

BORDER PACT –BEYOND THE BORDER ACTION PLAN

Trade between Canada and the United States is more than \$2 billion in goods and services and sees approximately 300,000 people crossing the border each day. The international trade between our two countries represents a tremendous mutual economic benefit that has grown substantially since the passage of the North American Free Trade Agreement. The Beyond the Border Action Plan of 2011, endorsed by Prime Minister Harper and U.S. President Obama, is intended to reduce trade barriers at the border through harmonization of the regulatory processes, increased mobility and reduced delays while at the same time increasing efficiencies under a series of enhanced security measures.

Harmonization of the regulatory process is intended to improve and streamline the flow of traffic and trade. This process will continue to find better ways to facilitate trade, boost economic growth and enhance job creation on both sides of the border. To date, the Beyond the Border initiative has proven successful whether it's the CBSA/CBP "Checked once, cleared twice" pilot project that was located in Prince Rupert or the more recent pre-clearance announcement for people crossing the border by all modes of transportation.

While progress has been made on many fronts, a number of issues still need to be addressed in order to realize the full economic benefits of a truly fluid border. A brief outline of which is provided hereunder:

Administrative guidance and training:

The efficiency of the border can be enhanced by the administrative guidance and the training our border officers receive. This is why both countries have committed to provide enhanced administrative guidance and training to their officers in an effort to achieve the optimal consistency at all ports of entry. While both governments have reviewed and updated various manuals, the enhanced operational manuals on business travel issues are not yet available to the public.

At the same time a NAFTA Guide for TN and L applicants issued in 2012, have 3 memorandums and one muster that were created in 2013, but have yet to be received.

Specialized maintenance and repair personnel:

With the amount of trade between Canada and U.S., our respective countries have many situations where specialized equipment, whether it's in manufacturing, mining, or other sectors of the economy, is sold and/or leased across the border. These kind of sales usually require specialized maintenance and repair, which is why both countries have committed to implementing policies that will facilitate the movement of specialized personnel to repair industrial machinery and other critical operation systems.

While Canada has moved to allow temporary worker entry to make emergency repairs and the U.S. has provided guidance to CBA officers that supervising or training by Canadian worker may be appropriate, clarification on measures to facilitate the movement of specialized personnel to perform maintenance and repairs of industrial machinery and critical operational systems is needed.

After-lease servicing:

In the 2013 Beyond the Border progress report, Canada and U.S. explained both countries are expeditiously pursuing changes to the existing rules for entry of business visitors providing after-lease service based on a designated contractual agreement so that it's applied in an equal fashion as to those people who provide after-sales services in the respective countries.

Progress to date, in Canada, has seen temporary entry for business travelers is permitted for both after-sales services and after-lease services under section 5.2 of the Temporary Foreign Workers guidelines. The U.S. CBA has clarified the entry process for business travelers providing after-sales and after-lease (or during-lease in the U.S.) services, but only by a designated contractual agreement.

With respect to provisions for applying equal application of after-lease service as per designated contractual agreements, any further update on progress and copies of any and all guidance documentation will be helpful to ensure this action continues to be implemented in a timely fashion.

NEXUS client profile:

NEXUS is an enrollment-based system in which applicants are pre-screened to determine what risk, if any, they pose when crossing the border. Upon approval, low-risk applicants are issued a NEXUS card which allows them access to the faster NEXUS lanes at land border crossings and NEXUS lines at airports security checkpoints. The NEXUS system, which provides the ability to separate low-risk from high-risk travelers thus providing predictable and timely border crossing for those low risk travelers, continue to grow in popularity. Recently, the Canadian government announced its 1 millionth NEXUS card holder.

While both countries have committed to further enhancements, especially to the NEXUS client profile, future provisions should include a retreat from the NEXUS zero tolerance enrolment policy on minor violations similar to that which is available under the FAST program.

Also, establishment of an appeals process by the U.S. similar to Canada on NEXUS denials and revocations would be appropriate from a due process point of view.

Advance adjudication process:

With respect to the provisions for Business Travelers, the U.S. government should be applauded for the new CBP guideline that allows first time TN applicants to advance process their applications at a USCIS service center. Along this same line, it is suggested that U.S. Consulates in Canada are also the appropriate authority to undertake similar processing for this category.

Redress/recourse mechanism

With respect to redress and recourse for business travelers whose applications are denied, the CBP needs uniform speedy mechanisms for wrongfully denied business entry based upon misadjudication of requests to enter the U.S. for business purposes or misadjudication of petitions for Intracompany Transferee or Business Professional status.

While the BC Chamber was party to a successful challenge of the Expedited Removal process, there is still a need for mechanisms to address Canadian business travelers placed into Expedited Removal proceedings at the border. DRS regulations mandate Canadian non-immigrants to be exempt from the Expedited Removal process which leads to questions why this process is being used against them at all. This process creates a chilling effect on cross-border business and has led to groups calling on Congress to institute reforms. Administrative remedies should be devised for any abuses of the process.

Pre-clearance of passenger by Canada Border Services and U.S. Customs & Border Officers

The provisions within the Beyond the Border Action Plan dealing with pre-clearance for train passengers have yet to be fully implemented. The one inspection in Vancouver, B.C. and a secondary inspection at the U.S. border needs to be combined so as to improve the Amtrak service.

In March 2015, A Pre-clearance Agreement between the United States and Canada outlines specific intent to achieve goals outlined in the Beyond the Border Declaration, however, this undertaking requires each country to enact legislation for it to be implemented. Concerns over granting of extra-territorial jurisdiction represent sovereignty and other technical issues that present political and legal challenges as to when, if and under what conditions these objectives can be expedited to accomplish the objectives. The U.S. are challenged by the Civilian Extraterritorial Jurisdiction Act, one barrier of which precludes U.S. legal authority to hold their own U.S. officials accountable or prosecute them if they commit crimes while

stationed in Canada. Any and all prior U.S. attempts to address extra-territorial jurisdiction matters has never been successful, largely due to controversial political impediments. Thus, from both a timetable and/or successful conclusion, renewed U.S. activity in this direction remains questionable.

Conclusion

These, and other examples, have been the subject of negative publicity and can be cause for concern, doubt and confusion which has led to loss of public confidence. The foregoing corrective undertakings are expected to provide beneficial changes within our border programs that will serve to create an increased level of public confidence and acceptability with the view that enhanced greater participation will lead to improved mobility and reduced congestion while advancing the cause of international trade and travel.

THE CHAMBER RECOMMENDS

That the Federal Government in conjunction with their United States counterparts

1. address the current existing inequities between regulatory and interpretative aspects of Canada / U.S. border impediments, as demonstrates in the combination of options for consideration and the urging of action with specific suggestions outlined in the preamble. These inequities negatively impact the legitimate flow of people, goods and services across the Canada / U.S. border for which action is advocated in conjunction with implementing improvements under the new “Beyond the Border Action Plan”; and
2. implement improvements in cross-border transactions to support the principle that people, goods and services are deserving of equitable treatment irrespective of whether the transactions are southbound or northbound across our mutual international borders.