

Beyond the Border Action Plan

Progress Report on Facilitating the Conduct of Cross-Border Business

1. Introduction

An efficient U.S.-Canadian border is critically important to U.S.-Canada cross-border business and the continued economic competitiveness of both countries. More than \$612 billion of trade occurs between the U.S. and Canada in a year—Canadian exports to the United States support one in seven jobs in Canada, and U.S. exports to Canada support millions of jobs in the United States.

The *Beyond the Border (BTB) Action Plan*, released in December 2011, helps facilitate legitimate trade and travel across the Canada-U.S. border while enhancing security of both countries. Both the U.S and Canadian governments have committed to work together through the BTB to ensure business travelers benefit from a more efficient and predictable border clearance processes. This report summarizes progress made by the Canadian and U.S. governments over the last year in facilitating the conduct of cross-border business and identifies a number of actions for future improvement.

2. Beyond the Border Action Plan—Business Traveler Initiatives

Under the BTB Action Plan, the United States and Canada made the following commitments to facilitate the conduct of cross-border business:

- A. *Administrative guidance and training:* Canada Border Services Agency (CBSA) and U.S. Customs and Border Protection (CBP) will provide enhanced administrative guidance and training to their officers and enhanced operational manuals to achieve optimal operational consistency at all ports of entry on business traveler issues.
- B. *Specialized maintenance and repair personnel:* Canada and the United States will develop and implement operational and administrative policies and requirements to facilitate the movement of specialized personnel to perform maintenance and repairs of industrial machinery and critical operations systems.
- C. *After-lease servicing:* Canada and the United States will expeditiously pursue changes to existing rules authorizing temporary entry of business visitors who provide after-sale service, so they apply equally to those who provide after-lease service as per designated contractual agreements.

- D. *NEXUS client profile*: Canada and the United States will implement specific approaches to incorporate designating documents onto the NEXUS client profile for predictable expedited clearances.
- E. *Advance adjudication processes*: Canada and the United States will review current administrative processes under which all categories of business travelers may request adjudication of employment and related petitions by the destination country's immigration authorities to identify and resolve potential issues prior to the actual date of travel. Based on this review, and with the objective of increasing the use of the advanced processes, we will improve current processes and, as appropriate, establish new processes.
- F. *Redress/recourse mechanisms*: Canada and the United States will review the effectiveness of existing redress and recourse mechanisms for business travelers whose applications are denied, and identify and implement administrative and operational improvements.
- G. *Consultations and future improvements*: The Minister of Citizenship, Immigration and Multiculturalism and the Secretary of Homeland Security will jointly initiate consultations with stakeholders in both countries. The objective of these consultations will be to identify and assess additional ways to facilitate relevant processes in the near and medium terms through administrative, policy, regulatory and operational improvements.

3. Status of Commitments

The following summarizes the status of each of the commitments.

A. Administrative guidance and training:

Canada

Citizenship and Immigration Canada (CIC) and CBSA have each played a role in enhancing administrative guidance and training for cross-border travelers. CIC's Temporary Foreign Worker Guidelines manual provides guidelines to assist immigration and border officials to interpret the rules governing the entry of foreign workers to Canada and also includes a detailed appendix on the North American Free Trade Agreement (NAFTA) temporary entry provisions. CIC has reviewed and updated the manual to reflect the latest policy interpretations and practice. The manual is publicly available at www.cic.gc.ca/english/resources/manuals/fw/index.asp.

In order to improve consistency of traveler processing, CBSA manuals, including the traveler immigration processing manuals have been reviewed and updated to reflect the recent changes to CIC's Temporary Foreign Worker Guidelines manual. To provide additional guidance, CBSA launched a new page for Border

Services Officers (BSOs) on the Agency's intranet called the *Business Traveller Toolkit* that serves as a single window resource consolidating manuals, bulletins and policies related to the processing of business travelers and their goods. The Toolkit is regularly updated as new guidance becomes available. A CBSA plan for enhanced BSO training material addressing the processing of business travelers has been put in place. A BSO training package called the *Business Traveller Action Learning Session* was developed as a refresher to address the processing of specific types of business travelers at the border. This evergreen training package has been distributed to all ports of entry in the land and air modes, and the training is being delivered to the BSOs on an ongoing basis as other Agency and border management priorities permit.

United States

Since December 2011, CBP has issued numerous guidance memos related to business travelers and processing at ports of entry of Canadian citizens seeking admission to the United States as NAFTA professional workers under the "TN" classification. In addition, CBP has drafted a NAFTA Reference Manual for CBP officers in an effort to clarify the temporary entry provisions for Canadians under NAFTA. The NAFTA Reference Manual was sent to the field on June 27, 2012. CBP is also in the process of drafting a detailed NAFTA Handbook for its officers on NAFTA processing and hopes to have it available to the field in the near future. Moreover, CBP has created the "Business Traveler's Corner" on CBP's intranet where memos and regulations pertaining to business travelers are posted. The Business Traveler's Corner is kept current and updated regularly. It is intended to be a go-to source for CBP officers looking for information regarding business travelers.

B. *Specialized maintenance and repair personnel:*

Canada

The entry of foreign nationals providing emergency repair services is facilitated in that they do not require a positive labour market opinion (LMO), confirming that there are no Canadians to do the job (see section 5.32 of the [Temporary Foreign Worker Guidelines manual](#)). CBSA has reinforced this policy in their updated training.

Those entering Canada to perform after-sales or after-lease servicing do not require a work permit and thus do not require an LMO (see item C below).

United States

Under current law, articulated in CBP field guidance, Canadian nationals may already be admitted pursuant to NAFTA in a number of categories, including installers, repair and maintenance personnel, or supervisors of such work on

commercial or industrial equipment or machinery (including computer software) manufactured and purchased from an enterprise located outside the United States. However, in such cases there must be a contract of sale or warranty for the equipment or machinery that specifically requires the seller to provide such services or to train workers to provide such services, and the alien must possess specialized knowledge essential to the seller's contractual obligation to perform the services or training and must receive no remuneration from a U.S. source. A person seeking admission to the United States to perform maintenance and repair work that does not meet these criteria must seek admission in an appropriate non immigrant visa category, e.g., as an H-2B temporary worker (a visa classification that requires a temporary labor certification from the U.S. Department of Labor).

Though Canadian repair workers generally are not admissible as temporary visitors for business other than in the aforementioned circumstances, such workers could be admissible as business visitors if they are entering for the purpose of temporary supervision or training of U.S. workers engaged in the repair work, as long as they otherwise are eligible for admission as a business visitor. The Canadian national in such a case would not be authorized to perform any such repair work himself or herself. In the spirit of the Beyond the Border joint declaration and to fulfil the commitments made under the BTB Action Plan, CBP issued guidance to the field reminding CBP officers at U.S. Ports of Entry that such supervision or training by Canadian repair workers may in certain circumstances be considered appropriate business visitor activity.

C. After-lease servicing:

Canada

Canada authorizes the temporary entry of business visitors providing both after-sales service and after-lease service under current provisions (see section 5.2 of the [Temporary Foreign Worker Guidelines manual](#)).

United States

The U.S. has issued policy guidance to CBP officers clarifying the circumstances under which temporary entry of business visitors who provide after-sale and after-lease (also referred to as “during-lease”) service as per designated contractual agreements is permissible.

D. NEXUS client profile:

Canada

CBSA currently includes the work permit as part of the NEXUS profile. If, at the time of application, a business traveler has an existing work permit, they can provide the permit number and it will be added to their profile. For applicants without their work permit at the time of their NEXUS application, the business traveler's work permit would be issued upon their first entry and then added to the traveler's NEXUS profile.

United States

CBP has a mechanism in place to identify different classes of admission in the NEXUS profile (e.g., admission in the TN classification) and would have that status recorded at enrolment so the traveler can select the appropriate class of admission under which the applicant is entering.

E. Advance adjudication processes:

Canada

While U.S. citizens seeking a work permit as a NAFTA professional, intra-company transferee or a trader/investor, are eligible to apply for a work permit at the border, they can obtain advance determination by applying to CIC. For business visitors, NEXUS represents a mechanism by which they can obtain advance adjudication.

United States

Prior to October 1, 2012, Canadian citizens seeking admission to the United States as NAFTA professional workers under the "TN" classification were required to apply at a U.S. Port of Entry (POE) to a CBP officer. While Canadian citizens may still apply directly with CBP at a POE for admission as a TN, an employer or U.S. entity may now elect to file a TN application on the Canadian citizen's behalf, with U.S. Citizenship & Immigration Services (USCIS), in advance of the Canadian citizen's travel after October 1, 2012. Adjudication of TN applications by USCIS prior to the traveler's application for admission is expected to increase the efficiency of POE processing of TN travelers and will improve consistency of DHS adjudications of TN applications.

USCIS has reminded employers that they still have the option of applying to USCIS for L-1 classification on behalf of a Canadian "Intra-company Transferee" in advance of travel to the U.S. However, as before, Canadian citizens may also apply for L-1 classification at a U.S. POE.

F. Redress/recourse mechanisms for denied applications:

Canada

For applications processed outside Canada, adjudication is provided via Canadian visa offices at selected Canadian embassies and missions. Redress is available through the ability to request a review by a supervisor, reapplication or through referral to CIC's Case Management Branch at Headquarters. A business traveler who has been denied their application at a POE may request that another officer review the decision or request to speak to the CBSA Superintendent on duty in an effort to resolve any issues immediately. If the business traveler is not satisfied, they can request a formal review whereby an official report is prepared and referred to a delegate of the Minister who reviews the accuracy of the inadmissibility decision and allows the traveler to provide evidence or rationale to support the purpose of the trip to Canada before rendering a decision in the matter. In all instances, travelers may lodge any service related complaints through CBSA's Enhanced Complaints Mechanism (ECM), which offers a review of the circumstances that led to the objection. After conducting a review of the ECM, the CBSA has determined that the process appears to be working efficiently. Only twenty complaints were received from business travelers in 2011 and 85% were addressed within CBSA's service standard of 40 days. Finally, an applicant may appeal a decision to the Federal Court for a judicial review.

United States

The redress mechanism in use by CBP is the Department of Homeland Security Traveler Redress Program (DHS TRIP). As the main point of contact for individuals who seek redress regarding travel screening difficulties, DHS TRIP is an excellent and effective way to address passenger concerns because it quickly routes redress requests to the appropriate office for review and adjudication. Additionally, when an individual applies for redress, he/she is assigned a record identifier or Redress Control Number that allows CBP to promptly identify the case in the system. CBP has determined that DHS TRIP should continue to be the mechanism for addressing passenger concerns.

4. Consultations and Related Initiatives

In May 2012, the governments of Canada and the United States held joint stakeholder consultations in Washington, DC and Toronto, Ontario. As well, stakeholders were invited to submit online suggestions and comments until the end of June 2012. The Migration Policy Institute was contracted to moderate the consultations and to report on the recommendations made by stakeholders. The report (available at http://www.cic.gc.ca/english/department/consultations/cross_border/index.asp)

summarizes stakeholders' comments received through both the face-to-face consultations and the online submissions. The consultations confirmed the stakeholders' support of the commitments related to business travelers as set out in the BTB Action Plan.

A variety of proposals were received from stakeholders through the consultations related to improving cross-border business between Canada and the United States, some of which are already in place or are being addressed through other Action Plan initiatives.

In particular, stakeholders expressed a desire to access real wait times at land crossings online so travelers can save time by choosing different routes. This is being addressed through the BTB Action Plan initiative relating to Improving Shared Infrastructure and Technology. Real-time border wait-time information will be made available to border and transportation agencies to better manage their resources and to drivers to make informed decisions about when and where to cross the border.

For NEXUS members, stakeholders suggested expedited clearance for U.S. domestic flights. As of February 2012, this is available at major airports in Canada, and as of November 2012 NEXUS members travelling domestically in the United States qualify to participate in the Transportation Security Administration's Pre✓™ program.

In addition, numerous mechanisms have been introduced to keep NEXUS members informed, including a NEXUS specific RSS feed that provides information on enhancements in real time for members who join through www.nexus.gc.ca; a CBSA-wide Twitter account; and a NEXUS Newsletter, which provides members with information regarding program enhancements and membership obligations via email.

5. Further Improvements

Taking into account commitments already made within the BTB Action Plan, stakeholder feedback and action items currently in process, Canada and the United States commit to pursue the following initiatives:

- Explore the feasibility of incorporating a trusted employer concept in the processing of business travelers between Canada and the United States;
- As part of ongoing work to revise its officer field guidance manuals, the U.S. will consider making public non-law enforcement sensitive portions of its manuals that are appropriate for public dissemination and not already published (e.g., http://foiarr.cbp.gov/index.asp?ps=1&search=&category=Manuals_and_Instructions), so business travelers will be aware of their rights and obligations. Operational guidelines relating to treatment of NAFTA business travelers to Canada are currently

available to the public in the Temporary Foreign Workers Guidelines manual at www.cic.gc.ca/english/resources/manuals/fw/index.asp, Appendix G;

- Review policies related to the movement and treatment of foreign drivers and related equipment to ensure maximum legally permissible alignment of policy with evolution in the cross-border trucking industry; and
- By June 30, 2013, review and adjust, if necessary, documentary requirements related to after-sale/during-lease services to ensure efficient and consistent treatment of service personnel at the border.

Canada and the United States acknowledge the many comments and recommendations received from stakeholders regarding the NAFTA professional list (set forth in NAFTA Appendix 1603.D.1) and other NAFTA-related issues, and will seek opportunities to address these issues as part of NAFTA Temporary Entry Working Group process.

6. Future Stakeholder Engagement

As part of the consultative process, stakeholders indicated their desire and support for establishing mechanisms for future consultation and feedback. Although there was no consensus for face-to-face consultations versus online consultations, they did appreciate the joint nature of the 2012 consultations. In light of these comments and consistent with the BTB Action Plan that the progress report “propose options for regular stakeholder engagement,” Canada and the United States are proposing that a joint, annual consultation session be held with stakeholders in each country for the foreseeable future, potentially focusing on locations near key border crossing points, with the first being held by September 30, 2013.