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# TO GO FORWARD, WE MUST REMEMBER AND RELY UPON OUR PAST

*By Paul Vandevert\**

## I. INTRODUCTION

In December 2011, the governments of Canada and the United States issued the “Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness Action Plan” ( “Action Plan”),<sup>1</sup> which was directed by the joint declaration of the Prime Minister of Canada and the President of the United States in February 2011 ( “Joint Declaration”).<sup>2</sup> The Action Plan outlines four areas of cooperation with the twin goals of enhancing the security of both countries and accelerating the legitimate flow of people, goods, and services between them.<sup>3</sup> The four areas of cooperation identified in the Action Plan are: (1) addressing threats early; (2) trade facilitation; (3) economic growth and jobs; and (4) critical infrastructure and cyber security.<sup>4</sup> This paper will focus on two of those priorities: trade facilitation and economic growth and jobs.

The most striking thing about the Action Plan is the enormous, overshadowing significance of what it does not say. There is only cursory reference to the extremely long history between the two countries.<sup>5</sup> There is no mention at all of the formal military alliances, such as the North Atlantic Treaty Organization (“NATO”)<sup>6</sup> and the

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1. U.S. DEP’T OF HOMELAND SEC., UNITED STATES-CANADA BEYOND THE BORDER: A SHARED VISION FOR PERIMETER SECURITY AND ECONOMIC COMPETITIVENESS (2011) [hereinafter BEYOND THE BORDER], *available at* <http://www.dhs.gov/xlibrary/assets/wh/us-canada-btb-action-plan.pdf>.

2. *Id.* at i-v.

3. BEYOND THE BORDER, *supra* note 1, at 1.

4. *Id.*

5. BEYOND THE BORDER, *supra* note 1, at i.

6. *See* North Atlantic Treaty, art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 (providing the ideological basis for the establishment of

North American Aerospace Defense Command (“NORAD”)<sup>7</sup> in which Canada and the United States have bound themselves together in the joint defense of North America. It is completely silent on the series of trade agreements, each of which enjoy the status of an international treaty: the Canada-United States Automotive Products Agreement (“APTA”),<sup>8</sup> Canada-United States Free Trade Agreement (“Canada-U.S. FTA”)<sup>9</sup> and the North American Free Trade Agreement (“NAFTA”),<sup>10</sup> that have resulted in Canada and the United States being two of the longest standing and largest trade partners in the world.<sup>11</sup> Last, but, perhaps most important in the context of the Action Plan, the fact that the Canada–United States border remains the longest “undefended” border in the world,<sup>12</sup> in the sense that neither country has ever deployed military forces to defend against acts of incursion or aggression by the other in our mutual history as sovereign nations is totally ignored. In stark contrast to these formal, long-established and tested ties, the Action Plan is expressly not a legally binding instrument: “Nothing in this Action Plan is intended to give rise to rights or obligations under domestic or international law; this action plan [*sic*] is not intended to constitute an international treaty under international law.”<sup>13</sup>

The Action Plan also omits any reference to its *raison d’être*: the tragic events of September 11, 2001, in which although the world itself really did not change, peoples’, most particularly Americans’, views and perceptions of the world radically, and, apparently,

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the North Atlantic Treaty Organization). See NORTH ATLANTIC TREATY ORG., available at [http://www.nato.int/cps/en/SID-C1F671EF-8A6CAB1D/natolive/what\\_is\\_nato.htm](http://www.nato.int/cps/en/SID-C1F671EF-8A6CAB1D/natolive/what_is_nato.htm).

7. *About NORAD*, N. AM. AIR DEFENSE COMMAND, <http://www.norad.mil/about/agreement.html> (last visited Oct. 7, 2012).
8. Automotive Products Trade Agreement, U.S.-Can., Jan 16, 1965, 79 Stat. 1016.
9. Canada-United States Free Trade Agreement Implementation Act, S.C. 1988, c. 65.
10. North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993).
11. See U.S. DEP’T OF COMMERCE INT’L TRADE ADMIN., TOP U.S. EXPORT MARKETS 3 (2008), available at [trade.gov/publications/pdfs/tm\\_091208.pdf](http://trade.gov/publications/pdfs/tm_091208.pdf).
12. Michael Wilson, *Proceedings of the Canada-United States Law Institute Conference on the World’s Longest Undefended Border: Gateway or Checkpoint? The Post-9/11 “Safe and Secure” Canada-United States Border in the Era of Global Supply Chains*, 34 CAN.-U.S. L.J. 67, 69 (2008).
13. BEYOND THE BORDER, *supra* note 1, at 1.

irrevocably changed. For most Americans, a largely positive, albeit not fully informed and somewhat naïve, worldview was replaced by one of mistrust and fear. The post-September 11 response, particularly in the areas of security and trade facilitation, seems to be that history and most everything known about trade partners, the traders and travelers who have been moving goods and people across the border for years, even decades and centuries, and the economies and societies that have been created and sustained by cross-border trade, are to be forgotten. The Action Plan is essentially an attempt at a complete “do-over” of the cross-border relationship between Canada and the United States.

But, a do-over, going back to a clean slate to create Canadian – U.S. border relations anew, is simply impossible. The structure, interrelationships, and interdependencies of the societies and economies that have evolved along the Canada – United States border can neither be undone nor substantially altered. Nor is it possible, or even desirable, to either abrogate or materially amend the formal, legally binding alliances and treaties in place between the two countries. Moreover, ignoring history, particularly what is already known about the traders, that is the producers, importers, carriers, of goods, the goods traded, and the individual travelers who have been and continue crossing the Canada–United States border every day, will all but guarantee that the goals of the Action Plan, such as enhanced border security and accelerated trade between Canada and the United States, will fail. However, it is only the Action Plan that will fail; the cross-border community will continue much as it has prior to and after September 11, without much heed to the pronouncements of government officials. For two countries founded on the rule of law, that is an unnecessary shame, made all the worse because it is avoidable. What needs to be done is to go back, take stock of what we know and use that knowledge to actually realize the goals of the Action Plan: truly enhanced border security and even more accelerated trade between these two great countries and partners.

## II. TRADE FACILITATION EQUALS ECONOMIC GROWTH AND JOBS

It is all but a maxim of international economics that international trade equals jobs. The creation or retention of jobs is a primary indicator of economic growth and health. With respect to international trade, national governments can best spur the growth of their economies and jobs in their respective countries through trade facilitation. In this way, the second and third priorities of the Action Plan are really one and the same: trade facilitation will accelerate

economic growth and jobs.<sup>14</sup> If the Canadian and U.S. federal governments focus on actually facilitating the legitimate movement of people, goods and services across the border, the commercial sector will take care of economic growth and job creation.

A. *Identifying Trusted Traders*

A key concept in the Action Plan for trade facilitation is the identification of a “trusted trader.”<sup>15</sup> Trusted traders are considered to pose the lowest risk in terms of threat to security and trade compliance.<sup>16</sup> Although the Action Plan gives a cursory nod to the historical fact that “many trusted traders have invested significantly in supply chain security and have strong compliance records,”<sup>17</sup> the Action Plan states that the “fundamental” and overarching priority of the governments is the collection of “advance information about shipments to conduct risk-based targeting.”<sup>18</sup> What collection of “advanced information about shipments” really means is that the Customs authorities intend to build their risk-threat databases on the particulars of each and every one of the tens of thousands of individual shipments and travelers that cross the Canada – United States border every day, without any reference to other sources of information about the traders and travelers involved in these border crossings. Aside from the questionable efficacy of such an approach, discussed below, utilizing shipment by shipment information alone cannot result in establishing valid, reliable trusted trader profiles.

1. Past Experience with Trade Agreements Is a Knowledge Storehouse

To develop a useable trusted trader profile, the Customs authorities must go back to the priceless wealth of knowledge they have acquired on the cross-border trade community from the three trade agreements between the two countries over the last half century. Beginning with the APTA in 1965, continuing with the Canada – U.S.FTA in 1988 and culminating with NAFTA in 1994, both governments have learned an immense amount about the people, goods and services that cross the border every day.<sup>19</sup> The Canadian

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14. See BEYOND THE BORDER, *supra* note 1, at 11-21.

15. *Id.* at 11.

16. *Id.*

17. *Id.*

18. *Id.*

19. See generally *U.S. Relations with Canada*, U.S. DEP'T OF STATE, <http://www.state.gov/r/pa/ei/bgn/2089.htm>, (last updated Jun. 29, 2012) (describing the bilateral, cooperative relations between the United States and Canada).

and U.S. federal governments already know and have known for a very long time the identities of the bulk of their trusted traders.<sup>20</sup> Under these trade agreements, hundreds of millions of Customs transactions have been processed in which importers have been trusted to legitimately make claims that avoided the payment of billions of dollars in Customs duties with relatively little physical scrutiny of the shipments as they cross the border.<sup>21</sup>

With specific reference to the identification of trusted traders required by the Action Plan, each of the three trade agreements noted above have had compliance assurance mechanisms by which participating traders reported and the respective Customs authorities verified the legitimacy of these claims.<sup>22</sup> Through these mechanisms, the Customs authorities have learned who their traders are and the sources, end consumers, and uses of the goods they trade. It is not at all clear what more or better information with respect to trade compliance will be gained by requiring long established cross-border traders to enroll in new trade compliance programs or being required to submit numerous details for every shipment in advance, especially when many shippers are within only minutes of the border. If the goals of the Joint Declaration are truly to be realized, the Customs authorities of each government should be instructed to go back and assess what they already know about cross-border trade and, perhaps more valuable and constructive, review what trade compliance assurance mechanisms have been employed in the past; the effectiveness of those mechanisms; and, how those existing mechanisms can be adapted to meet current trade compliance assurance requirements.

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20. See *An Overview of Trafficking in Trade Facilitation, Economic Growth and Jobs*, CAN.'S ECON. ACTION PLAN, <http://actionplan.gc.ca/page/bbg-tpf/trade-facilitation-economic-growth-and-jobs> (last visited Oct. 7, 2012).

21. For example, under NAFTA, which has been in effect since January 1994, an importer can make a NAFTA preference claim, thereby avoiding having to pay duties at the time of importation, simply by having possession of a NAFTA Certificate of Origin. The Customs authorities in all three NAFTA countries, the United States, Canada, and Mexico since the very beginning of NAFTA have waived the requirement of importers claiming NAFTA preference having to present the NAFTA Certificate of Origin to Customs at the time of importation. Importers do not have to present the NAFTA CO at all, unless requested by Customs.

22. See generally CAN.'S ECON. ACTION PLAN, *supra* note 20.

a. *The Canada- United States Automotive Products Agreement  
("APTA")*

In 1965, Canada and the United States initiated the APTA, in which originating goods of one country were allowed conditionally duty-free entry into the other country, as long as they were ultimately used in the production of new motor vehicles in either Canada or the United States.<sup>23</sup> The governments of both countries placed enormous amounts of trust in the traders participating in the APTA. An importer could claim preference under the APTA and not have to deposit Customs duties based solely on the declaration of the shipper (often just a stamp on the invoice) that the goods were originating in the exporting country under the applicable APTA Rules of Origin, and the importer's statement on the entry that the goods were to be used for new motor vehicle production.<sup>24</sup> The APTA's compliance assurance mechanism was the *annual* filing of so-called Diversion Reports, in which importers self-accounted for the goods they had imported under APTA claims, specifically reporting the end use of those goods.<sup>25</sup> If any goods had not been used for new motor vehicle production, that is, diverted to another use (i.e. aftermarket sales as parts for service and repair), the importer was required to tender the appropriate amount of duties for those diverted goods.<sup>26</sup>

Customs authorities routinely conducted audits of APTA participants.<sup>27</sup> There is no evidence that the trust placed with APTA traders was ever materially or significantly abused. While the APTA was recognition of the evolving integration of the Canadian and U.S. automotive sectors, there is no doubt at all that the APTA tremendously facilitated the growth of the automotive industry in North America with the attendant creation and sustenance of millions of jobs in both countries, all without decreasing security at the border.

b. *The Canada - U.S. Free Trade Agreement and NAFTA*

In 1988, Canada and the United States entered into a bilateral FTA that expanded the principles and benefits of the APTA to all trade in goods between the two countries.<sup>28</sup> Moreover, under the

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23. Automotive Products Trade Agreement, *supra* note 8.

24. *See id.*

25. Canada has continued this program, now open to all automotive producers, allowing conditionally duty-free importation of goods ultimately intended for new motor vehicle production under HTS 9958.

26. *See* Automotive Products Trade Agreement, *supra* note 8.

27. *See id.*

28. Canada-United States Free Trade Agreement Implementation Act, *supra* note 9.

FTA, conditionally duty-free entry was replaced with unconditionally duty-free entry, based on the importer's possession of a "Certificate of Origin" from the exporter or producer certifying that the imported goods qualified under the applicable "Rules of Origin."<sup>29</sup> Six years later, in 1994, the Canada-U.S. FTA was subsumed into NAFTA with Mexico joining the two countries to create at that time the world's largest free trade area. NAFTA is arguably, the most successful Free Trade Area in the world to date, in terms of economic growth and overall job creation for all three member states.<sup>30</sup> As with the Canada-U.S. FTA, NAFTA allows importers to claim unconditionally duty free entry of qualifying goods, based on their possession of a Certificate of Origin from the exporter or producer of the goods.<sup>31</sup>

The key compliance assurance mechanism of NAFTA (and the FTA before that) is origin verification audits conducted by the Customs authorities of the importing country of the exporters and producers of the subject goods in the other party country.<sup>32</sup> It is important to note that in establishing these origin verification audits, NAFTA grants an extra-territorial enforcement authority to the Customs authorities of the importing country.<sup>33</sup> Experience with these origin verification audits shows that in conducting them, the Customs authorities learn a great deal about the traders, their trade flows, the nature of the goods traded, and the industries and economic sectors in which these traders participate.<sup>34</sup> Because the economic and commercial composition of the cross-border trade community between Canada and the United States has not materially changed since at least World War II, the knowledge base accumulated by the Customs

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29. *See id.*

30. *See* OFF. OF THE U.S. TRADE REP., NAFTA FACTS (2007), available at <http://www.ustr.gov/sites/default/files/NAFTA%20Benefits.pdf>.

31. *See Fact Sheet: Certificate of Origin: Frequently Asked Questions*, OFF. OF THE U.S. TRADE REP., <http://www.ustr.gov/about-us/press-office/fact-sheets/2012/april/nafta-certificate-origin-frequently-asked-questions> (last visited Jan. 1, 2013).

32. *See What to Expect from a NAFTA Verification*, U.S. DEP'T OF HOMELAND SEC., [http://www.cbp.gov/xp/cgov/trade/trade\\_programs/international\\_agreements/free\\_trade/nafta/verifications/nafta\\_verification.xml](http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/verifications/nafta_verification.xml) (last visited Jan. 1, 2013).

33. *Origin Verifications*, U.S. DEP'T OF HOMELAND SEC., [http://www.cbp.gov/xp/cgov/trade/trade\\_programs/international\\_agreements/free\\_trade/nafta/customs\\_procedures/origin\\_verifications.xml](http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/customs_procedures/origin_verifications.xml) (last visited Jan. 1, 2013).

34. *See generally NAFTA Verification/Audit Manual*, U.S. DEP'T OF HOMELAND SEC., [http://www.cbp.gov/xp/cgov/trade/trade\\_programs/international\\_agreements/free\\_trade/nafta/verification\\_audit\\_manual/](http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/verification_audit_manual/) (last visited Jan. 1, 2013).

authorities in both countries in that time surely should provide a sizeable, solid foundation on which to establish profiles for recognizing trusted traders under the Action Plan.

*c. Trade Preference Benefits Are a Powerful Incentive to Compliance*

While substantial compliance with the conditions and rules of the various trade agreements could be inferred from a lack of evidence of non-compliance, the Action Plan makes clear a significant concern of the Customs authorities is that trade compliance should not be assumed; it must be verified in fact before any one trader can be designated as trusted.<sup>35</sup> However, starting from scratch, by requiring long-established, highly compliant cross-border traders to enroll in new programs and resubmit a great deal of information already known to the Customs authorities—which in all likelihood will be verified by Customs against their extant databases—is not the answer. If the Customs authorities in both countries were to go back and review the compliance assurance mechanisms in the existing trade programs and better understand the incentives for compliance and risks of non-compliance they contained, not only would they realize that they have proven, effective tools to identify and validate trusted traders, but it is all but certain that *many* trusted traders would be recognized as already identified and validated.

From the Customs authorities' perspective, trade preference programs, including free trade agreements, are often nothing more than fertile opportunities, even invitations, for massive fraud.<sup>36</sup> What the Customs authorities must understand and accept, however, is that for most of the traders, particularly those traders engaged in Canada – United States cross-border trade, the primary benefit of trade preference programs, which is the avoidance of paying Customs duties and the opportunities for growth and profit, are in themselves powerful incentives for strict compliance with rules and conditions of the trade preference program. All legitimate businesses require certainty and predictability in their operations. The risk to the business of non-compliance with trade program rules is having to pay after the fact all Customs duties and any other import related taxes, fees and charges previously avoided, plus interest, in addition to possible civil penalties on all imported goods found to be non-qualifying. For most businesses, the actual monetary liability or even carrying the risk of possible liability could easily mean financial ruin or at least public embarrassment, with significant adverse impact on the business. Under these circumstances, unless traders (that is, the

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35. See generally BEYOND THE BORDER, *supra* note 1.

36. See generally Penalties for Fraud, Gross Negligence, and Negligence, 19 U.S.C. § 1592 (2012).

producers and exporters who issue Certificates of Origin and the importers who rely on their suppliers' Certificates of Origin to make their trade preference claims) have certainty that their trade preference claims will hold, they simply will not risk their livelihoods and investments in making questionable claims. It is the risk and consequences of non-compliance to the traders that creates a very tangible basis for assuming a high rate of compliance among the cross-border trade community, which would allow for the Customs authorities to reliably identify and designate trusted traders for the Action Plan.

### *B. Risk Targeting*

In the section discussing trusted traders, the Action Plan makes a very significant qualification in how trusted traders, once identified and validated, will actually be treated. After acknowledging that “trusted traders have invested heavily in . . . security and have strong compliance records,” the Action Plan states “[w]e also recognize as fundamental that border agencies need advance information about shipments to conduct risk-based targeting.”<sup>37</sup> As stated above, collection of advance information means that all traders, regardless of their “trusted trader” status, will be required to file information about each and every one of their shipments some time in advance of that shipment arriving at the border, just as containerized cargo arriving by ocean vessels today is required to do under the U.S. Importer Security Filing (“ISF”) system.<sup>38</sup>

There are two fundamental problems with this requirement. The first is the very close proximity of a high number of shippers and importers to the border and the extremely high number of individual shipments made every day. The vast majority of cross-border traders are located within at most a couple of hours of, and many within only minutes of, the border. These traders send and receive a staggering number of individual shipments across the Canada and the United States land border each and every day. The combination of proximity of a vast number of traders to the border and the staggering volume of shipments they send and receive makes the ability of the Customs authorities to make adequate risk assessments on a per shipment basis highly questionable.<sup>39</sup>

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37. BEYOND THE BORDER, *supra* note 1, at 11.

38. See U.S. CUSTOMS & BORDER CONTROL, IMPORTER SECURITY FILING AND ADDITIONAL CARRIER REQUIREMENTS (2009), available at [http://www.cbp.gov/linkhandler/cgov/newsroom/publications/trade/import\\_sf\\_carry.ctt/import\\_sf\\_carry.pdf](http://www.cbp.gov/linkhandler/cgov/newsroom/publications/trade/import_sf_carry.ctt/import_sf_carry.pdf).

39. See generally SE. MICH. COUNCIL OF GOV'T, ECONOMIC IMPACT OF THE BORDER, (2009), available at [http://www.semco.org/uploadedFiles/Programs\\_and\\_Projects/Transportation/Borders/Economic%20Impact%20of%20the%20Border\\_web.pdf](http://www.semco.org/uploadedFiles/Programs_and_Projects/Transportation/Borders/Economic%20Impact%20of%20the%20Border_web.pdf).

Second, if every shipment requires advance filing of information for that shipment, the point of seeking trusted trader status is rendered moot. Without a tangible benefit to be gained by obtaining trusted trader status, there is no reason for any trader to undertake the time and expense of obtaining that designation, much less the ongoing cost and burden to maintain that status. Even from Customs' perspective, what is the value to them of the information they obtain about trusted traders and how can they justify the resources to operate a trusted trader program, if they are still going to make security and trade compliance assessments on each individual shipment arriving in the country?

The purpose of risk-based targeting is to allow the government agencies responsible for ensuring national and border security and safety to rationally deploy their resources and assets to shipments and persons who pose threats, while allowing those shipments and travelers that do not pose a risk to cross and clear the border expeditiously.<sup>40</sup> To achieve this objective, the Customs authorities and other agencies at the border must be able to winnow out the low risk shipments and travelers, leaving higher risk shipments and travelers open to scrutiny. The only way to do this is "reuse previous admissions experience . . . to quickly release [goods and travelers] known to be low-risk or to hold or deny entry to [goods and travelers] known to be high-risk or non-compliant."<sup>41</sup> Shipment by shipment review without any application of knowledge and information previously obtained will never result in a useable profile to properly make threat risk-assessments. And thus, the goals of the Action Plan can never be realized.

*C. Importers of High Volume, Highly Repetitive Shipments and Frequent Border Crossers Are Likely Trusted Traders*

A longstanding, key characteristic of Canada – United States cross-border trade is that there are many importers of high-volume, highly repetitive shipments and frequent individual traveler crossings. In such industrial sectors as automotive, the majority of shipments are from the same suppliers, shipping the same goods, usually in the

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40. See RISK ASSESSMENT METHODS, GLOBAL FACILITATION PARTNERSHIP FOR TRANSPORTATION AND TRADE (2012), available at <http://www.gfptt.org/entities/TopicProfile.aspx?tid=80503ce0-5f1f-440f-a1cb-50d6be78cc2d>.

41. ITDS PRODUCT IDENTIFICATION COMM., THE BUSINESS CASE FOR USING E-COMMERCE DATA TO MANAGE PRODUCT ADMISSION AT INTERNATIONAL BORDERS 8-9 (2011), available at [http://www.itds.gov/linkhandler/itds/tsn/itds\\_released\\_comment.ctt/itds\\_pic\\_presentation.pdf](http://www.itds.gov/linkhandler/itds/tsn/itds_released_comment.ctt/itds_pic_presentation.pdf).

same quantities, one or more times every day.<sup>42</sup> Indeed, to support Just-In-Time (“JIT”) inventories, these frequent shipments are sent at the same times of day, every day. The same is true for a significant number of individual travelers who cross the border from home to their jobs and then back home every day. Importers and shippers of high-volume, highly repetitive shipment and frequent individual border crossers are a perfect source of information to establish a highly reliable “risk profile by which trusted traders could be identified.”<sup>43</sup> By codifying the most important elements of the trusted trader’s profile, such as the shipper, product, carrier, and importer, using the knowledge already acquired by the Customs authorities from their extensive historical databases, as updated by the traders, trusted trader shipments and trusted travelers could be pre-cleared before arrival at the border. Clearing trusted traders before they arrive at the border would allow Customs authorities to properly focus on actual and potential threats to security and trade compliance.

### III. CONGESTION AT THE BORDER MUST BE RELIEVED

Even if a trusted trader process was established and used by Customs, the high degree of congestion at too many of the Canada – United States border crossings would continue to frustrate realizing the objectives of expeditious crossings for trusted traders and identification and inspection of suspect shipments and travelers, as envisioned by the Action Plan. Until the physical border crossing infrastructure is improved and expanded to not only handle current volumes of trade traffic, but the growth in volumes projected for the next decades, the Action Plan’s twin goals of enhanced security and greater trade facilitation will never be realized.

The awful situation with the Ambassador Bridge at the Windsor – Detroit border is a perfect example. The Ambassador Bridge has been universally acknowledged as being inadequate to meet the needs of the immense amount of border crossings that occur every day, seven days a week, twenty-four hours a day, much less future growth in cross-border traffic volume.<sup>44</sup> Yet, after decades of ferocious resistance and obstruction, it took the jailing of two Ambassador

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42. See generally *U.S. Transshipments through Canada or Mexico*, RESEARCH & INNOVATIVE TECH. ADMIN. BUREAU OF TRANSP. STATISTICS, [http://www.bts.gov/programs/international/transborder/TBDR\\_TS/TBDR\\_TS\\_Index.html](http://www.bts.gov/programs/international/transborder/TBDR_TS/TBDR_TS_Index.html).

43. RISK ASSESSMENT METHODS, *supra* note 40.

44. See U.S. DEP’T OF STATE, NEW INTERNATIONAL TRADE CROSSING 18 (2012), available at <http://www.state.gov/documents/organization/194997.pdf>.

Bridge Company principals to force them to allow their Bridge to be connected to the Michigan highway system and the province of Ontario committing to advance Michigan's share of the investment cost to make a international crossing, the Detroit River International Crossing a future reality.

Improved and expanded border crossing infrastructure will allow the creation and use of such facilitated trade features as dedicated lanes to be used only by trusted traders. With such infrastructure improvements that expand the capacity of the border crossings and reduce congestion, combined with deployment of expeditious, preferably pre-arrival, clearance of trusted traders, Customs and other agencies at the border will be much better able to focus on the real threats to security and trade compliance in the much reduced pool of border crossers.

#### CONCLUSION

If the goals of the Action Plan are to be realized, the long history of the Canada – United States border and the tremendous amount of knowledge of the border community we have acquired not only cannot be forgotten or ignored, but must be extensively used and relied upon. Trusted traders can only be effectively identified and designated by applying what we know or learn about them. Per shipment or traveler risk assessment is not only useless, it potentially increases the threat posed because it increases the opportunity for the real threats to be lost among the effectively indistinguishable mass of border crossers. Pre-arrival clearance of trusted traders will allow the real threats to be identified and addressed, because they will now be more visible in the thinned out crowd of border crossers.