



Canada-U.S. Border & Trade Issues

A brief outline of major pending issues

1. Harmonization of regulations, standards

Across all modes of commercial transportation, there are many issues of different and even contradictory regulations and acceptable standards between Canada and the U.S. as well as individual state and provincial jurisdictions which act as serious impediments to successful trade. With specific reference to the marine mode, the the most troublesome issue at the current time relates to ballast water standards, especially those emanating from the State of New York.

New York's Ballast Water Standards

As a result of U.S. Environmental Protection Agency regulatory powers under the federal Clean Water Act to combat the spread of aquatic invasive species, individual U.S. states have jurisdiction to individually regulate discharge standards for ship's ballast water. As a result, many states have moved to identify their own unique standards. Most troubling, however, is that the State of New York has prescribed a ballast water discharge standard, effective August, 2013, that would require the use of technology onboard vessels that other states (ie. Wisconsin) and governments (Government of Canada) have determined does not even exist, and may not for many years to come.

Furthermore, New York is interpreting this regulatory instrument towards all ships that simply seek to transit New York waters, regardless of whether they intend to discharge ballast water or not. The result is that, because all shipping traffic into the Great Lakes must pass through New York waters, New York may be able to virtually blockade the St. Lawrence Seaway preventing any vessel from passing that does not have required ballast water treatment technology.

Since 2006, all vessels entering the Seaway are inspected by joint Canada-U.S. agencies to ensure they meet the most stringent ballast water management protocols in the world (ie. salt water flushing and open sea ballast water exchange). There have been no new invasive species identified since this regulatory standard came into effect.

All stakeholders share the goal of preventing the spread of invasive species, but it makes no sense to encourage different or conflicting standards nor to impose a regulatory standard that can not be met. New York must stand down on the August/2013 implementation date of its ballast water standard and all U.S. states must rally behind one common national ballast water standard that is shared with the U.S. Coast Guard and the Government of Canada.

2. User Fees as Barriers to Trade

Industry on both sides of the border are increasingly burdened with new government/agency fees. Occasionally, such fees are rationalized and adequate government services are received in return. However, the following are examples of fees that are difficult to rationalize and which cause not only unnecessary added costs, but also inefficient bureaucracy and red tape.

- USDA APHIS import fees

In 2008, the U.S. Department of Agriculture (USDA) Animal Plant and Health Information Service (APHIS) implemented a new user fee for all Canadian marine imports into the U.S., for the purpose of

offsetting added costs associated with their purported bioterrorism screening program. This new fee is estimated to cost Canadian marine shipments \$488 per crossing per marine entry, thus amounting to a minimum of \$1-million annually.

While the target of the APHIS program is costs associated with biological infestations within imports of wood, fruits and vegetables and other agricultural or perishable products that might be susceptible, marine shippers of bulk raw materials like coal, iron ore, salt, aggregate, etc. are not liable to transport such potentially infested products and thus should be fully exempt from such fees.

- Canadian Coast Guard Marine Service Fees

The Canadian Coast Guard (CCG) Marine Service Fees (MSFs) were originally imposed on the shipping industry to recover costs associated with dredging, icebreaking and costs associated with maintenance of navigational aids. However, since the U.S. levies no similar fee on the American shipping industry, MSF's render the cost of Canadian products more expensive thus making Canada's shipping industry less competitive. Also adding to the competitive disadvantage is the fact that land-based modes of transportation (such as trucking) have roads and highways maintained at no cost whatsoever.

Notwithstanding the steady imposition of these fees over the many years they have been levied, the levels of service originally provided by CCG – especially re. dredging and icebreaking – have been dramatically reduced. Finally, although all 2-million (approx.) recreational boaters in Canada use the same navigation aids, there are no such fees levied on them.

- U.S. Harbour Maintenance Tax

Users of federal navigation channels pay into a trust fund an ad valorem tax of 0.125 percent on imports and domestic waterborne shipments between U.S. ports to provide a source of non-federal revenue to perform maintenance dredging. The federal government has not fully utilized the funds for needed maintenance dredging. Rather, it has allowed a large surplus to build up in the trust fund in order to mask the federal deficit or fund other programs not related to ports.

As a result of federal under-investment, federal channels now have available on average less than 35 percent of the authorized and required channel dimensions. The marine industry has paid sufficient annual revenue into the fund to cover the need. However, today a surplus of more than \$5 billion exists in the fund, with annual revenue of more than \$1.4 billion and growing. The annual need for maintenance dredging, which is in the range of \$1.3 to \$1.6 billion according to the U.S. Army Corps of Engineers, is comparable to the funds collected. However, over the past five years, annual expenditures for channel maintenance have averaged less than \$800 million, creating the surplus and leaving users with inadequately maintained channels.

The net result is increased costs for waterborne transportation users, higher prices to consumers, and reduced competitiveness of U.S. exports in the global marketplace. Jobs and income produced are adversely impacted as well.

The Congress should honor its pledge to maintain U.S. ports and harbors with the revenue provided by users. This can be accomplished through a shift in funding priorities in both the Congress and the Administration, given that annual revenue is available, or through legislation that would require that the annual harbor maintenance tax revenue be made fully available to the Army Corps of Engineers for maintenance dredging and related purposes in its annual appropriation.

3. Marine Security Contributions



Over the past decade, the unprecedented emphasis on Canadian and U.S. security establishments has put tremendous pressure on Canadian ports. While the Government of Canada has provided program funding for very specific port security infrastructure and system enhancements, such funding has not comprehensively covered many of the security upgrades that government mandated.

Furthermore, there appears to be a large differential in the amount of security upgrades at U.S. ports versus those required and funded at Canadian ports. This differential can pose competitive disadvantages to Canadian ports, especially in the eyes of large international shippers demanding the latest security technology.

As such, the federal Marine Security Contributions Program should be re-established with sufficient new funding to assist Canadian ports to finish implementing the security enhancements that government requires from them.

4. Pilotage

Marine pilots perform valuable service by providing professional navigational escorts for ships plying hazardous and/or unknown waters. However, as pilotage authorities throughout the bi-national Great Lakes/St. Lawrence Seaway all operate monopolies and recoup costs based on industry cost recovery, the resulting costs have grown excessive. Moreover, there are no less than five (5) separate agencies (2 Canadian, 3 U.S.) throughout the system that administer pilotage services.

Substantial efficiencies could be found in not only streamlining pilotage services on both sides of the border, but also by possibly amalgamating redundant resources. Furthermore, governments should continue to investigate the de-monopolization of the supply of pilotage services.

5. Icebreaking

In order for ships to ply the bi-national waters of the Great Lakes/St. Lawrence through the better part of a full year, ships and ports rely on Canadian and U.S. icebreaking operations. Unfortunately, resources dedicated to icebreaking – especially Canadian resources – have dwindled in recent years, resulting in commercial ships having to wait long periods of time for icebreaking services, lost time and money and often inaccessible navigation.

Although Canadian government authorities have announced and re-announced commitments for new icebreaking assets, such commitments have been meagre and are unfortunately still on the drawing board.

The time has come for the Canadian Government to get serious about the Canadian Coast Guard and to devote the resources required so that Coast Guard personnel are equipped to do the job that Canadians demand.

6. Seaway Infrastructure

Total cargo traffic through the bi-national Great Lakes/St. Lawrence Seaway (GLSLS) averages 260 million metric tons annually, saving shippers approximately \$2.7-bn a year in transportation costs that they would have otherwise have incurred had they used other modes of transportation. It is a gross understatement to say that the GLSLS facilitates an economic engine that propels substantial Canadian-U.S. commerce and prosperity.

However, for that prosperity to be sustained and to grow, governments need to face up to the expenditure responsibilities involved and invest heavily in not only existing Seaway maintenance but also future infrastructure, technology and research.

