

**Interim Submission of the Prince Rupert Port Authority to
Canada Transportation Act Review Panel**

Attention: The Honourable David L. Emerson P.C., O.B.C.

January 19, 2015

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Submission to Canada Transportation Act Review Panel

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Preface

[Note: This is a preliminary submission prepared by the Prince Rupert Port Authority (PRPA) briefly outlining issues of concern which PRPA considers are relevant to the Panel review. PRPA intends to provide a further detailed submission prior to September 2015.]

PRPA is a port authority established pursuant to the *Canada Marine Act*, S.C. 1998, c. 10 (the “CMA”) and operates in accordance with the provisions of the CMA and related Regulations and through Letters Patent issued by the Minister of Transport.

The CMA describes its purpose, in the establishment of the Canadian port system, as follows:

- s. 4.** In recognition of the significance of marine transportation to Canada and its contribution to the Canadian economy, the purpose of this Act is to
- (a) implement marine policies that provide Canada with the marine infrastructure that it needs and that offer effective support for the achievement of national, regional and local social and economic objectives and will promote and safeguard Canada’s competitiveness and trade objectives;
 - (a.1) promote the success of ports for the purpose of contributing to the competitiveness, growth and prosperity of the Canadian economy;
 - (b) base the marine infrastructure and services on international practices and approaches that are consistent with those of Canada’s major trading partners in order to foster harmonization of standards among jurisdictions;
 - (c) ensure that marine transportation services are organized to satisfy the needs of users and are available at a reasonable cost to the users;
 - (d) provide for a high level of safety and environmental protection;
 - (e) provide a high degree of autonomy for local or regional management of components of the system of services and facilities and be responsive to local needs and priorities;
 - (f) manage the marine infrastructure and services in a commercial manner that encourages, and takes into account, input from users and the community in which a port or harbour is located;

(g) provide for the disposition, by transfer or otherwise, of certain ports and port facilities; and

(h) promote coordination and integration of marine activities with surface and air transportation systems.

PRPA has a specific mandate to regulate port operations and to develop port lands to support the growth of Canadian trade by facilitating and expanding the movement of cargo and passengers through the Port of Prince Rupert in a commercially viable manner.

It is explicit in section 4 of the CMA that port authorities, including PRPA, are established to serve national, regional and local objectives. It is suggested that it is implicit in this section that in doing so, ports require the ability to participate in decisions “beyond the fence” which have the potential to affect port efficiency.

The Canadian Port Authority and *Canada Transportation Act* regimes are generally complimentary and have served Canada’s trade needs well to date. The Canadian port system has matured so that strong individual port gateways have been established to the benefit of national, regional and local trade, social and environmental interests. It is now necessary to proceed with the next phase in the development of Canadian Port regime to provide ports with an enhanced opportunity to positively affect gateway efficiency beyond their individual port boundaries.

List of Issues:

Canada Transportation Act and Fair Rail for Grain Transport Act

PRPA presented to committee during two recent processes concerning revisions to the Canada Transportation Act and enactment of the *Fair Rail for Grain Farmers Act* (2013 and 2014), which arose in large part to legislative changes proposed by grain shippers. During its presentations PRPA identified the following issues, which we consider are still relevant:

1. Mandatory arbitration to conclude level of service agreements for grain shippers has the potential to result in an inefficient allocation of rail service to one commodity sector. Although PRPA recognizes the value of arbitration in resolving level of service agreement disputes, further adaptations are required.

PRPA submits that either, arbitral panels established to conclude level of service agreements for grain shippers include representation from other cargo sectors and port authorities, or, these groups should have the opportunity to intervene in arbitrations, to ensure that level of service agreements appropriately reflect the needs of all rail users.

2. Inter-switching rights for US rail carriers into Canada, without a corresponding right for Canadian rail carriers into the US, is unfair to Canadian carriers and could draw Canadian cargo south of the border to the detriment of Canadian ports.

PRPA submits that Transport Canada should be asked to evaluate the potential impact of these inter-switching rights on Canadian rail carriers and ports.

3. Imposition of minimum weekly grain volumes on rail carriers may result in an unfair allocation of rail service to the grain sector.

PRPA submits that Canadian rail carriers, other commodity sectors and port authorities should have an opportunity to make submissions to the Minister of Transport with respect to potential impacts on transportation system efficiency for all rail commodity/transport types (dry, liquid and containerized), prior to the imposition of minimum weekly grain volumes.

Canada Marine Act

PRPA proposes that the Review Panel considers the following amendments or additions to the CMA:

1. **Borrowing Limits** – Either relax restrictions on Canadian Port Authorities’ borrowing limits (and let the commercial financial market determine borrowing capacity) or streamline the process under which ports may increase their borrowing limits for ports that can demonstrate a high level of financial stability.
2. **Statutory Letters Patent (SLPs)** – The SLP amendment process should be improved so that Canadian Port Authorities’ ability to acquire land to facilitate trade related port developments is not unnecessarily delayed. In addition the CMA should be amended to allow Canadian Port Authorities to lease or purchase Schedule “C” lands (those other than federal real property) without requiring an SLP amendment.
3. **Supply Chain Transparency** – Consider providing Canadian Port Authorities with enhanced tools and a mandate to play a leadership role in requiring and monitoring collaborative trade development agreements within corridors (for example, level of service agreements between ports, rail carriers and terminal operators) including requiring shippers, terminals, rail and marine carriers to provide access to key performance indicators.
4. **Board Appointments and Governance** – Revise the CMA to ensure consistency in application of governance obligations for Federal, Port User, Provincial and Municipal appointees; improve board appointment process, especially timelines; enable mechanisms for area First Nation Board appointee(s) and, provide greater accountability to Port User recommendations for board appointments.
5. **First Nations** – Clarify the role of Canadian Port Authorities as Crown agents in satisfying the Crown’s duty to consult and where appropriate, accommodate First Nations; and, improve the sharing of legal and other information between Canada and Canadian Port Authorities with respect to First Nations’ strength of claim.
6. **Safety and Security** – Enhance Canadian Port Authority security and safety enforcement powers under the CMA; and, increase Federal funding for oil and hazardous and noxious substance response capacity.

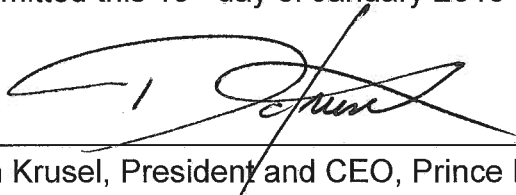
First Nations Issues

Decisions of Port Authorities which have the potential to impact aboriginal rights give rise to a duty to consult with First Nations. First Nations aboriginal rights must be respected and engagement with and opportunities for First Nations should be enhanced.

In the context of the Port of Prince Rupert, the following should be considered:

- Promoting a mechanism to work with First Nations to establish greater certainty with respect to overlapping claims ;
- Improve “governance” opportunities for First Nations including engagement in land use planning, construction coordination committees and sustainability and harbour safety initiatives;
- Continue to create opportunities for business partnerships and employment and training opportunities with First Nations; and
- Work with the Federal Government to clarify the “compelling and substantial purpose” of continuing port infrastructure development – through for example, amendments to the CMA and Port SLPs.

Submitted this 19th day of January 2015



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