



14 June 2019

Keith Jones
Director
International Marine Policy
Transport Canada
330 Sparks Street
Ottawa, ON, K1A 0N5

Dear Mr. Jones,

We are writing on behalf of the Shipping Federation of Canada, which is the association that represents the owners, operators and agents of foreign flag ships that carry Canada's imports and exports to and from world markets. Our members are involved in all of the international shipping markets, whether as the owners or Canadian representatives of ships that carry major commodities such as grain, coal, oil and forest products to export markets overseas, or as the operators of container shipping lines that serve Canadian ports by delivering intermodal containers to and from the rest of the world.

Given the global nature of our members' activities, it is essential that there be as much consistency as possible in the legal regimes – including those governing liability for the carriage of goods by water - of the countries in which their ships operate. Although the last several decades have seen several significant efforts to reform the existing legal landscape for marine cargo liability, including the development of the Hamburg Rules in 1978 and the Rotterdam Rules in 2008, the Hague-Visby Rules remain the liability regime that is most widespread among the world's maritime trading nations. We therefore continue to view those rules as being the most appropriate for a country such as Canada, which is heavily dependent on ocean shipping to carry its international trade to and from global markets, and for which global regulatory consistency is therefore so essential.

In view of the fact that the Hamburg Rules have failed to gain a significant level of support among the world's maritime nations since their introduction in 1978, we believe there is a legitimate question to be raised about the rationale for their ongoing inclusion in section 45 of Canada's *Marine Liability Act* and the ongoing exemption of Section 45 from the provisions of the *Statutes Repeal Act*. This being said, it is also our view that the provision set out in Section 44 of the *Marine Liability Act*, which requires the Minister to consider - on a five year basis - whether the Hague-Visby Rules should be replaced by the Hamburg Rules and to submit a report to Parliament in this respect – has provided a valuable mechanism for periodically assessing the performance and appropriateness of Canada's carriage of goods by water regime. Therefore, should a decision be made to repeal section 45 of the *Marine Liability Act*, we would recommend that a requirement to regularly review the Canadian regime - particularly in light of developments in other maritime trading nations – be re-introduced into the Act.

As noted in Transport Canada's discussion paper, the lack of a single, globally acceptable convention on marine cargo liability has encouraged a number of states to modernize their regimes by making changes to their domestic legislation or adopting national maritime codes, which in some cases has resulted in the development of hybrid legislation that includes elements from the Hague-Visby, Hamburg and Rotterdam regimes. We find it very difficult to support a piecemeal approach to regulating marine cargo liability

under which individual countries cobble together their own unique regimes - and indeed, we view such an approach as being antithetical to the principle of global regulatory consistency that is so important to the shipping industry. Nevertheless, we believe it is essential for Canada be aware of the changes that other countries are introducing to their liability regimes, with a view to being in a position to identify key developing trends and assessing their impact from a Canadian perspective.

We would therefore recommend that in addition to incorporating a requirement for a five-year statutory review of Canada's marine cargo liability regime in the *Marine Liability Act* (in the event that the current section 45 is repealed), Transport Canada also establish a stakeholder advisory committee – which would include shipowner, cargo, insurance and legal interests - to collectively discuss and assess developments that may impact Canada's future approach to regulating liability for the carriage of goods by water. Such a committee would provide Transport Canada with valuable input for the statutory review process, while also serving as a forum for potentially reconciling the oftentimes divergent perspectives of the key stakeholders involved.

We trust that these comments will be helpful in Transport Canada's preparation of its next report to Parliament and would be pleased to provide any additional information as required.

Sincerely,



Karen Kancens
Vice President
SHIPPING FEDERATION OF CANADA