



April 02, 2015.

Canada Transportation Act Review Secretariat
350 Albert Street, Suite 330
Ottawa, ON K1A 0N5

By e-mail: secretariat@reviewcta-examenlrc.gc.ca

**Re: Canada Transportation Act Review Submission from
Locher Evers International (LEI).**

Request for Review - purpose:

We write to urge you to take action to clearly define the obligations of Federally Regulated Marine Container Terminals and port Authorities to provide their services to the public without undue discrimination. We propose the Canada Marine Act is reviewed and updated to clearly define the legal obligations of a port authority and/or marine container terminal operator regarding providing port terminal access to port users (duly authorized and/or licensed container trucking companies). The current wording of the Act requires clarification and strengthening in today's environment, and the rights of the port user must be clearly stipulated and protected.

History – example of issue and need for address:

An example of unfair and unequal port access existed when prior to the implementation of regular night truck gates here at the Port of Vancouver, during the time leading up to the recent container truck strike/withdrawal of service, a handful of large truck carriers/port users secured confidential SLA's (Service Level Agreements) with certain marine container terminals. These confidential SLA's included a pre-allocated number of port reservations (truck gate appointment time slots) during the much sought after day shifts (prime-time). This was during the period when there were limited night and weekend shifts resulting in limited options for all port users accessing the main PMV marine container terminals. Meanwhile all other carriers (the vast majority in the sector) had no such special privileges. Although one could argue the original intent of the marine terminal operator(s) was to increase truck gate throughput for the benefit of all port users, the actual net result was these larger port users/container trucking companies were given



an undue advantage and were able to move much of their container volume in a more efficient and economical fashion, allowing them to grow and prosper. Those carriers on the outside, the vast majority of the truck carriers, had to compete for even fewer port appointments/reservations, and often could not secure any port access at all for complete shifts; thereby losing customers and market share. In many instances, export cargoes from small and medium sized Canadian businesses missed sailings, upsetting customers overseas, and negatively affecting Canada's reputation as a reliable trading nation. Moreover, many import shipments for small and medium sized Canadian businesses incurred expensive port demurrage charges while "stuck on the dock" waiting for reservations, and missed critical distribution deadlines.

Law - Common Carrier:

The Canada Marine Act must guarantee equal port access for container trucking companies during regular operating "public" hours and marine container terminal operators must adhere to the **Common Carrier** principle. This is the law. It is the law for a reason. Canada's Federally owned container terminals must be considered as being common carriers and adhere to the principles of a common carrier. One cannot discriminate against any duly authorized and/or licensed port user in regards to port terminal access rights and/or port terminal access availability. To specify, a port terminal reservation/appointment/allocation system cannot advantage one carrier/user while in effect discriminating against another, regardless of size, or traffic volume, during normal "public" operating hours. The allocation of Port access and/or port truck gate reservations/appointments, during normal "public" operating hours, for all authorized and/or licensed users, must be on a fair and equal basis without discrimination. A common carrier holds itself out to provide service to the general public without discrimination (to meet the needs of the regulator's quasi judicial role of impartiality toward the public's interest) for the "public convenience and necessity". A common carrier must further demonstrate to the regulator that it is "fit, willing, and able" to provide those services for which it is granted authority. This principle of non-discriminating in publicly offered services has ancient origins in the common law, which prohibited Ferryman from discriminating. Ferryman in ancient Britain could not deny or delay service to some while awarding preference to others. Marine terminals, like Ferryman, must treat all authorized port users and/or carriers equally, and cannot discriminate against some while offering preferential treatment and/or preferred and/or pre-allocated port access to others.



Canada Marine Act – modern environment:

The Canada Marine Act must take into consideration the evolution and maturation of ocean container traffic and the related increased container volume in and out of Canada's sea ports. In particular, the container terminal truck gates. The volume of container truck traffic at many of the nation's marine terminals has outgrown the traditional Monday to Friday day shift capacities of same. As a result, many of the Nation's marine container terminals have implemented truck gate reservation systems for controlling and allocating truck gate access, distributing cargo flows into and out of the respective marine terminals, and limiting trucks needlessly waiting in line-ups. All four federally owned marine container terminals in Vancouver (Canada's largest port) have such truck reservation systems in place. We understand Maher Terminals in Prince Rupert has a quasi-reservation system (volume notification system for those 3 truck carriers authorized to access the terminal). In due course, Montreal, Halifax, and perhaps St. John NB container terminals will no doubt also find themselves requiring similar truck gate control systems to manage and distribute their increased truck gate volume, as the historic and primitive method of "line up and wait your turn" becomes inadequate and unacceptable to most/all port users.

Current wording of Canada Marine Act:

Item 50 of the current Canada Marine Act (S.C. 1998, c.10) reads:

Discrimination among users

50. (1) A port authority shall not unjustly discriminate among users or classes of users of the port, give an undue or unreasonable preference to any user or class of user or subject any user or class of user to an undue or unreasonable disadvantage.

Marginal note: Exception re commercially acceptable discrimination(2) It is not unjust discrimination and it is not an undue nor an unreasonable preference or disadvantage for a port authority to differentiate among users or classes of users on the basis of the volume or value of goods shipped or on any other basis that is generally commercially accepted

In reading the above, it is important to note that in most cases, there is NO commercial relationship between a container trucking company and a marine terminal operator. Marine container terminals have public tariffs and negotiate rates with their ocean carrier customers, the shipping lines. The terminals invoice the respective ocean carriers for their services who in turn invoice the cargo that in turn hires the respective trucking carrier(s).



Example: Deltaport invoices Maersk Line for discharging/handling the import container. Maersk Line invoices ABC Importers or their forwarder, ABC Importers or their forwarder hires XYZ Cartage to pick up the import container from Deltaport. There cannot be an argument for it ever being commercially acceptable to grant special/privileged port access during "public hours" to one port user, all to the detriment of another. In effect, this constitutes rationing port access and choosing "favourites". Marine container terminals in Canada are federally/publically owned and exist to facilitate trade for the Nation's importers and exporters, and for the general public. All authorized and/or licensed port users must be able to access said terminals on an equal and fair basis, thereby ensuring fair and equal port access for their respective clients, Canadian importers and exporters, large and small.

Transparency:

The issue of transparency must be addressed, as the discussion of SLA's (Service Level Agreements) continues to exist here in the Vancouver market place. To protect the rights of all port users, and to protect the reputation of Canada's ports, including Port Metro Vancouver, it is of paramount importance that any "SLA" that exists between a port user and a marine container terminal operator and/or port authority, is made public with all respective terms and conditions disclosed. Furthermore, any/all authorized and/or licensed port user (truck carriers) must have equal rights to enter into such an SLA of their own, with a port authority and/or marine container terminal operator, provided of course there is no element of discrimination in said SLA.

Summary:

A trucking company transporting marine containers into and out of a container port, relies on sufficient, fair, equal, and consistent port access to deliver their customer's goods to/from a port. Moreover, this is in fact one of the most, if not the most, important factor in a carriers ability to provide for an efficient dispatch and efficient utilization of assets and drivers/employees. Anything other than fair and equal port access is in fact **picking winners and losers** in this sector. A comparison would be if an airport authority provided special/priority access to "their" airport for one taxi company which in effect reduced airport access/capacity for all others, who now lose fares and possibly strand passengers.



The ability and rights protected by law, for Canadian importers and exporters to transport their goods to market efficiently and competitively, and the ability of a trucking carrier to operate and compete in the market place, must not be determined by the actions or inactions of a port authority and/or its tenant, a marine container terminal operator.

We thank-you for taking our submission into consideration. We look forward to seeing the outcomes of the Canada Transportation Act Review, and in particular, the Government of Canada taking action to protect the rights of all users of our National assets, our strategic sea ports.

Sincerely,

Chris Locher

Managing Director

Direct: 604.515.5266

Chris.Locher@lei.ca

Locher Evers International, established in 1976, primary business is freight forwarding. LEI owns and operates LEI Cartage, LEI Customs Brokers, Westcon Terminals Ltd.. LEI is the largest Sea/Air Operator in Canada (deferred airfreight service from Asia to Europe via the Vancouver gateway). LEI operates offices in Vancouver, Richmond, Calgary, Winnipeg, Brampton, Montreal, Chelmsford UK and Bremen Germany. LEI owns and operates 165,000 ft2 distribution facilities in Delta BC and in Brampton Ont., together with leased distribution facilities in Winnipeg.

LEI are active members of:

- CIFFA (Canadian International Freight Forwarders Association)
- CSCB (Canadian Society of Customs Brokers)
- BCTA Intermodal Committee - Terminal Efficiency Subcommittee
- BCTA Reservations Subcommittee PMV/Advent Common Data Interface
- Transport Canada Asia Pacific Performance Table Intermodal Committee