



**BORDERS IN
GLOBALIZATION**





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Border Challenges - Atlantic Canada Ports

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Introduction

With its relatively sparse population and immense distances between major urban centers, Canada requires an efficient transportation network to move goods and people across the country and beyond. Canada's ports serve as key trade gateways. The national economy is underpinned by international trade and is dependent on efficient and productive ports. Ports in Atlantic Canada handle more than 25 percent of the Canada's international maritime tonnage. This is a significant amount and is more than four times the Region's overall contribution to Canada's Gross Domestic Product.ⁱ

Maritime trade also underpins the global economy. Today, ships carry almost four fifths of the volume worlds merchandise trade and 70 percent by value.ⁱⁱ Seaports play a key role in transferring trade goods to and from ships to landside intermodal rail and road transportation. North America is fortunate in having many deep-water, natural ports around its many coastlines on the Atlantic and Pacific coasts coupled with the world's longest marine corridor, the Great Lakes and St. Lawrence River serving the continent's industrial heartland. Much of Canada's international trade depends on efficient ports integrated with extensive intermodal transportation systems to move landed goods and material through national supply chains to inland destinations. Most maritime trade crosses borders, including continental cargo movements to and from Canada's major trading partner the U.S.

This chapter examines the border challenges facing Atlantic Canada ports. In-depth interviews were undertaken in April – June 2016 with senior port officials in Halifax, Saint John, Strait of Canso and Belledune, senior government officials in Transport Canada and the Canada Border Services Agency, and container terminals. The interviews were open-ended discussions based on questions relating to borders and ports.

To provide context, the first section in this chapter examines global and regional maritime trade and the challenges facing Atlantic Canada ports in today's turbulent maritime environment. The next section outlines the port's various border challenges. The chapter ends with a discussion of the ports' policy challenges and the steps needed to enhance the role of Atlantic Canada ports in supporting regional and national economies.

Maritime Trade

International cargo movement is forecast to grow. In its October 2014 *Global Economy Watch*, PWC predicted that the world's Gross Domestic Product (GDP) will increase at an annual rate of about 3.2 percent through to 2030.ⁱⁱⁱ Global population will rise by over 1 billion in the same period, generating additional trade growth.^{iv} By 2030, Canada expects to

have an additional 5.6 million people.^v All this projected growth is expected to double world seaborne trade from 10 billion tonnes in 2014 to 22 billion by 2030.^{vi}

Increasingly, national economies have become global as industries seek international sources for inexpensive raw materials and lower cost manufacturing. The “container revolution” underpinned global economic growth. Over the past several decades the rapid rise of containerized shipping led to significant freight rate reductions that in turn fueled the expansion of the global economy, making “the world smaller and the world economy bigger.”^{vii} For example, shipping goods is so inexpensive today that it makes financial sense for Scottish cod to be sent to China for filleting and then shipped back to Scotland for retail sale rather than paying more expensive Scottish fish plant workers.^{viii}

Many larger North American container ports serve as distribution hubs for retail and consumer goods. Distribution centres have been established in ports on both coasts to ensure the continuity of continental logistics supply chains. Creating supply chain resilience allows shippers to continue to distribute commodities despite occasional disruptions caused by labour strife in specific ports or natural and man-made calamities. The World Bank has recognized Canada’s relatively high level of logistics performance, ranking it 14th in its the Logistics Performance Index.^{ix}

Ships travel on well-defined international sea routes. Today, traditional maritime routes are subject to change as the Panama Canal has expanded to carry larger vessels, a considerably larger canal is being proposed through Nicaragua and the Suez Canal has been widened. These changes will inevitably affect sea routes and ports as shipping lines seek the most cost effective routings.

As trade has grown, so have ships. Indeed, the increasing size of ships and their growing specialization continue to challenge ports and landside intermodal systems in efficiently serving these behemoths. For example, container ships have grown to gigantic proportions carrying over 20,000 TEUs (twenty-foot equivalent container units), bigger than aircraft carriers. Their increased length, beam and draught limit their ability to service many of the world’s ports. Ultra Large Container Carriers (ULCCs) and similar larger ships in other trades have created the need for increased shore side storage, higher peaking factors, and faster ship-to-shore transfer velocity along with truck congestion at terminal gates and on urban streets.^x Several Atlantic Canada ports are capable of handling these large ships.

The introduction of ULCCs into the world’s container fleet has led to cascading older large 10,000 TEU container ships into other routes. This is leading to further capital investment requirements in medium sized ports to accommodate them. For example, the Port of Saint John recently announced an investment of \$205 million to upgrade and consolidate existing terminals to handle larger vessels.^{xi} The Angus L. Macdonald Bridge in Halifax harbour is undergoing a \$207 million refit to increase its height by 2.1 meters in part to enable the passage of larger container ships to the container terminal in the Bedford Basin.^{xii} Halterm, Halifax’ second container terminal announced a \$4.5 million investment to complement its recent \$20 million purchase of two super post-Panamax cranes to serve larger vessels.^{xiii} In anticipation of future container growth, both Sydney and Canso are promoting the

development of new container terminals in their ports. After many years of planning the Port of Sydney recently linked with the China Communications Construction Company to undertake the design, construction and ownership of a \$1.2 billion deep-water container terminal.^{xiv} Similarly, the long awaited \$350 million automated Melford container terminal in Canso has announced a partnership with SSA Marine and Cyrus Capital Partners to move the project forward.^{xv}

Atlantic Canada’s major ports (Saint John, Canso, Halifax, Belledune and St. John’s) handled 67.6 million tones of cargo in 2015, more than 13 percent of Canada’s total tonnage.^{xvi} To a degree, Atlantic Canada ports tend to specialize in terms of the cargo they handle. For example, container shipments primarily move through Halifax and Saint John, with a small domestic throughput in St. John’s. As shown in Table 1, Saint John is a Atlantic Canada’s largest port in terms of tonnes handled, primarily petroleum product. Canso follows them with the second highest tonnage of crude oil, while Halifax dominates in container throughput. Other Atlantic ports such as Belledune and St. John’s handle smaller tonnages. Similarly, other smaller ports in Atlantic Canada have relatively low throughputs and tend to specialize in handling regional cargos and serving ferries.

Table 1 Atlantic Canada Ports - Commodity Throughputs (2015)

Ports	Tonnage (million)	Containers (1000 TEU)	Cruise Ships	Cruise	Primary Commodities Handled
Saint John	26.4	97	59	120,000	Petroleum products, potash, containers
Canso	23.8*	----	----	----	Crude oil, aggregates, metallic ores and coal
Halifax	3.8	418	141	222,000	Containers, Autoport (>100,000 cars/trucks), petroleum, gypsum,
St. John’s	1.8	n/a	n/a	n/a	Containers, fish products, offshore energy supply
Belledune	1.8	----	----	----	Coal, pet coke, lead, wood pellets, aggregate
Charlottetown	----	----	77	131,000	----
Sydney	n/a	----	70	90,000	Ferry service
Argentia	n/a	----	----	----	General cargo, ferry service
Corner Brook	n/a	----	10	n/a	Forest and fish products

* 2013 data – latest available

Sources: Brinkley, A (2016) “Canadian Ports Recap 2016”, *Canadian Sailings*, February 22, pp. 6-11; and various port websites.

The global maritime economy is entering a turbulent environment. Canadian ports,

including those in Atlantic Canada face many challenges: serving every larger ships, shifting trade routes due to Panama and Suez Canal expansions, shipping line overcapacity generating record low freight rates, environmental and climate change generating new shipping regulations and driving innovative solutions, and growing safety and security demands. Automation and expanding information technology demand enhanced supply chain efficiency and rapid decision making. At the same time, the digital economy and increased interconnectedness creates cyber security vulnerabilities. Successfully navigating today's turbulent maritime environment by ports and their supply chain partners is critical to the country's continued economic growth.

Border Challenges

Canada Border Services Agency

Canada Border Services Agency (CBSA) officials have an unenviable task. They protect the border by preventing contraband and undesirable persons access the country. But at the same time they are challenged to ensure efficient and speedy border crossings to facilitate trade. The challenge lies in finding an appropriate balance between these two, at times, competing goals.

During the interviews for this study, some pointed out that CBSA tends to favour protectionism in contrast to their U.S. counterparts, Customs and Border Protection (CBP) who appear to support trade facilitation. From previous U.S. port experience, an interviewee claimed, "that in the U.S. CBP does not step in the way of commerce, unlike Canada's more intrusive approach." On the other hand, when discussing the impact of examination fees for targeted containers, a CBSA official demonstrated clear interest in facilitating trade by supporting reduced fees as they were reluctant to target specific importers too many times as impact of the fees could put them out of business.

In the wake of the 9/11 attacks in the U.S., port security changed forever. Shipping lines, port authorities and governments recognized inherent vulnerabilities in international maritime trade. Rapid steps were taken by the International Maritime Organization (IMO) in amending the *International Convention for the Safety of Life at Sea* (SOLAS) to add the "International Ship and Port Facility Security Code" (ISPS). The ISPS Code provides guidance to ports, ships and their national governments on preparing security plans. Canadian ports were quick to respond to the ISPS Code requirements by undertaking risk-based security studies and accessing matching federal funding to address vulnerabilities.

CBSA along with the RCMP and local police provide security in Canada's ports. Although none of the interviewees had security concerns on the ports' landside operations, concerns were raised about waterside security. In particular, the servicing of anchored foreign flag ships in the harbour – how can shore-based vessels be serving anchored vessels be screened?

Beyond the Border Initiative

Canada and the U.S. have had a lengthy history of cross-border cooperation and collaboration. These include the long standing 1909 International Joint Commission managing boundary waters, the joint development and management of the St. Lawrence Seaway, North American Aerospace Defense Command (NORAD) and so forth. The terrorist attack on the World Trade Centre towers in New York in 2001 led to a “thickening” of the U.S. borders for security reasons.

In 2011, to “thin” the Canada – U.S. border, President Obama and Prime Minister Harper issued the “Beyond the Border – A Shared Vision for Perimeter Security and Economic Competitiveness” (BYB). The aim was to “enhance our security and accelerate the legitimate flow of people, goods and services.”^{xvii} Among other goals, the BYB initiative focused on security, trade facilitation and economic growth.

The BYB led to increased cooperation and harmonization between the U.S. CBP and CBSA, including steps to speed legitimate international shipments across the border. A key step was the introduction of an integrated cargo security strategy through a harmonized approach to screening and clearing imported international cargo. The aim was to increase security at the continent’s perimeter and reduce the level of re-examination of imported containers crossing the border – “cleared once, accepted twice.” Pilot projects were initiated at the ports of Prince Rupert on the West Coast and Montreal in the St. Lawrence, where on behalf of CPB, CBSA conducted examinations on U.S. bound containers. The success of these pilot projects led to improved border clearance procedures. The BYB also generated other successful initiatives including: tamper evident technology for container seals, standard regulations on wood packaging materials, harmonized trusted trader programs and electronic single window data transfer.^{xviii}

The full impact of BYB is still to be felt in Atlantic Canada ports. However, despite this, CBSA does target some U.S. bound containers for inspection on behalf of CBP. There continues to be good cooperation between the two border agencies such as at the international ferry crossing between Yarmouth and Portland Maine. The challenge for CBSA in serving passengers on the ferry is its seasonal nature and uncertainty about its continued operation as it is costly to relocate CBSA inspectors to Yarmouth. Further, passengers and vehicles are required to be cleared during a short period once a day.

Container Inspections

CBSA has a significant role in inspecting containers and other international cargoes imported and exported through the larger ports. In smaller ports and coastal areas between ports, cross-border enforcement is an RCMP responsibility.

Almost all import containers (95 percent) pass through CBSA radiation portals in each terminal. Less than one percent of containers trigger an alarm and of those, some 80 percent are cleared quickly as radiation occurs naturally in various commodities such as bananas and gypsum used in drywall.^{xix} In the event of a radiation alarm being triggered in

CBSA headquarters in Ottawa, analysts check the signal against the declared commodity to determine whether it is naturally occurring. If there is still a concern a spectral analysis is undertaken to determine the nature of the radiation. This may lead to an on-dock inspection with specialized car-borne radiation analysis equipment. This equipment can test from a distance thus the suspect container can be stacked 2 or 3 high without the necessity of moving it to a separate area. Terminal operators report that the radiation portals have no impact on container throughput productivity.

More detailed container inspections are undertaken in two ways: random selection of boxes chosen through a CBSA algorithm, and targeted inspections of suspect containers based on the assessment of various risk factors. The actual inspection of selected containers includes: a dockside or pier examination, the use of non-intrusive large-scale imaging (LSI) units, and, if required, a full container de-stuff and detailed examination at a designated off-dock marine container examination facility (MCEF).

Pier examination of suspect containers is undertaken as contraband drugs may be placed into the back of containers either before the doors are locked and sealed or later through the journey as seals can be broken and the doors resealed with a similar lock. A quick pier examination can be done while the container is on the trailer awaiting movement to the container yard, thus not necessarily slowing down container throughput.

Mobile and fixed LSI units are a new technology being deployed in container terminals for non-intrusive X-ray examinations of suspect containers. This technology allows CBSA officials to see what is inside the container. Unlike the former VACIS system based gamma ray inspections, the LSI provides a high definition digitized image enabling inspectors to zoom in on suspect items within the container. Anomalies deep within a container, such as contraband or weapons, can be detected, depending on commodity density. The LSI inspection is useful in determining whether or not a more intensive and intrusive MCEF examination is warranted.

Marine Container Examination Facilities

Moving containers to an off-dock CEF involves a cost to the shipper. Normally, the MCEF is a customs sufferance warehouse operated by a private contractor under CBSA supervision. The shipper's cost includes moving the box to and from the terminal and the charges for de- and re-stuffing the container. The cost for a container examination can mount varying from \$150 to \$7,375, with an average of \$2,030.^{xx} These costs do not include the costs associated with delays in completing the inspection process. The Canadian International Freight Forwarders Association (CIFFA) has also raised concerns about the impact of container examination costs arguing they often penalize small, new entrepreneurial importers who are entering the international market. CBSA's selection process targets such new entrants, as they do not have a clean track record of other more established major importers. CIFFA's concerns include: lack of national standards (the costs and procedures in one port vary from another), lack of accountability, lack of transparency with no record of the examination provided to the shipper. A further concern is the lack of standardization across the country. As pointed out by the BC Chamber of Shipping, "the container examination

program has evolved over the years and there is no consistent approach to the governance of these facilities across Canada. The tariff will depend on the arrangement established with the facility operator in each region.”^{xxi}

The introduction and use of LSI has reduced the number of containers being sent to the MCEF. However, this has led to a higher fee per container for those that are inspected. The cost of operating the CEF is divided by the number of inspections, thus fewer inspections means higher the per container fee. Steps are being taken in Halifax to reduce these costs. The MCEF contractor has reduced their operating hours from 0800-2400 to a single 8-hour daytime shift. In addition, they are seeking permission from CBSA to reduce the size of the secure warehouse to permit other non-secure commercial uses. Container examinations and their associated costs are a particular problem in Atlantic Canada as many shipments arrive from high-risk areas such as the Caribbean and Latin America. This has led to a higher than average number of examinations in Halifax.

As discussed by CIFFA, there is a need to change the fee structure for container examinations. One approach would be to establish a flat fee per container to cover the costs, in a manner similar to CATSA’s standard airport security fee assessed on each passenger. Australia applies an Import Processing Charge (IPC) for each container to cover some of the MCEF costs, with the remainder being paid by the Federal Government.^{xxii} CBSA would likely support this approach, as it could reduce complaints from medium and small size shippers and make the examination process equitable. On the other hand, larger shippers, such as big box retailers, would likely oppose this step for as trusted traders their containers are not checked as frequently. Thus they could argue they should not subsidize other shippers.

While most of CBSA’s attention appears to be placed on examining imports, they also inspect exports. A 2014 CBSA audit found that export examinations rely on intensive manual screening of declaration documents. Halifax and Montreal were the two major Canadian ports with the highest export examination rates, where stolen vehicles in containers are discovered primarily through pier examinations.^{xxiii}

eManifest and Single Window Initiative

eManifest is part of CBSA’s ongoing initiatives to modernize cross-border commercial processes through the use of electronically transmitted and processed data. It requires all carriers, importers and freight forwarders to send advance information about their shipments prior to arrival at the border. eManifest enables CBSA officials to detect high-risk shipments while speeding the crossing of legitimate, low-risk trade.^{xxiv} A companion program, spurred on by BYB, the Single Window Initiative (SWI) aims to reduce the administrative burden on cross-border traders. With SWI, CBSA transmits electronically import information to appropriate government departments and agencies responsible for regulating imported goods. SWI’s data requirements are aligned as close as possible to those of the U.S. CBP. ^{xxv}

However, despite the efficiency gains from LSI inspections, eManifest and SWI, there continue to be inspection challenges. CBSA officials have considerable discretionary powers in carrying out their mandates. As one interviewee stated: “inspectors seem far too willing to pull out the *Customs Act*, which gives them the authority to act as they see fit.” On arrival, CBSA officials may demand the terminal print ship stowage and loading plans to allow them to determine a container bay selection plan. This occurs as some shipping lines do not provide stowage plans electronically prior to arrival. Currently, providing such plans is voluntary but may become mandatory in the future. Such a step would further enhance terminal productivity. In another container terminal in Montreal, the provision of bay stowage plans is not a concern as all vessels provide electronic version in advance.

In addition to following a pre-determined list of targeted containers to be set aside for LSI inspection, CBSA officials may choose to randomly inspect containers being unloaded by one of the terminal’s ship-to-shore gantry cranes. Each selected container is then inspected with a nearby mobile LSI unit, a process taking 3 to 7 minutes per inspection. Following inspection, another offloaded container is shunted to the LSI unit for inspection. Although this process may reduce the terminal’s productivity, adding a further tractor-trailer unit to the gang serving the container crane normally offsets any losses in productivity.

Port and terminal officials would welcome greater consistency in inspection procedures and processes among different CBSA officials and among across the country. Several interviewees pointed out that the lack of consistency generates uncertainty and is disruptive to commercial trade. As one interviewee put it, “CBSA needs to recognize that container terminals need speed in identifying and inspecting target containers, less interruption and intrusion in the terminal’s operations, and less confusion during ship operations.”

Cruise Passengers

Customs clearance for visiting cruise ships visiting Atlantic Canada ports is effective and efficient. Passengers are cleared on board with targeted individuals being pulled aside for secondary clearance. Generally passengers are cleared within 15-20 minutes of ship arrival in port. Cruise ships generally come from low risk areas (such as the U.S.) resulting in a quicker clearance. CBSA officials also observe disembarking passengers for anomalies. Typically, cruise passengers carry small bags and cameras leaving their other goods on board and thus are likely to return. However, if a passenger disembarks with luggage, CBSA would intervene. Ship crews are treated similar to passengers and are usually cleared quickly for short visits ashore. At “home ports” like Vancouver where cruise ships end their voyages with a full passenger disembarkation, CBSA undertakes a full primary and if required, secondary inspection to international passenger arrivals at airports.

Concerns have been raised about CBSA’s need for customs space in cruise terminals. In Halifax, dedicated space for cruise passenger checks is readily provided by temporary partitions in the cruise terminal. In Saint John, such space is also provided. However, there is concern in Saint John about CBSA’s demand for personnel space and jail cells on the 1st floor of the Port Authority’s Diamond Jubilee Building. Although Section 6 of the *Customs*

Act requires the Port Authority to provide such space at its cost, there are concerns that, at times CBSA has had excessive space requirements. For example, the City of Saint John has jail cells close by and the CBSA cells have never been used. Such concerns about CBSA requirements for cruise terminals have been raised in the past.^{xxvi} CBSA is currently reviewing its requirements and standards seeking to consistency in its maritime operations across the country.

Stowaways, Refugees and Desertion

There are few incidents of stowaways and refugees seeking access to Canada via Atlantic Canada ports. Normally the ship's master is aware of them prior to arrival and advises Canadian officials. Terminals cooperate with CBSA and RCMP in dealing with stowaways and refugees. Desertion of ships crew occurs on occasion. In these cases, the ship's master informs CBSA and RCMP who take steps to apprehend deserters. Some deserters leave their ship to seek refugee asylum in Canada. Though as one interviewee noted, Atlantic Canada's relatively sparse population and lack of proximity to major urban areas is likely a disincentive for would-be stowaways and deserters

Derelict and Abandoned Vessels

Derelict and abandoned vessels are a growing concern in Canadian ports, communities and for shoreline property owners.^{xxvii} Such vessels can be a hazard to mariners, create environmental impacts, and affect commercial and recreational activities. Removing derelict vessels is costly and may require unavailable technical resources. In many cases, the vessel owner cannot be identified resulting in a cost burden for shoreline property owners and public entities.

The issue of derelict and abandoned vessels appears more challenging in some Atlantic ports than others. For example, Canso is careful about which vessels it accepts or rejects as they had previous difficulties with abandoned vessels. Abandoned vessels use berth space without payment to the port. Further rusting hulks distress local politicians and the community who do not wish to see these eyesores on the waterfront. A number of years ago, a dredge coming through the Canso causeway was arrested and sent to Canso where no one paid for its berthage. Ironically, the Deepwater Horizon oil spill in 2010 resolved the issue as the dredge was acquired for the cleanup.

From a border perspective, some abandoned vessels are foreign flagged with crew on board. Looking after abandoned crewmembers often falls upon the local community until such time as they are repatriated to their home countries. The Seafarers' International Union of Canada also assists in highlighting the plight of abandoned crewmembers and their repatriation.^{xxviii} This can take some time as federal authorities search for vessel owners and seek payment for crew salaries and repatriation costs. CBSA provides temporary status to the abandoned crewmembers to allow them to remain in Canada until their repatriation process is finalized. CBSA has not deported abandoned crewmembers.

Cross-border Short Sea Shipping

North America faces increasing gridlock on highways and railways, particularly in urban areas. Developing enhanced cross-border short sea shipping (SSS) would relieve highway congestion and offer a more environmentally friendly marine mode for continental trade. Short sea shipping has not been well developed in North America due to cabotage restrictions in Canada and the U.S.

Cabotage

Despite the extraordinary international cooperation between Canada and the U.S., non-tariff barriers, such as cabotage, remain. Cabotage is normally used by nation states to protect their domestic coastal trade for their own carriers. For example, in Canada and the U.S., SSS is restricted to a national flagged vessel if more than one domestic port is being served. In other words, a Canadian flag vessel is required for transporting cargo from one domestic port to another, such as between Halifax and St. John's.

In the U.S., the "Jones Act" (*Merchant Marine Act of 1920*) restricts the movement of cargo and passengers between two American ports to ships that are U.S. flagged, U.S. owned and crewed by U.S. citizens or permanent residents. Similarly, Canada's *Coasting Trade Act* restricts cargo movement between any two Canadian ports to ships that are Canadian-flagged, owned and crewed. In the Canadian case, a temporary Coasting Trade license can be used to permit entry of foreign-flagged vessels into the cabotage protected trades if there is no Canadian-flagged ship suitable or available. There is no equivalent provision in the U.S. coastal trades. Cabotage restrictions are intended to protect national marine commerce as well as other safety, security and defence objectives. However, given the high level of cooperation and collaboration between Canada and the U.S. there seems to be little justification for cabotage restrictions on security grounds.

Marine cabotage has hampered the development of international short sea shipping. Unlike the European Union's extensive use of SSS, the earlier Canada-U.S. Free Trade Agreement and the North American Free Trade Agreement (NAFTA) did not remove marine cabotage among the trade partners. In particular, during the NAFTA negotiations and subsequent bilateral discussions, when Canadian negotiators pressed for cabotage changes, U.S. marine interests strongly lobbied against any relaxation.^{xxix} The failure to eliminate or relax marine cabotage provisions has hampered the development of an effective cross-border SSS regime in the Great Lakes and along both coasts.

Short Sea Shipping

In 2003, Canada, the U.S. and Mexico signed a *Memorandum of Cooperation on Sharing Short Sea Shipping Information and Experience* to support the development of short sea shipping services to shift land transport to the marine mode.^{xxx} Developing an effective bi-national SSS regime by eliminating or reducing cabotage restrictions would help to reduce highway

congestion, lower green house gas emissions and other environmental pollutants and support container transshipment in Atlantic Canada and U.S. East Coast ports.

Domestic short sea services exist in Canada. Oceanex' successful routing between Newfoundland and Montreal and Halifax has been in place for many years, providing transshipment services for domestic and international containers and trailers. The Icelandic Shipping Line, Eimskip, offers an international SSS service on the East Coast. Eimskip provides a shipping service between Portland Maine and Halifax and Argentina as part of its trans-Atlantic service to Iceland and Shetland.

From a Canadian perspective, there are two significant impediments to developing a viable international short sea shipping regime: U.S. cabotage restrictions embodied in the Jones Act and the application of the U.S. Harbor Maintenance Tax (HMT) on imported cargo, including Canadian. Given resistance of U.S. shipping lines to any relaxation of the Jones Act, it is doubtful cabotage changes will occur in the foreseeable future. For example, Senator John McCain has led persistent, but unsuccessful challenges to the Jones Act in recent years.^{xxxii} The HMT is also an impediment, as an East Coast SSS service would compete with cross-border trucking. Trucked commodities into the U.S. do not pay HMT while SSS cargoes would be charged HMT.

Free Trade Agreements

Beyond the NAFTA, Canada has been actively pursuing bi-lateral free trade agreements (FTA) with many countries and trading blocs around the world.^{xxxiii} From the perspective of Atlantic Canada, many ports anticipate increased trade opportunities from the proposed Canada-European Union Comprehensive Economic and Trade Agreement (CETA). For example, Canso is examining the potential of expanded fisheries and liquid natural gas exports. Other ports are focusing on increased throughput of agricultural commodities and other products.

CETA's marine elements may encourage SSS development by relaxing some of Canada's cabotage restrictions. For example, discussions are underway that may permit EU registered vessels to provide feeder services for containers and bulk commodities between Halifax and Montreal, in addition to allowing repositioning empty containers. In addition, from a ports perspective, commercial dredging can be obtained from private entities using vessels of any registry.^{xxxiii}

There are considerable benefits to Canadian ports, particularly in Atlantic Canada in the proposed CETA. However, there is opposition from the seafarers union and there may be concerns from land-based intermodal operators as they may lose cargo to marine feeder services.^{xxxiv} In addition, one interviewee suggested non-EU registered shipping lines are raising concerns about their inability to offer feeder services in Canadian waters.

First Nations Consultations

Canada's senior courts have made decisions that reinforce government's duty to consult and accommodate Aboriginal peoples as a way of reconciling the relationship between the Crown and First Nations. Consultation must occur before action is taken on projects that may affect claimed or proven Aboriginal and treaty rights.

Port projects may impact aboriginal rights giving rise to the duty to consult and accommodate First Nations. However, such consultation is a complex problem as there may be overlapping claims and unresolved treaty negotiations along with issues related to education, land provision, social programs and revenue sharing, all issues that are well beyond the port's capacity.

The issue of First Nations consultation is particularly prevalent on the West Coast. Most Atlantic Canada ports have not had consultation issues with First Nations. However, this situation may be changing. For example, the Port of Belledune thought they had consulted with First Nations on the development of a \$400 million project bringing Alberta crude oil by rail to the port's Chaleur terminals. They were caught off guard by the court action by three Mi'kmaq communities in Quebec's Gaspé region seeking to halt the shipments. The Mi'kmaq concerns include the lack of proper consultation and the detrimental environmental impact on their salmon fishery in the event of a spill along the railroad.^{xxxv}

Conclusions – Policy implications of ports and borders

International trade is essential to Canada and ports are key trade-enablers. Atlantic Canada ports contribute considerably to the development of the country's economy. However, all ports, including those in Atlantic Canada face major challenges including their geographic distance from markets in central Canada and the U.S. mid-west, dealing with the logistics of serving ever larger vessels, the impact of climate change and the need to respond effectively to emerging environmental concerns and regulations, and ensuring a safe and secure environment for commodity and people throughput.

The primary port-border relationship rests with the Canada Border Services Agency in clearing international imports and exports. CBSA is currently in the throes of modernizing to the digital era where the use of electronic information systems such as eManifest and the Single Window Initiative will come to predominate in port inspection and clearance processes. Unfortunately, there is evidence that some CBSA officials are not fully conversant with the new technologies and require training to ensure Canada's ports continue to be efficient and effective in moving goods through the facility. In a similar vein it is incumbent on CBSA to ensure inspection and clearance processes are undertaken as quickly as possible to reduce commercial delays. As pointed out by one interviewee, Canada's ports must continue to be efficient to remain competitive with their U.S. counterparts in serving continental trade requirements.

A continuing CBSA inspection issue rests with the differential fees being charged for full de-stuffing examinations undertaken in container examination facilities across the country. There is no standard fee as costs in each CEF are determined through separate contractual arrangements. The major challenge is that the high examination fee tends to penalize newer entrants to international importing and exporting – the same entrepreneurs that governments are encouraging to grow internationally. One approach to consider involves setting a flat standard fee per imported container to cover the examination costs for the small percentage of containers that require full de-stuffing examination. The application of a standard per passenger security fee is applied in Canada’s airports and the same approach should be used in the marine container importing and exporting sector. This would ensure all importers and exporters are treated equitably while encouraging the international growth of smaller entrepreneurial firms. Further, as suggested by one CBSA official, having a standard small fee would allow for frequent inspections of suspect containers without concerns about the financial impact on the shipper.

A further challenge raised by several interviewees is the need for national consistency in CBSA’s inspection and clearance process. There appears to be some inconsistency among individual CBSA inspectors and the various regions across the country in the application of CBSA procedures and processes. CBSA is addressing this concern through training, developing electronic process standards, and reviewing consistency across the country.

Short sea shipping has the potential to reduce roadway congestion by shifting commodity movements to the more environmentally friendly marine mode. While some domestic SSS occurs in Canada and on a limited basis internationally, more needs to be done to promote an effective international regime. Canadian and American cabotage restrictions stifle potential SSS development. Their relaxation or elimination between the two countries would promote more effective maritime trade routing. As discussed in the section on free trade, cabotage relaxation has been negotiated with respect to EU registered vessels under CETA. To achieve the environmental benefits of reduced air emissions and lower costs and congestion on roadways, both Canadian and U.S. governments should be encouraged to find ways to reduce cabotage limitations in the maritime sector.

Notably, this analysis of Atlantic Canadian ports has highlighted that not all border concerns are international. The growing role of First Nations’ rights in Canadian politics and constitutional law, illustrated by the opposition of Quebec-based Mi’kmaq to the transport of oil by rail in neighbouring New Brunswick, illustrates a possible internal border concern for ports as they seek to expand and diversify their cargoes. Interviewees in all four ports similarly mentioned the importance of securing support from local municipalities and keeping the public informed on port plans and operations. Local opposition could easily derail the most solid of development proposals. Thus, port authorities need to invest increasing consultation with First Nations and surrounding communities.

That being said, legitimate maritime trade will find few barriers crossing Canada’s borders. However, as discussed, steps could be taken to improve current inspection and clearance services. But as shown with Canada’s relatively high ranking in the World Bank’s Logistical

Performance Index, CBSA and others involved with port-border issues are providing world class services.

Endnotes

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