



December 3, 2018

The Honourable Marc Garneau, PC, MP  
Minister of Transport  
Transport Canada  
330 Sparks Street  
Ottawa, ON K1A 0N5

Dear Minister Garneau,

On behalf of Global Container Terminals ("GCT"), I am pleased to submit our submission to Transport Canada's *Ports Modernization Review*. Launched in March of this year by you and your department at our very own GCT Deltaport terminal, this undertaking by your government to review Canada Port Authorities (CPA) is critical to ensuring Canada's trade-enabling institutions are fully optimized and modernized to remain globally competitive.

GCT operates at the heart of Canada's Pacific Gateway – the country's primary link to trade and commerce with Asia and a primary west coast gateway for USA bound trade through Canada. Not only are we the anchor tenant of the Vancouver Fraser Port Authority, we are also the largest container terminal operator in Canada and, indeed, the largest maritime employer in the country. Proudly headquartered in Vancouver and privately-held by long-term majority Canadian institutional pension fund investors, Global Container Terminals has been a proponent of - and investor in - critical Western Canadian port infrastructure for over 100 years. In the past 10 years, from 2009 to 2018, GCT invested C\$876MM in its terminals in Vancouver. We have a long history as an important economic contributor and wealth generator in the province, and we have current and planned investments in Vancouver that will help improve and expand the country's trading capacity and global competitiveness. In fact, over the next 10 years, from 2019 to 2029, GCT intends to invest C\$1.7B in its two terminals in Vancouver.

Contained within the following submission are GCT's responses to the five key objectives outlined in the *Ports Modernization Review's* discussion paper. In providing our responses, we have drawn on our long history of operating in the Port of Vancouver, as well as our experience in operating in the US market through our two terminals at the Port of New York and New Jersey. We are, of course, glad to discuss our responses and expand on them further should that be of any interest to you and your officials.

Thank you again for your commitment to this important stakeholder engagement exercise. GCT welcomes the opportunity to participate in the review and we look forward to continuing to engage on these matters with your office and department over the coming months.

Yours truly,

Doron Grosman  
President & CEO  
GCT Global Container Terminals Inc.

## Executive Summary

This submission provides GCT's comments and recommendations for consideration by the Government of Canada as it conducts the *Port Modernization Review*. As a leading organization involved in facilitating Canada's trade, and the largest terminal operator in the country, GCT has taken our role in participating in this review with great importance. In providing our responses, we have leveraged not only our long history of operating at the Port of Vancouver, but also our experiences in operating in the US market through our two terminals at the Port of New York and New Jersey.

As identified in the following pages, GCT has chosen to structure its submission to reflect Transport Canada's five key objectives as stated in the Review's discussion paper. A summary of GCT's recommendations are provided below and are expanded upon in the ensuing body of the document thereafter.

### Key Recommendations

#### **1. Supporting the competitiveness of Canada's economy by facilitating the movement of goods and passengers**

- **Activate the Canadian Transportation Agency to conduct a national review of port competitiveness to ensure that CPA methodologies and rate-setting mechanisms are serving Canada's national interest and providing desired benefits to both government and industry partners.**
- **Critically review, as a policy consideration, the amalgamation of ports or strategic alliances between ports in a creative and coordinated way for the advancement of national interests, with perhaps different levels of scope under 'amalgamation' being considered.**
- Optimize the use of existing infrastructure at the lowest all-in cost for strategic and informed capital investments in key western Canadian port infrastructure, as well as in the marine environment, made through collaborative and transparent frameworks such as the Gateway Transportation Collaboration Forum.

#### **2. Strengthening relationships with Indigenous peoples and local communities**

- **Inject new definition into the scope of the *Canada Marine Act* to better clarify roles and responsibilities of CPAs in today's context, in particular as it relates to Indigenous relations.**
- Structure and deploy a formalized process that gathers the input of the user community, including terminal operators, as well as local communities, First Nations and Indigenous Canadians, and other important stakeholders when it comes to guidance on land acquisition, land use planning, and environmental permitting.

#### **3. Promoting environmentally-sustainable infrastructure and operations**

- Define a more in-depth process that ensures government, CPAs, Indigenous peoples and port tenants collaborate in developing approaches that provide environmental benefits and habitat improvements.

- Promote CPAs optimizing existing port capacity for freight movement and using excess revenues to develop infrastructure where market has failed to provide, like short sea shipping.
- **Support the proposed *Impact Assessment Act*, namely its intentions related to the removal of the ability for CPAs to unilaterally permit projects of which they are the proponent; and recommend applying greater scrutiny to the desired outcomes of the regulatory framework of the expanded designated “Project List.”**

#### **4. Enhancing port safety and security**

- Examine past safety and security programs that have ‘lost their home’ over the years, and resolve if they should be officially assigned to CPAs’ mandate, eliminated permanently, or re-assigned to an existing government agency.
- Define, with specificity, new safety and security programs for the benefit of all stakeholders.

#### **5. Optimizing governance and accountability, including with respect to financial management**

- **Create a governance model that decouples current conflicting mandates with stakeholders, increases transparency, improves financial accountability, and increases alignment with national interests for CPAs.**
- **Mandate the Canadian Transportation Agency to review rent-setting approaches for CPAs across the country and develop a utility model for rent collection on federal real properties under CPA jurisdiction.**
- Review CPAs’ designation as a shared governance organization under the *Lobbying Act*.

## **1. Supporting the competitiveness of Canada's economy by facilitating the movement of goods and passengers**

The marine sector is the backbone of the global economy. With roughly 70 percent of trade by value carried by sea and handled by ports, Canada's port authorities, and specifically their tenants, are an integral piece in the success of the marine sector, serving as a gateway to facilitate domestic and international activity and thereby the competitiveness of Canada's economy. International trade volumes have grown for the past 20 years and, as that trend continues, especially on Canada's west coast where in the past 20 years compound annual growth rate has been 2.7%. The future competitiveness of the Asia Pacific Gateway and Corridor will be dependent on the total cost, speed, fluidity and reliability of each of the components of its transportation chain in moving goods to market.

In this respect, the 2015 *Canada Transportation Act* (CTA) Review provided several worthy points and recommendations to the Government of Canada to strengthen the competitiveness of marine ports in Canada that GCT would re-emphasize:

### ***Optimization of Existing Infrastructure***

With the growth of Asian markets and the signing of new international trade agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the demand for transportation services for commercial purposes will continue to grow on the west coast, exerting pressure on existing transportation infrastructure and prompting calls for new footprints and facilities. West coast container growth in particular, according to Vancouver Fraser Port Authority is expected to range between 3.6% and 5.6% in the next 10 years.

GCT has always believed that, as a general concept, we should be building competitive capacity from the lowest all-in cost. This means maximizing existing operations, densifying land use as much as possible before looking at creating a new footprint, focusing instead on significant pressures for improvement and expansion of the current transportation network. It is for this reason that GCT has been, and will continue to be, a supporter of the government's investments through the National Trade Corridor Fund. The fund has already proven successful in driving collaboration across stakeholder groups and focusing on projects that reduce current bottlenecks in the system. By targeting these off-terminal common user infrastructure projects, the government seeks to maximize overall economic benefits to the country. As the Hon. David Emerson suggested in the CTA Review:

*"Increased traffic compounds the problem, as do quick fixes that don't stand the test of time. What are needed are funding mechanisms to maintain, improve and, in some cases, replace Canada's aging capital stock of transportation infrastructure"* (CTA Review, pg. 19).

GCT's \$180MM investment in GCT Deltaport Berth 3 (completed in 2010), and our \$300MM investment in densifying our existing rail yard operations at GCT Deltaport through semi-automation, provide two excellent examples of our contribution to this approach. By rethinking the layout, implementing semi-automation, densifying the tracks on the terminal, and changing the way we operate, we have managed to increase our overall terminal capacity by 33%. To be completed in

in 2019 and now in production, no additional lands were needed for the project to be realized and incremental capacity was delivered from the lowest all-in cost.

To build the strongest trade corridor possible, we encourage the Government of Canada to continue focusing on making the most strategic and informed capital investments in key western Canadian port infrastructure, as well as in the marine environment. These investment decisions should be made through collaborative and transparent frameworks, like the Gateway Transportation Collaboration Forum. Moreover, they should be based upon informed input from private sector industry stakeholders, such as ocean carriers, railways and terminal operators, who are the front line of Canada's trade and whose customers will ultimately be paying for the improvements through mechanisms such as the Gateway Improvement Fee, as implemented by the Vancouver Fraser Port Authority.

### **Canadian Transportation Agency Oversight**

As recognized by the National Transportation Policy, enshrined in the *Canada Transportation Act*, Canada is best served by an economically-efficient transportation system. The best way to achieve an efficient system is to rely as much as possible on competition and market forces:

*"Competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services", (Canada Transportation Policy, Section 5 (a)).*

Competition between existing ports and container terminals on Canada's west coast exists and is a good thing. For instance, decisions by CPAs to have multiple terminal operators are based on the idea that intra-port competition is generally beneficial. **However, with the trend in the ocean carrier industry moving towards increased concentration into three alliances and increased vessel size, which means container traffic arrives less frequently but in greater quantities, intra-port competition appears to have become less relevant.** Instead, ocean carriers and their beneficial cargo owner customers have numerous port options on the west coast of North America to select from:

*"The dominance of the three alliances has changed the character of that competition, as it provides a lot of leverage to alliances. A port with calls from the three alliances would ideally have three or more competing terminals that have exactly the right capacity to serve the calls from the respective alliances. Needless to say, this is rarely ever the case. Ports with three terminals and calls from three alliances can find themselves confronted with three alliances that predominantly use two terminals. Other ports might have two terminal operators that will have to deal with cargo from three alliances. Often the outcome of such dynamics is a "winner takes all" phenomenon, where one terminal is over-utilised whereas the competing terminals will be underutilised." (pg.63, The Impact of Alliances in Container Shipping, International Transport Forum, OECD/ITF 2018)*

The trends in container shipping are strengthening the case for inter-port competition on the North American west coast. With the Panama Canal expansion, and the growing competition from Mexican west coast ports, this competition will only further intensify. Canadian and US west coast ports can expect to be further challenged as the battleground for inland cargo continues to be reshaped. For Western Canada's port specifically, the US Central and Gulf regions alone account for nearly 40

percent of laden container imports from Asia. These market pressures are driving competition up and down the coast, as well as pushing terminal operators to develop cost-competitive capacity in order to be the preferred gateway into North America.

In this context, a key consideration moving forward is that the container industry is subject to greater inter-port competition and CPAs play a vital role in maintaining a balanced market-based approach to competition. When CPAs choose to interject into the competitive market by increasing rents from existing terminals in order for the CPA to invest into new operations, such as new terminals, it distorts competitive dynamics, discourages capital investments from existing tenants, and places new cost burdens on existing customers, making the gateway less competitive overall. Furthermore, it creates an environment where the landlord port is directly competing with existing tenants. This challenge, a direct result of the current conflicted model whereby CPAs can play a dual role as both regulator and landlord, could be addressed through greater oversight by the Canadian Transportation Agency (CTA). This, too, was a recommendation provided in the recent CTA Review:

*"c. introducing light-touch regulation covering fees, charges, common use of the facilities, and unfair competition by the port against its tenants to protect users;*  
*d. conferring oversight and enforcement of the measures in (c) on the Canadian Transportation Agency"* (CTA Review, pg. 228).

To that end, GCT strongly encourages the activation of the CTA to conduct a national review of port competitiveness to ensure that CPA methodologies and rate-setting mechanisms are serving Canada's national interest and providing desired benefits to both government and industry partners. This review should extend across items including transparency around rent-setting philosophies and mechanisms, leasehold management alignment with national interests, and accountability for subsequent capital investment decisions and related permitting or approval processes. Furthermore, the review should provide a benchmark that the CTA could use to monitor and review on a regular basis, ensuring optimal and ongoing competitiveness of the national ports framework.

### **Port Amalgamation**

The amalgamation of the three Lower Mainland port authorities in BC into the Vancouver Fraser Port Authority has proven that amalgamation can be a platform for future success. It has subsequently been copied by the Port of Seattle and Tacoma in their drive to become more competitive with Canada. In order to stay ahead, build on our successes, and more effectively prioritize the use of our ports to advance national interests, further amalgamation of port authorities should be explored on both Canada's east and west coasts:

*"b. encouraging regional amalgamation of Port Authorities guided by common-user and other principles embodied in the Canada Marine Act"* (CTA Review, pg. 281).

*"Another way to re-balance the relationship between carriers and ports would be increase cooperation between ports...more cooperation between terminals could be enabled by governments...Collaboration between ports can be seen as a direct and necessary response to the increased operations cooperation between shipping companies."* (pg.80-81, The Impact of Alliances in Container Shipping, International Transport Forum, OECD/ITF 2018)

While GCT would encourage the government to look at port amalgamation or strategic alliances, we also reflect on our experiences in other jurisdictions where single port authority mandates can become too big and can erode the desire for greater efficiency. As such, these considerations would need to be strategic, creative, and coordinated for national interest advancement, with perhaps different levels of scope under 'amalgamation' being considered. For example, consolidation of land use planning, environmental permitting, and other regulatory mandates and responsibilities of CPAs on the west coast would facilitate optimal use of relevant national assets, but leaving commercial leasehold administration and decision-making at the local level to provide for effective responsiveness and customer service.

## **2. Strengthening relationships with Indigenous peoples and local communities**

Whether it is the CPAs' relationships with local Indigenous peoples and/or local communities, both relationships could benefit from injecting new definition into the 1998 mandate of the *Canada Marine Act* to better clarify the roles and responsibilities of CPAs in today's context.

Much of the conflict we see today is the direct result of the vaguely-defined mandate of CPAs. In terms of this effect on local communities, the currently-nebulous framework permits jurisdictional tensions with other levels of governments, especially municipal players, around important decisions such as land use planning and environmental permitting.

For example, CPAs can purchase privately-held lands for speculative purposes that are under existing municipal or provincial land zoning jurisdiction restrictions. CPAs can, and will at times, threaten the use of federal supremacy to remove the land from local zoning restrictions causing unnecessary tension and only serving to exacerbate community's real concerns around accountability of CPAs.

The same is true when it comes to CPAs' relationships with Indigenous peoples. The oftentimes confusing role and responsibilities of CPAs vis-à-vis Indigenous relations – Crown agent or arm's length business – needs to be clarified moving forward. Local First Nations and Indigenous Canadians must be provided with opportunity for unbiased input to the investment and land management decision-making of CPAs.

Beyond updating the mandate of CPAs under the *Canada Marine Act*, a way to help solve this problem is a formalized process that includes the input of the user community, including terminal operators, as well as local communities, First Nations and Indigenous Canadians, and other important stakeholders when it comes to involvement towards land acquisition, land use planning, and environmental permitting. While VFPA has a new and improved Project and Environmental Permitting process, it lacks public confidence as it is still applied to projects that the Port Authority is a proponent for, thus the CPA is permitting itself. Decisions made in this framework tend to produce a lack of public trust, resulting in unnecessary conflicts with stakeholders. An improved process should provide for fairness advisory oversight, or be conducted by another 3<sup>rd</sup> party, while also ensuring that timelines are being adhered to.

For our part, terminal operators such as GCT have a role to play in strengthening relationships and developing mutually-beneficial partnerships with Indigenous peoples. Given much of the actual day-to-day interface between port operators and coastal communities is carried out by terminal operators themselves, it is important that CPAs clearly define their role in the engagement as a Crown Agent or a business, instead of switching between the two at convenience. The current approach creates mistrust between all parties, including confusion for terminal operators.

Economic development benefits accruing to First Nations and Indigenous groups are further enabled through partnership with terminal operators, as it is the tenants who ultimately pay for arrangements that CPAs may enter into. As such, there is no doubt that alignment and clarity of roles between CPAs and their terminal operators is essential to strengthening relationships with Indigenous peoples and local communities. For instance, GCT signed an MOU with the Tsawwassen First Nation in 2010, which enacts a number of important commitments to exploring and pursuing mutual economic benefit opportunities and to ongoing communication and collaboration wherever possible, yet the VFPA has entered into similar agreement in 2004. This layering and lack of alignment is making our ports system less competitive.

GCT strongly supports the need to clarify the role of CPAs in these important areas of responsibility, eliminating confusion in the market, as well as duplication of costs and inefficient deployment of valuable resources (both human and financial).

### **3. Promoting Environmentally sustainable infrastructure and operations**

The need to address climate change and its impacts will continue to be an important factor for governments moving forward, and CPAs and their tenants have a role to play. As we do move forward, it will be critical to ensure that government, CPAs, Indigenous peoples and port tenants collaborate in developing approaches that provide environmental benefits while also continuing to foster Canada's productivity, competitiveness, and the increased efficiencies of our supply chains.

A perfect example of the right approach to policy development that works for everyone's benefit is the Vancouver Fraser Port Authority-led Enhancing Cetacean Habitat and Observation (ECHO) Program, aimed at better mitigating measures that will lead to a quantifiable reduction in potential threats to whales as a result of shipping activities. The ECHO program benefited from early stakeholder input and advice from scientists, the shipping industry, conservation and environmental groups, First Nations groups and government agencies to help the program focus efforts, set goals and objectives, and deliver sustainable operational outcomes.

The same is true when looking at sustainable terminal operations. GCT is committed to continuing to enhance our environmental standards through ongoing innovations in the way we operate, as well as through our smart development through densification. This commitment has and continues to be recognized. For example, we were awarded Canada's Clean50 Top 15 Projects Award for 2017 for emissions reductions from our improved truck gate processing. We have received recognition from Green Marine for our leading category results in environmental performance. In 2018, we certified with ClimateSmart, a program advanced to the tenants by the Vancouver Fraser Port Authority, and were awarded the "Green Business of the Year" by Delta Chamber of Commerce. Most recently we recognized by our supply chain partners with CN Rail's EcoConnections Award for

2018. We are proud of these are accomplishments, but none of them would have been possible without community, government and CPA collaboration.

GCT's approach to enhanced environmental performance is achieved through our "Global Commitment" three pillar approach to *technology innovation, process improvement and densification of our existing terminals*' first. Aligned with our approach of getting maximum benefit out of existing facilities is embracing in supply chain processes accrued from things like short sea shipping. As noted in the CTA review:

*"By optimizing existing port capacity for freight movement, short sea shipping—the movement of cargo by water without crossing an ocean—offers opportunities to move freight around congested land corridors such as on the Great Lakes and in the Lower Mainland of British Columbia, with lower emissions and without the need for costly investment in new road and rail capacity"* (CTA Review, pg. 218).

Short sea shipping offers the ability to move freight within congested corridors, lowering emissions and reducing the need to rely on costly surface transportation expansion; however, as it is still nascent, it requires market intervention. This is one area where GCT would fully support CPAs use of excess revenues to develop terminal infrastructure, as it would give rise to a new industry, not compete with existing tenants, create efficiencies in the supply chain, and improve quality of life in the communities. Furthermore, CPAs investments could be further leveraged by the private sector, and the government through the Infrastructure Bank or NTCF.

Finally, when it comes to protecting environment and sustainable infrastructure, GCT is generally supportive of the current reforms taking place with regard to Canada's proposed *Impact Assessment Act* (IAA), Bill C-69 (at the time of this submission, currently before the Canadian Senate). The IAA is set to replace the *Canadian Environmental Assessment Act 2012* (CEAA), and it aims to restore public confidence into the environmental review process. To that end, GCT in particular supports the intentions related to the removal of the ability for CPAs to unilaterally permit projects of which they are the proponent. Port authorities should not be conducting their own permitting review. By removing this ability via the IAA, it creates a better, more transparent, more accountable process, which will build trust from the public. Ultimately, this is the intended purpose of Bill C-69, to rebuild confidence in the regulatory process.

Where GCT does have concerns with Bill C-69 is the expansion of the current designated "Project List", which would require any improvements or expansions of marine terminals designed to handle ships larger than 25,000 DWT to become a designated project under the IAA.

As mentioned earlier, VFPA has a robust Project and Environmental Review process that it has successfully undertaken over private sector tenant proponents in its role as a crown agent. The proposed added requirement in C-69 would do little to further protect the environment, but would make most expansions cost-prohibitive, reduce Canada's current trade advantage and place an onerous burden on a sector of the economy that continues to contribute millions of dollars to Canada's economy every day. The goals of the proposed IAA changes will be accomplished by the aforementioned removal of port authority's abilities to conduct their own reviews where they are the project proponent.

## **4. Enhancing port safety and security**

CPAs play a leading role in managing the navigational jurisdiction for facilitating Canada's trade while protecting the environment. This responsibility covers a vast array of commercial and recreational marine activities and regulations. At the Port of Vancouver specifically, the VFPA operations centre monitors and tracks marine objects within the federal navigational jurisdiction to prevent and mitigate environmental risks and eliminate hazards to navigational safety. VFPA is also responsible for dredging, or removing sediment, from port waters to maintain proper depth and keep the waterways open for deep-sea trade vessels.

Terminal operators like GCT work in lock step with the VFPA operations centre as we both have a joint commitment to the safe and reliable movement of goods and products through BC's ports. GCT's terminals have robust security protocols and procedures to maintain safe operations. All loaded imports and exports are kept in highly secured, monitored areas with controlled access and vigilant 24-hour surveillance, offering our customers and the local community an unparalleled level of accountability and regulatory compliance. Our terminals have security policies and procedures in place pertaining to site access, port passes for employees and guests and security information for vessels. As many of our containers are destined for the US, GCT also participates in the Customs Trade Partnership Against Terrorism (C-TPAT) program, a voluntary government-business initiative to strengthen and improve the international supply chain and U.S. border security. C-TPAT helps U.S. Customs and Border Protection (CBP) achieve the highest level of cargo security through close cooperation with importers, carriers, consolidators, licensed customs brokers, suppliers, and customers.

Looking ahead, there are opportunities to further enhance the safety and security of port operations. The government has a role to play in this effort and this review is a perfect catalyst. As the 1998 CPA framework was introduced, a number of roles and responsibilities previously managed by the ports were left in a state of flux, with no accountabilities, or sustainable funding mechanisms. These included Burrard Inlet Environmental Action Program (BIEAP) and Fraser River Estuary Management Program (FREMP) on the environmental front, the debris trap on the Fraser River that impacted the safety of boaters within the port jurisdiction, the Fraser River secondary channel dredging that impacted recreational users and float home owners in Delta, and more recently, the VFPA's termination of funding of the National Port Enforcement Team.

Many of these programs provided valuable services but fell outside of the interpreted mandate of CPAs. It should be recognized that VFPA, on interim basis, administered and supported these programs. GCT recommends that the Government of Canada examine the above mentioned programs that have lost their home over the years, and, through the *Ports Modernization Review* process, resolve if they should be officially assigned to CPA mandate, eliminated permanently, or assigned to another existing government agency.

## **5. Optimizing governance and accountability, including with respect to financial management**

As indicated under “What Canadians Told Us” as part of the recent Transportation 2030 consultations, Canadians expressed that Canada Port Authorities, as well as other federally-regulated marine organizations, needed improved regulations and “better management and ways of spending and tracking money” (Transport Canada, “Transportation 2030: Waterways, Coasts and the North”). The *Ports Modernization Review* is an opportunity to address these concerns and optimize the current and future role of CPAs as innovative assets that support inclusive growth and trade.

GCT outlined earlier in this submission that CPAs suffer from a vague mandate that often gives rise to a lack of public confidence in the execution of their duties and causes jurisdictional conflicts with other levels of government, other regulatory agencies, or even its own tenants. As such, a modernized CPA governance structure should couple improved mandate clarity with increased transparency in order to establish desired public and industry confidence.

In GCT’s own experience in other jurisdictions such as the United States, port authorities, while commercial entities, also respect their role as agents of government and defacto monopolies, by meeting or exceeding government reporting and transparency norms. This includes public posting of Board meeting agendas, minutes, decisions and even disclosure of revenue sources and commercial leases. This level of transparency results in a level playing field and confidence building with stakeholders.

This contradicts the experience in Canada, where GCT is directly experiencing the shortcomings of the current governance model because the port authority has decided to interject into the market by investing monies, derived from its tenants and ocean carriers, into a proposed new green-field terminal, instead of into off-terminal common user trade-enabling infrastructure, as has historically been the authority’s practice. The result, this has placed the Port in countless conflicting situations that give rise to a lack of public confidence, transparency, financial accountability, and alignment with the national interest. The VFPA’s desired outcomes could be just as easily achieved by engaging tenants and supply chain to first identify what is needed and then allowing private monies to fund new capacity increase. Furthermore, if the Port is allowed to interject into the operators market by leveraging Canadian taxpayer dollars, the Port should recuse itself from being both a competitor to their tenants and also the tenant’s regulator on the same type of project.

**The first example of governance shortcoming was experienced as GCT Canada attempted to enter into leasehold renewal discussions at GCT Vanterm. The port authority leveraged its landlord powers to control the timing and operational planning of existing tenants to achieve commercially desirable outcomes in support of the project they were acting for as a proponent. Throughout the leasehold renewal process, it was unclear what methodologies the port authority was using for rent setting or if the port authority was in fact setting necessary commercial pre-conditions it needed for their own green-field project to succeed.**

**The second example is currently being experienced. GCT Canada has own long-term, proven approach to incrementally growing capacity at our terminals. This has resulted in significantly increased revenues for VFPA and, correspondingly, resulted in VFPA becoming a leading gateway port in North America. As GCT began advancing its next set of expansion projects at GCT Deltaport that appeared to be in competition with the port authority’s commercial plans, the VFPA has leveraged its regulatory powers to control GCT project advancement, as well as leveraged its permitting role in extracting additional benefits from**

**unrelated projects or permits at other GCT leaseholds. To accomplish this, the port authority is using a market concentration concern – not policy – and relying on 15-year-old information created under already-reformed legislation that was scoped for a different project. The authority is using this stale dated information to argue GCT's incremental private capital capacity expansion project is not permissible. This situation, enabled by the current governance structure, deserves revisiting by an objective regulator other than by the port authority itself, which is understandably currently operating from a position of self-interest.**

The recent market trends in the container shipping also call for government to consider new approaches.

*“Government policy has frequently focused on introducing competition between and within ports. Although competition has often increased efficiency, it is also likely to have limited propensity for ports to cooperate. This dynamic should be addressed, as cooperation between ports provides a potentially significant source of countervailing power in a context of the rapidly increasing concentration of the shipping industry resulting from the growth of liner shipping alliances, as has already been shown via the actions of various governments that have facilitated this cooperation...Within ports, collaboration between terminals could improve the efficiency of the marine supply chain. Governments could consider how – and under which circumstances – they could allow facility sharing in ports, without introducing new sector specific block-exemptions from competition law.”* (pg. 90, The Impact of Alliances in Container Shipping, International Transport Forum, OECD/ITF 2018)

Furthermore, the following two quotes from the President of ILWU Canada and former Minister of International Trade and Chair of the last CTA Review further reinforce the need to address the current governance shortcomings.

*“Now what the Port of Vancouver is saying is, “We’re going to utilize your money to work against you, and by the way, you can’t have any ability to run the terminal, so we’re going to send it out to another corporation.” Some other company, an investment bank or whatever it is. Then what happens is they create a fully automated terminal or mostly automated terminal, which then drives the current tenants either out of business or forces them to automate their terminals, which then drives workers out of jobs.”* (Rob Ashton, President ILWU Canada to Senate Committee on Transportation - March.21, 2018)

*On the port authorities, my own feeling is that until there is a thorough review of the governance arrangements that deal with port authorities..., I get very nervous about opening up more spigots, if you like, for these authorities to get hold of more money, because I'm concerned with the governance framework....I think there is inadequate governance in relation to deployment of capital; there's inadequate governance when it comes to making sure that there is a recourse to a regulator where there is abuse of monopoly power; and there is inadequate governance when it comes to port or airport authorities entering into business in competition with their own tenants, and so frankly I wouldn't give them any more access to money until you clean that up.* (David Emerson, testifying on Bill C-49 House of Commons Standing Committee on Transport, Infrastructure and Communities - September 11, 2017)

Lastly, the current CPA model allows authorities to behave as commercial actors in cases of terminal development or land acquisition, all while they continue to operate in a protected government

monopoly. To advance their commercial interests, CPAs also engage in government advocacy and lobby government and elected officials for obtaining government funding for projects or changes to legislation or regulation to advance their commercial undertakings. In 2008, as a result of the *Federal Accountability Act*, the new *Lobbying Act* came into force, with the desired intention that public office holders and the general public were entitled to know who is engaged in lobbying activities. Yet, under the current interpretation of the *Lobbying Act*, CPAs are considered “Shared Governance Organizations” and exempted from being required to register their lobbying activities. This further erodes public and tenant trust in the conduct of CPAs and their activities and should be addressed by government through this modernization review.

## Conclusion

The *Port Modernization Review* is a very significant opportunity to set a forward-looking framework to 2030 and beyond that will adequately mandate CPAs to build and maintain public confidence in executing their regulatory mandate while further enshrining the successful free enterprise guiding principles for development of trade-enabling infrastructure.

As outlined, GCT would advocate a role for the Canadian Transportation Agency (CTA) to review rent setting approaches for CPAs across the country to determine if it is supporting the national ports framework and providing for desired national interests. Furthermore, CPAs operate as monopolies, and in the interest of protecting Canadian exporters from cost impacts resulting from locally inflated real estate markets, the CTA could develop a utility model for rent collection of federal real properties under CPA jurisdiction.

Capacity demands are best addressed by private sector market forces and they should be enabled and supported by relevant government policy and regulation, especially as it relates to collaboration or amalgamation of port authorities. The success of Canada’s ports is only delivered through success of Canadian terminal operators who are the front line of facilitating Canada’s trade objectives. Furthermore, many Canadian institutional investors are already invested in terminal operations and have the ready and willing capital to participate in building future needs for Canada’s trade-enabling infrastructure.