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Sieve or Shield: NAFTA and its Influence within Cascadia

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Abstract: This paper involves understanding how the particular provisions of Chapter 16 of the North American Free Trade Agreement (NAFTA) deal with temporary labour mobility of North American professionals, with particular emphasis in the Pacific Northwest region of Canada and the United States. The empirical research involves the Vancouver-Seattle corridor, namely the Cascadia region. Ideally, NAFTA visa provisions should make the temporary movement of professionals easier across the borders of all NAFTA countries, namely Canada, the United States, and Mexico, thus facilitating cross-border trade and enterprise. However, in the case of software engineers, which is a very important category for the expanding high-tech service industries of Vancouver and Seattle, this is not so. Thus, within the context of recent literature on 'cross-border trade and labour mobility' this paper aims to better understand the dynamics of transitory immigration of 'knowledge workers' between Vancouver and Seattle.

Key words: Canada-US border, knowledge workers, labour mobility, NAFTA, software industry.

Introduction

Events of September 11, 2001 have shone a spot-light on the Canada-U.S. border, and its perceived openness when it comes to the movements of people. However, professionals moving back and forth across the Canada-U.S. border under NAFTA have experienced considerable difficulties over the past few years when it comes to attaining admission under the NAFTA to enter and work in the United States. Although there is a growing perception that access into the U.S. via Canada is almost guaranteed, the legitimate NAFTA Information Technology (IT) professional has great difficulties for a number of reasons which are explored in this chapter.

From a perspective of security, there is a growing "push" on both sides of the Canada-U.S. border to create blanket North American visa policies and procedures, harmonize foreigner entrance and exit databases, and the possibility of greater harmonization of Canada-U.S. immigration policies. However, in this drastic attempt at creating a more secure North American border, one should not lose sight of the continued economic importance of the flow of goods, services, and people over the border. In fact, the absolute stand-still of the Canada-U.S. and the U.S.- Mexican borders for a few days following the September 11 tragedy helps to demonstrate how important a smooth yet secure flow of commerce is for the North American economy. Thus, the fluid stream of legitimate professionals under NAFTA is crucial in moving both the U.S. and Canada into a solid and growing information economy.

Purpose of the Paper

Historically, over the past 300 years since the development of nation state borders,¹ one primary purpose of international boundaries was to keep people residing in one nation state from moving and residing in another nation state. Now, networks of firms involved in information technology, and the new economy in general, span international borders. This sector needs to draw from a talented pool of well educated professionals residing throughout the globe as these firms compete in a high stakes game of product development where timing and cleverness are keys to success or failure. Thus, the immediate needs of the new economy require more cross-border integration and more predictable transparent border regulations when it comes to the movement of professionals across international boundaries.

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¹ 1648. Peace of Westphalia

Beaverstock and Smith (1996) have supported the above thesis by provided a comprehensive review of the significance of the transnational investment banking community in the City of London. Sassen (Sassen-Koob, 1984, 1986 and Sassen 1988, 1991) has provided a comprehensive review of immigrant labor demands in a global city's downgraded manufacturing and mainly low-waged service sectors, placing particular emphasis on New York and Los Angeles. This extensive work has covered the two opposing ends of the income hourglass of global cities. By contrast, there has been little research conducted on second tier cities such as Vancouver or Seattle regarding labour mobility of the knowledge worker across international boundaries, especially in the booming information technology (IT) industry. Thus, this paper serves three purposes: 1) to gain a greater understanding of the geographical and economic region situated between Vancouver, B.C. and Seattle, Washington, commonly referred to as Cascadia; 2) to illustrate its difference from the other most frequently used Canada-U.S. border crossings of Windsor/Detroit and Niagara Falls/Buffalo; and 3) to examine how Chapter 16 of the NAFTA, which promotes labor mobility between Canada, U.S., and Mexico operates in the Cascadia region.

A Comparison of Cascadia and the Michigan/Ontario/New York Corridor

The Cascadia region is relatively open, green, and non-industrial compared to the Michigan/Ontario/New York Corridor, which is frequently deemed as the auto manufacturing center of the world and Canada's industrial heartland, namely the "Golden Horseshoe." The nonindustrial nature of Cascadia (excluding the aircraft manufacturer Boeing) was considered an economic hindrance through much of the manufacturing age of the early twentieth century. However, after the signing of the Canada-U.S. Free Trade Agreement in 1989 and subsequently NAFTA, the Michigan/Ontario/New York Corridor suffered a much more immediate effect of this trade policy in the form of plant closures on the Canadian side (Dodds, 1999) and some auto plant closures on the U.S. side (Roberts and Wilson, 1996). However, from a perspective of manufacturing industries and employment changes, NAFTA has not yet had much influence on the Cascadia region.

Looking at some of the finer details of the two regions, according to the U.S. Immigration and Naturalization Service, the Cascadia region has roughly 20 million passenger border crossings annually. By contrast, the Detroit area ports of entry had over 40 million passenger border crossings, followed by more that 30 million in the Buffalo area (Meyers 2000). According

to Transport Canada, in 1996, 61.5% of Canada-U.S. truck traffic crossed through Ontario alone, with another 13.5% crossing through Quebec, 12.7% through B.C. and the Yukon, 7.7% through the Prairies, and 4.5% through the Atlantic provinces (Meyers and Papademetriou, 2000:131). Based on these figures, roughly 80% of Canada-U.S. trade passes through the eastern crossings. Although the Detroit/Windsor/Niagara Falls/Buffalo region has a much greater number of crossings (70 million) as compared to the Cascadia area's (20 million), the combined population for the Detroit/Windsor/Niagara Falls/Buffalo area is roughly 8.5 million people (including the greater Toronto area) whereas the Northern Cascadia area of greater Vancouver and Seattle comprise a region of roughly 5 million people. It should be noted that all three cross border areas have significant numbers of passenger crossings for the purposes of shopping, visiting friends/family or just a day trip into "the States" or "just over the border into Canada" (Ghandi 1990; Richardson 1998). More recently, the Windsor Casino has been a big draw to many people in Detroit over the past few years (Meyers and Papademetrio, 2000). Overall, these different types of local border crossings illustrate the varied nature of the Canada-U.S. border zones, which together makeup a continuous seam or backbone of "humanness" to the longest undefended border in the world.

The Detroit/Windsor/Buffalo/Niagara Falls Area

At a more detailed level, it is clear that the Detroit/Windsor and Buffalo/Niagara Falls corridors are comprised of heavily industrialized land uses and border crossings characterized by just-in-time (JIT) auto deliveries between assembly firms and their suppliers. By contrast, Cascadia's greatest strength is that it has a relatively clean and open border characterized by farmlands and green open space and is not riddled with trucks carrying auto parts, like that of the Ambassador Bridge which connects Detroit to Windsor, Ontario. With regard to high tech or 'knowledge' worker mobility across the eastern Canada-U.S. border regions, most development exists in the Detroit area and only a minimal amount has expanded across the border into Windsor (Molat, 2001). In fact, unlike the Boeing's 'hub and spokes' model in Seattle, which has led to a large local supplier network, Detroit's "Big Three" auto companies appear to have suppressed diversified growth and where company externalizing strategies in the profit-squeeze era initiated a downward cycle from which the Detroit region is only now recovering (Markusen et. al, 1999). Conversely, the Toronto area, serves as the financial center for all of Canada, and a cluster for highly skilled knowledge workers, yet it does not provide much spill-over into the predominantly blue-collar communities of Detroit and Buffalo.

These two large regions that straddle the Canada-U.S. border are very different, both in their environments and their economies. Thus, as Demetri Papademetrio and Deborah Waller-Meyers formerly of the Carnegie Endowment for International Peace, and now of the Migration Policy Institute, conclude in their recent paper on the Canada-U.S. border in the Spring 2000 issue of the leading journal on Canadian public policy, *ISUMA*, "One size does not fit all" here.

The Cascadia Region

From a more western regional perspective, despite its green calm "Pacific" nature, Cascadia has been riddled with conflict, most notably due to the 1997 'Fish Wars' and continual softwood lumber disputes. In part, this is due to both sides of the border specializing in similar undifferentiated primary products exported either across the border or to the same third markets (Kresel, 1992:71). Unlike the sophisticated production coordination of the JIT auto manufacturing process between Ontario/Michigan/New York, and the well thought out policies of the 1965 Auto Pact and now NAFTA (See Molat, this issue, for an articulate discussion of these policies and the implications for each signatory country), there appears to be a "winner take all" approach to the sale of natural resources between British Columbia and Washington. The mentality is that any sale in such an environment necessarily entails the diversion of a stream of revenue from one vendor to another (Kresel, 1992). The party that looses the big contract usually files a complaint with the relevant trade agency, as has been the case over the years.

However, it is important to note that although the economies of British Columbia and Washington appear to be competitors and may be regular petitioners in trade complaints procedures over raw materials, this has little or nothing to do with the economies of Vancouver and Seattle (Kresel, 1992). Specifically, the Cascadia urban core region may be unique along the Canada-U.S. border in that there is a 'core city' to 'core city' relationship, namely between the quaternary economic sectors of Vancouver and Seattle. Both these cities are relatively fresh young urban centers still developing their identities (Artibise, 1996) and are quickly becoming magnets for high tech workers from around the world seeking a solid job in addition to a good quality of life (Vancouver Sun, 5/25/00: A1). In Vancouver, this is evidenced of this with the high tech industry ranking as the number one employer for BC three years in a row (Vancouver Sun, 8/04/00: A1). In Seattle, dominated by Fortune 500 companies such as Microsoft and Boeing and attracting aggressive start-ups such as Amazon.com, high tech is Seattle's fastest growing employer (Markusen et. al., 1999). Consequently, it is here that NAFTA's Chapter 16,

which is designed to facilitate cross-border labor mobility, may provide an opportunity for closer integration and cross border circular flows of 'IT' workers between Vancouver and Seattle in the years to come. The remainder of this paper will explore this possibility, and how it might influence the Cascadia region.

Cascadia as a "Border Zone of Human Contact"

Since the late 1980s, there has been much rhetoric about the idea of a borderless world. Kenichi Ohmae is probably the most recognized figure, arguing in his 1990 book, *Borderless World*, that more borderless trade, or the continued elimination of tariffs and/or non tariff barriers would lead to an even greater win/win situation for all involved. Hosti (2001) also stresses the works of Bernard Badie and Marie-Claude Smouts (1999: Ch. 1) and James N. Rosenau (1997) for more theoretical statements surrounding the idea of the diminishing relevance of borders.

However, from a perspective of labor mobility and the growth networks between the 'new economy' firms, globalization really depends on the actual partitioning of space between states and the continued impediments to cross-border travel such as prohibition of labor mobility that exist between cross border regions and cities. It is clear that the major impact of NAFTA and other free trade agreements has been to facilitate the cross border flows of goods and investments capital. Thus, investments can now circulate more quickly between nations and/or sub-regions taking advantage of factors of production such as labor, land, ideas, and capital infrastructure which are unique to one particular area and guaranteed by the boundaries of a nation-state. Indeed, it is often argued that this new world system of fast moving capital flows need differences and inequities regarding factors of production, especially the International Division of Labor (Frobel et. al, 1980), in order to continue to profit and grow. However, one of the many downsides to the benefits of the globalization of capital is that it encourages nation-states and regions to almost enhance inequities such as low-cost labor, land, or lack of strong environmental laws in order to continue to draw capital investments beyond the boundaries of the community. Two classic examples of this effect are the U.S.-Mexico border region and the Hong Kong-Shenzhen border region of Asia (Wu 1999). However, more progressive policies are underway in the European Union where governments are taking deliberate policy steps to "iron out" many of these differences and inequities with regard to border regions in order to establish "zones of contact" (Ratti 1993) or "transborder regions" (Wu 1999). Specifically, opportunities on the other side of the border encourage the free movement of legitimate persons seeking greater

economic opportunities. Here, migration and labor mobility is defined by very simple procedures, and there are almost no differences in labor costs between adjoining regions (Wu 1999: 198-99). Consequently, the European Union has developed policies and a culture which encourages the movement of professionals across borders with uneventful ease. Ideally, Chapter 16 of NAFTA, which focuses on the temporary movement of business people should do something similar, but does it? The following sections of this paper will examine Chapter 16 of NAFTA and its implications for the cross border region of Cascadia.

NAFTA and Labour Mobility

The final impacts of NAFTA on its signatory nation states and each country's respective socio economic classes of citizens are far from over. However, one interpretation of the NAFTA provisions regarding cross border movement of labor is that it allows more and more North American professionals to cross the Canada-U.S. border with relative ease. Specifically, Chapter 16 of the North American Free Trade Agreement allows the temporary immigration of Canadian, U.S., and Mexican citizens as (1) Business visitors; (2) Traders and Investors; (3) Intracompany transferees; and (4) Certain professionals called Treaty NAFTA or "TNs" which allows free movement within the territories of Canada, the U.S., and Mexico. Since the signing of NAFTA in early 1994, Canadian scholars in particular have dedicated serious efforts to discussing the fact as to whether or not there is a "brain drain" of Canadian university educated professionals being lured to the United States in pursuit of better, higher paying jobs. These seemingly more lucrative job opportunities, coupled with the new easily accessible NAFTA work visas, gives the impression to many Canadians that a much better future lies south of the 49th parallel.

However, despite the fact that NAFTA has been enacted for almost ten years, current literature is suggesting that regardless of these "open borders," a majority of citizens in one country do not easily move to the now more open "other" country, despite the relatively permissive labour mobility provisions. Helliwell (1999) does note that the highly skilled are much more mobile than the less educated. However, the highly skilled are, by an order of magnitude, more mobile within their country of origin than between countries (Helliwell 1998). Devoretz and Iturralde (2000), found that most highly trained Canadians remained in Canada during the 1990s, exclusive of Canadian Nurses. In their paper, Devoretz and Iturralde presented a life cycle model which predicted staying patterns which are consistent with the thesis that changes in life cycle events in a household condition the movement for highly trained Canadians

to the U.S. They also found that the cost of moving increased with age, or the benefits of staying in Canada rise, or both. The second major reason for remaining in Canada is large family size. However, when a highly trained Canadian reaches the pre-tax income gain of \$135,000, the probability of staying in Canada collapses, regardless of household status. Finally, Devoretz and Iturralde stress that there must be a large critical reservation income gain before moving which suggest that several conditions must be in place to induce a move for a highly trained Canadian to recoup this gain (p. 21). Thus, the potential mover must be young, have a low discount rate, and expect an immediate and rapid gain in earnings. Devoretz and Iturralde conclude by stating that this is exactly the profile of the knowledge worker who receive payments in the form of stock options, physicians entering their specialties, and star academics.

Ideally, the labour mobility provisions under NAFTA are designed to allow the freer movement of business professionals (TNs), which include knowledge workers, without the bureaucratic hassles of its predecessor, the 'H1-B' visa. The general premise behind the TN visa is that it should help to create a more fluid North American border for working professionals. However, the remainder of this paper will explore possible reasons why movements across the Canada-U.S. border for high tech professionals under NAFTA are often much more difficult than originally anticipated because of regulatory issues.

The Treaty NAFTA (TN) Category – Easy Access to the U.S.?

Ideally, the labor mobility provisions under NAFTA are designed to allow the freer movement of business professionals (TNs) without the bureaucratic hassles of the broadly similar 'H1-B' visa. The idea behind the TN category is that it should help to create a more fluid North American border for working professionals. In fact, the TN category accommodates 63 classes of professions, most of which require an undergraduate degree. Vazquez-Azpiri (2000) argues that the newer TN category offers Canadian professionals four advantages over the H1-B visa. Firstly, the applicant need not file a non-immigration petition with an INS Service Centre before entering the U.S. She or he can present all material/documentation at the port of entry or preflight inspection station. Secondly, Canadian TN applicants are not required to obtain approval of a labor condition application from the Department of Labor, which was mandatory for the H1-B visa. Thirdly, unlike the H1-B visa, the TN category does not impose a maximum period of stay of six years, and TN status may be held indefinitely. Fourthly, there is no limitation to the number of Canadian nationals who may be admitted to the U.S. in any one year. Currently, the

H1-B category imposes a limitation of 107,500 new admissions for fiscal year 2001, which began on October 1, 2000. Regardless of all of the perceived gains that the TN category will bring, the H1-B visa is not being phased out of existence.

However, despite its claims that the NAFTA visa facilitates "preferential" entry into the territory of a state party, it has actually proven to be an imperfect and unpredictable mechanism for the entry of information technology (IT) knowledge workers to the United States (Vasquez-Azpiri, 2000). From a regional perspective, this imperfection of the TN visa may have tremendous impacts on the U.S. crossborder area between Vancouver, B.C. and Seattle, Washington, namely the more northern geographical portion of Cascadia, since both urban areas' fastest growing job market has been the high tech sector (Markusen et. al, 1999 and Vancouver Sun, 08/04/00: A1). With a relative deficit of IT workers on the Seattle side of the border due to high rates of economic growth, there is some concern that it will only be a matter of time before high tech giants such as Microsoft begin to pull well educated software engineers from just over the border in Vancouver to the suburbs of Seattle (IFC, 2000). In fact, a well-regarded U.S. immigration attorney, James Vazquez-Azpiri (2000) states:

"One development that has gone largely unnoticed in the national dialogue with respect to the IT industry's unsatisfied demand for knowledge workers is the emergence of Canada as an important repository of such knowledge workers. No one should be taken aback by this; Canada's geographical proximity, its cultural affinities to the U.S., the high level of technological education available at its universities, and the fact that it has its own well-developed IT industry make it seem quite natural that U.S. IT companies struggling to meet their hiring needs should view qualified Canadian professionals as particularly attractive resources."

Cascadia's Borderless High Tech Future?

Despite a growing demand for Canadian IT workers, over the past few years, immigration attorneys residing along the more northern portion of the U.S. west coast (Seattle, Portland, and San Francisco) have seen a rising denial rate of TN admission applications for IT workers at U.S. ports of entry (Interview with Greg Boos, U.S. Immigration Attorney, 6/15/2000). For instance, entry of Canadian "software engineers" into the U.S. for employment under the TN category has proven to be quite a challenge. Specifically, it appears that one of the great obstacles for software engineers, and the attorneys writing the TN application has been demonstrating to the Immigration and Naturalization Service (INS) official at the port of entry that "software" engineering is actually a true engineering and is recognized as one of the 63 professions allowed

under NAFTA provisions. Although the number of NAFTA admission applications being approved at the Seattle ports of entry has grown from around 2,000 in 1997 to 3,500 1998 (Meyers 2000), there is still a concern among immigration attorneys in the Seattle and San Francisco areas that INS port of entry inspectors do not allow a particularly flexible interpretation of job descriptions, especially to the degree required for software engineers (Interview with Greg Boos, U.S. Immigration Attorney, Chair of American Immigration Lawyers Association Canada-U.S. Immigration Committee, 6/15/00). Consequently, many Canadian software engineers have been refused entry into the U.S. (specifically to work in the Seattle region) with what on the surface appears to be a valid TN application, which was usually written by an experienced U.S. immigration attorney.

No precise records have been kept as to how many TN applications are being denied (Interview with Greg Boos, 6/15/00). Indeed, there is a need for further research in order to determine the actual numbers of TN applications being denied at the ports of entry and reasons why. Regarding some of the actual reasons behind these excessive denials at the U.S. ports of entry Vazquez-Azpiri (2000) argues that the INS's stance toward software engineers may be explained in part by a deeply rooted belief by border officials as to a more traditional notions of engineers who build tangible products and structures, and were employed in 20th century manufacturing industries. As well, the U.S. Department of Labor's (DOL) Occupational Outlook Handbook states only engineers recognized by professional societies are the touchstone of true engineers, all of which have professional associations and licensing requirements. By contrast, today's engineers are extremely flexible in the type of work that they do, and job requirements evolve so quickly that it is difficult to reflect this in a handbook that comes annually. Additionally, from an educational perspective, NAFTA does not require that a person coming in TN status have exactly the same educational background as the actual TN profession being sought. NAFTA's provisions regarding labour migration states that the person in question must be in a discipline or field *germane* to the job duties typically performed by members of that profession [Appendix 1603.D.1 of NAFTA] (Vazquez-Azpiri, 2000). However, in the context of software engineers, Vazquez-Azpiri (2000) stresses in practice that TN applicants must show they have a complete identity between the relevant engineering specialization and the degree being sought. Thus, holding a degree in computer science or for that matter, English, and requesting TN admission on one's baccalaureate degree as a "software" engineer opens the person up to a high likelihood of rejection by the INS, and possesses great risk for U.S. companies wanting to hire Canadian software engineers.

Overall, the TN category of Chapter 16 of NAFTA may be argued to have been a limited failure, in the sense that is not a wholly reliable, predictable, or consistently administered method through which to secure the services of Canadian IT workers (Vazquez-Arpiri, 2000). Specifically, Vazquez-Azpiri (2000) states that the TN category is deficient in three basic respects: (1) Policy – The lack of an unambiguous policy inherent in the NAFTA to promote and facilitate the mobility of citizens of one state party into the next. For example, the provisions of NAFTA state that INS officials are to allow the mobility of legitimate North American professional across the boundaries of said signatory countries, whereas, at the same time, protect American jobs for the domestic labor force [Article 1601 of NAFTA]; (2) Structure – The TN category provides an over-rigid framework that lacks the elegance required to consider the heterogeneity of the IT industry's professional occupations. For example, there is no listing in the DOL's Occupational Handbook for "Web God" or "Systems Genius," which are surprisingly common job title listings for many firms which work in the IT industry; and (3) Process - The internal rigidity of the reading of the of the TN category on the part of the INS officers at the ports of entry has become the most significant hazard involved in applying for TN admission. What this means is that the INS inspector has an unfettered right to deny or approve TN applications at the U.S. ports of entry. Thus, the biggest contradiction of the TN category's new benefit, "Port of Entry Adjudication," which was lauded for its presumed speed and efficiency and elimination of long months of waiting for either a visa approval or denial like that of the H1-B, is now proving to actually become the TN category's greatest obstacle.

Conclusion: The Canada-U.S. Border a 'Sieve' or 'Shield'

This paper has drawn attention to one particular characteristic of the Cascadia region, namely its growth as a corridor of high technology industries, especially compared with the auto industry economy that drives Toronto-Detroit-Windsor and Buffalo-Niagara Falls. The chapter has argued that inflexible implementation of NAFTA visa provisions have actually created an adverse impact of future possible growth of the region. In an era of an internationalized economy based on free trade, knowledge and information, some nation states are clearly intensifying their efforts to tighten the cross border movement of people, and the U.S. may indeed fall into this category. Such a circumstance appears to be especially true not only for Canada's experience with the U.S. in a post NAFTA era, but more importantly for the cross border region of Cascadia. If this situation continues it could have tremendous repercussion on IT worker cross border flows. Although Chapter 16 of NAFTA, in theory, allows for more fluid flows of professionals,

NAFTA's actual range of comprehension and its rigidity is, in part, based on a previous age of manufacturing and more predictable employment structures. The adjudication process for TN admission issuances appears to not allow for any flexibility, which is often paramount in the IT industry. Since this is perceived as an impediment to Canada's 'Brain Drain', relatively little official action has been taken on the Canadian side, for example, by using Articles 1606 and 2007 of NAFTA which focuses on "Disputes Settlement" mechanisms. However, the American Immigration Lawyers Association is trying to encourage the INS to expand the number of IT professions acceptable under NAFTA provisions (Vazquez-Azpiri, 2000). Clearly, some additional professional classification could facilitate the movement of IT professionals. Overall, there is a greater need to rethink the underpinnings of the original Chapter 16 of NAFTA - for instance, what are its objectives, why was it crafted, and does it serves the modern IT era? As well, rather than the linear rigidity of NAFTA's policies, there needs to be more flexibility in the decision making rules of port of entry INS officials. Finally, there also needs to be a greater awareness of the importance of the IT and knowledge worker, and how their growth and circular cross border flows contribute to the overall development Vancouver's and Seattle's future economic prosperity within the region of Cascadia.

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