

# CRS Report for Congress

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

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### Summary

The September 11 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. Congress has taken action (the USA PATRIOT Act, P.L. 107-56; and the Enhanced Border Security and Visa Entry Reform Act of 2002, P.L. 107-173) to increase the number of INS border patrol agents and inspectors at northern ports of entry and to provide these officials with additional technologically upgraded equipment.

### Introduction

Prior to the events of September 11, the focus on border security was beginning to shift from immigration-related issues to issues related to facilitating legitimate cross-border commerce. The events of September 11, however, have directed Congress's attention to U.S.-Canada border security-related issues. Both countries are now 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 may be called on to address several border security-related issues pertaining to the U.S.-Canada border. 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 for certain categories of frequent travelers (i.e., business and employment-related travelers); and (4) the expansion of the dedicated commuter lane program for low-risk frequent travelers.

### Background and Current Events

Many observers maintain that, historically, the U.S.-Canada border has been understaffed and lacks the necessary infrastructure to adequately screen individuals seeking entry into the United States. An Office of Inspector General (OIG) report issued in February 2000 highlighted deficiencies in the INS border patrol along the northern border. Among other things, the OIG report asserted that "the border patrol faced significant enforcement challenges along the United States-Canada border and was unable to adequately respond to illegal activity, primarily because of a lack of sufficient staff and

resources.”<sup>1</sup> According to an October 1, 2001 Senate hearing on *Northern Border Security*, INS has 334 border patrol agents and 498 inspectors assigned to the northern border, compared to over 9,500 border patrol agents and inspectors assigned to the shorter southern border.<sup>2</sup>

Congress took action to address the aforementioned problems by passing the USA PATRIOT Act (P.L. 107-56), which was signed into law on October 26, 2001. The Act authorizes the Attorney General to triple the number of INS border patrol personnel and inspectors along the northern border and authorizes \$50 million for INS 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), signed into law on May 14, 2002, authorizes additional personnel and provides for technological and infrastructure improvements at the borders.

The U.S. and Canadian governments signed a declaration establishing a “smart-border” on December 12, 2002. The declaration includes a 30-point plan to secure the border and facilitate the flow of low-risk travelers and goods through coordinated law enforcement operations, intelligence sharing, infrastructure improvements, the improvement of compatible immigration databases, visa policy coordination, common biometric identifiers in certain documentation, prescreening of air passengers, joint passenger analysis units, and improved processing of refugee and asylum claims, among other things. Previously, on December 3, 2001, the two countries signed a joint statement of cooperation on border security and migration that focused on detection and prosecution of security threats, the disruption of illegal migration, and the efficient management of legitimate travel.

Other efforts to increase border security between the U.S. and Canadian government include the 1999 *Canada-U.S. Partnership Forum* (CUSP) and the February 24, 1995 joint accord, *Our Shared Border*. CUSP provides a mechanism for the two governments, border communities, and stakeholders to discuss issues of border management. Guiding principles for U.S.-Canada cooperation resulting from these dialogues are as follows:

- ! Streamline, harmonize, and collaborate on border policies and management;
- ! Expand cooperation to increase efficiencies in customs, immigration, law enforcement, and environmental protections at and beyond the border; and
- ! Collaborate on common threats from outside the United States and Canada.

The 1995 accord brought together five agencies (the Immigration and Naturalization Service, the United States Customs Service, Revenue Canada, Citizenship and Immigration Canada, and the Royal Canadian Mounted Police) to focus on joint border issues such as enhancing security through more effective inspection efforts that target

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<sup>1</sup> 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.

<sup>2</sup> U.S. Congress. Senate Committee on Appropriations. Hearings on *Northern Border Security*, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. Washington, Govt. Print. Off., October 3 and December 5, 2001.

specific problem areas (e.g., drugs and smugglers), and the continued commitment to pool inspection and enforcement resources.

**Section 110 Automated Entry/Exit System.** 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 FY1999 Omnibus Consolidated Appropriations Act (P.L. 105-277) by extending the deadline for the implementation of an entry/exit system and by prohibiting significant disruption of trade, tourism, or other legitimate cross-border traffic once the entry/exit system is in place. In June 2000, Congress further amended Section 110 in the Immigration and Naturalization Service Data Management and Improvement Act of 2000 (P.L. 106-215) by delaying the immediate implementation of the entry/exit system at all ports of entry and requiring the development of a system that uses available data to record alien arrivals and departures, without establishing additional documentary requirements. The events of September 11, however, have redirected Congress's attention to the immediate development and implementation of an automated entry and exit control system at all ports of entry. In his FY2003 budget, President Bush has requested \$362 million for such a system.

**Machine Readable, Tamper-Resistant Entry and Exit Documents.** Section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173) requires the Attorney General and the Secretary of State to issue machine-readable, tamper-resistant visas and travel documents that have biometric identifiers by October 26, 2004. The law also requires the installation of biometric identifier readers and scanners at all ports of entry by October 26, 2004.

## Issues

The Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173) requires the development and implementation of biometric identifiers for travel documents. The Canadian government has fast-tracked the implementation of a machine-readable, permanent fraud-resistant resident card for new immigrants. It is still unclear whether the new technology will be compatible with the U.S. documents, and whether the Canadian cards will have similar biometric identifiers that are compatible with the U.S. system. If not, there could be efforts to coordinate the two countries' systems.

The law requires an automated entry and 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).<sup>3</sup> The Canadians currently do not want to implement a similar system, and this could complicate U.S.-Canadian border management.

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<sup>3</sup> 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.