

January 2003

## The Smart Border: Movement of Goods - Transportation and Customs Aspect - Canadian Speaker

Allan J. Cocksedge

Follow this and additional works at: <https://scholarlycommons.law.case.edu/cuslj>

---

### Recommended Citation

Allan J. Cocksedge, *The Smart Border: Movement of Goods - Transportation and Customs Aspect - Canadian Speaker*, 29 Can.-U.S. L.J. 141 (2003)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol29/iss1/23>

This Speech is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

## THE SMART BORDER: MOVEMENT OF GOODS - TRANSPORTATION AND CUSTOMS ASPECTS

*Allan J. Cocksedge*<sup>†</sup>  
Canadian Speaker

Thank you very much for your introduction, John. I am already feeling older since the beginning of the presentation. And thank you, Henry, for the invitation to participate in the Canada-U.S. Law Institute. It is an opportunity for me to be here and learn a lot, but it is also an opportunity to renew acquaintances with a number of American and Canadian colleagues with whom I have worked over the years, including Doug Browning.

We were talking just before the beginning of the session about how many different countries we have appeared on podiums. So it is a bit of an art for us. We worked very closely together, particularly between the period of 1993 and 1998. During that period, the focus of American politicians was much more on the southern U.S.-Mexican border than the northern border with Canada. Despite that, during that period, many of the fundamentals and basic direction of the initiatives that we are now talking about were established. A lot of the collaboration and relationship forged in those earlier years have served both countries well as they try to tackle together a far more complicated border after September the 11<sup>th</sup>.

---

<sup>†</sup> Allan J. Cocksedge is an Associate Consultant for Global Public Affairs, where he provides policy advice and representation in the areas of revenue and customs administration, trade administration, and regulatory issues related to transportation policy. He is the former executive vice president and COO of Vista, an information services and business management consulting firm. From 1993 to 1998, Mr. Cocksedge was Assistant Deputy Minister for Customs Operations/Border Services/Trade Administration for Revenue Canada. Prior to his service at Revenue Canada, he served for six years as the Assistant Deputy Minister of Tourism in the Department of Industry, Science and Technology Canada, served for three years as the Secretary General of the Canadian Human Rights Commission, and for two years as Director General of Canadian Employment and Immigration Commission over B.C. and Yukon Territory. Mr. Cocksedge received his Bachelor of Arts (Hons.) degree from the University of Toronto.

## IMPORTANCE OF THE CANADA-U.S. BORDER

Any discussion of the movement of goods and the Smart Border needs a bit of a context. So bear with me for a couple of minutes while I try to provide that. In a fundamental sense, the U.S.-Canada border continues, even after September the 11<sup>th</sup>, to serve three basic purposes. It defines in geographical terms American and Canadian sovereignty in terms of values, laws, and traditions. It supports the efforts to insure the protection and security of Canadians and Americans through the physical introduction at the border of an inadmissible people and dangerous sort of illegal goods. Finally, it contributes to the competitiveness of U.S. and Canadian businesses by facilitating the movement of legitimate travelers and commercial goods while insuring compliance with international trade rules.

We are all familiar, unfortunately, with the political context and the worldwide, let alone, bi-national preoccupation with security, international terrorism, and weapons of mass destruction. This has tended to dominate the thinking and focus of a public debate about what to do about border management. What is perhaps less known, particularly in the United States, is the continuing profound and significant economic interdependence between the two countries, and the significance of the border in that interdependence.

Most Canadians are quite aware of the extent to which Canada is linked economically to the United States. You have heard numbers referred to throughout the day. The U.S. is, by far, Canada's largest trading partner with over 86 percent, and some say now that has gone to 87 percent of Canada's exports going to the United States. That is up from just 70 percent in 1989. Canadian exports to the United States have grown 170 percent over the last ten years. Canadian mines, mills, and factories produce more for U.S. consumers than they do for Canadians. Most provinces now have more trade with the United States than they do with the rest of Canada.

Less known, and as I said, by Americans in particular, is the extent to which Canada is an indispensable economic partner of the United States. As I said, it is by far the largest trading partner of the U.S. with over a billion dollars U.S. a day in trade. This is about 15 percent more than all of U.S. trade with all the countries of Latin America combined. U.S. exports to Canada exceed those to all members of the European Union combined. Canada is the leading export market for 38 of the 58 states, as has been mentioned. Montana, Michigan, and Ohio send over 55 percent of their exports to Canada.

What was even surprising to me when I was doing a bit of research here, was the extent to which non-border states have a significant economic relationship with Canada. Almost 46 percent of the exports from Missouri, 38 percent of the exports from Oklahoma, and 34 percent from Tennessee are

destined to Canada. By way of specific example, U.S. trade with Ontario alone is essentially equal to U.S. trade with Japan. Ohio trade with Canada exceeds the total U.S. trade with China. Georgia sells more to Canada than the entire U.S. sells to Italy or France.

In addition to the role of the border, as an integral component of the economies of the two countries, it is important to note that its role has also evolved. International competition and technological change have forced companies on both sides of the border to dramatically alter their business methods to grow and in some cases just survive.

Companies most exposed to competition are embracing technology in order to reduce costs by eliminating both management steps and steps in the supply and trade chain. Electronic commerce has dramatically enabled the exchange of data so that inputs for finished products are no longer acquired and stored by wholesalers, but rather acquired directly from the producers of parts. The transportation system, particularly trucks, are now replacing warehouses as the just-in-time inventories are transported to the manufacturing sites and immediately to the production line. Likewise, for the retail sector. Inspired by the success of mail order operations, such as Lands End, it is transforming itself to deliver on-line shopping for all sorts of products from hardware to lingerie. This reduces the need for retail outlets and as in manufacturing, shifts yet more work to the transportation system. As trucks have replaced warehouses at factories, so have they become the warehouses for the retail sector.

As a result of these transformations, the increased level of U.S.-Canada border activity has been nothing short of phenomenal. The volume of trade between the two countries has increased by more than 140 percent over the last ten years. Seventy percent of that traffic, of that trade, moves by truck. Of that truck traffic, 70 percent moves through five crossings. One in British Columbia/Washington State, and four between Ontario, New York, and Michigan; the Windsor/Detroit tunnel, the Ambassador Bridge often referred to, and the bridges at Fort Erie/Buffalo and Sarnia/Port Huron.

The border, therefore, is no longer a stand-alone government operation performing regulatory operations and functions. Free trade and these huge increases in border activity have repositioned the border completely as one process in the series of integrated business activities for both the manufacturing and distribution of goods. The dependency of business on seamless, smoothly functioning, and timely border processes is fundamental to business competitiveness and economic prosperity on both sides of the border.

Given both the volumes and the funneling of shipments through a relatively few number of very busy crossings located along key north/south trade corridors, problems along the border had been apparent well before September the 11<sup>th</sup>. Overburdened and congested highways, lengthy delays

at border crossings, inadequate infrastructure, onerous regulatory requirements, and also poor controls over certain forms of smuggling and illegal movements of people and goods were already of concern.

### Early Initiatives

Recognizing these problems, Canadian and U.S. officials over the course of the 1990's initiated a series of programs to make the border better managed in order to reduce costs and facilitate trade. Programs such as CanPass and INSPass sought to facilitate travel by frequent and low risk travelers.<sup>1</sup> Other initiatives such as the Shared Border Accord announced in 1995, laid out a vision of border management that contemplated the use of emerging technologies, the development of streamlined, harmonized bi-national customs procedures, and the better sharing of data to both facilitate trade and enhance protection against smuggling and illegal movement of people.<sup>2</sup>

While some useful work was achieved, real progress was impeded by two overriding constraints. The focus during this earlier period by American politicians was on the immigration and drug smuggling issues of the southern border, and not of the northern border. Also the two countries, quite frankly, were unable to resolve some fundamental differences over key policy issues. Progress on the exchange of commercial importing data, for example, essential for intelligence gathering and targeting of shipments for examination, was thwarted by Canadian concerns about the privacy of information. That was coupled with very aggressive requests from U.S. authorities for individual company data on all international imports transiting Canada destined for the U.S.

The harmonizing of importation of processes got caught up in strong differences over the amount of data that low risk importers needed to provide. The creation of so-called international zones that would permit officials of one country to administer their laws on the soil of the other, or the physical layout of those five border crossings, especially at the bridges and tunnels, dictated this flexibility, never happened given the absence of Canadian legislation to permit this.

During the same period, despite the huge increases in the volumes of shipments, increases in the numbers of Customs Officers and Immigration Officers, simply did not occur, especially on the United States side.

---

<sup>1</sup> *CANPASS Air*, Fact Sheet, CANADA CUSTOMS AND REVENUE AGENCY, April 2003, available at [www.ccr-a-drc.gc.ca/newsroom/factsheets/2003/april/canpassair-e.html](http://www.ccr-a-drc.gc.ca/newsroom/factsheets/2003/april/canpassair-e.html); Ronald J. Hays, *INS Passenger Accelerated Service System (INSPASS)*, Biometric Consortium, Jan. 4, 1996, available at [www.biometrics.org/REPORTS/INSPASS.html](http://www.biometrics.org/REPORTS/INSPASS.html)

<sup>2</sup> Canada-United States Accord on Our Shared Border, Feb. 25, 1995.

Increasing resources on the northern border was not sexy and northern border political champions were very rare in the United States.

During this period resources along the southern border enjoyed huge increases in resources both in terms of dollars, technology, and people. So the problems worsened and the promise of the Border Accord was never fully realized. Given this, organizations such as the Can.-Am. Border Trade Alliance came into being in the early '90's, and argued strongly for the need for improvements along the northern border. By 2000, business interests on both sides of the border were coalescing around the concept of perimeter. Some called it continental clearance. A bi-national group called the Perimeter Clearance Coalition representing over 400 port and airport related groups began advocating for such an approach even prior to September the 11<sup>th</sup>. After September the 11<sup>th</sup>, truckers associations and chambers of commerce joined in.

In Canada, a group called the Coalition for a Secure and Trade Efficient Border produced a key document entitled *Rethinking Our Borders, A Plan For Action*, which provided a direction to address the twin realities of trade facilitation and the protection of both Canadians and Americans by spelling out some key principles.<sup>3</sup> First of all, the security of Americans and Canadians is paramount. Both governments and business leaders need to work together to protect citizens and safeguard their economic well-being. Secondly, security and trade are linked. Increased security will facilitate trade if there is confidence in the border measures that address both issues. Third, collaboration is essential, and solutions must be bi-national in nature. Canada and the United States must build on the 1995 Shared Border Accord and work jointly on introducing technology and harmonized procedures that work both ways. Fourthly, a perimeter clearance is needed.

This requires that risk management and assessment, some of the things that Steven was referring to earlier today, be at the heart of border management with three integrated lines of security. First, offshore interception. Problems with goods and people needed to be detected before they hit either Canadian or American shores. Second, the first point of arrival into North America. People and goods should be assessed at the first point of arrival, regardless of whether their ultimate destination is Canada or the United States. In so doing, the border processes along the 49<sup>th</sup> parallel can be expedited to allow for the smoother movement of low risk goods and people between the two countries. And, lastly, the identification process for low risk goods and people should be front-ended and done away from the border, thus reducing the need for intervention at the physical hard border to the absolute minimum.

---

<sup>3</sup> *Rethinking Our Borders, A Plan For Action*, COALITION FOR A SECURE AND TRADE EFFICIENT BORDER (2002), available at [www.chamber.ca/public\\_info/2002/planforaction.pdf](http://www.chamber.ca/public_info/2002/planforaction.pdf)

More specifically, industry offered the following suggestions. The approach for goods arriving in Canada from offshore destined to the United States should involve the Customs authority in the first country. For example, Canada Customs, transmitting data to the other, U.S. Customs or Homeland Security, as it is now called, for instructions on the level of inspection desired and/or approval for the shipment to proceed. Upon completion of inspection, the cargo is conditionally released and sealed for transport to the U.S.-Canada border. Upon arrival, the shipment would proceed by a dedicated expedited lane, subject only to random and selected checks.

A mirror process would occur in the opposite direction for international goods arriving at U.S. seaports or airports for transborder destinations in Canada. For example, goods arriving in the Port of New York and taken by rail or truck to Toronto. At the physical border, the 49<sup>th</sup> parallel, goods would be categorized into low or high or unknown risk goods. The low risk goods would be processed through a registration process and a pre-approval of both the goods and the drivers and the companies. Shipment data would be transmitted before the goods reached the crossing at the 49<sup>th</sup> parallel. Upon arrival there, the truck or other conveyance would then be allowed to move through the border with, in most cases, no additional examination. High or unknown risk goods between the two countries would continue to be subjected to a full Customs review.

For this to work significant efforts would be needed to achieve so-called traffic screening for the common land border. When you hear the stories about infrastructure improvements at the border, a lot of it is really an issue of how to move traffic through. No different than how you move a queue through McDonald's. This involves taking advantage of the physical layout in those five major border crossings, particularly where there are bridges and tunnels or constraints on either end, in order to maximize the throughput of traffic. Traffic screening would require managing both the physical flow of goods and people, as well as the activities of regulatory officials.

At present, about 85 percent of the vehicles crossing the physical border in both directions are passenger vehicles, not trucks. In order to provide access to primary Customs booths for trucks carrying goods, car movements also need to be processed through expedited and integrated systems to allow participants to move through dedicated lanes. Traffic screening, therefore, is essential to provide expedited transport or clearance. Segregation of these flows from regular cars and trucks would greatly increase the throughput, and was thought to be critical to the success of a perimeter clearance approach.

Given this input from the private sector, what have the two countries done? I am going to differ with some of the earlier colleagues who characterized the work over the last 18 months, in particular, as housekeeping. Not out of pandering to my successors, but out of an

acknowledgement of some work well done. I think the two countries have collaborated as never before.

The effect of the terrorist's act has galvanized the focus not just of Canada, but now also the United States, on the management of the northern border as never before. While the focus, some would say the obsession, is on how to make the border work as a key component of a more rigorous security network, the need to concurrently expedite the movement of low risk goods and people has been part of the thinking from the get-go.

There are still problems and some real potential for more, but the extent of effort and collaboration in what has only been 18 months is totally unprecedented. A significant part of the credit has to go to the hard work of people like Doug and others who have labored virtually nonstop since September the 11<sup>th</sup>. Another reason is the extraordinarily positive, professional, political, and personal leadership. We talked earlier today about the need for political leadership and it was shown on this file by both Deputy Prime Minister John Manley and Homeland Security Secretary Tom Ridge. Their willingness to listen to advice and learn from the past has resulted in a process and a set of initiatives that for the most part reconcile the security and trade facilitation issues as it pertains to the movement of goods in particular.

### Recent Initiatives

As a result of their efforts, significant resources have been injected by both countries to fund the acquisition of technology, detection equipment, as well as more resources to staff the border and to support the re-engineering of the border. On December the 12<sup>th</sup>, 2001, as we have already heard, there was the signing of the Smart Border Declaration.<sup>4</sup> Doug is going to talk a bit about the details in a second. It has the four focuses on the secure flow of people, goods, secure infrastructure, and information sharing.

While all the components interrelate, there are five that focus particularly on the management of goods. Harmonized commercial processing has resulted in the creation of FAST, a Free and Secure Trade Program. This is the first time that we have had a single bi-national clearance process for low risk shipments by pre-approved importers and pre-authorized drivers and carriers. This is a huge step forward for importers and exporters in both countries, in that for the first time it effectively harmonizes and results in an identical process for movements in both directions.

---

<sup>4</sup> *Smart Border Declaration*, CANADIAN EMBASSY (Dec. 12, 2001), available at [www.canadianembassy.org/border/declaration-en.asp](http://www.canadianembassy.org/border/declaration-en.asp); *Action Plan for Securing a Secure and Smart Border*, CANADIAN EMBASSY (Dec. 12, 2001), available at [www.canadianembassy.org/border/actionplan-en.asp](http://www.canadianembassy.org/border/actionplan-en.asp)

For high and unknown risk goods, there have also been successes, such as the use of Customs Officers located in the other country to target containers for examination and agreement on what data elements importers and brokers will need to provide. Clearance away from the border and joint facilities involves officials from one country administering their laws on the soil of the other and the building of joint facilities that could be used, given the traffic flows, by either jurisdiction. The implementation of these initiatives would dramatically reduce congestion where there are serious space constraints on one side or the other.

Unfortunately, issues related to the application of the U.S. Bill of Rights and the Canadian Charter of Rights and Freedoms when enforcement actions are undertaken by Officers in the other country's soil have prevented progress. These issues are already at play in the earlier accord discussions and, quite frankly, are still stalled. There may be some developments Doug can talk about.

As a result, Canadian legislation to allow U.S. officials to work on Canadian soil and actually administer their laws has not yet been passed. Customs data sharing and in transit container targeting at seaports has gone very well. Data sharing is critical to the targeting of shipments for examination at the first point of arrival, in transit container targeting at seaports, and international origin shipments for trans-shipment to the other country.

## CONCLUSION

This long-standing problem between the two countries over differences related to privacy has not been fully resolved, but has allowed for much better targeting than ever before. In summary, the machinery and the will to deal with the better joint management of the border are in place. For progress to continue, I would leave you with two overriding concerns that could still derail all the good work achieved to date.

There remains a perception in the United States that Canada is soft on security and that it is unwilling to invest enough on the enforcement side of the border equation. This perception has been exacerbated by the current differences over policy regarding the Iraq War and a strange reluctance in Canada to embrace openly the perimeter approach to security that clearly benefits both countries.

If this perception persists, we run the risk in Canada of the United States using the 49<sup>th</sup> parallel as the northern arm of the perimeter instead of the whole continent. This would be disastrous for Canada and the functioning of the U.S. border. It would reduce the security for both Canada and the United States. The United States needs to embrace a more global approach to ensuring higher security. It has, in Canada, a willing and informed partner.

Canada, especially its political leaders, need to shake their heads, get over the paranoia about the perimeter clearance approach, and aggressively embrace both the Border Accord and the 30-point plan. Canada needs to take a leadership role in making this happen between the two countries. The challenge that Derek threw out earlier today is engaging other countries to adopt the practices and systems to secure trade.

Secondly, Canadian preoccupations with sovereignty has re-emerged in the recent months. This preoccupation tends to fuel the paranoia to which I just referred. I can say that because I am a Canadian. I can refer to our own paranoia. It really involves Canadians who are involved in the overall political economic integration and transpose that to concerns about the integration of border procedures and the sharing of data. Canadians, particularly in the business community, need to rise to the occasion as they did during the free trade debate and counter these concerns with a blunt lesson on the economic realities of looking inward and the costs, particularly in terms of investments, that Canada will incur as a result.

Earlier this week over 100 of Canada's leading executives met with Deputy Prime Minister Manley and Secretary Ridge and other senior U.S. politicians to begin the process of fence-mending, to advocate the full concept of a security perimeter, and for an expanded debate on the further integration of policies and procedures, the so-called NAFTA Plus. These efforts by industry on both sides need to continue and accelerate so that politicians and officials on both sides of the border make informed decisions that are practical and workable. In my view, we have no choice but to get on with it.

