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BORDER INFRASTRUCTURE: GETTING TO 'YES' ON BRIDGES, TUNNELS, ROADS AND RAIL: CUSTOMS AND IMMIGRATION CHALLENGES

Michael Nobrega[†]
Canadian Speaker

Professor King, I think Jim thanked a number of people for getting him here. I want to know who sent me here. I will deal with that when I get back to the office.

I feel I made a big misstep in coming here. Number 1, I am not a lawyer. Number 2, I am not a professor. Number 3, I am not politician and Number 4, I am not a diplomat. I feel like the young golfer playing at the very established golf course in Toronto. This young man was of ethic origin, playing at a very established golf course in Toronto. One day he was playing ten feet off the tee, and the older gentleman came up to him and sort of berated him for about five minutes why he should respect the rules of the game, especially at the club. So, after about five minutes, he looked up at the older gentleman and said "I will play exactly where I am for three reasons. First of all, this is the first time anybody has spoken to me for three years at this club."

"Secondly, it is none of your business."

"And, thirdly, it is my second shot."

So, allow me the privilege of having a second shot in a place that I should not be.

Good afternoon ladies and gentlemen. Thank you, Rocco, for the kind introduction. My name is Michael Nobrega and I am the CEO of Borealis Infrastructure. Actually, my resume is wrong. I am a wholly owned subsidiary of the Ontario Municipal Employees Retirement System, otherwise known as OMERS. Unlike U.S. pension funds, Canadian pension funds have made commitments to invest in this infrastructure as an asset class. OMERS has been and continues to be one of the leaders of this trend in Canada.

[†] Michael Nobrega is the Chief Executive Officer of Borealis Infrastructure Management Inc., a corporation controlled by two large Canadian pension funds. Mr. Nobrega is responsible for originating, structuring, and financing infrastructure assets on behalf of these pension funds. Since its creation in 1997, Borealis Infrastructure has originated, structured, and closed over \$1.4 billion of infrastructure investments. Mr. Nobrega earned his B.A. (Honours) from the University of Toronto and became a Chartered Accountant in 1973. He was a partner in a major international firm prior to forming Borealis Infrastructure.

This leadership role is clearly displayed in an existing partnership we have with Canadian Pacific Railway. This partnership is generally known as the Detroit River Tunnel Partnership,¹ and this partnership's efforts to improve a major cross-border transportation corridor between Michigan and Ontario has provided many lessons in making 'yes' happen.

The Detroit River Partnership is the owner of a century-old, still operating real tunnel that joins in Detroit, Michigan and Windsor, Ontario. Canadian Pacific Railway operates this tunnel on behalf of the partnership. This facility today transports in excess of 450,000 cross border bound rail cars annually.² The existing rail tunnel serves today's needs by transporting goods between Montreal and Toronto to Detroit, Chicago, and other Midwest U.S. cities.

However, this tunnel has its physical limitations, which thereby prohibits the movements of double stacked rail containers at the Detroit/Windsor gateway. Realizing these limitations and therein envisioning an opportunity to solve a number of other issues at the Detroit/Windsor gateway, the Detroit River partnership proceeded to elaborate on a longstanding proposal by the Michigan Department of Transport for the reuse of existing tunnel as a solution for handling of cross-border commercial truck traffic. We call this project the "Jobs Tunnel," so named for a number of reasons.

Primarily, the Jobs Tunnel is an inter-modal cross-border system providing on state of the art infrastructure to function as efficiently as possible.

Secondly, it provides a number of efficiently enhanced features that further leverage infrastructure now and in the future. I would like to provide an example. If you come down from Cleveland, you come from Toronto or Montreal. Highway 401 runs through to Windsor. If you get to Windsor and want to cross the Ambassador Bridge, you will encounter seventeen different traffic lights. The Detroit River Tunnel Partnership owns an entire corridor linking the necessary highways. We have assembled this over the last 2 ½ years. We have assembled it at enormous cost. It represents close to 300 acres of land.

Our intention is to take a truck off 401, run it along the two-way highway; and take it to customs. After customs processing, the trucks will run under the river into the existing but renovated tunnel, one going to the United States and one coming from the United States, and take it right through I-75. It would be possible to come from Toronto and Montreal with no lights.

¹ See <http://www.thejobstunnel.com/> (last visited Sept. 27, 2004).

² See <http://www.thejobstunnel.com/jobs-tunnel.php?nic=faqs#How%20would%20rail%20service%20in%20the%20Detroit-Windsor%20area%20benefit%20by%20building%20The%20Jobs%20Tunnel?> (last visited Sept. 27, 2004).

Today 100 billion dollars of trade is controlled by the Traffic Commissioner of the City of Windsor on these seventeen traffic lights.³ The cost of this project will be approximately 500 million U.S. dollars.

More than 93 percent of the land is assembled and all the equity that is required for the project is in place.

“HOW WE GET TO THE ANSWER YES?”

At the heart of getting to the answer ‘yes’ in this proposal, our customs operation facilities that are proposed in the Jobs Tunnel, the design of the proposed facility goes to the heart of the Smart Border Accord, which is mentioned earlier on, jointly announced by the United States and Canada in December 2001.⁴

The Detroit River Tunnel Partnership (hereafter “DRTP”) entails an integrated customs facility located and sized in 135-acre joint facility on the Canadian side, away from the border, and in Windsor, Ontario.⁵ This facility will fit the requirements of the Department of Homeland Security, the Canada Border Services Agency and their supporting departments, and will manage and harmonize the associated processes.

Additionally, this secured corridor will be monitored and managed by intelligent transportation and security systems.⁶ Examples of such elements are changeable message signs, closed circuit television, ramp metering, automated tolling, etc.

In my opinion, the opportunity to implement the proposed facility provides the United States and Canada with sufficient reason to get to ‘yes’ as soon as possible.

I believe what I propose here today allows us to get to this yes answer without having to wait for the time period that has been mentioned - 2013 or beyond.

The benefits are far reaching but most specifically these new facilities will provide increased commercial traffic border crossing system capacity inclusive of increased approach roads capacity in both Windsor and Detroit. Increased border-crossing capacity in the form of new pavement joining the two countries is also provided, as well as increased customs’ clearance capacity. We have the opportunity to design a new facility from the ground up.

³ See <http://www.thejobstunnel.com/jobs-tunnel.php?nic=faqs> (last visited Sept. 25, 2004).

⁴ *Smart Border Accord*, available at: <http://www.canadianembassy.org/border/declaration-en.asp> (last visited Oct. 25, 2004).

⁵ See <http://www.thejobstunnel.com/images/newmapbig.jpg> (last visited Sept. 29, 2004).

⁶ See <http://www.thejobstunnel.com/jobs-tunnel.php?nic=faqs> (last visited Sept. 26, 2004).

Additionally but not yet mentioned, thru a new rail tunnel, increased cross-border rail capacity will be provided. We have an existing tunnel (I will show you a picture in a short while). The existing one will be converted for uses as a truck tunnel, one lane to the United States and one lane from the United States; and then in the same corridor, we build a new rail tunnel.

SO, WHY IS 'YES' NECESSARY?

Our regional and our national economies depend on us getting to the yes answer. Our jobs depend on us getting to the yes answer. Our health and quality of life depends on getting to 'yes'. Our existing infrastructure at this transportation gateway is broken, existing procedures disjointed and existent information systems are miles apart from one another. We also need new security standards to better protect ourselves in a drastically changed world.

Getting to 'yes' is also important because our two countries share the longest continuous unprotected border in the world.⁷

In 2001, the total value of surface trade between United States and Canada reaches 350 billion dollars.⁸ The Ambassador Bridge, the Detroit/Windsor Tunnel and the Blue Water Bridge accounted for 42 percent of this trade,⁹ or approximately 150 billion dollars.¹⁰ That is annually or 3 billion dollars a week. The Ambassador Bridge alone carried approximately 25 percent of the value of the merchandise trade between the two countries,¹¹ or approximately 90 billion dollars.¹² In addition, the rail tunnel, which we own commonly with CPR, Canadian Pacific, transports 25 billion dollars annually. This aggregate annual cross-border trade of 150 billion dollars annually at this gateway is twice the trade between the United States and Japan.¹³ That is one border, twice the trade between United States and Japan.

⁷ Alexandra Paul, *Peace Park Plans Secure Meeting Place Would Cater to Sensitive Political Talks*, WINNIPEG PRESS, Aug. 4, 2004, at B5.

⁸ U.S Department of Transportation, Bureau of Transportation Statistics, *2001 National Summary by Values*, available at: http://www.bts.gov/ntda/tbscd/reports/annual01/nat_2001.html (last visited Sept. 23, 2004).

⁹ Michael H. Belzer, *The Jobs Tunnel: The Economic Effect of Adequate Border-Crossing Infrastructure* (Nov. 3, 2003) at 4, available at: http://www.culma.wayne.edu/pubs/belzer/20031103%20Jobs_Tunnel_Econom.pdf (last visited Sept. 24, 2004).

¹⁰ *Id.*

¹¹ Michael Strong, *Border Crossings Can Mean Sizable Profits; Traffic Flow, New Crossing Will Affect How Much*, CRAIN'S DETROIT BUSINESS, May 10, 2004, at 13.

¹² *Id.*

¹³ See <http://www.canadianembassy.org/trade/wltr2001-en.asp?format=print> (last visited Oct. 27, 2004).

There is no doubt that the border crossings at the Detroit/Windsor tunnel are of critical importance. In the post 9/11 world, we have learned these crossings have significant national security implications as well.

Redundancy is important, as is economic competition. No region so tightly dependent as southeast Michigan and southwest Ontario and can risk it is entire economy on one single component of transportation infrastructure.

The implications and cost of not getting to yes by building the jobs tunnel or some similar infrastructure at this gateway will affect each of our economic futures and all that it entails.

The existence of the Ambassador Bridge system operates at about 92 percent of optimal design capacity for commercial motor freight, far closer to saturation capacity than previously believed.¹⁴ This situation will continue to deteriorate and produce a ripple effect through the economy. This deterioration has a cost equating to an aggregate between 17.5 billion to 23.2 billion in present value terms by the year 2030.¹⁵

Delayed cost relation truck movement across the Detroit/Windsor border will also lead to higher production cost for vehicles produced in this region. By 2010, border-crossing delays could add \$200 to the cost of producing a new vehicle.¹⁶ Additionally, with border crossing delays to continue to 2030, additional inventory costs will amount to 103 million dollars annually.¹⁷ This figure is deceptively small, because, in all likelihood, that increased inventory cost results in other added costs in the production cycle and in the reposition of specialized container equipment.

In the next two decades, hundreds of dollars will be added to the overall cost for production of vehicles and components produced in this region. This region's competitive advantage will be diminished.

These added costs will have substantial effects on the region's ability to sustain and grow the automotive sector, which is so crucial.

In Windsor, where manufacturing accounts for 31 percent of the total labor base,¹⁸ the impact will be most acute.

BORDER SYSTEM CAPACITY AND INFRASTRUCTURE

Border system capacity is the issue. Infrastructure capacity increases and improvements are the solution. On average, 12,800 commercial vehicle trips per day cross into Windsor/Detroit.¹⁹ Nearly 3.3 million dollars per trucks

¹⁴ *The Jobs Tunnel Draws Support at Manufacturing Summit*, PR Newswire, Dec 8, 2003.

¹⁵ Belzer, *supra* note 9 at 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Ontario-Michigan Transportation Planning/Needs and Feasibility Study* (January 2004) available at:

per year cross. This volume is expected to increase to 8 million dollars per truck by the year 2020.

This is truly a systems issue as illustrated by the different approaches to road infrastructure, capacity, and customs facilities in one direction versus the other between Windsor and Detroit.

There is a capacity of 315 trucks per hour traveling from Windsor to Detroit²⁰ and 395 trucks per hour from Detroit to Windsor.²¹ Adding to that fact it takes 2.7 times longer to clear customs in Detroit/Windsor than other northern border crossings,²² an estimated 28 minutes to 11 minutes.²³ While the paperwork and procedures are the same at all borders, the infrastructure is different. Currently, roughly 80 to 85 percent of all trucks at the Windsor border are pre-cleared.²⁴ Therefore, the issue is not inadequacy of the paperwork. It is the inadequacy of the physical infrastructure. The central, only issue of the Windsor/Detroit area is the addition of new infrastructure.

Not getting to 'yes' in the near future becomes very costly, particularly in this era of outsourcing and increasing competition. We cannot let these friendly borders between Canada and the United States become a competitive advantage when the solutions are so readily apparent.

IMPEDIMENTS TO 'YES'

There are numerous Impediments to 'yes'. The greatest impediments to 'yes' is complacency and inaction. Not acknowledging there is a problem, a systems problem, is the greatest challenge in getting to yes.

There are numerous well-known sovereignty and legal issues relating primarily to jurisdictions, authorities, immunities, and weapons. All implications for legal authorities inside and outside government indicate that any Charter and Bill of Rights issues therein can be managed. However, there seems to be a disparity an impetus to get to real solutions. Such solutions are possible.

The greatest recent example of which is a tunnel which links the U.K. to France. The political will was there to set the differences aside and establish a treaty reflective of integrated border facilities, and therein provide foreign control zones on domestic soils in opposing countries.

http://www.partnershipborderstudy.com/pdf/PNFStudyReport_FINAL_updatedpgnumbers.pdf
(last visited Sept. 24, 2004).

²⁰ Belzer, *supra* note 9 at 4.

²¹ *Id.* at 15.

²² *Id.* at 10.

²³ *Id.*

²⁴ See http://uscis.gov/graphics/shared/lawenfor/bmgmt/inspect/DMIAConRpt_Ch3.pdf
(last visited Sept. 30, 2004).

It is amazing to me how two countries, U.S. and Canada, so closely resemble each other and are so economically and socially tied, yet cannot seem to move to a similar agreement. Perhaps, the challenges provided by special interests are too heavy for politicians and bureaucrats to manage. Monopolies also work at this gateway. Inter-regional competition for jobs and funds also provide political decisions and reasons to delay decision-making.

Political paralysis, or what can be called political overlap, is another major impediment to getting to the 'yes' answer. Proliferation of governments on either side of the border has made border issues a multi-layered multi-jurisdictional binational challenge, seemingly impossible at times. Building the border crossing means dealing with the federal, provincial/state, regional and municipal politicians and multiple departmental authorities. Pre-defined procedures or pre-defined authorities responsible for managing and improving cross-border initiatives simply do not exist. What we have is an explosion of departments, groups and stakeholders who are always changing U.S. Customs. Now, U.S. Customs and Border Protection Services are tied to General Service Administration and all of them are reporting to the Department of Homeland Security, adding to the complexity.

In Canada, with the change of Government, Canada Customs and Revenue Agency has become the Canada Customs Border Services Agency responsible for immigration. In addition, we end up with conflicting, often divergent, policies.

Ultimately, Canada and the United States are two countries who are so often proud of our closeness, yet are badly prepared to manage that closeness.

How do we get to 'yes'? There is no easy answer to moving forward quickly on large infrastructure projects. Adequate time is required to study all the relevant design. The problem with the private sector initiating the solution for a major infrastructure gateway is that the process involves several governments and their agencies.

Borealis recommends the following. A bi-national cross border transportation authority be established by the governments of the United States and Canada to deal solely with the cross border infrastructure requirements - such as that within trade corridors like Windsor/Detroit and at the Peace Bridge.

Secondly, the authority should be granted the appropriate planning, environmental assessment and funding powers that push for the construction of the necessary infrastructure gateway assets.

Thirdly, that authority should be given the mandate to complete the construction of these infrastructure gateway assets within a fixed time schedule.

In conclusion, Borealis recognizes there is no easy answer to 'yes' to create the consensus. Professor King, may I suggest to you at one of future conferences be solely dedicated to transportation systems. The wealth of our two Nations depends on it. Your group can stimulate some serious discus-

sion and get rid of these impediments so we can get to a yes answer. Thank you very much.