

# Canada Transportation Act Review

Submission from the Montreal Port Authority



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avec le monde*

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*(...) we have to find ways to be better than our competitors which are principally in the United States. Being less bad is the wrong strategy. We must develop best practices. While shippers would prefer Canada as a port of call, they are concerned with the entire labour situation and with reliability of our infrastructure. Until these are dealt with, we will not reach the goals we have set out as a country.*

Strategic Advisors' Report and Recommendations to the Minister of International Trade and the Asia-Pacific Gateway and Corridor Initiative, 2008

## ABOUT THE MONTREAL PORT AUTHORITY

We are an *ocean port located on the St Lawrence River* at the heart of the continent, and a hub for international trade that contributes to the well-being of its clients and partners. We contribute to the economic development of Greater Montreal, Quebec and Canada while respecting the environment. Montreal is the last deep water port before the Great Lakes-St. Lawrence seaway system.

The Montreal Port Authority (MPA) is an autonomous federal agency created under the terms of the *Canada Marine Act*. It does everything in its power to make the Port of Montreal as competitive as possible, and from this perspective we provide first-rate facilities to sea and land carriers, to terminal operators and to shippers.

The Port Authority builds and maintains infrastructures that are leased to private stevedoring companies. These companies, as well as shipping lines, are represented by the Maritime Employers Association, which employs the longshoremen at the port.

The MPA directly operates a passenger terminal and has its own railway network, which includes more than 100 kilometres of track and provides transcontinental railways with direct access to almost every berth.

The Port Authority's Board of Directors is made up of seven businesspeople from the Montreal area. Each of the three levels of government – federal, provincial and municipal – names a director. The federal Minister of Transport, on the recommendation of port users, names the remaining four directors. The board is autonomous and elects its own chairman.

The port represents a vital and critical economic engine for the region and the country, generating<sup>1</sup>:

- 41 billion \$ in cargo value handled yearly;
- 2,1 billion \$ in yearly economic benefits for Canada as a whole, of which 1,6 billion for Quebec;

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<sup>1</sup> All data from Transport Canada and DAA Lemay et E&B Data (2014), *Impact économique et fiscal des activités maritimes et portuaires de Montréal*, Administration portuaire de Montréal.

- 16,000 stable jobs nation-wide, of which 7,000 jobs directly related to maritime and port activities in Quebec;
- Almost 900 million \$ in annual spending on maritime or port-related activities;
- Over 250 million \$ in fiscal revenues going to provincial and federal agencies each year. Each tonne handled generates about 8,80 \$ in fiscal revenue;
- Each container handled contributes approximately 960 \$ to the Canadian GDP, of which 600 \$ to the provincial;
- One job is generated for every 130 containers handled.

## INTEGRATED TRADE AND TRANSPORTATION POLICIES

- The MPA adopts an **end-to-end supply chain mindset** and believes competitiveness and investments must be looked at the supply chain level. It also believes that for a trade-reliant country like Canada, that **ports would be better served if national transportation and trade policies are established in concert**. Current transportation policy and law does not recognize ports as critical instruments of global trade nor does they give ports enough freedom to properly play a key role as a trade catalyst.
- With an increasing concentration of containerized traffic at a handful of ports, prolonged disruptions (or even a threat of disruption) can literally **paralyze Canada's trade capability**. Resilience must be built into transportation policies going forward.
- No single body or stakeholder group should be in a position to shut down a port or interrupt the flow of goods. There is **currently no overarching body to promote the country's trade interests**, above and beyond individual players' prerogatives in the supply chain. As a result, ports can become 'hostage' to overruling interests of other stakeholders.
- Most major ports in Canada are located in compulsory pilotage zones. The **delivery of pilotage services to ships** is covered under the *Canadian Pilotage Act*. On the St Lawrence, as on the west coast, pilots are grouped into corporations and enjoy an undisputed monopolistic position protected by law. The MPA believes that regulatory safeguards, in the form of additional powers, should be given to pilotage authorities mandated by the Act to establish, operate, maintain and administer in the interests of safety an *efficient* pilotage service. This will help to properly set the balance of powers given the absence of free market conditions.
- **Labor stability**: In a majority of instances port disruptions are caused by forces outside the scope of port authorities. Canada Port Authorities (CPA) currently have no power to intervene in labor conflicts, which directly affect port operations, and are dependent on external bodies to avoid shutting down or port disruptions. Such

disruptions result in significant costs to the economy. In other words, CPAs need to be part of the upstream dialogue in labor relations before conflicts erupt.

- Quebec is unique in having its own **Maritime Strategy**. However, the MPA believes that for any provincial strategy to be fully leveraged, it **must be aligned with federal policy**.
- The *Canada Transportation Act* (CTA) and the *Canada Marine Act* (CMA) govern landside transportation infrastructure and service providers. However, there is **no mechanism that governs the behavior of oceanside service providers**. Albeit, interdependence is self-evident, there exists a persisting **absence of coordination** between the two domains as ocean carriers strategy towards ever-increasing vessel size are putting tremendous pressure on port, rail and road infrastructure, as well as maritime access (dredging).

## RECOMMENDATIONS

The MPA sees a benefit in establishing a dialogue between the federal and provincial governments to ensure alignment between maritime policies.

The MPA recommends that the federal government consider building *resiliency* mechanisms in its policy framework to ensure ports do not suffer disruptions resulting from actions outside of their control.

The MPA would see benefit in the federal government to build in *agility* into its policy framework to reconcile landside and ocean-side supply and demand of infrastructure. This could be done by establishing an advisory forum to consider global supply chains in their entirety to create synergies between landside and waterside strategies.

## COMPETITIVENESS

- **Competing United States East Coast ports** currently have in excess of **7 billion \$** in committed investments in dredging and other container facility improvements. Most of these investments are derived from public funds. Canadian and United States ports compete commercially for the same markets, but Canadian ports do not have the same financial vehicles to adequately compete.
- **Annual Stipend based on gross revenues:** with the 2008 amendments to the CMA allowing CPAs to receive federal program money, legitimate questions around whether the annual stipend paid to the federal government have arisen. CPAs that receive federal contributions in the same year have to return part of their revenues back to the

federal government. The MPA feels there is a need to rethink this item to determine whether the revenues generated by the port are better used for reinvestment in port infrastructure, rather paying the annual stipend. The underlying question is one of competitiveness, and whether amounts collected for the state creates competitiveness constraints on the entire port industry?

- **‘Saint Lawrence Highway’ concept:** the Saint Lawrence River is one of Canada’s most strategic asset with an estimated 135 million tonnes of cargo transiting each year (including the Seaway). Maintenance costs are relatively low when compared to other critical infrastructure meaning that for every dollar spent improving the navigation channel there is a superior **return on investment per tonne** of cargo than any other mode.
- The MPA believes it has reached a stage of maturity where it **must consider improvements to the navigation channel** to keep abreast of global vessel deployment trends of mega-ships. Canada is a resource trading nation, its prosperity is dependent on a strong marine sector. Whilst the Saint Lawrence River is a shared infrastructure, its jurisdiction is left to several agencies that are not mandated to consider economic factors. Currently CPAs are the only ones who must carry the burden of social acceptability, rally concerned stakeholders, gauge political support and make a business case to finance navigation channel improvements.
- **Extended port communities:** CPAs interact with a broad set of stakeholders. Ports are inextricably part of competing supply chains and their competitiveness depends on fluidity of goods’ movement through the ports. In the past decade, port authorities have played an increasingly active role in rallying the entire supply chain community over issues of gateway performance and competitiveness. For instance, ports are facing increasing cohabitation issues in managing harbor truck flows, yet CPAs have no leverage or special status vis-à-vis municipal administrations for advancing urban road access improvements.
- Securing **rail corridors to ports** is critical to maintain competitiveness since a port’s first mile/last mile environment can significantly impact fluidity and costs. Some of these include corridors passing through areas facing social and political pressures from land use conflict. The sharing of rail infrastructure between commuter passenger and cargo trains is a growing issue in Montreal. This concern can have serious consequences for port operations in terms of railcar supply, train scheduling and overall fluidity.
- Rail freight service in Canada was the subject of a review in 2011 with many of the recommendations implemented by the industry. Both national railroads testified to the Canadian Rail Freight Service Review Panel that *planning* and *lead-time* are essential conditions to establish an efficient national rail freight service. Tipping the balance through regulatory obligation, to move quotas of a certain commodity for example,

forces the market to re-distribute resources and power in a less than efficient manner. Unbalanced market conditions can lead to the voluntary jettison of other freight segments, service blackouts and backlogs. **Rail freight service degradation hinders ports' competitiveness** and should be avoided.

## RECOMMENDATIONS

The MPA recommends that the *Canada Marine Act* be reviewed to allow greater inclusion of CPAs in specific fields of competence, notably longshore labor relations and road/rail access protection and development.

The MPA recommends that the federal government should consider revisiting the annual stipend based on gross revenues applied to port authorities.

The MPA believes the federal government could take more of a leadership role in large scale marine access projects through enhanced coordination of stakeholder interests.

## GOVERNANCE

- **Co-opetition:** cooperate to compete. Ports within the Saint Lawrence system need not compete with each other but rather they must leverage synergies and complementarities to create a **single multi-cargo service offering**. Moreover, this approach is perfectly aligned with the federal gateway concept. It is well known that uncoordinated development can lead to waste and redundancy.
- While the 2008 review of the *Canada Marine Act* provided more flexibility in **CPA financing mechanisms**, CPAs are still disadvantaged compared to their U.S. counterparts in capital funding options. Inaction on this matter tips balance in favor of better funded American ports.
- **Jurisdictional issues:** The MPA is faced with conflicts relating to provincial authority over water lots (e.g. the Contrecoeur project). Current legal provisions are not sufficiently clearly defined for port activities and how CPAs are to proceed to acquire development rights. This is currently an irritant for the MPA and could also be an issue for other CPAs.
- **Boards of directors:** there are no provisions in the *Canada Marine Act* examining the overall composition of CPA boards of directors; complementary expertise of

board members is required to address the complete scope of issues facing CPAs. Further consultation on this issue is warranted.

- In Montreal, and similarly in B.C. and Halifax, the **Maritime Employers Association (MEA)** acts as a single bargaining agent for terminal operators and ship agents in labor contract negotiations with Longshoremen and Checkers' unions. The organization's by-laws dictate that MEA's **board of directors** must be constituted of terminal operators, agents and shipping lines. The MPA believes that a review of the current by-laws is needed to ensure that decisions are taken in the ports' best interest and to ensure that fiduciary responsibilities are respected bearing in mind that the MEA board members compete with each other. We also feel it important to question whether foreign companies, with little or no vested interest in Canada, be the primary decision makers dictating the shape of longshore labour in Canadian ports.

## RECOMMENDATIONS

The MPA recommends that a dedicated federal port infrastructure fund be permanently established. Access to such funds by port authorities would be on a transparent, competitive, and merit basis. Allocation decisions must be free of self-interest and partisan biases to serve transcending interests of gateways of which ports are part.

The MPA recommends that Transport Canada pursue further CPA rationalization through mergers, much like the demonstrated success of Port Metro Vancouver, in order to achieve efficiency gains and economies of scale to better rival competitors.

The MPA recommends that the federal government implement an agile review process to reduce delays in processing borrowing limit applications.

The MPA recommends that the federal government independently review the current labor relations framework at ports.

## SUSTAINABILITY

- More often than not, ports must carry the burden of **social acceptability** of transportation projects or issues that stretch well beyond the scope of the ports' influence. Harbor trucking is a good example where delayed actions from provincial or municipal administrations to improve port access can result in exacerbating cohabitation conflicts that are blamed on ports (since ports are too often perceived as a source of nuisance).

- Industrial land management is outside the purview of federal authorities. There are concerns on the part of CPAs that there is a **depletion of peripheral industrial lands. These areas are being** consumed by other land uses and thus deprive Canada of strategic land banks to support port expansion. There is a need to rethink the port-city relationship to develop new ways to befriend local communities and justify ports' social licence.
- The MPA offers a **lower carbon footprint** supply chain alternative due to its inland river location, which maximizes the maritime segment of the end-to-end transport chain. There is an opportunity for Canada to innovate by implementing a form of carbon credit system on containers.
- Major greenfield projects such as MPA's Contrecoeur port expansion require a **coordinated effort** between CPAs and Ottawa on environmental permits and provincial water lot issues. CPAs are too often left 'on their own' when it comes to reconciling environmental permit processes. As no formal mechanism exists in Ottawa to support CPAs in their core economic development mandate more freedom is required to interact with provincial agencies.

## RECOMMENDATIONS

The MPA believes the federal government could further support CPAs on questions of social acceptability of projects that demonstrate clear benefits for national trade.

The *Canada Marine Act* should be amended to provide CPAs with more leverage in the acquisition of land as it is now up to individual CPAs to come up with proactive and creative strategies to protect its industrial land base.

There is further scope to coordinate federal and provincial requirements regarding environmental assessment processes for major infrastructure projects.