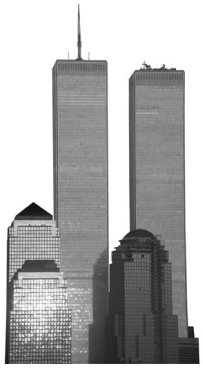
AFTER SEPT. 11: INTEROPERABILITY WITH THE U.S., NOT CONVERGENCE



Daniel Schwanen

The attacks on the World Trade Center and the Pentagon on Sept. 11, 2001, seem to have increased the momentum that had begun to build earlier this year toward greater North American economic and political integration. Many Canadians fear, quite reasonably, that integrated continental policies would be dominated by the United States, which, particularly after the attacks, is unlikely to surrender control of policy-making authority. In order to preserve Canadian policy independence, it would be better to strive for policy "interoperability," that is, institutional arrangements, including reciprocal recognition, that allow Canadian policy-makers to take U.S. interests into account and to cooperate more effectively with U.S. agencies.

Les attentats du 11 septembre 2001 contre le World Trade Center et le Pentagone semblent avoir accéléré le mouvement du début de l'année en faveur d'une intégration économique et politique nord-américaine. Non sans raison, bon nombre de Canadiens craignent que les États-Unis, peu susceptibles d'abdiquer leur contrôle sur les processus de décision, encore moins depuis les attentats du 11 septembre, ne dominent cette intégration continentale. Pour préserver l'autonomie du Canada, mieux vaudrait donc envisager une « interopérabilité » des politiques concernées, c'est-à-dire une série d'arrangements institutionnels, incluant une reconnaissance réciproque, qui inciterait les décideurs canadiens à tenir compte des intérêts des États-Unis et à collaborer plus efficacement avec les organismes américains.

North American integration was the stuff of front-page news, editorial comments, and columnists' musings in Canada well before the tragic events of Sept. 11. It was also on the radar screen in the United States as well. In August, the Institute for International Economics, a prestigious think-tank based in Washington, D.C., released its vision of a future North American Community, a common market within a single tariff and security perimeter, replete with fiscal transfers between rich and poor regions.

The attacks and their aftermath have reminded Canadians of their economic vulnerability to border disruptions, and have underlined the importance for Canada of adopting a clear-headed strategy towards its growing linkages with the United States and its other NAFTA partner, Mexico. Since Sept. 11 there have been renewed calls for convergence in Canadian and U.S. immigration and security policies, seemingly as the price to pay to preserve an open border for trade.

Many Canadians fear that further integration with the United States and attempts to minimize obstacles to trade at the border will lead to a wholesale convergence of important policies and standards across the two countries. In fact, in most policy areas it is not necessary to take that radical route in order to respond to the security concerns that now threaten the huge volume of cross-border trade. One of the key Canadian challenges in the current context is to demonstrate to the United States that such a degree of harmonization is, in most cases, neither necessary nor in the interests of either partner. The Merriam-Webster dictionary says that to integrate is "to form, coordinate, or blend into a functioning or unified whole." Canada's policy towards

North America should be built squarely on the "functioning whole," not the "unified whole" aspect of this definition. The fact is that the countries of North America need each other in order to pursue many of their economic, social, environmental and security objectives. These objectives may themselves diverge for some time to come, including as they do between Canada and the United States a number of areas with potential cross-border implications, such as immigration, firearms restrictions and prescription drug pricing.

Even if Canadians' views became much closer to those of Americans on these and other matters, being part of a North American policy determination process dominated by the United States Congress would likely not work to Canadians' advantage. To refer for a moment to prosaic trade matters, consider recent U.S. moves against Canadian potatoes and lumber, or continuing restrictions on a number of activities by Canadians in the United States, such as maritime cabotage or state-level procurement. It is hard to imagine that more integrated policies across North America, determined by a body that included no elected representatives from Canada, would be able to protect Canadian interests in a variety of matters. In short, we should be skeptical about talk of greater integration that simply envisions Canada converging towards made-for-US rules and policies. It is true that in many policy areas the two countries' approaches are similar, if not in some cases virtually identical, but there is no reason to suppose this will be true in all policy areas at all times. Canadians quite reasonably want to retain the right to depart from U.S. policy even it is a right they do not exercise frequently.

A common intergovernmental decision-making structure, such as an EU-style Council, which is sometimes talked about, could not function in North America, both because of the size imbalance between our countries and because, as is well known, Congress holds fast jealously to its powers. Another important driver of European integration, a Court of Justice, is likewise unthinkable on this continent. In short, a move towards integration that would involve either common political institutions or a supra national court sensitive to Canadian or Mexican interests is not likely to work for the United States.

It is true that a North American citizenship of a sort may well be developing within large corporations, the environmental movement or even in the cultural sphere. This no doubt has long-term implications for a possible political union between the three countries. But for now, the attraction of smoother access to the United States is not a reason for Canada to abandon its own policies and standards—certainly not when they can be shown to work well. There is value in differences as well as in harmonization, especially when needs are different across jurisdictions.

This admittedly crude analysis implies that a meaningful border will remain in place. But the key is to make this border a filter, that will only catch what should not go through, while letting beneficial flows occur with the minimum of impediments.

Nothing said so far means that Canada cannot or should not make major headway in facilitating and reducing the cost of the enormous movement of trade and people across North American borders, or in adopting measures necessary to minimize security risks to itself and others. But rather than being swept away by a sense of inevitable assimilation, we should aim in key policy areas for full *interoperability* between Canada, the United States, and possibly Mexico. This concept is commonly used in engineering and defense matters, where it is necessary if communications systems and computers are to be able to talk to one another. Here I am proposing that "interoperability" be applied to the need for different countries to be able to cooperate effectively on an ongoing basis in areas where their deep interdependence means that lack of cooperation could entail serious losses. Such cooperation should be possible in spite of the countries having little by way of common political infrastructure.

Interoperability thus connotes a situation in which partner countries are highly adapted to the others' needs. I see fuller North American interoperability as resting on four pillars, which can be viewed in part as an adaptation to the North American environment of some reasonably successful European practices.

The first pillar concerns the need for recognizing and addressing practices in each country that entail significant risks for the legitimate interests of another. Security risks have obviously jumped at the top of this list since Sept. 11. But another example might be the legitimate interests that parties have in enforcing their different criminal laws on their own territories. To the extent that possible threats can be identified, each country should take active responsibility

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not only for preventing infringements of its own laws, but also for addressing any threats to its trading partners that can stem from cross-border movements.

Given differences in the three countries' drug, weapons, refugee and other policies, applying this concept within NAFTA evidently requires surmounting a number of challenges. The key here is to realize that the answer does not lie in the all countries adopting the same security model—just as it does not lie in their adopting the same criminal laws (which indeed differ even between U.S. states). Appallingly lax security procedures, poor ongoing information sharing between various U.S. agencies themselves—and between private firms and public agencies—as well as a lack of public preparedness have been identified by U.S. experts as elements to focus on in that country if further attacks are to be successfully thwarted. It is clear, therefore, that for everyone to converge toward the same—but still flawed—system is not a solution. But the United States—and Canada—have the right to expect that when they do step up their domestic security measures, they will do so in a way that secures their partner's flank as well.

Mutual recognition works when each party recognizes that its partners subscribe to certain minimal standards, and is therefore less likely to view a product or individual originating in another party as unsafe, unqualified, or constituting unfair competition.

A modified version of the Schengen accord in force between some European countries—whose policies on drug laws or visa requirements sometimes differ—could be envisaged here. This would require harmonization of documentation, improved legal comity, and leeway for authorities in either country, under certain circumstances, to operate within the others' borders in order to prevent apprehended mischief before it reaches their territory. It would also require a standard way to discriminate between low-risk cross-border activities and those that create high risks for either partner, with the intention that all partners can focus attention and resources on the latter. For example, Canadian border guards, visa officers, customs and immigration agents and even tax officials would be actively on guard for legitimate US, as well as Canadian, interests.

Greater interoperability between the private sector and public agencies in crime and security matters is also vital. Measures could include greater monitoring by multinational and transportation firms of the flows occurring within their systems and those of their suppliers. "Fast-track" status would be granted at the border for those who have such systems in place and withdrawn if audits uncovered that firms could not sufficiently vouch for their products or personnel as they moved the border. The various sources of information could then be matched up with the goal of uncovering any discrepancy that might indicate a threat. Today's technologies should make such tracking and analysis possible. Work already underway under the aegis of the 1995 *Canada-US Shared Border Accord* could be accelerated to help build this first pillar.

A second pillar of interoperability involves improved management of less threatening differences, such as standards, qualifications, or policies, that can also cause friction as products and individuals cross borders. An obvious example is the punishing duty recently imposed on Canadian lumber exports, partly on the basis of different Canadian forest management policies. The problem with this measure is twofold. First, it indicates a lingering systemic mistrust far out of proportion with the economic or other threats that partners—particularly free-trade partners—pose to each other. Second, and more saliently in light of recent events, the fact is that the more effort we devote to blocking, inspecting, taxing or turning back legitimate trade and people flows, the less effort we can devote to thwarting serious threats.

Here we could rely on a North American version of the concept of "mutual recognition," prevalent in Europe. Mutual recognition works when each party recognizes that its partners subscribe to certain minimal standards, and is therefore less likely to view a product or individual originating in another party as unsafe, unqualified, or constituting unfair competition. We should create independent bodies, perhaps modeled on the existing Commission for Environmental Cooperation (CEC), whose role would be to provide common fact-finding and reporting on issues such as subsidies, environmental practices, qualifications or product standards across the area. Domestic agencies would continue to be responsible for the administration of domestic laws and the protection of the public interest in their respective jurisdictions. But they would be required to base any decision that created explicit obstacles to trade within the region, such as countervailing duties, on the fact-finding reports issued by these independent and multinational bodies—which like the CEC could embed processes for significant public as well as expert input. Among other advantages, this procedure could reduce the risks of capture of regulatory agencies by private interests at the expense of the public. A longer-term aim would be for all domestic regulatory agencies to begin treating firms from partner countries as they do domes-

tic firms, when the two operate under similar circumstances.

A third pillar of interoperability rests on greater basic cooperation in the setting of standards and regulations themselves and in streamlining various regulatory approval processes when the broad policy objectives underlying the standards are patently the same across borders. A possible formula here is a modified, "horizontal" version of the principle of subsidiarity, which is invoked in the EU to assign responsibilities to various levels of jurisdictions. In North America, lead jurisdictions (national governments, provinces or states, or even municipalities) could be designated in certain relevant regulatory activities, such as approval of cross-border mergers or enforcement of such things as intellectual property rights, machine safety standards, or professional qualifications. The decisions made by the lead jurisdiction would serve as a common template for the others. Each jurisdiction would retain full capacity to formally depart from the practices or decisions of the lead jurisdiction whenever it had reasons to believe that its own requirements were substantially different. Thus, no country would have to fear the imposition of standards that were unsuited to its needs—sovereign governments would not consent to this, in any case—but neither would there automatically be a patchwork of regulations and administrative processes where differences are unnecessary. Again, this would reinforce the notion that border crossing should be made easier for basically compatible goods, services or people, thus allowing enforcement authorities to focus on the real problem areas.

The fourth pillar of interoperability is a more traditional one. It would ensure better connectivity and compatibility in transportation infrastructure. This is one of the vital ways in which Canada and Mexico can ensure that, while policy and institutional differences make borders necessary, firms operating from the continent's two peripheral countries are not placed at a disadvantage because of this fact. Europeans well understand the importance of such an infrastructure for regions. Beyond its existing programs to fund infrastructure, Canada should refocus some of the funds currently aimed at regional development and diversification toward projects that are geared at greater economic integration with the United States and Mexico. Key studies have already been conducted on improved North American transport corridors, including on the negative environmental impacts of clogged cross-border traffic. It is time to give them effect.

Canada, the United States, and Mexico should envisage a framework agreement on interoperability based on these four pillars. Such an agreement could help strengthen mutually beneficial economic and security relationships without compromising the existing powers of domestic legislatures.

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Even before Sept. 11 If the purpose of NAFTA was to reduce transaction costs in doing business between the three countries of North America, then it has failed. The reduction in the tariff barriers has been exceeded by the increase in costs due to delays at the border and bureaucratic impediments and duplications at both borders. "Crossing the border," concludes a May 2000 report by a Canadian Member of Parliament, [Val Meredith] "has actually gotten more difficult over the past five years." The causes are twofold. "While continental trade has skyrocketed, the physical infrastructure enabling the movement of these goods has not." And second, the bureaucratic barriers that confront cross-border business make the infrastructural problems seem "minor in comparison."

There are 64 different jurisdictions in North America that set regulations for trucks, and a study undertaken by the three governments under the auspices of the NAFTA Land Transport Standards subcommittee concluded that "there is no prospect of developing complete consensus within North America on a common set of truck weight and dimension limits" ...

From a policy and resource standpoint, the number of overlapping jurisdictions is such that none of the three countries has a national infrastructure and transportation plan, let alone a continental one... Before too long, overland trade within North America will confront a barrier manned by bureaucrats and mined by flawed or inadequate infrastructure. This wall can be dismantled and de-mined only by a concerted effort of the three [nation's] leaders.

Robert A. PASTOR, *Toward a North American Community: Lessons from the Old World for the New*