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Deflection at the Border: Immigration and Security after 9/11

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Views expressed in this manuscript are those of the author(s) alone. For more information, contact the Co-directors of the Centre, Dr. Don DeVoretz, Department of Economics, SFU (e-mail: devoretz@sfu.ca) or Dr. Daniel Hiebert, Department of Geography, UBC (e-mail: dhiebert@geog.ubc.ca).

Deflection at the Border: Immigration and Security after 9/11

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Introduction

Canada has been preoccupied since September 11th, 2001 on the possible implications of increased United States border security on its immigration and trade flows. This pre-occupation has led to a variety of queries. For example, how will Canada's refugee policy change by increased border scrutiny? Will TN visas be more difficult to obtain for naturalized Canadians?

Will opportunities arise in Canada as a result of this increased United States border scrutiny? Will Canada receive more foreign visitors? Can Canada gain a comparative advantage in attracting foreign students normally destined to the United States? Will Canada's 'brain drain' to the United States be dampened by heightened security measures?

One common thread occurs across all these conjectures, namely there are few answers to these questions available circa 2005. Finally, it will be the purpose of this essay to pose expand on these questions of interest and formulate a framework to encourage research on either side of the border.

To organize the possible disparate effects arising from tighter border security on Canadian immigration flows I will concentrate on particular immigrant gateways — both permanent and temporary — to ease my exposition. These groups will include: refugees, foreign students, foreign-born potential TN visa holders and skilled permanent immigrants.

Sources of Deflection

Economists typically look for indirect effects whenever a quota or restraint is applied at a border. Thus both the unilateral measures that the United States has undertaken to enhance its border security and the resulting reactions of Canada in its admission policies for immigrants may lead to deflection of immigrants. I define deflection as increased movement north to Canada from the United States or vice-versa. I will review below the various entry categories to illustrate how this deflection effect arises.

Safe Third Country Agreement

The “Safe Third Country Agreement” is one direct outcome of the extended Canadian-United States negotiations to insure mutual border security.¹ This Canadian-inspired agreement stipulates that a refugee declaration must be made in either Canada or the United States, depending on the initial landing point of the refugee. The issue from a Canadian viewpoint is that this procedure will in fact make United States standards of refugee admission the North American norm since the majority of North America bound refugees land initially in the United States. The question at hand for this conference is not the inherent loss in Canadian sovereignty but the possible deflection of refugees. For example, what evidence exists today to suggest that refugee applicants have declined to Canada? Moreover, how many of these rejected refugees at the United States border would have been admissible in Canada? In short, has the “Safe Third Country Agreement” made a difference in deflecting bone fide Canadian bound refugees at the United States border?

Since the “Safe Third Country Agreement” has only been in effect since the beginning of 2005 it is premature to answer these question except to note that Canadian refugee applications are down substantially in first quarter of 2005. At this point it is important to note that the genesis of this “Safe Third Country Agreement” is actually found in Europe and that the North American initiative to this policy has been almost exclusively a Canadian one. Nonetheless, the implementation of the “Safe Third Country Agreement” is predicated on the proposition that there are gains to both countries from this protocol, which presumably enhances border security at the expense of Canadian sovereignty and refugee human rights.

Foreign Students

Canada has long been concerned with its relatively low number of foreign students (about 100,000) resident in Canada when compared to the numbers in the United States and more particularly Australia. Canada’s desire to increase the number of foreign students is driven by two forces. First, Canada wants to increase its university enrollment, but, more

¹ See D. J. DeVoretz and P. Hanson *Sourcing out Canada’s Refugee Policy: The Safe Third Country Agreement*, RIIM Commentary Series 03-06.

importantly, foreign students are thought of as a possible source to recruit permanent highly skilled immigrants for its labour force.²

However, Canada's attempts to increase foreign student enrollment have been thwarted by competitive pressures and the fear of being accused of accelerating the 'brain drain.' Canada has recently dropped its concerns about adding to the 'brain drain' and views foreign student movement as part of a 'brain circulation' movement. Given that Canada and the world now accept the less emotive 'brain circulation argument' it has now become politically feasible to deflect foreign students from the United States to Canada.

In fact, Canada has recently exploited this alleged deflection with an imaginative policy response. In short, Canada now will allow foreign students to apply for permanent residence status after graduation without leaving Canada.³ This minor change, coupled with tighter United States security efforts, may enhance foreign student deflection from the United States to Canada, and may also increase the number of Chinese (and other) applicants who never considered the United States as their first choice.⁴

TN Visa Holders

As an addendum to the NAFTA accord, Canada and the United States created the trade or TN visa which allowed temporary (one year) residence for its citizens in a limited number of occupations. This visa had become the favored mechanism to enter the United States for those Canadians who qualified prior to 9/11.

However, citizenship is a key criterion for eligibility for the TN visa, and a significant number of Canadian skilled immigrants are not eligible until they become citizens. In addition, recent increased United States visa requirements for Canadian immigrants from select countries (Iran, Pakistan, etc.) may have decreased their mobility given their country of birth status.

However, more dramatic events about enhanced security enforcement in the United States have no doubt had a deterrence effect on naturalized Canadian citizens. The fact that

² Canada currently is experiencing a credential recognition problem with its foreign trained immigrants.

³ Graduates can not reside in Toronto, Montreal or Vancouver during the application period.

⁴This latter phenomenon of increased worldwide applications by foreign students to Canada can be an outgrowth of offering an expedited entry into Canada after graduation.

the United States uses country of birth and not country of citizenship as the location criterion to deport undesirables has had a chilling effect on those Canadian citizens who previously migrated from terrorist-producing states and are now naturalized Canadian citizens. In addition, the employers of these naturalized Canadian citizens recognize their employees' increased vulnerability if they are naturalized citizens from terrorist-producing states. Again, the unproven supposition is that there exists a "chill effect" on cross border mobility and the use of TN visas.

Northern Permanent Flows

The United States has a large pool of legal temporary immigrants whose legal residence status is in doubt and they may respond to increased internal scrutiny by choosing to emigrate to Canada. Two visa types which may be affected and subject to northern deflection to Canada are current U.S. resident foreign students and H1-B visa holders. There is, again, limited anecdotal evidence that H1-B visa holders who lost their jobs in the United States have applied for permanent residency in Canada rather than violating their United States visa condition or returning home. Moreover, graduating United States foreign students have applied to enter Canada to both further their education and gain permanent residence status in Canada.

Conclusions and Some Research Questions

In sum, it can be argued that although enhanced United States scrutiny at the border has been quite minimal to date, immigration flows to Canada across a variety of entry categories from refugees to highly talented foreign students may be falling or rising respectively. This conclusion implies that a host of research questions with policy implications emerge including:

1. Has the composition, size and origin of refugees changed for either the United States or Canada, or both countries under the "Safe Third Country Agreement"?
2. Given the above, is there an analytical framework to assess the gain in security from any diminution in refugee claims?
3. Has there been a deflection of foreign students to Canada and at what level; graduate or undergraduate?

4. If there exists a deflection, have the best or the mediocre students been deflected Canada?
5. Have these students remained in Canada to become permanent residents or have they moved on?
6. Have former H1-B or other temporary U.S. visa holders applied for permanent Canadian resident status?
7. Has there been an increase in Canadian immigrant applicants from Middle Eastern countries, which are subject to special United States scrutiny?
8. What lessons can North America learn from the European Union experience under a common border scheme with 26 distinct immigration policies?
9. Does varying security scrutiny across entry gates result in substitution in immigrant applications across entry gates?

The answers to these questions could have important immigration policy implications and when data becomes available should be answered.

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