



PORTS MODERNIZATION REVIEW

Perspective of the International Shipping Industry

DECEMBER 3, 2018

SHIPPING FEDERATION OF CANADA

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1. INTRODUCTION

The Shipping Federation of Canada was incorporated by an Act of Parliament in 1903 to represent international shipping in Canada. Our members are the owners, operators and agents of the ocean ships that carry Canada's imports and exports to and from world markets. These ships play a key role in the Canadian economy by enabling Canadian companies to penetrate global markets at competitive prices and providing Canadian consumers with access to a wide range of competitively priced consumer goods. Indeed, without ocean ships, Canada's ability to engage in international trade would come to a virtual standstill and the country's prosperity and economic sustainability would be severely compromised.

Given that the ships represented by our members are quite literally the carriers of Canada's international trade, we have a strong interest in ensuring a robust, well-structured Canadian ports systems that is fully equipped to channel Canada's current and future trade volumes in the most efficient and cost-effective manner possible. We also believe that our national mandate and pan-Canadian membership provide us with a unique perspective on Canada's ports system which encompasses the full range of Canada Port Authorities that exist under the *Canada Marine Act* and the diverse operational and commercial realities they each face. We therefore appreciate the opportunity to provide our views on how that system could be modernized for the benefit of all Canadians, and provide the following comments for consideration by not only Transport Canada, but the numerous other federal departments and agencies whose mandates also intersect with trade and international shipping.

2. GOVERNANCE

Modernizing the Current Policy Framework

We believe that the current governance structure provided by the *Canada Marine Act*, under which Canada Port Authorities have the flexibility to operate as commercial entities while still remaining accountable to the government for their activities and operations, continues to represent the optimal means of ensuring that CPAs serve the needs of the Canadian economy in the most efficient manner possible. This being said, it is also our view that the current governance structure should be part of a broader national transportation policy that considers ports from a trade corridor perspective and views them as (essential) elements that contribute to that corridor's ability to efficiently channel trade to and from domestic and international markets. Such a policy would provide a much-needed framework for guiding infrastructure and investment decisions related to future port development in a manner which ensures that the larger national interest is appropriately factored into all such decisions, and for assessing the roles that the various elements of any trade corridor play relative to one another, whether as partners or competitors.

We believe that the most logical "home" for the above-noted policy would be Section 5 of the *Canada Transportation Act*, which already articulates a number of (broadly-based) elements of a national transportation policy for Canada. We would also recommend that such a policy make an explicit linkage between Canada's trade agenda and its transportation agenda, and underline the need for greater alignment between the government's trade growth objectives with the ability / capacity of the relevant Canadian trade corridor to carry the anticipated increase in cargo volumes. Formalizing these linkages through a national transportation policy statement is particularly important in a context where the key drivers for Canada's future economic success are trade growth and trade diversification, both of which

are closely linked to the availability of competitive transportation services and efficient trade routes to move the resulting cargo to and from world markets. In the same vein, a modernized policy statement should make reference to the need for greater alignment among ALL the federal departments and agencies that interact with international trade, so that trade facilitation and/ or supply chain efficiency become an integral part of their operations (to the extent possible given their core mandates).

3. COSTS AND COMPETITIVENESS

Ensuring Greater Accountability in CPA Fees

Although marine stakeholders usually focus on pilotage fees as the most significant cost element that an ocean vessel trading at a Canadian port (or ports) can expect to encounter, it is important to note that other user fees – including those assessed by ports - also have a substantive competitive impact when considered from a cumulative cost perspective. According to the *Canada Transportation Act* (CTA) review panel, marine user fees totalled \$857 million in 2013-2014 (with port, pilotage and Seaway fees accounting for more than 90 percent of this total), and have increased by an average of more than five percent per year over the past 15 years. The panel also makes the observation that the U.S. does not impose fees for vital services such as icebreaking and dredging, and that Canadian user fees are considered high by comparison, despite the fact that they only recover part of the cost.

Given that a significant proportion of the above services are provided to ship owners under either private or legislated monopolies, as well as the cumulative impact that user fees have on the competitiveness of the transportation system overall, we believe there is a need to introduce greater accountability into the process through which user fees are established and increased. An important step towards that end would be the development of a more robust mechanism for reviewing the user fees established by Canada Port Authorities under the *Canada Marine Act*, especially in a context where CPAs essentially operate as monopolies within their geographic areas, and therefore have the market power to establish fees at whatever level they desire.

Although the *Canada Marine Act* requires port authorities to fix their fees at a level that enables them to operate at a self-sustaining financial basis and that such fees be fair and reasonable (section 49(3)), the grounds under which a user can appeal to have those fees reviewed are very narrow. Indeed, under section 52 of the Act, a user can file a complaint related to a fee with the Canadian Transportation Agency, but the Agency is limited to assessing whether such fees constitute unjust discrimination or provide an undue or unreasonable preference or disadvantage to other users.¹

This means that users have virtually no avenues for ensuring that the level of fees a given CPA charges has any link with the efficiency of the service it provides². This is a concern not only for port users (who basically have a very narrow recourse against potential rate abuse), but also for the competitiveness of the transportation system as a whole, and for the Canadian importers and exporters who rely on that system to move their goods to and from world markets. The policy objective of having CPAs operate as

¹ Canadian Transportation Agency, Decision No. 437-W-2003 - Harlequin Cruises Inc., Nautical Adventures Ltd., Pioneer Cruises and the Great Lakes Schooner Company against the Toronto Port Authority.

² In its Decision No 293-W-2010 (Irving Oil Limited against the Saint John Port Authority), the Canadian Transportation Agency stated that its mandate under section 52 of the *Canada Marine Act* does not extend to assessing whether user fees set by a port authority are "fair and reasonable" or derived from an "economic and efficient service."

autonomous commercial entities should not trump the need to ensure a strong linkage between the fees they impose and the efficiency of the services they provide, especially given the monopolistic context in which they operate.

In order to address this situation, we recommend that consideration be given to establishing new grounds for appealing CPA fees under the *Canada Marine Act*, which are the same as (or similar to) those provided under section 34(2) of the *Pilotage Act* with respect to pilotage fees:

(2) Any interested person who has reason to believe that any charge in a proposed tariff of pilotage charges is prejudicial to the public interest, including, without limiting the generality thereof, the public interest that is consistent with the national transportation policy set out in section 5 of the Canada Transportation Act, may file a notice of objection setting out the grounds therefor with the Canadian Transportation Agency within thirty days after publication of the proposed tariff in the Canada Gazette.

The ability to challenge CPA fees on the grounds that they are prejudicial to the public interest would provide port users with a much-needed avenue for ensuring that the fees established by CPAs are consistent with the national transportation policy set out under Section 5 of the *Canada Transportation Act*, and its emphasis on competition, market-forces, user needs, and lowest possible costs. This would place greater onus on CPAs to ensure the existence of a sound rationale for the introduction of any new (or increased) fees in the first place, and serve as a backstop against the use of port tariffs as a convenient means of generating port revenue without having to establish any clear link between such tariffs and the efficiency of the service (or the benefits of the infrastructure improvement) to which they are linked.

In support of the above recommendation, we also reiterate the comments we submitted to the the *Pilotage Act* review, which highlight the importance of retaining a robust appeal process for user fees and express strong concern over any legislative amendments that would weaken the existing process under sections 34 and 35 of the *Pilotage Act*. A legislative self-sufficiency mandate in the context of legal or factual monopolies (as is the case for pilotage and port fees) MUST be counterbalanced by a strong appeal mechanism.

In a similar vein, we would also recommend that section 49 of the *Canada Marine Act* enshrine the “user pay – user say” principle, under which the party against whom a fee is assessed is the party who gains a direct benefit or advantage from the service or improvement linked to that fee. Although our specific interest in this respect is to ensure that ocean carriers are not obliged to pay for infrastructure investments that occur beyond the physical boundaries of a given port (as occurred when the Port of Vancouver introduced its Gateway Infrastructure Fee in 2010), we also view this as an important means of reinforcing the public interest dimension of the CPAs’ mandates (particularly as relates to identifying legitimate infrastructure needs and finding the appropriate funding).

Finally (and as an adjunct to our previous comments on the cumulative cost impact of user fees on the competitiveness of the transportation system overall), we recommend that the *Canada Transportation Act* include a provision allowing for mediation / adjudication by users before the Canada Transportation Agency with respect to the rates charged by granted regional monopolies of service providers (e.g. port tugs, container examination centers) when such rates are not already governed by a specific statute.

4. ENVIRONMENT AND SUSTAINABILITY

Incentivizing Green Shipping

In their role as the physical interface between ships and communities, ports are, in many ways, the natural target for the public expression of environmental concerns (and aspirations) related to shipping activity overall. As such, they play a key role in continuously helping the shipping industry build and maintain its social license to operate. Although many CPAs have undertaken a variety of measures to demonstrate their environmental engagement and leadership – including participation in environmental programs such as Green Marine – we believe that more could be done in this respect, particularly as relates to providing financial incentives for “green ships” calling Canadian ports.

It is worth noting that currently, only four of the eighteen Canada Port Authorities offer any kind of green shipping incentives. Moreover, the scope of the four programs that do exist is quite divergent, with two CPAs recognizing only a very narrow category of “green vessels”³ and the other two providing incentives for a much broader range of green investments including the use of green technologies, cleaner fuels, green operational practices, and / or certification under several ship sustainability programs.⁴ Our intent is not to criticize the four CPAs that have taken action, but rather, to highlight the need for a concerted national approach to expand on and implement a network of green ship incentive programs throughout all of Canada’s port authorities.

Towards that end, we recommend that Transport Canada develop a coherent, comprehensive and national approach to green ship incentive programs, with a view to further enhancing sustainable marine transportation in Canadian waters. As part of this commitment, the Canadian government should direct and support CPAs in establishing a common approach to green port fees. The criteria for port incentives should be broad enough to cover Canada’s major environmental priorities, including greenhouse gas emissions, air emissions and marine mammal protection (underwater noise and ship strikes), and should also recognize vessel participation in well-established ship sustainability programs (such as Green Marine, the Clean Shipping Index, etc.)⁵ as well as environmental notations from class societies.

Canada already recognizes and promotes green port fees as part of its work on the international front. Indeed, in a recent submission to the International Maritime Organization, Transport Canada stated that “marine carriers face challenges in understanding and navigating available incentive programs, which results in lower participation levels,⁶ and noted that Canada is now seeking to develop “a globally-interconnected network of (port) incentive providers.” We believe that it is equally important for Canada

³ The green port fees at the Montreal Port Authority and Sept Iles Port Authority are offered only to some categories of vessels certified under the Green Award Program. See section 3(2) of the Port of Montreal’s *Harbour Fees Tariffs* and section 4(5) and Annex 1 of the Port of Sept Iles’ *Harbour Dues Tariffs*.

⁴ See the *ECHO Action Program* for the Vancouver Fraser Port Authority and the *Green Wave Program* for the Prince Rupert Port Authority.

⁵ (Green Marine, Environmental Ship Index, Clean Shipping Index, RightShip, Energy Efficiency Design Index, and Green Award)

⁶ MEPC 73/7/1 submitted to MEPC on August 17, 2018:

[file:///C:/Users/sonias.SHIPPING/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/U2AJOF17/MEPC%2073-7-1%20-%20International%20collaboration%20on%20ship%20emissions%20reduction%20\(Canada\)%20\(002\).pdf](file:///C:/Users/sonias.SHIPPING/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/U2AJOF17/MEPC%2073-7-1%20-%20International%20collaboration%20on%20ship%20emissions%20reduction%20(Canada)%20(002).pdf)

to focus on the establishment of a comprehensive national approach to green ship incentives by providing direction and support to Canadian ports to invest in the development of such programs.

Ensuring that all Canada Port Authorities offer green incentive programs with similar eligibility criteria will assist in attracting more ships to participate in such programs and to adopt green measures (since there would be an opportunity for cumulative savings that would further support shipowners' investments in such technologies). Once this effort is well underway, Canada should then work to harmonize (where possible) its green port incentive program(s) at a regional level with American ports on common shipping routes – in addition to its ongoing efforts at the International Maritime Organization.

We believe that the combination of actions noted above will play an essential role in establishing the appropriate conditions for attracting, retaining and further incentivizing the use of green vessels in Canadian waters.

5. INNOVATION AND TRADE LOGISTICS

Digitizing Trade Processes and Adding Value to Data

One of the key roles played by ports is to provide an interface between the various links in the logistics chain, from marine carriers – to terminals – to the rail and highway modes – to service providers – to a host of regulatory authorities. This makes ports ideally positioned to fully leverage the benefits of new technologies that can add value to the port logistics process by enhancing supply chain visibility, integrating logistics flows and improving the performance of the transportation system overall.

The involvement of ports such as Halifax and Montreal in testing the joint blockchain Trade Lens platform developed by IBM and Maersk is a very positive development in this respect, which may help incentivize other trade chain stakeholders to follow suit, thereby adding some of the “critical mass” that will ultimately determine the success of this and / or similar ventures.

The Port of Vancouver's use of blockchain technology to improve the efficiency of the container examination process (which will begin testing with a handful of marine carriers early in the new year) provides another example of port leadership in this field, and is particularly noteworthy due to its focus on the impact of what is essentially a CBSA (or customs) mandated activity on the efficient movement of cargo from the marine terminal to the examination facility and beyond.

Ports are also well positioned to add value to the information they collect from stakeholders by using it to provide insight / visibility into the performance of the supply chain overall. The Port of Vancouver is currently pursuing such an initiative through its supply chain visibility project, which could potentially be formalized and replicated in other major ports, especially if the relevant supply chain stakeholders were to be offered some kind of incentive for sharing the relevant data in this respect.

Although these are all positive developments for which we applaud the ports in question, we believe that a bolder vision and more fully integrated approach to managing and sharing data is needed in order to improve the performance of Canada's trade logistics processes and ensure Canada's ability to efficiently deliver future trade volumes to and from world market – and that Canada's ports are ideally positioned to play a leadership role in bringing such a vision and approach to fruition. We also believe that the concept of the “port community system,” which has been implemented in a number of European ports, including

Rotterdam, Antwerp, Hamburg and Le Havre, may provide a particularly instructive model for moving forward in this respect.

The “port community system” model is based on the development of a digital platform for facilitating the transmission of trade and logistics information between different partners in the multimodal transportation chain. The intent is not to build a new system, but to connect the multiple data transmission systems that are already operated by individual stakeholders into a single information hub, thereby eliminating the need for stakeholders to maintain bilateral data transmission channels between one another. As a result, activities such as pre-arrival vessel reporting, export documentation, ordering of tugs and other services, coordination of loading and unloading operations, etc., could be conducted electronically via a single portal (on a fee per transaction basis), thereby leading to a more streamlined and fluid port logistics process.

Such a model could also serve as a gateway to the implementation of a “single window” concept in Canada, by means of which federal government departments and agencies (and their respective data transmission processes) could also be integrated into the system. This would enable trade chain partners such as marine carriers to submit individual data elements a single time via the same digital portal, with public authorities such as Transport Canada, the Canada Border Services Agency, and the Canadian Food Inspection Agency (to name a few) then accessing that portal to extract the specific pieces of data they require. It is worth noting that the International Maritime Organization has been championing the development of a single window model for the maritime mode for the past several years, and the concept is in various stages of implementation in several EU nations as part of the port community systems they already have in place.

We strongly encourage Canada’s port authorities to play a leading role in developing and implementing concepts such as the “port community system” and “maritime single window,” with a view to leveraging the tremendous benefits such platforms offer not only in terms of streamlining logistics processes and expediting cargo flows, but also of providing better visibility (and potential predictability) into the performance of specific supply chains and trade corridors. In a context where key Canadian gateways (especially those on the west coast) continue to face serious and unrelenting capacity challenges, we believe that the ability to manage information and use data as effectively, seamlessly and innovatively as possible will become as important as the construction of physical infrastructure in overcoming our capacity challenges in the future.

Given the above, we urge CPAs to consider the National Trade Corridors Fund and similar federal programs as potential sources of funding for the development of digital platforms such as those described above, and trust that the government will consider the merits of such funding requests on the basis of their contribution to the national interest from a trade corridor perspective.

6. CONCLUSION

We have provided the above recommendations with a view to ensuring that Canada’s ports system is well positioned to meet the ambitious trade growth and trade diversification objectives that the government has set for the future. It is essential that Canada’s transportation system has the ability and capacity to efficiently handle the growth in world trade upon which our future economic success is largely based. Give that a significant proportion of this trade will be carried on board ocean going ships, it is particularly

important that Canada's ports have the appropriate capacity, infrastructure and tools to channel this cargo to and from world markets in a manner that not only maintains, but also enhances, the competitiveness of Canadian exporters and importers.

The package of recommendations we have put forth are aimed at ensuring the ability of Canadian ports to meet these challenges by modernizing the current governance structure so it more fully reflects the national interest role of the CPAs, introducing greater accountability into the manner in which CPA fees are established (and may be challenged), incentivizing green shipping throughout Canadian ports, and capitalizing on the tremendous opportunities provided by digitizing and adding value to data in order to enhance supply chain fluidity and respond to our capacity challenges. We believe that the implementation of these recommendations will ensure that Canadian ports are both well-equipped and well-positioned to continue to serve as essential elements in the supply chain and as key contributors to the Canadian economy.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "M.H. Broad". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Michael H. Broad, President
SHIPPING FEDERATION OF CANADA

7. LIST OF RECOMMENDATIONS

Governance

1. Modernize the current port governance structure by expanding the national transportation policy articulated in Section 5 of the *Canada Transportation Act*. More specifically, the amended Act should:
 - a. Make an explicit linkage between Canada's trade policy and its transportation policy;
 - b. View ports from a trade corridor and national interest perspective;
 - c. Seek alignment between Canada's trade growth objectives and the cargo carrying capacity of the associated Canadian trade corridors;
 - d. Seek alignment among all federal departments and agencies that interact with international trade so that trade facilitation becomes an integral part of their operations.

Costs and Competitiveness

2. Strengthen the mechanism for reviewing the user fees established by Canada Port Authorities under the *Canada Marine Act* by providing that such fees can be appealed on the grounds that they are prejudicial to the public interest, including the public interest that is consistent with the national transportation policy set out in section 5 of the *Canada Transportation Act*;
3. Enshrine the "user pay – user say" principle in the *Canada Marine Act* to ensure that the party against whom a fee is assessed is the party who gains a direct benefit or advantage from the service or improvement linked to that fee;
4. Incorporate a provision in the *Canada Transportation Act* allowing for mediation / adjudication by users with respect to rates charged by granted regional monopolies of service providers such as tugs and container examination centers.

Environment and Sustainability

5. Establish a comprehensive national strategy for developing a green ship incentive program across all Canadian ports with similar eligibility criteria that covers Canada's major environmental priorities;
6. Work to harmonize the above-noted program on a regional basis with American ports on common shipping routes;
7. Continue to work through the International Maritime Organization to develop a globally interconnected network of port green incentive providers.

Innovation and Trade Logistics

8. Work with CPAs to develop and implement digital platforms (such as the "port community system") that integrate the electronic submission of data by multiple trade chain partners via a single portal;
9. Use digital platforms as gateways to implementation of the "single window" concept in Canada, under which government departments and agencies are also integrated into the new data portals;
10. Allocate funding under the National Trade Corridors Fund to investment in digital platforms and transition to a "single window" model in Canada.