HOMELAND SECURITY ADVISORY COUNCIL

BORDER INFRASTRUCTURE TASK FORCE

TASK FORCE REPORT AND RECOMMENDATIONS

NOVEMBER 2012

MEMORANDUM FOR: Judge William H. Webster

Chairman

Homeland Security Advisory Council

FROM: Secretary Napolitano

SUBJECT: Homeland Security Advisory Council

Tasking of New Border Infrastructure Task Force

I request that a Task Force be established to provide recommendations on enhancing border crossing infrastructure on our southern and northern borders and establishing predictable and equitable mechanisms for project design, financing and implementation by public/private partnerships. The new border infrastructure task force should address, among other closely related topics, the following subjects:

1) **Developing a regulatory framework for public/private partnerships:** What standards/criteria should be applied to privately funded border infrastructure projects? How should governments evaluate new proposals, to provide a predictable and fair regime for public/private partnerships? What legislative or regulatory changes, if any, are necessary to create the framework? What institutional arrangements are required to authorize and oversee public/private partnerships in the cross-border context? How should projects be handled where sponsors have over-estimated revenues and are threatened with insolvency?

2) **Designing Mechanisms to enhance investment:** In addition to any innovative financing opportunities that the task force has identified, what additional means and methods should be considered to encourage bi-national investment in border crossing infrastructure? Are there sources of revenue at the state or border-wide level that might catalyze new investment? Are there examples of projects and arrangements in other infrastructure areas that could provide instructive insights and examples?

Should you have questions, please do communicate them to Patrick McQuillan, Director of the Homeland Security Advisory Council, DHS Office of Policy, at (202) 447-3409.

Introduction

The Border Infrastructure Task Force (BITF) was created by the Secretary of the Department of Homeland Security (DHS) in the fall of 2012 to look at ways to encourage private investment in North American border crossing infrastructure and provide recommendations on establishing a predictable and equitable regulatory regime for public/private partnerships (PPPs).

The Task Force has sought to provide recommendations that can help streamline the processes of creating public-private partnerships, with the goal of promoting continued job creation and enhancing the global economic competitiveness in the United States. Enhancing the capacity, effectiveness and efficiency of border crossing facilities and operations will expedite the processing of legitimate trade and travel, reducing both the government's costs and the total cross border trade transaction cost borne by the user.

Border infrastructure projects should be considered for PPPs whenever an analysis of whole-life project costs indicates that there is potential for taxpayer savings using PPPs versus traditional procurement. Such analysis should consider not only the cost of capital but also life-cycle operating and maintenance expenses and risk allocation.

In light of the current fiscal environment, and the constraints of the Budget Control Act, neither DHS nor CBP can expect significant budget growth in the foreseeable future and additional staffing and infrastructure at our ports of entry may not be funded through annual appropriation. The federal government, including DHS, needs to be innovative in identifying new financing mechanisms outside of the current model.

In discussions with subject matter experts from the private sector, the Task Force found that a transparent and predictable legal and regulatory framework and a proven revenue stream are essential components in successful PPPs, whether the projects are funded entirely by private sponsors or in addition to government backing and financing. The Task Force found that unclear approval processes could hinder a PPP proposal, especially when looking at ports of entry (POE) where two federal governments are involved.

Successful PPPs have the following traits:

- Clearly defined procurement processes and approval systems in place that the private sector can rely upon when formulating project bids.
- Clear allocation of risks and responsibilities.
- Consensus of political and community support for the project.
- Tolling levels that are specified in advance in the PPP agreement, so that tolls do not constrain the flow of trade and travel.

Developing a Regulatory Framework for Public/Private Partnerships

I. What standards/criteria should be applied to privately funded border infrastructure projects?

1) In this difficult budget environment, it is imperative that the existing infrastructure and staff be used as efficiently as possible. However, when additional staffing is needed as POEs need to be updated or newly created through PPPs, Customs and Border Protection should clarify which costs the private sector will be responsible for and the rules governing other parts of the potential agreement:

    - In this current budgetary environment, it will be essential that private investors pay for facilities, staffing, equipment, and operations costs at new border crossings, with the discretion for determining which costs must be borne by the private sector partners in PPPs being given to the Commissioner of CBP.
    - New staffing costs must be included in the analysis of proposed projects, so that CBP is not required to remove staff from existing POEs to staff the new facilities.
    - Staffing levels at PPPs/POEs need to be adequate, not an impediment to efficient processing of legitimate trade and travel. The CBP Commissioner has the discretion and responsibility to set and adjust staffing levels at POEs. That said, staffing at proposed crossings should be set at a reasonable level based on projected volume of passengers. Future staffing levels should be reviewed by both parties periodically.
    - Mechanisms to allow for staffing changes in response to changes in traffic flows need to be clarified.
    - Reimbursement costs at privately funded projects should include staffing costs for such projects.

II. How should governments evaluate new proposals, to provide a predictable and fair regime for public/private partnerships?

2) The newly-created Office of PPPs (see recommendation 17) should review the current list of capital projects at POEs against DHS/CBP's prioritization, and determine whether any potential POE projects might lend themselves to a PPP approach. The office should act in a manner similar to an ombudsman to help remove bureaucratic roadblocks.

3) The newly-created Office of PPPs (see recommendation 17) should work with the Secretary's office to oversee PPP projects, including a goal of initially launching three to four demonstration PPP projects on both borders within the next fiscal year (depending on private sector and bilateral governmental interest and commitment). Using the criteria outlined in Recommendation 1, these pilot projects will allow all the parties involved the opportunity to work out the process for an effective PPP partnership.

4) The Task Force supports the necessary statutory and budgetary changes to consolidate the construction, maintenance, and operating budget for all new land POEs into the DHS/CBP budget as detailed in Recommendation 18.

5) PPPs should be encouraged. DHS/CBP should work with the Department of Transportation to help find funding, subject to appropriation and the availability of funds, for potential PPP projects. *(See Appendix A for background information.)*

III. What legislative or regulatory changes, if any, are necessary to create the framework?

6) Enact legislation providing the CBP Commissioner with authority to enter into PPP projects affecting the POEs. *(See Appendix A for background.)*

7) Enact legislation that permits the CBP Commissioner to approve a "user fee" funding approach and structure to cover facilities and staffing for new land POEs and enhancements to existing facilities, similar to the current legislation that permits the Commissioner to approve and assess a fee for user fee airports covering staffing and equipment costs. This should not affect entities, such as bridge or tunnel commissions, with the established authority to toll.

8) CBP should ensure existing POEs are used as effectively and efficiently as possible. A recent successful example was the staggering of inspection booths for commercial trucks at the Blue Water Bridge, located on the border between Port Huron, Michigan and Sarnia, Ontario. DHS/CBP should consider using congestion pricing or tolls at privately funded crossings to segment traffic and encourage traffic to cross during non-peak hours. CBP would need statutory authorization to collect a fee for use of a POE during peak hours. This fee could cover, for example, the operational costs of expanding staffing hours and lane availability during non-peak hours. In doing so, CBP should avoid extracting a cash fee or toll at the POEs as cash payments tend to increase wait times. Rather, CBP should encourage, where feasible, assessing such fees using Radio Frequency Identification (RFID) or other electronic technology. *(See Appendix A for background information.)*

9) Enact legislation that eliminates the guidelines of the 1990 Budget Enforcement Act and which would allow a federal construction project, or the cost of purchasing a building for use by a federal agency, to be amortized over the construction period or over the expected life of a purchased building. *(See Appendix A for background information.)*

10) Enact legislation to complete the process of establishing "One Face at the Border", i.e. the creation of a single unified border agency for the U.S. To the extent that there are currently FDA inspectors at POEs (and they are not at all 300+ POEs, but only a small fraction of them), these positions, and the full time employees (FTE) they represent,

should be transferred to CBP. The Task Force believes this single step would go a long way to reducing wait times and shipment delays that are often overnight or longer, and further the Beyond the Border Initiative. *(See Appendix A for background information.)*

IV. What institutional arrangements are required to authorize and oversee public/private partnerships in the cross-border context?

11) Institutionalize the gains made in bi-national infrastructure planning through the Beyond the Border (with Canada) and 21st Century Border (with Mexico) mechanisms and continue to improve the bi-national planning processes to jointly review, plan, develop and construct infrastructure. In particular, build on the successful incorporation of state, provincial, regional, and local entities into the planning process through the Beyond the Border action plan, and review how this approach could be effectively applied to U.S. - Mexico border infrastructure coordination. *(See Appendix A for background information.)*

12) The U.S. Government should work with the Canadian and Mexican Governments so that both the investors and planning entities can see that planning is coordinated bi-nationally. To the extent practicable, the construction, engineering, and design teams for building the roads leading into POEs and the POEs themselves should be bi-national, with visas that permit them to work on the project on either side of the border, to ensure that the timing of construction is perfectly synchronized.

13) To expand/create new POEs, the Task Force encourages bi-national joint ventures with the private sector on both sides of the border as well as for the infrastructure leading into POEs.

14) The Task Force recommends changing the charter of the North American Development Bank (NADBank) to allow the NADBank to make infrastructure loans by amending its charter or reinterpreting the mandate by the NADBank Board to accomplish the same goal. The Task Force also supports the NADBank playing a supportive role in establishing public-private partnerships. The Task Force also supports exploring additional potential financing mechanisms such as Export-Import Bank and Overseas Private Investment Corporation within the US Government, the Inter-American Development Bank, and the Mexican National Bank of Public Works and Services (BANOBRAS). *(See Appendix A for background information.)*

V. How should projects be handled where sponsors have over-estimated revenues and are threatened with insolvency?

15) To prevent uncoordinated expansion of POEs and ingress and egress road construction, the U.S. Government should work with Canadian and Mexican partners to ensure projects are bi-nationally planned, where a single team can help ensure the POE and surrounding

infrastructure is built on schedule. If feasible, this would include bi-national design, engineering, and, where feasible, construction crews, as well as bi-national oversight.

16) CBP should ensure that prior to beginning construction on a new POE through a PPP, the memorandum of agreement ensures that in case of default or bankruptcy, the private investor, through surety bond or otherwise, is financially responsible for any shutdown costs, including cleanup and demolition of facilities, staffing and relocation costs, and any additional staffing costs incurred during shutdown. *(See Appendix A for background information.)*

<u>Designing Mechanisms to Enhance Investment</u>

VI. In addition to any innovative financing opportunities that the task force has identified, what additional means and methods should be considered to encourage bi-national investment in border crossing infrastructure?

17) The Secretary of DHS should direct the CBP Commissioner to establish an Office of Public-Private Partnerships at CBP, presumably within the Office of the Commissioner. CBP should create and staff the Office of PPPs, which would be mandated to:

- Evaluate PPP proposals that include expansions of existing or creation of new POEs, and coordinate an expeditious evaluation process within CBP and other relevant government agencies, of the feasibility and types of revenue models and risk protection measures that are appropriate to a particular PPP project.

- The Office of PPPs would recommend to the Commissioner of CBP whether a PPP project should be approved, to include fairly apportioning the burden and capital cost of the infrastructure, the funding for staffing and operations and maintenance for screening equipment such as non-intrusive inspection machines and the like.

- Subject to appropriation from Congress, the Secretary of DHS would work with the CBP Commissioner to secure funding for CBP to staff an Office of PPPs with the requisite level of expertise to perform the foregoing duties. This office would be staffed with personnel familiar with both the Northern and Southern borders and who have the expertise to evaluate the public interest and benefits derived from a PPP project as well as an understanding of private sector investments and incentives. A public affairs professional should also be added to help coordinate the messaging to the public, Congress, and relevant parties.

- The office should serve as a point of contact to the private sector and help develop partnerships to potential investors. The Office needs to be transparent and be willing to work with private investors to provide specifics on how to make PPPs possible.

18) The Task Force recommends a budgetary/statutory change to the current GSA-CBP framework which would allow CBP to use the rent money, currently being paid by CBP on land POEs owned by GSA into GSA's Federal Buildings Fund, for capital costs to create and expand POE facilities. The specialized mission-centric characteristics of land POEs require a more sophisticated and stakeholder-focused approach to planning, design, and construction than the traditional office space comprising the bulk of GSA's federal buildings portfolio. Rent monies paid by CBP to GSA for LPOEs under GSA's Federal Buildings Fund would be more efficiently utilized as a directed capital and sustainment program under CBP's authority, providing more timely implementation and greater value for money to the nation. A change to the CBP-GSA framework would not necessarily require immediate ownership transfer of the LPOEs owned by GSA, but could be pursued through delegations of authority from GSA to CBP that would allow CBP to make nimble investment decisions more in line with its mission needs and to pursue acquisition approaches and delivery mechanisms such as PPPs that could broaden the pool of available resources and reduce the amount of time it takes to deliver improvements[1]. *(See Appendix A for additional background information.)*

19) Involving GSA as appropriate and after a substantive interagency consultation, CBP should share a prioritized, merit-based list of infrastructure improvements to POEs with the public and private sector. *(See Appendix A for background information.)*

VII. Are there sources of revenue at the state or border-wide level that might catalyze new investment?

20) Through its research, the Task Force found that tolls, retail and other sales such as duty-free, lease-payments, communications conduits, and advertising are all potential sources of revenue that may help lead and induce private sector to invest in new or expanded POEs.

VIII. Are there examples of projects and arrangements in other infrastructure areas that could provide instructive insights and examples?

[1] While Recommendation 18, above, would be helpful, including streamlining the approval of PPP/POE projects, the task force did not address the broader issues related to the potential transfer of ownership of land POEs from GSA to CBP as well as the transfer of the maintenance budget and an aliquot share of the Federal Building capital fund, as this was beyond our mandate. We believe, however, that the Secretary, as a potential good government measure, may wish to consider a broader look at this issue in order to better align within DHS/CBP the expertise regarding the needs for and at the POEs with capital and maintenance budgets.

21) The Task Force encourages CBP to continue its efforts to standardize best practices on both sides of the border at all land POEs. These efforts are crucial to enhance our nation's economy and trade.

22) The Task Force also strongly supports CBP's expansion of trusted traveler and trusted trader programs including C-TPAT, SENTRI, NEXUS and FAST, and the infrastructure (dedicated primary booths, access lanes, etc.) to make these programs work even more efficiently to expedite trade and travel. *(See Appendix A for background information.)*

23) The Task Force also encourages CBP to continue its efforts on pre-inspection and pre-clearance programs, reciprocally where sensible, on both sides of the northern and southern border. Further, the Beyond the Border Initiative contains the commitment to negotiate a land, marine, and rail pre-clearance agreement that has the potential to transform the current approach to and location of POE infrastructure.

24) CBP should continue to promote the segmentation of traffic leading to POEs, especially for trusted traffic. CBP should work with Mexican and Canadian partners to ensure that FAST, C-TPAT, NEXUS, and SENTRI traffic is separated and expedited as far as possible from the POE to provide expedited access to primary inspection. Additionally, the Mexican government should be encouraged to engage in similar, reciprocal initiatives.

Appendix A. Findings/Further Background on Recommendations

Background on Recommendation 5:

Transportation Infrastructure Finance and Innovation Act (TIFIA)

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides credit assistance for qualified projects of regional and national significance. The Task Force was briefed on the program as it has been used to assist on a number of public-private partnerships. Any large-scale, surface transportation projects - highway, transit, railroad, intermodal freight, and port access - are eligible for assistance. Eligible applicants include state and local governments, transit agencies, railroad companies, special authorities, special districts, and private entities. The TIFIA credit program is designed to fill market gaps and leverage substantial private co-investment by providing supplemental and subordinate capital. Each dollar of Federal funds can provide up to $10 in TIFIA credit assistance and support up to $30 in transportation infrastructure investment.[i]

For example, DOT and GSA currently interact under a specific statutory framework that sets forth the Coordinated Border Infrastructure Funding (CBIF) grant program. More specifically, CBIF grant recipients may transfer funds to GSA under certain conditions, as spelled out in the statute. The Coordinated Border Infrastructure Program is a formula grant program whose purpose is to improve the safe movement of motor vehicles at and across our Nation's borders with Canada and Mexico. Under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), a total of $833 million is authorized in the program to be distributed by formula to states. This program replaces the Coordinated Border Infrastructure Program (CBI program) in the previous transportation authorization, the Transportation Equity Act for the 21st Century (TEA-21).[ii]

Background on Recommendation 6:

The FY 2013 President’s Budget included a legislative proposal to expand public private partnerships at our ports of entry by removing restrictions on CBP’s ability to receive outside funding, except in narrowly defined instances, pursuant to Chapter 19 of the U.S. Code, Section 58b. The restrictions in Section 58b of Title 19 currently provide CBP the authority to receive reimbursement only if a determination that the volume or value of business cleared through the facility at issue is insufficient to justify the availability of CBP services there and if the governor of the state in which the facility is located approves such designation.

CBP’s legislative proposal vests authority with the Commissioner to approve or disapprove requests from interested parties. Moreover, it authorizes CBP to: receive reimbursement from public-private sector organizations for border services in the air, land and sea environments at both domestic and foreign locations; receive reimbursement at international and landing rights airports that already receive inspection services; and define reimbursable expenses including salaries, benefits, temporary duty costs, relocation, and, as applicable, housing, infrastructure, equipment and training.

The proposed legislation stipulates that reimbursement will be for costs incurred above and beyond any user fees collected in association with the service provided to avoid double payment.

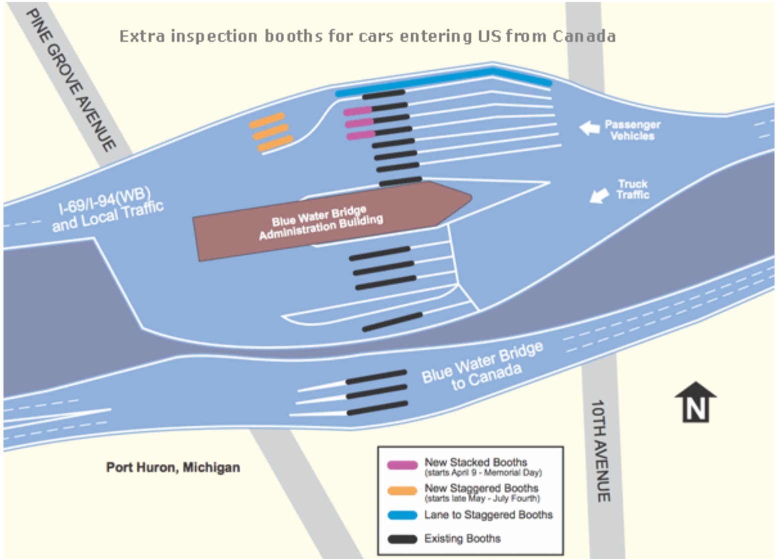
Enhancing the use of public private partnerships through the proposed legislation would allow CBP to provide requesting entities, such as airlines, cost estimates for the additional service, and these entities would be able to better ascertain whether incurring the additional costs would fit within their business model. The entities could then make a decision to incur the costs and provide the service, or seek alternatives (other locations, different hours, or not provide the additional service).

Reimbursable agreements would be a major operational benefit for CBP. These agreements would allow for shorter wait times as international air carriers would have more flexibility to schedule arrivals around peak traffic times. Reduced wait times would allow CBP Officers to conduct more thorough examinations of high risk passengers and merchandise. The proposal also has the potential to expand CBP's preclearance program which will help keep unwanted people and materials from reaching the United States.

Background on Recommendation 8

Blue Water Bridge Staggered Inspection Booths

The Blue Water Bridge Crossing (BWBC) is centrally located on the eastern border area between Point Edward/ Sarnia, Ontario and Port Huron, Michigan. In an effort to alleviate some of the congestion from CBP inspection lanes at the Blue Water Bridge, the Michigan DOT/CBP has staggered extra booths to allow more motorists to be attended to at one-time within the same plaza pavement area. The $1.5 million project has added five booths increasing the capacity of the plaza to 13 primary car inspection booths.[iii]



(Samuel, Peter. “$1.5m buys big improvement in traffic flow at Blue Water Bridge - stacking, staggering booths.” TollRoadsNews 23 Jun. 2012 http://www.tollroadsnews.com/node/6014.)

Radio Frequency Identification (RFID) Technology

Radio Frequency Identification (RFID) technology utilizes a unique number, which is embedded in an RFID tag which, in turn, is embedded in each cross-border travel document or license. At the border, the unique number is read wirelessly by CBP and then forwarded through a secured data circuit to back-end computer systems. The back-end systems use the unique number to retrieve personally identifiable information about the traveler. This information is sent to the CBP Officer to assist in the authentication of the identity of the traveler and to facilitate the collection of the toll fee.[iv]

Multiple border crossing programs use or plan to take advantage of CBP’s vicinity RFID-reader enabled border crossing functionality including CBP’s own trusted traveler programs, the pending Department of State’s (DoS) Passport Card, the Mexican Border Crossing Card, the proposed Enhanced Driver’s License (EDL) offered by various states, tribal enrollment cards that could be developed by various Native American Tribes, and the proposed Enhanced Driver’s Licenses being developed within the various provincial authorities in Canada.[v]

Background on Recommendation 9:

Prior to 1991, the Office of Management and Budget’s standard practice was to record the budget authority and outlays for lease-purchases in their authorizing legislation incrementally, over the term of the lease. New guidelines were issued in connection with the Budget Enforcement Act of 1990 requiring budget authority equal to the present value of lease payments over the life of such a lease to be scored up front, at the time that budget authority is first provided for the lease, and the corresponding obligation to be recorded up front when the lease is signed. [vi] An alternative approach would be making an administrative modification to OMB Circular A-11, which sets forth the scoring framework.

Background Information on Recommendation 10/One Face at the Border

Background on Recommendation 10:

Currently, there are 21,000 CBP Officers who conduct inspections and manage the movement of goods, vehicles and people through the nation’s 300 plus POEs into the United States. The only other agency of the U.S. government with inspectors assigned to POEs besides CBP is the Food and Drug Administration (FDA) which has several hundred inspectors and not enough to staff all POEs in which FDA regulated items are sought to be entered in the U.S. This inefficiency has created a bottleneck for the import of FDA-regulated goods, divided release responsibilities between CBP and FDA for these imports, prevented CBP from applying a common risk management strategy and best practices to all imports, and made C-TPAT less effective by depriving CBP of the opportunity to offer expedited benefits to importers of FDA regulated goods who have or would otherwise be willing to secure their supply chains to CTPAT verified standards.

The recommendation is to transfer the FDA inspectors assigned to POEs, along with the underling FTE from the FDA to CBP. At the same time, CBP will provide CBP Officers with any additional or specialty training necessary to perform the inspection functions needed for FDA issues (as it does currently for approximately 44 other federal regulatory agencies) pursuant to a risk-management approach. This includes, e.g., applying toy safety regulations of the CPSA, agricultural protection regulations of the USDA, controlled substances such as opium under DEA licenses, counterfeit pharmaceuticals, imitation firearms regulated by the Commerce Department, etc. If CBP did not perform this role at the POEs, we would have inspectors from 44 different agencies at our POEs, and one of the most inefficient border management systems imaginable.

By adopting this recommendation, CBP would then have the ultimate responsibility to make decisions to hold or release all imported goods, including FDA regulated goods, not just most of them. This shift of resources from FDA to CBP would at least be revenue neutral, although it could well result in cost sayings to the government by consolidating FDA inspectors into CBP, but would allow CBP to realize the benefits to security and facilitation of applying its risk-management approach to the border inspection functions and improve the trade-off that is essential to the largest government-private sector partnership created in the aftermath of 9/11, the Customs-Trade Partnership Against Terrorism (C-TPAT). It also would consolidate responsibility and accountability for the security and facilitation of all imports into one agency.[vii]

Border Inspections Prior to 9/11

Before September 11, 2001, border security at the nation's ports of entry was fragmented, with border security and control functions divided among several federal departments agencies, principally including but not limited to: the Department of Justice (the Immigration and Naturalization Service); the Department of the Treasury (the Customs Service); and the Department of Agriculture (the Animal and Plant Health Inspection Service.[viii]

"One Face at the Border"

In March 2003, as part of the Homeland Security reorganization, U.S. Customs and Border Protection (CBP), a unified border agency, was created as a new agency of the federal government within the new Department of Homeland Security. Shortly after CBP was created, it established a new multi-functional Customs and Border Protection Officer (CBPO) position, as part of the "One Face at the Border" initiative, at all our nation's POEs.[ix]

At all U.S. ports of entry (POEs), CBP officers are responsible for screening and inspecting and scrutinizing on all goods, vehicles and people seeking to enter the U.S. through our POEs for all purposes, including for immigration, customs, and agricultural protection and counter-terrorism. The "one face at the border" initiative, all CBP inspectors are cross-trained to perform all types of inspections in order to streamline the border crossing process and bring the combine authorities to bear to further the border protection mission. This initiative unifies the prior inspections processes, providing entering passengers and travelers with one primary inspector who is trained to determine whether a more detailed secondary inspection is required for any purpose relevant to CBP's border protection mission.[x]

The "One Face at the Border" initiative was aimed at unifying the inspection process for travelers, vehicles and goods entering the United States. Instead of interacting with inspectors from three different agencies – an Immigration Inspector, a Customs Inspector and an Agriculture Inspector – travelers interacts and is cleared by a single border agency and inspectors trained to do the job of all three legacy agencies. Imported goods are also screened for Customs, agriculture, and environment protection and nearly all other regulatory issues by CBPOs within one agency, CBP. [xi]

With the creation of CBP in 2003, nearly 99% of the inspectional personnel at the border POEs were merged into CBP.[xii] As noted, only a small number of FDA inspectors assigned to POEs were omitted. To make our border more efficient and effective, it is time to rectify this, and complete "One Face at the Border"; one unified, federal border agency at the POEs.

For more information, visit: http://www.gpo.gov/fdsys/pkg/CHRG-108hhrg21510/html/CHRG-108hhrg21510.htm

Background on Recommendations 10 and 11

Beyond the Border Initiative

In February 2011, President Obama and Prime Minister Harper announced the United States-Canada joint declaration, Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness. Beyond the Border articulates a shared approach to security in which both countries work together to address threats within, at, and away from our borders, while expediting lawful trade and travel.[xiii]

21st Century Border Management

In May 2010, Presidents Obama and Calderón released a joint Declaration on 21st Century Border Management focused on securing and facilitating the flows of people and cargo, strengthening public security and engaging the border communities in the creation of this new border vision. The presidents tasked a Bi-national Executive Steering Committee comprised of senior interagency leaders to oversee, prioritize, and shepherd critical projects that promote the economic well-being, global competitiveness and safety of our countries. In December 2010, this group began meeting regularly and implementing an action plan to improve the border. The United States and Mexico are also investing in border security through the Merida Initiative.[xiv]

Background to Recommendation 14:

This recommendation may require legislative changes in both the United States and Mexico to change the NADBank's charter. Previously, In June 2000, the NADBank's Board of Directors began discussions on expanding the Bank's financing activities to more effectively serve border needs. These discussions gave rise to a broad set of reform initiatives, some of which required changes to the original BECC-NADB Charter. Following passage of the necessary U.S. and Mexican legislation, an amended Charter went into force on August 6, 2004.[xv]

Background Information on Recommendation 16:

Typically, PPP agreements set out clearly what constitutes an event of default, as potential remedies to cure any breach of the agreement.

Background Information on Recommendation 18:

This change would necessitate a delegation of authority from GSA to CBP to assume responsibility for building operations, maintenance and capital construction at all GSA-owned land port inspection facilities. The Administrator of GSA has broad authority to delegate authority to heads of other executive departments. For instance, the Administrator may delegate the authority to operate, maintain and repair buildings or facilities. See 40 USC 121(d). However, the statute also states that when the Administrator delegates such authority, the agency receiving the delegation "may retain the portion of the rental payment that the Administrator determines is available to operate, maintain, or repair the building or facility." Congress has frozen expenditures from the FBF. Therefore, while all tenant agencies continue to pay annual rent, they see no continued investment in the facilities they occupy. Under a delegation of authority, CBP would retain the funds appropriated for rent to GSA at the land ports of entry and repurpose those funds directly toward sustainment and recapitalization of the port infrastructure.

Examples of Other Rent Exemptions

GSA has, on a case-by-case basis, given some agencies rent exemptions. One of the most significant exemptions is for the Agriculture Department, which had paid nothing into the fund from 1996 to at least 2009 for the department's three headquarters buildings. GSA granted the exemption so Agriculture could accumulate funds for making major repairs on the buildings, which it pledged to do on its own. The agreement was intended to expire in 2006 but remains in place as of 2009, diverting $52 million in payments to the fund each year, according to a 2005 GAO report.[xvi]

Border Inspections Prior to 9/11

As discussed in the findings of recommendation 10, in the pre 9/11 era, U.S. Customs was one of several agencies with inspectors at the POEs. The others included the INS and the Agricultural Quarantine inspectors. These agencies were components of three different departments of the government, viz., Treasury, Justice and Agriculture. It was in this era that GSA became responsible for the construction and maintenance of a majority of the land ports of entry owned by the federal government. And GSA was needed because the three different agencies from three departments of government had equities and requirements for how POEs were constructed that had to be coordinated if anything was going to be built. GSA played an important brokering role between the three agencies that is no longer necessary since the consolidation of the people and functions of these three agencies into a single agency, CBP under one department, DHS, in March 2003.

Current Ownership of Ports of Entry

Out of 168 LPOE facilities, GSA currently owns 102.5 of land ports of entry, CBP owns and maintains 41, GSA leases 22.5, and two ports of entry are owned by the National Park Service. CBP staffs and operates all of our nation's POEs.

In recent years GSA has encountered a budget crunch, which has prevented it from modernizing their infrastructure. At the same time, CBP has matured as an agency and had several recent successes in modernizing their ports of entry. In 2009, CBP recently modernized fully through a $420 million appropriation as part of the American Recovery and Reinvestment Act (ARRA).[xvii] Moreover; CBP owns and manages a sizable federal inventory of unique real property assets and infrastructure used in other contexts to support its mission between the ports of entry.

Current Land Port of Entry Budgeting Process

For any given fiscal year, the Department of Homeland Security, Customs and Border Protection (CBP) submits a list of prioritized LPOE capital projects to GSA for consideration and inclusion in GSA's fiscal year capital program submission to the Office of Management and Budget (OMB). Based on the list submitted by CBP, GSA regional offices begin to develop the project by contracting with a private sector A/E firm to develop a project feasibility study. The feasibility study will define the project's scope, budgets and schedules, as well as supporting the project design prospectus submitted in a fiscal year's capital program.[xviii]

The region submits a project design prospectus to GSA's National Office for review and integration into the annual capital program. The annual capital program is then submitted to the OMB in the spring of the given fiscal year. Because of limited funding, the projects are competed against the other capital projects within the overall GSA capital program submittal. Should the project be approved by OMB, it is included in the President's Budget the following February for review, authorization and funding by Congress.[xix] POE facilities seldom enjoy the same level of political support as, say, federal buildings and courthouses in urban areas.

CBP Pilot in El Paso and Buffalo

Beginning in January 2012, CBP, at the direction of the Office of Management and Budget, initiated planning with the U.S. General Services Administration to assume responsibility for building operations, maintenance and construction at 16 land ports of entry within CBP's Buffalo and El Paso Field Offices. This effort will serve as a pilot to prepare the agency to similar responsibility for all 102 land port inspection facilities owned by GSA. Through this delegation effort, CBP will be more effectively positioned to coordinate investment in land port infrastructure, staffing and equipment, to target infrastructure toward its operational priorities, and to utilize appropriated funds previously paid to GSA in the form of rent to sustain and modernize land port facilities. In preparing for the pilot delegations, CBP is currently working to address several challenges including:

§ *Legislative relief*-In prior efforts to assume responsibility for the land ports of entry, CBP worked to obtain full ownership of the inspection facilities. However, this transfer of ownership has proven challenging because it requires legislation to change the Public Buildings Act, effectively realigning oversight for the land ports between congressional committees. The current proposal avoids that challenge by seeking authority to manage the land port infrastructure by administrative action by relying on the existing statutory authority empowering the Administrator for GSA to delegate his or her authority to the head of another fellow agency.

§ *Concurrence from GSA*-in order to accomplish this transfer of authority by delegation, the Administrator for GSA must approve the delegation to the Secretary of Homeland Security. Toward that end, CBP in partnership with GSA formed a working group beginning in March of 2012 to develop the delegation requests and negotiate the terms of the proposed delegation for the pilot locations. This group resolved the terms for the delegations and submitted delegation request packages to the delegations program office within the Office of the Administrator in June. Since that time, CBP and GSA have continued to negotiate several key terms for the pilot delegations and are working with OMB to resolve any remaining items prior to submittal to the Administrator. Upon approval, the pilot delegations will serve as the template for delegation requests that CBP will initiate in early 2013.

§ *Funding and resources*-Under the current structure, all federal tenant agencies including CBP pay an annual rent to GSA for both the cost of building operations and maintenance as well as the amortization of projected future year recapitalization for GSA owned federal properties including land port inspection facilities. GSA aggregates this rent within the Federal Buildings Fund (FBF), a revolving fund the agency relies upon to operate, maintain and capitalize their portfolio of federal properties. Under this regime, there is no direct nexus between the annual rent payment from a given tenant agency and the resulting investment in that agency's facilities.

Retention of what otherwise would have been paid to the FBF would fund some construction; however, this funding level alone would not address the immediate backlog of all major projects. Thus, the PPP approach would help with capital investment, but it may still be necessary for DHS to request additional appropriations for major projects. In other words, DHS would have to assume the liability for port infrastructure projects that GSA has funded in the past.

Furthermore, as proposed, CBP would not realize immediate increases to the staffing and program resources necessary to execute the delegation during the pilot phase. Instead, CBP would utilize existing program resources in concert with GSA personnel who would serve on a fee-reimbursable detail assignment to support the pilot effort.

Background Information on Recommendation 19:

Current Planning Process at GSA-Owned Ports of Entry

The Department of Homeland Security, Customs and Border Protection (CBP) submit a list of prioritized projects to GSA. Based on this list, GSA regional offices contract with a private sector A/E firm to develop a feasibility study to define a project's scope, budget and schedule to support a design prospectus. During the feasibility study, GSA works with CBP to establish overall program areas including commercial and POV lanes, inspection facilities, dog kennels and other areas necessary to accommodate CBP's operational needs. Once the project's scope has been determined, and its costs have been established, the region submits a project design prospectus to GSA's national office for review and integration into the annual capital program for submission to the Office of Management and Budget (OMB).[xx]

Background Information on Recommendation 22:

Customs-Trade Partnership Against Terrorism (C-TPAT)

Under CBP's layered, defense-in-depth strategy against terrorism, C-TPAT is the CBP initiative that partners, on a voluntary basis, with members of the trade community. Begun in November 2001 with just seven major importers as members, as of June 2011, the partnership has grown. There are now more than 10,000 certified partners that span the gamut of the trade community have been accepted into the program. These include U.S. importers, U.S./Canada highway carriers; U.S./Mexico highway carriers; rail and sea carriers; licensed U.S. Customs brokers; U.S. marine port authority/terminal operators; U.S. freight consolidators; ocean transportation intermediaries and non-operating common carriers; Mexican and Canadian manufacturers; and Mexican long-haul carriers. These 10,000-plus companies account for over 50 percent (by value) of what is imported into the United States.[xxi]

CBP's strategy relies on a multilayered approach consisting of the following five goals:

1) Ensure that C-TPAT partners improve the security of their supply chains pursuant to C-TPAT security criteria.
2) Provide incentives and benefits to include expedited processing of C-TPAT shipments to C-TPAT partners.
3) Internationalize the core principles of C-TPAT through cooperation and coordination with the international community.
4) Support other CBP security and facilitation initiatives.
5) Improve administration of the C-TPAT program. Further, this strategy aligns with and supports CBP's Strategic Plan, CBP's Strategy for Preventing Terrorist Weapons from Entering the United States, the DHS Strategic Plan, the Department's efforts to develop a national strategy for cargo security and the President's Strategy for Homeland Security.[xxii]

For more information, visit:
http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/ctpat/ctpat_program_information/what_is_ctpat/ctpat_strat_plan.ctt/ctpat_strat_plan.pdf
http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/ctpat/ctpat_program_information/what_is_ctpat/ctpat_overview.ctt/ctpat_overview.pdf

The Free and Secure Trade Program (FAST)

Part of the C-TPAT program, The Free and Secure Trade program, or FAST, is an expedited commercial clearance program for known low-risk shipments entering the U.S. from Canada and Mexico. Initiated after 9/11, this innovative trusted traveler/trusted shipper program allows expedited processing for commercial carriers who have completed background checks and fulfill certain eligibility requirements.[xxiii]

To be eligible for FAST processing requires three green lights: (1) the shipper or importer must be C-TPAT certified, (2) the carrier must be C-TPAT certified, and (3) the truck driver must be vetted and C-TPAT certified.[xxiv]

More than 78,000 commercial drivers are enrolled in the FAST program nationwide. FAST enrollment is open to truck drivers from U.S., Canada and Mexico.[xxv]

FAST processing exists at 55 of 105 northern and southern land border ports that process commercial cargo. The majority of dedicated FAST lanes are located in northern border ports in Michigan, and New York and at southern border ports from California to Texas.[xxvi]

For more information, visit:
http://www.cbp.gov/linkhandler/cgov/newsroom/fact_sheets/travel/fast/fast_fact.ctt/fast_fact.pdf

Secure Electronic Network for Travelers Rapid Inspection (SENTRI)
SENTRI provides expedited CBP processing for pre-approved, low-risk travelers. Applicants must voluntarily undergo a thorough biographical background check against criminal, law enforcement, customs, immigration, and terrorist indices; a 10-fingerprint law enforcement check; and a personal interview with a CBP Officer to assure that the applicant presents no risk.[xxvii]

Applicants may not qualify for participation in the SENTRI program if they:
- Provide false or incomplete information on the application;
- Have been convicted of any criminal offense or have pending criminal charges to include outstanding warrants;
- Have been found in violation of any customs, immigration, or agriculture regulations or laws in any country;
- Are subjects of an ongoing investigation by any federal, state, or local law enforcement agency;
- Are inadmissible to the United States under immigration regulation, including applicants with approved waivers of inadmissibility or parole documentation;
- Cannot satisfy CBP of their low-risk status or meet other program requirements[xxviii].

For more information, visit:
http://www.cbp.gov/xp/cgov/travel/trusted_traveler/sentri/sentri.xml

NEXUS
NEXUS is identical to SENTRI, and is CBP's trusted traveler program for the northern border. NEXUS is a joint program with the Canada Border Services Agency that allows pre-screened, approved travelers faster processing. NEXUS was established in 2002 as part of the Shared Border Accord, a partnership between the United States and Canada that creates open channels of dialogue and working groups committed to the mutual goals of securing our shared border, while

promoting the legitimate trade and travel that is vital to both economies. U.S. Customs and Border Protection (CBP) and Canada Border Services Agency (CBSA) are cooperating in this venture to simplify passage for pre-approved travelers.[xxix]

Individuals may qualify to participate in NEXUS if they are a citizen or permanent resident of the United States or Canada residing in either country, or if they are a citizen of a country other than Canada or the United States who plan to temporarily reside lawfully in Canada or the United States for the term of their NEXUS membership and who pass various criminal history and law enforcement checks by both countries.[xxx]

Over 700,000 U.S. and Canadian citizens have been pre-vetted and enrolled in NEXUS. Both NEXUS and SENTRI are part of and subsumed within CBP's Global Entry program. The total vetted and enrolled individuals in CBP's trusted traveler programs now exceed 1 million. All of CBP's trusted traveler programs provide substantial benefits to pre-vetted travelers in the form of expedited processing and shorter or no queues at the border entry points.[xxxi]

For more information: visit:
http://www.cbp.gov/xp/cgov/travel/trusted_traveler/nexus_prog/nexus.xml
http://www.cbp.gov/linkhandler/cgov/travel/trusted_traveler/nexus_prog/nexus_facts.ctt/nexus_facts.pdf

Appendix B. Members of Border Infrastructure Task Force

William Webster	Retired Partner, Milbank, Tweed, Hadley & McCloy LLP (HSAC Chair)
Jim Jones	Chairman and CEO, ManattJones Global Strategies (Task Force Chair)
Ruben Barrales	President and CEO, San Diego Regional Chamber of Commerce
Robert Bonner	Senior Principal, Sentinel HS Group
Stephanie Caviness-Tantimonaco	President, Foreign Trade Association
John Cook	Mayor, City of El Paso
Richard Cortez	Mayor, City of McAllen
J. Chappell H. Lawson	Associate Professor of Political Science, Massachusetts Institute of Technology
Tiffany Melvin	Executive Director, NASCO, Inc.
Ralph Ogden	Sheriff, Yuma County Sheriff's Office
Jim Phillips	President & CEO, Canadian/American Border Trade Alliance
Maurice Sonnenberg	Senior International Advisor, J.P. Morgan
Robert Wolf	CEO, 32 Advisors
Al Zapanta	President & CEO, United States-Mexico Chamber of Commerce

Appendix C. Subject Matter Experts

Alan Bersin	Assistant Secretary, Office of International Affairs/Chief Diplomatic Officer, DHS
William A. Ferrara	Deputy Executive Director, Mission Support, Office of Field Operations, CBP, DHS
Trent Frazier	Director, Field Operations Facilities Program Management Office, Office of Administration – Facilities Management & Engineering, CBP, DHS
Chad Gilchrist	Deputy Director, Field Operations Facilities Program Management Office, Office of Administration – Facilities Management & Engineering, CBP, DHS
Jorianne Jernberg	Financial Analyst, TIFIA Credit Program, Department of Transportation
Kevin McAleenan	Assistant Commissioner (Acting), Office of Field Operations (OFO), CBP, DHS
Tom Osborne	Managing Director, Head of Americas Infrastructure Group, UBS Investment Bank
Roger Petzold	Team Leader, Office of Planning, Federal Highway Administration, Department of Transportation
Joseph Ramos	(Acting) Director of Facilities, Office of Field Operations, CBP, DHS
Ron Rienas	General Manager, Peace Bridge Authority
Raul Rodriguez Barocio	Chairman of the Board of Advisors, North American Center for Transborder Studies, Arizona State University
Ben Rohrbaugh	Policy Advisor, Customs and Border Protection, DHS
Mike Yeager	Assistant Commissioner, Office of Congressional Affair, Customs and Border Protection, DHS

Appendix D. Case Studies

Case Study: Canada:

Unlike the United States, Canada has a Department-level agency, Public-Private Partnerships (PPP) Canada, which deals specifically with public-private partnerships. According to their website, "PPP Canada's mandate is to improve the delivery of public infrastructure by achieving better value, timeliness and accountability to taxpayers, through P3s… PPP Canada was created to deliver more P3s by leveraging incentives, demonstrating success, and providing expertise; and to deliver better P3s by promoting P3 best-practice, and capacity-building."[xxxii] PPP Canada was established in 2008 as a crown corporation and has an independent Board of Directors that reports through the Minister of Finance to Parliament, and is a merit-based program.[xxxiii]

Several Canadian provinces also have strong PPP programs including Partnerships British Columbia and Infrastructure Ontario, which started by doing hospitals and court houses and have now worked up to major highways.[xxxiv] The two provincial programs have had success building PPPs in transportation infrastructure including:

- The Confederation Bridge (New Brunswick to PEI);
- Two major highways in New Brunswick (and one more planned for 2013);
- Windsor-Essex Parkway.

For further information, visit:
www.p3canada.ca/home.php,
www.partnershipsbc.ca/,
www.infrastructureontario.ca/.

Case Study: Puerto Rico:

The Puerto Rico Public-Private Partnerships Authority (PPPA) was created in 2009 to be the government entity responsible for working on public-private partnerships. The PPPA is composed of a small staff which includes general counsel, an engineer, and a financial analyst.[xxxv]

The PPPA manages and promotes the establishment of P3s by coordinating with government agencies and private sponsors through the project development process. One of the major goals of the new PPPA was to ensure transparency of the process by including government sector participants, either through the participation of officials from various government entities in the Partnership Committees, the composition of the Authority's Board that must approve the process and the contract—which includes representatives from the Legislature, the Executive and an independent third party—and the requirement that the creation of the PPP be approved by the Board of Directors of the relevant government entity and the Governor.[xxxvi]

For more information, visit:
http://www.app.gobierno.pr/?lang=en/

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