United States General Accounting Office

GAO

Report to the Honorable John C. Danforth, U.S. Senate

July 1987

TRANSBORDER TRUCKING

Impacts of Disparate U.S. and Canadian Policies

Released

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GAO

United States
General Accounting Office
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Resources, Community, and
Economic Development Division

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July 30, 1987

The Honorable John C. Danforth
United States Senate

Dear Senator Danforth:

This report is in response to your November 17, 1985, request that we conduct a review of transborder trucking problems, especially those related to the disparities in Canadian and American regulatory policies. This report examines the specific issues raised in your letter and examines the prospects for regulatory change in Canada.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the Secretary of Transportation and to the United States Trade Representative. Copies will also be made available to other interested parties.

This report was prepared under the direction of Kenneth Mead, Associate Director. Major contributors are listed in appendix II.

Sincerely yours,

J. Dexter Peach

J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

Canada and the United States are each other's most important trading partner, and trucks carry more than half the goods traded between them. Over the past decade the United States has largely deregulated its trucking industry while Canada has not. Many U.S. truckers believe that differences in rules and regulations affecting trucking have made it difficult for them to compete for traffic moving by truck between the two nations.

In view of these concerns, the former Chairman of the Senate Committee on Commerce, Science, and Transportation, Senator Danforth, requested that GAO address the following questions:

- How difficult is it for U.S. truckers to gain authority from provincial regulators to expand their operations into Canada?
- Do differences in costs and restrictions on operations in the United States and Canada place U.S. truckers at a disadvantage when competing for transborder traffic?
- Have these differences allowed Canadian truckers to capture a disproportionate share of transborder traffic?
- What are the prospects for change in trucking regulation in Canada?

Background

Before the U.S. began to deregulate its trucking industry, most goods trucked across the border were interlined; that is, goods shipped from Canada were transferred to American trucks and American goods were transferred to Canadian trucks at the border. However, when the United States made it easier for U.S. and Canadian truckers to get operating authority with the passage of the Motor Carrier Act of 1980, many Canadian truckers stopped interlining and began offering both American and Canadian shippers single-line service. Meanwhile, the Canadian provinces continued to regulate entry into their markets. Some U.S. carriers sought to gain Canadian operating rights by purchasing Canadian trucking companies, but until recently, Canadian restrictions on foreign investment limited this option.

In response to U.S. carrier complaints that the Canadian provinces restricted U.S. carrier entry, the Congress, in August 1982, passed a moratorium on new Canadian operating authorities but authorized the President to lift the moratorium if he found it in the nation's interest. The President signed the bill but immediately lifted the moratorium and directed the U.S. Trade Representative to negotiate a solution to problems raised by the disparate policies.

The result, in November 1982, was the Brock-Gotlieb Agreement, which set up a consultative mechanism to address problems created by traffic shifts resulting from regulatory differences.

For the past 4 years, delegations from the United States and Canada have met annually to discuss problems and developments relating to transborder trucking. However, some U.S. truckers believe that there has been little progress and that the United States should reinstate the moratorium until the Canadians begin to treat U.S. truckers the same as the United States treats Canadian truckers.

Results in Brief

Canadian provinces continue to regulate entry into the trucking industry, making it more difficult to secure operating authority in Canada than in the United States. However, GAO found no evidence that provincial regulators discriminated against U.S. applicants for operating rights or that they imposed on U.S. carriers any fees or standards not also required of Canadian operators. While there are a number of differences in U.S. and Canadian rules and procedures affecting trucking, GAO found only two which placed a greater burden on U.S. truckers than on Canadians: workman's compensation payments and the Heavy Vehicle Use Tax.

Available data indicate that American truckers have lost traffic to Canadian carriers over the past decade. But there are a number of factors other than regulatory policy that might account for the shifts in market share. These include the decline in the value of the Canadian dollar relative to the U.S. dollar, and the shift in the balance of trade to Canada's favor.

Finally, the Canadian government and the provinces have taken steps to deregulate the trucking industry. If this process continues, many of the present differences between U.S. and Canadian policy are likely to be eliminated over the next few years.

Principal Findings

Canadian Markets Still Regulated

GAO found that, since the United States deregulated the trucking industry, it is easier for Canadian firms to expand into the United States than it is for U.S. firms to expand into Canada. In the United States, a carrier

is granted nationwide authority by the Interstate Commerce Commission. In Canada, a carrier must obtain operating authority from each province. The provinces require more proof of need for the service than the ICC and usually grant authority restricted to particular commodities or customers.

These practices, however, apply to both U.S. and Canadian carriers, and GAO found no evidence that Canadian provincial regulators discriminate against U.S. applicants for operating authority. American applicants for Canadian operating authority are granted all or part of the authority that they request 80 to 90 percent of the time. Also, recent changes in the rule governing foreign investment have made it easier for American firms to enter Canada by acquiring a Canadian subsidiary.

U.S. Operators Generally Not Disadvantaged

There are differences in the U.S. and Canadian policies governing trucking operations, but GAO found no evidence that these differences, on balance, favor one nation's carriers over the other's. For example, in the case of customs procedures and insurance requirements, Canadian practices and requirements are less restrictive than those of the United States. In other areas, such as licensing fees and restrictions on the work that can be performed by foreign nationals, both nations enforce similar policies. In all of these cases, each country's requirements apply to both U.S. and Canadian truckers.

GAO found only two practices that imposed a cost on U.S. truckers engaged in transborder competition that Canadian carriers operating in this market have avoided. First, the U.S. Internal Revenue Service had ruled that truckers registered in Canada were not required to pay the U.S.-imposed Heavy Vehicle Use Tax. The Congress recently passed legislation eliminating the exemption and requiring Canadian truckers to pay the tax at 75 percent of the rate applicable to U.S. truckers.

Second, three Canadian provinces require that U.S. carriers contribute to the provincial worker's compensation funds for the time their drivers spend in the province. Because the states do not require such payments of Canadian transborder truckers, U.S. trucker costs are higher for traffic between the states and these three provinces.

Canada's Market Share Has Increased

The available evidence indicates that Canadian truckers have increased their share of the transborder trucking market over the past decade. However, several factors other than regulatory policies may have contributed to the shifts in market share. The relative decline in the Canadian dollar and the shift in the balance of trade appear to have played a role in determining which nation's carriers would get the traffic. Available data, however, are not adequate for determining traffic shifts precisely or measuring the influence of the various factors. Accordingly, GAO cannot determine whether any shifts in market share are significant.

Trucking Deregulation in Canada

All of the Canadian provinces have plans to ease entry into their trucking markets, although the pace of reform in the individual provinces varies widely. Some have already introduced important changes in anticipation of the passage of national legislation to substantially deregulate extraprovincial trucking by 1993. Under the current timetable, Parliament will vote on the bill sometime in 1987.

Recommendations

GAO is making no recommendations.

Agency Comments

GAO asked for official agency comments from the U.S. Department of Transportation and the U.S. Trade Representative. The U.S. Trade Representative had no comments. Transportation pointed out, as GAO did in its report, that while differences in regulatory approaches continue to exist, U.S. truckers' access to Canadian markets has improved over the past few years. Transportation also asked GAO to update the discussion of the Heavy Vehicle Use Tax to account for recent changes in the law regarding application of the tax to Canadian truckers. These and other suggestions have been incorporated in the report. (See app. I.)

Contents

Abbreviations

ATA	American Trucking Associations
BMCS	Bureau of Motor Carrier Safety
CAVR	Canadian Agreement on Vehicle Registration
CMA	Canadian Manufacturers' Association
DOT	Department of Transportation
FIRA	Foreign Investment Review Agency
HVUT	Heavy Vehicle Use Tax
ICC	Interstate Commerce Commission
INS	Immigration and Naturalization Service
IRP	International Registration Plan
IRS	Internal Revenue Service
LTL	Less Than Truckload
NTA	National Transportation Act
OHTB	Ontario Highway Transport Board
PCN	Public Convenience and Necessity
WCF	Workman's Compensation Fund

Introduction

After pursuing similar regulatory policies toward the trucking industry for more than 40 years, the United States began to deregulate the industry in the late 1970s while Canadian regulatory policy remained largely unchanged. Reduced controls in the United States, especially entry controls, allowed many new firms, both U.S. and Canadian, to enter the U.S. market. Canadian truckers are able to readily bring goods from Canada into the United States or carry goods from points in the United States to Canadian destinations. American truckers, on the other hand, must comply with the formal regulatory requirements of Canadian provincial governments if they want to secure similar international authority. This difference in policy toward market entry, in combination with other differences in rules, regulations, and practices affecting transborder trucking, raised the concern among American truckers that they were being placed at a competitive disadvantage with respect to transborder traffic.

Historical Development of Regulatory Policy in the United States and Canada

For nearly half a century the United States and Canada maintained similar policies in regulating intercity trucking. Regulations controlling entry into trucking in both countries had emerged in the 1930s for similar reasons. The railroads wanted to extend regulation over trucking because they believed that unregulated truckers, offering very low rates, were diverting traffic from rail to truck. Trucking firms advocated regulation as a way to stabilize an industry that many believed was becoming so intensely competitive that many firms were being driven from the industry.

In the United States, the individual states took the initiative and began regulating common and contract motor carriers of freight in the 1920s.[1] Federal regulation of intercity trucking began with the passage of the Motor Carrier Act of 1935[2] (1935 Amendments to the Interstate Commerce Act, Ch. 255, 49 Stat. 543).

In Canada, trucking regulation remained a purely provincial matter until 1954. In that year the Privy Council (the final court of appeals in Canada) in the Winner Decision determined that the federal government had the authority and responsibility for regulating extraprovincial trucking. In the Motor Vehicle Transport Act of 1954, the Canadian Parliament re-

[1]Common carriers are those that are willing and able to serve all shippers while contract carriers serve only those shippers with whom they have an agreement.

[2]D. Phillip Locklin, Economics of Transportation, Seventh Edition Irwin Press, 1972, pp. 673-676.

delegated trucking regulation to the existing provincial agencies.[3] However, some of the regulatory practices of the provincial authorities appeared to be inhibiting the healthy development of the Canadian trucking industry, and so Parliament later enacted the National Transportation Act of 1967, which established a mechanism for reasserting federal control over extraprovincial trucking.[4]

During the years when U.S. and Canadian truckers operated under similar regulatory regimes, there was relatively little entry into each other's markets. Instead, most traffic was interlined; that is, northbound cargo was transferred from U.S. to Canadian trucks while U.S.-bound freight was switched from Canadian to American trucks. More than 80 percent of transborder traffic was transported under interline arrangements before the United States reformed its regulatory system.

In both the United States and Canada, entry into the interstate and interprovincial trucking industry was tightly regulated. Those applying for authority to offer trucking services had to demonstrate that their service would meet a strict test of the "public convenience and necessity" (PCN), a test that new carriers often found difficult to meet. Specifically, new entrants had to show an existing need for their operation which could not be met by firms already in the market. The burden of proof was on the new applicant, not on the existing carriers protesting the proposed service. When authority was granted, it typically was restricted to hauling a particular commodity over a particular route.

U.S. Deregulation Resulted in Disparate Entry Policies

The changes in regulatory policy and philosophy that characterized the late 1970s were contained in the Motor Carrier Act of 1980. The act substantially relaxed restrictions on entry in the U.S. trucking industry. The act did not distinguish between foreign and domestic carriers, and as a result, Canadian carriers that already had international authority expanded their U.S. operations and many other Canadian truckers entered the U.S. market for the first time. At the same time, the provinces continued to regulate and control new entry into trucking in Canada. The disparity in regulatory environments gave Canadian carriers an advantage over Americans in the competition for transborder traffic. Canadian truckers could more easily establish international service by

[3]D.L. McLachlan, "Canadian Trucking Regulation," The Logistics and Transportation Review, Vol. 8, No. 1, p. 60.

[4]K. Button and G. Chow, "Road Haulage Regulation: A Comparison of Canadian, British and American Approaches," Transportation Review, Vol. 3, No. 3, 1983, pp. 237-263.

securing U.S. operating authority than American carriers, who could not as readily secure Canadian authority. Some U.S. truckers lost business as traffic that formerly was interlined at the border could now be handled by a single, Canadian firm. Figure 1.1 shows the growth in the number of Canadian trucking firms seeking authority to operate in the United States. Table 1.1 indicates the overall growth in new applications. Less than 2 percent of the 9,767 new applications received by the Interstate Commerce Commission (ICC) in 1985 were from Canadian carriers.

Table 1.1: New Applications to the ICC for Permanent Operating Authority, 1976-85

Year	New applications[a]	Percent granted
1976	558	93.6
TQTR[b]	224	83.4
1977	1,161	83.7
1978	629	92.3
1979	748	97.2
1980	1,461	99.4
1981	3,782	99.3
1982	6,166	99.0
1983	6,363	99.9
1984	8,115	99.9
1985	9,767	99.9

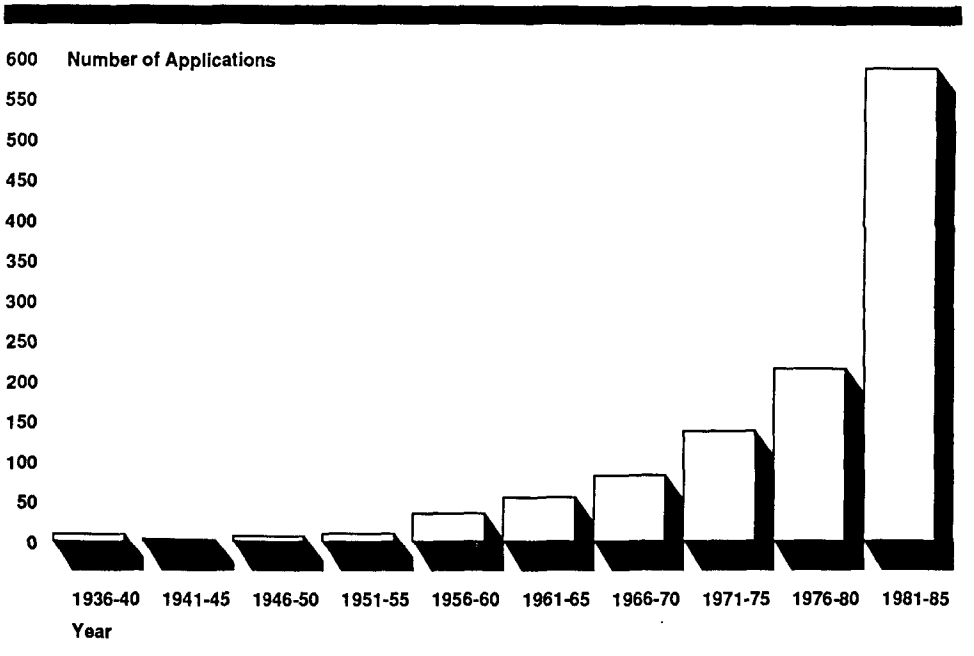
[a]Foreign and domestic.

[b]Transition quarter.

While Canadians were increasing their share of the transborder trucking market by expanding into the United States, U.S. trucking firms continued to face restrictions on entry into Canadian markets. One alternative to applying for Canadian operating rights would have been for a U.S. carrier to purchase a Canadian trucking firm that already had the authority to offer the desired service. However, until recently, the investment restrictions imposed by the Canadian Foreign Investment Review Agency (FIRA) were seen by many U.S. carriers as a serious obstacle to expanding into Canada by acquiring Canadian trucking firms.

American truckers believed that the Canadian regulations and restrictions were unfair and sought relief from the Congress and the ICC. In

Figure 1.1: Initial ICC Filings of Canadian Truckers, 1936-85



February 1982, the ICC began an investigation, Ex Parte 157,[5] into the matter and froze all existing Canadian applications for authority. In addition, in August 1982 the Congress enacted a moratorium on all new Canadian and Mexican applications. The Canadian trucking industry and the provincial and federal governments protested these actions, and the regulatory boards of several provinces threatened to retaliate. However, the Congress authorized the President to lift the moratorium if he found that it would be in the national interest. The President did so in September 1982 and directed the U.S. Trade Representative to negotiate a solution to the transborder issue.

The ICC concluded its investigation in October 1982 and found that U.S. truckers were not discriminated against by provincial regulators. The ICC found that U.S. truckers were accorded the same treatment in the

[5]U.S. Interstate Commerce Commission, Investigation into Canadian Law and Policy Regarding Applications of American Carriers for Canadian Operating Authority, Ex Parte No. MC-157, Washington D.C., 1982.

provinces as Canadian applicants. This is known as national treatment.[6] However, the ICC concluded that the FIRA restrictions on U.S. acquisitions were discriminatory in that they applied only to foreign firms.

The Brock-Gotlieb Agreement

In November 1982, the Canadian Ambassador to the United States, Allan Gotlieb, and the United States Trade Representative, William Brock, exchanged letters of understanding that established philosophical and administrative guidelines for jointly resolving transborder trucking issues. In the Brock-Gotlieb agreement, both nations state their commitment to a policy of nondiscrimination and to providing "full, fair and equitable opportunities among truckers from both countries to compete for the carriage of international traffic." However, the understanding also points out that there are differences in the policies and the economies of the two countries that may affect the competitive opportunities. If these differences result in a "major shift of traffic to the harm of an important segment of the trucking industry," the two nations agreed to consult on how to address the problem. The understanding established a consultative mechanism comprised of U.S. and Canadian transportation and regulatory officials to deal with the full range of transborder truck transportation issues. Both governments agreed to promote greater efficiency in trucking, to expedite the processing of applications for operating licenses, and to give significant weight to the needs of shippers and consumers in deciding whether or not to grant authority.

In the Brock-Gotlieb agreement the Canadian federal government expressed its commitment to improving the flow of commerce across the border and to "competitive, market-oriented motor carrier services." The commitment to a greater reliance on the market and less regulation was reiterated on several occasions. In May 1984, the Council of Ministers Responsible for Transportation and Highway Safety met in Ottawa and agreed to reduce the regulatory disparities among the provinces and between the provinces and the United States. Both provincial and Canadian federal officials participated. A Memorandum of Understanding reflecting this agreement was issued in a joint communique in February 1985. In July 1985, the Canadian federal government published a white

[6]The term "national treatment" has been defined in other ways in recent years. This report distinguishes national treatment (one nation treats foreign firms in the same manner as national firms) from reciprocity (in which nation A treats firms from nation B in the same manner that nation B treats firms nation A.)

paper, Freedom to Move, which outlined the federal government's preference for increased reliance on competitive markets and reduced regulation for all forms of transportation.

Objectives, Scope, and Methodology

In November 1985, Senator John Danforth, then Chairman, and Senator Slade Gorton, member of the Senate Committee on Commerce, Science, and Transportation, requested that we review the continued allegations of unfair treatment of U.S. truckers by Canadians. On the basis of the letter requesting this study, subsequent meetings with Committee staff in January and February 1986, and the recognition that there were some data limitations, we agreed to focus on the following four questions:

1. How difficult is it for U.S. truckers to gain authority from provincial regulators to expand their operations into Canada?

2. Do differences in costs and restrictions on operations in the United States and Canada place U.S. truckers at a disadvantage when competing for transborder traffic?

3. Have these differences allowed Canadian truckers to capture a disproportionate share of transborder traffic?

4. What are the prospects for change in trucking regulation in Canada?

We conducted interviews, undertook an extensive literature search, and sought to assemble all available data to develop a detailed understanding of the issues. We reviewed existing studies of transborder trucking prepared by government agencies or published in professional journals and the trade press. We interviewed regulatory officials, trucking firm executives, labor representatives, and trucking industry experts on both sides of the border. In Washington, D.C., we interviewed officials from the office of the U.S. Trade Representative, the Interstate Commerce Commission, the Department of Transportation, the Customs Service, the Immigration and Naturalization Service, the American Trucking Associations, the International Brotherhood of Teamsters, several major trucking firms, and the Canadian Embassy. In Ottawa, we interviewed officials at Transport Canada, Statistics Canada, Canadian Customs, Canadian federal regulators, the Canadian Trucking Associations, and the Canadian Teamsters.

To gain insights into the differences in the rules and regulations confronting American and Canadian truckers, we interviewed transportation and regulatory officials, truckers, and representatives of organized labor in a number of border states and in four Canadian provinces: Alberta, British Columbia, Manitoba, and Ontario. These four provinces were selected by agreement with our requesters. We believe that they represent a broad range of conditions in Canada (Alberta, the most liberal; British Columbia, probably the most difficult to enter; and Ontario, the most important province in terms of the volume of transborder traffic flows).

In order to learn more about how American applicants for operating authority were treated in Canada, we also reviewed applications on file at provincial regulatory commissions. While it was not feasible to draw a scientifically valid sample, we did examine 60 applications in these provinces made between 1984 and 1986 to see if there were any indications that U.S. applications take longer to process and/or are in other ways treated differently from Canadian applications.

To help determine the scope of the problem, we surveyed the offices of Senators representing border states to determine whether they had received complaints about Canadian trucking competition or lack of access to Canadian markets. The American Trucking Associations also notified its members of our study and directed them to submit any relevant experiences they might have encountered. We explored a range of data bases in an effort to assess the extent of Canadian penetration of U.S. markets.

Agency Comments

We asked for official agency comments on this report from the U.S. Department of Transportation and the U.S. Trade Representative. The U.S. Trade Represenative had no comments. Transportation pointed out, as we did in the report, that while differences in regulatory approaches continue to exist, U.S. truckers' access to Canadian markets has improved over the past few years (see ch. 2). Transportation also asked that we update the discussion of the Heavy Vehicle Use Tax to account for recent changes in the law regarding application of the tax to Canadian truckers (see ch. 3).

Entry Into Canadian Markets Continues to Be Difficult but Not Discriminatory

Entry into Canadian trucking markets continues to be controlled by provincial regulatory agencies.[1] Some American carriers have complained that the process of applying for Canadian market entry is complex, time-consuming, and costly and that, even when they succeed, the authority granted is often very restricted. Since the Interstate Commerce Commission has greatly simplified entry into the American market for all applicants, American truckers believe that Canadian truckers have a competitive advantage as a result of their greater ease of entry into the American market. Our comparison of U.S. and Canadian provincial entry control procedures shows that it is more difficult to secure operating authority in Canada than in the United States, but the charge of discriminatory or unfair treatment does not appear to be well-founded.

Rather than enter the Canadian market through the regulatory process, some American carriers have purchased Canadian subsidiaries. Until 1985, Canada followed a policy that discouraged such foreign investment. Canada has since changed its foreign investment policy and is now encouraging foreign investment. This has made it easier for American truckers to expand their operations into Canada by acquiring Canadian carriers.

American Carriers Complain of Difficult Market Entry

American truckers and teamsters have alleged that it is a very expensive and time-consuming process for U.S. carriers to obtain even highly restricted operating authority from Canadian provincial regulators while, at the same time, Canadian carriers can enter the U.S. market almost at will. The Americans point out that the authorities that are ultimately granted are restricted as to the types of commodities that can be carried, the routes that must be followed, and the shippers who can be served.

In order to document these allegations about the difficulty of gaining Canadian operating authority, we contacted the American Trucking Associations (ATA) to learn how widespread the problem might be and the kinds of difficulties carriers were experiencing. We also contacted the offices of U.S. senators representing states that border Canada to see if many truckers had complained of unfair treatment. ATA officials said that they had not maintained a file of trucker complaints but

[1]Western Transportation Advisory Council, Under Debate: The Framework for Canadian Trucking, WESTAC Newsletter, Vol. 12, No. 1, Jan. 1986.

agreed to solicit responses through their publications and through correspondence with their members. U.S. Senate office personnel contacted district staffs to see if many truckers had registered complaints and what concerns had been raised. We should emphasize that we did not undertake a scientific survey of the trucking industry to ascertain the extent or nature of the problems faced by American truckers trying to enter Canada or trying to compete with Canadian firms for the available traffic. Instead, we relied on the American Trucking Associations, Senate offices, and our discussions with state trucking associations, teamsters, and individual truckers to identify complaints.

About 30 U.S. trucking firms that had complaints about Canadian competition or lack of full access to Canadian markets responded to the inquiries of the ATA and the Senate offices. These complaints included being denied operating authority or being granted only very limited authority by provincial regulators; being required to spend considerable time and money to secure operating rights in Canada; and losing business to new Canadian competition. Only one U.S. trucker alleged that a provincial commissioner at the application hearing was biased against U.S. trucking firms. However, we also spoke with a number of truckers who told us that they are treated fairly by Canadian provincial regulators and that they are treated the same as Canadian truckers.

Current Canadian Entry Control Practices

Under the Canadian Motor Vehicle Transport Act of 1954, the responsibility for the economic regulation of trucking is vested in the provincial governments.[2]

Each province regulates intraprovincial and extraprovincial (including transborder) traffic. Although the details of entry regulation vary among the provinces, the overall process greatly resembles that which prevailed in the United States prior to 1980.[3]

Both Canadian federal and provincial officials claim that U.S. trucking firms are treated the same as Canadian firms by provincial regulators. This practice of treating foreign applicants the same as domestic ones is referred to here as giving "national treatment." As previously noted, there are alternative meanings sometimes applied to the term. In fact, American Trucking Associations officials told us that the Canadians do

[2]McLachen, op. cit.

[3]ICC, Ex Parte No. MC-157.

not discriminate against U.S. applicants who request operating authority. Rather, they claim that provincial regulations controlling entry favor those already serving Canadian markets and that, more often than not, these are Canadian carriers. At the same time, U.S. deregulation has removed the benefit of incumbency that American carriers enjoyed in U.S. markets so that, on balance, American truckers are disadvantaged. According to the ATA, it is not discriminatory treatment, but disparate treatment, that is the problem. The United States readily allows Canadian carriers to carry goods to and from U.S. points, but the Canadian provinces have not reciprocated. Reciprocity implies that Canada would offer U.S. truckers the same opportunity that the United States offers Canadian truckers. National treatment, on the other hand, requires only that whatever restrictions are placed on carriers are applied without regard to the nationality of the trucker.

Canadian Regulatory Procedures[4]

While there are differences among the provinces, the trucker seeking operating authority in Canada typically files an application with the provincial regulatory commission, and the commission then publishes a notice of the filing so that interested parties, especially carriers potentially harmed by the proposed service, can respond. If there are no objections, the regulatory agency often grants the authority requested, although it retains the option of granting only a part of the request or denying it altogether. If there are objectors, the applicant may negotiate with them and amend the request for authority to satisfy their concerns. If the objectors withdraw their protests, then the amended application is processed the same as an uncontested one. Sometimes, changing an application from common carrier to contract carrier status will successfully satisfy objectors as the latter represents a narrower form of authority and presents less of a competitive threat.

If the objections are not withdrawn, the provincial regulatory commission holds a hearing to listen to the arguments of the parties. While the individual provincial regulators consider and weigh the various factors differently, the applicant usually must demonstrate that the proposed service offering will meet the "public convenience and necessity." While this term is not defined precisely, there are usually guidelines as to what should be considered. Most important, the test requires that the applicant shoulder the burden of proof and show that the proposed service meets a public need that cannot be met by carriers already authorized to provide service.

[4]Ontario Highway Transport Board, Requirements for Filing Applications, Toronto, 1985.

In anticipation of the passage of regulatory reform legislation by the Canadian federal government, several provinces have revised their interpretations of what constitutes the public convenience and necessity for domestic applications. The Ontario government has directed the Ontario Highway Transport Board to consider the importance of trade with the United States, the needs and desires of shippers and consumers, the desirability of single-line service, and positive province-wide economic impacts when evaluating a new application.[5] Manitoba now operates on a shared responsibility basis whereby both the applicant and respondent have equal responsibility for proving their positions. British Columbia has been phasing in a "reverse onus" test that would shift the burden of proof from the applicant to the respondent. The future of regulatory change in Canada is discussed in more detail in chapter 5.

U.S. Regulatory Procedures Have Been Simplified

Motor carriers seeking to haul freight in interstate commerce must still apply for operating authority before the ICC, but the process has been substantially streamlined and shortened under the Motor Carrier Act of 1980. A common carrier must establish that it is "fit, willing, and able" to provide the service and present evidence that the proposed operation will serve a "useful public purpose." This "threshold burden" can be met by submitting evidence of shipper support for the application. The ICC requires that all carriers request authority sufficiently broad to provide a complete service to shippers desiring the service. Applications to haul processed food and other specified products do not require evidence of public need or demand, and unprocessed food requires no operating authority at all.[6]

As in Canada, the successful applicant also must file proof of adequate insurance, designate process agents in each jurisdiction through which operations will be conducted, and file a copy of the tariffs or rates to be charged.[7] The carrier must also meet the requirements for operating in each of the states where it will travel.

Overall, it is simpler, less costly, and less time-consuming to get ICC operating authority than authority from the provinces. Canadian truckers do

[5]Ontario Highway Transport Board, Statement of Government Policy in International Transborder Trucking, Toronto, 1985.

[6]ICC, Guide to Applying for Permanent Operating Authority: Property, Washington, D.C., 1985.

[7]ICC, Guide to Applying for Permanent Operating Authority: Property, Washington, D.C., 1985.

not need to travel to Washington, D.C., to defend their case; they rarely need to secure legal representation to battle objectors; and they can usually gain the requested authority much sooner than in the provinces. In 1985 the ICC handed down 11,122 initial decisions. Both U.S. and Canadian cases averaged 85 days from the initial application to the date of the decision. Less than 1 percent of the applications, either U.S. or Canadian, were opposed.

Filing Costs in the U.S. and Canada

In the United States both federal and state regulatory agencies require payment of filing fees. The one-time filing fee for ICC authority to carry most commodities is $150. The charge for authority to haul foodstuffs is $70.[8] Although state regulatory agencies cannot deny entry to a firm engaged in interstate transportation, the states can and do require that the carriers file their ICC operating authority with their state commissions and pay a filing fee, typically around $25.[9]

Because trucking regulation is a provincial responsibility, there are no federal filing charges in Canada. The cost of obtaining new operating authority in the provinces depends on the type of authority applied for and the number of provinces served. According to Canadian regulatory officials, the fees apply equally to foreign and domestic applicants. The fees assessed for the actual filing and processing of an application in Manitoba, for example, are shown in table 2.1. By themselves these fees are not excessive, but if an American trucker requires legal representation to secure authority and if that, in turn, requires travel to Canada, costs will be greater than those for Canadian truckers who are already there.

Several trucking firms we contacted about problems they had experienced in seeking authority to operate in Canada complained about filing costs. One firm commented that it spent $45,000 for attorneys' fees and witness costs only to have its application denied. None of the carriers contacted, however, suggested that they faced any additional expenses, other than travel costs, because they were non-Canadian carriers.

[8]ICC, Guide to Applying for Permanent Operating Authority: Property, Washington, D.C., 1985.

[9]J.J. Keller and Associates, Trucking Permit Guide, Neenah, Wisconsin, 1987.

Table 2.1: Manitoba Motor Transport Board Rules of Practice and Procedure Fees (As of 1986)

	Canadian dollars
Application fees:	
Operating authority	$200
Designated commodity authority	150
Corridor authority	100
Temporary authority	50
Approval of transfer	150
Renewal of certificate	50
Special applications (except discontinuance petitions)	200
Review applications	200
Statement of opposition fee	50
Statement of intervention fee	25
Hearing fee (per one-half day scheduled)	75
Show cause complaint fee	200

Most Provinces Do Not Appear to Treat American and Canadian Applicants Differently

In 1982 the ICC noted in its review of Canadian regulation of U.S. carriers that all parties generally agreed that the Canadian authorities did not intentionally discriminate against U.S. motor carriers in favor of Canadian operators. The Canadian government supplied the ICC with statistical information on the grant and denial rates separated by domicile of applicant. The data, primarily for 1980-81, showed that denial rates for U.S. and Canadian carriers were very similar. Although the ICC noted that the data did not address the type of authority granted or denied, it nonetheless was satisfied that the data indicated that U.S. applicants were subject to the same burden of proof requirements as the Canadians.[10]

To determine whether the situation had changed since the ICC investigation, we collected statistics from the four provinces that we visited on the disposition of the U.S. and Canadian applications. The data in table 2.2 covering 1983-85 show that most applications are approved either in full or in part and (except for British Columbia) the denial and approval rates do not suggest that U.S. truckers are treated less favorably than Canadians. The data for British Columbia indicate that U.S. firms are more likely to be denied entry than Canadian carriers and less likely to be granted all the extraprovincial operating authority requested. We were told by provincial officials that these data are clouded by the fact that taxicabs, buses, and local trucks are included. However, we have no

[10]ICC, Ex Parte No. MC-157.

data on the grant rates for these other services; therefore, we cannot estimate how their inclusion might bias the measure of U.S. grant rates.

Table 2.2: Disposition of U.S. and Canadian Applications for Operating Authority

Provinces and years	Applications		Percent granted in full	Percent granted in part	Percent denied	Percent withdrawn canceled
	Origin	Number				
Alberta	U.S.	287	82	13	3	2
1983-85	Can.	664	79	17	3	1
British Columbia	U.S.	342	38	38	16	8
1983-85	Can.	4,999	55	27	11	7
Manitoba	U.S.	95	80	7	2	11
1983-85	Can.	91	77	2	7	14
Ontario	U.S.	439	83[a]	•	9	8
1985	Can.	2,850	85[a]	•	6	9

[a]Ontario data did not distinguish between full and partial grants for 1985. Data for the first 6 months of 1986 showed identical percentages for full and partial approval for U.S. and Canadian truckers.

Without more detailed information, it is not possible to do more than speculate as to why U.S. applicants are less likely than the Canadians in British Columbia to receive all the authority they request.

The grant rates of the Canadian provinces can be contrasted with those of the ICC in recent years. As the data in table 1.1 showed, the ICC is much less stringent than the individual provincial regulatory authorities. Today, the ICC grants authority to virtually any firm that applies.[11] Further, the ICC typically grants 48-state authority with few, if any, restrictions. Because the authorities granted by the provinces are usually less broad, it is difficult to draw valid conclusions about the relative ease of entry into U.S. and Canadian truck markets from a simple comparison of grant rates.

In summary, because Canada regulates trucking more tightly than the United States, it is more difficult for truckers to establish transborder service from an American base as opposed to a Canadian one. Still, available information does not suggest any systematic pattern of discrimination against U.S. applicants on the part of Canadian provincial regulators.

[11]ICC, Disposition Profile of Permanent Operating Rights Applications, Washington, D.C., 1987.

Case Reviews Show No Discrimination Against U.S. Carriers

To supplement our evaluation, we examined a sample of cases from three Canadian provinces to see if we could identify any evidence of discriminatory treatment on the part of Canadian regulators. We were especially interested in determining whether U.S. applications took longer to process than Canadian ones. Due to time and data limitations, we were unable to construct a scientifically valid sample from the Canadian provincial files, and as a result, the cases examined cannot be said to be fully representative.

We reviewed 16 applications on file at the Ontario Highway Transport Board (OHTB) that were decided between 1984 and 1986. More than 1,000 applications were made during this time. Eight applications came from American firms, four from Ontario carriers, and four from truckers from other provinces. We found no cases where the OHTB placed restrictions on the application for authority. Applications were often amended by those seeking authority to address the concerns of objectors, but there was no evidence from the data that these amendments were coerced by OHTB. Applications for authority seemed to attract objections either when the request was for extremely broad general freight authority (one applicant requested operating authority from any point in the United States to any point in Ontario and vice versa) or when an applicant filed for authority that competed with an authority previously awarded to a respondent. Once the application was amended to specific authority or altered to remove the intrusion on the other carrier's authority, the objections were usually withdrawn. Sometimes applications are limited before they are filed in anticipation of objections.

Table 2.3 summarizes the findings from the file review with respect to the time it took to process U.S. and Canadian applications. We reiterate that these data do not come from a statistically reliable sample. However, they do not make a case for the argument that U.S. carriers are treated worse than Canadian applicants.

Table 2.3: Average Time to Process U.S. and Canadian Applications for Operating Authority in Three Canadian Provinces, 1984-86

	Domicile of applicant			
	U.S.		Canada	
Province[a]	No.	Days	No.	Days
Alberta	7	58	13	118
British Columbia	10	64	14	214
Ontario	8	120	8	199

[a]Manitoba, the other Canadian province visited by GAO staff, did not have data available in readily usable form.

The cases of U.S.-domiciled applicants that we reviewed in British Columbia and Alberta were processed much faster than those of Canadian truckers. However, the apparently shorter processing times for U.S. carriers in these provinces are due to the peculiarities of the sample. In Alberta we reviewed 20 cases, 13 Canadian and 7 American. Once again, this is a small fraction of the applications processed during the 1984-86 period. One of the Canadian applications took 494 days to process and another 287 days. If these outliers are discarded from the sample, then the processing time for Canadian applications falls to 70 days. This is closer to, although still higher than, the times recorded for U.S. applications. In British Columbia we reviewed 24 cases, 14 Canadian and 10 American. The cases examined showed that Canadian applications took more than three times as long to process as American ones, a surprising outcome. However, closer inspection revealed that nearly all the American cases in this sample were unopposed, while the Canadian applications were mostly contested. The American applications were often only for adding another vehicle to the fleet, which in British Columbia requires a separate license. Thus, while we found no evidence of differential treatment, the data are too unrepresentative to demonstrate conclusively that it does not exist.

Finally, the average time to process U.S. applications in the three provinces that we visited is not very different from the 85-day average for the ICC to process uncontested applications. The ICC spent 208 days processing the average contested application.

One interesting finding from our review of Canadian processing of applications for operating authority was that the opposition to U.S. applications often came from other U.S. truckers. Indeed, Canadian carriers seeking extraprovincial authority often found their petitions challenged by U.S. firms that had previously secured similar authority. Table 2.4 lists the domicile of applicants and protesters for Alberta between 1983 and 1985.

Table 2.4: Residency of Those Objecting to Applications for Operating Authority in Alberta, 1983-85

	Applications for operating authority		Number of objectors by residency	
Year	Domicile	No.	U.S.	Canada
1983	U.S.	97	14	33
	Canada	201	21	104
1984	U.S.	87	9	12
	Canada	228	35	88
1985	U.S.	103	19	23
	Canada	235	38	108

Foreign Investment Restrictions

Under the Foreign Investment Review Act, which governed foreign investment in Canada before 1985, a non-Canadian-controlled corporation or individual desiring to acquire control of a Canadian business or to establish a new business in Canada had to receive the approval of the Canadian federal government. In its investigation, the ICC found that most U.S. truckers who sought to invest in Canada under FIRA were successful. Of 24 applications, 20 were eventually approved. Nevertheless, some U.S. carriers believed that application under FIRA was a costly and inequitable procedure that severely limited the exercise of their business judgment and unreasonably restricted management discretion. Moreover, the carriers suggested to the ICC that the small number of applications under FIRA was proof that the administrative burden had a chilling effect on investment in Canada by U.S. trucking firms. The ICC decided that the evidence was inconclusive on how much FIRA frustrated potential U.S. investment, but it did conclude that FIRA was prima facie discrimination in that it compelled American carriers or Americans wishing to purchase Canadian motor carriers to engage in a complex and potentially costly process not required of Canadians.[12]

In 1985, the Canadian government adopted a more proinvestment stance and replaced FIRA with a new policy called Investment Canada.[13] Canadian transportation and regulatory officials told us that they believe this less restrictive policy should eliminate most of the complaints that U.S. carriers had concerning Canadian regulations on foreign investment. The new policy establishes a new agency and has given it a mandate to encourage investment by both Canadians and non-Canadians. For example, Roadway Express, an American Company, recently gained Canadian operating authority by purchasing a Canadian subsidiary.

Conclusions

It is more difficult, more costly, and more time-consuming for truckers to gain extraprovincial operating authority in Canada than to acquire interstate authority in the United States. In the relatively deregulated U.S. environment, Canadians and those Americans who already have authority to operate into and out of Canada find it easy to connect with U.S. markets and offer international service. They no longer need to interline at the Canadian border. This affords Canadian operators and the U.S. operators with Canadian authority the advantage of service quality and convenience. Also, the scope of operating authority granted

[12]ICC, Ex Parte No. MC-157.

[13]Investment Canada, Key Features of the Investment Canada Act, Ottawa, June 1985.

by the Canadian provincial regulators is typically far more narrow than the broad authority granted by the ICC.

The competitive advantage that has arisen traces to the U.S. decision to relax the restrictions on entry into its trucking industry while the Canadian provinces continue to regulate. However, we found no evidence to support the allegation that the Canadians discriminate against American firms applying for operating authority. Neither the aggregate grant rate data nor our limited review of provincial files provided any evidence of systematic discrimination or intentionally unfair treatment of U.S. applicants. Rather it appears that Canadian and U.S. firms alike have more difficulty obtaining operating authority in Canada than in the United States.

All but Two U.S. and Canadian Fees and Regulations Have Applied to All Truckers

In addition to regulatory requirements governing market entry, both American and Canadian truckers engaging in transborder operations face numerous other regulations, restrictions, and fees imposed by the various states and provinces in which they operate. Some American carriers have expressed concern that certain of these requirements are imposed in such a way that U.S. operators find themselves at a competitive disadvantage. We examined several areas where American truckers have suggested that differences in the ways rules are applied or fees levied favor Canadian transborder truckers. Among the areas that we investigated were insurance and bonding requirements, customs procedures, truck taxes and licensing fees, work restrictions placed on foreign nationals, and payments into workman's compensation funds for the time drivers spend operating outside their own state or province.

Our review shows that, while there are differences between the rules and regulations governing trucking operations in Canada and the United States, there are few instances where truckers from one nation or the other are the decided beneficiaries of the disparities. The reason is that, in most cases, each country's rules and regulations are applied equally to U.S. and Canadian truckers. In the case of insurance requirements, Canadian requirements are less stringent. It is also easier for all truckers to enter Canada than the United States because the Canadians have established warehouses for clearing Customs inland. In other instances, such as immigration and naturalization restrictions and the rules, regulations, and fees governing trucking operations, both Canadian and American governments pursue similar policies and practices and no pattern of advantage to U.S. or Canadian carriers is readily apparent. In most instances, the rules and fees imposed by Canadian and American public agencies on foreign operators apply equally to domestic operators.

We identified two policies, however, that have provided a competitive advantage to Canadian carriers. The first is the requirement of some Canadian provinces that extraprovincial truckers, including American carriers, pay into their workers' compensation funds for the time drivers from outside the province spend working there. None of the American state worker's compensation boards require such payments from Canadian carriers. The second policy that had favored Canadian over American truckers was the exemption of Canadian carriers from the U.S. Heavy Vehicle Use Tax (HVUT). The U.S. Internal Revenue Service had exempted the Canadians from this tax.[1] (This issue is currently the

[1] T.D. 8027, 1985-2, I.R.B.

subject of a congressionally mandated study by the U.S. Department of Transportation.) Thus, American truckers had to pay a tax that ranges up to $550 annually for the largest trucks and from which Canadian truckers were exempt. However, in April 1987 the Congress enacted legislation requiring Canadian truckers to pay 75 percent of the HVUT rate applicable to U.S. carriers.

In Some Areas Canadian Policies Are Less Onerous Than U.S. Ones

While Canada continues to be more restrictive with respect to entry requirements, in other ways U.S. policies are more burdensome to both U.S. and Canadian truckers engaging in transborder carriage than the corresponding Canadian ones. Two cases where U.S. policy appears to be more restrictive are insurance requirements and customs procedures.

Insurance Requirements

While the Canadian provinces require carriers to maintain liability insurance, the minimum limits are much lower than those required in the United States.[2] The Motor Carrier Act of 1980 requires carriers operating in the United States to have at least $750,000 of insurance when carrying nonhazardous property and up to $5 million when carrying hazardous substances, certain explosives, and radioactive materials.[3] In the four provinces that we visited, carriers were required to maintain only $200,000 in liability insurance. Thus, in order to carry international traffic, Canadian carriers must incur higher costs for more insurance coverage while U.S. carriers incur no such cost increase when expanding their operations to Canada. This difference is changing as the provinces adjust their insurance requirements. For example, Manitoba recently increased its insurance requirement to $1 million for truckers carrying nonhazardous commodities.

Customs Procedures

We were asked to investigate allegations of long delays at the Canadian border due to inspections and large quantities of paperwork. However, on the basis of information received from Canadian Customs and interviews with teamsters, trucking associations, and trucking firm officials, we uncovered no evidence that U.S. truckers are unduly delayed at the border because of either lengthy inspections or excessive paperwork. While backups and delays do occur, other factors, such as an inadequate

[2]J.J. Keller and Associates, op. cit.

[3]P.L. 96-296, sec. 30 (44 U.S.C. 10727).

number of entry points, also play a role. Several U.S. trucking firms told us they have never had a problem with Canadian Customs but did believe their drivers were being detained by U.S. Customs. According to Canadian Customs officials at Winnipeg, Manitoba, and Toronto, Ontario, Canadian inspectors do not discriminate between U.S. and Canadian truckers as to the amount of time or rigor involved in each inspection. No one that we interviewed alleged that the inspection process at the border is discriminatory.

The evidence that we collected suggests that, if there is a difference, it is easier to pass through Canadian Customs than U.S. Customs. According to Canadian Customs, U.S. truckers entering Canada have the choice of either clearing customs at the border or traveling "in bond" to an inland highway sufferance (bonded) warehouse.

Clearing customs at inland sufferance warehouses involves the carrier being bonded; filling out a short form providing information also found on the carrier's bill of lading; and having the truck sealed. The driver is then free to continue on to a warehouse in a major city. Once the driver arrives at the warehouse, the cargo can be unloaded and the driver is free to go since generally it is the consignee's responsibility to claim the cargo after it clears customs. Since the driver does not have to be present while customs inspects the shipment at the warehouse, the trucker saves valuable time. Another advantage of the inland sufferance warehouse is that truckers with cargo from multiple shippers (less-than-truckload or LTL cargo) do not have to keep an aisle down the middle of the truck for customs inspections. Maintaining such a passageway is required for trucks with LTL shipments crossing the border into the United States. Meeting this requirement has been estimated to reduce the available cargo space in the trailer by as much as 20 percent.

All carriers wishing to use the inland sufferance warehouses must be bonded for up to $5,000 per vehicle or $25,000 for a firm annually. Bonds are required to ensure that all duties and taxes are paid and the carrier will show up at the warehouse. The trucks of some large carriers, called post-audit carriers, are not inspected and sealed by Canadian customs. They report their own duties and are randomly audited by Canadian customs. More typical are the bonded carriers, which purchase a bond in advance, but still must be sealed and inspected. Another category consists of the itinerant carriers, which purchase bonds for each separate trip. We were asked to examine the allegation that some

U.S. truckers have been required to purchase special bonds when entering Canada. However, these bonds allowing the truckers to bypass Canadian customs are the only ones that we uncovered, and these are more of a benefit than a burden because they allow the carrier to save time by avoiding border delays.

Customs officials in Alberta informed us that the release time at the border depends first on whether the shipper wishes to have the cargo cleared at the border or at an inland sufferance warehouse and, if not, whether it's a truckload or LTL shipment and whether the carrier has the required paperwork in proper order for processing. These officials estimate that a truckload cargo takes roughly 1 to 2 hours to be cleared at the border in Alberta, while that same load, if cleared inland, would take only about 15 minutes at the border.

The LTL cargo is different because each shipment in the load must have its individual manifest, invoice(s), and customs entry form. All shipments on the truck must be cleared before the truck is released, which can take an entire day. Again, the driver's time at the border can be minimized if the cargo is cleared at an inland warehouse.

The Superintendent of Customs in British Columbia told us that border delays generally are about an hour. A "perfect" border entry, with all the necessary forms filled out and procedures correctly followed, could take as little as 30 minutes. However, delays of 3 hours to 3 days are not unknown, depending on the driver's documentation and knowledge of Canadian Customs entry procedures.

On the other hand, Canadian trucking firms complained about some U.S. Customs procedures, such as overly stringent interpretation of customs regulations by U.S. border inspectors. The American inspectors, they claimed, cite drivers for what they believe to be essentially paperwork violations, whereas Canadian Customs, they claim, would treat the same problem as an infraction that could be cleared up by mail later. While we did not attempt to validate these claims, they suggest that both nation's truckers have complaints about border practices and procedures. The Canadian truckers also noted the lack of active inland bonded warehouses in the United States. Without them, trucks must be cleared and inspected at the U.S. border and this is time-consuming.[1]

[1]P.L. 96-296, sec. 30 (44 U.S.C. 10727).

Finally, regardless of different policies, U.S. and Canadian truckers are treated the same in each country and, therefore, neither enjoys a comparative advantage due to differential treatment.

In Some Cases the U.S. and Canada Pursue Similar Policies Affecting Trucking

There are some differences in Canadian and American policies toward the taxation and regulation of the trucking industry but, overall, the two nations pursue similar trucking policies. American truckers complain that they must deal with different rules and regulations in the various provinces, but so too must Canadian truckers cope with the different rules governing trucking in the 50 states. The same is largely true for fees and taxes. Some U.S. carriers have complained about the restrictions placed on the activities of their drivers while they are in Canada, but the restrictions cited appear to apply with equal force to Canadian drivers operating in the United States. Nevertheless, each province has authority similar to that vested with ICC before regulatory reform in the United States; thus, serving multiple provinces is more difficult than serving multiple states.

Significance of Multiple Regulatory Jurisdictions

To examine whether decentralization of regulatory authority in Canada makes it more difficult for U.S. truckers to operate there than in the United States, we reviewed the different rules and policies of four provinces and compared them with the state and federal policies that truckers must comply with when operating in the United States.

In the United States, the ICC has central authority for the economic regulation of interstate trucking, and the federal government retains authority to regulate driver and equipment safety and to set minimum levels of financial responsibility. The federally controlled aspects of trucking in the United States, including insurance requirements and weight and size limits on the interstate highways, appear to make compliance in the United States easier than in Canada, where each of the provinces exercises independent control over extraprovincial trucking. However, the individual states also have regulatory authority over and responsibility for some of the physical and business aspects of trucking, such as the size of vehicles permitted on state highways. License and registration fees and fuel taxes are also levied by the individual states. Each state differs somewhat from the others in how it exercise its controls over trucking operations in the state.[1]

[1]J.J. Keller and Associates, op. cit.

Likewise, there is no question that the rules and regulations applying to extraprovincial trucking vary from province to province. Although each provincial regulatory agency exercises control over entry similar to that vested in the ICC, the provinces also enforce other controls and requirements that are the responsibility of the individual states. On the basis of our review of state and provincial policies and our discussions with Canadian and U.S. transportation officials, regulatory authorities, and carriers, provinces differ much the same way that the states differ in the requirements they place on truckers operating to or through their territory.

A detailed analysis to precisely determine the comparative impact of the varying policies of multiple jurisdictions is beyond the scope of this review. It would require a profile of traffic patterns of Canadian and U.S. carriers and a detailed assessment of the numerous rules, regulations, and fees of the individual provinces and states that affect trucking operations. However, during our interviews with regulatory officials and carriers on both sides of the border, we found no evidence that U.S. truckers are any more burdened by the diverse regulatory practices of the Canadian provinces than are Canadian truckers. Similarly, both U.S. and Canadian truckers must comply with the different rules and regulations governing truck operations in the individual states. Thus, while inconsistency can make it more difficult for truckers to operate, it is a problem on both sides of the border. In fact, the simple realities of political geography and demography would suggest that the Canadian truckers must often traverse several U.S. states and meet the different requirements of each, while a U.S. trucker serving Canada would seldom be traveling to more than one or two provinces. This is true because 80 percent of the Canadian population resides within 90 miles of the U.S. border and because nearly 90 percent of international truck traffic is to two provinces, Ontario and Quebec. The greater dispersion of the U.S. population means that Canadian truckers must often travel through a number of states.

Taxes and License Fees

There are variations in the fees and taxes required of motor carriers among the states and provinces.[6] With respect to the United States, each state requires interstate motor carriers to register their interstate operating authorities and to pay vehicle registration fees, fuel taxes, and sometimes additional taxes, such as those based on miles traveled in the state. Responsibility for collecting these levies usually is divided among

[6]Ibid.

different departments within the state government. As a result, interstate motor carriers, both American and Canadian, often must deal not only with the separate requirements of individual states but also with a number of agencies within each state.

A number of proposals since the 1950s have advocated more uniformity in state regulations which would reduce carriers' administrative burdens. While the rules and regulations governing trucking operations continue to vary among the provinces and among the states, some degree of reciprocity and uniformity in vehicle registration agreements has been achieved in the United States by the International Registration Plan (IRP) and the Uniform Proration Compact. In Canada, the provinces established the Canadian Agreement on Vehicle Registration (CAVR) in 1980, which also reduces the burden of registering vehicles traveling in two or more provinces. All Canadian jurisdictions belong to CAVR except the Northwest Territories and the Yukon.[7] These agreements allow all carriers from participating states and provinces to prorate license and registration fees.

Alberta belongs to CAVR and the IRP, which includes 33 states. The IRP does not provide for the proration of other taxes such as fuel taxes.[8] The IRP reduces some of the paperwork and administrative burden facing all truckers who travel to or through a number of states. The ability to prorate can have a significant impact on the registration fees a carrier must pay. For example, a trucker from an IRP state with 11 trucks pays $54.54 annually to operate in Alberta. That same firm would have to pay $26,627 to operate those 11 trucks in Alberta if it was from a non-IRP state.

British Columbia is a member of CAVR, the Uniform Proration Compact, and has a bilateral agreement with California.[9] With the latter two agreements, British Columbia is able to prorate the taxes and fees of truckers from 20 states. British Columbia is contemplating the pros and cons of joining the IRP. Although membership would likely reduce the administrative costs for B.C. trucking firms engaged in transborder

[7]Canadian Conference of Motor Transport Ministers, Canadian Agreement on Vehicle Registration, Procedural Manual, 2nd edition, Ottawa, 1983.

[8]Alberta Motor Transport Board, International Registration Plan and Uniform Proration Agreement, Red Deer, Alberta (undated).

[9]Canadian Conference of Motor Transport Ministers, op cit.

operations, B.C. officials estimate that it might reduce provincial revenues from extraprovincial vehicle registrations by as much as $300,000 per year.

Both Ontario and Manitoba have reciprocity agreements with other provinces and certain states that provide for either exemption from these fees or reduced fees.[10] Ontario has bilateral, full reciprocity agreements with 38 states. These agreements provide for "full and free" recognition of license plates by each party to the agreements for interjurisdictional moves. Manitoba has reciprocity agreements with 33 states.

In the case of fuel taxes, there is no IRP and only two minor agreements among the states (one of which includes Washington, Iowa, and Arizona while Maine, New Hampshire, and Vermont comprise the other). In the rest of the states interstate carriers must register for the fuel tax, secure necessary bonds, attach the proof of payment, and file quarterly tax reports in every state they travel in during the tax period.[11]

Weight/distance taxes also are levied on both Canadian and U.S. carriers. Eleven states impose this type of tax, and 5 of these require separate stickers showing that the weight/distance taxes have been paid. In addition, there is little uniformity among these states on the basis for calculating the weight/distance taxes. Trucks traveling in these states must calculate their tax and make separate payments to each jurisdiction.[12]

Again, a detailed quantitative assessment of comparative tax incidence was beyond the scope of this review. However, we found no evidence that taxes and fees were any more diverse in Canada than in the United States. Similarly, we did not uncover any Canadian provincial taxes or fees that were assessed only on U.S. carriers. Officials from Canadian transport boards that we visited stated that all operating regulations apply equally to carriers of both countries. However, there was one U.S.-imposed fee that American carriers had to pay from which Canadian carriers were exempt: the Heavy Vehicle Use Tax (HVUT) (see p. 39).

[10]J.J. Keller, op cit.

[11]Ibid.

[12]Ibid.

Work Restrictions

Some U.S. truckers have complained that they are not allowed to perform repair or maintenance work on their vehicles while they are in Canada. They also have complained about Canadian truckers performing illegal pickup and delivery work while in the United States. To address these concerns about the treatment of truckers operating outside their home country, we reviewed the policies governing the activities of foreign nationals operating trucks in the United States and Canada, and we interviewed officials at the Immigration and Naturalization Service (INS) and the U.S. and Canadian Customs Services to discuss how these policies are enforced. In general, both the United States and Canada restrict the activity of foreign truck drivers.

U.S. immigration laws prohibit aliens from working in the states unless there are an insufficient number of American workers able, willing, and qualified to do the work and there will be no adverse impact on the wages and working conditions of American workers from employing the aliens. If the INS grants a Canadian trucker permission to drive a Canadian-based vehicle into the United States, the Canadian driver is usually not allowed to make pickups and deliveries—that is, provide point-to-point service—within the states. The only exception to this restriction is the case where the pickup and delivery would be incidental to a regularly scheduled international operation. The definition of a regularly scheduled operation calls for frequent (e.g., daily) service at set times over the same highways. Few transborder trucking operations qualify for this exception.

In some cases Canadian drivers have been found to be violating the INS restriction on their activities by engaging in illegal pickup and delivery in the states. Currently, U.S. Customs checks for violations at the border by reviewing truckers' log books, and the highway patrol occasionally stops truckers to check their manifests for violations of INS regulations.

U.S. Customs officials informed us that during the past several years they have cited some Canadian drivers for making illegal pickups and deliveries. Since the cases are filed chronologically and not by type of infraction, we could not readily compile a record of domestic hauling violations by Canadian truckers.

Canadian Customs officials told us that Canadian regulations permit American trucks to make multiple stops to pick up goods for export and, if there are no available Canadian carriers, to make multiple stops to deliver goods from the states. They also said that domestic hauling by Americans (intraprovincial pickup and delivery work) is permitted, with

certain restrictions, as long as "it is incidental to the international commercial transportation." In order to qualify for permission to do domestic hauling, the foreign carrier must both enter and leave Canada with a load. Canadian Customs officials told us that they do not have the staff to enforce the regulations and learn of violations only if they are notified by personnel operating roadside truck weigh scales.

The request for this study specifically asked us to examine the issue of whether U.S. trucking firms are denied permission to cross into Canada to repair a disabled vehicle. We found that this prohibition does exist, but it exists in both nations.

American Truckers Face Two Charges That Canadian Truckers Do Not

While we were unable to substantiate many of the allegations made by American truckers engaged in transborder operations, the evidence in two areas suggested a relative disadvantage. Several provinces require out-of-province truckers to pay into their workman's compensation funds for the time the truckers spend working in the province. While this applies to Canadian as well as American truckers, no state requires a similar payment from out-of-state truckers. The other difference was that U.S. carriers had to pay the Heavy Vehicle Use Tax while Canadians were exempt. Recent legislation has largely eliminated the latter disparity.

Workman's Compensation Funds

U.S. trucking firms must pay into the workman's compensation funds (WCFs) of Manitoba, Ontario, and British Columbia for the time spent by their drivers working in these provinces, while the individual states do not require any such payments from Canadian truckers. In return for these payments, U.S. truckers are covered by the provincial funds if their drivers are injured while working there. None of the provinces that require these payments recognizes the coverage of states for the time that truckers work in their province. Thus, truckers are required to pay twice for workman's compensation coverage for the time their drivers spend in some of the Canadian provinces when they are also covered by a fund in their home state. If the driver is injured while in Canada, the claim can be made on either the provincial fund or the fund in the state where the driver is based. American truckers providing transborder service, therefore, are faced with an added cost that Canadian transborder truckers do not face. This raises U.S. trucker operating costs relative to those of Canadian carriers and can affect rates, traffic shares, and profits. The specific requirements of the three provinces that call for these payments are discussed below.

Ontario

American truckers must pay into the fund if they are doing pickup or delivery work in Ontario. Those using "corridor only" authority (operating authority that allows a carrier to drive through the province) need not pay into the fund. The 1986 fee in Ontario is 5.63 percent of the firm's total payroll weighted by the proportion of miles driven in Canada by the company's drivers.

The Ontario Workers' Compensation Board relies on the principle of "good corporate citizenship" for enforcement. They rely on the trucking firms to pay into the fund in accordance with regulations. Currently, the only way they have of knowing if a firm is contributing is when an accident occurs and a claim is filed.

Manitoba

All trucking firms with either pickup or delivery authority or even corridor authority must pay into the Manitoba WCF. The fee is 4.8 percent of the wages paid by U.S. firms for work done in Manitoba.

The Workers' Compensation Board in Manitoba said that currently there is no way of knowing if a trucking firm was avoiding payment into the fund unless it was reported. However, they are considering matching their records with the records of authorities granted at the Manitoba Motor Transport Board as a means of enforcement.

British Columbia

According to an official with the Workers' Compensation Board of British Columbia, whether or not a U.S. trucking firm must pay into the WCF for its workers depends on how the firm operates in the province. Generally, U.S. employers who do not have a place of business in the province, such as a trucking terminal, and who do not employ B.C. residents are not required to pay into the WCF. If a U.S. firm has a place of business in the province, the firm would be required to pay into the WCF to cover its U.S. employees working in the province.

A firm not based in British Columbia that hauls goods into the province, drops them off, and leaves empty is not regarded as being "in the trucking industry" and, therefore, would not have to pay into the WCF. However, a U.S. firm hauling goods out of British Columbia must contribute to the WCF if it made seven or more trips out of the province a year.

We contacted officials at WCF programs in a number of states concerning the requirements for Canadians to pay into the WCF for time the drivers

operate in states. We were told by these state compensation board officials that employees engaging in interstate trucking are not required to be covered by the state's worker's compensation fund outside their home state. The Canadian Trucking Association told us that no state requires Canadian carriers to pay into state funds.

Heavy Vehicle Use Tax

The federal Heavy Vehicle Use Tax was first imposed in 1956 to help pay for the wear and tear on the highways caused by the heavier vehicles.[13] Canadian vehicles were exempt from paying this tax because they were not considered to be registered in the United States. However, this situation changed in 1981 when the Internal Revenue Service (IRS) ruled that Canadian vehicles from provinces that prorated registration fees with states through the IRP or the Uniform Proration Agreement were considered to be registered in the United States and subject to the tax.[14] This meant that truckers from Alberta and British Columbia would be subject to the tax. At the time, the tax was $240 per vehicle for the heaviest tractor- trailer combinations. However, the Surface Transportation Assistance Act of 1982 increased the HVUT dramatically.[15] The fee for vehicles over 80,000 lbs. would rise to $1,900 per year by 1988. The Congress later reduced the maximum rate to $550 per vehicle in the Deficit Reduction Act of 1984.[16] This act also called for a Department of Transportation (DOT) study of the HVUT and U.S.-Canadian transborder traffic.

While most Canadian carriers continued to be exempt, truckers from Alberta and British Columbia were required to pay the tax, and these provinces were considering leaving the multiple registration agreements. This issue was taken up at the 1984 meeting of the consultative mechanism and the conferees agreed to extend the exemption to all provinces pending the outcome of the DOT study. The IRS issued a ruling exempting all Canadian truckers from the HVUT in May 1985.[17]

American truckers point out that relaxed U.S. entry standards have resulted in a dramatic increase in Canadian truck use of U.S roads. The

[13]Federal Highway Act of 1956, sec. 206 (4481, I.R.C.).

[14]Rev. Rul. 81-86, 1981-1, I.R.B.

[15]P.L. 97-424, Title 5, Sec. 513, 96 Stat. 2177.

[16]P.L. 98-369, Secs. 901, 902, 903, 98 Stat. 1003.

[17]T.D. 8027, 1985-2, I.R.B.

U.S. truckers claim that their competitive position for transborder traffic is further eroded by the lower costs Canadian carriers incur because they avoid U.S. highway taxes. The HVUT is one tax that does not have a Canadian counterpart. The American truckers believe that the Canadians should be assessed for the damage that their heavy vehicles do to U.S. highways. The Canadians agree that they should pay something, but they note that their vehicles spend most of the time on Canadian highways and so they should pay only a pro rata share.

The HVUT is a flat per-vehicle tax and is not based on mileage. (A tax that took into account both mileage and weight could provide a more accurate assessment of road damage, but compliance with such a tax would be difficult to monitor. DOT currently has a study underway on the feasibility of a federal weight-distance tax, and the findings will be reported to the Congress by October 1, 1987.) Trucks that travel less than 5,000 miles on public roads are excluded, and agricultural and timber vehicles may travel up to 7,500 miles annually under the exclusion. Other commercial trucks are assumed to be required to pay the fee. The 5,000-mile exclusion could prove to be a problem in the case of Canadian vehicles. Some Canadian trucks that travel only occasionally to the states might qualify for the 5,000-mile exclusion by adjusting their fleet utilization plans to minimize their HVUT payments.

The DOT study on the HVUT is also scheduled to be completed by October 1987. The study is examining several options through which the Canadians would contribute to the HVUT, including requiring that Canadian truckers pay a percentage of what the Americans pay. The Americans point out that this is a weight-based tax and that American truckers that travel fewer miles pay the same as those traveling more. They believe there is no reason to reduce the tax for Canadians. In April 1987, the Congress enacted the Highway Revenue Act of 1987 over the President's veto that contained a provision requiring all Canadian truckers to pay 75 percent of the HVUT subject only to the 5,000-mile exclusion.

Conclusions

We examined a number of complaints about Canadian and U.S. rules and practices to see if any exhibited a systematic bias against U.S. trucker interests. In some cases, such as insurance requirements and customs procedures, it appears to be more costly for both U.S. and Canadian carriers to operate in the United States. In other cases, such as licensing fees and INS restrictions, we found that the two nations followed similar policies affecting both U.S. and Canadian truckers and that, whatever

differences exist, it was not readily apparent that truckers from one nation or the other were systematically disadvantaged.

In two areas, however, we found that U.S. carriers are treated differently from Canadians. To the extent U.S. carriers must pay into some provincial workman's compensation funds while Canadians do not have to pay into American state funds, U.S. truckers incur an added cost that Canadians do not. Similarly, as long as Canadian truckers pay a smaller HVUT than U.S. truckers, U.S. truckers incur a higher operating cost than Canadians.

The Heavy Vehicle Use Tax and the requirement to contribute to provincial WCFs are unlikely to raise the operating costs for U.S. transborder truckers by as much as 1 percent. All WCF payments by U.S. carriers amount to only 1.5 percent of the total operating costs of Class I carriers in the United States and the $550 annual charge for the largest trucks is well below one-half of 1 percent of the annual operating costs of such vehicles. These differences probably are not critical in determining which nation's truckers will carry the traffic, and it is unlikely that these differences will result in traffic shifts significant enough to trigger the consultative mechanism discussions called for in the Brock-Gotlieb agreement. There are many other factors, such as relative operating efficiency and fuel costs, that are more important in determining which carriers have the competitive edge. Canadian truckers claim that Canadian taxes are higher than those paid by American firms, that their fuel costs are higher, and that they do not have the operating efficiencies of the larger U.S. carriers.

The basis for the HVUT is to require payments for road use in accordance with the costs imposed by use of the roadways. Canadian trucks, when they use American roads, do the same damage as comparable U.S. trucks, and so it is reasonable that they be charged in accordance with their usage. We found little disagreement that Canadian truckers should pay the HVUT. The question that the DOT study will decide is the basis for calculating how much the Canadians should contribute.

The payments into Canadian WCFs when the carriers already are covered by their home state funds also result in an extra cost that American transborder truckers incur that Canadian truckers do not. Reducing the costs associated with overlapping coverage would require either that the provinces recognize state coverage or that state funds prorate their own charges to account for U.S. trucker contributions to the Canadian funds.

Canada's Share of Transborder Traffic Has Increased, but the Impact on American Carriers Remains Unclear

The Brock-Gotlieb agreement specified that the United States and Canada would reassess the transborder trucking situation if there is a major shift in market share to the harm of an important segment of the industry. However, the phrases "major shift" and "important segment" were not defined in the agreement. Despite this limitation, we sought to determine whether there has been a substantial shift in transborder traffic due to the disparate entry policies or other differences in trucking regulations and costs of operation in the United States and Canada. We looked for evidence from carrier complaints and evaluated the available U.S. and Canadian data on transborder traffic market shares.

Data from Canadian agencies, evidence from U.S. truck accident statistics, and a number of individual reports of traffic losses led us to believe that Canadian truckers have increased their share of the transborder trucking market. However, the data on shifts in the market shares of transborder traffic are very scarce, especially data from American sources. We cannot, therefore, quantify a shift in transborder traffic. Without better data and without accepted criteria for determining what is a "major shift" or an "important segment," it is not possible to determine whether American traffic losses have been serious enough to warrant consideration by the consultative mechanism.

Market Share Data Are Scarce

A number of U.S. trucking firms have complained that they have lost business to Canadian carriers. While anecdotal evidence can be useful in obtaining a feel for how widespread a problem might be, statistical information collected systematically is necessary to precisely establish the seriousness of the situation and whether government action is required to rectify it. However, the data available on the shares of transborder traffic hauled by U.S. and Canadian trucks are extremely scarce. We contacted U.S. and Canadian regulatory and transportation officials, trade and customs personnel, and representatives of the major data collection agencies in both countries. Neither country collects data on tonnage or value of goods shipped across the border by truck disaggregated by the carrier's country of domicile. A few surveys have been made, but none recently, and the ones done earlier were usually confined to a single geographic area. The consensus among officials whom we interviewed was that Canadian carriers have made some inroads since the United States deregulated.

Alternative Data Sources

In the absence of reliable statistics on the relative amounts and values of the goods carried by U.S. and Canadian firms, we sought to identify other data sources that might serve as proxies for trends in market shares.

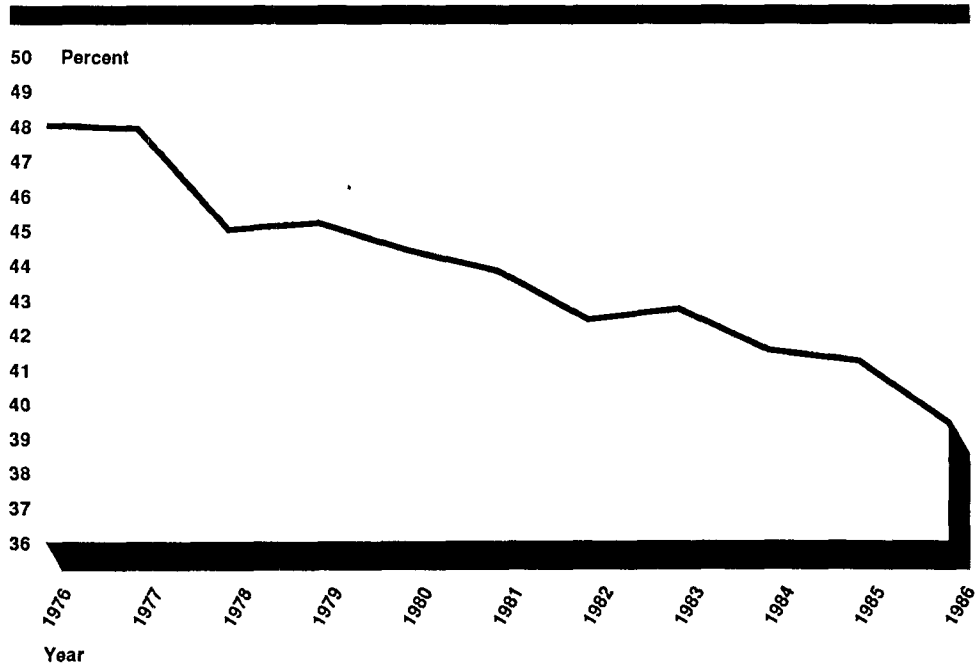
Border Crossings

One proxy we uncovered is a data series developed by the Canadians which tracks the number of border crossings into Canada by commercial trucks and distinguishes between U.S.- and Canadian-based vehicles. This information is collected by the International Travel Section of Statistics Canada largely for monitoring trends in travel and tourism. These data are shared with the U.S. Bureau of Economic Analysis and the U.S. Travel and Tourism Administration. The data contain no information on either the volumes or values of the commodity flows, nor are they able to detect U.S.- or Canadian-owned subsidiaries. Only border crossings are recorded. Thus, they provide only a rough approximation of market share shifts.

The border crossing trends presented in figure 4.1 suggest that the American share of the transborder truck traffic has declined about 10 percent since 1980 when the United States opened up its trucking market to the Canadians. However, the data also show that the decline in market share predates the surge of Canadian entrants following U.S. regulatory reform. While deregulation may have played a role in continuing the decline, other factors may also have contributed to the traffic shifts.

One possible influence is the exchange rate between U.S. and Canadian currencies. Over the same period examined in figure 4.1, the U.S. dollar appreciated substantially relative to the Canadian dollar. U.S. goods and services have become more expensive for Canadians while Canadian goods and services have become cheaper for Americans. Figure 4.2 plots the decline in the Canadian dollar expressed in U.S. dollars.

Figure 4.1: U.S. Percent of Truck Border Crossings Into Canada 1976-86



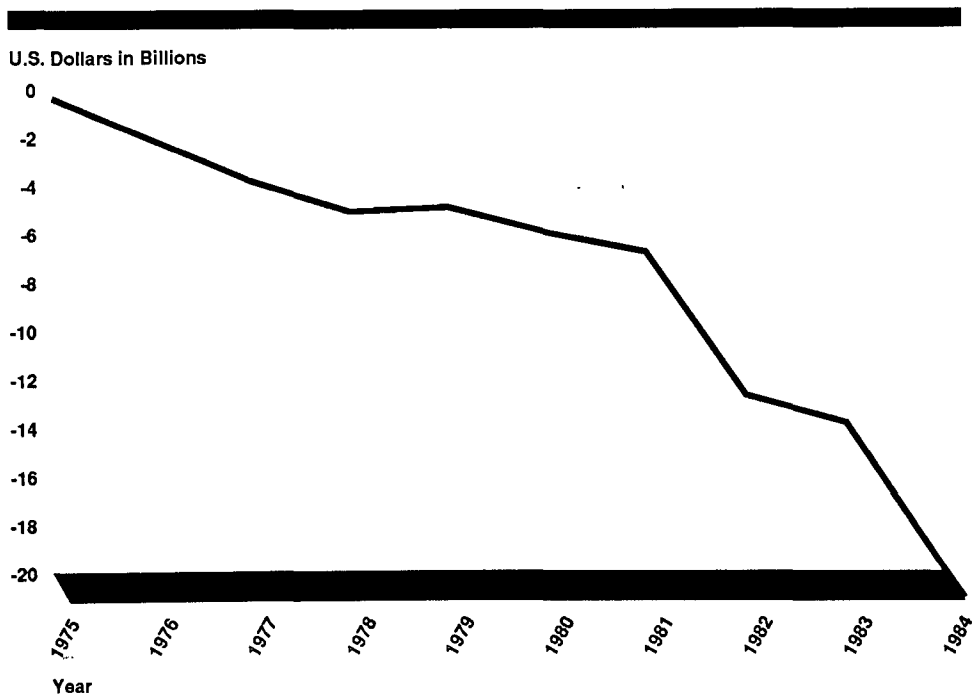
Source: Statistics Canada International Travel Section.

Figure 4.2: U.S.-Canadian Exchange Rates, 1976-84

Source: U. S. Department of Commerce.

Another factor that could help explain the loss of market share by U.S. truckers, and related to the exchange rate differential, is the shift in the balance of trade. Falling Canadian prices stimulate Canadian exports and rising relative U.S. prices dampen U.S. exports. As a result, the relative amount of traffic originating in Canada will increase. The U.S. trade deficit with Canada has reached an all-time high of $20 billion annually (see fig. 4.3). If truckers in the exporting nation have an advantage over truckers in the importing nation in soliciting traffic, we should again expect the Canadians to increase their share of the transborder traffic. There are other factors as well, including labor cost differences, that can help explain shifts in market share. We did not attempt to measure the potential impact of each of the several factors that could influence market share. The data are too scant for such an undertaking.

Figure 4.3: U.S. Balance of Trade With Canada, 1975-84



Source: Statistical Abstract of the United States.

Accident Frequency

In addition to the border crossing data, we examined accident records from the U.S. Bureau of Motor Carrier Safety (BMCS). Our reasoning is that if Canadian truckers have increased their share of international truck traffic and have captured American traffic that was previously

interlined, the increased Canadian truck travel in the United States would be reflected in the accident statistics. Unless the Canadian truckers entering the market today are safer drivers than those who were already here, the increased exposure should be apparent in an increased share of accidents. Figure 4.4 indicates that there has been an increase in the Canadian share of truck accidents reported to the BMCS. Accidents reported to the BMCS are those involving loss of life, serious injury, or property damage in excess of $4,200 ($2,000 before 1986). Although these accident statistics support the thesis that Canadians have increased their share of the transborder traffic, the absolute size of the increase, as well as the absolute size of the Canadian share of BMCS-recorded accidents, is small—about one-half of 1 percent.

Figure 4.4: Canadian Percent of U.S. Truck Accidents, 1981-86

Source: DOT.

Canadian Survey

The final data that we uncovered on the market shares issue came from a 1985 survey of the transborder trucking industry by Transport Canada. The survey examined the market penetration of 160 Canadian trucking firms currently operating in the United States. The survey had a somewhat different focus than necessary for our purposes. No U.S. firms were included, for example, so we know only the increase in

importance of international traffic to Canadian firms, but not the market share trends. Nevertheless, these data can help paint the picture of traffic shifts.

The firms included in the special survey account for 62 percent of the international revenues earned by Canadian carriers in 1983-84. The information garnered in the special survey was augmented by information collected annually in the Motor Carriers of Freight Survey. The data from this annual survey show that the amount of international revenue earned by Canadian for-hire truckers has increased continuously between 1975 and 1984 except during the recession year of 1982 (see table 4.1).

Table 4.1: Trends in International Revenues of Canadian For-Hire Carriers, 1975-84

(Canadian dollars)

Year	Total international revenues	Percent of operating revenue
1975	$209,520,000	8.1
1976	241,137,000	8.4
1977	296,807,000	9.1
1978	400,442,000	10.0
1979	472,512,000	10.1
1980	489,359,000	9.4
1981	561,077,000	9.9
1982	584,299,000	10.5
1983	697,526,000	12.1
1984	864,851,000	12.8

Source: Transport Canada.

The increase in the percentage of revenue earned from international operations by Canadian-domiciled carriers between 1982 and 1984 is matched by a parallel increase in Canadian exports to the United States carried by road. During this period, all exports to the United States by modes other than road decreased. Canadian trucks are also traveling greater distances in the United States. In 1984, the distance traveled by Canadian-domiciled carriers on trips to the states increased by 12 percent over 1983. More than 80 percent of the trips to the states of those responding to the survey were for distances greater than 200 kilometers.

Few U.S. Truckers Complained of Losses

We proceeded along several avenues to identify truck traffic and jobs that might have been lost to new Canadian competition. As discussed in chapter 2, about 30 trucking companies and teamster organizations were identified through our inquiries to offices of border-state Senators and the notice sent out by the ATA. We also interviewed a number of truckers suggested to us by state trucking associations, teamsters, and others. We received few reports of lost traffic or job losses due to increased Canadian competition. Nevertheless, among those firms that did report lost business, the decline was often steep. One U.S carrier reported that it lost 83.4 percent of the revenues earned in Canada and 91.1 percent of the traffic after a Winnepeg-based competitor was granted U.S. operating authority and captured traffic that previously had been interlined. Another U.S. carrier identified more than $180,000 in lost revenues from increased Canadian competition. However, more than one-half of the "loss" was due to reduced rates to meet Canadian competition.

Conclusions

The limited data, especially on the experience of U.S.-domiciled truckers, makes it difficult to be precise about the effect of disparate U.S. and Canadian regulatory policies on national market shares. The scant data that are available, the views of industry observers, and the testimony of affected U.S. truckers all point to an increased Canadian presence in the United States and to less interlining with American carriers since the United States deregulated in 1980. The proxies that we developed to examine the trends also support the thesis that Canadians have gained market share, but factors other than disparate regulatory frameworks may be responsible for the shifts. Moreover, the BMCS accident data suggest that, while the gains may be relatively large for Canada, they are a relatively small proportion of U.S. truck traffic.

The limitations on the available data inhibit accurate monitoring of shifts in the market shares of U.S. and Canadian transborder truckers. Without more precise data on the value and volume of traffic carried by U.S. and Canadian truckers, it will not be possible to evaluate whether U.S truckers have lost traffic to the degree that significant portions of the industry have been harmed as specified in the Brock-Gotlieb agreement.

Canada Is Taking Steps to Deregulate Its Trucking Industry

Over the past several years, there has been considerable debate in Canada over transportation regulation. While some Canadians emphasize the potential benefits of regulatory reform, others fear loss of jobs and business in a more competitive climate. These concerns notwithstanding, successive Canadian federal governments have expressed their commitment to substantially deregulating Canada's transportation system. In anticipation of federally sponsored regulatory reform legislation, some provinces have taken steps to deregulate the trucking industry. Canadian officials expect that the federal deregulation plan will be enacted by the Parliament sometime in 1987. The new law would largely eliminate current restrictions on entry into the extraprovincial trucking industry over the next 5 years.

Transborder Trade Is Important to Both Nations

The United States and Canada are each other's most important trading partners. Both countries are affected by what happens across the border, but Canada is especially affected by U.S. economic and regulatory policies. In 1984, Canadian exports to the states had a value of nearly $83 billion (Canadian), and more than $44 billion moved by truck. Table 5.1 shows the provincial distribution of Canadian exports to the United States.

Table 5.1: Exports From Canadian Provinces to the United States by Mode of Transport in 1984 (Millions of Canadian Dollars)

Province	Road	Rail	Water	Air	Other	Total
Ontario	32,021.3	12,622.7	577.2	2,411.9	567.4	48,200.6
Quebec	6,887.6	4,123.0	1,031.3	511.1	431.1	12,984.1
Brit. Col.	1,794.8	2,093.8	1,095.1	47.7	608.8	5,645.2
Manitoba	984.6	149.5	3.0	40.8	121.0	1,299.0
Alberta	772.9	1,229.2	26.7	34.3	7,271.1	9,334.2
Saskatchewan	494.3	551.4	90.1	10.2	1,305.7	2,451.7
New Brunswick	475.0	141.1	315.5	4.8	469.8	1,406.2
Nova Scotia	373.6	287.6	330.8	9.4	4.2	1,005.6
Newfoundland	286.3	12.0	86.4	2.3	0.3	387.3
Prince Edward I.	68.4	0.4	3.6	4.1	0.1	76.6
Yukon	2.6	0.9	•	2.3	0.1	5.8

Source: Statistics Canada.

Both American and Canadian truckers share in this traffic. In 1985, 500 U.S.-domiciled carriers were operating in Canada and nearly 800 Canadian carriers had authority to operate in the United States.

Economic Pressures for Regulatory Reform of Extraprovincial Trucking

In market-oriented economies, such as the United States and Canada, economic regulation over rates, services, and entry is reserved for those situations where many people believe competition will not work. Industries where the most efficient plant size is so large that it can meet all demand are considered to be natural monopolies and, if they are privately owned, are typically regulated to protect the public interest. Competition under these circumstances can be ruinous. During the 1930s, the trucking industry in the United States exhibited considerable instability as many firms left the industry. The Motor Carrier Act of 1935 brought trucking under the regulatory umbrella partly to bring more stability to the industry. However, the trucking industry does not have the prerequisites for ruinous competition. There are few barriers to a new firm entering the industry. Therefore, economic regulation is not necessary to protect the public from the development of a natural monopoly. Whatever other conditions existed to justify restricting competition in the trucking industry in 1935, by 1980 it was generally believed that continued economic regulation of trucking was inefficient and costly.

In Canada, to a greater extent than in the United States, regulation has been relied on to promote certain social goals, such as regional equity. Ensuring that the more remote settlements in the country receive adequate transport service is an important purpose of regulating entry in Canada, and it has been the rationale for restricting competition in the more lucrative markets.

Increased competition in the United States has resulted in lower freight rates, and one outcome of the difference in regulatory environments is that transport costs in Canada are now substantially higher than in the states. In some cases, they are as much as 30 to 50 percent higher. In June 1984, the former Canadian transport minister observed that it costs $1.38 per truck mile to move goods between Windsor, Ontario, and Chicago, but only $0.79 per truck mile to move the same load from Detroit to Chicago. Canadian trucking firms spend $40 million (Canadian) annually to comply with the procedural requirements of the 10 provincial boards.

Opposition to Trucking Deregulation in Canada

Opposition to trucking deregulation comes from those who might be expected to suffer losses if Canada relaxes its restrictions on entry—Canadian truckers and teamsters. Canadian truckers argue that if the provinces deregulate, large U.S. firms will come into Canada and target lucrative markets such as Seattle-Vancouver or Toronto-Montreal but

will not serve the sparsely settled areas. They claim that large, established American carriers will merely extend already well-developed networks a few miles across the border, offer steeply discounted rates, and capture the lion's share of the lucrative traffic.

However, rates might not fall in Canada by as much as they did in the United States following deregulation because Canadian regulators never controlled extraprovincial rates as tightly as the United States controlled interstate rates. Therefore, there might not be as much discounting in Canada compared with what occurred in the states after deregulation. If rates were not higher due to rate control, but were higher only because there was less competition, then the impact on freight rates from deregulation might be less dramatic than has been true in the states where both rate and entry controls had kept up freight rates.

Canada's teamsters are also very concerned about their prospects under regulatory reform. A 1983 study concluded that as many as 5,000 jobs could be lost in Ontario alone if that province adopted an open-door border policy with regard to U.S. truckers. Canadian labor has noted the steep decline in the use of union labor in the United States under deregulation. Organized labor is often a major beneficiary of economic regulation, and the increased competition that results from deregulating rates and market entry forces firms to bargain more intensely over wages and working conditions. Competition forces firms to trim costs, and labor costs are a large share of a trucking firm's operating costs.

Canadian Transportation Ministers Have Pledged Regulatory Reform for Extraprovincial Trucking

The prospect of a U.S. moratorium and the threat by the Canadian federal government to rescind the delegation of regulatory authority over extraprovincial trucking led to meetings of the transport ministers of the various provinces, territories, and the federal government. On February 27, 1985, the ministers signed a Memorandum of Understanding that called for substantial deregulation of extraprovincial trucking. The memorandum explicitly states that it applies only to extraprovincial trucking, and it does not prevent a province from regulating intraprovincial trucking in a manner consistent with provincial policy.

The ministers agreed to work toward shifting the burden of proof in a contested application for authority from the applicant to the protester. The ministers also agreed to develop common lists of exempt commodities, simplify license categories to enhance compatibility between jurisdictions, streamline application procedures, establish uniform taxation

categories for commercial vehicles, and develop a uniform national definition of "fitness."

The ministers reaffirmed their commitment to reducing the burden of regulation on the trucking industry in October 1985. They also agreed to work for uniform safety standards and compatibility with the United States.

While the Memorandum of Understanding evidences a general commitment to regulatory reform, a recent Manitoba Transport Board decision had this to say about the document:

". . . the Council of Ministers is not a body with any law making power. The signatories to the Agreement can not "commit" their respective legislatures or regulatory tribunals, set up under provincial legislation, to anything. Accordingly, the document has no legal power; it is solely a political document, which indicates the signatories and their respective governments will not make political objections to the stated reforms and will proceed to make reasonable efforts to achieve legislative sanction therefore. It is "enforceable" only by the desire inherent in any government to maintain its good will, and thereby continue to be able to rely upon the commitments given in every other such agreement."

Statements of intent, therefore, are no guarantee that reform will take place. Canadian federal action specifying what changes will take place and establishing a timetable for implementation is also needed to ensure that the goals expressed in the Memorandum of Understanding are realized.

The Canadian Provinces Have Introduced Some Changes in Trucking Regulations in Recent Years

Table 5.2 summarizes the intraprovincial and extraprovincial regulatory policies of the individual Canadian provinces. Although the provinces are broadly similar in their regulation of intra- and extra-provincial trucking, they differ in how stringently they enforce entry requirements and other regulations.

Table 5.2: Provincial Regulatory Policies

	Intraprovincial				Extraprovincial			
Province	Entry	Rate Filing	Rate Filing and Approval	Rate Prescription	Entry	Rate Filing	Rate Filing and Approval	Rate Prescription
British Columbia	Yes	N/A	Yes	No	Yes	No	No	No
Alberta	No	No	No	No	Yes	No	No	No
Saskatchewan	Yes	N/A	N/A	Yes	Yes	No	No	No
Manitoba	Yes	N/A	N/A	Yes	Yes	No	No	No
Ontario	Yes	Yes	No	No	Yes	Yes	No	No
New Brunswick	Yes	Yes	No	No	Yes	Yes	No	No
Nova Scotia	Yes	Yes	No	No	Yes	Yes	No	No
Prince Edward Island	Yes	Yes	No	No	Yes	Yes	No	No
Newfoundland	Yes	N/A	Yes	No	Yes	N/A	Yes	No

Source: Garland Chow, Canadian Business Review, spring 1983.

We visited four Canadian provinces to learn first-hand their regulatory practices and procedures and to review their proposed policies and programs relating to truck regulatory reform.

Ontario

Ontario, with its large manufacturing and distribution base, has been under strong pressure by shippers to reform its transportation policies, and the province has been studying regulatory reform of the for-hire trucking industry for several years. Provincial legislation proposed in 1985 was the culmination of a decade of investigation and study. A bill was introduced in the provincial legislature but was not enacted. The bill was designed to:

". . . foster fair and innovative competition . . . and be of benefit to users of transportation services and not for the protection from competition of individual producers of such services."

The key proposals concerning entry requirements are the "fitness" test and the "market" test. It is anticipated that the two-part fitness/market test will reduce the number of hearings required to gain entry into the trucking industry by reversing the burden of proof from the applicant to the objector. The first phase, the fitness test, would not be conducted as an adversarial proceeding, but as an examination by a Highway Transportation Board. This would be basically an administrative proceeding and would supposedly take the place of the public convenience and necessity test. To demonstrate fitness, the applicant must describe the

nature of the service to be provided, offer evidence of insurability, pass a test showing that the applicant has the basic knowledge to manage a trucking business, and have an acceptable record of past performance. If the applicant meets these requirements and if there are no objectors, then the Highway Transport Board may issue the license. However, if there are protesters, then a hearing will be held and the procedure will move into the second phase, the market test.

Some observers believe that the market test may prove to be the undoing of regulatory reform. Under the proposed law, when an individual objects to the granting of an authority, he or she may request that the Board conduct a market test providing he can show that there will be a significant detriment to the public interest. The test will be adversarial, and in evaluating the likelihood of harm to the public interest, the Board is directed to consider

- the stability of the trucking industry,
- the availability of trucking services,
- the ultimate consumers,
- the net impact on employment, and
- the public interest.

Following the market test, the Board, if it finds there is no significant detrimental effect on the public interest, may grant the requested authority, issue a staged license with fleet limitations for the first 4 years, or grant a modified authority.

The responsibility for proof in a market test would be on the objector unless the hearing is requested by the Board or the Minister. If it is requested by the Board or a Minister, then the burden of proof would be on the applicant to show that the service would cause no harm to the market. The president of Roadway Express told us that he did not believe that any large American carrier could pass a market test. The Canadian Manufacturers' Association (CMA), an advocate of regulatory reform, is opposed to the market test as proposed by the Ontario Review Committee. The CMA claims:

"In our opinion the market test amounts to the current test of public necessity and convenience under a different guise. Determination of the public interest and what is detrimental to the public interest by the Ontario Highway Transport Board would give the Board the same authority it presently has to deny applications for operating authority on subjective rather than objective grounds."

Moreover, the CMA believes that even when the burden of proof is on the protester, it is not clear that reversing the onus will necessarily change the outcome. In the United States, the commissioners, as well as the law, changed. The CMA is concerned that in Canada, commissioners, who for years have heard cases expecting the applicant to make his case, may have a difficult time in making the philosophical adjustment to hear the same evidence but evaluate it differently. As the CMA has stated:

"Commission members after years of ruling on applications based in most cases on restrictive policies, would continue to hold a certain bias towards these outdated regulations. We have seen also regulators over time gain a certain understanding of a situation which becomes fixed in their minds limiting the flexibility of thought required to adapt to a new regulatory environment. In extreme cases the regulators because of their longstanding relationship with those being regulated become empathic to the regulated which creates a certain bias."

The CMA believes that if reverse onus is to be effective, it will be necessary to reconstruct the various provincial regulatory boards with new members and that these new members must be guided by policy statements issued by the transport ministers.

According to the Assistant Deputy Minister of Safety and Regulation in Ontario, progress toward regulatory reform was temporarily slowed due to a change in the provincial government. Still, he believed that progress was again underway and that reform should be enacted in 1987. The Liberal Party has reintroduced the legislation and has renamed it the Truck Transportation Act.

Manitoba

Manitoba has also been studying regulatory reform for several years. The Manitoba Minister of Highways and Transportation established a task force to review trucking regulations in December 1982. In September 1984 the task force made several recommendations to reduce trucking regulation, including reversing the burden of proof and expanding the list of exempt commodities. However, Manitoba remains cautious.

The Chairman of the Motor Transport Board of Manitoba has said that there will be no wholesale deregulation in Manitoba. Manitoba will make some reforms, but the focus will be on making the system work better rather than on throwing all the regulations out. Manitoba plans on moving to a maximum rate system and a rate monitoring program. Under rate monitoring, carriers will be required to submit their rates to the Board on request with a view toward determining what the maximum

should be and also to detect predatory pricing. Once a maximum is fixed, anything below that level can be charged without filing. Operating authorities are in the process of being rewritten and insurance requirements will probably be raised.

Manitoba Transport Ministry officials told us in May 1986 that the province plans to deregulate entry control over interprovincial and transborder trucking in 12 to 18 months. However, they said also that the Minister wants to see a system to ensure safety in place before deregulating. The Manitoba Motor Transport Board basically concurred with this timetable.

Alberta

Alberta has already largely complied with the 1985 Memorandum of Understanding. Alberta has cooperated with Manitoba and Saskatchewan in establishing a list of "eased entry" commodities common to the three provinces. An Alberta Motor Transport Board official told us that he believed that the reverse onus test could be in place at any time as it does not require legislative change. He said that Alberta will now probably bypass reverse onus and go to a fitness only test directly by 1988.

British Columbia

An advisory task force on trucking regulation submitted a report in September 1984 to the Minister of Transportation and Highways who has said he will introduce a bill to amend the province's Motor Carrier Act. It is expected that the proposed legislation will include reverse onus for both intra- and extra-provincial trucking, elimination of rate regulation, and replacement of vehicle licensing with fleet licensing. British Columbia is the only province that licenses each truck individually rather than granting operating authorities to individual companies.

The timetable for implementing these changes is uncertain. Officials at the transport ministry told us that they believed that movement toward reverse onus had already taken place and was to be fully implemented by the end of 1986. Prospects for implementing the other aspects of the proposal depend on the outcome of provincial elections, which will take place sometime before the end of 1988. Several British Columbia officials told us that the impetus for provincial deregulation had lost momentum after the recent changes in the Quebec and Ontario provincial governments.

We visited only the four Canadian provinces discussed above. However, there have been a number of summary articles on progress elsewhere in

Canada toward reforming for-hire trucking regulation. These suggest that the activities in the four provinces that we visited generally reflect what is happening in the other provinces. Change has occurred, but there is little desire to rush headlong into deregulation. Most are waiting on passage of the federal program by the Parliament.

The Canadian Federal Government Has Issued a Blueprint for Transportation Regulatory Reform

In July 1985, the Canadian federal government issued its white paper, Freedom to Move: A Framework for Transportation Reform. Freedom to Move takes as its starting point a commitment to less regulation and a greater reliance on competition and market forces. Freedom to Move deals with all modes of transportation. Extraprovincial trucking receives only two pages in the 58-page document. Many details of the regulatory reform of extraprovincial trucking are contained in the Memorandum of Understanding of the Council of Ministers.

In June 1986, the federal government introduced legislation to implement the transport policy espoused in Freedom to Move. The law, entitled the National Transportation Act of 1986, would establish a national transportation policy emphasizing safety and reliance on market forces to determine the type of transportation services that will be offered in Canada. The federal proposal would revise the Motor Vehicle Transport Act of 1954 to reflect the conditions of the agreement signed by the federal and provincial ministers of transport and to change the current National Transportation Act (NTA) criteria for entry and rates. It would change the entry criterion from a test of "public convenience and necessity" to a "fit, willing and able" requirement.[38]

With respect to extraprovincial trucking, the act calls for a new Motor Vehicle Transport Act based on the federal/provincial Memorandum of Understanding of February 1985. There would be a nationwide entry standard based on a new fitness test that includes primarily insurance and safety requirements. This would be effective January 1, 1988. There would be a 5-year transition period during which entry applications would be subject to a "public interest" test, where the onus of proof would be placed on the protester. Extraprovincial tariff approval would be eliminated and numerous other restrictions on operating authorities, such as route restrictions, would be removed at the end of the transition period.

[38]Transport Canada, Freedom to Move: The Legislation, Ottawa, 1986.

The 1986 legislative session came to a close before the proposed transportation act was passed. It has been reintroduced and is currently under consideration. It is expected to be enacted sometime in 1987, according to Canadian officials.

Conclusion

Although there continues to be strong opposition to deregulating trucking from affected interests, many believe substantial reform will take place in Canada over the next few years. However, the pace of reform in the individual provinces and the way in which such changes as reverse onus and market tests are interpreted might vary widely.

Comments From the Department of Transportation

U.S. Department of Transportation

Assistant Secretary
for Administration

400 Seventh St., S.W.
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JUL 7 1987

Mr. J. Dexter Peach
Assistant Comptroller General
Resources, Community, and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

Enclosed are two copies of the Department of Transportation's comments concerning the U.S. General Accounting Office draft report entitled, "Highway Needs: An Evaluation of DOT's Process For Accessing the Nation's Highway Needs."

Thank you for the opportunity to review this report. If you have any questions concerning our reply, please call Bill Wood on 366-5145.

Sincerely,

Melissa J. Allen for

Jon H. Seymour

Enclosures

DEPARTMENT OF TRANSPORTATION REPLY TO GAO REPORT OF APRIL 8, 1987 ON TRANSBORDER TRUCKING: IMPACTS OF DISPARATE U.S. AND CANADIAN POLICIES

SUMMARY OF GAO FINDINGS

The GAO found that (1) it is more difficult to secure operating authority in Canada than in the United States but found no evidence that Canadian provincial regulators discriminate against U.S. applicants for operating authority; (2) there are differences in the U.S. and Canadian policies governing trucking operations, but found no evidence that these differences, on balance, favor one nation's carriers over the others; (3) two practices that impose a cost on U.S. truckers engaged in transborder competition that Canadian carriers operating in this market avoid were the Heavy Vehicle Use Tax imposed on U.S. truckers but not Canadian truckers and the requirement by certain provinces that U.S. carriers contribute to the provincial workman's compensation fund for the time their drivers spend in the province while the States do not require such payments by the Canadian transborder truckers; (4) the available evidence indicates that Canadian truckers have increased their share of the transborder trucking market over the past decade, but several factors other than regulatory policies may have contributed to the shifts in market share; and (5) the Canadian Federal Government has moved forward with legislation to reform extraprovincial and international regulation, and all Canadian provinces have plans to ease entry into their trucking markets, although the pace of reform in the individual provinces varies widely.

The GAO made no recommendations.

SUMMARY OF DEPARTMENT OF TRANSPORTATION POSITION

The GAO identifies a significant issue, which is that Canadian firms have a competitive advantage in transborder operations because the U.S. has deregulated trucking and Canada has not. It is easier for Canadian firms to expand into the U.S. than it is for U.S. firms to expand into Canada. The GAO, however, does not offer a solution and we recognize that there is no simple, effective solution. Congress defined its concerns in terms of discrimination; and in lifting the moratorium in 1982 in response to an ICC finding that Canada does not discriminate against U.S. truckers, the United States acknowledged that the U.S. and Canadian regimes do not have to be identical for the United States to continue to afford Canadian carriers national treatment. However, DOT believes that since the 1982 signing of the Brock-Gotlieb Understanding, there have been improvements in access. Investment barriers in Canada have been relaxed, and 80 to 90 percent of American requests for authority are granted in whole or in part. The Understanding in part calls for increased competition and access; and, through the Understanding's

consultative mechanism, the U.S. has made inquiries in specific cases that were eventually resolved successfully. Finally, the proposed Canadian federal regulatory reform legislation, if passed, will align our regimes more closely. However, at present the two regimes are significantly different, and DOT will continue to work closely with Canada to reduce access problems.

In discussing the heavy vehicle use tax, the report seems to mention as an afterthought the recent imposition of the tax on all Canadian carriers traveling over 5,000 miles in the U.S. (7,500 miles for farm vehicles) as a result of the enactment of the Surface Transportation and Uniform Relocation Assistance Act of 1987. While Canadian carriers will be charged only 75 percent of the rate applicable to American carriers, most will pay more heavy vehicle use tax per mile traveled in the U.S. than do American carriers. The report suggests, however, that the tax places American carriers at a competitive disadvantage, as if the heavy vehicle use tax had not been imposed on Canadian carriers. This apparent misunderstanding may be due to the fact that the draft report was released so near the passage of the 1987 Act.

Comments regarding specific parts of the report are provided in the POSITION STATEMENT.

POSITION STATEMENT

Executive Summary, Principal Findings

Now on p. 3.

Page 4, Canadian markets still regulated. We believe that this finding should place greater emphasis on the adverse effects of economic regulation on the ability of U.S. trucking firms to compete with Canadian firms in transborder operations, and accordingly, we recommend that this finding be rewritten as follows:

Canadian regulation
constrains competition

> GAO found that, since the United States deregulated the trucking industry, it is easier for Canadian firms to expand into the U.S. than it is for U.S. firms to expand into Canada. In the U.S., a carrier is granted nationwide authority by the Interstate Commerce Commission. In Canada, a carrier must obtain operating authority from each province. The provinces require more proof of need for the service than the ICC, and usually grant authority restricted to particular commodities or customers.

These practices, however, apply to both U.S. and Canadian carriers, and GAO found no evidence that Canadian provincial regulators discriminate against U.S. applicants for operating authority. American applicants for Canadian operating authority are granted all or part of the authority they request 80-90 percent of the time. Also, recent changes in the rule governing foreign investment have made it easier for American firms to enter Canada by acquiring a Canadian subsidiary.

Chapter 3. All But Two U.S. and Canadian Fees and Regulations Apply to All Trucks

Now on p. 29, para. 1.

Page 19, last paragraph. This paragraph should be revised to reflect the fact that the provisions of Section 507 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987) imposes the heavy vehicle use tax on Canadian carriers at a rate of 75 percent of the rate applicable to American carriers.

Now on p. 40, para. 2.

Page 29, fourth paragraph. The GAO states that the 5,000-mile threshold for heavy vehicle use tax liability is meant for American agriculture and timber vehicles. Actually, vehicles engaged in agriculture may travel up to 7,500 miles annually before becoming liable for the heavy vehicle use tax. The 5,000-mile threshold is intended to buffer all other types of operators that may travel limited mileage on public highways each year.

Now on p. 40, para. 2.

Page 29, fourth paragraph. We suggest rewording the second sentence covering weight-distance taxes to indicate that such taxes could (rather than would) be more difficult to monitor than the heavy vehicle use tax. It also should be noted that the Department has a study under way on the feasibility of a Federal weight-distance tax. A report on findings of that study is due to Congress on October 1, 1987.

Now on p. 40, para. 3.

Page 29, fifth paragraph. In the last sentence, the recent imposition of the heavy vehicle use tax on all Canadian carriers is noted, but there is no mention that the rate is only 75 percent of the rate applicable to American carriers.

Now on p. 41.

Page 30, fourth paragraph. It is not quite correct to say that the basis for the heavy vehicle use tax is "to require payments for road maintenance from those who cause the damage." The heavy vehicle use tax is part of an overall user fee structure. An important goal in establishing rates for each Federal user fee is to charge various vehicle classes in proportion to their highway cost responsibility. The heavy vehicle use tax is included in the user fee structure because other Federal user fees do not

adequately reflect the highway damage caused by vehicles with gross weights over 55,000 pounds. Maintenance is only one of the costs considered in estimating overall highway cost responsibility.

Now on p. 43.

Page 32, third paragraph. The GAO states that the consensus among officials whom they interviewed was that the U.S. continues to dominate the international motor freight traffic flow. The data, however, in Figure 4.1 on Page 33 seem to contradict that statement; the U.S. percentage of border crossings between 1976 and 1985 is shown to have decreased from 48 percent to 41 percent. The report notes the distinction between border crossings and either mileage or volume of goods transported, but further explanation is needed regarding the sense in which the U.S. dominates international traffic flows.

Now on p. 45.

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