8,893 KILOMETRES OF COOPERATION:
APPLYING KINGDON'S MODEL TO THE DEVELOPMENT OF CANADIAN
BORDER SECURITY POLICY SINCE 9/11

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Abstract

Canadian border security policies are largely shaped by the asymmetrical relationship that exists between Canada and the United States. American markets are the primary destination for over eighty percent of Canadian exports, creating an economic dependence highlighted in the days following 9/11. As wait times at the American border extended to sixteen hours the importance of the shared border came sharply into focus. To ensure Canada's economic security the Canadian government needed to develop policies that would satisfy the American need for physical security and the Canadian need for economic security. This thesis applies John Kingdon's policy streams model to demonstrate and explain the subsequent development of Canadian border security policies. It also examines the institutional context for border security policies and examines two case studies: the Container Security Initiative and NEXUS.

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List of Abbreviations

ACI	Advance Commercial Information
APEC	Asia-Pacific Economic Cooperation
ATS	Automated Targeting System
BPRI	Border Policy Research Institute
CBSA	Canada Border Services Agency
CBP	Customs and Border Protection
CCCE	Canadian Council of Chief Executives
CCRA	Canada Customs and Revenue Agency
CFIA	Canada Food Inspection Agency
CIC	Citizenship and Immigration Canada
CME	Canadian Manufacturers and Exporters
CSI	Container Security Initiative
C-TPAT	Customs-Trade Partnership Against Terrorism
CUSP	Canada-United States Partnership
DHS	Department of Homeland Security
EPA	United States Environmental Protection Agency
FAST	Free And Secure Trade
FEMA	Federal Emergency Management Agency
FY	Fiscal Year
GAO	Government Accountability Office
IBET	Integrated Border Enforcement Teams
INS	Immigration and Naturalization Services
JTI	Joint Targeting Program
MTSA	Maritime Transportation Security Act 2002
NRAC	National Risk Assessment Centre
PACE	Peace Arch Border Crossing
PIP	Partners In Protection
PNWER	Pacific Northwest Economic Region
PSEPC	Public Safety and Emergency Preparedness Canada
RCMP	Royal Canadian Mounted Police
RFID	Radio Frequency Identification
SARS	Severe Acute Respiratory Syndrome
SPP	Security and Prosperity Partnership
TWIC	Transportation Worker Identification Credential
USCIS	United States Citizenship and Immigration Service
US-VISIT	United States Visitor and Immigration Status Indicator
WCO	World Customs Organization
WCOG	Whatcom Council of Governments
WHTI	Western Hemisphere Travel Initiative
WMD	Weapon of Mass Destruction

CHAPTER 1: INTRODUCTION

In the post September 11th (9/11) world, heightened security concerns in the United States and Canada led to changes in many policy areas, including border policies. The terrorist attacks revealed the vulnerability of the United States (U.S.) and other western countries to non traditional threats posed by a small terrorist cell with the right tools. With the hopes of preventing another planned attack, many countries began seriously examining their security, immigration, and border policies. The goal was to reduce or eliminate these vulnerabilities.

For countries with open trade economies and open immigration policies, the complete elimination of all vulnerabilities was simply not possible. The only way to eliminate all vulnerabilities would be to reduce the importation of goods and entry of persons into the U.S. to such a point as to incur serious long term costs. This issue was recognized by the U.S. Office of Homeland Security's 2002 National Strategy for Homeland Security, which outlined a plan for prevention, threat reduction, damage minimization, and recovery (Office of Homeland Security, 2002, p. 2). Border security was listed as an integral part of this plan and the National Strategy called for both it and its related policies to be reviewed.

This recognition did not change the fact that the paramount issue in the U.S. was security. The reality was approximately 3,000 people died on 9/11 and all homeland security policies, including border policies, were formed with this reality in mind. The first priority of any new policy was to improve the physical security of Americans; any other effects of the policy were secondary to this priority.

The reality was different for Canada. When cross-border commercial traffic slowed to a trickle in the days after 9/11 it served to underscore what the Canadian government already knew: Canada's economic security was tied to regularized, predictable access to the American market.

As border policies are an essential component of economic security, they moved front and center for Canada. The "other effects" of security policies were not secondary for Canada.

It is the premise of this research that American political scientist John Kingdon's policy streams model will provide an accurate explanation of Canadian border policy development. The first aim of this thesis is to provide an explanation for the development of border security policies in Canada following 9/11. The second aim of the thesis is linked to the first, to test Kingdon's policy streams model in the context of border security policies. To my knowledge, Kingdon's model has not been used in the context of Canadian border security policy. Its applicability to border security will strengthen or diminish the explanatory value of Kingdon's model. The model seeks to explain why some subjects became prominent on the policy agenda and why certain alternatives for policy choice received serious consideration and others do not (Kingdon, 2003, p. 3). Three policy streams are identified: problem identification, policy generation, and political events. The circumstances under which these streams meet – as well as the actors and processes in these streams – are key focuses in the model.

Kingdon refers to these three streams interchangeably as policy streams and policy processes. There is an important distinction to make between the *policy development stream* – a process of policy development – and *a policy stream*, which is a policy area where these three processes are located. For instance, there is a border stream, an immigration stream, and an infrastructure stream. For the purposes of this research, Kingdon's second process, the policy development stream, is always referred to as the policy development stream to distinguish it from particular *issue* policy streams.

To meet the second goal of this thesis, Kingdon's model is tested in both the American and Canadian contexts. There are two reasons for this approach. First, a comparative approach is useful as a way of testing the validity of, conditions for, and the limits of the model. The second is to better understand the context for the policy development in Canada; the American context is

an important dimension to this understanding. No policies develop in a vacuum and the close, but asymmetrical nature of the relationship between the two countries should be considered when examining policy developments in Canada, especially those with strong bilateral dimensions.

This research also examines two case studies in order to offer a comprehensive assessment of border policies in Canada and to further test the applicability of Kingdon's model to policy and program development. The first is the development of the Container Security Initiative (CSI), a program designed to prevent the delivery of a weapon of mass destruction to North America by screening cargo containers before they arrive in the U.S. or Canada. The second is the development of NEXUS, a trusted traveler program that provides expedited border clearance to travelers who have been pre-screened.

The case study model was chosen for this thesis as it is the most appropriate method given the goal of the research. In the introduction of Yin's 1984 *Case Study Research* he outlines three criteria that make case studies appropriate for the research being conducted. First, the form of the research question is how and why (p. 17). The ultimate aim of this thesis is to determine how and why post 9/11 border policies in Canada developed the way they did. The second criterion is that the researcher has little or no control over behavioural events (p. 19). The researcher cannot re-create the events to test the hypothesis again. This is the case here and with most research in political science. Third, the focus is on contemporary events and there are people who can provide first hand insight into what occurred. (p. 19). The principle aim of this thesis, to elucidate the development of Canadian border policies, fits this description.

Most of the information for my case studies was obtained through confidential interviews with mid to senior level officials from the Canadian Border Services Agency (CBSA). The interviews took place in October and November of 2008, with follow up questions and information obtained in February and March 2009. The officials interviewed provided relevant information and insight into the case study programs and the evolution of those programs. I

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received Human Subject Research Approval from the Human Subject Research Committee at the University of Lethbridge for the interviews and the application was assigned protocol number 808.

Border Security Policies

Border security policies are usually determined in relation to broader security and public safety policies. Security and public safety policies include all policies related to homeland security. Generally these policies fall under two categories: national security and emergency management. These policies can include terrorism prevention, border security, critical infrastructure protection, and recovery planning for natural disasters and public health threats.

Border security policies are, however, also part of immigration and asylum policies, law enforcement policies, travel and trade facilitation policies, as well as border infrastructure and border management policies. Border management policies refer to the administrative processes for integrating the border objectives of the other policy streams, and include policies relating to customs and excise as well as food safety.

Immigration and asylum policies, set in Canada by Citizenship and Immigration Canada (CIC), are guidelines for the admittance of persons into Canada. This includes immigrant and non-immigrant visas and the criteria for granting asylum and refugee status. It is up to CBSA agents to make admission decisions based on guidelines set by CIC and their personal assessment of the individual. All travelers, immigrants or visitors, are assessed by CBSA agents.

Border policies are most important to law enforcement policies in relation to organized criminal activity, such as the trafficking of people and smuggling of drugs and other contraband. Cases involving criminal activity are turned over to the Royal Canadian Mounted Police (RCMP), the agency responsible for enforcement. It is for this reasons that the RCMP and not the CBSA

works with U.S. Customs and Border Protection on the Integrated Border Enforcement Teams (IBETs).

Travel and trade facilitation policies and programs are two related policy streams. These programs offer economic incentives in exchange for security information. The programs are designed to assist the border agents in their assessment of a visitor or goods. This allows agents to process travelers faster as a security assessment of travelers can be completed quickly. Some trade facilitation programs, such as Free and Secure Trade (FAST), are built on the same principles as travel facilitation and are designed for the people involved in trade, such as truck drivers. Other programs, such as the CSI, focus on the cargo. These programs increase security by allowing CBSA agents to determine where to focus their attention, thereby providing a better allocation of limited resources.

There are two sub-streams to infrastructure policies: physical and technological. A large part of physical infrastructure include concerns regarding land crossings; number of lanes available or bottle necks en route to a crossing for instance. Agencies such as Transport Canada and the U.S. Department of Transportation are usually the lead agencies in physical infrastructure policy, though provincial and state level equivalent departments are also involved. The number of scanners available for containers or cars, as well as the size of the customs receiving area at an airport, are also included in this category. Technological infrastructure refers to things such as the availability of biometric scanners and readers and the interoperability of databases, as well as more mundane elements such as computer systems for front line border agents.

There are also customs and excise policies enforced for the admittance of goods into Canada, such as the import of cultural items, exotic animals, and weapons, among other things. These rules are set by the CBSA; however, the regulations for food, agricultural input and product imports are set by the Canada Food Inspection Agency (CFIA). These policies are linked

to trade as all imports must be declared and are subject to inspection by the CBSA, but all fall within the border management stream.

This research focuses on border policies within the security and public safety stream and the travel and trade facilitation stream. This research does not discuss the border concerns arising from immigration and asylum seeking, the importation of food and agricultural products, or criminal behaviour relating to organized crime. These policies are determined and administered by CIC, CFIA, and the RCMP respectively, as discussed above. Adding those policies determined by other departments extends the scope of the research beyond that permitted by the length of this thesis. Infrastructure policies also entail a high degree of coordination with other departments, but are included where appropriate. It is also for this reason a full review of all actions and measures taken by the governments of both countries relating to all aspects of border security is not done.

This thesis does not include a discussion of Mexico or the impact of 9/11 on American/Mexican border relations. A discussion of Mexico and the overall context of North American border security could offer valuable insights into border policy development in the U.S. and Canada. However, the focus of this thesis is on Canadian policy development and to include Mexico would push the research beyond the scope of a Master's thesis.

9/11 and Why Border Policies Matter

Border policies rarely draw public attention unless there is some type of failure. There are many different types of failures possible, from the terrorist attacks of 9/11 to the millions of illegal immigrants in the United States. In the eyes of American policy-makers there is a hierarchy of importance assigned to these failures, especially since 9/11. The failures that lead to loss of life are the most critical. The most catastrophic failure possible would be the importation and successful detonation of a nuclear or biological bomb. Less catastrophic but still serious

failures include attacks on specific targets, but without the scope and long term health impact of a nuclear or biological attack.

Secondary failures are those that do not result in loss of life, but are a threat to the United States. The thousands of people who enter the U.S. annually from the southern border without documentation or permission, or who overstay their visas without any consequence, are considered a threat to American sovereignty as such developments limit American control over its population and borders.

Tertiary border policy failures are those that do not result in the loss of life or threaten U.S. sovereignty to any degree. Generally, they are those relating to commerce. Significant delays at the border for imports and exports represent a failure of border agencies' mandate to promote the prosperity of their nation, an aim included in both the CBSA and Customs and Border Protection (CBP) mandates. A decrease in travelers and tourists to the U.S. resulting from strict border requirements, leading to a loss in revenue for the hospitality, restaurant, entertainment, and culture sectors, are included in this category. The secondary and tertiary failures, though important, are not more important than protecting the lives of American citizens. Therefore if a program meets the primary goal but results in tertiary policy failure, than it is considered a success by most American policy-makers.

The goals of border security policies, preventing terrorist attacks, controlling illegal immigration and maintaining open trade borders, are occasionally trade-offs of one another. They represent competing priorities for border agencies. To cope with these competing priorities agencies employ a risk management strategy; a strategy for the allocation of scarce resources. The strategy assigns priority to the various tasks and goals and determines the allocation of resources, such as time and personnel. Risk management strategies also employ several policies and programs working in conjunction with one another to accomplish the same goal. For instance, the CSI uses technology to increase the number of containers screened without increasing the

number of agents needed to do it and is used in conjunction with the Customs-Trade Partnership Against Terrorism to ensure the cargo inside a container does not pose a threat to the U.S.

The priorities of U.S. border security policies are important to Canada due to the asymmetrical economic relationship that exists between the two countries. The relationship is characterised by a strong degree of interdependence, though more prominent on the Canadian side. This interdependence and the importance of U.S. market access require policy adjustment in Canada in the event of U.S. border failure. It also puts the border security priorities of the two countries at odds with each other, as the priorities are different in Canada.

The commercial slowdowns and disruption of cross-border trade are primary failures as they lead to secondary effects on employment and investment in Canada. Security is considered a parallel primary policy issue. First, it is necessary to protect Canadians and second, because it is a condition for meeting the economic and commercial priorities. The greater the degree of trust the Americans have in the Canadian security system, the greater the likelihood of collaboration on cross-border economic issues with Canada. There are two more priorities for Canadian border policies. The second is preventing disruption to cross-border tourism and the third preventing the disruption of accustomed border community interactions.

Canadian companies who primarily export to the U.S. are the first to feel the effects of decreased or slowed trade due to border wait times, often needing to compensate for the loss in revenue by downsizing, temporarily or otherwise. Trusted-traveler and trusted-shipping programs can be influential as they affect the processing and wait times at border crossings. These wait times also influence tourism, as they can affect vacation plans, and communities living in and around the border. Members of these communities often commute across the border or have interconnected emergency services. These communities can also be impacted socially if there are integrated community groups or sports teams.

In the rush to take meaningful action after 9/11, the implications of these actions for tourism, travel, trade and the more routine interdependence of border communities were not always carefully considered. Examples of the effects of border policies are outlined here to illustrate some of these points.

On September 12th, wait times at the U.S./Canada land borders were hours long. It was, however, not only Canadian interests that were affected – but those of businesses with operations on both sides of the border and their workers. On September 13th, Daimler-Chrysler had announced it was closing an assembly plant in the U.S. the next day as shipments were stuck on the Canadian side. Ford announced the closure of five plants in a week on September 14th. This was problematic enough that the U.S. opened the border again and within a week wait times were almost back to normal (Flynn, 2003, p. 115).

A 2008 report published by the U.S. State Department and the Department of Homeland Security found that tourism to the United States had decreased by seventeen percent from 2000 through 2006. Despite the high value of the British pound, travel from the UK was down eleven percent while travel from the UK to India went up one hundred and two percent and travel from the UK to New Zealand went up one hundred and six percent (United States, 2008, p. 7-8).

Perhaps most illustrative of how problematic border policies became are the medical examples at the Detroit/Windsor crossing. On November 16, 2007 an ambulance from Windsor, ON en route to a hospital in Detroit, MI was delayed at the border when CBP agents pulled the ambulance over for secondary inspection. The ambulance had been pre-cleared under the rules of a 2005 agreement and the patient was in need of urgent medical care (CBC, 2007, ¶ 3).

Thesis Outline

Chapter 2 of the thesis presents the theoretical framework for the research. J. Kingdon's policy streams model developed in *Agendas, Alternatives, and Public Policies* is used to analyse

the post 9/11 developments in border security. Though originally designed to be applied to the American political system, the model is successfully applied by Tomlin, Hillmer, and Hampson in *Canada's International Policies* (2008) to several Canadian policy fields, including trade and defence. To date, it has not been applied to border policy in Canada.

The chapter begins by describing the model and continues with its application to the American and Canadian contexts. The choice of a comparative approach was primarily due to the strong bi-national dimension of cross-border issues and the influence outlined earlier of American border policies on Canada. An understanding of Canadian border security policies would be incomplete without examining the context in which they developed, including related developments in the United States.

The three policy streams of the model are explained – problem identification, policy generation, and political events – and are followed by a description of the coupling of these streams and the opening of policy windows. The events of 9/11 are discussed as the key focusing events prompting the new developments in border security policies. Two subsequent sections summarize the political and legislative responses to 9/11 in the U.S. and Canada, followed by an analysis of these responses using Kingdon's model.

Chapter 3 builds on the policy community discussion of Chapter 2 by identifying the single most important influence on policy windows – where the opportunity to affect change is most likely: electoral cycles. It examines the relevant Canadian institutions for border security policies as well as the influences on those institutions, including the relevant policy communities. The chapter draws on Brunet-Jailly's model of factors influencing cross-border interaction to offer further insight where Kingdon's model leaves off. It then examines the American institutional context and discusses the importance of elections. The last section develops the concept of electoral cycle windows by tracing the electoral cycles in Canada and the U.S. post 9/11.

Chapters 4 and 5 present the program case studies. The Container Security Initiative and NEXUS were chosen as they represent a commercial freight program and travel program respectively, one each from the trade and travel aspects of border management. This is for the purpose of offering a more comprehensive view of border programs. The CSI represents a program that is an important part of the risk management strategy of "pushing the border out" and NEXUS represents a trusted traveler program, part of the "pre-clearance" risk management strategy. Though strongly linked, as pre-clearance can entail moving border inspection away from the border and therefore "pushing the border out", NEXUS members are given permission to enter at the border, not before at a pre-clearance sight. The program renders the proverbial "hay stack" of millions of annual border crossings smaller by readily and easily identifying travelers who pose a minimal threat.

NEXUS Air is an exception to the "before" versus "at" the border pre-clearance. NEXUS members who travel by air, as with all other air travelers, clear U.S. Customs before they board their U.S. destined plane. This is a good example of the "pushing the border out" strategy. It refers to the inspection and clearance process of people or goods before they physically arrive at the border. The border is therefore moved from inside a county's territory to the foreign location.

The CSI and NEXUS were selected as both were mentioned in the December 12, 2001 Smart Border Accord and they have been fully implemented for several years, providing a longer period of time for development and implementation. Though a NEXUS pilot pre-dated 9/11, the current program, as with the CSI, stems from the December Accord. It is for this reason programs such as the Western Hemisphere Travel Initiative (WHTI) were not selected. Though the WHTI was far more politically contentious than the two programs selected for the case studies, the program has not been fully implemented at the time of writing and remains relatively new.

Each case study presents an outline of the program and how it operates. The case studies then examine the policy evolution of the program and apply the three streams of Kingdon's

model to this evolution. With regards to the CSI, the chapter provides an outline of the program as an effort to prevent global supply chains from being used to deliver a weapon of mass destruction to the United States. The border is pushed out and better protects residents of port cities by screening containers before they leave port for the U.S. rather than after they arrive. The Canadian CSI was designed after the American CSI and is almost identical in purpose; the chapter outlines why there was program deviation. The NEXUS chapter outlines the background of the program, from early programs such as CANPASS to the pre-9/11 NEXUS pilot. The chapter then outlines the current program, the development of NEXUS policy and criticisms of the program.

The final chapter is the conclusion. It begins with a brief summary of the intention and aims of the thesis and provides conclusions with regards to these aims. The chapter concludes that Kingdon's model does explain broad border security policy development in both countries, but it is not as applicable to the policy of particular border programs, such as the CSI and NEXUS. A discussion of the road ahead outlines what may be next for programs such as CSI and NEXUS. Recommendations and ideas for further research, such as using another model in addition to Kingdon's to explain the influence of the asymmetrical Canadian/American relationship, conclude the thesis.

Summary of Sources

The Tomlin, Hillmer, and Hampson book, *Canada's International Policies: Agendas, Alternatives and Politics*, provides an excellent starting point for the application of Kingdon's model to Canadian policy fields. This research seeks to build upon the study the authors began.

This research drew heavily from primary documents and sources, including information obtained from confidential interviews with CBSA officials, the 9/11 Commission Report, various reports from the U.S. Government Accountability Office, the Canadian Senate Committee on

National Security and Defence's report *Borderline Insecure*, reports from Canada's Auditor General, and documents from the Canadian Border Services Agency.

The Border Policy Research Institute (BPRI) at Western Washington University, the Conference Board of Canada, and the C.D. Howe Commentary series "The Border Papers" have been particularly helpful in providing quantifiable economic impacts of border security in terms of trade and the economic relationship between the U.S. and Canada. In particular, the BPRI's Border Policy Briefs, Working Reports and Research Reports have been insightful with regards to regional and micro-level border issues. The July 2006 Globerman and Storer *Impacts of 9/11 on Canada-U.S. Trade* was one of these Research Reports. Others include Morgans' *Analysis of American and Canadian cross-border business expansion in the Pacific Northwest* (September 2007) and Goodchild, Albrecht, and Leung's *Cross border transportation patterns at the Western Cascade Gateway: Implications for mitigating the impact of delay on regional supply chains* (June, 2008).

There have also been several researchers from the Conference Board of Canada who have published studies on the impact of border security on Canadian firms. In June 2007, a series of three studies were published examining cross-border economic issues. These included *Is Just-in-Case Replacing Just-in-Time? How Cross-Border Trading Behaviour has Changed Since 9/11*; *Reaching a Tipping Point? Effects of Post-9/11 Border Security on Canada's Trade and Investment*; and *Tighter Border Security and Its Effects on Canadian Exports.*

The research for this thesis draws frequently on the work of G. Hale of the University of Lethbridge and R. Whitaker of the University of Victoria for analysis of Canadian policy with regards to security, trade and Canada's relationship with the United States. Several articles appearing in the series *How Ottawa Spends* by both authors have been influential in the analysis of this research.

Andreas and Biersteker's *The Rebordering of North American: Integration and Exclusion in a New Security Context* (2003) includes analysis of the Canadian/American relationship following 9/11 from multiple perspectives, including S. Clarkson's examination of the military, societal, and economic implications of reaction to 9/11 and L.W. Pauly's analysis of the reshaping of the political and policy landscape in Canada following 9/11.

Finally, the institutional analysis of the Canadian/American border and Canada-U.S. border policy management have been the subjects of recent PhD and Masters research, including Hataley (Queens), Carpentier (Saskatchewan), and Beisswanger (Concordia).

This list is a partial summary of the sources and literature available on border security policies, the institutional context for these policies, and the frameworks of analysis used to explain policy development. Literature on border security has seen a significant increase since 2001, especially with regards to the shared border between Canada and the United States. F. Harvey of Dalhousie University has published on the subject at hand, but has not been referenced in this research.

There is an enormous literature available on institutionalism and policy communities that is not reviewed here. The use of Kingdon's model places greater emphasis on pluralist and public choice theories, both of which have a wealth of literature available but are also not referenced or reviewed here. Some aspects of institutionalism are referenced in Chapter 3, as is a brief discussion of a state-centered analysis for border security policy, however to include a full review and discussion of these literatures would push this research beyond that of a Master's thesis. I have preferred to focus on Kingdon's model and the process for border security policy development.

CHAPTER 2: KINGDON'S POLICY STREAMS MODEL AND POST 9/11 BORDER POLICIES IN THE UNITED STATES AND CANADA

John Kingdon's policy streams model is the theoretical framework chosen for this research. The model was chosen for two reasons. First, I believe Kingdon's model is the most relevant for the outcomes discovered in my research as he takes into account the different participants, their means of influence, and the processes by which this influence occurs. Second, Tomlin, Hillmer & Hampson's (2008) effective use of this framework in their analysis of Canadian trade policy and Canadian defence policy suggests its potential application to this research. This chapter represents my original contribution to the study of political science as, to my knowledge, Kingdon's model has not been applied to border policies in Canada or the United States. The following chapter, which provides the institutional context for border policies in both countries, builds upon the analysis of this chapter.

The chapter begins with a brief outline of the border security framework in both countries, followed by an explanation and description of Kingdon's model. Two subsequent sections summarize the American and Canadian response to 9/11 as relates specifically to border security, enabling an analysis of each response using Kingdon's model. The outline and analysis of the American response is first as the Canadian response was, in some ways, reactive to changes in the United States.

The border is an important issue for both Canada and the U.S., though in different ways. Due to the importance of access to U.S. markets for Canada, border security is a major issue for Canada in its relations with the United States. With approximately eighty percent of Canadian exports destined for the American market and many companies employing just-in-time supply

chain strategies, the border can be a major hurdle. The framework of Canadian/American relations is therefore significant for the Canadian approach to border security.

There are two layers to the border question in the U.S. The first layer is illegal immigration along the southern U.S. border. With illegal immigration rising throughout the late 1990s, most new legislation or changes in policies were directed toward the southern border. The gravity of the situation was underscored when in 2005 the governors of Arizona and New Mexico declared states of emergency in portions of their states to free up state resources to "combat" the problem (USA Today, 2005, ¶ 2). The second layer gained much greater prominence after 9/11: preventing terrorists from entering the country. This layer includes air, land, and sea borders.

Both of these layers have raised issues along the Canadian/American border. Policies aimed at illegal immigration generated negative externalities for Canada. Section 110 of the 1996 Illegal Immigration Reform and Immigration Responsibility Act, discussed later in the chapter, was one of these examples. It required a system to document the entry and exit of non-U.S. citizens. Though it was a compromise between Congress and President Clinton and cross-border interest groups that pushed the deadline for implementation back, the Canadian government was concerned enough about the requirements to speak out publicly against the Bill (Sands, 2007, p.252 & 254).

The second layer was more complex. The concerns regarding terrorism began to arise prior to 9/11 due to increased concerns regarding the attacks on American targets abroad (Sands, 2007, p. 257). The 1999 so-called Millennium Bomber, Ahmed Ressam, raised important questions about the security threat posed by Canada. Following 9/11, it fell to Canada to prove it was not a security threat to the U.S.

In view of the challenges the United States faces in protecting its border from illegal immigrants and terrorists, the Canadian/American relationship becomes important in terms of

border security. In Canada, it is border security that is important in terms of the Canadian/American relationship.

Kingdon

I have chosen Kingdon's model for my analysis, as outlined above. Despite its American origins and important structural differences between the Canadian and American systems, Kingdon's model is flexible enough to accommodate the substantial differences between the policy making processes that take place within these two systems. Further, as previously mentioned, Tomlin et al (2008) have made effective use of this framework in their analysis of Canadian trade policy and Canadian defence policy.

Border policies are set and determined in much the same way as other public policies in Canada and the United States. A problem is identified, potential solutions are brought forward and a decision is made by those with the appropriate political authority. However, how problems are identified, how responses are determined, who has a voice, and who ultimately sets the policy are complex questions. Many different actors play roles, how these actors interact and at which stages of the policy process will determine the final policy outcome. Kingdon addresses the questions above with his model. He seeks to explain why some subjects became prominent on the policy agenda and why certain alternatives for choice were given serious consideration and others were not (Kingdon, 2003, p. 3). The model focuses on agenda setting and the alternatives considered when dealing with the agenda. In this case the agenda refers to the issues and problems to which government officials, and those outside government closely associated with them, are paying serious attention (Kingdon, 2003, p. 3).

First, Kingdon distinguishes between participants and processes. In the context of the American political system he notes the different roles played by different participants, including the President and his staff, members of Congress, civil servants, congressional staff, interest

groups, academics, the media, campaigners, and public opinion. The President, senior officials of the Administration, and members of Congress are the most important actors in terms of Kingdon's concept of agenda setting. Kingdon refers to these key policy and decision makers as the government.

Second, Kingdon notes the process for policy development within each issue. The process includes three largely independent policy streams: the problem recognition stream, the policy generation stream, and the political events stream (Kingdon, 2003, p. 19). These streams are independent of one another and develop according to their own interactions and rules and are generally dynamic idea or event processes. They are also contributors to the governmental agenda and alternatives considered to manage agenda items.

The problem stream consists of the identification or recognition of a problem or problems that need to be addressed. These problems are usually identified by systematic indicators such as unusual increases or decreases in known patterns. Kingdon's examples include car crashes per highway mile, energy consumption, or monetary costs (Kingdon, 2003, p. 17). In the context of border management systematic indicators would include increased wait times at the border or reduced exports to the U.S. from Canada. They might also include security indicators such as a sudden decrease in attempted drug smuggling at a particular crossing, potentially indicating the smugglers have switched to an "easier" crossing or developed new ways of smuggling contraband.

A second problem identifier is a focusing event such as a disaster or crisis. The 1999 arrest of Ahmed Ressam in Washington State is an example of a focusing event that drew attention to border security. A third problem identifier is feedback from the operation of current programs. This feedback to decision makers comes from bureaucrats who administer the programs day-to-day or from systematic monitoring and evaluation studies. It can also be more informal, such as citizens' complaints to legislators (Kingdon, p. 101).

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A particular issue in the problems stream is the budget and the availability of budgetary resources to a particular policy or program. The cost of an idea or program to the current budget can act as deterrent for advancement on the policy agenda or prevent the idea from reaching consideration at all (Kingdon, 2003, p. 103). Kingdon links budget constraints to the state of the economy. When the economy is stagnant or growing slowly, the government is faced with larger constraints as revenues fall off (Kingdon, p. 108). There are three general types of budget constraints: regulatory - internal processes to control costs; policy - if a particular decision is seen to save money; and small projects - when a large ticket item cannot be proposed a small ticket item is proposed in its place (Kingdon, p. 108). The issue of budget constraints has the most bearing on problem response. The identification of problems is continuous regardless of fiscal constraints. The responses to those problems, if any at all, can be largely dependent on their ranking on the administration's agenda and the costs associated with them.

The budget can also be used as a promoter (Kingdon, 2003, p. 106). If an issue is of enough importance and has a high enough ranking on the federal budget, then costs associated with it are expected to be high and expensive programs can be moved up on the agenda. Kingdon uses the example of Medicare and Medicaid (Kingdon, p. 106). After 9/11 the issue of homeland security was – and continues to be – so high on the U.S. agenda that the amount of funds allocated to it by the federal government allow for expensive programs and ideas to move forward. The budget as a constraint or promoter is an issue discussed further in this chapter.

The second stream in Kingdon's policy model is that of the policy generation. The policy stream consists of those in the policy communities engaged by the problem stream and generating policy proposals. It is the process of the gradual accumulation of knowledge and perspective among specialists in a given policy area (Kingdon, 2003, p. 17). These specialists are scattered inside and outside of government, consisting of academics and researchers, interest group analysts, congressional staff, and bureaucrats in planning and evaluation offices. These

communities are characterised by a high degree of interaction, as they are often quite small. They are familiar with each other's ideas, research, and proposals (Kingdon, p. 117). These members of the policy generation stream are often important actors in the model as interest groups and congressional staffers have access to members of Congress. However, the amount of influence of those members of Congress varies greatly. The relevant policy communities for border management and border security are touched on in this chapter and discussed in the following chapter.

An important aspect of policy generation is the survival of ideas in the community. Ideas bump into each other and are combined with other ideas; some survive and some do not, and some survive in a form quite different from the origins (Kingdon, 2003, p. 131). Some ideas are trial balloons for technical feasibility, value acceptability – whether the ideas are acceptable to those in existing communities, such as liberals or conservatives – and anticipation of future constraints, such as cost and public acceptability.

Policy entrepreneurs are usually members of the policy generation community who invest time and effort into promoting a particular idea. They can be key in advancing and ensuring the survival of an idea and "softening up" the policy community and larger publics. "Softening up" is the idea that people are less resistant to change when they are used to an idea or have seen it before. For policy communities, "softening up" is often necessary as they tend to be inertia-bound and resistant to change (Kingdon, p. 128).

The model's third stream is the political stream. It consists of the political processes that affect the agenda. Kingdon uses "political" in this case in the colloquial Washington sense, meaning a narrow definition related to the electoral, partisan, or pressure group factors (Kingdon, 2003, p. 145). Kingdon identifies influential factors as swings in the national mood or public opinion, organized political forces and pressure group campaigns, election results, partisan or ideological distributions in Congress, and changes of administration (Kingdon, p. 17 & 145).

The national mood is the notion that a rather large number of people in the country are thinking along the same common lines and that it changes in discernible ways (Kingdon, 2003, p. 146). For instance, this can be reflected in the findings of public opinion polls. In the U.S. the national mood in the late 1990s was characterised by relative optimism. Since 9/11 this optimism has largely given way to cultural insecurity in response to illegal immigration, physical and psychological insecurity following 9/11, and growing economic insecurity. The national mood is one factor in policy decisions; if a policy is determined to be counter to the national mood it will likely be left for another time. National mood can also be used to support a policy. If the administration or Members of Congress are confident that public support is behind them, they may be more likely to push for a policy that reflects that mood (Kingdon, p. 147).

Organized political forces include interest groups, political mobilization, and the behaviour of political elites. Central to the understanding of the role is the degree of consensus or conflict among these groups (Kingdon, 2003, p. 150). The level of consensus can be a powerful impetus to move policy in one particular direction and the level of conflict can influence a policy maker if the balance between the groups is tilting in one direction.

Within the government, Congress or the administration, changes in the agenda are usually the result of a change in priorities. This may be due to a change in priorities of the incumbent or due to turnover of the people in those positions (Kingdon, 2003, p. 153). Most often, these changes are the result of elections as newly elected representatives seek to distinguish themselves from their predecessors by bringing new ideas forward.

Elections can also create interesting dynamics if there is a change from majority to minority and vice versa. After an election, the President or members of Congress may find themselves in a position to make policy changes they were not in before. It is easier to push policies forward when the President has a majority in the Congress; the same is true of the Prime Minister in Canada. If the Prime Minister has a majority, then he or she is in a stronger position to

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move policy forward. Changes of personnel in key agencies, such as the Interstate Commerce Commission, are also relevant as new personnel may bring new ideas or different points of view with them. The question of jurisdiction is also important as agendas are influenced by "turf battles," certain policies will make their way onto the agenda of a particular agency or department so they can retain influence over issues and policies (Kingdon, p. 155-156).

The circumstances under which these three streams meet – problem recognition, policy generation, and political events – are those under which the greatest policy change occurs. This coupling, as Kingdon refers to it, can then open a policy window. The most successful couplings are those in which all three policy streams are present, which is greatly facilitated by the presence of policy entrepreneurs. A solution floating around in the policy community is attached to a problem, proposals are linked with political circumstances, and alternatives introduced when the agenda changes (Kingdon, 2003, p. 173) The circumstances in the political stream are crucial, as there could be a problem identified with a viable solution, but if no one with the political authority to make changes is listening then it is irrelevant.

Policy windows are often open only for a short amount of time and are usually unpredictable. Therefore, policy entrepreneurs must have their proposals ready at all times (Kingdon, 2003, p. 165). Windows consist of opportunities for influence that did not exist before due to some kind of change, including a newly elected Administration or Congress, a momentous event that focuses attention on a particular field, or the regular budgetary cycle. Budgetary cycles and elections are institutionalized windows which occur at regular intervals, while other windows are highly contingent upon such things as party distribution in a legislature or levels of constituent interest.

Policy entrepreneurs are advocates who are willing to invest the time, energy and sometimes money to promote a position in return for anticipated gain. This future gain could be in the form of material, purposive, or solidary benefits (Kingdon, 2003, p. 179). Material gains

are generally those relating to pay and other financial benefits; purposive gains are those relating to influencing policy and contributing to society; and solidary gains are those relating to the social aspects of group membership. These entrepreneurs can be found in almost all formal or informal political positions; they could be members of the House, lobbyists, academics, or bureaucrats.

In Kingdon's model September 11th is a clear and unprecedented focusing event. It brought border security and the problems associated with it front and centre in the eyes of decision makers in the U.S. and Canada. It became the number one agenda item for both: in the U.S. for purposes of increasing security and in Canada to ensure the integration of trade with security. The need to establish what had happened and what could be done to prevent the same failures in the future became paramount in the United States. Canada examined its own border security for weaknesses and sought to determine how best to protect Canadian economic interests in the U.S. given the new security conditions.

The American Response to 9/11: Border Security

After 9/11, Washington began a prompt and extensive re-evaluation of its broader security policies, including border security. It was clear there had been failures of intelligence, but initial reports also pointed to failures of border security and immigration policies. In October of 2001 the President issued an Executive Order creating the Office of Homeland Security to coordinate and improve departmental functions relating to homeland security. Former Pennsylvania governor Tom Ridge began his term as Director that same month. In December of 2001 Ridge signed the Canada-U.S. Smart Border Accord on behalf of the United States. The Accord outlined a plan for cross-border cooperation as it related to the secure flow of people and goods, secure infrastructure, and the coordination and information sharing in the enforcement of these objectives (Government of Canada, 2008, Protecting our borders section, ¶ 3).

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The USA PATRIOT Act also passed Congress in 2001. The Act's Title IV dealt with increasing the number of Border Patrol personnel, Customs Service personnel, and Immigration and Naturalization Service personnel (who would all later become part of the Department of Homeland Security) and increasing the exchange of information between the State Department and the National Crime Centre. It also mandated the Institute of Standards and Technology to develop a technology standard to verify identity. In 2002 the Enhanced Border Security and Visa Entry Reform Act required that all INS internal databases become interoperable, that federal law enforcement and intelligence agencies should share data on aliens with the INS and State Department, and that all travel and entry documents be machine readable and tamper resistant with a standard biometric identifier.

The Office of Homeland Security became the Department of Homeland Security (DHS) in November 2002, pursuant to the Homeland Security Act of 2002, which came into effect in early 2003. Ridge became the first Secretary, Michael Chertoff became the second Secretary in February of 2005 and Janet Napolitano became the third Secretary in January 2009. This Act consolidated 22 agencies under the umbrella of DHS, including Customs Services (from Treasury), Immigration and Naturalization (from Justice), Coast Guard and Transportation Security Administration (from Transportation), among others (US Department of Homeland Security, 2008).

In November 2002 President Bush and Congress established the National Commission on Terrorist Attacks Upon the United States, or more commonly, the 9/11 Commission, which presented its final report in July 2004. Later in 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act based on the recommendations of the 9/11 Commission (US H.R. Rep. No. 108- 796, 2004). This Act included provisions for the Western Hemisphere Travel Initiative (WHTI) and US Visitor and Immigration Status Indicator Technology (US-VISIT) program to more effectively monitor entry into the United States. Under the WHTI, any person

flying into the U.S., U.S. citizens included, was required to have a passport by January 2007. Anyone entering by land or sea was required to have a passport or another secure form of identification by January 2008; however, this was subsequently postponed until June 2009 (Abelson & Wood, 2007, p.6).

To protect the country from potential vulnerabilities in maritime and port security, the U.S. established the Container Security Initiative (CSI) in January 2002 and the Customs-Trade Partnership Against Terrorism (C-TPAT) in 2003. The CSI is designed to prevent the use of containers as a means to smuggle a weapon of mass destruction into the United States and C-TPAT as a measure to monitor and ensure the security of the supply chain for the same reasons.

The Security and Accountability For Every Port Act (SAFE Port Act), passed in 2006, codified both the CSI and C-TPAT and built on the Maritime Transportation Security Act (MTSA) of 2002. The MTSA was designed to protect ports and waterways from terrorist attacks by increasing coordination between port stakeholders, including federal, state, and local agencies as well as industry and the public. This was to be done by establishing Area Maritime Security Committees. These Committees were to develop a risk based methodology to assess sectors that have a higher risk of security incidents (such as large passenger vessels) and create a consistent security program for all ports in terms of passenger and baggage screening, personnel identification procedures, etc. The SAFE Port Act added additional requirements for maritime facilities, created the Transportation Worker Identification Credential (TWIC), and established interagency operational centers for port security and foreign port assessments.

The latest legislation to be passed was the Secure Travel and Counterterrorism Partnership Act of 2007, which was rolled into the larger Implementing Recommendations of the 9/11 Commission Act. It was signed into law in August of 2007 and mandated the establishment of an exit system to monitor those leaving the U.S. It also requires a complete cost analysis of the

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WHTI and provides funding for various infrastructure projects as well as agencies, such as FEMA, and establishes a framework of cooperation between agencies.

The aforementioned legislative and executive responses are those affecting the border policy stream. However, there were other policy streams that were affected by 9/11. Criminal law and intelligence gathering, traveler security – notably airline and cruise ship security – as well as port security are some of these streams. Border policies do not exist in a vacuum and are linked to greater and lesser extents with these streams. The links between immigration, law enforcement, traveler security and port security are the most relevant for border security. The links often require high degrees of coordination between agencies; intradepartmental coordination within the Department of Homeland Security is particularly important. However, these independent policy streams generally have different lead agencies and congressional oversight committees, complicating the process for coordination.

Analysis of the American Response to Border Security: Coupling and Policy Windows

The events of September 11 were, as mentioned, clear focusing events. They opened a window of opportunity for policy makers and entrepreneurs. The first window was opened by the desire of Congress and the President to take action in the aftermath of 9/11 and the run up to the 2002 Congressional elections. The need to prove to the American people that their elected representatives were dealing with the issue was used as a window by those whose ideas were previously sidelined. For example, those who had been advocating for a reform in the civil service and the centralization of resources were able to bring this idea forward in the form of DHS. There had been attempts by the Administrations since Reagan to change federal personnel management that had been scaled back by Congress (Brook & King, 2007, p. 400). President Bush had an agenda to improve the quality of management in the federal executive branch that had not been "getting any traction" earlier in his terms (Brook & King, p. 400). With the

establishment of DHS, the Administration was then able to advance this particular set of policies. Though this particular issue was a secondary one to the security initiatives, it does illustrate a policy window that was created in this case.

The establishment of the 9/11 Commission was important to the 2002 Congressional elections. Both the President and Congress needed to "build a record" to take to the electorate. The 9/11 Commission allowed for a reprieve from assigning blame to those deemed responsible for the security failures. It also delegated the responsibility for bi-partisanship and unity away from those who needed to run partisan advertisements in their campaigns. This need to "build a record" prior to the elections and take action to secure the country led to a certain degree of competition between the executive and the legislature for control of the agenda. The President originally created the Office of Homeland Security, under the aegis of the Executive Office of the President. Senator Lieberman, an important actor as Chair of the Government Operations Committee, discussed later in this chapter, pressed for a full fledged department.

A second policy window was opened with the establishment of the 9/11 Commission. It was the main investigation unit into what happened and why, and was further mandated to make recommendations for each problem identified. This necessitated the consideration of as many solutions and recommendations from as many sources as possible. Based on information acquired during the investigation, the Commission made two important recommendations regarding border security among the forty contained in its eventual report.

These recommendations were: develop a comprehensive screening system for the border, including the integration of transportation systems and access to vital facilities with border security, and establish a biometric entry/exit system. Kingdon does not explicitly deal with special commissions as they are not a normal part of the policy process. However, the recommendations made by the Commission were instrumental in setting policy. This was due to the political environment of the time. The American people would be looking to both Congress

and the President to act on the recommendations of the highly publicized, bipartisan Commission. Since it is both of these actors who have the most control over the agenda, it is not surprising that the Commission influenced their actions. Many of its recommendations were adopted into legislation by Congress, including the Intelligence Reform and Terrorist Prevention Act of 2004 and the aptly named Implementing Recommendations of the 9/11 Commission Act of 2007.

The role of Members of Congress is identified by Kingdon as very important in both the agenda setting process and in the consideration of alternatives. Members of Congress are some of the few actors who have this dual capability and this gives them a very influential role (Kingdon, 2003, p. 35). This importance is underscored by the fact policy entrepreneurs are often members of Congress. For instance, Senator Joseph Lieberman from Connecticut has been a particularly prominent policy entrepreneur. As the Chair of the then Senate Committee on Government Affairs (now Homeland Security and Governmental Affairs) he proposed the formation of the Department of Homeland Security and under his guidance the Committee also helped bring about the creation of the 9/11 Commission (Senate Committee on Homeland Security and Governmental Affairs, n.d., ¶ 2). Senator Lieberman also coauthored and introduced the Intelligence Reform and Terrorist Prevention Act with that committee's ranking minority member, Senator Susan Collins of Maine. He was also one of seven co-sponsors for the Implementing Recommendations of the 9/11 Commission Act.

Senator Patty Murray of Washington (D) is another influential policy entrepreneur in Congress, specifically with regards to port and cargo security. She has convened Senate hearings on port security and cargo security and has helped increase the Coast Guard's budget (United States Senator Patty Murray, n.d., ¶ 12). She is also a leading proponent of the CSI and C-TPAT. This type of support for these programs has ensured that they receive the resources necessary to be successful. Her support is particularly significant as she sits on the Senate Budget and Appropriations Committee, and within Appropriations, the Homeland Security Subcommittee.

The WHTI is a good illustration of the murky dynamics in the Senate. Senators have different levels of influence related to their different roles played as Committee and sub-Committee chairs, and sometimes as their ranking members. This distinction, between those who promote ideas (Murray) and those with the institutional capacity to secure their passage through committee or their adoption by the full Senate (Lieberman) is important to note.

Senators will often work together for common interests. Senator Leahy of Vermont sits on the Appropriations Committee and consistently opposed the WHTI. Senator Stevens of Alaska, the longest-serving Republican senator until his defeat in 2008, sat on the Senate Committee on Homeland Security and Governmental Affairs with Senator Lieberman and also opposed the WHTI. Working together, they were instrumental in moving the deadline for WHTI implementation (United States Senator Patrick Leahy, 2007, ¶ 4-5). Introduced in 2004 and with an original deadline of January 2007, the WHTI has a current deadline in 2009.

Within Congress there was a third key policy entrepreneur on Homeland Security policies, Jim Sensenbrenner (R-WI). He was Chair of the House Judiciary Committee from 2003-2007. It was Sensenbrenner who introduced the REAL-ID Act in 2005; it legislated stricter security standards for the issuance of driver's license and ID cards for boarding planes and interacting with the federal government (Sensenbrenner, 2005, ¶ 3). It also required the immigration status of the person to be listed. Sensenbrenner also supported the quick implementation of WHTI and led an unsuccessful attempt to strip the Leahy Amendment from the annual homeland security budget bill in 2006 (United States Senator Patrick Leahy, 2006, ¶ 3; ASAE, 2006, (5) President signs bill delaying WHTI implementation section, ¶ 3).

Policy entrepreneurs typically face budgetary concerns even when a window of opportunity opens. Kingdon has a specific section on problems presented by the budget. He outlines how it can act as a promoter of items on the agenda, but usually it is a constraint, keeping items low or even off the agenda due to cost (Kingdon, 2003, p. 105). Following 9/11 budgetary

constraints on items of national security and border security were less of a concern. From 2002 to 2004 the federal government increased the resources for agencies and programs moving to DHS by more than 60 percent to $36.2 billion (Executive Office of the President, 2008). Funding for DHS in the fiscal year 2005 increased, as it did for 2006, 2007, 2008, and 2009 – although the Bush administration began to constrain departmental budgets after the Democrats gained control of Congress in the November 2006 mid-term elections. This increase in funding has allowed for the consideration of programs and ideas that were previously unviable due to cost. It virtually eliminated one of the major challenges facing proposals. Policy entrepreneurs were then able to take advantage of this window and move on their proposals.

The concern over budgetary constraints was further relaxed by public opinion and the national mood. Kingdon discusses the role of the national mood in the political stream and points to its role in promoting or constraining certain policy proposals (Kingdon, 2003, p.146). The national mood after 9/11 indicated that there was no price too high for security and gave politicians ample room for manoeuvring. This is reflected in the USA PATRIOT Act and the curtailing of civil liberties, which saw very little concerns raised by the general public. Interest groups and civil rights groups did raise concerns, but the general public seemed content to let the politicians do their job and pay whatever price was named for national security, monetary or otherwise. This trend was noted in a general survey of opinion polls by Bowman, who found that in late 2001 a majority of Americans believed that it was necessary to give up some civil liberties to ensure their security (Bowman, 2005, p.6-7).

A budget issue that Kingdon does not deal with but which does face DHS in particular is mission creep, or in DHS' case, mission explosion. The Department of Homeland Security has a very large budget; unfortunately mission creep – the tendency to expand the mission of a particular agency or department – has cancelled out some of benefits of having a large budget. As the mandate increases so does the need for additional staff and resources to meet the mandate,

therefore eating into the money that would have gone to policy and program development and implementation. In addition, mission creep reduces the resources available for ports of entry staffing and infrastructure development.

The national mood, which is to a great extent a reflection of public opinion, was a consideration leading up to the 2002 Congressional and the 2004 Presidential elections. Republicans sought to use the security issue to their advantage, which led the Democrats to begin seeking ways to prove their security credentials. The SAFE Ports Act is one example, as is the pressure they exerted against the Dubai World Ports takeover in early 2006. Senator Carl Levin (D – MI), Chairman of the Senate Committee on Armed Services from June 2001 to January 2003 and again from January 2007 to the present, was a prominent Democrat to oppose the takeover (United States Senator Carl Levin, 2006, ¶ 4-6).

There were several interest groups concerned with the new border security measures. They were predominantly economic interest groups who were concerned about the impact of these measures on sectors tied to the Canadian economy. These included the Canadian-American Business Trade Alliance (Can-Am BTA), the Canadian-American Business Council, the Business for Economic Security, Tourism and Trade Coalition (BESTT), and the North American Competitiveness Council. Kingdon's discussion of interest groups speaks to the importance of business interest groups and the types of influence these groups can have on the agenda and the alternatives considered by policy makers (Kingdon, 2003, p. 48). They can have varying degrees of influence based on who is listening to the group.

There are two ways for interest groups to be successful. The first is to represent a large number of constituents in a member of Congress' district, unions for instance. The second is tied to what Kingdon refers to as the level of consensus in the political stream. The higher the level of consensus among organized political forces and interest groups the more impetus there is to push policy makers in that direction (Kingdon, 2003, p. 150). For instance, in the weeks following

9/11, the consensus among the business community and business interest groups that something needed to be done to re-stabilize the border for commercial traffic helped push the government toward the Smart Border Accord of December 2001 (Hale & Marcotte).

The last element of Kingdon's model to be applied here is the idea of fading. Kingdon explains that issues sometimes fade because the government believes they have addressed the issue and move on to other agenda items, or because people believe the issue is being addressed and lose interest (Kingdon, 2003, p. 104-105). In the American context fading seems to be linked to election cycles. In the 2002 and 2004 elections security was the dominant issue, including border security in the context of terrorism prevention. However, by 2006 illegal immigration began to take over the border security issue and competing interest groups gridlocked Congress for much of 2007 over the issue. By 2007 attention had turned to the historic Presidential election campaign. Even with reports from the Brookings Institution (Austin, 2008) and the Canada and U.S. Chambers of Commerce (Canadian Chamber of Commerce, 2008) in early 2008 concerning border delays the issue only surfaced politically in conjunction with immigration concerns. The immigration debate forced border security back into the spotlight; however, it overwhelmingly focused on the southern border.

In the case of homeland security fading in 2008 may not necessarily have occurred because the issue was "dealt with." It may have faded because both the Presidential candidates, Obama and McCain, did not propose any substantive changes to homeland security policy, nullifying any potential publicity and debate around the issue. Further contributing to issue fading was the concern and awareness around the growing economic crisis. As the extent of crisis was revealed and November moved closer and closer, it became the single dominant issue on the candidates' platform.

Canadian Response to 9/11: Border Security

Canada's response to the changes in U.S. policy is best understood in the context of the border management collaboration between the two countries that developed in the 1990s. Collaboration on border issues started to formalize in 1995 when President Clinton and Prime Minister Chrétien signed the U.S.-Canada Shared Border Accord. The Accord focused on customs and was a response to the rapid growth in cross-border commercial traffic (Sands, 2007, p. 251).

The next two formal agreements related to immigration rather than customs. They came in 1997, following the 1996 passage of the Illegal Immigration Reform and Immigration Responsibility Act in Congress. The Act was primarily a response to growing concerns about illegal immigration along the southern U.S. border. Section 110 of the Act would have required every alien entering or leaving the U.S. to have proper documentation, including Canadians. Implementation was set for October of 1998. This deadline was subsequently pushed back several times. The Canadian Government, working with domestic interests in the U.S., was able to convince key members of Congress that this would have an adverse effect on Canada/U.S. trade (Tomlin et al, 2008, p. 64). The Clinton Administration and American business groups had also been against its implementation (Sands, 2007, p. 254).

Recognizing the importance of the immigration policy debates in the U.S. and the impact they could have on Canadian interests the Canadian government signed two bilateral agreements in 1997 with the U.S. (Sands, 2007, p. 253). The first established two working groups, the Canadian Anti-Smuggling Working Group and the Northeast Border Working Group. These groups focused on the coordination of national immigration and law enforcement resources. The second agreement was the Border Vision Initiative, which aimed to facilitate information sharing between Citizenship and Immigration Canada and the U.S. Immigration and Naturalization Services (Sands, p. 253).

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The law enforcement dimensions of the two working groups established by the first agreement were further developed by the establishment of the Cross-Border Crime Forum, also in 1997. The Forum addressed law enforcement cooperation on issues such as smuggling, money laundering, and cyber crime. It was this cooperation that established the first Integrated Border Enforcement Teams.

Perhaps the most relevant agreement for border management was the CUSP, the Canada-United States Partnership, signed in 1999, again under Clinton and Chrétien. It pledged both governments to initiate "a series of stakeholder consultations that would solicit ideas and input on border management from communities, interest groups, and businesses" (Sands, 2007, p. 256). Around this time serious concerns regarding Canada's immigration and security policies were raised by American officials, casting a shadow over CUSP consultations. The CUSP consultations did demonstrate the strength of the grassroots constituency in both countries to improve the border, maintaining a secure yet relatively open border for tourism, trade, and local economies (Sands, p. 257).

Despite the bilateral mechanisms for cooperation in place, the circumstances of 9/11 made it difficult to determine what the repercussions for Canada would be. How Canadian interests would be affected by changes in U.S. policy or legislation was unknown. However, with these agreements in place and the regularization of border cooperation moving forward through the 1990s, it is easier to see how agreements between the U.S. and Canada, such as the December 2001 Smart Border Accord, were agreed to while the U.S. was still picking up the pieces from 9/11. The Accord is also known as the Ridge-Manley Accord, as it was then Office of Homeland Security Director and former Governor of Pennsylvania Tom Ridge who signed on behalf of the U.S. and John Manley, then head of the ad hoc Cabinet Committee on Public Security and Anti-Terrorism, who signed for Canada.

The ad hoc committee that Manley led included representation from Citizenship and Immigration, Customs and Revenue, Justice, Solicitor General, and Transport and dealt with issues such as border security. The committee was created in the weeks following 9/11 to "review policies, legislation, regulations and programs across the Government to strengthen all aspects of Canada's approach to fighting terrorism and ensuring public security" (DFAIT, 2003, Canada's actions against terrorism since September 11 section, ¶ 2; Tomlin et al, 2008, p. 75).

In addition to the border accords and working group arrangements with the U.S., Chrétien strengthened the capacity of Cabinet to coordinate security policies by restructuring the cabinet architecture for policy making. He also introduced new or revised legislative powers (Whitaker, 2003, p. 46). Part of these revised legislative powers included the passing of the Anti-Terrorism Act in December of 2001. There was no particular mention of border security in the legislation. This is likely because Canada's border security is more an indirect response to the U.S. threat to the Canadian economy than a direct response to failures of Canadian border security (Whitaker, p. 52). The decision to create a centrally coordinated response was also a way of signalling to public servants and Washington the priority the Chrétien government was placing on Canada-U.S. relations (Hale, 2003).

Structural changes relating to the border would wait for Paul Martin's coming to power. In the Martin government's first Speech from the Throne, it took the ad hoc measures of Chrétien and established a policy framework in the April 2004 National Security Policy. Chapter 7, entitled *Border Security*, formally outlines the separation of Customs and Revenue Canada and the integration of Customs into the new Canadian Border Services Agency (CBSA), responsible to the also newly created Ministry of Public Safety and Emergency Preparedness. These changes were later legislated in 2005 and 2004 respectively, though a similar reorganization bill for the Department of Foreign Affairs and International Trade was voted down. It is interesting to note

the contrast with the American system, which requires the President to obtain legislative approval before the implementation of any major reorganization of executive departments.

Martin initially created Public Security and Emergency Preparedness Canada (PSEPC) in December 2003 – now Public Safety – which was seen by many as a parallel institution to DHS. This was a logical approach for two reasons: First, it again signalled to the Americans the priority of the relationship. Second, negotiating border issues is significantly easier with parallel institutions (Whitaker, 2005, p. 82). PSEPC functions included national security but in keeping with a broader definition and approach to threats, it also included crime prevention, policing and law enforcement, and emergency preparedness and response to events such as natural disasters (Whitaker, 2005, p. 81).

This was part of the government's "all threats" approach to ensure the safety of Canadians, a more comprehensive definition of threat that went beyond terrorism. This approach required a higher degree of integration and cooperation between national, provincial, and local agencies within Canada and included the development of Integrated National Security Enforcement Teams (IBETs). These teams included agents and officers from the RCMP, the newly created CBSA, Immigration Canada, and local police services in four major cities (Whitaker, 2005, p. 83).[1] Further discussion of the institutional differences affecting the policy coordination of law enforcement and related border management issues follows in the subsequent chapter.

Martin created the CBSA in December of 2003 by separating Customs from Customs and Revenue Canada and including the border security and intelligence functions of Citizenship and Immigration Canada and the Canadian Food Inspection Agency. Shortly after 2003, the National Risk Assessment Centre (NRAC) was created within the agency for analysis and information

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[1] The cities are Vancouver, Toronto, Ottawa, and Montreal

sharing. The NRAC would help meet the goals of the fourth section of Smart Border Agreement of 2001, Coordination and Information Sharing.

Following the National Security Policy in April of 2004 Canada also announced its commitment to partner with the U.S. in the Container Security Initiative. Specific ports, such as Montreal and Halifax had begun working with the Americans under their CSI in March of 2002 (CSI Fact Sheet, 2007, p. 2). However, it was not until 2004 that Canada began the process for its own separate program.

Martin also created a Cabinet Committee on Canada/U.S. relations, which he chaired (Tomlin et al, 2008, p. 99). Given the bilateral relationship is the most important framework for Canadian border security, it sent a clear signal to Canadians (and the U.S.) that the government was taking the new environment seriously. The priority of the relationship led to increased cooperation at the operational level with an increase in the already existing IBETs.

The Security and Prosperity Partnership (SPP), launched in March 2005, was the last of the important initiatives under the Martin government. The SPP is a trilateral project to increase security and prosperity in the US, Canada, and Mexico through administrative cooperation and information sharing. There were many initiatives relating to border security, including a NEXUS marine pilot and port security exercises (Security and Prosperity Partnership of North America, 2005, Initial Results: Security section, ¶ 6 & 10).

When the Harper government took office in January 2006 Privy Council Clerk Kevin Lynch dismantled much of the apparatus for micro-policy coordination and pushed it down to the relevant departments. However, in early 2006 a revised cabinet committee structure gave policy oversight to the new Foreign Affairs and Defence Committee. Overall, Harper seems to prefer working within the established framework of border security; no new programs or significant changes to existing programs and policies have been made. The SPP was one of the areas in

which Harper showed strong continuity with the former government. Harper did, however, decide to focus on five major priorities, including smart and secure borders.

In 2007, under the SPP the Government of Canada increased funding to the CBSA program Partners in Protection (PIP) in order to achieve mutual recognition and compatibility with the C-TPAT program. This was achieved in June of 2008 (CBSA, 2008, ¶ 8-9). PIP began as a customs program in 1995 and was changed following 9/11 to emphasize supply chain security. Unlike the U.S. none of the CBSA programs have been legislated, as they can be implemented under Public Safety's jurisdiction and funded through the annual Estimates process.

The Harper government set a new tone in relations with the Bush Administration (Hale, 2007a, p. 72). Its approach to dealing with the WHTI was to quietly suggest DHS might want to delay implementation of the WHTI until they could "get it right" and to support domestic U.S. interest groups who were lobbying for an extension of the WHTI deadline (Hale, 2007a, p. 79). The technology would not have been in place on the stated deadlines, nor would have been the required document standards; in the end it would have only given the illusion of security, not the fact. This delay would also buy more time for the Canadian Government to put in place the necessary resources (extra staff at Passport Canada) and take the necessary steps (information dissemination to the population) to deal with the new rules. Harper's strategy was careful; as the WHTI also applies to American citizens it is seen as a domestic issue in the eyes of many decision makers. These decision makers did not appreciate what many viewed as earlier efforts by Canada to interfere with domestic policy (Hale, 2007a, p. 79)

Analysis of the Canadian Response to Border Security: Coupling and Policy Windows

On the Canadian side, the problems recognition, policy generation and political events streams were roughly similar to those in the United States. There were differences in problems: 9/11 was a focusing event for Canadian security but also for Canadian/American trade relations,

specifically with concerns to Canada's security procedures and market access. The policy windows that were opened were also different. The first window to open was the one presented by Tom Ridge in the form of the Smart Border Agreement; Tom Ridge himself assisted in opening the window. Prior to becoming Governor of Pennsylvania, Ridge served as the member for the House of Representatives for Pennsylvania's 21st district. The district is in the northwest and includes the City of Erie. He was seen by Canadian officials to have an unusual awareness of the issues surrounding the Canadian/American border.

The Accord was particularly important as it addressed both security and trade concerns. The emphasis on security was more for the sake of the U.S. than for Canada. It was not Canada that had suffered a catastrophic border and intelligence failure, but it was going to have to act quickly to ensure the spillover from the American side was minimized. This managing of the U.S. reaction and Canadian/American relations was the primary policy focus for Canada.

John Manley and the role he played coordinating the Canadian response as the head of the ad hoc Cabinet Committee is a good example of Kingdon's analysis of the importance of politicians in key positions as policy entrepreneurs. As senior cabinet ministers in Canada play a similar role to both U.S. cabinet secretaries and senior Congressional committee chairs – combining both (subordinate) executive power and legislative discretion – Manley's position allowed him to have influence on both the agenda and the alternatives considered. As both Deputy Prime Minister and Minister of Foreign Affairs he was at the top level of decision making and as the Chair of the ad hoc Committee he was able to hear the many alternatives and suggestions put forward to handle the new American security environment. Further, he was widely held in high regard in the business community and viewed as pro-American. It is also worth noting that since his departure from office he has become a member of the Can-Am BTA senior advisory board.

The debate after 9/11 on dealing with American fallout also opened a window for those policy entrepreneurs who argued for closer ties to the United States. Wendy Dobson of the C.D. Howe Institute, Hugh Segal of the Institute for Research in Public Policy, and Allan Gotlieb, former Canadian Ambassador to the U.S., all argued in favour of closer economic and political integration (Whitaker, 2003, p. 53-54). It was argued this could help resolve not only the security problem but some of the economic disputes between the two countries, such as the (at the time) ongoing softwood lumber dispute and helping to protect against any future American protectionism (Whitaker, 2003, p. 54; Dobson, 2002, p. 11).

Other windows that opened in the Canadian context were changes in government. The change from Martin to Harper in 2006 saw the strengthening of the political relationship between the U.S. and Canada in the change of tone used by Harper. Though the behind the scenes relationship between the two countries was generally strong, Martin's tendency to highlight differences between the two countries and send mixed signals to Washington made the task of those negotiating the relationship more difficult. The signalling on Harper's part for a desire to improve of relations contributed to a more receptive audience in Washington (Hale, 2007a, p. 76-77), which in turn allowed for a better reception for Canadian concerns.

As the Prime Minister, both Martin and Harper occupied a role similar to that of the President in Kingdon's model; there are differences. Under most circumstances the President has more limited authority over the detailed contents of the legislation. Kingdon describes the role of the President as the single strongest actor in the political system in agenda setting in any given policy area. He dominates the agenda but has very little control over alternatives considered (Kingdon, 2003, p. 23). Control over the agenda is even greater in the Canadian Parliamentary system as it is generally the government that introduces bills and the exercise of party discipline is greater. It is also generally the case that bills are developed in response to the government's agenda. Martin's 2004 National Security Policy was an excellent example of agenda setting; it

provided a clear list of priorities and approaches to Canadian security, including border security, organized crime, and natural disasters. It is within this policy agenda that the reasons for the establishment of the CBSA are given. It also lays the foundation for many issues that would then become part of the SPP.

Harper was able to capitalize on the command of public attention afforded by Kingdon to the President or Prime Minister and use the ease of access to information across the border to signal his intentions to Washington. He was careful that his message to the Canadian public was not one that would contradict the message he was privately giving Washington, something Martin had done that cost him credibility on substantive issues (Hale, 2007a, p. 68).

The role of the budget in constraining policy was similar to that in the U.S.: it was not as important an issue as it would have been under normal, pre-9/11 circumstances. The government re-allocated resources to the CBSA and Public Security, and related agencies received increased funding. In 2001, $1.2 billion was allocated over five years to strengthen border security and improve border infrastructure and in 2003 a further $286 million was allocated from the security contingency reserve for key border management programs such as FAST, NEXUS, and the IBETs (Department of Finance, 2004, Smart Border section, ¶ 2). The 2006 budget allocated a further $404 million to the border; however, $101 million went to eliminating work alone posts and not program development or implementation (Department of Finance, 2006, Securing Safe and Open Borders section). New policies in Canada did face more budgetary constraints than in the U.S. as border security was not as high on the decision agenda. Furthermore, the national mood in Canada was not as focused on security and this made it more difficult for politicians to justify comparably large expenditures on security.

Interest groups play an active role in shaping the environment for border policies, if a different one than in the United States. Prominent groups include the Canadian Council of Chief Executives (CCCE), Canada's representative on the North American Competitiveness Council;

the Canadian Alliance for Secure, Trade-Efficient Borders (which includes members from the CCCE, the Canadian Manufacturers and Exporters, the Canadian Chamber of Commerce, the Canadian Federation of Independent Business, as well as fifty other interest groups); the Can-Am BTA and the Canadian-American Business Council. The role of these business interest groups is somewhat different in Canada than the United States. The Canadian government and senior policy makers already know how vital the border relationship is for the economy and the groups therefore do not need to compete as intensely for time as they do in Washington. Trade interest groups are more often than not working in conjunction with the government to determine the best manner to affect change on the U.S side. For the U.S., the accommodation of business group interests were largely at the margins and usually on issues of implementation, as demonstrated by the interest groups involved with WHTI.

The phenomenon Kingdon describes as fading is helpful in explaining the decline of 9/11 concerns on the Canadian policy agenda a year later (Whitaker, 2003, p. 55). As discussed earlier in the chapter, Kingdon explains that issues sometimes fade because the government believes they have addressed the issue and moves on to other agenda items, or because people believe the issue is being addressed and lose interest (Kingdon, 2003, p. 104-105). Action had been taken to address the border problem and to try to improve trade relations with the Americans. There was obviously some success, otherwise there would have been reverberations in the Canada due to the backlog at borders. Though there was a decrease in trade with the U.S., this was attributed more to the increasing value of the Canadian dollar against the American dollar. The public had other concerns, and given the status of the minority governments and the threat of election at almost any point the federal parties were all concentrating on issues important to voters. Border security was just not one of those issues.

Though border issues began to fade for the Canadian public, they did not fade from the federal agenda. Border issues were included in the on-going SPP and there remained a concerted

effort to lobby Washington to push back WHTI through 2005, 2006, and 2007. Despite the lack of intense public engagement, the federal government recognized the importance of a properly managed border for Canada. With a longer time frame for WHTI implementation, fewer Canadians are caught unaware of the new rules, more Canadians have the chance to look into alternatives such as NEXUS, and more businesses have the time to look into FAST and adapt their business practices accordingly.

Kingdon discusses elections as having some indirect influence on the agenda as a new administration may change the policy priorities that were set (Kingdon, 2003, p. 62). I would also argue they have an indirect effect on the agenda as policies that are not seen to be able to gain many votes will invariably slip further and further down the agenda and the proposed agenda. In the elections of 2004, 2006, and 2008 the border was not an issue that figured prominently in platforms or agendas. If it was discussed, it was generally in the broader context of security or Canadian/American relations.

The last item to be examined in the Canadian context is that of unanticipated consequences. Kingdon states that occasionally the consequences of a policy or action can be positive (Kingdon, 2003, p. 192). The hardening American border may yet prove to be beneficial. In order to secure better access to the U.S. market the Canadians have been working on border programs like FAST, CSI, and NEXUS. The goal of these programs is to have pre-approved and pre-cleared cargo, goods, and people crossing the border. These pre-clearance programs, if developed properly, may actually improve the speed at which trade occurs. This however, remains to be seen. Without the proper infrastructure in place there would be no difference. After all, there would be no point in having a dedicated FAST lane if those who could use it cannot get to it without first sitting in traffic for 3 hours.

Infrastructure is not the only issue facing these potential benefits. Effective response to these issues is at risk of constraint from the different perceptions of the problem within the

different governments. For instance, if the American government, whether the administration or ranking members of Congress, see the Canadian border as a threat and deal with it through a security lens then this presents a challenge for a Canadian government that views the border primarily through a trade and economy lens. Coordination between the CBP and CBSA can be hindered by these differing frameworks and their instructions from above. Differing institutional arrangements in each country may have the same effect. If a policy must first wind its way through various congressional committees before approval then policy that emerges at the end may not be the same one that went in.

The last issue for effective policy response to border issues is overlap from other policy streams, the immigration and law enforcement streams in particular. The problems surrounding immigration reform in the U.S. are contentious and numerous. If a decision on a particular policy course for immigration constrains the options available for the improvement of border policies, there is often little those officials in the border security stream can do. The ranking of priorities becomes important for effective policy response.

Conclusion

The Kingdon policy streams model has been valuable in providing insight into the development of post 9/11 border security policy. I believe it provided an equally useful explanation of the Canadian and American contexts, despite having been developed for the American political system. In explaining the development of border policies Kingdon has helped identify key avenues of influence in Canadian-American cross-border relations and in stakeholder-government relations. The identification of these avenues gives those looking to influence the policy stream a better idea of where and when to expend resources. In both instances policy windows and policy entrepreneurs played the most significant role; these are the avenues to which resources should be invested. Furthermore, where the chairs of specific

committees in the U.S. Senate stand on particular issues is important information and it can give a good idea to special interests about the likelihood of their subject reaching prominence. The following table summarizes the key aspects of Kingdon's model identified in the analysis of American and Canadian border security policy context.

Table 1

United States	Canada
9/11 as focusing event for security	9/11 as focusing event for trade & security
Windows: elections, 9/11 Commission	Windows: Ridge, new security environment, elections
Policy Entrepreneurs, such as Lieberman	Policy Entrepreneurs, such as Dobson
Lack of Budgetary restraint	Budget restraint
National mood	Interest groups
Interest groups	Fading
Fading	Unintended consequences

Lastly, any major shift in border policy in the U.S. is likely to cause a similar shift in Canada, creating openings for those advocating new or different ideas. These shifts in Canadian policies do not always occur and those that do often occur for practical reasons. As the outline and analysis of the Canadian response to 9/11 demonstrated there were parallel responses to American policy shifts, including the creation of Public Safety and Emergency Preparedness shortly after the creation of the Department of Homeland Security. Given the history of cross-border collaboration and the formalization of the relationship after 1995, it was logical and practical to have parallel institutions to facilitate dialogue and cooperation. The extent to which there are policy shifts also depends on factors such as different political and administrative

conditions in Canada. The factors governing the extent and limits of Canadian policies following a shift in the U.S. are addressed in Chapter 3.

It is the identification by Kingdon of regular windows of opportunity that holds the most predictive value. Elections (to a lesser degree in Canada than the U.S.) and budgetary cycles are the most prominent examples. Policy entrepreneurs do quite well monitoring public opinion and the national mood in the run up to an election or monitoring the areas by which a new administration or government wants to distinguish itself from its predecessors. These windows are the best time to sell ideas.

Border policies do not exist in a vacuum; they are influenced by criminal law enforcement policies and immigration policies. They are also not often at the forefront of policies in which the public, and therefore their elected representatives, take the strongest interest. It usually takes a focusing event, of varying degrees of significance, to draw attention to it. It is the windows of opportunity created by these focusing events of which border policy entrepreneurs need to be most aware. It is often these same windows that are the most difficult to predict.

Policy entrepreneurs and interest groups with an interest in border policies need not necessarily wait for these unpredictable windows. Budgetary cycles and elections are regularized windows that present themselves in a predictable pattern and can be taken advantage of, most often when there is a change in administration or government. How these budgetary and electoral cycle windows influence policy are key concepts explored in the following chapter.

CHAPTER 3: INSTITUTIONAL CONTEXT FOR BORDER POLICIES

Just as they are influenced by political processes, border policies are influenced by the institutions in which they are developed, by related policies, and by specific actors. This chapter explores these influences and locates Canadian border policies in a broader institutional and political context. It examines the location of border policies within domestic institutions together with the role of border communities, including local government and societal actors, and interest groups in Canada. It also discusses the institutional context of border policy in the U.S., providing a contrast to the Canadian example and illustrating the ways in which the institutional context in a state centered analysis affects policy. The institutional context sets the stage for understanding the relevance of the second section of the chapter, which addresses the interaction of electoral cycles and border policy processes in each country.

This chapter argues that the single most important framework for understanding the broader context of border policies in Canada and the United States has become the electoral cycle; both domestic electoral cycles and the overlap that exists between the two cycles. Specifically, it is the substance and timing of changes to border security policies that are affected by electoral cycles. Kingdon's identification of policy windows is the most relevant in this context. Kingdon identifies an open window as the time in which an issue captures the attention of government officials and those close to them (Kingdon, 2003, p. 168). Elections monopolize the attention of senior elected decision-makers. During an election campaign – and often distracting them for some time before it begins formally – senior political decision-makers are not focused on policy; they are focused on running for re-election. Therefore the window for policy development is generally closed when attention is on an election and technically complex or politically contested issues risk being pushed to the sidelines during this time. Complex or

contested issues are generally avoided as they represent the chance of losing votes, either by losing the attention of voters or by choosing the "wrong" side of the issue.

The imminence of an election can, however, open certain policy windows. For instance, policies regarding issues that are salient in the election campaign are likely to receive attention. If there are electoral advantages to advocating certain policies, then these policies are likely to appear on the electoral agenda. If the candidate is elected or re-elected, these policies can then move on to the government agenda. By contrast, policies that are low on the election agenda will experience difficulty garnering attention and must wait for another window.

Effective cross-border security policies are best achieved when both the Canadian and American governments are focused on similar issues. This is especially true for Canada, whose policies are often focused on more cross-border micro-level initiatives for which American government cooperation is essential. There needs to be attentiveness to the issue on the American side to achieve this outcome. This attentiveness is simply not present when the Administration or Congress is heading into an election. The importance of these cycles is the focus of the second half of this chapter.

Canadian Institutions

The lead agency driving border policy in Canada is the Canadian Border Services Agency (CBSA), which operates within the mandate of Public Safety Canada. The role the CBSA plays in program and policy development is described in the two case studies of this thesis, CSI and NEXUS. Both of these programs were driven by initiatives from within the agency following 9/11.[2] This state centered view applies to varying degrees to border security policy in Canada. The state centered approach conceives of the state as the dominant actor and "focuses directly on politicians and administrators in the executive as independent participants in the policy process"

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[2]Though NEXUS existed as a pilot pre-9/11, it was a small regional program that served as a starting point for the national, all modes program post-9/11.

(Ikenberry, Lake, and Mastanduno, 1988, p. 10). It also emphasises the "goal-oriented behaviour of politicians and civil servants as they respond to internal and external constraints..." (Ikenberry et al, 1988, p. 10). The role of civil servants in the case of the CSI and NEXUS corresponds more with Ikenberry's model than Kingdon's model as the CSI was developed by CBSA officials based on a comparable U.S. program and the current NEXUS program was written into the Smart Border Accord by government officials.

Since December 2003, the CBSA is one of several agencies that operate under the umbrella of the Department of Public Safety (originally Public Safety and Emergency Preparedness Canada). As described in the previous chapter, the department has an "all threats" approach to protecting Canadians, including law enforcement, emergency management and border security. The Department oversees the Royal Canadian Mounted Police (RCMP) – which plays a role in border enforcement through the Integrated Border Enforcement Teams (IBETs) as well as other law enforcement duties. It also oversees the Canadian Security and Intelligence Agency. The goal of this oversight is increased coordination in policy and agency objectives. The creation of the National Risk Assessment Centre as a separate centre within the CBSA also improved coordination between agencies.

It should be noted in the Canadian context, the term oversight is used to describe the hierarchical process of political responsibility and accountability for various agencies and departments. In the American context, referred to later in the chapter, oversight describes an external scrutiny of departments, agencies and their programs. This oversight is typically done by Congressional committees, though other institutions such as the Government Accountability Office also act in this capacity.

As mentioned in Chapter 2, the creation of Public Safety paralleled DHS with the major exception of the "all threats" approach. This approach reflected both the desire of the Canadian government to distinguish its policies from those of the Bush Administration as well as the

experience of government officials and senior public servants in coping with the series of crises in 2003. A SARS outbreak in Toronto was followed by a few cases of mad cow in Alberta which in turn were followed by a massive electricity blackout in Ontario. When Public Safety was created in late 2003 its mission included terrorism, natural disasters, disease epidemics, and infrastructure failures. There was no hierarchy to the relevance of any one particular threat and no one overriding focus of the Department.

Ministerial responsibility for the CBSA is with Public Safety. The Department of Public Safety in turn reports to the Cabinet Committee on Foreign Affairs and Security, of which the Minister of Public Safety is a member. The committee's mandate includes issues relating to foreign affairs, international development, public and national security, and defence policy issues. It makes recommendations for final decisions to the full Cabinet. It is the Prime Minister who appoints Ministers and determines the composition of the Cabinet Committee, all members of the governing party. As a result, the only actors exerting direct political influence on the CBSA are officials of the Department of Public Safety. The pressures on the agency and therefore on policy relating to the CBSA are limited in comparison to its U.S. counterpart. Policies relating to the Customs and Border Protection are determined by DHS; however, due to the oversight of the Department from a variety of House and Senate committees, the interests of the members of these committees and the influence of various interest groups on these committee members, there are a wide range of outside pressures that can influence policy.

The Senate Committee on National Security and Defence, chaired by Senator Colin Kenny since 2001, is another institution that provides scrutiny on border security issues. Though the Senate does not have the formal authority to force policy or administrative changes, its committees are mandated to scrutinize government departments and agencies and to make recommendations. The Senate Committee on National Security and Defence reviews all general matters relating to security, including border security. In June 2005 it released the report

Borderline Insecure, which provided twenty six recommendations relating to different aspects of border policy. The report included recommendations specifically for the CBSA as well as recommendations for the federal government relating to border policy, including pre-clearance and infrastructure (Senate of Canada, 2005, p. 69-71).

Senator Kenny was deeply concerned with regards to the state of Canada's borders – as well as the state of Canada's military – and published articles in nationwide and political newspapers highlighting border issues (for instance Kenny 2005a, 2005b, 2005c, 2002). In keeping attention focused on security he hoped to put more pressure on the government for change than he could exert as a member of the Senate.

Canadian Institutional Influences

Outside of the actors within the state, border security policies are influenced to varying degrees by interest groups. Kingdon includes interest groups and stakeholders in his category of policy communities. He describes policy communities as being comprised of specialists in a given policy area scattered throughout and outside government (Kingdon, 2003, p. 117). This includes researchers, academics, interest groups, and congressional staffers such as committee staff or congressional agency staff. In the Canadian context, the role of congressional staffers is filled by both Parliament staff and bureaucrats working for the relevant departments and agencies.

The Canadian policy community also includes research centers and think-tanks. They typically focus on broader policy issues rather than the more technical dimensions of border and policy. The Conference Board of Canada, the C.D. Howe Institute, the Fraser Institute and the Asia Pacific Foundation of Canada are all examples of these research centers. Major interest groups consist of organizations such as the Canadian Council of Chief Executives (CCCE), Canadian Chamber of Commerce and Canadian Manufacturers and Exporters (CME), touched on in the previous chapter. Other interest groups in the border policy community have a regional and

cross-border base, such as Pacific North West Economic Region (PNWER). These two policy community members, interest groups and research organizations, do have a certain amount of overlap; the Fraser Institute and the Canadian Centre for Policy Alternatives advocate certain ideological positions. The Asia Pacific Foundation is another organization with overlap in categorization. The foundation was created in 1984 by an Act of Parliament as an independent think-tank on Canada's relations with Asia and receives funding from the Department of Foreign Affairs and International Trade as well as the Canadian International Development Agency. It provides the government with an annual report, submitting policy proposals to the government much like an interest group, yet it does not have a specific membership whose interests they represent.

Within these policy communities some are more influential than others. Businesses with interest in the U.S. were threatened by the new border environment and sought to band together to present their case to the Canadian government in the form of coalitions such as the Canadian Coalition for Secure and Trade-Efficient Borders coordinated by the CME. The Coalition represents over 55 Canadian business associations and individual companies, including the Aerospace Industries Association of Canada, the Association for Canadian Port Authorities, the Canadian Trucking Alliance, and the Forest Products Association of Canada (Coalition for Secure and Trade-Efficient Borders, 2004, Coalition Members section). The range of industries and associations, and their importance in the Canadian economy, represented by the Coalition increases their importance in government and policy-makers eyes and thereby increases their influence with these actors.

Kingdon identifies degrees of unity and fragmentation in the policy community as important for policy coherence. A high degree of unity serves as a policy anchor for agenda stability (Kingdon, 2003, p. 120-121), keeping the attention of decision makers focused on the issue. The 2008 joint Canadian and American Chambers of Commerce report *Finding the*

balance: Reducing border costs while strengthening security included the CME and the CCCE as partnering organizations and illustrates the degree of unity in the border policy field on the part of Canadian businesses.

The CCCE and the C.D. Howe Institute (CCCE, 2004; Dobson, 2002) also began advocating for a new way forward for Canada, namely through further economic integration with the United States. The CCCE was more focused than C.D. Howe, who provided a forum for a variety of perspectives. The CCCE served as the Canadian Secretariat for the North American Competitiveness Council, the trinational business advisory body for the Security and Prosperity Partnership as well as providing the Canadian co-chair and Secretariat for the Independent Task Force on North America. The Task Force was sponsored by the Council on Foreign Relations, the CCCE, and the Mexico Council on Foreign Relations on the tenth anniversary of NAFTA and built on the recommendations stemming from the 2005 SPP Summit. This North American approach built on the advocacy of deeper economic integration between Canada and U.S., extending it to include Mexico. The Task Force released a report in May of 2005 entitled *Building a North American Community* that included recommendations for making North America safer, creating a North American economic space, and the creation of institutions to guide trinational relations. The ultimate goal of the Task Force Report was to provide a framework in which to move forward in the post 9/11 security environment. Despite the influence of the CCCE and the Canadian Chamber of Commerce, these recommendations were ultimately not pursued by the Canadian government. The reasons for this decision are discussed later in this chapter.

In some cases, interest groups directly advise the government in developing policy. In the case of the government's Pacific Gateway Strategy, the initial impetus for the Gateways Strategy discussed later in the chapter, the Asia-Pacific Foundation has provided technical expertise and research on supply chains, 'soft infrastructure' requirements of the Gateway, and Canadian

business strategies in Asia (Asia-Pacific Foundation, n.d., Gateways Research and Reports section). The Foundation's website has a specific section dedicated to the Gateway and has conducted research on various aspects of the Gateway and its impact, including security, tourism, trade, cultural industries, and Chinese-Canadian entrepreneurship (Asia-Pacific Foundation, n.d., Gateways Research and Reports section). Moreover, the Gateway was the focus of the Asia-Pacific Foundation's 2006 Summit which took place just five days after the Pacific Gateway Strategy was announced. The summit provided a forum to promote the new strategy to relevant stakeholders.

One of the more overlooked set of stakeholder groups in Canada are border communities. The concentration of population in specific regions, such as BC/Washington and the southern Ontario/central Michigan borders, as well as the existence of small towns such as Stanstead and Derby Line that actually straddle the Québec/New York border, have created cross-border communities and led to varying degrees of economic and social integration. These communities typically receive more attention from provincial and state governments than the federal government and it is most often through regional organizations such as PNWER that these communities find the most effective forum to represent their interests. The Pacific Northwest is a useful context to discuss border communities as it is the most integrated borderland along the Canada/U.S. border and a discussion including all of the regions would be too lengthy for this chapter.

PNWER is one of the many institutions in what is called the Cascadia region, the Georgia Basin-Puget Sound bioregion, from Eugene, OR along the Cascade Range up to Vancouver, BC distinguished by a temperate coastal rainforest and several cross-border watersheds (Clarke, 2000, p. 363). The region is highly integrated. PNWER was created in 1991 by statute in Alaska, BC, Alberta, Oregon, Washington, Montana, and Idaho; Yukon joined in 1994 and Saskatchewan in 2008. It was created to address common issues and interests and was expanded later to include

official private sector participation. Other regional organizations include the Cascadia Centre for Regional Development, a regional alliance coordinating growth management and strategic planning efforts founded in 1993; the BC/Washington Environmental Cooperation Council created in 1992 to ensure coordinated action and information sharing on environmental matters of mutual concern; and the Pacific Corridor Enterprise Council established in 1989 as a non-profit business organization to promote cross-border transactions. The 1998 Memorandum of Understanding between BC, Washington, and Oregon to establish a Northwest International Trade Corridor is also an example of the integration of the region over multiple issue areas.

The importance of border communities is identified by Brunet-Jailly through the key assumption of his model of factors which influence the nature and extent of cross-border cooperation and integration:

> As national border-security policies attempt to enable security personnel to recognize dangerous individuals and substances, they must compete not only with the increasingly large market-driven flows of goods and people crossing borders and borderlands but also with the local culture and political clout of borderlands, and the border-security policies implemented by other government levels and agencies (Brunet-Jailly, 2008, p. 9).

The more integrated a borderland is, the more potential for competition there is between local borderland communities and the national border security policies enforced at the border. Brunet-Jailly's model identifies four factors straddling the border that increase borderland integration: culture, political clout, market forces and trade flows, and the policy activities of multiple levels of government (Brunet-Jailly, p. 10).

The Cascadia region arguably possesses all four of these characteristics. The West Coast culture focused on environmental sustainability, healthy organic living, and progressive social values is found in the cities of Portland, Seattle, and Vancouver. There are many local civic and political organizations, such as the Cascadia Centre for Regional Development, that have expanded local level relations and policy networks. Market forces and trade flows between BC and Washington have steadily increased over the past decade; in 2007 sixty percent of the $1.01

billion in goods entering Canada from Washington, Oregon, and California went through the Blaine crossing (BPRI, 2008, p. 5). Task specific public and private organizations, such as the Pacific Corridor Enterprise Council, PNWER and the BC/Washington Environmental Cooperation Council are identified as examples of multi-level governance spanning the border to influence the policy activities of governments across the region. How regional interests can affect border security policy at the federal level is an issue that is discussed at greater length in each of the case study chapters.

This tension between integrated borderlands and national policies was illustrated in the Border Policy Research Institute's September 2008 Border Brief. The Brief explores the issue in comparing U.S. export activity at the Blaine, WA and Buffalo, NY border crossings. The varying degrees of integration across the border have led to different levels of industry and business integration, not all of which respond the same way to border policies and programs. It was determined that programs such as FAST were most effective at crossings that have a large volume of inter-firm trade taking place multiple times per day or per week, such as Detroit/Windsor (BPRI, 2008, p. 6). However, further west, it appears that FAST is not a good match for the types of commodities and traffic patterns of regions such as the Pacific Northwest. FAST works poorly for agricultural commodities where securing the supply chain is problematic and for "less than truckload" freight, where a single trucker carries goods from several shippers (BPRI, p.6). If a truck is carrying goods from even one company that is not enrolled in the U.S. Customs-Trade Partnership Against Terrorism or the Canadian Partners in Protection, then the whole truck is ineligible for the FAST lane (BPRI, p. 6). Therefore, different degrees of integration have implications for border policies set federally with a "one size fits all" approach.

At first, one uniform border policy for Canada is logical. There are only two land borders with one other country and one uniform policy is easier to implement and enforce. It is also how border policy has been set in the past. However, the evidence from the BPRI report demonstrates

that this is not necessarily the most effective or efficient approach to border management and regional factors such as degree of integration and export commodities should be taken into account.

American Institutions

Programs such as FAST and C-TPAT – though not always the most effective way to manage individual border crossings – do serve to make the task facing U.S. Customs and Border Protection agents more manageable. CBP agents are tasked with securing the border from criminal or terrorist exploitation, a task they share with Immigration and Citizenship Enforcement. Together, they are the two lead agencies involved in border security. They often work in conjunction with the Coast Guard, who along with the Transportation Security Administration, are the four main border related agencies under the mandate of the Department of Homeland Security. The single most important focus of DHS is terrorism prevention; the CBP has a priority mission of keeping terrorists and their weapons outside of the U.S.

The CBP is one of the largest and most complex components of DHS. Unlike the CBSA, it shares its duties with the three other institutional actors within DHS, as noted above. Further, the Departments of Justice and Transportation are also influential in border related policies in terms of law enforcement and border infrastructure respectively, as well as air security. Both of these outside departments have policy and organizational clout, which added to the border responsibility shared between four agencies, renders the institutional context of U.S. border policies, and therefore policy implementation, far more complex than the CBSA.

As with the Canadian Department of Public Safety, the mandate of DHS includes responding to emergencies, natural or man-made. To this end the Federal Emergency Management Agency (FEMA) is also included under the DHS mandate. However, its response to Hurricane Katrina indicates the secondary importance of natural hazards and non-terrorist hazards

compared to the prevention and resilience to terrorism mandate (Farson, 2006, p. 54). This hierarchy of priorities, focusing on the prevention of terrorism above all else, is in contrast to the approach of Public Safety.

Also in contrast to Public Safety, key law enforcement agencies remain outside of DHS. The FBI, the lead law enforcement agency for domestic investigation and surveillance, remains with the Department of Justice. The CIA remains an independent agency and the National Security Agency, the other lead intelligence gathering agency, within the Department of Defense. This has led to complications and delays as the departments of State, Justice, and Homeland Security try to coordinate their efforts as well as defend their jurisdictions. For instance, following 9/11, Justice asserted its power to scrutinize visa applicants on national security grounds, putting the department at odds with the State Department, whose officials were worried the move might alienate allies such as Pakistan (Alden, 2008, p. 4). Adding to the complications of visa issuance is the location of U.S. Citizenship and Immigration Services (USCIS) in DHS. For certain visas, such as a K1 Nonimmigrant Fiancé(e) Visa, U.S. citizens must apply for fiancé(e) visas at the USCIS office in the U.S. that serves their area and the fiancé(e) must then go to the U.S. embassy or consular office for an interview and to complete the visa application process. This entails cooperation between three departments, State, Justice and DHS, for one single visa applicant.

Another complicating issue for CBP and DHS is oversight. Unlike the Canadian structure, oversight for the CBP and DHS falls to more than one branch of government, as well as to different levels of the Executive branch. There are three parallel oversight actors: internally, by the DHS Inspector General; and externally by the Government Accountability Office (GAO) and by various committees of Congress. The GAO provides oversight on general management functions and Congressional committees on policy and budgetary as well as management functions. Additionally, the Homeland Security Council within the Executive Office of the

President provides coordinating functions within the executive branch with regards to DHS and its mandate.

The various Congressional committees responsible for oversight include the House Committee on Homeland Security and the Senate Committee on Homeland Security and Governmental Affairs as well as the relevant subcommittees of the Judiciary and Appropriations Committees of both the House and Senate. Committees are bi-partisan in composition with committee membership granted by appointment by the Senate and House leaders of each party. The Cabinet Secretaries and their principal officials of each Department report to the various committees that oversee the jurisdiction of that Department's mandate. This oversight, by a variety of different committees each with its own priorities and agendas, subjects the Departments reporting to them to a variety of pressures from each of these committees and their members.

Committee oversight also has the unfortunate side effect of distracting the leadership of the Department. Heyman and Carafano's 2008 report, DHS 3.0, states that in 2007 senior DHS staff appeared before 86 congressional committees and subcommittees, participated in 206 congressional hearings, attended 2,242 briefings for Members of Congress, wrote 460 legislatively mandated reports, and answered 2,630 questions for the record submitted by Members of Congress after hearings (p.18). The report also repeats an earlier recommendation that Congress should consolidate jurisdiction over DHS into single committees in each chamber (p. 20). This would allow the leadership of DHS to focus in a consistent manner on the department itself.

Elections

These variations in policy-making and oversight processes, combined with the need for some degree of cross-border cooperation for effective border-related policy-making, increase the relevance and potential disruptiveness of electoral cycles in each country. Windows are open

when politicians and government officials are paying attention and willing to work on particular issues. During an election campaign, politicians' attention is concentrated on the campaign and re-election, with policy issues often pushed to the back burner.

In the U.S., the lead up to the congressional midterms and the presidential elections can begin to divert attention as early as six months before Election Day. The fixed election dates give politicians time to mobilize and start early on the campaign, especially in competitive states or districts – in which incumbents must often divert much of their time to raising millions of dollars in campaign funds.

The appropriations cycle in the U.S. shortens that window even more. Once policies and programs have been approved for the budget, they move into the appropriations process to obtain funding. The President submits a budget at the beginning of February and Congress has until April 15 to adopt the budget resolution. This deadline is not always met, at times it has taken longer to approve the resolution or a resolution has not been adopted at all (Streeter, 2007, p. 4). Once this process begins in February, the window to influence policies closes for all but particular Members of Congress. During this period of time, government officials are concentrating on the policies that are in the budget and not new policy measures. However, policy entrepreneurs in Congress will use their various committee positions to re-write particular department budgets and the budget that emerges at the end may be quite different from the one that went in. Therefore, the window of opportunity remains open for these particular Members of Congress.

As there are no fixed election dates at the federal level in Canada, the policy windows do not start to close as early as in the United States. Canadian politicians do not generally have several months to prepare for an election. Estimation can certainly be made, especially for a majority government closing in on a four or five year term. However, the most notice that all but the most senior politicians can expect is a couple of weeks prior to the dissolution of Parliament.

Attention is diverted from policy issues during a campaign for approximately one month, generally the length of time of a federal campaign. This creates a much wider window of opportunity for policy development. Nevertheless, policy development at the bureaucratic level is constrained up to six months prior to an anticipated election. This is especially true for key agencies and bureaucrats involved in Throne Speech and Budget preparation, which are key policy windows. They are often under pressure to generate policy proposals for these key windows in order to set the stage for an upcoming election.

There is no equivalent to the American appropriations cycle in Canada; the governing party submits a budget to the House for a vote. As the Prime Minister and the Cabinet are members of the legislature, they do not need separate approval from Parliament for their budgets, although detailed enabling legislation for major budget measures must subsequently be submitted to Parliament. The budget may need to be revisited if the governing party holds a minority and cannot obtain the necessary votes to pass the budget, as demonstrated by the May 2005 Martin government's budget and the January 2009 Conservative budget. However, the renegotiating of a new budget is not subject to the same process as the appropriations cycle as Congress can dictate or delete funding for specific programs.

An election can affect the window not only in the run up to an election, but also during a change in government. In the months following the election of a new government, there is usually a corresponding change in personnel involved in particular portfolios. This change results in a time delay before decisions are made as the new officials orient themselves on the issues. This is particularly true in the U.S. system as there are a greater number of political appointments to senior and middle ranking positions in various departments. There is also a greater time delay as a number of people need to receive Congressional approval, in addition to the time needed for subsequent portfolio orientation.

As politicians are focused on the election, they are not giving much instruction to the bureaucrats down the line. If they are, it is likely to focus on policies expected to produce short term political benefits. Bureaucrats and non-elected officials move into a holding pattern, not wanting to pursue policies that may end up substantially changed or eliminated after the election. They may also begin to tie up outstanding policy issues and clear the desk of current issues, either by finalising decisions or eliminating the issue entirely. In some cases, if a change in government is anticipated some senior administrative officials may leave their posts early to find congenial employment in the private or academic sector, further affecting policy in the run up to the election.

When it comes to policy issues that necessitate cross-border cooperation, such as border security and border management, the policy windows in both the U.S. and Canada must be open, narrowing the window of opportunity to accomplish meaningful negotiations. The windows can be narrowed by the domestic situation in either country. For instance, when a Canadian election comes up in the window after an American appropriations cycle in an American election year the window is reduced to such a short amount of time it may not be considered worth starting bilateral discussions.

Electoral Cycles and Policy Cycles in Canada

Border policy development in Canada since the implementation of NAFTA can be largely divided into three eras. The first is from 1995 and the Shared Border Accord until 9/11 and the Smart Border Accord. The second is from the Smart Border Accord until the 2004 federal election, and the third is from the 2004 federal election to the present. The first era represents a period of cooperation and convergence of border management practices based on equally shared economic and trade principles and objectives between Canada and the United States. This era ended with the new security concerns after 9/11 and the new blueprint for border management

based around these concerns outlined in the Smart Border Accord. What followed was a time of Liberal majorities in the House of Commons until Paul Martin's government was reduced to a minority in the June 2004 election, resulting in the beginning of the third era. Martin's defeat in the January 2006 election resulted in another minority government under Stephen Harper. In October 2008, Harper was re-elected but still with a minority government.

The minority status of the government influences the policy agenda as the government will focus, if at all possible, on issues over which it can maintain control. The government needs to be seen as effective if it hopes to win the next election and the time frame in which to accomplish this is shortened for a minority government due to the possibility of a non-confidence vote in the House of Commons. This shortened time frame pares down the agenda and focuses it on issues that are determined to be the most beneficial for the government going into an election.

Following 9/11, Chrétien initiated several policies and began the process of establishing a relationship with the U.S. in the new security environment, as reviewed in the previous chapter. However by 2002, Chrétien was more or less a lame duck; he had nine years as Prime Minister and was weakened by the surfacing of an internal battle between the Chrétien and Martin factions of the Liberal Party. With the governing party at odds with itself, it made major policy development or new initiatives virtually impossible. Any serious changes, including those relating to cross-border security policy, would wait until after Chrétien stepped down.

After Martin took office in December of 2003, Canada saw the creation of Public Safety and Emergency Preparedness and the April 2004 release of the National Security Strategy. These were substantive developments; perhaps the only real substantive developments in creating a framework for policy development in the past several years. Following the June 2004 election, Martin found himself with a minority government. The dynamics in the House changed. Martin would no longer be able to pass legislation without the support of one of the other three parties. Any more substantive developments would need to wait for control of the House or conditions

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conducive to a more bipartisan approach to policy. Martin was also distracted by the possibility of an election, which could happen within months. Whitaker also concluded Martin would face challenges keeping the momentum for his initiatives given a minority government and the low priority granted by the public to security issues (2005, p. 92). Any initiatives or policies undertaken would have to be popular with Canadians.

The 2006 election saw the Conservatives under Harper come to power, but also with a minority. He was in no better position than Martin had been to make substantive changes or developments to major policy areas. Harper would also focus on issues over which he had the most control. The ability to exercise control over the issues is the main reason why the previously mentioned Task Force report calling for greater North American integration failed. The integration recommended in the report would require a tremendous amount of negotiation between all three countries. When Martin received a minority in 2004 he was not in the position to begin these negotiations. Harper found himself in the same situation in 2006.

There were also other major issues on the cross-border policy table that needed to be dealt with. Softwood lumber dominated the agenda in 2006. After the Conservative government took power in January much of March and April was focused on negotiating a new lumber agreement with the United States. The months that followed focused on writing the text and much of September and October on implementation. Following the resolution of the softwood lumber issue, the Canadian Embassy and consular officials made the Western Hemisphere Travel Initiative (WHTI) their top priority (Hale, 2007b); it dominated the agenda in 2007. As of January 2007, all air and some sea travel to the U.S. required a passport or other WHTI compliant document; which applied to Americans as well as Canadians. Therefore, the Harper government needed to be careful in its approach to the issue.

Previous attempts at lobbying the U.S. government irritated some Members of Congress who perceived the Canadian government to be meddling in a domestic issue. Harper's response

was to quietly suggest that the Americans take the time to get the program right (Hale, 2007a, p. 79). Cross-border discussions over handling the WHTI sucked the oxygen out of bi-national dialogue on border issues and overshadowed most other issues on the table throughout 2007. Border policy with the Americans was a difficult issue to handle; it was not in the interest of a minority government to engage in other cross-border issues while the WHTI was still a prevalent issue. The risk of not being able to reach an agreement and appearing less than competent with an election in the near future was too great. Any broadening of the agenda at this point was also difficult in light of Secretary Chertoff's decision to terminate discussions on land border preclearance due to policy differences between the two governments.

It was better for electoral purposes to focus attention on initiatives and policy proposals that the government could control. The National Gateways Strategy, mentioned earlier, is such an example. In 2006 a Pacific Gateways Strategy Action Plan was published, outlining the importance of China as a Canadian trade partner and the need to improve transportation infrastructure. The importance of a national freight supply chain for Canada's economic competitiveness was also highlighted. The Pacific Gateway Strategy was originally announced in October of 2005 by Martin and continued by Harper into 2006. In both cases, the minister responsible was David Emerson of British Columbia. Harper convinced him to cross the floor in early 2006 to continue to steer a policy vital to his province's interests.

Based on the Pacific Gateway, Harper created a National Policy Framework for Strategic Gateways and Trade Corridors in 2006. It included the Ontario-Quebec Continental Gateway and Trade Corridor and the Atlantic Gateway. Budget 2007 provided a $2.1 billion fund for gateways and border crossings. The framework outlines a plan to "enhance multimodal integration of major transportation systems, as well as their efficiency, safety, security, and sustainability" and a "national policy tailored to geographic, trade and transportation opportunities in different regions of Canada" (Transport Canada, 2007, National policy framework for strategic gateways and trade

corridors section, ¶ 2).). There were no specific provisions for the Gateways and Trade Corridors in the 2009 budget. There was, however, a provision to accelerate investment in infrastructure by almost $12 billion over two years (Canada, 2009, Infrastructure Advantage – Immediate action to build infrastructure section, ¶ 1). As a domestic infrastructure policy the Gateways Strategy entailed the spending of public funds on high profile projects across Canada, corresponding to the need for a policy the government could control as well as the electoral requirements of government action.

Electoral Cycles and Policy Cycles in the United States

The Canadian government takes into consideration American electoral cycles when planning cross-border initiatives; this was particularly true in 2000 and 2008 when changes in administration would take place due to the retirement of an incumbent President. These major transitions, as discussed earlier in the chapter, necessitate longer periods of transition and therefore greater distraction on the American side. The electoral cycles interfere with the ability of senior Canadian government officials to engage the U.S. government continuously on bilateral issues. In the run up to these elections, the window for Canada to engage U.S. policy makers substantially closes. There have been four election cycles since 9/11 that have shifted American attention: two congressional elections in 2002 and 2006, and two presidential elections in 2004 and 2008.

The influence of the items that dominate the election agenda can also constrain the window. The issues of most concern during an election are the ones most likely to be dealt with after the elections. In the 2002 congressional elections, security and the Bush Administration's emphasis on building up a strong security record were central to the agenda. These issues were still important to the 2004 presidential election and security, broadly defined, was central to this election. Both immigration and border policies are subsets of security policy and are deeply

linked; since the 1990s and the beginning the renewed immigration debate, immigration concerns have largely driven border policies.

After the 2004 election, immigration from Latin America and especially Mexico began to take over the U.S. domestic political agenda, a debate which came to dominate the 2006 congressional election cycle. By 2007, attention was turning to the 2008 Presidential Election and there was a race to either implement programs or consolidate them before the election cycle began, closing the window for major changes to border policy.

The historic nature of the 2008 Presidential election turned attention to the election earlier than usual. The different departments and agencies cleared their desks of outstanding issues in preparation for the new administration. With a particularly difficult FY 2008 appropriations cycle ending in July 2007 and the battle between Hillary Clinton and Barack Obama for the Democratic nomination underway – Clinton having announced her candidacy in January 2007 and Obama in February of 2007 – attention was almost exclusively focused on these two issues. It left very little room for the consideration of border security policies.

The focus on the 2008 Presidential election moved departments and agencies into the bureaucratic holding pattern in the run up to an election. A second dynamic of clearing the policy deck was at work in the run up to the 2008 Presidential election. The Bush Administration had enacted several policies that were unpopular and it was widely believed either McCain or Obama would be implementing changes upon taking control of the government. The various departments began to clear the decks of outstanding issues until the new President was elected. To accomplish this, some issues were cleared by focusing on implementation, such as with WHTI, and in other cases the issues were dropped all together. The unilateral ending of discussion on land pre-clearance in 2007 by DHS Secretary Chertoff is an example of the latter.

Security and Prosperity Partnership

There has been limited coordination between Mexico and Canada on border issues, derived from the fact that they do not share a border. They do, however, both share a border with the same larger trading partner. This reality has forced the two countries into a limited degree of dialogue, especially when the U.S. preferred a trilateral approach to certain issues. The Security and Prosperity Partnership (SPP) is the most recent example of a major trilateral initiative that dealt with issues relating to border security.

The SPP was launched in March 2005 with the goal of furthering the common security of North America and ensuring the streamlined movement of legitimate travelers and cargo between the three countries (White House, 2005, ¶ 1). The development and implementation of a border facilitation strategy to improve the legitimate flow of people and cargo, and to identify, develop, and deploy new border technologies were two of the goals pertaining directly to border security (White House, 2005, ¶ 3).

There have been only two Reports to Leaders concerning the progress of SPP initiatives; the first three months after the announcement of the SPP in 2005 and second in 2006. The first provided a report of progress on twenty-one points and an extensive, detailed framework for further collaboration based on the key themes of promoting growth, competitiveness, and quality of life as well as protecting North America from external and internal threats and streamlining the borders (SPP, 2005). The 2006 Summit included discussion of North American Emergency Management and goals to develop a common approach to critical infrastructure protection and response to cross-border incidents and disasters. Significantly, it also called for the development of a coordinated business resumption plan at border crossings in the event of an emergency (White House, 2006). However, the 2006 Report to Leaders, submitted five months after the Summit, was considerably shorter than the 2005 report. It provided a summary of progress on seventeen points and no framework for further collaboration (SPP, 2006).

The 2007 Summit resulted in a joint statement from the three leaders and the outline of goals for four initiatives, including protection of intellectual property rights and the development of a plan for avian and influenza pandemics, but no formal report and nothing on borders (SPP, 2007). The 2008 Summit began with a joint press release from the ministers responsible for commerce in preparation for the Summit (SPP, 2008) and also resulted in a joint statement from the leaders, without a formal report but with a brief mention of borders (White House, 2008). The reduction in the number of issues addressed from 2005 to 2006 and again from 2006 to 2007 combined with the lack of a clear framework for cooperation no formal progress report sent a clear signal the SPP process was a declining priority on the broader policy agenda.

By 2007, Harper's minority government was being faced with the growing unpopularity of the SPP. Already twelve months into the average eighteen months for a minority government to retain the confidence of the House, and losing the media battle for the initiative, it was gradually moved down the government agenda in favour of more politically viable policies.

Part of the momentum for the SPP was further lost in late 2006 when the U.S. voted to construct a 1,500 km wall along the American/Mexican border in an attempt to deter the flow of illegal workers (Morales, 2008, p. 131). This move essentially buried the spirit in which outgoing Mexican President Vincente Fox had been pushing his "NAFTA-Plus" initiative – including the Partnership for Prosperity, agreed upon by Fox and Bush in 2002 and the precursor to the SPP (Morales, p. 131).

Contributing to a further loss in momentum in Mexico was the transition from President Fox to President Calderon, also in late 2006. The Mexican President is subject to a six year term and cannot run again. The 2006 election was particularly distracting at the domestic level; the results of the contested outcome lead to a constitutionally mandated interregnum until the swearing in of Felipe Calderon in December of 2006, five months after the election. In addition to the extra time focused on the election itself, the transition to a new leadership and administration

results in a narrower cross-border policy window, as described earlier in the Chapter. The new President and politically appointed officials require time to familiarize themselves with their portfolios and decide on a course for political action.

Calderon has preferred to negotiate with the U.S. on specific issues and initiatives rather than concentrate on developing the SPP framework for more general integrated cooperation (Enriquez, 2007 ¶ 4). The negotiation of the Mérida Initiative in 2007 – which came into effect in June 2008 – to provide Mexico with millions of dollars to help combat drug trafficking and a growing narco-insurgency is an example of this approach.

Conclusion

Canadian border policies are influenced by the broader context in which they are found. The institutions and departments that have jurisdiction over border policy and the hierarchical oversight structure of these departments can influence border programs and policies. The institutional structure in which Public Safety is located gives it several advantages over its counterpart in the U.S., DHS. First, the influence of actors outside of the department is limited and second, the senior officials in the department do not split a significant amount of time between committee hearings and running the department.

The policy communities as defined by Kingdon in Canada have different levels of influence and interaction with the government. Interest groups and organizations such as the Asia Pacific Foundation attempt to influence the government and work in conjunction with it to meet their mandates. Levels of influence are determined by how fragmented or unified the policy community is and seat distribution in the House. The degree of influence is also limited by whether the government has a majority or a minority in the House as that will affect the agenda of the government, as demonstrated by Martin after June 2004 and the Harper governments.

In terms of cross-border policy, the most important factor to consider in recent years has been the influence of electoral cycles on the opening and closing of policy windows. Electoral cycles are especially important in the U.S., as are the appropriations cycles. Regularized elections mean attention is turned to campaigns earlier than in a non-fixed election system and the rotation between congressional and presidential elections mean attention is turned to elections once every two years. The yearly appropriations cycle further narrows the window of opportunity to influence policy as attention is focused on the competition within Congress to control the allocation of public funds to policies and projects favoured by Congressional policy entrepreneurs.

The windows are open longer in Canada as the appropriations cycle is controlled by the executive and elections are not regularised to every two years. The exception is in the context of a minority government, which often results in an election every twelve to eighteen months. The windows of opportunity for cross-border discussion are important for Canada, the smaller partner in an asymmetrical relationship. However these windows are of limited use in the context of a minority government.

The imminence of elections is not the only factor narrowing the windows. A minority government or divided Congress can limit the scope of what an executive can achieve, forcing certain issues on to the agenda and other down the agenda. The domestic political salience of particular issues and the context for these issues, as well as the likelihood they will help win votes in an election, can narrow or widen a window.

In addition to the influence of the domestic political context on windows, overlapping electoral cycles narrow windows of opportunity for cross-border cooperation. This is clearly relevant for Canada-U.S. cooperation but it is particularly relevant for issues that involve trilateral coordination, such as the SPP. Coordinating between two electoral and appropriations cycles was complicated enough without adding a third cycle with a major transition during the 2006 Mexican

presidential election. Coupled with the difficulties associated with focusing on political issues relevant to the electorate, the result can be quite detrimental to cross-border policy coordination.

The asymmetrical relationship between the Canada and the United States as well as the importance of the broader security context in relation to the electoral cycles are important frameworks for understanding the development of cross-border security policy. The windows of opportunity in the bilateral border security relationship have been particularly important for the development of specific cross-border programs such as the CSI and NEXUS, the case studies for this research. The role of policy entrepreneurs, the role of actors within the state (such as the CBSA), and the experiences drawn from cross-border collaboration in the Pacific Northwest are all important elements in the context of the following two chapters.

CHAPTER 4: THE CONTAINER SECURITY INITIATIVE

This chapter is the first case study of the thesis and focuses on the Container Security Initiative (CSI). The chapter begins with a discussion of the growth and importance of international container traffic and the need for a program such as the CSI, particularly in the post 9/11 security environment. It continues with a description of the program and its components as well as the specifics of the program in Canada. The policy development for the program in the Canadian context follows. As the development is described, Kingdon's model is applied, particular with regards to how specific actions and developments fit into the model.

Approximately 108 million containers are shipped internationally every year, carrying roughly 90 percent of the world's general cargo (MariNova, 2006, 3.1 The Global Container Industry section, ¶ 1). They have come to represent a critical component of global trade and in supply chains of multi-national companies. The trend toward containerization began in earnest in the 1970s and grew steadily, fuelled by globalization and the relocation of manufacturing industries to China and Southeast Asia. The mid 1990s to the present saw an almost exponential growth in container traffic. In some cases, such as the ports of Honolulu, New York, and Los Angeles, the number of containers passing through the port has doubled or, in some cases, nearly tripled in the past ten years. Large international companies such as Wal-Mart have been particularly influential in the growth of containerized trade (MariNova, 2006, 3.1 The Global Container Industry section, ¶ 8).

The importance of Asia is demonstrated by the American Association of Port Authorities 2006 ranking of largest ports by container traffic. The Chinese ports of Hong Kong, Shanghai, and Shenzhen are ranked 2 to 4 in the top five, bracketed by Singapore and Busan, South Korea. The four largest ports handle approximately 20,000,000 Twenty-foot Equivalent Units (TEU) a

year. The growth in containerization is also reflected in those number as in 2004 Shanghai and Shenzhen handled approximately 14,000,000 TEU and in 2002 only 8,000,000 TEU.

This growth in containerization led shipping companies such as Maersk and Hapag-Lloyd to invest heavily in developing cargo ships capable of transporting more and more containers. This investment gave rise to larger and larger ships, including the new generation of Post-Panamax vessels (too large to pass through the Panama Canal). These ships, such as the Emma Maersk, are capable of transporting 13,000 to 15,000 TEU at a time.

With the growth of container traffic came several challenges. The first and most important is port congestion. This has been a particular problem on the West Coast of North America, where the port capacity has not kept pace with the growth of container traffic from the Far East. In Southern California, which handles seventy percent of the cargo between China and the U.S., there are two aspects to the problem: capacity at the port itself and the capacity to move containers inland (CalTrade, 2004, ¶ 19-21). Capacity at the port is strained in two ways: the number of berths available to ships and a lack of storage space due the lengthy storage periods of empty containers. The capacity to move the containers inland is also lacking as there is insufficient rail service to clear the containers in a timely manner. There are also issues getting enough truck drivers to serve the port. Drivers are paid based on transportation of cargo; therefore idling at the port waiting for a container represents lost wages for the drivers (CalTrade, 2004, ¶ 35). The backlog of containers in the port then causes a backlog of ships waiting for berths.

The second challenge is not all ports are large enough to accommodate Post-Panamax ships; they are simply too large to reach the docks. The draft of this size of vessel is often too deep for them to enter into the harbour.

With ports struggling to keep pace with container traffic under normal circumstances (some of the pressure has been reduced due to the recent economic slowdown) a shut down of a port for security reasons could create serious trade disruptions. To reduce inventory most

companies keep an estimate of how long it will take to get the containers through the port, employing a just-in-time supply chain management strategy. If there is a break in the supply chain the production of the entire company is disrupted.

The CSI was developed to help prevent such a break from occurring due to a terrorist attack. It protects containerized shipping from being exploited or disrupted by terrorists (CBSA, 2008e). In the post 9/11 security context, weaknesses previously exploited to smuggle drugs, arms, and people were identified as exploitable by terrorists. The threat of a nuclear weapon or other weapon of mass destruction (WMD) delivered via container gained increased relevance. Graham Allison specifically identifies the potential nuclear threat in *Nuclear Terrorism: The Ultimate Preventable Disaster* (2004).

The consequences of a WMD attack executed via container would be immediate and devastating. The first consequence would be substantial loss of life, as many ports are located in high population centers such as Los Angeles and Vancouver. The second would be the shut down of a portion of the global supply chain. As outlined above, if one port is closed the supply chains of companies shipping though the port are disrupted. The supply chains of other companies are also affected, as most ports are operating at or near capacity they are ill-equipped to handle the influx of diverted container traffic, causing greater port congestion elsewhere. The larger Post-Panamax ships face even fewer alternatives due to size restrictions, forcing them to divert to the nearest large port, which in the case of Los Angeles and Long Beach is Seattle or Vancouver. It is also possible that these alternative ports may also be shut down due to fears of another attack. In that case ships would need to return to their ports of origin, such as Hong Kong, causing backlogs at some of the largest ports and disrupting all shipments through those ports.

The economic impact would be significant. The port of Los Angeles alone, excluding the only slightly smaller nearby Port of Long Beach, supports over a million jobs in California and

marine cargo activity generates a total of $159.8 billion of total economic activity in the State (Martin Associates, 2007, p. 6-7).

In 2006 P. Gordon, J. Moore, H. Richardson of the University of Southern California co-edited *The Economic Impacts of Terrorist Attacks* in which the editors, in conjunction with Q. Pan of Texas South University, authored a chapter describing the impact of an attack specifically on the ports of Los Angeles and Long Beach. They found a lower end attack on the twin ports that closed the ports for 15 days would result in about $138.5 million of lost output, whereas a higher end attack that closed the ports for 120 days would result in the loss of $34 billion of lost output (p. 272-274).

The consequences of an attack on a Canadian port would also be far reaching. Economic disruptions due to the port closure, disrupted supply chains, and diverted container traffic would be extremely harmful to the Canadian economy. The psychological impact on the country resulting from the loss of life would be tremendous. Perhaps equally damaging to Canada would be the impact on trade with the United States. Over the past several years Canadian ports, such as Montreal and Prince Rupert, and Canadian shippers have made efforts to integrate Canada into North American supply chains, promoting Canadian ports as an entry for containers destined for U.S. markets. Approximately fifty percent of the containers entering the Port of Montreal are destined for the U.S. market (Port of Montreal, 2009, North American markets section, ¶ 2). This integration represents business opportunities that could be lost if American businesses lose confidence in the Canadian routes.

The second economic dimension to the CSI is its importance in promoting Canada's Pacific Gateway Strategy. The Strategy is designed to "enhance prosperity and strengthen Canada's position in international commerce" (Transport Canada, 2005, ¶ 3) by investing in transportation infrastructure, as well as secure and efficient border services. The CSI ties directly with the investments made to the CBSA to support increases in container volumes. CBSA agents

stationed in Japan and future Japanese customs agent pre-clearing exports will give Canada an advantage when exporting goods to the Japanese market.

CSI Background

The CSI was originally the idea of CBP Commissioner Robert Bonner, proposed in 2002. CBP describes the CSI as "using a security regime to ensure all containers that pose a potential risk for terrorism are identified and inspected at foreign ports before they are placed on vessels destined for the United States" (CBP, 2007). The program's aim is to ensure a compromised container never reaches the United States. The CSI is not designed to be an independent security program, but to work with other security programs to create a layered defence (Bonner, 2007). The Canadian program is designed to serve the same objectives.

To meet its objective, the CSI operates in ports outside of the U.S. and Canada. CBP and CBSA place border agents at the foreign ports, who then work in conjunction with the host country's border agents to screen the cargo. Screening refers to a risk assessment and inspected refers to a physical inspection of the container. It is important to note that CBP and CBSA customs agents do not have the authority to inspect the containers themselves. If a container is identified for inspection it is the agents from the host country who physically inspect the container and its cargo and report their findings to the foreign agents. These findings could include a written assessment, a read-out of the test results or scan results and video footage if any was taken. There is full disclosure of all the information concerning the identified container (Confidential interview, CBSA, October 2008). In some cases, such as Japan, there is a dedicated team for assisting the Canadian and U.S. border agents and in other cases it is part of the regular border agents' duties.

The CSI consists of three (or four, depending on the date of the publication) key elements. The first and second elements, identification and pre-screening of high risk containers,

are done almost simultaneously. A risk assessment framework is used to accomplish this. The CBP uses the Automated Targeting System (ATS) and the CBSA uses TITAN-Marine. The ATS and TITAN-Marine use advance information and strategic intelligence to determine whether a container is a potential threat. For the purpose of obtaining advance information, American and Canadian customs declarations are now filed on-line within 24 hours prior to the container being loaded onto the vessel in the foreign port (CBP, 2006b & CBSA 2008e). This gives both agencies time to determine whether examination and inspection are necessary by properly identifying the containers and asking for additional information if required. The receipt of information 24 hours prior to loading is not directly part of the CSI; it is a separate program called the 24 Hour Rule in the U.S. and is part of the Advance Commercial Information program in Canada. This program is described in greater detail later in the chapter. Both are other post 9/11 initiatives and are used in conjunction with the CSI as part of the layered defence and risk management strategies.

When the information is processed by the ATS and TITAN-Marine, the container receives points based on predetermined criteria and is assigned a risk score, with a higher score indicating higher risk (GAO, 2006, p. 6-7 and Auditor General, 2007, p. 23). The more points a container receives the more likely it is to be inspected. This screening is done at the point of departure if possible or while the container is at a port in transit between its point of origin and the U.S. or Canada.

Neither the specific evaluation criteria nor the number of points assigned to these criteria are available as public information. However certain educated estimations can be made. Country of origin, history of the shipping company, number of ports called and location of these ports, as well as declared cargo in the container are all likely inspection criteria. As one unnamed American official stated: "if you say you are importing bananas from Iceland, you're going to score higher" (Schiesel, 2003, ¶ 18).

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The third element of the CSI is the use of technology to ensure those containers identified for screening are screened rapidly, without any delay to the movement of goods. This was a major concern for many importers and exporters, as many companies who ship internationally use "just in time" shipping for their supply chains. Therefore a delay with the shipment can delay the entire production line. To ensure no additional disruption to the shipments the CSI mandates the use of technology that can quickly and efficiently screen containers for illegal weapons and radiation. These technologies include large scale X-ray and gamma ray machines as well as radiation detection devices.

The last element is the use of smarter, more secure containers. A smart container is a term given to containers that have built in security features, such as a tamper-proof locking seal on the container doors. These types of security features allow customs agents to detect tampering during transit or at any point after the container was closed, thereby identifying containers that pose a threat. This can be accomplished in several different ways. The first is by an electronic signal transmitted by the seal the length of the container's journey, which would indicate whether the container made any unauthorized stops or detours. The second is by electronic information stored in the seal concerning when and how many times a container was opened, which is then accessible by customs agents once the container arrives in port. This aspect of the program has lessened over time as it is difficult for the CBP or the CBSA to influence the type of container used by international companies

Though not part of the four core CSI elements, an additional aspect of the CSI is reciprocity. This is two fold. The first is in terms of the exchange of border agents and the second in terms of information. Participating countries are able to send their own border agents to American and Canadian ports to inspect cargo destined for export to their countries, as the U.S. and Canada place their border agents in ports aboard. This is not common. In the U.S. only Japan and Canada have agents stationed in the U.S. and currently none of Canada's CSI partners have

agents stationed in Canada. This is most likely due to resource constraints as not all countries have the means to send their agents abroad. In some cases, for instance South Africa's partnership with Canada, the incentive for program participation was capacity building and strengthening of the trade partnership (discussed later in the chapter), lessening the need for South African agents in Canada.

In terms of information, there is bilateral sharing that takes place between the CBP or CBSA and the participating country. This information could include the history of a shipper, importer, or exporter; recent information on location of terrorist cells; and ports that have known, exploitable weaknesses.

Once the program was developed, the U.S. went to the World Customs Organization (WCO) in the hopes of having CSI principles and processes adopted by the international community. This provided the U.S. with a veneer of international consensus for the internationalization of U.S. security goals and a process for capacity building with developing countries more at risk of exploitation by terrorists.

The WCO had already set certain standards for international container shipping; it was a natural venue for cooperation and improving standards. The U.S. has a strong presence in the WCO and many of the countries in the WCO also look to the U.S. for guidance and support with regards to their customs policies (Confidential interviews, CBSA, October 2008). It was a natural vehicle for the U.S. to reach out to other countries in promoting the CSI. There was another factor that worked in the favour of the U.S.: those countries trading with the U.S. have a vested interested in maintaining or reaching the standards set by the U.S.

CSI in Canada

There are two important distinctions to make with regards to the CSI in Canada and the CSI in the United States. The first is that Canada's CSI does not refer to the reciprocal CSI

program with the United States. In Canada that program is called the Joint Targeting Initiative, or JTI, established in 2002. One of the key differences between the JTI and the CSI is the U.S. cannot request a container be inspected with the JTI as it can under CSI (Confidential Interview, CBSA, November 2008).

Specifically, the CSI refers to the program implemented with other partner countries, such as South Africa. It should be noted that the U.S. does include Canada as a CSI partner; listing Halifax, Montreal, and Vancouver as the first CSI ports in operation. The second distinction is Canada's CSI operates differently than the U.S. program, though the programs have the same name, are based on the same principles and have many similarities.

Similarities between the two include the CBSA's Advance Commercial Information (ACI) program that parallels the 24 Hour Rule. The ACI initiative provides CBSA agents with "electronic pre-arrival cargo information so that they [the agents] are equipped with the right information at the right time to identify health, safety and security threats related to commercial goods before the goods arrive in Canada." (CBSA, 2008b). There are two modes, marine and air. For the purposes of the CSI and this chapter only the marine mode is touched on.

The marine mode was "established to deal with the unknown and higher risk goods by providing CBSA with electronic cargo and conveyance data" (CBSA, 2006, Introductory section, p. 4) and "requires marine and air carriers to electronically transmit marine cargo data to the CBSA 24 hours prior to loading cargo at a foreign port (including the U.S.)... This requirement allows the CBSA to effectively identify threats to Canada's health, safety, and security prior to the arrival of cargo and conveyances in Canada." (CBSA, 2008c). The ACI specifically requires all marine carriers arriving at a Canadian port with commercial goods to transmit conveyance and cargo reports through electronic data interchange (EDI) and is required for all import, in transit and freight remaining on board (FROB) containers (CBSA, 2008d).

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The ACI initiative was implemented in April of 2004 and the CSI, implemented in 2005, is seen as an extension of the marine aspects of the ACI (CBSA, 2008e). Over time the ACI has been brought further into line with the CSI, as mentioned in the December 2004 Status Report on the Smart Border Action Plan. By that date there had been "significant harmonization on timeframes for advanced cargo reporting, data elements and risk assessment methodologies, criteria and scoring" (Smart Border Action Plan Status Report 2004, Point 14).

Canada officially signed a CSI agreement with the U.S. in October of 2005 and later established additional agreements with Panama, South Africa, and a Memorandum of Understanding with Japan. The CBSA currently has two agents stationed in South Africa, and recently posted agents in Panama and Japan. Japan will also likely have at least one officer stationed in Vancouver in the near future (Confidential Interview, CBSA, October 2008).

CSI Policy

As mentioned earlier in the chapter, this section focuses on the policy development for the CSI in Canada. As this process is outlined Kingdon's model is used to describe the developments and offer insights into the process.

The Smart Border Declaration of December 12th 2001 launched the 32 Point Action Plan (also referred to as the 30 Point Action Plan) for improved cooperation and integration on security matters between the U.S. and Canada. The plan laid out a comprehensive strategy for border security between the two countries, covering air travel and transportation and land and sea borders.

In terms of container security the mechanisms for cooperation are listed in Point 18 of the Agreement. It states the two countries will "jointly target marine intransit containers arriving in Canada and the United States by exchanging information and analyses and work in partnership with the industry to develop advance electronic commercial manifest data for marine containers

arriving from overseas" (Point 18, 32 Point Action Plan). It is called the Canada-U.S. Joint In-Transit Container Targets at Seaports Initiative, the previously mentioned JTI.

The CSI was developed from this concept, designed to build upon this relationship and enhance security by cooperating with foreign partners. It was the idea of former U.S. CBP Commissioner Bonner. Commissioner Bonner is a policy entrepreneur with a clear claim to an authoritative decision making position, one of the three categories of qualities listed by Kingdon for an entrepreneur's success (Kingdon, 2003, p. 180). In the aftermath of 9/11 the President and all members of his Administration were looking for ideas to secure the nation, the CSI presented a relatively uncontroversial program to help accomplish this. Occasionally, suggested ideas are accepted because they are deemed to be the "right thing to do" (Kingdon, p. 125), which is likely the case with the CSI.

Bonner was also able, by virtue of his position in the CBP, to bring his idea to the forefront and make it a priority for the CBP. An agency Commissioner is designated by Kingdon as a senior political appointee in the Administration; these political appointees have influence in placing ideas on the agendas of important people (Kingdon, 2003, p. 27-28). Commissioner Bonner was very likely to have been able to put the CSI on the agenda of Office of Homeland Security Secretary Ridge.

The CSI was initially conceived as a joint Canada-U.S. program, a step towards creating a North American perimeter in which Canadian or American border agents would be posted overseas. Therefore, a foreign port with a Canadian agent would be approved for the U.S. and vice versa. However, the U.S. moved more quickly and aggressively than Canada and as a result the program lost its joint aspect (Confidential interview, CBSA, October 2008). The JTI remained the mechanism of cooperation between the U.S. and Canada and the U.S. brought the concept of the CSI to foreign partners bilaterally without Canada. This split also led to slightly different focuses for the CBP and CBSA; the U.S. has a stronger security and terrorism prevention

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dimension to its screening, whereas Canada has a stronger trade compliance dimension (Confidential Interview, CBSA, October 2008).

At the beginning of program development cooperation between Canada and the U.S. was extensive. The CBSA worked quite closely with the CBP and then gradually reduced coordination as the two programs began to diverge. However, the two organizations maintain a close working relationship. This helps not only the relatively free flow of goods between the two countries and the pooling resources, but it further helps the competitiveness of both countries since other countries perceive Canada and the U.S. as a North American block (Confidential Interview, CBSA, November 2008). Furthering the differences between the two are the differences in legislation under which the agencies operate. As a result of this divergence both American and Canadian border agents work side by side in countries such as South Africa.

This divergence was also the result of the differing political context of the program in each country. In the U.S. security was and remains a political issue subject to congressional one-upmanship and the security agendas of various congressional committee chairs and members. For instance, the CSI was incorporated into the SAFE Port Act of 2006. In Canada the JTI and CSI programs were politically useful in bringing Canada into the American security umbrella, but were not necessarily domestic political issues. The programs were incrementally adapted as needed in response to the U.S., but with security lower on the political radar there was little political competition for the issue and it was left to be implemented by the CBSA.

The quicker implementation of the new security program in the U.S. was a question of resources and money (Confidential interview, CBSA, November 2008). In view of the constraints the CBSA decided to implement the program in stages, each one building on the next. For instance, the ACI and the transfer of electronic data 24 hour prior to arrival needed to be in place before Canada's CSI program could be fully implemented. Therefore, when funding did come through the CBSA was prepared to move forward immediately. With the infrastructure and

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technology in place the CBSA was able to sign Memorandums of Agreement of several countries very quickly and begin implementation of the CSI.

The budget is identified by Kingdon as one of the most important constraints on the consideration of proposals and initiatives (Kingdon, 2003, p. 106). It is clear that in this case the budget did constrain the development of the CSI in Canada in its original form as a cooperative U.S./Canada program. It also clear, however, that the CBSA did not shelve the idea of the program because of this. They implemented smaller stages to build up to the program, thereby asking for money in increments rather than one large sum.

To be able to implement the CSI, the CBSA needed to obtain approval from the federal government. The CSI started as a vision, an idea of what was needed to accomplish both enhanced security and trade facilitation. The development of the program would help protect Canadians living in cities with major ports and the Canadian economy from trade disruption resulting from a potential terrorist attack. Unlike the JTI, which was in many ways a political manoeuvre to prevent further thickening of the Canadian/American border and to reassure Washington that Canada was taking action to prevent an attack on the U.S. via Canada, the CSI was intended to promote Canadian trade interests. As mentioned, as the Canadian and American programs diverged Canada's program took on a more trade oriented dimension. Due to this, the Canadian CSI is in some ways more of an extension of trade policy than border security policy parallelism with American policies.

The CSI was first sent as a "small concept" Memorandum to Cabinet, three to four pages. As with most departments or agencies requesting funding, a functioning example of what the CBSA wanted to accomplish was included. In this case the example of the American CSI was used, as the example illustrates the function and benefits of the program (Confidential interview, CBSA, November 2008). The CSI was also tied into the National Security Policy of 2004 (Confidential Interview, CBSA, November 2008) as well as the 32 Point Action Accord.

In using the American CSI as a viable example for the CSI, the CBSA established policy precedents for the program. This is then coupled with Kingdon's idea of "softening up," an idea that as a policy concept floats around in a policy community people become less resistant to it (Kingdon, 2003, p. 128). As the JTI and the U.S. CSI were already implemented this served to "soften up" decision makers.

Once the basic concept for the program was given the go-ahead from Cabinet, the proposal was taken to the Treasury Board for a closer and more detailed examination and cost analysis. Concerns regarding such issues as equipment needed, training related to the program, and sending agents overseas were examined at this point. A second important dimension of the program was also developed at this point: evaluation. How and when the evaluations will take place must be determined, as well as indicators for success, before the program is rolled out (Confidential Interview, CBSA, November 2008). The program could be evaluated every year or every 2 to 3 years depending on its priority (Confidential Interview, CBSA, November 2008).

Once the money was received the program was scrutinized to ensure the most economical and efficient program possible was developed. The World Customs Organization framework was closely examined, to ensure the proper standards are met and that the policies will be aligned with the international standards.

Cabinet approval prior to the full development of the program helped ensure there will be little intrusion from other Departments. All stakeholder ministers must sign off on the Cabinet Briefing before the program goes to development, reducing the likelihood of intrusion from departments with similar mandates. Fortunately, the CSI falls fairly squarely within the mandate of the CBSA, which helps reduce a number of coordination issues with other departments and agencies. In some cases involving import/export programs, there is a lot of consultation with the RCMP and Transport Canada, which can make agreement on the issues at hand more difficult (Confidential Interview, CBSA, November 2008).

The relationship between CBSA and Public Safety is very good (Confidential Interview, CBSA, November 2008). A positive working relationship with the Department increases the trust between the CBSA and their politically appointed directors, which in turn helps reduce the likelihood the program will be vulnerable to challenges by a particularly interested policy entrepreneur. It also helps isolate it from the influence of other elected officials responding to interest groups or constituents. It does this as those seeking to influence the policy would most likely seek out the Minister or his or her staff. If the Minister is convinced the CBSA is implementing a valuable, well planned program in a satisfactory way then he or she is less likely to take outside interests into account.

Following approval by the Treasury Board the program proposal was brought to potential foreign partners for feedback and proposed changes. Further research and evaluation of the program on the part of the CBSA is ongoing. The results of the feedback and research are then taken into account and the program is refined. This process of refinement is continuous and ongoing at all stages of the program (Confidential Interview, CBSA, November 2008). Refinement of the program can include the tweaking of the mandate to include more agents or changes to the implementation plan.

Prior to any agreement with foreign partners, the CBSA first meets with the Canadian Ambassador to that country. This allows for proper coordination between Canadian interests and as the CBSA agent is attached to the embassy, it is important that the Department of Foreign Affairs and International Trade has a clear understanding with the CBSA about the role and mission of the CBSA agent. The CBSA then meets with officials from the host country to discuss how the program will be implemented.

Implementing Canada's CSI after the American program allowed Canada to learn from the U.S. program. While designing the CSI, the CBSA also reached out to its foreign partners for feedback and advice. The CBSA was then able to adjust and adapt the program to enhance

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program performance (Confidential Interview, CBSA, November 2008). One of these adaptations was for CBSA agents to play more of a role than just targeters, the role played by the CBP agents. The CBSA agent also provides customs expertise and training if needed, which is particularly relevant in cooperation with South Africa and Panama. Another key difference related to targeting is the placement of targeters overseas. The U.S. has targeters in each of the ports participating in the CSI, Canada does not. This is due to a second divergence between the programs. There was more emphasis in the Canadian program on intelligence and information sharing as well as diplomatic cooperation (Confidential Interview, CBSA, November 2008). Canada places CBSA agents in each of the countries participating in the Canadian CSI program, but not in every port. The officers in each partner country travel between the ports to ensure the CSI is working effectively (Confidential Interview, CBSA, November 2008).

Another important aspect to the intelligence and information sharing dimension is cooperation between the CBSA and customs agents of the host country with regards to best practices. This was an aspect of the collaboration that appealed to host countries, as Canada can provide clear and proven customs management strategies. Furthermore, agents stationed overseas will often provide information to assist local businesses and customs officials to understand and access the Canadian market. The fact the CBSA agents work at or in conjunction with the Canadian Embassy in the host country helps coordinate assistance with regards to trade promotion and helps develop the economy of the host country (Confidential Interview, CBSA, October 2008).

Expectations with regards to information and customs management assistance as well as assistance and education with the new technologies vary by country. For instance, the technology used in Japan is more advanced than anything Canada has. It will take the CBSA approximately ten minutes to take one picture of one angle on a single container, whereas the Japanese border agency will take approximately one minute to take pictures of two angles (Confidential interview,

CBSA, October 2008). Japan is unlikely to request assistance for technology use; however, Panama and South Africa may do so.

In terms of program development with Japan there were several issues around funding and expectations. Originally Japan had hoped the CBSA agent would be an attaché at the embassy taking calls and answering e-mails, whereas the CBSA wanted its agent in the field. It wanted the agent to be able to meet with the American agents in Japan as well as the Japanese CSI agents. They also wanted an assessment of the ports to determine what would be needed in terms of equipment and resources (Confidential Interview, November 2008, CBSA). Once the expectations were clear the CBSA then met with private sector interests in Japan, coordinated with stakeholders, and established communications with the U.S. CBP officers and the Japanese CSI team (Confidential interview, CBSA, November 2008). All of these are issues that are taken into account when the program and its related policies are being implemented and during any review of the program.

With regards to private sector and interest group involvement in the CSI, there has been a general lack of pressure by interest groups with regards to the program. This is likely due to the seemingly minimal impact on trade of the CSI. If there are no issues to be raised then the interest groups would have no reason to meet with the agency. To date there has been very little, if any, lobbying on the part of companies to have the CSI rescinded or modified (Confidential Interview, CBSA, November 2008). Most have adapted and see the benefit of pre-screening. If the container is screened before it arrives in Canada or the U.S., then the company can move it directly upon arrival into the market or on to a truck or trail en route for its final destination. This eliminates inspection times and is beneficial to the company. Another benefit to CSI may be the reduced cost of insurance. The security of containers is one reason why there would be a decrease, but also possibly due to a reduction in the number of liability claims against customs administrations

(CBP, 2006a, p. 10). Though there have been decreases in trade in the last few years, this was likely linked to the rising value of the Canadian dollar at that time (Goldfarb, 2007).

However, there were issues at initial implementation. These were often associated with delays in transporting containers identified for screening to the location of the screening system. For instance, a stationary gamma ray machine located only in one section of the port necessitates additional delays for flagged containers. It should be noted that most containers sit in a port for several days before they are loaded on to a ship and it is during this downtime that most containers are identified and screened, or inspected as the case may be. As the program is developed the port infrastructure is also developing to adapt and meet the new requirements of the CSI. The acquisition of additional stationary machines as well as mobile screening devices serves to reduce the amount of time necessary to screening.

During program development the CBSA also consulted with private sector and private stakeholders to ensure a mutual understanding of how the program would be managed in Canada (Confidential interview, CBSA, November 2008). Many in the private sector were quite interested in the program, and many industries wanted Canada to work closely with the United States. Working with the U.S. would help ensure higher coordination and ensure that shipments targeted in Halifax would not then be targeted again as they crossed into the U.S. via Detroit and other land crossings. With the development of the 24 Hour Rule and the JTI this was accomplished.

There was much less "push back" on the part of the private sector for the CSI in Canada since many of its components were already in place at the time of implementation (Confidential Interview, CBSA, November 2008). This included the 24 hour rule of the ACI. When the first stages of the program were being brought into effect there had been much more reaction on the part of industry. The initial concern of private companies was there would not be enough coordination between the border agencies of the different countries and the companies would then

need to meet the requirements of each individual country. The prospect of having to meet a 24 hour data requirement in one country and a 96 hour data requirement in another was one that risked complicating the business of many companies engaged in international trade.

In dealing with the private sector it was important for Canada and the CBSA to work within international frameworks as it is far more difficult to challenge or protest the implementation of an internationally sanctioned program than a solely Canadian program. It is likely had Canada tried to implement the program on its own there would have been far more push back from the private sector (Confidential Interview, CBSA, November 2008).

At the port level there were also concerns on the part of various port authorities that would be affected by the new rules. There was great concern specifically with regards to the performance indicators and evaluation of the success of the program (Confidential Interview, CBSA, November 2008).

Kingdon indicates interest and lobby groups can play an important role in policy process, especially business interest groups (Kingdon, 2003, p. 46-47). In the case of the Canadian CSI, it does not seem that interest groups played much of a role. This is likely due to stakeholder consultation on the part of the CBSA and private sector familiarity with the American program. The issue was likely also dealt with at the front end of the Smart Border process as point 18 called for intransit electronic data transmission for Canada and U.S. bound containers. If the CBSA consulted with stakeholders and businesses from the beginning of program development than those businesses most affected by the CSI would have an avenue to provide feedback and express concerns. The implementation of the U.S. program several years earlier gave an opportunity to the American program to adapt to business interests, providing Canada with an already improved program. Furthermore, the implementation of the Canadian CSI after the U.S. CSI gave a period of time for the CBSA to learn from the CBP experience and adopt changes appropriately.

Program Evaluation

The success of the program is difficult to gauge. It is not possible to deem it successful solely on the fact that no weapons of mass destruction have been discovered or other terrorist activities have been foiled by the CSI. It is also difficult to know whether the CSI has acted as a deterrent to those who would have used the global supply chain to deliver a weapon.

The length of time taken to examine all or a significant number of containers is an important indicator of success. One of the goals of the program is to ensure trade is not slowed by the new measure. If there is less physical inspection of containers due to the information obtained under the ACI and the analysis conducted under the CSI, then the end result is less disruption to the supply chain and the flow of goods internationally.

Generally evaluation of the program has been through results based management. Data quality has always been a problem in this regard. It is this data that provides the basis for the results of the screening, and therefore the management of the program. When targeters evaluate and analyse the containers coming into port their analysis is only as good as the data and information they receive. The CSI and its associated outreach have helped improve the quality and the quantity of the information received. This is often due to cooperation with the host country (Confidential interview, CBSA, November 2008). It is also the host country who will help with regards to queries for exams and keep a detailed list of the number of exams conducted and weapons found.

Though no formal, comprehensive evaluation focusing only on the CSI has been conducted the CSI has been discussed in both internal and external reviews. A Pre-Arrival Targeting Evaluation Study was conducted internally at the CBSA in January 2008, which includes a discussion of the CSI and TITAN-Marine. In the annual reports to the House of Commons the Auditor General has a chapter dedicated to customs and border issues which also discusses issues associated with the CSI and TITAN-Marine. Both of these reports found issues

with the CSI and the TITAN-Marine risk assessment system. These include an uncertainty on the part of the CBSA with regards to which level of inspection is appropriate for which TITAN scores and a lack of faith in the TITAN system by agents (Auditor General, 2007, p. 24). Other issues identified were staffing and proper training with regards to the new programs (CBSA, 2008a). These issues are generally addressed in the on-going refinement of the program.

On a last note, there has been at least one positive spillover of the program. This is an increased CBSA understanding of the overseas private sector's operating procedure and cultures as well as of different enforcement organizations' cultures. The program has not only served to push the border out and increase security, as suggested by risk management based themes of border security, but it has also been good for increased intelligence sharing and cooperation (Confidential interview, CBSA, November 2008).

Conclusion

Although Kingdon offers some insight into the development of CSI policy, in many ways the CSI in Canada falls outside of Kingdon's model. Given the development of the program as outlined by CBSA officials, the CSI seemed to bypass much of the model, including the opening of a clear policy window through which the three streams, problems, policy and politics, are joined. It is possible to argue that, even in Canada, 9/11 was a focusing event that opened policy windows. However, the concept of container security was not present as a solution in the policy stream waiting to be coupled with a problem, as Kingdon argues is the case for policies (Kingdon, 2003, p. 172). The problem was identified and then a solution sought, fitting the more traditional problem-solving model of policy development rather than Kingdon's model.

The development of the CSI in Canada also demonstrates the effect of U.S. policies on Canadian government actions, reflecting the asymmetric nature of the relationship that exists between the two countries. The response of the Canadian government to U.S. policies and private

interests such as international shipping rather than Canadian public interests is also difficult to explain using Kingdon's model.

Another dimension that does not fit Kingdon's model is the program proposal sent to Cabinet as a Memorandum through final program implementation. Kingdon does not state that all of the elements outlined by his model are present to explain the policy process. However, Kingdon's model does not account for policy development once the idea for the policy reaches prominence on the agenda. Kingdon's model is more applicable in the case of the CSI in the U.S.; the idea of the CSI in the U.S. rose to prominence extremely quickly given the window presented by the political environment of the time and the support of former Commissioner Bonner.

It was different in the Canadian context. The idea was already present in the form of the American CSI and the JTI, working programs under the CBSA mandate. The logic of the idea would have made sense to most people working for the CBSA at the time. With the example of the U.S. to draw on and the benefits of increased security it is not difficult to see how the program would have appealed to members of Cabinet once it was presented to them. Kingdon does not deal with the influence of an international relationship on the policy process, nor for the asymmetrical influence in big country-small country dynamics, which accounts for one of the reasons for his model's inability to offer a concrete analysis of CSI program development in Canada. Another international aspect Kingdon's model does not account for is the feedback from international partners, including customs agencies and private interests.

The presence of the program in the U.S. and later program standards adopted by the WCO limited the interest group pressure in Canada. Many of the companies who were affected by the rules of the CSI, such as Canadian-based multinationals and Canadian-based divisions of foreign multinationals, were already operating within the framework and were familiar with the requirements. As discussed earlier in the chapter, the largest concern from private industry was each customs agency adopting different rules as that would overcomplicate the task of the

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shipping company and increase the risk of declaration errors. Canada avoided this by adopting the U.S. program with international standards.

Kingdon's model does offer insights into the development of the CSI in Canada; however, alone it is not sufficient to explain the development of the program from JTI to CSI and the process for CSI evolution in the Department of Public Safety.

CHAPTER 5: NEXUS

The second case study is of the NEXUS trusted traveler program. As with the CSI, it is a cooperative border program between Canada and the United States. As with the previous case study, the chapter outlines the program, describes policy development in Canada, and analyses the program's development using Kingdon's model.

NEXUS is a bi-national trusted traveler program between Canada and the United States. The purpose of the program is to expedite the entry of pre-registered, low-risk travelers into the country. During the application process, potential members are subject to comprehensive screening, eliminating the need for this screening at the crossing. The program offers an exchange, information about a traveler's low risk status for expedited processing at the border. In early 2009, the program has approximately 245,000 members from both countries (Confidential Interview, CBSA, November 2008; Beeby, 2008, ¶ 9).

Unlike the CSI, which involves two programs with the same name administered in each country, NEXUS is one program that is jointly administered, with one card valid for travel into both countries. The program can be used in three modes of transportation: land, air, and sea. Though many countries have trusted traveler programs, NEXUS is the only jointly administered program currently in use. Also, unlike the CSI, NEXUS is a program whose origins predate 9/11. The pilot, described later in the chapter, began in 2000 at the Blue Water Bridge crossing between Sarnia, ON and Port Huron, MI, and was originally designed for business travel and commuters. It had its roots in the PACE program – Peace Arch Crossing Entry – a regional initiative in BC and Washington State, between the highly integrated border communities of Blaine, WA and Surrey, BC.

The NEXUS pilot was suspended following 9/11, but the December 2001 Smart Border Accord called for the resumption of NEXUS and the new post 9/11 program began operating in

June 2002. The new program faced challenges related to database integration of the three modes, security standards, and infrastructure development. The chapter discusses these challenges and traces the program's development.

NEXUS Program Description

The current program is outlined in the NEXUS Information and Application Form, available on both the CBSA and CBP websites (referenced in this chapter as Government of Canada, n.d.). NEXUS is a voluntary program and offers expedited border clearance to low-risk, pre-approved travelers (Government of Canada, n.d, p. 1). It is an exchange. The more border agents know about a traveler, the faster they are able to make a risk assessment.

Those who wish to join NEXUS fill out an on-line or paper application and submit a fee with copies of their proof of citizenship or status as well as proof of address. Applicants must bring the originals with them for the interview phase of the application. Following an application, both the CBSA and CBP investigate the applicant's information and both agencies must approve the applicant (Government of Canada, n.d, p. 2). Applicants deemed admissible are invited for an interview with the CBSA or the CBP. If they are residents of Canada, they are interviewed by a CBP agent and vice versa (Government of Canada, n.d, p. 7).

At the interview, the agent reviews the information to ensure it is current, examines the original application documents, and takes the applicant's ten fingerprints. Once accepted into NEXUS, the new member must also provide an iris scan. These biometrics, along with a digital photograph, are used to verify the identity of members when entering either country. The biometric information is stored in the NEXUS database and assigned a file number. This file number is stored in a RFID (radio frequency identification) chip in the NEXUS card. This RFID chip is used at the dedicated NEXUS lanes at land crossings. The iris scan is used at designated self-serve kiosks at airports, and advanced phone reporting is used for marine travel.

In the case of land crossings, the RFID chip transmits the file number to the border agent, which corresponds to the individual's personal file in the NEXUS database. The file is pulled up on the computer screen of the agent, establishing the identity of the traveler several seconds prior to the member pulling up to the window. NEXUS members use a Traveller Declaration Form to declare their goods, instead of responding to an agent's declaration questions, and pay their fees and deposit it at the Point of Entry (Confidential Interview, CBSA, March 2009). NEXUS travelers are not exempt from customs and import laws. They must submit a customs declaration upon entering either country and pay customs fees that may apply.

As the idea behind NEXUS is to speed the processing of travelers between the two countries, frequent travelers and commuters became the target group for the program. However, the program has expanded and is now open to all Canadian and U.S. citizens, permanent residents, and relevant visa holders (Government of Canada, n.d, p. 5). The expansion was driven in part by an increase in demand, as the NEXUS card qualifies as a WHTI compliant document. With WHTI air regulations already in effect and land rules coming into effect in June 2009, the increase in demand was not entirely unexpected.

Part of program expansion to non-commuters also lies with the security focus of post 9/11 border programs. The relevance for the two border agencies is the personal information provided by applicants and members. Expedited clearance was the incentive offered for providing this information, which then allows the agencies to conduct criminal and security-related background checks. Theoretically this allows customs agents to focus their attention on those for whom they had little information. The more people in the program, the more people the agencies are able to perform comprehensive checks on. Expansion of the program therefore benefits the security dimension of the program.

Historical Background

There have been three broad eras of cross-border policy cooperation. The first, 1995-2001, was characterised by the slow rollout of the Shared Border Initiative. The second was from 2001-2006 in which efforts to improve security along the border were relatively uncoordinated and superimposed on the existing technology and infrastructure. This posed many challenges as different modes of transportation and different traffic volume were not taken into account by new program developments. The third post-2006 period is characterized by the progressive integration of technological systems in response to stakeholder criticism and growing administrative and technological capacity. These eras correspond to the same eras identified for border management collaboration in Chapter 2 and, with the exception of a 2006 rather than 2004 start date for the third era, the eras correspond to those identified for border security policy development in Chapter 3. The discrepancy between the dates was due to a delay in coordinating program delivery by mode of travel more than any significant policy differences.

The original idea for NEXUS was included in the 1995 Shared Border Action Plan, in the first era. The Canadian Customs and Revenue Agency coordinated the development of the program with the RCMP, Transport Canada, and Citizenship and Immigration Canada on the Canadian side, and Immigration and Naturalization Services (INS) on the American side (Confidential Interview, CBSA, November 2008). The agencies developed five, ten, and fifteen year plans as a blueprint for how they wanted the program to evolve, including stakeholder consultations and travel and trade facilitation goals (Confidential Interview, CBSA, November 2008). Stakeholder consultations and the dual travel facilitation and security goals of the program were aspects of NEXUS that carried through into the post 9/11 program.

The NEXUS pilot began in the fall of 2000 at the Blue Water Bridge crossing between Sarnia, ON and Port Huron, MI and had approximately 5,000 members. It was scheduled to be

evaluated in the fall of 2001, the results of which would have indicated whether the program would continue (Confidential Interview, CBSA, November 2008). However, the context of the program changed following September, 2001 and the program received support to formalize and move ahead to broader application.

The Smart Border Accord of December 2001 identified NEXUS in Point 3 of its Action Plan and by January/February of 2002 the program resumed. It was at this point the NEXUS working group began meeting again, as it had been suspended following 9/11 (Confidential Interview, CBSA, November 2008). The Shared Border Coordinating Committee, originally created after the 1995 Agreement, also began meeting again. The CBP Commissioner and the President of the CBSA began to meet twice, sometimes four times, a year to review developments in NEXUS and its three modes – land, air, and marine – and other Smart Border measures (Confidential Interview, CBSA, November 2008).

The program was further linked to the public safety and anti-terrorism priorities of the government, which helped create a strong political will for the program on the Canadian side. Part of this was due to the strong emphasis on risk management in Canada; with growing concerns regarding the "thickening" of the American border the program was supported by all federal departments (Confidential Interview, CBSA, November 2008).

Following 9/11 NEXUS went from being a niche program to a high profile security project (Confidential Interview, CBSA, November 2008). Part of its high profile is attributed to the program's integration with WHTI standards and the removal of the frequent traveler program name in favour of a trusted traveler name.

NEXUS and other trusted traveler programs were originally niche programs as they were designed to address issues at particular crossings. The first trusted traveler program was piloted in 1990 as a jointly administered program, PACE at the Douglas, BC and Blaine, WA crossing. It was designed to reduce traffic congestion at the border (WCOG, n.d., ¶ 3). However, the

Canadian government was ready to implement sooner than the U.S. and the programs diverged, with Canada developing CANPASS (Cascadia Project, 2001, p. 5) and the U.S. keeping PACE. These programs were fully operational by 1991 and Canada later expanded CANPASS to the rest of country. PACE, on the other hand, remained a niche program for the busy, densely populated southern BC, northern WA area. The idea behind the programs was also to focus enforcement attention away from low-risk traffic, therefore better utilizing limited resources (Cascadia Project, 2001, p. 3). This became a priority for the NEXUS program following 9/11.

The American program was administered by the INS and the Canadian program by the Canada Customs and Revenue Agency, which were the key agencies involved in developing NEXUS pre- and post 9/11. The experience and knowledge from PACE and CANPASS would have been quite helpful with regard to NEXUS development. For instance, a report published in May, 2001, entitled Pre-Approved Cross-Border Travel in the Cascade Gateway, identified the goals and barriers to a jointly-administered program. Goals included the security improvement and increased program efficiency (Cascadia Project, 2001, p. 7), and barriers included household enrolment for CANPASS and individual enrolment for PACE as well as staffing issues leading to program instability (Cascadia Project, p. 18).

The report further compares the application forms of PACE, CANPASS, and the NEXUS pilot programs (Cascadia Project, p. 19-21). The NEXUS pilot had a more rigorous security screening procedure and eliminated many issues of the PACE and CANPASS programs by joint administration. It is likely due to the benefits of NEXUS over the two other programs that it was the only land crossing program re-opened following 9/11.[3] As a jointly administered program it

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[3] CANPASS Air, CANPASS Corporate Aircraft, CANPASS Personal Aircraft and CANPASS Private Boat are current, operational programs based on the same principles as NEXUS Air and Marine. As with NEXUS, CANPASS travelers must be pre-approved, however CANPASS is more flexible. For instance, the CANPASS aircraft modes allow those pre-approved travelers onboard to land at an airport where there are no NEXUS kiosks or to proceed on from the airport without needing to detour into the airport to a NEXUS kiosk. More information about CANPASS is available from www.cbsa-asfc.gc.ca/prog/canpass/menu-eng.html.

eliminated the barriers of a local, piece-meal approach to trusted traveler programs, reduced the length of time for application review, harmonized identification requirements and resolved the issues of individual versus household enrolment.

NEXUS Post 9/11 & Policy Development

The previous section, the development of the NEXUS program prior to 9/11, helps illustrate the evolution of NEXUS policy after 9/11. Kingdon's model identifies three elements in the previous section that are relevant for policy development.

First, as with the CSI, 9/11 was a focusing event for border security. As a pilot project, NEXUS existed in the policy community of the customs agencies. In Kingdon's policy stream, the solutions are coupled with problems and introduced when the agenda changes (Kingdon, 2003, p.173). In this case when the agenda changed following 9/11 the trusted traveler program, in the form of the NEXUS pilot, was introduced as a response to increased security needs.

Second, Kingdon identifies a "primordial soup" in which ideas float around before they are coupled with a problem and brought forward in the policy stream (Kingdon, 2003, p.116-117). PACE and CANPASS represent an idea for a solution brought to the front following problem identification: traffic congestion. This was an issue in Southern Ontario as well, where NEXUS was first piloted.

Last, the programs also served to "soften up" policy makers, making decision makers more comfortable with an idea they have seen before (Kingdon, 2003, p. 128). There were also several market research projects and surveys completed of the PACE and CANPASS programs by the Cascadia Project Discovery Institute over a several year period. They focused on issues of marketing, administration and operations, and barriers to a jointly-administered program (Cascadia Project, 2001. p. 3).

The new NEXUS program was rolled out at the Douglas/Blaine crossing in Southern BC and Northern Washington. In April/May of 2002 the program was announced, to start in June. There was a flood of approximately 40,000 applications (Confidential Interview, CBSA, November 2008). It was chosen as the first highway test area, as the NEXUS pilot had been at a bridge crossing. It was important to have a highway test; the transferability of the program's benefits had been questioned as a bridge crossing has a funnelling effect that does not necessarily occur on land (Confidential Interview, CBSA, November 2008).

There were changes to this new NEXUS program. These were steps to improve the security of the program, including more detailed address and employment history. Feedback to the NEXUS working group from senior policy makers at DHS with an eye for security would have been the main reason for security changes in the NEXUS program. Kingdon identifies feedback as one way in which problems are identified and solutions developed (Kingdon, 2003, p. 100).

This new focus on security also led to the opening of the program to non-commuters, as previously noted. There was a conscious effort to shift the marketing of the program from a frequent traveler program to an expedited traveler program (Confidential Interview, CBSA, November 2008). As discussed earlier, the more members there are in NEXUS, the greater the number of travelers who are verified and the greater amount of resources that can be diverted to those travelers who may pose a threat.

There was also negotiation around biometric identifiers. In the pre-9/11 context the CBSA had expressed concerns over taking ten fingerprints, arguing it carried too much of a negative connotation (Confidential Interview, CBSA, November 2008). It was then INS Commissioner Ziegler who suggested the agreed upon compromise. Instead of the 10 prints NEXUS would require the two digit prints only. These prints would suffice to run against the INS

database (Confidential Interview, CBSA, November 2008). Given the security emphasis in the post 9/11 context, this was changed to require all ten prints.

Another important change to the program was NEXUS database integration, which occurred in December 2006 (Confidential Interview, CBSA, October 2008). It is this integration that allows applications to be processed at the point of entry where applicants are interviewed. This was not a feature of the program before December of that year. In order for this to be possible, not only did the databases need to be integrated, but land crossings needed to be equipped with the technology to take iris scans, which are necessary for NEXUS Air.

Negotiation around biometric requirements and the challenge of integrating the database from each of the three modes and creating one database for both countries were some of the challenges faced by CBSA and CBP officials working on the program. The challenges are important in understanding why it took five years to consolidate the administrative and technical systems of the program.

There are still challenges since full integration. Beeby (2008, ¶ 12) points to concerns regarding the frequency of which members are checked against the police and customs databases. The CBSA runs NEXUS members against security and criminal databases only once per year where as the CBP runs the member list against FBI and immigration databases every 24 hours (Confidential interview, CBSA, November 2008 and Beeby, 2008, ¶ 10). It should be noted though these checks are done every 24 hours, they are not as comprehensive as the yearly checks and are not as robust as the CBP would like them to be (Confidential Interview, CBSA, March 2009).

The Canadian security system is not as robust as the American system (Confidential Interview, CBSA, November 2008) and is also not as integrated. For instance, upon the receipt of an applicant's information in the U.S., CBP forwards it immediately to the FBI for a check against its database. This is not the case in Canada, where the CBSA has yet to negotiate an

agreement with the RCMP as the monetary cost and time needed to launch such a system are factors that have yet to be negotiated (Confidential Interview, CBSA, November 2008). Applicants are, however, checked against five databases, including customs and immigration lists in both countries and a police enforcement database (Confidential Interview, CBSA, November 2008).

Despite these criticisms, it should be noted the program has proven to be quite flexible. Originally, the land and air NEXUS programs were two separate programs requiring two separate applications. Since December 2006, there has been one application for all modes, with NEXUS Marine added later. At first NEXUS identification consisted of a rather flimsy piece of paper that airline officials sometimes found dubious (John Wagner, Border Symposium I, PNWER). The new NEXUS card is a far more secure and reliable document. This is another example of Kingdon's feedback and problem identification. In this case, it was NEXUS users who identified the issue; the feedback was taken into account and a new card designed. The new card was also created to be a more secure document.

The adaptability of the program is displayed in its evolution from a pilot to the post 9/11 security program. The most important support for the program came from the December 2001 Smart Border Accord: the Accord outlines the streamlining of two programs. It was also important as the meetings leading to the Accord represented an agenda change. This agenda change is identified by Kingdon as a policy window (Kingdon, 2003, p. 166-167), creating an opportunity for policy entrepreneurs of NEXUS and those within the policy community to push NEXUS forward as a solution for the border "problem."

Improvements to the program include the processing of applications; they have become faster, as previously all applications were sent to Niagara and now they are processed at the port of entry where they are received (Confidential Interview, CBSA, October 2008). Capacity and infrastructure issues were examined as the program evolved, and changes made accordingly. For

instance, NEXUS was originally implemented at the Coutts/Sweetgrass crossing in Alberta; where it was subsequently pulled as there were not enough members to warrant taking one of the three lanes (Confidential Interview, CBSA, October 2008). However, with continued program expansion NEXUS was reopened at the crossing in August 2008 (CBP, 2008).

NEXUS Air and NEXUS Marine were piloted after NEXUS land, with all three programs fully harmonized in December of 2006 (Confidential Interview, CBSA, November 2008). The number of locations where NEXUS is available has increased since 2002, from six to fourteen dedicated highway lanes, eight airports and anywhere by marine.

There was also a fee change to the new program. There was no fee for the pilot and the original fee for the post 9/11 program was US $50 or CDN $80. The fee reflected the exchange rate of the time but was later harmonized to $50 regardless of currency. A fluctuating fee corresponding to a fluctuating Canadian dollar is extremely inconvenient, and it is unlikely there will be any more fee changes regardless of the value of the Canadian dollar (Confidential Interview, November 2008).

NEXUS has evolved to become important from at bilateral political perspective, as it provides an opportunity for Canada to engage the U.S. on security matters (Confidential Interview, CBSA, March 2009). The program provides a venue for continuous communication between the two border agencies and a solid, positive example of security cooperation that can be drawn on during political negotiations between the two countries.

Canada also used the program as an example of a co-managed border and a model for a trusted traveler program when reaching out to the European and Asia Pacific Economic Cooperation (APEC) countries. This gave Canada a level of influence on border management related issues it may not have otherwise had (Confidential Interview, CBSA, November 2008).

There is a growing trend at the international level toward pre-registered traveler programs using biometric identifiers and technology, such as smart gates, to expedite border clearance

processes. Many countries are developing programs similar to CANPASS and the American Global Entry Program. NEXUS is currently the only bi-national program; however the Americans have begun negotiations with several EU member states to link the U.S. Global Entry program to the programs that already exist in the EU countries, such as the Dutch Privium program. Eventually, with Canada's participation these programs will be linked to NEXUS (Confidential Interview, CBSA, March 2009). This growth in trusted traveler programs was prompted by strong American approval for NEXUS; the U.S. has a high degree of confidence in the membership and the quality of the program (Confidential Interview, CBSA, November 2008).

The idea of NEXUS has spurred a vision of linking trusted traveler programs in the hopes of developing a multi-national program. There are many issues that arise for this type of multi-national program, including criteria for risk assessment and what would occur if a person is approved in one country but not another. Other issues arise concerning privacy, the sharing of personal information, and fee collection. Further, issues regarding the governance structure also arise at this level which currently have no formal way to be negotiated or addressed. They are complex issues and gradual, incremental steps will eventually lead to a mutli-lateral program (Confidential Interview, CBSA, March 2009).

The main strength of the program is governance and cooperation. All levels of CBP and CBSA officials meet at regular intervals, from the CBP Commissioner and the CBSA President to working level groups, to address issues with the program. Possible scenarios are discussed at the working group level, including ideas for potential solutions, which are then taken to the senior level. Both Canada and the U.S. have promoted the NEXUS model of cooperation, as it allows each side to express concerns and bring forward issues for discussion (Confidential Interview, CBSA, November 2008). This has been solidified by several agreements and a Memorandum of Understanding on the program and its governance (Confidential Interview, CBSA, November 2008). There are daily phone calls between counterparts at the two agencies, leading to a stronger

understanding between the two partners. There are strong discussions as each side pursues their own interests or a particular view, with neither side hesitating to "push back" when needed (Confidential Interview, CBSA, November 2008).

Another of the main successes of the program is its technology. The International Civil Aviation Organization recognizes this feature of the program, as the iris scan is a well accepted, secure biometric (Confidential Interview, CBSA, November 2008).

These aspects of the program, governance and technology, represent the future of border programs. Travel is expected to increase over the next decades; security policy specialists and officials at the CBSA suggest that instead of increasing the size of border facilities by increasing the number of lanes available at crossings or in airports, for which the cost of expansion can be prohibitive, borders need to be made "smarter" by using technology and available traveler information. This "smarter" is what NEXUS represents, technology coupled with traveler data. The program is part of a broader "smart border" strategy, but it is also a significant driver behind it (Confidential Interview, CBSA, November 2008). The program is not a panacea, but it is part of the solution by allowing for a successful risk management solution to the border.

Stakeholder consultation has been an important aspect of the program in the post 9/11 context. Evaluations of the program have shown strong stakeholder approval, especially in the private sector (Confidential Interview, CBSA, November 2008). The CBSA has tried to include private stakeholders as much as possible. For instance, a representative of the Vancouver Airport Authority was present during certain NEXUS Air meetings and many private stakeholders have been involved in publicising the program (Confidential Interview, CBSA, November 2008). Many of these interests are in border communities, who have a vested interest in supporting trade and tourism between the two countries.

Kingdon indicates the role of interest groups as influential depending on who is listening to them (Kingdon, 2003, p. 48). As with the case of CSI, the inclusion of stakeholders in the

policy process for the program limited the pressure interest groups applied on public officials. The most important difference between the two programs is that the CSI affects mostly businesses, whereas NEXUS affects businesses, tourism, and border communities. NEXUS received no public opposition from interest groups but it did receive public support from the Canadian-American Border Trade Alliance, Airport Authorities, and Travel and Tourism Associations. The inclusion of stakeholders therefore helped not only to ensure those groups most affected by the program felt they had a forum for their concerns , but also helped generate support for the program. The point of NEXUS is to allow expedited access to each country, thereby allowing border communities to continue to have relatively unimpeded access to all parts of their community.

Program Evaluation

There are both internal and external criticisms of the program. Internally, there are concerns on the part of border agents that NEXUS members view the program as a "licence to smuggle," as many border agents have experienced attempted cheating by program members (Beeby, 2008, ¶ 5-6). It is not clear from Beeby's article if this cheating is limited only to cheating on items that must be declared, such as particular food items, or smuggling of illegal substances, such as drugs.

From an external point of view, "smugglers" failing to declare the total value of goods purchased in the U.S. represents a different problem than engaging in criminal activity. As a trusted traveler program in the post 9/11 context, the main goal of the program is to detect terrorists and focus on security, the occasional member trying to smuggle in one shirt too many is not a serious problem associated with the program. This view is held by the Senate Committee on National Security and Defence. In the 2007 report *Canadian Security Guide Book 2007: Border*

Crossings the committee is clear that it believes too much attention is paid to minor duty infractions and too little attention to security (Senate of Canada, 2007, p.1).

A second issue identified by Beeby is keeping the files of NEXUS members up to date. Of 2,000 surveys sent out to NEXUS members 500 were returned because of wrong addresses (Beeby, 2008, ¶ 12). NEXUS members are responsible for updating their information, either through the U.S. Global Online Enrollment System or by contacting a U.S. Enrollment Centre or the Canadian Processing Centre, and are advised of this at the time of enrolment (Confidential Interview, February 2009). They are advised if they do not keep this information up to date they could lose their membership (Confidential Interview, CBSA, February 2009). Relying on users to update the agencies when there is a change is perhaps not the most effective option; however, the CBSA determined it would be too onerous a task to follow up regularly with members to determine if there have been personal information changes, such as addresses (Confidential Interview, CBSA, February 2009). The CBSA does not have the resources to conduct an investigation into every case where a letter is returned due to a wrong address (Confidential Interview, CBSA, March 2009). Though updated information is an issue, it does not change the member's biometric identification or the security checks done by the agencies for members.

Other external criticisms of the program include frustration by highway and marine users that NEXUS benefits are only available if all people in the vehicle or boat are members. However, the NEXUS designation is not given to a vehicle or boat; it is given to the person. This is an unfair criticism of the program. It would defeat the purpose of the program if anyone could use the NEXUS lane so long as they were with a NEXUS member. Though it would make the lives of those in vehicles and boats more convenient, the program is designed as an exchange. Those who have not provided the personal data are not entitled to easier border clearance.

One of the more important concerns has been the potential theft of personal information from the RFID chips. The RFID chip broadcasts continuously, not only when approaching a

border crossing. The potential for someone to have a small handheld receiver with the ability to read to chip does exist. However, as described earlier, the only information the chip broadcasts is a number. The number corresponds to a file in the CBSA or CBP database, which is secure. Without the database the information is simply a number, and therefore the member is not at great risk. There is also the possibility of placing a cover over the card that would block the signal; the member would then remove the cover as they approached the border.

There is also some concern that NEXUS lanes are not available at all border crossings. However, most crossings where NEXUS is unavailable do not have high enough volumes of travelers to warrant its necessity. Given initial NEXUS members were commuters and business people traveling through the busiest crossings, this was not initially an issue. As the program has expanded to include members of the general population this issue was raised. However, those who sign up for the program are generally those who live near a land crossing and are unlikely to sign up if their preferred crossing does not have a NEXUS lane. This is illustrated by the geographic distribution of members. There are very few NEXUS members in the Prairie Provinces or the Atlantic Provinces. However, there is a large concentration of NEXUS members in Southern BC and Southern Ontario (Confidential Interview, CBSA, October 2008).

As for airports, the CBP and CBSA accept the NEXUS card as a valid travel document at all airports when the traveler is flying between the U.S. and Canada. The eight busiest international airports in Canada[4] also have pre-clearance lines specifically for NEXUS members. There are, however, no pre-clearance lines in American airports.

Concerns regarding infrastructure have also been expressed, especially at land crossings. If a NEXUS member must first sit in traffic for an hour before reaching the NEXUS lane then it does not offer enough of an incentive to join the program. This has been identified as an issue in Southern BC and Southern Ontario, specifically at the Sarnia crossing. Officials interviewed

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[4] The airports are: Vancouver International, Toronto Pearson, Ottawa Macdonald-Cartier, Montreal Trudeau, Halifax Stanfield, Calgary International, Winnipeg Richardson, and Edmonton International.

suggest there needs to be a dedicated approach, not just a dedicated lane (Confidential Interview, CBSA, October 2008). Where it is feasible, there has also been some discussion of integrating the NEXUS and FAST lanes.

Yet this problem cannot be dealt with solely by the CBSA and the CBP. There are other stakeholders involved, especially in urban areas such as Detroit/Windsor. For any expansion or development there needs to be a high degree of coordination between all stakeholders, including the border agencies, other federal agencies, state or provincial administrations, municipal administrations, and private owners.

The Detroit/Windsor crossing is a good illustration of this point. The first level of coordination is between the CBP and the CBSA. The second level is with other federal agencies or departments, such as Transport Canada. The third level is with state or provincial levels of government, as they are often responsible for infrastructure in the area, such as roads.

The Canada-US-Ontario-Michigan Border Transportation Partnership is an example of cross-border infrastructure coordination. The Partnership is responsible for the Detroit River International Crossing Project and is a partnership between Transport Canada, the U.S. Department of Transportation's Federal Highway Administration, the Ontario Ministry of Transportation, and the Michigan Department of Transportation. In January 2004 the Partnership produced a Study Report "identifying a long-term strategy to meet the needs of the transportation network serving the border between Southeastern Michigan and Southwestern Ontario" (Detroit River International Crossing Project, n.d., Welcome section, ¶ 1).

A key objective of the Partnership is to develop an integrated environmental study process (Canada-US-Ontario-Michigan Border Transportation Partnership, n.d., Stage 2: TOR/P&N section, ¶ 1) and in January 2004 it released an Environmental Overview Report written in consultation with Environment Canada, the Ontario Ministry of the Environment, the U.S. Environmental Protection Agency (EPA), and the Michigan Department of Environmental

Quality among others. In May 2004 the Ontario Ministry of Transportation submitted a required Environmental Assessment Terms of Reference to the Ontario Ministry of the Environment (Detroit River International Crossing Project, n.d., Welcome section, ¶ 2) and on the American side all stages of the project development must comply with the National Environmental Policy Act, requiring EPA concurrence at three stages (Canada-US-Ontario-Michigan Border Transportation Partnership, n.d., NEPA: P&N, ¶ 1). This identifies the horizontal coordination that must occur at the federal and state/provincial levels, as well as the vertical coordination between them all.

A fifth level of coordination is with those who own the land and/or infrastructure (e.g. buildings, rail yards, parks, etc) in the area. At times it is the local level government or city that has ownership and at times it is private stakeholders. This can include infrastructure at the crossing as well as land. In the Detroit/Windsor case, the main crossing between the two cities is the privately owned Ambassador Bridge. An additional and equally important challenge for coordination in the case of private ownership is illustrated by the conflict between the owner of the Ambassador Bridge and the Border Transportation Partnership, which envisions a publicly owned crossing.

The 2007 Ambassador Bridge Enhancement Project further highlights the importance of coordination as it entails the construction of a second bridge west of the current one; once completed the current bridge would be closed for repairs. The project includes an environmental assessments conducted by the U.S. Coast Guard and Canadian Environmental Assessment Agency (Ambassador Bridge, n.d.). An additional government stakeholder was introduced when an assessment of the project was conducted by the Michigan State Historical Preservation Officer. The officer concluded the proposed project would result in an adverse effect to the existing Ambassador Bridge as the structure is eligible for listing in the National Register of Historic

Places (Ambassador Bridge, n.d., United States Coast Guard Draft Environmental Assessment Release section, ¶ 2).

Even if the infrastructure was developed after the lengthy planning, development, and approval process there is still the issue of staffing. Recruitment and retention issues have been identified by Timmerman in July 2008 and training issues by Meyers in 2005. Meyers reviewed the "One Face at the Border" initiative of DHS and found issues with regards to expertise and knowledge with immigration and agriculture rules (Meyers 2005, 16-19). Timmerman also speaks to this initiative and emphasises the need for increased staffing, especially along the northern U.S. border. Timmerman also identifies insufficient training and lack of staff as hindering the ability of CBP officers to properly protect the U.S. (Timmerman, 2008, Challenges at the northern border Ports of Entry section, ¶ 1). If under current circumstances there are not enough agents trained for these tasks it may not be genuinely feasible to expand the border by adding new lanes or expanding programs offered, as this would only strain already stretched staff resources.

Conclusion

As with the CSI, NEXUS does not completely fit into Kingdon's model. More investigation into PACE and CANPASS as well as the NEXUS pilot would be necessary to determine the political climate in Southern BC and Northern Washington in the 1980s. The same would be needed for Southern Ontario and Central Michigan in the 1990s. Who the main proponents of the program were, how it came to the attention of decision makers, and what the policy's path was, are questions that would all need to be investigated to determine the policy evolution of NEXUS.

Following 9/11 there had already been evaluations of PACE and CANPASS to identify issues with these programs. Given that NEXUS had just finished its own pilot and resolved some

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of these issues, it is not surprising the program was chosen over the others. It also presented a program that could be implemented nation wide, something for which the Americans did not originally have a plan. The resumption of the NEXUS working group following the Smart Border Accord and the meetings between the CBP Commissioner and CBSA President are the most important elements to consider in the development of NEXUS policy. They represent important windows of opportunity for feedback, coordination, and policy development. There are two things here that Kingdon does not take into account: international working groups and special committees. Both of these can have an important role in Canadian border policies.

The program has been successful to date. There are some issues with it: members attempting to cheat for instance, keeping the membership list current, and limited market penetration. However, overall the program has been successful in allowing border agents to focus their attention on non-screened travelers and making border crossings faster for members. Continued growth of the program suggests the benefits of the program are starting to be considered by the public, likely due to incoming WHTI rules and the marketing of the program.

NEXUS also has potential to help improve security by allowing border agents to concentrate their efforts on travelers about whom very little is known. This will only occur if a substantial number of travelers enrol in the program and there are increased border crossings with NEXUS capability. According to B. Neinast, a Chief Patrol Agent for the U.S. Border Patrol, as of July 2008 the total of land border Trusted Traveler crossings was only nine percent (2008, p. 9). This number is not high enough to provide the additional security benefit of resource concentration away from trusted travelers.

The NEXUS program has provided a template of border cooperation that the U.S. is now using to expand its cooperation with other countries. It has been looking at developing a Nexus Air program with several European countries, including the UK and Germany (Confidential Interview, CBSA, October 2008.) Canada has been very supportive of these initiatives and has

led preliminary discussions with members of the G5 and G8 about developing a similar program between members.

Joint administration and the bi-national working groups of NEXUS represent an important step in cross-border Canadian/American cooperation. The program institutionalizes a forum for cross-border feedback and cooperation for issues specifically related to border management. The program builds trust between the two border agencies and gives them a solid understanding of each other's operating methodologies. NEXUS' success it could open a window of opportunity for other border security policies to move forward.

CHAPTER 6: CONCLUSION

The primary, secondary, and tertiary repercussions of the events of 9/11 still reverberate eight years later. The primary impact was on security as the vulnerability of the U.S. and other nations to the threats posed by terrorist groups, both external and subsequently home grown, were made clear. The security overhaul in the U.S., of which border security is a part, resulted in secondary and tertiary effects. The new security concerns led to legislative and political changes; some of the security changes led to the secondary repercussion: the economic impacts – actual and anticipated. The economic impact in turn led to a tertiary impact, policy adaptation in Canada.

This thesis has focused on the secondary and tertiary impacts. The overall economic impact is somewhat ambiguous. As Flynn (2003) pointed out the immediate response to 9/11 was a self imposed embargo, as every truck, car, driver, and passenger was examined and thereby creating sixteen hour waits at the border (p. 115). However, this did not last more than a week and as Goldfarb (2007) points out, U.S. imports from Canada have not decreased in the past several years. There had been small fluctuations due to exchange rate variations, but the overall level of exports has remained steady, at least until the beginning of the 2008 recession.

Nonetheless, the new border security environment has resulted in important new costs associated with crossing the border (Goldfarb, 2007, p. i). Programs such as the Container Security Initiative and C-TPAT required adjustment on the part of companies, increasing costs by necessitating the purchase of new technology, creating new fencing and restricted areas for drivers, improving surveillance, and creating employee awareness programs (Goldfarb, p. 13). In the long term, these increasing costs absorbed by Canadian companies could reduce their competitiveness. As with levels of exports, this has increased in relevance since the 2008

recession. The recession has resulted in a reduction of Canadian imports, further putting pressure on Canadian companies exporting to the United States.

It was these secondary impacts of 9/11 – the potential economic consequences – that were the most relevant for Canada. They did, however, also concern American interests; especially companies with integrated supply chains such as the big three automakers in Ontario and their suppliers in Michigan and other mid-western states. A second economic impact felt by American domestic interests, perhaps not as strongly, was the decrease in the number of visitors to the U.S due to new travel regulations and public perception of enforcement practices.

The tertiary effect described here was the policy adjustment in Canada. Due to the importance of secure market access to the competitiveness of Canadian firms and Canada's ability to attract foreign investment, the Canadian government needed to assure continued, regularized access to U.S. markets. In the post 9/11 context, security hawks in the U.S. raised concerns about terrorists' potential use of Canada as a backdoor to enter the United States. The Canadian government needed to reassure the American government that it was doing everything possible to prevent this from occurring to continue to enjoy regularized access to U.S. markets for their companies.

The events also highlighted the importance of security as a domestic policy consideration for Canada, a less likely target than the U.S., but an ally in the War on Terror and contributor of troops to Afghanistan. There was a need to evaluate Canada's own security policies to protect Canadians; however, the Canadian government used the events to review all policies related to public safety and emergency preparedness. Border security was a key component of these new policies.

Main Objectives & Conclusions

The main objective of this thesis was to provide an explanation for the development of border policies in Canada following 9/11, a tertiary effect of the events of that day. A second objective was to test Kingdon's policy streams model in the context of border security policies. The two objectives are accomplished together: by using Kingdon's model to provide an explanation of policy development in Canada. The second, fourth, and fifth chapters trace the development of border security policy and specific programs.

The major developments in Canada following 9/11 described in the second chapter – the Smart Border Accord, the creation of the CBSA and the National Security Policy – provide the political and administrative framework for understanding the development of border security policies. The identification of electoral cycles in Canada and the U.S. in the third chapter, as well as the U.S. appropriations cycle, are important constraints on the windows of opportunity for changes to cross-border related policies. It is one of the more important contributions of Kingdon's model to understanding the process of policy development. It becomes even more relevant when considering trinational cooperation on border security issues.

The fourth and fifth chapters provide a more detailed examination of border security policies by looking at the development of the CSI and NEXUS. The evolution of these programs demonstrates the more detailed working level aspects of policy development. Kingdon's policy model does provide a reasonable explanation of why and how the developments occurred. The key concepts introduced by Kingdon are the three independent streams and their coupling, as well as the opening and closing of policy windows. The increased chance of a particular idea gaining relevance when the three streams of problem recognition, policy development and political events join is important in the context of border security. However, in this context it is policy development and political events that are most important. When a policy emerges that could improve the effectiveness and/or efficiency of restricting and allowing access to the border, it can

be pushed forward without a clear problem being identified, subject to the broader availability of resources. Ensuring the safety and security of its citizens is a priority for all governments. Therefore improvements to border security and other broader security goals do not always need a problem indicator to prompt change.

The applicability of the model to program developments such as CSI and NEXUS is more limited. In Canada, the CSI was primarily driven by the CBSA in response to developments in the U.S., and fits better into a state-centered model. The acceptance of the program was driven by the relationship Canada has with the U.S. and Kingdon's model does not allow for international factors to influence policy. In some cases, the actions and policies of American decision- and policy-makers can influence actions and policies in Canada, but Kingdon's model only considers domestic influences. It does not take into account the asymmetrical relationship between countries of substantially different sizes and levels of power such as Canada and the United States. Kingdon's model was not developed to do so. There is no country that exerts influence over the U.S. in the same way that the U.S. can exert direct or indirect influence over other countries.

As with the CSI, Kingdon's model does not completely explain the development of the NEXUS program. The Smart Border Accord and the desire by the U.S. for greater security at the border following 9/11 did represent important policy windows. However, border management cooperation between Canada and the U.S. since the 1995 Shared Border Accord and the pre-9/11 NEXUS pilot were important factors in the development of the current NEXUS program and involved international working groups and special committees. The international cooperation resulting from the program cannot be explained by Kingdon's model.

The analysis of both broader American and Canadian border security policies as well as the case studies demonstrated the effectiveness of using Kingdon's model as a policy tool, the second objective of the thesis. The model was more useful in the case of broad border policy

rather than specific program development. This suggests that Kingdon's model has limited applicability at the working level; however working level policy is usually based on instructions from senior officials, who make policy decisions based on the government's agenda. Assessing how specific ideas or policy ideas rise on this agenda is the principle aim of Kingdon's model. Kingdon provides a model that accomplishes this task in the case of Canadian border security policies.

The Road Ahead

The current dynamics of the relationship between Canada and the U.S. are unlikely to change in the years ahead. The U.S. will remain Canada's largest trading partner and primary export destination. American influence, whether direct or indirect, will continue to play a role in security policies at the border. The most important factor is whether Members of Congress and senior administrative officials believe Canada is doing its part to ensure it is not used as a back door into the U.S. by individuals or groups hostile to that country. If those in Washington are satisfied that Canada is doing its part, meeting the primary policy goal of the U.S. – security – then there is a greater likelihood that U.S. officials will be willing to cooperate with Canada on economic issues, meeting the primary policy goal of Canada – stable access to American markets.

How these programs move forward in the next few years will be determined by the successes and failures of security policies in the U.S. or Canada. By establishing programs such as the CSI that prevent a weapon of mass destruction from ever reaching its destination, American and Canadian government officials hope to reduce the likelihood of an attack. By establishing programs such as C-TPAT – Partners In Protection (PIP) in Canada – that protect the supply chains of many industries, these same officials hope to increase the resilience and recovery rate of trade flows in the event of another attack. If another attack on the U.S. should occur and DHS determines the supply chains were not exploited then trade could continue as

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usual, lessening the impacts of the attacks. Taken together, these programs create multiple layers of defence for the citizens and economies of Canada and the United States.

The CSI may also be adapted to meet new requirements. In 2007 the U.S. Congress enacted a one hundred percent screening mandate as part of the Implementing Recommendations of the 9/11 Commission Act, requiring all cargo be scanned before entering the U.S. by land, air and sea. There are concerns by independent researchers as well as the Government Accountability Office that this is simply not feasible and will divert limited resources unnecessarily. It remains to be seen how the new Obama administration approaches the risk management versus risk avoidance debate. There is some indication that DHS Secretary Janet Napolitano – who served as the Governor of Arizona before her nomination as Secretary – is more open than some previous senior officials to the risk management approach. In her pre-hearing questionnaire to the Senate Committee on Homeland Security and Governmental Affairs, she commented that container security is about secure global supply chains, not just securing ports and acknowledged the limitations of the Secure Freight Initiative's screening requirements (Napolitano, 2009, p. 54-55). The degree to which maritime programs like the CSI change will depend on how the Obama administration moves forward on maritime security and the approach it takes to broader security goals.

What lies ahead for NEXUS is more certain. There has been very little political conflict surrounding the program or its implementation. It is not a compulsory program for travelers and imposes no cost on those who do not want to participate. There have therefore been few domestic constituent concerns raising the issue at the political level. Its lower cost compared to a passport and the access to faster entry into either country give the program much appeal for regular travelers. The WHTI rules have prompted an increase in demand for program membership. However, it remains to be seen how far market penetration will go.

The format of NEXUS as a jointly administered program will hopefully lay the groundwork for other joint programs and future collaboration related to border security. The key benefit to a joint program is the exchange of information. The CBSA and the CBP provide information to the same program database, assuring the Americans that no one who they believe could pose a risk to the U.S. is allowed membership. This provides confidence in the program and trust between the countries. As one of the first programs of its kind, NEXUS helped resolve issues preventing collaboration, such as privacy concerns. Resolving these issues is key to expanding other cross-border administered programs, such as FAST.

Further Research

As touched on earlier in this chapter, Kingdon's model does not take into account the asymmetrical relationship between Canada and the United States. From the Canadian perspective the need for the Smart Border Accord was based on the need to continue cooperation with the U.S. for economic reasons. There were certainly domestic pressures and problem indicators after 9/11; however, some of these domestic pressures were caused by the situation in the United States. The origin of these pressures can be important in understanding when and why domestic pressures emerge in Canada. The degree of influence of an outside actor such as the U.S. can also be important depending on the strength of that outside force.

There are two elements from the second chapter that warrant further exploration. Kingdon does not deal with the relationships between actors, such as lobbyists and Senators, or the influence of other, more important, policies which may "spill over" from one policy stream to another. These are important to examine in predicting which policies will be adopted. Ideas and contributions of interest groups who do not have access to influential members of Congress are unlikely to achieve prominence. Ideas or policies that are in conflict with more important policies, such as immigration in the U.S., are also unlikely to achieve prominence.

The extent that administrative arrangements for existing policies are affected by electoral cycles is another area that warrants further research. A closer examination of the relationship and levels of influence between the relevant agencies and departments, as well as the role of particular policy entrepreneurs within these departments and agencies, would help identify how the distraction and turnover associated with electoral cycles influence policies.

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