Sieve or Shield: The Canada-U.S. Border and High Tech Labor Connectivity within Cascadia Under NAFTA and After September 11

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Abstract

This dissertation involves understanding how the particular provisions of Chapter 16 of the North American Free Trade Agreement (NAFTA) dealt with temporary labor mobility of North American professionals across the Canada-U.S. border, with particular emphasis in the Pacific Northwest region (Cascadia) of Canada and the United States. Ideally, NAFTA visa/status provisions should make the temporary entry of professionals easier across the borders of all NAFTA countries — namely Canada, the United States, and Mexico—thus facilitating cross-border trade and enterprise. However, in the case of software engineers, which are a very important category for the expanding high-tech service industries of Vancouver and Seattle, it is arguably not so. Additionally, the concept of ‘cross border regions’ has gained increasing prominence in policy and academic discourse beginning in the early 1990s. However, in light of September 11, 2001, nation states have found it problematic to balance the need for more open borders to facilitate trade (borders as sieves) with the need for sovereignty or security concerns (borders as shields). Thus, within the context of recent literatures on ‘labor mobility/immigration, industrial clusters, borders and borderlands, cross border institutions, and pre/post September 11 security measures’, this research aims to better understand the dynamics of transitory immigration of ‘knowledge-workers’ between Vancouver and Seattle. The research methodology involved in-depth interviews with 10 companies based in Cascadia, 19 officials responsible for creating or interpreting the NAFTA visa provisions, and 15 attorneys primarily in the Cascadia region conversant with facilitating NAFTA and related international work applications. The objectives of this study were to test whether firms’ demands for cross-border movements of knowledge workers (e.g. for recruitment or for international sales) were facilitated or impeded by recent NAFTA status provisions, and whether this encumbered the development of a “Cascadia” high-technology cluster, similar to Silicon Valley in the U.S.A.

Findings for this dissertation suggest that the mobility of high tech employees working for Vancouver based firms was not impeded by the NAFTA status provisions. However, interpretation of the complex nature of Chapter 16 of NAFTA in part worked against certain occupations emerging in the high-technology field (especially in information technology) and there were significant differences in interpretation by border officials on the Canadian and the United States sides of the international border. Although there were delays and increased anxieties in traveling to the U.S., the events of 9/11 did not stop the flow of Canadian NAFTA professionals into the U.S. and U.S. NAFTA professionals into Canada. While access to the U.S. was not an over-riding problem for Vancouver based firms, many of these firms (and their attorneys) practiced something called “port shopping” when it came to Canadians professionals seeking NAFTA statuses at U.S. ports-of-entry. This involved seeking out a specific port-of-entry along the border line, which - based on the advice of attorneys or other professional colleagues - were felt to be more facilitative towards issuing a NAFTA status without problems. Much of the reputation of each U.S. port-of-entry’s attitude towards NAFTA visa provisions was dependent on the interpretation of the port director or other influential personalities within the particular port-of-entry. By comparison, port shopping did not appear so prevalent in the case of U.S. knowledge workers seeking temporary work visa into Canada. This was due to more rigorous on-going standardized training among Canadian border officials, and a deliberate process of communication between front-line port-of-entry officers and headquarters in Ottawa. Since the creation of the U.S. Department of Homeland Security (DHS) in March of 2003, the U.S. had moved more towards the model of Citizenship and Immigration (CIC) Canada in some of its mandate, which requires that all DHS officers be in a
state of “on-going” training. Also, there was a greater demand of professional conduct for DHS officers, which was something that had always been required of CIC officers. As well, all airport U.S. pre-flight inspections port directors now had something called “Discretionary Authority.” This power allowed the port director to grant a right of travel into the U.S for a foreigner who, normally, might be denied entry. Canadian port directors have had this power prior to September 11. Additionally, the U.S.’s DHS became more like the Canadian model in its effort to create distance between its port-of-entry officers and immigration attorneys, by not allowing U.S. attorneys to accompany clients through the adjudication process of seeking a NAFTA status at ports-of-entry. (The U.S. government tolerated this activity until August 2003.) Although there was a growing distance between port-of-entry immigration officers and Canadian and U.S. attorneys, firms needed increasingly the help of immigration attorneys with NAFTA applications, especially after September 11.

In conclusion, despite the continued mobility of professionals under NAFTA across the Canada-U.S. border between Vancouver and Seattle, this study indicates that many of the firm’s employees were in fact destined for California or other urban centers in the U.S. or the rest of the world, rather than Seattle. The same held true for the one large Seattle based firm interviewed. Much of this firm’s movements of NAFTA professionals into Canada were not directed to Vancouver per se. Thus, the study suggests that the economic construct of Cascadia continues to remain a figment in the imagination of many, and that the cross border-flows of knowledge workers in Vancouver and Seattle reflect “meso/macro regional” and “global” flows rather than “micro regional” flows. Indeed, the patterns of travel for many of these NAFTA professionals actually fell more closely within the boundaries of David McCloskey’s original notion of Cascadia, which was based on an ecological perspective and reached from Alaska into North California; rather than the economic notion of Cascadia constructed by Alan Artibise, which reached from Whistler, B.C. to Eugene, Oregon. Finally, regarding the concept of the Canada-U.S. border being a “Sieve or Shield,” there remained a tension between U.S. federal concerns, namely “shield” effects, of heightened security coupled with cross border economic regional needs for more flexible and predictable border management, namely “sieve” effects. This dual mandate of Canada-U.S. border management highlighted the continued bipolar nature that the Canada-U.S. border, as it relates to Chapter 16 of NAFTA, is still embroiled within – continued mandates towards greater North American regional integration (sieve effects) but is still dictated by strong federal policy directives in a post 9/11 climate (shield effects).
# Part I

Chapter 1 - Introduction

1. Introduction .............................................. 1
   1.2 General Background ................................. 4
   1.3 Research Questions .................................. 6
      1.3.1 The Primary Research Question ................. 6
      1.3.2 Methodology and Other Primary Research Questions 8
   1.4 Empirical Research and the Interviews ............... 9
      1.4.1 The Firms ..................................... 10
      1.4.2 The Immigration Officials ...................... 13
      1.4.3 The Immigration Attorneys .................... 16
   1.5 Summary ............................................. 17

Chapter 2 - Introduction ................................ 18

2.2 Borders and Borderlands: Their History, Current Situation, and Possible Futures ......... 18
   2.2.1 The Historical Importance of Borders and Borderlands .......... 19
   2.2.2 The Contemporary Importance of Borders and Borderlands .. 22
   2.3 Cross-Border Regional Development in Theory and Practice ......... 25
      2.3.1 Similarities in the Development of Cross Border Regions ... 26
      2.3.2 Types of Cross-Border Regions and their Development ... 29
   2.4 Post 9/11 Security Measures and Its Influence on Borders and the Movements of Peoples 32
      2.4.1 Border Management ................................ 35
   2.5 High Tech Companies, Innovative Regions, and their Demand for Labour .......... 37
      2.5.1 High Tech Companies and their Regions .............. 38
      2.5.2 Innovation, Learning Regions, and Their Institutions .... 41
      2.5.3 Institutions, Learning, and Labour in High Technology Regions .... 42
   2.6 Transnationalism, Labour Mobility of the Highly Skilled, and Its Shortcomings .... 45
      2.6.1 Introduction .................................... 45
      2.6.2 Transnationalism ................................ 46
      2.6.3 Labour Mobility and the Internationally Highly Skilled .... 47
   2.7 Cross Border Institutions in the Facilitation/Impeding of Transborder Labour Mobility and Sojourner Rights .... 50
      2.7.1 The Role of Supra-National Agreements or Institutions that Affect International Labour Mobility .......... 53
   2.8 Summary ............................................. 58

Chapter 3 - The Cascadia Region In Its Wider Context ........................................ 61

3.1 General Introduction – Purpose of Chapter ........................................ 61
3.2 Cascadia as a “Border Zone of Human Contact” ..................................... 62
3.2.1 Introduction ........................................................................................................................................ 62
3.2.2 The Cascadia Region .......................................................................................................................... 64
3.2.2.1.2 The Seattle-Post dotcom Bust and September 11 Fallout ......................................................... 76
3.2.2.2 The Vancouver Economy – From Peripheral Hinterland to Growing New Economy .................... 78
3.3 Cascadia in Its Wider Context .................................................................................................................. 84
3.3.1 Mode 4 of the General Agreement on Trade in Services (GATS) .......................................................... 87
3.3.2 Various U.S. Visas for The Admission of Foreign Professionals into the United States ...................... 88
3.3.2.1 Permanent Migration of Skilled Workers to the United States ...................................................... 89
3.3.2.2 U.S. Temporary Immigration - The H-1B Program ......................................................................... 91
3.3.3 Canadian Professional Immigration ..................................................................................................... 95
3.3.3.1 Permanent Migration for Foreign Professionals ............................................................................. 95
3.3.4 Chapter 16 of the North American Free Trade Agreement ................................................................... 98
3.3.4.1 NAFTA and Labour Mobility ........................................................................................................ 99
3.3.5 The Canada-U.S. Border a ‘Sieve’ or ‘Shield’ under NAFTA? ............................................................ 104
3.3.6 Section Summary .................................................................................................................................. 105
3.7 Chapter Conclusion .................................................................................................................................... 106

Part II

Chapter 4 – The Firms .................................................................................................................................... 108
4.1 Introduction ............................................................................................................................................... 108
4.2 The Types of Firms Surveyed and the Questionnaire ............................................................................... 108
4.3 General Firm History and Reasons for Locating in Vancouver or Seattle ................................................ 110
4.4 Strategic Connections between the U.S., Canada, and the Rest of the World ........................................ 113
4.4.1 Sales Connections to The U.S. and Beyond ....................................................................................... 113
4.4.2 Sources of Financing and Technology ............................................................................................... 116
4.4.3 The Hiring of Foreign and Domestic Personnel .............................................................................. 119
4.4.4 Reasons for Movements of Professionals Across International Borders ........................................... 123
4.5 Visas and Work Statuses .......................................................................................................................... 125
4.5.1 Recruiting Employees from the U.S.A .............................................................................................. 126
4.5.2 Recruiting Employees from Canada .................................................................................................. 130
4.6 Experiences with Crossing the Canada-U.S. Border ............................................................................... 133
4.7 Firm Strategies When Crossing the Canada-U.S. Border ....................................................................... 137
4.8 Was the Canada-U.S. Border an Impediment to a High Tech Cluster between Seattle and Vancouver? ............................................................................................................................................. 140
4.9 What would Happen if Cross Border Mobility was Impeded? .................................................................. 141
4.10 Mobility of North American Professionals in a Post 9/11 World ............................................................ 144
4.12 Recommendations for Improving the Experience of Crossing Borders .................................................. 148
4.13 Conclusion ............................................................................................................................................... 150

Chapter 5 – The Immigration Officials .......................................................................................................... 152
5.1 Introduction ............................................................................................................................................... 152
5.2 Methodology for the Empirical Research ................................................................................................. 152
5.3 The Canada-U.S. Border and NAFTA Status Provisions ....................................................................... 153
5.3.1 Background Comments by U.S. Immigration Officials .................................................................. 154
5.3.2 Comments by Canadian Immigration Officials ............................................................................... 155
5.3.2 NAFTA Statuses – The View of U.S. Immigration Officials ............................................................... 156
List of Tables

Table 2.1 Typology of Border Region Development .................................................. 31
Table 3.1 U.S. Temporary Entry Statuses ................................................................. 84
Table 3.2 Canadian Temporary and Permanent Entry Statuses .................................. 86
Table 4.1 Selected Distribution of Sales for Firms Interviewed ................................. 115
Table 4.2 Sources of Financing for Firms Interviewed ............................................. 118
Table 4.3 Paces of Origin for the Professionally Highly Skilled .............................. 123
Table 5.1 Types and Characteristics of Attributes which Contribute to Varying Border
Management Styles along the Canada U.S. Border in Cascadia – Pre and Post
9/11 ......................................................................................................................... 200
List of Figures

Figure 2.1 Professional Worker Visas/Statuses Issued under the Canada-U.S. Free Trade Agreement and NAFTA to Canadians from 1989 to 2004. 56
Figure 3.1 Breakdown of Border Crossing Types at Four Largest Land Border Crossings Between Vancouver, B.C. and Seattle, Washington (Canada entering U.S.). 72
Figure 6.1 Envisioned System of Communication and Influence Under Chapter 16 of NAFTA. 239
Figure 6.2 Chapter 16 of NAFTA's Realistic System of Communication and Influence. 240
List of Illustrations

Illustration 2.1 The U.S. Mexico Borderlands in Southern California.................................21
Illustration 2.2 The Singapore-Johore-Riau Growth Triangle..............................................21
Illustration 2.3 Tumen River Area Development Zone.........................................................30
Illustration 2.4 Saar-Lor-Lux Cross Border Labor Market..................................................30
Illustration 2.5 Silicon Valley.................................................................................................40
Illustration 3.1 Cascadia.........................................................................................................69
Illustration 3.2 Economic Cascadia.......................................................................................70
Illustration 5.1 All Ports of Entry Between Western-Most U.S. and Canada.....................175
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Chapter 1 – Introduction

1. Introduction

The idea of borders as sieves or shields has come to the forefront of topics in the discipline of geography in the past few years. The opportunities presented by free trade and the emergence of cross border regions have been compromised by the constraints imposed after the attacks on the World Trade Center in New York City in September 2001 (hereafter 9/11), and the subsequent “fortressing up” with drastic security measures taken not only along the U.S. borders, but also along international borders throughout the world (Andreas, 2003). The overall trend since the ending of the Cold War has been one of free access across international borders, especially for international trade and multinational business interests (Ohmae, 1995). In fact, the trend of globalization, in general, has been seen as a catalyst to making international borders more and more irrelevant, fostering the idea of borders operating as a ‘sieve’.

However, in a post 9/11 environment, ‘borders are back’, and a new set of security issues have arisen, which contribute to the idea of borders functioning again as ‘shields’, as they did during the Cold War, but now with an emphasis on shielding citizens from terrorists as opposed to rogue nation states (Andreas, 2003). In other words, borders represent a fascinating case study of a more general intersection between geography and contemporary public policy (Cox, 1997).

Borders have always been important to geographers since the signing of the Treaty of Westphalia in 1648. This treaty helped to end the 30 Years War in Europe and legitimately recognized the demarcations of a state’s territory by physical boundaries or borders. In fact, the Treaty of Westphalia in 1648 helped to establish the creation of the borders and boundaries of many contemporary nation states, which evolved out of the kingdoms and territories of European royalty and nobles starting in the eighteenth century. Moving forward to the late twentieth century, new regional groups are beginning to form, which cut across the borders of nation states. This includes the triad economy of North America under the North American Free Trade Agreement (which includes Canada, the United States, and Mexico) the European Union, and the Association of South East Asian Nations, (ASEAN). Within these larger continental trading blocks are sub national cross-border regions; these include SIJORI (Singapore-Johore-Riau Growth Triangle) and Cascadia (the Pacific Northwest region of North America), for example. In fact, Cascadia may be considered a local example where issues of cross-border flows are critical to the growth of a post-industrial high tech service oriented...
region that benefits from Seattle and Vancouver’s interaction and dynamism. Ideally, Chapter 16 of NAFTA (the North American Free Trade Agreement), which is dedicated, in part, to facilitating the movements of North American business persons, traders, investors, and professionals, should help to foster movements of these qualified people between Vancouver and Seattle. This dissertation explores the intersection of the Canada-U.S. border, the high tech economy in the Seattle-Vancouver corridor, namely Cascadia, and how well NAFTA has contributed to the movement of North American professionals between these two cities.

The North American Free Trade Agreement (NAFTA) since its inception in 1994, was designed to allow for the greater ease and cross border mobility of goods, services, investment, government procurement, intellectual property, competition policy, and finally the mobility of business persons.¹ For the most part, NAFTA may be considered a success in terms of the majority of factors in that it allows facilitated cross border entries. Within continental North America there is a general perception that access into the U.S. from Canada is almost guaranteed for North American business people and vice versa. However, as will be shown in the thesis, the legitimate NAFTA Information Technology (IT) professional has perceived difficulties moving back and forth across the Canada-U.S. border for a variety of reasons. Unlike the European Union’s Schengen Agreement developed through the 1990s (Anderson, 2000), which allows for complete labour mobility between all signatory countries, there has been no attempt to harmonize the regimes of NAFTA entry for Canada, the U.S., and Mexico. Essentially, each NAFTA country has set its own standards for the entry of skilled workers. Hence, there are three country systems operating under NAFTA, which look alike but are quite different from each other. These differences, coupled with the growing post 9/11 restrictive nature at U.S. ports of entry, has led to considerable variability in border controls, not only between the U.S. and Canada, but also between U.S. ports of entry. In addition, there is a widening gap between the Canadian and American interpretations of NAFTA at the actual ports of entry as it applies to the North American business person. The following interview excerpt provides a rather vivid example of these complexities and of the difficulties encountered by one Canadian high technology firm trying to seek entry of its workers into the U.S. after 9/11 in order to perform a job for the U.S. Navy.

¹ Chapter 16 of NAFTA includes the preferential treatment of North American business visitors, traders, investors, intracompany transferees, and 65 professional job categories.
KR: I remember, a while back when I first spoke with you on the phone, you and your crew had a very interesting time in trying to get across the Canada-U.S. border. Could you tell me about it?

C-F6  Oh yes that was our US Navy fiasco [in 2002]. We were contracted to do a job for the U.S. Navy in San Diego. We expected some problems. So we got a letter from the U.S. Admiral in charge. He was an Admiral. We were each issued letters from the US Navy and the State Department letterhead stating who we were and the fact that we had to provide maintenance on U.S. Navy equipment. We go to the POE [port of entry, but it is actually the “U.S. preflight inspection area’’] at YVR (Vancouver Airport). The guys always push me to the front of the line when we go through the border. I got through because I am a dual citizen. The next guy goes through, the immigration officer talks to him and pulls him aside. He then pulled all the other guys aside, and refused entry to all of them!!! One of them had an H-1 card [a designated U.S. work visa], but it had expired and he did not return it. (The card is the property of the U.S. government.) For the other three, they said that the letter was not specific enough. We had the U.S. immigration talk with the Navy [on the phone]. They [the border officials] considered our work “maintenance”, and said anyone can do this! They sent us home and told us to come back the next day. We went back the next day with additional paperwork from the Navy. However, they gave us a one-time entry, and as soon as we reentered any port in Canada we would lose this status. So we went to San Diego and performed the job for a week or so. They did not want to pay for us to stay there, so they sent us home.

However, four days later the U.S. Navy called us back saying they needed us, right away. This was the worst time for this to happen, there was another terrorist threat or something like that, I don’t know. Essentially, the U.S. border went on Orange alert in early October [of 2002]. I called the U.S. immigration people at the Peace Arch/Douglas border crossing, and they said it would be highly unlikely that they would let us through. The Navy said we have to go. The guys rented a car, and we put all of our gear (work hats, equipment, everything) in a big box, shipped it to San Diego. We then rented a car, filled it with Doritos chips and pop and said we are going to Seattle [for the week] to do some shopping and maybe some fishing. They drove to Seattle, ditched the rental car in a hotel parking lot, took the shuttle bus to SeaTac [airport]. We went to San Diego for the week, got the job done. Came back home, drove through the [Canadian] border. “Yeah, it was a great trip.” You know. I mean, what are you going to do? The U.S. Navy does not work that fast [with paper pushing]. I don’t believe we did this, and I don’t believe we didn’t get nailed! In the end it all worked out well. I cannot believe we had a contract with the U.S. Navy, and we had to sneak people into the U.S. to get the job done.

Although not frequent, many of the smaller Canadian firms I interviewed noted that they would take extreme measures in order to get into the United States to perform a job, land a contract, or provide services to U.S. firms. The above excerpt provides a very determined and creative example of what Canadian firms will do in order to continue their working linkages and networks not only with U.S. firms, but also with powerful U.S. governmental bodies, such as
the U.S. Navy. Even more interesting is the paradox or tension, which apparently exists between the U.S. Department of Homeland Security (DHS), directed to guard the U.S.'s domestic borders and the U.S. Navy, mandated, among other things, to protect the U.S. from enemy invasions by water and "to hold the oceans." Based on the above example, the U.S. Navy found it in the best interest of the U.S. to allow passage into the U.S. for these five Canadian aquatic equipment specialists. However, the U.S. Department of Homeland Security port of entry officers were not convinced of their professional significance, and exercised their right as immigration officials first in the line of defense of the U.S.'s border to refuse entry to four of the five Canadian professionals.

The above example demonstrates that my examination of the role of the international border in the high-tech Cascadia region leads, naturally, to a focus on, first, the firms' that need to send highly qualified employees across the border. In addition, my study also led me to focus on the role that the port of entry officials and other governmental officials played, especially with regard to their interpretation of NAFTA status provisions. Thus, as will be shown shortly, my examination of border management has led also to the important role carried out by immigration lawyers who specialize in preparing complex visa applications for cross-border business travelers in both the U.S.A. and Canada.

Overall, in the dissertation, the plans, dreams, and goals of these smaller Cascadian firms will be explored in relation to how they see themselves within a North American context, and how the Canada-U.S. border affects their day-to-day operations and their long-term goals. An examination of the other players and actors such as immigration officers and immigration attorneys, in addition to the experiences of larger U.S. firms moving people through the U.S.-Canadian border, will also be explored in hopes of gaining a better understanding of the similarities and differences between the Canadian and American experiences of moving across the Canada-U.S. border under NAFTA.

1.2 General Background

NAFTA intended to give freer mobility to high tech professional workers across the international borders between Canada, the U.S., and Mexico. In fact, even prior to September 11, 2001, there was a growing "push" from key decision makers on both sides of the Canada-
U.S. border to create blanket North American visa policies and procedures, develop common
terminology, stream-line entrance and exit databases, and the possibility of greater
harmonization of Canada-U.S. immigration policies. Despite these long-term coordinating
efforts between Canada and the U.S., this study found that there is still considerable variability
between the U.S. and Canada when it comes to the actual inspection, facilitation and
admittance of North American business people across the Canada-U.S. border, as discussed in
the preceding paragraph. This growing variability may have tremendous impacts on the
predictability of mobility for professionals, which arguably, in turn, may have severe impacts
on the continued development and success of the integrated North American high tech
economy. For example, Vasquez Azpiri (2000) argues that this fluid stream of legitimate
professionals under NAFTA is crucial in moving both the U.S. and Canada into a stable and
growing information economy.

The need for greater ease and mobility of professionals or “knowledge workers” is especially
relevant for the emerging new economy high tech corridor in Cascadia which transcends the
international border between Vancouver, B.C. and Seattle, Washington. (See Appendix 16 for
a satellite image of this region). These two urban settlements have developed successfully over
the past 100 years into modern cities, both lauded internationally for their quality of life
(MacDonald, 1987). Seattle is home to major high technology companies such as the software
giant Microsoft, and the commercial headquarters of the aircraft manufacturer Boeing, both
world leaders in their respective industries (Puget Sound Business Quarterly, 2004).
Vancouver is quickly developing its own critical mass of new economy industries with over
600 high tech firms in 2003 when the industry employed over 52,000 people (Business in
Vancouver, 2003). In fact, Vancouver is often stated as a city of choice for young high tech
specialists looking for quality of life as they embark on their fast paced careers in software
development (Mackie, 2000). Additionally, over the past fifteen years, Vancouver has
developed strong human and economic networks with three of the four East Asian tigers

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2 The Canada-U.S. Smart Border Declaration, signed in December 2001 had been in develop between senior
Canada and U.S. officials since the early 1990s.

3 A Knowledge worker, is a term orginally developed by by Peter Drucker in 1959 and generally refers to a person
who works primarily with information or one who develops and uses knowledge in the workplace.
Based on the above introduction and background, this dissertation examines how the particular provisions of Chapter 16 of the North American Free Trade Agreement (NAFTA) actually deal with temporary labour mobility of North American high tech professionals across the Canada-U.S. border, with particular emphasis in the Pacific Northwest region of Canada and the United States. The empirical research includes the Vancouver, B.C.-Seattle, Washington corridor, namely the Cascadia region (see Figure I). In principle, the NAFTA status (visa) provisions should have made the temporary movement of professionals easier across the border of all NAFTA countries (Canada, the United States, and Mexico), and facilitate cross-border trade and enterprise. However, in the case of software engineers and related professions, which are a very important category for the expanding high-tech service industries of Vancouver and Seattle, I argue in the thesis that it is not so. Drawing from four primary literatures, which include material on high tech/industrial clusters; borders and borderlands in a post 9/11 era; transnationalism and labour mobility; and transborder institutions, my research aims to understand better the dynamics of transitory immigration of ‘knowledge-workers’ between Vancouver and Seattle. A greater understanding of these dynamics also helps to shed light on whether or not the Canada-U.S. border is an impediment to the development of high-tech clusters in the Cascadia region. In essence, is the border a ‘sieve’ or ‘shield’ to successful regional development in this part of North America?

1.3.1 The Primary Research Question

More concretely, the primary research question is as follows: “Is the Canada-U.S. border an impediment to the development of a high-tech industrial cluster in the Cascadia region?” This is of critical importance because much of the ‘new economy’ in the Cascadia region (as in

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4 The New Economy is a term that was developed in the 1990s to describe OECD countries transitions from industrial/manufacturing-based economies into a high technology-based economy, arising largely from new developments in the technology sector. Initially, many business analysts though that the “New Economy” would rendered obsolete many traditional business practices. After the bursting of the dotcom bubble in early 2000, many of these predictions and new business practices proved to be wrong. However the term “New Economy” is frequently used to describe the contemporary American economy.
other similar regions) is dependent on the free movement of highly skilled peoples over international boundaries who can respond quickly to the ever changing needs and developments of firms that develop and work with new technologies (Richardson, 2006a). Historically, over the past 300 years since the development of nation state borders, one primary purpose of the border was to keep people residing in one nation state from moving and residing in another nation state. Now, networks of firms involved in information technology, and the new economy in general, span international borders. Thus, the information technology sector needs to draw from a talented pool of well educated professionals residing throughout the globe as these firms compete in a 'high stakes game' of product development where timing and cleverness are keys to success or failure (Saxenian, 2002). And so, the immediate needs of the new economy require more cross-border integration and more predictable transparent border regulations when it comes to the movement of professionals across international boundaries.

The need for greater ease and mobility of professionals is especially true for the emerging high-tech corridor of Cascadia, which transcends the international border between Vancouver, B.C. and Seattle, Washington. It shares the natural drainage basin of the Georgia Basin, but is bisected politically by the Canada-U.S. border. These settlements have similar histories as two new northwest coast cities designed to function as outposts in the export of natural resources, such as timber and fisheries (MacDonald, 1987). As mentioned previously, these two cities have developed successfully over the past 100 years into modern settlements, both lauded internationally for their quality of life and globally competitive high tech industries. In the context of the high levels of growth and success of high tech in Seattle and Vancouver, the question emerges as to whether or not the Canada-U.S. border impedes their integration and the development of a high-tech complex, as has been the case with Silicon Valley in Northern California (Lee et al., 2000).

From a Canada-U.S. studies perspective, the impact of the North American Free Trade Agreement (NAFTA) and its implementation in Cascadia is also a pertinent issue. There is a need to understand how NAFTA has impacted the emerging high tech cross-border complex. While NAFTA was introduced in 1993 to facilitate cross-border trade, its detailed implementation and outcomes remains a relatively understudied area of research. Moreover, compared with other Canada-U.S. border regions (e.g. the Detroit-Windsor corridor and the
Atlantic Maritime and Northeast States) very little detailed research has been carried out on the industrial connections between Cascadia. Historically, there has been more scholarly work done on the Canadian branch economy located within the Golden Horseshoe of southern Ontario, (Molat, 1999; and Holmes, 2003). Here a sophisticated Just-in-Time (JIT) delivery process of the big three auto manufacturers created networks of production that span across the Ambassador Bridge linking Detroit and Windsor. This JIT system has carefully integrated Canadian production facilities into a powerful chain of auto production plants originating in Detroit and extending into Ohio and Tennessee (Holmes, 2000). However, no research to date has attempted to “map out” similar chains of interactions between high tech firms in the Vancouver, B.C. and the Seattle corridor. Additionally, rather than moving car parts, as is frequently the case between Detroit and Ontario, the Cascadia area has a greater potential of moving knowledge workers across its regional borders due to the fact that the high tech industry is much more dependent on flows of people as opposed to goods (Florida, 2003). Thus, this research project places special emphasis on the movement of knowledge workers across the Canada-U.S. border in Cascadia, and how Chapter 16 of NAFTA, which deals with labour mobility, has affected these movements. Indeed, it is intended that a primary outcome of this work will be a better understanding of how high tech firms span across the Canada-U.S. border within the Cascadia region, and whether the border impedes possible flows of peoples working in the high tech industry.

1.3.2 Methodology and Other Primary Research Questions

The methodology behind this research study includes semistructured in-depth interviews with 16 Canadian/U.S. front-line immigration officials and the Canadian/U.S. officials who wrote and continue to negotiate Chapter 16 of NAFTA. As part of the study, I also interviewed 15 Canada-U.S. immigration attorneys, and 13 of the chief executive officers and human resource managers of 9 high tech firms based in Vancouver and one Fortune 500 company based in Seattle that move people, goods, and/or services across the Canada-U.S. border. The semistructured in-depth interview format was chosen as the major approach to gathering information due to the lack of consistent quantitative data on knowledge workers crossing the U.S.-Canada border. This assessment of NAFTA in the case of highly skilled labour immigration, was used due to the fact that there was a lack of documentation regarding the varied experiences of North American professionals seeking entry across North American borders for purpose of work.
I prepared initially a list of pertinent questions for the firms, border officials and immigration lawyers. These structured interview questions provided a framework to begin with not only for myself, but also for the interviewee involved. Due to the nature and time constraints of many of the participants, the semi-structured interview methodology provided an air of comfort and "predictability" regarding such a sensitive subject matter as cross border flows, especially following 9/11. Indeed, the firms and Canadian immigration officers were most adamant about seeing the questions before they agreed to be interviewed (see Appendices 1, 2, and 3). Surprisingly, the U.S. legacy Immigration and Naturalization Service/Department of Homeland Security\(^5\) was probably the most flexible when it came to interview structure, questions, and the actual tape recording of the interviews.

The interview process was considered "semi-structured" due to the fact that many of the interviewees added other dimensions to the interview that could not be captured by the questions that I asked (see Appendices 1, 2, and 3). Additionally, once the interview began, many of the participants became very comfortable talking about the topic area, and I did not want to impose such a rigid structure that the more traditional "structured interview" requires (Fontana and Frey, 2000).

Despite the flexibility in the research structure, there were four questions that were asked to all interviewees. These questions include the following: Is the Canada-U.S. border an impediment to a high tech industrial cluster developing along the Vancouver/Seattle corridor?; How has Chapter 16 of NAFTA influenced this region and or your work/firm?; How did September 11, 2001 influence the flows and experiences of high tech professionals moving back and forth across the Canada-U.S. border; and, What is the relationship between all of the actors involved?

### 1.4 Empirical Research and the Interviews

In order to answer the question, "Is the Canada-U.S. border an impediment to the development of software firms in the Cascadia region?,” empirical research was conducted in the form of 44

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\(^{5}\)The U.S. Immigration and Naturalization Service (INS) ceased to exist as of March 1, 2003. The U.S. INS was then folded into the new Department of Homeland Security. When one refers to the former "INS", the proper title now is "Legacy Immigration and Naturalization Service."
semi structured interviews in Vancouver, Seattle, San Francisco, Washington D.C. and Ottawa. They included interviews with the CEOs, vice presidents, and human resource managers from a variety of firms that engage in ‘high tech’ work in Vancouver, B.C. and Seattle, Washington. These companies employ software engineers who have to cross the Canada-U.S. border often for purposes of work (e.g. sales, research, and service activities). These firms also recruit specialists, such as software engineers, computer graphic design artists, and engineers in general from either side of the Canada-U.S. border in order for the firm to remain competitive in its respective industry. Canadian and U.S. immigration lawyers practicing law primarily within the Vancouver-Seattle corridor were also included in this study for their background and understanding of the TN status and the H1-B visas. I felt that these attorneys were important in order to determine if intermediaries, such as immigration attorneys, were significant in the management of the U.S. border within the Cascadia region. In fact, I found that they played an important role. Specifically, the attorneys contributed tremendous insights into the culture and spirit of both the Canadian and U.S. immigration services, in addition to providing leads to companies that move people back and forth across the Canada-U.S. border under NAFTA. Canadian and U.S. front-line immigration officials and port of entry directors were also interviewed for this research since their understandings, interpretations, and adjudications of NAFTA statuses (in addition to being the gatekeeper to the flows of people, in general) were pivotal to learning how the border acts as a shield and/or sieve when allowing for the legitimate movements of professionals. Finally, interviews with key officials within institutions, primarily governmental, which affect or have influence on the policy development and or adjudication of cross border labour mobility policies were also included as part of this study due to the fact that many of the ideas and policy influence regarding the border originate with these actors in the major ministries and departments in Ottawa and Washington D.C. The following section expands on the nature of these three types of actors involved in cross-border regulations.

1.4.1 The Firms

Currently there is a minuscule amount of literature that explores the development and operations of clusters of high tech firms that operate in a cross border transnational setting. However, there appears to be a growing trend in the need for smaller, non-multinational firms

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6 The TN status and the H-1B visa will be explored in more detail in Chapter 3 of the dissertation.
to have a global reach upon firm inception, and the necessary requirement to move beyond the borders of nation states. For example, Saxenian (2000) demonstrated that Chinese and Indian engineers started 29 percent of Silicon Valley's technology companies between the years of 1995-98, and spend considerable time traveling between their operations in Silicon Valley and China and Taiwan, which contributed to a growing transnational economic network between North America and Asia. Saxenian expanded on this idea two years later in a study conducted for the Brookings Institution in 2002 by stating the following,

As recently as the 1970s, only giant corporations had the resources and capabilities to grow internationally, and they did so primarily by establishing marketing offices or manufacturing plants overseas. Today, new transportation and communications technologies allow even the smallest firms to build partnerships with foreign producers to tap overseas expertise, cost-savings, and markets. Start-ups in Silicon Valley are often global actors from the day they begin operations. (Saxenian 2002)

The above quote helps to confirm Canada and the U.S.'s growing experience in transcending international boundaries as a part of daily operations for the emerging information and technology sector. This phenomenon will be explored more thoroughly in the dissertation in the hopes of contributing to this nascent body of literature.

Within the large and varied “high tech” sector of Cascadia a total of 10 companies, located in either the Vancouver and Seattle areas, that have Canada-U.S. cross border connections/activities participated in this research project. I originally intended to interview 30 firms in both Vancouver and Seattle. However, due to the bursting of the “dotcom” bubble in early 2001, followed by the 9/11 terrorist attacks in the U.S., many software firms in both Seattle and Vancouver either went out of business or were barely remaining in business with a “barebones” professional staff when I began my empirical research in 2002. In fact, when I first commenced interviewing firms in November of 2002, one software firm, which ranked number 16 in terms of sales and size according to the *Seattle Business Journal* 2002 annual report, noted that they once had a staff of about 70-80 people in 2000. However, due to the bubble bursting and 9/11 a vice president of the firm (who answered the main phone line when I first called the firm) said to me, “Kathrine, we are down to 18 people. Essentially, we sent all of the foreigners, which included Canadians, home. We couldn't pay them. I don’t think we can help you with your research at this time.” This was frequently the case for many of the
software firms especially those in the Seattle area, which, ironically, were touted as having much potential all through the late 1990s.

Based on the above circumstances, I decided to broaden the sample of firms to any firm that worked within the "high tech" sector, which needed to employ software engineers for the firms various line of work. This strategy yielded a much more robust sample since many firms, whether mature or new, had gone "high tech" in order to remain competitive and employed at least some software engineers and related professions. I found this to be especially true for some of the largest companies located in the Seattle area (including resourced based firms).

For example, Weyerhaeuser, headquartered in Federal Way, Washington and the largest timber and paper-manufacturing firm in the world, employed approximately 50,000 people globally, and had a considerable number of software engineers as professional staff at their headquarters (Weyerhaeuser Annual Report, 2004). Additionally, Boeing, the world's largest manufacturer of commercial airplanes, employs over 1,000 software engineers also for a variety of purposes within the production of commercial aircraft and related products, such as Minute Man missiles and other U.S. defense ballistics. Regionally, Boeing is responsible for employing or creating "spin-off" employment for roughly 100,000 jobs within the Seattle area. Microsoft, located in Redmond, Washington, not only employed over 9,000 software engineers, but it has also helped to draw many start-up software firms to the Seattle area that have, in turn, employed hundreds of foreign software engineers (Markusen, 1999). The interview with from the Seattle-based firm revealed four key themes: (1) for the most part, the firm sometimes did have difficulties bringing in software engineers and related professionals from Canada, especially after 9/11; (2) a representative the firm noted that due to the fact that it used an in-house attorney and the firm had experienced human resources professionals, the firm was usually capable of avoiding any serious problems, and, in fact, had never had a refusal of entry for the personnel that they hire under NAFTA; (3) for the most part, the U.S. firm lauded the Canadian experience when sending employees across the border as intracompany transferees, new American hires, or for services contracts; and (4) finally all U.S. and Canadian firms found the Canadian immigration service to be extremely professional, knowledgeable, and most importantly, predictable in their adjudications and issuing of working permits/visas, stressing that the U.S. side could possible learn from this management style. These findings will be explored in more detail in Chapter 4 of the dissertation as well as in the conclusion.
By comparison, the Vancouver based firms were much more varied and significantly smaller than the Seattle firm. High tech firms interviewed ranged from relatively small-scale firms that developed single person operated submarines to large-scale companies in leading edge hydrogen fuel cell and professional printing technologies. Additionally, the largest firm interviewed in Vancouver employed a total of about 1,000 people within the Greater Vancouver area. Of course, these employment numbers are a few magnitudes less than those employed by Boeing and Microsoft or their high-technology supply firms within the Seattle area. Despite these employment size differentials between key firms in Seattle and Vancouver, Vancouver is beginning quickly to “come into its own” with key world class technologies and firms that should prosper and flourish within the next decade. This concept and growth potential will be explored more deeply within Chapter 4 of the dissertation. Interviews from these Vancouver based firms revealed five key themes: (1) firm size is significantly smaller than the Seattle based firm, and led to less firm recognition and “clout” when trying to cross into the U.S.; (2) the mobility of employees is based on time zones and regions, not countries; (3) the Canada-U.S. border has become much more unpredictable since September 11; and (4) firms are turning more and more to attorneys for advice on NAFTA applications and general cross border mobility strategies when moving employees or potential employees across the Canada-U.S. border for work. These findings will be explored in detail in Chapter 4 of the dissertation as well as the conclusion.

1.4.2 The Immigration Officials

Historically, the state has played the most important role in modern times when it comes to controlling movements of people (Scott, 1998). Despite the increasing inquisition of the State over time in the movements of people across international boundaries, the freest time for the movements of wealthy foreigners occurred in Europe, just prior to World War I (Torpey, 2001). During this time period, there was considerable emphasis placed on the fact that these foreigners could bring considerable wealth into foreign cities and nation states. This welcoming attitude of the state towards foreigners ended abruptly during World War I, and since this time emphasis has been placed on controlling the entry of foreigners into other nation states, and there has been a growth of discretionary power of immigration officers who represent and execute the will of the state towards foreigners. There is a relatively sparse literature on this topic area, but there have been some studies conducted over the past ten
years. By way of illustration the Migration Policy Institute, formerly the Carnegie Endowment for International Peace, has probably been the most prolific with pragmatic publications on this topic area, both before and after 9/11. For instance, in the late 1990s, the Carnegie Endowment published an important monograph, authored by Demetrios Papademetriou, T. Alexander Aleinkiff, and Deborah Waller Meyers, entitled, *Reorganizing the U.S. Immigration Function: Toward a New Framework for Accountability*. This explored the purpose and function of the legacy U.S. Immigration and Naturalization Service, and to some extent the professional backgrounds of the actual immigration officers. Slightly later, Joseph Nevins in *Operation Gatekeeper* (2002) and Peter Andreas in *Border Games* (2000) explored the culture and attitude of U.S. immigration officers along the U.S. – Mexico border. However, shortly following 9/11, the U.S. Immigration and Naturalization Service was abolished and completely restructured into the newly created U.S. Department of Homeland Security in early 2003. The Canadians quickly followed suit with the creation of the Canadian Border Service Agency, which replaced Customs and Revenue Canada and Citizenship and Immigration Canada. A relative “flurry” of recent literature has been published on these new developments regarding the immigration function and enforcement along and within the North American borders, with Peter Andreas and Thomas Biersteker, edited volume, *The Rebordering of North America: Integration and Exclusion in a New Security Context* (2003); and, from the Migration Policy Institute, Stephen Yale-Loehr, Demetri Papademetriou, and Betsy Cooper’s *Secure Borders, Open Doors: Visa Procedures in the Post-September 11 Era* (2005) as well as Deborah Waller Meyers’ report, *One Face at the Border: Behind the Slogan* (2005).

The above narrative provides an introduction to the fact that literature on the topic of immigration and immigration officials is ever changing and growing with new perspectives, especially after 9/11. Chapters 2 and 3 comprise a more detailed review of these topics. For the purpose of this study, a greater understanding of the nature and culture of immigration officers is extremely important since much power rests in the hands of the reviewing officer at each port of entry for NAFTA applications. Thus, considerable time is dedicated to this topic area in the dissertation, especially with regard to commenting on the semi-structured interviews. The next few paragraphs will provides a short review of the types of immigration officers involved in this study, and the key findings, which emerged from this component of the research.
Immigration officers include district directors, special agents, port directors, and front line supervisors for both the B.C./Yukon District of Citizenship and Immigration Canada and the Seattle District of the U.S. Department of Homeland Security (formerly the U.S. Immigration and Naturalization Service). Immigration policy experts employed by Citizenship and Immigration Canada and the Department of Homeland Security and based in Ottawa or Washington D.C. were also included in the study within the cohort of interviewees. The rationale for interviewing front-line Canadian and U.S. immigration officials for this research project was that this cohort is a primary official gatekeeper/facilitator to labour mobility across the Canada-U.S. border under NAFTA. In addition, the need to interview a number of key policy officials who wrote and annually amend Chapter 16 of NAFTA (either in Washington D.C. or in Ottawa) was essential to understand the ideas behind the origins of Chapter 16 of NAFTA (e.g. how changes are negotiated between all actors involved and the dissemination and implementation of these changes with front-line immigration officials at the ports of entry.)

To provide some background for the reader, NAFTA was written originally in the early 1990s in such a way that a person applying for a NAFTA status might go to a port of entry (POE) of the receiving country with completed application materials. Then, ideally, he/she would be issued a NAFTA status within ten minutes to a few hours of applying. This procedure has given powers of review and adjudication rights to front-line immigration officers at the POE, which was not the case prior to NAFTA, and understandably the change in border policy has had tremendous influence in the gate keeping/facilitation mechanism of North American labour flows under NAFTA (Vazquez-Azpiri, 2000).

In collecting information for the thesis, I found the majority of immigration officials (especially those in the U.S.) were extremely cooperative and helpful with the interview process. Indeed, many Canadian officials were most concerned as to what would happen with my work when it was complete, in addition to the fact that they wanted to know who my supervisor was and other U.B.C. faculty that were involved with my research project. Once this was established, Citizenship and Immigration Canada was extremely helpful, and even served me tea at our first meeting at the CIC downtown Vancouver office! Regarding the actual interviews, each interviewee was asked a series of approximately 15 questions relating to the Canada/U.S. border (see Appendices 1, 2, and 3). From these questions, six themes began to emerge: 1) the impact of NAFTA on labour mobility between Canada and the U.S. and the Cascadia region specifically; 2) the types of professions that are difficult to interpret under NAFTA; 3) how
immigration officials are educated about Chapter 16 of NAFTA; 4) the issue of port shopping (i.e. choosing the ‘easiest’ port of entry); 5) how immigration officials saw the role of attorneys in the NAFTA application process; and 6) how September 11 had influenced the flows of professionals across the Canada-U.S. border. These themes and possible consequences towards the development of a high tech corridor within Cascadia will be explored within Chapter 5 and the Conclusion of the dissertation.

1.4.3 The Immigration Attorneys

Overall, the ‘migration industry’ (i.e. the lawyers who prepare immigration and visa applications and argue cases on behalf of their clients) may be considered a ‘meso-structure’ which acts in the space between micro (local) - and macro (international)-structures, by linking individual activities to the state and the economy (Castles and Miller 1998: 26). This meso-structure or layer is especially true for the role of business immigration attorneys. This group not only serves as an interface between individuals, firms, and front-line immigration officials at ports-of-entry, but the immigration attorneys also act as key ‘spokespeople’ and ‘lobbyists’ to the national government officials who create immigration policy and also to the public at large. In regards to this study, many of the attorneys interviewed had served since the early 1990s in a capacity as professional advocates and facilitators for NAFTA applicants. They also have a wide breadth of knowledge about the labour mobility process and immigration law, especially when it involved crossing the U.S.-Canada-Mexico borders. Consequently, understanding their part in how the Canada-U.S. border operates in the Cascadia region is critical, and a key pillar within the empirical work of this study. This component is also significant as there is very little literature, if at all, on the role of attorneys in the movements of professional foreign workers across international boundaries. Therefore, it is hoped that the outcomes and findings of this study will help to provide more academic insights into the role and capacities that business immigration attorneys fill in the movement of professionals across North American borders.

The majority of immigration attorneys interviewed had law offices in either the Vancouver or Seattle areas. Two attorneys were located outside of the Cascadia corridor. One practiced law in Toronto at a medium sized firm and the other practiced law in San Francisco at a large and well-established firm. Many of the attorneys stressed that although much of their client base came from the region, they also had clients throughout North America, Europe, and Asia.
Similar to immigration officials, each lawyer was asked a series of approximately 15 questions relating to the Canada/U.S. border. (See Appendix 3.) From these interviews, six major themes became apparent: 1) the impact of NAFTA on labour mobility between Canada and the U.S. and the Cascadia region specifically; 2) the power and “clout” of large versus small firms; 3) the types of professions that were especially difficult to ‘interpret’ under NAFTA provisions; 4) how immigration officials were educated about Chapter 16 of NAFTA; 5) the issue of ‘port shopping’ (i.e. choosing the ‘easiest’ port of entry); 6) the seemingly indisputable power of the front-line immigration officials and the “disconnect” between distant policy makers in national capitals and these front-line officials; and, 7) how 9/11 has influenced the flows of professionals across the Canada-U.S. border and the attorneys’ line of work. These themes and possible consequences for the development of a high tech corridor within Cascadia will be explored within Chapter 6 and in the Conclusion of the dissertation.

1.5 Summary

This chapter has provided a general introduction and reasoning for the purpose of conducting this dissertation. Part I will continue with Chapter 2, which will review the appropriate realms of literatures that provide a theoretical and conceptual structure to the dissertation. Additionally, it will depict an ideal type of cross border flows for professional labour mobility under NAFTA rules in the new economy, and how each actor influences and interplays with other actors in terms of the movement of these professionals. Chapter 3 will explore the concept of the region of “Cascadia” and how it operates economically. Part II of the thesis focuses on the empirical work covered in the study, with Chapter 4 exploring the firms’ experiences in moving people back and forth across the Canada-U.S. border. Special attention will be placed on the Vancouver firms’ experiences (as smaller firms) in contrast to the larger Seattle based firm’s experience when it comes to moving employees and potential employees back and forth across the Canada-U.S. border. Chapter 5 explores the role of immigration officials, both front-line officials at the various ports of entry in addition to key immigration policy officials based in Ottawa and Washington D.C. The relationship and interplay between these governmental policy makers and the officials who interpret and adjudicate NAFTA applications ‘on the ground’ will be examined in addition to how other actors see and interpret their experiences with these primary gatekeepers and policy makers. Chapter 6 examines the role of immigration attorneys in the movement of professionals across the Canada-U.S. border. Particular emphasis is placed on how immigration attorneys are seen and portrayed by other
actors in addition to their own reflections of themselves and their profession. Part III of the dissertation will include Chapter 7, which provides a discussion of the research findings, policy implications and recommendations, and a conclusion of the dissertation research and possible next steps.

Chapter 2 - Borders and the Movement of the Highly Skilled

2.1 Introduction

In order to begin to answer the question as to whether the international border impedes the development of Cascadia as a high technology region, a number of more general themes are relevant in framing this study. Clearly, geographers have long been interested in borders and borderlands, and this suggests a rich array of literature to review. Similarly, Cascadia has been identified as a high-tech region, albeit growing on either side of an international border. The growth of the 'knowledge intensive firm' and the workforce in the past 20 years or so provides a hint that highly skilled labour is important to the success of Cascadia, and that mobility of labour is equally important as the mobility of goods and services within the Cascadia region. Still, understanding the dynamics of the Cascadia economy is complex, and so requires a review of diverse literatures and frameworks that have hitherto rarely been juxtaposed, namely the geography of borders and borderlands; the spatial dynamics of high-technology regions; transnationalism and labour mobility of the highly skilled; and cross border institutions that facilitate or impede labour mobility. These general literatures are discussed within the following chapter, which closes with a discussion of how they might be applied to research on highly skilled labour mobility within the Cascadia corridor.

2.2 Borders and Borderlands: Their History, Current Situation, and Possible Futures

Boundaries have been long associated with kingdoms, tribal territories, and tribal kingships. However, not until the Peace of Westphalia in 1648, when the Holy Roman Emperor conferred sovereign independence on princes who remained formally within the Empire\(^7\), ending the Thirty Years' War which involved much of Europe, did the inviolable nature of territory, and its respective boundaries, begin to be associated with the modern state (Muir, 1983: 20). Since this inception in the mid-1600s, national boundaries in Europe have been riddled with conflict.

\(^7\) Sovereignty involves the recognition by the sovereign of the exclusive rights of other sovereigns to govern within their respective states, and of the inviolable nature of the territory of other states (Muir, 1983: 20).
between any two neighboring nation states (see for example, Prescott, 1965; Eyre, 1968; Hodder, 1968; Beckinsale, 1969; and Rushton, 1968). For instance, it not until the latter part of the 20th century that regions spanning international boundaries were seen as having economic promise and opportunity to literally transcend the nation state (Anderson, 2000). This section provides a brief introduction to how borders have been interpreted over the past century; how these current trends towards globalization have shifted the image of border regions; and, currently with a greater emphasis on meso scale regional development, how various border regions might be perceived due to the globalization of neo-liberal regimes. It should also be stressed that due to a “Post 9-11 World” borders throughout the world have taken on a much more security focused position. This trend will also be explored in the remaining sections.

2.2.1 The Historical Importance of Borders and Borderlands

Borders may be seen as one of the important variables that allow any particular state to be part of an international system composed of sovereign nations. Specifically, a state’s sovereignty terminates at its boundaries, as this represents the interface between two or more neighboring territories. It is here that the roles of boundaries and borders have been crucial for over the past 300 years. Historically, boundaries have always been problematic in a political or administrative sense, although the nature and degree of potential conflict has greatly varied from border to border (Sahlins, 1989; Martinez, 1986; and Muir, 1983). Therefore, borders have typically been seen as ‘buffer zones’, and this perception has often diminished opportunities for both wide-scale international trade as well as international conflict. In fact, historically, there have been often few incentives to develop and populate borderlands especially since frequent warfare in continents such as Europe resulted in constant alterations of nation state boundaries. Nations that often lost part of their borderland territories in conflict had good reason not to develop or populate their remaining borderlands in order to keep the national “heartland” at a safe distance from aggressive neighbors. For example, the Scottish-English border region created an extremely unstable environment with devastating consequences for the local border communities over the course of three centuries. George MacDonald Fraser, in his book, The Steel Bonnets: The Story of the Anglo-Scottish Border Reivers, captures this situation well:

Whoever gained in the end, the Border Country suffered fearfully in the process. It was the ring in which the champions met; armies marched and counter-marched and fought and fled across it; it was wasted and burned and despoiled, its people harried and robbed
and slaughtered, on both sides, by both sides. Whatever the rights and wrongs, the Borderers were the people who bore the brunt; for almost 300 years, from the late thirteenth century to the middle of the sixteenth, they lived on a battlefield.

(Fraser, 1989 cited in Martinez, 1994, p. 13)

As well, the experiences of ‘tejanos’ (Texas Mexicans) in the 19th century were similar to those living along the Scottish and English borders, although the period of instability was much shorter (Martinez, 1994). Oscar Martinez, in his book *Border People: Life and Society in the U.S. - Mexico Borderlands*, describes this war-torn borderland:

During the Texas rebellion of the 1830s and the U.S. - Mexico War in the following decade, the Texas-Mexico border became a ravaged wasteland, forcing many borderlands to choose between remaining in their war-torn land and abandoning it for safer ground. Scores of tejanos sought asylum in Mexican territory, returning to their homes years later after the issue of a permanent boundary had been settled.

(Martinez, 1994, p. 13)

The decline of territorial conflicts after World War II and advancements in technology allowed countries to both modernize their transportation and communication systems as well as steadily increase international trade. In fact, interdependence between once warring countries has quickly become a way of life, as can be seen with the strong economic relationship between two former enemies, namely Germany and France, and the experience of the larger European Community following 1945. Since the 1970s with the onset of globalization, border regions found in North America, Europe, and Asia (with some important exceptions being North and South Korea, for example) have begun to have a more prominent role in labour exchanges, commercial transactions, and binational industrialization due to growing international trade (Held, 2000 and Edgington et al., 2003). These concepts and others will be explored more thoroughly in the following sections. Illustrations 2.1 and 2.2 provide visual depictions of two of the better know border regions throughout the world.
The U.S.-Mexico Borderlands in Southern California

Source: Andreas, 2000

Illustration 2.1

The Singapore-Johore-Riau Growth Triangle

Source: MacLeod and McGee, 1996

Illustration 2.2
2.2.2 The Contemporary Importance of Borders and Borderlands

In an era of globalization, transborder trade and movements of people across international borders is key. Ohmae has explored these concepts in a popular fashion in his 1990 book, *Borderless World* and empirically the issue has been treated in *Regions and the World Economy* (1998) by Alan Scott. In the post cold war period, border regions have been perceived as having many positive prospects rather than being characterized by the more traditional problems such as illegal migration, smuggling, air pollution, water contamination, and trade protection, although these latter issues remain important. In fact, border regions once seen as national hinterlands are now cooperating with crossborder partner regions to form crossborder regional alliances, such as the Regio Basiliensis, formed in 1963, which includes Alsace (France), South Baden (Germany) and the border cantons of Switzerland (Briner, 1986). This trinational body, which has received endorsement from each nation's respective government, assesses the needs of the common border area, collects data, and engages in transportation and environmental planning for the region as a whole. The Regio Basiliensis provides a positive model for not only the European Commission, in its long, yet deliberate, process of integrating Europe's borderlands with capital for transnational economic development, but also for other regions throughout the world which are separated by international boundaries, but are drawn to one another in an age of global economic integration.

Although the above paragraph may appear optimistic about the overall future progress of cross-border cooperation and integration, it should be noted that the three major global triads, Europe, Asia, and North America are at very different stages of mesoregional integration. While there has been an acceleration in the number of regional trading block agreements in recent years (e.g. the European Union, the North American Free Trade Agreement, and Association of South East Asian Nations) most outside of the European Union are very limited in the depth and extent of their integration and these differences have commensurate implications for particular cross-border (or meso-level) regions (Wu, 2001). Only Europe has advanced to the stage of a formal economic union, which the harmonization of certain economic and social policies under supranational control. North America, which includes Canada, Mexico, and the United States, has not integrated beyond a simple free trade agreement, namely the North American Free Trade Agreement (NAFTA) – although labour and environmental side agreements were an important part of NAFTA. Even slower in formal
integration is Asia, which has not progressed beyond the stage of international free trade commitments, such as the ten nations involved in the Association of South East Asian Nations (ASEAN), or the Asia Pacific Economic Cooperation (APEC) forum, which has scheduled a reduction of trade barriers by 2020 in the Bogor Agreement (APEC, 2005). Ultimately, at whatever level of economic and political integration that these regional entities finally achieve, it is the borders and borderlands of component nations that will likely receive a tremendous amount of influence and change from their roles as peripheries of the nation state to the gateways of international regional economies.

2.2.3 The Potential Futures of Borders and Borderlands

The future focus of borders lie within the crossborder or transborder regions in which they transect. For example, the means by which binational communities in Europe such as France and Germany have made dramatic efforts to make their national borders more porous to facilitate trade and economic growth also provides a solid and inspiring model for other crossborder regions to follow. However, even the success of Europe’s border region integration is not uniform. By way of illustration, the economic integration of the Dutch-German border is much more complete than that of Spain and Portugal (Dickens, 1998, and Capellin and Bates, 1993). Additionally, the Nijmegen Centre for Border Research at the Radboud University Nijmegen, established in 1998, has an extensive listing of recent publications dedicated to the European challenge of “debordering”, “rebordering”, and “re ordering” its boundaries, both inside and outside the EU. Wong-Gonzalez (2001) captured well the opportunities, but also the struggles that many of these emerging transnational regions face in an era of globalization,

The relationship between territory and globalization can be said to have a double face...... On one side, it supposes the creation of a single world space of interdependencies that constitutes the scope of the new global economy and culture; on the other, it entails the restructuring of existing territories, a new division of international labour, and a new geography of development with winning and losing regions, becoming a factor of both opportunity and danger. In this sense, the possible regional impacts of globalization will depend strongly on the specific territorial response; that is, the modality of integration—the exogenous condition—and on the region’s endogenous ability to enhance such a process...... The emergence of transborder regions is noteworthy as a part of this

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8 The difference between cross border and transborder regions will be discussed in a upcoming section of this chapter.
change in economic geography and territorial division of labour on a global scale, resulting from the processes of globalization and international integration; these are entities with qualifications superior to those called simply border regions. (Wong Gonzalez, 2001; 59)

Overall, even in an era of “free trade” the successful development of transborder regions depends on specific circumstances, agencies and willingness to cooperate. It is the painstaking details of transborder development and the institutions, structures and agencies that make this happen, which will help to determine if these new meso scale regions will succeed in increasing trade and economic growth in addition to the development of the transborder region’s own culture. Alain Vanneph in Wong-Gonzalez (2001) explained this idea, as a ‘region of the third kind’. He states,

When market forces transcend the obstacles conventionally established by people and generate a migratory and economic dynamics, inducing such evolutions, [such as ] solidarities and convergences on both sides of the border, that a single transitional space is created between them or, better said, about them; a ‘region of the third kind’- with all the interest that covers this hybrid, this ‘cross fertilization,’ creator not only of change and wealth but also of a new culture or a new space of cultural identity from the neighborhood to the region. (Alain Vanneph in Wong-Gonzalez , 2001; 59)

The above implies that there is much potential not only economically and geographically with the development of transborder regions, but also the opportunity to develop a hybrid culture between and within the transborder region. Examples of this include Cascadia (McCloskey, 1988 and Artibise, 1996), the many communities along the U.S.-Mexico border (Martinez, 1994), and the domestic settlements that have straddled international borders throughout Europe for centuries (Ratti, 1993). What is most interesting about these referent examples of crossborder regions is that there is a strong transborder culture, which has existed long before the emergence of globalization and its subsequent transborder regional development. Thus, the communities situated along these international borders might be in a stronger position to develop a ‘region of the third kind’ as compared to newer transborder regions, driven primarily by globalization and economics. However, a new factor that has been added to the mix of transborder regions is the concept of ‘security’, especially following 9/11. In fact, security is now the number one priority for all border regions that deal with the United States when it comes to shipping, or staging, goods and services, and/or moving people either into or out of the U.S.A. (Rudd and Furneaux, 2002). In the foreseeable future, it is likely that the successful facilitation of NAFTA at all North American borders, as well as the smooth implementation of
trade policies around the world, must succumb to the ever changing concept of security and its increasing influence (Rudd and Furneaux, 2002).

The next section moves from a general history of the role of borders and border regions to the more specific notion of developing cross border regions. It briefly explores the idea of cross border regional development in theory and practice. The chapter will then move to some of the primary concepts regarding post September 11 security within North America. It will place particular emphasis on continental perimeter security as well as the Mexican experience along the U.S.-Mexico border, and how these new security policies may influence the movements of legitimate travelers that influence and impede cross border development.

2.3 Cross-Border Regional Development in Theory and Practice

Besides a historical perspective, discussion of theories relevant to cross-border regions (hereafter CBRs) and their development in an era of globalization is also pertinent to this essay. Thus, a literature has emerged that examines many different perspectives of these changing borders. From a more tangible approach, CBRs have specific characteristics that distinguish them from other types of regions located within a nation state (e.g. their intersections with boundaries between provinces and states). Consequently, theorizing and policy formation regarding their long-term development has been relatively complex and difficult. In concrete terms, the major theoretical foundations of regional theory and analysis centering around traditional models - such as regional growth theory\(^9\) (Perloff and Dodd, 1963), location theory (Losch), the original regional development formulations of John Friedmann\(^10\), and the growth pole theory of Peroux (Friedmann, 1965; and Darwent, 1969) do not apply easily to those regions containing cross-border areas. For example, much of the literature using these theoretical models was dedicated to British Post- World War II New Towns, in an effort to decentralize growth away from the central city of London. Hence, the following section will begin to discuss why particular regional growth theories, which are based on regional linkages

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\(^9\) Perloff and Dodd (1963) focus on the idea of “export” and “internal” determinants as they relate to regional growth. Internal determinants can be characterized by a region’s natural strengths and the success of its growth sequences. Export determinants can be described as that part of a region’s growth, which is attributed to exported goods or services at a competitive advantage with respect to other regions.

\(^10\) Friedmann (1965:12) stresses the fact that no matter at what scale (world, continent, nation, and city) the centre-periphery hypothesis appears on all the relevant scales of explanation simultaneously as cause and as effect of economic transformation. Essentially, industrial growth tends to be concentrated upon a few metropolitan regions, or to use Francois Peroux’s vivid expression, “the growth poles” of an economy.
within nation states, do not adequately represents the needs and unique characteristics of regional cross-border development.

### 2.3.1 Similarities in the Development of Cross Border Regions

Although there are differences between cross-border regional development and conventional regional development, as noted in the preceding section, there are also similarities. Indeed, a number of studies have been carried out on cross border regions. However, I would argue that these have been primarily focused on describing particular cross border flows. (See for example *Regional Studies*, 1999, *Geojournal*, 1998, and the *Journal of Borderland Studies*).

There has been relatively little literature that has attempted to analyze the importance of border management to the overall growth of these regions. Thus, one objective of this dissertation will be to provide a solid analysis of how, as a whole, Cascadia’s international border separating Vancouver and Seattle is administered, and whether this serves the growing needs of the region. This section reviews studies that focus on the particular needs of cross border regions, which points out the similarities between cross border regions and more conventional regional development theories. According to Wu (1998: 5) there are four aspects that are more or less similar in importance to their successful development: the role of infrastructure, the significance of transportation costs, the importance of factor supplies, such as labour and comparatively inexpensive land, and the crucial role of government in promoting development. Thus, appropriate infrastructure is considered crucial in promoting economic development as the 'backwardness' of formerly remote locations close to borders can affect cross border transportation costs as well as business investment location decisions. Wu argues that the strongest attribute with remote border locations is often the availability of inexpensive land and labour. The fourth factor seen as important to development of cross border regions is government intervention in the form of seed capital and effort has been seen as essential for a region to succeed in attracting investment and engaging in sustained regional economic development.

Of course all of these factors identified by Wu can also be considered key factors in the success of conventional regional development as well as cross-border development. However, according to Wu (1998), there are a number of aspects of economic growth in cross-border
regions that are unique from other types of regional development, and which are not considered in the convention regional development literature.

The first of these differences include complementary factors of production. A key point is that cross-border development hinges on the complementarities of factors across borders, such as high levels of capital in California along-side low wage labour and relatively inexpensive land in Mexico. A second example of this concept includes cross-border regions that profit from providing expertise, adding value, or storing a good until it is purchased as it moves from one country to the other (e.g. the Hong Kong-Shenzhen corridor). Essentially, these border regions often specialize in the disjuncture and different trade policies within a natural geographical region divided by an international border. Compared with the reality of cross border zones, conventional regional development theory often assumes the mobility of factors of production, including labour across borders. Finally, unlike regions lying completely within any nation state, one of the greatest challenges with a cross border region involves the transaction costs and delays that are an inherent attribute of all but the most intricately integrated borders, such as the Benelux region of Europe (Bertram, 1998).

Thirdly, yet another challenge of developing a cross-border region is integrating two or more areas with incompatible economic systems. For example, Hong Kong-Shenzhen, Germany and Poland, and the border areas of Thailand-Laos have proved to be very complicated in blending various transitional economies with market based ones. An even greater challenge in this mix is where transitional economies are also going through political reforms. Bertram (1998) calls these cases “double transformations”. Wu (1998) noted that developing cross border regions with incompatible economic systems may pose other challenges. These include the fact that there is the issue of additional institutional learning that must occur as the economy moves from one system to another, as well as the challenges of being a latecomer to industrialization.

Fourthly, the role and stability of national institutions are pivotal to the success of any cross-border development. For example, much of the delay in achieving results in the Hong Kong-Shenzhen region has been due to institutional problems. Specifically, the Chinese government had to progressively liberalize many restrictions such as wages and lease of land to non-Chinese citizens (Wu, 1998).
Fifthly, economic complementarities must be present in order for cross-border development to work. This is the most important attribute to successful cross border development. Essentially, cross border development fixes differences in space, and attracts movement of investment across the border to the region, which has the less expensive labour force and land (Wu, 1998: 7). (Conventional theory by comparison expects movement of labour towards the center or urban core of a region.) The U.S.-Mexico border is probably the best example of this dynamic. Within Cascadia, there is some activity that fits into this type of cross border complementarity. (See Merrit, 1998; and Richardson, 1998). However, since the greater Vancouver area can be described as a post-manufacturing economy, and with land and labour costs in the neighbouring U.S. county not being that dramatically different compared to the Greater Vancouver area, there is not the same ferocity of economic activity that can be found along key urban corridors along the U.S.-Mexico border where maquiladora zones attract U.S. direct foreign investment that takes advantage of cheap wages in Mexico (Andreas, 2000).

Finally, much of conventional regional development theory has revolved around the importance of large-scale industrialization and the formal economy (Wu, 1998). However, by comparison, many cross-border developments focus on trade within small-scale industries (e.g. clothing, household goods, electronics, and so forth), and also within the service sector, and cross border regions have taken advantage of exchanges between the small-scale informal economies. For example, cross-border areas straddling between the transitional market economies of Russia and China and China and Vietnam have engaged in cross-border trade since it provides an opportunity for residents on either side of the border to buy affordable consumer goods or hard currency, in exchange for agricultural products or raw materials. Over time, this small-scale trading potentially allows entrepreneurs to invest in larger trading operations or diversify into other activities (ibid.).

As mentioned previously, the development of cross-border regions to facilitate international trade and economic development is a relatively new and changing phenomenon. Therefore, in the literature there has been little theoretical work dealing rigorously with the underlying cycles and dynamics of cross border regions, even though there are specific case studies to describe these recent and unfamiliar activities. This section’s discussion has attempted to demonstrate that border regions have many unique attributes, which are not dealt with by conventional theories of development. Hence, due to this poverty of literature, which critically examines
cross border theorization, there is a need for more articulate research on this topic area. The following section will examine various type of cross-border development drawing from European, Asian, and North American experiences in an attempt to gain a greater understanding of possibly theories, which might be derived from these new activities.

2.3.2 Types of Cross-Border Regions and their Development

Although the various meso regions within the “global triad” have had different histories, and most likely will experience different futures, many cross-borders regions, whether in Europe or South East Asia, appear to be going through significant transitions. This section reviews a series of representative case studies from the various mesoscale cross-border regions of Europe, Asia, and North America, stressing their unique features but also drawing attention to their commonalties.

Wu (1998) in a review of the European and Asia Pacific situations emphasizes that cross-border regions have a number of different characteristics, but fall primarily into three different types (see Table 2.1). Wu calls his first category “border regions”, which are primarily the least developed regions of the three types and have the least potential for trade and other forms of cross-border interaction. The Russia-China-North Korea border area is an example of this type of border region (see Illustration 2.3). The second type he calls “cross-border regions”. These are characterized by inter-dependent economic relations and substantial trade, but some types of flows (e.g. immigration) are still tightly controlled. The Hong Kong-Guangdong Province in Asia and the Cascadia Corridor in North America are examples of this type of border region development. He notes that these types of regions have the greatest potential in achieving a “transborder region” which is the most open of the three border types that he recognizes (Table 2.1). This third type of region is characterized by true symbiotic economic development, a joint management regime, and almost free movement of regional citizens across international borders. The Benelux region of Belgium, the Netherlands, and Luxembourg is an example of this type of border region development, as well as the “Saar-Lor-Lux” region of Luxembourg, Germany, and France (see Illustration 2.4.)
Tumen River Area Development Zone

Illustration 2.3
Source: Lee, 1998

Saar-Lor-Lux Cross Border Labor Market

Illustration 2.4
Source: Schulz, 1999
Table 2.1 Typology of Border Region Development

<table>
<thead>
<tr>
<th>Type of Border Region</th>
<th>Economic Relations</th>
<th>Institutional/Governmental Frameworks</th>
<th>Types of Enterprises</th>
<th>State of Infrastructure Networks</th>
<th>Migration</th>
<th>Differences in Labour Cost</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Border Regions</td>
<td>Few and strictly controlled</td>
<td>Few</td>
<td>Individuals or small enterprises</td>
<td>Bottlenecks due to strict and cumbersome border controls</td>
<td>Strictly controlled (frontier)</td>
<td>Extremely high</td>
<td>Russia-China (Tumen), China-Vietnam</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Emerging, but one-sided</td>
<td>Spontaneous development</td>
<td>(as above)</td>
<td>(as above)</td>
<td>High</td>
<td>Thailand-China-Burma-Laos</td>
</tr>
<tr>
<td>Cross-Border Regions</td>
<td>Dependent relations</td>
<td>Emerging consultative mechanisms</td>
<td>Enterprises large and small acting on their own – largely contractual relationships-joint ventures</td>
<td>Consultative planning-border controls still important</td>
<td>Controlled migration (shoppers who commute) university students also commute</td>
<td>High</td>
<td>Poland-Germany</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Diminishing</td>
<td>Hong Kong-Shenzhen</td>
</tr>
<tr>
<td>Trans-border Region</td>
<td>Symbiotic</td>
<td>Cooperative Institutions</td>
<td>Enterprise networks; technology transfer/sharing networks</td>
<td>Joint planning of infrastructure networks</td>
<td>Simplified procedures and relatively free movement</td>
<td>Little or none</td>
<td>European Union (planned)</td>
</tr>
</tbody>
</table>

The most difficult objective to attain regarding the above three factors is the free mobility of people across international boundaries. Much of the existing literature on cross border regions has tended to focus on “core” and “periphery” regions such as Singapore-Johore, Hong-Kong-Guangzhou, and Los Angeles-Tijuana.

In this case, interactions across the border, which bisect CBRs are defined by traditional core-periphery relations, e.g. direct foreign investment from the core flowing to a cheap wage periphery. However, little has been written on ‘core’ – ‘core’ regions such as the Vancouver-Seattle corridor, where wages and levels of development are roughly similar. Perhaps the European Union may provide examples of ‘core’ to ‘core’ cross border economic connectivity due to its efforts to unite the continent economically for the past 40 years (Anderson, 2000). In fact, the EU is the only meso-scale region that has allowed for complete employment mobility for its citizens through the EU labour mobility policies and the Schengen Border Accord. As will be discussed in Chapter 6, the Canada-U.S. relationship has not evolved to this level of trust between nations when it comes to its citizens. For example, even before September 11, under Section 110 of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) of 1996, U.S. Congress was seriously considering that all Canadians attain visas upon entering the United States, even for a simple shopping trip\(^{11}\). This portion of the bill was finally defeated in 2000. However, the spirit of “restrictiveness” when it comes to allowing “familiar” foreigners, such as Canadians, to traverse easily into the U.S. was mounting long before 9/11.

2.4 Post 9/11 Security Measures and Its Influence on Borders and the Movements of Peoples

Finally, in considering the theoretical literature on borders and CBRs, the impact of events following the terrorist attack of 9/11, 2001 must be considered. The horrific events of September 11 placed a spotlight on America’s borders, and how porous they are to terrorists. While gazing at America’s own borders, attention was also drawn specifically to the Canada-U.S. border, and U.S. Congress raised strong concerns about the perceived openness and little security, which might be found on the Canadian side of the border. Thus, Senator Hilary

\(^{11}\) Theodore Cohn (1999) has provided a thorough analysis of the development and possible impact that Section 110 would have on Canada-U.S. cross border travel, and the ripple effect within border communities and beyond if this portion of the IIRIRA Act were to be enacted into U.S. law.
Clinton, remarked erroneously that four of the terrorists involved with the 9/11 hijacking had slipped into the U.S. from Canada (Biersteker, 2003). Senator Clinton later retracted these comments when it was determine that all 19 terrorists directly involved with September 11 had directly entered the U.S. legally. However, there was a time lag of a few weeks between Senator Clinton's comments and factual evidence that these comments were incorrect. Within this time period of only a few weeks, many alarmist articles in U.S. papers were generated about the perceived laxness of Canadian security along its borders, and the fact that this "irresponsible" neighbor shares the longest demilitarized border with the U.S. (Klein, 2003). This created a public relations nightmare for the Canadian government, since much of the "openness" of the Canada-U.S. border rests on the American perception that Canada is a safe, non-threatening country. Still senior levels of the Canada Government had anticipated a scenario of this sort occurring long before September 11 (Rudd and Furneaux, 2002)). In fact, the Canadian federal government has been working with the U.S. government on tighter and more harmonious border controls since the early 1990s. A product of these joint efforts was the signing of the Ridge-Manley Smart Border 30 Point Declaration on December 12, 2001 by Governor Tom Ridge and Foreign Minister John Manley. These products are examples of long-term Canadian planning and advancement when it came to the Canada-U.S. border that allow it to remain relatively open, with seemingly unofficial preferential treatment for Canadians entering into the U.S., but also to establish more restrictive measures using sophisticated technology for all others entering the United States through Canada.

The above paragraph draws attention to the fact that there was a scramble after 9/11 by U.S. politicians from across the political spectrum to be seen as doing something about the perceived "leaky" and dangerous border between Canada and the U.S. (Andreas, 2003). In fact, the more traditional topics of trade issues and immigration/labour mobility have been seen through a lens of security since 9/11. Andreas (2003) considers that the growing momentum developed through the 1990s regarding talks and efforts towards open borders in North America have been replaced by discussions regarding security perimeters and homeland defense. Moreover, he notes that it is now seen as politically incorrect to talk about open borders. He stresses,

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12 First Secretary of the U.S. Department of Homeland Security
13 Unlike many western European countries, Canadians, for the most part, are still visa exempt when it comes to seeking entry into the U.S.
Any politician who does talk about open borders may be quite possibly muted, attacked, and ostracized by their political opponents (Andreas, 2003: 2)

Based on the darkened mood emanating from the terrorist events on September 11, 2001 towards borders and security, Andreas concludes that “borders are back” with a vengeance (Andreas, 2003). However, Biersteker (2003: 160) writing in the same collection of essays, reflects on the fact that borders are not fixed, but are “socially constructed by the practices of state and nonstate actors.” In fact, during the latter part of the twentieth century, many states have lifted controls on goods, currency, and ideas, but have continued to control the cross border movement of a majority of people. He notes that the range of activities controlled by the state at borders, and also the points and places of inspections, also varies. Biersteker goes on to point out the changing and elusive natures of borders in addition to the different actors, both state and nonstate, that has control within these zones of power and authority:

Thus, when thinking about the nature of borders and boundaries, the important point to remember is that the border changes in two dimensions: both over what it attempts to control, and where it attempts to assert its controlling authority. Its salience and meaning vary according to the ease with which different types of goods and services are allowed across it (the porosity of the border), and it varies according to the actual physical location at which the state attempts to assert its authority. Perhaps the most significant aspect of the line to demarcate the border is not the actual physical location of the inspection of goods and people, but the jurisdiction under which the inspections take place. There are often competing and/or conflicting claims of legal jurisdiction in any particular case, but the changing meaning of the border may be captured best by the idea of moving from a physical line of demarcation, the traditional nineteenth century view, to a legal jurisdiction, defined by practices of authority claims by states (and some nonstate actors) and recognized as legitimate by other states and nonstate actors (Hall and Biersteker, 2003). In the final analysis, state jurisdictional claims of authority define the operational meaning of the border, both how hard or how soft it is, and precisely where (in legal, not physical space) the authority is exercised. Not only are the issues over which states claim authority (and the need for control) variable, but the location of the assertion of that control also changes (Biersteker, 2003: 160-161).

Indeed, controls over flows and networks across borders (Luke, 1991) are becoming as important as the actual “traditional territorial imaginary of international political economy” (Biersteker, 2003: 161). Added to these new developments around transnational movements and imaginary boundaries are the development of transborder regions, as has been discussed in the previous section, which physically emerge along international borders, and serve as a site of facilitation and a catalyst towards moving and developing goods, services, and even people,

\[14\] My emphasis.
from one nation state to another. Biersteker (2003) used the example of the dramatic fall of the Mexican Peso in 1994 to demonstrate that it had major short-term impacts on the regional economies of the American Southwest, which was highly dependent on the economy of northern Mexico, but very little impact, if at all, on the economy of Boston, Massachusetts. Thus, the idea of a transborder region may be expanded to different scales, with perhaps the nexus being the strength of the social and economic networks that have emerged between these different regions.

Cascadia has been identified as a core-core CBR, one with the potential to emerge as a high technology region in continental North America. Accordingly, as part of my review of relevant literature framing this study, an upcoming section shall continue to explore the idea of innovative regions and their spatial implications as they apply to high tech companies and their networks of operations. However, before the dissertation moves to explore innovative regions, the concept of border management will be explored.

2.4.1 Border Management

The concept of border management has taken many different forms over the past century. This range and variety of management agencies and raisons d'etre is reflected in the many different governmental agencies responsible for some part of managing the goods, people, and services that flow from one country to the next. It was not until the formation of the EU in the late 1980s and the aftermath of 9/11 that Europe and North America began to take a more integrative and “upfront” approach to how borders were managed. From the perspective of the EU, this may be demonstrated in the development of the Schengen Acquis\footnote{A combination of the Schengen Agreement (1985) and the 1990 Schengen Application Convention, (Anderson, 2000).} in the early 1990s (Anderson, 2000).

The North American effort towards the joint management of borders includes the Ridge-Manley Smart Border 30 Point Declaration, which was first initiated in the early 1990s, and was finally ratified in December 2001 between then Minister of International Affairs, John Manley and Tom Ridge, the newly appointed Secretary of the U.S. Department of Homeland Security. Despite these initial collaborative efforts between the U.S. and Canada regarding
shared understandings and possibly seamless management of the two countries' borders, the Smart Border 30 Point Declaration was more of a broad based visioning statement and listing of all current collaborative work rather than a strategic foundation for joint Canada-U.S. policy work. The actual workings and details needed to develop a policy foundation for a seamless Canada-U.S. border remain for a future Canada-U.S. border declaration. More importantly, perhaps, the events following 9/11 made policy experts in the U.S. take a closer look at how exactly the U.S. manages its border, especially from the perspective of the movements of people. Thus, the Migration Policy Institute (MPI), based on Washington D.C. conducted some recent analysis on this topic area in 2005 in the form of three publications. Two of the three publications focused directly on the management of borders as it relates to people. The first relevant publication was entitled Secure Borders, Open Doors: Visa Procedures in the Post-September 11 Era authored by Stephen Yale-Loehr, Demetri Papademetriou, and Betsy Cooper (2005) and the second was Deborah Waller Meyers' report, One Face at the Border: Behind the Slogan (2005). The first report, Secure Borders, Open Doors, provided detailed analysis as to how visa procedures were administered after 9/11, and the effectiveness of these procedures in relation to U.S. security needs. The second report, One Face at the Border, examines the effectiveness of changes within the legacy INS as a result of the organization's amalgamation into the Department of Homeland Security in 2003. Overall, both reports provide a detailed analysis of the changes in the U.S. government's management towards the facilitation of foreigners into the U.S. since 9/11. However, both reports found many flaws in these new U.S. governmental procedures and approaches and cautioned that due to these flaws, the U.S. government may continue to compromise, inadvertently, the security of the U.S. and its people, despite the fact that the majority of these changes were instituted in an attempt to provide better security for the U.S. regarding the admittance of foreigners.

A different perspective towards the approach of managing borders in a post-9/11 climate is the one taken by the Canadian Policy Research Initiative (PRI) based in Ottawa, Canada. The initiative is sponsored by the Canadian Government and examines key issues pertinent to Canada and its people. Currently, one main focus of the initiative is the study of Canada's relationship to the United States, or "North American Linkages." The effort began in 2000 with a major conference on the Canada-U.S. Border hosted in Vancouver, B.C. in October 2000. The PRI has subsequently followed up on this conference platform with key publications, such as North American Linkages, in June 2004; the November 2005 Interim
Report on Cross Border Regions; and The Emergence of Cross Border Regions in February 2006. Rather than security, the main thrust of these reports focuses on trade and economic relationships between the different crossborder regions between Canada and the U.S., and Canada and the U.S. in general. Surprisingly, there was no mention of high tech clustering or connectivity between the different Canada-U.S. cross border regions within any of these reports, which further bolsters the importance for a study of this sort.

Overall, the above review of some of the current border management work conducted by the Migration Policy Institute, based in the U.S. (and dedicated to U.S. federal policy development) and the Canadian Government’s Policy Research Initiative (dedicated to both federal policy and also geographically regional Canadian initiatives) helped to demonstrate the conflicting priorities and concerns regarding border management within North America. Specifically, the difference in the scale of perspective was very important here. The more federally based perspective, namely the Migration Policy Institute, placed considerable emphasis on the “shield” effects of the U.S. border, while the more regionally focused efforts of the Canadian Policy Research Initiative emphasized more border management flexibility, or a “sieve” approach. Hence, the tension regarding Chapter 16 of NAFTA between federal policy priorities and cross border regional economic needs has not been solved at this time. The following section shall begin to explore high tech companies within innovative regions and their demand for internationally highly skilled labour.

2.5 High Tech Companies, Innovative Regions, and their Demand for Labour

While growing scholarly attention has been paid to cross border regions, Cascadia is a special type of emerging cross-border region, one to be shown later that is focused on high-technology. There is no literature on cross-border high-tech regions per se, but there has been substantial research on high tech companies, their vocational preferences together with the notion of “learning regions”, and the geography of innovation, which has emphasized the importance of labour mobility. Thus, this section reviews the major pieces of literature within this topic area, and closes with how these themes may be applied to an analysis of the Cascadia region.
2.5.1 High Tech Companies and their Regions

High tech companies, and the regions that they are located in, emerged through the interactions of three major developments: the technological revolution, the formation of a global economy, and the emergence of an informational form of economic production and management (Castells and Hall, 1994). These advanced activities and the areas they occupy may be considered the 'mines and factories' of the information age. However, despite the new economic wealth that these regions have generated over the past thirty years, albeit unevenly, they are still poorly understood in regards to their composition, and the fundamental dynamics contributing to their success. Many regional economic development agencies envision that clusters of successful firms will eventually cause a spill-over into the larger region with more and more firms growing and benefiting from success as has been the case in Silicon Valley. However, in recent times, high technology regions have had a volatile cycle of development. For instance, the high tech industry has experienced a massive “bust” with the bursting of the dotcom bubble in 2000, followed by the slowing of the North American economy immediately after 9/11. These negative events impacted the high tech industry in the form of massive employee layoffs as well as firm closures during 2000 to 2003. It was not until 2005 that high tech firms began to hire in substantial numbers, led by Silicon Valley (Tam, 2006). A more recent phenomenon has been the outsourcing of certain high technology jobs, reflected, for example, in the hiring of high tech software professionals found in India. For example, Microsoft Corporation, headquartered in Redmond, Washington announced plans in 2005 to invest over $1.7 billion dollars and double its workforce in India by adding 3,000 computer related jobs over the next four years. The Chairman and cofounder of Microsoft, Bill Gates, stressed that the foreseeable growth in employment for Microsoft will be higher for India that in the U.S. (Mehapatra, 2005).

These dramatic and fast moving circumstances, have caused regional development agencies to reassess what type of industries they wish to generate and foster within their region, and how they can attract, draw, and retain key talented employees who, ideally, will contribute to building a successful region. Nonetheless, despite the volatility of information technology firms and associated high tech sectors, many regional economic development agencies continue to strive for the next “Silicon Valley”, with a combination of research facilities, access to venture capital, a well-educated workforce, and a strong quality of life. Analysis of other
successful high tech regions can be found in Kenney (2000) (Silicon Valley), Markusen et al. (1999) (Seattle) and Saxenian (1994) (Boston and Silicon Valley). The evaluation of Silicon Valley\textsuperscript{16} is of special interest to an analysis of Cascadia, as it hints at what Cascadia might become.

**Silicon Valley**

Silicon Valley is a region or social system located in the southern portion of the San Francisco Bay area. It is not a formal geographical area, but encompasses much of San Mateo and Santa Clara counties, from San Carlos in the north to San Jose in the south, covering approximately a 100-kilometer corridor. (Please see Illustration 2.5). Over the past four decades, Silicon Valley has commercialized some of the most important electronics and biomedical technologies developed in the second half of the twentieth century (Kenney, 2000: 1). The region is the product of a rich overlay of at least five distinct institutional groupings: an impressive cluster of innovative electronics firms: Stanford University and its nonprofit research spin-offs; large domestic computing and instrumentation forms, many of them branch operations; research, marketing, and information-gathering operations of foreign firms; and a military-industrial component of both private corporations and government offices (Markusen, 1999: 307). Saxenian (1994), through her study of small and medium sized electronics firms, described a “fuzzy” mutually beneficial social relationship within this network of firms. Primary characteristics of this relationship were based on egalitarianism, trust, and cooperation. These attributes enabled these smaller firms to quickly reposition themselves in response to industry change in the late 1980s and continue to succeed. These behaviors were contrary to electronics firms in the Boston area, which she characterized as larger, hierarchical, and more culturally conservative.

Markusen (1999), along with others such as Stopper (1999), is rather firm in her argument that the success of Silicon Valley is likely very difficult to replicate elsewhere for a variety of factors, based on its specific history, the influence of the military in Northern California, big firm leadership, and continual massive foreign direct investment within the region.

Additionally, Silicon Valley is not without a number of social challenges. For instance, the region’s income distribution is highly skewed and collective bargaining to protect the wages of

\textsuperscript{16} Silicon Valley is a similar 100 to 150 kilometer north-south corridor, albeit lying within one country rather than straddling an international border, as is the case with Cascadia.
the working class is almost nonexistent. Hence, Markusen (1999) has stressed that perhaps the dynamics or “milieu” behind the success of other high tech clusters such as the “Third Italy” (Piore and Sable, 1984), North Carolina’s Research Park (Luger and Goldstein, 1990) and Seattle (Markusen et al., 1999) may provide more appropriate case studies for many other regions wanting to achieve similar high tech success due to their more manageable nature and greater income equity, as compared to Silicon Valley. These three geographic regions, in addition to other high tech areas, are associated with various characteristics, such as innovation and learning institutions. They appear to have an ability to attract and retain highly skilled workers (whether foreign or domestic). Thus, these factors together may have the synergistic effects of contributing to a successful prosperous new economy region. Hence, the next two sections review these concepts, and how they might be applied to the Cascadia region.

Illustration 2.5

Source: Kenney, 2000
2.5.2 Innovation, Learning Regions\textsuperscript{17}, and Their Institutions

Innovation, in a regional context, is often seen as the consequence of the critical institutional or organizational frameworks of production in an attempt to make change or create something new. Storper (1999) argues that there are two schools of American thought dedicated to what factors are important to regional development. These factors include innovation, high technology, institutions, and regional development. The first stresses the university-production link and uses the experiences of Silicon Valley and Boston’s Route 128 as their examples (See Markusen et. al., 1986). The second approach focuses on a ‘regional politics’, and stresses the importance of the dynamics of regional coalitions that rally to attract certain high technology, allowing for the transfer of high-technology resources into the region’s economy. For example, much of the ‘gunbelt’ economy of New England and Southern California developed because of influential federal politicians representing New England and Southern California who lured substantial amounts of federal monies to their regions for the purpose of defense research. Storper adds that both approaches to successful regional development have flaws to their arguments. For instance, the first approach emphasizes university-industrial linkages and it only works well with a significant formal science base, such as advanced science based universities and the semiconductor industry. However, there were no strong research universities in the Los Angeles area in the 1920s and 1930s when the development of the airplane industry began in this region (Scott 1993; Storper 1982). The second argument is also flawed. Again, the importance of an external influence such as military investment (using the Southern California aerospace industry example) was in place long before the development of a military industrial complex. In sum, for Storper, the American school on what factors make for a successful high tech region has still not developed a coherent and convincing theory linking high-technology development to regional development (Storper, 1999).

Another, perhaps more convincing, approach has been developed by the GREMI group (Group de Recherche Europeen sur les Milieux Innovateurs) which is made up principally of Franco-Italian-Swiss regional economists. Their ideas on innovation and regional development revolve around the notion of a \textit{milieu}. Storper (1999:35) essentially summarizes the work of various academics who specialize in this topic area (Aydalot 1986, Aydalot and Keeble 1988, Camagni

\textsuperscript{17} Richard Florida (1995) defines this term as collectors and repositories of knowledge and ideas that provide and underlying environment or structure which facilitates the flow of knowledge, ideas, and learning (p. 528).
by stating that the milieu is a context for development, which motivates and guides "innovative agents" to be able to innovate and coordinate with other innovative agents. The notion of milieu might be described as a system of regional institutions, rules, and practices, which lead to innovation. It is essentially a territorial version of the embeddedness of social and economic processes described initially by the sociologist, Mark Granovetter (1985). The milieu revolves around the concept of a network of actors, such as producers, researchers, and politicians, for example. Such a network is embedded in a milieu, which helps to provide these actors with what they need in order to succeed with innovation. In closing, though, the GREMI group cannot explain the logic or the essence of the intangible that they seek. In sum, the essential factors behind successful innovative regions are largely unclear (Storper 1999).

2.5.3 Institutions, Learning, and Labour in High Technology Regions

The growth of any high-tech region generates a commensurate demand for skilled labour. In changing economic times, great emphasis is placed on the ability of regional based institutions to acquire, absorb, and diffuse relevant knowledge and information throughout the region that affect the process of economic development and change (Wolfe and Gertler, 2002: 2). Additionally, Gertler (2004:10) stressed the need for institutions and related industrial practices to rethink their existing policies and approaches to innovations and industrial development within a region. He stressed that a matrix regulating investment decisions and time horizons, labour market decisions, and labour-management relations in the workplace have the most impact from a perspective of innovation and learning within an industrial region. Thus, this section briefly examines the role of institutions and the process of learning, both within and between institutions situated within a given geographical space in addition to the essential ability to draw and retain labour to a region. Based on the foundational works of Weber, Veblen, Schumpeter, and Karl Polanyi, economic processes are embedded in a variety of institutions such as local customs, government, firms, associations of firms, religion, culture, and the legal framework within a society. This being the case, the ability of these institutions to respond to and flourish within changing economic times is critical to a region’s success. The other critical attribute of these local institutions is their ability to retain and transmit learning and knowledge to their members (Wolfe and Gertler, 2002). Hence, the continued success of a region may be attributed to the abilities of its institutions, down to the firm level, to capitalize on this knowledge. 
on social learning and increased networking between firms and other organizations within a geographical space.

By way of example, (Cooke 2002) examined to what degree European regions were able to support innovation at the firm level. His findings were interesting in the sense that they revealed that most of the firms he interviewed operated in regional and national markets rather than international ones. Additionally, these firms innovated due to the pressures of competition, which required higher quality products at lower costs. Finally, the regional organizations, which were meant to help firms innovate, failed to do so since they do not reach nor help identify the regional firms’ needs. Thus, this particular case study puts into question the preparedness of these regions to continue to innovate and learn in addition to the actual strength of the regional “network” beyond the firm level. Gertler (2002) adds to this questioning with his study, which examined the relationship between German manufacturers and North American clients. His research found that the importance of institutional forces beyond the level of the nation-state was rarely taken into consideration. Although firms tried to collaborate at the international level, much of their knowledge and experiences had not been shaped by a similar set of national institutions. This often led to confusion and misunderstandings between actors, and lessened considerably the likelihood of achieving interfirm learning beyond regions located within a nation state.

Since Gertler (2002) stresses the need for the same institutions, usually found within a nation state, for learning and innovation to occur at the firm level and resonate outward to the region, there may be many challenges for the concept of Cascadia to achieve high tech aspirations, since it does straddle an international border. Thus, there are many different types of institutions and understandings formulated and reassured by two different nation states, namely Canada and the United States. Therefore, management of the border and achieving harmonization of practices and procedures when interpreting ‘rules of crossing’ seem to be important. However, Gertler’s findings provide an interesting departure point to the next paragraph, which shall briefly introduce the critical importance of the access and availability of skilled labour within a region.

The literature in the above paragraphs helps to draw attention to the factors of regional based institutions and learning within key firms and how these attributes ripple outward to the larger
region. One additional factor that is essential to the growth and development of a high tech region is the availability of locally highly skilled labour and/or a region's ability to attract highly skilled labour, whether domestic or international in origin. Thus, it is not only important for a cluster to create networks within the local environment, but also to develop and maintain crucial alliances and networks both within the region and also externally beyond the region. Bresnahan, et. al. (2002) noted that the key ingredients that are needed to operate a regional cluster, in general, included entrepreneurship, linkages to a major and growing market, and the availability of skilled labour. Biotechnology firms, especially, have been seen as operating along these complex local to global networks in the development of strategic alliances regarding financing, Research and Development (R&D), and scientific innovation. These factors have been argued to be important if the firm stands a strong chance of success (Darby et. al. 1999).

The reason for these vast and complicated networks is that the global biotechnology industry is an inherently risky and complicated one with many processes and potential pitfalls. Thus, any innovative firm requires extensive finances and seasoned experience, which is sometimes beyond the realm of the immediate firm. In addition to these needs, a biotechnology cluster, for example, specifically needs close physical proximity to key research centers that attract star scientists (Darby and Zucker, 1996), and a subsequent entourage of leading international researchers and graduate students with (or developing) highly sophisticated skills. In fact, Wolfe and Gertler (2003: 54), based on an extensive study of various types of industrial clusters throughout Canada, bolstered this milieu of critical factors, stressing that the centrality of skilled labour was seen as the single most important local asset to a successful high-tech cluster. They elaborated on this phenomenon as follows:

"The local endowment of 'talent' in the labour force is emerging as a crucial determinant of regional-industrial success. This endowment is created and maintained by the retention and attraction of highly-educated, potentially mobile workers who are drawn to thick, deep, opportunity-rich local labour markets. The emergence of a strong, concentrated talent pool in local and regional economies also serves as a key factor in launching individual clusters along the path to sustained growth and development. Critical mass appears to be important here: Until this is achieved, local employers will fight a losing battle in attempting to retain or attract the skilled talent they need. Once it is achieved, this set in motion a positive self-reinforcing circle through which regions with a critical mass of highly skilled workers in a particular sector are able to attract still more workers of this kind. The initial source of the local talent pool can be highly varied, with both government laboratories and local anchor firms playing a key role in
developing the initial talent base. Post-secondary educational institutions also play a central role in many of the health-based biotech clusters, but seem to be less critical for the initial launch of many of the other clusters."

The next section of the literature review shifts from a focus upon critical institutions to examining the concepts of labour mobility, immigration, and transnationalism, which are also essential to a successful high-tech region, as argued by Florida (2002). Despite the many challenges and confusion that arise between actors originating from different regions and learning experiences, there is still a great desire, opportunity, and need for highly skilled people to move across international boundaries for the purposes of work and immigration.

2.6 Transnationalism, Labour Mobility of the Highly Skilled, and Its Shortcomings

2.6.1 Introduction

As noted in Chapter 1, a critical component to a high tech firm's success is its ability to draw from a talented pool of well educated professionals residing throughout the globe as these firms compete in a high stakes game of product development where timing and cleverness are keys to success or failure (Florida, 2005). Thus, the immediate needs of the new economy require more cross-border integration and more predictable and transparent border regulations when it comes to the movement of professionals across international boundaries. Beaverstock and Smith (1996) have supported this thesis by providing a comprehensive review of the significance of the transnational investment banking community in the City of London. Sassen (Sassen-Koob, 1984, 1986; and Sassen 1988, 1991) has provided a comprehensive review of immigrant labour demands in a global city's downgraded manufacturing and mainly low-waged service sectors, placing particular emphasis on New York and Los Angeles, as case studies. These scholars, in sum, covered the two opposing ends of the 'income hourglass'\(^{18}\) of global cities. By contrast, there has been little research conducted on second-tier cities, such as

\(^{18}\) The 'income hourglass' can be defined as the increasing bifurcation of an urban economy where there are high end service providers such as stock brokers, consultants, lawyers, bankers, and so forth paired with very low end service providers such as restaurant workers, janitors, dry cleaning services, and so on, which exist to provide services to these high end urban service providers. What is often absent from this dynamic is the socio economic middle class and usually includes teachers, police officers, professional government bureaucrats and so on. New York city is typically cited as a good example of the income hourglass since it is one of the global headquarters of world finance, providing well-paid jobs to a global elite in addition to being home to many immigrants, who often willingly work these low-end service jobs as undocumented workers. The most difficult positions to fill in this urban dynamic are middle class jobs. The reason being is that the cost of living is so high in the actual city and these middle class professionals can seek employment, domestically, in other urban centers where they will most likely have a better access to housing, good schools, and less of a commute time compared to New York City.
Vancouver or Seattle regarding labour mobility of the knowledge worker across international boundaries, especially in the growing information technology (IT) industry and within the regional area of Cascadia.

It should be noted that the regional mobility of international workers to some degree has been continuous for over 300 years. Yet, historically, the majority of skilled migrations were regional rather than truly global in nature (Held et al., 1999). For example, from the seventeenth century onwards, mercantilist-oriented states drew on the flows of skilled labour such as the Dutch moving to Germany and England for land drainage projects and Peter the Great attracting artisans and gunsmiths to imperial Russia (Lucassen, 1987). Thus, current professional labour movements within North America may be described as part of a more historic and natural pattern of labour movements that occurred before technological and military capabilities allowed for more global labour movement (Held et al., 1999).

2.6.2 Transnationalism

From a broader perspective of “Transnationalism”, Ong (1999) has captured theoretically the experiences of the mobile elite, for example, moving from Hong Kong to North America and returning yet again to Asia, in the form of a circular mobility. Among other things, Ong discusses the apparent ease and agility that these flexible elites experience as they move from one country to another. This global fluid mobility has been an experience of a select elite originating in the capital cities of great colonial powers over the past three centuries. In this regard, Carlos and Nicholas (1988) found that imperial trading companies used an extensive and elaborate network of salaried managers, usually expatriates, to oversee and monitor the hundreds of thousands of annual company transactions. Also, the Japanese Soga Shosa (general trading companies) have moved much of their managerial personnel around the world to support their global networks for the past century. Now, a considerable number of transnational elites originate in powerful cities in the Asian Pacific (e.g. Singapore, Hong Kong, and Bagalore, India) (Sassen, 2000 and Waters, 2004). Instead of moving from the capital city of London, to Burma on behalf of a British trading company, as in the nineteenth century, these new transnationals from Asia gain a professional education at leading education institutes throughout the world (e.g. Harvard, Massachusetts Institute of Technology, The University of British Columbia, Cambridge, and Oxford) (Waters, 2004). Based on the caliber
of their education (and class agility) many of these elites are then offered a job in a primary city or region, which focuses on leading edge activities such as banking in London or New York City or high tech development in Silicon Valley (Florida, 2005; and Saxenian, 2000).

The above scholarly work emphasizes the experiences of an elite, which has always found relative predictability and ease in moving across the boundaries of one nation state to another for either work or pleasure. Now, with the growth of knowledge workers throughout the western world in the face of global restructuring, there is a greater and greater need to draw larger pools of global talent. Often this labour force comes from not only the developed world, but also increasingly the developing world (Florida, 2005). These knowledge workers might not have been born into a privileged background, but through the experience of a good education, they often have the opportunity and eligibility to work for a powerful or quickly growing high tech firm in North America.

2.6.3 Labour Mobility and the Internationally Highly Skilled

Compared with the mainstream flows of overseas migration whose goal is typically full-time settlement, skilled transient migratory movements often go highly unnoticed both within the receiving country at large and within the academic literature. Possible reasons for this may be that this type of temporary migration poses no threat in terms of social and economic burdens to the host countries, as well as often being invisible ethnically and culturally (Findlay, 1995). A majority of these skilled migrants move from core country to core country, (e.g. between England, United States, Canada, Australia, and Japan). However, there still is a “brain drain” of well-educated professionals immigrating from Asia, Eastern Europe and Africa to the western world. Africa is probably the worst off on a per capita basis having lost over 60,000 professionals between 1985-1990 and is continuing to lose approximately 20,000 professionals annually (Stalker, 2000). Nonetheless, the majority of highly skilled migrant movements are between core economies, such as the USA, Japan, and Western Europe, for short durations of time, namely anywhere from two to five years. The majority of these migrants move as intracompany transferees within these global firms. Historically, much of these movements have been reserved for executive and management personnel. However, now, with an economy based on information and highly sophisticated technologies, the crossborder movements of highly skilled professionals are becoming more commonplace (Findlay, 1995). This can been
seen within a North American context, especially with the onset of NAFTA in the early 1990s. Since NAFTA’s inception in early 1994, over 75,000 Canadians have entered the U.S. on professional work statuses for temporary employment and these numbers grow by about 10,000 new work statuses every year (DHS statistics, various years).

The international hiring and movements of skilled professionals and star junior executives is a dynamic activity, historically dominated by large multinational corporations (PriceWaterhouseCooper, 2002). However, due to cost cutting measures, many large corporations are scaling back on these types of overseas assignments for their executive ranks, and incorporating shorter-term assignments with the expectation of performance (Lopes, 2004). Thus, these types of assignments are no longer seen as a “perk” or a “fast tracking” mechanism to the executive level as they once were (Li, 2005). Perhaps a growing type of the internationally highly skilled is something that Boyle and Motherwell (2004:15) found in their policy study, which examined how to lure highly skilled Scots away from the vibrant city of Dublin, Ireland, back to Scotland. Through a series of 10 focus groups conducted in Ireland with newly located highly skilled Scots (usually since 1998), they noted one of the following themes,

“A definitive feature of the Scottish expatriate community in Dublin is the footlooseness of migrants. Throughout the Focus Groups, there was a constant trivialization of the decision to migrate. This casualisation of what still is an international relocation decision after all, was most manifest when participants talked about the almost accidental and happenstance circumstances that surrounded their decision to migrate, and when they proffered the belief that it would not be a problem to reverse the decision were they to feel unhappy in Dublin. Clearly the relative youth and lack of ties of the Focus Groups cohort allied to the close proximity of Dublin to Scotland (repeatedly mentioned in relation to the growth of low cost airlines), goes some way to explaining this liberated attitude to displacement.”

The study also worked to move beyond the traditional motivators of the highly skilled being economic, career enhancement, and quality of life factors, (PriceWaterhouseCooper, 2002), usually promoted by the human resource department of large corporations, by examining something called “cultural cosmopolitanism,” based on the use of key cultural indices (the Bohemian Index, the Gay Index, and the Multicultural Index) developed by Richard Florida in his 2002 book, The Rise of the Creative Class. According to Florida, members of the creative class are essential to the success, dynamism, and ability to innovate for regional economies. It should also be stressed that a majority of these highly skilled expatriate Scots worked for
smaller less established firms in Dublin, which seemed to contribute to the “Bohemianness” of Dublin (Boyle and Motherwell, 2004). From a more clinical perspective on this topic area, Saxenian (2000) demonstrated that Chinese and India engineers started 29 percent of Silicon Valley’s technology companies between the years of 1995-98.

The above helps to demonstrate that in an era of globalization there are different types of firms, especially smaller start-up firms, needing to hire and retain international highly skilled talent. Additionally, the new type of the internationally highly skilled professional may not be of a “traditional corporate culture”, but one with many different diverse backgrounds, as described by Boyle and Motherwell (2004) and Florida (2002, 2005).

Overall, the phenomenon of the movements and intermittent and final destinations of the internationally highly skilled is a relatively understudied one within the academic literature for a variety of reasons. This includes the fact that data and general information regarding international personnel are hard to extract at the firm level due to corporate confidentiality policies. Also, once a highly skilled migrant is within the host country, there is a likelihood that the person may move from one type of work visa to another, which makes tracking these types of immigrants through government immigration data a serious challenge.

Highly skilled professionals’ origins, patterns, and durations of stay can be described as somewhat different compared to the more predictable and secure forms of migratory movements for corporate elites. For example, professionals may originate from many different countries other than the country that hosts a multi-national corporation’s headquarters, while a majority of these corporate elites originate from the country that hosts the headquarters of multinational corporations. As well, international professionals are transferred to other international corporate sites for projects, training, and generally shorter term assignments as compared to corporate elites. Additionally, they are usually not given the privileged pay structure and moving allowances given to international corporate elites.

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19 This is reflected in many foreign work visas’ length of time to remain in host countries. The U.S., for example, allows a professional, usually on an H-1B visa (which will be explained in more detail in Chapter 3), three years to remain in the U.S., whereas a foreign executive working for the same firm is usually allowed five years to remain in the U.S. for purposes of work.
In an era of flexible accumulation, larger global firms have developed many sophisticated strategies to using and moving highly skilled professional people's expertise, without taking direct responsibility for these professionals as corporate employees. For example, many larger multi national firms contract out work responsibilities to smaller and local high tech firms. It then becomes the burden of the smaller firm to move their highly skilled professional employee across the border for meetings with, or to provide direct services for, the larger multinational. Findlay (1995) has stressed that these firms' patterns possibly indicate a new production regime involving sophisticated networks of high technology contractors and suppliers, which transcend international boundaries (see also Sunley, 1992). Based on his research of electronics firms in Hong Kong, Findlay (1995) concludes that there are scarce technical skills residing in key individuals, which allow the relatively uninhibited movement of those with skills, and these movements do not necessarily need to be channeled through the international labour markets of large firms. Secondly, global cities with clusters of high tech specialized firms may prove attractive to high tech international professionals since they can locate within these clusters, and have the option of moving to another firm within a cluster. Ideally, the international migrant can position himself/herself for future international employment without being directly tied to a multinational company. Hence, the highly skilled professional migrant can operate as his or her own independent actor within the global economy. Despite the apparent free mobility of elite 'knowledge-workers' suggested by Findley, the next section reviews some of the major constraints on the autonomy of the global professional worker.

2.7 Cross Border Institutions in the Facilitation/Impeding of Transborder Labour Mobility and Sojourner Rights

Historically, the state has played the most important role in modern times when it comes to controlling movements of people. Torpey (2001) emphasized that perhaps the freest time for the movements of wealthy foreigners occurred in Europe, just prior to World War I. He cites the work of Bertelsmann (1914), who stressed the fact that foreigners moving throughout Europe were no longer viewed with suspicion, but welcomed by a host state since it was recognized that these foreigners bring "tremendous economic value in goods and exchange." This spirit of "open borders" did not last for long, and immediately after the commencement of World War I, states recommenced monitoring and controlling the movements of its own citizens, as well as the entry and movements of foreigners, which has lasted well into the latter part of the twentieth century. However, beginning in the early 1980s, states began to respond
to a resurgence of international trade and commerce, and started to rethink and consider the facilitation of foreigners involved in these activities (Sassen, 1998). This was especially true in Europe, since the Berlin Wall fell in late 1989 and allowed many undocumented migrants from Eastern Europe to enter Western Europe free from historical barriers placed between East and West Germany. It was also at this time that supranational organizations, such as the European Union (EU) and the World Trade Organization (WTO), began to reconfigure the responsibilities and rights normally attributed to the state, such as mobility of persons within the EU and international human rights codes (Sassen, 1998). Additionally, the emergence of supranational legal trade regimes, such as the GATT, NAFTA, and EU policies towards labour equalization and the EU's Schengen Agreement, intervened in many aspects of international trade, services, finance, and, most notably, cross border labour mobility – within the EU region and in other global regions such as continental North America and East Asia. Finally, since September 11, transnational legal regimes, such as NAFTA have undergone a heavy veil of security measures and surveillances, which were not originally anticipated when initially written. The roles of these supranational legal agreements on cross border labour mobility will be reviewed in the following sections. Special emphasis will be placed on NAFTA, and the various actors involved in its original development, its daily implementation/facilitation, and what type of actors makes use of this trade agreement.

However, before turning to these supra national institutions, it should be underlined here that the general culture and management of U.S. borders over the past twenty years has deteriorated regarding port of entry officer professionalism and general respect for basic human rights for all persons seeking entry into a nation state. As will be noted in the empirical chapters of this thesis, this is a critical issue in the flow of knowledge intensive workers across the border in Cascadia. In fact, a reoccurring theme for many people seeking entry into the United States, whether legally or illegally, has been a rather 'hostile' one when encountering any U.S. immigration officer responsible for inspecting the person seeking entry (Nevins, 2002). Although cross border mobility was often perceived as 'on the rise' during the latter part of the 1980s and early 1990s (Ohmae, 1995), as part of globalization, for many seeking entry into foreign countries the experience is frequently not a humane or welcoming one. This is a far too common experience for many seeking entry into the U.S., either legally or illegally. In fact, there have been a growing number of books over the past five years on this topic. For example, *Operation Gatekeeper* by Joseph Nevins (2002) explores the remaking of the U.S.-Mexico
border in an era of globalization under the Clinton Administration. The book places particular emphasis on the project's failure to hold back the tide of undocumented immigrants while at the same time the legacy Immigration and Naturalization Service's treatment of undocumented aliens worsened. In fact, the drastic measures placed along the U.S.-Mexico border contributed to a dramatic rise in death rates as Mexican and other Latin Americans seek more difficult and dangerous entry points along the border. The following is a quote from the American Civil Liberties Union (ACLU) web site reflecting on the impact that Operation Gatekeeper has had on those trying to cross the U.S.-Mexico border illegally,

The violence is inhumane. One recently adopted Border Patrol tactic, Operation Gatekeeper, seeks to deter migrants from traditional passage routes. Although some anti-immigration zealots extol Operation Gatekeeper's success at border control, the human toll has been very high: In the first ten months of 1997 alone, at least 72 people have died trying to traverse treacherous alternative passages over 5,000-foot Tecate mountains or through the 120-degree heat of the Imperial desert.

American Civil Liberties Union Web site, May 2005

Overall, the driving thesis of Nevins' work is that the state has actually created the crisis of illegality along the U.S. - Mexico border that it is now responding to. In Detained: Immigration Laws and the Expanding I.N.S. Jail Complex, Michael Welch (2002) reveals the unchecked power given to the legacy INS as a result of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) passed by the U.S. Congress in 1996. Among other unchecked powers, the INS was given the right to "expedited removal", which is discussed at length in this dissertation, and "indefinite detention", which may be applied to asylum seekers waiting for a hearing, which may never occur. Overall, this has led to growing levels of incarceration rates and a rise in detention centers, which are usually run for profit - all of this is spurred by the United State's moral panic towards perceived outsiders. These draconian measures against immigrants were in place before the events of 9/11 and before the passing of the U.S. Patriot Act in 2001, which shall be explored later in the dissertation.

Both of the above studies discussed in elegant detail how immigration law passed by U.S. congress over the past 10 years has allowed and even encouraged drastic and inhumane approaches to dealing with foreigners at the U.S.'s boundaries, especially the southern border in an era of "globalization" and pre 9/11 "open borders."
2.7.1 The Role of Supra-National Agreements or Institutions that Affect International Labour Mobility

On a global basis, the most important formal arrangements regulating international labour mobility include the World Trade Organization's General Agreement on Trade in Services (GATS), the North American Free Trade Agreement (NAFTA), and the European Union's (EU) policies on labour mobility which allow for the transnational movements of each signatory country's citizens for purposes of work within the territories of all signatory countries. Although each of these agreements were designed to facilitate easier mobility of foreigners for purposes of work, they are quite different in their make-up and intricacies. These differences are briefly explored in the following paragraphs.

2.7.1.1 General Agreement on Trade in Services (GATS)

Mode 4 of the GATS recognizes the need for the temporary movement of natural persons for purposes of service deliveries. It has usually been applied to higher-level personnel, especially to intra-corporate transferees, whose mobility is basically an adjunct of foreign direct investment (Winters et al., 2002: V). The GATS is usually used by citizens of developing countries when seeking access to developed countries, since there are other supra-national agreements, such as the NAFTA, allowing for the movement of North American executives, service providers, traders and various professionals, and EU policies, designed to create a pan-Europe dynamic knowledge based economy, and the Schengen Agreement which specifically allows for open borders and free movement of all EU citizens. One drawback to the GATS is that it has not allowed for easy movements of medium skilled service providers (such as professional assistants, trades people and technical support personnel, which would include systems analysts and programmers) due to its complicated nature regarding interpretation. For example, among other structural problems, there is a lack of uniformity in the definition and coverage of the various categories of service personnel, allowing to liberal interpretations by immigration officials and consular offices (Chanda, 2001). These problems also contribute to the difficulties of entry under the GATS for medium skilled personnel, where developing countries have more of a comparative advantage over developed countries, which more frequently export highly skilled and executive level personnel. Additionally, similar to
NAFTA and the EU's Schengen Agreement, the GATS is subject to immigration legislation and labour market policy rather than international trade policy (Winters et. al. 2002).

2.7.1.2 The European Union's Policies on Labour Mobility and the Schengen Border System

The European Union has developed aggressive policies designed to encourage spatial job mobility across state borders. In fact, the EU has made tremendous efforts to create an EU-wide acceptance of educational and skills certificates and gearing social securities systems towards a balancing of all EU countries, so that the EU labour market may become more transparent. These open labour market policies are coupled with the Schengen Border System\(^{20}\), which allows for the creation of a free movement area without border controls. This is balanced by exceedingly strict border enforcement at the EU's external frontier designed to curtail illegal immigration, to enhance police cooperation, and to improve judicial cooperation (Anderson, 2000). Despite these well thought-out efforts and transparent preferential policies, the vast majority of Europeans are still rather immobile. In fact, Van der Velde and van Houtum (2004) identified a study conducted by Fischer et. al. (2000) where only 4 percent of people in their study had actually moved from one EU country to another EU country since the late 1980s. Additionally, Fischer et. al. (2000) found that only 1.5 percent of the people living within EU border regions commute across the border for purposes of work. Thus, Van der Velde and van Houtum (2004) concluded that spatial job immobility, not mobility, is usually the dominant spatial practice of people living within the EU. Hence, national borders still play an important influence on the socially constructed frameworks of familiar locales. Additionally, these new EU citizens have not been able to conceptualize, nor operationalize, the possibility of including other countries into their ideas of feasible work opportunities.

2.7.1.3 The North American Free Trade Agreement (NAFTA)

The North American Free Trade Agreement is yet another supra-national legal regime which allows for the preferential status/visa treatment for four different types of North American business persons. This includes business visitors, traders, investors, intracompany transferees,

\(^{20}\) A compilation of the 1985 Schengen Agreement and the 1990 Schengen Application Convention. The Schengen Agreement brought together the Benelux Common Travel Area with the proposed open frontier agreement between France and Germany to abolish all border controls on goods and persons between them. The Application Convention set up a series of arrangements, including a strengthening and standardization of controls at the external border, and of police and judicial cooperation between the EU member states (Anderson, 2000: 21).
and certain professionals established under NAFTA (Folsom, 1999). A primary idea behind the development of the NAFTA visa status was that it was to allow preferential entry for these business persons so that the other provisions of NAFTA, which deal with services, investments, and goods could be carried out with ease. However, these business persons can enter into all signatory countries on their own right. Provided that a NAFTA applicant has the correct and required documentation, they are only subject to public safety and national security reviews at international borders. NAFTA professionals and intracompany transferees do not have to undergo labour certification screens, which the U.S. Department of Labour and the Human Resources and Development Canada usually require before a foreigner is issued a professional work status/visa. Private interests saw this particular requirement as a big drawback to NAFTA’s predecessor, the U.S.’s H1-B visa. Hence, the NAFTA status, or “TN Status” especially for professionals, was heralded in the early 1990s as a vast improvement over the H1-B visa, famous for its slow cumbersome nature, and its application cost, which could run into the thousands of dollars. Another salient point of the NAFTA status was its port of entry adjudication. The H1-B visa required that all paperwork be mailed to the legacy INS case processing center in Lincoln, Nebraska, and an average H1-B application took anywhere between 4 to 6 months to process. Thus, the NAFTA TN status was framed to U.S. Congress as a much more efficient and immediate way to allow for North American professionals to access Canada, the U.S. and Mexico in an era of globalization and fast moving capital. Ideally, port of entry adjudication would take anywhere from ten minutes to an hour for the majority of NAFTA applicants. These factors have contributed to NAFTA’s rising success as a supra national legal document that has allowed for over 85,000 Canadians to enter into the U.S. as NAFTA professionals with annual rising increments of approximately 10,000 Canadian annually (DHS/INS Annual Yearbook, various years), see Figure 2.1.
Figure 2.1

Source: U.S. Immigration Service and Department of Homeland Security Annual Yearbook, Various years. Note: No data exists for the year 1997 (or Number "9") on Figure 2.1.

2.7.1.3.1 NAFTA and Its Actors

Overall, from the rising number of NAFTA visas issued since 1993, one may conclude that Chapter 16 of NAFTA, which covers labour mobility, has, in general, been a positive factor for the North American business community and the mobile North American professional. However, certain professions listed under NAFTA, which include software engineers, computer systems analysts, management consultants, and scientific technicians, have had a more difficult time crossing borders with NAFTA visa statuses than the other 65 professions listed under NAFTA for a variety of reasons. (See Appendix 14 for a listing of these 65 professional job listings.) Specifically, the way NAFTA was crafted, the rather esoteric job descriptions and nature of the above mentioned professions (exclusive of management consultants) and the variety of ways that front-line immigration officials understand and
interpret NAFTA at each Canada-U.S. port of entry can lead to a host of problems for firms trying to hire these professionals under NAFTA (Vazquez-Azpiri 2000, and Richardson 2002).

In fact, there has been considerable discussion regarding the varied norms and rules that NAFTA adjudications operate within, both between each signatory country and also between each nation state’s ports of entry. In fact, Finnemore and Sikkink (1998) more generally discuss the relationship between rules and norms in the context of how certain norms at the bureaucratic level influence international politics. Their study spends considerable time defining exacting what norms are, the relationships between domestic and international norms, and whether norms are agents of stability or change. Although their research is aimed at examining dynamic international issues, such as women’s suffrage and the banning of land mines, the authors’ topic areas and concepts may be applied to the detailed implementation of a regional trade agreement, such as NAFTA. Specifically, Finnemore and Sikkink (1998: 891) stress that norms involve a prescriptive (or evaluative) quality of “oughtness” that set norms apart from other kinds of rules. The authors go on to stress that there are no ‘bad norms’ from the vantage point of those promoting the norms. For example, slaveholders and non-slaveholders believed that slavery was an appropriate behavior, for without this belief, the institution of slavery would not have been possible (ibid). Although norms may be difficult to document empirically *prima facie*, norms promote shared moral assessment among participating actors and leave extensive trails of communication and evidence of their influence. Additionally, norms are usually found naturally within the community or regional level (i.e. in this case, the respective Canadian and U.S. immigration authorities), but usually not at the international level, and vary between countries in their strength and influence.

The above intellectual context of the definition of what a norm is and where it might be found provides a framework for explaining why variability exists in interpreting NAFTA between Canadian and U.S. border officials and the many U.S. POEs. To begin with, although the actual “rules” of NAFTA has been constructed and approved by each signatory country, there is considerable leeway between each particular country in the interpretation and implementation of NAFTA. Thus, it is up to each country (Canada, the U.S.A. and Mexico) as to how its front-line officials understand and interpret NAFTA applications. These domestic “norms” then set the tone as to the actual interpretation of NAFTA applications. As will be explained in detail in the empirical section of the dissertation (Chapters 4, 5, and 6) this
“leeway of interpretation” has proven to be an important impediment to the “easy” mobility of high tech firms’ employees and new hires between Vancouver and Seattle.

Overall, the challenges found within the use and implementation of NAFTA and the three primary actors involved, namely government officials, immigration attorneys, and the firms and individuals who use NAFTA statuses, serve as the departure point for Chapter 3, which examines the Cascadia region specifically, in addition to the remainder of the dissertation.

2.8 Summary

This chapter has reviewed the existing literature on cross border regions and analyzed its strengths and weaknesses in framing a study of the role of the border in the Cascadia region. It has revealed that existing studies of CBRs have focused on some of the factors behind their success, but have rarely focused on how the management of international borders, per se, has influenced patterns of development. Similarly, scholarship of innovation and high technology regions have pointed to the important role of skilled labour and also the institutions in ‘social learning’ and the transmission of knowledge in regional networks, but has generally underplayed the significance of institutions that facilitate labour mobility. Studies of international labour mobility have suggested an increasing importance of footloose knowledge-intensive workers, but have rarely focused on the very real constraints imposed by regulatory mechanisms embedded in the WTO, the EU, and NAFTA. Building on this narrative, I will indicate the importance of the international border for Cascadia and spotlight the role of a number of significant actors. Overall, one outcome of the review reveals the transition of ‘border regions’ in the popular imagination—from the concept of being a ‘shield’ to a ‘sieve’ in the late 1980s and 1990s, and now back to a rather ambiguous ‘shield’ rather than a ‘sieve’ in light of 9/11. However, despite this new trend, the U.S. is still committed to business interests and globalization in general in the form of “open borders.”

At a broad-scale, this rapid transition of the concept of borders in the imagination, as well as the actual practices of regulating movement across North American borders, warrants the need for a more concrete study; one that examines in detail this rapid transition, and how it has influenced flows of professionals back and forth across the Canada-U.S. border. As stressed earlier, Cascadia is a particular type of border region, which for the most part contains a critical
mass of high technology companies, and one that I argue suggests a strong demand for highly skilled labour. As stressed earlier in this chapter, high tech regions grow best when supported with suitable institutions, and in the Cascadia case those that facilitate the mobility of labour are equally, if not more important, than those that support the mobility of goods. Finally, because there is a paucity of published statistics indicating who crosses the Cascadia border, and who applies for various visas, I argue that a more qualitative approach, one that interviews the various actors – high tech firms, immigration lawyers, and regulators – is an appropriate methodology adopted for this thesis.

With regard to the three different types of actors involved with the facilitation and movement of NAFTA professionals within North American space, representatives of each NAFTA signatory country’s government are significant. This group includes actors at the governmental policy level who actually developed NAFTA. This group also includes actors employed by North American governments at the ports of entry who actually interpret the NAFTA document and adjudicate the NAFTA applications on a day-to-day basis. A second set of actors encompasses Canadian and U.S. immigration attorneys, who have served as professional facilitators with difficult NAFTA applications. Additionally, as will be examined later in the thesis (Chapter 6) since 9/11, attorneys are becoming more of the “norm” as facilitators for firms and individuals looking to use NAFTA statuses when moving across North American boundaries. The final sets of actors involved in the NAFTA status are the actual firms and professionals that use the NAFTA status. Thus, one main purpose of this dissertation is to tie together the roles and relationships of these various actors when it comes to moving professionals within the Cascadia corridor. In fact, there is no comprehensive data source as to why people move across the Canada-U.S. border for purposes of work and the experiences they encounter, especially at the actual border crossings. Hence, there is a need to collect information from the firms concerned. Finally, there is also no comprehensive data source as to what types of people are refused visas/statuses and why, and what types of people are granted statuses/visas and why. Thus, this research will explore these issues and examine possible reasons for patterns that the new data analyses reveal.

The above research activities assist to build a unique framework in understanding the needs and constraints of cross-border labour flows within Cascadia, and the relationship of government officials, immigration officers, and firms/professionals on either side of the Canada-U.S.
border. Additionally, the relationship that each of these national actors has with their counterparts on the other side of the border, especially in light of September 11 will also be explored. Chapter 3 will build on this argument by exploring the economic history and contemporary economy of the Cascadia corridor, and how NAFTA, with a focus on the research framework adopted here, may be central to its future success.
CHAPTER 3 - The Cascadia Region In Its Wider Context

3.1 General Introduction – Purpose of Chapter

This chapter builds on the literature review carried out in Chapter 2 and argues that the Cascadia cross border region is significantly different from the more traditional ‘goods and trade’ oriented border zones between the U.S.A. and Canada, such as Detroit-Windsor and the San Diego-Tijuana, Mexico border.

In particular, cross border flows of skilled labour are much more important in Cascadia than cross border flows of parts or assembled final goods. Cascadia, from a development perspective, may be characterized as a natural resource intensive and post-industrial services based economy. It contains mature firms, such as the multinational timber giant, Weyerhaeuser, operating alongside new high tech firms such as Microsoft and the Norht American headquarters of Nintendo, which are both based in the Seattle area, and Electronic Arts and Ballard Fuel Systems, based in the Vancouver area. Besides being a CBR of intense transnational interaction, Cascadia has many links to the Asia-Pacific region, and also southwards into California. Edgington (1995) revealed the importance of Cascadia cross border connection with Japanese soga sosa (or trading houses). Artibise (1996, 2005) has documented the social and cultural connectivity within the more northern portion of Cascadia, which, include the greater Vancouver and Seattle areas while David McCloskey (1988) has done the initial work of exploring the historical and environmental connectivity’s within the region of Cascadia and also coined the term, “Cascadia.” The second purpose of this chapter is to provide a framework of the many institutional apparatus that range from the international to the continental and finally to the domestic level that may affect cross-border labour mobility within the Cascadia region.

The continued growth of the Cascadia region as a center for world-class high tech and biotechnology commercial development and research begs the question as to whether or not the Canada-U.S. border is a constraint (shield) or facilitator (sieve) to the symbiosis of more interactions between these industries based in Seattle and Vancouver. The material in this chapter first sets the parameters for this key research question and then leads into an analysis of the relationship between the firms and their demand for cross border professional labour, Canadian and U.S. regulators, and immigration lawyers. All of these actors play influential
parts in the possible development of this international high tech region. More detailed discussion of Cascadia's firms, the role of border officials, and immigration attorneys are found in Part II of the dissertation (Chapter 4, 5, and 6).

Overall, the frequency of cross border mobility of professionals in Cascadia is likely to be more similar to the movement of EU cross border regions, such as the "Blue Banana" which includes portions of the London, England through Germany, the Randstad of the Netherlands and on to Northern Italy (Dunford and Kafkalas, 1992). Essentially, Cascadia may be considered an area with an advanced service based economy that has developed over the past 20 years. Additionally, this advanced service-based economy has created a need for professionals moving across borders, and this mobility is essential to the evolving success of the region (BC Biotech, 2004). The next section explores the concept of Cascadia, and how the Cascadia region is different from other cross border regions. It then speculates as to how the region may have an economic future as a symbiotic high technology/biotechnology zone, and the implications on the need to hire North American and foreign skilled personnel. Both the Seattle and Vancouver economies, post the bursting of the "dot-com bubble" in 2000 and 9/11, are explored in detail. The chapter also examines other immigration/labour mobility options. Finally, the role of Chapter 16 of NAFTA and how the Canada-U.S. border works both as a sieve and a shield in light of this trade agreement is briefly examined. The chapter closes by introducing Part II of the dissertation (Chapters 4, 5, and 6), which sets out the empirical work and focuses on the three major actors involved in the management of the international border and cross border mobility. Section II depicts the dynamics of Canada/U.S. high technology firms, immigration officer and policy experts, and immigration attorneys since all of these key actors facilitate or impede the flows of North American professionals.

3.2 Cascadia as a “Border Zone of Human Contact”

3.2.1 Introduction
Since the late 1980s, there has been much rhetoric about the idea of a borderless world. As noted in Chapter 2, Kenichi Ohmae is one of the most recognized commentators in this regard, arguing in his 1990 book, Borderless World, that more borderless trade, or the continued elimination of tariffs and/or non tariff barriers would lead to an even greater win/win situation for all involved. Holsti (2004) deals with borders and cites the works of Bernard Badie and
Marie-Claude Smouts (1999: Ch. 1), and James N. Rosenau (1997) provides for more theoretical statements surrounding the idea of the diminishing relevance of borders. However, as explored in Chapter 2, the notion of borders, from a perspective of security, is back with "with a vengeance" (Andreas, 2003). Biersteker (2003) tempered this statement by stressing that borders and boundaries are being used in many different way that transcend physical demarcations, and powers of the state are now being vested to many different types of actors, both public and private. Several geographers have also contested this notion, however. For example, see Kevin Cox's (1997) discussion regarding the powers of the local in response to globalization. Additionally, as stated in Chapter 2 using Wu's border typology matrix, Cascadia may be considered somewhere between a transborder and crossborder region, since the movements of citizens within these regions are not completely liberalized, as is the case within the EU.

From a perspective of labour mobility and the growth networks between the 'new economy' firms, the degree of globalization really depends on the actual partitioning of space between states and the continued impediments to cross-border travel, such as regulations prohibiting labour mobility between cross border regions and cities. It is clear that the major impact of NAFTA and other recent free trade agreements has been in general to facilitate the cross border flows of goods and investment capital. Thus, investments can now circulate more quickly between nations and/or sub-regions taking advantage of factors of production such as labour, land, ideas, and capital infrastructure that are unique to one particular area and guaranteed by the boundaries of a nation-state. Indeed, it is often argued that this new world system of fast moving capital flows requires differences and inequities regarding factors of production, especially the New International Division of Labour (Frobel et al., 1980), in order to continue corporate profits and growth. However, one of the many downsides to the benefits of the globalization of capital is that it encourages many developing nation-states and regions to continue comparative inequities with developed countries, such as low-cost labour, land, or lack of strong environmental laws, in order to continue to draw capital investments from beyond the boundaries of the local community.

Two classic examples of the New International Division of Labour, introduced above, are the U.S.-Mexico border region and the Hong Kong-Shenzhen border region of Asia (Wu, 2001). Here, both urban centers in the American Southwest and Hong Kong supply capital and
management while Shenzhen and the Mexican maquiladoras zones supply the sites of operations with an abundance of low paid and seemingly endless supply of workers. However, in bordering countries that have more equal development status, (eg. France-Germany and Canada-U.S.A.), an opportunity exists to allow the more equitable exchange of professionals and workers in general. The European Union’s policy on labour mobility and now NAFTA, in theory, are two good examples of this more equitable availability and accessibility of continental labour. Specifically, more progressive policies exist in the European Union where the EU parliament, working directly with concerned local governments has taken deliberate policy steps to “iron out” many of these differences and inequities with border regions based on so called “zones of contact” (Ratti, 1993) or “transborder regions” (Wu, 2001). In fact, many opportunities on the other side of international borders encourage the free movement of EU citizens seeking greater economic opportunities. Here, migration and labour mobility is defined by very simple procedures, and there are almost no differences in labour costs between adjoining regions (Wu, 1998: 198-199). Consequently, the European Union has developed policies and a culture that encourages the movement of professionals across borders with seemingly uneventful ease. Ideally, Chapter 16 of NAFTA, which focuses on the temporary movement of business people, should do something similar, for continental North America, but does it? The following sections of this chapter examine the Cascadia region in more detail, both as a region, and also focuses on the separate urban economies of Seattle and Vancouver.

3.2.2 The Cascadia Region

The idea of a Northeast Pacific Coast region has been in the imagination of novelists, journalists and geographers for over the past 25 years. Ernest Callenbach in his 1980 novel, Ecotopia was perhaps the first to capture this imaginary region. The book is a utopian futuristic look (based in 1999) at a politically autonomous Washington, Oregon, and North California. The three-state region has seceded from the United States and operates as a “stable state” economy, banning all internal combustion engines, polluting factories, and military-industrial industries. The society operates as an open equal one, and only small-scale environmentally friendly technologies are allowed within the region. San Francisco is seen as Ecotopia’s capital, but the city is broken down into “mini cities.” There is a strong emphasis on everyone

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21 The book was originally published privately in 1975. The rights to publishing were bought out by Bantam Books in 1979.
within “Ecotopia” sharing the same ethos of an open and spiritually aware group of people dedicated to living in harmony with oneself, the community, and the environmental at large. The vision is perhaps utopian in the sense that even though there are pockets of communities throughout the Northeast Pacific Coast that are still dedicated, for the most part, to this ethos (e.g. Bolinas, California, Bellingham, Washington, and Eugene, Oregon) realistically, the region, as a whole, has a much wider range of values and perspectives than what was originally developed by Callenbach. This is evident in Joel Garreau’s 1981 book, *The Nine Nations of North America*. Garreau not only captured the “spirit” of these environmentally based secessionists but also the tension between different perspectives found within this “Ecotopia” region. For example, Garreau stressed, realistically, that Washington State was also home to The Boeing Company, a leader in not only commercial aircraft, but also key missiles and other sophisticated defense artillery used by the U.S. government in addition to housing a fleet of nuclear submarines in Bangor, Washington. Although Garreau had a much more encompassing perspective of the many realities found in this “Ecotopia”, he also expanded the boundaries of his imaginary of this region to include Southeast Alaska and Western British Columbia and south and eastward beyond Silicon Valley to Davis, California. He not only recognized the economic and political power of the greater San Francisco Bay Area, but also Seattle. Interestingly, Garreau’s defining point of a “boundary” to his Ecotopia is not political, but based on the abundance and immediate access to water and the fact that the mountains serve as a collector of these waters, which make this Ecotopia a distinctive region. Finally, Meinig, in his third volume of *The Shaping of America: A Geographical Perspective on 500 Years of History: Transcontinental America 1850-1915* (1986) provided a historical depiction of the regional connectivity of Washington and Oregon, specifically noting the strong historic economic and social connections between eastern Washington and Western Oregon at the turn of the last century. Meinig discussed at length the political importance and wealth that Washington’s Inland Empire and Portland, Oregon amassed by shipping grain to various regions in Europe during repeated times of political turbulence in the late 1880s and early 1900s. Meinig also provided an elegant account of the overall regional Pacific Northwest and the politics between Eastern and Western Washington, the influence of Oregon and California

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22 The Inland Empire is centered on Spokane, Washington, and its region includes much of the Columbia River Basin, northern Idaho, northeastern Oregon and northwest Montana.
in these matters, and the “American Influence” into British Columbia during this time period. In sum, Meinig provided an excellent historical account of regional relations, roughly 100 years ago that may still be found in this “Ecotopia” today.

The above discussion of recent ideas, imaginaries, and histories surrounding the various regions located within the Northeast Pacific Coast lands (and inland areas) helped to provide a foundation as to where the concept and term “Cascadia” may have originated. The original concept of the term “Cascadia”, was a natural, ecological one, developed by David McCloskey at Seattle University in 1988. McCloskey’s northern and eastern boundaries of “Cascadia” were similar to Garreau’s, being the pan-handle of Southeast Alaska, and the spine of the Canadian Coastal-U.S. Cascade/Sierra Nevada Mountain Ranges. However, McCloskey’s southern boundary of Cascadia only extended to Mendocino, California. McCloskey argued that the commonality of this territory was its temperate rainforest ecology and was bounded by the B.C. Canadian Coastal/Washington-Oregon Cascade and California’s Sierra Mountain Range in the east and the Pacific Ocean to the west. Although McCloskey used physical features to determine Cascadia’s boundaries, he argued that the word “Cascadia” represented the many waterfalls that may be found within this temperate mountainous area. In fact, McCloskey’s idea of Cascadia “a great green land on the Northeast Pacific Rim” may be defined as follows:

Cascadia is a land rooted in the very bones of the earth, and animated by the turning of sea and sky, the mid-latitude wash of wind and waters. As a distinct region, Cascadia arises from both a natural integrity (landforms and earth-plates, weather patterns and ocean currents, flora, fauna, watersheds) and a socio-cultural unity (native cultures, a shared history and destiny.) One of the newest and most diverse places on earth, Cascadia is flowing land poured from the north Pacific rim. McCloskey 1988 cited in Artibise 1996

(Please see Illustration 3.1 for a visual depiction of this original concept of Cascadia.) Since this time, the “Cascadia” concept has grown into a more political and economic term, and is currently used, or perhaps “misused” by a variety of academics and business organizations.

23 It is essentially a connected chain of mountains, but each adjoining political territory calls its portion of the range by a different name.
24 Dr. David McCloskey is apparently suing Dr. Alan Artibise for copyright infringement over the term and idea of “Cascadia.” Dr. Matt Sparke, Public Lecture, UBC Department of Geography Guest Lecturer Series. March 29, 2006.
dedicated to a more “pro business” environment within the Cascadia corridor. Specifically, professor Alan Artibise formerly at the University of British Columbia and now at Arizona State University has developed ideas revolving not only the cultural connectivity, but also the possible economic connectivity with the region of Cascadia. Artibise’s idea of Cascadia reaches more within the boundaries of British Columbia, Washington State, and Oregon with the Whister, B.C. to Eugene, Oregon corridor deemed its “Main Street” (Artibise, 1996 and Piro, 1995). (Please see Illustration 3.2 for a more economic depiction of Cascadia.)

Since the early 1990s, a substantial organizational infrastructure has grown up to discuss common goals and objectives in the development of this CBR, as well as cross border growth strategies and trends and patterns relative to the growth of the region. Specifically, the Pacific Northwest Economic Region (PNWER), based in Seattle, represents two Canadian provinces, namely, British Columbia and Alberta, five U.S. states, namely, Washington, Oregon, Idaho, California, and Alaska and one Canadian territory, Yukon. PNWER has been in existence since 1990 and has not only worked to lobby Washington D.C. and Ottawa on issues pertaining to its western members, but also to develop and/or resolve issues between the region’s members, such as the “Wheat Summit” held in 1998 and now is dedicated to energy issues and other matters of a “western” North American nature, but increasingly include California (informally) in its activities and meetings. The Discovery Institute, also based in Seattle, may be considered a conservative neo liberal think tank and has been in existence since 1991. Since the Discovery Institute’s inception, it has worked on a number of projects and issues related to the concept of Cascadia. However, through the development of the Discovery Institute’s identity over the past fifteen years, it has finally settled on issues regarding transportation when it comes to dealing with the Cascadia corridor, and is currently working as a facilitative force towards the implementation of tolling “freeways” within the Seattle region. From a perspective of governance, there is an annual meeting of the two governors of Washington and Oregon with the Premier of British Columbia to discuss matters that affect all citizens within their areas of jurisdiction. As well, the Georgia Basin Initiative, developed by former B.C. Premier Mike Harcourt, is a joint initiative between B.C. and Washington state dedicated to the stewardship of the marine waterways and drainage basins that surround the lower portions of British

25 The Discovery Institute helped to develop the idea of the “Two Nation Vacation”, which included travels between B.C. and Washington state in addition to attempting to secure a cross border Summer Olympic bid between Seattle and Vancouver for 2008.
Columbia and extend to the Southern Puget Sound in Washington State. From a cultural perspective, *The New Pacific* magazine was created in the early 1990s and was dedicated to business and more “main stream” environmental issues throughout the Vancouver-Seattle corridor. Its circulation included greater Vancouver and Seattle, but it ceased publishing in the late 1990s due to a lack of financing.

Finally, the concept of Cascadia is not without its critics and observers. Matt Sparke (2000, 2003 and 2005) a professor of geography at the University of Washington has offered a sustained neo Marxist critique of the more “business oriented” approach to the idea of Cascadia. Although Sparke (2005) spent considerable time deconstructing the more business minded “free market promoters” found within the Cascadia region, he dedicated very little effort in his work, if at all, towards a more acceptable vision of what his ideal construct of Cascadia would look like, and how it would actually function as a “sustainable” region.  

Perhaps a more balanced critique of “Cascadia” may be found in the works of Susan E. Clarke (2000, 2001, 2002 and 2004) at the University of Colorado. Over the past eight years, Dr. Clark has observed the regional governmental, public, and private networks that have emerged within Cascadia. Based on her professional observations, she has offered varied critiques of these activities and actors, and how these activities and their actors may have long-term influences within the Cascadia region, as well as comparing the varied “bottom-up” activities within the Cascadia region to the more formal “top-down” activities emerging within Europe’s border regions, as a result of direct EU governmental policy (op cite, 2002).

The above three paragraphs touch on the many different ideas, institutions, activities, actors, and critics that surround the idea of “Cascadia.” However, there has been no research and policy development on labour mobility and common labour force issues per se. Thus, it is hoped that this thesis will contribute to providing a foundation of evidence towards the needs of cross border labour mobility and common labour force needs within the Cascadia corridor. The following paragraph discusses in some detail historic relations between B.C. and Washington State, and then moves on to an introduction to the economies of Vancouver and Seattle.

26 The author asked Dr. Sparke what an ideal construct of “Cascadia” would entail. Dr. Sparke responded with a somewhat vague approach stressing that a better idea of Cascadia would be more “sustainable” without further elaboration beyond Washington State and B.C. government initiatives stemming from the original Georgia Basin Initiative. Dr. Matt Sparke, Public Lecture, UBC Department of Geography Guest Lecturer Series. March 29, 2006.
CASCADIA

Source: David McCloskey, 1988

Illustration 3.1
Economic Cascadia

Source: Alan Artibise, 1996

Illustration 3.2
From a more western regional perspective, despite its green calm “Pacific” nature, Cascadia has been riddled with border conflicts, most recently due to the 1997 ‘Fish Wars’ and continual softwood lumber disputes, which was settled between Prime Minister Stephen Harper and President George Bush in the Spring of 2006. In part, many of these disputes are due to both sides of the border specializing in similar undifferentiated primary products (e.g. timber and seafood) exported either across the border or to the same third markets, such as Japan (Kresel, 1992:71). Unlike the more sophisticated crossborder production coordination of the just-in-time (JIT) auto manufacturing networks between Ontario/Michigan/New York, and the well thought out policies of the 1965 Auto Pact and now NAFTA (Molat, 2000), there appears to be a “winner take all” approach to competition and the sale of natural resources between British Columbia and Washington (Kresel, 1992). The mentality is that any sale in such an environment necessarily entails the diversion of a stream of revenue from one vendor to another (ibid.). Typically, the firm that loses “the big contract” files a complaint with the relevant trade agency (such as the NAFTA or the WTO), as has been the case over the years.

However, it is important to note that although the firms and economies of British Columbia province and Washington state appear to be severe competitors and may be regular petitioners in trade complaint procedures against each other often over raw materials, this has little or nothing to do with relationships between the producer service economies of Vancouver and Seattle (Kresel, 1992). Specifically, the Cascadia urban core region may be unique along the Canada-U.S. border in that there is a ‘core city’ to ‘core city’ relationship, namely between the quaternary economic sectors of Vancouver and Seattle. Both these cities are relatively fresh young urban centers still developing their identities (Artibise, 1996) and have established a reputation as magnets for high tech executives and professionals alike workers from around the world seeking a solid job in addition to a high quality of life (B.C. Biotech, 2004). In Vancouver, there is evidence of this through the high technology sector ranking as the fastest sector for incremental growth for three years in a row (2000-2003) (BC TIA, 2003). Seattle, by contrast, contains larger and more mature firms, especially Fortune 500 companies such as Microsoft and Boeing, and has attracted start-ups such as Amazon.com. Indeed, high tech is still Seattle’s fastest growing employment sector despite the post ‘dotcom’ fallout (Puget Sound

27 The Canada-U.S. softwood lumber was originally settled under NAFTA dispute resolution proceedings in late 2004, although the U.S.A. did not recognize the official arbitrators’ ruling, which favors the Canadian position. The U.S.’s lack of respect for the NAFTA arbitrators’ ruling put into question the legitimacy of NAFTA as a trade agreement and its subsequent dispute resolution mechanism.
Please see Figure 3.1 for a visual depiction of the numbers and types of Canadian entries at U.S. ports of entry into the U.S. between the Seattle and Vancouver corridor. Figure 3.1 helps to demonstrate that business travel is still a relatively minor component (8%) compared to the other types of crossing from Canada into the U.

Figure 3.1

Source: Hacker and Associates, 1997; U.S. Customs and Border Protection Port of Blaine, 2004; and interviews with various DHS port of entry personnel 2002-2004

The following sub-section explores the two separate economies of Seattle and Vancouver in more detail, and examines the two cities' future needs for foreign highly skilled workers. The next section of the chapter examines immigration visa/status regulators. It covers Cascadia’s wider context and then assesses how NAFTA’s Chapter 16, which was designed to facilitate cross-border labour mobility, provides an opportunity for closer integration as well as possibly imposing constraints on IT labour mobility within Cascadia.
3.2.2.1 The Seattle Economy

The city of Seattle and its surrounding region can be described, in general, as a great success story in its ability to grow from a mere trading post and logging village in the late 1800s to a city hosting the head offices of five fortune 500 companies, namely Boeing, Microsoft, Weyerhaeuser, Nordstrom, and Starbucks Coffees. Not only does Seattle support these major firms, but it also hosts over 1,000 high tech firms, a robust and internationally competitive port and shipping industry, and a rapidly emerging biotech industry (Gray et al., 1999). This section discusses some of Seattle’s major strengths as an economy, and how the region is fairing in light of the ‘bursting’ of the ‘dot-com bubble’ in 2000 and the post 9/11 economic fallout.

3.2.2.1.1 Seattle’s ‘Hub and Spokes’ Economy

Gray et al. (1999), deemed Seattle as an outstanding American ‘hub and spoke’ city, which has been understudied and unappreciated, both as a city and as a development concept. Essentially, a hub and spoke industrial district may be considered as a region that hosts one or more industries, each with one or a few dominant “hub” firms surrounded by smaller firms which are tied, through origin and/or ongoing exchange relationships, to the larger firm (Gray et al., 1999). However, the hubs are also usually engaged in various relationships, such as branch plants, suppliers, customers, and competitors. As well, there are also relationships outside of the region which can range anywhere from national to international in nature.

3.2.2.1.1.1 Aerospace and Software Sectors

The world’s most successful aircraft manufacturer and military defense developer, namely Boeing Corporation, began south of Seattle in the early 1900s. Boeing’s success over the years has made it the number one employer in the Seattle region, directly responsible for over 80,000 jobs as of 2003.28 Boeing may be considered, therefore, as a ‘hub’ within the classic ‘hub and spokes’ model, since many smaller firms within the Seattle area are somewhat dependent on Boeing contracts. However, due to Boeing’s international scope, especially with its commercial airplane sales, only about 15 percent of Boeing suppliers have been locally based (Beyers, 1993). Additionally, Boeing has a policy not to be supportive of the spin-off firms it

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28 Although Boeing’s main headquarters are located in Chicago, Illinois as of early 2001, Boeing’s commercial headquarters still remain in Seattle, Washington.
generates, to the point that it refuses to purchase from companies owned by former employees for a period of five years (Gray et al., 1999). Although some may consider this a strict and unbending policy, it has often forced local firms to not be entirely dependent on Boeing, and required that new supply firms also develop their own relationships with other firms and government. So, when Boeing has suffered economic setbacks, such as declining defense procurement through the U.S. Pentagon, other firms in the Seattle area have not been as affected as if they had depended only on Boeing contracts.

Overall, Boeing may be considered most powerful in its role as a ‘regional agglomerate’, specifically in its capacity to influence the regional economic infrastructure and labour pools. For example, many engineering and supply firms have located within the Seattle area in order to tap into the regional labour pool, specialized business services, and the business opportunities provided by Boeing employees’ affluence (Gray et al, 1999). Additionally, the presence of the Seattle aerospace hub has influenced the development of the quickly growing software hub. Boeing Computer Services (BCS) established in 1970, provided internal services to Boeing as a whole, and by 1989, it was the region’s largest software developer with around 6,000 employees (Chase, 1991). From a regional development perspective, BCS was most influential in providing a critical mass of highly skilled software professionals, who were recruited nationally and bolstered the regional labour pool with a critical mass of expertise. Thus, these recruited software professionals provided a local labour pool to draw from for hundreds of smaller software companies established in the 1980s, which included the now software giant, Microsoft.

Microsoft Corporation is perhaps the most well known ‘hub’ high technology firm associated with the Seattle metropolitan economy. The enterprise gained its lead in the industry by tying its product, the operating system MS-DOS for IBM and IBM compatible microcomputers, to the sale of microcomputers themselves. The firm then took an international lead in the software industry through product innovation, through purchasing other competitive firms and their products and through the aggressive use of the courts to protect its patents (Gray et al., 1999: 277). Today, Microsoft has matured beyond its era of expansive innovation and focuses more on market penetration, cost control, and service. Similar to the aerospace industry, its primary contribution to the region is through the formation of a highly skilled labour pool (ibid.). This labour pool has not only contributed to the development of the region’s software
industry, but has also provided an array of professionals that the emerging regional biotechnology cluster can draw from, especially since computers are an essential tool in biotechnology research. The following subsection provides a synopsis of Seattle's growing biotechnology cluster, and ends with how the region has recovered from the dotcom bubble bursting in year 2000, and its response to the needs of a post 9/11 world.

### 3.2.2.1.2 Seattle's Emerging Biotechnology Economy

Over the past fifteen years, Seattle has emerged as a leading national cluster of biotechnology firms with over 60 firms within the area in addition to a complementary medical instrumentation industry. The literature review in Chapter 2 revealed the importance of regional institutions. Here the University of Washington and the Fred Hutchinson Cancer Research Center (the “Hutch”) have been the two lead institutions in the biotechnology industry, employing over 1,700 professionals (Gray et al., 1999). Approximately 700 of these people are faculty with joint appointments at the University of Washington. There is a strong cluster effect within the biotech sector with approximately 30 percent of newly created firms are “spin-offs” from the University of Washington and/or the Hutch. The cluster is still considered in its infancy, but it is growing with Amgen, ICOS Corp, Zymogenetics, Inc. and Cell Therapeutics, Inc. as the top four firms in 2005 (Puget Sound Business Journal, 2005) and ever growing alliances with pharmaceuticals. Continuing to be a leader in securing federal research funds, the University of Washington receives more federal research funding than any other American public university, a position it has held each year since 1974. Since 1991, the UW has ranked second among all universities, both public and private, in competing for federal science and engineering grants (University of Washington, 2006). Additionally, Bill Gates, cofounder of Microsoft Corporation, is a strong proponent of the regional biotechnology industry, and has endowed the newly created Department of Molecular Biology at the University of Washington with a $12 million dollar donation. From a futurist's perspective, both Bill Gates and Paul Allen (cofounder of Microsoft) see biotechnology to be an economic leader in the coming years, and have made personal contributions in the form of not only endowments, but also investments of their own personal wealth into local biotechnology firms.
3.2.2.1.2 The Seattle-Post dotcom Bust and September 11 Fallout

Since the bursting of the dotcom bubble in late 2000 and early 2001, Seattle’s labour market has been severely impacted with job losses of over 10,000 up to 2003 and firms closing in every sector. Overall, Seattle was one of the most heavily impacted cities after the bursting of the dot-com bubble, with unemployment rates still around 7.7 percent in 2004 while the national average was around 5.88 percent (Office of the Forecast Council cited in Jones, 2004). Yet, at the end of 2005, Seattle’s software industry was beginning to rebound, but at that time, it was below levels of growth in the late 1990s. Some of this relative decline has been attributed to Microsoft continuing to offshore work and expanding its software campuses in India and other offshore destinations, while curtailing expansion plans at its headquarters in the Seattle suburb of Redmond, Washington (Mahapatra, 2005).

Additionally, post 9/11 impacts affected the Seattle area in the form of decreased airplane orders for the Boeing Company. Immediately following September 11, 2001, the demand for jet airplanes declined dramatically. For example, Boeing went from delivery of 527 planes in 2000 to delivering slightly less than 300 planes in 2002, and consequently had to layoff over 30,000 people worldwide including 16,000 people in the Seattle area, by the end of the year (Morgan, 2002). Although there was speculation that Boeing would recover it production levels by 2004, the company was still not within its recovery target range by the end of 2004. The losses, during this time period (2001-2004) fueled a bitter dispute between the company and its highly unionized Seattle based employees over job security and pension rights. Part of this is attributed to the general cyclical down cycle after 9/11. But more importantly, there has been greater concern over permanent job losses to countries in the Asia Pacific region and the continuing downsizing of production across the post industrialized world, regardless of post 9/11 fallout (Morgan, 2002).

In late 2005, the Seattle economy was beginning to show signs of a rebound, with Boeing setting a record for commercial airplane orders, beating its previous record set in 1988 (Linn, 2006). However, after the tough and difficult recession of the early 2000s, the region is still encouraging diversification by reviving the remaining high tech firms in addition to the infant industry of biotechnology. Despite this growing sense of economic optimism found in 2006, there has been a sense of caution that comes when a city begins to mature. Historically, Seattle has always been a “boom bust” economy since the late 1800s, so its inhabitants may be
somewhat used to these dramatic economic swings (MacDonald, 1987). However, until late 2001, Seattle's economy accomplished an astounding 15-year boom. Oliver Morgan of *The Observer* newspaper captured the more cautious post dot-com spirit and aftermath of 9/11 with the following quote:

> Five years ago the city was celebrating a modern-day gold rush. Jobs in IT multiplied as Bill Gates's Microsoft soared, and the boom was fuelled by the likes of Jeff Bezos' Amazon.com, which sucked in talent from California and the east. Internet whiz kids fuelled by Starbucks coffee flew round the globe on Boeing jets. Seattle's glitter began to fade with the infamous World Trade Organization meeting in 1999, marred by anti-globalization protesters. Three months later the dotcom boom ended, and IT jobs were flushed away. Washington State now has the second highest unemployment rate in the US - 7.3 percent compared with the national 5.8 percent. Seattle is still a dynamic, optimistic and highly attractive city, bordered on one side by Puget Sound and on the other by spectacular mountains. But the economic realities are unavoidable (Morgan, 2002: A8).

Johnathan Raban, an award winning British writer, who now makes Seattle his home, summed up the cultural realities of post dotcom and 9/11 Seattle recently. In an interview with the *Seattle Times* in September 2003 about his latest novel, *Waxwings*, a book about the lives of two immigrants grappling with the American experience in post 9/11 Seattle, Raban expressed the following:

> Seattle Times: You’ve lived in Seattle for 13 years. How has it changed?

> Raban: It’s come down (from the dot-com boom) with a bump. To me that’s a good thing. There was a sense of everyone being wildly over promoted; the waiter (at your favorite restaurant) should have been a dishwasher; the owner should have been a waiter. There was a kind of inflation of roles. I like the mood of chastened realism that’s crept into Seattle life. Seattle is a much more realistic city now. (Gwinn, 2003: A8)

Perhaps as Seattle begins its second century as a leader in the new economy and well situated on the Pacific Rim, its labour market may grow and excel with a mature sense of cautious optimism, which may be more similar to its northern 'sister city' of Vancouver, B.C. As MacDonald (1987) states, both Seattle and Vancouver emerged as cities around the same time in the late 1800s, but Vancouver grew more slowly and cautiously, with heavier government intervention in its development and planning processes as compared to Seattle’s developer dominated culture of growth. Although the more mature industries of timber and fishing compete against one another in a regional context between British Columbia and Washington
State, it is unknown if the newer economies, such as high technology and biotechnology, are competing or complementary economies between Seattle and Vancouver. In fact, this particular conundrum is something the empirical work from this study will help to provide more factual information on in Chapter 4. The next section covers the economy of the city of Vancouver. It has been, perhaps, more successful than Seattle in the past 30 years in attracting outside investment and immigrants primarily from the Asia Pacific region, although its new IT sector has not generated the large number of jobs that Seattle has. Indeed, despite the fact that the Vancouver economy was not as heavily impacted by the dot-com bust and post 9/11 fallout, the regional economy still has experienced setbacks in the past six years (2000-2006). However, many commentators believe that the new economy of Vancouver has much to offer in the future especially with the telecommunications sector, software for electronic gaming, and world-class biotechnology development. The economic profile of Vancouver is where we now turn to.

3.2.2.2 The Vancouver Economy – From Peripheral Hinterland to Growing New Economy

Vancouver began its identity in the late 1800s as the western most point of the Canadian Pacific Railroad, a port city for exporting commodities for all of western Canada and the entry point of goods coming from the Asia Pacific (MacDonald, 1987). The greater Vancouver area was based in a tradition of resource-exploitation, with timber exports and, to a lesser extent, mining exports producing the major thrust of growth. These two hinterland staples helped to set the economic culture of the region for over 75 years, or what Innis (1999) describes as a classic staples economy. However, the robustness of natural resources began to wane in the early 1980s (Barnes 1996). This required that Vancouver begin to diversify its economy to high value added services such as tourism in addition to encouraging foreign direct investment and immigration from Asia Pacific economies such as Hong Kong and Japan (Edgington and Goldberg, 1992; Edgington, 1995; and Hutton, 1998). Vancouver emerged as a world-class destination point by hosting the World’s Expo in 1986. In addition to notoriety and international attention, the city at this time also received enormous infrastructure upgrades. These funds, primarily from the Federal Government of Canada, allowed the city to clean up its old polluted lumber yards and harbours (e.g. False Creek), and transformed these areas into what some consider post-modern sites of entertainment and human habitat, contributing greatly to Vancouver’s international reputation as a “Livable City” (Ley et al., 1992). In fact, what is
now known as Granville Island and the redeveloped Expo site are probably the best examples
of Vancouver's almost immediate transformation from a timber town to a metropolitan
 economy based on service sector employment and tourism.

### 3.2.2.1 Vancouver as a Site for Immigrants and Foreign Direct Investment

Compared to Seattle, immigration and foreign investment have been more important to
Vancouver. Canada, generally, has always been a draw to foreigners and overseas workers
wishing for a new and better life in North America. In fact, Canada is the one of the few
remaining developed countries in the world that still provides reasonable access to foreigners
wishing to immigrate permanently. At a national level, Canada used its open immigration
policy to its advantage in the 1980s and 1990s by aggressively advertising Canada as a place to
live in Hong Kong and East Asia as the 1997 China takeover deadline loomed (Ley, 1996;
Mitchell, 1996; and Waters, 2000). This national recruitment strategy helped to lure wealthy
Hong Kong residents to Vancouver as a new home, and Canada, more generally, as a country
ripe for their foreign/domestic direct investments and a depository of their vast amounts of
personal wealth. The so called “business migration plan” worked reasonably well with many
Hong Kong residents moving to Vancouver and other large urban centers over the course of the
late 1980s and 1990s (Waters, 2000). In fact, as of late 2004, over 40 percent of the population
of suburban Richmond, B.C. spoke Cantonese as their original language (City of Richmond
Official Web Site, 2004). Additionally, Hong Kong investments have found their way into
condominium developments, helping to transform parts of the skyline of Vancouver, which is
now often know to resemble the urban architecture of Hong Kong (Hutton, 1998). However,
Canada has not been as successful in convincing these new Asian residents and citizens to
invest a significant amount of their personal fortunes in Canadian business due mainly to
Canada’s high personal and corporate tax levels and limited investment returns at a domestic
level (Ley, 2005). In fact, this is a growing area of frustration for Revenue Canada and
Citizenship and Immigration Canada to the point that immigration officials have often stripped
new permanent residents of their status when they attempt to reenter Canada from abroad,
citing the fact that they have not truly immigrated to Canada.

Perhaps a more “acceptable” form of recent direct foreign investment into Canada from Asia is
the country of Japan. Japan has invested in the natural resource economy of western Canada
for over two decades with relatively positive financial returns on their areas of interest. Over
the past twenty years or so, these investments have also focused on tourism in the Canadian West (Edgington, 1995). In the late 1980s, Japanese Sogo Sosha, or the foreign trading companies component of the massive kereitsu business groups invested in hotels, ski resorts, and other travel amenities that were popular with Japanese tourists, hoping to recoup these Japanese expenditures in B.C. when their citizens traveled to Canada. Despite the fact that Japan has a world-class electronics industry and a burgeoning biotech industry, Japanese firms have chosen to not invest in these industries within the Vancouver area, favoring Silicon Valley and the greater Los Angeles area as major North American destinations for R&D based investments (Florida and Kenney, 1994). Nonetheless, high technology production and biotechnology in Vancouver are fast growing industries, with high technology out-pacing timber as metropolitan Vancouver’s third leading employer in 2003, just behind tourism and construction (BC TIA, 2003). Additionally, the biotechnology industry, although still in its infancy, is seen as a rising continental star, ranking third in North America with numbers of biotech firms (61) in the Vancouver area, just behind San Francisco (71) and Boston (65) (Vancouver Economic Development Commission et al. and Sui, 2002). It is these two newer industries to which the discussion turns.

3.2.2.2.2 Vancouver’s Fledging Industries of High Technology and Biotechnology

The development of the high technology sector in British Columbia in the 1980s was seen as an opportunity for British Columbia to move away from the cyclical resource industry of timber to an industry, which provided longer-term employment for an increasingly highly skilled workforce. The sector has gone from employing 23,000 workers in the late 1980s to 45,000 workers in 2005 (BC TIA, 2006). Revenue for this industry has grown from approximately $5 billion in 1997 to over $6.3 billion in late 2005 (BC TIA, 2006). Although the bursting of the dotcom bubble in 2000 impacted growth on the BC provincial revenues, the industry could be described as volatile even before 2000, with grow rates varying from $7.6 billion Canadian to $4.1 billion Canadian in 1998 (Rees, 1999). However, despite the volatility in corporate revenue, the industry has moved from a stage of infancy in the early 1990s to one characterized by gaining a stable critical mass of growth through firms and employees by the late 1990s. Although the industry suffered from the post dotcom shakeout in 2000, followed by a post 9/11 economic slump, the high technology industry rebounded with employment growing by 2.7 percent in 2004 to a level of 45,000 workers. In fact, the Vancouver region did not suffer through the 2000-2001 recession as severely as its southern neighbor, Seattle, in terms of
comparative losses in employment and revenue (BC TIA, 2003). This may attributed to the fact that the Vancouver based firms did not have such the easy access to U.S. based venture capital as the Seattle firms enjoyed before the dot-com bust, nor was the high technology sector as developed as its southern neighbor. Thus, Vancouver firms were not as highly leveraged as their Seattle counterparts when the bubble bust, and so they could ‘ride out’ the dramatic economic restructuring after year 2000 since they did not have the higher debt loads of Seattle based firms (International Financial Centre, 2000).

Unlike the software side of high tech, Vancouver’s fledging biotechnology industry was not as directly impacted by the bursting of the dotcom bubble or 9/11 fallout. In fact, overall, the biotechnology has gained substantial ground over the past fifteen years with over half of the 61 biotechnology firms in Vancouver being created since the early 1990s (BC Biotech, 2003). However, the industry may be characterized as comprising small enterprises with an average of just 25 employees per firm, and the largest firm employing just over 300 employees in 2004 (BC Biotech, 2004). The medical biotechnology industry is the second largest component of the high technology sector in Vancouver, and employs over 3,000 people. In the recent past, the majority of these firms have been primarily involved in the “research” component of “Research and Development” which include the exploration and development of compounds. If successful, these nascent enterprises will eventually lead to more lucrative commercial pharmacological and diagnostic applications. However, in the past two years a significant number of firms have begun to enter phases I, II, or III of clinical trials. This implies that the Vancouver biotechnology cluster is entering into a more “development phase,” overall.

As of 2004, only two biotechnology firms have successfully launched products onto the international market of pharmaceuticals, namely QLT and Angiotech. Unfortunately, one of the larger B.C. biotechnology firm’s main drug product did not satisfy the Oncology Drug Advisory Committee (ODAC) of the U.S. Food and Drug Administration arm of approval Marquibo on December 1, 2004. In fact, the ODAC recommended against fast-track approval.

29 The biotechnology industry is comprised of biopharmaceutical and biodiagnostic companies which include activities that apply recent developments in recombinant deoxyribonucleic acid (DNA) research and genetic engineering to the innovation and production of drugs, enzymes, and other therapeutic items and complex molecules (Defined by the U.S. Census and reconfigured by BC Stats 1996/2003 in Rees 1999. Additionally, Rees (1999:134) expands on this definition to include the biodiagnostics industry, which uses these technological advancements to generate enzymes and new assays to determine and occasionally measure the presence of medical conditions.

30 An anti-cancer drug that targeted a particularly deadly cancer called non-Hodgkin’s lymphoma (NHL).
and threw out data on 47 of the 119 patients included in the clinical trials (Braun, 2004: B2). This means that the firm, Inex, will have to go through almost three more years of phase II and III clinical trials before the drug is possibly ready for market (Braun, 2004: B2). The experience of this particular firm can be considered somewhat common for a biotechnology firm and represents the long time frame that it takes a firm before a product even comes close to being ready for market. In fact, the average biotechnology firm takes anywhere from 10 years to 15 years in taking a product from conception through development, pre-clinical testing, clinical trials, regulatory approval, and eventual launch on the market (Rees, 1999). These increasing regulatory barriers and precautions have extended market launch time-frames by about 4 years from the 1990s, where the average time frame for a drug to reach the consumer market was 8 years. This experience helps to demonstrate why BC biotechnology revenues comprise only 3 percent of all high technology revenues in 2003. Nevertheless, R & D activity in this industry has continued to grow, and B.C. biotechnology have begun to attract powerful venture capital firms from the San Francisco area such as Burrill and Company, which has formed a strategic alliance with the Vancouver based Qwest Emerging Biotech (VCC) Fund (BC Biotech, 2003).

3.2.2.2.3 Vancouver’s New Economy – All Ring and No Core

Overall, the B.C. high technology sector is much more diversified than just software and biotechnology, which essentially describes Seattle’s situation. Vancouver’s diversification within the sector helps make it much more resilient to industry slumps and product failures. For example, as of 2003, Telus, a telecommunications firm is the IT employment leader, followed by Creo, a high tech printing firm, and thirdly, Business Objects, a firm that makes information management software, (Business in Vancouver, 2003). Since 1995, high tech firms employing over 500 people have tripled in numbers, growing from three firms to nine in 2003 (ibid.). However, unlike Seattle where a few large corporations dominate much of the economic activity in the region, the high technology industry of B.C. may be characterized as having many very small firms and few large firms (Rees, 1999). Contrary to Seattle’s hub and spokes structure, the Vancouver high tech industry may be described as operating as what Storper and Harrison (1991) define as an “all ring, no core” manner (Rees, 1999). This may be characterized by a lack of a core lead firm, such as Boeing and Microsoft in Seattle, and a horizontal production network system of products, as opposed to a vertical and hierarchical system. Its system of governance may be similar to the Marshallian industrial district of Italy,
where there are many highly creative local firms (Piore and Sabel, 1984). However, Rees (1999) stresses that these firms are different from their Marshallian counterparts in the sense that there is an absence of intra-regional collaboration between firms within the Greater Vancouver area, which mitigates against the development of a true regional innovative network. Thus, the mix of innovation in high technology coupled with fragmentation may be deemed as being “territorial innovative, but without milieux” (Camagni, 1995; cited in Rees, 1999). This all ring-no core structure characterized by predominately external collaborative linkages best describes Vancouver based firms as they continue to seek complementary access to basic research, testing, and marketing-oriented activities. This is especially true for the biotechnology sector. The broader high technology industry has significant external linkages derived from increasingly foreign ownership/major investments and information flows extending beyond the local Vancouver area and Canada, generally. A majority of these external linkages for both high technology and biotechnology lead to California. The eastern United States and Western Europe also have strong linkages with biotechnology.

3.2.2.2.3.1 Vancouver’s Ring – External Linkages and the Need for Access and Mobility of the Internationally Highly Skilled

The crucial external linkages for Vancouver’s high technology and biotechnology industry introduced in the preceding subsection are heavily dependent on the movement of internationally highly skilled professionals and executives in order to continue to grow these locally developed industries (Richardson, 2006a). High technology is dependent not only on sending qualified Canadian professionals over the Canada-U.S. border for sales meetings, service delivery, job promotions, and general contact with the parent firm, but it is also dependent on the hiring of international professionals, especially Americans, in order to fulfill its growing professional employment demands. Biotechnology, for instance, is dependent not only on the hiring of world-class scientists and executives, but also on the movement of professional personnel back and forth across the Canada-U.S. border for clinical trials, partnerships with pharmaceuticals, and general collaborative research efforts with U.S. firms and institutions (ibid.). Although a majority of these connections expand beyond the region of Cascadia, a growing number of activities within the high tech section, especially biotechnology, can be found between the Vancouver-Seattle corridor. The software industry of Seattle has always hired considerable numbers of Canadian software professionals, and there is growing long-term activity between the two fledging biotechnology industries of Seattle and
Vancouver, in the form of firm start-ups, executives, personnel, marketing, and financing (ibid). For example, the University of British Columbia’s Nobel Laureate, Michael Smith, co-founded Zymogenetics in Seattle, Washington in the early 1980s. Thus, the need to move personnel back and forth across international borders, especially the Canada-U.S. has become more and more critical. Chapter 16 of NAFTA, which deals with professional labour mobility, seems like a crucial, and rather timely, mechanism to facilitate these movements.

The next section addresses existing arrangements that regulate crossborder flows of professionals and knowledge workers in Cascadia. It will first explore the impacts of broader scale regimes dealing with labour mobility embedded in the WTO/GATT Agreement, and moving to national arrangements, such as the U.S. H-1B visas for foreign professionals. It concludes with closely examining Chapter 16 of NAFTA and its implications for the cross border region of Cascadia.

3.3 Cascadia in Its Wider Context

The preceding section has provided an overview of the Cascadia region and its high tech economies. It is now necessary to explore how exactly NAFTA has impacted labour mobility in the Cascadia region since this is a key question within the dissertation. In addition, it is important to point out that there may be institutional apparatus besides NAFTA that also affect cross border labour mobility within the Cascadia region. This particular section reviews these varied mechanisms including the labour mobility provisions under the General Agreement on Trade and Services (GATS) developed by the World Trade Organization; Chapter 16 of the North American Free Trade Agreement (NAFTA); the U.S.A.’s H1-B visa; and general Canadian professional work authorization for foreigners, which includes the Informational Technology Workers Program. (See Table 3.1 and Table 3.2, showing the different levels and major attributes of these foreign work statuses for Canada and the U.S.A.)

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<tr>
<th>Types of Entry Status</th>
<th>Description</th>
<th>Labour Certification</th>
<th>Length/Renewable</th>
<th>Strengths/Weaknesses</th>
</tr>
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<tbody>
<tr>
<td>H-1B</td>
<td>H-1B status usually applies to a foreign professional with</td>
<td>Employer must ensure that foreign worker is not</td>
<td>Good for up to three years with the opportunity to renew for three more years.</td>
<td>S: Reasonable length of time to work in U.S., and renewable. Can lead to permanent work status (a</td>
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<td>Type</td>
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<tr>
<td><strong>H-1B</strong></td>
<td>Professional work status in the US. Must file through the DHS case-processing center in Nebraska.</td>
<td>Foreign worker must leave U.S. for one year if seeking an H-1B for another three-year term. “green card”).</td>
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<tr>
<td><strong>TN</strong></td>
<td>Applies to Canadian and Mexican nationals who meet the education and/or work requirements for 65 professional job classifications listed under NAFTA. Can file at port-of-entry with all needed documentation. Intended to be self-explanatory, and the applicant should usually not need legal help.</td>
<td>No labour certification is required. This is debatable. TN statuses are only issued for one year. Attorneys and employers say that this status can be renewed indefinitely, but U.S. immigration officials say that the job the TN status is being granted for can take no longer than one year.</td>
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<tr>
<td><strong>L</strong></td>
<td>Applies to intracompany transferees who are executives, managers, and employees with specialized knowledge. Can file at ports-of-entry.</td>
<td>No labour certificate, but person must have worked for at least six for company before transferring. For managers, seven years. All other employees are allowed five years.</td>
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<tr>
<td><strong>B</strong></td>
<td>Applies to business visitors who are traveling to the U.S. trade shows, meetings, training or conferences. Usually conducting intermittent business activity.</td>
<td>No labour certificate required. Allowed for up to one year. Standard status is usually anywhere from one day to a few weeks.</td>
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<tr>
<td><strong>E-1 and 2</strong></td>
<td>Applies to foreign traders and investors that conduct a</td>
<td>No labour certification required. The status is good for up to one year. Can renew this type of visa for up to five</td>
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</table>

S: Fast (ideally) and inexpensive ($56.00 US processing fee). Also, no labour certification. W: Port-of-entry officers are sometimes inconsistent with adjudications. Very little recourse for applicant if application is denied. If application denied, could lead to expedited removal proceedings and possibly bar NAFTA applicant from US for 5 years. Applicants need the help of lawyers.

B: Easy and accessible at port of entry W: Many foreigners do not know they need this type of visa. Cannot be paid by a US employer under this type of visa. S: Accessible visa for traders and investors wishing to do significant amounts with the U.S.
significant amount of business between US and home country.

W: Significant amounts of paperwork. 4-8 weeks to approve.

Source: Much of the above material is from the web site of Joe Grasmick, U.S. Immigration Attorney, 2006, and research interviews for this dissertation work.

Table 3.2 Canadian Temporary and Permanent Entry Statuses

<table>
<thead>
<tr>
<th>Types of Entry Status</th>
<th>Description</th>
<th>Labour Certification</th>
<th>Length/Renewable</th>
<th>Strengths/Weaknesses</th>
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</thead>
<tbody>
<tr>
<td>TN</td>
<td>Applies to U.S. and Mexican nationals who meet the education and/or work requirements for 65 professional job classifications listed under NAFTA. Can file at port-of-entry with all needed documentation. Intended to be self explanatory, and the applicant should usually not need legal help.</td>
<td>No labour certification is required.</td>
<td>TN statuses are only issued for one year. CIC perspective is that the TN may be renewed indefinitely.</td>
<td>S: Fast (ideally) and inexpensive ($56.00 US processing fee). Also, no labour certification. W: Port-of-entry officers are sometimes inconsistent with adjudications. Very little recourse for applicant if application is denied. If application denied, could lead to expedited removal proceedings and possibly bar NAFTA applicant from US for 5 years. Applicants need the help of lawyers.</td>
</tr>
<tr>
<td>General Professional work status</td>
<td>Applies to professional job categories. Similar to the U.S. H-1B, but must get HRSDC approval before making offer to hire foreigner.</td>
<td>Must get HRSDC approval. Employer must demonstrate a clear and deliberate effect to hire a Canadian for position but with no success. Must show job advertisements, etc. to HRSDC.</td>
<td>Work status is usually good for up to three years with the possibility of renewal. May also apply for permanent residency status after one year in the job.</td>
<td>S: Is available for most professional job classifications. W: Must get HRSDC approval, which may take beyond six months. Also additional time and money involved to demonstrate that no Canadian met the qualifications</td>
</tr>
<tr>
<td>Provincial Nominee Program</td>
<td>CIC program run by various provinces (such as B.C.) to “fast-track” various professionally skilled foreigners that the province has a demonstrated shortage in. (IT professionals, health care workers and international students doing graduate work). Also open to foreign investors and entrepreneurs.</td>
<td>Employer sponsors foreign applicant. No HRSDC approval. However, job classifications and very elite and narrow. Also the PNP personnel serve as a screening board for “appropriate” applicants and their job types.</td>
<td>Leads to permanent residency status ideally within 5-12 months of submitting a completed application.</td>
<td>S: Very effective and efficient program for all professional types that fall within the program’s parameters. W: Application process is almost too soon. Firms must spend vast amounts of money (legal fees) ($8,000) and human resource personnel’s time to help foreign employee process application, before employee decides that he/she really wants to live in Canada. This usually takes about two years (learning to like Canada).</td>
</tr>
<tr>
<td>Information Technology Workers Program (Pilot Program)</td>
<td>This is a pilot program to allow for seven different types of IT specific jobs that the government of Canada (Industry Canada, HRSDC, and the Software Human Resource Council) has demonstrated a clear lack of Canadian workers who are able to fill these jobs.</td>
<td>Program has a national confirmation letter from Canadian government attesting that not enough Canadian workers are able to fill these job types. Thus, HRSDC exempt.</td>
<td>Work status is usually good for up to three years with the possibility of renewal. May also apply for permanent residency status after one year in the job.</td>
<td>S: Very fast and efficient for firms needing to hire foreign IT professionals quickly. W: It is a pilot program. Therefore, subject to political whims of the government. (Some components of the program were cut after the new immigration laws were past in 2001.) Also, does not apply to biotechnology field, which is in serious need of foreign personnel.</td>
</tr>
</tbody>
</table>

Source: Much of the above material is from various Citizenship and Immigration Canada official web sites and research interviews for this dissertation work.

### 3.3.1 Mode 4 of the General Agreement on Trade in Services (GATS)

Labour mobility across international borders was first incorporated into an international trade agreement through the World Trade Organization, established in 1996. An outcome of the Uruguay Round, negotiated by the World Trade Organization, includes the General Provision on Trade in Services (GATS). Essentially, the GATS had recognized four modes of service delivery: Mode 1 - cross border supply; Mode 2 – consumption abroad; Mode 3 – commercial
presence; and Mode 4 – the temporary movement of natural persons (TMNP). Of these four modes, Mode 4 is the smallest form of service delivery in terms of both trade flows and the volume of scheduled concessions recorded under the GATS (Winters et al., 2002). Currently, Mode 4 really only applies to highly skilled professionals and executives, especially intra-company transferees that usually follow corporate foreign direct investment. Additionally, Mode 4 of the GATS is usually used by countries that do not already have separate labour mobility agreements with receiving countries, and is especially relevant for professionals in developing countries that seek access to work in developed countries, or, for other reasons, are not eligible under domestic immigration legislation and/or labour market policy. It is argued by some (Winters et al., 2002; and Chanda, 2001) that the Mode 4 of the GATS does not serve developing countries well since their competitive advantages lies with medium and low skilled workers as compared to highly skilled workers. Thus, one strong argument with the further liberalization of Mode 4 of the GATS provision on service delivery is to allow for the international mobility of medium and less skilled service providers (ibid.).

Since the Cascadia region is primarily used as an entry point for movement of skilled professional labour between the western portions of North America and a gateway for the Asia Pacific, the GATS has been seldom used in this region (interview with Douglas/Peace Arch Port of Entry Port Director-Vancouver, September 2003). Reasons for this include the fact that other more accessible visas, such as the Trade NAFTA or “TN” status, the U.S.A.’s H1-B visa, and Canada’s temporary professionals labour entry programs, are used more frequently. These visas are easily accessible and can be considered more “familiar” to the professionals who work with labour mobility visas, for instance, immigration officials and attorneys. These and other types of visas used to facilitate cross border mobility of knowledge intensive employees in Cascadia and will be discussed in the following subsections together with how they are used by immigration professionals, such as attorneys.

3.3.2 Various U.S. Visas for The Admission of Foreign Professionals into the United States

The United States, often deemed as the strongest economy in the world, relies not only on the labour of its citizens for such a robust performance, but also on the capabilities of foreigners, both high and low skilled (Tichenor, 2002). In explaining the rather complex immigration and
visa procedures for cross border labour, I first address the key discrepancies between ‘permanent’ and ‘temporary’ labour visas and migration regulations.

NAFTA has made a significant contribution to the U.S.’s demand of highly skilled foreign workers, having issued over 85,000 professionals TN statuses since NAFTA’s inception in 1994, and growing by about 10,000 TN statuses yearly until 2001, with a sudden drop in numbers, most likely due to the economic impacts immediately following 9/11 (DHS statistics, various years). However, as one can see, from Figure 2.1 in Chapter 2, the NAFTA statuses issued to Canadians are growing again (post 9/11), most likely due to the North American economy rebounding.

However, there is also a need for the U.S. to attract foreign labour originating outside of North America. Thus, the U.S. immigration system allows for the admission of foreigners with executive, professional and technical skills for both permanent and temporary immigration. However, this admission of foreign professionals can be somewhat unbalanced when one considers permanent versus temporary workers. The certification process for admitting permanent immigrants is slow and costly, whereas the process for highly skilled temporary workers or immigrants is fast and relatively inexpensive (Martin, 2001). Nevertheless, both avenues provide options for U.S. employers looking to hire non-U.S. employees, but both options are numerically limited. This section provides a review of both of these types of American professional immigration policies, their strengths and weaknesses, and recent trends in these immigration programs.

3.3.2.1 Permanent Migration of Skilled Workers to the United States

For permanent immigration, the U.S. Department of Labour recognizes five categories\(^{31}\), which allow for an immigrant and his/her family to enter the U.S. for purposes of work based on their

\(^{31}\) The U.S.A. admits permanent immigrants for economic and employment reasons which fall into five preferences that are each numerically limited. They are as follows: 1) Priority workers including foreigners of extraordinary ability such as professors, researchers, and multinational executives and managers-maximum 40,040 annually including families; 2) Professionals with advanced degrees or person of exceptional ability-maximum 40,040 annually including families plus any visas not used in category 1; 3) Skilled and other workers-maximum 40,040 annually including families plus any visas not used in category (there is an annual limit of 10,000 for unskilled workers); 4) Special immigrants maximum 9,940 annually including families (there is an annual limit of 5,000 for religious workers); and 5) Employment-creation investors-maximum 9,940 annually including families (Martin, 2001: 274-275).
personal characteristics or because an employer requested them by name to fill vacant work positions. On an annual basis, up to 140,000 permanent immigrants, and their family members have been allowed to enter the U.S. annually under these five categories. However, this annual quota has never been filled due mainly to the cost involved in seeking permanent immigration status, roughly $10,000-$20,000 in legal and governmental fees, and the fact that Category 3 (which addresses skilled and other workers) requires that the U.S. Department of Labour must certify that no U.S. worker is capable of filling the job in question, a rather severe requirement since it can take anywhere from 2-4 years to satisfy this requirement (Martin, 2001). In fact, the numbers of foreigners seeking entry into the US under these five categories declined steadily in the late 1990s with 123,291 in fiscal year 1994, 117,500 in fiscal year 1996, and 77,517 in fiscal year 1998 (ibid).

Possible reasons for this decline in permanent immigration statuses issued include growing use of the alternative temporary H1-B visa for foreign professionals. Additionally, as noted, the cost for preparing permanent immigration status applications is prohibitive for many companies that are in a "cost-cutting" mode, as well as the fact that visa processing time delays make it almost impossible for a firm in an era of just-in-time recruitment to have to wait for two to four years to secure a suitable visa for a perspective employee.

Thus, almost by default, this program appears to only serve large corporations that are multinational in nature, unique institutions such as universities and research units, and somewhat wealthy families wanting to sponsor an additional relative into the U.S. as a "bogus" employee (Martin, 2001), since, as mentioned previously, any legitimate firm does not usually have the time to wait 2-4 years for an employee, especially at a medium to low skill level. Specifically, large multinationals are the only types of firms that can fall into category 1 of this program area, and are most likely to have lobbied the U.S. Congress on these issues. Smaller firms that wish to move their employees across borders into the U.S.A. are not eligible under this particular category due to their limited size (less than 1,000 employees). In effect, this elite visa status is not available to smaller firms due to their size, and presumably their limited affect on the economy as a whole. One of the biggest public criticisms of permanent immigration for category 3 is the "sham" recruitment for positions that are already being filled (illegally) by foreigners, or families sponsoring their relatives as needed employees. For example, the U.S. Department of Labour investigated 24,000 jobs advertised under this
program. Over 165,000 U.S. applicants applied for the positions listed, but in almost every case, the U.S. worker was not hired, and the employer was then permitted to hire the foreigner (Martin, 2001).

Finally, the question of national interest may be applied to this type of permanent immigration policy. In other words, any employers have the opportunity to reward their foreign workers with the possibility of eventual permanent immigrant status, or, by sponsoring family members to come to the U.S.A. as employees for lower skilled work (e.g. within family owned businesses). Specifically, between 1988 and 1996, the U.S. admitted as economic/employment immigrants, some 40,000 housekeepers, nannies and domestic workers, 15,000 cooks and chefs, 3,000 auto repair workers, 252 fast-food workers, 199 poultry dressers, 173 choral directors, 156 landscape labourers, 122 short-order cooks, 77 plumbers, 68 doughnut makers, 53 baker's helpers, and 38 hospital janitors (Martin, 2001: 277). These examples of perhaps “misusing” permanent immigration policies have led to a calling of reform for the system. In fact, Martin (2001) has made the recommendation that applicants pay a fee to the U.S. government ranging in the sum of $7,000 - $10,000, which would then go into a fund to train U.S. workers for jobs. The DOL labour certification process would be abolished, and ideally, this would also erase the need for attorneys to “Shepard” the process, thus saving the applicant $10,000-$20,000 in legal and governmental fees. However, no feasible ideas or solutions have been presented on behalf of smaller start-up firms wanting to make use of permanent immigration for their foreign employees. Thus, by default, many firms turn to the somewhat cumbersome and numerically limited H1-B visa when they are in need of foreign professional employment.

### 3.3.2.2 U.S. Temporary Immigration - The H-1B Program

By the year 2001, there were 14 types of non-immigrant visas for foreigners seeking work in the United States (Martin, 2001). Beginning in the early 1990s, the U.S. developed a number of these foreign worker programs. Each visa program has been designed for a very limited area of the labour market, with the H-1B program being the largest when it comes to admitting highly skilled foreign workers into the United States. Overall, all non immigrants seeking temporary entry into the U.S. for purposes of work must demonstrate that she/he will leave the U.S. when the visa expires, and show ties to their country of origin. Most non-immigrants may bring their family members, but family members are usually unable to work in the U.S. unless
the spouse attains his/her own work status/visa. Finally, there are usually no limits for the majority of these non-immigrant visas, except for the important H-1B visa type, since it is used so frequently. In fact, U.S. Congress sets its limit annually with a minimum ceiling of 65,000 visas, which has in the recent past been raised to 107,500 for fiscal year 2001. The actual limit was set in 2000, which was the height of the dotcom bubble. However, despite the bursting of the dotcom bubble, there was still a high demand for foreign highly skilled professionals. Thus, congress relaxed the cap to 195,000 for 2001 through 2003 (McHale, 2003). It returned to 65,000 in 2004.

Essentially, the H-1B program allows U.S. employers to admit foreigners into the U.S. as professional employees. The current program was established under the Immigration Act of 1990, although its roots go back to the 1950s (Martin, 2001). Under the H-1B program, the potential applicant must have at least the equivalency of an undergraduate degree. The prospective employer does not have to submit a labour certification, unlike the case of a permanent immigration visa requirement for foreign professionals, as discussed in the preceding section. In this case, the employer must attest that he/she is offering the H-1B visa worker “going wages” within the workplace; that the working conditions do not adversely impact, or under-cut U.S. employees' working conditions; and also that the foreign employee does not fill a position caused by any strike or lockout (ibid.). If issued, the H-1B visa is valid for three years, and this can be renewed for another three years. Finalizing of any application usually takes anywhere from two to four months to process. The H-1B program visa is limited in its duration though. Thus, after six years, any visa holder must apply for permanent immigration, usually through being sponsored by his/her place of employment or must return home for one year. In the recent past, it usually took anywhere from three to four months to process a more permanent “green card” application. In the late 1990s, a prospective employer could pay an additional $1,000 to “fast track” an H-1B application, and if successful, the visa will then be issued in two weeks (ibid).

As noted earlier in this thesis, the 1990s saw a boom in the information technology (IT) industry, and in fact, this sector made up half of all requests for H1-B visas (Martin, 2001). The IT industry also took the lead to lobby U.S. congress to raise the H-1B capacity to 195,000 visas in 2001. The U.S. Congress complied, but only with the requirement that each application for an H1-B visa should be accompanied by a fee of $1,000, which was then put
into a scholarship fund to encourage U.S. citizens to study computer programming. During the period of rapid industry expansion, 100 to 200 employers were deemed by the legacy U.S. Immigration and Naturalization Service as “H-1B dependent”, since over 15 percent of these employers’ staff relied on H-1B visas (Martin, 2001). These employers, and only these employers, were then required to document their efforts to find US workers in addition to demonstrating that no US workers were laid off in the past 90 days, nor any US worker was likely to be laid off within 90 days of hiring the foreign worker (ibid).

Although the demand for foreign workers under the H1-B program dropped considerably since the booming 1990s, criticisms over the system still remain. There are three major complaints against the H-1B visa (Martin, 2001). One was that the prospective employers use it to hire foreign students already in the U.S.A. and so possibly undercut existing U.S. workers salaries - not because U.S. workers are unavailable, per se. The second major criticism was that foreigner workers would not complain even if they were not paid prevailing industry wages, since they ran the possibility of losing their job, and their chance to continue working in the U.S.A. Thus, employers have had a certain amount of leverage over these foreign workers that they do not have over U.S. workers. There also appears to be significant fraud committed by both employers and employees. Some employers have turned out to be employment agencies with “mail drops,” rather than sites of employment facilities, that then charge fees between $5,000 to $15,000 US to non – U.S. workers (usually East Indians and Chinese) for a three year H-1B visa, which can be renewed for an additional three years. Moreover, many employees do not have the educational qualifications that they claim to have in seeking an H-1B visa. For example, the American Consulate in Chennai, India found that 21 percent from a sample of 3,200 H-1B applications were fraudulent (Martin, 2001). Finally, there have been growing networks linking Indian computer schools to U.S. firms. Thus, it is highly questionable as to whether or not the $1,000 fee collected for each H1-B visa application would truly even begin to cover the scholarships and education needed in order to make a generations of Americans competitive within their own domestic IT industry. Finally, as of 2004, the H-1B visa capacity limit was reduced to a 65,000 unadjusted limit. Now, many IT companies must “get in line” with their H-1B visa applications for the coming 2006 fiscal year in hopes that they might be successful. (This concept of companies queuing for ‘scarce’ temporary labour visas will be discussed in Chapter 4 of the dissertation.) In closing, it should be noted that Bill Gates made a visit to the White House in April 2005, in an attempt to personally lobby President George W.
Bush to raise the cap on H-1B visas, which Microsoft sees as its lifeblood regarding the firm’s ability to hire foreign high tech professionals (Globe and Mail, 2005).

Overall, both the permanent and temporary U.S. immigration programs for professional workers in the high technology industrial sector come with concerns and criticisms. Temporary immigration seems to be the most flexible of the two programs, and is the growing preference for the U.S. government when it comes to allowing foreigners into the US for purposes of work. However, in broad-scale, fraud appears to be on the rise with the H-1B program, although prior to the creation of the Department of Homeland Security (DHS) in 2003, there was very little dedication to investigation, enforcement, and legal action on behalf of the U.S. government. Currently (2005), one entire division (Immigration and Customs Enforcement or “ICE”) out of the three newly formed divisions which make up the DHS is dedicated to investigating fraud and removing foreigners who have overstayed their visas, or are in the United States illegally. In the past, highly skilled foreign workers were not seen as a threat to the American workforce, and the legacy INS focused more scarce resources towards deporting undocumented migrants in low skilled jobs within manual agriculture, the meat packing and garment industries (Nevins, 2002), for example, rather than the relatively higher paying U.S. high tech industry. This is beginning to change in light of the post-dotcom bubble bursting, and the new priorities and enforcement division, namely ICE within the DHS. Additionally, offshoring U.S. IT jobs and the related issue of hiring foreigners to take the work of laid-off US IT workers were a major campaign theme for the U.S. federal election in 2004. This matter will most likely escalate as the US IT industry continues to rebound and the need for both domestic and foreign professional workers increases. However, the matter is now not only on the radar screen of U.S. Congress, but also the American people see it as an issue of economic concern, which was not the case in the 1990s. Regionally, this matter is of great concern for software professionals in the Seattle area as Microsoft continues to implement plans to establish campuses and serious financial investments in India, while scaling back on planned expansions in the Seattle suburbs of Redmond and Issaquah (Malhapatra, 2005). Additionally, the perceived continued rise of hiring foreigners not only from Canada, but also from India and China in the Seattle-based software industry is beginning to raise alarm, if not concern, among local software developers.
By comparison, the Canadian federal government has not had the same concerns or negative perceptions relative to other western countries regarding the use of foreign workers and immigration in general. Canada may be considered unique in this regard since it still allows, if not encourages, up to 200,000 immigrants annually. Over 65 percent of these new immigrants usually must have at least a bachelor degree in order to be considered for immigration to Canada. However, no research to date has actually uncovered exactly what makes Canadians more accepting of foreigners than other countries. The chapter now turns to a brief review of the Canadian Immigration policies that are dedicated to professional immigration.

3.3.3 Canadian Professional Immigration

Canada is one of the few countries in the world that has a relatively open immigration policy relating to recruiting skilled workers. This more open immigration system extends to the family members of Canadian citizens, and also refugees fleeing political and/or religious persecution from their countries of origin. However, 65 percent of Canada's annual intake of immigrants is made up of skilled workers (Tolley, 2002). Thus, professionals seeking permanent entry into Canada have a relatively easier time as compared to foreign professionals seeking permanent entry into the U.S.A. for purposes of work. This section provides a review of Canada's permanent immigration policies for skilled workers as well as foreigners seeking professional work in Canada on a non-permanent basis. It also examines trends and possible future directions for the recruitment of foreign skilled professionals.

3.3.3.1 Permanent Migration for Foreign Professionals

The new Immigration and Refugee Protection Act (IRPA), implemented in June 2002, encourages foreigners seeking permanent residence who are capable of becoming economically established in Canada. This program emphasizes the broad human capital attributes and flexible skills of intending applicants as opposed to the traditionally narrow range of allowable occupations. Significantly, Tolley (2002) argues that this broader approach is more reflective of the needs and demands of the current flexible labour market. The process of seeking permanent immigration as a skilled worker is based on a points system, with education, language proficiency, employment history, age, arranged employment in Canada, and general adaptability, all important factors. McHale (2003) notes that the list of variables for which
points are allocated is based on an earning prediction framework. However, he also noted that the initial pass mark set at 75 out of 100 total points might be considered rather high if Canada is trying to successfully compete with other comparable countries for the highly skilled (e.g. the United Kingdom, the United States, Germany, and Australia). In fact, McHale (ibid.) applied the following scenarios for a young foreign software engineer and a comparatively older person with a two-year degree to the new immigration policies, and found that one would fail (the software engineer), and one would barely pass (the older person), under the new system due to the relative point allocations and the rather stringent cut-off:

For example, a 22-year-old applicant (10 points), with a four-year computer science degree (20 points), one year's experience (15 points), high proficiency in English but no proficiency in French (16 points) would score only 61 points. Even with a formal job offer or maximum adaptability points based on a Canadian education/experience and a university-educated spouse, this applicant would score only 73 points and be rejected. On the other hand, the fact that the cut would be made by a 45 year-old (10 points), with a two-year degree (20 points), four years experience (21 points) high proficiency in English and moderate proficiency in French (24 points), and no formal job offer or adaptability points (0 points). (McHale, 2003: 239)

Despite the dubious design features of the new system, Canada along with Australia has led the way with a skills focused approach to immigration in the past decade. Other countries appear to be following this approach. For example, both Germany and the U.K. have just instituted highly skilled migrant programs in order to attract global talent (McHale, 2003). In addition to innovative design elements, such as giving points for past earnings, both the German and U.K. systems emphasize speed of application processing. This is in direct contrast to the Canadian system where some applications, especially for applicants originating in India and China, can take literally years to process (ibid.). Under the new provisions, a status change from a temporary worker to a permanent worker is allowed. Previously, there was tremendous ambiguity as to likely success when it came to moving a foreign worker from temporary work to permanent work status.

Despite a more flexible approach in addressing the permanent migration of skilled worker applicants Canada has not been as flexible when it comes to temporary workers compared to other countries such as the U.S.A., the UK, Germany, and Australia. Specifically, Canada's system for temporary work authorization is reliant on a labour market test conducted by Human Resources and Skills Development Canada (HRSDC) in order to guarantee that the job could
not be filled by a domestic worker. The process usually takes anywhere from three weeks to six months, which represents critical time lost when it comes to recruiting highly skilled foreigners. As will be discussed in Chapter 4, my empirical research revealed that this issue was of primary concern for many Vancouver based high tech firms, leading to the conclusion that if the Vancouver economy continued to grow, a slower visa process could impede the local region’s labour market and economy. Australia, on the other hand, has reframed the focus of the impact of hiring highly skilled foreign workers from one of taking jobs away from domestic workers to showing positive effects on factors such as trade and competitiveness (McHale, 2003). As noted previously, the U.S.A.’s H-1B program only requires that the employer attest that he/she is paying the foreigner the prevailing wage and that the foreigner is not affecting domestic workers. Although Canada’s immigration system is perceived to be quite permissive when allowing the entry of high skilled foreigners, it is not without its problems. I now turn to a review of the Software Pilot Program, which serves as an example of what Canada might continue to do in order to expedite the entry of foreign software professionals.

3.3.3.1.1 – The Information Technology Worker Program

One area of temporary migration where Canada has eliminated the domestic labour market test is within the software industry. The Information Technology (IT) Worker Program allows for eight different types of foreign professionals to enter Canada without the labour market test. However, due to the bursting of the dotcom bubble and the fact that the program was pilot in nature, components of it are slowing being closed down. This is confusing the local software industry since they have begun to rely on fast-track processing of foreign software professionals. In addition, the information technology industry is starting to rebound again (Interview with Immigration Specialist, Vancouver Firm V-9, July 14, 2004). It was noted in interviews for this dissertation that Vancouver based firms have to turn to NAFTA visa provisions more and more when looking to hire Americans workers, whether temporarily or permanently. Canadian human resource managers see NAFTA as a last resort, since it does not

32 The Information Technology Worker Program was commonly referred to as the “Software Pilot Program” by the Canadian firms and government employees that I interviewed.
33 This finding is based on a memo sent by Greg Anstruther, Corporate Service Manager at the downtown Vancouver office of the HRSDC in January 2004 to three of the larger Vancouver based firms included in this study. Essentially, the memo stated that the High Tech Project of “fast-tracking” these firms’ applications for foreign IT professionals would cease as of February 2004. The reason for this action was that it was deemed that this policy discriminated against smaller firms, which was now unacceptable under the new Canadian Immigration and Refugee Act passed in June of 2002 (see appendix 5).
provide the longer work terms (one year versus three) that the usual generic Canadian work status allows. However, they noted that with elements of the Information Technology Program shutting down, they are left with fewer and fewer options when it comes to temporary employment of foreigners. Chapter 4 of the dissertation provides a more thorough examination as to how this program has affected the Vancouver IT industry. The next section (3.4) explores both the pulse of the Vancouver and Seattle information technology economies, the post dotcom bubble bursting, and events following 9/11.

### 3.3.4 Chapter 16 of the North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) established in 1994 was the first continental-wide trade agreement to contain labour mobility features. Chapter 16 of the NAFTA allowed for the preferential visa/status treatment of 1) business visitors; 2) traders and investors; 3) intracompany transferees; and 4) for 65 specific professional categories listed under the NAFTA (See Appendix 14 for a complete listing of these professions). The NAFTA is, of course, only applicable to Canadian, U.S., and Mexican citizens. Spouses who accompany NAFTA status entrants are allowed to work if the spouse is entering on a trade, investor, or intracompany transferee status. Currently, there are no pre-entry labour certification screens nor any numerical limits to any of these four categories of highly skilled labour. Although not officially stated in the NAFTA, NAFTA work statuses are usually granted for only one year, with the possibility of renewal (interview with Legacy U.S. INS Port Director-Vancouver International Airport, February 2003). This is especially true for Canadians and Mexicans seeking entry into the U.S. However, this is seen as a source of contention between U.S. immigration attorneys, the Department of Homeland Security, and foreign firms seeking entry into the U.S., and this issue is explored further in Chapter 5 of the dissertation.

Overall, in the past ten years since NAFTA has taken effect, it has undeniably been beneficial to many North American industries and their professional staffs by lowering trade barriers in capital, goods, services, and by facilitating the entry of highly skilled professionals. (Again, see Figure 2.1 for a graph regarding how many NAFTA statuses have been issued over the past

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34 Initially, the U.S. restricted Mexico to 5,500 professionals, which could enter under NAFTA per year. The U.S. eliminated this quota in 2003. It should be noted that Mexico never reached the upper limits of this quota before 2003.
10 years.) However, in some of the more innovative and cutting edge sectors, such as high
technology and biotechnology, the implementation of NAFTA has not kept up with the rapid
pace of technological change and innovation (Vazquez-Azpiri, 2000: 805). In fact, NAFTA is
actually seen as an imperfect mechanism for the facilitation of Canadian high tech and
biotechnology professionals into the United States, due to the rapidly changing job descriptions
and responsibilities in a wide variety of high tech industries. For example, many high tech job
titles have very “catchy” titles, such as “Web God”, or “Systems Genius” and most likely these
would not be listed in a typical U.S. Department of Labour (DOL) manual on job titles and
subsequent work status. This constraint is also magnified by the fact that the responsibilities of
these types of jobs change rapidly, and so radically that even if the DOL manual were to
capture the essence of these catchy titles and esoteric job descriptions, it would be outdated at
the time the manual went to print since the industry as a whole typically completes an entire
generation of software products every eighteen months. Thus, a major thrust of the dissertation
is directed at what are possible constraints of NAFTA provisions by exploring firms in both
Vancouver and Seattle and revealing to what extent the NAFTA status system has possibly
impeded the free flow of professional workers in the Cascadia labour market.

3.3.4.1 NAFTA and Labour Mobility

The previous subsection provided a brief introduction to Chapter 16 of NAFTA, which allows
for labour mobility of professionals and other business people throughout North America,
namely Canada, Mexico, and the United States. However, the final interpretations of the
impacts of NAFTA on its signatory nation states and each country’s respective socio economic
classes of citizens are far from over. Still, one interpretation of the NAFTA provisions
regarding cross border movement of labour is that it allows more and more North American
professionals to cross the Canada-U.S. border with relative ease. Specifically, Chapter 16 of
the North American Free Trade Agreement allows the temporary immigration of Canadian,
U.S., and Mexican citizens as (1) Business visitors; (2) Traders and Investors; (3)
Intracompany transferees; and (4) Certain classes of professionals, called Treaty NAFTA (or
“TNs”) which allows free movement within the territories of Canada, the U.S., and Mexico.

Since the signing of NAFTA in early 1994, Canadian scholars in particular have dedicated
serious efforts to discussing the fact as to whether or not there is a “brain drain” of Canadian
university educated professionals being lured to the United States in pursuit of better, higher
paying jobs. These seemingly more lucrative job opportunities, coupled with the new more easily accessible NAFTA work statuses, gives the impression to many Canadians that a much better future lies south of the 49th parallel. However, despite the fact that NAFTA has been enacted for almost ten years, current literature suggests that regardless of these “open borders”, a majority of citizens in one country do not easily move to the now more open “other” country, despite the relatively permissive labour mobility provisions. Helliwell (1999) notes that the highly skilled are much more mobile than the less educated. However, his research suggests that the highly skilled are, by an order of magnitude, more mobile within their own country of origin than between countries (Helliwell, 1998). DeVoretz and Iturralde (2001) found that most highly trained Canadians remained in Canada during the 1990s, exclusive of Canadian nurses. Their research presented a life cycle model that predicted ‘staying patterns,’ which were consistent with the thesis that changes in life cycle events in a household conditioned the movement for highly trained Canadians movements to the U.S. They also found that the cost of moving increased with age, or the benefits of staying in Canada rose, or both. The second major reason for remaining in Canada was a large family size. However, when a highly trained Canadian reached a pre-tax income gain of $135,000, the probability of staying in Canada collapsed, regardless of household status. Finally, DeVoretz and Iturralde (2001) stressed that there must be a large critical reservation income gain before moving, which suggest that several conditions had to be in place in order to induce a move for a highly trained Canadian to recoup this gain (ibid: 21). Thus, the most likely potential mover to the U.S.A. is likely to be young, have a low discount rate, and expect an immediate and rapid gain in earnings. DeVoretz and Iturralde (2001) concluded by stating that this was exactly the profile of the knowledge worker who received payments in the form of stock options, physicians entering their specialties, and star academics.

The above review of previous research demonstrates that even with relatively open borders the majority of people tend to remain in their country of origin for purposes of work, as is also demonstrated by evidence from the European Union, discussed in Chapter 2. Nevertheless, the labour mobility provisions under NAFTA are designed, ideally, to allow the freer movement of certain categories of business executives and certain categories of professionals, which include knowledge workers, without the bureaucratic problems of its predecessor, the ‘H-1B’ visa. The general premise behind the NAFTA TN status is that it has potentially helped to create a more fluid North American border for working professionals. In fact, the TN visa category now
accommodates 65 specific classes of professions, most of which require an undergraduate degree. Vazquez-Azpiri (2000) argues that the newer TN category in NAFTA offers Canadian professionals wishing to work in the U.S.A. four advantages over the H1-B visa. Firstly, the applicant need not file a non-immigration petition with a Department of Homeland Security Service Centre before entering the U.S.; she or he can present all material/documentation at the port of entry or pre-flight inspection station. Secondly, Canadian TN applicants are not required to obtain approval of a labour condition application from the Department of Labour, which was mandatory for the H1-B visa. Thirdly, unlike the H1-B visa, the TN category does not impose a maximum period of stay of six years, and TN status may be held indefinitely. Fourthly, there is no limitation to the number of Canadian nationals who may be admitted to the U.S. in any one year. Currently, the H-1B category imposes a limitation of 65,000 new admissions overall for fiscal year 2004, which began on October 1, 2003. Regardless of all of the perceived gains that the TN category were thought to bring, the H1-B visa was never phased out of existence since it is still one of the few temporary U.S. work visas available to all other foreign nationalities other than Canada and Mexico. In fact, since NAFTA’s TN category has been in effect, the H1-B visa attributes are even more appreciated by prospective employers than prior to the inception of NAFTA, due to its predictability. This concept will be explored in more detail in Part II of the dissertation.

3.3.4.2 NAFTA and the Cascadia Region: A Summary

Despite its claims that the NAFTA visa facilitates “preferential” entry into the territory of a state party, it has actually proven to be an imperfect and unpredictable mechanism for the entry of information technology (IT) knowledge workers to the United States (Vasquez-Azpiri, 2000). From a regional perspective, this imperfection of the TN status may have tremendous impacts on the U.S. cross border area between Vancouver, B.C. and Seattle, Washington (namely the more northern geographical portion of Cascadia) since the high tech sector is still an employment growth area, despite the impact of the dotcom bust and post 9/11 fallout. For example, prior to the bursting of the dotcom bubble, there was a relative deficit of IT workers on the Seattle side of the border due to high rates of economic growth. In fact, there was some concern that it would only be a matter of time before high tech giants such as Microsoft began to recruit well educated software engineers from just over the border in Vancouver to the

"One development that has gone largely unnoticed in the national dialogue with respect to the IT industry’s unsatisfied demand for knowledge workers is the emergence of Canada as an important repository of such knowledge workers. No one should be taken aback by this; Canada’s geographical proximity, its cultural affinities to the U.S., the high level of technological education available at its universities, and the fact that it has its own well-developed IT industry make it seem quite natural that U.S. IT companies struggling to meet their hiring needs should view qualified Canadian professionals as particularly attractive resources."

The above quote sets the tone for the future of North American labour needs especially when it comes to high technology and biotechnology. Even through the citation is slanted towards the U.S. economy, there is also a growing need for Canadian firms to tap American professionals, especially if the firm in question is highly integrated in the form of markets or monetarily with the U.S. economy. However, despite the growing demand for Canadian high technology workers over the past few years, immigration attorneys residing along the more northern portion of the U.S. west coast (Seattle, Portland, and San Francisco) have seen a rising denial rate of TN admission applications for IT workers at U.S. ports of entry (Interview with Chair of American Immigration Lawyers Association Canada-U.S. Immigration Committee-Seattle, Washington, June 15, 2000) even before 9/11. For instance, entry of Canadian “software engineers” into the U.S. for employment under the TN category has proven to be quite a challenge. Specifically, it appears that one of the great obstacles for software engineers, and the attorneys writing the TN status application has been demonstrating to the Department of Homeland Security (DHS) official at the port of entry that “software” engineering is actually a true engineering activity and that it is recognized as one of the 65 professions allowed under NAFTA provisions. Although the number of NAFTA admission applications being approved at the Seattle ports of entry has grown from around 2,000 in 1997 to 3,500 in 1998 (Meyers, 2000), there is still a concern among immigration attorneys in the Seattle and San Francisco areas that DHS port of entry inspectors do not allow a particularly flexible interpretation of job descriptions, especially to the degree required for software engineers and related professions (Interview with Chair of American Immigration Lawyers Association Canada-U.S. Immigration Committee-Seattle, Washington, June 15, 2000). Consequently, many Canadian software engineers and related professions have been refused entry into the U.S. with what on
the surface appeared to be a valid TN application, which was usually written by an experienced U.S. immigration attorney.

Although records are kept regarding why TN applications are denied, they do not remain in the DHS’s computer system for more than 7 days (Interview with Chair of American Immigration Lawyers Association Canada-U.S. Immigration Committee-Seattle, Washington, 6/15/00). Indeed, there is a need for further research in order to determine the actual numbers of TN applications being denied at the ports of entry and reasons why. Regarding some of the actual reasons behind these continued excessive denials at the U.S. ports of entry Vazquez-Azpiri (2000) argues that the INS’s stance toward software engineers, for example, may be explained in part from a deeply rooted belief by border officials as to a more traditional notion and definition of engineers as someone who builds tangible products and structures, employed typically in twentieth century manufacturing industries. This lies, of course, in stark opposition to a “software engineer” who usually writes code and designs whole systems of computer applications for many new, smaller, and relatively unknown firms. As well, the U.S. Department of Labour’s (DOL) Occupational Outlook Handbook states only engineers recognized by professional societies are the touchstone of true engineers, all of which have professional associations and licensing requirements. By contrast, many of the software engineers are extremely flexible in the type of work that they do, and job requirements evolve so quickly that it is difficult to reflect this in a handbook that comes annually (Vazquez-Azpiri, 2000).

Additionally, from an educational perspective, NAFTA does not require that a person crossing a border on a TN status have exactly the same educational background as the actual TN profession being sought. NAFTA’s provisions regarding labour migration state that the person in question must be in a discipline or field *germane* to the job duties typically performed by members of that profession [Appendix 1603.D.1 of NAFTA] (Vazquez-Azpiri, 2000). However, in the context of software engineers, Vazquez-Azpiri (2000) stresses in practice that TN applicants must show there is a complete congruence between the relevant engineering specialization and the degree being sought. Thus, holding a degree in computer science or for that matter, English, and requesting TN admission on one’s baccalaureate degree as a “software” engineer opens the person up to a high likelihood of rejection by the DHS, and possesses great risk for U.S. companies wanting to hire Canadian software engineers.
Overall, the TN category of Chapter 16 of NAFTA may be argued to have been a limited failure for Canadians seeking entry into the U.S.A., in the sense that it is not a wholly reliable, predictable, or consistently administered method through which to secure the services of Canadian IT workers (Vazquez-Azpiri, 2000). Specifically, Vazquez-Azpiri (2000) states that the TN category is deficient in three basic respects. First, it fails on policy grounds, especially due to the lack of an unambiguous policy inherent in the NAFTA to promote and facilitate the mobility of citizens of one state party into the next. For example, the provisions of NAFTA state that INS officials are to allow the mobility of legitimate North American professionals across the boundaries of said signatory countries, whereas, at the same time, to protect American jobs for the domestic labour force [Article 1601 of NAFTA]. Second, on structure, the TN category provides an over-rigid framework that lacks the elegance required to consider the heterogeneity of the IT industry's professional occupations. For example, there is no listing in the DOL's Occupational Handbook for "Web God" or "Systems Genius", which are surprisingly common job title listings for many firms, which work in the IT industry (Vazquez-Azpiri, 2000). Finally, on process, the internal rigidity of the reading of the TN category on the part of the INS officers at the ports of entry has become the most significant hazard involved in applying for TN admission. What this means is that the INS inspector has an unfettered right to deny or approve TN applications at the U.S. ports of entry. Thus, the biggest contradiction of the TN category's new benefit, "Port of Entry Adjudication", which was lauded for its presumed speed and efficiency and elimination of long months of waiting for either a visa approval or denial like that of the H1-B, is now proving to actually become the TN category's greatest obstacle.

3.3.5 The Canada-U.S. Border a 'Sieve' or 'Shield' under NAFTA?

This chapter has drawn attention to one particular characteristic of the Cascadia region, namely its growth as a corridor of high technology industries, especially compared with the auto industry economy that drives Toronto-Detroit-Windsor and Buffalo-Niagara Falls. However, I argue that inflexible implementation of NAFTA visa provisions has actually created an adverse impact on future possible growth of the region. In an era of an internationalized economy based on free trade, knowledge and information, some nation states are clearly intensifying their efforts to tighten the cross border movement of people, and the U.S. may indeed fall into
this category. Such a circumstance appears to be especially true not only for Canada’s experience with the U.S. in a post NAFTA era, but more importantly for the cross border region of Cascadia. If this situation continues it could have tremendous repercussions on IT worker cross border flows. Although Chapter 16 of NAFTA, in theory, allows for more fluid flows of professionals, NAFTA’s actual range of comprehension and its rigidity is, in part, based on a previous age of manufacturing and more predictable employment structures. The adjudication process for TN admission issuances appears to not allow for any flexibility, which is often paramount in the IT industry. Since this is perceived as an impediment to Canada’s ‘Brain Drain’, relatively little official action has been taken on the Canadian side, for example, by using Articles 1606 and 2007 of NAFTA which focus on “Disputes Settlement” mechanisms. However, the American Immigration Lawyers Association is trying to encourage the legacy Immigration and Naturalization Service (now the Department of Homeland Security) to expand the number of IT professions acceptable under NAFTA provisions (Vazquez-Azpiri, 2000). Clearly, some additional professional classification could facilitate the movement of IT professionals. Overall, there is a greater need to rethink the underpinnings of the original Chapter 16 of NAFTA - for instance, what are its objectives, why was it crafted, and does it serves the modern IT era? As well, rather than the linear rigidity of NAFTA’s policies, there needs to be more flexibility in the decision making rules of port of entry INS officials. Finally, there also needs to be a greater awareness of the importance of the IT and knowledge worker, and how their growth and circular cross border flows contribute to the overall development Vancouver’s and Seattle’s future economic prosperity within the region of Cascadia.

3.3.6 Section Summary

The above section helps to demonstrate that there are many avenues and options, in terms of employment visas, when foreign professionals cross the border between Canada and the U.S.A. and vice versa. The Cascadia region, as it continues to grow economically, with aggressive new industries such as high technology and biotechnology, will need to not only recruit nationally within the U.S.A., but also internationally across the border when searching for suitable professionals workers. Thus, the need for the ease and mobility of professionals between Vancouver, Seattle, and also California will likely continue to increase as the demand for foreign professionals rises within this newly emerging international network along the north Pacific coast of North America. However, this section has revealed that many of these
immigration and foreign labour entry options are not without their drawbacks, especially for young small firms, which as noted earlier, characterize much of the high tech industry within Cascadia.

The above section has aimed at introducing some of the problems regarding Chapter 16 of NAFTA’s TN status, the broader WTO, and also U.S.A. and Canadian specific visa control arrangements that impact on the cross border flow of highly skilled labour, and its influence in the Cascadia region. Due to the fact that an anonymous database is not kept on the number of TN denials at U.S. port of entry and reasons why, a more qualitative approach to examining the research question, “Is the Canada-U.S. border an impediment to the development of a high tech corridor between Seattle and Vancouver?” is in order. Accordingly, I have undertaken quasi-structured interviews with Canada and U.S. immigration attorneys, Canada and U.S. immigration officials, and Vancouver and Seattle based high technology and biotechnology firms in years 2002-2004 to ascertain their experiences with hiring and/or moving professional employees back and forth across the Canada-U.S. border for purposes of work. The results of these interviews have led to a heuristic model of Cascadia’s cross border flows which is discussed more completely in Chapter 4, 5, and 6. This model examines the relationship and dynamics between all of these actors, and how they contribute to facilitating or impeding the movement of high tech professionals back and forth across the Canada-U.S. border.

3.7 Chapter Conclusion

The purpose of this chapter was to explain the growth in high technology industries and labour in both Seattle and Vancouver as well as the many institutional apparatuses that regulate cross border labour mobility. These institutional apparatuses range from the General Agreement on Trade and Services, to NAFTA and also domestic pilot projects, such as the Canadian software pilot project, which may affect cross-border labour mobility within the Cascadia region. A fundamental to understanding the characteristics in Cascadia is the realization of how it is different from the other more traditional ‘goods and trade’ oriented border zones, such as Detroit-Windsor, Hong Kong-Shenzhen, and the San Diego-Tijuana, Mexico, border regions. Cascadia, may be characterized as an advanced service based economy, which has developed over the past 20 years. One of the key characteristics of this so-called ‘new economy’ is a continued need for foreign professionals and an unhampered ability for firms to move these
peoples across borders. In fact, the empirical work for this study will focus on why transborder
mobility is essential to the evolving success of the region, even in light of the bursting of the
dotcom bubble and the post 9/11 recession.

The continued growth of the Cascadia region as a center for world-class high tech and
biotechnology commercial development draws attention to the key research question as to
whether or not the Canada-U.S. border is a constraint or facilitator to the symbiosis of more
interactions between these industries based in Seattle and Vancouver. Thus, this chapter helped
to set the parameters for this key research question and leads into a focus of ‘how key ‘actors’ –
high technology, Canadian and U.S. regulators, and immigration lawyers - all play influential
parts in the possible development of this international high technology region. These actors
and their various relationships will be explored more completely in Part II of the dissertation.
Chapter 4 – The Firms

4.1 Introduction

Chapter 3 ended by providing a three-part research approach to studying the role of the international border in Cascadia, focusing on the activities of firms, trade regulators, and immigration attorneys involved in cross border labour movements. This particular chapter is the first of three that explores the results of the empirical data for this dissertation. Specifically, the chapter reviews and assesses 11 interviews conducted with human resource executives and vice presidents of high tech and biotech firms based in Vancouver and Seattle. It focuses on their experiences moving professionals back and forth across the Canada-U.S. border as part of a growing continentalism under NAFTA and in light of a post 9/11 world. The chapter closes with reflections on the overall findings and ends with a brief conclusion.

4.2 The Types of Firms Surveyed and the Questionnaire

A total of ten firms were interviewed, with nine firms based in Vancouver and one firm based in Seattle. The focus of the firms interviewed ranged from electronic gaming, to submarines, to financial software, and even timber production. This latter firm had a surprisingly high demand for knowledge-workers. The variety of Vancouver-based firms reflected the region’s character of supporting a diversity of new industries, which included environmental and marine technologies, software, new media, and biotechnology. Vancouver firms were selected primarily from Business in Vancouver’s 2003 listing of “top 24 high tech firms in terms of employment.” Thus, eight out of 10 firms contacted from this annual list agreed to participate in my research project. The participation levels of firms is a is a solid representation of the local industry with five of the participating firms ranking within the top 10 for high tech firm employment in Vancouver. The one additional Vancouver based firm was contacted through my research supervisor’s professional connections within the region’s high tech industry. The Vancouver-based firms were approximately three to four magnitudes smaller than the single Seattle firm interviewed. Specifically, the Vancouver-based firms included in this study ranged from employing 11 people to over 2,000 people worldwide. Overall, as noted in Chapter 3, there is a growing mass of high tech firms in the Vancouver area, even after the early 2001 ‘dotcom bust.’ However, there has still not been sufficient synergy within the area for it to be
considered a cluster in the true sense of the word (Rees, 1999). One leading Vancouver-based biotechnology firm was interviewed for this study, and provided a very interesting perspective into this new emerging local world-class industry. In fact, this particular industry may be considered much more of a cluster when it comes to personnel and general cultural cohesion as compared to Vancouver high tech activities in general (Richardson, 2006a).

In contrast, the Seattle firm employed over 50,000 people worldwide. It can be noted that while it was disappointing not to have included more Seattle-based firms in this research, it was not due to lack of effort. As stated previously, twenty Seattle based firms were approached for this study, including Microsoft and Boeing, yet 19 firms were not able to participate in the research project due to time constraints, or the firm contacted did not currently employ foreigners, which included Canadians. The Seattle based firm was chosen through a professional contact of mine. Although the Seattle-based firm focused on the timber industry, it employed a large number of North American software engineers and professionals in general.

The questionnaire was administered to senior managers and covered a range of areas relating to each firm’s experiences with operating in a North American space, and included a range of questions, (see Appendix 1). These questions focused on the background information of each firm (Question 1); whether or not the firm was mobile throughout North America and/or the world (Questions 3 and 4); the levels of international personnel within the firm (Questions 3 and 4); the firm’s experience with attaining visas and work statuses (Questions 5 and 6); the employees’ experiences with crossing the Canada-U.S. border and attaining visas/statuses, especially in light of post-September 11, 2001 security measures (Questions 7, 8, 9, and 10); overall reflections on the Canada-US border in relation to the firm’s activities, what would happen if cross border mobility was impeded, and how important is the region of Cascadia to the firm’s success (Questions 12 and 13).

These topic areas explored three of the four areas of the general literature covered in Chapters 2 and 3 of the dissertation; specifically, how the concept of clusters and innovation applied to the Vancouver and Seattle urban areas, whether geographically they had a strong likelihood of being connected as a cluster, and would ideally contribute to greater innovation within the Cascadia region than if a firm operated just on its own (see Gertler, 1999). Additionally, a closer look at how and why the firms hired and moved employees around North America.
helped to provide a more refined understanding of North American labour mobility and immigration in addition to their experiences with the various institutions that are suppose to facilitate labour mobility and immigration. The next section explores findings from the interviews, categorized into various key themes and topic areas.

4.3 General Firm History and Reasons for Locating in Vancouver or Seattle

Vancouver-based Firms

As stated previously, a wide assortment of Vancouver-based firms were interviewed, but their commonalities included high technology activities being seminal to their purpose and operations, and each firm having various types of connections into the United States. A total of nine firms were interviewed in the survey, and firm sized ranged from 11 employees to approximately 3,500 employees.

The products the firms produced varied considerably, but included world renowned aquatic technology development and production, electronic gaming, industrial printing equipment, hydrogen fuel cell production, biotechnology, and a wide assortment of software. Although the author had agreed to anonymity to all firms that participated in the study, it should be stressed that some of these Vancouver-based firms were considered to be the ‘best in the world’ in their particular sector in high technology. These star performers included submarine development, electronic gaming, industrial printing equipment, hydrogen fuel cell production, and biotechnological cures for cataracts. Locational advantages for these world-class products included Vancouver’s strong and immediate connection to maritime activities, the environment, and close physical proximity to the University of British Columbia (UBC), which through the study period was considered a world-class institution. Although UBC has only been in existence for less than 100 years, it has proven to not only consistently draw star researchers, but also produce excellent scientists and engineers. Spin-off innovations have generated a number of regionally based premiere companies, especially in the biotechnology sector. These firms in high technology are generally anywhere from 10-70 years younger than their Seattle counterparts, and they are just beginning to build a critical mass of prestige and reputation for what they do. Thus, these Vancouver-based firms are highly competitive world-wide despite their youth (BC Biotech, 2004).
The interviews confirmed that all firms located in Vancouver were generally started here because the founders lived here, and many original firm founders were either professors or graduates of UBC (Firms V-1, 2, 3, 4, 6, 7, 8, and 9; see Appendix 4). Many of the firms with a strong software focus were originally established in the late-1960s to the mid-1980s. They have gone through various transitions ranging from just a name change to different industry focuses. Overall, the Vancouver-based firms weathered the dotcom bust of late 2000/early 2001 much more successfully than their Seattle counterparts. Possible reasons for this included the fact that Vancouver-based companies did not have the easy access and availability to U.S. capital compared to their Seattle counterparts. Additionally, there was nowhere near the magnitude of software firms in the Vancouver area as compared to the Seattle region, so the overall regional impact of the downturn was not as great as in Seattle, accordingly they did not over-extend their investments in the late 1990s. However, Vancouver-based firms were hit hard by the effects of post 9/11 security measures due to their strong connections with the U.S., in addition to the continued general downturn in the North American economy immediately following 9/11. An entire section within this chapter is dedicated to exploring the impact of 9/11 and the subsequent impact of greater border security on all high tech firms interviewed. However, Vancouver firms that weathered both of these economic storms experienced an upswing in 2003 and 2004, with considerable infusions of foreign capital as these firms continue to grow to the next stage of development.

Key findings from this study revealed that a majority of the foreign sources of capital originated in the U.S. and California, in particular. Interestingly, all firms noted that despite the large sums of capital invested in their growth, they refused the temptation to leave Canada for the United States. Reasons for this continued local embeddedness included an unwillingness on the part of the firm founder, executives, and a critical mass of firm employees to leave the Vancouver area (Firms V 2, 3, 4, 6, 7, 8, and 9). If anything, this stubborn Vancouver embeddedness has forced some U.S. investors to allow certain firms (Firms V 2, 3, 5, and 9) to remain in Vancouver on their terms. This concept is explored more completely in an upcoming subsection, "Strategic Connections with the U.S./Canada." Finally, many firms noted that although the cost of living was generally high here in the Vancouver area, it was considerably less than in California and the urban areas of the U.S.'s east coast, which were alternative destinations for these Vancouver firms if they decided to relocate to the U.S. Additionally, they considered that benefits such as state-sponsored health care for employees, excellent
public schools, and the overall safe and comfortable Canadian way of life were strong draws for not only foreign employees but also domestic employees for all Vancouver-based firms interviewed.

The Seattle Based Firm

A total of 20 Seattle based software firms, which were listed in the Puget Sound Business Journal as the top 20 software firms in 2002, were approached for this study. Due to the bursting of the ‘dotcom bubble’ in early 2000 and the recent economic fallout of post 9/11, almost all the Seattle firms listed beyond the top four did not have Canadians, or any foreigners, on staff at the time that the study’s fieldwork began. Many firms noted that they were essentially in “survival mode,” and did not foresee hiring software professionals in the near future, or conducting international expansion, even into Vancouver, B.C. Thus, it was a challenge to secure any form of Seattle firm participation due to the post 2001 economic climate in the high technology sector.

The one Seattle-based firm interviewed was based in the Seattle area for over 100 years, and is in fact one of the oldest companies in the western United States. The firm’s industrial sector was focused on various aspects of timber production. Due to the seemingly endless availability of evergreen forests throughout all of western Washington, the firm had a rich supply of timber to work with and built a corporate empire since its commencement. The firm has continued to focus on natural resource extraction, and was considered to be a multinational company. However, only in the past ten years has the firm truly become “global” in its operations, employing over 50,000 people worldwide, and roughly 10,000 in the Seattle area. As with many other companies that focus on natural resource extraction, this firm was heavily impacted in the early 1990s with a downturn in the global economy, in addition to pressures stemming from a growing and sophisticated North American environmental movement dedicated to changing the forest industry practices as a whole. Midway through the first decade of the twenty-first century, this firm responded rather positively to these changing economic and environmental challenges by reorganizing the firm structure, streamlining productions, and also automating and computerizing much of the firm’s timber management practices. All of these changes were embedded within the firm’s solid environmental ethos. This firm’s success cannot be applied to the industry as a whole, however. At the time of the study, the timber industry was in decline throughout North America, and many smaller firms and operations
were obligated to sell out to larger operations. Thus, this particular firm survived a very
difficult and potentially devastating time all through the 1990s. The firm stabilized with even
larger operations and with a renewed global focus. Finally, even though the firm is focused on
the extraction of natural resources, it was very much driven by high technology in its long term
planning and day-to-day operations, which made it a good candidate for this particular study.

4.4 Strategic Connections between the U.S., Canada, and the Rest of the World

4.4.1 Sales Connections to The U.S. and Beyond

I will now comment on the types of markets that firms had who were interviewed for this study.
Question #1 from the firm survey best addresses this topic area. Specifically, the question
asked the following, “Can you tell about the various sorts of activities that your firm engages in
Canada/U.S. or beyond? Do these interactions with firms on the other side of the border (sales,
inputs, finances, joint research, and so on) require the movement of your employees? If “yes”,
for what reasons, and what types of employees move across the border?”

Vancouver-Based Firms

Based on the responses to question 1 of the interview survey (See Appendix 1), all firms
interviewed in Vancouver reported that a primary component of their sales, client, marketing,
and support services were dedicated to the United States, but also European markets.
Specifically, firms recorded that anywhere from 15 percent to 95 percent of their sales were
found within the U.S. market as a whole rather than merely the local Cascadia region.
However crossing the international border to access markets was a key feature of their
connections to clients. One human resource executive for Firm V-1 put it succinctly,

As you know, we are involved in software sales. 95% of our customers are in the U.S.
We visit our people [in the U.S.] for pre- and post-sales. The entire development and
implementation of our product is here in Canada, but our sales are in the States. Thus,
our people move [across the border] for the purpose of sale.

(Vice President, Human Resources, Firm V-1)

However, in addition to targeting the whole U.S. as a primary market, many firms had also
stressed that they were really global in their outreach (Firms V - 3, 4, 7, 8, and 9). Some had
operations in Germany and Japan (Firm V-3) and, as well, general sales and client bases in
Latin American and Europe and Asia. In fact, one firm (Firm V-4) stressed that even the Vatican was one of their clients!

Due to the sophistication and high costs of some of the firms’ products (running into the hundreds of thousands to millions of dollars), three firms (Firms V-3, 4, and 9) emphasized that Western Europe was just as a strong a market for their products and services as the U.S. In fact, for Firm V-3’s products, which included sophisticated alternative energies, Europe had the most active market as compared to other world markets due to Europe’s advanced environmental laws and policies. Additionally, another firm (V-8) noted that although it carried out a considerable number of projects with Microsoft (based in Seattle), the U.S. market, overall, was very difficult to break into for a new Canadian firm of their type. For example, the interviewee noted that the culture of this firm’s particular industry (banking) was based on very old connections with clients, which sometimes went back over a century. A vice president for this firm explained,

".....Our core is Canadian, but most of our revenue is international. We have four customers in the US – one credit union and three banks. The main banking firms in the US are mature firms with old [and loyal] connections. For example, we work with Microsoft to develop a PC based banking system. We have the market in Canada as the biggest service banking software system. We had a US subsidiary at one point with 100 employees in Florida. Now we are down to 13 people in the US. We want to stay here (and Southern California).

.....We are doing a lot of work with Mexico and other firms in South America and South Africa right now. 90 percent of our people work with product development and professional services. Their job is to travel [internationally]. For example, we are currently implementing our products in Africa on behalf of American Express. We are also doing an extensive amount of work in Asia."

(Vice President, Firm V-8)

The above quote alluded to the issue that even though NAFTA had helped to eliminate trade and investment barriers between Canada and the U.S., cultural barriers found within various domestic industries still existed. The interviewee for Firm V-8 noted that they had a difficult time breaking into the U.S. market not because the company was a “Canadian Firm,” but because the particular industry that they worked within went back over two hundred years in the U.S. and took pride in its strong culture of loyalty and tradition towards other firms that had been in the business a long time. Thus, this firm had found opportunity within the domestic
market of Canada in addition to the emerging economic systems of Latin American and Asia, which lacked a stable and reliable industrial culture over the long term.

However, the above firm (Firm V-8) was somewhat of an anomaly, having such a large client base domestically within Canada. For the most part, all other firms interviewed in Vancouver stressed that they were strongly dependent on the U.S. and Western Europe for much of their client base, significantly far beyond the local Cascadia region. Additionally, Mexico and Latin America were seen as promising emerging markets. Although Asia had considerable promise in the mid-1990s, two firms (V-4 and V-8) noted that at the time of firm interviews in 2004, the region was still recovering from the “Asian Flu” of 1997, and was seen as somewhat dormant, economically. Table 4.1 shows for all the firms interviewed percentage breakdown of sales, indicating the distribution of markets within Cascadia, Canada, California, the greater U.S., and the rest of the world.

Table 4.1

<table>
<thead>
<tr>
<th>Firm</th>
<th>Selected Distribution of Sales for Firms Interviewed</th>
<th>Cascadia</th>
<th>Canada</th>
<th>California</th>
<th>Rest of U.S.</th>
<th>World</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vancouver 1</td>
<td></td>
<td>1%</td>
<td>1%</td>
<td>15%</td>
<td>77%</td>
<td>6% EMEA, Philippines &amp; Australia</td>
</tr>
<tr>
<td>Vancouver 2</td>
<td>Strategic partnership w/ Microsoft</td>
<td>13%</td>
<td>NA</td>
<td>15%</td>
<td>77%</td>
<td>19% Europe, Middle East, S. Africa (EMEA)</td>
</tr>
<tr>
<td>Vancouver 3</td>
<td>NA</td>
<td>NA</td>
<td>Strong partnership with urban localities</td>
<td>45%</td>
<td>55%</td>
<td></td>
</tr>
<tr>
<td>Vancouver 4</td>
<td>Regional management of services w/ Seattle</td>
<td>30%</td>
<td>NA</td>
<td>30%</td>
<td>25%</td>
<td>25% EMEA 15% Asia Pacific</td>
</tr>
<tr>
<td>Vancouver 5</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Vancouver 6</td>
<td>50%</td>
<td>&gt;10%</td>
<td>40%</td>
<td>&gt;5%</td>
<td>38%</td>
<td>38% Europe 18% Japan 4% Other</td>
</tr>
<tr>
<td>Vancouver 7</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>40%</td>
<td>38%</td>
<td>38% Europe 18% Japan 4% Other</td>
</tr>
<tr>
<td>Vancouver 8</td>
<td>10%</td>
<td>40%</td>
<td>20%</td>
<td>10%</td>
<td>10% EMEA</td>
<td>10% Latin America</td>
</tr>
<tr>
<td>Vancouver 9</td>
<td>&gt;5%</td>
<td>10%</td>
<td>NA</td>
<td>60%</td>
<td>25%</td>
<td>25% Europe &amp; Australia</td>
</tr>
<tr>
<td>Seattle 1</td>
<td>NA</td>
<td>&gt;5%</td>
<td>NA</td>
<td>60%</td>
<td>20%</td>
<td>20% Europe 10% Asia 5% Other</td>
</tr>
</tbody>
</table>

Source: Based on company annual reports (2002-2003) and interviews with author
As indicated, these results indicate that the sales connections in the main lie far beyond the Cascadia region alone.

The Seattle Firm

As discussed earlier, this particular firm is a large multinational with global sales markets. Thus, the Seattle firm usually had strong local nodes or clusters of sales team distributed in key locations throughout the world. However, with its significant Canadian operations, especially in British Columbia, and their close proximity to Seattle, the human resource manager noted that there was a considerable amount of cross border activity for sales personnel and knowledge workers connected to various Canadian projects within the firm. She explained,

We also have something called ‘commuters’. These commuters move back and forth to work on projects that include technology and engineering. (These kinds of things.) They go for maybe a couple of days. Sometimes Monday through Friday, then they go home for the weekend. Driven by what the business needs. Sometimes the expert is in one country, and is needed in the other country. Sometimes these are business trips. If a person is going to fix something, then we need work authorization. (Firm-S1)

4.4.2 Sources of Financing and Technology

Question #1 from the firm survey also helped to reveal the firms’ sources of financing and technology. As stated previously, the question asked the following, “Can you tell about the various sorts of activities that your firm engages in Canada/U.S. or beyond? Do these interactions with firms on the other side of the border (sales, inputs, finances, joint research, etc.) require the movement of your employees? If “yes”, for what reasons, and what types of employees move across the border?” Although many of the firms interviewed stressed that they were global in their operations, Vancouver firms 2, 3, 5, and 9 were highly integrated monetarily with sources of funds coming from the U.S. - and from California in particular. In addition, Firm 3 had strong financial partnerships with firms based in Michigan and Germany. Each of these four Vancouver-based firms had unique arrangements with their U.S. based partner. Through in-depth comments of financial sources reported in the interviews, histories regarding financial sources and various patterns could be gleaned from these arrangements.

Essentially, as each firm reached a certain level of success in its early stages of development, the firm in question would begin to require more and more capital if the firm was to grow to the next level of development and compete internationally. Due to the U.S.’s sheer economic
magnitude, and potential availability of U.S. investor firms, the required capital invariably came from the U.S.A. Typically, funding ranged from U.S. $20 million to U.S. $330 million. The general proximity of Vancouver to California and Michigan, allowed the Vancouver-based firms to qualify for solid partnerships with U.S. firms and U.S. investment firms. This monetary connection allowed these Vancouver-based firms to continue operating and growing as 'global companies.'

Three of the firms (Firms 2, 5, and 9) stressed that while they were connected technically to operations based in the U.S., a majority of their operations, research and development, and founding executives still remained in Vancouver. The technology connection to the U.S.A. also allowed regional access to funding from a U.S. based partner. The relationship benefited the Canadian firms by allowing a U.S. headquarters mailing address and also a global marketing division, while the major development and production of firm products, services, and key executive personnel stayed in Vancouver. Indeed, Firm 3 was the only Vancouver-based firm, which maintained its global headquarters in Vancouver despite a considerable influx of U.S. and European capital. By contrast, one firm interviewed (Firm 7) behaved more like an American investor firm and had its global headquarters in Vancouver. This firm acquired a large U.S. firm based in Colorado during the latter part of 2004 as part of its growth strategy. More generally, this pattern of international acquisitions appears to be a growing trend for Vancouver-based firms engaged in biotechnology, and as Vancouver emerges as a dominant North American cluster (BC Biotech, 2005: 40). Table 4.2 summarizes the dominant location of sources of finance for the firms interviewed and indicates the importance of California and the rest of the U.S.A.

Overall, the links between Vancouver and the U.S., in terms of markets and sources of finance and technology have encouraged the movements of employees and consultants back and forth across the Canada-U.S. border, even though they are not so tightly focused upon the Cascadia region per se. The human resource manager for one firm (Firm V-4) stressed the fact that her firm needed to operate seamlessly throughout North America, and that its operations were dictated by regional time zones rather than the borders and boundaries of countries. She reported,

We see our enterprise as having no borders. We see our regions within particular time zones. For example, we call Seattle if we need something right away rather than
Toronto [which is three hours away in real time]. Our operation is based on time and
economic regions, not countries.

(Human Resource Manager, Firm V4)

This comment helps to demonstrate that although the company's vision and market may be
global, the firm's operations are often dictated by various time zones and geographical regions,
not countries. This suggests that for many Vancouver-based firms in high technology, the
mobility of people, products, and ideas back and forth across international borders is essential
to a firm continuing to operate smoothly and fulfill its vision. The upcoming subsection shall
explore the actual mobility of professionals, which are essential to these firms meeting their
operational goals and visions. This subsection closes with exploring the Seattle firm's
experiences with global financing and restructuring in the 1990s.

Table 4.2

<table>
<thead>
<tr>
<th>Firm</th>
<th>Cascadia</th>
<th>Canada</th>
<th>California</th>
<th>Rest of U.S.</th>
<th>World</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vancouver 1</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Vancouver 2</td>
<td>2%</td>
<td>3%</td>
<td>85%</td>
<td>10%</td>
<td>NA</td>
</tr>
<tr>
<td>Vancouver 3</td>
<td>&gt;1%</td>
<td>1%</td>
<td>2%</td>
<td>43%</td>
<td>54%</td>
</tr>
<tr>
<td>Vancouver 4</td>
<td>NA</td>
<td>11%</td>
<td>NA</td>
<td>37% (Americas)</td>
<td>38% EMEA 12.5% Asia Pacific</td>
</tr>
<tr>
<td>Vancouver 5</td>
<td>NA</td>
<td>NA</td>
<td>85%</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Vancouver 6</td>
<td>30%</td>
<td>10%</td>
<td>10%</td>
<td>50%</td>
<td>NA</td>
</tr>
<tr>
<td>Vancouver 7</td>
<td>NA</td>
<td>39%</td>
<td>NA</td>
<td>55.3%</td>
<td>5.7%</td>
</tr>
<tr>
<td>Vancouver 8</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Vancouver 9</td>
<td>NA</td>
<td>2%</td>
<td>85%</td>
<td>10%</td>
<td>3%</td>
</tr>
<tr>
<td>Seattle 1</td>
<td>NA</td>
<td>&gt;5%</td>
<td>NA</td>
<td>60%</td>
<td>20% Europe 10% Asia 5% Other</td>
</tr>
</tbody>
</table>

Source: Based on company annual reports (2002-2003) and interviews with author

Seattle Based Firm

As indicated in Table 4.2, the Seattle-based firm relied on the U.S.A. as well as global sources
for its corporate finance. Although companies, such as Seattle Firm 1, based on natural
resource extraction are subjected to dramatic swings in economic cycles, this particular firm
remained strong in its global position through the 1980s and 1990s. At the time, the industry,
as a whole, went through a drastic transition in management and operations. Indeed, at the time

35 Firm revenue
36 Source of shareholders
of the interview in August 2004, the firm was the world’s leading company in its industry. Its headquarters, based south of Seattle, served as the epicenter for one of the world’s leading multinational companies. As it continued to grow as a global corporation, the firm was challenged by the needs to move its employees around the world, and especially across the Canada-U.S. border. The firm recently acquired a major Canadian firm in 1999 and so was also considered one of the largest timber companies in Canada. This company also had operations in Japan, Australia, and China. The firm’s focus in Canada was based on harvesting, pulp production, sales, and the management of substantial acres of timberland. Additionally, apart from production operations, the firm had well-established markets throughout North America, Europe, and Japan, with newly emerging markets in China and Latin America. Thus, there was a need for considerable employment within Canada for this firm in addition to a multitude of countries throughout the world. The next section will explore who this firm and Vancouver firms hire within its North American operations and why.

4.4.3 The Hiring of Foreign and Domestic Personnel

Vancouver-based Firms

Question number 2 asked, “Do you recruit employees from Canada/the U.S./around the world? If “yes”, from what universities or labour pools do you seek potential employees?” The question helped to explore how Vancouver-based firms became more international in their products’ reach. Additionally, as these firms increasingly faced global competition, they were often forced to recruit from outside the local labour market to obtain a professional workforce. Consequently, as indicated in Table 4.3, anywhere from 10 percent to 35 percent of professionally highly skilled staff within all Vancouver-based firms interviewed were considered “foreign”, or “not Canadian.” This included general professionals, technical staff, and executives, who had developed considerable expertise and “know how” outside of Canada, and these skills were vital to the firm continuing to succeed. To facilitate the recruitment of non-Canadian professional workers, Vancouver firms V - 2, 5, and 9 had even hired full-time immigration specialists to orchestrate the hiring and retention of foreign employees. This was in addition to dealing with immigration lawyers when these professionals were needed.

One Immigration Specialist working for Firm V-9 discussed its hiring practices over the year previous to the interview in July of 2004,
We have upwards of 1-2 international people coming into [Firm V-9] a week for work. For example, last year with 400 people hired, this included graphic designers, software engineers, producers, development directors, and language translators in quality assurance. Essentially, 25 percent to 35 percent of the firm is dependent on international hires. Our business is tied to being able to hire internationally. We cannot find these skill sets in Canada. Within this 25 to 35 percent, 75 percent of it is from the U.S. Many of these people are from southern California and they worked for our competitors as producers, directors, and top graphic designers. The other sources of our people are from Great Britain, Germany, and France. We compete with the movie industry for talent. Basically, our recruitment model is 75 percent directly from universities (green) that come in and grow with the company, and 25 percent of the hires are at the higher end. For example, people with gaming experience, entertainment, TV, people working for academy award winners etc., and senior software engineers. Our head office, worldwide, is in Redwood Shores, California. We also have studios in Tiberon, Florida. We have a large studio in Chuchy, UK [near London] and Warrington, UK [near Manchester]. We also have affiliate studios in Germany, Spain, and Australia. (Immigration Specialist, Firm V-9)

The above quote also alludes to the hiring of top talent from around the world for senior positions in addition to professional software developers. For this particular firm (Firm 9), the elite international hires were at the project manager level and included U.S. Academy Award recipients. The interviewee also noted that the majority of their executive staff was from the U.S., which was a common theme for five of the nine Vancouver-based firms (Firms V - 2, 3, 5, 7, and 9). In fact three (Firms V - 2, 3, and 7) of the nine firms interviewed had an entire “U.S. team”, which made up their executive staff. The immigration specialist for Firm 2 noted that American executives had a much wider range of experiences than their Canadian counterparts due to the larger U.S. markets and a perceived stronger culture of entrepreneurship than in Canada. Additionally, Firm V-2 reported that the U.S. executive talent pool provided 10 times the number of applicants as compared to the Canadian market. Other interviewees stressed that almost all founders of firms interviewed were Canadian, but when the firm had reached a particular point in its development, it often had to bring in not only a seasoned CEO, but also a team of executives who could continue to move the firm forward, and on to the next level of development. A resources manager for Firm V-7 explained,

All of our executives are now from the U.S. However, William Van Reikswick is from Vancouver (He’s the founder of company, and he sits on the board.) Essentially, the US executives have more experience within the industry. It is a pretty tightly knit community, and we have to tap from other industrial clusters [which are usually located in the U.S.] if not the actual person we want [who is usually from the States.] (Firm-V7)
The need to hire computer professionals and professionals in general was a constant for all firms interviewed. However, the 'dotcom bubble' bursting in late 2000 and early 2001 created an immediate abundance of domestic Canadian software engineers, and the firms interviewed noted that since 2001 they could more easily draw from this newly created domestic pool of suitable computer professionals for many jobs that they once had to be advertised internationally. One Vice President of Human Resources for Firm V-1 reflected on the challenges of finding good software engineers in the late 1990s,

In the late 1990s, it was almost impossible to find people. We hired system engineers, sales engineers, and software engineers from all over. In fact, we hired as far away as South Africa. We used search agents and relied on internal referrals a lot. (Firm –V1)

Vancouver-based firms stressed that if they needed high-level professional staff then they were often forced to recruit from other industrial clusters located throughout North America. One firm (Firm-V5) noted that they usually drew from Ottawa more than any other region since that is where the largest supply of appropriate professionals, in this particular industry, were located. The human resource manager for Firm-V5 noted,

We hire some folks who are local. We often look at people with transferable skills. Also, we hire many people from Toronto and Ottawa. Regarding the tech labour pool, there are many more people with the skills that we need coming from Ottawa, than elsewhere. We DO recruit from the states, for example, California, Boston, Maryland, and Texas,...[and] in the past, from Europe and Asia. Now, with the downturn, it takes too long to get someone from Asia and Europe, and it costs too much. Nortel is our customer, but we also compete with them [for employees]. We also compete with other small firms for employees. For example, Alcatel is our customer, but we also compete with them for employees. (Firm - V5)

The above quote helps to emphasize that not all talent in the Vancouver high tech sector is found outside of Canada. (See Table 4.3). However, perhaps more appropriately, it was often stressed that it was very difficult to find seasoned talent from just the local Vancouver labour market. The immigration specialist for Firm V-9 explained,

Overall, it is a lot easier to hire locally. For example, it cost about $25,000US to relocate people, even from Seattle. We would like to hire Canadians......it’s less stressful, easier on the wife, etc. See, [when they relocated to Canada] everything is a question, groceries, banking, you name it.... But all of my job is dedicated to our foreign employees [and helping them get situated in Canada]. Our business dictates that if we are going to grow and be the biggest and the best, then we need the world’s best brains. We are a global company. (Firm-V9)
The above quote reveals the truly global focus of many Vancouver firms interviewed for this study; and there were also reflections of this situation in the needs of six of the nine Vancouver firms interviewed (Firms V-2, 3, 4, 7, 8, and 9). The other three Vancouver firms had a primarily North American focus, but needed to hire across the border, nonetheless, (See Table 4.3).

The next subsection explores the Seattle firm’s hiring practices. The next section then turns to the firms’ major reasons for moving their highly skilled professionals across international borders. The chapter then moves to understanding the firms’ experiences with different types of visas and experiences at actual ports of entry between Canada and the U.S.

**The Seattle-Based Firm**

The Seattle-based firm reflected carefully on the hiring of local and domestic versus international labour. Despite the fact that they were a large global company with an employment base the size of a medium North American town, the firm’s human resource manager stressed that they emphasized hiring locally first, before looking to other labour markets. She expanded,

> Lower down in the corporation [with more routine jobs], we can find [people] in the domestic workforce. In fact, we have a policy to hire locally! Only if we cannot find someone local, do we begin to look internationally. Sometimes we need a technical skill, etc. It may be a management or strategic leadership type of thing…… We need to utilize our human resource staff. Hence, occasionally the best person for the job in the US may be a person in Canada. We also have people working on projects as teams. These projects go through phases with development, implementation, etc. Hence, we need to move people around based on their abilities and the different stages of the project. In fact, we have a couple of different scenarios in regards to mobility. For example, there is the permanent move to Canada or the US sometimes. We call it “localizing” into Canada. Person is transferring into the local system. They get local pay, local benefits, etc. Salary is determined by competitive pay in the region. We think about how this can be sustained, for example, [are they eligible for] a [U.S.] Green card [visa]?

> When they come in at the entry level, they go onto a development plan. We look at where they want to go and the skills they need to develop. Sometimes, they do things that involve moving internationally. For example, do they want to be part of strategic leadership or have an executive presence? With international assignments, the time period is usually five years, then they return. The reason is social security and taxes. A person can not be out the country for more than five years. Certain countries
have agreements with the US. It is allowed that that person pays US social security, but then after that, they must start paying into the host country's tax and pension systems. Thus, this is when other countries require that a person start paying into [the host country's equivalency of] social security. (Firm-S1)

In sum, the general skills needed for the success of this firm's operation could be found for the most part with local and regional labour markets wherever this firm had operations throughout the world, (see Table 4.3).

#### Places of Origin for the Professionally Highly Skilled

**Table 4.3**

<table>
<thead>
<tr>
<th>Firm</th>
<th>Cascadia</th>
<th>Canada</th>
<th>California</th>
<th>Rest of U.S.</th>
<th>World</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vancouver 1</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Vancouver 2</td>
<td>30%</td>
<td>25%</td>
<td>10%</td>
<td>10% (US executive Team)</td>
<td>15%</td>
</tr>
<tr>
<td>Vancouver 3</td>
<td>25%</td>
<td>35%</td>
<td>&gt;10%</td>
<td>15% (US executive Team)</td>
<td>15%</td>
</tr>
<tr>
<td>Vancouver 4</td>
<td>50%</td>
<td>20%</td>
<td>NA</td>
<td>20%</td>
<td>10%</td>
</tr>
<tr>
<td>Vancouver 5</td>
<td>20%</td>
<td>50%</td>
<td>15%</td>
<td>&gt;10%</td>
<td>&gt;5%</td>
</tr>
<tr>
<td>Vancouver 6</td>
<td>80%</td>
<td>16%</td>
<td>4%</td>
<td>&gt;1%</td>
<td>&gt;1%</td>
</tr>
<tr>
<td>Vancouver 7</td>
<td>5%</td>
<td>5%</td>
<td>25%</td>
<td>25% (US executive Team)</td>
<td>40%</td>
</tr>
<tr>
<td>Vancouver 8</td>
<td>NA</td>
<td>70%</td>
<td>NA</td>
<td>NA</td>
<td>30%</td>
</tr>
<tr>
<td>Vancouver 9</td>
<td>40%</td>
<td>25%</td>
<td>20%</td>
<td>6%</td>
<td>10%</td>
</tr>
<tr>
<td>Seattle 1</td>
<td>80%</td>
<td>&gt;5%</td>
<td>NA</td>
<td>15%</td>
<td>5%</td>
</tr>
</tbody>
</table>


#### 4.4.4 Reasons for Movements of Professionals Across International Borders

This sub-section summarizes the reasons why firms in Cascadia move their professional workers across the international border upon responses to the question posed on markets, sources of finance as well as recruiting practices. Overall, eight out of the nine Vancouver firms interviewed depended absolutely on some connections to the U.S. (not Canada) as part of their global strategy, in addition to maintaining the lifeblood of the firm. Even during the aftermath of the ‘dotcom bubble’ bursting and post 9/11, all Vancouver-based firms maintained strong links to the U.S. Vancouver firms V - 2, 3, and 4 had sales and customer links with Asia, but after the 1997 Asian Flu, connections and business activity could be considered still...
dormant. Latin America was important for three firms interviewed (firms V - 4, 8, and 9), with considerable growth potential slated for the next twenty years. However, links to continental North America were more dominant, overall. In fact, the responses of all the Vancouver firms interviewed revealed that anywhere from 10 percent to 35 percent of staff were traveling somewhere in the U.S. at the time that interviews were conducted. Thus, these patterns suggest that international mobility, although not necessarily focused on the Cascadia region, *per se*, was an important part of the raison d'être of the Vancouver-based high-tech firms. The international focus for all Vancouver firms interviewed mandated that many of their key employees should be able to move legitimately across the international borders without complications and undue delays. However, as will be shown shortly, this was particularly difficult in light of certain NAFTA provisions and interpretations of NAFTA as well as post 9/11 security concerns.

Travel requirements of many key personnel from all firms interviewed ranged from anywhere from a half day meeting in the United States to a permanent move abroad. The majority of reasons for travel into the U.S. and other foreign countries were for the purpose of product sales and after sales follow-up (firms V - 1, 2, 3, 4, 5, and 8). Other firms recalled that their employees crossed international borders for collaborative firm research, which required anywhere from a week to a few years of relocation (firms V - 3, 5, 6, 7). One firm (firm 6) moved an entire team of employees when they had to complete a project in the U.S. Due to the nature of their work, it was always difficult to determine how long they would be in a foreign country. As noted above, many firms also noted that they hired many foreigners, especially Americans, and they relocated permanently to Canada (firms V - 3, 4, 5, 7, and 9).

The human resource manager for the Seattle based firm stressed that for the most part only managers, executives, and highly specialized employees moved globally within the firm's operations. She stated that the need for experience and pay were big motivators for these executives and managers to want to move internationally within the firm, but there were also other reasons. She explained:

Most traffic is from Canada to the U.S., for reasons of career enhancement. The power is here [in Seattle], so those wanting to move up come here! Sometime people move for reasons other than money. For example, the health care system is better in Canada. Canadians do not have to pay out of pocket. ... We do not really have a Concept of the "Citizen of the World", which you mentioned. I mean my parents never gave a shed
of thought to living anywhere else in the world than America. Moving around is
difficult, so we put people through a culturalization process, even with moving to
Canada. (Firm-S1)

The above comment helps to paint a rather wide, but bounded picture of the range and
opportunities offered to this Fortune 500 firm’s employees around the globe. Most
interestingly, there was a strong emphasis on the fact that this Seattle based firm could hire
locally for much of their work that needs to be done in any part of the world. But, by contrast,
a more specialized project, and a more sophisticated job, may require a foreign based
professional to come to the U.S.A. Additionally, unlike the toy manufacturer, Mattel, or Levis
Strauss, the jean manufacturer, this particular Fortune 500 firm did not move their professionals
around the world on a routine basis. In fact, as the human resource manager stressed, Firm –
S1 moved their employees internationally only once, noting that this particular practice is very
often hard on the person and his/her family.

4.5 Visas and Work Statuses

While the firms interviewed for this study recruited from many different countries, and also
sent sales employees to many countries, the analysis focuses specifically on problems
encountered when crossing the Canada-U.S. border. Firm questions number 4 and 5, are meant
to gain a greater understanding as to what types of visas a firm uses to move international
employees into Canada or the U.S.A. as well as moving employees across the Canada-U.S.
border. Overall, firms reported that they used a range of visas and work statuses when moving
people back and forth across the Canada-U.S. border. This subsection explores these work
status and visas types from both a Canadian and American perspective.

Vancouver-based Firms

Firms in Vancouver reported that they used many different types of visas and work statuses
when moving their employees into the U.S. in addition to moving American hires into Canada.
Most importantly, the TN status for NAFTA (explained in Chapter 3) was seen as one of many
options for the Canadian firms interviewed. The Software Pilot Program, general professional
immigration arrangements, the new Provincial Nominee Program (PNP), NAFTA statuses (for
U.S. and Mexican citizens), and short-term work statuses (up to three years) were all possible
options for Vancouver firms looking to bring foreigners into Canada for purposes of work. The
following paragraphs explore the pros and cons of these various visas and work statuses, as
The chapter then turns to examine the firms' experiences with moving employees into the U.S. for purposes of work according to various visas.

4.5.1 Recruiting Employees from the U.S.A.

The software pilot program allows for eight different classifications of foreign software professionals to apply for work status in Canada and not to be subject to Human Resources and Skills Development Canada (HRSDC) review on an application-by-application basis. Essentially, in this program, a potential immigrant employee is granted a work visa usually between two weeks to a month after submitting a completed application to Citizenship and Immigration Canada (CIC). Five Vancouver firms (Firms V 1, 2, 3, 5, and 9) reported that they definitely used this program, but that the job classifications allowed were rather narrow and only applied to specific types of software work. However, when it was suitable for the job classification required, the program was seen as quite a 'boon' since there was no HRSDC review. The foreign hire was automatically granted work status if she/he qualified for the program. An extension of the software pilot program was a “fast-tracking” process for the larger firms, which allowed them to quickly process the paperwork for related foreign software professionals who were not included in the software pilot program. The program was highly lauded for its expediting nature, and the fact that the hires were not subject to HRSDC review on an application-by-application basis. However, in February of 2004, this program was cancelled (see Appendix 5), which led to confusion, if not panic, for many of the firms. Two Human Resource Specialists for Firm -V5 and the Immigration Specialist for Firm -V9 explained,

Sometimes we use the Software Pilot Program, but this does not cover all of our needs. We go through the HRDC a lot. It was fantastic! We once had fast processing, but it was nixed in February of this year (2004). In June, the HRDC and Skills Canada merged to become the HR"S"DC [emphasis added], and now they require us to [specifically] post position and salary wages [when we want to hire a non Canadian]. We cannot post salaries due to competition! We cannot bring in these international people until we get this figured out. We have about 15 people in view. We have to get this figured out! No one told us this! Historically, the HRDC has been very good, but now (ever since they got that "S" in their name) they are slowing us down! .... For example, we have several academy award-winning people on staff. In fact these people directed very successful movies, but their applications were rejected by HRSDC! They told me that I did not “recruit” for this position. This [particular] person [that we want to hire] is being fought over by Americans [in the gaming and film industries] for him
to work on their projects. They [HRSDC] tell us, “Oh well, you didn’t search Canada for these credentials,” but there are not that many local academy award-winning people, let alone in Canada.......or the world for that matter. *I am trying to work with them so that they understand our needs.* [emphasis added]......We want to hire these people, now we need to look at moving them in under NAFTA (eyes roll). (Firm-V9)

The software pilot program is cancelled. This was very sort sighted on the part of the Canadian government. Also, spousal hires were attached to this. This was a broad and progressive approach, and they cancelled it. (Human Resource Manager) (Firm-V5)

We used to be part of a high tech project, essentially, we could get the job done in 2 hours. They took this away in late February, and this hit us hard. Now, the person is delayed for about 8 weeks. This greatly affects the scheduling of our projects....... (Human Resource Associate) (Firm-V5)

The above comments help to capture some of the desperation that the Vancouver-based firms experienced in 2003-2004 with the elimination of the “fast-tracking” aspect of recruiting foreigners for some types of jobs within high tech industries. Additionally, there was general frustration felt by the managers of the Vancouver-based firms regarding the complete lack of understanding on the part of the HRSDC towards the basic hiring needs and human resource compositions of these Vancouver high tech firms. The Immigration Specialist for Firm-V9 noted that since the HRSDC had eliminated this “fast-tracking” system, his firm would have to use NAFTA TNs when bringing American citizens into Canada. However, NAFTA was seen as a secondary option when there was the more efficient fast-tracking system in place. The reason for NAFTA’s “secondary status” was that NAFTA statuses were only good for one year, compared to the three-year visa given under the now eliminated fast-tracking system. The immigration specialist for Firm-V9 stated that although the firm never had a problem renewing NAFTA statuses, the end of the year always came quickly, and then the firm had to renew the visa. Two other firms (firms V-4 and 7) noted that NAFTA was perhaps more suitable if the firm needed to bring an employee from the U.S. in quickly. The firm would then change the person’s status once he/she was in Canada. Also, firm-V7 hired American medical doctors, as researchers, and Ph.D.s in the sciences. Due to their highly specialized areas of professional expertise and education, these professions were more easily admissible under NAFTA.

Overall, though, the use of NAFTA statuses for Americans coming into Canada was seen as a temporary ‘fix’ (due to the status’s short-term nature) until a firm could organize the paperwork for a longer-term visa, or work status.
The longer-term Canadian visas for foreign workers included a three year work permit, which was subject to HRSDC review in order to determine if a Canadian citizen was equally qualified or not. This type of visa was generally avoided since it was subject to time delays in processing for up to six months and required a considerable amount of time and paperwork on the part of the firm applying. Prior to the ‘dotcom bubble’ busting, many foreign high tech employees were either brought in on the Software Pilot Program or NAFTA (if they were American), and then switched to permanent residency status once they arrived. Firms in my interviews reported that after the ‘dotcom bubble’ bust and the creating of Canada’s Immigration and Refugee Protection Act and Regulations (IRPAR) in June of 2002, the wait times for permanent residency has risen from six months to up to two to three years. After IRPAR had been implemented for about six months, Citizenship and Immigration Canada (CIC) received a number of complaints from Canadian firms and individual applicants that the new Act was too slow. It then became a concern that the new regulations were deterring possible foreign professionals from seeking work and/or immigration to Canada. The Provincial Nominee Program, created in 2003, was a response to this concern. (See Table 3.2 for a general description of some of the program’s key attributes.) Essentially, the Provincial Nominee Program is a provincially administered program, which fast tracks the applications of predetermined professionals that provinces have a shortage of (e.g. certain types of researchers, scientists, business professionals with expertise in trade, and so forth). This program had been in affect for almost three years now at the time of this study (2004), two firms (Firms- V7 and 9) said that it was fantastic compared to the old system, although the immigration specialist for Firm - V9 reported a number of criticisms. He explained at length,

Well, we are now looking at NAFTA for Americans. Essentially, NAFTA is a secondary route. We use to bring someone in for three years under the now “nixed” program. We are also looking at the Provincial Nominee Program [PNP]. A person named John Kens runs it in Victoria. The pros of it are that it is a good avenue for getting people into the country quickly based on our established relationship. The cons are that is it really necessary to become a permanent resident right away? It is almost too soon. The Reason: we get HRSD approval, the foreign employee gets a three year work permit. After 2 years they want to stay in Canada. They begin to apply for permanent residency. However, it takes them about 1.5 years to figure it out - especially if they come from California. Whenever they come to Canada. In a sense, you know that American attitude of, “Well I’m going to Canada, like I’m going to the colonies”…..after awhile, they get over it. They begin to like it here. This is when the wives start talking to the husbands saying, “You know, it is a nice place to live, the schools are really good, [it is] a great place to grow up. Why don’t we stay?” However, with the PNP the person has to apply within three months of arriving. We, as
the company, have to cover the application fees and the legal fees, which is between $5-$8,000 per couple. We like to see how they work out within a year and a half. It is hard to assess within three months. The company has to get them going on it right away.

(Immigration Specialist, Firm V-9)

The above commentaries illustrate that the firms in Vancouver had a variety of visa options when bringing staff from the U.S. to Canada, and that each visa type – fast-track, NAFTA, and the PNP program - had varying levels of complexities. NAFTA TNs were often seen as a secondary choice compared to the much more comprehensive and longer-term options offered by other types of Canadian work and immigration status. However, when Canada's immigration laws were rewritten in June of 2002, NAFTA, by default, became a primary choice for many firms hiring people from the U.S.A. since all other immigration options were bogged down in lengthy applications, and there was a dearth of Canadian government immigration staff, in addition to closures of certain components of the fast-tracking pilot programs for foreign hires, as explained in the above paragraphs.

The next subsection explores the nine Canadian firms’ experiences with various visas and work statuses when sending their employees (and potential employees) into the United States for purposes of work.

**4.5.1.1 Sending Employees to the U.S.A.: The Vancouver Firms’ Experience**

The majority of Vancouver firms used a TN status when sending their employee down to the States to work for the short term. They also used L-1 statuses, which were considered an intracompany transferee under NAFTA. Many found that sending the person as an intracompany transferee, rather than a new hire “TN”, was easier to administer through the U.S. port of entry. The following are reflections by the firms on their experiences with various U.S. work visas and statuses,

We use L-1\(^{37}\), T-N\(^{38}\), B-1\(^{39}\) (for U.S. meetings), with proper letters they are not that tough. In fact, I have never had a rejection. However, I must include more and more evidence with the employees’ applications. The U.S. office is sales and marketing, and the Canadian office is R&D, we need them to move across the border for our raison d’etre.

\(^{37}\) Intracompany Transferee status, permissible under Chapter 16 of the NAFTA

\(^{38}\) Treaty NAFTA professional worker status, permissible under Chapter 16 of the NAFTA

\(^{39}\) Business visitor status, permissible under Chapter 16 of the NAFTA
In terms of the US, we have anywhere from 20-30 people crossing the border at any one time for purposes of [on-site] client R&D, services sales, etc. Overall, I am fine with it. However, blanket L-1s would be easier. They (the US DHS port people) know us, so it is not that difficult when we apply for L-1s. It would be a lot simpler if we could have a blanket L-1 petition. But, a firm must have over 1000 people and generate a certain about of revenue to fall into this category. We cannot do this due to our small size. (Firm-V8)

If it is just for a meeting, then we need a B-1. If it is for work, then we need a TN. It depends on the individual and what he/she is doing. We always have to be asking ourselves if the professional fits into the category we are trying to use. (Firm-V4)

Going into the US, we try and use the H1-B, since it leads to a green card. The TNs and the L-1s are temporary......with the B-1 visas, you need letter of intent if it is for a short conference. With a TN, the assignment needs a beginning and end date. With the TN the expectation is to try out the role in the States, and then hire long-term, which is the H1-B. (F-V5) (Human Resource Manager)

Overall, despite the confusion and anxiety of sending people into the United States, all firms noted that on most occasions they succeeded in sending their people for work across the border and into the U.S. However, roughly 10 to 15 percent of the time, they experienced delays and the possibility of delays and possibly being turned back at the border and being sent back to the firm for additional information.

The Seattle Based Firm

4.5.2 Recruiting Employees from Canada

The Seattle-based company recruited many employees from Canada to the U.S.A. For the most part, there was nowhere near the visa or work status options for newly recruited foreigners entering the U.S. as compared to Canada. Nor was there the relative ease and reasonable predictability in obtaining the visas or statuses such as the fast-track software pilot program or the provincial nominee program. In fact, the American experience was more limited, cumbersome, and anxiety ridden when it came to the Seattle-based firm seeking U.S. work statuses for its Canadian and international employees.

For the most part, work status for the Canadian employees of the Seattle firm were temporary in nature, and ranged from anywhere from just one day to three years in time. Chapter 3 reviewed many of the visa and status options for foreign professionals seeking entry into the
U.S. for work. The Seattle firm confirmed the limited nature of these visas discussed in Chapter 3. The U.S.'s H1-B visa was the most frequently sought after since it allowed a foreigner up to three years in the U.S., and this could then be renewed for another three years.

The Seattle-based firm discussed that it used every type of visa or work status that it could when moving employees and new hires across borders. The human resource manager noted that her firm had a very good attorney that she turned to regarding these matters. She discussed at length the different types of visas the firm used when bringing foreigner employees into the U.S., in addition to the pros and cons of each.

Regarding immigration into the US, if someone is coming in short-term, I look to see if I can use NAFTA. We also look at “Ls” or intracompany transferees. For Ls, they must have one-year of experience with the firm. I then look at the H-1Bs. The reason is a hierarchy. If it is a project where the person is a commuter and working short-term, then I look at NAFTA. I can prepare a letter, explaining what it is we need, and the cost is less than $100.

I feel that people abuse NAFTA for the longer term stays. In the last couple of years, everyone started bringing people in on H1-B, they maxed out [the capacity limit set by the U.S. Federal Government], so we then had to start turning to NAFTA. This has gone on for two or three years. Companies started screaming to [U.S.] Congress to raise the cap. Congress said, “OK, we will expand the numbers for a few years until you get US workers trained for these types of jobs.” It has then gone back to the 65,000 limit again. We are maxing out again. If you put in an application in October, you cannot get a visa until April of the following year. You can start applying six months ahead of October 1, which is the beginning of the fiscal year. This means that you will be first in line. We are getting the petitions ready, but I have no idea how long the line will be. We have heard rumors that if you cannot apply by November or December then they will all be gone by that point. Whether this is true or not, who knows! I do have a couple out there, if we don’t get them I am going to be forced to look at alternatives that I do not know about. We have a guy I want to bring in from Uruguay, so NAFTA is not an option for him. We have used NAFTA when we ran out of H-1Bs. Firm to firm, we use NAFTA. This is low cost.

If I cannot use NAFTA, then I use Ls. We go to the “Ls” if localizing, if not a project. We have a preference of “Ls” over “Hs”. With Ls for intracompany transferees and if a manager or executive to get a green card does not require a labour certification, (A is for executive and Bs is for company [professionals]). If not a manager or an executive, they could still transfer in under an L-1A. They must have specialized knowledge not found in the States. So it is not just a firm employee. Thus, we need to say we need to bring in this person because we need this person’s experience, and we do not have it here. Those people, under the L-1B, we must do a labour certification. So this is why we draw the line with localizing. We really only localized high-level executive managerial positions because it is so difficult to get a labour certification. With lower
level, you can find that talent here. It may not be exactly what you are looking for. For example, a manager came to me regarding a job that is open and there are two people applying from [the Canadian side of the firm], and the manager would love to interview them since they are [already firm] employees and they know the [firm] system. These people are working within the larger organization, but they are not managerial. Unfortunately, I have to say “No”. The chance of us being able to keep them long-term is hard. I can get them here on a L-1 for five years, but if the intent is for long-term, we may not be successful, and probably not be successful. We could recruit on two years of experience, but we can not recruit on the basis of know the “Firm System”. A person has to be specialized with a technology. It is disappointing that we cannot bring these other employees in and be assured that we can keep them long term. We do not want to disrupt their lives by bring them here [US] for five years, and then say, “OK, go back to Canada and have a good life.” We take into consideration the human end of this. Also, when you localize someone, you change their pay and their retirement plans. I cannot find my in crystal ball what the impact of a person’s retirement will be if they change from Canada to the US or from the US to Canada. There are so many different factors. Let’s say they have worked 5 years in one country and thirty years in another. Or another person with ten years here and ten years there. We try and be real cautious when we talk about how their retirement will look. I don’t know. We also do not know what the impact on their social security will be. So if you are localizing with an L-1 person if we cannot get the person a green card for the person, then the person has to go back to Canada. I don’t know what this will do to their retirement. We do it one time [move people from one country to another]. This is a career decision move. With H-1Bs, must do a labour certification, especially for a green card. We like to move people only one time, and that is it! This is a career decision move. We are doing this with the best information. Other firms consider their personnel to be global so they do not have a home base, but we do not do this! We are looking at controlling costs. Moving people around is very expensive. We might see some changes, but I think we are looking at a more conservative era. (Firm -S1)

The rather lengthy quote from Seattle firm 1 helps to demonstrate the large number of options with U.S. work permits, almost all of which are temporary in nature. Additionally, the yearly capacity set by U.S. congress on H-1B visas was an issue; and since the U.S. economy had slowed (post 9/11), U.S. Congress was somewhat skittish about admitting large numbers of foreign professionals into the U.S. Most importantly was that cross border labour flows was a significant issue even for a large Fortune 500 firm; one with ample funds dedicated to expert immigration attorneys and lobbyists, and not just a small high tech startup company.

Overall, the results of the interviews focusing on Vancouver firms “sending” employees to the U.S.A., and the results of the Seattle firm “recruiting” employees from Canada, suggests that the U.S. immigration system was more complex and less certain than recruiting employees into Canada. In fact, the U.S. side of the border appeared to be a maze for all Cascadia firms, whether a large 100 year-old Fortune 500 firm or a small start-up firm, especially after 9/11.
The dissertation now turns to exploring some of the strategies that the firms use in order to get across the Canada-U.S. border despite the growing impediments in a post 9/11 world.

4.6 Experiences with Crossing the Canada-U.S. Border

All firms interviewed had at least one interesting story to tell about the experiences that they had moving their employees across international boundaries, especially the U.S.A.

The Vancouver Based Firms

Each firm remarked that they found considerable variability between the various U.S. ports of entry along Cascadia when it came to their employees crossing into the United States. Three firms (Firms V-1, 2, and 8) noted that they had ‘problems,’ which ranged from having requests for additional information by border officials, to more intense questioning and longer wait periods than what was once the ‘norm’ (i.e. before 9/11) at the Pacific Peace Arch Land Border crossing; but that the Vancouver International Airport and the Pacific Highway Truck Crossing were almost never a problem. Firms V-2, 3, 5, and 7 even had employees turned back for various reasons ranging from ‘not enough information’ to particular scrutiny for ‘darker skinned employees’ and even more interestingly ‘white women.’ This will be discussed in more detail in an upcoming section entitled, “Post 9/11 Experiences”. In fact, a human resource manager for Firm V-5 summed up some of his many experiences well when it came to moving his employees,

It is always an adventure moving across the Canada-U.S. border. It is basically the roll of the dice, and it depends on what kind of day they are having. Our folks have been prevented from entering. Since 9/11 there is a lot more questioning regarding our products. There is a lack of understanding as to what we do. About 10% of our people experience lengthy delays and need to return to the company for another letter.

......There was one of our employees who had to meet with a customer [last year, 2003]. She was waiting for a flight to the U.S. and was rejected. She was sent back to Vancouver. There was no rhyme or reason for why the officer refused her. She was on a letter of intent [usually a requirement for a business visitor’s visa]. So I was not sure exactly WHY she was refused. (Firm-V5)

The Vice President for Firm-V1 explained that his firm had difficulties moving his employees across into the U.S. even prior to September 11. However, following September 11, 2001, the
firm began to use a seasoned U.S. immigration attorney, and subsequently they had not found any difficulties with the Canada-U.S. border. He explained,

Most of our crossings are at the airport. Where we had problems is at the Pacific Border Crossing. However, we have never had a refusal. There is a bit of a problem with [port of entry] supervisors giving [what seems to be] too much power to front-line employees. We use immigration attorneys. It cost us about $3,500 to $4,000 [per application], to make sure that everything is in order. (Firm-V1)

By contrast, another human resource manager exhibited considerable frustration towards the U.S. immigration authorities and their seemingly arbitrary nature when it came to admitting some of her firm’s employees into the United States. She stressed,

......This is also especially important for our sales people, we need to know that they will get across the border without a problem. Otherwise, we could lose a multi-million dollar deal. These deals and meetings take months to set up. The government gets caught up in the process, and does not understand how sensitive it is for our firm to move across the border. Like I mentioned, millions of dollars are at stake in us crossing the border without a hitch. There should be a level of support coming from the government. (Firm-V3)

Despite these indications of crossborder hindrances, and particular frustrations as to the apparent variability and even randomness of cross border checks, many of these firms continued to grow and succeed as global companies. The older and relatively more established firms discussed the fact that the U.S. immigration officials between Seattle and Vancouver were beginning to recognize the firm’s name and their employees when they crossed the border. Six firms (firms V-1, 2, 3, 4, 8, and 9) stressed that this “familiarity” was a good thing, since this familiarity with company names and employees made passing across the border a little easier, although it did not guarantee entry into the U.S. However, one human resource manager reflected on the fact that since her firm had developed a “good” reputation as a viable firm, with major Fortune 500 company firms as its competitors, it now had to do everything “above board” since the firm’s reputation was at stake. This included hiring attorneys to scrutinize visa and status applications, and to make sure that everything was properly in order before their employees attempted entry into the U.S. She explained,

.....being listed on the NASDAQ is a plus when crossing the border. We are a public company [and this gives us credibility with border officials]. Our clout gets bigger as we grow. However, as we grow, we must protect our relationship with the border officials. We are becoming a large company and must protect our “reputation.” We cannot get away with errors like we used to. Now, we always use attorneys and myself
for our employees when we send them over the border. Part of my professional role is to know when to go to our attorney [in these circumstances]. (Firm V-4)

All firms noted that prior to September 11, it seemed that everyone "fudged" when it came to seeking entry into the U.S. An executive for firm 8 explained,

We used to use B-1s [short-term business visitor visas rather than work visas] a lot when we went over the border. No one really enforced it [in the past], and everyone fudged a lot of the time when they were going to trade shows and conferences. (Firm-V8)

Firm-V6 was most articulate about taking radical approaches when seeking entry into the U.S. (See the quote from Firm 6 at the opening of the dissertation on page 1.) This demonstrates the often clever and determined approaches that Canadian firms often have to take in seeking entry into the U.S. for a contract with a U.S. firm or governmental group. Additionally, a Canadian attorney (who was interviewed for the material on immigration attorneys in Chapter 6), who has many larger multinational firms as clients as well as smaller firms, summed up some of the differences between the two types of firms, and how large firms often use smaller firms when they need something done quickly. He explained,

Not everyone deserves NAFTA treatment. I work with Blue Chip companies, and they want to maintain their good corporate image. So, they only hire people who are permissible under NAFTA. They are not going to jeopardize their due diligence. They also have the money to pay higher wages, so they get better people. However, they also have larger overheads. Smaller and mid sized firms have not been in it long enough (nor do they have the resources) to worry about due diligence, so they are not going to care. Large firms know this. Hence, large firms subcontract out to smaller firms when they need to get things done quickly. It is essentially like what Wal-Mart does with its subcontractors. Hence, ideally NAFTA should open up more labour [within North America], which creates lower production costs over unit costs, resulting in greater economic productivity. (C-A6, Canadian Immigration Attorney)

**The Seattle-Based Firm**

Despite the fact that this firm was one of the largest within the U.S. with considerable operations in Canada, it also experienced difficulties and "hold ups" similar to the smaller Canadian firms when their employees who are Canadian citizens sought entry into the U.S. for purposes of work. The human resource manager explained,

We have had our moments. We had someone turned away [from the border] this week. He was fairly high level and was seeking an intracompany transferee status. The person
at the border asked for some of our financial records and also a corporate hierarchy depicting how [our firm in] Canada was related to [headquarters in the] US. I pulled all of the materials together for him. He went through the next day to a different DHS officer with all of the materials requested, but he [the officer] did not ask for them. He just issued him the status [emphasis added]. We have had to structure the company as a North American company. We have a parent US firm and a subsidiary in Canada, but from an operating perspective, we like to operate seamlessly across North America. You may have a manager in the US with staff in Canada. Thus, the staff needs to come in once a month for meetings. For example, a woman working in Canada was doing HR for Canada and relocations across Canada. We work together and have monthly meetings so that everyone is on board with things. She lives in Canada and works in Canada. Thus, she is not taking away a job from a US worker. We have had people stopped - especially if they cross the border frequently. They [the border officials] just say “no” without an explanation. One [employee] did say that the officer was really nice about it, but still said “no”.  (Firm-S1)

The above section helps to reflect on some of the experiences, in general, that the firms have had when crossing into the United States. In general, although the vast majority of firms interviewed have not major problems with their employees crossing into the U.S. since 9/11 there is now a strong addition of anxiety, tension, and confusion for these firms and their employees when traveling into the U.S.A. An upcoming section explores in more detail the particular cross border experiences that firms have had in a post-9/11 environment. For the most part, both Canadian firms and the one American firm have had nowhere near the levels of frustration with the Canadian ports of entry when bringing in American employees, or executives, into Canada, although they did emphasis that the Canadian ports of entry were becoming more “security and enforcement” driven after 9/11. When their frustrations occurred on the Canadian side of border controls it was with the HRSDC [Human Resources and Skills Development Canada], and the immigration processing centers in Vegreville, Alberta, and the Canadian Consulate in Buffalo, New York outside of Cascadia, which was responsible for processing all permanent resident entries for North America.

In part from differences experienced in crossing into Canada and the U.S.A., firms also reported that there was variability and randomness to the interpretation of NAFTA rules by different port of entry officers, which the firms felt were not warranted under NAFTA. Additionally, some firms realized that there was considerable variability across different border crossings, and that firms would often use this to their advantage, based on the situation. Finally, firms stressed that they had to use attorneys more frequently, due to the port of entry officers’ increased intensity towards the review of NAFTA applications, and supporting
documents, especially after 9/11. All of these factors have caused increased time, work, stress, and money for these firms in their additional requirements. Based on these experiences, the following section explores in more detail the strategies used to move employees across the border and the types of visas and work statuses the firms reported using to do this and the experiences that the firms have had with these various work visas and work status arrangements.

4.7 Firm Strategies When Crossing the Canada-U.S. Border

Firm strategies about how to cross the Canada-U.S. border in a more closely regimented post 9/11 world ranged considerably. These strategies included more paperwork, the hiring of firm personnel whose job was solely dedicated to the recruiting of key foreign employees and moving existing employees across borders. Some companies adopted more “rogue-like” strategies, which included using ports of entry to one’s benefit and others even adopted what might be considered a strategy of using “fraudulent entries”. This section explores these strategies in some detail.

Vancouver Firms

Every firm interviewed stressed that over time, more and more paperwork was needed to document their employees’ reasons for entering into the U.S., as well as recruiting employees into Canada. For instance, the immigration specialist for Firm -V9 noted that even if their employees were going to Seattle for a basketball game, they had to have letters from the firm stating their intention of entering the U.S. if it was a firm-sponsored event. He noted,

Borders are getting tighter in both directions. Everyone must have a letter and explain why they are traveling. Our people [who are] going down for a basketball game, even to a Washington town, everyone must have a letter as to why they are traveling. (Firm-V9)

Additionally, all firms stressed that they hire attorneys to go over all of their visa and work status applications. The smaller firms noted that this was very costly for them since an attorney would charge from $1,500 to $4,500 per case to prepare the necessary paperwork for a visa or work status application. The Operations Manager for firm V6 explained,

We are looking at getting [our] people permanent work visas......It is very expensive! The attorneys, the permits......We need better and more detailed information. We
started with an immigration lawyer in San Francisco who charged $350 an hour. So, we looked around closer to home, and found someone [in the area.] (Firm-V6)

The need over time to use legal advice led three firms (Firms V-2, 5, and 9) to hire a human resource professional whose sole purpose was dedicated to arranging the paperwork for the hiring of foreign professionals and helping them move across international borders (usually into the U.S.) for purposes of work.

All of my job is dedicated to our foreign employees……(Firm-V9)

It should be stressed that Firms 2, 5, and 9 were mid-sized firms (total employees numbers ranged between 200-2,000 employees) with considerable budgets for such a professional person. However, smaller firms often had to use an attorney, and many firms, as expressed by FirmV-6 above, noted that these immigration lawyers put a strain on the expenses of the firm. This circumstance led one of the smaller firms (Firm V-8) to use one of the firm’s executives, who was a lawyer by profession, as a quasi-immigration attorney when a firm employee needed paperwork for a work visa or status application into the U.S. The Vice President for Administration for FirmV-8 explained,

The law firm we use is expensive! They charge about $1,500 for an average US visa and $1,000 for a TN. Now I do a lot of the applications since I am an attorney by profession. (Firm-V8)

Vancouver-based firms also talked about the difference between the ports of entry, and how they used the ports to their advantage when moving people back and forth across the Canada-U.S. border. One human resource manager for Firm V-7 noted that there was a considerable difference between the rural and urban ports of entry which straddled B.C. and Washington State. For example, one of their professional employees had difficulties getting residency visas for his children at the Oosoyoos border crossing, which can be considered a rural port of entry in the interior of B.C., so that they could attend school in British Columbia. The family and the firm’s human resource staff had to sort out the problem when the employee finally arrived at the Douglas border crossing, 40 minutes directly south of Vancouver, B.C. The human resource manager stressed that if the employee had passed through the Douglas border crossing originally, rather than Oosoyoos, or come through the Vancouver airport, this problem would most likely not have occurred since the officials at these more urban border crossing dealt with similar family problems for foreign employees almost every day. Another interviewee noted
that his firm (Firm V-8) sent their employees through the truck border crossing a day or so ahead of time to pick up their L-1 visas and then they fly out of Vancouver airport a day or so later. I asked if the firm had ever had problems with this, since formal procedure required that one is suppose to be heading to the U.S. for the designated (and only the designated) purpose of the NAFTA status upon seeking entry into the U.S. The interviewee responded as follows,

When we have to send our employees out through the airport, we send them through the truck crossing the day before to pick up the NAFTA status. Then we send them through the airport the next day. No ones ask (U.S. port of entry officials). It has not been a problem. (Firm-V8)

This particular procedure, however, was not permitted under NAFTA, as was explained in Chapter 5 (The Immigration Officials). However, it was still done by Firm V-8, and it appears that it was a classic “don’t ask, don’t tell” type of situation. Overall, Vancouver-based firms have had to develop some sort of strategy in moving their people back and forth across the Canada-U.S. border, and quite clearly, some of these strategies involved ingenious ways of using the geographic variety of border crossings in the Cascadia region.

The Seattle-Based Firm

The Seattle based firm reported that their only concrete strategy to navigate the complexities of the U.S.-Canada border was to work closely with their attorney. As mentioned previously, they had considerable financial resources to pay expert immigration attorneys to work on cross border matters. However, the human resources manager stressed in a previous section of this chapter that even their high level managerial staff had difficulties with the border. Perhaps most interesting was the fact that the firm’s Canadian employee who was turned back at the U.S. border went back the very next day to a new DHS officer, and he did not even request any additional materials than those presented to the first DHS officer from the previous day. The new DHS port of entry officer just issued the work status. The human resource manager for Firm S - 1 noted that she and executive financial staff went through a considerable effort to prepare the requested materials within a single afternoon, and she was somewhat surprised that these materials were of no relevance to the ‘new’ DHS port of entry officer. This experience helps to bolster the attorneys’ claims reported later in Chapter 6 that U.S. port of entry officers’ reviews and requests for additional information have been rather random and without consistent logic.
The next section explores what these firms would do if existing levels of cross border mobility was impeded, or stopped - as many found out for approximately 24 hours immediately following the September 11th, 2001 attacks on the east coast of the U.S.

4.8 Was the Canada-U.S. Border an Impediment to a High Tech Cluster between Seattle and Vancouver?

The above frustrations with the Canada-U.S. border might lead one to think that the Canada-U.S. border was a serious impediment to firms moving their people around North America and inferred that NAFTA acted more as a 'shield' than a 'sieve'. So, when asked the question “Is the Canada-U.S. border an impediment to a high tech cluster between Seattle and Vancouver,” (see appendix 1), surprisingly, many of the firm respondents, after a few moments of reflection, said that overall, it was not more of a 'shield' than a 'sieve'. Despite all of the negatives, reported earlier, that the border brought to moving people post 9/11, it was considered still relatively open. Importantly, NAFTA, overall, appears to provide many more options for companies than before it existed. Some of the firms explained,

No, because of NAFTA, it is now much easier to get across. There is the possibility of creating a cluster (in Cascadia). In fact, some of our people go to Seattle for new jobs. (Firm-V7)

All in all, it [the border] is not really a big deal. The number of incidences are small. We could avoid many things if we knew what to expect ahead of time. Maybe under the new blanket of security, things will be more difficult. Will there be big problems if there was a special U.S. visa requirement for Canadians? We need to think about how we facilitate trade without compromising security. (Firm-V1)

Specific to Cascadia, many of our employees need to travel to Microsoft to work on joint projects (software integration projects). We also have employees based in Seattle who travel to Vancouver on a regular basis for meetings, etc. Some of these employees could be based anywhere, but they choose to be located in Seattle in order to be close to our Vancouver office and family and friends. (Firm-V2)

To date I have not found that this is so. The border is keeping things in check. In regards to “impeding,” the Canadian side [not the U.S. side) is slowing us down with approvals! (Firm-V9)

Because we are not a “high tech” company, per se, I cannot answer this. We do hire software engineers, and we are implementing these huge technology programs and processes. I do not think the border is an impediment because we can get our people across. But if you are talking about high tech as a whole, I do not know. (Firm-V1)
So, despite all of the misgivings about the border, and the perceived inadequacies of many of the visas, there appears to be ample opportunity for knowledge worker mobility, both within Cascadia and within continental North America. Overall, the findings may appear as somewhat of a paradox. Apart from the comments made above, in the previous subsection the Seattle based firm, in particular, would definitely like to have freer mobility throughout Canada and the U.S. with its employees. In the above material, interviewees tended to be more critical of U.S. border controls than those on the Canadian side of the border. Yet, it should also be stressed that seeking entry into Canada was not without its problems. In fact, throughout the dissertation, interviewees have often heralded Canadian border practices as an example for the U.S. to follow, but some firms also stressed that fact that Canada could be just as difficult as the U.S.; and, indeed, Canada was becoming more 'enforcement driven', especially after 9/11, as opposed to its frequently perceived “facilitative” nature.

4.9 What would Happen if Cross Border Mobility was Impeded?

Each firm interviewed was asked the question, “What would your firm do if cross border mobility was even more impeded than now between Canada and the U.S.?” This was used as a way of gauging the importance of the Canada-U.S. border on firms’ activities. (See question number 12 in Appendix 1). As mentioned in the preceding subsection this actually occurred between Canada and the U.S. for about 24 hours immediately following September 11, 2001. In the months following this catastrophic event, the mobility of people and goods often slowed to a crawl across the border due to tougher security and inspection procedures. These actions had considerable negative effects on both economies, and if at all, helped to remind both Canadians and Americans how important a relatively open border was between the two countries for trading purposes. This section explores the reflections and anxieties of just how firms would respond if they could not move employees easily across the Canada-U.S. border.

As indicated by patterns of sales, financing, and technology, all firms interviewed were closely embedded in such a way between both the U.S. and Canada, that they depend on mobility of their people across the border to keep the links and networks active throughout North America. Indeed, each firm had a special and unique arrangement with how it tied and engaged itself with the U.S. This ranged from having headquarters in Vancouver, but calling itself an “American” company (as was the case with Firm 5) to receiving considerable infusions of capital from the U.S. and Germany, but being based in Burnaby, B.C.; and finally to being a
solidly anchored Canadian firm, but relying heavily on U.S. and other foreign markets for firm accounts. Thus, with just nine Vancouver-based firms interviewed, there were nine unique ways to develop relations and networks throughout the U.S. and the world. However, each firm was absolutely dependent on the U.S. for firm survival, if not success. It could also be said that the Seattle-based firm depended upon its Canadian activities, as a global firm. Consequently, each firm interviewed noted that if cross border mobility was impeded, it would have a very negative effect on their business. The majority of the interviews were conducted in 2003 and 2004, about two to three years after the 9/11 attacks. Despite this lag in time, the majority of the firms noted that they did not know what they would do if they could not move personnel between Canada and the U.S. for purposes of business. Three firms (Firms V - 2, 3, and 4) reported that they would have to result to video conferencing. However, in the same breath, they stressed that this strategy would only be partially successful since they really needed to send people over the border as part of their operation (for sales, R&D, meetings, and so on). The human resource specialists for Firms V - 2 and 3 explained,

......I wonder about this myself, sometimes! We would have to rely on remote communications, such as phone and video conferencing; make better use of remote access tools; and hire more people locally (e.g. consulting and sales). (Firm -V2)

Don't know. We try and be proactive. I have a spread-sheet with all of the people who are not Canadian citizens. We try and get them to be provincial nominees and permanent residents. I push our people to get going on this. We try and be more proactive, and do things in-house. It is very expensive to use attorneys. It will become more and more challenging if they keep tightening up the border. We might do video conferencing, but we need hands-on engineers [crossing international borders] for much of what we do. (Firm-V3)

Although one other firm (Firm V-4) noted that they would also respond with technology, the human resource specialist also stressed that they needed to have an international pool of applicants, since their types of work was “global” in nature. Thus, they had to be able to choose from the best people in the world. Firms V- 5 and 7 were quite emphatic about how absolutely necessary international talent was to the success of the firm. They explained,

We probably could not do business! We need face-to-face interaction. We could rely on video conferencing. We would have to hire locally, which would limit us since we thrive on the very best [from around the world]. We would probably have to relocate the company to the US or bring everyone to Burnaby... (Firm-V4)
Lobby the government and join forces with other high tech firms in our HR needs. Some folks may want to hire domestically, but we will miss out on some world-class talent. For example, we hire people from the Middle East, which includes Israel, Saudi Arabia, and Iran, [as well] as Eastern and Western Europe, and the U.S. We experience this already when [Canadian] professors leave for the States and take their good students away [with them]. We can only develop to the point that we have access to intelligent qualified people. (Human Resource Manager) (Firm-V5)

Don’t know.....maybe a sales office in the U.S.? We would then have to hire them [American employees] in the U.S. However, we must hire internationally do to the types of work that we do. We are dependent on their knowledge. (Firm-V7)

Another interviewee for Firm V-8 noted that his firm had a worldwide reach with the firm’s products and “shutting down”, or “drastically impeding” the mobility of people between across borders, especially the Canada - U.S. border, would have dire consequences on his firm. He explained,

We would be dead! We would have to break contracts that we are under. We would have to buy new companies and become a U.S. firm, and do a majority of the work via email. However, product development and new customers must go with people! We would then have to find implementation U.S. partners, and these Americans would have to come to Canada for training and company interactions. (Firm-V8)

Perhaps most emphatic is the response from Firm V-9 to this question,

IT WOULD CRIPPLE US!  
(Firm-V9)

The above remarks help to uncover the anxious quandary that human resource professionals and executives continue to have over the tightening and possible closures of international borders, especially between Canada and the U.S. These quotes reveal that although firm managers had thought about these uncomfortable possibilities, there was little they could do in order to avoid the possible situation of a complete border closure without a complete restructuring of the firm, or extensive use of teleconferencing in certain cases. As some firms exclaimed, it would more than likely completely destroy their abilities to operate and execute their purpose.

The Seattle-Based Firm

The Seattle-based firm was of considerable magnitudes larger than the Vancouver firms, and with this size differential, the human resources manager stressed that if the Canada-U.S. border
was seriously impeded or even closed, then the impacts would go beyond that of the firm and likely impact the entire North American economy. She explained,

> We would see an impact on the economies of Canada and the U.S. Essentially, it would be to the detriment of the economy! It would affect our ability to manage trade throughout North America. This would really impact the Canadians who work for us. We are partners together. We would them have to become separate functioning entities. There would be a detrimental on both sides. (F-S1)

The comments further reinforce the importance of the smooth operations of the U.S.-Canada border for all Cascadian companies. As has been demonstrated, even larger firms would be impacted by border closures, and this would have a major impact on both the Canadian and U.S. economies.

In sum, while the material from the interviews suggests that Cascadian firms' major linkages are well beyond the region's own borders, the international U.S.-Canada border plays an important role in the success (or otherwise) of these companies. The next section explores some of the specific impacts of 9/11 on the ability of firms to move their employees and new hires across the border.

4.10 Mobility of North American Professionals in a Post 9/11 World

September 11 had a direct and lasting impact on the mobility of all people crossing international borders. Question #8 in the firm questionnaire (Appendix 1) "Have the incidents of September 11 affected your employees' experiences in crossing the Canada-U.S. border?" tried to capture these experiences. This section focuses on some of the impacts from this catastrophic event on the firms interviewed, and how they have responded.

**Vancouver Firms**

All Vancouver firms interviewed felt the effects of 9/11 in different degrees. The firms stressed that for a few months following 9/11, travel for their employees was impeded considerably. Additionally, the negative economic impact was perhaps even more detrimental to the firms since, as mentioned previously, all conducted a significant portion of their business in the U.S. From a more technical perspective, all firms interviewed stressed that there was more attention to paperwork for visa applications. For example, small details about their employees' applications that were never a problem before 9/11 could sometimes now prevent
the employee's entry into the U.S. This additional scrutiny sometimes led to missed flights for some of the employees of the firms (Firms V-1, 5, and 6). Overall, there was considerable anxiety for all firms and their employees after 9/11 when seeking entry into the U.S. The immigration specialist for Firm V-2 explained,

I had two employees turned back with deficiencies in their application for things that had never been an issue before. One was assessed by a very inexperienced [port of entry] officer, and the other employee was assessed by a senior officer who was training a new officer. Very recently I have experienced some additional problems with credentials, e.g. employee reference letters and university transcripts. I am not sure if this relates to a general “stepping up” of processing enforcement. Overall, I have few examples of employees running into problems, but there is always a threat, so employees tend to be anxious about applying for visas [at the border]. When something goes wrong, it tends to go very wrong! (Firm-V2)

Also, since September 11, 2001, the firms experienced increased scrutiny when they moved Americans through the Canadian ports of entry between Vancouver and Seattle. One human resources manager for Firm V-4 explained,

We have problems with Canadians coming across the U.S. land borders. In addition there is confusion between the HRSDC [Human Resource Skills Development Canada] and the CIC [Citizenship and Immigration Canada] as to what is acceptable. For example, service engineers coming into Canada. They ask very intense questions about their backgrounds. This primarily takes place at the Peace Arch-Douglas Crossing. This is a recent phenomenon. We have had two such incidents in the past month. The person was coming up from the Seattle branch office to service a Canadian customer. We do not have the human resource capabilities here to provide the services needed for our Canadian customers. There is a depth of knowledge and experience that our U.S. engineers have over the Canadians. Thus, we need to pull staff from Seattle. However, there is a growing inability to predict what will happen on both sides of the border when we are moving people back and forth. (Firm-V4)

In regards to the vexed issues of racial profiling, the comments from firms were mixed. All firms interviewed thought it was going to be a problem, but for many, the “Post 9/11” border was not as severe as expected. However, four firms (Firms V-3, 4, 8 and 9) stressed that they had found additional attention being focused on their Iranians employees and Firms V - 8 and 9 noted that there was always some anxiety with Latin American employees. Firm interviewees explained,

Within the last six months, it has become much tougher to move across the border. Just this week, one of our employees who is Muslim and with darker features tried to cross at the Windsor-Detroit border. He is a permanent resident, but they went ahead and
took his fingerprints and mug shots, and said he did not have the correct paper work. He stayed the night in Canada at a hotel near the border. I faxed him additional paperwork and he managed to get through the next day. If he did not get into Flint, Michigan, our whole IT system might have come down. (Firm-V3)

Yes, we feel a lot more scrutiny than prior to 9/11. For example, we have an employee who was born in Iran. He is a mechanical designer for the company, and a Canadian citizen. However, he must explain every time he goes back and forth across the border. He usually goes through the airport, but he finds the questions to be intense and inconsistent. We always say to tell them the truth. (Firm-V4)

Now after 9-11, [everyone] must be cautious when crossing the border. Our people born in Colombia [and Latin America], and possibly people with pilots’ licenses [have attracted attention]. Regarding Arabic people, it is not as big a problem as I thought. If they hold a Canadian passport, then it is easier. (F-V8)

We have had a few people turned away or delayed. Don’t know why. For example, employees not included in our visa waiver program have a hard time. We had to get clearance from either the US consulate or go to the Canadian Consulate. This slows things down. For example, an Iranian has to go to the US consulate to get into the States to go to the Canadian consulate, but they must get clearance through the U.S. consulate here in Vancouver to enter the U.S. This also happens a lot to South Americans. For example, Colombian and Brazilians come here for film school, or for Emily Carr. If we hire them, they then have to temporarily enter the U.S., which is hard to do. It is very hard to bring them into Canada. We have to change their study permit to work permit. Regarding the Middle East you ask? We do have some Israelis. (Firm-V9)

Additionally, one firm noted that immediately following September 11, they hired about a dozen foreign professionals who were working in the U.S. and were afraid that their work visas would not be renewed due to the current “climate” in the U.S. The Human Resource manager for Firm 5 explained,

After 9/11 we brought people here from the U.S. who were concerned about renewing their work visas in the States. These were primarily Indians and Chinese. We landed 10 people as a result of this. (Firm-V5)

Perhaps most disturbing are the actual physical searches that have occurred after September 11. Two firms (Firms V-2 and 7) explained that they have had employees searched before they boarded flights bound for the U.S. One of the firms (Firm V-7) noted that their employee who was traveling to the U.S. for a clinical trial was actually strip searched. Most interesting to note is that both of these employees were women. The immigration specialist for Firm V-2 commented,
...I didn't receive any feedback that employees were being scrutinized more closely, except for one, who was very embarrassed when she was searched at an airport gate prior to getting on her plane. She was sure it was because she held a Canadian passport.

(Firm-V2)

Finally, the project manager for Firm V-6 stressed that the difficulties along the border were not just related to 9/11, but often much more closely tied to the North American economy. He frequently found U.S. port of entry officers denying entry to Canadians in order to protect local U.S. employees and their jobs. He stated,

....The reason being is that the [North American] dive industry is very competitive. For example, the Gulf of Mexico is full of divers, but they cannot get jobs due to the slump in the oil industry [up to 2004]. This started long before 9/11; much of this is related to the economy. However, the bulk of our problems have happened after 9/11. This may be due to training and awareness after 9/11. It seems like they are checking things more thoroughly. However, 9/11 is not just the reason that these things are happening.

(Firm-V6)

The above comments paint a broad and somewhat mixed picture as to the varied experiences that the firms have had as a result of 9/11. Interestingly to note, although many have experienced increased scrutiny when seeking entry into the U.S. many ethnicities and groups that had nothing to do with 9/11, e.g. Iranians, women, and Latin Americans, had received the most scrutiny and invasions of privacy compared to other groups. Additionally, although 9/11 slowed movements of people considerably, one firm reflected that increased scrutiny of non-U.S. citizens across the border was also directly tied to a slowdown in various sectors of the U.S. economy. Hence, although 9/11 did have an impact on the movements of people across all North American borders the increased security towards “targeted” groups associated with 9/11 was not apparent in my interviews. The effects of 9/11 appeared to create more of a "dragnet" effect, with repercussions for all crossing international borders, perhaps for those who may be seen at not being able to defend themselves.

The Seattle-Based Firm

The Seattle-based firm’s reflections were those of a larger company with a strong human resource and legal presence to draw from. It had some negative incidences, but overall, it had not had any major problems, post 9/11. The human resource manager explained,
Nothing that I can specifically cite, but I feel that things have tightened up. I cannot define how. We continue to have a good relationship with the border. We have had a few incidences, but it is working! (Firm-S1)

The next section shall explore various ideas proposed by firms interviewed as to how to make the experience of crossing into the U.S. (and Canada) more predictable and less anxiety ridden.

4.12 Recommendations for Improving the Experience of Crossing Borders

A summary of policy implications of my research will be set out in Chapter 7. However, the comments of the firms on border issues are presented here. Indeed, all firms had comments and recommendations for improving their experience with crossing the Canada-U.S. border. This section shall review these comments in some detail, and explores how effective these recommendations might be in creating a more predictable yet secure border.

Vancouver Firms

The firms, above all, wanted clarity in the process and access to “up to the minute” policy updates regarding the movement of people across the Canada-U.S. border. Five firms (Firms V - 2, 3, 4, 5, and 6) all stressed that they usually experienced some confusion when compiling the foreign worker applications for their employees, and would have liked to call the ports of entry or have access to a “1-800” number (with a competent person at the other end) in order to seek additional information. The human resource and immigration specialists for these firms explained,

As an employer, clarity around the process would be good. We are a business and we do not have time to keep up with these things. It would be good to know what the changes are. It would be great if they could keep us updated with bulletins and memos. The U.S. side is very different. We [as a Canadian firm] are used to good access to information. There are changes in the policies, which we understand, but how to deal with it is another issue. On the Canadian side, it would be nice if there were better communication between CIC and HRDC. It is more central at the federal level, but out here in Vancouver, it would be nice if they coordinated. (Firm-V4)

It is less than ideal right now. I would like to move back to the expedited process. For example, the software pilot program and make it easier for spouses to work and study here. More information seminars would be useful. It would help to know what the questions are in advance. I can understand why they want things to be unpredictable, but maybe we could do some things in advance. (Firm-V5)
Sometime in the future, it would be nice to call US immigration and not have a lot of legalese. We do not know where we fit. Important not to use a lot of legalese! We seem to get lost in the sea of legalese!

Question from Kathrine: What about Citizenship and Immigration Canada’s web site?

Project Manager: Not that helpful. Glossy PR, but it does not work that well when you need to get something done. I recall trying to get into CIC’s web site that was somewhat helpful. If I am going through the net, even with Fisheries and the Canadian Navy, whenever you see that Maple Leaf on the page and the black text to the right of it, you know the web site is gonna suck. You will get bogged down in link after link of crap. It is funny but sad. What is important for the smaller firms, is when we are called upon, we must respond! We need better and more detailed information. Now we are turning to attorneys to help us. (Firm-V6)

We should have 100% predictability with NAFTA, especially with TNs. However, we have changing and moving standards. With immigration, no one ever gives a straight answer. Nothing is documented [as to what we need to provide]. Thus, it is very difficult to plan. If our people are denied, there is no rebuttal. Essentially, we are told, “It’s the law!” The immigration people know us, and our patterns, so I understand why they make it so difficult. Essentially, they are building a process for the lowest common denominator. Once, again, we need to know what the rules are so that we can follow them. In 2001, it became more difficult to move people over the border, and now it is becoming even hard still. NAFTA should be a slam-dunk, but it is not. (Firm-V3)

The above comments first point to a need for a “help line” to assist firms when they send people back and forth over the Canada-U.S. border; second, more continuity to various Canadian programs, such as fast-tracking firm applications for highly skilled high tech workers, which have recently been eliminated; and third, greater access to expediting programs in the U.S., which due to the Vancouver firms’ relatively smaller sizes, they were not eligible for. An additional finding was that the firms interviewed had a strong level of respect for the role and purpose of immigration officials, and wanted to do everything they could to cooperate with these branches of government. However, they also expressed their own needs as firms, which included a certain level of predictability in crossing the Canada-U.S. border. Firm 3, for instance, expressed that it found the DHS to have a climate of changing and unpredictable standards, which was hard to comply with. At best, the material in the chapter suggested that firms had to use a ‘coping strategy’ to address border issues, and some firms had developed rather elaborate strategies in order to deal with what was perceived as constantly changing and seemingly unpredictable standards.
Seattle-Based Firm

The Seattle-based firm had different yet similar needs as the smaller Vancouver-based firms. Although it had the resources to hire people locally to do jobs, rather than move employees around North America to carry out many jobs, the human resource manager stressed that it would be a lot easier if their firm could move their own people freely throughout North America without any labour certifications or statuses. She explained,

I would like to see when it [the movement of employees] is between two firm affiliated companies, that it be easier to move employees, and that a labour certification requirement would not be needed, for example, the L-1B. I know that this is different for getting them across the border. We are restricted when using some of our talents when it comes to this. I don’t know what works the other way (taking nonmanagerial people into Canada). (Firm – S1)

The comment demonstrates that as this firm operates its business seamlessly throughout North America, the firm would also like to be able to move their employees accordingly.

Overall, then, although the firms appear willing to cooperate with the government officials at the Canada-U.S. border, it would be much easier for their operations if they were allowed to move their people without the stop-check measure at the Canada-U.S. border.

4.13 Conclusion

Overall, all firms included in this study had a strong demand for hiring and sending employees across the Canada-U.S. border. However, the region of Cascadia itself was a minor destination point for the majority of these firm’s personnel. California was, in fact, the most frequent point of origin/destination point for employee movements of Vancouver-based firms. The Seattle firm tended to hire from all over Canada, and send their employees to Canadian regional offices or into the field, which were in locations frequently well outside of the greater Vancouver area. There was a complexity of visas used, each with their own advantages and disadvantages. There was a perceived problem with ‘visa ambiguity’, meaning uncertainty in what exactly was required to successfully obtain a work status or visa and frustration over seemingly changing standards implemented by port of entry officers. In order to deal with the seemingly randomness of NAFTA visa interpretations, especially in light of 9/11, the firms in my survey employed a number of strategies to better ‘navigate’ the cross border system. This included hiring in-house immigration specialists, using attorneys more frequently in the preparation of
visa applications, and engaging in the activity of 'port shopping'. Although the events of 9/11 slowed down the process of moving personnel across the Canada-U.S. border by approximately one-half day, in addition to the added expense and time of hiring a professional immigration attorney to prepare and review visa applications, the security aftermath of 9/11, overall, did not appear to stop the movements of firm activities and their personnel across the Canada-U.S. border.
Chapter 5 – The Immigration Officials

5.1 Introduction
This chapter examines the varied roles of Canadian and American immigration officials in administering the Canada-U.S. border in Cascadia. I interviewed officials at various ports of entry, primarily within the Seattle – Vancouver corridor, as well as key Canadian and American policy officials who had developed and overseen the policies surrounding Chapter 16 of NAFTA. As argued in Chapter 2, immigration officials are key to not only the facilitation of North American professionals across the Canada-U.S. border, but their role also as gatekeepers serves a broader function in protecting and securing the boundaries of the nation state for varied purposes and reasons. I argue that officials who develop the actual policies and laws that govern the management of the borders are critically important to the process of border management. It is the effective implementation of these ideas that contributes, ideally, to a consistent management of the nation state’s borders. It is at these individual border crossings here that there should be a smooth flow of information from policy development to implementation at actual ports of entry. In the case of a common continental-wide program much as NAFTA, it might be assumed that a common harmonious approach to administering status/visa applications might be in force, especially after the 10 or so years since its inception in 1994. However, for a variety of reasons explored in this chapter, I found that this was arguably not the case. Indeed, as argued in the literature review of Chapter 2, local norms and values, together with issues such as institutional history, training programs and separate national legislation, have influenced substantially the interpretation and implementation of NAFTA on either side of the Canada-U.S. border in Cascadia, as well as along the border at each port of entry (hereafter POE).

5.2 Methodology for the Empirical Research

A total of 19 government officials were interviewed for this particular component of the research. (See Appendix 6 for a list of job titles, interview locations, and dates.) Nine participants worked for Citizenship and Immigration Canada and ten participants worked for what is now called the U.S. Department of Homeland Security (DHS) (formerly the U.S. Immigration and Naturalization Service). Fifteen of those interviewed worked in the capacity of front-line supervisors or port directors at the various ports of entry, and four people worked
in the capacity of policy development officers in either Ottawa (3), Washington D.C. (1), or British Columbia (1). The sample, of course, is not necessarily representative of the entire U.S./Canada immigration staff that work at all Cascadia ports of entry between Vancouver and Seattle, which, for the U.S. is about 217 people, and for Canada is about 200 people (Interviews with U.S. Legacy INS Seattle Region Assistant Director-Vancouver, B.C., May 2002 and CIC Senior Policy Analyst-Vancouver, B.C., July 2003). However, I find that it is a fair representation of the supervisory and management staffs at the targeted Cascadia ports of entry. The method of contact prior to interviews included personal connections with officers working in both the DHS and CIC and using the "snowballing technique" for obtaining contacts and organizing interviews. Due to confidentiality issues and the sensitive nature of cross-border issues following 9/11, no informant can be named in this study, but the various job classifications, locations and dates of interviews are show in Appendix 6. In regards to the research issues covered here, each interviewee was asked a series of approximately 19 questions set out in Appendix 2. These nineteen questions can be grouped into the following themes: (1) the impact of NAFTA on labour mobility between Canada and the U.S., and the Cascadia region specifically; (2) types of high tech professions and job classifications that are difficult to interpret under NAFTA status provisions; (3) the particular "cultures" and histories of immigration officers, and the institutions that they form a part of; and (d) the impacts of 9/11 on the movement of professionals across the Canada-U.S. border and on the interpretation of NAFTA.

The interview results revealed a wide array of findings and information on the administration of the Canada-U.S. border; how labour mobility fit into the overall regulation and facilitation of entry at the border; the culture and histories of the immigration officials and their institutions; and, most interestingly, the relationship between the various actors that serve as facilitators and/or gatekeepers to the North American pools of human resources for the Cascadia high tech economy. The following sections first review the overall findings from interviews with immigration officials, and the chapter ends with a brief summary and conclusion.

5.3 The Canada-U.S. Border and NAFTA Status Provisions

Immigration officials were first asked about the day-to-day mechanisms of obtaining NAFTA statuses, and also what they thought made the Canada-U.S. border between Seattle and
Vancouver unique compared to other crossing points. This particular section covers questions 1-6 of the questionnaire shown in Appendix 2.

5.3.1 Background Comments by U.S. Immigration Officials

The U.S. immigration officials interviewed stressed the fact that the Cascadia region was the third busiest point of crossing after Detroit, Michigan/Windsor, Ontario and Buffalo, New York/Niagara Falls, Ontario. In particular, in the U.S.A. the Seattle District had all three elements of entry, i.e. by air, sea, and land. Significantly the Vancouver international airport had the only U.S. pre-clearance in the district, and, at the time of the interview (February 2003), operated a special INS pass system\(^{40}\), which facilitated business travelers crossing into the U.S.A. via air. At the time of writing, late 2005, this particular system was discontinued and a seemingly more sophisticated system called, the U.S.-Canada NEXUS Air Program was being tested in a pilot capacity at the Vancouver International Airport until April 30, 2006 (DHS, 2006). The Vancouver airport preclearance facility was the sixth busiest in the U.S.A. regarding the handling of immigration in the U.S. at airports. In fact, only John F. Kennedy (New York City), Los Angeles, Miami, Chicago, and LaGuardia (New York City) were larger.

The Seattle area also had a cruise ship terminal with visa inspections for foreign travelers heading to Alaska. Thus, the Vancouver International Airport preflight U.S. port of entry provided an “all round” level of experience for U.S. immigration officers. Because the U.S. and Canadian land ports of entry were located directly on the ‘Interstate 5’ corridor between Seattle and Vancouver (see Appendix 15), and because part of the Cascadia regional economy was still dependent on natural resources, these land ports of entry were important for controlling cross border trucks moving seafood and lumber as well as tourists. One port director (US-I1) stressed some of the unique qualities of this region’s ports of entries, and how it differed from the U.S.-Mexico border.

The amount of fraud and smuggling [along this border] is much smaller than the U.S.-Mexico border. However, this region still has problems with imposters and the

\(^{40}\) The INS Passenger Accelerated Service System (“INSPASS”) allows eligible frequent business air traveler participants to receive expedited service via automated inspection. The DHS/legacy INS currently offers INSPASS at international airports, which include Los Angeles, Miami, Newark, New York (JFK), San Francisco, Washington-Dulles, and the U.S. pre-clearance sites at Vancouver and Toronto. This service has been in effect since 1995. Over 45,000 people have participated in the program, and the DHS/Legacy INS has never discovered a fraud perpetrated by an INSPASS participant (See Beno, 2000: 30 and http://www.ins.usdoj.gov/graphics/lawenfor/bmgmt/inspass.htm).
smuggling of people and goods. In regards to the U.S.-Mexico border, many more people are U.S. citizens passing through this border, in fact, roughly 60% or higher. The other major group of people is Canadian—they do not need passports or visas when crossing into the United States. Thus, this area [Canada-U.S. border] is not document intensive. For Mexicans, there is the I-94 and the border-crossing card (in lieu of a visa). Both of these forms of identification take more time to process than what is required for the majority of people moving across the Canada-U.S. border. However, in regards to the U.S.-Mexico border, it is now becoming more biometrical. The idea here is that it is not only more secure, but also easier to process people.

The above comments reflect that U.S. authorities are aware of the balance between security and the need to process people quickly and efficiently. This balance in the Cascadia region will be explored further in later sections of the chapter.

5.3.2 Comments by Canadian Immigration Officials

Canadian officials also drew attention to the distinctive nature of Cascadia's international border crossings. The Canadian ports of entry between Seattle and Vancouver were part of the larger BC/Yukon Territories for the CIC, which had its regional headquarters located in downtown Vancouver. From a regional perspective, the amount of immigration flows using NAFTA statuses was only around 30 percent of the total border crossings compared to those in the Toronto-Detroit area (interview with CIC Regional Policy Advisor (C-I3), July 2003). For example, the largest array of Canadian companies is found in the Toronto area, and consequentially, this is where a majority of the highly skilled foreigners working in Canada are located. However, the Vancouver-Seattle corridor has the largest forest and mining companies in Canada, and these provide a substantial draw for the U.S. knowledge workers and other internationally highly skilled employees with relevant expertise. One port director and another port supervisor both stated succinctly some of the main features of Cascadia ports of entry.

We are the only port of entry open 24 hours a day west of Windsor, Ontario. We deal with cars and commercial trucks. We are not the busiest, but close. We are not nearly as big as the U.S.-Mexico border. This southern border is massive with eight-hour line-ups. People (Mexicans) would stream by and the U.S. officials would single people out. One of

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41 This includes of transition from manual border crossing cards to a more sophisticated computerized crossing card, which included the computerized recording of all Mexican traveling into the U.S. (See Chapter 3 of Nevins, 2002.)
our challenges is getting the Customs officials to screen for us\textsuperscript{42} ....... We see many business professionals and management consultants coming through these particular land ports of entry. (C-IO4)

...... we do not have that many IT people crossing across the land border. This is mainly found at the Vancouver Airport. We do not see a lot of American film crews coming through the land ports of entry. Additionally, one must remember that we have other programs (apart from NAFTA) for software engineers, which facilitates labour mobility from around the world. NAFTA is merely one of many ways to enter Canada. (C-IO5)

5.3.2 NAFTA Statuses – The View of U.S. Immigration Officials

U.S. immigration officers provided their own insights on how the special NAFTA statuses had operated in practice for high-tech employees wishing to cross from Canada (Vancouver) into the U.S. (Seattle). In regards to how NAFTA has influenced labour mobility across Cascadia's Canada-U.S. border, there was a wide array of responses from those interviewed. One port director (US-1 1) noted that the Vancouver - Seattle corridor comprised a cluster of high tech industries (e.g. aircraft, software, and biotech) and that because these industries were located in both Seattle and Vancouver it was only natural that well educated people would be moving back and forth across the border. The same port director noted that the U.S. preflight immigration clearance at the Vancouver International Airport reported many thousands of NAFTA applications a year. Consequently, the U.S. staff at the Vancouver International Airport had become very familiar with NAFTA applications, especially so when compared to a more rural port of entry, such as East Port, Idaho, which might only process less than 100 NAFTA applications a year. It was also stressed however, that NAFTA did not allow completely unregulated access to the U.S. The particular jobs that Canadians coming to the U.S. could apply for were listed under NAFTA (as described in Chapter 3). In most cases, the applicant had to meet the minimum qualifications specified for each job type and the job must not be a permanent position. Thus, immigration officers at ports of entry played an important role in determining whether or not a NAFTA applicant matched a particular professional category and the subsequent job description, as listed under NAFTA. There were alternative longer-term visas (lasting three years with an automatic three year renewal), such as the H1-B (NAFTA's predecessor), which might be more suitable for various types of jobs, but, as explained in Chapter 3, these types of statuses/visas took longer to attain. Consequently, as

\textsuperscript{42} Prior to the creation of the Canadian Border Service Agency in December 2003, Customs and Revenue Canada conducted primary inspections at the actual Canadian port of entry and Citizenship and Immigration Canada (CIC) conducted secondary inspections within the office at the port of entry.
explained earlier, NAFTA statuses were often more attractive as they were easier to attain. Indeed, one U.S. officer (USI-1) interviewed noted that some Canadian applicants used the NAFTA status to circumvent the longer visa processes.

U.S. immigration officials mentioned that the larger firms in the Seattle region, such as Boeing and Microsoft, often used Treaty NAFTA statuses or “TNs”, in addition to the more traditional H1-B work visa, in order to bring prospective Canadian employees into the U.S. Two U.S. immigration officers (US-I0 3 and 4) noted that if a firm wanted to hire a person for a short amount of time to “see how the employee worked out” (which was a strategy used by firms V - 5 and 9 in Chapter 4) then the firm usually used a NAFTA TN status due to its administrative ease and low cost; and most importantly, the status was good for only one year. So, if the employee did not “work out”, then this was an easy “way out” for the firm after a year’s employment. However, if the firm in question did wish to keep the Canadian employee, the firm would often switch the employee over to an H1-B visa and then to a ‘green card’ (i.e. permanent job authorization). Smaller firms also liked the TN status since it was not as expensive as the H1-B, which usually ran into the thousands of dollars due to DHS processing fees and legal costs, and it was short term (one year) in its duration. As well, the employer was not obligated to renew the employment status after one year. It was stressed, however, that the larger firms had to be ‘legitimate’ in the way that they used NAFTA statuses, and not abuse the NAFTA status application system. One port of entry supervisor stated,

The larger companies usually go for the H1-B since they are longer term, but Microsoft, Boeing, and Volts semiconductors (a subcontractor of Boeing) also do many TNs. The idea is that the company brings a person in on a TN, and if it works out (with the person) the company switches the person over to an H1-B, and then they can move to a green card. The company usually sponsors the person when they move to a green card. The small firms like the TN since it is not as expensive as the H1-B, and it is short term, so that the employer is not obligated to renew the status. Overall, the employment status for “management consultants” is very tough! There is a borderline as to whether or not ‘management consultants’ are legal under NAFTA. Many people are being hired “to do” (i.e. work on the job) as opposed to “consult” (i.e. advise at a managerial level), which is what is specified under NAFTA. The smaller firms are guilty of this since they are looking for staff “to do”.

...Overall, the larger firms are usually more legitimate [in the use of NAFTA statuses]. However, the smaller firms (which are usually subcontractors to the larger firms) are the ones we have to take a closer look at, as I explained earlier. This may be due to a
lack of understanding of the application process, or the fact that the actual person may not qualify under NAFTA. (US-IO 3)

The above comments reflect a continuing theme of additional scrutiny applied by border officials towards personnel working for smaller, lesser-known firms who use the NAFTA status application procedure. This theme was further explored in Chapter 4 of the dissertation, when I covered the experience and perspectives of the smaller Vancouver firms. It is also taken up again in Chapter 6 in commentary provided by some of the immigration attorneys interviewed.

Although the NAFTA status provisions were seen as an improvement over the H-1B visa, especially in regards to availability and cross border access, the provisions of NAFTA that applied to new North American professional employment status were not without its criticisms. Indeed, U.S. immigration officers spent considerable time in the interviews discussing some of the limits and drawbacks of the NAFTA TN system. First of all, when an applicant sought a NAFTA status at a port of entry, he/she had to plan their status application thoroughly beforehand and had to be traveling purposely to his/her expected job destination in the U.S. In other words, a Canadian prospective employee had to both fill in an application at the POE and travel across the border at the same POE on the very same day. He or she could not “pick up a NAFTA status application form” one day, and then return to the border (at the same POE or a different POE) the next day with his/her belongings and then be ready to travel to Seattle for work. In practice, it was reported that some NAFTA applicants had arrived at the U.S. land borders in Cascadia seeking a TN status, but in reality the person had intended to fly out of the Vancouver International airport at a later date. However, this type of travel and status acquisition was not seen as acceptable to four U.S. immigration officers (US IO–1, 2, 3, and 4) since it went against a particular ruling on this type of application process from INS headquarters in the late 1990s, which required the applicant to both apply for a NAFTA status and cross the border on the very same day and at the very same location.

Thus, the NAFTA procedures for crossing the Canada-U.S. border had certain limitations. According to the way NAFTA was written, the TN status was issued based on the person’s particular intent of entry. For example, a NAFTA applicant’s intent of entry must be to work in the U.S. (at the time the applicant is seeking entry). Hence, attaining the NAFTA status at the port of entry must simultaneously occur at the time the person seeks access to work as allowed
under NAFTA. The person had to be willing to enter the U.S. at the same time that he or she applied for a NAFTA status.

Two U.S. immigration officers (U.S.- IO 3 and 4) noted that rather than going through a particular port of entry adjudication, one applicant could send his/her NAFTA application off to Lincoln, Nebraska\(^43\) for NAFTA status verification and the hopeful issuing of the NAFTA status. However, this application process would likely take up to 4 months to process. The applicant could also send a TN status renewal off to the same processing center (Lincoln, Nebraska), with the renewal usually taking about a month to process. The same two officers noted that this might pose less of a risk to the applicant rather than renewing the status at a particular port of entry. Applicants seeking renewal through Lincoln, Nebraska would not run the risk of being denied entry back into the U.S. if the application was flawed. In regards to remaining in the U.S., then the applicant could stay in the U.S. under the TN status as long as the person received a paycheck from the same firm as the TN status was issued for. If the person were to lose his/her job, then, officially, that person was obligated to return to Canada, and usually had between 10-30 days to leave the country. With an H1-B, visa holders had 30 days to leave the country (interview with U.S. Immigration Officers 3 and 4, February 2003).

So, in the experience of many U.S. immigration officers I interviewed, overall, the NAFTA experience had been a rather mixed one with some support for its facilitation procedures for Canadians, while others commented on its unforeseen disadvantages. Since 1994, inspecting and adjudicating NAFTA statuses was only one of many tasks that front line immigration officials were responsible for. The past ten years had provided these officials with some experiences regarding the NAFTA procedures and documents in addition to the patterns that applicants exhibited when applying for NAFTA statuses. Some of these policies and patterns of practices were acceptable to these officials. These were the clearer and more direct professional job categories and job descriptions listed in NAFTA Chapter 16, and the need for presentation of the actual individual seeking entry into the U.S. at a port of entry. However, other components of NAFTA and applicant behavior were not so acceptable. These included rather ambiguous job titles and job descriptions in NAFTA; as well the penchant of some

\(^{43}\)Lincoln, Nebraska is a DHS/Legacy INS administrative center, which handles much of the administration of visas and work statuses for non-U.S. citizens.
applicants attaining a NAFTA status at a particular land port of entry, but with the intent of departing from the Vancouver International Airport at a later time.

The following section explores the Canadian immigration officers’ experience with Chapter 16 of NAFTA and the flow of American professionals into Canada since 1994.

5.3.3 NAFTA Statuses: The View of Canadian Immigration Officers

In regards to U.S. professionals moving across the Canada–U.S. border, Canadian immigration officials provided their own set of comments during interviews. In general, they processed a large number of U.S. business professionals and management consultants who wished to come to Canada and work in Vancouver and other parts of B.C. As stated previously, the port of entry immigration officials considered forest and mining companies to have the biggest demand when it came to moving professionals within the Cascadia corridor. However, the quantity of immigration flows using NAFTA statuses was substantially smaller than in the Toronto-Detroit area. Nonetheless, despite these regional size differentials, there were similar sets of issues in both regions when it came to professional labour mobility. Essentially, professionals in the U.S. workforce coming into Canada were well educated and sometimes known internationally for their expertise. They usually prepare “superior applications” based upon comprehensive ‘homework.’

However, the B.C./Yukon District of Citizenship and Immigration Canada (C-IO 5 and 6) stressed that they did not have so many information technology (IT) people wishing to cross the land border into Canada from the U.S.A. They mentioned that U.S. professionals came from all around the United States and usually entered Canada through the Vancouver International Airport or Pearson Airport in Toronto. In sum, flows of employees within Cascadia per se did not appear to be so important. Additionally, three Canadian immigration officers (C-IO 1, 2, and 3) noted that, apart from NAFTA, Canada had other immigration programs for software engineers that facilitated labour mobility from around the world (e.g. The Software Engineers Pilot Program). Indeed, long-term immigration to Canada generally as a professional software engineer was usually more appealing to both the foreign engineer and the firm doing the hiring as compared to shorter term options such as the NAFTA status. In other words, acquiring
employment statuses for computer specialists coming into Canada was not seen as quite the challenge that was reported by Vancouver firms moving employees into the U.S.

Canadian immigration officers noted that they had greater concerns with the actual management at ports of entry when it came to the initial screening of foreigners (usually Americans) seeking entry into Canada. One port director in British Columbia (C - I4) reflected on the experiences at one of the land ports of entry,

'...One of our biggest challenges is getting the Customs officials to screen for us' I mean, one time I looked out my office window, and I couldn't believe that the Customs guy was actually letting this particular carload of Americans in! I was shocked! These people should not have been let into Canada! (C-IO 4)

The above comment highlights that NAFTA is only one of a number of mechanisms that the Canadian government and private sector interests can use to bring international professional IT workers into Canada, even from the U.S. Additionally, there are also many other challenges that CIC faces on a day-to-day level with border management, especially when it comes to communication between Canada Customs, which up to late 2003 worked in primary inspections at POEs, and CIC, which were found within secondary inspections. The recently created Canadian Border Services Agency, established in December of 2003, was an attempt to better harmonize some of the border management between Canadian Customs and CIC. However, this agency was still in its infancy, at the time of my interviews (2002-2004) and at the time of writing (late 2005), no major changes in border control practices have taken place. The chapter now turns to how NAFTA statuses are interpreted, and the various norms and rules that U.S. and Canadian immigration officials used when understanding, interpreting, and adjudicating NAFTA statuses.

As stated previously, prior to the creation of the Canadian Border Service Agency (CBSA), it was the duty of Canadian Revenue and Custom Agency officials to screen all people seeking entry into Canada. One major concern that immigration officials had regarding this arrangement was the customs officer's inability to screen correctly regarding immigration matters. However, since the creation of the CBSA was created in 2003, all former Customs and Immigration officials are given the same types of training regarding both immigration and customs matters.
5.4 The Interpretation of Work Status Applications Under NAFTA

All interviewees were asked to comment on how high tech professional employees were treated when traveling between Vancouver and Seattle for work or consulting. This particular category covers questions numbered 7 - 10 of the questionnaire (see Appendix 2).

5.4.1. The U.S. Immigration Officers' Experience

U.S. immigration officers (US – IO 2, 3, 4, and 8) noted that due to the rather ambiguous 'job descriptions' of people working in the IT industry, work status/visa adjudications under NAFTA could often be considered difficult and non-routine. For instance, in regards to professions that were hard to interpret under NAFTA provisions, U.S. immigration officials all agreed that the job description of 'management consultants', in particular, was often 'very tricky.' "Software engineers" and "systems analysts" were also problematic job classifications in the NAFTA regulations for a variety of reasons. For instance, many management consultants were hired "to do" [i.e. to carry out work activities in the U.S.A.] rather than merely "to consult," which was the specified activity allowed under NAFTA regulations. The professions of "computer systems analyst," "scientific technician," and "scientific technologist" also caused problems for a variety of reasons. For example, with the category of 'scientific technologist', these types of workers had to provide proof of at least three years of relevant work experience. The category of "software engineers" also was difficult to interpret due to the wide range of job activities that software engineers could perform. In fact, three officers (US- IO 2, 3, and 4) noted that the DHS had difficulty interpreting this category. Two immigration officers (US- IO 3 and 4), interviewed at the same time, summarized well the broader challenges involved with interpreting Chapter 16 of NAFTA:

"Registered nurses" and "management consultants" are tricky. "Software engineers" and "systems analysts" are also difficult. Many people, both the applicant and the immigration officer, have different interpretations regarding NAFTA. Basically, it is a definition problem........

In regards to software engineers, they are tough to interpret. In fact, there was a period of time when we were having difficulties with it. Essentially, it is hard to sort out the software engineers and what they do. They must do a lot of explaining, and we then must verify their credentials. So, with software engineers we look at 1. Education; 2. Previous experience; and 3. Wages........with "scientific technologist", they must have three years of experience, and be able to prove it. (US-IO 3)
U.S. officers noted that in this case they often examined a variety of evidence including the actual applicant. This included the following: formal education; previous experience; wages and offers for the job that was sought. Usually, the job category of a computer engineer earned significantly more than a “computer programmer,” which was sometimes the job that the U.S. firm was actually hiring a Canadian for, but “computer programmer” was not allowed under NAFTA. Two immigration officers (US-IO 3 and 4) noted that ‘computer programmers’ could not enter under NAFTA because they were not listed as a suitable job category in the NAFTA Chapter 16 schedule. Consequently, in these cases, often the applicant and the immigration officer often had different interpretations regarding NAFTA, especially with how particular job categories were defined. Some applicants prepared the NAFTA applications themselves for even the more difficult job categories. This was especially so when the applicant was an independent consultant or a very small firm that had just landed a contract in the U.S., and could not afford an immigration lawyer to prepare the application. However, three officers (US-IO 2, 3 and 4) stressed that the application was usually more thorough if a qualified immigration attorney helped to prepare the application.

Some people pull the NAFTA application together themselves. It is quite evident when this happen, but it is usually more thorough if an attorney helps the person with the application. (US-IO 4)

Chapter 6 explores in more detail the role of attorneys in the NAFTA process. The section now turns to the Canadian experience in interpreting NAFTA statuses.

**5.4.2 Canadian Immigration Officers’ Experience**

By contrast with the U.S. immigration officers, three Canadian immigration officers (C-IO 4, 5, and 6) stressed that from their perspective, the NAFTA applications were rather easy and essentially “cut and dried”. They stressed that “everything within the application fits together nicely.” However, these three Canadian immigration officers agreed with US-IO 3 that the job category “management consultants” could be very difficult to process and interpret under NAFTA regulations. One Canadian port director (C-IO 4) stressed that they would often go out of their way to even contact the company hiring the NAFTA status applicant in order to obtain a better understanding as to what the proposed job actually required, especially if there were
questions regarding the application. Canadian immigration officers also processed many U.S. nurses coming across the land border for jobs in Vancouver. Yet with “software engineers,” it was more difficult for these professionals to explain the exact nature of their work in such a way that it was succinct and understandable to the immigration officer.

A possible reason for the misunderstanding of the category of “software engineer” for the immigration officials is that many times the job duties of software engineers were often abstract and even avant-garde, so that the job description was difficult to communicate to people outside of the software industry. Professionals in engineering and the performing arts (film industry) were still in demand in Canada, but three Canadian officers (C-IO 3, 4, and 5) noted that the demand for foreign software engineers in Vancouver had dropped over the past few years. One immigration officer (C-IO 5) noted that this could be attributed to the North American high tech ‘bubble’ bursting after 2000, in addition to the fact that Canada had recently generated sufficient IT professionals within it own borders.

Overall, the Canadian experience with understanding and interpreting the NAFTA applications were seen as a relative “non event.” This may be compared to the American experience, and the comments of the U.S. border officials who stated that NAFTA provisions could sometimes be seen as rife with ambiguity and unpredictability (see the previous section). The next section further explores these geographical differences by examining how U.S. and Canadian immigration officers have been trained regarding NAFTA statuses, and how differences in levels of training and sources of knowledge may have contributed to differences in attitudes towards NAFTA statuses, both between the two countries and also along the various border crossings in Cascadia found within each country.

5.5 Training and Available Resources for the Understanding of NAFTA

The variability in interpreting NAFTA provisions between U.S. and Canadian officials led me to examine the training programs with both the DHS (U.S.) and CIC (Canada). This aspect of the study revealed how officers were trained to understand and interpret NAFTA applications. I found that their training came from a variety of measures, and that these varied considerably between the U.S. and Canada.
5.5.1 The U.S. Immigration Officers’ Experience

From a U.S. perspective, four immigration officers (US-IO 3, 4, 5, and 6) noted that although they usually had some training in the academy, there was more ‘on the job’ training. It was also stressed that the NAFTA status provisions were not taught in their basic training, but rather these skills were taught in the “advanced journeyman’s” schooling. Two immigration officers (US-IO 3 and 4) commented on where and how they learned about NAFTA.

In regards to inspector training, there is some OJT [on the job training]. NAFTA is not taught in basic, but it is taught in the advanced journeyman’s schooling. We have not had advanced classes in this type of status. (US-IO 4)

When there was a designated NAFTA-trained officer at the U.S. ports of entry (prior to 2000), this officer usually provided about 8-16 hours of NAFTA training to the other immigration officers working in the same port of entry. There were also manuals provided to the immigration officers with step-by-step instructions on how to interpret NAFTA status applications. Three U.S. immigration officers (US-IO 1, 3, and 4) noted that up to 1999 there were specific NAFTA officers at each port of entry within Cascadia who adjudicated and facilitated questions regarding NAFTA job statuses. These NAFTA officers also provided “preapprovals,” which allowed NAFTA applicants, or their attorneys, to send the required application materials to the POE usually a day or so ahead of the applicant arriving in person. If everything was in order, the applicant would almost immediately receive his/her NAFTA status. However, this policy was stopped suddenly on October 20, 1999, with a memo from legacy INS headquarters specifically from Robert Bach, Legacy INS Executive Associate Commissioner, Policy and Planning in Washington D.C., stating that it was contrary to the NAFTA to engage in prior approval procedures, petitions, and labour certification tests as a condition for temporary entry. Additionally, the policy memo also addressed the growing disparities, which had developed between the various ports of entry in regards to the interpretation of NAFTA Chapter 16 and particularly specific job classifications listed in NAFTA. The memo, in effect, was sent out in an attempt to harmonize POE adjudications of NAFTA provisions. Although the memo did not explicitly state this, it was at this time that all POE officers began to adjudicate NAFTA statuses directly rather than just Free Trade Officers. (The memo, in its entirety, may be found in Appendix 7).

45 All U.S. DHS officers go through an approximate four-month intensive training period at a school or an “academy.” This experience includes academics, physical endurance, security, operating firearms, and overall education dedicated to becoming a successful U.S. federal officer.
Two immigration officers (US – IO 3 and 4) offered an explanation for this “harmonization policy” that immigration attorneys tended to identify the traits and characteristics of this small number of NAFTA officers and consequentially tailored their NAFTA status applications to the various officers’ specific preferences. This sort of activity then led to something called “port shopping,” which will be discussed more fully in the following section.

In sum, since late 1999, any immigration officer at a port of entry has been able to review and inspect any NAFTA status application. Four officers (US – IO 3, 4, 5, and 6) emphasized that this was a better method of preserving the integrity of the NAFTA application system. One officer emphasized,

Now, everyone does NAFTA applications. They get some instruction in basic academy training. We used to have a NAFTA officer who gave us about 8-16 hours of training. (US – IO 5)

Another officer stated:

.....now that we all do them [NAFTA applications], it is much more random and fair.

(US – IO 4)

However, a U.S. immigration attorney, Greg Boos, in testimony given during May 2002 to the Canadian House of Commons Standing Committee on Foreign Affairs and International Trade, stated the following:

....Free Trade Officers were INS Inspectors who, in addition to their numerous other duties gained a great amount of on-the-job experience in the adjudications of Free Trade matter. In practice, the October 20, 1999 instructions [from Robert Bach] (See Appendix 7) effectively terminated review of TN matters by trained Free Trade Officers at most Port of Entry and Pre-flight Inspection stations. These instructions eliminated the mechanism that had evolved for getting a TN matter before a Free Trade Officer so that he or she could review it when other duties allowed. In practice, any INS inspector may now take jurisdiction over a TN matter, a process that has resulted in wildly erratic (my emphasis) adjudications of TN matters.

The above quote suggest that the 1999 policy memo from headquarters has paradoxically contributed to even greater variability in the treatment of NAFTA status applications from one port of entry to the other. It also reveals a tension between the predictability of the experienced
few (i.e. designated NAFTA officers before October 1999) and the democratization of NAFTA applications at POEs (i.e. allowing all regular immigration officers to now adjudicate NAFTA statuses). Indeed, the unpredictability of NAFTA adjudications after October 1999 was at seemingly epidemic proportions according to the many US attorneys interviewed as reported in Chapter 6.

Beyond issues relating to immigration officer training in the U.S.A., many immigration attorneys stated in their interviews that the spirit of interpreting NAFTA applications rests more on a broader port culture in the U.S.A. of "restrictiveness" (see comments in Chapter 6) more than anything else. This became apparent shortly after the "pre adjudications" of TN matters ended at POEs in October 1999. For instance, after this time, the interpretations of "computer professionals", in particular, began to be interpreted very narrowly by U.S. immigration officers. Overall, the interpretation of "computer professionals" under NAFTA has been one fraught with difficulty and confusion, as was discussed initially in Chapter 2. Even with only Free Trade Officers adjudicating NAFTA statuses, the interpretation of Canadian computer professionals attempting to enter to work in the U.S.A. has been riddled with unpredictability since the inception of NAFTA. For example, legacy INS headquarters in Washington D.C. issued a letter of response to one immigration attorney in San Francisco in May 1995 stating that computer engineers, did, in fact, fall under NAFTA (i.e. qualify for a NAFTA status) if the applicant had a baccalaureate or licenciature degree (see Appendix 7). This policy letter helped to clarify the issue for the (pre-1999) Free Trade Officers. However, beginning in late 1999, at the time that all POE immigration officers were allowed to review NAFTA applications, immigration attorneys, once again, began to see many computer professionals' NAFTA applications being denied into the U.S.A once more. Boos commented on the issue (2002) and stated,

......Shortly after termination of "preadjudication" of TN matters by trained Free Trade Officers, TN status for computer professionals became one of the subjects of INS rigidity (my emphasis) on TN issues, with INS inspectors at POEs and PFIs frequently taking the position that computer engineers and software engineers did not qualify as engineers for purposes of TN status, despite previous guidance to the contrary from INS headquarters. Denials of TN status to TN qualified computer professionals by INS inspectors at many POEs became commonplace, forcing INS headquarters to

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66 See Appendix 8. (Jackie Bednarz's letter)
subsequently issue instructions to the field reaffirming that “software engineers” could qualify for TN engineer status.\textsuperscript{47}

However, the instructions from INS headquarters\textsuperscript{48} received narrow interpretations at POEs and PFIs [Preflight Inspections], and practitioners were soon circulating reports of INS inspectors denying TN engineer status to Canadians with baccalaureate degrees in Computer Science on the grounds that these individuals needed software engineering degrees to qualify for TN status as computer engineers.

The above quote helps to demonstrate a continuing unpredictability of interpreting various NAFTA job listings on the U.S. side of the border in addition to the wide range of discretion that POE immigration officials have had over NAFTA applications on a day-to-day basis, despite seemingly clear policy direction from legacy INS headquarters that attempted to standardize interpretations of NAFTA job regulations. An important finding was that this “gap” in policy, or rules, originating from legacy INS headquarters, and the interpretation of these rules at the actual ports of entry, rested heavily on the “norms” or culture at each port of entry as discussed by Finnemore and Sikkink (1998) and noted in Chapter 2.

The intellectual context of the definition of what a “norm” is and where it might be found provides a framework for explaining why such variability existed in interpreting NAFTA as between Canadian and U.S. border officials and as between the many U.S. POEs. In other words, the Canadian port of entry officials commented that NAFTA status applications were becoming “routine” because the Canadian policy regarding NAFTA status applications was standardized for each port of entry. By contrast, the ambiguity or ‘non-routineness” mentioned earlier by U.S. port of entry officials was due to the greater ‘ad hoc’ status found in training and applications of NAFTA policy along the U.S. side of the border. Indeed, although the actual “rules” of NAFTA have been constructed and approved by each signatory country, there is considerable leeway between each particular country in the interpretation and implementation of NAFTA. Thus, it is up to each country as to how its front-line officials understand and interpret NAFTA applications. I argue that these domestic “norms” have then set the tone as to the actual interpretation of NAFTA applications.

\textsuperscript{47} See Appendix 9. (Memo from Johnny Williams)
\textsuperscript{48} ibid.
The next section, “The Geography of Port Shopping” explores in more detail how the “norm” of interpretation varies widely between Canada and the U.S.A., and also among each U.S. port of entry; whereas the Canadian ports of entry appear to be relatively consistent in their NAFTA adjudications. I argue that much of these differences may be attributed to differences in nationwide training, as discussed in the forthcoming subsection; but there are also other factors that will be explored in other parts of this chapter. It should also be stressed that the U.S. has made a deliberate effort toward more on-going and consistent education of front-line officials since the development of the DHS in early 2003.

5.5.2 The Canadian Immigration Officers’ Experience

The Canadian experience regarding implementing Chapter 16 of NAFTA may be considered somewhat different from that of the U.S. This subsection covers some of the major differences and ends with a brief conclusion reflecting on the overall variability (yet some seemingly growing similarities) in interpreting NAFTA between the two countries.

Firstly, for Canadian immigration officers, NAFTA was seen within a broader area of their overall employment training for immigration officers, rather than being treated as a specialized area of immigration. In fact, the CIC training manual for border officials is public and can be found on the CIC’s web site, (http:www.cic.gc.ca/manuals.guides/English/fw/few.pdf). Rather than the somewhat limited hours of official basic training provided for U.S. immigration officers, more specialized training regarding NAFTA was provided to all Citizenship and Immigration Canada officers. Indeed this type of training was regarded as ‘on-going’ as long as the officer was employed within CIC. With regard to training, there were also constant updating, and what were called “complete systems of communication” from the officers at the ports of entry directly to CIC headquarters located in Ottawa, and then also back to the regional ports of entry. In other words, there appeared to be a more systematic and thorough approach to NAFTA status interpretations, one that involved clear, concise, and timely directives from policy headquarters in Ottawa to all individuals at Canadian POEs. For instance, three officers (C-IO 3, 4, and 5) noted that when an unusual case was found in Cascadia, its details were then transmitted to the regional program specialist at the CIC regional headquarters located in downtown Vancouver, and he/she would then channel this information on to CIC headquarters.
in Ottawa. After discussion in headquarters, a resolution was then channeled back to the regions, with updates and memorandums, if necessary. One senior policy analyst explained,

NAFTA is included within the broader category of employment training. You can find the manual on the CIC’s web site. You have to remember, the training for all CIC officers is ongoing, and there is constant updating. When we find an unusual case, we channel this to Norm Hopkins, our regional program specialist, and he then channels all of this back to headquarters in Ottawa. It is then channeled back to use with updates and memorandums, if necessary. (C - IO 3)

In the Canadian system there were also special ‘NAFTA trainers’ established for border control officers when NAFTA was first implemented in 1993. Immigration officers were obligated to undergo special training away from the POE office at least twice a year. One session in each training program was dedicated solely to covering updates/revisions to new types of associated legislation. The following quote from a supervisor (C – IO 5) reflects some of the required communications and trainings that all Canadian immigration officers have,

We had NAFTA trainers when NAFTA first came on. Immigration officers go in for official training a couple times a year. They cover a wide scope of training, from updates/revisions to whole new types of legislation. All training is mandatory. There is much training up front, then experience takes over. (C – IO 5)

Concerning the interpretation of problematic job descriptions and classifications that were reviewed earlier in this chapter, Canadian officers noted that discussion on different types of IT professions, and the relevant type of jobs duties performed, were all ‘part and parcel’ of the in-training process. Still, at times, it could be difficult to determine if a particular type of job and respective work activities fell under available NAFTA status provisions. For example, the job category of “management consultant” was as particularly troublesome in Canada as on the U.S. side; as has been noted, there were a variety of activities that could be performed by ‘consultants.’ For example, a management consultant could work in all sectors of business enterprises, and was accepted under NAFTA provisions, just as long as the person “consulted” rather than “did.” Additionally, under NAFTA, the applicant did not need a bachelor’s degree to attain the job category of “management consultants.” However, the fact that ‘management consultants’ could possibly lack a bachelor’s degree is where suspicion arose regarding the job category on the part of both the Canadian and U.S. immigration services, since businesses used frequently this job classification to move employees throughout North America who did not have bachelor degrees or higher, whether they were proper management consultants or not. In
fact, due to the way NAFTA was written, two Canadian immigration officer interviewees (C-IO 5 and 6) stressed that there was only a very narrow range of activities that CIC recognized as comprising a management consultant.

One officer (C-IO 5) noted that they had a “cheat sheet” under the old legislation (the 1989 Canada-U.S. Free Trade Agreement or FTA) in order to familiarize officers with what was and was not acceptable as to types of professional activities allowed under the then new FTA. However, the wider scope of NAFTA had still not resolved what was and was not acceptable under this particular job description, and in the interviews with Canadian border officials it was considered that it would take some time to resolve. Thus, despite the more extensive training that Canadian Immigration officers underwent, one port director (C-IO 4) stressed that the NAFTA applications were still open to interpretation by individual port of entry officials, which could vary. She remarked,

When NAFTA first came on, all we had were the FTA guidelines within the three months of training that we have, and within this, we had three days of NAFTA training. Despite all of this training, there is still an incredible amount of variability with adjudicating NAFTA statuses. For example, one person went through two different ports of entry with the same letter and materials when seeking a NAFTA status. One port of entry approved it without a problem, the other port of entry almost denied it. (C-IO 4)

Despite the possible variability in interpreting NAFTA applications, Canadian immigration officers overall had a greater spirit of “facilitation” towards NAFTA applications rather than the more “restrictive” attitude of the U.S. immigration officers. This issue is discussed further in the forthcoming section, which deals with the geography of port shopping.

In closing, despite the view of port of entry officer, C-IO 4, quoted above, the Canadian norms of interpreting NAFTA applications were considered by interviewees as relatively consistent from one port of entry to another port of entry along the border in Cascadia when compared to the U.S. experience. In other words, there was a smoother flow of policy over NAFTA “rules”, established by policy officials in Ottawa down to their interpretation across POEs along the vast Canada-U.S. border. More, consistent nation-wide training and education on the Canadian side had shaped the consistency of ‘rules-to-norms’ as well as more consistent norms at each port of entry. For example, the Canadians dedicated considerable effort to achieving nation-
wide training of immigration officers and updating the knowledge regarding the understanding of NAFTA statuses, job classifications, and other related issues as part of immigration officers’ professional employment. The U.S., on the other hand, had relied less on the advanced stages of basic academy training; but depended even more on educating just a few staff (i.e. designated NAFTA officers prior to 2000) at each POE, and then these designated NAFTA staff providing on-the-job-training (OJT) to the other immigration officers.

However, this policy has changed since 2004, and the DHS is moving towards the Canadian example of mandatory ‘on-going training’, although the port director has had, in recent years, more influence in training and education of individual officers, as compared to his/her Canadian counterparts.

In fact, in one of the last interviews conducted for this research project in October 2004, with a new port director (US – IO 10) stressed that all DHS officers were in a “constant state of training.” This was a very different mind-set compared to earlier interviews in 2003. The port director explained:

Now, we will always have on-going training. We are making sure that they have on-going training. We are in a constant state of training. For example, everyone will be required to go through the training of doing a personal search. Right now, we are working on professionalism training.

Question: It seems like there is a much more deliberate effort to make sure that all staff are trained, and this on-going training appears to be new.

Yes, the time you talked to the [INS] people in March of 2003, the DHS was just beginning as an agency. The decisions were being made, but there was no structure. They were saying, “Yeah, we’re going to do this, but we do not know how. Now, they are saying were doing this, and this is how.” We now have a plan, as opposed to just an idea, as it was in the beginning. On-going training is a key part of the new DHS……
The training is established and the completion date is established [by Headquarters]. It is then left to the field manager to make sure that everyone completes the prescribed training in the given time frame. I am basically the manager for British Columbia. There is Calgary, Toronto, and Montreal. Basically, we get direction and guidance from headquarters, and they leave it up to us to figure out how to implement the guidance and training within the specified timeframe. (U.S. – IO 10, October 2004)

These comments help us to understand that a very different set of objectives and mind set regarding training and consistency of NAFTA Chapter 16 interpretations is being applied under the newly created Department of Homeland Security, as compared to the former INS. Constant
and more uniform education is now a primary pillar of the DHS. However, there is still leeway
given to each port director as to how exactly the educational programs will be executed.
Although it is just in its infancy, this constant and mandated training program may provide
more uniform and consistent interpretations of NAFTA application all along the Canada-U.S.
border.

As will be shown in Chapter 6, U.S. attorneys were still quite skeptical of this “on-going”
education in the DHS, and its contribution to a more consistent approach with managing the
border. In fact, many of the U.S. attorneys I interviewed stressed that the port director’s
attitudes and perceptions of NAFTA still had a major influence on how NAFTA applications
were interpreted on a day-to-day basis. In other words, the prevailing norms of NAFTA at each
port of entry were directly influenced by factors other than just overall training and education
surrounding the actual NAFTA document, and its official regulations.

Faced with the realization that the Canadian immigration training system was more
comprehensive and ongoing, two U.S. attorneys (US-A 1 and 3) noted that they would like to
see more consistent education and training for the U.S. immigration officials. All U.S. attorneys
interviewed stressed that the way NAFTA applications were understood still rested heavily on
the “culture” of interpretation and local procedures used at each port of entry. A more uniform
nation-wide ongoing training and education for all immigration officers (as used in Canada)
would help to broaden the reviewing immigration officers’ perspectives and create a more
predictable and consistent means of understanding NAFTA applications for all U.S. ports of
entry, which it appears the U.S. is beginning to do. One immigration attorney (US-A 3) noted
that the CIC’s approach towards frequent and on-going education for their immigration officers
would also be advantageous for the U.S. immigration officers. This attorney suggested that it
would be ‘a positive step’ if Canadian and U.S. immigration officers were given the same
training, especially since NAFTA rules applied equally, in theory, to both Canada and the U.S.
(and Mexico). This attorney noted that Canada seemed to be much more ‘progressive and
professional’ in keeping their reviewing officers updated and educated about immigration
policies and procedures as compared to the situation in the U.S. This and other attorneys’
reflections regarding the education of front-line officers were for the most part recorded before
the DHS implemented its new on-going training program. However, one attorney (US-A 3)
stressed that he would still like the DHS to follow the Canadian training program (directly)
since Canadian port of entry officials appeared to have a better and more comprehensive grasp of NAFTA and related issues.

5.6 The Geography of Port Shopping

The above narrative has suggested that due to the inherent complexity of NAFTA status regulators, and the problem of rapidly changing job descriptions in the IT industry, adjudication of NAFTA on a day-to-day basis was potentially left to the discretion of individual POE officers. The U.S. and Canada immigration systems differ in how they approached the problem; and Canada’s ‘plan of attack’ was to emphasize more consistency across the board through more intensive training programs and better and more frequent communications between headquarters, regional headquarters, and individual POEs. Yet, while both sides had recognized the inevitable variability in NAFTA interpretations, it was likely to continue. This continued variability has led to the phenomenon of “Port Shopping.” This section covers what exactly port shopping is, why it occurs, the efforts made to curb this activity, and how port shopping influences the ‘geographical dynamics’ of NAFTA applications, especially for Canadians seeking entry into the United States. (Please see Illustration 5.1 for a visual depiction of the many different ports of entry between the more western U.S. states and Canada.)
All Ports of Entry Between Western-Most U.S. and Canada

Source: Cheetham et al. 2001

5.6.1 The U.S. Immigration Officers’ Experience

From a broad perspective, “port shopping” may be considered the activity of seeking a port of entry that appears to be more facilitative towards allowing a foreign applicant into a desired country, usually for purposes of legitimate work or refugee status. This term can be applied to the Canada-U.S. border in the interpretation of NAFTA status regulations in two ways. The first is when someone is denied entrance to either Canada or the U.S. at a certain port of entry, and then the applicant has approached another port, trying to seek entry. The other form of “port shopping” is when an immigration attorney advises his/her clients as to which ports to go
through, and even as far as which officers they should submit their NAFTA application to. One U.S. supervisor (US-I 2) stressed that port shopping was not illegal, but it tended to destroy an applicant's credibility, if found out. Disclosure was more likely in the U.S. side of the border, since whenever a person was denied entry, the decision was registered into the Department of Homeland Security's databases. This information could then be easily recalled when a second application was made at another port of entry. This same situation could occur on the Canadian side, but as will be explored in this section, Canadian immigration officers were much more facilitative towards NAFTA applicants seeking entry to Canada than U.S. immigration officers. In addition, there were more consistent NAFTA adjudications by Canadian immigration officials all along the Canada-U.S. border.

Despite the use of computerized mechanisms, which should deter NAFTA applicants from port shopping, this phenomenon still occurred for a variety of reasons. As was discussed earlier in the chapter, when NAFTA was first implemented in 1994, designated free trade officers in the U.S.A. were the only immigration officials at ports of entry who reviewed NAFTA applications, up to 1999. Many immigration attorneys interviewed for this dissertation emphasized that when only free trade officers reviewed applications there was a much greater level of predictability and expertise focused around NAFTA applications. One immigration attorney stressed that she only sent her clients to two particular officers at the Vancouver port of entry since she was more confident that they would not adjudicate NAFTA status applications in an arbitrary or off-handed manner, and that they would be more professional in addressing her clients. She stated,

I used to always send my clients through the airport. The free trade officers knew what they were doing, and the port director expected professionalism from his staff. My clients were always treated well, and it was a pleasure to work with the [legacy] INS. (US – A3)

Although both U.S. and Canadian attorneys praised the original NAFTA system of allowing only designated free trade officers to review NAFTA applications, many U.S. immigration officials stated that over time, this began to erode the integrity of the NAFTA application process. One immigration officer explained,

What began to happen was that the attorneys began to write up the [NAFTA] letters with what the Free Trade Officers were looking for. They figured out what the various [Free Trade] officers liked, then they would send their clients through at the time of day
that particular officer was working. This is called ‘port shopping’ and it corrupts the procedure and integrity of the NAFTA system. Now any of our inspectors can review a NAFTA application. In fact, an applicant had the possibility of about 217 different officers reviewing a NAFTA application between Vancouver and Seattle when seeking entry into the U.S. (US – IO 1)

This comment underscores the attempt after 1999 to avoid port shopping and make the NAFTA adjudication more “random” and more equal along the border. Yet, despite the fact that the legacy INS tried to create more “randomness” towards the review of NAFTA applications, (i.e. avoiding the targeting of specific U.S. POEs and immigration officers) the activity of port shopping still occurs. In fact, the elimination of the Free Trade officers in late 1999 gave way to what one U.S. immigration attorney, Greg Boos, described as “widely erratic” interpretations of NAFTA applications all across the Canada-U.S. border (Boos, 2002). Rather than sending clients through one particular port of entry at a certain time of day, which was the case when Free Trade officers were adjudicating NAFTA applications up to 1999, attorneys subsequently sent their clients through a wider range of ports of entry all along the Canada-U.S. border. They even developed a rather sophisticated mechanism of written communication with each other regarding the various “climates” at each particular port of entry, especially since the attitudes and interpretations of NAFTA applications now rested more heavily on the attitudes of the port director, rather than the professional expertise of a Free Trade Officer. In fact, after 1999, the smaller, more rural ports of entry became favorite access points for attorneys who had clients with “marginal” applications. One attorney elaborated on this phenomenon,

……..Sweet Grass, Montana use to be the place to take it to if you were denied everywhere else. This has changed now. It knows now that it was seen as a “soft touch,” and it is now more difficult [with NAFTA applications]. (US – A 4)

In fact, at the time of conducting interviews for this study (2002-2004), port shopping involving sequential applications had almost become a game of “musical chairs” all along the Canada-U.S. border with respect to U.S. ports of entry. I argue that the lack of a uniform comprehensive and on-going educational program regarding NAFTA, in addition to the general lag time of NAFTA information circulating from Washington D.C. to the ports of entry contributed to a wide variation in interpreting NAFTA status applications, especially in the case of problematic job descriptions such as ‘management consultant,” and “software engineer.” This local variation was further exacerbated by many immigration officers relying heavily on local on-the-job-training and the expertise of other officers at their own POE. At times, this
type of local "knowing" could be subject to personal interpretations and attitudes as opposed to "professional facts." This circumstantial situation is what many immigration attorneys referred to as the "culture" at each port of entry, and this could vary significantly from port to port.

From interviews conducted with U.S. border officials and immigration attorneys it was clear that a strong influence in the interpretation of NAFTA applications is the attitude of each port director. If he/she understood NAFTA provisions and expected professionalism from his/her staff (i.e. a more consistent interpretation), then the NAFTA applicant was more likely to obtain a fairer (or more consistent) review. In fact, the new U.S. port director at Vancouver International Airport in 2004 emphasized that they (DHS) were aware that some ports of entry were more "lax" than others. However, during the interview, he focused on building up the reputation for his particular port of entry that it was "difficult to get through" if an applicant had a less than accurate application. In response to the immigration attorneys' communication network of providing constant updates to other attorneys regarding the various ports of entries' cultures (see Chapter 6), it was the intent of this particular port director to be known as a leader of a tough, yet professional staff at his particular port of entry. He stated:

At the Vancouver [International Airport], I think we have a reputation that we are very conscientious and we enforce the regulations. Although we do use discretion where appropriate. But you have other ports throughout the Northern border.....You might find a smaller port where they are laid back and do not get much traffic, so we started to hear things.....Well, a good example, is Christmas time. At Christmas time, we have people who are illegally living in the U.S. as Canadian citizens, and they come home for Christmas. They do not know that there are a lot of them. It makes it quite evident when you see the [pattern of] travel in their passports. Or we look at their record of travel.......It is pretty evident who these people are. So, they do not get back in here [at the Vancouver Airport], we refuse them. They withdraw [their application for entry]. Then they might try Lynden, or Sumas [border crossings]. If they have a job in the U.S. that they are uniquely holding, then they need to get back to that job. So they keep going! We have had people end up as far as Toronto, trying to get into the U.S. They hit the land borders and they say, "Oh, that didn’t work. So let’s fly to Toronto or fly to Ottawa."

It depends on the inspector that they get that day, but there are ports where there seems to be less of an interest on holding close to the regulations. So you can go to a port where the guy is actually not doing his job well that day, or people at the port are a little more laid back. I’m not saying that that is a bad thing, but if people say, "I don’t like Vancouver because they really do their job well." I can live with that. Versus, "I don’t like Vancouver because they humiliate people or treat people unfairly." There is a big difference as far as why people complain. Or, "I don’t like them because they found out about my drug conviction. They didn’t let me go." I can live with that.
Overall, it is important for the reader to understand the power of the "port's reputation" that flows from the experiences at each port of entry. I found in a number of interviews that the notion of a particular "port's reputation" was a strong contributor to the variation in adjudicating NAFTA statuses and to the activity of port shopping along the U.S. border with Canada. However, it should also be emphasized that this particular port director stressed the fact that he did not want his employees to be known as a staff that "humiliated or treated people unfairly."

This attitude of "professionalism" (i.e. treating applicants fairly and humanely) was a relatively new management concept for the DHS, and will be more thoroughly explored in an upcoming section, "The Effects of September 11." Beyond the concept of port shopping, one immigration attorney emphasized that the use of rumors of border controls and "port reputation" about how 'tough' any particular POE was in adjudicating NAFTA applications was in itself a primary strategy used by the DHS in keeping people away from the Canada-U.S. border. He reflected on the backgrounds and culture of DHS immigration officials at the various U.S. ports of entry between Seattle and Vancouver, and compared these with those of similar Canadian immigration officers.

Overall, the border guards are underpaid. They are also undereducated, but rather intelligent. They know how to send out signals of deterrence. They intentionally treat people with disrespect. From here a Canadian will send out a message to 20 of his/her friends that, "The INS is very disrespectful." Canadians do not like being treated with disrespect [emphasis added]. The INS [DHS] usually goes far beyond what is needed in regards to creating a climate of deterrence [at the border]. On the Canadian side, they [immigration officials] are much younger. They usually have some college education, and they are much less intimidating than the Americans. However, Canadian laws are much harsher for [foreign] people seeking entry into Canada who have committed crimes or who just are not permissible. Despite the fact that the Canadians have much tougher laws that they can apply to people seeking entry, you do not feel a military presence like the U.S. side. (U.S. – A11)

The above quote helps to pin-point some of the misconceptions regarding the often perceived relaxedness that Canadian officials have towards managing their Canadian borders. In fact, I argue later in this chapter that since 9/11, the U.S. border officials are becoming more like the Canadian officials in regards to the laws and rights that immigration officers have over foreigners seeking entry into the U.S. Yet, it is important to emphasize that prior to 9/11, the
U.S. relied not only on laws and policies but also on the use of rumors and impressions of intimidation to scare foreigners away from the border. Although Canadian immigration officials have more stringent laws when it comes to foreigners entering the country, the Canadian ports of entry have nowhere near the problem of port shopping, and in fact, I would argue give a spirit of “facilitation” when adjudicating NAFTA applications. The following subsection explores possible reasons why.

5.6.2 The Canadian Immigration Officers’ Experience

Port shopping is something that also occurs at Canadian ports of entry, but nowhere near the levels that the Americans experience. Two Canadian immigration officials (C-I 3 and 4) made specific comments on port shopping. They stressed that shopping for a port of entry typically did not work in Canada, although many applicants and immigration lawyers engaged in this practice. The Canadian officers reported that they usually could see if a person was hiding something. Additionally, as in the U.S., once a person was denied entry, this decision was then registered on the Canadian CIC computer. This computer system also kept a record of criminal applicants’ backgrounds. However, some officers were known to have let certain applicants in after they were denied entry at another port. “Personalities get involved a lot of the time,” stressed one officer (C-IO 6). If an applicant did not understand why a particular decision was made at another POE, the reviewing officers would go over the decision with the NAFTA status applicant (unlike in the U.S.). It was also noted that the term, “port shopping”, was used at the land ports of entry in Cascadia rather than the Vancouver airport, and that it was more broadly applied to persons seeking entry into Canada beyond the NAFTA status applicants (e.g. for people seeking more general admission into Canada), because it was more difficult to inspect thoroughly people traveling in cars at the lands port of entry compared to the airport, where there was always a “one-on-one” inspection. In other words, with land border crossings by cars, sometimes a rigorous check could not be done on all passengers in any particular car. The CIC usually noted the car license plate number, and if the car did not belong to the person trying to ‘port shop’, it was then difficult to record and control all ‘port shopping’ applicants, who might be traveling by car. The interception of persons attempting to ‘port shop’ and seek entry into Canada at another POE from the U.S. was more challenging to execute.

However, Canadian immigration officials stressed on the Canadian side of the border, almost every NAFTA applicant was granted a NAFTA status. One policy advisor put it rather
succinctly when asked the question about the particular process that an applicant went through when seeking entry to Canada under NAFTA. He stated,

Essentially, it works like this:
1. Arrives
2. Asks
3. Gets

...the majority of the NAFTA applicants are well prepared when they submit their applications. We also have addressed the process on our web site. (C – IO 3)

The above comment reflects not only a greater attitude of facilitation on the Canadian side compared with the U.S.A., but also the greater willingness of Canadian immigration officials to work directly with applicants by providing accurate and transparent information regarding the preparation of NAFTA applications. This was very different from the U.S. experience at the border, which frequently emanated a feeling of “restrictiveness,” and deferred most professional advice and help with NAFTA applications to third parties, such as immigration attorneys. In fact, a policy analyst, and also a port supervisor, put it well with the following statements,

Overall, most people know what is expected of them when they come across the border seeking work. However, they have the luck of the draw when it comes to the immigration officer who reviews the material. (C-IO 3)

The process [of adjudicating NAFTA applications] is one of “fact finding” for the officers. We are “facilitative” in the way we see our work. However, we are also “investigative” in the process of our work. (C-IO 6)

These comments help to shed light on why there is a relative absence of port shopping for American applicants going through Canadian ports of entry. Canadian immigration officials tended to interpret NAFTA applications more generously and more consistently. As discussed earlier in this chapter, considerable time is spent formally educating Canadian immigration officials about NAFTA and other forms of professional work statuses. Additionally, CIC has developed its own detailed web site on how to prepare a successful NAFTA application (see http://www.cic.gc.ca/manuals-guides/english/fw/few.pdf). This helps to alleviate the problem of incomplete and poorly prepared applications, which is a common problem for Canadians seeking entry into the U.S. Finally, the attitude or culture at Canadian ports of entry is one of “facilitation,” as described in the above section. The Canadian immigration officials are investigative in the process of their work, in addition to the fact that they have even stronger laws to fall back on if a foreigner is inadmissible. However, the overall attitude of the
immigration officials is one of “facilitation.” This is a striking difference when compared to the American immigration officials, who are generally more “restrictive,” and even vary in their attitudes of “restrictiveness” from port to port, which then gives rise to the activity of port shopping. Although many U.S. immigration attorneys complained about this restrictive attitude, it also helped to secure their own roles as professional intermediaries in the movement of Canadian professionals across the Canada-U.S. border. The following section explores the role of immigration attorneys from the immigration officials’ perspectives.

5.7 The Role of Attorneys in the NAFTA Status Application Process

The preceding section explored the concept of port shopping along the Canada-U.S. border and emphasized the fact that attorneys played an influential role in the activity of port shopping, perhaps more so for Canadians wishing entry into the U.S.A. Attorneys also served in a more direct capacity when working with clients on NAFTA applications. This included making sure that their clients were generally admissible under NAFTA status provisions, preparing a thorough application, and finally helping their clients negotiate particular ports of entry and the possible questions that immigration officials might ask. In my interviews, questioning the necessity of attorneys in the NAFTA process was a common theme for many Canadian immigration officials, whereas many U.S. immigration officials accepted the U.S. immigration attorneys’ role as intermediary as part of the usual NAFTA application process. The following section explores how immigration officials themselves perceived the role of attorneys in the NAFTA process, and how these roles may differ from a United States and Canadian perspective.

5.7.1 The United States’ Immigration Officers’ Experience

Immigration officers in the U.S.A. and Canada were questioned in the interview process as to the usefulness of immigration attorneys in securing successful cross border employment authorization. Many U.S. immigration officers noted that having an attorney involved in the NAFTA application process was not critical to the success of any NAFTA status application. However, as stated previously, two U.S. officers (US-IO 3 and 4) noted that if an attorney were involved in an application, then it was usually more complete.
Additionally, another immigration officer (US-IO 2) noted that attorneys may be required to give assistance as the DHS/INS personnel were rarely able to provide “help” to NAFTA applicants. The immigration officials perceived that their job was merely to inspect the applicant and the particular NAFTA status application. On a more compassionate note, two U.S. officers (US-IO 3 and 4) stressed the fact that it was hard to give accurate information to prospective cross border applicants informally over the phone, as they were very concerned about giving out inaccurate information. These officers stressed that they did not want to mislead any perspective NAFTA applicant. Four U.S. officers (US-IO 1, 2, 3, and 4) noted that the DHS/INS web site and the State Department web site provided up-to-date information on how to apply for a NAFTA status. They also noted that U.S. attorneys and law firms provided accurate information regarding how to go about completing a NAFTA application. For example, two officers (US – IO 3 and 4) noted that one U.S. attorney had a very comprehensive web site of his own on NAFTA status issues. In addition there were numerous U.S. law firm web sites with good information regarding how to seek entry into the U.S. under NAFTA. One remarked,

One U.S. attorney has an excellent web site with much of the needed information and possible common pitfalls with the NAFTA application………the State Department’s website also provides instructions on how to apply for a NAFTA status. The American Immigration Lawyers Association and various other law firms throughout the country also have detailed information for possible NAFTA applicants…….the person really needs to be his/her own advocate, though. (US – IO 3)

The above comment helps to demonstrate that the DHS recognizes that there are other sources and references, beyond the DHS, that a NAFTA applicant may turn to these in preparation of the NAFTA application. Additionally, the DHS officers demonstrated a certain level of legitimacy and professional respect for these other points of reference. The section now turns to the Canadian perspective towards the involvement of attorneys in the NAFTA process.

5.7.2 The Canadian Immigration Officers’ Experience

Canadian immigration officers had quite different perspectives on the role of attorneys in the NAFTA process. To begin, Canadian immigration officers often emphasized that attorneys were not so essential to seeking a successful NAFTA status for work in Canada. One interviewee noted,
Attorneys are not that essential. Yet, if they (attorneys) were used, they usually wind up being the coordinator between all of the people involved. (C-IO 3)

Another immigration officer (C-IO 5) also stressed that even if an attorney were to be involved, they (the CIC) always needed the correct information. Interviewees (C-IO 3, 4, and 5) noted that the CIC already had professional staff at each port of entry to do the job of working with the NAFTA status applicant. In addition, the CIC would not let an attorney travel (to the port of entry) with the client. This can be compared with the changing policies of the new DHS in the United States. Historically, the U.S. Legacy INS would allow attorneys to represent their clients directly at the border when seeking a NAFTA status. However, this policy changed after 9/11. Now, as of August 2003, a U.S. immigration attorney could not represent his/her client at any port of entry. The attorney may indeed “tag along” with his/her client, but cannot formally represent their client unless the NAFTA applicant has become the “focus of a criminal investigation” (see Appendix 10). This concept will be more thoroughly explored in Chapter 6. Two Canadian officers (C-IO 4 and 5) noted that it was their role to inspect an applicant seeking admission into Canada, not the applicant’s attorney. One port supervisor summed it up well,

We have people on staff to do the job of working with the applicant. In general, we will not let an attorney go (to the port of entry) with the client. We are inspecting the person seeking admission into Canada, not the attorney representing the person. (C - IO 5)

It is interesting to note aspects of the procedures used at Canadian POEs. For example, in regards to working with a NAFTA applicant, the CIC often made a phone call to the particular company wanting to hire the person. One officer (C-IO 3) explained,

In regards to working with the applicant, the CIC may make a phone call to the company wanting to hire the person. If the person is an intracompany transferee, we want to know how long the person has been with the company and in what capacity…….We definitely try and help people at the border. We also might call the attorney. If the person’s application is deficient, we explain what is needed and possibly have the person fax materials to the border. (C-IO 3)

CIC officers also stated that they preferred letters from the firm offering the job rather than from any attorney representing the applicant. When an applicant called the CIC for help, it typically went to the CIC call center, which was usually not able to provide detailed information needed for a successful application. This was a common irritant for many Canadian immigration attorneys, as explained in more detail in Chapter 6. Three Canadian
officers (C-IO 3, 4, and 5) noted that the CIC had a very good web site with explicit information on how to apply for a NAFTA status. One port director stressed,

> It is very straightforward......Overall, most people know what is expected of them when they come across the border seeking work. (C-IO 4)

However, it was noted that the applicant often experienced the ‘luck of the draw’ in just which immigration officer reviewed the applicant’s material. From the reviewing officer’s perspective, the application process was one of “fact finding.” Once again, the two officers (C-IO 5 and 6) noted that they were “facilitative” in the way they see their work, but they were also “investigative” in the process of their work. All Canadian immigration officer interviewees stressed that they (CIC) had a transparent process for NAFTA. One Canadian officer (C-IO 5) noted,

> It is clear and straightforward to anyone applying under NAFTA. (C-IO 5)

The above comments suggest a rather self-assured perspective that Canadian immigration officers have over the NAFTA process and their inherent willingness to help the NAFTA applicant. This being the case, they saw little need for immigration attorneys to be involved in the process. As will be shown in Chapter 6, however, Canadian immigration attorneys were in strong disagreement with this attitude. The chapter now turns to immigration officials in a post 9/11 world, and how the NAFTA status procedures have changed in Cascadia as a result of increased emphasis upon cross-border security.

### 5.8 Immigration Officials in a Post 9/11 World

The events of September 11, 2001, had tremendous impacts on the immigration services of both the U.S. and Canada in addition to the day-to-day work of their respective personnel. These transitions ranged from the creation of entirely new institutions that oversee immigration into the U.S. as well as Canadian border management, a rise of professionalism and on-going training programs in the newly created U.S. Department of Homeland Security, to a variety of new laws and policies allowing front-line immigration officers many more liberties on behalf of the state. In this section, I report on the immigration officers’ responses to Questions 3, 8, and 20 (shown in Appendix 2), and I argue that in some ways, 9/11 has brought each country’s implementation of border management closer to a common norm.
5.8.1 The U.S. Experience
5.8.1.1 The Development of New Border Management Institutions

First, one outcome of September 11 has been the creation of the Department of Homeland Security in the U.S.A. The Department of Homeland Security, established through the U.S. Homeland Security Act of 2002, includes the merger of over 20 agencies and governmental organizations into one department. With the creation of the DHS, the U.S. INS, U.S. Department of Customs and U.S. Department of Agriculture were merged into one inspections agency called Border and Transportation Security Agency (BTSA). Within this agency are the creation of two new bureaus, the Customs and Border Protection (CBP) designed to manage the border and the Bureau of Immigration and Customs Enforcement (ICE), which is considered the investigative arm of the directorate (Meyers, 2005). In response to this, the Canadian government created something called the Canadian Border Services Agency (CBSA) in late 2003, which included the merger of customs, immigration, and agriculture. Despite this merger, Citizenship and Immigration Canada is still responsible for enforcement activities regarding immigration, and has established a new admissibility branch in response to these larger changes regarding Canadian border management (Public Service Alliance of Canada, 2004).

5.8.1.2 The Rise of Professionalism in U.S. Immigration Management

One interesting turn of events as a result of September 11 and the metamorphosis of the INS into the DHS has been a rise of the culture of ‘professionalism’ within the newly created DHS. As discussed in the literature review in Chapter 2, a reoccurring theme for many people seeking entry into the United States, whether legally or illegally, has been a rather ‘hostile’ one when encountering the U.S. immigration officer responsible for inspecting the person seeking entry. However, through the metamorphosis of the U.S. INS into the DHS there has been a rise in the culture of ‘professionalism’ within the newly created DHS. Despite the fact that potential immigrants and foreigners have been seen as somewhat powerless and invisible when it comes to U.S. federal political influence, enough stories and complaints found their way to U.S. policy makers to the extent that a main architectural pillar in the formation of the DHS has been the spirit of mandatory professionalism within all ranks. One port director elaborated:
We just completed our professionalism training...we keep it professional and impersonal. Even if you are a violator, you still have the right to be treated as a human being with respect. So, even if I have to have you carted off to jail, you will go with dignity. This is everything that is over there on the wall - to be professional; treating everyone with courtesy.... even in the most difficult circumstances you must be professional.

Kathrine: Yes, I noticed this when I called for the interview.

Yes, every person must now be greeted. Yeah, it used to be “Give me a declaration!” I honestly believe that you will see more and more of this. This is something that has been mandated from the top. You have the right to be treated courteously. We now have signs going up everywhere, so if you are treated uncourteously, but the sign says that you have the right to talk with a supervisor. Well, then you are going to ask to speak with a supervisor that the sign says you have a right to speak with. This is the standard that we hold the employees to. We have made some good changes. The uniforms look good. They all have the new DHS badges. We are taking the time to do professionalism training. We try to make them aware of what we expect and not only expect, but demand. Because if we get complaints, this implies that we are not taking the necessary corrective action.

So, “Headquarters says that I have to be courteous and professional, or I'm going to be disciplined. I may lose some money.” I mean this is a no-brainer. “It does not hurt me to say ‘Hello,’ even though I may not mean it. But I will greet everyone, otherwise I am not following established procedures.” With the interest of the Commissioner and Tom Ridge, this is not optional. The border environment was one year ago, and I will admit this, that “We own it, so we can do anything we want.” That was the attitude, especially along the Southwest border, and even along the Northwest border. “The Northern border this is our border, so I have the right to treat you like you just broke our laws.” Well, this doesn’t find agreement with me, and anyone in this mindset will not be around much longer because there is too much effort being put into place to erase this mindset. Mr. Ridge has been here, our Assistant Commissioner has been here. The message you hear is clear, “You will be professional, or we will try to make sure that we correct your behavior.” I think it is working!...A lot of DHS people along the Washington [land] Border do not know who I am. So when I cross the border it is usually not in uniform. I point out to them if it was a nice greeting or not so nice greeting. So it is good to know that they do not know who I am.

Kathrine: Oh yes. I have noticed it. There is a real conscious effort of professionalism.

Yes, if the person has been standing in line for 45 minutes, and the first thing they hear from the officer is “Good Morning,” it diffuses much of any anger or frustration that they had from standing in line. This positive greet makes the average person’s experience a positive one. Whereas if the officer say, “Give me a declaration!” and it goes from there. The idea is to start if off with a positive. If the response is not positive, so be it. We cannot control the public, and how people respond. But we do

\footnote{The first Department of Homeland Security (DHS) Secretary.}
have to be in control of our employees, and how they interact with the public. This is the biggest change in my opinion. “Be nice or else!” (US – IO 10)

This rather lengthy quote helps to demonstrate not only a significant turnaround of the DHS that occurred in its attitude with the public, but also a change in the mindset of front-line border officers, and how they perceive themselves in relation to the border. Although at times an inspecting officer may not be so sincerely “professional,” there has been a direct mandate from the former head (Tom Ridge) of the newly created DHS in Washington D.C. that all employees should conduct themselves in a professional manner with those seeking entry into the U.S. There were heavy consequences, such as deductions in pay, for those officers who did not behave in a professional manner. Perhaps more importantly was the effort to change the overall attitude of how U.S. immigration officers saw their power and relationship with the border and people attempting entry. In the above quote, the U.S. port director (US – IO 10) emphasized that only about a year ago there was the attitude that the border were seen as “their border,” and they had a perceived right to treat people seeking entry “as though you just broke our laws.” Although the author remained somewhat skeptical that the new “professionalism” training would sway front-line officers to an entirely different mind-set regarding their applicants at the border, it did indicate a direct and conscious effort to change the driving perceptions about their purpose and role in relation to NAFTA applications and foreigners, in general.

I would argue that particular importance should be placed on the fact that each port director, personally, will no longer tolerate the seemingly engrained older attitudes. As has been discussed earlier in this chapter, the port director at each U.S. port of entry has had a considerable amount of influence, both professionally and charismatically, over each POE’s employees. Thus, perhaps the most important change was the port director’s own embrace of these new attitudes and approaches towards managing the border. In fact, since the creation of the DHS, more powers were given to the discretion of port directors in an attempt to provide devolution to front-line managers, which allowed for smoother flows of people at ports of entry, but without sacrificing security. The next sub-section reviews the new security priorities of the DHS for all people seeking entry into the U.S., and its implications for Cascadia’s border crossings. In addition, it examines how the Illegal Immigrant Reform and Immigration Responsibility Act (1996) and the U.S. Patriot Act (2001) have allowed even more rights to
DHS officers on behalf of the state, and the new rights that port directors have as a result of the creation of the DHS.

5.8.1.3 New Security Priorities for the Department of Homeland Security

Since September 11, 2001 the guidelines for admissible entry into the U.S. have changed considerably. Before, there was a primary emphasis on illegal entry; now, terrorism is the main focus, criminality is second (drug smuggling, embezzling, money laundering, and so on); and illegal (or fraudulent) entry ranks third. One port director (US-IO 10) explained:

9/11 changed everything, and how we look at the border! The directive is now the following: 1. Terrorism and bringing in terrorist weapons, 2. Criminality, and finally 3. Illegal immigration. Then we go to the NAFTA agreement. And what the three former agencies [Customs, Agriculture, and Immigration] covered. We then look to see if these people are representing themselves as legitimate business people. (US-IO 10)

The major transformation of the INS into the DHS changed the experience of all who seek entry into the U.S. However, three officials (US – IO 3, 4, and 5) noted that paradoxically, the change was perhaps not so important since the DHS has always had a heavy veil of security when it came to admitting people into the U.S. Additionally, the experience for people seeking NAFTA statuses has not changed drastically. One officer (US – IO 4) noted,

Yes, overall, it has had an effect. The DHS has increased the scrutiny for all travelers. We are also using additional databases on people, which were not used in the past. For example, some people had past records for possession of marijuana....that did not come up under the old system, now they do. Thus, the person must get a waiver, which is usually done with the help of an attorney. However, we always must check these sorts of things out! For people coming in under NAFTA, they are working professionals and have done their homework [in regards to what they need]. (US – IO 4)

The above comment helps to situate the fact that although there were different priorities for the newly created DHS, there was also some level of consistency for professional business people. However, the newly created U.S. Patriot Act (2001), coupled with the Illegal Immigration Reform and Immigration Responsibility Act of 1996, allowed more extensive powers and rights to all levels of U.S. law enforcement officers over applicants seeking entry into the U.S., as well as over U.S. citizens. The following subsection explores how this has been applied to front-line DHS officers along the Canada-U.S. border in Cascadia.
5.8.1.4 The Illegal Immigration Reform and Immigration Responsibility Act of 1996 and the U.S. Patriot Act of 2001

The U.S. Patriot Act was passed by Congress in late 2001, and gave more substantial powers to law enforcement authorities for security and political reasons primarily as a result of the events stemming from September 11, 2001. Before exploring these new powers, it should be stressed that the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) of 1996 provided the current foundation as to what constitutes “entry” into the U.S. for many non-U.S. citizens. Much of what will be discussed in the next three paragraphs is based on the work of Ronald Zisman (2004), a practicing lawyer of Preshaw and Zisman.

IIRIRA (1996), ratified by U.S. Congress, significantly altered the definition as to what constituted an “entry” into the U.S., and so it has been an important benchmark in determining which constitutional protections were available to arriving ‘aliens,’ or non-U.S. citizens (p. 1). First, the Act expanded the grounds for inadmissibility and narrowed the scope of constitutional rights applied to arriving non-U.S. citizens, or aliens. A key issue here is the new distinction between ‘admitted aliens’ and ‘applicants seeking admission,’ since admitted aliens have ‘due process rights’ under the U.S. Bill of Rights. However, these applicants seeking admission but who were found inadmissible during the inspection process at a port of entry might be subjected to ‘expedited removal.’ This program was administered directly at the POE. It indicated that there were no due process rights involving judicial review of such a draconian decision, and a person barred from entry in this way could be also barred from entering the U.S. again for a period of up to five years. Added to these rather restrictive measures were other new laws developed within the guise of the creation of the Department of Homeland Security (DHS), and these are found in INA 287 (p. 1). After 9/11, all DHS inspecting officers were able to use these more extensive powers of expedited removal at POEs on behalf of the state over the rights of the individual, whether a U.S. citizen, permanent resident, or an alien. Some of the main powers that DHS employees might use in connection with administering security along the U.S. border included the following:

The powers to search are unbound by warrant when a person is seeking admission into the United States. The power to arrest is based on the inspector’s ‘reason to believe that the alien so arrested is in the United States in violation of any such law.....’and can also do so within a reasonable distance from ‘any external boundary of the United States.....and within a distance of twenty five miles from any such external boundary to have access to private lands.....’ (US INA 287 in Zisman, 2004)
The above quote helps to demonstrate that powers of U.S. immigration officials were quite considerable. Accordingly, the rights of non-U.S. citizens have been eroding for almost ten years (i.e. since the IIRIRA 1996 legislation), and this erosion began before the U.S. Patriot Act of 2001. I argue therefore that the process of expedited removal under the IIRIRA (1996) has had a strong effect on NAFTA applicants seeking entry into the U.S. I will return to this concept in Chapter 6. What is most surprising about the quote by Zisman (2004) in regards to the U.S. Patriot Act is that the powers and rights afforded to DHS personnel may not only be applied to aliens, but also to U.S. citizens. The most well-known case of applying the U.S. Patriot Act to a Canadian citizen is Maher Arar.50 Perhaps the most disturbing aspect of this rather bizarre case is not the lack of rights given to a Canadian citizen but a deliberate refusal to return him to his country of citizenship.

One of the major components of the U.S. Patriot Act is to “beef up” security along the Canada-U.S. border, aka the “Northern border.” Specifically, the Act mandated that by 2005 there would be three times the numbers of personnel there as before 2001, but this has not happened yet. In fact, an interview with DHS supervisory personnel in November 2004 revealed that the Vancouver International Airport, for the most part, had not seen received additional funding, nor additional personnel, as promised under the Act (interview with Port Supervisor-Vancouver International Airport, October 2004 US-I O 11). The supervisor noted this as we walked out of his office and into the line-up of people waiting for U.S. primary inspection. The line snaked all the way back to the Christian Dior display in the duty free shop. In fact, Harvey (2004) has done extensive research on this phenomenon of the promise of additional provisions for “beefed up” homeland security within the U.S., and the failure of these financial commitments to materialize.

5.8.1.5 The Power of Discretionary Authority

In closing, it should be stressed that the new legislative powers being handed down to U.S. port directors occurred in a rather positive way. By this, I mean that since the creation of the DHS,

50 U.S. officials detained Arar, a dual citizen of Canada and Syria, as he attempted to pass through John F. Kennedy International Airport in New York City on his way to Canada. After days of interrogation about his terrorist ties and despite his repeated refusal to concede to deportation, the United States removed Arar to Syria (via Jordan), rather than Canada, where he reportedly suffered torture over a ten-month period. (Kerwin, 2004: 5)
the devolution of discretionary authority from district offices to the individual port and assistant port directors has been a positive step for applicants seeking entry into the U.S. under NAFTA. One port director (US – IO 10) stressed that he found this to be a very positive thing for Canadians who might be denied entry into the U.S. based on a minor infraction of rules, or for purely technical reasons, such as when a person’s passport was not machine readable. The port director explained,

The DHS came into effect in March 2003. Prior to the establishment of the DHS, the district office could only OK a waiver. This has changed now. For example, a waiver of admissibility would now be handled at the local POE. For example, my status [as port director] allows me to make these decisions. Now with these new laws, I have local discretionary authority. I can give a waiver of admissibility for people who have violated the law. For example, a person convicted of marijuana. I can parole the person into the U.S. for a certain amount of time. Also, even with machine-readable passports for countries that are visa exempt, some of these people were in transit when the law occurred. I am able to give a one-time parole to these people, which was not the case prior to 9-11. Before 9-11 they were refused entry. The discretionary authority for port directors is new after 9-11. If the person does not represent a threat to terrorism or criminality, then I have the authority to make the determination to waive the requirement of a visa. We try and make sure that travelers know what the requirements are. However, sometimes things happen. This is a major benefit for the POEs. We have received a lot of training in these areas. (US – IO 10)

Overall, the new powers of discretionary authority given to port directors was a key to each port of entry being able to better facilitate the movement of cross border migrants. Port director, US – 110, stressed that knowing how to use this power properly was essential in using it correctly. He also noted that a representative from DHS headquarters in Washington D.C. had come to his local office, to ensure among other things that his use of discretionary authority was being used properly. He commented on this at length,

We are eager to take a much more conscientious approach to people who have minor problems versus the bureaucracy. Such as, “Well, you have to have this visa, and you do not have it, so you don’t get in. Bye.” The transit without visa program has been eliminated, so if you are going to Mexico, and your ticket you paid $500 for and the ticket says you have to go through San Francisco, but now you are not allowed to go through San Francisco. So now you have to buy a $3,000 ticket to go directly to Mexico on the day of travel. So the discretionary authority is major. If used appropriately, there is nothing wrong with it. That was a hard pill for some of our employees to swallow, initially. They would say, “But the regulations say.....” I am like, “I understand that, and you are 100% right. Your determination that this person does not meet this criteria, but as the person who has the discretionary authority I am going to allow this person to travel and this is the reason why......” We really stress when I look at a discretionary call, based on the experience of the managers that are
dealing with it. But I also want them to go back to the employee and say, “OK, you were right. But based on the information that he had, Mr. Andersen is going to use his discretionary authority to allow this person to travel today.” A perfect example is when I first got here, and it was before discretionary authority had been implemented. A gentleman and his wife, and his two small children were going to either Hawaii or Disneyland, I can’t remember. All of a sudden, I heard a scream from one of the children. So I went rushing over to the area, and it turns out that he had a minor conviction for marijuana. So he was inadmissible. The officer denied the husband, he said, “the wife and the children can travel, but the husband can not. He [the husband] can submit an I-192 for FUTURE trips, but today, he is going to be refused.” Now with my discretionary authority, I can look at this and make a determination as to whether or not he should be refused based on that, who he is traveling with (his family), where he is going. So it is a completely different situation. (US-IO 10)

Overall, the above section helps to demonstrate that since 9/11, and the change to the DHS and the new legislation, controls along the Canada-U.S. border have become stricter in some ways, such as the narrowing of rights for aliens through the IIRIRA of 1996 and the increased powers given to DHS personnel under the U.S. Patriot Act of 2001. However, there have been some efforts to soften the appearance of the front-line DHS personnel through professionalism training, and perhaps more importantly through the increased powers of discretionary authority which have been given to port directors. On first brush, it appears that the U.S. government has tried to be more lenient in the case of older minor criminal convictions, such as convictions of possession of marijuana, say 20 years ago, but much harsher on possible terrorists and people deliberately trying to commit fraudulent entries. Perhaps surprisingly, in a post 9/11 world, I argue that the U.S. system of law and border management has moved to more closely resembling the Canadian system in many ways, such as through more training and professionalism. The subsection now turns to changes in the Canadian situation.

5.8.2 The Canadian Experience and the Canadian Code of Conduct

The Canadian experience with 9/11 was initially a difficult one. Immediately following the attacks, Canada was accused of allowing four of the September 11 terrorists into Canada, who then seemingly made their way into the State of Maine and then on to Boston (Andreas, 2004). However, despite these initial accusations, after careful investigation by CSIS, CIC, and the U.S. government, it was determined that all 19 terrorists entered directly into the United States. Still, these accusations, although deemed incorrect after investigation, turned the American public’s attention to Canada as a possible “soft spot” of foreign entry into North American. This unwelcome focus forced the Canadian government to rethink its own immigration and
border security systems. However, the author’s empirical research tends to suggest that the Canadian system has long maintained professional and high levels of performance, in contrast to the U.S. accusations. Moreover, since 9/11 it appears that the U.S. system is actually becoming more like the Canadian system, as indicated by the U.S.’s effort to be more professional, establishing a more consistent and on-going system of training and education, and creating greater powers of the state over individuals seeking entry into Canada. This section explores further these growing similarities with a focus on the recent Canadian experience.

By comparison with the newly created DHS’s push towards professionalism in the U.S.A., Citizenship and Immigration Canada has always maintained that their staff should behave in a professional and non-intimidating manner when working with the public. One port director (C – I4) stressed that no matter what the situation, all officers would treat applicants at the border with respect and dignity. In fact, she noted that each officer, while in training, had to read and sign a “Code of Conduct”, laying out the values, ethics, and behaviors that all officers should emulate as part of the CIC. She explained,

We also have the idea of what is called “Client Service.” We are providing a service to our clients. We must treat people with respect. There is no other way to treat a person. We want our officers to be calm and professional, but thorough. There is the idea of values and ethics. We have something called a “Code of Conduct” and every officer must read and sign this. (C – IO 4)

This behavior was expected of all Canadian officers long before the events of September 11 occurred, and it is more in line with the overall Canadian ethic of “Good Government” and good behavior, which in a large part has defined the Canadian culture and its people for over a century (Gwyn, 1985). By contrast, the DHS has apparently only just beginning training on how to act professional, after a century of immigration management. This advanced management approach on behalf of the Canadian government is a strong indicator of other aspects of progressive professional management within the CIC. In fact, despite the seemingly friendly and professional nature of Canadian Customs and Immigration Officers at a port of entry, they have, in fact, many more powers over foreigners seeking entry into Canada, as compared to those of legacy INS prior to the IIRIRA of 1996. The following sub-section explores this concept in more depth.
I argue that despite the greater security on both sides of the Canada-U.S. border following 9/11, my research has demonstrated that the CIC continues to administer border control in a more humanitarian way than on the U.S. side. From an economic perspective, September 11 was devastating to the tourism economy of the Greater Vancouver Area and British Columbia in general. Since this is the third major source of revenue for the province of B.C., especially for small communities, it has affected British Columbia severely. The following quote from my research interviews in 2003 illustrates this point,

"It has been eerily quiet this summer. Normally, the land ports of entry are backed up all summer until after the Labour Day weekend." (C-IO 5)

Overall, many Canadian CIC officers interviewed had a strong grasp of how the American economy influenced and usually helped the Canadian economy. Special recognition was given to the film industry in its ability to bring in substantial income to smaller communities in B.C. that were hit hard by the downturn in the timber industry. In fact, one port director noted that her staff found a small bag of marijuana in Winnebago of a U.S. film crew. The inspecting officer did not let them continue onto Canada, and, returned the crew to the U.S. for this violation. She recalled the situation,

"Well, the bag [of marijuana] wasn’t that much (it was small)..... I said, “It’s not that big of a deal, and they [the U.S. film crew] are going to drop millions of dollars into one of our communities, but you did the right thing by turning them around [to the U.S.]” (C — IO 4)

The above comment helps to depict the tension between the CIC’s role of border law enforcement and the recognition of how to sustain the rural economy in B.C. in an era of continentalism. Perhaps more surprisingly was the officer’s lack of permissiveness towards marijuana for it is perhaps tolerated within Canada and especially in the city of Vancouver. From a broader perspective, the above comments help to demonstrate the complexities of administering Canadian law and managing the border in Cascadia from a Canadian perspective in a in a post-9/11 world. To reiterate, the most important characteristics following 9/11 from a Canadian perspective are that CIC immigration officers have for a long time been well educated and have always held professionalism in high regard, which is something that the U.S. is only just beginning to conduct. Second, it should also be stressed that Canadian port
directors have always had discretionary authority when it comes to issuing paroles or waivers of exclusion to foreigners not deemed as admissible into Canada, a power that has been just recently given to U.S. port directors. Additionally, the CIC is as severe as the U.S.A. with regard to power of the state and the rights of law enforcement over people trying to seek entry into Canada. Finally, despite these strong and seemingly growing powers of the state, there appears to be a more human element of reflection in the case of the Canadian officers, which the U.S. officers seem to lack perhaps due to their traditionally more militant nature and strong reliance on the direct interpretation of regulations. The concluding section in this chapter explores the overall effect that NAFTA has had on the Cascadia border from the perspectives of both U.S. and Canadian immigration officers.

5.9 Has NAFTA Facilitated Cross Border Labour Mobility in Cascadia?

Both Canadian and U.S. immigration officers were asked to reflect on whether the NAFTA status provisions had indeed been favorable in facilitating the growth of the Cascadia corridor to cross border labour mobility.

5.9.1 The United States Immigration Officers’ Experience

Two U.S. officers (US-IO 3 and 4) noted generally that Canadian employees who enter the U.S. under NAFTA provisions were regarded as a middle and upper middle class elite, who did not drain social services and possibly gave back to the U.S. economy in the form of taxes and providing jobs to Americans. In fact, after reflecting on this question one officer (US-IO 3) expressed:

This [NAFTA provisions] is a nice quiet way to allow for immigrants. They are highly desirable.

US - IO 3

However, with the adjudicating of NAFTA statuses, two port directors (US-IO 5 and 6) noted that there was potential conflict with the principle of ‘enforcement’ versus that of ‘adjudication’ coming from the same reviewing officer. There was also concern that as Canadians applying for a NAFTA status, they might be taking away a high paying job from a U.S. citizen. Yet, under NAFTA provisions, immigration officers must uphold the spirit of
NAFTA while also being careful to protect the viability of the existing American workforce. From an administrative perspective, two U.S. port directors (US-I O 5 and 6) noted that the reviewing officers needed a quiet place and time to review NAFTA applications, but under current working conditions a busy POE could be a difficult environment to adjudicate a complex NAFTA application. Also, the immigration officers noted that they were required to shift from being extroverted and "upfront", when first inspecting any applicant, to being more quiet and introverted when reviewing completed formal NAFTA written applications. Overall, every U.S. immigration officer noted that they had seen an increase in Canadians coming across the border for purposes of work under NAFTA.

5.9.2 The Canadian Immigration Officers' Experience

Canadian immigration officers, by contrast, were much more enthusiastic about NAFTA status provisions. All immigration officers interviewed stressed that Canadians, in general, gained from NAFTA. Canadian immigration officers interviewed saw NAFTA as a "good thing", and "not a bad thing at all." Two officers (C-IO 4 and 5) noted that U.S. applicants coming into Vancouver helped to keep the local B.C. economy sustained, not only in the major cities of Vancouver and Victoria, but also in the more rural communities in B.C. where new investment was badly needed. This was especially true for those U.S. personnel required to support the Vancouver film industry, and its operations in smaller rural communities outside of the Greater Vancouver region.

In reflecting on the relatively stronger Canadian support for NAFTA, one Canadian supervisor (C-I 5) stressed that the U.S. was an employment hub for everyone from around the world. Thus, many people came through Canada as a transit point en route to the U.S. He went on to emphasize,

The U.S. receives many more people wanting to come in and work than is the case in Canada. Hence, Canada does not need to be so restrictive in protecting its borders as the U.S. This is one of the reasons that the U.S. has such strict guidelines....Canada does not see the numbers of people that the U.S. does. We do not see immigration as being that "enforcement" driven. However, at the same time, we are seeing more people wanting to come into Canada. Therefore, there is a growing need for a balance of enforcement and facilitation. (C - IO 5)
This comment helps to summarize the Canadian awareness of the U.S. conundrum over balancing NAFTA entries with a high level of security when it comes to permitting foreigners past its borders. However, the quote also suggests the fact that Canada, in certain ways, may become more like the U.S. as a desirable destination for purposes of work, professional advancement, and quality of life. In other words, as the Canadian side of Cascadia generates a demand for jobs attractive to potential foreign employees, then Canadian immigration officials may have to balance enforcement and facilitation. Overall, it would appear that Canada and the U.S. are becoming more and more alike in many respects when it comes to managing the Canada-U.S. border.

5.10 Conclusions
This chapter has attempted to demonstrate some of the major differences between Canada and the U.S. in interpreting the NAFTA Chapter 16 provisions and how these are administered at various ports of entry. It also pointed to possible growing similarities between Canadian and U.S. immigration officials regarding the interpretation of NAFTA status applications and related matters such as job classifications (See Table 5.1). This closing section briefly reviews of some of these major differences and similarities.

In regards to how the interviewees understood labour mobility between Canada and the U.S. border, most stressed in one way or another, that Vancouver and Seattle had very similar advanced service economies, so it would be only natural for the flow of well educated professionals across the Canada-U.S. border to increase. All immigration officials stressed that the Cascadia region was a very busy region for the POEs between Canada and the U.S. Thus, both Canadian and U.S. immigration officials emphasized that they were well versed with NAFTA and the movement of professionals back and forth within the Cascadia corridor of the Canada-U.S. border.

Regarding NAFTA’s impact on the national economy, the American port of entry immigration officials were a little more skeptical regarding whether Chapter 16 of NAFTA had helped the U.S. economy, since they were concerned that Canadians might be taking jobs away from Americans. Surprisingly, Americans were much more tolerant and respectful towards U.S. immigration attorneys, compared to their Canadian counterparts. Also, the U.S. side was just beginning to introduce “professionalism” and on-going training (meaning a more consistent
approach) as a primary pillar to their new mission as the DHS, whereas these two themes had already been a staple of CIC. Additionally, 9/11 had tremendous impacts on both the American and Canadian immigration services. This resulted in entirely new agencies being created that were designed to more effectively manage both sides of the Canada-U.S. border. Also, the U.S. Congress and the Canadian Parliament created new laws that addressed national security and terrorism. Surprisingly, both the U.S. and Canada have had very strict laws in place prior to September 11 that pertained to alien rights (or an ever increasing lack of) and powers and authorities derived to the state in regards to border management. Additionally, this chapter suggested that Canadian law was in fact harsher than U.S. law when it came to inadmissible foreigners seeking entry; yet the U.S. was becoming more similar to Canada after the creation of the U.S. Patriot Act of 2001. Table 5.1 helps to summarize these similarities and differences. Overall, it is a dynamic time for both Canada and the U.S. when it comes to immigration and border management, and the interpretation of Chapter 16 of NAFTA is affected directly by both these changing parameters.
<table>
<thead>
<tr>
<th>Type of Attribute</th>
<th>Canadian</th>
<th>American</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAFTA adjudication</td>
<td>Seemingly consistent from Port to Port</td>
<td>Varies from port to port (based on “port culture”)</td>
</tr>
<tr>
<td>Mode of Communication of problems/issues</td>
<td>Iterative and deliberate</td>
<td>Top-down and seemingly inconsistent – Post 9/11 more deliberate</td>
</tr>
<tr>
<td>Training</td>
<td>Mandatory 16 hrs/annually</td>
<td>Eight hours in academy on On-the-job training – Post 9/11 “Constant State of Training”</td>
</tr>
<tr>
<td>Education</td>
<td>Majority have 4 yrs of college or more</td>
<td>Majority have 2 yrs of college or less – Military hiring preference. Post 9/11 becoming more culturally diverse and educated</td>
</tr>
<tr>
<td>Powers of Front-line Immigration Officers</td>
<td>Wide range of rights on behalf of the sovereign – more so than American officers</td>
<td>Wide range of rights, but less than Canadians. Individuals also have rights (either citizen or foreigner). Post 9/11 Creation of DHS, heavy and deliberate 'security' focus. Foreigners now have less rights beginning in 1996 under the IIRIRA.</td>
</tr>
<tr>
<td>General Impression of Immigration Officers</td>
<td>Perceived as “facilitative” towards NAFTA</td>
<td>Perceived as “militaristic” and “restrictive” towards NAFTA and disrespectful towards NAFTA applicants</td>
</tr>
<tr>
<td>Attitude towards “Port Shopping”</td>
<td>Not seem as a problem due to consistent interpretation of regulations from port to port – based on constant training and communication</td>
<td>Not illegal, but ruins a person’s credibility. Based more on the culture of each Port, or attitude of individual officer. Post 9/11-May become more consistent from port to port due to consistent and continual training of port officers.</td>
</tr>
</tbody>
</table>

Source: Primary research and interviews with author, 2000-2004
Chapter 6 -The Immigration Attorneys

6.1 Introduction

This particular chapter examines the role of immigration lawyers, primarily within the Seattle-Vancouver corridor of the Cascadia region, located usually either the greater Seattle or Vancouver regions. These attorneys help facilitate the movement of high technology professionals moving across the border under NAFTA and associated regulations. They may be considered part of the complex social network that works to move all types of immigrants and refugees around the world. In fact, Harris (1995) considers this type of activity a “migration industry” which consists of recruitment organizations, lawyers, agents, smugglers, and other “middle” people. Castles and Miller (1998) stress that these agents, taken as a group, can both help and exploit immigrants and temporary cross border workers. This is especially true in the case of illegal immigration and in circumstances of over-supply of potential immigrants. In fact, this migration industry has a strong interest in continuing migration, even when government efforts attempt to stop or control cross border labour movements.

Overall, the migration industry may be considered a ‘meso-structure” one that acts in the space between micro- (local) and macro - (international) structures, by linking individual activities to the state and the economy (Castles and Miller 1998: 26). This meso-structure or layer is especially valid for the role of business immigration attorneys. They not only serve as an interface between individuals, firms, and front-line immigration officials at ports-of-entry, but also act as key spokespeople and lobbyists to national government officials who create immigration policy and also the public at large. In regards to this study, these immigration attorneys have served since the early 1990s in a capacity as professional advocates and facilitators for NAFTA applicants, and in the contemporary period also have a wide breadth of knowledge about the labour mobility process and immigration law, especially when it involves crossing the U.S.-Canada-Mexico borders. Consequently, understanding their part in how the Canada-U.S. border operates in the Cascadia region is critical, and a key pillar within the empirical work of this study. This component is also significant as there is very little literature, if any, on the role of attorneys in the movements of professional foreign workers across international boundaries. Therefore, beyond my primary concern over the role of the international border in Cascadia, it is hoped that the outcomes and findings of this study will
help also to provide broader insight into the role and capacities that business immigration attorneys fill in the movement of professionals across North American borders. It should be stressed that there was some hesitation and questioning by government immigration officials in both the U.S.A. and Canada as to why attorneys needed to be involved in this particular study, especially as government agents saw the role of the attorneys as a very minor one in the overall process of cross border labour migration in Cascadia. However, it is hoped that this chapter reveals how important immigration attorneys are to this process, and the possible reasons why immigration attorneys were thought by governmental officials to not warrant a place in this study.

6.2 Methodology for the Empirical Research

As mentioned previously in Chapter 2, a total of 15 structured interviews took place with Canadian immigration attorneys (six), and U.S. immigration attorneys (nine) during 2002-2004. A majority of the attorneys had law offices in either the Vancouver or Seattle areas with the exception of two attorneys. One of these lawyers outside of Cascadia was a partner with a large and well-established firm in San Francisco, and the other worked for a law firm in Toronto. Many stressed that although much of their client base came from the Cascadia region, they also had clients throughout North America, Europe, and Asia. Due to confidentiality and the sensitive nature of cross-border issues following September 11, no informant could be named in this study, but the list of attorneys by code number, size of their firm, firm locations, and dates of interviews are show in Appendix 11. In regards to the actual research, each interviewee was asked a series of approximately 15 questions relating to the Canada/U.S. border, and the actual questions may be found in Appendix 3; These 15 questions could be grouped under the following headings: (a) the impact of NAFTA on labour mobility between Canada and the U.S. and the Cascadia region specifically; (b) what types of professions are difficult to interpret under NAFTA; (c) how immigration officials are educated about Chapter 16 of NAFTA; (d) the issue of port shopping (i.e. choosing the 'easiest' port of entry); (e) how do immigration officials see the role of attorneys in the NAFTA application process; and (f) whether or not NAFTA has helped or hindered flows of professionals across the Canada-U.S. border.
The interview results revealed a wide array of findings and information about the Canada-U.S. border; how labour mobility fits into the regulation and facilitation of entries at the border; and more interestingly the relationship between the various actors that served as facilitators and/or gate keepers to the North American pools of human resources for the high tech regional economy. The next section reviews the overall findings from interviews with the immigration attorneys. The results show significant differences in perception as to the effects of NAFTA between Canada and the U.S.

6.3 The Role of Attorneys in the NAFTA Status Application Process

Chapter 16 of NAFTA was written in such a way that an applicant, when assembling a NAFTA status application, would not need an attorney. It was deliberately created in this fashion as a response to the H-1B visa, NAFTA’s predecessor in the U.S.A., which was seen as confusing for the average person, required a tremendous amount of paperwork, and an attorney was almost always involved in the process. Thus, the new NAFTA status was seen as “liberating” and “easy”, and a reflection of the NAFTA as a whole, which, ideally, should embodied a spirit of facilitation of movements throughout North America (Vazquez-Azpiri, 2000). However, as more and more Cascadian firms began to use the NAFTA status application in the mid-1990s, they began to realize that they did need the help of a professional, especially for the new types of job occupations found within the growing high tech economy. The need gave rise to attorneys playing a stronger and stronger role in the NAFTA process, which is still the case today. This section examines the role of attorneys in the NAFTA process, both the American and the Canadian experiences, and the increasing distance that both Citizenship and Immigration Canada and the new Department of Homeland Security exhibited towards immigration attorneys.

Attorneys were questioned as to how useful or critical they considered their own role in the NAFTA process. All attorneys interviewed stated that ideally, NAFTA status provisions should be rather straightforward and one should not need the help of an attorney. However, according to three U.S. immigration attorneys (US-A 2, 4, and 6) it appeared that about 15 percent to 20 percent of NAFTA applicants did need the help of an attorney, especially when applying for the professions involved in IT industries- such as management consultants, software engineers, scientific technician/technologists, computer systems analysts, and medical
technologists. Three U.S. attorneys (US-A 1, 2, and 4) noted that the way these job and degree/experiences specifications were written under NAFTA, they were very "tricky." Yet as suggested in Chapter 5, for an applicant or human resource office to write a proper and successful NAFTA application without professional and legal assistance was "risky," according to attorneys. For example, one attorney (US-A 6) discussed the fact that many Canadian professionals seeking entry into the U.S. for purposes of work did not take the entry process seriously, neither do the human resource personnel understand the process of NAFTA. He stated,

The Canadians are not taking entry into the US seriously. For example, Canadians say they are going to golf, but they are actually going to work. This is a fraudulent entry. Additionally, there are many human resource people trying to put materials together themselves in order to save some money. They usually do a "half baked" job, and they then have to hire an attorney to unravel what they have done in addition to doing a correct application. This usually costs them more than if they hired an attorney in the first place. I, as an attorney, will not present a client to the border if it is sketchy. There is a terrible tension at the border [regarding NAFTA] based on these types of circumstances, and it is growing. (US - A6)

Additionally, three U.S. attorneys (US-A 1, 2, and 5) stressed that if an attorney was involved, the application process usually was much smoother. One U.S. attorney (US - A 2) also noted that from an ethical perspective, attorneys usually did not represent a perspective client who did not fall within one of the recognized professional categories permitted under NAFTA. Hence, the attorneys considered that they provided an unofficial screening mechanism for people seeking entry into the U.S. One attorney (US-A 2) emphasized that since he began working with NAFTA applications, he had a 99 percent success rate. He said,

I do not take clients that did not legitimately fall under NAFTA provisions. If I did, this would affect my professional reputation. (US-A2)

6.4 The Role of Advocacy to Policy Analysts and the US Congress and Canadian Parliament

It should be mentioned that all attorneys interviewed had a clear understanding of the fact that certain key policy experts in the U.S. and Canada, and to a lesser degree Mexico, held a certain amount of sway over how Chapter 16 of NAFTA was interpreted, officially, and how it has changed. Ideally, the U.S. Congress, the Canadian Parliament, and the Mexican Senate had
final authority over whether or not additional professions should be added to the "NAFTA list.\textsuperscript{51} Still, the day-to-day management of NAFTA rested with two key North American government bureaucrats, one in the Canadian Federal Government and one in the U.S. Federal government. Both of these bureaucrats were found within the immigration component (Citizenship and Immigration Canada and Department of Homeland Security) of government, rather than an international trade department, and both could be considered experienced senior level officials. A more thorough analysis of the responsibilities of these two officials is explored in Richardson (2006b).

As mentioned previously, part of these senior policy analysts’ responsibilities included listening to all of the official complaints and the seemingly “unfair” adjudications under NAFTA at various ports of entry between Canada and the U.S. In their capacity as members of the NAFTA Temporary Entry Working Group (TEWG), these two policy experts had the ability to send memoranda of understanding to ports of entry for further clarification on the interpretation of Chapter 16 of NAFTA as a document. This legitimate power had led many immigration attorneys, and their associations, to directly contact and, in fact, lobby these two individuals regarding various issues and discrepancies in the interpretation of Chapter 16 of NAFTA. These issues ranged from discrepancies in the actual writing of the NAFTA document to the attitudes of border officials at various ports of entry. Overall, despite the fact that federally elected bodies of governments and trade ministers had the official final authority regarding Chapter 16 of NAFTA, it was these senior bureaucrats who were seen as being the most influential and knowledgeable. Thus, attorneys spent a considerable time e-mailing and telephoning these two policy experts and their offices on behalf of their clients, rather than federally elected bodies of governments (i.e. Congress or the Canadian Parliament), when they had problems or issues regarding Chapter 16 of NAFTA.

6.5 The Canada-U.S. Border and Perceived Opportunities and Problems with the NAFTA Status Provisions

Both U.S. and Canadian immigration attorneys recorded in my interviews that NAFTA had helped tremendously with facilitating the movement of professionals across the Canada-U.S.

\textsuperscript{51} Only two new professions, plant pathologist and actuary, have been added to the original list of 63 professions since NAFTA’s inception in 1994.
border. In fact one Canadian attorney (CA-2) noted the fact that over 70 percent of all Canadians lived within 90 minutes of the Canada-U.S. border. Thus, Chapter 16 of NAFTA was one more avenue that could lure Canadians into the U.S.A. However, attorneys, (US-A4 and C-A2) tended to suggest that NAFTA had not been effective in opening the border to complete worker mobility in North America as for example the Schengen agreement had been in the European Union. The opportunities and problems presented by Chapter 16 of NAFTA are now considered, according to the interview comments provided by both U.S. and Canadian immigration attorneys.

**U.S. Attorneys**

One U.S. attorney (US-A 4) stressed that there was no attempt to harmonize cross border regulations for the three signatory countries, - (i.e. the labour mobility entry policies of Canada, the U.S., and Mexico) similar to that of the Schengen Agreement of the European Union. From the attorneys’ viewpoint, therefore, it appears that in theory, NAFTA was designed to maximize labour mobility, but, in practice, each NAFTA country had retained its own jurisdiction and standards for entry into its nation state. In other words, the attorneys’ attitude was that there had been tremendous variability in how each respective country’s immigration officials reviewed, interpreted, and adjudicated NAFTA applications. The variability in U.S. port of entry immigration officials regarding their interpretation of NAFTA has been discussed in Chapter 5. This concept from the perspective of the attorneys will be explored in more detail in an upcoming section of this chapter. Another immigration attorney (C-A 1) stressed that the U.S. immigration officials often did not respect the NAFTA agreement, which is an international treaty, and they frequently defaulted to their own domestic laws and decisions when adjudicating and interpreting NAFTA statuses (i.e. falling back on immigration policy created by U.S. Congress, which was not part of NAFTA). The key Canadian negotiator for Chapter 16 of NAFTA provided a good example regarding the many opportunities for variability regarding the interpretation of NAFTA from country to country (C-IO 9). For example, it says nowhere within the NAFTA treaty that TN statuses shall be issued for one year or less. However, U.S. immigration port of entry officers often decide that TN statuses would only be granted up to a one-year maximum when NAFTA first went into affect, and this arbitrary decision remains to this day (Henry, 2003). The Canadian immigration officers
followed suit, and so this is a good example as to how a somewhat arbitrary decision at the domestic level could hold sway over an international agreement like NAFTA.

**Canadian Attorneys**

Compared with the rather harsh and negative perception by U.S. attorneys as to whether or not the border was open after NAFTA, Canadian immigration attorneys stressed that the more flexible NAFTA status provisions had been tremendously helpful. This was especially so in the way that NAFTA had assisted with circumventing the restrictive Human Resources and Skills Development Canada (HRSDC) rules for foreigners seeking professional jobs in Canada. For instance, one attorney (C-A4) commented that prior to NAFTA, a foreigner seeking a job in Canada had to either obtain a validation confirming that he/she would not be taking a job away from a Canadian, or an obtain a specific exception from the HRSDC rules. After NAFTA, a foreigner (often assisted by an attorney) no longer had to experience the often-complicated process of going through the HRSDC in addition to seeking a work status/visa as noted in Chapter 3. This attorney went on to stress that although the HRSDC is a Canadian federal government authority, the spirit or mindset of the HRSDC regulators varied greatly from region to region. For example, in working with clients in both the Vancouver and Toronto areas, this particular attorney found the Vancouver region HRSDC to be much more facilitative towards validating jobs for foreigners than the Toronto area HRSDC. He went on to note that the Toronto office was in general much more restrictive, and that his firm, and many other attorneys, had found that they were constantly having to apply for an exemption category for professional jobs being offered to foreigners. By contrast, the Vancouver office of the HRSDC did not require an exemption category for the same types of jobs being offered to foreigners. However, reference was also made to immigration priorities for certain high-tech professionals due to their relevant shortage in the Canadian labour market. Thus, three Canadian immigration attorneys (C-A 1, 4, and 5) underscored that there was a ‘software workers pilot program’ (discussed earlier in Chapter 3) that was designed to expedite the entry of international software professions to work in Canada. To successfully complete a visa application for software professionals, “All one needs is a job offer,” explained one attorney (C-A 4). In reference to Canada’s relatively open immigration policy when compared to the U.S., two attorneys (C-A 1 and 4) mentioned that there was also the possibility of applying as a Canadian permanent resident if a Canadian job seeker sought a professional job in the software
industry. This type of status (permanent resident) could be seen as a longer-term option and therefore easier to maintain over the long-term versus the one-year NAFTA status. Thus, NAFTA was only one of a few avenues that U.S. applicants could take to seek professional employment in the Canadian software industry.

6.6 NAFTA Status Regulations and the Range of Variability in their Adjudication

US Attorneys
Overall, U.S. attorneys stressed that NAFTA had provided them with extra work since its inception. However, all noted there was tremendous variability in the adjudication of NAFTA applications among U.S. immigration officers along the Canada-U.S. border, not only between each port of entry but also between individual officers at each port of entry (as discussed earlier in Chapter 5). To specifically test this proposition, one attorney (US-A 2) had prepared two NAFTA applications for a U.S. firm for two Canadian engineers that the firm was hiring. Both applicants had the same degree and were being offered the same job by the same U.S. firm. The attorney stressed that it indeed was exactly the same application except for the names of the applicant. Both applicants went through the U.S. pre-flight immigration inspections at the Pearson Airport in Toronto at different times of day. One applicant was almost denied entry while the other NAFTA applicant went through the Pearson Airport in Toronto smoothly and entered the U.S. without a problem. In fact, a U.S. immigration supervisor at Pearson Airport notified the attorney to let him know that it was one of the best NAFTA applications that he had reviewed.

One U.S. immigration attorney summed up the tension between how NAFTA benefits North American business mobility, but how there were also anxieties for Canadian business seeking access into the U.S.

NAFTA and labour mobility help, but there are kinks. Some aspects of NAFTA have turned into a “roll of the dice.” For example, L-1s and TN status adjudications at the border. It puts adjudications at the spot of the border. If it is a marginal case, it is left up to the POE reviewing officer to decide. If a person has been admitted 6-8 times, and then the 9th time his application is not “OK”?? How can subjectivity like this facilitate commerce? This deters Canadians from seeking entry into the U.S. at the border. (U.S.-A6)
There is considerable speculation that some of this variability in adjudicating Canadians’ NAFTA status applications is based on how well the U.S. economy is doing. Three U.S. attorneys (US-A 1, 3, and 4) stressed that in the late 1990s NAFTA adjudications seemed to become more predictable and that border officers in the U.S. at this time had more of a spirit of facilitation towards NAFTA. In the late 1990s, the U.S. information technology sector was booming! However, since about the year 2000 (right about the time of the ‘dot-com bubble’ bursting) attorneys had noted that there was again more variability between the reviewing officers, both within each port of entry and, more importantly, significant variability between each port of entry, depending on the attitudes of each port’s director.

Five immigration attorneys (US-A 1, 2, 3, 4, and 5) stressed that each U.S. Port Director had tremendous influence over how NAFTA applications were reviewed and adjudicated. This particular concept will be explored in more detail in an upcoming section. Finally, even before September 11, there was a generally greater veil of enforcement and restrictiveness for all foreigners seeking entry into the United States than at the Canadian side. Two attorneys (US-A 3 and 4) emphasized that this had not helped the average NAFTA applicant seeking entry across the Canada-U.S. border into the U.S. This topic area is a primary theme of the dissertation and is covered in more detail in an upcoming section of this chapter.

6.7 NAFTA and Professional Skills

It should be stressed that NAFTA TNs rarely apply to professionals who did not have degrees or were not a practicing “professional.” TN statuses were not designed to facilitate semiskilled or unskilled labour across the Canada-U.S. border. One U.S. attorney (US-A 2) noted that the labour mobility requirement of NAFTA in reality did not provide many professional classification options for the business community. He stressed, “One must be a ‘degreed’ professional to come in under NAFTA, which excludes much of the existing business community.” He implied that there were many competent business people that did not fit under NAFTA’s TN categories (e.g. business analysts, marketing experts and so on). Hence, as has been demonstrated in Chapter 4, many companies in Cascadia have tried to fit their business personnel into the higher status ‘management consultant’ category, which is recognized under NAFTA. Yet this sometimes did not work, and immigration officials usually discovered this rather ‘bogus’ strategy when they began to question the actual work duties that the NAFTA
applicant would be performing (i.e. ‘doing’ rather than ‘advising’). The interpretation of NAFTA work status applications, and their limitations from the attorneys’ perspective, is covered in this section.

As discussed in Chapter 3 of the dissertation, NAFTA TN status applications may be applied for at a port-of-entry when seeking certain types of professional employment in either the U.S. or Canada. When NAFTA was presented to the U.S. Congress for approval, it was seen as a vast improvement over the previous H-1B visa, (the NAFTA predecessor), which could take several months to process. The other attribute of the new NAFTA status was that the reviewing officer at the port-of-entry could review, adjudicate and issue the actual NAFTA status as a ‘one-stop’ sort of process. However, despite the apparent efficiency involved, this particular step was also where there was the biggest controversy, or “hazard”, as Vasquez-Azpiri (2000: 820) notes. He states,

“The TN categories biggest benefit “port of entry adjudication” has become its biggest hazard. This is Chapter 16’s biggest paradox.”

Some of this hazard may be attributed to the internal rigidity of the TN category (i.e. the rather restrictive list of acceptable occupations) and the relative freedom of interpretation that the reviewing officers had when it came to applying NAFTA at the border area. Another problem was structural (Vazquez-Azpiri, 2000). As noted in Chapter 3, the TN category provided a very rigid framework when it came to job descriptions, as it arguably did not allow for the flexibility and heterogeneity often needed for a quickly changing range of professional occupations, like the H-1B visa, which did. This rigidity in NAFTA is particularly damaging for the high tech sector in Cascadia, which is a rapidly changing industry. This section explores these concepts in more detail.

**US Attorneys**

Overall, all U.S. immigration attorneys interviewed argued that NAFTA provisions should be read in a “liberal spirit” and that the drafters of NAFTA presumably wished that the 65 professions listed should be interpreted as broad categories rather than narrow openings (see also Vazquez-Azpiri, 2000). Three U.S. immigration attorneys (U.S. – A 3, 4, and 7) stressed that there was a broad disconnect between what the drafters of NAFTA envisioned and the
actual interpretations at the ports of entry. All attorneys reported that many times their applications were “picked apart” on details, and there was an apparent randomness as to how applications were interpreted. For example, one U.S. immigration attorney (US/C-A 10) noted that in his experience much of a successful NAFTA status application was based on semantics. For instance, on the day of the research interview in 2003, he was in the process of rewriting a person’s job description as a ‘management consultant’ for a Canadian applicant’s NAFTA renewal with was recently turned down at the U.S. border. The attorney explained that he had to use the word “advise” in the management consultant’s job description as opposed to the word “train,” because “advise” is more of a management or supervisory function as opposed to the word “train” which is more of a “doing” function, which is not allowed under NAFTA provisions. He noted, “These fine details with the preparation of NAFTA applications have keep immigration attorneys busy.”

From a structural perspective, the TN status is written in such a way that the actual job position must be matched exactly with the NAFTA professional job description in order for a reviewing officer to issue a TN status. From about 1995 onward, there were many problems revolving around the title of “software engineer,” since these types of engineers did not produce tangible engineering structures, nor were there accreditation boards or societies that recognized these professionals, which is frequently the case for other types of professional engineers. However, in 1995, Jacqueline Bednarz of the legacy INS/DHS, and one of the key policy experts of Chapter 16 of NAFTA, issued a letter to an immigration lawyer based in San Francisco regarding the fact that a software engineer was in fact a legitimate profession under NAFTA status provisions, and if a person has a “baccalaureate or licenciatura degree or state/provincial license would qualify under the profession of ‘engineer’ as listed in Appendix 1603.D.1 of the NAFTA.” (See Appendix 8 for a copy of this letter.) Subsequent memos were sent to all ports of entry with the intention of clearing up the confusion surrounding this new type of engineers. However, Michael D. Cronin, Acting Executive Commissioner, Office of Programs, Legacy Immigration and Naturalization Service, issued a memo in July 2000 to all Regional Directors and Director of Training entitled “Guidance for Processing Applicants under the NAFTA Agreement.” Portions of the memo read as follows,

Appendix 1603.D.1 to Annex 1603 of the NAFTA includes the occupation of “Engineer” within the list of professional level occupations. The minimum requirement
for entry as a NAFTA engineer is a baccalaureate or licentiature degree or a state/provincial license. There is no further delineation of the types of specialty engineering degrees (e.g. civil, mechanical, electrical, etc.) that qualify for TN classification. Since the appendix doesn’t specify certain specialties, the three NAFTA partners interpret this to mean that all engineering specialties are included. Accordingly, an individual engaged in business activities as a “software engineer” at a professional level that requires a baccalaureate or licentiature degree or state/provincial license may qualify under the profession of “engineer” under the NAFTA. The question is whether the individual possesses the requisite engineering degree or state/provincial license.

The office has also been asked to provide guidance regarding the minimum educational requirements and alternatives credentials required for applicants for admission under the NAFTA. In addition to “engineer”, Appendix 1603.D.1 lists 60 occupations at the professional level with a corresponding list of education requirements. If there is an acceptable alternative credential in the education requirement it is also listed. The degree should be in the field or in a closely related field. Officers should use good judgment in determining whether a degree in an allied field may be appropriate. Returning to the “software engineer” example, it is reasonable to require an engineering degree for admission as a TN to perform professional level duties as a civil engineer. (Emphasis added by author)

The above portions of the memo (see Appendix 12 for the complete memo) helps to demonstrate the variability internally within the legacy INS/DHS towards understanding and interpreting the profession of “software engineer” as listed under NAFTA. In fact, many of the attorneys (US-A 3, 4, and 6) found that software engineers still posed a problem for US border officials (unlike Canada). This was despite the fact that the Department of Homeland Security (DHS)/Legacy Immigration and Naturalization Service (INS) had tried to recognize the university degree of software engineering as a valid degree for the profession of software engineer. Three attorneys (US-A 1, 2, and 4) stressed that much of this had to do with the fact that many software engineers still did not have degrees in software engineering. Additionally, until recently, many Canadian and U.S. universities did not grant degrees in software engineering. Many ‘older’ software engineers received their original degrees in physics, mathematics, and even in English. Accordingly, there was no perfect match between the university degree recognized between the DHS and the particular job offered.

The above discussion leads to a third problem of interpreting NAFTA statuses and job descriptions. On the US side, there appeared to be an internal rigidity in the interpretation of the TN category, especially when reviewing officers expected a perfect match between the job title and description being offered and job title and description listed under Appendix 1603, D.1.
of NAFTA (Vazquez-Azpiri, 2000). As noted in Chapter 3, in theory there should be considerably more flexibility to interpreting job applications and what is listed under NAFTA, as expressed by Jacquelyn Bednarz of the legacy INS in May, 1995. However, two U.S. attorneys (US-A 1 and 4) stressed that current immigration practice and interpretations of NAFTA by U.S. immigration officials led to confusion, if not deliberate rigidity and an unwillingness to be flexible with job descriptions. For example, software engineering jobs were at best abstract when compared to many other more 'traditional' engineering jobs such as civil engineers. Additionally, in the high tech sector, the software engineering industry changed so rapidly that a job description written under NAFTA or the U.S. Department of Labour’s Occupational Handbook was usually outdated by the time it reached port-of-entry officials. This usually led to the prospective Canadian NAFTA status applicant having to explain his or her job description to the immigration officers beyond the facts of what was stated formally in the U.S. company job offer. Two attorneys (US-A 2 and 4) stressed that this could lead to the application being denied if the human resource department of the U.S. company hiring the Canadian or the actual immigration attorney did not prepare the NAFTA status adequately beforehand.

Other attorneys argued that the way U.S. immigration officers read and understood NAFTA applications was beyond the concept of internal rigidity, structure, and process, but based more on how well the U.S. economy was performing. For example:

NAFTA has facilitated the movements of people. During the boom of the late 1990s, we saw that NAFTA was subject to very loose interpretations. Management consultants could get through without a problem. Anyone with a history or an English degree, or any related field could get through without a problem. However, after the collapse of the bubble the POE people [Port of Entry immigration officials] began to narrow the scope. They basically get their interpretations of the robustness of the economy through the newspapers and word of mouth. Now, since 9/11 there is a strong sense of “border protection”.

(US – A5)

The US attorneys pointed to the ambiguous policy that Chapter 16 of NAFTA was cloaked in. Essentially, article 1601 stated that “the desirability of facilitating temporary entry” and “the need to ensure border security and to protect the domestic labour force”, were two policy directive that “deserve equal footing” (US-A4) with one another. These two conflicting
directives apparently provided a sense of tension and confusion for many immigration officers, since one directive seemingly cannot be addressed without detriment to the other. Thus, port of entry officers were forced to side with one directive versus the other. From the attorneys' perspective, without any other sense of guiding directive to follow, they frequently defaulted to the "climate" of the economy and how other officers within the POE handled similar NAFTA applications. In light of September 11, US attorneys confirmed that terrorism was yet another guiding directive that immigration officers had to screen for.

Overall, despite these contradictions in how NAFTA was written and the interpretations and culture of reviewing officers, education and training of POE officers was seen by US attorneys as a crucial component as to how officers understood the broader implications of NAFTA as well as the day-to-day adjudications of work status. The chapter now turns to the concept of "Port Shopping," and offers comments on this phenomenon from U.S. and Canadian attorneys.

6.8 Port Shopping

As noted in Chapter 5, extreme variability in the interpretation of NAFTA status regulations along the Canada-U.S. border (especially the U.S. side) has led to 'port shopping', i.e. searching for a port of entry that might be more flexible in granting NAFTA statuses, despite the more uniform training and communication efforts coming from DHS headquarters, which is discussed in an upcoming section. Port shopping comprised one of two events. The first was when someone was denied entrance either to the U.S. or Canada, and the applicant then went to another port, trying to seek entry. The other form of "port shopping" was when a U.S. immigration attorney advised their clients as to which ports to go through and which officers they should submit their NAFTA application to. Port shopping was much more common for Canadian NAFTA applicants seeking entry into the U.S. than for U.S. applicants seeking entry into Canada. This section covers a brief history regarding the adjudications of NAFTA applications at U.S. ports of entry within the Cascadia region, and then focuses on what particular circumstances led to the activity called port shopping. The section concludes as to why port shopping still continues, despite efforts to stop it, in addition to why port shopping is not so prevalent for Americans seeking entry into Canada.
6.8.1 The Beginning of Port of Entry Adjudications under NAFTA in the U.S.A.

All immigration attorneys were asked about the concept of "port shopping" in the questionnaire. Essentially, when NAFTA was created in 1994, designated Free Trade Officers were installed at major U.S. ports of entry, and were responsible for being a resident "expert" and adjudicator of matters attributed to NAFTA. This was considered by attorneys to be a positive outcome of the NAFTA status arrangement and implementation process. The other positive attribute of the NAFTA application process was the "pre approval" of NAFTA applications by free trade officers at the Vancouver Airport. Essentially, an attorney could fax all needed NAFTA materials to the airport port of entry, and if everything was in order, the NAFTA status would be ready for the applicant when he/she went through pre-flight inspection. Attorneys stressed that the NAFTA application process was much smoother and predictable when there were pre-approvals of NAFTA applications by designated NAFTA officers at various ports of entry, and especially at the Vancouver International Airport POE. For instance, many attorneys noted that the Vancouver International Airport Pre-Flight Clearance office was traditionally more 'Free Trade Friendly' than many other locations. Two attorneys (U.S. - A 2 and 3) noted, however, that in 2000, the experienced designated Free Trade Officer retired and even the airport port director has since moved on. The input of these two individuals were seen as being critical to a successful NAFTA application, and contributed to the perception that the Vancouver Airport was 'friendly' to NAFTA status applicants in the Cascadia region. According to these attorney interviewees (U.S. - A 2 and 3), when the new airport port director arrived in 2000, the NAFTA pre-approval process ceased, and he stipulated that any officer at the airport could review a NAFTA application. One attorney (US-A 2) stressed that since this had happened, the airport was no longer considered so 'Free Trade Friendly.' Indeed, he reported that he once sent about 80 percent of his clients through the airport POE when it was seen as "friendly." However, beginning in about 2001, he started sending about 90 percent of his clients though the four 'land POEs', specifically, the Peace Arch or Truck Crossing POE. After 2001, he was more confident that his clients would have better success in attaining a NAFTA status at one of the four land POEs than at the airport. He stated:

Yeah, I used to do lots of work at the airport [port of entry]. The reason is that it was "Free Trade Friendly". About three years ago, I could prefile the NAFTA application and the I-94 form. It was painless. Now, the FTA officer retired and the port director is
gone. They did away with the preapproval process as well. Additionally, as lawyers, we were once allowed to go to inspections at the airport. This is no longer allowed. Sending people through the airport was once 80% of my work, now it is only 10%. I now send my clients through the land borders since it is more predictable than the airport. I should stress that now any officer can now review a NAFTA application. (US – A 2)

Another attorney, US - A3 stressed the loss of professionalism now (at the time of the interview in early 2003), which was once almost mandatory with the old port director at Vancouver International Airport. She stated,

About five years ago [1998], there was a fantastic team at the Vancouver Airport when it came to NAFTA applications. They understood NAFTA and the importance of moving people within North America. They had a lot of integrity, and it was a pleasure to work with the INS. They also went above the call of duty when it came to applications. They worked with attorneys when it came to the applications. There was a real spirit of facilitation [at this time]. (US – A3)

The above remarks allude to the geographic variability and randomness that one would assume would not be a factor in a rather lengthy and well thought-out trade document such as NAFTA. In fact, the above comments touch on what one attorney (US-A5) has already referred to as the “climate” at the border. Another attorney (C-A 2) noted that a good attorney should keep up with the ‘culture’ in operation at the different port of entry and be in constant contact with other attorneys to find out what the overall current “spirit of facilitation and/or restrictiveness” might be at each port of entry even down to the individual immigration officials. This information is crucial for attorneys when they instruct their clients as to what borders to travel through, what time of day, and which border official to be looking for.

6.8.2 The Geography of ‘Port Shopping’ Along the U.S. Border

Two U.S. immigration attorneys (US-A5 and 8) stressed that general training and education did not play as heavy a role in the interpretation of NAFTA applications as the actual ‘culture’ of each port of entry, and the levels of professionalism displayed by each port director. In fact, one U.S. immigration attorney summed it up well with the idea of the “climate” of immigration at each port of entry, meaning that the interpretation of NAFTA regulations was heavily dependent not only on how the regional economy was faring, but also the personalities and attitudes towards NAFTA of key personnel at the port of entry. She stated:
The gate-keeping mechanism at the ports of entry is based on economics and politics. The U.S. economy does influence how the applications are interpreted at the border. For example, they [the immigration officers] get their ideas from the newspaper. There is the idea of a "climate" at the border. DHS has its political objectives. When it changes its officers [and port directors], the opinions of the border changes. This shapes the climate at the border. It is implicit. It is hard to nail down with concrete pinpoint, but can be described as a "climate." (US – A5)

Three attorneys (US – A 4, 7, and 8) argued that rather than having to think through a complex NAFTA application it was much easier for the border official to just deny it. They discussed that this leads to a culture of "No", or refusal of a complex application; but it was a local ‘culture’ that varied greatly from port to port. This, in turn, led to the phenomenon of “port shopping.” In fact, the following quotes (by US –4 and 7) touch on some of these complex topic areas:

......There is much work for graphic designers within the high tech arena. However, immigration officers have not made this connection yet. The high tech field grows so rapidly, that it is hard to have a system that keeps up with it. Immigration officers like things to be simple and consistent. When it gets complicated for them, it leads to confusion and frustration. [This could lead to the application being denied]. Now, for these professionals, they must provide additional evidence when moving across the border. (US – A7)

Obviously it [NAFTA] has enhanced labour mobility. It made mobility much more rapid than if the person was not a Canadian national. Now, the [Canadian high tech employee] person does not need a petition. Now one can just go straight to the port of entry. However, NAFTA’s biggest benefit, being port of entry adjudication is also its biggest drawback. It exposes these kinds of applications to inexperienced officers and their own agenda when it comes to admitting Canadians. We have experienced too many denials not warranted under the law. There is too much discretion to the actual officers at the border. They do not have enough training in adjudicating. They are extremely rigid, and they have very little guidance. It makes it too easy to find defects on which a denial can be based. There are still too many defects within NAFTA. (US-A4)

The above circumstances have led many immigration attorneys to track the times of work shifts of experienced officers, and recommend to their clients to go through the various ports of entry at these times of day. For example:

[You] do not want to file a TN or an L over the weekend because the Free Trade officer is not there. On the weekend, an applicant will not get an officer who is experienced. The attitude [at the port of entry] is that it is easier to deny and application rather than do anything else. (US-A4)
The above quotes begin to touch on the almost “default” mechanism that U.S. POE officers resort to when reviewing NAFTA applications. Although there is some formal education and training around NAFTA, which was discussed in detail in Chapter 5, it appears to U.S. immigration attorneys that it is much easier to refer to the reviewing officers’ own judgments and the general climate of “restrictiveness” or “facilitativeness” within each port of entry. This is true to such an extent that former INS Commissioner, James Ziglar issued a memorandum of understanding in late March of 2002 to all Regional and District INS Directors regarding a “Zero Tolerance Policy” (see Appendix 13). Essentially, the memo reads as follows:

Effective immediately [March 22, 2002], I am implementing a zero tolerance policy with regards to INS employees who fail to abide by Headquarters-issued policy and field instructions. I would like to make it clear that disregarding field guidance or other INS policy will not be tolerated. The days of looking the other way are over.

Regional Directors and District Directors are expected to read and understand all field guidance and then it is their responsibility to ensure that the substance of all field guidance is properly and effectively communicated to all personnel, in a timely manner.

It is also imperative that each employee review and understand issued field guidance. Each supervisor is to ensure that each employee has not only read the field guidance, but that they are also implementing the guidance. Individuals who fail to abide by issued field guidance or other INS policy will be disciplined appropriately. (Ziglar, 2002)

The above memo was eventually rescinded, apparently due to its strong tone, but the awareness of the problem of disregarding policy and formal training manuals in the field is rather apparent. Since the writing of this memo, there have been deliberate efforts to better educate U.S. immigration field personnel, but with overall mixed results. In fact, a year and a half later in October of 2003, (when I interviewed US – A4,) one US attorney reported that there was still tremendous variability between each port of entry, even under the guises of the new Department of Homeland Security. The attorney stated:

Regarding the new Department of Homeland Security, there are three separate entities, they include the (1) U.S. Customs and Immigration Service (CIS) - this is the entity that replaced the INS as the various servicing centers (2) the BCBP Bureau of Customs and Border Protection (BCBP) which replaces the INS at ports of entry and preflight inspection and (3) Immigration and Customs Enforcement (ICE) which is an entirely new entity dedicated to investigations and enforces immigration laws within the U.S. Only the CIS is dedicated to service. The other two are dedicated to enforcement. This is critically important when one considers the TN process at the border. Basically, you now have an enforcement service adjudicating the TN applications. In addition, the three inspection functions (people, goods, and agriculture) are all done by one person.
The training for these people, especially with immigration law, is minimal. Two problems with this – There are people with a police mentality and with minimal experience adjudicating NAFTA applications. I just went to an AILA (American Immigration Lawyers Association) meeting day before yesterday where the majority of the session was dedicated to the nature and the characteristics of POEs between the U.S. and Canada. The POEs still vary considerably. [Despite efforts to harmonized adjudication procedures]. (US – A 4)

Even in late 2003, there appeared to still be variability between each U.S. port of entry, to the point that AILA regional chapters were distributing detailed packets of information on the “cultures” of each port of entry, with the inference as to whether or not the immigration attorney should send his/her client through these ports of entry.

6.8.3 Additional Aspects of “Port Shopping”

Two interviewees (US-A 3 and 4) suggested that by keeping in constant contact with other attorneys, through telephone and email, attorneys could then advise their clients as to which port of entry was the best to travel through. The levels of communication and information about each U.S. port of entry along the Canada-U.S. border were quite sophisticated, to the point that U.S. immigration attorneys held seminars and distributed packets of information regarding each port of entry’s overall ‘culture’ and attitudes towards NAFTA. For example, the NorCal (Northern California) chapter of the American Immigration Lawyers Association (AILA) gave a rather intensive briefing to its regional membership in October 2003 on the topic of the cultures of the various ports of entry into the United States, and the general attitudes towards NAFTA of the various reviewing officers (AILA NorCal Chapter Meeting, 23rd October, 2003). The packet of materials included who were the various Free Trade Officers and what times of day were best to go through each port of entry in hopes of having an experienced NAFTA officer review the NAFTA application. This information packet also provided specifics on the way the supervisors at each port of entry interpreted NAFTA statuses, and whether or not it was advisable to go through the various ports of entry based on the personalities of these immigration officers. In fact, the materials advised the attorney membership to such an extent as: “This [Port Huron, Michigan] port of entry is one of the worst ports of entry. Avoid it if you can!” (AILA NorCal Chapter Meeting, 23rd October, 2003).
6.9 Perceived Problems/Opportunities with US/Canadian Border Officials

This section examines the role of training programs in the professional development of border officials in the Cascadia region. After September 11th, there was a concern with three U.S. immigration attorneys (U.S. - A 4, 6, and 7) that U.S. immigration officers would receive even less training on immigration matters than before September 11th since these officers would also be responsible for agriculture and customs in addition to immigration. One U.S. attorney summed it up well:

With the DHS, the officers have very little training in these matters, and now that they are also responsible for customs and agriculture, there will probably be even less training than they had previously [on immigration matters]. (US-A7)

In fact, one immigration attorney (U.S. – A 3) recommended to me that I obtain copies of the legacy INS’s training manuals since she was curious to know what, exactly, was being taught to these POE officials. Overall, there was general concern that the POE officers’ training and education seemed somewhat out-of-date, and not ongoing, which was essential to ever changing circumstances and issues surrounding movements of high skilled people.52

US Attorneys

Based on their discontent with the training and educational aptitude of U.S. immigration officers, three U.S. attorneys (U.S.- A 1,3, and 7) stressed that they would like to see the U.S.’s system be based more on the Canadian immigration training system. There was a general impression that the Canadian system was more comprehensive and current. All attorneys stressed that the way NAFTA applications were understood rested heavily on the “culture” of interpretation and local procedures used at each port of entry. A more uniform nation-wide ongoing training and education for all immigration officers (as used in Canada) would help to broaden the reviewing immigration officers’ perspectives and create a more predictable and consistent means of understanding NAFTA applications for all U.S. ports of entry. One immigration attorney (US-A 3) noted that the Canadian approach, which emphasized frequent and on-going education for their immigration officers, would also be advantageous to the U.S. immigration officers. This attorney suggested that it would be ‘a positive step’ if Canadian and

52 When this interview took place in 2002, there was no mandated on-going training for DHS port of entry officers. Since this interview, under the guises of the DHS, mandatory on-going training is required of all DHS personnel (see Chapter 5).
U.S. immigration officers were given the same training, especially since NAFTA rules applied, in theory, equally to both Canada and the U.S. (and, of course, Mexico also). The attorney noted that Canada seemed to be much more ‘progressive and professional’ in keeping its reviewing officers updated and educated about immigration policies and procedures as compared to the situation in the U.S.

6.10 The Role of The Port Director

It should be mentioned that three U.S. immigration attorneys (US – A 2, 3, and 4) stressed that the single most important factor regarding the spirit of NAFTA rests with the attitude of each port director. Thus, much of the culture or climate of each port of entry may be traced back to the attitude of the particular port director. One attorney (US – A4) provided a lengthy statement about the variability of each port of entry and the important role that the port director played in his/her attitudes towards NAFTA:

In terms of specific ports of entry, Blaine is consistent, but there are some old school people. Regarding the Pacific Highway Crossing, Jones is OK, but Swansee can be difficult. Remember this can change. [For example], Sweetgrass, Montana used to be the place to take it to if you was denied everywhere else. This has changed now. Now it [Sweetgrass] is more difficult. It [Sweetgrass, Montana port of entry] knows now that it is seen as a “soft touch,” and has to reverse this image. Calgary is good with Management Consultants. Edmonton and Winnipeg are to be avoided. Not because they are harsh, it is just that they do not understand the process. They commit rookie type errors like not giving them an I-94 Card (showing that you have been admitted). Vancouver - you can get a fair adjudication.

The Peace Bridge in Buffalo is the only place to go in the more eastern regions along the Canada-U.S. border. For example, John Cardiff [at the Port Huron POE] is seen a the worst immigration officer along the Canada-U.S. when it comes to adjudicating TN statuses. He has mentioned that he does not like foreigners. My experience with him is that he was only willing to approve TN applications for companies that he had heard of. Thus, Canadians [working for smaller lesser know firms] will not get a fair review. Right now, Pearson Airport in Toronto is seen as the best. James Anglia is the Port Director. He understands NAFTA and its process. He is accessible, answers his phone, and responds to faxes. He also will not outright deny an application. He will call the attorney, and ask for more information to be faxed. At the moment, this is THE BEST port of entry along the Canada-U.S. border. In my experience, Ottawa is also one of the better ports. The consulate in Ottawa is also very good. The visa consular, Catherine Bremen, expects professionalism from her staff. (US-A4)

53 All names used have been changed to protect the confidentiality of these people.
The above quote stresses that the "professionalism" and attitudes surrounding NAFTA appeared to be highly dependent on how the port director perceived NAFTA, and what he/she expected from his/her staff. Once again, this commentary also demonstrates the lack of uniformity along the Canada-U.S. border for U.S. ports of entry as demonstrated in Chapter 5. This was in direct contrast to the Canadian ports of entry. Additionally, the above quote alludes to the broader regional nature or culture at specific the ports of entry. The specific 'culture' of decision-making at any POE, strongly dependent on the personality of each particular port director, appeared to contribute to the success (or failure) of a NAFTA application. It was emphasized by US attorneys, that in addition to the attitudes of the port director, the port of entry's "level of experience" with applications and the movement of business people also contributed to how NAFTA applications were received and interpreted. Thus, airport ports of entries, such as Vancouver and Toronto, saw many more Canadians moving through for purposes of work compared to the so-called land borders. Therefore, these ports of entry had a higher likelihood of understanding and approving a NAFTA application. Additionally, the central North American ports of entry, located between Detroit/Windsor and Buffalo/Niagara Falls may be considered better than the west, Calgary/Edmonton, Alberta (preflight) and the four most western land crossing and the Vancouver International Airport. One attorney (US - A4) stressed that the 'culture' of POEs was always subject to change, and so had to be monitored. This is one reason why attorneys, acting as intermediaries in the NAFTA process, were so important. This particular concept, the role of attorneys in the NAFTA process, was discussed earlier in the Chapter. However, the following sub-section explores one possible alternative to port of entry adjudications of NAFTA applications in an effort to overcome this rather complicated and ever changing practice of "port shopping".

6.11 Alternatives to Ports of Entry Adjudications?

U.S. Attorneys
When posed with the question about what were the possible alternatives to port of entry adjudications in order to address the issue of port shopping, the only response that came to mind for many of the U.S. attorneys was the use of a more centralized processing center, similar to the facility in Nebraska, which processed all H-1B applications and was capable of processing NAFTA applications. However, based on past experiences with INS/DHS central processing centers, two attorneys (US – A 4 and 8) did not see this as providing a solution for
more predictable adjudications of NAFTA applications. In fact, despite the seemingly complicated 'port shopping' strategies, in addition to the general frustrations with local port of entry adjudications discussed above, U.S. attorneys for the most part stressed that they preferred the port of entry adjudications when compared to sending in the NAFTA status applications to the centralized U.S. Nebraska Servicing Center. Attorneys noted that there was a high degree of variability with the time that it took to issue a NAFTA status when dealing with the INS/DHS Nebraska Servicing Center. One attorney summed it up well with his reaction to the question about doing away with port-of-entry adjudications and moving all NAFTA applications to the Nebraska Servicing Centre.

The other option is to adopt the strategy of not going through the border. Have the person change his/her status once they are in the U.S. We have something called premium processing. So, for a $1000 fee the person's application will be processed within two weeks. Before premium processing, the time delays were prohibitive. Nebraska is the only servicing center that does this. The problem with this is that the petition is no longer preferential, which is one of the mandates under NAFTA. This would be inconsistent with the NAFTA. NAFTA applicants would have to get in line with everyone else. I would fight that strongly if it occurred. Even though I'm moaning about Port-of-Entry [adjudications] being very inconsistent, I think it would be a tremendous step backwards if we moved NAFTA applicants to the Nebraska Processing Center. (US-A4)

In fact, three attorneys (US – A 2, 3, and 4) stated they preferred the more local or regional nature of NAFTA status adjudications at the actual ports of entry. Despite the fact that there were specific officers that the attorneys wanted to avoid, it was also a strength to know the particular immigration officers on duty who might be conducting the adjudication and issuing of the NAFTA status. One attorney (US-A 8) stated that when one sent materials off to Nebraska, it was like sending materials off to a “black hole.” Historically, there was no way to follow an application, let alone getting through on the telephone when an application was being processed at the Nebraska Servicing Centre. Thus, the relatively quick turn around time for the majority of NAFTA status applications directly at POEs in addition to the fact that attorneys could call the ports of entry to follow up their applications, and until recently could even accompany their client to the border POE, was seen as a real advantage over the way things use to be done when the servicing centre in Nebraska was the only option. In fact, one U.S. attorney (US-A 2) stressed,

I want to deal locally with people that I know. I do not want to send it into the [Service] Center to people I do not know, and where I have to wait. (US – A2)
The above quote was made in July 2002, approximately ten months after September 11 occurred. At this time there was still a feeling of familiarity and comfort with the local ports of entry. However, another interview with an attorney in April of 2004 revealed that the cultures at the local ports of entry had changed considerably, and there was a growing attitude of ‘distance’ between the (now) U.S. DHS officers and immigration attorneys. Additionally, there were many new people working at the local ports who came directly from Washington D.C., or ports of entry located along the U.S. Mexico border. One attorney, (US – A6) stated:

There are still inconsistencies [regarding NAFTA]. There is now even more work than ever for attorneys after September 11. I used to phone the border regarding my clients’ applications. However, since August, no one can have an attorney present with them at the border. DHS is using this as a wedge to push us away. I do not know the new people with the DHS at the border now. (US - A6)

The above quotes help to demonstrate the ever changing nature of the ports of entry and how critical it is that attorneys know who works at each port of entry, and that they have physical access to these officers. One attorney (US – A2) stressed that this is essential for him to being able to do his job. Additionally, there is a stronger and stronger legal effort on the part of the DHS to not allow attorneys access to the port of entry, unless his/her client is being changed criminally. These topics will be discussed in detail in an upcoming section.

In summary, the above section revealed why “port shopping” with U.S. ports of entry has become such a prevalent factor in issuing NAFTA statuses. Although there have been deliberate efforts to curtail this activity, which was discussed in Chapter 5, port shopping still continues for U.S. ports of entry.

**Canadian Attorneys**

Interestingly, Canadian attorneys, for the most part, tended not to stress that port shopping was an issue. Two Canadian attorneys noted that they found that most of the Canadian ports of entry, especially the larger ones found in the three busiest corridors, namely Vancouver-Seattle, Windsor-Detroit, and Niagara Falls-Buffalo, have rather consistent adjudications along the Canada-U.S. border. In fact, one Canadian attorney (C - A4) stressed,
We do not have the TN horror stories that you hear about with Canadians trying to enter the U.S.…….Basically, the INS [now DHS] plays a human resource role under NAFTA [i.e. making adjudications according to the strength of the U.S. economy]. They should not be doing this. They [as an organization] really are not designed for this. We have pretty consistent adjudications at the borders. Where we get our variability is with HRDC. The spirit of the HRDC varies considerably from region to region. This is where we as [Canadian] attorneys are helpful in addition to other reasons. (C-A4)

The above quote helps to demonstrate the varying nature not only of the experience of NAFTA applicants from one side of the Canada-U.S. border to the other, but also the different roles that immigration attorneys see themselves playing, based on which country they practice law in.

The next section continues to explore the comments of immigration attorneys and the changing roles that they have played in the NAFTA process after the events of 9/11.

6.12 Changes since 9/11 and Labour Mobility under NAFTA

Although the chapter has alluded to the impact of September 11\textsuperscript{th} on labour mobility and the work of immigration attorneys in many ways, this particular section shall briefly cover some of the major impacts that September 11 has had on labour mobility and adjudication of NAFTA visas at U.S. ports of entry, through the experiences of immigration attorneys.

U.S. Attorneys

Three U.S. attorneys (US-A 1, 2, and 3) stressed that September 11 was absolutely devastating to labour mobility across the border and to their practices. However, about two months after September 11, business began to rebound for various reasons not associated with offering professional help in attaining a NAFTA status. For example, many clients post 9/11 now needed a waiver of excludability for former drug convictions due to the fact that the legacy INS was reaching deeper and deeper into its databases, in order to search for possible terrorists, which was not the case prior to September 11.

Immediately following September 11, many U.S. immigration attorneys saw their workload shifting to new Canadian clients who needed something called a “waiver of excludability” which was needed for entry into the U.S. if the foreigner had a past drug conviction. Attorney (US – A3) states,
Initially, immediately after September 11, it was devastating to my practice. However, after a couple of months, it started to pick up. Interestingly, we started getting a high volume of calls from Canadians who needed something called a “waiver of excludability.” This is needed if a person has been convicted of possession of drugs or other criminal charges, and would then normally not be allowed into the U.S. What was happening was that the INS was digging deeper into their databases and going farther back into people’s histories, which was usually not the case before September 11. Also, they [U.S. immigration officials] were reading NAFTA applications much more narrowly after September 11, and people were being rejected who did not have problems in the past. Thus, foreigners were subject to a much higher level of scrutiny, and needed the help of a lawyer now more than ever. (US – A3)

Another attorney commented on the culture and seemingly unchecked power of U.S. immigration officials at the border, which is growing after September 11,

Their people [immigration officials] are law enforcement. They really do not want to review paperwork [like NAFTA applications]. They have a lot of power. For example, they can do the following: 1. Search without a warrant 2. Interrogate 3. A person stopped at the border does not have a right to counsel 4. A person can be barred from entering the United States for up to five years at the border through the expedited removal process. Did you know that the INS can search without a warrant within 25 miles of the border?.....Now, after September 11, they have even looser restrictions in regards to what they can do. Larger companies, such as Microsoft or Sierra have vast legal resources and human resource departments that can help their foreign employees negotiate around the growing obstacles at the border. However, smaller firms do not have these resources, and stumble around trying to find help. Once a person is denied entry at the border, it is very hard for them to get reentry. This is when we are usually contacted [as attorneys]. However, now the smaller firm usually pays more since we have to undo what they are tangled up with at the border, and get them admitted into the U.S. (US – A10)

As discussed in the previous section, all immigration attorneys noted that there was a spirit of heavy “enforcement” at the U.S. border; and they had noticed that more of their clients’ applications were being rejected, than before September 11, due to a seemingly more narrow reading of NAFTA. Finally, due to this spirit of greater enforcement at the borders, firms on both sides of the border, especially smaller ones, were more likely to seek the professional advice of attorneys, which had not been done in the past due to the costs involved.

**Canadian Attorneys**

Two Canadian immigration attorneys (C-A 1 and 2) noted that the CIC has also stepped up security for applicants entering into Canada. In fact, they were concerned that Canadian
immigration officials were becoming more like those in the U.S. in their spirit of "restrictiveness." Thus, Canadian immigration officers were also heavily scrutinizing everyone entering Canada. This is where an applicant would also need the help of a Canadian immigration attorney if she/he was convicted of possession of drugs or drunk driving, for example, and wanted to work in Canada. Essentially, the person would need a temporary residential entry, which is difficult to attain without the professional help of an attorney. Attorneys equated this to the experiences that Canadians, who had old drug convictions, were having with trying to enter into the U.S. on NAFTA TNs after September 11.


Overall, one major outcome of 9/11 on the U.S. side of the border appeared to be a growing "distance" between U.S. immigration officers at port of entry and U.S. immigration attorneys. As discussed previously, immigration attorneys said that knowing the U.S. immigration officials at the various ports of entry was seen as a real (informal) strength in the NAFTA process. However, since September 11, there were many new officers at the U.S. ports. In addition, U.S. attorneys reported that they felt more of a feeling of "distance" between the officers and attorneys. One attorney (US – A6) stressed,

I have to spend some time getting to know the new DHS people at the border. Essentially, one has to make all new friends now.

(US – A6)

Based on interviews and visits to the actual ports of entry that since September 11, my observation was that there has indeed been an increased amount of turnover at the ports of entry between Seattle and Vancouver, especially at the director level. It appears that this will continue to be the case in the future, and that much of the day-to-day activities dealing with border management and adjudicating NAFTA statuses is being executed by the seemingly more permanent, lower level staff. It is unclear if this more rapid turnover of U.S. port of entry directors will continue. Other attorneys also noted the many new faces at the ports of entry, and discussed how they were responding in developing relationships with a new array of immigration officials. One immigration lawyer (US – A8) stated:
It takes a while to create positive relationships with these people. I try and give them applications that are easy and straightforward, initially. This builds up trust. So, if I submit more complex applications later on, there is an established record of credibility. (US – A8)

6.12.2 Expedited Removal in the U.S.A.

Probably the most direct blow to the U.S. immigration attorney-U.S. immigration officer relationship since 9/11 was a memo written by Michael P. D’Ambrosio, Customs and Border Protection Director of Field Operations, Buffalo, New York, to New York AILA Chair, Mark Kenmore, in August of 2003. Essentially the memo advised Mr. Kenmore and the AILA (American Immigration Lawyers Association) membership that attorneys were no longer allowed to assist their clients in primary or secondary inspections at U.S. ports of entry unless the client became the focus of a criminal investigation and had been taken into custody, or the inspecting officer requested the services of the client’s attorney, on behalf of the client. D’Ambrosio argues that the reason for this action was to “increase security at our ports of entry.” However, Boos and Pauw (2004) in a general statement rebuffing this new approach argue that it is unclear within the memo exactly how barring immigration lawyers from ports of entry would increase port security.

Although the Legacy INS (i.e. before 9/11) had not officially allowed immigration attorneys to be present while their foreign clients go through primary and secondary inspection at the U.S. ports of entry for the past twenty years, attorneys used to accompany their clients to ports of entry for a variety of immigration-related issues, ranging from applications for humanitarian parole to processing of NAFTA related immigration matters (Boos and Pauw, 2004). However, as of August 2003, the DHS took a rather hard and direct approach to this matter, by reminding attorneys that they were not allowed to represent their clients in primary and secondary inspections. Boos and Pauw (op.cit.) argue in their opening paragraphs that in the stage of secondary processing at port of entry, a foreigner may be subjected to something called “expedited removal”, and especially in these situations an attorney could possibly defuse such a rather draconian outcome for the foreigner. Essentially, expedited removal bars a foreigner from entering the U.S. (from anywhere from five years to a lifetime) who has made a material misrepresentation in the entry process or who lacks required documentation for entry54. U.S.

54 INA 212(a)(6)(c) in Boos and Pauw (2004)
immigration attorneys consider this new procedure “draconian” since the order is drawn up by the reviewing officer at the port of entry and is subject to only a review by his/her supervisor before the foreigner is effectively “removed” from the U.S.

Since early 1997, when expedited removal was first implemented under the U.S.’s Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), signed in 1996, this measure continued to expand in use. For example, expedited removal was usually applied to asylum seekers who allegedly failed to articulate a fear of persecution if removed from the United States. As of May 25, 2001, inspecting DHS officers can now put Canadian NAFTA applicants into expedited removal proceedings if the U.S. port of entry officers make the determination that the applicant was not eligible for the NAFTA status and the applicant declined to withdraw the application. Prior to May 25, 2001, the government’s denial of a TN status for a Canadian citizen was subject to the review of an immigration judge. Boos and Pauw (2004: 389) argue that the “hard-line” approach of expedited removal became a tactic used by the U.S. federal government to remove adjudication in NAFTA TN matters from any formal review process. This was in addition to not allowing the presence of attorneys within POE secondary inspections so that the situation does not escalate to expedited removal proceedings.

6.12.3 U.S. Expedited Removal Expanding to Canada?

Up to 2003, there were less than 20 expedited removals for Canadian citizens seeking TN statuses in the past five years at the ports of entry between Seattle and Vancouver (Interview with C-A 1). However, the U.S. attorneys I interviewed considered that the growing lack of checks and balances between the U.S. government and the judiciary process, and its officers, namely attorneys, was possible cause for alarm. Currently, the new “hard-line approach” only applies to ports of entry in the U.S. However, the Canadian government has just passed the Preclearance Act in 1999, a law that grants extraterritorial powers, such as the right to detail and arrest, to DHS officers stationed at Canadian preflight inspections, which includes Vancouver International Airport. Boos and Pauw (2004) concluded that the U.S. government might soon allow expedited removal proceedings to be practiced at U.S. preflight inspections within Canada under this new Canadian law.
The above complexity and added security provisions at U.S. POEs since 9/11 suggest a growing role for the U.S. attorneys of Canadian clients when attaining a NAFTA status. Additionally, there appears to be a growing distance between immigration attorneys and DHS field officers, especially at U.S. ports of entry. This was demonstrated by the reported barring of U.S. attorneys from ports of entry when they attempted to represent their clients. This was causing considerable concern within the community of immigration lawyers, especially in light of the use of expedited removal proceedings and the growing unchecked powers of U.S. immigration officers at ports of entry.

The above sub-section has highlighted increasing complexity in administering NAFTA statuses in the U.S. following 9/11. But what about the Canadian situation? The following section now turns to the Canadian immigration attorney’s experience in the NAFTA process in the post 9/11 era and their relationship with Canadian immigration officers.

6.13 The Canadian Experience: A Strained Relationship?

The NAFTA process for Americans seeking entry into Canada can be considered a relative “nonevent” compared to the “roll of the dice” (as one U.S. attorney (US – A6) put it) for Canadians seeking entry into the U.S. However, the Canadian attorneys reported a more subtle set of interactions between Canadian immigration attorneys and port of entry officers and in their interviews alluded to a much more strained and complicated relationship than appeared on the surface. This subsection examines this complex and rather tense relationship.

To begin with, two Canadian attorneys (C-A 4 and 6) stated that for the most part, entering Canada under NAFTA was extremely straightforward, compared to seeking entry into the U.S. under NAFTA. As stated previously one Canadian attorney (C-A 4) stressed that the Canadian side does not have the NAFTA ‘horror stories’ that one could hear from the U.S. immigration attorneys. However, he did note that smaller companies, ranging from ‘special effects firms’ in the Vancouver film industry to small manufacturing firms, did need the help of attorneys in navigating though the NAFTA status provisions. He also noted that Canadian attorneys were also hired for auxiliary purposes if a person was seeking a NAFTA status to work in Canada. For example, he stated:
An attorney is usually needed if the applicant had a previous drug or drunk driving conviction, visa expiration, or wanted to bring his/her spouse into Canada while he/she was on a NAFTA status. (C-A4)

Another Canadian attorney (C-A 1) also stressed that it was advisable that NAFTA applicants sought professional help since the NAFTA status process could be confusing. So, despite an overall approval of NAFTA status provisions, Canadian attorneys also reported that a professional could help a perspective applicant avoid possible problems before they arose. One attorney stressed that this ran counter to the viewpoint of the CIC, which stated that a person only needs an attorney if and when problems were to arise. (CIC's perspective regarding its own ideas about its role in the NAFTA process were explored in Chapter 5.) This attorney stressed:

How is the person to know if there are problems until they are discovered by the CIC? Once this happens, the person has to prove his or her innocence, and an attorney is definitely needed. Now, [in such a case] the application process is usually twice as long and twice as expensive than if an attorney was hired in the first place. (C-A1)

The attorney also stated that there was much confusion and spectacular misunderstandings as to business people seeking entry into Canada and the appropriate work statuses/visas they required. This attorney went on to provide the example of a recently hired U.S. executive who was coming into Canada for a preliminary meeting with his new company under the NAFTA classification as a 'business visitor', meaning he could “visit” a business office, but not to work.

Yes, the CIC port of entry immigration officer tried to be magnanimous and granted him a TN status as a management consultant for one year. Basically, they gave him an incorrect job classification. It was quite clear from the letter, which the executive was carrying, that he was the new chief executive officer of a Canadian company and coming into Canada for two days just for a meeting, not for work. He was clearly a senior manager and not a professional, which is what the job states TN classification was drawn up to cover. My client asked the immigration officials to call me, I am his attorney, since I could better explain to CIC exactly what my client needed. However, the immigration officer said that they would call the company in Canada, but not the CEO’s attorney, namely me.......There is a bad attitude towards attorneys at the Canadian ports of entry. (C - A1)

The above attorney argued that CIC did not want attorneys to review their decisions, especially at the POEs, and this particular example clearly demonstrated this. In fact, at the time of the interview, the attorney was going through the process of changing this particular client’s work
status from the incorrect ‘management consultant’ category which was incorrectly issued at the port of entry to the more suitable ‘executive’ category. He stated,

All of this is taking additional time and money which could have been avoided had they (the CIC) called me. (C-A1)

Other Canadian attorneys interviewed noted the seemingly deliberate distance between immigration officers and attorneys in addition to the immigration officers’ lack of professional competence towards NAFTA and Canadian immigration matters in general. Two Canadian immigration attorneys (C-A6 and C-A3) explained:

The CIC should also have an attorney line so that attorneys can call in. Lawyers are officers of the court, you know. Attorneys are an institution of the court and an institution of trust. In fact, the CIC should have a “1-800 – number” for phone and fax so that attorneys can reach the CIC. Also, attorneys should be able to call and inquire about file specific information and confirmation numbers. This is the number one irritant for Canadian attorneys. The issue here is one of “control” [with CIC]. How can we identify the person making the call, you ask? Well, the lawyer system works. There are only 450 immigration attorneys in Canada. This should be easy enough to administer and track. Give them a password or code number from one to 450. Attorneys can then log on and access files.

......Look at the Globe and Mail article this coming Thursday. There is an internal audit of the CIC. If we (as a law firm) had this many errors, we would be shut down.

......The immigration officers at the land borders do not want business coming into Canada. They are not given the resources to do their job properly. (C – A6)

What has happened in B.C.? We have not used the immigration system to promote business.....we give mixed messages to immigrants. We supposedly open doors, but it is still very difficult to immigrate to Canada. For the high tech worker, it is even more difficult under Chapter 16 of NAFTA since it is difficult for smaller firms to understand [and use].....Despite the downturn in high tech, we are still fast-tracking the high tech sector through with the software pilot program. Right about the time the economy picks up again, the government will have shut down parts of the program.

Politically, any immigration official is terrified of immigration attorneys. They are political appointees, but we know immigration and the law. It’s our profession. Many immigration officials are afraid to speak out on immigration matters since they know we will crush them......NAFTA is safe. If immigration officials don’t understand and facilitate NAFTA, then what does this say about the rest of the immigration system? (C-A3)
The above short, but direct, comments on the role of Canadian immigration in the NAFTA process puts considerable emphasis on a greater tension between immigration attorneys and Canadian immigration officials, which goes beyond NAFTA. The control of power and authority over the process of immigration appears to be a growing one for Canada. The above commentary suggests the tension and frustration of certain attorneys over what they perceive as an increasing lack of accountability of the Canadian government, and the seemingly disrespect that government officials have for attorneys and their legitimate role in the process of immigration and labour mobility into Canada. Historically, Canada, as a country, has long been known for its good government and the culture of its citizens to follow and obey leadership without much question (Gwyn, 1985). However, as Canada continues to portray itself as an open western democracy to the greater world, especially as it uses this packaging to encourage immigration to Canada, then arguably it must be accountable to checks and balances inherent in a democracy, which includes the judiciary system. Surprisingly, the U.S. is actually becoming more like Canada in the distance that is being created between immigration officials at ports of entry and U.S. immigration attorneys in addition to other growing powers that the state has over persons seeking entry into the U.S. These growing and seemingly unchecked powers of government were discussed in more detail in Chapter 5 of the dissertation.

6.14 Overall Comments on the Post 9/11 Situation and NAFTA Statuses

In summary, the U.S. attorneys commented that the role and involvement of attorneys in the NAFTA TN process is a growing and seemingly more necessary one, especially after September 11. The expanding need for attorneys ranges from the more narrow readings of NAFTA at U.S. ports, due to a downturn in the U.S. economy, to the need of attorneys in POE secondary inspections to avoid the draconian measure of expedited removal.

By comparison, Canada’s interpretation of NAFTA has been a fairly direct one without the constant need of attorneys in the process. However, when an attorney was needed, there was an apparent lack of cooperation between immigration officials and the attorney, compared to the U.S. attorney-immigration official relationship. There has always been deliberate distance between the Canadian immigration attorneys and officials, but Canadian attorneys stressed that this had been growing, post 9/11. Finally, the U.S. appeared to becoming more like Canada in its growing distance between immigration officials and attorneys, especially in light of
6.15 Has NAFTA Facilitated Cross Border Labour Mobility in Cascadia?

All immigration attorneys interviewed were asked to reflect on whether the NAFTA status provisions had indeed been favorable in facilitating the growth of the Cascadia corridor to cross border labour mobility. This section reviewed the responses given to this question and the following section deals with the broader implications of NAFTA in the region.

Although attorneys spent considerable time in the interviews discussing how NAFTA was imperfect, in many ways, all attorneys interviewed emphasized that NAFTA was a positive force in allowing greater cross border mobility in the Cascadia corridor. Since its inception, NAFTA had improved flows of North American professionals across the Canada-U.S. border by providing a wider range of mechanisms to move legitimately across North American borders. The attorneys also commented that it had influenced positively their own practices by adding a new component of client services, which was not so much in demand before NAFTA and the Canada-U.S. FTA.

Many attorneys stressed that NAFTA has been a tremendous boon for the Canadian professional worker since many now had considerable access to firms in the U.S. as well as Canada. One attorney (US – A10) explained:

In terms of Canadians, NAFTA is a tremendous benefit! They do not have to go through the H-1B process, and the TN application is much faster. Additionally, over 60 percent of all Canadians live within 90 minutes of the border, so NAFTA has opened up employment prospects in the U.S., which were not accessible before NAFTA. (US – A10)

NAFTA has also been good for smaller firms who need to move people quickly and efficiently across the border without the time and cost that an H-1B requires. Overall, this has helped the growing number of small but expanding high tech firms in the Cascadia region. For example,
one attorney (US - A10) was emphatic about how helpful NAFTA has been for high technology in the region,

The software industry has been liberalized! It is a fact of life [in this region] that people must travel back and forth over the border for. (US – A10)

However, usually in the same breath, many attorneys (US – 3, 4, 5, 6, 9, and 10) stressed that NAFTA does have its drawbacks, especially with port of entry adjudications. One attorney (US – A4) articulated:

Obviously it [NAFTA] has enhanced labour mobility. [NAFTA] has made mobility much more rapid than if the person was not a Canadian national. You do not need a petition. Now, one can just go straight to the port of entry. However, NAFTA’s biggest benefit, being port of entry adjudication is also its biggest drawback. It exposes these kinds of applications to inexperienced officers and their own agenda when it comes to admitting Canadians. We have experienced too many denials not warranted under the law. (US – A4)

6.16 NAFTA’s Broader Influences

From a structural perspective, NAFTA was designed to primarily allow only degreed professionals mobility across North American borders. Thus, many attorneys argued that NAFTA did not allow key people within industries who do not have degrees. Two attorneys (C-A5 and C-A4) stressed:

NAFTA does not apply to people who did not get smart through an education. For example, Bill Gates would not pass on a NAFTA TN. (C-A5)

....the software pilot program and NAFTA set certain thresholds for levels of skills. Much of it is based on experience and education……for example, there was a Korean national that had never attained an educational certification, but he was a recognized leader in his field. In fact, he had authored key books on the subject matter and was constantly being requested to speak at key events. He was clearly ahead of the industrial curve. Essentially, he was merited, but not accredited. This type of person would not be eligible for TN status [if he were Canadian] or other related professional Canadian work statuses. (C-A4)

NAFTA’s extensive list of 65 professions for a TN status mandates that all should have a bachelor’s degree except for two (management consultant and scientific technician). This has put a stop to professionals without degrees who moved freely across the border prior to
NAFTA. For example, one immigration attorney (US - A3) discussed the predicament that journalists found themselves in after the Canada-U.S. Free Trade Agreement was signed in 1989. She explained:

.....An interesting example of this is journalists. They were originally listed on the FTA. However, with the FTA, one almost always needs a 4-year degree and many journalists do not have four-year degrees. So, after the FTA was implemented, many journalists could not move back and forth across the border. Thus, they petitioned to remove themselves from the list. (US -A 3)

Finally, the above attorney (US – A 3) went on to stress that NAFTA had much potential when it was first created in the early 1990s. However, over the past ten years of NAFTA’s existence, she noticed that NAFTA, which was designed as an agreement to facilitate cross border labour mobility, had become somewhat stagnant. Part of the idea behind Chapter 16 of NAFTA was to include a wide range of contemporary professional jobs to move freely within North Americas borders, and to reflect and respond to the professional human resource needs of a robust new IT economy. Unfortunately, much of NAFTA was written in the mid-to late-1980s as part of the original Canada-U.S. FTA, and so the economy and its human resource needs then were rather different than in the early twenty-first century. Additionally, the wording of the NAFTA agreement was now difficult to change, even with the NAFTA labour mobility-working group that had reviewed NAFTA annually since 1994. She explained,

The TN status has made movements of certain professionals more difficult. It does not fit certain categories listed. For example, the 'code jockey' and the 'programmer' do not fall under the TN. The TN category is used to try and fit these people into various related professions, which they really don’t fit. They are not systems analysts nor are they software engineers because they do not have an engineering degree, and they are not management consultants. They do not fit into these three categories. As a consequence, because NAFTA has been so rigid in terms of updates, programmers have never been included on the list. Programmers show up at the border and are shocked to find that they are not included on the list.

Right now, firms try and fit high tech professionals who do not fall under NAFTA into the H1-B category. Some of these jobs are “doing” things. They do not fit into the three categories of NAFTA that I listed earlier. One of the problems is that NAFTA is so rigid in terms of updates. Programmers are not listed. They [programmers] must get on a broader computer list. Now we are bringing them in under H1-Bs. The primary reason [for lack of a broader listing of computer professions] is that the three countries could not agree on which high tech professions should be included. Also, the high tech industry evolves so rapidly. However, NAFTA is not designed to respond to
the rapid changes in the new economy. It is very inelastic. In fact, NAFTA's rigidity is showing with age. In order for Chapter 16 of NAFTA to continue to be a success, it needs to be a living growing treaty rather than something set in stone. (US – A3)

The above quote summarizes much of the wider frustration that all attorneys felt towards NAFTA beyond the day-to-day adjudications at different ports of entry. Although NAFTA has provided many options that were not available prior to the early 1990s, NAFTA as a structural document appears to be rather rigid and has considerable difficulty responding to the ever changing needs of the high tech industry, which is now found in all sectors of the economy. Chapter 5 of the dissertation examined more closely the policy development side of Chapter 16 of NAFTA and why, from a regulator's perspective, NAFTA was so difficult to change (see also Richardson 2006b.) The dissertation's concluding chapter, Chapter 7, provides some ideas as to how to make Chapter 16 of NAFTA a more 'flexible living document' without compromising its original integrity as a trade agreement.

6.17 Conclusion

This chapter has reported on a wide range of issues, such as port shopping, the relationship between attorneys and port of entry officials, and the role taken by attorneys in the NAFTA status approval process. The material underscores that there is a clear "geography" of border administration in Cascadia, with the attorneys having quite different remarks whether they were on the American or Canadian side of the border, and different experiences at POEs along the international border. One key point regarding the inception of Chapter 16 of NAFTA was that attorneys were not supposed to be needed for NAFTA's sort-term and seemingly easily accessible foreign work statuses. However, over the course of the past ten years, and especially in light of 9/11, attorneys are needed more and more for both Canadian and American professionals seeking entry into their NAFTA counterparts. Over time, the structural problems of NAFTA are becoming increasingly apparent, in addition to the varied cultures at each U.S. port of entry, and the deliberate distance and the seemingly growing unaccountability of immigration officers at ports of entry, especially since 9/11.

Overall, all the fifteen attorneys interviewed felt that immigration officials were using September 11 as a reason to put distance between themselves and attorneys, but they felt they had a legitimate and rightful place in the process of immigration and foreign labour mobility.
Many Canadian attorneys were concerned that Canadian officials were becoming more like the U.S. in their "restrictive" spirit when it came to interpreting NAFTA provisions. Conversely, it appeared that U.S. immigration officers were actually becoming more like Canadian officers in their deliberate efforts to deny U.S. attorneys access to ports of entry on behalf of the attorney's client. Figures 6.1 and 6.2 depict the envisioned relational geography of Chapter 16 of NAFTA and the realistic relational geography between immigration attorneys, their clients, the ports of entry, and key decision makers in Ottawa and Washington D.C. Overall, the final effects of 9/11 on professional labour mobility throughout North America remain to be seen. These are all continuing developments as this dissertation is written.
Envisioned System of Communication and Influence Under Chapter 16 of NAFTA

Canadian Side

Canadian Professional ------- Canadian Professional Association

Canada-U.S. Border

Canadian Firm

Canada-U.S. Border

U.S. Professional-----U.S. Professional Association

NAFTA Policy Advisor-Ottawa

NAFTA Policy Advisor-Washington DC

U.S. Firm

U.S. Side

*= Port of Entry

Figure 6.1
Chapter 16 of NAFTA's Realistic System of Communication and Influence

Canadian Side

Canadian Professional with no Canadian Professional Association

Canada-U.S. Border

Canadian Firm and Canadian Immigration Lawyer

Canada-U.S. Border

U.S. Professional with no U.S. Professional Association

Canada-U.S. Border

U.S. Firm and U.S. Immigration Lawyer

U.S. Side

* = Port of Entry

Figure 6.2
Chapter 7 - Conclusion

7.1 Introduction
This chapter provides a summary and conclusion to the dissertation. The chapter begins with a summary of the empirical findings, which explore if the international border really is an impediment to the development of a high tech region between Vancouver and Seattle. It then moves to determining what type of border bisects the transnational region of Cascadia and comments on the 'geography' or border administration with regard to knowledge worker mobility. It closes with examining what are the implications of this study for theory, policy, and further research.

7.2 Summary of Findings

Against a background of long-term international trends in the location of economic activity, North American integration following NAFTA is having a significant and lasting impact on the organization of economic activity with regions, cross-border region or otherwise, becoming central economic players and key engines of growth. Many suggest a new approach for regional development and industrial policies, including harmonization of government policies (Ohmae, 1995). Cascadia in particular has been seen as a new cross-border that has potential for growth based on knowledge-intensive production and services. In this way it is qualitatively different from other cross-border regions in North America, and throughout the world, that focus on the movements of goods across international borders rather than people – examples of the former type include Toronto/Detroit; Atlantic (Atlantic Canada, southern Québec, northeastern United States); the Singapore Growth Triangle; the Tijuana-San Diego border region; and the Japanese Eastern Sea Rim region (see Chapter 2).

Much previous literature on Cascadia has focused upon the need for transportation connections and other improvements in infrastructure (see Chapter 3). But with the understanding that the 'people' (including tourists) in this cross-border region are more important than 'manufactured products', the purpose of this study has been to examine whether or not the international border that divides Cascadia has been a significant impediment to the cross-border movement of knowledge-based and skills-based employees; and in turn, whether the border had constrained
the formation of a cross-border cluster of synergistic economic activity based on high-technology industries, such as software, advanced engineering and so on, stretching from Seattle to Vancouver. Indeed, very little previous literature has focused on the administration of border regimes \textit{per se} as either facilitating or constraining cross-border interaction of ‘knowledge workers’ necessary for high-technology regional development. To pursue this issue in the Canadian context I examined not only provisions of the NAFTA, which in great measure was a trigger to the Cascadia concept in the 1990s, but also conducted interviews with firms that send employees across the border and the border officials themselves, as well as the attorneys who were hired by corporations to facilitate the transfer of employees across the international border from Seattle and Vancouver.

This section provides a brief review of the key points from Chapters 4 – 6 of the dissertation, which explored the research findings for 44 interviews conducted with firms, immigration official, and immigration attorneys primarily in the Cascadia region, but also elsewhere in North America.

7.2.1 The Firms

As discussed, a total of 10 firms were interviewed for this study with 9 firms being based in the Vancouver area, ranging in firm size from 11 to over 4,000 employees. All had some sort of technology focus (e.g. software development, biotechnology, computer design, and so on). The U.S. firm was a multinational corporation with over 50,000 employees worldwide, and a strong history of natural resource extraction. However, the U.S. firm used considerable high technology services for many of its day-to-day operations, and employed many hundreds of technology ‘knowledge workers’, and thus was included in the study. The following provides the key findings for this component of the research.

Canadian Firms

Overall, all firms needed to cross the Canada-U.S. border for a variety of reasons, including sales, finance, follow-up services, and the recruitment of labour. All but one of the Vancouver based firms ranked as one of the top 20 high technology employers in B.C. in 2003 (\textit{Business in Vancouver}, 2003). Additionally, all were outward looking in their growth strategy, by focusing on the U.S. as either their prime market, or the rest of the world. Neither regional nor national
markets in Canada were seen as a priority for these firms. See Tables 4.1, 4.2 and 4.3 in Chapter 4 for a depiction of this phenomenon. Perhaps most interesting about the patterns in these tables is that these firms’ sales connections within the Cascadia region were recorded less than 10 percent of the time, which was similar to the domestic and national percentage of connections. Thus, I conclude that these firms had far reaching connections across international borders (beyond Cascadia per se) in order for their business operations to be successful. A critical factor in each one of the firms’ successes was the ability to hire from outside their immediate area and to move people back and forth across the Canada-U.S. border. Firms had certain frustrations moving their knowledge-intensive workers across the border but did not perceive it as an overriding barrier or ‘shield’ to professional worker mobility. Although 9/11 has not stopped the movement of their employees, this event did make the firms even more aware of just how much they depended on an open and predictable border, and how seemingly powerless each firm was in actually influencing Canada-U.S. border management.

The Seattle Based Firm

The Seattle based firm had different yet similar needs as the smaller Vancouver based firms. Although they had the resources to hire people locally to do jobs rather than move one person around North America for many jobs, the human resource manager stressed that it would be a lot easier if one firm could move their people freely throughout North America without any labour certifications or statuses.

7.2.2 The Canadian and U.S. Immigration Officials

A total of 19 governmental officials were interviewed for this study. Nine participants worked for Citizenship and Immigration Canada and 10 participants worked for the U.S. Department of Homeland Security, before 2003 the legacy U.S. Immigration and Naturalization Service. Fifteen of those interviewed worked in the capacity of front-line supervisors or port directors at ports of entry along the border in the Cascadia region, and four people worked in the capacity of policy development in either Ottawa, Washington D.C. or British Columbia. The interviews took place in 2001 – 2003, immediately before and shortly after the 9/11 terrorists attacks on the World Trade Center in New York City. The changes, which resulted from this event, included abolishing the U.S. Immigration and Naturalization Service, which had over a 100-year history. The Canadian government quickly followed suit with the creation of the
Canadian Border Services Agency (CBSA) in late 2003 under the Ministry of Public Safety and Emergency Preparedness headed by then Deputy Prime Minister, Anne McLellan. Needless to say, the interviews took place during a very interesting and challenging time for both organizations.

Chapter 16 of NAFTA was designed in part to facilitate cross-border movement for certain skilled workers, and an important component of this thesis has been to test the effectiveness of this new legislation. It created guidelines for the admissibility of 65 professions, but left it up to each country, namely Canada, the U.S., and Mexico, to interpret and adjudicate these guidelines (Richardson, 2006b). This is unlike the European Union (EU), which mandates that all signatory countries should interpret and follow common European Union policies and guidelines as they have been developed by the European Union’s Secretariat. Overall, this EU mandate has led to more consistent and predictable policy interpretations and adjudications regarding EU laws and policies within Europe’s borders (Henry, 2003). However, NAFTA’s more open guidelines have resulted in three different understandings and interpretations of NAFTA between Canada, the U.S. and Mexico, especially at ports of entry. In the case of Cascadia, my research showed that there were clear differences in interpreting the provisions of NAFTA between Canada and the U.S.A. These differences have led to some ambiguity and inconsistencies, which worked against the notion of an ‘open and predictable border.’ The next section briefly reviews some of these key differences, plus some of the growing similarities between Canada’s and the U.S.’s interpretations of Chapter 16 of NAFTA.

7.2.2.1 The Canadian Immigration Officials

Overall, both firms and immigration attorneys saw the Canadian officials as being much more “facilitative” towards NAFTA status applicants than U.S. officials. In part, this reflects the different norms and values in the two immigration organizations (as predicted by Finnemore and Sikkink, 1998) and points to an intriguing “geography” of how NAFTA is implemented; a geography of difference not only between Canada and the U.S.A., but also along the Canada-U.S. border in Cascadia. Reasons for this include a greater understanding of the importance of foreign professionals working in Canada’s domestic economy and a general acceptance of

55 The Canadian Border Service Agency is designed to bring together the customs function of Revenue Canada, the intelligence, interdiction, and enforcement components of the CIC, and the agricultural inspection component of Canadian Food Inspection Agency at Canadian ports of entry.
foreigners seeking entry into Canada’s labour markets. Canadian immigration officials at ports of entry also had mandatory and extensive training programs regarding their jobs and interpretations of Chapter 16 of NAFTA. Thus, there was a spirit of education and willingness to learn and understand new rules and regulations as they developed. There was also a deliberate iterative system of communication between ports of entry and Citizenship and Immigration Canada headquarters in Ottawa and vice versa regarding interesting or contested cases, and questions on how NAFTA was interpreted and implemented. This led to a more standard and predictable approach to implementing NAFTA rules. By comparison, the U.S. side exhibited more ad-hoc instruction, which led to a phenomenon of port shopping along the U.S. side of the border by U.S. attorneys and their clients.

The relationship between Canadian immigration officials and Canadian immigration attorneys was seen as a strained one, with Canadian immigration officials not recognizing the legitimate role of immigration attorneys in the NAFTA process. This was demonstrated by Canadian immigration officers’ refusal to contact a NAFTA applicant’s attorney from the port of entry to not allowing immigration attorneys on the premises of the ports of entry. Finally, Canadian immigration officials were perceived as becoming more ‘enforcement’ driven (i.e. using a stricter interpretation of NAFTA rules) as opposed to facilitative. This trend began to occur before the repercussions of 9/11, and was in some ways due to the growing numbers of foreigners wanting entry into Canada.

7.2.2.2 The U.S. Immigration Officials

When compared with Canadian officials, the U.S. has had seemingly erratic interpretations regarding Chapter 16 of NAFTA, which led to the phenomenon of “port shopping.” Port shopping occurs when NAFTA applicants (firms and attorneys) took their applications to U.S. ports of entry that were seen as more liberal in interpreting NAFTA applications. Chapter 5 explored this problem in detail; but to summarize much of this variability was attributed to the U.S. port of entry officers’ limited professional training regarding NAFTA, the varying attitude of the port director at each port of entry, and the subsequent culture at each port of entry between all officers (see Table 5.1).
On a more positive note, there was a general level of professional respect by U.S. officers towards U.S. immigration lawyers, and an understanding as to where lawyers fit within the process of Chapter 16 of NAFTA. However, as of August 2003, U.S. immigration attorneys were no longer allowed to accompany their clients to U.S. ports of entry, which was seen as an acceptable norm prior to this date. Additionally, since September 11, 2001, there were many new DHS personnel at the U.S. ports of entry between Seattle and Vancouver, which made developing relations of trust difficult for the U.S. attorneys. Thus, there was a growing distance within the relationship between immigration official and lawyers, which was once seen as a rather symbiotic one. The events of 9/11 also brought about changes in the way that U.S. immigration officials were trained, and how they behaved at ports of entry. Mandatory constant training is now the norm for all DHS personnel. Additionally, "Professionalism" training was one of the first modes of education mandated by Tom Ridge, former Secretary of the DHS. Thus, the U.S. model has become more closely aligned to the Canadian model in regards to education and codes of conduct.

### 7.2.3 The Immigration Attorneys

Finally, 15 lawyers were interviewed for this study, with six practicing Canadian immigration law, and nine practicing U.S. immigration law. (Two of the 15 practiced both Canadian and U.S. immigration law.) The majority of the lawyers had offices in Vancouver or Seattle and two in Toronto and San Francisco. Four of the lawyers interviewed worked for large law firms while the remaining 9 had their own independent practices.

As noted in Chapter 3 of the dissertation, Chapter 16 of NAFTA was originally envisioned as a very simple process, which would not require much paperwork and the subsequent professional advice of lawyers (See Richardson, 2006b). However, as explored in Chapter 6 of the dissertation, lawyers were needed by firms and their employees (and potential employees) more frequently due to the local variability between U.S. ports of entry, as well as the repercussions following 9/11 with border security. Thus, lawyers had become crucial mediators between the firms and immigration officials. In their role as mediators they have developed sharp insights into the actual workings of NAFTA adjudications at ports of entry as well as reflections on the broader implications of Chapter 16 of NAFTA.
In light of the empirical findings, I can now reflect on the key research question, "Has the Canada-U.S. border impeded the creation of a high tech region in Cascadia?" The following sections explores some the answers to this question and additional themes that have developed as a result of the empirical research.

7.3 Is the Canada-U.S. Border an Impediment to the Development of a High Tech Cluster Between Seattle and Vancouver?

The various frustrations with the Canada-U.S. border reported by firms and their attorneys might lead one to think that the Canada-U.S. border was a serious impediment to firms moving their people around North America as a part of NAFTA. So, when asked the question "Is the Canada-U.S. border an impediment to a high tech cluster between Seattle and Vancouver," surprisingly, many of the firm respondents, after a few moments of reflection, said that overall, it was not. Despite all of the negatives that the border brings to moving employees across the border post 9/11, it is still relatively open, and, NAFTA Chapter 16, overall, provides many more options for companies than before it existed. Some of the firms explained,

No, because of NAFTA, it is now much easier to get across. There is the possibility of creating a cluster. In fact, some of our people go to Seattle for new jobs. (F-V7)

All in all, it is not really a big deal. The number of incidences is small. We could avoid many things if we knew what to expect ahead of time. Maybe under the new blanket of security, things will be more difficult. Will there be big problems if there was a visa requirement for Canada? We need to think about how we facilitate trade without compromising security. (F-V1)

Specific to Cascadia-many of our employees need to travel to Microsoft to work on joint projects (software integration projects). We also have employees based in Seattle who travel to Vancouver on a regular basis for meetings, etc. Some of these employees could be based anywhere, but they choose to be located in Seattle in order to be close to our Vancouver office and family and friends. (F-V2)

To date I have not found that this is so. The border is keeping things in check. In regards to "impeding," the Canadian side [not the U.S. side) is slowing us down with approvals! (F-V9)

Because we are not a "high tech" company. I cannot answer this. We do hire software engineers, and we are implementing these huge technology programs and processes. I do not think the border is an impediment because we can get our people across. But if you are talking about high tech as a whole, I do not know.
So despite all of the misgivings at the border, there is still ample opportunity for mobility within North America. Overall, it appears that the present administration of the border acts more like a 'sieve' [perhaps keeping out some IT workers who do not clearly fall within the 65 professional classifications of Chapter 16] than a 'shield' that bars entry except for those few brave enough or patient enough to petition governments and use high priced attorneys. In the previous subsection the Seattle based firm would definitely like to have free mobility throughout Canada and the U.S. with its employees. However, it should also be stressed that seeking entry into Canada is not without its problems, and more attention needs to be given to the changing categories of IT workers. Some interviewees have heralded Canadian rules and norms as an example for the U.S. to follow; but some firms stressed also that Canada can be just as "difficult" as the U.S., and is becoming more enforcement driven, as opposed to "facilitative", especially after 9/11.

7.4 What Type of Cluster is Cascadia?

Apart from this key question, my research also has implications for Cascadia and more broadly for theories of regional development. Accordingly, the section provides a succinct analysis as to what type of high tech cluster may be developing in both Vancouver and Seattle, and whether or not what are currently two separate clusters may one day be considered one large symbiotic cluster.

7.4.1 Vancouver

The above reflections on the role of the border in acting as a sieve or shield to mobility in Cascadia begs the question, as to what type of regional cluster is Cascadia, anyway? As explored in Chapter 2 of the dissertation, Rees (1999) did extensive work on this topic regarding the greater Vancouver area. He found that Vancouver was all "ring and no core." This concept refers to Storper’s idea (1999) that a region such as Vancouver is characterized by a lack of a core lead firm (similar to Boeing and Microsoft in Seattle) and a horizontal production system of products, as opposed to a hierarchical system. Its system of governance may be similar to the Marshallian industrial districts of Italy, where there are many highly creative local firms (Piore and Sabel, 1992). However, Rees (1999) stresses that these firms are
different from their Marshallian counterparts in the sense that there is an absence of intra-regional collaboration between firms within the Greater Vancouver area, which mitigates against the development of a true regional innovative network. Thus, the mix of innovation in high technology coupled with fragmentation may be deemed as being "territorial innovative, but without milieux" (Camagni, 1995 cited in Rees, 1999). This all ring-no core structure characterized by predominantly external collaborative linkages describe many Vancouver based firms as they continue to seek complementary access to basic research, testing, and marketing-oriented activities.

Historically, this has been especially true for the biotechnology sector. The broader high technology industry has significant external linkages derived from increasingly foreign ownership/major investments and information flows extending beyond the local Vancouver area and Canada, generally. A majority of these external linkages for both high technology and biotechnology lead to California. The eastern United States and Western Europe also have strong linkages with biotechnology. However, as both the high tech and biotechnology clusters grow, they are increasing the local availability of human capital, whether foreign or domestic. In fact, the Vancouver biotechnology sector through their human resource professionals has formed a group dedicated to retaining foreign and domestic talent within the region (Richardson 2006a). This strategy has worked well since within the past three years, more and more biotechnology professionals have been able to move from one employer to another within the local region, and junior executives are increasingly seeing growth opportunities with fledgling firms within the immediate region (BC Biotech, 2004). Additionally, the system was able to absorb over 100 displaced employees due to an unexpected firm layoff within the past year back into the local biotechnology cluster (Richardson, 2006a). Thus, it appears that perhaps the Vancouver biotechnology cluster may be on the brink of not only having a strong capacity towards territorial innovation, but also the ability to create systems of intra-regional collaboration. This may lead Vancouver to creating a cluster that is "territorial innovative with milieux" (Camagni, 1995).

7.4.2 Seattle
Seattle, on the other hand, may be considered a classic American "hub and spoke" city that hosts one or more industries, each with one or a few dominant "hub" firms surrounded by smaller firms which are tied, through origin and/or ongoing exchange relationships, to the larger firm (Gray et al. 1999). However, the hubs are also usually engaged in relationships,
such as branch plants, suppliers, customers, and competitors, outside of the region which can range anywhere from national to international in nature. Boeing’s relationship with its local suppliers is a classic example of this, since Boeing has a policy that its local suppliers not be entirely dependent on Boeing for contracts. Microsoft is also seen as a strong “Hub” within the hub and spokes model of the local software industry. A majority of the connections and inputs/outputs into Microsoft may be considered national and international. In fact, Microsoft’s greatest contribution to the region is a growing pool of highly skilled professionals, both domestic and foreign. The software cluster is not seen as collaborative in the sense of Silicon Valley as described by Saxenian (1994). In fact, it may be seen as a more parasitic relationship with the smaller high growth firms luring away top Microsoft executives to run these other local firms with much potential. However, Amgen is quickly pulling the emerging local biotechnology sector towards California with the purchase of Immunex (Seattle’s largest biotechnology firm) in 2002 (Puget Sound Business Journal, 2002). Thus, this local cluster is losing a critical mass of its local autonomy to the regional forces of California.

7.4.3 Summary of Cluster Types
The above commentary helps to depict a pattern that Vancouver and Seattle high tech clusters, although similar in their development, are growing and changing in different ways with different connections and networks that reach far beyond the region of Cascadia to the United States and the rest of the world. This is rather a speculative finding, one that needs to be further researched. Still, Vancouver, on the one hand, is more dependent on foreign investment, expertise, and sales and marketing that originate internationally, but primarily from the state of California. However, Vancouver is growing rapidly and it is developing its own local cluster of expertise, which may contribute to a factor of “milieux” to accompany the idea of “territorial innovation.” However, when reaching beyond the boundaries of the local it is this cluster’s preference to draw from California for professional expertise and finances as opposed to Seattle. Possible reasons for this include just the shear numbers of available experts in the state of California in addition to the fact that the largest concentration of biotechnology firms in the world are located in California (Biocom, 2006), which substantiate the regional gravity model of Helliwell (1999). Seattle, however, is highly dependent on a “hub and spokes” model initiated by the Boeing Company and Microsoft has followed suit with the software industry. This includes strong local interactions, but also being dependent on connections and networks throughout the U.S. and the rest of the world. This is similar to
Vancouver, but each city has its own networks and connections with other regions in the U.S. and the rest of the world. Perhaps where there was better opportunity for regional connections within Cascadia was the biotechnology sector. In fact, Michael Smith, a UBC professor and Nobel Laureate, helped to create Zymogenetics in Seattle in the early 1980s. However, as stated previously, leading Seattle based biotechnology firms, such as Immunex are being bought out by California biotechnology firms at a faster pace than the Vancouver firms (Richardson, 2006a). In fact, key Vancouver biotechnology firms, namely QLT and Angiotech, have actually managed to remain independent and avoid mergers with larger and more powerful biotechnology and pharmaceutical firms usually based in the U.S. Thus, these key Vancouver firms are creating a foundation of independence and industry leadership throughout North America.

Overall, the above comments underscore that although Vancouver and Seattle are physically close cities with very similar histories, and comparable new industries, such as high technology and biotechnology, their clustering strategies and networks with other regions are separate and different for a variety of reasons. Both cities’ key new industries originated and operate well within the local cluster. However, the new industries in both cities have had to recruit highly skilled professionals at critical stages of firm development, who were not accessible within the local clusters. Both cities’ industries have had to turn to sources of financing outside of the local region at critical stages of an individual firm’s growth, and both cities’ new industries reach to the rest of the U.S. and the world for markets and sales. Despite all of these similarities, both Vancouver’s and Seattle’s high technology and biotechnology clusters operate independently of one another.

7.5 What Type of Border Bisects the Cascadia Corridor?

The above discussion leads to the question, “what type of border bisects the Cascadia corridor?” Wu (2001) and Bertram (1998) have done excellent foundational work in categorizing and discussing the many facets of border regions. As discussed in Chapter 2 of the dissertation, Wu (2001) has worked to developed three different types of border regions; namely border regions, cross-border regions, and transborder regions, with the latter being the most open and fluid. Key contributing factors towards these assessments include economic and institutional relationships, infrastructure networks, labour costs, and migration factors. Wu
(2001) stressed that actual cross border regions usually do not fit neatly into these categories set out in the typology. However, the typology does encourage a continuum of development, which moves from a frontier as a barrier, to the border as a filter, then to a border region as a zone of contact (Ratti, 1993 in Wu, 2001). This recognized fluidity of the constant transitioning of borders helps to explain Cascadia’s typology. Cascadia waivers between a cross-border region and a transborder region, due to its partial allowance of free mobility of people, especially under NAFTA, but not absolute free mobility of people as is the case in the EU, which constitutes a transborder region according to Wu (2001).

Prior to 9/11 Cascadia was moving more towards a transborder region with its deliberate policy developments around Chapter 16 of NAFTA, which should ensure fluid movements of professionals in addition to the general movements of residents within the Cascadia transborder area. However, following 9/11, there was a strong retrenching of firms and people back into the confines of one’s nation state, despite the more open labour mobility policies still in place. This culture of retrenchment was also manifested at the actual ports of entry with both Canadian and U.S. immigration officials becoming more enforcement driven in the way they approached their work. Additionally, the Vancouver and Seattle high tech and biotechnology clusters operate separately from one another, so at the time of writing, there is not much networking, or symbiosis, occurring between the two regions, which would indicate that Cascadia is more of a transborder region in its economic relations and private enterprises. In fact, many of the Vancouver firms use the land ports of entry to collect their NAFTA statuses (stating that they are going to a Seattle firm for a meeting) then fly out of the Vancouver International airport for U.S. destinations beyond the Seattle area a few days later. Thus, the actual border region between Seattle and Vancouver is increasingly being used as a staging area for not only international goods, but also the internationally highly skilled as they prepare for their foreign professional journeys, which extend beyond the region of Cascadia.

7.6 International Labour Mobility of the Highly Skilled

As discussed in Chapter 2, the regional international movements of the professional highly skilled have taken place for over 300 years. Currently, the need for the internationally highly skilled is perhaps even greater than any other time in the history of the global capitalist system, due to fierce competition between industries at a global level. In fact, one key feature to
creating and maintaining an innovative and competitive economy is access to the highly skilled, both foreign and domestic (Florida, 2002 and 2005). This need has given rise to many different types of industries depending on the professional abilities, cultural fluidity, and international mobility of the highly skilled. Over the past fifty years, multinational corporations (MNCs) have dominated the movements of the professionally highly skilled as these corporations expanded beyond the boundaries of the firm’s original nation state in an insatiable appetite for overseas markets as has been demonstrated by Beaverstock and Smith (1996) in their study of the transnational investment banking community in the City of London; Beaverstock’s (1996) separate work on the international migration of skilled labour in the global accountancy industry; and Findlay et al. (1996) study regarding the complex relationships of the internationally mobile and the organization of the transnational corporation in the global city of Hong Kong. All of these studies focused primarily on the relationship of the large multinational corporation (MNC) and the internationally highly skilled. Regarding Beaverstock and Smith’s work (1996) and Beaverstock (1996), these elite “corporate types” have moved around the globe to oversee or work within these international operations. Historically, these foreign assignments were also seen as a grooming mechanism within the firm’s corporate culture for an eventual senior executive position within the MNC’s corporate headquarters. Now, with cost cutting measures in place at all levels of corporate management, this once dominant trend of moving an elite group of highly skilled corporate managers from the headquarters firm to corporate sites around the world has declined dramatically (PriceWaterhouseCooper, 2002). In fact, with the growing trend of creating a flattened structure of MNCs, there is a deliberate effort to train and groom local corporate professionals at these regional or satellite offices of the MNCs, rather than encourage the costly measure of importing professionals from the corporation’s headquarter. This MNC strategy has greatly reduced the need to move corporate professionals around the world, and more importantly across international borders. Now, a rising trend is the movement of the professionally highly skilled and executives that work for younger, smaller, yet aggressive firms in the areas of high tech and biotechnology. This trend has been demonstrated initially by Saxenian (2000 and 2002) in her study of new high tech firm in Silicon Valley and Boyle and Motherwell’s study (2004) regarding the regional international mobility of highly skilled Scots and their work location preference in the high technology cluster in Dublin, Ireland over the “stodgy” urban centers of Scotland.
Both Saxenian’s and Boyle and Motherwell’s studies alluded to the fact that unlike a larger MNC, which has the financial ability to hire a wide variety of professionals and executives at a majority of the firm’s foreign and domestic operations, the smaller nascent firm has a very limited number of human resource strategies and options when it comes to conducting business in foreign countries and moving and hiring the internationally highly skilled. More often than not, many of these younger firms must temporarily move existing executives and professionals for projects, meetings, sales, or just establishing presences in a foreign country rather than hire a duplicate domestic staff at that foreign site. These new firms do not have an army of human resources to work with, as is the case with larger MNCs. Thus, these smaller firms are obligated to move their existing staff located at firm headquarters to these foreign destinations, either temporarily or permanently.

The growing trend of smaller, yet aggressive, high tech firms needing to become global has put an added layer of responsibility and professional obligation for all executives and professionals that that firm hires. This includes the ability to be internationally mobile and culturally fluid for either short or long-term assignments for a vast majority of professionals and executives. This growing trend is especially apparent with the finding for this particular study with all participating firms having anywhere from 10 to 35 percent of all professional staff conducting a variety of firm operations in foreign countries at the time of the research interviews in 2002-2004. In fact, all firms interviewed stressed that a majority of their sales, markets, and finances were directly tied to the United States, especially California, and it was essential to maintain a constant flow of firm professionals and executives between Vancouver and California, in addition to the larger U.S. and the world. All firms also stressed that they hired a number of professionals and executives from the United States and relocated these people to Vancouver. Thus, there was considerable need to have a predictable and efficiently operating border, especially between Canada and the U.S. This predictability was needed not only for these firms to move their people, but also to ensure a seamless operation of business between their firm headquarters, namely Vancouver, and the rest of the world, with particular emphasis on the U.S.

All of these operational requirements were a tall order for a firm just beginning to make its way. In fact, these vast global operational requirements add complicated work time and expensive costs to the existing obligations of these nascent firms. Additionally, these smaller
mobile firms are not similar in size or structure to the vast MNCs, which have been seen as the most common type of firm to move people and conduct business beyond the boundaries of nation states since the 1940s. Thus, these smaller firms and their personnel were seen as having somewhat of a disadvantage when trying to cross the boundaries of international borders, especially between Canada and the U.S. since they usually do not fit the profile of the MNC's ideal type. Overall, these firms' smaller size and their highly skilled professionals and executives are disadvantaged compared to the larger MNCs when it comes to gaining access to a foreign nation state at the actual local ports of entry between Canada and the U.S. for a variety of reasons. The following section shall explore this final theoretical concept in more detail.

7.7 Policy Implications: Institutions that Affect Labour Mobility

The research has certain policy implications, especially regarding the management of the border in Cascadia. As has been discussed in Chapters 2 and 3, there are a variety of institutions that range from the global to the local, which affect the movements of the internationally highly skilled. The primary focus of this dissertation was to examine how NAFTA has affected labour mobility for high tech professionals moving between Vancouver and Seattle. Overall, NAFTA was seen as one of many different institutional options that the participating firms could use when needing to move existing or potential employees within North America or beyond. NAFTA TN statuses, overall, were seen as the most accessible and least costly of all the foreign work status options. However, the NAFTA status was not without its drawbacks. The following subsection shall summarize NAFTA's overall affect on labour mobility and its broader influences. The section will then explore the actual need for updated on-going management surrounding the implementation of NAFTA and the Canada-U.S. border in general, and then close with a concluding section.

7.8 Policy Implications: Borders and Labour Mobility Management

Perhaps what the preceding section leads to is more consistent and predictable management within each port of entry along the Canada-U.S. border that facilitates labour mobility under NAFTA. At present, the border appears to act as an unpredictable sieve, with some ports of entry more tightly controlled than others, both when the Canadian side is compared to that of
the U.S., and also along the border at various POEs. Portions of Chapters 2 and 3 have explored some of the norms and rules that influence how decisions surrounding international trade policies are actually implemented as well as developed (Richardson, 2006b). Chapter 5 of the dissertation, which explored the role of both Canadian and U.S. immigration officials, demonstrated that the actual border management and policies towards NAFTA varied considerably between Canada and the U.S., and especially between U.S. ports of entry. Although, Papademetrio et al. (2005) and Meyers (2005) have conducted policy analysis on the Canada-U.S. border and the role of the newly created U.S. Department of Homeland Security, the finding from this dissertation reveals that the on-going, mandatory, and extensive training that U.S. officers are now receiving is a step in the right direction, especially if one is to compare the U.S. style of implementing NAFTA at ports of entry to the Canada style.

However, there is still a tension between U.S. federal concerns, namely “shield” effects, of heightened security coupled with cross border economic regional needs for more flexible and predictable border management, namely “sieve” effects. This dual mandate of Canada-U.S. border management highlights the bipolar nature that the Canada-U.S. border, as it relates to Chapter 16 of NAFTA, is still embroiled within – continued mandates towards greater North American regional integration (sieve effects) but still dictated by strong federal policy directives in a post 9/11 climate (shield effects). The Canadian Policy Research Initiative in its November 2005 *Interim Report* captured this tension well in the following quote regarding Single-Door Diplomacy:

**Pressure on Single-Door Diplomacy**

The growing emergence of cross border regions, that display a high level of involvement of sub national governments in Canada-U.S. issues would have an important impact in the context of how foreign diplomacy is conducted. Traditionally, state-to-state relations were largely the domain of the president or prime minister, ambassadors, and foreign ministers. Cross border cooperation and the multiplicity of sub-national actors and linkages raise new challenges of co-ordination for the Government of Canada. Similarly, the cross border regions and their institutions become a channel of communication between sub-national and national governments that cannot be ignored.

(Policy Research Initiative, 2005)

On a positive note, as has been demonstrated throughout this dissertation, the Canadian model of local port of entry adjudications has received very few criticisms from the firms interviewed,
and many of the study's participating attorneys have attributed this to the Canadian system of constant on-going training and a strong culture of iterative communication from front-line port of entry officers to headquarters based in Ottawa. These are learning and management strategies that the newly created U.S. DHS is only beginning to embrace and use. Historically, the variability of each U.S. port of entry's culture could be attributed to the attitude of each port director and other strong personalities within each particular port. This has led to considerably varying interpretations of NAFTA applications, and had significant impacts as to whether or not a NAFTA applicant would be allowed entry into the U.S. It remains yet to be seen as to whether or not these broader mandated training policies stemming from DHS headquarters in Washington D.C. will create more consistent and predictable interpretations of NAFTA TN applications between U.S. ports of entry, but it is quite clearly a step in the right direction for all professionals seeking labour mobility throughout North America under NAFTA.

7.9 Further Research

This study has implications for further studies of the Cascadia region, and especially whether or not the construct of "Cascadia" is a useful one for high tech firms located in both Vancouver and Seattle. Based on the evidence there appears to be very little connectivity within Cascadia per se for the majority of the firms that I interviewed. Their links are much wider to other parts of North America and beyond. Earlier in the Chapter, I speculated that Vancouver and Seattle were likely to develop their high technology sectors in different ways. 'Cascadia' remains as a figment in the imaginations of many that live within this region. Overall, it would appear that rather than a concrete reality, more work needs to be conducted regarding the continental and global networks of the firms in Seattle and Vancouver. This is especially true for the biotechnology sector. Additionally, comparative work also needs to be conducted on border management involving knowledge workers along the U.S.-Mexico border, in the Singapore Growth Triangle, between Australia and New Zealand, and within the dynamic zone between Eastern and Western Europe. In an era of increasing use of information technology in growth oriented business and regions there is a need for further research generally regarding the international regional movements of the highly skilled.
Bibliography


264


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Scott, A. J. “The role of large producer in industrial districts: a case study of high technology houses in southern California,” Regional Studies. 23. 405-416.


Appendix 1
Appendix 2
The Canada-U.S. Border within the Cascadia/Pacific Northwest Region and High Tech Labour Mobility Under NAFTA

Kathrine Richardson – Ph.D. Candidate, The University of British Columbia

Canada/U.S. Immigration Officials – The primary object of this particular component of research subjects is to gain a greater understanding of Citizenship and Immigration Canada and the U.S. Department of Homeland Security and its functions within the cross border region between Vancouver and Seattle. Also, this component of the research will help to shed light on how both Canadian and U.S. immigration officials interpret, issue, and adjudicate TN statuses under Chapter 16 of the NAFTA.

1. How does this particular border crossing differ from other border crossings between Vancouver and Seattle? The Canada-U.S. border? The U.S. Mexico border?

2. Has the newly created Department of Homeland Security (DHS) shifted or changed responsibilities for the development and/or adjudication of NAFTA statuses? What about professional immigration/labour mobility in general?

3. I was curious about levels of staffing since September 11. Have you hired more DHS officers for the various ports of entry between Vancouver and Seattle? If “yes”, are the backgrounds of these new hires similar to existing personnel, or does it differ? (e.g. work experience, education, gender, cultural background, familiarity with languages other than English, and so forth)

4. I am curious to know about the flow of professionals moving back and forth across the border in this area. Can you tell me about this?

5. How has NAFTA influenced the Vancouver-Seattle area? How does this compare to other Canada-U.S. border regions?

6. Can you give me some idea as to how many people have come through your port of entry over the past three to five years seeking NAFTA status for the TNs, L-1s, and B-1s? (Statistics would be helpful here)

7. Are statistics kept at the Seattle District level regarding the movement of professionals? If “yes”, then how far back do they go? Is there a possibility that I may review this data?

8. Have the events from September 11 had any effect on Canadians seeking NAFTA status within your port of entry?
9. What particular professions do most people seek NAFTA status for? What are other professions that people seek NAFTA status for? What professions are easy to issue NAFTA status for? Why are they "easy"? What professions are most difficult to issue NAFTA status for? Why are they "difficult"?

10. Can you walk me through the process that a professional seeking NAFTA status would go through here at your Port of Entry?

11. What sort of training do your officers go through in regards to interpreting NAFTA status applications?

12. What resources are available to an immigration officer if they have a question regarding a NAFTA status?

13. As you know, Canada has a fairly open immigration policy when it comes to admitting professionals originating from other countries. I am curious to know about your experience with issuing NAFTA statuses to Canadian citizens who have birthplaces and have considerable socialization experiences outside of Canada? For example, a Canadian citizen who was born in China and attained an undergraduate degree in computer sciences at a Chinese university, spent six months working for a Vancouver software firm, and now is being offered a job in Bellevue, Washington as a computer engineer. How would this be handled? Can this scenario be considered common or frequent? Would the fact that the person's degree is being issued from a foreign country be difficult to interpret?

14. If a person's NAFTA status application was denied, what is the recourse for the applicant?

15. In regards to protocol, does a supervisor have final authority on a NAFTA status denial, or is it left to the reviewing officer to make this decision?

16. Can you tell me about "Port Shopping"?

17. Does the expedited removal process apply to NAFTA applicants at all ports of entry within the Seattle District including the Vancouver International Airport? Do you have statistics for your district and/or port of entry regarding how many people have gone through the expedited removal?

18. Overall, do your think that the NAFTA status has been helpful in facilitating the movement of professionals across the Canada-U.S. border?

19. Can you think of ways to improve the current process of adjudicating, administering, and issuing NAFTA statuses?

20. Is there anything else you would like to add?
Appendix 3
1. Can you tell me a little bit about your line of work? Do you practice Canadian immigration law, American immigration law, or both? What types of clientele do you provide professional services for, eg. Large firms (types), small firms (types), individuals, etc.? What is your volume of clients?

2. Can you tell me a little bit about Chapter 16 of NAFTA, which deals with North American labour mobility?

3. What are your insights into how this has influenced labour mobility across the Canada-U.S. border?

4. In your professional experience, what particular professional categories have the most problems attaining NAFTA status?

5. What about the movement of professionals working in the high tech sectors, has the TN status, which falls under Chapter 16 of the NAFTA, helped to facilitate the flows of North American professionals across the border of Canada and the U.S.?

6. If the TN status has paradoxically made more difficult the movements of high tech professionals across the Canada-U.S. border, what do you think are possible reasons for this?

7. In retaining the confidentiality of your clients, is it possible to provide me with more detailed examples of your clients' experiences in seeking a TN status/visa?

8. What difficulties do they experience, if any?

9. Do you have any empirical data which may help to shed light on the complexities of attaining the TN status/visa?

10. What other type of visas do you use for professionals moving back and forth across the Canada-U.S. border? What are their strengths and weaknesses?

11. What do you recommend for strategies in order to alleviate some of these problems, if there are any?

12. Is there anything else you would like to add?
List of Firms Interviewed

Canadian Firms

Firm – V1 – Vice President, Human Resources, Richmond, B.C. October 17, 2002


Firm V-4 – Human Resource Associate, Burnaby, B.C. April 28, 2004

Firm V-5 - Human Resource Manager, Burnaby, B.C. April 15, 2004
Firm V-5 – Human Resource Associate/Immigration Specialist, Burnaby, B.C. April 28, 2004

Firm V-6 – Project Manager, Vancouver, B.C. April 23, 2004

Firm V-7 – Human Resource Specialist, Vancouver, B.C. June 9, 2004

Firm V-8 – Vice President, Administration, Richmond, B.C. June 9, 2004

Firm V-9 – Immigration Specialist, Burnaby, B.C. July 14, 2004

Seattle Firm

Appendix 5
Listing of Immigration Officers/Policy Experts Interviewed

Canadian

C-IO 1, Immigration Policy Specialist, Vancouver, B.C. April 9, 2002
C-IO 2, Foreign Worker Specialist, Vancouver, B.C. April 9, 2002
C-IO 3, Senior Policy Advisor, Vancouver, B.C. July 23, 2002
C-IO 4, Douglas Port Director, Vancouver, B.C. August 28, 2003
C-IO 5, Douglas Port Supervisor, Douglas POE. September 23, 2003
C-IO 6, Douglas Port Supervisor, Douglas POE. September 3, 2003
C-IO 7, Policy Analyst, DFAIT/CIC Headquarters, Ottawa, Canada. March 26, 2004
C-IO 8, Policy Analyst, DFAIT/CIC Headquarters, Ottawa, Canada. March 26, 2004

U.S.A.

US - IO 1, Vancouver International Airport Port Director, Richmond, B.C. January 28, 2003.
US - IO 7, U.S Legacy INS Regional Director, Vancouver, B.C. May 28, 2002
Appendix 7
Memorandum for Regional Directors

Subject: Processing of Applicants or Admission under The North American Free Trade Agreement

15.5 NAFTA Admissions.

(a) General. The North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico entered into force on January 1, 1994. Chapter 16 of NAFTA pertains to Canadian and Mexican citizens seeking classification as one of four types of business persons:

- B-1 temporary visitors for business under section 101(a)(15)(B) of the Act;
- E-1 or E-2 treaty traders and treaty investors under section 101(a)(15)(B) of the Act;
- L-1 intracompany transferees under section 101(a)(15)(L) of the Act; and
- TN professional level employees under section 214(c) of the Act.

The NAFTA is an historic accord governing the largest trilateral trade relationship in the world and covers trade in goods, services, and investments. NAFTA facilitates the movement of U.S., Canadian, and Mexican businesspersons across each country's border through streamlined procedures. The NAFTA maintains the provisions of existing laws that ensure border security and protect indigenous labor and permanent employment. Further, NAFTA fully protects the ability of state governments to require that Canadians and Mexicans practicing a profession in the United States are fully licensed under state law to do so. Current U.S. law and practice relating to exclusion and deportation of aliens applies unchanged to all business persons seeking temporary entry under the provisions of Chapter 16 of the NAFTA.

The immigration-related provisions of NAFTA are similar to those contained in the United States-Canada Free-Trade Agreement (CFTA), which was suspended with the entry into force of NAFTA.

The NAFTA is an international agreement subject to scrutiny by the public, the media, other governments and the Temporary Entry Working Group. INS inspectors must maintain the highest standards of objectivity, courtesy and professionalism when processing applicants for admission.

(e) L Classification as an Intracompany Transferee.

(2) Terms of Admission. A petition must be filed in the applicant's behalf to accord the alien classification as an L-1. The petition must be submitted by the qualifying entity to the Service on Form I-129, Petition for Temporary Worker, in accordance with the instructions for that form. The Service will provide the NAFTA intracompany transferee and dependents with Forms I-94 at the time of admission, endorsed in the same manner as other class L admissions. The I-94 is the employment authorization document for the L-1 and may be presented to the Social Security Administration for the purpose of applying for a social security number. Periods of admission and extension for NAFTA L aliens are the same as for other L nonimmigrants.

(A) Citizens of Canada. A citizen of Canada is not required to, but may obtain, a nonimmigrant visa. The applicant must establish Canadian citizenship.

The I-129 petition may be filed (in duplicate) by the U.S. or foreign employer in advance of entry or in conjunction with an application for admission. If the alien wishes to file in advance, the petition must be submitted to the appropriate Service Center and should be submitted at least 30 days in advance of the expected date of entry. The applicant must present evidence of the approved petition (form I-797, Notice of Approval) at the time of application for admission. If the petition is filed in conjunction with an application for admission, such filing must be made in person with an immigration officer at a Class A port-of-entry located on the U.S.-Canada land border or at an U.S. pre-clearance/pre-flight station in Canada. Petitions may not be submitted to a port-of-entry in advance. The petitioning employer need not appear, but the Form I-129 must bear the authorized signature of the petitioner and all documentation and the appropriate filing fee must accompany the petition. The port of entry may accept appointments but the use of appointments may not preclude an applicant who did not make an appointment from being processed at the time of his/her application for admission. The I-129 petition is complex and requires sufficient time for review by the processing officer. The burden of processing time rests with the applicant not with the Service. Applicants for admission filing I-129 petitions at
Pre-flight locations in Canada must allow sufficient time prior to the departure of their flight for processing.

(f) TN Classification as a Professional.

(3) Qualifications. The NAFTA professional must meet the following general criteria:

- Be a citizen of a NAFTA country (Canada or Mexico).
- Be engaged in professional-level activities for an entity in the United States. Only those professional-level activities listed in Appendix 1603.D.1 to Annex 1603 are covered under the NAFTA. The applicant must establish that the professional-level services will be rendered for an entity in the United States. The NAFTA professional category is not appropriate for Canadian or Mexican citizens seeking to set up a business in the United States in which he or she would be self-employed.
- Be qualified as a professional. The applicant must establish qualifications to engage in one of the activities listed in Appendix 1603.D.1. The Minimum Education Requirements and Alternative Credentials are listed in the Appendix for each professional-level activity. The regulation requires that degrees, diplomas, or certificates received by the TN applicant from an educational institution outside of the United States, Canada, or Mexico must be accompanied by an evaluation by a reliable credentials evaluation service that specializes in such evaluations. Experiential evidence should be in the form of letters from former employers. If the applicant was formerly self-employed, business records should be submitted attesting to that self-employment.
- Meet applicable license requirements. To practice a licensed profession, Canadian and Mexican entrants must meet all applicable requirements of the state in which they intend to practice.

Note: In certain circumstances, although a profession may generally require licensing, there may be duties within the occupation that do not require licensing. For example, an architect must be licensed to sign architectural plans, etc. but not all professional-level duties of an architect require licensure (an architect can work on development of plans but be precluded from signing the plans).

Similarly, a dentist requires a license in the U.S. to practice dentistry but if a Canadian citizen is coming to the U.S. as a TN to give a seminar on dentistry, no U.S. license would be necessary. The Canadian may establish qualifications as a dentist by showing a provincial license or a D.D.S., D.M.D., Doctor en Odontologia en Cirugia Dental.

This is analogous to the lawyer who seeks admission as a TN to offer professional-level legal advice about Canadian law but who is not going to practice before any state bar in the U.S.— this Canadian citizen would need only to establish qualification as a lawyer— a J.D. or provincial bar membership could suffice.

- Be in the United States temporarily. The NAFTA professional must establish that the intent of entry is not for permanent residence.

(4) Application Process.

(A) Citizens of Canada. A citizen of Canada may apply for entry to the U.S. as a NAFTA professional at major ports-of-entry, airports handling international flights, or at the airports in Canada where the Service has established a pre-clearance/pre-flight station. The applicant must submit documentary proof that he or she is a citizen of Canada. Such proof may consist of a Canadian passport or birth certificate together with photo identification. No visa is required for entry, but the applicant may seek visa issuance if desired.

An application for entry as a TN professional is an application for admission. It must be made, in person, to an immigration officer at the same time the individual is applying for admission to the United States. There
Appendix 8
Appendix 9
Appendix 10
Mr. Mark Kenmore  
AILA Chapter Chair  
1620 Statler Towers  
Buffalo, New York 14202

Dear Mr. Kenmore:

My staff has informed me that attorneys routinely appear at the ports-of-entry to represent their clients during the secondary inspections process for such work authorizations as TN and L-1 classification under the North American Free Trade Act.

Title 8 CFR 292.5(b) states:
... nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody.

This regulation governs primary and secondary inspections conducted at ports-of-entry and also deferred inspections, which are a continuation of a secondary inspection conducted at an onward office.

Please be advised that effective immediately attorneys will no longer be allowed to assist their clients at the secondary inspections counter, unless requested by the inspecting officer. Attorney's that appear at a port-of-entry with a client will be required to remain in the port-of-entry waiting area until the secondary inspection is completed.

This action is being taken in response to our need to increase security at our ports-of-entry. It will also enable us to do a better job of protecting the privacy and confidentiality concerns of other secondary inspections cases, as well as to ensure that port-of-entry operations are conducted in compliance with 8 CFR 292.5(b).

Your assistance in disseminating this information to your membership would be greatly appreciated.

Sincerely

Michael P. D’Ambrosio  
Director  
Field Operations, Buffalo

Vigilance Service Integrity
Appendix 11
Listing of Immigration Attorneys Interviewed

**Canadian Attorneys**

C – A1, North Vancouver, B.C. August 14, 2002

C-A2, Vancouver, B.C. July 24, 2002 (US-A 10)

C-A3, Vancouver, B.C. August 8, 2002

C-A4, Vancouver, B.C. September 9, 2002

C-A5, Vancouver, B.C. February 13, 2003 (US-A 11)

C-A6, Vancouver, B.C. January 12, 2004

**U.S. Attorneys**

US – A1, Vancouver, B.C. July 9, 2002

US – A2, Vancouver, B.C. July 14, 2002

US – A3, Vancouver, B.C. August 16, 2002


US – A5, Toronto, On. March 8, 2004

US-A6, Vancouver, B.C. April 26, 2004


US – A9 Seattle, Washington. October 24, 2004

US-A10, Vancouver, B.C. July 24, 2002 (C-A2)

Appendix 12
Appendix 13
March 22, 2002

MEMORANDUM FOR ALL REGIONAL DIRECTORS
ALL DISTRICT DIRECTORS

FROM: James W. Ziglar /s/
Commissioner
Immigration and Naturalization Service

SUBJECT: Zero Tolerance Policy

Effective immediately, I am implementing a zero tolerance policy with regard to INS employees who fail to abide by Headquarters-issued policy and field instructions. I would like to make it clear that disregarding field guidance or other INS policy will not be tolerated. The days of looking the other way are over.

Regional Directors and District Directors are expected to read and understand all field guidance and then it is their responsibility to ensure that the substance of all field guidance is properly and effectively communicated to all personnel, in a timely manner.

It is also imperative that each employee review and understand issued field guidance. Each supervisor is to ensure that each employee has not only read the field guidance, but that they are also implementing the guidance. Individuals who fail to abide by issued field guidance or other INS policy will be disciplined appropriately.
Appendix 14
PROFESSION 1/  MINIMUM EDUCATION REQUIREMENTS

AND ALTERNATIVE CREDENTIALS

General
Accountant
Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A. or
C.M.A.

Architect
Baccalaureate or Licenciatura Degree; or state/provincial license

Computer System Analyst
Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma
3/ or Post-Secondary Certificate 4/ and three years experience

Disaster Relief Insurance
Claims Adjuster (claims adjuster employed by an
insurance company located in the territory of a Party,
or an independent claims adjuster)
Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in appropriate areas of insurance adjustment pertaining to disaster relief claims

Economist
Baccalaureate or Licenciatura Degree

Engineer
Baccalaureate or Licenciatura Degree; or state/provincial license

Forester
Baccalaureate or Licenciatura Degree; or state/provincial license

Graphic Designer
Baccalaureate or Licenciatura degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience

Hotel Manager
Baccalaureate or Licenciatura degree in hotel/restaurant management; or post-secondary diploma or post-secondary certificate in hotel/restaurant management, and three years experience in hotel/restaurant management

Industrial Designer
Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience

Interior Designer
Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience

Land Surveyor
Baccalaureate or Licenciatura Degree; or state/provincial/federal license

Landscape Architect
Baccalaureate or Licenciatura Degree

Lawyer (including Notary in the Province of Quebec)
L.L.B., J.D., LL.M., B.C.L. or Licenciatura Degree (five years); or
<table>
<thead>
<tr>
<th>Profession</th>
<th>Education/Credentials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Librarian</td>
<td>M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)</td>
</tr>
<tr>
<td>Management Consultant</td>
<td>Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement</td>
</tr>
<tr>
<td>Mathematician (including Statistician)</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Range Manager/Range Conservationalist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Research Assistant (working in a post-secondary educational institution)</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Scientific Technician /Technologist 5/</td>
<td>Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research</td>
</tr>
<tr>
<td>Social Worker</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Sylviculturist (including Forestry Specialist)</td>
<td>Baccalaureate or Licenciatura Degree</td>
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<tr>
<td>Technical Publications Writer</td>
<td>Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate and three years experience</td>
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<tr>
<td>Urban Planner (including Geographer)</td>
<td>Baccalaureate or Licenciatura Degree</td>
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<tr>
<td>Vocational Counselor</td>
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<tr>
<td>Medical/Allied Professional</td>
<td>D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental, or state/provincial license</td>
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<tr>
<td>Dentist</td>
<td>Baccalaureate or Licenciatura Degree</td>
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<tr>
<td>Dietitian</td>
<td>Baccalaureate or Licenciatura Degree</td>
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</table>
(Mexico and the United States) 6/

- Nutritionist  
  Baccalaureate or Licenciatura Degree  
- Occupational Therapist  
  Baccalaureate or Licenciatura Degree; or state/provincial license  
- Pharmacist  
  Baccalaureate or Licenciatura Degree; or state/provincial license  
- Physician (teaching or research only)  
  M.D. or Doctor en Medicina; or state/provincial license  
- Physiotherapist/Physical Therapist  
  Baccalaureate or Licenciatura Degree; or state/provincial license  
- Psychologist  
  State/provincial license; or Licenciatura Degree  
- Recreational Therapist  
  Baccalaureate or Licenciatura Degree  
- Registered Nurse  
  State/provincial license; or Licenciatura Degree  
- Veterinarian  
  D.V.M., D.M.V. or Doctor en Veterinaria; or state/provincial license  
- Scientist  
  Baccalaureate or Licenciatura Degree  
- Agriculturist (including Agronomist)  
  Baccalaureate or Licenciatura Degree  
- Animal Breeder  
  Baccalaureate or Licenciatura Degree  
- Animal Scientist  
  Baccalaureate or Licenciatura Degree  
- Apiculturist  
  Baccalaureate or Licenciatura Degree  
- Astronomer  
  Baccalaureate or Licenciatura Degree  
- Biochemist  
  Baccalaureate or Licenciatura Degree  
- Biologist  
  Baccalaureate or Licenciatura Degree  
- Chemist  
  Baccalaureate or Licenciatura Degree  
- Dairy Scientist  
  Baccalaureate or Licenciatura Degree  
- Entomologist  
  Baccalaureate or Licenciatura Degree  
- Epidemiologist  
  Baccalaureate or Licenciatura Degree  
- Geneticist  
  Baccalaureate or Licenciatura Degree  
- Geologist  
  Baccalaureate or Licenciatura Degree  
- Geochester  
  Baccalaureate or Licenciatura Degree  
- Geophysicist (including Oceanographer in Mexico and the United States)  
  Baccalaureate or Licenciatura Degree
<table>
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<tr>
<th>Profession</th>
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<td>Pharmacologist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Physicist (Including Oceanographer in Canada)</td>
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<td>Plant Breeder</td>
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<td>Soil Scientist</td>
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<td>University</td>
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Appendix 15
Source: Thomas Hacker and Associates, 1997
Appendix 16
Appendix 17