

September 4<sup>th</sup>, 2015

The Honourable David L. Emerson, Chair Canada Transportation Act Review  
C/O Canada Transportation Act Review Secretariat  
350 Albert Street, Suite 330  
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*Via email*

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Dear Mr. Emerson:

**RE: Submission to the Canadian Transportation Act Review Panel**

The West Coast Container Freight Handlers Association (WCCFHA) is a newly formed but rapidly growing coalition of export container transloaders serving the Vancouver Gateway. We represent transloaders across all industries including, forest products, agricultural commodities, metals, and temperature controlled goods. Combined we expedite over 500,000 TEU's annually through Port Metro Vancouver and are responsible for over 1,000,000 container truck trips each year. We play a vital role in Canada's export supply chain and form the primary interface between some of the largest exporters in Canada and the local Vancouver container drayage community.

**1. The Container Trucking Act and the 14 Point Plan**

In an attempt to hastily resolve the Container Truckers' Strike that took place in Vancouver in March 2014, the BC Government in concert with Port Metro Vancouver imposed the 14 Point Plan which was followed by the Provincial Container Trucking Act. We steadfastly believe the efforts to address the root cause of the truckers strike were grossly misplaced and the adverse effects of these regulations reach well beyond the trucking community, effecting the efficiency of the entire supply chain. The effects have most notably impacted transloading activities in Vancouver. Indeed the Plan and the Act have simply moved congestion from the deep sea container terminal gates to the transloading facilities. Specific ramifications of the Plan and Act on the supply chain are detailed in our letter sent to The Honourable Todd Stone – Minister of Transportation and Infrastructure for British Columbia on September 4<sup>th</sup>. We have attached a copy of this letter as a supplement to our submission to the panel.

**2. Market Structure – Container Drayage**

Most economists would agree that the market structure of the container drayage industry in BC's Lower Mainland was text book *perfect market competition* – very low barriers for new truckers to enter or exit the market, a large number of drayage firms existed providing a homogenous service and relatively limited opportunities were available to any individual drayage firm to offer service

differentiation to their customers. Under such conditions, the market itself would perfectly match the number of container drayage suppliers with the demand for drayage service through naturally set competitive market rates. If the number of competitors increased beyond demand and drayage rates fell below a profitable level, trucking firms could easily redeploy assets to truck in other trucking markets. Once demand for drayage services exceeds the supply of trucks, rates would naturally climb and attract new trucking firms, or trucking firms that had previously exited, would be invited back into the container drayage market. This natural ebb and flow in the market, which existed previously, created some semblance of self-regulated rate consistency matching demand with supply through the trend line. The WCCFHA supports such free enterprise and generally advocates against regulation of competition by Government in successful, competitive markets.

It is important for our submission to revisit the primary reason behind the work stoppage initiated by the drayage community. If you recall the strike was not because of *rates* but rather due to *wait times* at the deep sea terminals. The rate structure that was previously in place would work when a truck was able to complete 3, 4 or even 5 or 6 trips per day. The previous rate structure did not allow truckers to cover their costs when they could only complete 1 or 2 trips per day.

Regulating container drayage and upsetting a “pure” market, not surprisingly, only served to create disharmony elsewhere. Succinctly imposing a non-market driven rate structure for container drayage simply compensated drivers for wait times but did not address the root issue – *the wait times themselves*. Canadian exporters (and importers) are now ultimately paying higher drayage rates which in turn makes Canadian exports more costly in a competitive global economy. This is specifically punitive to exporters as Canadian exports are largely commodities and generally commodities are very sensitive to price. The higher drayage rates Canadian exporters and importers are now paying is simply compensation for unnecessary container terminal wait times under the guise of fair drayage rates.

### **3. Market Structure – Container Terminals**

Despite our staunch support of free enterprise for working markets, the WCCFHA strongly recommends that Governments *must* intervene in markets that have failed – specifically in essential markets where little or no effective competition exists. Monopolies, duopolies and oligopolies are a case in point. While the container drayage industry may be the poster child for perfect competition, the market structure the deep sea container terminals enjoy is, on the other hand, a text book duopoly. Indeed, two firms control majority of market supply, multiple markets depend on their container stevedoring services and their container stevedoring services ultimately delivers the fuel to the economic engine of Canada – clearly it is an “essential” service. Moreover, significant barriers make it virtually impossible for new deep sea container terminals to enter the market and increase competition. These barriers include lease covenants, the availability of adequate commercial waterfront real-estate, and the massive capital investment required to achieve the needed economies of scale.

In most Western economies, and certainly in Canada, such market failures have been heavily regulated. Examples include the railways, telecommunications, utilities, and ferries. Somehow TSI

and DP World - the two primary deep sea terminals in Port Metro Vancouver have flown under the radar and have been allowed to operate untethered and largely unregulated. The lack of regulatory oversight on their market power naturally translates into social and commercial inefficiencies that are typical outcomes of unchecked duopoly behavior:

- a. Allocative inefficiencies – deliberate restriction of supply to increase profits. Demand for stevedoring service greatly exceeds the supply of gate access and reservations – this leads to massive and frequent queuing. To gain access to the terminal users were required to pay exorbitant speed gate and late gate fees. Terminals continue to focus on asset utilization rather than on operating efficiencies and continuous improvements to customer service. Ultimately this is the root cause of the drayage strike that has yet to be fully addressed.
- b. No natural market incentives exist to influence a change in behavior. Terminals can abuse their market position and continue to offer service levels that are well below levels that would be supplied in competitive markets.
- c. No accountability – no vehicle exists to assign financial accountability to terminals for service failures, vehicles that also exist naturally in competitive markets. As consumers of their services have no choice, terminals repeatedly abuse their market dominance and refuse to accept accountability as users currently have no recourse.
- d. Collusion on rates (tacit or otherwise) – it must be reasonably questioned that when assigning a cost based rate for the day time reservation fees required to cover the costs of operating evening hours at both TSI and DP World – two separate operating entities with at least some difference in cost structure – how did both TSI and DP World coincidentally arrive at *exact* same rate?

Suffice it to say that no enterprise with effective competition would be able to behave this way and remain a going concern.

#### **4. Fluidity Through the Entire Supply Chain**

It is easy to understand that an *effective commercially based, market-driven, multi-modal transportation system that delivers the best possible service in support of economic growth and prosperity* will only be as fluid as its greatest bottle neck. Efforts can be made to remedy rail velocity and volumes or restrict the supply of container trucks but if goods cannot move efficiently through the ocean terminals the exercise in all other markets has been futile. The *Fair Rail for Grain Farmers Act* passed in 2014 is a case in point – albeit the example here specifically relates to the *containerized* grain market. Although this Act certainly opened up bottlenecks created by railway car supply at origin and notably increased velocity of cars as well as volumes to Vancouver, grain transloaders were suddenly overwhelmed by the volume of rail cars that kept arriving in Vancouver – not because of a lack of transloading capacity, but because they simply could not get enough reservations at the container terminals to move loaded containers to dock. The bottle neck was and continues to be at the deep sea container terminal gate. The performance of deep sea terminals is critical to the efficient movement of containers through the gateway and to Canadian economy.

The role they play in effective transportation in Canada is critical and their service record to date, simply cannot be ignored during the CTA review.

## **5. Call for Regulation of Container Terminals**

The WCCFHA cannot speak for container terminals in other geographic regions of Canada – however we have significant authority on the behavior of the two primary operators in Vancouver and the two largest in Canada. We highly recommend that the Act be revised in a manner that:

- a. embraces greater transparency and accountability of deep sea container terminals which includes insurance of fair rates and that efficient access is available for importers and exporters
- b. creates incentives for deep sea terminals to improve customer service which includes compensation or restitution to shippers for service failures directly related to the terminals;
- c. promotes innovation for continuous improvement to access, service and social efficiency while driving internal operating efficiencies to mitigate future rate increases ;
- d. ensures that the terminals of Vanterm, Delta Port and Centerm always be operated by separate entities to lessen market control and encourage competition;
- e. establishes a universal reservation system for all terminals that is operated by a separate independent entity at arm's length from the terminals and from Port Metro Vancouver to promote fair and increased access;
- f. ensures Port Metro Vancouver's regulatory powers over the terminals be limited to traditional landlord tenant oversight. Indeed, as PMV's largest tenants and revenue stream are drawn from TSI and DP World, it would certainly create a conflict of interest if PMV is also given economic and accounting powers over them.

We appreciate any consideration the review can provide to these concerns raised by the WCCFHA and the recommendations provided herein. Again we apologize for the late submission as our group is newly organized and therefore our collective efforts were slightly out of sync for a timely submission. We do hope that the issue at hand is greater than the strict adherence to the deadline and that the alarming state of the Vancouver Gateway will be brought to the attention of the review panel. Indeed in recent discussions with other associations including the Pulse Canada, the Freight Management Association of Canada (FMA), BC Chamber of Shipping and the Western Canadian Shippers Coalition (WCSC) – we are confident that they will echo our sentiments and support our recommendations

Kind Regards,

Paul Wellar, President  
WCCFHA

