

At the Border, Fees Are Hurting Trade

Canadian commerce tends to involve multiple crossings, and those costs can quickly add up.

BY MATTHEW NOLAN

The United States and Canada have long enjoyed a special relationship with many decades of peaceful coexistence along the border, deeply rooted economic and cultural ties, and, of course, a mutual affinity for hockey. Indeed, the special relationship is exemplified by the fact that President Barack Obama's first foreign trip as president, coming in February one month into his term in office, was to Canada.

International Report: Canada



Over the years, the economies of the two countries have grown ever closer together. Today, they are practically intertwined. Up until last year Canada was our leading trade partner (and may regain that status given the reductions in China trade). Canada supplies a large percentage of our imported energy. The importance of our relationship resulted in ground-breaking free trade agreements, first the Canada-U.S. Free Trade Agreement, and later the North American Free Trade Agreement, which promised to remove border impediments to trade.

But the post-9/11 environment has heightened the focus on security, including border management with Canada. This new environment is characterized by numerous "enhanced" security measures, and attendant fees, which tend to restrict or reduce the benefits of cross-border trade. These measures were initially imposed indiscriminately, with little regard for the potential adverse effects on cross-border trade, and without sufficient consultation or cooperation with our Canadian neighbors.

Although more recent initiatives have attempted to reverse this course to some extent, we are still in an environment where security tends to trump trade, even though it should be possible to achieve both without injuring either.

PAPER BARRIERS

As one example of how security trumps trade, consider

the Western Hemisphere Travel Initiative, which establishes acceptable identification documentation that travelers may present upon entry into the United States from Canada (along with Mexico, and the Caribbean). It will be fully implemented at land and sea ports of entry in June 2009.

Although the initiative has been improved since its initial unveiling, the program requires new forms of documentation for personal travel like specially issued "enhanced drivers licenses" or a passport. Reports from border areas such as Buffalo, N.Y., clearly indicate that these types of new requirements and uncertainty have harmed casual cross-border traffic.

There have also been many programs to try to bridge the security/open trade divide. The most recent initiative was the Security and Prosperity Partnership and its private sector counterpart the "North American Competitiveness Committee" begun in 2004 to address border security, trade, and travel after 9/11. Unfortunately, the partnership has been long on rhetoric and short on concrete achievements in reducing trade impediments.

The governments have also developed several trusted-traveler programs such as FAST and NEXUS to facilitate movement of people and goods. These programs are administered jointly by U.S. Customs and Border Protection and the Canadian Border Security Agency. They have been helpful but contain their own security, registration, and paperwork requirements.

A PROLIFERATION OF FEES

Security costs money, and that has led to a proliferation of border and inspection fees. These fees, while seemingly innocuous in specific cases, have a cumulative effect that reduces North American competitiveness.

In fact, many Canadian and American businesses claim border charges such as customs and agriculture user/inspection fees (such as certain specific user fees and harbor maintenance fees discussed below) disproportionately affect Canadian exporters versus other major exporters to the United States.

Unfortunately, these claims are difficult to track through

official U.S. government statistics, but many businesses and academic researchers have attempted to analyze this effect. One such study identified patterns of trade that suggest Canada does bear a greater burden. For instance, when a container arrives from China, it crosses the border one time, and therefore incurs one set of border and inspection fees. But trade with Canada tends to involve multiple crossings. For example, in building a car, components may cross the border five or more times as the finished auto is completed. Under U.S. law, the components are subject to inspection and fees on *every* crossing.

Although fees on any individual shipment may be relatively small, given the large number of repeat U.S.-Canadian border crossings, those costs can quickly add up. Today, every dollar counts.

As important, inspections inevitably cause some delays. Studies show that a majority of Canadian exports to the United States come from the automobile or related industries. Thus, these fees potentially could have a particularly acute impact on auto/component shipments from Canada.

USER AND INSPECTION FEES

Many of these fees have been in place since the mid-1980s, but they have increased in recent years. The government has said that the increases were due to increased inspection costs, which at least indirectly are due to increased security costs of the post-9/11 environment. Moreover, there is little way to track where the money from the fees is spent. In fact, these fees often have little relation to the inspection services provided.

In particular, these fees include the conveyance and passenger user fees authorized by the Consolidated Omnibus Budget Reconciliation Act of 1985, the Agricultural Quarantine Inspection User fee, the merchandise processing fee authorized by the Omnibus Budget Reconciliation Act of 1986, and the Harbor Maintenance Fee.

- **COBRA user fees:** The conveyance and passenger user fees were first established by the Consolidated Omnibus Budget Reconciliation Act of 1985; the merchandise processing fee was established by the Omnibus Budget Reconciliation Act of 1986. The user fees are temporary and are set to expire on Sept. 30, 2014. U.S. Customs collects the COBRA fee from carriers and deposits it into the Customs User Fee Account to defray costs of performing commercial border inspections of commercial passengers, vessels, vehicles, aircraft, and cargo. COBRA also established fees for processing passengers and carriers such as trucks, barges, railroad cars, and private aircraft.

- **Merchandise Processing Fee:** This fee is a charge for processing merchandise entering the United States based on the value of the merchandise. It is paid by importers in addition to any COBRA fees. These collections are also maintained in a permanent Treasury account (the Customs User Fee Account) used to offset the cost of Customs noninspectional and commercial enforcement operations. The maximum fee per shipment is \$485; the minimum fee is \$25.

- **Harbor Maintenance Fee:** This fee was established in 1986 as part of the Water Resources Development Act, which authorized a harbor maintenance fee for the U.S. Army Corps of Engineers to improve American channels and harbors. In 1990, Congress tripled the ad valorem fee. By 2007, a substantial surplus of \$3 billion had accrued in the Harbor Maintenance Trust Fund.

- **Agriculture user fees:** The Agriculture Quarantine Inspection fee is set by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service and covers activities such as inspections of passengers and cargo at ports. In 2007, the service raised the fee, claiming that the balance in its reserve fund was dangerously low, endangering its ability to conduct inspections (even though in 2002 Customs had been given most of the inspection responsibility). In 2007, the U.S. government removed the Canadian exemption for these APHIS fees because it claimed agricultural costs for inspecting Canadian shipments were increasing and needed more funding.

EFFECTS ON TRADE

NAFTA mandates that there be no increases to "customs user fees," and thus shipments from Canada have traditionally been exempt from a merchandise processing fee. Importers must invoke NAFTA to be exempt from the fee, however. Anecdotal evidence indicates that NAFTA is not claimed on up to 45 percent of shipments from Canada, meaning these shipments are charged the fee. In many cases, importers do not consider it worth the effort to comply with sometimes complex NAFTA eligibility requirements. In others, the product simply does not qualify as NAFTA eligible.

These concerns are hard to measure because U.S. law does not require Customs and the Census Bureau—the two agencies that collect and maintain import statistics—to maintain much of the specific data for such calculations.

For example, Customs is not required to maintain information on the number of border crossings by transportation mode (vessel, truck, rail, air). Census maintains values for Canadian imports into the United States for air and vessel conveyances only; neither Customs nor Census maintains import values by rail or truck. Neither agency maintains information on the amount of user fees paid by imports from specific countries.

A U.S. Government Accountability Office report in February 2008 examined the customs and agriculture user fee issue. This GAO report covered only air and sea customs fees. There is still no comprehensive study on land border crossing fees, which is the vast majority of shipments from Canada.

The report confirmed that Customs and the USDA cannot fully account for the fees collected and that they are used for the purpose for which they are assessed. The report concluded that without regular, substantive fee reviews, stakeholders (such as agencies, importers, carriers, and Congress) lack complete information about changing program costs and whether the agencies are fully using the fees

for the purposes authorized. It recommended that a User Fee Advisory Committee be created.

NEXT STEPS

In its response to the GAO report, Customs indicated that it broadly agreed with the report and would institute measures to adopt the report's recommendations. Most of these measures were scheduled to be completed by late 2008. Congress and the new administration should review agency steps in implementing these measures and findings.

Another solution could be to request a Section 332 investigation concerning the effect of border fees on Canadian/U.S. trade and the two countries' economic relationship. Section 332 of the Tariff Act of 1930 directs the U.S. International Trade Commission to conduct investigations into trade and tariff matters upon the request of certain government officials (the president, the U.S. House Committee on Ways and Means, the U.S. Senate Committee on Finance, or either branch of Congress) or upon the commission's own initiative.

Section 332 does not provide for any form of import relief, but using the commission's resources and expertise to study these user fees may help to better understand these issues.

These two solutions are not mutually exclusive but

should be mutually reinforcing. Indeed, review of the user fee issue could easily dovetail into a review of overall border management issues that a new administration would naturally be conducting.

The point of all this is to emphasize that the United States and Canada have two highly integrated economies. Canadians buy billions of dollars of U.S. products and services, and we consume billions of dollars of Canadian products and services, including oil and natural gas critical to our national security.

Improving North American competitiveness is good for both countries, and we should look for ways to reduce impediments and to cooperate on shared security. The creation of more border impediments runs counter to these goals, and we should seek ways to reduce them wherever possible. It is possible to have security *and* free trade in this context.

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