of ways. In order to more succinctly explore the role of private industry in driving better border related policymaking, one must single out an industry of focus. In the case of Canada-U.S. trade, the cross-border trucking industry is a strong choice. Canada and the U.S. share the world's longest un-militarized land border and approximately 70% of Canadian trade with the U.S. moves across the border by truck.<sup>16</sup> About 75% of this bilateral

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<sup>16</sup> Hart, Michael. (2010). Trade, Globalization, and Canadian Prosperity in John Courtney and David Smith (Eds.) *The Oxford Handbook of Canadian Politics*. Oxford: Oxford University Press. Pg. 410.

trade moves across the border at five major crossings.<sup>17</sup> Furthermore, as explained by Michael Hart, the emergence of global value chain business models, “cross-border linkages, and the application of just-in-time production technologies have made an increasing number of plants on both sides of the border extremely vulnerable to border delays”.<sup>18</sup> He expands by saying that in “the automotive sector, for example, ... unexpected shutdowns due to the late arrival of parts can cost the industry up to \$25,000 per minute”.<sup>19</sup> These costs are often passed back to the trucking industry in the form of late arrival fees, delivery penalties, or moves to another method of cross-border transportation such as rail. The cost of complying with increased security measures is yet another financial strain on the industry. It is because of these increased border costs that Canada-U.S. trade, and more specifically, trade moving across the border by truck, diminished in the years following 9/11. In 2001, 50,000 trucks were crossing the Canada-U.S. border each day. In 2005, this number had been reduced to 38,000.<sup>20</sup> Although the trucking industry remains the dominant choice for moving cross-border trade (as opposed to rail or air), it has also been the industry most negatively affected by heightened border security. This makes the trucking industry the most appropriate analytical choice for this study. If best practices were to be demonstrated in any industry related policy process, they should have been utilized in the creation of trucking related border policy; the trucking industry is the most directly connected to the border and risks the most economic hardship at the hands of misinformed policy. If the policymaking process failed for such a key industry, failure can most likely be attributed to structural flaws in the government-business relationship which will continue to plague the effectiveness and efficiency of public policymaking. As this paper later highlights, two important structural flaws in this process can be

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<sup>17</sup> Hart, Michael. (2010). Trade, Globalization, and Canadian Prosperity in John Courtney and David Smith (Eds.) *The Oxford Handbook of Canadian Politics*. Oxford: Oxford University Press. Pg. 410.

<sup>18</sup> Ibid., Pg. 410.

<sup>19</sup> Ibid., Pg. 410.

<sup>20</sup> Ibid., Pg. 410.

identified as an ineffective consultation process and a poor institutionalization of private interests in the policymaking sphere.

Such a significant reduction in Canada-U.S. trade vis-à-vis the trucking industry demonstrates that, in spite of a host of new border policies enacted by the American and Canadian governments, trucks were being significantly delayed at the border, causing Canadian and American firms to re-think their cross-border business strategies. Despite efforts to facilitate trade to the fullest effect, new border policies failed to maintain a fluid and flexible Canada-U.S. border and were costing the Canadian trucking industry billions of dollars a year. Although a host of variables may have had an impact on the effectiveness of post-9/11 border policies, the business-government relationship presents itself as one of the most neglected aspects of the policymaking process. Bilateral state level cooperation and policy response time, the other critical factors in the policymaking process, appear to have been handled well. The multitude of post-9/11 border policies which were joint initiatives between the Canadian and American governments (i.e. the Smart Border Accord and the SPP) demonstrate that there was indeed significant bilateral cooperation at the state level, while the unusually fast execution and implementation of early post-9/11 border policies (such as the Smart Border Accord) shows that timeliness was also prioritized. Nurturing of the business-government relationship, however, is less obvious. Given that private firms understand the trucking business inside out and therefore might have been able to more accurately anticipate costs associated with proposed border policies, one questions why the business-government relationship was not more heavily emphasized as a key aspect of the policymaking process. This paper aims to understand what sort of role the Canadian trucking industry played in creating post-9/11 border policy. More specifically, it looks at what sort of public-private cooperation took place as part of the policymaking processes related to the Smart

Border Accord, the FAST program and the SPP, perhaps why it was not more extensive, what the effects were on the final policy outcome, and how limited private industry involvement probably created a less effective policy response to the newly securitized Canada-U.S. border. A review of business-government relations literature and comparisons to best practices in policymaking informs this study. This analysis indicates that had the Canadian trucking industry been more fully integrated as an active policymaking partner, as opposed to just an outside stakeholder, post-9/11 border policy could have been more effective in facilitating Canada-U.S. cross-border trade and mitigating economic losses to the Canadian trucking industry. In addition, the analysis points to three primary reasons for this breakdown in business-government relations and the exclusion of the trucking industry from the policymaking process: (1) an ineffective consultation process; (2) strong external international forces; and (3) poor institutionalization of private-sector interests in the policymaking process. Given these conclusions, deliberation councils are presented as a solution for strengthening the business-government relationship and driving more effective and informed border policy.

To develop the argument outlined above, this paper first provides a review of business-government relations literature, followed by an examination of the Canadian trucking industry and the events of September 11<sup>th</sup>, 2001. The Canadian government's border-related policy responses to 9/11 are next discussed. Subsequent is an analysis of that policymaking process, specifically in regards to the business-government relationship and the private industry's involvement in the creation of post-9/11 border policy. Lastly, deliberation councils are presented as a solution for improving the business-government relationship and enhancing the policymaking process with respect to the Canada-U.S. border.

## **II: Business-Government Relations**

Individual countries have varying theoretical positions regarding government involvement in a nation's economy. In North America, traditional free market attitudes have "often exalt[ed] an ethos of rugged individualism in the building of private businesses and their survival in a world of intense competition and unforeseen changes in the business environment".<sup>21</sup> Since the 1930s and the onslaught of the Great Depression, however, governments in both Canada and the United States have become increasingly involved in 'managing' the domestic marketplace. This intervention has been intended to meet a number of differing public policy objectives, ranging anywhere from protecting national security or public health to promoting a certain export industry, and has therefore touched a wide variety of economic sectors. Canada, skewing further towards the left on the political spectrum, has perhaps distinguished itself from the United States in this regard; it has not only allowed government to intervene more frequently in the private sphere, but has come to expect that government will play a leading role in advancing economic prosperity and national wellbeing through active involvement in the economy.<sup>22</sup> This increased government involvement, sometimes referred to as the emergence of 'big G governance', has to some degree politicised areas of economic and social activity which were previously considered part of the realm of private matters.<sup>23</sup> According to Hale, "economic prosperity and its equitable division within society have become major factors in voters' evaluation of governments".<sup>24</sup> This evolving assessment of successful governance indicates a divergence from traditional beliefs around the role of government and business. According to Taylor, Warrack, and Baetz, conventional views of business as the sole supplier of goods and services and government as the provider of national defence, justice, and the protection of life and property are being challenged. Shocked both by market and government failures and other negative

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<sup>21</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 7.

<sup>22</sup> Ibid., Pg. 9.

<sup>23</sup> Ibid., Pg. 3.

<sup>24</sup> Ibid., Pg. 9.

externalities related to either purely economic or social decision making, society has modified “[t]he basic philosophy of capitalism ... into various concepts of collectivism”,<sup>25</sup> which promote a more complete and inclusive public interest. This shift in ideology has intertwined the previously isolated spheres of public and private life, creating a space where neither commercial nor political decisions are made in isolation of one another. Highlighted in this intermingled socio-economic space is the need for well functioning business-government relations. In a world where neither business nor government is unaffected by the other, the two parties need to cooperate both effectively and efficiently, facilitating, to their own mutual benefit, a stronger understanding of each other’s values, attitudes, beliefs and perceptions.<sup>26</sup> As highlighted by Taylor, Warrack, and Baetz, “business and government need to work cooperatively as partners to forge strategies that will guarantee Canada continued and sustainable economic prosperity, at least cost to the natural environment and within the increasingly turbulent and complex global order”.<sup>27</sup>

### **Mutual Interdependence and Conflict Management**

The meshing of private and public life, and therefore of business and social interests, has not only strengthened the need for effective business-government relations, it has also complicated the area of study. The meeting of the two worlds has created a sort of mutual dependence between business and government where each party requires an intimate understanding of the other’s priorities, goals and processes in order to carry out its own operations successfully. Where government is an active player in managing the economy, businesses expect that it will construct a favourable policy environment in which the private sector can operate effectively and efficiently. In this regard, firms depend on government (often known to them as the regulator) for a stable, predictable, and transparent set of rules by which they must

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<sup>25</sup> Taylor, D. Wayne, Warrack, Allan, & Baetz, Mark. (1999). *Business and Government in Canada: Partners For the Future*. Toronto: Prentice Hall Canada. Pg. 2

<sup>26</sup> Taylor, D. Wayne, Warrack, Allan, & Baetz, Mark. (1999). *Business and Government in Canada: Partners For the Future*. Toronto: Prentice Hall Canada. Pg. 1-2.

<sup>27</sup> Ibid., Pg. 2.

conduct their affairs. They might also rely on government for protection from foreign competitors or for financial assistance, possibly in the form of subsidies, tax breaks or research grants. Lastly, businesses may also seek compensation for “the effects of other government policies that, while attempting to promote the public good, create unintended or counterproductive barriers to economic activity”.<sup>28</sup> It is clear that government intervention can have a large impact on the way that private firms do business. It is of utmost importance therefore that firms actively interact with policymakers, communicating the anticipated impacts of prospective policies on their business models, operating procedures, and bottom line.

Firms are not the only dependent party in the business-government relationship. Government relies on businesses to drive economic growth, which is essential and necessary for national prosperity and well-being. Given Hale’s research, which shows economic prosperity as one of the main factors in determining how citizens vote, it seems that a government’s longevity may be tied to how well business performs. Government also relies on the private sector for job creation, as a source of important tax revenue, and as a public partner that is willing to help public officials understand the ins and outs of specific industries that they wish to regulate but may not have much first-hand experience in. Government, therefore, also has an interest in building a strong relationship with the private sector. It is in government’s best interest to support growth and success in the private sector and also to incorporate industry’s expertise into the policymaking process.

Government also has its own agenda, however. It has a set of goals that go beyond its role as a promoter of economic growth and facilitator of business activity. Responsible for ensuring social harmony, peace and liberty within the nation, government must also be attentive to the demands of social groups outside of the business community. Spurred by government’s increased participation in both the social and economic realm, there has been what Hale describes as a “multiplication of interest groups to project and protect their members’ interests in the design and delivery of government policies and programs and in the

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<sup>28</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 7.

creation of more effective constraints on government actions that may threaten the well-being of different elements of society”.<sup>29</sup> These interest groups exert pressure on the government, ensuring that the public administration advocates not only for the business community, but for the larger public interest.<sup>30</sup> Public interest, however, is something that is not always easily understood, with as many varying interpretations of the term as there are politicians trying to act in its favour. In the 1950s, for example, C.D. Howe, Minister of Trade and Commerce at the time, interpreted the public interest as ultimately being business interest.<sup>31</sup> Judging from more recent literature, however, it seems that this perception has changed, with more politicians now favouring social or political goals over those of the private sector. Much of Taylor, Warrack, and Baetz’s related research suggests that:

[G]overnment intervention is [now] emasculating the private sector; that business’ interests are no longer synonymous with the “public interest”; that what was once the workplace of a national socioeconomic partnership is now the battleground for two disparate solitudes, each growing increasingly agnostic, mutually suspicious, and ignorant of another.<sup>32</sup>

Although not all theorists would support a statement which so blatantly dismisses government’s attention to business interests, this type of discourse demonstrates the balancing act and conflict management which is required on the part of government. As highlighted by Atkinson and Coleman:

[I]t must be understood that relations between business and government in advanced, capitalist systems will always contain an element of conflict...The assumption by the state of a role in assisting in the accumulation of capital and in ensuring social harmony, both within the structures of a liberal democracy, forces it to be attentive to the demands of classes other than business. Accordingly, business will always suspect that the state is being too accommodating to others ... and less responsive to the more basic and pressing needs of business.<sup>33</sup>

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<sup>29</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 3.

<sup>30</sup> Atkinson, Michael, & Coleman, William. (1987). Is There a Crisis in Business-Government Relations? *Canadian Journal of Administrative Science*. 4 (4). Pg. 322.

<sup>31</sup> Taylor, D. Wayne, Warrack, Allan, & Baetz, Mark. (1999). *Business and Government in Canada: Partners For the Future*. Toronto: Prentice Hall Canada. Pg. 3.

<sup>32</sup> *Ibid.*, Pg. 3.

<sup>33</sup> Atkinson, Michael, & Coleman, William. (1987). Is There a Crisis in Business-Government Relations? *Canadian Journal of Administrative Science*. 4 (4). Pg. 322.

It is clear therefore that the business-government relationship, although one of absolute necessity and mutual benefit for both parties, is filled with tension and tradeoffs.

### **A Historical Perspective of Business-Government Relations in Canada**

The historical context in which the business-government relationship in Canada developed is important for understanding the current landscape in which the two parties operate. Dating back to the early years, the years before Canada was even an independent nation, there existed a strong connection between business and government. This was largely due to the fact that Canada's most primary industries (the fur, timber, fish, grain, mineral, fossil fuels, and pulp and paper trades) were often state-owned, state-created, or state-franchised. In its most primary stages of development, Canada relied on these industries to build up its economy, attracting inhabitants to its large and undeveloped yet resource rich land. In turn, the government supported these industries and their development, protecting them from foreign competition, financing them with government loans and grants, and often even participating in their management and strategic growth plans. It was through this support that Canadian industry grew and developed, forming the base of what is today an advanced first world economy. Taylor, Warrack, and Baetz, describing this history, recall that it was this public-private cooperation and integration that fundamentally worked to build Canada.<sup>34</sup> In these early stages, there was no perceived conflict of interest which accompanied this cooperative relationship, as it was well understood that "the public purse hung from the waist-coat of business".<sup>35</sup> The closeness of private industry and government was just sound business and wise public policy.

As Canada evolved into a developed, functioning pluralist democracy, this closeness between government and business did not diminish. The Canadian Pacific Railway was constructed, a joint venture

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<sup>34</sup> Taylor, D. Wayne, Warrack, Allan, & Baetz, Mark. (1999). *Business and Government in Canada: Partners For the Future*. Toronto: Prentice Hall Canada. Pg. 14.

<sup>35</sup> Ibid., Pg. 15.

between Canadian private and public sectors, and as the United States and Britain began to exude power over the North American market, the National Policy of 1879 was introduced to protect and promote domestic Canadian industry. The National Policy, as described by Taylor, Warrack, and Baetz, created “the third commercial empire of the North – a mercantilist empire characterized by a strong and interventionist state, state protection of big business, tariff barriers, subsidies, and a positive trade balance”.<sup>36</sup> This strong firm-centered state carried on through the early 1900s, the Great Depression, and the two world wars; however, things began to change starting in the late 1950s with the election of John Diefenbaker, a nationalist who decried the immorality of big business and big government.<sup>37</sup>

Aligned with Diefenbaker’s scepticism of ruthless capitalism, the 1960s ushered in an era of socialism which flew against the traditional firm-centered culture upon which Canada had been built. From the 1960s through to the 1980s the government pushed through a wide variety of social security programs, federal-provincial transfer payments to finance them, various social and economic regulations, and higher taxation to foot the bill.<sup>38</sup> At the same time, a number of aligning economic and political forces drove a steady decentralization of power, shifting influence from the federal government to the provinces.<sup>39</sup> Under this regime, the traditional closeness of government and business deteriorated. According to Atkinson and Coleman, during this period “tensions between business and government increased, relations became embittered and a dialogue of the deaf became the norm”.<sup>40</sup> Business liberalism, the previously (pre-1960s) dominant ideology that business interests reigned supreme in the determination of national interest, had been undermined. Instead, rivalry and conflict between social and economic interests characterised the policy environment of the 70s and 80s.

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<sup>36</sup> Taylor, D. Wayne, Warrack, Allan, & Baetz, Mark. (1999). *Business and Government in Canada: Partners For the Future*. Toronto: Prentice Hall Canada. Pg. 17.

<sup>37</sup> Ibid., Pg. 23.

<sup>38</sup> Ibid., Pg. 22.

<sup>39</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 147.

<sup>40</sup> Atkinson, Michael, & Coleman, William. (1987). Is There a Crisis in Business-Government Relations? *Canadian Journal of Administrative Science*. 4 (4). Pg. 322.

As Canada approached the twenty-first century, the political and economic environment began to change significantly. Globalization, deficit reduction goals, technological change, international competition, and an aging population which forefronted the need for advanced yet expensive social policies, all contributed to a re-thinking of the current business-government relationship. From the election of the Mulroney government in 1984 to the end of Chrétien's second term in office in 2000, neo-liberalism emerged as the dominant political paradigm. In comparison to the previously dominant liberalism, neo-liberalism continued to regard economic growth, increased standards of living, and greater social and economic equality as the primary goals of government; however, in neo-liberalism "the ability of the state to achieve these goals in an open, diverse, and pluralistic society appears to be largely dependent on the willing cooperation and participation of private businesses and individual citizens rather than on increased state planning and regulation"<sup>41</sup>, as was the case in the era of liberalism. It has been in this new age, therefore, that the regeneration of the business-government relationship has become all the more important.

For the current government, it has become clear that politicians alone can not build an economic and policy climate in which Canadian firms can become internationally competitive. They instead must forge economic alliances with the private sector that will serve the nation's best interest. These renewed relationships can not be expected to mirror the intimacy of those of the 19<sup>th</sup> century upon which Canada's economic legacy was built; however, they must work to realign the private and public sectors in carving out a niche for Canada within the global marketplace.<sup>42</sup> Today, this relationship has begun to be rejuvenated; however, it remains very formal, a shadow of the two parties' intimacy and closeness prior to the 1960s. Currently, government acquires input and advice via formalized advisory boards and sectoral committees. Opinions and information are given through testimony in front of committees of the House of Commons, Senate, or before royal commissions. Taylor, Warrack, and Baetz point out that economic

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<sup>41</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 29.

<sup>42</sup> Taylor, D. Wayne, Warrack, Allan, & Baetz, Mark. (1999). *Business and Government in Canada: Partners For the Future*. Toronto: Prentice Hall Canada. Pg. 24.

interests no longer talk directly to senior level bureaucrats responsible for industry related policymaking,<sup>43</sup> but often instead focus their input on elected officials. Although a shift to the political wing of government works to strengthen democratic decision making, it also works to limit the amount of information that the business community shares with actual policymakers (the bureaucracy) and therefore may negatively affect the quality of public policies. Although any degree of communication is an improvement over the conflict-stricken and embittered relationship of the 70s and 80s, one may wonder if this high level relationship is substantial enough to carry Canada into the next era of global competitiveness and international competition.

### **The Federal Dynamic**

While history may provide a much needed background on business-government relations, Canada's institutional arrangements and economic structure can not be ignored. The effects of federalism and regionalism, both "dominant realities of Canadian political life",<sup>44</sup> are becoming increasingly important to policymakers. The resulting divisions of economic activity within a federation affect the success of public policies, especially when the policies aim to balance important social and economic objectives with the "efficient and equitable workings of the market economy".<sup>45</sup>

A large country characterized by diverse regional and provincial identities, Canada has embraced the federal system as a way of accommodating varying political, economic and social goals and identities which span from coast to coast. Canadian federalism, a system of governance which separates power between national and subnational governments, was established in the Constitution Act, 1867 and created a multilevel system of governance where neither order of government, federal or political, is subject to the other. It segregated political and legal responsibility for major areas of economic and social life between

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<sup>43</sup> Ibid., Pg. 23.

<sup>44</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 213.

<sup>45</sup> Ibid., Pg. 175.

the federal and provincial regimes, creating two orders of governance that could have significant impact on business operations and related social interests. Although the federal system has been set in stone as a concrete element of Canadian governance, the Constitution Act, 1867 and the division of jurisdictions are subject to interpretation from the courts. It is this legal interpretation which has contributed to Canada's evolution from a relatively centralized federation to one in which the provinces hold a great deal of authority.<sup>46</sup> Under the current interpretation of the Constitution Act, 1867, as relating only to economic policy, provinces have sole jurisdiction over direct taxation for areas under provincial jurisdiction, property and civil rights, economic development, education, social services, highways, and public works. The provinces share jurisdiction with the federal government for agriculture, immigration, law enforcement, pensions, consumer affairs and the environment. In addition, provinces also render power from their ownership of natural resources, their regulatory powers over municipalities, and their responsibilities for labour and environmental policies and maintenance of public infrastructure.<sup>47</sup> It is clear, therefore, that provinces hold a great deal of power and control over many areas of everyday life; they have jurisdiction over "taxation and economic and social regulation that enable[s] them to play an active and sometimes primary role in shaping economic and related social policies that affect the political, economic and cultural environments for business operations and business-government relations".<sup>48</sup>

In addition to federalism, regionalism – "the shared identification of citizens with a region as a distinct political or social community based on conscious differences in political, economic and social interests and structures"<sup>49</sup> – has also influenced the political environment and, in turn, business-government relations. The interaction of federalism and regionalism has been described by Simeon and Robinson as a sort of societal federalism: federalism interacts with underlying societal and economic

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<sup>46</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 214.

<sup>47</sup> Ibid., Pg. 215.

<sup>48</sup> Ibid., Pg. 215.

<sup>49</sup> Ibid., Pg. 213.

differences, creating varying political, social, and economic environments in which the politics of Canada's provinces and regions are carried out.<sup>50</sup> The effect of societal federalism on the Canadian political scene has been the creation of provincial governments that have not only a great deal of constitutional authority, but are also "seen by citizens as the principal representatives of regional interests within Confederation".<sup>51</sup>

Canada, a vibrant federation with three formal levels of governance (including municipal governments) and many more informal levels, hosts a complex and dynamic policy environment which presents challenges for policymakers and interests groups alike. More specifically, this creates challenges for business-government relations as it multiplies the number of parties involved in the policymaking process, confusing the points of contact and information flow between parties. In this environment, one of the greatest challenges for social groups, including business interests, is to identify, communicate with, and make responsive to their objectives those segments of government that most directly affect their activities.<sup>52</sup> According to Hale, a recent survey of the small-and medium-sized business community reveals that most small firms view provincial governments as "having a greater impact on their operations than other levels of government".<sup>53</sup> This implies that most firms will try to seek out a relationship with government at the provincial level. Depending on where the constitutional jurisdiction lies however, this may not be the most productive course of action; interests under federal jurisdiction would be served more aptly by relations with the central government. When jurisdiction is shared between the federal and provincial government, the relationship can become even more complex. Confusion can arise among governments in terms of understanding which party is responsible for consulting with private industry. Firms may also not know where to direct their lobbying efforts. A prime example of this sort of shared

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<sup>50</sup> Simeon, Richard, & Robinson, Ian. (1990). *State, Society and the Development of Canadian Federalism*. Toronto: University of Toronto Press. Pg. 9.

<sup>51</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 213.

<sup>52</sup> *Ibid.*, Pg. 176.

<sup>53</sup> *Ibid.*, Pg. 217.

jurisdiction is in the trucking industry where transportation in general (and therefore the regulation of the trucking industry) falls under provincial jurisdiction; however, interprovincial (and international) transport falls under federal jurisdiction. As with any sound policymaking process, intergovernmental cooperation and private industry consultation are important, but in this complex multilevel system of governance, it is easy for lines of communication to become closed and for cooperation to fail. The business-government relationship is particularly hard hit in the multilevel federal system. As highlighted by Hale, “[t]he paradox of federalism is that the more closely governments work together to address common policy problems, the greater the likelihood that significant economic and social interests outside of government may be neglected or sidelined in policy outcomes”.<sup>54</sup> In other words, governments are so busy balancing their own objectives through intergovernmental cooperation that they commonly forget to incorporate outside economic and social interests. This is why, in a federal environment, business interests have to be that much more organized. Industry associations are a way to increase organization and political influence alike. Associations, however, must be cognisant of where to direct their lobbying efforts. When industries are regulated federally – particularly in banking, telecommunications, broadcasting, and interprovincial transportation – industry associations should structure their representative associations at the national level and direct their lobbying efforts toward the federal government. Industries that are regulated provincially will want to establish provincial associations and nurture relationships with sub-federal governments. As should be expected, the decentralization of power in Canadian politics drove an explosion in the number of interest groups (including chambers of commerce, industry associations and organized labour groups) that target provincial governments as their main point of contact for public affairs.

Federal complexity also creates challenges for Canadian policymakers. The evolution of the Canadian political system, more specifically the decentralization of policymaking power to the provinces and the emergence of regionalism, has contributed to a fragmented policy environment where central

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<sup>54</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 218.

planning of the economy is no longer possible. Federal policymakers now share jurisdiction with provincial governments, which, by the very nature of the political system, only advocate for provincial interests. In areas where federal and provincial governments must work together, either in areas of shared jurisdiction or where policy under federal jurisdiction interacts with that of provincial jurisdiction, the aligning of national and provincial policy goals remains a challenge. As suggested by Friedrich Hayek, “the greatest challenge facing any effort at central planning of the economy is the difficulty that government policymakers have in measuring, let alone understanding, the innumerable economic interactions of producers and consumers in a complex industrial economy”.<sup>55</sup> Federalism takes it a step further; even if policymakers are skilled enough to understand the varying economic interests, it is another matter to try and coordinate the policymaking game, aligning interests and policies in ways which promote both the good of the provinces individually but also the interest of Canada as a whole. Sometimes, due to competing interests and the lack of coordinated policymaking capacity at the federal and sub-federal levels, the individual provinces and the nation as a whole can not both be made better off. Tradeoffs must occur. In the context of government-business relations, this means that the business community should not only develop relations with the federal or sub-federal government, but should also become an active participant in governance at all levels. Relationships with municipal, provincial and federal policymakers are necessary if economic interests are to be pursued in Canada’s system of multilevel governance.

An example where the provincial and federal policymaking worlds intertwine is in the realm of international trade policy. In the last half century, Ottawa, having jurisdiction over foreign policy, international trade and the ability to enter into international treaties, has increased Canada’s membership in many international trade regimes. These include the General Agreement on Tariffs and Trade (GATT), The North American Free Trade Agreement (NAFTA), and the World Trade Organization (WTO). As international trade agendas progressed, however, issues of provincial jurisdiction such as agriculture,

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<sup>55</sup> Hayek, Frederick. (1944). *The Road to Serfdom*. Chicago: University of Chicago Press. Pg 28.

alcohol, government procurement, energy, and the environment were added to the list of negotiating items. Although Ottawa has the constitutional authority to negotiate commitments in these areas on an international stage, they do not have the ability to ensure these commitments are domestically enforced as only provinces have jurisdictional control in these areas. Ottawa can not force the provinces to adopt policies that it has negotiated as part of an international trade agreement. In light of this conflict, Ottawa has become “increasingly aware of the need to secure the provinces’ compliance when negotiating and implementing”<sup>56</sup> these international treaties. Inviting the heads of ten provincial and three territorial governments to the international negotiating table, however, greatly reduces the ability of national policymakers to conclude international trade agreements, as often the Canadian delegation itself, can not agree on one harmonious position.<sup>57</sup> In addition, relating this back to the challenges for business-government relations, amongst all the conflict between the central and provincial governments, there is hardly room for informed and valued business-government consultation and input. In conclusion, the federal dynamic adds another challenge to the business-government relationship.

## **International Openness**

In the globalized world, the making of economic policy and the government-business relations which support the process do not take place in a domestic cocoon. Canada especially, a trading nation which has become dependent on international markets for continued economic expansion and growth, is more vulnerable than ever to international economic forces and political events. According to Hale, “more and more in recent years, the environment for Canadian businesses – and their relations with governments – are being influenced by events beyond Canada’s borders”.<sup>58</sup> September 11, 2001, and the resulting impact on Canada’s trade flows, is a recent and vivid example of how events in foreign countries can

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<sup>56</sup> Kukucha, Christopher. (2008). *The Provinces and Canadian Foreign Trade Policy*. Vancouver: University of British Columbia Press. Pg. 3.

<sup>57</sup> *Ibid.*, Pg. 3.

<sup>58</sup> *Ibid.*, Pg. 245.

impact Canada's economy and spur a policymaking process designed to mitigate negative economic effects. The aftermath of events like 9/11 highlight Canada's deep economic interdependence with the larger global economic system, and more specifically, with the U.S. According to Hale, our interdependence with other countries is also demonstrated by our "large volume of trade with the rest of the world (and the distribution of that trade inside and outside of North America), the international involvement of Canadian businesses and capital markets, and the many institutional linkages created to provide a stable, but adaptable legal framework for business activity within the dynamic environment".<sup>59</sup> Our reliance on international trade is a particularly sensitive issue. In Canada, "international trade accounts for a larger share of economic activity ... than [in] any other major industrial economy".<sup>60</sup> With 28.7% of Canada's 2009 domestic income being derived from exports,<sup>61</sup> Canada can not afford to ignore elements of the international economic space. This means that Canadian policymakers are forced to balance domestic and international considerations when formulating Canada's economic policy. Just as managing the federal dynamic takes away from business-government relations, so does balancing domestic and international considerations. As policymakers become more and more consumed by demands from Canada's largest international trading partners, they grow to be less attentive to the interests of Canadian firms themselves. This is yet another challenge in the business-government relationship and an area to be overcome in the name of sound policymaking.

## **Consultation**

While it is clear that the government-business relationship in Canada faces many challenges, it is also evident that this public-private cooperation is necessary for effective policymaking. The previous

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<sup>59</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 250.

<sup>60</sup> Ibid., Pg. 250.

<sup>61</sup> Department of Foreign Affairs and International Trade. (2008). *Pocket Facts: Canada – Economic Indicators*. Accessed on June 24, 2010 at [http://www.international.gc.ca/economist-economiste/assets/pdfs/Quarterly\\_Ec\\_Indicators-ENG.pdf](http://www.international.gc.ca/economist-economiste/assets/pdfs/Quarterly_Ec_Indicators-ENG.pdf). Last Updated June 8, 2010.

discussion of mutual dependence highlights the interconnected nature of public policymaking and private business activities, justifying a need for strong two-way communications between government and business. Private consultation is one way of establishing and maintaining communication between the two parties and, since the increase in government intervention in the 1960s, has become a major element of the policymaking process. Consultation can take a variety of forms and depends on the nature of the policy in question, political culture, the number of significant stakeholders, the consensus among government officials, and the potential degree of controversy among outside parties.<sup>62</sup> Some common forms of consultation include ministerial or departmental advisory committees, public hearings by regulatory agencies, town-hall style public meetings, deliberation councils, surveys to assess and determine potential policy outcomes among stakeholder groups, or one-on-one direct firm level or industry association level meetings between government and the private sector.

There are a number of reasons why consultation proves to be such a value-added tool in the policy making process. Firstly, by conducting consultations with potentially affected stakeholders, the government appears more responsive to its constituents' needs.<sup>63</sup> It appears to be concerned with potential negative externalities from the future policy and consults with stakeholders as a way of easing their apprehensions regarding the forthcoming policy. Consultation of this type, although potentially symbolic, provides an element of legitimacy to governments. Montpetit refers to this type of legitimacy as procedural legitimacy; "output-oriented" legitimacy is gained through consultations which allow governments to provide greater detail on the benefits of suggested policies by creating a forum for discussion which involves major stakeholders, while "input-oriented" legitimacy comes from creating opportunity for the general public or interested stakeholders to participate in the policy process, offering input and information

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<sup>62</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 400.

<sup>63</sup> Ibid. Pg. 400.

which may affect consensus building in the policy outcome.<sup>64</sup> Increased legitimacy in the policymaking process amplifies the potential for policy success as it encourages buy-in on the part of stakeholders who participated in the policy process and the general public who understands that interest groups were given the chance to participate. Consultation, therefore, is often used as a ploy to gain political support; it is used to “manage public expectations, build political capital, and earn sufficient trust to exercise greater policy autonomy on a wide range of issues”.<sup>65</sup>

Just as consultation can increase political legitimacy, it can also reduce it. According to Hale, governments need to be mindful of “poorly managed consultations [which] may create inflated or unrealistic public expectations, squander political capital, and risk turning debates over specific policies into lightning rods for generalized public debate”.<sup>66</sup> Governments may also lose legitimacy if they consistently ignore public input, devaluing information contributed during consultations and public opinion as a whole. In this situation, the public becomes aware of the government’s plan to use consultations only to boost public image. It is recommended, therefore, that governments engage in substantive consultations rather than purely symbolic ones. Substantive consultations take place “when a government actively uses [consultations] to ... visibly address [major stakeholders’] concerns in [relation to] changes to proposed policies or legislation”.<sup>67</sup> This involves conducting consultations early on in the policymaking process. Actively using private industry’s input helps improve the effectiveness of public policies. As was highlighted in the discussion about mutual interdependence, a policy which unnecessarily hinders the private sector can be incredibly damaging to public officials. Tax revenue, economic growth, jobs, and private-sector support can all be lost if policies ignore the needs of business. In order to avoid this situation, policymakers need to consult first hand with private stakeholders that are likely to be affected by

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<sup>64</sup> Montpetit, Éric. (2003). Public Consultations in Policy Network Environments: The Case of Assisted Reproductive Technology in Canada. *Canadian Public Policy*. XXIX. Pgs. 95 – 110.

<sup>65</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 399 - 400.

<sup>66</sup> Ibid., Pg. 400.

<sup>67</sup> Ibid., Pg. 402.

new policies. According to Hale, “[p]oliticians and civil servants discovered that their policy initiatives often affected citizens and businesses in very different ways than they had anticipated”.<sup>68</sup> Unpredicted policy effects can be disastrous both to a government’s public image and to the policy’s overall effectiveness. In cases where there are adverse reactions on the part of private industry, policies often become difficult to implement as planned. This is especially the case when the affected stakeholders are well organized and have the resources (time, money and human capital) to fight the proposed legislation. The most successful of these opposing groups are the highly-organized stakeholders who are essential to public life and who have a high level of technical expertise. They are able to use their social capital, that is the value of their social relationships which impart on them credibility and bring expected returns,<sup>69</sup> to credibly oppose a seemingly uninformed policymaking process. Consultation, held in advance of policy implementation, can be an effective avenue for avoiding conflicts of this manner, ensuring that policy initiatives meet social goals in addition to driving economic growth and benefit.

A common misconception about consultations, however, is that the process involves only a one-way flow of information. Government officials often assume that the private sector understands the policy environment sufficiently to give input without having to be briefed on the government’s policy agenda. Speaking of policy related to European integration, Leblond points out that many policymakers “usually assume that economic interests are fully cognisant of the net benefits or costs of integration in a given sector right from the start and, consequently, that they will readily share this information with uncertain policy-makers through lobbying activities”.<sup>70</sup> The reality however is much different. Businesses understand their economic models and can communicate their preferences to government on which policies they might prefer; however, they are only able to do this once they have been given enough details

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<sup>68</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg. 400.

<sup>69</sup> Claridge, T. (2004). Social Capital and Natural Resource Management. Unpublished Thesis. Brisbane, Australia: University of Queensland. Accessed on June 20, 2010 at <http://www.socialcapitalresearch.com/definition.html>.

<sup>70</sup> Leblond, Patrick. (2008). The Fog of Integration: Reassessing the Role of Economic Interests in European Integration. *British Journal of Politics and International Relations*. 10 (1). Pg. 10.

on the proposed policy to effectively evaluate the costs and benefits associated with such a proposal. Policy details are important and can change the way a business is affected by legislation. It is important, therefore, that consultation involves a two-way flow of information. Government must also be engaged and prepared to share its proposed policy agenda, including details, with the private sector. If it instead holds this information close, economic interests will not be able to accurately assess the costs and benefits associated with the proposed policy and will not be able to provide government with an accurate indication of its support for or against potential legislation.

Campos and Gonzalez have demonstrated the value of sound, two-way consultation in their study, which considers how deliberation councils – institutionalized collaborative forums which bring together stakeholders from government, business and civil society – played a major role in “the crafting and implementation of effective policies that benefited both the public and private sectors”<sup>71</sup> and drove remarkable growth in the East Asian economies during the 1990s. Research by Gregory Noble also supports the use of deliberation councils, claiming they have strong “potential to inject expertise, diverse perspectives, and a deliberative space into the policymaking process”.<sup>72</sup> Examining the organizational and institutional setups of the Singapore National Wages Council, the Malaysian Business Council, and the Saskatchewan consultative committee on Educational Policy, Campos and Gonzalez analyze how this sort of institutional setup could be used in other policy environments to drive sound, informed and accepted policy. Learning from the three case studies, Campos and Gonzalez set out a number of necessary characteristics for successful consultation using deliberation councils. Firstly, they stress the need for inclusive membership. In order to act as a fully informed advisory committee, consultative groups need to include all major stakeholders. This includes members from the private sector, representatives from

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<sup>71</sup> Campos, Jose Edgardo, & Gonzalez, Joaquin. (1999). Deliberation Councils, Government-Business-Citizen Partnerships, and Public Policy-making: Cases from Singapore, Malaysia and Canada. *Asia Pacific Journal of Management*. 16 (1). Pg. 429.

<sup>72</sup> Noble, Gregory. (2004). The Diffusion and Operation of Deliberation Councils in East Asia. Paper presented at the annual meeting of the American Political Science Association, Hilton Chicago and the Palmer House Hilton. Chicago, IL. Sep 02, 2004.

industry associations, politicians, senior public servants, NGOs, academics, social interest groups, and other relevant members of civil society. In order for consultations to be effective, all relevant voices must be heard. Regional, ethnic, economic, sectoral, and political representatives should all be included. Secondly, the principles of unanimity and non-attribution play a significant role in the use of deliberation councils. In all three cases presented by Campos and Gonzalez, decision making was by consensus and on an entire package of recommendations not attached to any one group or council member. It was by conforming to this principle that “open discussions and healthy exchanges among council members”<sup>73</sup> were permitted. Most controversial, it was important for deliberations to be held behind closed doors. Although it prompts criticisms stemming from a lack of transparency, a closed door policy also “permit[s] frank discussions which allow council members to exchange views”.<sup>74</sup> It also prevents lobbying from less relevant outside interest groups and allows members to focus on reaching a consensus. Lastly, the main benefit of the deliberation council approach is the focus on a collaborative rather than just a consultative approach. Once consensus has been reached by the deliberation council, initiatives can be implemented quickly, credibly, and effectively. Policymakers can be confident that the new policy will be well received and effective in meeting its social and economic goals. By inviting all relevant parties to the policymaking table, and being genuinely willing “to trade authority for information”,<sup>75</sup> governments can increase the effectiveness of the policymaking process. Campos and Gonzalez conclude that the deliberation council was “one of the least appreciated but important institutional factors underlying the remarkable growth in the East Asian miracle economies”.<sup>76</sup> They also concur, however, that this model for more institutionalized and formal consultation can be used to improve the policymaking progress around the globe in both social and economic areas of policymaking.

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<sup>73</sup> Campos, Jose Edgardo, & Gonzalez, Joaquin. (1999). Deliberation Councils, Government-Business-Citizen Partnerships, and Public Policy-making: Cases from Singapore, Malaysia and Canada. *Asia Pacific Journal of Management*. 16 (1). Pg. 444.

<sup>74</sup> *Ibid.*, Pg. 434.

<sup>75</sup> *Ibid.*, Pg. 444.

<sup>76</sup> *Ibid.*, Pg. 429.

In conclusion, time has seen the public and private spheres mix into a world where government intervention is a common element in the Canadian economy. There exists a mutual interdependence between government and business, creating a relationship where cooperation and coordination is essential to ensuring continued economic growth and social harmony. Federalism and regionalism add interesting dynamics to this relationship, creating a system of multilevel governance which challenges the effectiveness and efficiency of the business-government relationship. Many authors, Hale included, have commented on how “regulatory regimes [now] coexist at national, international, regional and sectoral levels”.<sup>77</sup> In the analysis of factors affecting the business-government relationship, one can not omit the pressures that arrive from the international environment. Canada, deeply integrated into the North American economy as well as the larger global economic system, can not ignore the concerns and desires of our trading partners. Instead, we must also incorporate their costs and benefits into our policymaking process.

Although the Canadian policymaking process is evidently complex with a multitude of stakeholders demanding varying economic and social provisions, there are ways to mitigate the confusion which commonly surrounds the policymaking process. Consultations are a way of increasing the two-way flow of information between the public and private sectors and should be used to better inform the policymaking process as a way of creating more effective and efficient economic and social policy. The use of deliberation councils specifically may be something that can be used to improve policy quality.

Now that the background has been set, attention is turned toward the Canadian trucking industry and the making of post-9/11 border policy, investigating specifically what effects the policy has had on the trucking industry and Canada-U.S. trade as a whole. Also investigated is the role the Canadian trucking industry played in the making of the Smart Border Accord and the Security and Prosperity Partnership (SPP), and the effects that this interaction, of lack thereof, had on the policies’ overall effectiveness.

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<sup>77</sup> Hale, Geoffrey. (2006). *Uneasy Partnership: The Politics of Business and Government in Canada*. Peterborough: Broadview Press. Pg.254.

### **III: The Canadian Trucking Industry**

Moving from the general to the particular, the Canadian trucking industry is examined as a tool for understanding the sectoral context in which business-government relations take place. In order to analyze private-public cooperation surrounding the making of post-9/11 border policy, one must first understand the structure of the trucking industry, the regulatory framework in which it operates, and its relevance to the larger Canadian economy, more specifically the Canada-U.S. trade relationship. The events of September 11<sup>th</sup>, 2001 and the Canadian policy response, both short and medium term, are also discussed. Examined last are the effects of the ensuing policy on the Canadian trucking industry and the Canada-U.S. trade relationship as a whole.

#### **The Industry**

In Canada, trucking is a \$65 billion industry.<sup>78</sup> In terms of the preferred method of transportation for Canadian shippers, trucking has become the mode of choice. This is due to trucking's speed, adaptability, and low cost in comparison to both rail and marine transport for the large majority of goods shipped between Canada and the U.S. In terms of structure, the Canadian industry is diverse and competition is high. Large conglomerates are rare, leaving thousands of small-and medium-sized businesses and independent owner-operators to dominate the market.<sup>79</sup> Trucking firms also vary in business model; the industry is made up of for-hire carriers who ship cargo belonging to others and are paid for the service, private carriers who maintain their own trucks to transport their own freight, owner-operators who are individuals owning their own truck who transport cargo belonging to others on a

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<sup>78</sup> Canadian Trucking Alliance. (2009). *Trucking in Canada*. Accessed on June 30, 2010 at <http://www.cantruck.ca/iMISpublic/Content/NavigationMenu2/CTAIndustry/TruckinginCanada/default.htm>.

<sup>79</sup> Ibid.

contract basis, and courier firms who ship goods on an expedited basis.<sup>80</sup> Nationwide, the industry employs over 400,000 Canadians, 260,000 of which are drivers.

Domestically, in Canada, trucks move 90% of all consumer products and foodstuffs, making them a vital part of the Canadian economy.<sup>81</sup> The trucking industry, however, is also integral to the international movement of goods and Canada's health as a trading nation. In our cross border trade with the U.S., our largest trading partner, trucks move more than two thirds of all trade (by value).<sup>82</sup> For Canada's importers, especially those using global supply chain models or just-in-time inventory systems, trucking is a key trade facilitator; over 80% of all U.S. exports to Canada are shipped by truck.<sup>83</sup> Given that most Canada-U.S. trade crosses the border by truck, land border crossings have become increasingly more important to Canada's economic health. At the Canada-U.S. land border, nearly 200 million crossings take place each year.<sup>84</sup> In terms of geography, "about 75% of bilateral trade in goods moves through four Ontario and one British Columbia border crossings: two at Windsor-Detroit, one each at Fort Erie-Buffalo, Sarnia-Port Huron, and White Rock-Blaine".<sup>85</sup> With increasing cross-border industrial linkages and the growing popularity of just-in-time production technologies, the border and the trucks that move across it are of paramount importance to the movement of Canadian products, both domestically and internationally. According to the Canadian Trucking Alliance, "[w]ithout trucking, the wheels of commerce would stop rolling and Canadians would be unable to enjoy many of their favourite consumer products".<sup>86</sup> Dianne Cunningham, Director of the Lawrence National Center for Policy and Management, makes an even more

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<sup>80</sup> Ship North America Transportation. (2010). *Glossary: Trucking Services*. Accessed on August 8, 2010 at [http://www.shipnorthamerica.com/htmlfiles/gloss\\_truckserv.htm](http://www.shipnorthamerica.com/htmlfiles/gloss_truckserv.htm).

<sup>81</sup> Canadian Trucking Alliance. (2009). *Trucking in Canada*. Accessed on June 30, 2010 at <http://www.cantruck.ca/iMISpublic/Content/NavigationMenu2/CTAIndustry/TruckinginCanada/default.htm>

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Hart, Michael. (2010). Trade, Globalization, and Canadian Prosperity in John Courtney and David Smith (Eds.) *The Oxford Handbook of Canadian Politics*. Oxford: Oxford University Press. Pg. 410.

<sup>85</sup> Ibid., Pg. 410.

<sup>86</sup> Canadian Trucking Alliance. (2009). *Trucking in Canada*. Accessed on June 30, 2010 at <http://www.cantruck.ca/iMISpublic/Content/NavigationMenu2/CTAIndustry/TruckinginCanada/default.htm>.

profound connection between border policy, trucking, and the economic health of not only Canada's export oriented firms, but the market as a whole. She reminds us that:

[t]rade and transportation go hand in hand in creating our nation's wealth. You can have the best product in the world, but you will lose in the global marketplace if you cannot be assured it can get to customers quickly, reliably and at a low cost. In the 21<sup>st</sup> century, if you don't deliver on time, you won't deliver again.<sup>87</sup>

By viewing the trucking industry through this lens, its importance to Canada's larger economic well-being becomes clear.

In terms of the regulatory environment, the Canadian trucking industry has been "under tight controls since its infancy".<sup>88</sup> Trucking regulation in Canada originally stemmed from the Great Depression and provincial governments' desires to remedy "distress in the railway industry and turbulence in the trucking industry"<sup>89</sup> caused by competition between the various modes of transportation. According to Madar, "governments at the time believed that unregulated motor carrier competition caused the problems and that tight controls would cure them".<sup>90</sup> Within Canada's federal structure, the regulatory environment for transportation was well established and well defended as being a provincial prerogative. Each province had authority over the rules and regulations that guided its industry's operations. Ottawa did have regulatory authority over interprovincial trucking; however, it never exerted its regulatory power in this domain. Provincial regulations varied in nature and intensity across the country but most exhibited strong control over the industry. They controlled entry to the industry, the domains of each carrier, the terms of business with shippers, and the conditions for growth and change. They governed the number of carriers, acceptable routes, and rules surrounding the use of public infrastructure. They also implemented commodity controls that governed what and where they could haul, as well as how much they could charge

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<sup>87</sup> Cunningham, Dianne. (2008). Director's Message: Developing Competitive and Sustainable Transportation Policy Workshop. *Lawrence National Centre for Policy Management*. London: Richard Ivey School of Business. Pg. IV.

<sup>88</sup> Madar, Daniel. (2000). *Heavy Traffic: Deregulation, Trade and Transformation in North American Trucking*. Vancouver: University of British Columbia Press. Pg. 5.

<sup>89</sup> Ibid., Pg. 5.

<sup>90</sup> Ibid., Pg. 5.

for each load.<sup>91</sup> Such a prevalence of intrusive regulation created a highly structured domestic market. For many years, this type of regulatory regime was acceptable for the Canadian market. As Canada opened its economy and became a trading nation, however, this sort of regulation only inhibited competitiveness and innovation in business and industry. With the Motor Vehicle Transport Act, passed in 1987, a new regulatory regime was laid out. The provinces, responsible for implementing the vision and spirit of the federal bill, had implemented these new regulations by 1989. The passage of this act, and more importantly its implementation, worked to deregulate the Canadian trucking industry. It allowed industry players, among other things, to decide on their own service offerings and to negotiate prices individually with clients. This deregulation transferred a large degree of power from the provinces back to the industry itself; however, it did not streamline or harmonize Canadian trucking regulation as a whole. Although some rules and regulations were abandoned, provinces were not willing to forego all regulatory control. Provincial regulations still exist, preventing true central control and national harmonization in the industry.

Mirroring the fragmented regulatory environment, trucking-related industry associations began cropping up all over the country. Strategically aligning with the realities of provincial regulatory control, trucking associations organized at the provincial level. Most lobbying efforts and involvement in consultations would take place at the sub-federal level of government so it was important that the trucking industry had representation in each of the provincial capitals. The Canadian Trucking Alliance, a federation of provincial trucking associations that represents a broad cross-section of the industry at the federal level, did emerge; however, it did not have many responsibilities in the most crucial area to truckers – economic regulation. Private carriers and independent owner-operators also established their own associations to represent their specific industry interests. In the mix of alliances, it is the provincial associations that are the largest and best funded. Reflecting the size of its carrier industry, the Ontario

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<sup>91</sup> Madar, Daniel. (2000). *Heavy Traffic: Deregulation, Trade and Transformation in North American Trucking*. Vancouver: University of British Columbia Press. Pg. 11.

Trucking Association has traditionally been the strongest of the provincial associations. This size and relative power can be important in the decentralized policy realm of trucking reform. Fighting for their own regional interests, provincial associations can often come into conflict with one another. Associations are pressured by their members to act locally and to protect their members from extra-provincial outsiders. Conflict can also be anticipated between associations and shippers, which often pool their resources to counter both the regulators and the trucking associations' voices at the policy table. According to Madar, "[r]egulatory decisions directly affected the terms of transport supply, making shippers interested parties in proceedings and providing an incentive for common positions".<sup>92</sup> In Canada, it is the Canadian Industrial Transportation League which organizes the trucking industry's thousands of clients and directs their voice in the policymaking process. Through an examination of all the relevant associations and organizations connected to the trucking industry, it becomes clear how many sets of distinct interests are present in the policy environment.

#### **IV: September 11, 2001 and the Border**

Immediately following the terrorist attacks of 9/11, the U.S., terrified by the threat of further assaults, turned inward. They closed all airports, seaports, and land crossings with Canada and Mexico.<sup>93</sup> Days later the borders finally reopened; however, customs officials at all entry points began subjecting all cross-border traffic to intensive inspections. Especially devastating for traffic crossing the Canada-U.S. land border was the unfounded belief that several of the 9/11 hijackers had entered the U.S. from Canada. Looking for a scapegoat, high-ranking American political figures began citing Canada's 'lax' immigration

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<sup>92</sup> Madar, Daniel. (2000). *Heavy Traffic: Deregulation, Trade and Transformation in North American Trucking*. Vancouver: University of British Columbia Press. Pg. 31.

<sup>93</sup> Globerman, Steven, & Storer, Paul. (2008). *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto Press Incorporated. Pg. 3.

and domestic security policies as a major threat to American security.<sup>94</sup> It was through these claims that the political shockwaves from the 9/11 attacks reached Canada, increasing border security in an insurmountable way which effectively shut down the world's largest bilateral trading relationship.<sup>95</sup>

In the immediate aftermath of 9/11, the state of the Canada-U.S. land border was surrounded by uncertainty. Congress pushed through the Patriot Act, tripling the number of U.S. customs agents deployed to the northern border. The National Guard was also called in to help with patrols and inspections at the border. The Coast Guard was instructed to stop all boats crossing the Great Lakes and to escort gas and oil tankers.<sup>96</sup> Although increased border security was a legitimate concern of the U.S., in practice it worked largely to inhibit legitimate trade, becoming a new kind of non-tariff trade barrier. As Stephen Flynn notes, the security-centered border response following 9/11 had the same economic effect as the U.S. imposing a trade embargo on itself and its greatest trading partners.<sup>97</sup> The predictable result of new border controls was a substantial decrease in cross-border traffic. In the days following 9/11, delays for truck carriers hauling cargo into the U.S. rose from approximately 1 to 2 minutes on average to ten to fifteen hours.<sup>98</sup> Some carriers waited at popular border crossings for up to eighteen hours.<sup>99</sup> The delays stranded people, parts, shipments, and even perishable goods. Industries with intensive cross-border operations or reliance on just-in-time operating systems were especially devastated by the increase in border wait times. Delays in the auto industry, for example, cost firms hundreds of millions of dollars a day, until they could no

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<sup>94</sup> Andreas, Peter. (2003). "A Tale of Two Borders" in Peter Andreas and Thomas Biersteker's (Eds.) *The Rebordering of North America*. New York: Routledge. Pg. 8.

<sup>95</sup> Globerman, Steven, & Storer, Paul. (2008). *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto Press Incorporated. Pg. 3.

<sup>96</sup> Andreas, Peter. (2003). "A Tale of Two Borders" in Peter Andreas and Thomas Biersteker's (Eds.) *The Rebordering of North America*. New York: Routledge. Pg. 9.

<sup>97</sup> Flynn, Stephen. (2003). "The False Conundrum" in Peter Andreas and Thomas Biersteker's (Eds.) *The Rebordering of North America*. New York: Routledge. Pg. 117.

<sup>98</sup> Andreas, Peter. (2003). "A Tale of Two Borders" in Peter Andreas and Thomas Biersteker's (Eds.) *The Rebordering of North America*. New York: Routledge. Pg. 10.

<sup>99</sup> Globerman, Steven, & Storer, Paul. (2008). *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto Press Incorporated. Pg. 3.

longer continue to operate.<sup>100</sup> On September 14<sup>th</sup>, 2001 DaimlerChrysler closed an assembly plant due to parts stuck on the Canadian side of the border. Later that day, Ford also announced that they would close five plants the following week.<sup>101</sup> The transportation industry itself was also hard hit by border delays. A study by the U.S. Federal Highway Administration which monitored only seven ports of entry revealed that border delays at this limited number of ports still cost the transportation industry approximately “2.6 million hours in delay time per year, at a financial cost of at least \$88 million”.<sup>102</sup> In addition, delays at these seven ports also led to the annual wasting of approximately 2.6 million gallons of fuel, contributing to the release of approximately 23,000 tons of carbon dioxide and more than 300 tons of nitrous oxides into the environment.<sup>103</sup> If the study was to be extended across the entire spectrum of Canada-U.S. border crossings, estimated costs to the trucking industry would be exponentially larger.

Hearing the cries of their business communities, it quickly became clear to both the Canadian and American governments that the Canada-U.S. border could no longer continue to be compromised by overzealous security measures. Serious economic losses, derived from such deep levels of economic integration, were being felt by both Canadian and American firms and could not be sustained over the medium or long term; the border had to be reopened and the movement of cross-border trade had to be facilitated through government intervention. Policy action, however, would involve acknowledging a sensitive trade-off between border security and economic prosperity. It would be a major public policy challenge to find a solution which would ensure expeditious cross-border trade of legitimate goods and people while continuing to block clandestine actors from entering the U.S.

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<sup>100</sup> Clarkson, Stephen. (2008). “Border Security and the Continental Perimeter” in *Does North America Exist?* Toronto: University of Toronto Press. Pg. 369.

<sup>101</sup> Flynn, Stephen. (2003). “The False Conundrum” in Peter Andreas and Thomas Biersteker’s (Eds.) *The Rebordering of North America*. New York: Routledge. Pg. 115.

<sup>102</sup> Condon, Bradley, and Sinha, Tapen. (2003). *Drawing Lines in Sand and Snow: Border Security and North American Economic Integration*. London: M.E. Sharpe. Pg. 41.

<sup>103</sup> *Ibid.*, Pg. 41.

## The Canadian Policy Response

### *The Smart Border Accord*

The shutting down of the 49<sup>th</sup> parallel in the days following 9/11 was unacceptable to both Canadian and American business communities. Business interests, dependent on the free flow of goods, services, and people across the Canada-U.S. border, met and desperately lobbied the governments to guarantee the free movement of trade across the U.S. boundary. Ottawa and Washington responded by holding bilateral discussions at the highest political level. On December 12<sup>th</sup>, 2001, the Smart Border Declaration, the first major bilateral government initiative to emerge post-9/11, was signed in Ottawa by Canadian Minister of Foreign Affairs John Manley and U.S. Homeland Security Advisor Tom Ridge. Accompanying the Smart Border Declaration was a 30-point Action Plan designed to reconcile the conflicting policy goals of closing the border to clandestine actors such as terrorists, but opening it to economic flows. According to the declaration itself:

Public security and economic security are mutually reinforcing. By working together to develop a zone of confidence against terrorist activity, we create a unique opportunity to build a smart border for the 21<sup>st</sup> century; a border that securely facilitates the free flow of people and commerce; a border that reflects the largest trading relationship in the world.<sup>104</sup>

The declaration was broken down into four pillars which speak broadly of the declaration's policy objectives. These pillars closely mirrored the main border security themes that had ironically been discussed by the two governments in advance of 9/11.<sup>105</sup> They aimed to facilitate 1) the secure flow of people; 2) the secure flow of goods; 3) secure infrastructure; and 4) policy coordination and information sharing in the enforcement of the plan's objectives.<sup>106</sup> The Action Plan, published as an attachment to the

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<sup>104</sup> Department of Foreign Affairs and International Trade. (2003). *The Canada – U.S. Smart Border Declaration*. Accessed on June 5, 2010 at <http://www.dfait-maeci.gc.ca/anti-terrorism/declaration-en.asp>. Last Updated February 7, 2003.

<sup>105</sup> Clarkson, Stephen. (2008). "Border Security and the Continental Perimeter" in *Does North America Exist?* Toronto: University of Toronto Press. Pg. 377.

<sup>106</sup> Department of Foreign Affairs and International Trade. (2003). *The Canada – U.S. Smart Border Declaration*. Accessed on June 5, 2010 at <http://www.dfait-maeci.gc.ca/anti-terrorism/declaration-en.asp>. Last Updated February 7, 2003.

declaration, identifies thirty specific undertakings or policy actions which are intended to address the goals mentioned in the four pillars. Five of the thirty action points are of central importance to Canada-U.S. trade and cross-border trucking. These are listed below:<sup>107</sup>

<b>Action Point</b>	<b>Expansion</b>
1) Biometric Identifiers	The development of common biometric identifiers in documentation such as travel documents, permanent resident cards, etc.
14) Harmonized Commercial Processing	Complementary systems for commercial processing, including audit-based programs and partnerships with industry to increase security.
15) Clearance Away From the Border	Development of integrated clearance programs which move security away from the border, including in-land preclearance/post clearance, international zones and pre-processing centers at the border, etc.
16) Joint Facilities	Establish criteria, under current legislation and regulations, for the creation of small, remote, joint border facilities. Examine the legal and operational issues associated with the creation of these facilities.
17) Customs Data	Sign and enforce the Agreement on Sharing Data related to Customs Fraud, exchange NAFTA related customs data, and discuss what other commercial data can be shared for national security purposes.

The Free and Secure Trade Program (FAST) was developed from the tenants of the Smart Border Declaration and was designed to meet a number of specific Action Plan items. It was launched in September 2002 by Canadian Prime Minister Jean Chrétien and American President George Bush. FAST combined the U.S. Custom Service's Customs Trade Partnership Against Terrorism program (C-TPAT) and the Canada Customs and Revenue Agency's (CCRA) Partners in Protection (PIP) program in an attempt to align the two initiatives across the border and further expedite the crossing of low risk goods.<sup>108</sup> Both programs had been created shortly after the signing of the Smart Border Accord as a means of advancing the 30-point Action Plan. C-TPAT is a program that is intended to expedite entry into the U.S. for commercial drivers, highway carriers, and importers by pre-authorizing them to use FAST lanes which

<sup>107</sup> Parks, Joseph L. (2004). The United States – Canada Smart Border Action Plan: Life in the Fast Lane. *10 Law and Business Review Am.* 395(1). Pg. 6.

<sup>108</sup> Parks, Joseph L. (2004). The United States – Canada Smart Border Action Plan: Life in the Fast Lane. *10 Law and Business Review Am.* 395(1). Pg. 4.

would allow them to avoid lengthy questioning and screening processes at various Canada-U.S. border crossings. The application process to participate in FAST is fairly extensive. Carriers must provide all background information on their firm and its operations, including corporate structure, services provided, and location of all corporate facilities. Information on the firm's use of the Canada-U.S. border as well as information on the firm's staff of commercial drivers must also be provided. Carriers applying for FAST certification in the U.S. must also submit a completed security questionnaire, addressing physical security, personnel security and security related to services providers employed by the carrier. Designated company officials must also enter into an agreement to participate with U.S. Customs Services in which the company must agree to a number of conditions, including the establishment of a company policy that requires "managers, supervisors, and employees to fully cooperate with customs officials and other law enforcement organizations".<sup>109</sup> The FAST program also mandates that the Pre-Arrival Processing system (PAP) be utilized. In this program, while still in Canada, merchandise is labelled with a unique barcode. This identifying information is then faxed to an American customs broker who enters the shipment information into the U.S. customs' computer system. When the truck arrives at the border a few hours later, the customs broker can just scan the unique barcode to access detailed information about the shipment. Unless physical inspection is required, the truck is free to pass. Lastly, drivers wishing to participate in FAST must register and be approved for a FAST commercial driver identification card.<sup>110</sup>

The Canadian counterpart of the American C-TPAT program is the Partners in Protection (PIP) program. Mirroring the workings of the C-TPAT process, American carriers wishing to pass quickly into Canada using FAST lanes must first be accepted into the PIP program. Entry into the PIP program requires that a carrier commit to "acting as a partner with the CCRA to protect Canadian society and to facilitate

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<sup>109</sup> Parks, Joseph L. (2004). The United States – Canada Smart Border Action Plan: Life in the Fast Lane. *10 Law and Business Review Am.* 395(1). Pg. 7.

<sup>110</sup> *Ibid.*, Pgs. 6-8.

legitimate trade”.<sup>111</sup> The first step to active partnership is the signing of a memorandum of understanding (MOU) between the carrier and the Canadian Minister of National Revenue that commits the firm to certain standards and protocols under the categories of “enhanced security”, “information exchange”, and “awareness sessions”. Carriers and importers must also complete a security questionnaire and a customs self assessment (CSA). In order to be eligible to complete a CSA, firms must have an active history of importing goods into Canada, they must have not incurred any previous contraband violations or major commercial infractions in the past, and senior management must provide documentation proving that proper commercial processes, customs interfaces, and audit trails are well kept in the firm’s books and records. If these criteria are met, then a firm undergoes a three-part approval process that involves a risk assessment, evaluation of books, records and business systems, and the completion of a client undertaking document. If the carrier passes through this CRA approval process, successfully completes his security questionnaire (with satisfactory results), completes the MOU process, and ensures that his driver has a valid FAST commercial driver identification cards, his cargo can then be expedited into Canada via the FAST border lanes.<sup>112</sup>

Looking back on the policy expectations, the jointly initiated FAST program was anticipated to have numerous benefits. First and foremost, it was intended to reduce the number of physical examinations of cargo at the border, reducing the amount of time cargo spends waiting to cross the Canada-U.S. border. Reduced waiting times were to lessen the costs of doing cross-border business and encourage the continued use of North American supply chains which increase specialization in tasks and promote lower cost production and greater efficiencies. In addition, the FAST program’s reliance on electronic data protocols was to produce greater certainty of customs clearance for carriers hauling cargo cross-border. If customs forms were filled out properly with all necessary information sent in advance, there would be less

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<sup>111</sup> Parks, Joseph L. (2004). The United States – Canada Smart Border Action Plan: Life in the Fast Lane. *10 Law and Business Review Am.* 395(1). Pg. 8.

<sup>112</sup> *Ibid.*, Pgs. 8-9.

chance for confusion or disruption at the border. Lastly, in the long run, the FAST program was expected to reduce carriers' compliance costs of meeting border regulations. This expectation was based on the need for common, compatible technologies and electronic data protocols which were to eliminate the need for carriers to complete two sets of customs paperwork (one when crossing into the U.S., another when crossing back into Canada), and lead the border towards process and regulations harmonization. Actual policy results, and an evaluation of whether or not these goals were met, are discussed in the following section.

### *The Security and Prosperity Partnership*

Four years following the launch of the Smart Border Accord, on March 23, 2005, the Security and Prosperity Partnership (SPP) was signed in Waco, Texas by Canadian Prime Minister Paul Martin, American President George Bush, and Mexican President Vicente Fox. Its birth, driven by the three-way consensus that U.S. security measures could no longer continue to stifle trans-border flows of goods and people that were critical to North American competitiveness, marked the first trilateral attempt to push forward the stalled economic integration agenda.<sup>113</sup> According to Anderson and Sands, the SPP process provided a valuable forum for discussing North American economic integration in the context of the new security environment.<sup>114</sup> In a 2009 press release, The Government of Canada called the SPP a North American initiative, that “provide[d] a flexible means for dialogue, priority setting, collaboration and action on issues affecting the security, prosperity, and quality of life of Canadians, Americans and Mexicans”.<sup>115</sup> A wide variety of issues, including border facilitation, the environment, food and product safety, and overall measures of North American competitiveness, were to be discussed via the SPP which

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<sup>113</sup> Clarkson, Stephen. (2008). “Border Security and the Continental Perimeter” in *Does North America Exist?* Toronto: University of Toronto Press. Pg. 436.

<sup>114</sup> Anderson, Greg, & Sands, Christopher. (2007). Negotiating North America: The Security and Prosperity Partnership. *The Hudson Institute*. White Paper. Pg. 1.

<sup>115</sup> Government of Canada. (2009). *Security and Prosperity Partnership of North America: About SPP*. Accessed on June 23, 2010 at [http://www.spp-ssp.gc.ca/eic/site/spp-ssp.nsf/eng/h\\_00003.html](http://www.spp-ssp.gc.ca/eic/site/spp-ssp.nsf/eng/h_00003.html). Last updated on May 13, 2009.

would have leaders from the three countries meet annually to discuss priorities, progress, and recommendations put forth by the issue specific working groups. In regards to border facilitation, the SPP was a forum in which the Canadian government could continue the work on smart border initiatives and related infrastructure improvements as a way of ensuring that Canadian exporters and importers maintained expedited access to the U.S. market, and in turn, could preserve their international competitiveness. A border facilitation working group was created to address specific issues relating to the movement of goods and people across the Canada-U.S. and U.S.-Mexico border.

Although business interests were pleased that their governments were once again addressing the issue of clogged and sluggish borders, they were not happy to have been left out of the deliberation process. According to Anderson and Sands, the design of the SPP did indeed exclude outside economic interests, jeopardizing potential gains from the entire process.<sup>116</sup> Early in 2006, the decision was made by the North American business community to re-engage in the policy process. United Parcel Services (UPS), a large and influential transnational corporation, invited more than 50 government and business leaders from across Canada, Mexico and the United States to its transportation hub in Louisville, Kentucky for discussion regarding border congestion. During the meeting, UPS clearly demonstrated how border delays had created massive problems for its courier business and expressed the need for policy action, but also for all relevant stakeholders, including business interests, to be involved in the preliminary discourse.<sup>117</sup> Two months later in Washington D.C., a group of 60 North American business leaders met under the joint auspices of the Council of the Americas and the U.S. Chamber of Commerce. By that time the business community had been successful in exerting their influence over the policy process as governments had acknowledged the need for private-sector involvement. It was decided that the SPP would be monitored

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<sup>116</sup> Anderson, Greg, & Sands, Christopher. (2007). Negotiating North America: The Security and Prosperity Partnership. *The Hudson Institute*. White Paper. Pg. 2.

<sup>117</sup> Clarkson, Stephen. (2008). "Border Security and the Continental Perimeter" in *Does North America Exist?* Toronto: University of Toronto Press. Pg. 438.

and activated by business participation through an independent but connected body called the North American Competitiveness Council (NACC). The NACC had 30 members, ten from each Canada, the U.S., and Mexico, all representing corporate interests. The Canadian representatives were announced by Prime Minister Stephen Harper on June 13, 2006 at the second SPP summit in Cancun, Mexico. Representation was to consist of five CEOs and five members of the Canadian Council of Chief Executives (who were also high ranking corporate officials).<sup>118</sup> Sectoral representation was broad with the forestry, banking, rail, energy, insurance, manufacturing, retailing, and telecoms industries all being represented.<sup>119</sup> According to a Government of Canada press release, the NACC's purpose was to ensure that private industry expertise was put to use in "provid[ing] governments with recommendations on broad issues such as border facilitation and regulation, as well as the competitiveness of key sectors including automotive, transportation, manufacturing and services".<sup>120</sup> The NACC met again on August 15, 2006 to outline its key priorities. It then met with the SPP ministers on February 23, 2007 to provide a preliminary report which outlined 51 recommendations for advancing North American economic integration. In February 2008, the NACC had another meeting with the SPP ministers to evaluate progress made on the 2007 report of policy recommendations. In April 2008, it delivered its second report to the SPP leaders. This latter report, entitled *Meeting the Global Challenge*, displayed deep concern over "recent isolationist rhetoric and its potential impact on efforts to strengthen the competitiveness of the three countries"<sup>121</sup> and called for improved border management which facilitates movement of cross-border travel and North American supply chain development. In August 2008, the NACC met once again with SPP ministers to focus on balancing American security issues with legitimate North American trade which is critical to the prosperity

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<sup>118</sup> Clarkson, Stephen. (2008). "Border Security and the Continental Perimeter" in *Does North America Exist?* Toronto: University of Toronto Press. Pg. 439.

<sup>119</sup> Prime Minister of Canada. (2006). *Prime Minister Announces Canadian Membership of North American Competitiveness Council*. Accessed on June 12, 2010 at <http://pm.gc.ca/eng/media.asp?id=1200>. Last Updated June 13, 2006.

<sup>120</sup> Ibid.

<sup>121</sup> Council of the Americas. (2008). *NACC Report to Leaders: Meeting the Global Challenges*. Accessed on June 12, 2010 at <http://coa.counciloftheamericas.org/article.php?id=1000>. Last updated April, 2008.

of Canada, the U.S., and Mexico. The NACC has not met since then. As for the SPP, government officials have not met since the leaders' last meeting in August 2009, after which the SPP's website was updated to say "[t]he Security and Prosperity Partnership of North America (SPP) is no longer an active initiative. There will not be any updates to this site".<sup>122</sup> This can be construed to mean that the SPP initiative has failed, losing the momentum and institutional capacity required to make meaningful border policy in the post-9/11 security environment.

## **V: The Effectiveness of Post-9/11 Border Policies**

An evaluation conducted just a year after the Smart Border Accord was signed indicated that progress had been made on all thirty Action Plan points.<sup>123</sup> A few years later, auxiliary programs such as FAST and the ACE e-manifest had been implemented and were in full operation. Research conducted in the years following the implementation of these programs, however, suggests that, in the medium and long term, post-9/11 border policies were not as successful as hoped for in reducing border wait times and relieving post-9/11 congestion. An August 2002 survey reported by Newswire indicated that Canadian carriers were still experiencing a 20 percent increase in border delays when crossing into the U.S. and a 12 percent increase in delays when crossing back into Canada.<sup>124</sup> These figures are supported by the Canada Customs and Revenue Agency, which reported rising wait times at the Canada-U.S. border in early 2002.<sup>125</sup> A study by Lee and colleagues, using data from the U.S. Department of Homeland Security (DHS), looks more long term, investigating the average delay at the border for carriers coming from Quebec and heading into the U.S throughout 2003, 2004 and 2005. By creating an average from a random

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<sup>122</sup> Dobbin, Murray. (2009). The SPP is dead. Let's keep it that way. *The Rabble*. Accessed on June 28, 2010 at <http://rabble.ca/news/2009/09/spp-dead-lets-keep-it-way>. Last updated September, 2009.

<sup>123</sup> Parks, Joseph L. (2004). The United States – Canada Smart Border Action Plan: Life in the Fast Lane. *10 Law and Business Review Am.* 395(1). Pg. 11.

<sup>124</sup> Canada News Wire. (2002). *Cross Border Delays Too Long: Canadian Carriers*. Accessed on July 2, 2010 at [www.newswire.ca/en/releases/archive/August2002/21/c4317.html](http://www.newswire.ca/en/releases/archive/August2002/21/c4317.html). Last updated August, 2002.

<sup>125</sup> Globerman, Steven, & Storer, Paul. (2008). *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto Press Incorporated. Pg. 35.

sample of data, Lee et al. determined that the average waiting time for Quebec truckers to reach the border over the years of study was approximately 32 minutes.<sup>126</sup> In comparison to an average pre-9/11 border wait time of 19 minutes,<sup>127</sup> this represents a significant increase in delays over the long term.

### **Impacts on the Trucking Industry**

With so many stakeholders interested in the border, each with different measures of success and improvement, general analysis of post-9/11 border policies is likely to be ambiguous and subjective. From the perspective of the Canadian trucking industry, however, the analysis is more straightforward. Speaking to the Canada-United States Law Institute at Case Western University in Cleveland, Ohio, Canadian Trucking Alliance CEO and President, David Bradley, proclaimed that “[t]he Smart Border Accord of 2001 spoke to the need for more security plus improved trade facilitation through risk management, but things have gone off track”.<sup>128</sup> Speaking of the onslaught of new security measures that were implemented as part of the Smart Border Accord, Bradley says the trucking industry is now “grappling with the theatre of security, where it’s check everything, everyone, all the time”.<sup>129</sup> As demonstrated previously, these obsessive security concerns have continued to contribute to lengthy border delays, especially for the trucking industry. Wait times at the border is not the only variable which has increased; processing times have also jumped. In 2005, the Coalition for Secure and Trade-Efficient Borders reported that since the Smart Border Accords’ creation in 2001, processing times for cargo entering the U.S. from Canada has increased more than 300 percent, from 45 seconds per truck on average to more than 135 seconds.<sup>130</sup>

Jennifer Fox of the Ontario Trucking Association confirms the border’s continued sluggishness, saying that

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<sup>126</sup> Lee, Linda, Martin, Pierre, Ouellet, Estelle, & Vaillancourt, François. (2005). *American Border Security Measures: Potential Economic Impacts and Policy Responses from a Quebec Perspective*. Unpublished manuscript. Montreal: University of Montreal. Pg. 43.

<sup>127</sup> Globerman, Steven, & Storer, Paul. (2008). *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto Press Incorporated. Pg. 138.

<sup>128</sup> Today’s Trucking. (2008). Smart Border Accord Needs to be Restored: Bradley. Accessed On July 14, 2010 at <http://www.todaystrucking.com/news.cfm?intDocID=19472>. Last updated April 23, 2008.

<sup>129</sup> Ibid.

<sup>130</sup> Globerman, Steven, & Storer, Paul. (2008). *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto Press Incorporated. Pg. 36.

“[w]hile many Ontario carriers take full advantage of [new border programs such as FAST, C-TPAT, and PIP], the border remains slow, frustrating and thick”.<sup>131</sup> The impact of this thickening border has been an increase in costs for the trucking industry. According to Taylor, Robideaux and Jackson, there are two broad categories of costs which the trucking industry has had to shoulder since the dawn of the Smart Border Accord. These are 1) costs related to increased transit times and greater uncertainty about transit times; and 2) more general border-related costs, including administrative costs associated with new border regulations.<sup>132</sup> As part of their study, the authors estimate the total increase in costs for the trucking industry at approximately US\$10.3 billion.<sup>133</sup> The majority of these costs are estimated to be associated with the increase in delays at the border. Bonsor, similarly studying costs associated with the new border regime, argues that the increase in delays at Canada-U.S. border crossings has pushed transportation costs above the efficient level, contributing to a reduction in cross-border truck traffic.<sup>134</sup> A more recent study by DAMF Consulting, confirms Taylor et al. and Bonsor’s estimates.<sup>135</sup> The study estimates that in 2005 additional security measures added 60 to 90 minutes to the average transit time for trucks crossing the Canada-U.S. border, corresponding to an annual industry cost impact of between \$179 million and \$406 million. All these additional costs have had an impact on the amount of truck traffic crossing the Canada-U.S. border. As of 2007, truck traffic had decreased for the third straight year in a row. In 2007, 200,000 less trucks crossed the border than in 2006, and in 2006, 200,000 less trucks crossed the border than in 2005.<sup>136</sup>

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<sup>131</sup> Fox, Jennifer. (2008). Will Electronic Clearance Services ever be Feasible as the Only means to Transit Border-Processing Points and Reduce Congestion at Border Points? Developing Competitive and Sustainable Transportation Policy Workshop. *Lawrence National Centre for Policy and Management*. London: The University of Western Ontario. Pg. 10.

<sup>132</sup> Taylor, John, Robideaux, Douglas, and Jackson, George. (2003). *The U.S. – Canada Border: Cost Impacts, Causes, and Short to Long term Management Options*. Allendale: Grand Valley State University Press. Pg. 26.

<sup>133</sup> *Ibid.*, Pg. 27.

<sup>134</sup> Bonsor, Norman.(2004). Fixing the Potholes in North American Transportation Systems. *Choices*. 10(8). Pg. 3.

<sup>135</sup> DAMF Consulting. (2005). *The Economic Impact of Post-September 11, 2001 U.S. Border Security Measures on the Canadian Trucking Industry*. New York: Mimeo Publishing. Pg. 45.

<sup>136</sup> Fox, Jennifer. (2008). Will Electronic Clearance Services ever be Feasible as the Only means to Transit Border-Processing Points and Reduce Congestion at Border Points? Developing Competitive and Sustainable Transportation Policy Workshop. *Lawrence National Centre for Policy and Management*. London: The University of Western Ontario. Pg. 10.

Designed to facilitate the cross-border movement of people and goods, one might wonder what factors have caused post-9/11 border policies to contribute to decreasing truck traffic. According to research conducted by the Ontario Trucking Association, truckers participating in programs such as FAST or C-TPAT must learn to specialize in crossing the border. They must become intimately familiar with a host of uncoordinated policies on both sides of the border and learn to play a faultless game of meeting stringent border demands. Required documentation from the ACE e-manifest is especially demanding on the trucking industry. The policy mandates that information regarding a truck's cargo be transmitted to customs hours before the truck reaches the border. This allows for pre-screening intended to speed up the crossing of the truck once it actually reaches the border. Research suggests, however, that this is not actually the case. In a world of just-in-time technology and the North American supply chain, it is often impossible for truckers to know exactly what will be on their truck hours before it reaches the border. If any one aspect of the data transmission fails, for example information is missing, the data is in the wrong format or has small inconsistencies, or does not reach the customs official within the mandated timeframe, the truck will be held at the border until the discrepancies are resolved. According to Jennifer Fox, "with the advent of the newly introduced customs programs and the systems that these programs rely on, there is actually a greater potential that something could go wrong, information missing or a communication disconnect along the way, ultimately leading to greater delays".<sup>137</sup> As mentioned previously, there are also substantial costs that accompany many of the new border policies. The purchase of new information reporting technology is required by the ACE e-manifest and C-TPAT programs. A lack of harmonization between the Canadian and American programs means that costs to upgrade technologies must be incurred twice, as opposed to only once if technological requirements had been standardized. The FAST, PIP and C-TPAT programs also incur additional costs for both trucking companies and individual drivers. FAST

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<sup>137</sup> Fox, Jennifer. (2008). Will Electronic Clearance Services ever be Feasible as the Only means to Transit Border-Processing Points and Reduce Congestion at Border Points? Developing Competitive and Sustainable Transportation Policy Workshop. *Lawrence National Centre for Policy and Management*. London: The University of Western Ontario. Pgs. 10-11.

cards must be purchased and renewed frequently, while PIP and C-TPAT require costly application and business model adaption processes in order to be approved as an eligible participant. The Canadian Trucking Alliance has estimated that the added cost to trucking companies to comply with all the new rules is approximately \$500 per truck.<sup>138</sup> At a time when Canadian firms are trying to compete with foreign low-cost producers from China and elsewhere in Asia, it does not benefit the trucking companies, their customers, or the Canadian economy as a whole to be adding these sorts of additional costs to the North American supply chain. These increased delays and costs mean that a growing number of small trucking firms are going out of business while those that manage to stay afloat face reduced commercial activity.

### **The Effect of 9/11 Border Policies on Canada-U.S. Trade**

Returning to the big picture and the impact of new border policies on the larger Canadian economy, it is also important to understand how the post-9/11 border regime affected the Canada-U.S. trade relationship. Given that the majority of Canada-U.S. trade moves across the border by truck, it is significant that the new security regime burdened the trucking industry with prohibitive costs which reduced overall truck traffic. With fewer trucks available to carry goods across the border, exporting became an increasingly expensive activity. A study by Globerman and Storer investigates the impact of 9/11 border policies on Canada-U.S. trade. Although the study methodology and specific results are beyond the scope of this paper, Globerman and Storer conclude that “the disruptive impacts of post-9/11 security developments on Canada-U.S. trade did have a significant and negative impact on the growth of Canada-U.S. trade”.<sup>139</sup> A study by MacPherson et al. supports the research of Globerman and Storer.<sup>140</sup>

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<sup>138</sup> Today's Trucking. (2008). Smart Border Accord Needs to be Restored: Bradley. Accessed On July 14, 2010 at <http://www.todaystrucking.com/news.cfm?intDocID=19472>. Last updated April 23, 2008.

<sup>139</sup> Globerman, Steven, & Storer, Paul. (2008). *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto Press Incorporated. Pg. 100.

<sup>140</sup> MacPherson, Alan, McConnell, James, Vance, Anneliese, & Vanchan, Vida. (2006). The Impact of U.S. Government Antiterrorism Policies on Canada-U.S. Cross-Border Commerce: An Exploratory Study from Western New York and Southern Ontario. *The Professional Geographer*. 58 (3). Pgs. 266 – 277.

Examining the impact of American antiterrorism policies on Canada-U.S. cross-border commerce, MacPherson and his colleagues conclude that security-related initiatives have inflated the business costs of exporters on both sides of the border, acting as non-tariff barriers to bilateral trade. The authors argue that the long term consequences of these additional costs may indeed be trade diversion.<sup>141</sup> Given that Canada is a trading nation with a significant dependence on the U.S., it can be concluded that the trade distorting post-9/11 border measures did more than just damage the trucking industry; they also jeopardized Canada's economic lifeline, a direct corridor to the U.S. market.

## **VI: The Failed Policy Process - Breakdowns in Government-Business Relations**

Although post-9/11 border policy was successful in alleviating immediate congestions concerns surrounding the Canada-U.S. border, it is clear that in the years following the policies' implementation, auxiliary concerns emerged. The trucking industry, one of the largest users of the Canada-U.S. border, has been most negatively affected by these policies. Critical to the Canada-U.S. trade regime, the trucking industry's slowdown has been seen to correspond with reduced Canada-U.S. trade. In order to understand why such negative externalities were derived from post-9/11 border policies, one must return to the policymaking process and consider how inputs and structure, or lack thereof, affected the final policy outcomes. In the context of the trucking industry's ailments, it was a lack of substantial consultation, strong international forces, and poor institutionalization of private-sector interests in the policymaking process that contributed to detrimental policy outcomes for the trucking business.

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<sup>141</sup> MacPherson, Alan, McConnell, James, Vance, Anneliese, & Vanchan, Vida. (2006). The Impact of U.S. Government Antiterrorism Policies on Canada-U.S. Cross-Border Commerce: An Exploratory Study from Western New York and Southern Ontario. *The Professional Geographer*. 58 (3). Pgs. 266, Pg. 266.

## Ineffective Consultative Process

Returning to the best practices presented at the beginning of this paper, private-sector consultations are an important part of sound policymaking. In the case of border policymaking, the principles are no different. What does complicate the realm of border policymaking, however, is the vast number of stakeholders interested in the state of the border. These stakeholders include firms crossing the border as part of their international business plan, individuals crossing for travel and tourism purposes, and various levels of governments concerned with supporting development of the North American supply chain. Some stakeholders interact with the border more than others. Several, including the trucking industry, regard the border as one of the most important factors in their business model. It is these high-intensity border-users who should play a critical role in the policymaking process. In the case of post-9/11 border policymaking, the trucking industry should have been at the top of the consultation list. According to Mr. David Bradley, President & CEO of the Canadian Trucking Alliance, however, the Canadian trucking industry struggled to clearly communicate its border-related interests to the Canadian Government.<sup>142</sup> Bradley recalls that in the months immediately following 9/11 the Government of Canada remained eerily silent regarding any policy movement in relation to the border, forcing the affected stakeholders, including the Canadian trucking industry, to seek out avenues for input and influence. The Canadian government was not coming to industry asking it how it was being affected and what needed to be done. Instead, the government remained inward looking. Speculating as to the cause for the federal government's inwardness, Bradley maintains that officials remained confused about who they really should have been talking to. Desperately grasping for a greater understanding of the border, how it worked, and who its greatest users were, officials needed time to get a firm grasp of the problem at hand before they knew who to consult. Even once the trucking industry had been highlighted as an important stakeholder, the fragmented and truly federal nature of the

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<sup>142</sup> Bradley, David (President and CEO of the Canadian Trucking Alliance). (2010). *Speaking Engagement: Canadian Trucking Alliance on the Smart Border Accord and SPP*. July 20, 2010. Ottawa: Department of Foreign Affairs and International Trade.

industry's regulatory regime may have also confused policymakers. Government officials may have been uncertain as to whether they should consult provincial trucking associations, the Canadian Trucking Alliance, provincial governments who maintained most regulatory control over the industry, or individual firms themselves. Conscious that consultation with provincial bodies would most likely produce a vast array of diverse and regionally centered interests that would further complicate the policy agenda, federal policymakers may have intentionally avoided discussions with these sub-federal institutions. The fragmented regulatory nature of the industry, therefore, may have actually worked to keep private-sector voices out of the policymaking process.

What most surprised Bradley in regards to the consultative process, or lack thereof, was that, as the head of the Canadian Trucking Alliance, he was being approached more frequently by American officials requesting consultations than by his own government.<sup>143</sup> In relation to the Canadian government, the Canadian trucking industry was forced to seek out accessible officials who could bring the trucking industry's cause to the Canadian table. Finding that the right officials were not always accessible, the industry struggled to create a two-way information flow between Canadian policymakers and the trucking industry itself. Without an avenue for this necessary communication, the border policy that was being formulated behind the scenes would be missing crucial elements that only private industry was able to highlight because it lives and breathes the border every single day.

Eventually, however, as the Canadian government became more involved in the creation of post-9/11 Canadian border initiatives, it realized the importance of private-sector input and began to consult private industry. At this stage in the consultative process, however, there was another problem. According to Bradley, it was no longer a problem of inwardness that was affecting the trucking industry's ability to

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<sup>143</sup> Bradley, David (President and CEO of the Canadian Trucking Alliance). (2010). *Speaking Engagement: Canadian Trucking Alliance on the Smart Border Accord and SPP*. July 20, 2010. Ottawa: Department of Foreign Affairs and International Trade.

contribute to the policymaking process, but one of diffused responsibility.<sup>144</sup> Although the Canadian Border Services Agency had the lead on the border file, responsibility for different aspects of the initiative was spread among various government departments. The Department of Transportation, the Department of Public Safety, Citizenship and Immigration Canada, and the Privy Council Office all maintained some area of responsibility within the larger border file.<sup>145</sup> From the perspective of the Canadian trucking industry, this diffusion of responsibility prevented any coordinated approach to consultation between the public and private sectors. The result was a haphazard and inconsistent approach to consultations that prevented substantial discussions, which were needed to legitimately steer the policymaking process. Instead of coordinating consultations in a way which would promote a common understanding of the industry's concerns and needs, trucking industry representatives spent precious time and efforts in meetings with various government officials saying the same thing, desperately repeating their plea for trade facilitating border policy. Bradley, hoping that the government departments would communicate with each other and coordinate their consultations with industry in a way that allows for effective and efficient feedback, called for a sort of border tsar who could coordinate the Canadian effort.<sup>146</sup> Without a coordinated approach to consultations that allowed for substantive and influential exchanges of information, the policymaking process could not have been efficient in hearing industry's concerns and incorporating them into the end product. Had the Government of Canada been more organized and strategic in the way it approached industry, doing it earlier and in a way that allowed for useful feedback, post-9/11 border policy may not have been so damaging to the Canadian trucking industry.

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<sup>144</sup> Bradley, David (President and CEO of the Canadian Trucking Alliance). (2010). *Speaking Engagement: Canadian Trucking Alliance on the Smart Border Accord and SPP*. July 20, 2010. Ottawa: Department of Foreign Affairs and International Trade.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

## **Strong External International Forces**

Following the terrorist attacks of September 11, 2001, the American Government was understandably in a state of chaos. Rumours of further attacks led the American administration to undertake drastic measures in an effort to safeguard and protect the lives of the American public. A sense of urgency, panic, and immediacy characterized the interactions between the governments of Canada and the U.S. Rumours that the terrorists had entered the U.S. from Canada did little to advance Canada's desperate call for reopening the borders. American officials demanded that Canada increase its border security immediately, taking action to prevent future attacks. Until Canadian officials could demonstrate this sort of progress to the Americans, efforts to start negotiating a more fluid border would be futile. Realizing Canada's economic dependency on access to the American market, Canadian officials could not afford to waste time. Of much weaker influence than their counterparts to the south, Canadian officials had no choice but to begin the uphill battle of trying to convince the Americans that Canada indeed was a secure trading partner that could be trusted with an open border.

In order to convince the Americans that Canada was serious about border security, officials had to act quickly and in ways that produced visible security deliverables. In the short months following 9/11, Canada undertook a host of measures to demonstrate its commitment to the newly-emerged American security regime and the fight against terrorism. Immediately following the attacks, Canada put in place a high state of alert at all Canada-U.S. land-border crossings and elevated security levels at Canada's airports, allotting an additional \$280 million for detection technologies and personnel. Officials launched new legislation to stifle the funding of terrorism and froze the assets of known terrorist organizations. An additional 2,000 Royal Canadian Mounted Police were assigned to border control and anti-terrorism files. To counter the perception that Canada was a safe haven for illegal aliens and terrorist cells, Canada also introduced a permanent fraud-resistant resident card for new immigrants, increased its detention capacity

and deportation activity, and intensified security screening for refugee claimants. Canada also introduced visa requirements for Saudi and Malaysian visitors.<sup>147</sup> Aside from the above mentioned policy changes, however, Canada had to demonstrate that it was willing to adapt its border security regime toward American objectives for the long term. It was for this reason that then Deputy Prime Minister John Manley worked tirelessly with then Director of Homeland Security, Tom Ridge, to produce the Smart Border Declaration and its 30-point Action Plan. The declaration was more than a commitment toward efforts to produce a secure and efficient border, it was also a message that Canada would accede to the American call for immediate, far reaching, and long lasting security measures. Given the need for immediacy, little time or effort was left for substantial consultation with Canada's most frequent border-users. The international forces were so great that the Canadian government could not risk what might have seemed like delay or hesitation had it taken the time to thoroughly consult stakeholder interests in advance of launching into the policy process. By acceding to American pressure and pushing through the signing of the Smart Border Declaration by December 2001, only three months after the attacks, Canada had perhaps overridden the interests of its border-users but it had maintained the all-important confidence of its neighbour to the south. The need to remain steadfastly committed to American security measures continued well into the years following the signing of the Smart Border Accord and still remains a priority today.<sup>148</sup> It is this constant pressure from the American security regime that continues to drive Canadian border policy and steers the policymaking process towards American interests at the expense of Canadian industry. For a country that operates according to the principles of international openness and interdependence, Canada has had no other choice but to prioritize the needs of its largest trading partner.

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<sup>147</sup> Andreas, Peter. (2003). "A Tale of Two Borders" in Peter Andreas and Thomas Biersteker's Eds.) *The Rebordering of North America*. New York: Routledge. Pg. 13-14.

<sup>148</sup> Manley, John (President and Chief Executive of the Canadian Council of Chief Executives). (2010). *Speaking Engagement: Canadian Business in a Global Economy*. April 12, 2010. Ottawa: Canadian International Council National Capital Branch.

## **Poor Institutionalization of Private Interests**

Connected to the dominance of international forces is the poor institutionalization of private-sector inputs into the domestic policymaking process. Without an institutional process and/or mechanism that provides organizational structure for and mandates substantive private-sector consultation, the policymaking process can easily be overridden or hijacked by stronger outside forces. In the case of the Smart Border Accord, the policymaking process, lacking an organized mechanism for private-sector input, was overrun by American security interests. Although Canadian officials knew the importance of private-sector consultation, it was not something that was deemed possible in order to push the policymaking process forward. Even with individual businesses and industry associations approaching government to provide input on border delays and request assistance with cross-border initiatives, there was no institutional mechanism that either required or provided a structure for the government to interact with private stakeholders. The decisions to both hold individual stakeholder consultations and incorporate private-sector feedback into the policy process was the prerogative of government officials working on the border file. Dealing with such a far-reaching policy issue – the border has a vast number of both direct users and stakeholders who may be affected indirectly by changes in related policy – officials may have been intimidated by the immense number of interested parties, confused about who to consult with or solicit input from, and/or may have been resource strapped and unable to conduct such widespread and comprehensive consultations both effectively and efficiently. Without an institutional mechanism to provide guidance and structure to the business-government relationship, especially in times of crisis, consultations fell by the wayside and policymaking effectiveness was reduced.

The SPP's failure is another example where post-9/11 border initiatives failed to successfully incorporate private-sector interests and, as a result, were less effective in pursuing trade facilitation objectives. In its original form, the SPP consisted of only public officials. The leaders of Canada, Mexico

and the U.S. spearheaded the initiative at a high level and public servants took to work behind the scenes to prepare the initial action plans. From the beginning there was very little public discussion around the agreement or the specific policy proposals put forth in the months and years following the SPP's launch.<sup>149</sup> Anderson and Sands agree that the SPP's design left little room for input by outside special interests.<sup>150</sup> In a 2007 report commissioned by the Hudson Institute, the authors advise that governments "find a way to solicit input from other special interests"<sup>151</sup> in order to avoid risking loss of potential gains from the SPP process. Robert Pastor, writing on the decline of the SPP, attributes the partnership's failure to its bureaucratic nature and the decision policymakers made to keep the SPP policymaking process out of the public eye.<sup>152</sup> As was the case with the Smart Border Accord, there was a lack of private-sector involvement due to the absence of any sort of institutional mechanism that mandated that private stakeholders be given a chance to participate in the policymaking process. Public servants dominated the policy process behind closed doors. As a result, there was a general lack of understanding surrounding the significance of the agreement's outputs.<sup>153</sup> Without a process that had taken into account the interests of primary border-users themselves, outsiders had no basis to judge the partnership's outcomes as either "meaningless verbiage..., trivial projects..., [or] powerful proposals".<sup>154</sup> As a result, the partnership itself and its proposals for a more efficient Canada-U.S. border gained little public merit, failing to accomplish many of its stated goals.

Eventually, the North American business community became frustrated by its exclusion from the SPP policymaking process and demanded to be included. It was only through this private-sector initiative that the need for business involvement was highlighted and recognized. The creation of the North

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<sup>149</sup> Clarkson, Stephen. (2008). The Security and Prosperity Partnership in *Does North America Exist?* Toronto: University of Toronto Press. Pg. 437.

<sup>150</sup> Anderson, Greg, & Sands, Christopher. (2007). Negotiating North America: The Security and Prosperity Partnership. *The Hudson Institute*. White Paper. Pg. 2.

<sup>151</sup> *Ibid.*, Pg. 2.

<sup>152</sup> Pastor, Robert. (2008). The Future of North America: Replacing a Bad Neighbour Policy. *Foreign Affairs*. 87 (4). Pg. 84.

<sup>153</sup> Clarkson, Stephen. (2008). The Security and Prosperity Partnership in *Does North America Exist?* Toronto: University of Toronto Press. Pg. 437

<sup>154</sup> *Ibid.*, Pg. 437.

American Competitiveness Council in March 2006 finally provided a mechanism for including such important business interests in the SPP policy process. The initiative, however, was too little too late. The SPP's action plan had already been formulated and announced by June 2005.<sup>155</sup> Problem identification had been completed and the policy agenda set. The private sector's input into these fundamental policymaking stages had been overlooked and the opportunity to influence the direction of the policy was lost. Private-sector input would be limited to the latter half of the policymaking process, restricting business influences to the implementation stages of the policy process.

Furthermore, the lack of the NACC's integration into the SPP's policymaking process created additional challenges. When created, it was decided that the NACC would be an "independent but connected body".<sup>156</sup> The NACC held its own meetings and met independently of the other SPP policymakers. The group of private-sector officials was not included in larger SPP meetings, except when being asked to present recommendations, and was not regarded as part of the collective which truly influenced policy decisions. The decision to keep the organization at arm's length may have sufficiently removed a degree of interaction, uninhibited communication, and true consultation that could have improved the policymaking process. Use of a more integrative institutional structure that linked public officials steering the SPP with the private sector would have likely improved the policy outcome.

Lastly, the composition of the NACC left a lot to be desired. Although it is recognized that the SPP was designed to deal with issues of national competitive on a wide and all encompassing scale, its composition should have reflected the Council's priorities. During the August 2006 meeting, three priority areas were established, one assigned to each group of NACC participants from the three countries. One of the priority areas identified, and ironically the area which was assigned to Canada, was border security. Given that it was responsible for border-related policy, it would have made sense for Canadian officials, or

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<sup>155</sup> Clarkson, Stephen. (2008). *The Security and Prosperity Partnership in Does North America Exist?* Toronto: University of Toronto Press. Pg. 437.

<sup>156</sup> *Ibid.*, Pg. 437.

the NACC itself, to adjust the Canadian portion of the NACC membership base to reflect the assigned policy problem. This would have involved identifying the most relevant stakeholders and including them in the advisory process. In fact, however, the Canadian membership on the NACC did not include representation of the most frequent border-users. There was no representative from the trucking industry, or even of the larger transportation sector. Industry interests were more centered around the financial and energy sectors.<sup>157</sup> A stronger institutional structure, which would have imposed a process for selecting relevant stakeholders as key members of the consultation group, would have ensured that the minds most capable of discussing and contributing to the border debate were present. This would have undeniably added to the quality of discussion and most probably improved the final policy outcome. It is clear, therefore, that for a multitude of reasons, a more institutionalized approach to private-sector consultation would have benefited the border policymaking regime.

## **VII: Conclusion and Policy Recommendations**

The trucking industry, an industry incredibly valuable to the Canada-U.S. trade regime, has been rendered economically vulnerable by the many post-9/11 border initiatives that have compromised certain aspects of the industry's cross-border business model and imposed on it heavy financial constraints. Policy that was designed to enhance the Canada-U.S. trade relationship and facilitate the continued economic growth of Canadian businesses should not have had such a devastating effect on any Canadian sector, especially one so reliant on the border for its success. Through examination of the policy process that led to these outcomes, it becomes clear that a breakdown in the government-business relationship can be blamed, at least in good part, for the less than desirable policy results. A lack of substantive and coordinated industry consultations, the presence of overriding international forces, and the absence of an

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<sup>157</sup> Council of the Americas. (2008). *NACC Members*. Accessed on July 17, 2010 at <http://coa.counciloftheamericas.org/files/editor/image/03%20NACC%20Members.pdf>.

institutional mechanism that could provide for a structured and open government-business relationship all contributed to the failure of post-9/11 border policies in driving a more efficient and effective border.

Moving forward, it is important not only to identify past mistakes that have inhibited effective policymaking but to use those cases as lessons to identify better ways of creating future policy. In this paper's case the challenge is to suggest a possible way to enhance and strengthen the business-government relationship in order to promote more effective and efficient policymaking. Borrowing from the research of Campos and Gonzalez, this paper proposes that the use of deliberation councils in the policymaking process would improve the public-private relationship and create structure and stability for the consultative process that is absolutely necessary for the elaboration of effective border-related policies in the post-9/11 security environment.

### **Policy Recommendation: Deliberation Councils**

As previously discussed in this paper, deliberation councils are a mechanism for improving the complex policymaking process by ensuring effective public-private cooperation. Proven to have contributed to sound policymaking in tough economic and social situations in Singapore, Malaysia, and Saskatchewan, the use of deliberation councils in the post-9/11 border policymaking world could add structure, order, and consistency to the currently confused and fragmented process.

Firstly, use of a deliberation council would ensure that all relevant stakeholder voices are included in the policy community and have opportunities to contribute to the final policy outcome. This is a key characteristic of a deliberation council: i.e. that the working group includes not only federal public officials but also members from relevant industry groups, private-sector representatives, officials from sub-federal governments, nongovernmental organizations (NGOs), and members of civil society. In the formation of a deliberation council compiled to address the need for trade-facilitating and security-enhancing border

policy, it would be essential to include a host of representatives from the private sector, including those representing the Canadian Trucking Alliance, provincial trucking associations, the Canadian Chamber of Commerce and/or the Canadian Council of Chief Executives, as well as representatives of other key industry sectors such as the rail and the automotive industries. Representatives from the public sector must also be carefully selected, ensuring that provincial government representatives and members from all federal government departments holding a piece of the border file are included. In order to ensure that the final policy outcome is well regarded by the public, members of civil society should also be included. This might also include representatives from relevant NGOs. By ensuring that the right people are gathered around the table, deliberation councils can better ensure that private-sector voices are heard by the right government officials and that a consistent and clear message is communicated. The approach should be one of collaboration, as opposed to just one of consultation, with all parties being regarded as valuable and equal members of the committee. This approach would facilitate open communication and consultation between all and would prevent blocked communication lines between business and government as seen in the actual policy process that led to post-9/11 border policies such as the Smart Border Accord, FAST, and ACE E-manifest. The use of a deliberation council is also more efficient than holding individual consultations between the private sector and each government department. In this case, the number of required meetings with the private sector is cut down and there are fewer burdens on the bureaucracy in terms of consolidating and coordinating industry input post consultation.

Secondly, given that border policy is largely a cross-border initiative, it would also be wise to consider including as part of the deliberation council representatives from the American government who could provide insight into America's security demands. As demonstrated in the actual policymaking process which took place post-9/11, American security concerns were a dominating variable which highly influenced Canada's decision-making. This is a reality which we can not ignore, and although it may be

unconventional to include a member of a foreign government in a domestic policymaking process, it would be wiser to include those interests in the process where they can be balanced by the interests of domestic stakeholders than to allow them to hijack the entire process from the outside. As discussed in the following paragraphs, decision-making mechanisms would have to be adjusted to allow for the inclusion of foreign participants in the deliberation council; however, the input of Canada's highly influential neighbour is an element that can not be removed from the policy process and therefore should be incorporated into the consultative structure.

Thirdly, requiring the use of a deliberation council provides an element of institutionalization and structure to the consultative process that provides direction, certainty and organization to an otherwise multidimensional and often confused process. The transferable nature of deliberation councils has been well studied by authors such as Campos and Gonzalez, and the conclusion has been that "replication or adaption [of the deliberation council model] in other contexts may be possible".<sup>158</sup> The method has been proven to provide a structure that ensures a wide variety of both public and private-sector participation by mandating the inclusion of all major stakeholders and removing the element of discretionary choice, which in the past has led to the exclusion of certain economic interests from the policy process. If it has been decided that the deliberation council approach would be used for complex policy issues such as border policy, policymakers can react quickly and with confidence following the predefined approach. They will know that the identification of key stakeholders is the first step, the formation of a council the second, deliberations surrounding the policy area the third step, and decision making the fourth. This sort of process, especially once fleshed out and documented as a valid and necessary part of the policymaking process, leaves little room for inaction or uncoordinated activities based on confusion or overwhelming circumstances.

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<sup>158</sup> Campos, Jose Edgardo, & Gonzalez, Joaquin. (1999). Deliberation Councils, Government-Business-Citizen Partnerships, and Public Policy-making: Cases from Singapore, Malaysia and Canada. *Asia Pacific Journal of Management*. 16 (1). Pgs. 445.

In terms of the deliberation and decision-making processes, the deliberation council method also provides much needed structure. Deliberations are to take place behind closed doors with all members of the council present. Chatham House rules of non-attribution and the unanimity principle shall apply in order to facilitate free and honest debate and avoid the final policy decision being attributed to any one group involved in the policymaking process. Every member has the right to be heard and the duty to give his or her full and honest opinion in the course of all discussions. In terms of decision-making, at the end of their deliberations, the council will make a recommendation to the prime minister and the cabinet based on unanimity. There should be, however, one exception to this principle. Given that this paper has suggested the inclusion of international actors in the deliberation process, there must be exceptions in the decision making process to account for their alternate, non-Canadian interests. American representatives who may have participated in the deliberations should be the only party not given a vote in the decision-making process and their agreement should not be required in order to make a unanimous recommendation to cabinet. It should also be noted that making a recommendation to cabinet does not ensure that the government will adopt the recommendation in whole or in part as its final policy solution. Based on the democratic principles of governance, policymaking is always at the final prerogative of the elected government. In this situation they are not obliged to adopt recommendations that have been put forward by a collective group including private-sector members. For reasons outside of public understanding or common knowledge, the government may choose to alter the policy or take a completely different approach. Based on the research of Campos and Gonzalez, however, it is often the case that policy recommendations put forth by deliberation councils are swiftly and easily adopted due to the comprehensive approach to policymaking. Due to the intensive and open deliberation process which supported its creation, the policy outcome is often widely accepted by the public and by government

officials.<sup>159</sup> This facilitates the approval process, leads to faster implementation of the policy, and expedites the policy's intended results.

It should be noted, however, that there are criticisms against the deliberation council model of decision-making. For instance, requiring that all members of the council agree on a unanimous recommendation can lead to lengthy and time consuming deliberations. In the case of post-9/11 border policymaking, this may have slightly impeded the timeliness of the public policy response. In addition, there have been concerns surrounding deliberation councils' lack of transparency. Given that discussions take place behind closed doors, it is not always possible for the public to have complete disclosure regarding the policymaking process. In a democratic nation such as Canada, this can present challenges for policymakers and politicians alike. Nonetheless, deliberation councils still present themselves as a wise addition to the policymaking process and a sound alternative to current decision-making regime which has been shown to be ill-informed and ineffective. The benefits of inclusive membership, a collaborative deliberation approach, the institutionalization of private-sector and civil society interests, and the council's ability to produce widely accepted policy recommendations greatly outweigh any criticisms which can be mustered against the use of deliberation councils.

September 11<sup>th</sup>, 2001 and the subsequent closing of the Canadian borders created the greatest policy challenge for Canadian policymakers in decades. Today, as the negative effects from post-9/11 border policy continue to emerge, the border remains an area of priority. Going forward, however, we must avoid the mistakes that were made in the past. We must ensure that consultations are substantive and diverse. Allowing for all relevant stakeholders to be heard will ensure that the final policy outcome does not have a disproportionate negative effect on one industry as current border policies have on the trucking industry. The American influence must also be managed. We must acknowledge our neighbour's concerns

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<sup>159</sup> Campos, Jose Edgardo, & Gonzalez, Joaquin. (1999). Deliberation Councils, Government-Business-Citizen Partnerships, and Public Policy-making: Cases from Singapore, Malaysia and Canada. *Asia Pacific Journal of Management*. 16 (1). Pgs. 443.

and, given the reality of our economic interdependence, we must accede to many of its wishes. We must nevertheless avoid letting American influences hijack our policy process in ways that drown out Canadian interests. Lastly, we must subscribe to some sort of institutional structure that can direct our policymaking process to ensure substantive consultation and balancing of international and domestic forces. We must remove room for ambiguity and confusion in the policy process and provide direction and guidance to our public officials responsible for the content and coordination of policymaking. The use of a deliberation council can remedy these problems of the past and provide the necessary structure that is needed to improve future policymaking. To remain content with the status quo is not an option. The problems suffered by the trucking industry demonstrate to us that the current system is less than ideal. To create truly comprehensive policy that does not continue to allow security to trump trade, we must revamp our systems of governance and policymaking and move to a deliberative and collaborative approach that will revive the business-government relationship and more justly represent and defend Canadian interests.

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