

Skills Research Initiative

Initiative de recherche sur les compétences

Is there Scope for Enhancing the Mobility of Labour Between Canada and the United States?

Michael Hart
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Working Paper 2004 D-04

Human Resources Development Canada/Développement des ressources humaines du Canada
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Abstract

Over the past twenty-five years, integration between Canada and the United States has accelerated perceptibly, driven in large part by the demands of firms and individuals in both economies for the goods and services produced in the other, but facilitated by policy developments such as the negotiation of the Canada-US Free Trade Agreement. The extent of cross-border linkages that now tie the two economies together has created a dense pattern of private and public cooperation that is further deepening integration. The free movement of people, particularly movement to pursue temporary work assignments, remains one of the areas for which there remains significant scope to do better. This paper argues that Canada has much to gain and little to lose from an aggressive effort at reducing the impact of entry and regulatory restrictions that deter cross-border Canada-US labour mobility. The principal focus of such an initiative should be the border because that is where the most restrictive impact is administered. Additionally, useful results can be gleaned from a more active, bilateral program of regulatory cooperation aimed either at mutual recognition or similar approaches to certification, accreditation, and other deterrents to the cross-border deployment of scarce professional expertise or reducing the impact of relatively minor differences in labour-market and similar regulations. Canada's long-term goal should be to move toward an open border between the two countries, with customs and immigration inspection reduced to spot checks, backed up by tighter and mutually agreed approaches to customs and immigration issues involving goods or people from third countries. Such an initiative needs to be an integral part of a larger and more ambitious project to design how the two governments can best work together to govern their common economic and security space to the mutual benefit of their citizens. Such a new bilateral accommodation needs to engage the full spectrum of issues where the two societies connect and have common interests, from security and immigration to the regulation of consumer safety and the treatment of third-country goods.

Résumé

Au cours des vingt-cinq dernières années, s'est accélérée sensiblement l'intégration entre le Canada et les États-Unis, à la faveur principalement de la demande, par des entreprises et des particuliers dans les deux économies, de biens et de services produits dans l'un ou l'autre pays, mais elle a été facilitée par les résultats de décisions d'orientation des politiques comme la négociation de l'Accord de libre-échange entre le Canada et les États-Unis. L'étendue des liens transfrontaliers qui unissent maintenant les deux économies a favorisé une intense coopération entre le secteur privé et le secteur public, coopération qui est en train d'intensifier encore davantage l'intégration. La libre circulation des gens, particulièrement la circulation découlant du travail temporaire, demeure un des domaines où s'offrent encore de nombreuses possibilités de faire mieux. L'auteur du document soutient que le Canada a beaucoup à gagner et peu à perdre d'un effort énergique visant à réduire les répercussions des restrictions à l'entrée et des restrictions de la réglementation qui nuisent à la mobilité de la main-d'oeuvre entre le Canada et les États-Unis. Il est d'avis qu'une telle initiative devrait viser principalement la frontière, car c'est là que sont administrées les incidences les plus restrictives. Il

estime, de plus, que peuvent être obtenus des résultats utiles de la mise en oeuvre plus active d'un programme bilatéral de coopération en matière de réglementation axé soit sur la reconnaissance mutuelle, soit sur l'adoption d'approches similaires dans les domaines de la certification et de l'accréditation, soit encore sur les autres mécanismes qui nuisent au déploiement transfrontalier d'une rare expertise professionnelle, soit enfin sur la réduction de l'impact des différences relativement mineures entre les règlements régissant le marché du travail et les règlements similaires. Le Canada devrait avoir comme objectif à long terme de s'orienter vers la création d'une frontière ouverte entre les deux pays, où les inspections à des fins de douane et d'immigration seraient réduites à des vérifications au hasard, mais une frontière renforcée par l'adoption de manières communes et plus strictes d'aborder les questions de douane et d'immigration touchant aux biens ou aux personnes venant d'autres pays. Une telle initiative doit faire partie intégrante d'un projet de plus grande envergure et plus ambitieux visant à déterminer comment les deux gouvernements peuvent mieux travailler ensemble pour régir leur espace économique et de sécurité commun, et ce, à l'avantage mutuel de leurs citoyens. Un tel nouvel accord bilatéral doit aborder l'éventail complet des questions où les deux sociétés se rejoignent et ont des intérêts communs, allant de la sécurité à l'immigration, en passant par la réglementation de la protection des consommateurs et le traitement des biens provenant des autres pays.

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High principles and low prejudices ... combine uneasily in the restrictive immigration practices of most countries. ... [T]here is practically universal agreement, among modern states, that free flows of human beings, no matter how efficacious for world efficiency, should not be permitted. Today, immigration restrictions are virtually everywhere, making immigration the most compelling exception to liberalism in the operation of the world economy.

Jagdish Bhagwati, US trade economist¹

Today, the border between Canadian and US labour markets is somewhat more open than it was at the end of the Second World War. But, in comparison with the markets for products and capital, it is still the least open. This is because of immigration policies and a multitude of different provincial, state, or federal licensing laws in the two countries. To achieve the full benefits of a single market, significant freeing up of laws and regulations that impede labour mobility would be needed."

David Dodge, Governor of the Bank of Canada²

Introduction

In various papers published over the past three years, Bill Dymond and I have argued that political, economic, security, and other factors all point to a growing need for Canada and the United States to pursue a new accommodation to govern the accelerating integration of their two societies.³ The analysis supporting this conclusion proceeds as follows:

- The Canadian and US economies have become much more intertwined over the past quarter century in response to demands by Canadians and Americans alike for each other's products, services, capital, and ideas, creating jobs and wealth across many sectors and accelerating the forces of mutually beneficial integration.
- The framework of rules and institutions developed since the 1930s have worked well to facilitate and govern this process of "silent", market-led integration, but the continued presence of a heavily administered border and of similar but differentiated regulatory regimes now undermines the ability of firms and individuals on both sides of the border to reap the full benefits of deepening integration.
- Continued reliance on the border to enforce a range of public policy objectives poses a threat to the integrity of cross-border supply chains, particularly in a world that has become more sensitive to security threats, while the development of a less intrusive border built on enhanced trust and mutual confidence, will amplify opportunities to invest in a seamless North American economy.
- New, deep-integration arrangements need to be an integral part of a larger and more ambitious project to design how the two governments can best work together to govern their common economic and security space to the mutual benefit of their citizens. Such a new bilateral accommodation needs to engage the full spectrum of issues where the two societies connect and have common interests, from security and immigration to the regulation of consumer safety and the treatment of third-country

goods. In each instance, the case for cooperation is well established by years of informal practice, but now needs to be reinforced and upgraded by more formal arrangements.

- The key to successful new arrangements will be the establishment of flexible institutions capable of addressing the dynamic nature of modern markets and regulatory regimes. Markets work best when reinforced by limber but effective institutions, including cooperative bilateral institutions.
- In the absence of an active approach to building institutions and procedures for joint governance, Canada faces one of two undesirable prospects: either drift towards US-determined default positions on most matters related to the regulation of the market, or a conscious effort to assert Canadian regulatory independence. In both instances, Canada will enjoy the illusion of independence and the reality of economic performance well below potential.

Among issues that continue to hamper deeper, wealth-creating integration are government-imposed barriers to the mobility of labour. In negotiating the Canada-United States Free Trade Agreement (CUFTA), Canada and the United States recognized that easing restrictions on the temporary entry of business travelers was critical to the success of the agreement. Not surprisingly, the chapters on temporary entry in both the CUFTA and its successor, the North American Free Trade Agreement (NAFTA), have proven their value. Given the extent of cross-border integration today, should the two governments now consider taking further steps to facilitate the cross-border movement of people?

From an economic efficiency perspective, there is much to be gained from easing restrictions on labour mobility.⁴ As technology has become more sophisticated and integration has deepened, the scope for delivering services on a cross-border basis has increased, and the key to service delivery is people. Similarly, as goods production has become more integrated along north-south lines, the need to deploy key personnel where they are most needed has increased. Reducing barriers to the efficient deployment of human resources is critical to reallocating labour from declining, low-productivity to expanding, high-productivity sectors. In the highly competitive, post-industrial North American economy, market success depends more on developing market niches based on quality and service — factors heavily dependent on the effective utilization of human resources.⁵ As the *OECD Observer* concludes: “As business goes global, and product cycles shorten, companies need to be able to move more people — and more types of people — around more countries for shorter periods and at shorter notice.”⁶

Thus, as helpful as the temporary entry provisions of the CUFTA/NAFTA have proven, there is scope to do more. Doing more, however, engages security and related considerations, particularly in the aftermath of 9/11. Security threats are now much more varied and sophisticated than in the past and entry controls are perceived to be critical to reducing risk. Addressing cross-border labour mobility as part of a broader effort at cooperation in governing the treatment of people from third countries would significantly enhance the prospect of success and, concurrently, build confidence in the commitment of the two governments to both the security and the prosperity of North America.

This paper examines the extent to which border entry controls, labour-market restrictions, and related regulatory regimes undermine the ability of Canadians and Americans alike to reap the full benefits of deepening bilateral integration and considers the issues that would need to be addressed in order to facilitate the cross-border movement of labour. The paper focuses in particular on issues related to temporary, short-term labour mobility, rather than longer-term migration, because the former is of greatest import in gaining the full benefits of deepening integration. Specifically, it considers seven major issues affecting short-term labour mobility in the more integrated North American economy:

- How well do the NAFTA labour mobility provisions work? Is there scope for improvement and what would be the likely impact on labour mobility and on trade and investment? Could the list of 63 enumerated professions and associated requirements be discarded?⁷
- How different are the licensing laws and practices governing professionals in Canada and the United States? Can these differences be bridged?
- What other barriers to greater labour mobility in a Canada-US context and in a Canada-US-Mexico context are amenable to intergovernmental resolution, and what is their impact on deepening bilateral integration, including economic, immigration, security, and related considerations?
- Are there relevant lessons from the EU experience on labour mobility in a Canada/US or Canada/US/Mexico context?
- What is the political economy of enhancing cross-border labour mobility in Canada, the United States, and Mexico.
- What are the available options for policy makers and what are the pros and cons of each option?
- What about Mexico? Should changes to labour mobility provisions be pursued under NAFTA, or can they only be pursued bilaterally?

The paper is written from a Canadian perspective and focuses on issues of primary concern to Canadians in their trade and investment relations with the United States. Discussion of the Canada-Mexico dimension is limited to those elements that touch upon Canadian interests, e.g., the political economy of labour mobility in the United States or perceptions that NAFTA is the appropriate vehicle through which Canada should address Canada-US bilateral trade and related issues. NAFTA was a product of a specific set of circumstances in the early 1990s. At the time, there were expectations that NAFTA would prove a precursor to the development of a North American community. To date, that has not happened; as such, the NAFTA remains an agreement that governs two robust and growing economic relationships: between Canada and the United States and between the United States and Mexico. A Canada-Mexico relationship remains at a rudimentary level; its absence should not deter either Canada or Mexico from pursuing its interests with the United States. In the words of Jean Daudelin: “Canada’s bilateral relationship with the United States is vital and its management should not be cluttered by the massive complexity of Mexico-US affairs. ... Canada’s relations with Mexico ... will remain marginal to the country’s core interests.”⁸

Some historical perspective

Over the past seventy years, Canada and the United States have made substantial progress in reducing the impact of customs and related regulatory requirements on cross-border exchanges of goods, services, capital, and technology. The results have been impressive and mutually beneficial. The numbers speak for themselves. In 1934, during the depths of the depression and the last year in which the two countries extended each other least-favoured-nation treatment, the value of bilateral trade was equivalent to less than twenty percent of Canada's GDP, and less than one percent of US GDP. Seventy years later, these values have more than tripled. By 2003, the value of goods and services exchanged on a cross-border basis had reached C\$2 billion per day; on an annual basis, two-way trade in goods and services is valued as the equivalent of three-quarters of Canadian GDP and about five percent of US GDP. The result has been the creation of a deeply integrated cross-border economy reflected in vast, sophisticated, and growing cross-border linkages.

Ironically, as the two governments worked together to reduce barriers to cross-border exchanges of goods, services, capital, and technology, they also took steps to increase controls on the cross-border movement of people. Until the early years of the 20th century, there were virtually no such controls. People moved back and forth freely and naturally, with minimum interference from officialdom or requirements for documents. The large number of French-Canadian surnames in the New England states attests to the ease with which enterprising Canadians could move south to seek their fortune. Indeed, in the three decades between 1880 and 1910, people left Canada for the United States at twice the rate that immigrants landed in Canada from Europe. The first stage of urbanization in Canada involved moving to urban centers in the United States. Between 1881 and 1930, the United States welcomed 23.5 million people. One in ten came from Canada, including many who had originally come to Canada from overseas. Admittance was easy, restricted only by issues of health, morals, and finances; in the case of those entering from Canada, there was virtually no paper work.

The open arms of the United States, however, slowly became less welcoming. Restrictions were initially racially motivated: first Chinese (1882), then Japanese (1907), and then East Indians and other "Asiatics" (1917) were excluded. In 1921, the US Congress adopted a full-scale immigration policy with the *Immigration Act* of 1921, limiting permanent entry to people from outside the country on the basis of quotas and more generally imposing stricter entry conditions for nationals from many jurisdictions. Similar to other countries, US authorities began to require visas, passports, and other documents to enter the United States, even for brief visits, and required potential immigrants to apply from outside the country. The increasing scrutiny of travelers was not unrelated to the increasing ease and reduced expense of international travel. Canadian residents, however, continued to benefit from less burdensome temporary-entry rules, including exemption from visa and passport requirements.

In the 19th century, Canada similarly required little documentation and posed few barriers to immigrants. Indeed, immigration laws and policies were largely focused on attracting new Canadians and increasing Canada's population, rather than on regulating

the flow of migrants. In like fashion to the United States, however, racial prejudice, nativism, protectionism, security, and other fears gradually led to a more restrictive approach to regulating immigration and temporary entry, including the flow of people across the Canada-US border.⁹

It is not a coincidence that the move to control the entry of people into Canada and the United States coincided with the greatly enlarged role assumed by governments in the years following the First World War and then the Depression. Jan Tumlir has written that one of the easily forgotten legacies of that era was that it laid the foundation for the intricate involvement of government in society. It ushered in what he called the politicization of the economy, involving political authorities in regulating its structure and operation.¹⁰ The advent of Keynesian economics further bolstered the belief that governments had a large role to play in guiding the economic and social fate of a nation and its citizens and ingrained belief that government needed to control who was and was not part of the nation. The increasing role of economists in government policy, i.e., officials with a high regard for counting and measuring, added to the penchant for regulating more and more aspects of life.¹¹ Finally, industrialization, urbanization, and the rise of the union movement added further impetus to the desire to control and chart the movement of people.

Since the 1930s, the story of controls on the cross-border movement of goods, services, capital, and technology has been either to reduce or circumscribe the role of government through international agreement; controls on the movement of people, however, have been largely immune from these developments. The ability to control who enters and exits and who benefits remains a hallmark of modern ideas of sovereignty, jealously guarded by an officialdom subject to fewer international commitments than almost any other. In the United States, two agencies have popularly been considered to be beyond the pale of democratic oversight: the IRS and the INS — the tax collector and the controller of the gate.¹²

In earlier periods, Canadian and US concerns about the permeability of their borders derived largely from the perceived economic impact, with security playing an important but secondary role. On the Canadian side of the border, the typical first question to incoming travelers, “anything to declare,” captures well Canadian concerns about the impact of foreign goods on Canadian economic interests and the official’s primary role as a revenue collector. On the US side, the first question concerns the “purpose of your trip,” exemplifying the priority attached to the person entering the United States, and the official’s responsibility as a peace officer, a fact punctuated by the prominently displayed sidearm. Canadian border officials are first and foremost customs officials, concerned with the importation of goods; US officials see immigration matters as their first priority, related to both security and economic considerations.

US anxiety about high levels of illegal immigrants and related problems, for example, has led to steady tinkering with the rules, tinkering that has had important impacts on Canada, e.g., section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the latest in a long series of immigration laws.¹³ Since 9/11,

US concerns with the border have been driven even more by security concerns, ushering in a new wave of efforts, e.g., the VISIT program,¹⁴ to plug any potential holes in US controls on the entry of aliens, again with a collateral impact on Canada. Changes in Canadian immigration programs have been much more influenced by the need to attract skilled workers. In the United States, the operative word has been “prevention;” in Canada, it has been “selection.” In addition, both countries have had to address pressures emanating from humanitarian concerns, such as family reunification and asylum for refugees.

Today, 200 million people cross the border between Canada and the United States annually,¹⁵ for brief stays of an hour or two or for extended visits of days or even months, to work, to shop, to visit friends or relatives, to see the sights, to enjoy better weather, or to go to school. More Canadians cross to go to the United States than vice versa. Nearly two centuries of peace and harmony have ensured relative ease in these cross-border movements, and less of a paper burden than faces visitors from overseas. At least for now, no forms need to be filled out by either Canadian or US citizens crossing by land for tourist or personal visits, but those crossing the border for business-related reasons, education, for temporary employment, or similar reasons, continue to attract a high level of official interest. The irony is that as the two societies have become more integrated, controls on the cross-border movement of people have tightened, particularly over the past two and a half decades.

Emerging patterns of cross-border trade and production

Bilateral integration has accelerated significantly over the past twenty-five years. In 1980, two-way bilateral trade in goods and services represented about forty percent of Canadian GDP. By 2000, that figure had nearly doubled to reach about 75 percent, valued at nearly \$700 billion. Annually, some sixteen million trucks, or about 45,000 per day, cross the border to carry much of this trade; the Ambassador Bridge between Windsor and Detroit alone handles over 7,000 trucks a day, or one every minute in each direction, 24 hours a day. About 100,000 passenger vehicles also cross the Canada-US border every day, in addition to millions of tons of freight and commodities carried by planes, railcars, ships, and pipelines.¹⁶

Historically, the driver of deepening Canada-US economic integration has been the “pull” of private market behaviour responding to consumer demand, and that pull has, in turn, shaped the nature of the policy response. While deepening patterns of trade and investment now point to the need for further policy responses, it is also important that the policy responses be consonant with the changing nature of the cross-border pull of trade and investment.

Trade policy and trade agreements from the 1930s through the 1970s were largely designed to eliminate or discipline barriers to exchanges of goods between unrelated parties operating in two separate markets. Today, such cross-border transactions are increasingly the exception. Starting with the 1965 Autopact, the two governments began to address barriers to much more integrative trade and, increasingly, investment. Today,

more than two-thirds of cross-border trade in goods and services is between related parties, taking place either wholly within the confines of a single firm or among parties to an integrated network of firms. One-third of the value of Canada's total exports today is made up of previously imported inputs.¹⁷ The typical automobile, for example, assembled in Canada and exported to the United States, is made up of inputs that may already have crossed the border up to five times as they wended their way up the value chain. Just-in-time production strategies involve an intricate pattern of parts and components flowing from one plant to another; freer trade has made it possible for firms to locate such plants strategically throughout North America, with less and less regard for borders. The automotive sector is the most integrated, but other sectors are rapidly catching up and even resource trade is seeing new patterns of integration. Nevertheless, the continued presence of a border between Canada and the United States, and regulatory differences, also shape such decisions, often to the detriment of locations in Canada.

Traditional trade agreements also assumed that trade was largely a matter of exchanging goods and that the production of goods was the mainstay of economic growth and development. Today, three-quarters of North Americans are employed in delivering services; manufacturing now directly employs less than one in five workers in both countries and manufacturing directly contributes less than a fifth to either country's GDP. More than one-fifth of the value of *recorded* trade transactions now involves the exchange of services. Value derived from licensing, investments, and other non-goods transactions have also become more critical to cross-border economic linkages. The total value of cross-border transactions averaged, on a balance-of-payments basis, \$746 billion annually in the first three years of the 21st century. In addition, an unknown, but growing, share of value is added on the basis of electronic transactions that take place within the proprietary networks of integrated firms with operations on both sides of the border, only some of which is either recorded as trade or generally recognized as part of deepening patterns of cross-border linkages.¹⁸

These emerging patterns of integration are market responses to opportunities created by technological developments. Liberalization embedded in intergovernmental agreements, however, helped to create the environment within which these opportunities proved profitable to firms and beneficial to individuals. The fruits of that liberalization have now been largely harvested between Canada and the United States. The issues that now condition much more varied trade and investment patterns are less classic market segmenting policies such as tariffs and quotas affecting trade in goods, and more subtle regulatory differences affecting the full range of cross-border transactions. Border administration remains important to the enforcement of these differences, but the key to addressing them is less a matter of liberalization and more a matter of designing a cooperative or coordinated approach to governance of the market. In short, in North America, the trade policy of shallow integration based on liberalization is giving way to the challenge of forging rules for deep integration. The focus of liberalization agreements was largely static rule making centered on the cross-border movement of goods; the focus of governance agreements revolves around much more dynamic institutions and procedures affecting a much more varied range of cross-border transactions, including the movement of labour. As Richard Harris points out:

Canada is heavily integrated with the United States on both the trade and investment front. This is affecting the organization of the Canadian economy, the way in which business is conducted, and the role of governments in the economy. When barriers to economic exchange are sufficiently low, markets naturally expand and trade becomes common. The same is true with respect to labour markets. As economic integration of national economies proceeds, at some point the integration of labour markets begins to occur. In the extreme a single, or common, labour market can be created through the cooperation of the participating nations in which labour is free to move among the regions making up the common market area.¹⁹

From a Canadian perspective, the Canada-US border has always been a critical factor conditioning Canadian economic development. In many ways, a recurring theme in Canadian trade policy and trade negotiations has been either to enhance or offset the impact of the border. Initially, Canada sought to increase investment by creating a captive, protected market. The result was a larger economy but a poorer Canada.²⁰ Since the 1930s, Canada has sought to attract investment to serve world markets, particularly US markets. To an investor, serving the North American market from inside the much larger US market makes intuitive sense.²¹ In response, Canadian trade policy has thus pursued, as a constant goal, efforts to offset this natural investor bias.²² Reducing the border effect is critical to this effort, and reducing the border effect on labour mobility is now an integral part of that agenda.²³

Integration and labour mobility

As the Canadian and US economies have become more integrated and knowledge-based, the efficient functioning of labour markets has become more critical to achieving sustained economic growth, increasing productivity, and securing higher standards of living. Highly skilled workers — technicians, scientists, engineers, and other professionals — provide the strategic skills required for innovation, growth, and sustained success in the dynamic economic setting of the 21st century. Barriers to the best use of scarce resources — including human resources — can stand in the way of achieving growth and innovation. Notes Tom d'Aquino, the CEO of the Canadian Council of Chief Executives: "In today's global economy, money flows to locations where it can find the right people — but people increasingly flow to places where someone is willing to show them the money. ... In both the public and private sector, the war is on, and it is a struggle that our society cannot afford to lose."²⁴

Canada's trade-orientated economy is increasingly driven by inter-firm and intra-industry competition and affected by technological change and the cross-border integration of product, capital, and labour markets. Gaining access to and deploying the best human capital is critical to success in the modern firm. Knowledge leading to commercially successful product and process technologies has increasingly formed the basis for comparative advantage, increased trade, and economic growth. However, new business strategies flowing from technological and institutional developments are further increasing pressures for industrial, structural, and labour-market adjustments. It is also creating potential conflict between economic actors, including between the state and the most important agent of cross-border integration, the multi-national corporation (MNC).²⁵ The late Harvard scholar, Ray Vernon, captured this emerging dilemma as follows:

The challenge for policy makers is to find a way of accommodating two quite distinctive regimes in the global economy, each widely accepted as legitimate and constructive, that are bound at times to see themselves in basic conflict. The regime of the nation-state is built fundamentally on the principle that people in any national jurisdiction have a right to try to maximize their well-being, as they define it, within that jurisdiction. The multinational enterprise, on the other hand, is bent on maximizing the well-being of its stakeholders from global operations, without accepting any direct responsibility for the consequences of its actions in individual jurisdictions.²⁶

To a large extent, Canadian firms and labour markets have adapted successfully to the trade and innovation demands of the more open Canadian economy and the interests of more outwardly oriented firms.²⁷ However, some domestic labour-market policies and immigration policies affecting cross-border and inter-provincial labour mobility could be re-examined to assess whether Canada is capturing the full potential benefits from North American integration, increased trade in services, and the gains from the enhanced mobility of skilled workers. The more basic challenge, however, lies in convincing US authorities that both countries can gain from a more permissive approach to labour mobility. The crux of that challenge lies in addressing both the economic and security dimensions of labour mobility and by building on the mutually beneficial experience under the NAFTA's temporary entry provisions.

Experience under CUFTA/NAFTA Chapter 15/16

Throughout much of the 20th century, Canadians and Americans were relaxed about each other's entry requirements. While sometimes a nuisance, they were on the whole an acceptable part of living in harmony with, but distinct from, each other. That attitude, however, began to change in the 1980s as bilateral commerce became more sophisticated, travel easier, and restrictions more onerous. A first concrete sign of this change was evident during the bilateral free-trade negotiations. Canadian business travelers, in particular, indicated that they would like to see a set of rules that reflected the growing reality of deeper integration and removed the need to blur the truth when visiting the United States for business reasons. The result was Chapter 15 of the Canada-US FTA: "Temporary Entry for Business Persons."

Chapter 15 for the first time integrated controls on the temporary movement of labour into a trade agreement. While safeguarding the right of Canada and the United States to determine who could enter, it stipulated that certain classes of individuals from either country, otherwise qualified to enter the other, would be allowed to engage in temporary economic activity. The agreement specified four classes of temporary workers:

- *Business Visitors*, i.e., persons carrying on any business activity related to research and design, growth, manufacturing and production, marketing, sales and distribution, after-sales service, and general service.
- *Professionals*, i.e., business persons carrying out one of 63 scheduled professional activities for an employer or on contract to an enterprise located in a member country other than their own.
- *Intra-Company Transferees*, i.e., business persons who are employed by an enterprise to perform management or executive functions or who bring

specialized knowledge to this enterprise or its subsidiaries or branches established in one of the member countries.

- *Traders and Investors*, i.e., business persons who plan to carry out trade in goods and services principally between member countries, or to establish, develop, administer or provide consulting or technical services for the administration of an investment to which foreign capital has been committed or is in the process of being committed.

The temporary entry provisions of the FTA were carried over into the NAFTA (Chapter 16) with some improvements in the text and coverage.²⁸

In the United States, TN Visas (Treaty Nationals) are administered by the Bureau of Citizenship and Immigration Services (BCIS) in the Department of Homeland Security.²⁹ Prior to NAFTA, Canadians who wanted to engage in temporary economic activity were required to obtain an H-1B non-immigrant visa, which had an annual cap on admissions and contained other provisions intended to protect American workers. The TN visa has since largely supplanted the H-1B as the visa of choice for Canadians entering the United States to work on a temporary basis, including as a shortcut to obtaining a green card providing them with the equivalent of landed immigrant status. Canadians apply at the border and are processed immediately by border officials. Mexicans must apply at US consulates. Prior to 1 January 2004, it was also mandatory for Mexican applicants to file a Labor Condition Application (LCA) with the Department of Labor and the INS. The cap of 5500 Mexican TN visas was also eliminated as of 1 January 2004.³⁰ If a TN professional wishes to continue employment beyond one year, the employer may petition INS for an extension of stay. Extensions are granted in one-year increments. TN status does not include the Dual Intent Doctrine; every time a TN holder enters the United States, the holder must declare an intention not to immigrate to the United States. If the TN holder wishes to file for an immigrant visa, the holder should consider changing his/her status to H-1B first. The major advantages of TN status over H-1B status are:

- Although granted for only one year at a time, the number of renewals permitted is unlimited whereas H-1B status has a definite time cap.
- No forms are required.
- TN status can be obtained in person at the border instead of having to be submitted by mail or courier, as do most other visa applications.
- TN status is available to some people who do not qualify for H-1B status.

The Business Visitors Visa (B-1) permits temporary entry of foreign business people for up to six months, with a possible extension to one year. Under NAFTA, Canadians and Mexicans have more liberal access under this visa, allowing a wider variety of professions to enter. NAFTA also enabled Mexicans to qualify for the first time as treaty traders or investors under the E visa.

In Canada, the NAFTA program is administered by Citizenship and Immigration Canada, in cooperation with the Departments of Foreign Affairs, International Trade, Human Resources and Development Canada (HRDC), and the Canada Border Services

Agency. Canadian employers do not need to have a job offer approved by HRDC to employ a US or Mexican businessperson. Business visitors are exempted from getting a work permit, but applicants for the other three NAFTA categories must apply for one. In the case of American citizens, this is possible to do at the port of entry; otherwise it must be done at a Canadian Embassy in the home country. Generally, no immigration document is issued to a business visitor; however, if terms and conditions are imposed on a visitor's entry, they will be issued a visitor record. A visitor record can also facilitate frequent cross-border entry into Canada, or serve as documentation for extended stays. In addition, after-sales service personnel will be issued a visitor record if the intended stay is to be longer than two days.

US and Mexican professionals, intra-company transferees, and traders/investors can apply for an Employment Authorization at any Canadian embassy, consulate, or port-of-entry. When applying at ports-of-entry, no written application is required from either professionals or intra-company transferees and determination can be made at the time of application provided that all necessary documents are available and that the applicant otherwise meets existing immigration requirements for temporary entry. Traders/Investors are required to provide information on their business by completing an Application for Trader/Investor Status. There is a processing fee for the issuance of an employment authorization. Extensions for intra-company transferees may be granted in increments of up to two years. Upon arrival, applicants must obtain a Social Insurance Number from a local Human Resource Centre.

The success of the CUFTA/NAFTA and related programs can be seen in the numbers. Between Canada and the United States, after an initial slow start, up to 160,000 persons take advantage of temporary entry provisions annually (based on the most recent patterns, an average of about 135,000 Canadians and 25,000 Americans are granted temporary work authorization under NAFTA or other programs.³¹ Because a TN visa may involve administrative delays at the border and costs US\$50.00 on entering the United States, it is not clear that the numbers reflect the full extent of business visitors travelling between the two countries for short-term work assignments. Even if the TN numbers are double, however, the total would still represent less than .02 percent of the labour force of either the United States (ca. 142 million) or Canada (ca. 16 million).³² The economic impact on national labour markets, therefore, is negligible, while their importance to firms and individuals doing business on a cross-border basis is much larger.³³ Much of this kind of temporary labour mobility is trade and investment enhancing, rather than reducing opportunities for local labour.³⁴

In addition to the temporary movement of labour under NAFTA or similar programs, there are modest levels of permanent migrants between Canada and the United States, again with more people emigrating from Canada to the United States than vice versa. There is some controversy about the numbers, but even the largest estimates of permanent migration from either country to the other add up to a small fraction of the temporary entry numbers. From an economic perspective, therefore, the issue is not pent-up demand for labour in either country from the other, but whether the two governments want to ease the flow of people engaged in wealth-enhancing temporary labour mobility.

Doing so requires a clearer understanding of the barriers that may now stand in the way of such flows and their role in meeting other national objectives, including security.

The nature and range of barriers to Canada-US cross-border labour mobility

Despite the success of the NAFTA program, barriers to cross-border labour mobility remain significant, suggesting continued scope for useful efforts by the two governments to work out cooperative solutions to reduce their impact. Some of these barriers are more amenable to resolution than others, some pose more immediate barriers than others, while others are of greater interest in reducing barriers to temporary, rather than permanent, labour mobility. In this section, we provide an overview of the terrain that must be traversed if Canada and the United States wish to take further steps to ease cross-border labour mobility.

Long-term or temporary mobility?

Before considering the impact of various barriers and the prospect for ameliorating them through bilateral discussion, it might be useful to distinguish between the impact of long-term and temporary mobility. NAFTA chapter 16 is specifically aimed at facilitating short-term, business-related labour mobility because this was identified by business groups as an issue critical to making the rest of NAFTA effective. Anecdotal evidence suggests this remains the case. The ability of firms to re-locate key personnel on a long-term basis or for individuals to take up longer term opportunities in the other country are affected by different factors and have different impacts. In the context of considering labour mobility as part of a broader agenda aimed at facilitating deepening integration, it is short-term, temporary mobility that is of primary interest. As discussed further below, experience in the EU indicates that it is both easier and more pertinent to address temporary mobility. Within the EU, barriers to temporary mobility have, generally, been erased, largely on the basis of “negative” measures, i.e., by eliminating border formalities and reducing the impact of differences in accreditation and certification requirements. Barriers to longer term mobility, such as differences in social legislation, in tax levels, and in labour-market regulations, are proving much more difficult to address and often involve “positive” measures, i.e., agreement to harmonize and standardize.

Border controls

The exercise of controls at the border remains the critical first stage in restricting labour mobility between Canada and the United States. Some of these controls are the result of immigration regulations, while others may be the result of relying on immigration officials to enforce regulations that are of primary interest to other agencies. At border check points, immigration officials on both sides of the border need to determine whether a person entering either Canada or the United States is:

- properly documented;
- eligible to enter;
- eligible to enter for the stated purpose; and
- eligible to work, if the stated purpose is other than personal or pleasure.

Border officials dispose of a tremendous degree of authority in making these decisions, able to make determinations on arbitrary and even capricious grounds, and with little recourse for those caught up in negative decisions.³⁵

As with many matters in the United States, laws and regulations governing entry and exit are exceedingly complex, reflecting the piecemeal approach to legislation and rule-making in the United States. US law now provides that visitors can be classified under one of eighty different visa classifications.³⁶ US laws result from the highly brokered US legislative system wherein individual legislators offer amendments and new legislation to address problems, real or perceived, that have sufficient political appeal to attract a supporting coalition of interest groups, fellow legislators, and administration officials. The result is a complex structure of overlapping and even conflicting rules, many out of date or irrelevant to current circumstances.³⁷ The consolidation of the immigration function into the new Department of Homeland Security created an opportunity for some reforms, but did not lead to any fundamental changes in immigration law.³⁸ International negotiations often offer an effective way out of the problems created by the US legislative process by providing a means to streamline and rationalize existing legislation.

Canadian legislation, while generally similar in scope and purpose to US legislation, tends to be more straightforward and easier to comprehend and administer.³⁹ Under Canadian legislative practice, most new laws and regulations are introduced by the responsible minister and are the result of intense discussions within government, including by administrators and by affected officials from other agencies, and with affected interests. Once introduced in Parliament, they are subject to a further round of scrutiny and discussion. Finally, laws and regulations are subjected to periodic efforts to remove overlap, duplication, and ambiguity. The result is a less complex set of rules. In Canada, complexity is more likely to flow from overlap and duplication between provincial and federal responsibility. Most labour market regulations, for example, fall within provincial jurisdiction, but immigration and border controls are administered by the federal government. Addressing greater cross-border labour market mobility, therefore, requires cooperation between the two levels of government.

Canadian and US entry controls flow from similar objectives, but with different emphases. As immigration specialist Peter Reikai observes, “prevention, not selection, remains the current focus of the US government’s immigration agenda. Hence, a long overdue public debate about the objectives of the US immigrant selection process remains on hold.”⁴⁰ In Canada, permanent immigrants are roughly divided between economic and humanitarian (family reunification and refugee) classes. In the United States, four out of five immigrants enter on humanitarian grounds, and less than one in five enters as an economic migrant. Of course, close to half a million economic migrants a year enter the United States without the benefit of documents and permission; the 2001 US census estimated that between 8.7 and 10.2 million illegal migrants resided in the United States, a number that may since have swelled to up to 12 million.⁴¹

The reality of illegal migrants strongly colours US attitudes to cross-border labour mobility and indicates why more than controls on Canadians and Americans crossing the border is at issue. In order to facilitate cross-border labour mobility, the two governments will need to address the full range of migration issues and find ways to address common problems.⁴² A good base for such a cooperative approach has been built as a result of a number of initiatives in the 1990s, all of which have now been subsumed into the Smart Border Accord.

In the 2001 *Smart Border Declaration*, the two governments noted that “public security and economic security are mutually reinforcing ... and that by working together to develop a zone of confidence against terrorist activity, we create a unique opportunity to build a smart border for the 21st century.”⁴³ The most recent update of the Smart Border Action Plan (October 2003) included an announcement by the US Government that Canadian and American citizens would not be subject to the US-VISIT program (entry-exit forms) under current US policy; and that the two countries have committed to working together to identify a way to implement the program that minimizes the impact on border flows and the need for exit infrastructure at the Canada-US land border. “... As we continue to develop our US-VISIT program, we need to ensure that it will enhance our national security while not impeding legitimate flows of trade and travel across our land border,” said Homeland Security Secretary Ridge. “Once again, we are showing what can be accomplished through cooperation and collaboration between our countries. By working together we can better reach our common goals of ensuring the security and prosperity of our citizens.”⁴⁴

Nevertheless, Canadian administration of its immigration, particularly refugee, policies has raised concerns both in Canada and the United States. At a minimum, US officials expect that Canada will exercise “due diligence within its own territory and jurisdictions to ensure that its border controls, refugee, immigration, and other policies and procedures limit as much as is reasonably possible the ability of terrorists to infiltrate Canada and to use it as a base for attacks against the US.”⁴⁵ In an open society, of course, there are limits to what a democratically elected government can do to root out potential terrorists. Canada’s record compares reasonably well to that of the United States.⁴⁶ Perception, however, may be as important as reality, suggesting that efforts to address both are important.

Both Canada and the United States are immigration societies with processes in place to deal with the security threats posed by new immigrants, by those claiming refugee or asylum status, and by short-term visitors (e.g., business visitors, tourists, students). Since 9/11, some of the deficiencies in the systems in both countries have been identified and both governments are working on them, in both cases perhaps not as intensely as the other would wish, but progress is being made and levels of confidence are increasing.⁴⁷ A further bilateral initiative, however, could provide a useful opportunity to strengthen bilateral cooperation and address remaining problems, both on their own merits, and as part of a larger, confidence-building package.⁴⁸

The international exchange of goods, services, capital, and technology has become steadily less burdened by discriminatory and restrictive regulations, without losing the ability to address problems of contraband, money laundering, counterfeit, and other illegal transactions. The challenge to increasing labour mobility is to find ways to differentiate between necessary and unnecessary barriers to mobility, and to find better ways to address the critical functions performed by immigration officials at the border, particularly those related to drug trafficking, terrorism, and similar cross-border criminal behaviour.⁴⁹ Relying more on police and intelligence cooperation, rather than interdiction at the border, may prove critical to addressing this aspect of the labour mobility file.⁵⁰

Professional occupational licensing and certification by self-governing professional bodies

Most professions — e.g., doctors, dentists, pharmacists, lawyers, accountants, architects, engineers, or teachers — rely on self-governing accreditation bodies to determine who is competent to practice that profession. The authority to make such determinations is usually delegated by governments, generally at the state or provincial level, and limited to that state or province. As a result, most professionals are licensed only in the state or province in which they are accredited, creating both inter-provincial/inter-state barriers to mobility as well as cross-border barriers.

Much progress has been made through reciprocity, mutual recognition, courtesy, and similar arrangements⁵¹ to reduce the economic impact of inter-provincial/inter-state barriers, and the NAFTA and WTO provisions on services have made a start at eliminating cross-border barriers. In addition, the NAFTA temporary entry provisions have also reduced the impact of cross-border barriers. There remains scope, however, for deepening and strengthening these provisions. Even within Canada, for example, provincial licensing of doctors and the resultant insurance implications, complicated an appropriate national response to the SARS crisis in the Spring of 2003. A cross-border response would have been even more difficult.

Business organizations routinely identify problems with certification and accreditation of foreign-trained workers in Canada as a tax on Canadian productivity and economic development. They see efforts to remove such accreditation barriers, while protecting professional standards, as an essential step if Canada is to make efficient use of all the skills at its disposal.⁵²

There was a lively debate in Canada a few years ago worrying about a “brain drain” as some of Canada’s most talented professionals, scientists, and others moved to the United States, attracted by higher pay, greater opportunities, access to resources, and more.⁵³ While the numbers were small,⁵⁴ the argument ran, the impact was large because it would, among other things, lead to a “hollowing” out of corporate headquarters and exacerbate efforts to attract talent to Canada. The NAFTA temporary travel and mutual recognition provisions were cited among contributing factors.

Concern about the drain brain appears to have been overwrought. It is difficult to have expected anything else at a time that the US economy was red hot and opportunities for bright and ambitious individuals were multiplying. The slow down in the US economy brought the debate to an end, but it is likely to revive in the future. When it does, Canadians should keep the issue in perspective. Canada adds more university graduates through immigration from third countries than it loses to the United States. It is also not dissimilar to concerns in Saskatchewan about depopulation as talented individuals move to seek their fortunes in Ottawa, Toronto, Calgary, or Vancouver, or the complaints of firms in St. Louis and Cincinnati that they can't attract the same kind of talented people as their competitors on the two coasts.

These kinds of impacts are to be expected as the two economies move away from their resource and manufacturing bases into service and knowledge-centred economies. Canada can ill afford, however, to pursue either positive or negative programs to discourage or impede these kinds of adjustments. Rather, the federal and provincial governments need to ensure that Canadian professional and other talents can participate fully in the sectors with a future, including by moving freely within Canada and between Canada and the United States.

In most circumstances, the skills and knowledge required of a professional in Michigan are not greatly different from those required in Ontario. There may be some instances where local knowledge is important, for example in the practice of some areas of law or engineering, but such requirements are too easily elevated into barriers to prevent local competition from outside the immediate jurisdiction.

It is difficult to envisage hundreds of doctors, dentists, accountants, engineers, and architects roaming back and forth across the border offering their services. The infrastructure each profession needs to perform its work is itself sufficient to make this a difficult proposition. Nevertheless, it is possible to envisage highly specialized members of these professions offering consulting and similar services in narrow circumstances. Licensing and accreditation limitations should not prevent such sensible deployment of specialized expertise. A general right to practice one's profession anywhere in Canada or the United States on a temporary basis would seem a useful goal to pursue, while continuing to require that long-term relocations require local accreditation.

Most professions recognize the long-term negative economic impact of restrictive entry and certification requirements, but they have found it difficult to overcome the wide spectrum of differences in licensing and certification procedures that have historically developed. Because governments have delegated the authority under which most professions license and certify, governments can make adjustments to this authority in order to overcome rent-seeking behaviour. Any endeavour to facilitate cross-border labour mobility would need to include enhanced efforts to address bottlenecks in ongoing discussions aimed at reducing barriers to cross-border licensing and certification.

Government licensing of trades

Again, restrictions on mobility of licensed occupations — e.g., auto mechanics, plumbers, electricians, hairdressers — operate at both the inter-provincial/inter-state, as well as at the cross-border level and, unlike for professional licensing and certification, much less progress has been made in reducing these barriers through mutual recognition and other techniques. Most of these barriers are the result of government regulations. Again, the long-term economic benefits of greater standardization, reciprocity, and other steps toward reducing these barriers are clear, but interests aligned against such developments remain strong, particularly in highly unionized trades.

In the case of the professions, there is evidence of demand for reducing barriers to the deployment of specialized expertise on a cross-border basis. The evidence for similar pressures to address barriers to the cross-border deployment of the trades is less clear. Discussions with business leaders suggest that their general assessment is that the benefits are not sufficient at this stage to warrant the expenditure of political capital. Nevertheless, they acknowledge that in some instances, particularly for trades used by firms active on both sides of the border, there may be a clear case for including them in any initiative; more generally, however, they accept that in the absence of any strong demand, little will be done.

Preferential hiring practices

Governments at all levels (federal, provincial, state, and municipal) practice preferential hiring of local people and thus restrict labour mobility. Governments may also extend such practices to private employers engaged on large publicly funded or subsidized projects, such as federal pipeline projects, mineral exploration, or off-shore gas and oil exploitation. Given the size of the public sector (as much as one-third of the labour market in some jurisdictions) and of major projects, the extent of such preferences can have significant impacts on the efficient allocation of scarce human resources.

Government procurement in general was one of the last areas of public policy directly related to international trade to be tackled in international trade negotiations.⁵⁵ Even then, progress has been slow. The WTO Agreement on Government Procurement is the only substantive agreement that does not form part of the “single undertaking” and both its membership and coverage are far from universal. The NAFTA government procurement provisions (Chapter 10) are similarly limited, confirming how difficult it is to overcome the political prejudice that governments should, to the extent possible, only purchase goods and services from local producers.

The same frame of mind informs restrictions on the hiring of non-residents or even non-citizens and suggests it would be difficult to make significant inroads in reducing the results of this mindset. The economic benefits of non-discriminatory hiring practices, of course, are clear, but the politics are equally clear and generally tend to trump such economic considerations.

Labour market regulations

Differences in labour market regulations — e.g., union membership, hours of work, minimum wage, layoff and dismissal, discrimination, health and safety standards, workers' compensation, and other employment standards legislation, often at the level of detail rather than in scope and objective — can have important direct impacts on investment and location decisions, and more indirectly on the deployment of labour. Some progress has been made within Canada to address the tyranny of small differences at the inter-provincial level through model laws and mutual recognition. Under the terms of the 1994 Agreement on Internal Trade, various inter-provincial working groups have succeeded in reducing the impact of differences, as the provinces move toward achieving the goal of “enabling any worker qualified for an occupation in one part of Canada to have access to employment opportunities within that occupation in any other province or territory.”⁵⁶ Scope for doing so at the cross-border level may be more limited and distant, but some efforts toward standardization and reducing major differences would facilitate not only cross-border labour mobility, but also the flow of trade and investment.

While many of these regulations ostensibly serve a public purpose, they often also serve to protect private interests, and those who have succeeded in capturing the benefits of regulation will work hard to protect their rents. In such cases, the public interest is more likely to be served by reducing or eliminating differences than by protecting them. The negotiation of a mutually beneficial accord to facilitate cross-border trade, investment, and labour mobility may provide a useful setting within which to address the continuing benefit of such regulatory differences.⁵⁷ At the same time, it is important to remain realistic. Addressing regulatory differences may well have prophylactic effects and help to reduce labour market rigidities, but the political economy of addressing these issues on a cross-border basis are sufficiently complex to make the prospect for progress on this front limited and long-term.⁵⁸ Their limited impact on the most important trade and investment labour mobility issue — the temporary movement of key personnel — further underlines the perception that labour market regulations are part of a second order of issues.

Social legislation

Differences in social legislation — e.g., income support programs such as unemployment insurance and pensions, medicare, education — as well as the pervasive presence of government social programs may also deter labour mobility as a result, for example, of residency requirements, limits on portability, and differences in eligibility and benefits. The impacts of these on labour mobility are likely to be larger on permanent than temporary mobility, although some programs may provide negative incentives for employees to take temporary assignments outside of their home state or province. As discussed below, even the Europeans in their fifty-year long integration project are only now beginning to address the impact of differences in social legislation. Steps to facilitate labour mobility have not included this aspect until very recently and have not proven a major issue. Similarly in Canada, efforts to ensure full portability of social programs

across the country have been predicated more on social and equity grounds than on the need to promote labour mobility. While there may be areas where some welfare-enhancing benefits may be derived from addressing barriers created by differences in social legislation between Canada and the United States, the practical and political problems that would need to be overcome would seem to be out of all proportion to those benefits. Indeed, it is as likely that increasing mobility by reducing differences in social legislation might well have a welfare-reducing effect.

Differences in tax regimes, education, and more

The economic literature considers differences in tax, education, and similar regimes to be part of the universe of disincentives to labour mobility, and this is probably true. The willingness of people to move from one place to another is affected by a host of factors, including differences in tax burdens, the quality of schools for their children, access to various other amenities, weather, and more. Most of these considerations, however, are of greatest importance for people contemplating long-term commitments, and are relatively less important to people seeking to deliver their services on a cross-border basis or accepting short-term assignments. From a trade and investment perspective, it is such short-term labour mobility that is of greatest interest. By a happy coincidence, the barriers to short-term cross-border labour mobility, particularly border controls, certification and accreditation issues, and some aspects of labour-market regulation, are also the barriers most amenable to resolution through intergovernmental discussion and cooperation. Additionally, removing barriers to temporary mobility are likely to have a welfare-enhancing effect, while addressing differences in tax, education, and similar regimes would have much more ambiguous results.

Networks of cooperation

While there are differences in the way Canadians and Americans regulate labour markets, deliver social programs, and certify and accredit professionals, these differences should not be exaggerated. To a very large extent, the two countries seek very similar objectives and outcomes and, often, pursue them along similar lines. The differences are matters of detail and emphasis, not of fundamental intent or design. As a result, there already exists a high level of regulatory convergence.⁵⁹ Nevertheless, these differences impose costs and affect investment decisions. Much, therefore, can be gained by exploring ways and means in which such differences can be bridged or their impact ameliorated. The extent of regulations in both countries at all levels of jurisdiction suggests that this is a task that would need to be broken down along sectoral and functional lines and include procedural and institutional capacity to address the dynamic character of most regulatory regimes.

Because of the inter-connected natures of the Canadian and American economies, Canadian and US officials work closely together to manage and implement a vast array of similar but not identical regulatory regimes from food safety to refugee determinations. The Centre for Trade Policy and Law has developed an extensive data base detailing the extent of co-operation in ten sectors, including customs administration and immigration. In both cases, the evidence indicates that officials have developed a dense network of

informal, co-operative arrangements to share information, experience, data, and expertise with a view to improving regulatory outcomes, reducing costs, solving cross-border problems, and more. On any given day, dozens of US and Canadian officials at federal, provincial, and state levels are working together, visiting, meeting, sharing e-mails, taking phone calls, and more. Virtually all of this activity takes place below the political radar screen. Little of it is co-ordinated or subject to a coherent overall view of priorities or strategic goals.⁶⁰ Some of it is mandated by formal agreements such as the NAFTA, others by less formal memorandums of understanding. More importantly, much of this activity is the natural result of officials with similar responsibilities and shared outlooks seeking support and relationships to pursue them. This activity also reinforces, subtly and indirectly, the deepening integration of the two economies. The NAFTA and similar arrangements mark efforts by governments to catch up with the forces of silent integration and provide appropriate and facilitating governance.

To all intents and purposes, therefore, a solid foundation already exists for the two governments to begin to consider to what extent they want to go further to develop cooperative strategies to reduce the most pressing barriers to cross-border labour mobility. Any such strategies, of course, would be pursued as a supplement to already existing international rules and commitments.

International rule-making

Cross-border controls on the entry and exit of people are subject to fewer international, treaty-based rights and obligations than the movement or exchange of the other factors of production. Such international rules as do exist are more likely to be the result of humanitarian rather than economic considerations. Humanitarian-based international rules and procedures tend to be “softer” than trade and investment rules and procedures, i.e., subject to less rigorous enforcement or binding dispute settlement procedures. Over the last twenty years, however, modest progress has been made in subjecting immigration and related controls to economic agreements and their more stringent enforcement mechanisms.

One of the reasons that the movement of people is subject to fewer international rules is that the right to control who enters a country became deeply embedded into 20th century ideas of “sovereignty”. Over the past six decades, governments have been prepared to subject both border and domestic measures to an increasing array of international rights and obligations, convinced that cooperative, joint rule making is in the broad interests of their citizens. In the WTO, NAFTA, and elsewhere, Canada and the United States have been prepared to accept increasingly stringent commitments, and to subject those commitments to extra-national or intergovernmental enforcement through dispute settlement procedures. Commitments on who may enter a country, however, remains high on the list of “untouchables,” providing scope for arbitrary decisions by border officials. Nevertheless, some rules have been developed, including:

- *Consular conventions* — most such conventions, whether negotiated bilaterally or multilaterally (viz. the Vienna Convention on Consular Relations) impose obligations on signatory governments to extend “national treatment” to the nationals of other

governments and to provide foreign nationals access to consular officials in times of trouble. The consular conventions deal essentially with the obligations governments assume when they allow foreign nationals to enter; they create no right of entry.⁶¹

- *The UN and human rights* — The 1948 Declaration on Universal Human Rights constitutes a solemn pledge by Canada and other members of the United Nations to protect human rights by the rule of law.⁶² Over the years, the UN Human Rights Commission has raised the consciousness of member states about the importance of human rights, and shone the spotlight on the most egregious violators. UN conferences have steadily expanded the ambit of international human rights legislation to include not only the rights enumerated in the original Declaration, but extending them to a wider range of political, social, and economic rights. Like the consular conventions, however, human rights conventions create no obligations on member governments to allow foreign nationals to enter their country. Rather, they establish minimum standards of humane treatment governments are obliged to respect in their treatment of both their own citizens and foreign nationals.
- *Refugees* — The 1951 UN Convention on Refugees goes further and requires governments to allow refugee claimants entry and to extend them minimum standards of treatment. Governments have the right to determine whether claims to refugee status are legitimate and to return those whose claims are judged to be illegitimate either to their country of origin or to their country of last transit.⁶³
- The *WTO General Agreement on Trade in Services* (GATS) sets out the first multilateral, general obligations governing labour mobility as an economic issue. While the primary focus of the GATS is trade in services, the agreement recognizes that the delivery of many services may require the cross-border movement of people to deliver the services. To this end, governments agreed to schedule the movement of certain classes of service providers so long as these movements are for a specific purpose, confined to the sector scheduled, and temporary in nature. People eligible to enter as scheduled service providers must, as a prior condition, also meet normal immigration requirements (e.g., as regards visas, health, security, and similar matters). The number of temporary workers taking advantage of GATS provisions remains small because governments scheduled far fewer obligations under Mode 4 (temporary entry of service suppliers) than under the other modes. GATS Mode 4 is also limited to service suppliers, and does not extend to workers engaged in the production of goods. Finally, Mode 4 is a trade concept, not a migration one; its efficacy depends on governments following up with the requisite changes in their immigration policies, something which does not always follow. Nevertheless, the GATS has created an important precedent in creating multilateral rules governing the mobility of labour. Future negotiations should steadily extend these provisions to more classes of scheduled providers, including perhaps also workers engaged in the production of goods.⁶⁴
- *Regional integration agreements* have made much more progress in addressing labour mobility, particularly temporary entry related to trade and investment. The extent to which such agreements take a liberal or restrictive approach generally reflects such factors as geographic proximity, similarity in levels of economic development, and cultural and historic ties. Not surprisingly, the EU has provided by far the most extensive liberalization of its internal labour market, followed closely by related

agreements, such as the Agreement on the European Economic Area, and the European Free Trade Association. The Australia-New Zealand Closer Economic Relations Agreement provides for the full mobility of all service providers, while the Trans-Tasman Travel Arrangement between the two countries provides for full labour mobility. NAFTA, CARICOM, EU-Europe agreements, and the Japan-Singapore Agreement go beyond GATS with various temporary entry provisions, but stop well short of full labour mobility. Finally, a whole range of other agreements, including the webs of bilateral arrangements being forged by the United States, the EU, and Canada, all contain either no temporary entry provisions or arrangements similar to the GATS, with coverage very similar to the parties' GATS schedules.⁶⁵

Most of this general international rule-making has limited applicability to the challenges posed by deepening cross-border Canada-US integration. More is likely to be gleaned from the efforts in Europe to effect a single European market among the members of the European Union.

The European experience⁶⁶

Despite tremendous cultural, social, economic, and political differences among the now twenty-five members of the European Union, EU members have made significant progress in implementing their commitment to ensure the free flow of labour throughout the Union. Article 2 of the original Treaty of Rome (1957) set the task of “promoting the harmonious development of economic activities, continuous and balanced expansion, increased stability, a rapid rise in living standards, and closer relations between its Member States”. This was to be accomplished by opening up borders to the free movement of individuals, goods, and services and by promoting common policies and common financial instruments.

It took forty years to achieve this goal. Experience demonstrated that it was easier to harmonize customs duties than taxes, that the regulations governing the professions differed significantly from one country to the next, and that stubborn protectionist attitudes combined with the proliferation of technical standards served only to exacerbate the partitioning of markets until well into the 1980s.

In 1985 the Commission headed by Jacques Delors published a White Paper that made it clear that there had been far too many delays and that too many barriers still stood in the way of the creation of a single market. Delors convinced the then twelve members to pursue a blueprint and a timetable for adopting some 270 measures that would be needed to create a more integrated, single market. By the mid-1990s, the single market was up and running and the ability of citizens of one member state to work in another had become an everyday reality. Nevertheless, in 1997, the Commission launched a new plan of action to safeguard and enhance labour mobility. A key element was to promote and encourage longer term labour mobility by removing deeply embedded social disincentives.

The principle of the free movement of persons had been an integral part of the original treaty and again of the single market initiative, but member governments, heeding the need for security, were slow to complete the necessary mechanisms to ensure both freedom of movement and safety within the EU area and at its external borders. At the 1997 Amsterdam EU Summit, member governments agreed to work toward:

- harmonizing laws relating to asylum (the Dublin Convention);
- introducing, at the EU level, rules on immigration applicable to nationals of non-member countries;
- strengthening police cooperation to combat cross-border crime; and
- drafting and implementing cooperation agreements in the areas of civil and criminal law.

A large part of this new agenda of cooperation has since become subject to EU regulations, while cooperation on criminal matters remains part of the intergovernmental framework, even if the methods of cooperation have been considerably improved to make them more effective.⁶⁷

The parallel negotiation and implementation of the Schengen Agreement — which entered into force in 1995 — had a major impact on reducing the impact of border controls on the free movement of people. Countries participating in the Schengen accord (thirteen EU members plus Iceland and Norway; the UK, Ireland, and the ten new members that joined in May 2004 are not — as yet — parties to the Schengen Treaty) have, in essence, reduced border controls to spot checks for all intra-Schengen traffic. As a result, freedom of movement now applies to all, regardless of nationality:

- For EU nationals, the principle has largely been put into practice in the area covered by the Schengen Treaty.
- Arrangements for tourists, asylum seekers, and legal immigrants from non-member countries (the Dublin Convention) are included in the Agreement, the main aim of which is to standardize procedures throughout the Schengen area.
- Police continue to operate on their own national territory, in ports and airports, but closer cooperation has made controls at external borders more effective.
- There are common rules on measures to combat terrorism, smuggling, and organized crime. The Schengen Treaty makes provision for cooperation between courts, police forces, and government departments.
- Visas, asylum, immigration, and other policies affecting the freedom of movement of people have now all been transferred to the Community system. For issues related to Schengen, the Council of the Union is replaced by the Schengen executive committee, but the European Commission is able to exercise initiatives, and the Court of Justice can declare the competent authority in these areas.

Impact and extent of labour mobility in the EU

Despite many years of effort, intra-EU labour mobility remains modest.⁶⁸ As Table 1 shows, intra-EU mobility has been very low compared with migration from outside the EU, with only around 1.6 percent of the total EU population estimated to live in another

member state. Although this table only reflects long-term changes of residence rather than short-term, temporary moves, the low intra-EU mobility trend seems to persist despite EU efforts to remove all obstacles to the free movement of people. According to the EU Commission's *Social Situation Report 2002*, "geographical mobility between Member States is estimated to range between 0.1 and 0.2 per cent of the total population per year."⁶⁹

Table 1 - Population Share of EU- and Non-EU Nationals in Percent, 1985-1998⁷⁰

Country	EU –Nationals				NON-EU Nationals			
	1985	1990	1995	1998	1985	1990	1995	1998
EU-15	1.5	1.5	1.6	1.6	2.3	2.6	3.3	3.5
Austria	n.a.	1.0	n.a.	1.2	n.a.	5.6	n.a.	7.9
Belgium	6.0	5.5	5.5	5.5	3.2	3.4	3.7	3.3
Denmark	0.7	0.7	0.9	1.0	1.4	2.2	2.9	3.7
Finland	0.2	0.1	0.3	0.3	0.1	0.3	1.0	1.3
France	n.a.	2.3	n.a.	n.a.	n.a.	4.0	n.a.	n.a.
Germany	2.0	1.9	2.2	2.3	3.6	4.2	6.4	6.7
Greece	0.4	0.5	0.4	0.4	2.0	1.7	1.0	1.2
Ireland	1.8	1.8	2.0	2.3	0.4	0.5	0.6	0.7
Italy	n.a.	n.a.	0.2	0.2	n.a.	n.a.	1.0	1.3
Luxembourg	n.a.	25.4	29.5	31.0	n.a.	3.4	3.1	3.8
Netherlands	1.3	1.1	1.3	1.2	2.6	3.2	3.7	3.1
Portugal	0.2	0.3	0.4	0.5	0.6	0.7	1.2	1.3
Spain	0.4	0.6	0.6	0.7	0.2	0.4	0.6	0.9
Sweden	2.6	2.3	2.0	2.0	2.1	3.0	4.1	3.9
United Kingdom	1.5	1.6	1.6	1.4	2.5	2.7	2.1	2.3

In the case of the Nordic countries, which have allowed free mobility of labour for fifty years,⁷¹ the mutual integration of labour markets does not appear to be more pronounced than among EU countries. Today, some 90,000 citizens of other Scandinavian countries work in Sweden, i.e., 2.2 percent of the total workforce (of whom two-thirds come from Finland). In Norway, the share of other Scandinavians in the work force amounts to 0.9 percent, in Denmark to 0.4 percent, and in Finland to 0.3 percent.⁷²

The European Commission highlights as determinants of the low intra-EU mobility rate such factors as:

- the reduction in the gap between the most and the least prosperous European countries;
- the transition from labour-intensive production to a knowledge-based economy (which allows mobility of skills without geographical mobility);
- language and cultural barriers;
- the potential loss of social networks;
- the incorporation of women into the labour market (which, in family terms, often means having to look for work for two people with different professional careers); and
- the availability of affordable and good quality housing are some of the reasons.

At the same time, these low migration rates also show that the fears that freedom of movement of persons would trigger massive intra-EU migrations from the poorer countries have been proven wrong.

EU citizens working in another EU country are increasingly highly skilled. Unskilled labour migration of EU citizens has declined or even come to a halt, while the mobility of people with high and specialized skills, in particular in the information-communication technology field, has increased. This does not mean, however, that unskilled labour migration has come to a halt in western Europe. Unskilled labour still accounts for the bulk of migrants in Western Europe — either as guest workers or as permanent migrants. The source countries of such migrants changed, however, as the supply dried up in the less developed regions of the EU as a result of human resource and economic development. More now come from non-EU countries, the majority from the Mediterranean Basin (Turkey, former Yugoslavia, Algeria, Morocco), as well as from areas which were linked to Europe through former colonial ties or as a result of refugee intake.⁷³

The relatively low rates of intra-EU mobility should not be equated with the strength or weakness of the intra-EU migration scheme. Its objective is to abolish barriers to free movement and eliminate member-state discrimination against EU nationals, and not increase intra-EU migration itself. As Rey Koslowski points out, the issue is not the behaviour of individuals but that of states; so far, the EU has been very successful at eliminating barriers to the free mobility of its citizens. He notes that member-state cooperation on intra-EU migration was often driven by spillover from one area of functional cooperation to another. The goal of free movement of workers entailed, in practice, member-state cooperation on many other issues, such as freedom of movement for spouses and dependents which, in turn, prompted the expansion of the free movement principle to EU nationals in general. Similarly, since migration within the EU is closely linked to migration from outside the EU, cooperation was also required to develop common policies on visas, border controls, asylum applications, and illegal migration.⁷⁴

Issues and analysis

As the European experience suggests, facilitating cross-border labour mobility can be pursued at two levels: easing barriers to long-term mobility and facilitating temporary mobility. Reducing barriers to long-term mobility requires tackling deeply embedded social preferences and coming to terms with a range of domestic policies; even as progress is made, however, its impact is likely to be minor. Reducing barriers to temporary mobility, on the other hand, while not easy, is much more straightforward and is likely to lead to more immediate and economically useful results. To that end, the EU successfully addressed four sets of issues: the administration of entry controls at national borders; the determination of asylum seekers and migrants; the impact of differences in certification and accreditation of professionals and trades; and select labour market regulations (e.g., residency requirements).

While circumstances and motivations in Europe are not identical to those facing Canada and the United States, they are sufficiently similar to suggest that an analogous agenda will be required to further facilitate temporary labour mobility across the Canada-US border. As in Europe, the objective should not be to increase the number of Canadians working in the United States or the number of Americans working in Canada,

but to facilitate mobility for those who have a need or desire to work in the other country on a temporary basis. We now turn to each of these items to consider what would be involved and what might prove doable.

Rethinking Canada-US border controls

As we have seen, both Canada and the United States maintain extensive controls at all points of entry (ca. 130 land-border crossings, and dozens of airports and marine points) along the 8,000-kilometer border. These controls seek to meet the following objectives as regards the movement of persons:

- *Security* — reduce potential threats to persons, property, or public order of foreign persons entering a country.
- *Economic* — control competition for local citizens and residents in the labour market and restrict the entry of illegal or undocumented workers.
- *Social* — reduce the number of illegal residents drawing on social programs without paying into them.
- *Political* — protect sovereignty and respond to real or imagined threats to “us” by “them”.

The experience in Europe suggests that all of these concerns pose less of a threat or problem than is popularly presumed or can be better met by non-border strategies. Far fewer people are prepared to move than is often assumed, particularly between countries at similar stages of economic development. More is at play in labour mobility than the presence or absence of formal barriers, including language and cultural differences, as well as such matters as pension rights, tax differences, and the range and quality of amenities. The number of Canadians interested in moving permanently to the United States is modest and currently not much deterred by immigration restrictions; the number interested in working or residing in the United States on a temporary basis, while larger, still does not amount to more than a fraction of one percent of the US labour force. In the other direction, the number of Americans interested in moving to Canada, either temporarily or permanently, is miniscule and easily accommodated under existing programs.

The impact of border controls on security is also easily exaggerated. Pre-entry screening, profiling, intelligence cooperation, and police work are all likely to yield better results in keeping terrorists, criminals, and other undesirables out of a country, or finding them once they have entered, than heavy-handed immigration controls at the border. As the Canadian Council of Chief Executives points out:

The risk management approach will require continued strengthening of information sharing and dialogue among officials on both sides of the border. Experiments such as Fast and Secure Trade (FAST) lanes for trucks and NEXUS for frequent travelers by air and land show that they can be effective risk management tools that reduce border delays for those who participate.⁷⁵

In the case of more benign evasions of the border, the vast majority of illegal workers, for example, either do not enter a country at designated ports of entry or enter as visitors/tourists and then disappear into the general population. Immigration controls tend

to have a minor impact in the face of strong economic incentives in the other direction. In 1986, the Reagan Administration in the United States instituted a general amnesty in order to reduce the large number of illegal workers and place them on a properly documented basis. By 2003, US officials estimated that the United States again harboured 10-12 million undocumented workers, about half from Mexico, the rest from other parts of Latin America, China, the former Soviet Union, and other countries. All had succeeded in foiling ever-more draconian efforts to seal off US borders.⁷⁶ In an almost desperate response, Tom Ridge, the Secretary of Homeland Security, has begun once again to speak of the need for an amnesty program.⁷⁷

The cost to the state of social programs used by illegal migrants are also easily exaggerated. Most undocumented workers are careful not to use social programs because it will create a record of their presence, even though many pay social security taxes through payroll deductions. In fact, undocumented workers are a net social benefit, prepared to do jobs and add wealth in ways and places that nationals and legal immigrants are not prepared to undertake. In most instances (i.e., not including such illegal activities as forced prostitution), this is a win-win situation for a country and for the illegals: a country is able to count on workers prepared to take on jobs that are otherwise difficult to fill, while the illegal workers build an economic future for themselves and their children not available in their home country under conditions that may be undesirable to some but offer a marked improvement over their conditions “at home”.⁷⁸

In sum, the border between Canada and the United States serves more as a costly political symbol than as a critical contributor to economic or physical security. The traditional customs function, which derived from the role of border taxes as an important source of revenue, has been reduced to a minor holdover from the past. Newer customs responsibilities are more a matter of administrative convenience than necessity; many of them could be performed more efficiently away from the border or even eliminated.⁷⁹ Scarce immigration resources could be better deployed at the entries to Canada and the United States than at the land border between the two countries.

The case for maintaining a well-staffed and administered border between Canada and the United States is weaker than the case for such a border between the United States and Mexico. The US economy exerts a tremendous magnetic pull to the rest of the world, and particularly to its much poorer neighbour to the south. Gary Hufbauer and Jeff Schott point out that:

... perhaps the most vexing question between Mexico and the United States is the issue of undocumented workers. Legal immigration from Mexico numbered about 130,000 to 170,000 persons annually in the past few years (compared to 737,000 annually on average between 1997 and 2000), and over 95 percent of legal Mexican immigrants enter under family reunification visas. Within the undocumented category are two groups: those who already reside in the United States, a group whose number reached 5 million in 1996 and those who will, in the future, come to the United States to work, a number running about 275,000 per year. While important distinctions can be made between the two groups, the whole issue of unauthorized immigration is highly charged. On the Mexican side, the government considers the legalization of immigrant workers a matter

of human rights and social justice—and a necessary step in the economic integration of North America. ... On the United States side, feelings are equally strong. Some Americans flat out oppose any increase in immigration. ... According to polls, after September 11, the American people grew more apprehensive about what they perceive as weak border control and voiced stronger support for enforcing immigration laws.⁸⁰

Thus, while the case for maintaining a well-staffed and administered border between Canada and the United States rests largely on political grounds, there are more substantive reasons for maintaining some form of border controls between Mexico and the United States, underlining the point that the prospect of successfully addressing labour mobility on a trilateral basis, at least for the foreseeable future, is a non-starter. Nevertheless, political symbols and values are important and point to the need both to consider the political economy of easing cross-border labour mobility and to look at ways in which this issue can be addressed on a step-by-step basis.

Immigration and refugee determination policies

As noted above, Canadian and US approaches to immigration and refugee determination policies are grounded in very similar objectives, and such differences as exist have been narrowed further as a result of their individual responses to the security challenges raised by 9/11. Efforts under the Smart Border Action Plan are addressing remaining issues of common concern.

Based on the progress made to date in bridging these differences, there would appear to be no fundamental obstacles to finding mutually acceptable ways to address any remaining differences that are critical to the administration of the border and entry controls. Even in circumstances in which the two governments agree to eliminate entry controls at the bilateral border and replace them with a common approach to entry controls from outside North America, there is no reason to harmonize immigration policies. There may be a need to coordinate and discuss, for example, selection criteria and security issues, but no need to agree on absolute numbers, the balance between family class and economic immigrants, or similar matters. Both countries would continue to pursue their own priorities, but would coordinate how best to administer them.

Accreditation, certification, and labour market regulations

NAFTA mandated an active work program among the three partners to address issues related to gaining the full benefit of the services and temporary movement chapters. In the first few years after the agreement was implemented, there was a flurry of activity as working groups were established and met once or twice. Since then, the pace of activity has slowed markedly. One of the most cited reasons is the inability of Mexico to focus on the issues and provide them with some priority. A further reason is that the attention of limited resources was diverted to more pressing work, e.g., preparation for a new round of WTO services negotiations. Whatever the reason, it is clear that the NAFTA work program has not yielded the anticipated results.

The merits of addressing bottlenecks in efforts to reduce the impact of accreditation, certification, and related requirements, however, remain real and suggest that a new, bilateral program that forms part of a larger, bilateral agenda might be needed to breathe new life into earlier work. This work must also rely more on push from governments and become less dependent on voluntary action by private-sector regulatory bodies.

The political economy of easing cross-border labour mobility

Any assessment of the political economy of facilitating labour mobility in particular, and enhancing the governance of deepening integration in general, must start with the reality of asymmetry. Labour mobility is an important issue for Canadians and a marginal one for Americans. Access to the US economy is critical to Canada while US access to the Canadian economy is no more than desirable. The extent of cross-border integration has created a deep, and asymmetrical, dependence by Canadians on the US market. Asymmetry is even more pronounced today than a generation earlier: in nominal terms, the US economy is fourteen times the size of the Canadian economy; bilateral trade is about eighteen times more important to Canadians than to Americans. US foreign direct investment (FDI) in Canada is valued at about ten percent of total US FDI, while Canadian FDI in the United States represents about half of total Canadian FDI. In the other direction, US foreign direct investment in Canada represents about two-thirds of the total, while Canadian FDI in the United States amounts to less than ten percent of the total. Asymmetry in military power, cultural projection, and a host of other indicators are too well known to Canadians to need repetition.

Despite this asymmetry, the absolute value of US economic interest in bilateral trade and investment is roughly equal to that of Canada. Nevertheless, because its relative value is not and US international economic interests are dispersed more widely around the globe, US political leaders will need to be convinced of the wider implications of allowing deepening integration to become hostage to rules and procedures that have reached their past due date. Labour mobility and other issues, therefore, will need to be addressed on more than their economic merits to gain an audience in the United States.

Canadians will have to convince Americans that they have a vital interest in a relationship with Canada built on mutual trust and confidence. They will have to demonstrate that a more open and prosperous North America is, in the final analysis, the best guarantor of US and Canadian security. The tragic events of 9/11 strengthened the case for a comprehensive initiative, adding an urgency to the security dimension that, in the post-Cold War era, had faded from public consciousness. Disruptions at the border underlined to a growing number of Canadians and Americans the necessity of keeping the border open as a conduit for trade, tourism, and investment and making it less vulnerable to disruption by terrorist and other threats. Both Canadian and American economic and security interests are clearly implicated in the free flow of goods, services, and people between the two countries and in co-operative police, intelligence, and related security strategies.

The political economy of integration also requires that Canadians take the initiative and frame the debate. Most commentators agree that Canadians must first have a clear idea of what they want and why before any useful dialogue can be initiated with the United States. Even American commentators, less concerned about bilateral issues than their northern cousins, accept the conventional wisdom that initiatives should originate in Canada, recognizing that Canadian sensitivities are likely to reach a fever pitch in response to any US initiatives.

In order for Canadians to take the case to the United States, they must first overcome their internal doubts and accept that deepening integration has been to their mutual benefit and will continue to pay dividends. Or, as Bill Dymond and I put it in another context:

There is, of course, an alternative. It consists of imposing significant barriers to the forces of silent integration and seeking to create distance between Canadian and US economic, foreign policy, military, political, and other interests. Pursuing such an alternative would mean a poorer Canada, since no other trading partner could provide anything approaching the United States as an attractive and dynamic market for Canadian goods and services. It would also mean a less secure Canada, because there is no stronger military power on the near or far horizon than the United States. Finally, it would mean a more isolated and less influential Canada, since influence given up with the United States cannot obviously be replaced by acquiring influence with the players in the minor leagues. The alternative of distance would rapidly lead to a decline in the rewards and challenges that sharing a continent with the United States brings.⁸¹

Fred McMahon of the Fraser Institute makes a similar point, when he writes that Canada's nationalist, anti-globalist left is up in arms about establishing a North American perimeter. It's an affront to Canadian sovereignty, they say. But sovereignty does not belong to government. Sovereignty belongs to individuals who entrust some aspects of it to their government. The central sovereign duty a government owes its citizens is sound security and economic policy. Our left wants the Canadian government to neglect its key sovereign duty to Canadian citizens for economic and physical security, apparently because this will somehow protect our sovereignty. If long-term enemies like France and Germany can establish a common perimeter around Europe, surely long-term friends like Canada and the United States can establish one in North America.⁸²

Creating a seamless border, including for labour, backed up by a tighter and jointly administered perimeter, however, will need to be carefully handled and will suffer from a commonplace in the management of Canada-US issues: Canadians find major, bold initiatives threatening while Americans need them to overcome the inevitable pressures from narrow, well-entrenched interests. At the same time, the concentration of power in Canada at the top makes it easier for Canada to conceive and propose bold initiatives while the dispersion of power in the United States and the need to build coalitions makes it easier for US officials to respond than to initiate. The lesson of both the CUFTA and the NAFTA is that Canada and Mexico successfully proposed a bold course and US officials were able to build and sustain the necessary coalitions of support.

Conclusions and recommendations

Canada has much to gain, and little to lose, from an aggressive effort at reducing the impact of entry and regulatory restrictions that deter cross-border Canada-US labour mobility. Indeed, as this paper argues, re-thinking the objectives of these restrictions and the means chosen to deliver them should lead to a much more effective way of addressing security and related concerns, while easing their increasingly counterproductive impact on wealth-creating cross-border integration.

The principal focus of such an initiative should be the border because that is where the most restrictive impact is administered. Canada and the United States should pursue a program that provides essentially hassle-free travel back and forth for qualified individuals. Additionally, useful results can be gleaned from a more active, bilateral program of regulatory cooperation aimed either at mutual recognition or similar approaches to certification, accreditation, and other deterrents to the cross-border deployment of scarce professional expertise or reducing the impact of relatively minor differences in labour-market and similar regulations.

Canada's long-term goal should be to move toward an open border between Canada and the United States, with customs and immigration inspection reduced to spot checks, backed up by tighter and mutually agreed approaches to customs and immigration issues involving goods or people from third countries. This long-term goal will require that the two governments pursue a detailed and ambitious program of negotiations, other aspects of which are discussed in my recent paper, "A New Accommodation with the United States: The Trade and Economic Dimension," published by the Institute for Research on Public Policy.

In the interim, however, Canada and the United States should build on the success of the NAFTA temporary entry provisions and the progress being made under the Smart Border Action Plan and negotiate more liberal temporary entry provisions. The current program, useful as it is, is marred by three problems:

- it is limited to named classes of workers;
- some elements still rely on a "needs" test; and
- the administrative requirements are excessive.

In its place, the two governments should allow any Canadian or American citizen or permanent resident, otherwise qualified for entry, the ability to accept temporary assignments — e.g., of less than six months — in the other country without the need for prior applications or approvals. Individuals who want to travel on this basis would, however, have to apply for a special passport from his or her government, valid for up to five years, that certifies an enhanced security check and pertinent professional and biometric information. For statistical and control purposes, holders of such passports would declare at the point of entry that they will be working during their visit and have their passports stamped to that effect.

To ensure that a more open border does not pose a threat to the security of Canadians and Americans alike, the two governments need to pursue a more active program of cooperation on immigration, police, military, and intelligence matters, ensuring that the approaches to North America are secure from criminal, terrorist, and similar threats and internal threats are addressed as a common problem. The overall focus of such cooperation should be to implement risk-based management of the border.⁸³

To ensure that officials on both sides of the border maintain a more open approach to the management of the border and the mobility of qualified individuals, the two governments should establish a Joint Border Commission with a mandate to resolve problems and recommend remedial action. Canadians and Americans should have full access to the services of the Commission, either directly or through their federal or state/provincial governments, on a basis similar to Chapter 19 of the NAFTA, i.e., as a way of challenging the proper administration of current laws and regulations by border officials. Among its responsibilities, the Joint Border Commission should have the authority to require either government to justify any new policies or regulations that would have a negative impact on maintaining an open border.

Labour mobility should form an integral part of a larger bilateral agenda aimed at upgrading the governance of deepening Canada-US integration and reaching a new bilateral accommodation with the United States across the full range of cross-border interaction. As Bill Dymond and I have concluded elsewhere,

Overwhelmingly, Canada's leading trade and foreign policy partner is the United States, surpassing all other partnerships combined in the breadth, depth, and intensity of the relationship. Cross-border trade and investment drive our economy. US innovation and entrepreneurship provide both opportunities and competition. US popular culture dominates, not because it is forced on Canadians but because Canadians choose it. The US military provides a blanket of security. US warm weather cossets millions of Canadians each winter. The US presence pervades every aspect of Canadian life, including, as Foreign Minister Bill Graham recognizes, foreign policy. Virtually every aspect of Canada's political, economic, cultural, and social life is measured by Canadians in terms of the US yardstick. ... The first and virtually only priority for Canadian diplomacy over the next few years is to reach a new accommodation with the United States. Canada and the United States need to take deliberate steps to bring the architecture of their relationship into line with the challenge and fact of deepening integration as well as with the political and security realities ushered in by the events of September 11.⁸⁴

The need to reach a new accommodation with the United States is primarily a bilateral matter and should not be complicated by pursuing a NAFTA-plus agenda that includes Mexico. The range of issues that need to be addressed in the Canada-US context are difficult and complex, and would only become more so with the addition of Mexico's equally difficult and complex, but different agenda. While the two agendas may intersect at some points, offering scope for making common cause, US appreciation of its priorities with each neighbour differ. This is particularly the case with labour mobility. For Canada, the issue is facilitating mutually beneficial, wealth-creating integrating mobility and building stronger cooperative mechanisms to address security, criminal, and related concerns. For Mexico, the issue is a continuing tide of illegal migrants and a lack of trust along the full range of security and criminal matters. Time will tell whether

sufficient progress can be made on each bilateral agenda to warrant their eventual merger into trilateral approaches.

Issues for further research

Canada needs to come to a clear articulation of objectives, ways, and means to address the growing agenda of issues created by deepening integration, including barriers to the mobility of scarce human resources. Much remains to be done in fully thinking these issues through. Specifically on labour mobility, a number of further areas of research and analysis could usefully be pursued:

- A more detailed assessment of current patterns of bilateral labour mobility, temporary and long-term, including breakdowns of classes of workers who currently move and for how long.
- A more detailed appreciation of the extent to which firms and individuals value greater freedom to move between the two economies. My sense is that one of the impacts of deeper integration has been to alter the character of cross-border trade, investment, and labour mobility, but more detailed studies might be helpful in confirming this judgment.
- A more detailed examination of the different professional licensing, accreditation, and certification practices in the United States and Canada, assessing the extent to which these are amenable to mutual recognition and similar strategies.
- An assessment of security-related issues that would need to be addressed in order to achieve a more open border.
- A study of the objectives and operation of the International Joint Commission and an assessment of its strengths and weaknesses as a model for a Joint Border Commission. The IJC provides a potential model to be emulated in other areas of Canada-US interaction. To that end, a study providing a clear description of how it operates and assessing its strengths and weaknesses as a model would help in fleshing out the detail of the proposals described in this paper.
- A more detailed study of the lessons to be learned from the European experience. As noted above, circumstances in North America are sufficiently different to make replication of the European experience inappropriate. Nevertheless, we believe that the European experience contains important lessons that need to be taken into account in developing an appropriate plan of action for pursuing cross-border labour mobility.

Ottawa
8 July 2004

Endnotes

- ¹ "Incentives and Disincentives: International Migration," in Douglas Irwin, ed., *Political Economy and International Economics* (Cambridge, MA: MIT Press, 1991), 344, 342.
- ² Address to the Couchiching Institute on Public Affairs, August 7, 2003, p. 3.
- ³ See, for example, Dymond and Hart, "Canada and the Global Challenge: Finding a Place to Stand," C.D. Howe Institute Commentary No. 180 (Toronto: C.D. Howe Institute, March 2003) and Hart, "A New Accommodation with the United States: The Trade and Economic Dimension," *IRPP Art of the State*, Volume II: *Thinking North America*, No. 1 (Montreal: IRPP, March 2004).
- ⁴ There is an extensive literature on the economic effects of labour mobility. See the discussion in Surendra Gera, Samuel A. Laryea, and Thitima Songsakul, "International Mobility of Skilled Labour: Analytical and Empirical Issues, and Research Priorities," Working Paper 2004-D01 in the HRDC-IC-SSHRC Skills Research Initiative, available at http://strategis.ic.gc.ca/epic/internet/ineas-aes.nsf/en/h_ra01877e.html. Increased labour mobility, like all economic adjustments, creates winners and losers. In aggregate and in the long run, however, society as a whole is better off if labour is allowed to move freely and thus promote the more efficient allocation of scarce human resources. Nevertheless, this paper does not provide scope for an examination of the economic literature regarding the benefits of labour mobility.
- ⁵ See the discussion in Morley Gunderson, "Barriers to Interprovincial Labour Mobility," Montreal Economic Institute, accessed at www.iedm.org/library/palda6en.html, p. 5.
- ⁶ Policy Brief, "Service Providers on the Move," *OECD Observer*, August 2003, p. 1.
- ⁷ NAFTA Appendix 1603.D.1 enumerates the 63 professions and their required qualifications.
- ⁸ "The Trilateral Mirage: A Tale of Two North Americas," Canadian Defence and Foreign Affairs Institute, May 2003, at <http://www.cdfai.org/PDF/The%20Trilateral%20Mirage.pdf>.
- ⁹ See *Forging Our History* at <http://www.cic.gc.ca/english/departement/legacy/index.html>, and Ninette Kelley and Michael Trebilcock, *Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 1998).
- ¹⁰ Jan Tumlir, 'Evolution of the concept of international economic order 1914-1980,' in Frances Cairncross, ed., *Changing Perceptions of Economic Policy* (London: Methuen, 1981).
- ¹¹ While the outlook of most economists includes a preference for reduced government intervention, economists' penchant for counting and measuring has had the perverse effect of adding regulatory burdens to many private activities. Economists can never have enough statistics, but gathering and analyzing statistics requires an army of officials and a population prepared to fill in forms or otherwise satisfy the statistical urge. It is not difficult to envisage an economist arguing in favour of immigration controls for the sake of the information gathered as a result.
- ¹² See James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989) for a discussion of the bureaucratic response to the tasks set for them by politicians, and the problems created by the establishment of conflicting objectives and means.
- ¹³ See <http://uscis.gov/graphics/publicaffairs/factsheets/948.htm> for a description of the act and its implementation. Canada remains exempt from some aspects of the act (viz. s. 110, requiring all visitors to the United States to log in their entry and exit). It is important in assessing this and other recent legislation that the United States continues to host millions of "undocumented" workers, suggesting both the limits of tighter border restrictions and high demand for low-skilled labour.
- ¹⁴ See http://www.dhs.gov/interweb/assetlibrary/Pamphlet_BW_Web.pdf for a description of the program, which further refines entry and exit controls and reporting requirements.

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- ¹⁵ Source: <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?act=v&mid=1&cat=10&did=1679>.
- ¹⁶ Sources: <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?act=v&mid=1&cat=10&did=1680>. And <http://www.dfait-maeci.gc.ca/eet/trade/state-of-trade-en.asp>.
- ¹⁷ Philip Cross, "Cyclical Implications of the Rising Import Content in Exports," *Canadian Economic Observer*, December 2002, accessed at <http://www.statcan.ca/english/ads/11-010-XPB/pdf/dec02.pdf>. In his analysis, Cross emphasizes how industry has re-organized production to take advantage of a more open border. While the automotive sector has moved furthest along the integration spectrum, other sectors are not far behind, including machinery and equipment, electronics, plastics, and textiles. Even resource industries, including metals and minerals and forest products, exhibit a surprising level of import content in their exports.
- ¹⁸ Industry Canada, in its North American Linkages project, has catalogued the wide range of connections that form part of the emerging pattern of deepening cross-border integration. See Richard Harris, ed., *North American Linkages: Opportunities and Challenges for Canada* (Calgary: University of Calgary Press, 2003). Earl Fry, "North American Economic Integration," no. 3 in the IRPP *Art of the State II: Thinking North America* series (Montreal, 2004) also provides a useful catalogue of the extent of integration.
- ¹⁹ "Labour Mobility and the Global Competition for Skills: Dilemmas and Options," Working Paper 2004-D02 in the HRDC-IC-SSHRC Skills Research Initiative, available at http://strategis.ic.gc.ca/epic/internet/ineas-aes.nsf/en/h_ra01877e.html, p. 3.
- ²⁰ A classic statement of the impact of the National Policy on Canada's economic development is John Dales, 'Protection, Immigration and Canadian Nationalism,' in Peter Russell, ed., *Nationalism in Canada* (Toronto: McClelland and Stewart, 1966).
- ²¹ John Simpson, president of the American Association of Exporters and Importers, and former head of the US Customs Service, trenchantly observes, that "as long as the traditional character of the border, specifically its revenue and regulatory function is unchanged, you in Canada who depend on trade with the US will be living on the edge of a volcano." He suggests that creating a common external tariff (Customs Union) would create a free-trade zone eliminating the administrative burden on traders and facilitating the cross-border flow of goods. See his remarks in Public Policy Forum, "Canada's Policy Choices: Managing Our Border with the United States," accessed at http://www.ppforum.com/ow/ow_p_11_2001A_frep.pdf, p. 38.
- ²² While Canadian trade policy has, more or less consistently, moved in this direction over the past seventy some years, other federal and provincial policy instruments have not always followed suit. Canadian banking, telecommunications, culture, energy, dairy, and transportation policies, for example, continue to be hobbled by what can be charitably described as a "National Policy" attitude, hampering Canadian economic development and the ability of investors to reap the full benefits of deepening integration. For those Canadians worried about the continuing productivity gap between Canada and the United States, continued reliance on such "nation-building" policies offers some of the answers.
- ²³ See Michael Hart, *A Trading Nation: Canadian Trade Policy from Colonialism to Globalization* (Vancouver: UBC Press, 2002), for a broader discussion of Canadian efforts over the past two hundred years to reduce or enhance the impact of the border on Canadian economic development.
- ²⁴ Thomas d'Aquino and David Stewart-Patterson, *Northern Edge: How Canada Can Triumph in the Global Economy* (Toronto: Stoddart, 2001), p. 139.
- ²⁵ As Steven Globerman points out, the modern theory of the MNC stresses the potential need for factor movements, especially the relocation of managers and technical experts, to expedite production rationalization and increased international trade following trade liberalization. Since the bulk of international trade is carried out by MNCs through FDI, theory suggests that freer trade between

Canada and the United States, to the extent that it encourages increased intra-industry trade and investment, might be expected to increase economic incentives for bilateral migration. See "Trade Liberalization and the Migration of Skilled Workers," in *Perspectives on North American Free Trade*, Industry Canada Research Publication Program, 1999.

- ²⁶ Raymond Vernon, *In the Hurricane's Eye: The Troubled Prospects of Multinational Enterprises* (Cambridge: Harvard University Press, 1998), p. 28.
- ²⁷ Globerman concludes that "at least some portion of the increased temporary Canadian migration to the United States in the 1990s has been associated with adjustments occasioned by trade liberalization" Other motives include career development, and there is a net welfare gain in the long run once those skilled workers return to Canada. See "Trade Liberalization and the Migration of Skilled Workers," p. 23.
- ²⁸ A very clear, detailed description of the administration of NAFTA Chapter 16 in all three countries can be found in a Canadian federal government pamphlet: "Cross-Border Movement of Business Persons," available at <http://www.dfait-maeci.gc.ca/nafta-alena/cross-en.asp>.
- ²⁹ See http://uscis.gov/graphics/services/visa_info.htm for a detailed explanation of US visa policies.
- ³⁰ While Immigration authorities announced these changes, the State Department's website still cites the earlier requirements that the prospective employer must first file a Labor Condition Application and a Petition for Non-Immigrant Worker. See travel.state.gov/tn_visas.html.
- ³¹ See discussion of the numbers in Surendra Gera, et. al., "International Mobility of Skilled Labour: Analytical and Empirical Issues, and Research Priorities," pp. 14-19.
- ³² See the tables in Andrew Sharpe, "A Comparison of Canadian and US Labour Market Performance 1989-2000," accessed at www.csls.ca/reports/sharpe.pdf. for figures comparing the size of the two labour forces.
- ³³ Consistent with the relatively low levels of trade and investment between Canada and Mexico, Canada-Mexico temporary business travel is similarly negligible, indirectly confirming the extent to which this kind of labour mobility is related to trade and investment activity.
- ³⁴ See Harris "Labour Mobility and the Global Competition for Skills," for a discussion of the economic benefits of greater labour mobility in the integrated Canada-US market. The issues in the US-Mexico context, of course, are of a different order. While a case can be made for the economic benefits of greater labour mobility between the United States and Mexico, the arguments are substantially different from those involving Canada-US mobility. Regarding the more complex issues that would arise in a trilateral approach to labour mobility, see below.
- ³⁵ The treatment of Maher Arrar by US immigration officials in New York in 2002 provides a compelling example. It was less isolated than is widely assumed. Take the case of 30-year old Sue Smethurst, an Australian journalist who flew to Hollywood to interview fellow Aussie Olivia Newton-John for a Down Under feature. She failed to get an obscure journalist visa before leaving home and found herself in the clutches of the INS for 15 hours, cuffed, probed, finger printed and interrogated before being unceremoniously hustled onto a return flight to Sydney, without her interview and barred from returning. Matt Welch, "Journalists expelled, terrorists allowed in," *National Post*, 6 December 2003, RB2.
- ³⁶ See <http://uscis.gov/graphics/services/visas.htm> for a full list.
- ³⁷ Note US immigration experts Demetrios Papademetriou and Deborah Meyers: "If US immigration policies seem opaque to the non-specialist or appear at times either disconnected from other national priorities or at odds with them, it is because they are so. For more than a century, the INS has unsuccessfully struggled to navigate between two sets of interests that appear to be contradictory, if only on their face: those of US workers and those of US business. The former, and their allies, try to

regulate the flow of foreign workers as tightly as possible so as to compel better conditions for US workers. At the same time, business interests have pushed for nearly unfettered access to a global workforce under conditions that will maintain US competitiveness in a global economy with ever fewer trade protection. Both sides have had some success. That success, however, has been typically at the INS's expense — as each side's allies in Congress and the Administration whipsaw the agency on this issue almost regardless of how it does its work." "Reconcilable Differences? An Evaluation of Current INS Restructuring Proposals," Migration Policy Institute, *Policy Brief*, No. 1 (June 2002), p. 3.

- ³⁸ See, for example, David A. Martin, "Immigration Policy and the Homeland Security Act Reorganization: An Early Agenda for Practical Improvements," Migration Policy Institute, *Insight*, No. 1 (April 2003), for a description of the revamped administration of immigration policy in the United States.
- ³⁹ For a good comparative review of the two regimes as they stood in 2002, see Peter Reikai, *US and Canadian Immigration Policies: Marching Together to Different Tunes*, C.D. Howe Commentary No. 171 (November 2002).
- ⁴⁰ Reikai, *US and Canadian Immigration Policies*, p. 6.
- ⁴¹ See US Census website at www.census.gov.
- ⁴² The need for harmonization of policies, however, should not be exaggerated. There are Canadians, for example, who see the border as all that stands between them and the US gun culture. Strict Canadian controls on handguns, however, has not prevented the development of a flourishing sub-culture in Toronto devoted to the daily use of handguns to enforce its code. Handgun controls in New York have been as strict or stricter than those in Canada for many years, without any perceptible impact on the ability of criminals to find them and use them. Similarly, US attitudes toward recreational drugs are tougher than those in Canada, but draconian efforts to control them at the border have had little if any impact. These are criminal and police matters, with deep sociological roots that go beyond this paper. They are not primarily border enforcement problems.
- ⁴³ "The Smart Border Declaration: Building a Smart Border for the 21st Century on the Foundation of a North American Zone of Confidence," Ottawa, 12 December 2001, accessed at <http://canadianembassy.org/border/declaration-en.asp> and the "Action Plan for Creating A Secure and Smart Border," Ottawa 12 December 2001, accessed at <http://canadianembassy.org/border/actionplan-en.asp>
- ⁴⁴ Press Release, "Governor Ridge and Deputy Prime Minister Manley Issue One-Year Status Report on The Smart Border Action Plan," 3 October 2000 accessed at <http://canadianembassy.org/border/status-en.asp>.
- ⁴⁵ David A. Charters, "Terrorism and Response: The Impact of the War on Terrorism on the Canadian-American Security Relationship," *Conference Publication: Canadian Defence and the Canada-US Strategic Partnership*, 5-6 September 2002, Canadian Defence and Foreign Affairs Institute, accessed at: <http://www.cdfai.org>, page 16.
- ⁴⁶ For a contrary view, see Glynn Custard, "North American Borders: Why they Matter," available at <http://www.cis.org/articles/2003/back803.html>. While there is room for improvement in both countries — e.g., the United States, for example, admitted the 9/11 terrorists and still has not plugged many of the loopholes that they exploited, and Canadian refugee determination policies still attract critics — there is a cost to freedom that flows from these improvements.
- ⁴⁷ The two governments, for example, have reached agreement on refugee determinations and agreement that refugees must make their claim at the first safe country, and cannot pass through a safe third country, e.g., the United States, on their way to make a claim in Canada. European countries have agreed on similar provisions in the Dublin Convention dealing with refugees and asylum seekers. On the Canada-US Safe Third Country Agreement, see <http://www.cic.gc.ca/english/policy/menu->

safethird.html. On the Dublin Convention and its application, see,
<http://homepage.eircom.net/rishhaven/IHDublinConvention.htm> and
http://www.oasis.gov.ie/moving_country/seeking_asylum/dublin_convention.html.

- ⁴⁸ The current Smart Border Action Plan does not meet this need because it is predicated on solving problems and streamlining procedures within the context of existing domestic legislation and bilateral commitments. This is important and useful work, but more will be required to achieve greater labour mobility and other issues arising from deepening integration than can be accomplished within existing mandates. Deborah Meyers concludes that the current process is “frustrated by a lack of vision or roadmap detailing next steps, by a slow bureaucracy, by limited progress on-the-ground, by a somewhat limited focus on land borders, by ingrained attitudes, and by a lack of attention to the meaning of a true partnership and resolution of broader, but related issues.” “Does ‘Smarter’ Lead to Safer? An Assessment of the Border Accords with Canada and Mexico,” *MPI Insight*, June 2003, No. 2, p. 15, accessed at <http://www.migrationpolicy.org/pubs/2003.html>.
- ⁴⁹ Note Papademetriou and Meyers: “We should not abandon common sense and overreact to occasional violations of our laws by inconveniencing the 98 or 99 percent of compliant traffic while trying to pursue the remaining one or two percent who are non-compliant. ... many of those who are non-compliant seem to be neither deliberately nor meaningfully non-compliant. ... We do not mean to belittle the importance of the drug and people smuggling interdiction efforts but ... we have seen no evidence and have heard of no claim that, even in places where the anti-smuggling/drug effort is most dedicated, the inspection system currently in place at either border intercepts most would-be violators. A number of people even suggested to us that a random inspection method would probably be as effective as the current inspection methodologies. And, under questioning, even those most committed to the anti-alien smuggling/anti-drug effort acknowledged that most of their good ‘busts’ occur as a result of tips, good old-fashioned human intelligence work, and seamless on-the-ground cooperation with the Royal Canadian Mounted Police.” Testimony before US House Subcommittee on Immigration and Claims, 14 April 1999.
- ⁵⁰ John Simpson, former head of the US Customs Service, suggests that Canada and the United States should move their scarce immigration control resources off the land border and re-locate them at the relatively limited number of airports and seaports that serve as points of entry into North America. Border immigration inspectors would probably have more success in locating terrorists at points of entry and police and immigration agents would probably be more successful in locating terrorists already in North America. See his remarks in Public Policy Forum, “Canada’s Policy Choices: Managing Our Border with the United States,” p. 39.
- ⁵¹ Licensing authorities and professional accreditation bodies can pursue various strategies to allow duly accredited professionals from one jurisdiction to practice their profession on a temporary basis in another jurisdictions. The provincial bar societies from Ontario west, for example, have over the past few years worked out arrangements that allow members of these bars to provide legal advice to clients in other provinces; US courts can grant an out-of-state lawyer standing in a local court on a courtesy basis. Both of these approaches are predicated on the assumption that the accreditation of a professional in one jurisdiction is sufficient to practice in another on a limited basis. Under the terms of the 1994 Agreement on Internal Trade, some progress has been made in reducing the impact of interprovincial barriers. The AIT Secretariat reports that by July 1, 2001, 42 of the 51 professional regulatory bodies had achieved full or substantial compliance with the Labour Mobility Chapter requirements. These 42 regulatory bodies accounted for approximately 97% of persons working in the professions. See report at http://strategis.ic.gc.ca/epic/internet/inait-aci.nsf/en/il00033e.html#chap_7.
- ⁵² See, for example, the websites of the Canadian Chamber of Commerce, the Canadian Council of Chief Executives, and the Canadian Labour and Business Centre, respectively, at:
<http://www.chamber.ca/article.asp?id=179#immigration>
<http://www.ceocouncil.ca/en/human/immigration.php>
http://www.clbc.ca/Research_and_Reports/Archive/archive07010101.asp#immigration.

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- ⁵³ See the references cited at the Industry Canada website at strategis.ic.gc.ca/epic/internet/ineas-aes.nsf/vwGeneratedInterE/h_ra01886e.html. There is even a website devoted to the issue, at www.canadasbraindrain.ca/home1.html.
- ⁵⁴ Globerman, "Trade Liberalization and the Migration of Skilled Workers," p. 15, for example, calculates the brain drain in the managerial category as follows:
- 1982-89 Canadian managers to US = 7,883
- 1982-89 US managers to Canada = 3,783
- 1990-96 Canadian managers to US = 12,294
- 1990-96 US managers to Canada = 2,089.
- ⁵⁵ In 1947, governments specifically exempted purchases for their own use from the GATT's non-discrimination provisions (Article III:8(a)).
- ⁵⁶ See <http://strategis.ic.gc.ca/epic/internet/inait-aci.nsf/en/Home> for a discussion of the Agreement on Internal Trade.
- ⁵⁷ The federal government's stated intent to review all regulatory instruments by the end of 2005 with a view to reducing their unintended and growth-inhibiting effects should also provide an opportunity to consider the extent to which differences between Canadian and US regulations continue to serve a useful purpose. See Michael Hart, "Risks and Rewards: New Frontiers in International Regulatory Cooperation," paper prepared for the External Advisory Committee on Smart Regulation, available at <http://www.smartregulation.gc.ca/en/05/01/i1-02.asp>.
- ⁵⁸ There is an extensive literature comparing the impact of labour market performance in North America and Europe by focussing on the impact of more onerous regulations in Europe and North America. Cato Institute analyst Brink Lindsay observes that "from 1980 to 1997, there was no net private-sector job creation in the European Union – none at all. By contrast, the United States added some 30 million new private-sector jobs over that same period." *Against the Dead Hand: The Uncertain Struggle for Global Capitalism* (New York: John Wiley, 2002), p. 240.
- ⁵⁹ A good overview of the extent of convergence and difference in the two countries' regulatory regimes can be found by mining the OECD program on regulatory reform, particularly the two country studies on Canada and the United States, available at <http://www1.oecd.org/publications/e-book/4202091E.PDF> (Canada) and <http://www.oecd.org/dataoecd/48/19/2478900.pdf> (USA). Both are also available in book format.
- ⁶⁰ The Regulatory Issues Unit at the Treasury Board Secretariat and the Regulatory Affairs and Orders in Council Secretariat at the Privy Council Office and the Office of Information and Regulatory Affairs in the US Office of Management and Budget provide oversight of the regulatory activities of federal agencies in Canada and the United States respectively. Canadian and US officials from these offices consult frequently, either directly or at the OECD and similar bodies. In both countries, the aim is to ensure that regulations meet their objectives in as simple and clear a manner as possible. Discussions with officials in both offices indicate a high level of convergence in regulatory design and objectives between Canada and the United States.
- ⁶¹ Canada has entered into few consular conventions, relying instead on the multilateral instruments. See http://www.voyage.gc.ca/main/legal/legal_menu-en.asp.
- ⁶² See the Declaration at www.un.org/rights/ro/decla.htm.
- ⁶³ See www.unhcr.ch/ for a discussion of the Convention.
- ⁶⁴ See www.wto.org/english/tratop_e/serv_e/serv_e.htm for a description and explanation of the GATS.

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- ⁶⁵ For a more complete comparative discussion of labour mobility in regional trade agreement, see “Labour Mobility in Regional Trade Agreements,” OECD document TD/TC/WP(2002)16/FINAL.
- ⁶⁶ This section relies on a research paper prepared by Maria DelMar Hurtado, “Elimination of Border Controls on People,” for the Center for Trade Policy and Law, and on file with the author. See also Malcolm Anderson, “The Transformation of Border Controls: A European Precedent?” in Peter Andreas and Timothy Snyder, eds., *The Wall around the West: State Borders and Immigration Controls in North America and Europe* (Oxford: Rowman & Littlefield, 2000), Rey Koslowski, *Migrants and Citizens: Demographic Change in the European State System* (Ithaca: Cornell University Press, 2000), and Friedl Weiss and Frank Wooldridge, *Free Movement of Persons Within the European Community* (London: Kluwer Law International, 2002).
- ⁶⁷ The EU is governed on the basis of a complex mix of supra-national and intergovernmental institutions reflecting, in turn, the extent to which member states have reserved or delegated responsibilities to EU institutions. For a good explanation of EU governance institutions, see Neill Nugent, *The Government and Politics of the European Union*, 4th edition (Durham, NC: Duke University Press, 1999).
- ⁶⁸ Perhaps modest, but not unimportant. In a study of intra-EU barriers to labour mobility done by PriceWaterhouseCoopers, at least half of EU firms surveyed agreed that a willingness to be mobile is an important characteristic for senior managers and professionals, and that their need for mobile workers will increase as they seek to expand their businesses into new markets. Firms identified the five most important barriers to mobility as:
- The lack of integrated employment legislation — seen by 40 percent as a significant barrier;
 - Differences between tax systems — also seen by 40 percent as a significant barrier;
 - Need to provide spousal employment — seen by 39 percent as a significant barrier;
 - Lack of language skills — seen by 35 percent as a significant barrier; and
 - Differences between benefit systems — seen by 32 percent as a barrier.
- Some 68 percent of the firms surveyed agreed that the lack of integrated, EU-wide employment legislation constituted a significant barrier to their ability to deploy their human resources effectively. See PricewaterhouseCoopers, “Managing Mobility Matters—a European Perspective” accessed at [http://www.pwcglobal.com/Extweb/ncsurvres.nsf/0cc1191c627d157d8525650600609c03/6ae28a9826724ab785256b7b003c9cfa/\\$FILE/mobility.pdf](http://www.pwcglobal.com/Extweb/ncsurvres.nsf/0cc1191c627d157d8525650600609c03/6ae28a9826724ab785256b7b003c9cfa/$FILE/mobility.pdf).
- ⁶⁹ “The Social Situation in the European Union 2002. In Brief,” accessed at http://europa.eu.int/comm/employment_social/news/2002/jun/inbrief_en.pdf.
- ⁷⁰ Reproduced from Michael Fertig and Christoph M. Schmidt, “Mobility Within Europe – What Do We (Still Not) Know?” IZA Discussion Paper No. 447, March 2002.
- ⁷¹ Denmark, Norway, Sweden, Iceland, and Finland, as a result of the Nordic Passport Union of 1954, have allowed Nordic citizens to move freely throughout the five countries since 1954.
- ⁷² See Gudrun Biffl, “Migration Policies in Western Europe and the EU-Enlargement” in OECD, *Migration Policies and EU Enlargement—The Case of Central and Eastern Europe*, 2001, accessed at <http://www1.oecd.org/publications/e-book/8101041E.PDF>
- ⁷³ Biffl, “Migration Policies in Western Europe and the EU-Enlargement.”
- ⁷⁴ *Migrants and Citizens: Demographic Change in the European State System*, 160.
- ⁷⁵ See “New Frontiers: Building a 21st Century Canada-United States Partnership,” p. 6, at www.ceocouncil.ca.
- ⁷⁶ Gary Hufbauer concludes that the more draconian measures adopted in 1986 had the perverse effect of changing seasonal illegal workers into permanent illegal residents. See Hufbauer and Gustavo Vega-

Cánovas, "Whither NAFTA: A Common Frontier?" in Peter Andreas and Thomas J. Biersteker, eds., *The Rebordering of North America: Integration and Exclusion In a New Security Context* (Routledge, 2003), accessed at <http://www.iie.com/publications/papers/hufbauer1202.pdf>

- ⁷⁷ See, for example, Mike Allan, "Immigration Reform on Bush Agenda," *Washington Post*, 24 December 2003, p. A01.
- ⁷⁸ For a contrary view, see Steven Camarota, "Immigration From Mexico Assessing the Impact on the United States," at <http://www.cis.org/articles/2001/mexico/execsum.html>.
- ⁷⁹ This is not the place to examine the details of customs administration and the scope for reducing its impact on cross-border trade. Work done at CTPL suggests that there is significant scope for either eliminating some of these functions or administering them on a basis other than at the border. Some of that work is summarized in Hart, "A New Accommodation with the United States: The Trade and Economic Dimension," *IRPP Art of the State*, Volume II: *Thinking North America*, No. 1 (Montreal: IRPP, March 2004).
- ⁸⁰ "North American Labor Under NAFTA," Institute for International Economics Policy Brief available at <http://www.iie.com/publications/papers/nafta-labor.htm>.
- ⁸¹ "Canada and the Global Challenge: Finding a Place to Stand," C.D. Howe Institute Commentary No. 180 (Toronto: C.D. Howe Institute, March 2003), p. 17.
- ⁸² Fred McMahon, Fraser Institute, December 2001, "*Perimeter Puzzle*", accessed at http://oldfraser.lexi.net/publications/forum/2001/12/section_13.html. Dalhousie political scientist Denis Stairs suggests that 9/11 made it politically possible for the political and economic mandarinates in Ottawa to proceed more expeditiously with "seamless border" initiatives involving "a newly conceived and broadly negotiated framework within which to stabilize and govern the Canada-US relationship – a framework coupled to the idea of some sort of common defence perimeter – promises a tempting dose of relief." "Challenges and opportunities" for Canadian foreign policy in the Paul Martin era," *International Journal*, LVIII: 4 (Autumn 2003), p. 495.
- ⁸³ A broader, foreign policy discussion can be found in Michael Hart and Fen Hampson, "Canadian Foreign Policy and the United States," paper prepared for the Department of Foreign Affairs' Foreign Policy Review and soon to be available at the departmental website.
- ⁸⁴ Michael Hart and Bill Dymond, "Canada and the Global Challenge: Finding a Place to Stand," C.D. Howe Institute Commentary No. 180 (Toronto: C.D. Howe Institute, March 2003), 16 and 20.