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Border Security: U.S.-Canada Immigration Border Issues

Lisa M. Seghetti
Analyst in Social Legislation
Domestic Social Policy Division

Summary

The United States and Canada are striving to balance adequate border security with other issues such as the facilitation of legitimate cross-border travel and commerce, and protecting civil liberties. Congress has taken action to improve border facility infrastructure, increase the number of border patrol agents and immigration inspectors at the northern border, and provide these officials with additional technologically upgraded equipment. Congress has also taken action to track the entry and exit of foreign visitors by mandating an automated entry/exit system, however, its anticipated implementation at the northern border may not have an adverse impact on travel as most Canadian nationals will be exempt from the requirements of the system. Moreover, there have been several bi-national initiatives aimed at making the border more secure while facilitating travel. These initiatives are outlined in a 30-point plan, which was signed by officials from both countries in December 2001.

Introduction

The September 11, 2001 terrorist attacks and continued threats of future attacks have directed Congress's attention to U.S.-Canada border security-related issues. Both countries are striving to balance adequate border security with other issues such as the facilitation of legitimate cross-border travel and commerce, and protecting civil liberties. Previous Congresses passed significant border security-related legislation, and issues pertaining to the oversight of the legislation and possible policy implications for U.S.-Canada border relations may be of interest to the 109th Congress. The 109th Congress may also address several border security-related issues pertaining to the U.S.-Canada border that continue to be of interest. These may include (1) more information sharing with Canada, including joint intelligence sharing; (2) greater sharing of technology such as fingerprint data and passport readers; (3) off-site pre-inspection and pre-clearance areas; (4) the expansion of NEXUS for low-risk frequent travelers; and (5) improving infrastructure at the border and ports of entry.

Legislative Background¹

Congress has taken action to improve border security at and along the northern border. Congress has also taken action to track the entry and exit of foreign visitors by mandating an automated entry/exit system. Following is a sample of legislation that has been enacted into law in recent years.

Personnel, Infrastructure and Technology. The northern border extends some 4,000 miles and is the largest of the two borders. Compared to its southern counterpart, the northern border historically has been understaffed and lacked the necessary infrastructure to adequately screen individuals seeking entry into the United States. Although the southern border has seen more illegal activities over the years, there has been growing concern over the insufficient number of personnel assigned to the northern border, the increasing amount of illegal activity that occurs at the northern border, and the potential for terrorists to sneak into the United States through the northern border. There has also been concern with respect to the antiquated facilities at the northern border and the inadequate physical infrastructure to accommodate the increasing volume of traffic at the border.²

Congress took action to address the aforementioned problems by passing the USA PATRIOT Act (P.L. 107-56). The act authorized the Attorney General to triple the number of border patrol personnel and immigration inspectors along the northern border and authorized \$50 million for the agency to make technological improvements and to acquire additional equipment for the northern border. The Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173) authorized additional personnel and provided for technological and infrastructure improvements at the borders.

More recently, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), which requires the Secretary of Homeland Security (Secretary) to increase the number of border patrol agents along the northern border by at least 20% each year, FY2006 through FY2010. With respect to technology, the act permits the Secretary to establish a pilot program that tests advanced technologies (i.e., sensors, videos, and unmanned aerial vehicles) for border surveillance between ports of entry. The act requires the program to operate in remote areas along the northern border and that the operation be coordinated with other federal, state, local and Canadian law enforcement and border security agencies. The act also requires the Secretary to design the program in such a way that it has the capability to be expanded.

Congress also passed several appropriations bills that authorized appropriations for immigration inspectors and border patrol agents. For example, the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for FY2002 (P.L. 107-77) included \$25.4 million for 348 additional immigration inspectors and \$66.35 million for 570 additional border patrol agents. The Department of Defense Appropriations Act for FY2002 (P.L. 107-117) authorized \$55.8 million for

¹ For additional information on immigration border security-related legislation, see CRS Report RL31727, *Border Security: Immigration Issues in the 109th Congress*, by Lisa M. Seghetti.

² U.S. Department of Justice, Office of Inspector General, *Follow-Up Report on the Border Patrol's Efforts to Improve Northern Border Security*, OIG Report I-2002-004.

immigration inspectors and support staff and \$23.9 million for the redeployment of border patrol agents to the northern border. The Consolidated Appropriations Act for FY2003 appropriated \$25.5 million for an additional 460 immigration inspectors and \$57.21 million for an additional 570 border patrol agents. The FY2004 Department of Homeland Security Appropriations Act (P.L. 108-90) authorized \$41 million in appropriations for an additional 570 border patrol agents; \$9 million for additional inspectors (number of inspectors not specified); and \$76.3 million for increased deployment of inspection technology, among other things. The FY2005 Department of Homeland Security Appropriations Act (P.L. 108-334) authorized \$156.2 million for inspections and surveillance technology and Unmanned Aerial Vehicles, among other things.

Automated Entry/Exit System (US-VISIT).³ Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA; Division C of P.L. 104-208) required the Attorney General to develop an automated system to record the entry and exit of every alien arriving in and departing from the United States. This provision became a source of concern for border communities whose members feared that if Section 110 were implemented it would cause gridlock at border crossings. Consequently, Congress amended Section 110 in the 105th Congress by extending the deadline for its implementation and by prohibiting significant disruption of trade, tourism, or other legitimate cross-border traffic once the system is in place. Congress further amended Section 110 in the 106th Congress by delaying the system's immediate implementation at all ports of entry and by requiring the system to use available data to record alien arrivals and departures, without establishing additional documentary requirements. Following the September 11, 2001 terrorist attacks, however, Congress requested that resources be directed to the immediate development and implementation of an automated entry and exit control system at all ports of entry.

The Canadian government has expressed strong opposition to implementation of an automated entry and exit data system at northern ports of entry. Notwithstanding, Canadian citizens are exempt from some of the US-VISIT program requirements. For example, Canadian nationals and some Canadian landed immigrants are not required to present a passport, and are often not required to obtain a visa.⁴ Moreover, Canadian nationals are generally not required to obtain an I-94 form (Arrival/Departure Record) if they are entering the U.S. temporarily for business or pleasure.⁵ Canadians who enter the U.S. for purposes other than business or pleasure (e.g., employment, trade and diplomatic activities, etc.) are issued an I-94 form but may be able to omit their passport number and visa information from the form, if they have not visited outside the Western Hemisphere.⁶

³ See CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa M. Seghetti and Stephen R. Vina.

⁴ Section 212(d)(4) of the INA permits the Attorney General and the Secretary of State acting jointly to exempt certain foreign nationals from the documentary requirements to enter the United States. See also 22 U.S.C. §41.2 (allowing the Secretary of State and AG to waive Canadian nationals' visa and passport requirements if they have not visited outside the Western Hemisphere).

⁵ 8 C.F.R. §235.1(f)(i).

⁶ See 68 *Federal Register* 292, 293 (citing 8 C.F.R. §212.1).

Biometrics and Travel Documents.⁷ Congress first mandated biometrics in travel documents in IIRIRA by requiring Border Crossing Cards (BCCs, now referred to as Laser Visas) for Mexican nationals to have a biometric identifier that is machine readable. In addition to IIRIRA, the USA PATRIOT Act and the Border Security Act both required biometrics in travel documents in order for foreign nationals to enter the U.S. Until recently, however, most Canadian nationals were exempt from the documentary requirements for entry into the U.S.⁸

Previous Bi-National Cooperation

Both the United States and Canada have taken measures to better secure the shared border, while preventing disruption to the flow of people. Such efforts date back to 1995 and include the following:

- A 30-point plan, commonly referred to as the “Smart Border Accord” (signed on December 12, 2001), to secure the border and facilitate the flow of low-risk travelers through (1) coordinated law enforcement operations; (2) intelligence sharing; (3) infrastructure improvements; (4) the improvement of compatible immigration databases; (5) visa policy coordination; (6) common biometric identifiers in certain documentation; (7) prescreening of air passengers; (8) joint passenger analysis units; and (9) improved processing of refugee and asylum claims.
- A joint statement of cooperation on border security and migration was signed on December 3, 2001 by representatives from the United States and Canada. The joint statement of cooperation focused on detection and prosecution of security threats, the disruption of illegal migration, and the efficient management of legitimate travel.
- A mechanism for the two governments, border communities, and stakeholders to discuss issues of border management was established in 1999, commonly referred to as the “Canada-U.S. Partnership Forum (CUSP). The guiding principles that evolved from the discussions include: (1) streamlining, harmonizing and collaborating on border policies and management; (2) expanding cooperation to increase efficiencies in customs, immigration, law enforcement, and environmental protections at and beyond the border; and (3) collaborating on common threats from outside the United States and Canada.

⁷ See CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa M. Seghetti and Stephen R. Vina.

⁸ In general, Canadians arriving at a designated port of entry must, in general, comply with the biometric requirements. However, those Canadian citizens who travel on temporary visits to the U.S. and who do not apply for admission pursuant to nonimmigrant visas do not have to supply the biometric information currently required by law (see 69 *Federal Register* 468, 472). The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), however, requires *all* individuals traveling into the U.S. to have a passport or other document, or combination of documents, that the Secretary of Homeland Security deems sufficient to denote one’s identity and citizenship by January 1, 2008 (the law does not require the documents to contain a biometric identifier nor does it require *all* travelers seeking entry into the U.S. to be vetted through the entry and exit database).

Current Bi-National Cooperation

The U.S. and Canada have several bi-national initiatives aimed at improving border security and facilitating the legitimate flow of goods and people. Following is a sample of a few of these initiatives.

NEXUS. The NEXUS program permits pre-enrolled, low-risk travelers who are either a citizen or a legal permanent resident of the United States or Canada expedited crossing at the border by preclearing them for inspection purposes.⁹ Under the “Smart Border Accord,” NEXUS will expand to every major land border crossing at the northern border. The United States and Canada have already expanded the program to twelve land border crossings, two Canadian international airports (NEXUS-Air), and there are plans to expand the program to the Windsor/Detroit marina area (NEXUS-Marine).

Integrated Border Enforcement Teams (IBET). IBETs are bi-national (United States and Canada), multi-agency law enforcement teams that target cross-border criminal activity.¹⁰ IBETs were originally set up as a result of the 1995 joint accord on Our Shared Borders to target cross-border crimes that usually involved illicit drug violations. The Smart Border Accord, however, expanded IBETs to designated areas across the northern border and its focus has broadened to include counterterrorism measures.

Shared Facilities. Prior to the events of September 11, 2001, the United States and Canadian governments had taken measures to facilitate the pre-screening of people (and goods) prior to their arrival at ports of entry. For example, in some instances the countries would permit immigration (and Customs) officials to co-operate in each other’s country.¹¹ Such an effort has been viewed by many not only as a mechanism to facilitate travel but also as an intervention tool that allows for preclearance activities to occur away from the border. Such cross-border efforts, however, have not been without controversy.¹²

Preinspections.¹³ Currently, preinspections of travelers en route to a U.S. air port of entry are allowed at seven Canadian airports.¹⁴ Although preinspections at selected Canadian international airports have been in place for some time, under a May 2, 2003

⁹ Although individuals enrolled in NEXUS are precleared for inspection purposes, they are subject to random cursory searches.

¹⁰ The core agencies involved in IBETs are the Coast Guard, and immigration, customs and law enforcement agencies from both countries.

¹¹ The concept of shared facilities is often used interchangeably with reverse inspections. Under reverse inspections, inspections that are currently conducted at a U.S. port of entry are done in a foreign country (i.e., on the Canadian side of the border crossing), whereas in a shared facility, inspection officials from both countries are co-located in the same facility.

¹² See 96-397, *Canada-U.S. Relations*, by Carl Ek, the section entitled “Border Security: Trade and Commercial Concerns,” by Ian F. Fergusson, p. 21.

¹³ Pre-inspections are immigration inspections conducted at foreign ports of embarkation by United States authorities for passengers seeking entry into the U.S.

¹⁴ Calgary, Edmonton, Toronto, Vancouver, Victoria, Winnipeg, and Montreal (see 8CFR 103.1).

agreement, Canada has agreed to allow travelers en route to the United States to be inspected *directly* by U.S. officials, thus bypassing Canadian inspection. This agreement replaces a 1974 agreement and clearly identifies the authorities of U.S. inspectors.

Current Issues

Several issues have been raised when examining the need for tighter border security while continuing to allow for the unimpeded flow of travel across the northern border. In almost every case the need for bi-national cooperation is evident. Following is a discussion of two such issues.

US-VISIT Program. The law requires an automated entry/exit system at all ports of entry that records arrivals and departures of every alien entering and exiting the country (Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act, IIRIRA; Division C of P.L. 104-208).¹⁵ The Canadians currently do not want to implement a similar system, however, there have been reports that the Canadian government may introduce a plan that would have Canadian Customs officials collect exit information on non-citizens and pass it on to U.S. officials. Such a plan could further aid the United States in identifying non-citizens who may enter the country. The absence of such a plan, however, could complicate U.S.-Canadian border management. Moreover, as the U.S. begins to implement an automated entry and exit control system, the demand for improved infrastructure will be critical for the development of such a system. It is unclear if Canada will facilitate such a system by extending its infrastructure at the relevant border crossings.

North American Perimeter Security. As the United States moves forward with implementing much of the security requirements in the PATRIOT Act and the Border Security Act, many fear that the tighter security requirements will impede the flow of people across the border. Some critics are advocating for a more open border. The ideal of a North American Perimeter Security concept has been around for several years and the basic premise of a North American Perimeter Security would move inspections and enforcement activities away from the border. Such a concept would essentially eliminate barriers to the movement of people (and goods) across the shared border. The Border Security Act called for a study to examine the feasibility of establishing a North American Perimeter Security program that would provide for increased cooperation with foreign governments on questions related to border security. The North American Perimeter Security, however, would require the harmonization of U.S. and Canadian immigration and refugee policies, among other things. Although such a harmonization of policies may be problematic following the events of 9/11, both countries have begun to harmonize other policies at incremental levels that could be viewed as “pushing the border out” (i.e., preinspections and reverse inspections).

¹⁵ Several subsequent laws extended the implementation of an entry/exit control system deadline set forth in §110 of IIRIRA; and the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173) further requires implementation of an entry/exit control system.