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RESTRUCTURING CANADIAN PORTS: PROSPECTS AND PROBLEMS

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During the past several years, the federal government has taken significant steps in "commercializing" Canada's transportation industry, particularly in the air side, the removal of major subsidies, and the privatizing of CN. The final stage in this transportation rationalization process is reforming the marine sector. This paper examines current Canadian port reform evaluating the proposed restructuring of the Canadian ports system to identify both the benefits and potential pitfalls.

1. INTRODUCTION

Within Canada's federal system, constitutional responsibilities and authority are divided between provincial and federal governments. Under the *Constitution Act* of 1982 (formerly the *British North America Act* of 1867), ports and harbours along with navigation and shipping are federal government responsibilities.

Despite this concentration of ports authority at the national level, current Canadian ports administration is anything but homogeneous. Rather, Canada's 356 commercially-oriented ports are a diversified, multi-layered and loose-knit mixture of Crown corporation ports (Canada Ports Corporation), harbour commissions, Transport Canada's public harbours and port facilities, and private industrial harbours. The common element among public ports is their link to the federal government through various statutory reporting relationships to the Minister of Transport.

By the late 1960s Canadian ports presented a picture of confusion and conflicting federal objectives ranging from the rigid centralized control of NHB ports to decentralized, semi-autonomous Harbour Commissions to subsidized departmental Public Harbours. The financial regulations effecting each set of ports vary considerably. As continental transportation issues became more complex in the 1970s (particularly with U.S. deregulation), concerns arose over how best to rationalize Canada's fragmented ports system.

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For more than a decade, the federal government sought to establish a rational national ports policy. The 1968 Manning Report was the first of several analyses of Canadian ports; all arguing for the need to rectify ports administration.¹ The lack of government action in the ports field reflected the low priority given ports within the transportation sector. During this period, the government considered, but failed to adopt many recommended changes to the port system.²

Legislation passed by Parliament in February 1983 established the Canada Ports Corporation (CPC) as a Crown corporation with subsidiary Crown corporations at the local port level. The legislation sought to strike a balance between national coordination and local commercial responsiveness. A degree of local autonomy was provided to those ports of national or regional significance, which had achieved financial self-sufficiency, by incorporating them as subsidiary Local Port Corporations (LPC) with their own Boards of Directors (BoDs) (members appointed by the Minister). To date, seven ports have been granted LPC Crown corporation status: St. John's, Halifax, Saint John, Quebec, Montreal, Vancouver, and Prince Rupert. In addition, prior to adopting the *Canada Ports Corporation Act*, the federal government cancelled some \$727 million worth of NHB debt and unpaid interest owed to Treasury Board to enable the CPC ports to operate efficiently without the full burden of past debts.³

CPC is responsible for 14 commercial ports, including the seven LPC facilities; many of them being Canada's largest seaports. CPC is governed by a national BoD appointed by the Minister. LPCs are incorporated as Crown corporations in their own right, but report to the Minister through the Ottawa headquarters of CPC. The seven non-LPC ports are administered by CPC in Ottawa on a divisional basis (a central department of the Crown corporation).

Despite Section 3 in the *Canada Ports Corporation Act* defining a national ports policy, the *Act* is silent on the role of the other forms of ports administration: Harbour Commissions, Public Harbours (Transport Canada ports), and private industrial facilities. The lack of any action in developing a national ports policy makes a mockery of this portion of the legislation. Further, in spite of the *Act's* efforts to rectify the problems of the former NHB system, there is still no overall national coordination of Canadian ports.

In spite of the commercialisation tendencies of the *Act*, over time, bureaucratic rules, regulations and the financial strictures of the *Financial Administration Act*, prevented major ports from operating as true commercial entities. Delays in obtaining CPC and Treasury Board approvals for financing port development and dealing with land transactions resulted in Canadian ports being unable to quickly tap emerging opportunities (in contrast to their U.S. competitors). For example, the Vancouver Port Corporation (VPC) argued it must obtain federal cabinet

approval to spend its own retained earnings, a process of four to 26 months. Similarly, disposing of federal port land can be an expensive and lengthy process. Again the VPC pointed out that it took almost two years and cost more than \$250,000 to dispose of a \$95,000 parcel of land.⁴ The creation of CPC and its subsidiary LPCs may have addressed the problems of the 1970s, but the legislation did not create commercialised and market-responsive institutions required to meet the turbulent pressures of continental and global economic competition of the 1990s.

2.0 RESTRUCTURING CANADIAN PORTS

During the 1990s, the federal government encouraged in-depth program reviews of all departments (including Transport Canada). Under the newly elected Liberal Government in 1993, there were to be no "sacred cows" in this review, all government expenditures were under scrutiny with the focus being to: improve efficiency; cut costs; and, do things differently. Although in Transport Canada, the initial emphasis was on major programs (airlines, airports, and subsidies), by late 1993, the review was broadened to encompass the marine transportation sector. The marine review was initiated by a senior level international port reform seminar examining port corporatisation and privatisation initiatives in New Zealand and Britain along with a review of the current U.S. and Canadian port systems.⁵

Although more than thirty percent of Canada's export trade is by water transport (the remainder shipped overland to the U.S.), the role of Canada's ports in the country's overall transportation policy framework has not been significant. The attention of Parliament, the Minister of Transport and the federal government has focused on other matters reflecting the continental nature of trade and transportation, rather than on more esoteric marine issues. As pointed out by the Minister of Transport, Doug Young in his charge to the Parliamentary Standing Committee on Transportation (SCOT): "the time has come to insist that we take directly into account the needs of those individuals and those companies which use marine transportation. Without wanting to sound unpleasant, it might be said that the marine element has been neglected within the whole system of transportation in Canada."⁶

2.1 Standing Committee on Transport (SCOT)

In late 1994, the Minister requested the SCOT to undertake a broad review of Canada's marine sector. The SCOT's terms of reference required them to consider Canada's port system, pilotage services, St. Lawrence Seaway, and Canadian Coast Guard based on five objectives:

identify key competitive challenges; define essential federal roles and services; develop options to reduce subsidies and examine various commercialization options; obtain regional views on priorities, issues, and solutions; and build consensus on solutions, future directions, and development of a comprehensive national marine study.⁷

The SCOT undertook 17 days of intensive hearings in ten cities across the country during February and March 1995. During their review, the SCOT received 176 written submissions and heard from 260 witnesses representing 140 differing organizations. The port-related submissions to the SCOT hearings included representations from the CPC (LPCs and divisional ports), the Canadian Coast Guard (HPD), the seven LPCs, six harbour commissions and three other Transport Canada HPD ports. Verbatim minutes of the public hearings were published by the House of Commons. These minutes exceeded 1,600 pages of bi-lingual text in 20 separate bound publications.

A number of port-related themes emerged from the SCOT hearings, including: the ports' desire to maintain the status quo by remaining federal agents and having the Minister continue to appoint port directors; port competition; user requirements; dockworker labour concerns; and conflicts with municipalities.

Maintaining the Status Quo

A major theme emerging throughout the SCOT hearings was the strong desire by major ports to maintain the status quo with only minor modifications made to provide local port autonomy. The strong status-quo orientation of the port managers and their directors reflects the findings of an earlier ports survey.⁸ The pervasiveness of the status quo theme led the SCOT to ask some senior port managers and BoD chairmen why they would not want to be more independent. For example, during the SCOT hearings in Quebec the following exchange ensued:⁹

Mr. J. Fontana (London East): What would you think of being totally independent, totally flexible, and not a crown corporation but another structure where the shareholders might very well be the stakeholders in your business, from the users of the system to the owners and all the people who are involved in the Port of Quebec, as opposed to having a single shareholder, that being the Government of Canada?

Mr. R. Gaudreault (President and CEO, Quebec Port Corporation): When you have a good model, you don't change it. As a whole the local port [corporation] works well.

Mr. Fontana: In other words, the crown corporation suits you well as long as we get the CPC off your back?

Mr. Gaudreault: That's right. You understand that very clearly.

A further measure of the desire to retain the status quo came from the recurring request to the SCOT that port directors continue to be appointed by the Minister. As shown in the following excerpts, this theme was set by some of the major ports:

Mr. R. Longstaffe (Chairman, Vancouver Port Corporation): In order to retain our status as a federal agency, we believe the majority of appointments [to the BoD] should be made with the approval of the federal cabinet.¹⁰

Mr. A. Gingras (Chairman, Montreal Port Corporation): ... submit the following recommendations ... that a board of directors be maintained with at least seven members who would still be appointed by the Minister of Transport and the Governor in Council....¹¹

The consistent theme calling for ports to remain as federal Crown corporations, harbour commissions and Transport Canada facilities may be surprising to outsiders, however, as discussed earlier, the Canadian ports system has a long history of central control and dependence on public sector financial support. It is problematic to expect port managers and their directors to actively seek to cut their ties to the federal system.

The emphasis on status quo emerges partly from the current ports' mandate placing financial accountability at the bottom of the list of port priorities. The Quebec Port Corporation outlined this perceived mandate to the SCOT as follows:

Mr. R. Paquet (Chairman of the Board, Quebec Port Corporation): First of all, to promote and contribute to Canada's international trade. Secondly, to promote regional economic development. Thirdly, to offer efficient and equitable port services. Finally, to be financially self-sufficient.¹²

A fundamental shift in the governance of Canadian ports towards a corporatised or privatised model would likely force a re-ordering of these priorities by placing financial self-sufficiency near the top rather than at bottom.

Port Competition

During the past decade, competition among the differing Canadian port regimes has intensified. The issue is not competition *per se*, but rather that the financial obligations of each of these three types of ports differ, distorting the "playing field" as shown in the following comments to the SCOT:

Mr. A. Gingras: Public Ports and Harbours [Transport Canada HPD] don't have to be financially self-sufficient and they don't pay any grants in lieu of taxes. This enables them to charge rates lower than ours.¹³

Mr. M. Dulude (Executive Vice-President, ITT): Certain cases never cease to astonish me: such as the example of the Port of Cacouna [Transport Canada HPD], where the federal government was ready to invest \$20 million for a return of only \$200,000 in additional revenues per year.¹⁴

It is apparent from these comments that current domestic inter-port competition creates inequities. Shipper concerns also focused on overcapacity and the spread of a limited amount of export traffic among a number of ports leading to higher unit costs for handling cargo and labour difficulties as throughput waxes and wanes depending on the vagaries of the shippers in this competitive situation. These concerns were best summarized by the Marine Task Force of the Saint John Board of Trade:

Mr. K. Davidson: It is our view that Canada's national ports system is subject to gross overcapacity, cumbersome administration and burdensome legislation. It is in our view, ill equipped to meet the challenges of the 21st century.¹⁵

Port User Requirements

Although only a few shippers presented material to the SCOT, their concerns were strongly expressed:

Mr. C. Bales (Chairman, Marine Committee, Council of Forest Industries): Ports should be capable of making substantial financial commitments, subject to the constraints of the financial markets and the needs of users.... The board of the ports should be comprised of members drawn from the user community.... The management, organization, and mandate of the port should be customer-focused.¹⁶

Mr. E. Weinberg (President, PRR Transportation Consulting Services Inc.): We believe the Windsor Harbour Commission has outlived its usefulness and reason for being. It serves no useful purpose or function that private industry could not itself perform, although with greater efficiency and greater cost-effectiveness. It is a relic of a past era of privilege and patronage. It has every appearance of being too fat, inefficient and living too lavishly at user expense.¹⁷

As shown from these limited excerpts from the SCOT hearings, shippers are not enamoured with the centralized, non-business-like approach of the current Canadian ports system.

Port Labour

Although the landlord nature of Canadian reports removes the port authorities from direct responsibility for labour-management issues, this does not relieve the port administrators from concern over this key cost element. The general public, shippers and politicians typically expect the port's managers to ensure stable labour relations. These concerns were voiced by several ports during the SCOT hearings:

Capt. N. Stark (President and CEO, Vancouver Port Corporation): VPC does not control or indirectly control or employ any longshoremen, foremen or grain handlers who work at the port, but their performance and reliability is key to the port's reputation and competitive positioning.¹⁸

Mr. R. Gaudreault: Presently it costs more per ton to load general cargo in Quebec rather than in neighbouring ports which do not have archaic industrial relations system.... the present system doesn't give the port the opportunity to intervene in labour matters....¹⁹

The subsequent SCOT report directly addressed the ports' labour concerns by suggesting: "it is time for a comprehensive independent review of labour-management relations at our major ports."²⁰

Port Conflicts with Municipalities

Several municipalities outlined their concerns to the SCOT about the ports within their jurisdictions. Some ports which pay grants-in-lieu of municipal property taxes also expressed concerns as they believed the municipal services provided did not match the funds being paid. In addition, these ports were concerned that the payment of such taxes led to increased cargo-handling rates and made them uncompetitive with nearby U.S. ports (which in many cases either pay no

municipal taxes or have taxing authority in their own right to raise revenues to subsidize their port operations). The following comments outlines some of the concerns raised by both municipalities and ports.

Mr. N. Hutchinson (Acting Commissioner, City of Oshawa): ... over the last 15 years many development opportunities have not been realized due to the jurisdictional gridlock between the Oshawa Harbour Commission and the City of Oshawa.... The Oshawa Harbour Commission... has lost the ability to change quickly or meet community demands or expectations because of potentially conflicting mandates.... the current operating mandate [of the Harbour Commission] does not allow or provide for prioritizing of local and community issues as compared with national transportation needs.²¹

Mr. R. Pearce (Port Manager, Fraser River Harbour Commission): We have very strong competition from United States ports. They receive considerable breaks when it comes to taxation, and we need a level playing field in taxation. Seattle and Tacoma collect taxes while Vancouver and Fraser pay.²²

Mr. L. Kirby (Executive Director, Hamilton and District Chamber of Commerce): The federal government should review taxation, regulation, and financial treatment of ports in an effort to put Canadian ports on an equal footing with our U.S. competitors.²³

Not all ports have these same concerns. LPCs and CPC divisional ports pay grants-in-lieu of taxes to adjacent municipalities. Harbour commissions do not pay property taxes nor provide grants-in-lieu, while Transport Canada facilities do provide grants-in-lieu but through Public Works Canada rather than as a charge against a specific port.

SCOT Recommendations

The SCOT report with its recommendations on a revised federal marine policy was tabled in the House of Commons on May 3, 1995. The recommendations were disappointing to those who had anticipated the emergence of a new, business-oriented, commercial era for Canada's ports. The SCOT reinforced the status quo with some modifications such as recommending the elimination of the CPC, that effectively promised more of the same but with differing titles and structures. Such an outcome is not surprising as the SCOT's *National Marine Strategy* indicated: "our role is to reflect what we heard and what most wanted in the way of reform and that is, that the federal government continue to have responsibility for a national ports system."²⁴ Effectively, Canada's major

commercial ports sought increased local autonomy without further corporatisation or privatisation.

2.2 Transport Canada's Regional Shippers' Hearings

There was little representation from the shippers' community to the SCOT hearings. To solicit these missing views Transport Canada held five regional workshops for invited shippers (and other participants) across Canada during May 1995. These one-day workshops served as focus groups soliciting views on the effect of the SCOT recommendations on ports, pilotage, St. Lawrence Seaway and Canadian Coast Guard. Several port-related themes emerged from the workshops including: concerns about federal appointments to port BoDs; the bureaucratic nature of the proposed ports system; and, the need for further privatization.

Each of the five workshops emphasized the need for local user representation to form the majority on port BoDs, not federally appointed members. For example, in Saint John, the participants "generally agreed that the local board must be representative of the stakeholders, and must be given authority at the local level.... board size should be kept fairly small."²⁵ Similarly, in Quebec: "everyone agrees that a majority of members of the board of directors should be appointed by local people, not the federal government."²⁶ This theme was reiterated in Winnipeg where: "the workshop was strongly of the opinion that the government should not appoint the majority of members of port Boards."²⁷

A second ports-related concern was that the SCOT approach was too bureaucratic and could lead to a repetition of the current inefficient centralized port system. This concern was raised in Saint John where the participants expressed: "significant concern that the centralization characterized by the 'Ports Desk' and the 'Pilotage Desk' means the creation of sizeable central bureaucracies in Ottawa." The Vancouver group: "agreed that the Canada Ports Corporation should be replaced with a new ports desk, provided it only performs a facilitating role and does not turn into another large bureaucracy."²⁸

A third concern was that the recommendations tended to stop short of the need to corporatise or privatise Canada's commercial ports to enable them to fully compete in the continental and global marketplace. One of the workshop groups in Ontario believed: "the changes recommended in the Standing Committee report don't go far enough, and won't bring about the efficiencies that are promised and necessary... the full privatization of ports should be fully considered."²⁹

Overall, the shipper hearings did not support the SCOT port-related recommendations. Perhaps the best summation of the participant's views is provided by one of the Quebec groups who, "agreed with the principles of the Keyes Report [SCOT], but it must go further as regards autonomy..." The ambivalent support for the SCOT recommendations from this selected sample of the marine transport community contributed to Transport Canada's view that Canada's commercial ports need to shift further towards a corporate model rather than backwards to the semi-departmentalised model proposed by the SCOT.

2.3 Federal Port Reform Proposals

In August 1995, the Deputy Minister of Transport elaborated on the Minister's marine policy in a detailed presentation to the annual conference of the Canadian Port and Harbour Association (CPHA).³⁰ The overall objectives of the federal marine policy included: ensuring affordable and effective marine transport services; fair competition; greater say by users on port priorities; reduced overall infrastructure; and a continued commitment to safety and environment.

From the ports perspective, the proposed marine policy limits the federal government's involvement to those of national significance as Canadian Port Authorities (CPAs) and those smaller ports serving remote communities. All other regional/local ports are to be divested to provincial, municipal, community or private groups. CPAs will be part of a National Ports System (NPS) managed by autonomous BoDs with limited federal oversight. The CPC will be eliminated and a small ports secretariat provided in Transport Canada for the five year transition period following the legislation. The criteria for selecting CPAs include: financial self-sufficiency; being essential for international and domestic trade; having a diversified traffic base and serving a vast hinterland; and, being linked to major rail lines and highway infrastructure. In August, Transport Canada anticipated about 45 CPAs. When the Minister announced the National Marine Policy in mid-December, the only CPAs designated were LPCs and Fraser River Harbour Commission, although other ports could seek designation if they met the criteria.

Many elements of the Harbour Commission model were incorporated in the proposed CPA approach. The NPS incorporates the not-for-profit business corporation that Transport Canada had adopted for Canadian airports and the Air Navigation System. It reflects a commercial corporatisation model seeking to make cost-minimisation the top priority.

Incorporating CPAs as federal agencies rather than as agents of the Crown enables CPAs to "carry the Canadian flag" in overseas marketing (an issue raised in the SCOT report) and to retain federal status in dealing with property tax

concerns at the municipal level, but tries to ensure the federal government is not liable for any CPA debt. The CPAs will not be subject to the financial restrictions incorporated within the *Federal Administration Act*. As federal agencies, CPAs will not be eligible for federal guarantees of loans. Hence, the financial marketplace, not the federal government, will exert commercial discipline on CPAs. There will be no borrowing limits imposed on CPAs, however, they will only be able to use non-federal assets and projected cash-flow (including the use of federal assets to generate an ongoing revenue stream) as collateral.

Transport Canada's proposal for CPAs went further than the minor modifications proposed by the SCOT. At the CPHA Conference and in subsequent meetings with federal officials, the port managers and directors expressed dismay over the proposed port reform. Port Chairpersons, directors and managers lobbied their federal members of parliament, ministers and in some cases, the Prime Minister to state their opposition to the Minister's proposed port reform.

The Minister's plan had been to introduce to Parliament in the fall of 1995 an omnibus Marine Policy Act incorporating the proposed ports reform, changes to the *Pilotage Act*, a not-for-profit commercialised *St. Lawrence Seaway Act*, increased cost recovery provisions in the *Coast Guard Act*, and other Acts as required. However, the Quebec Referendum led to delay with the legislation. Although the proposed legislation was to be introduced in early 1996, the recent federal cabinet shuffle replacing the Minister may lead to further delays in the implementation of this final major transportation sector reform. To date, only the proposed cost recovery formula for navigation aids (and subsequently for ice-breaking) has been announced (to the consternation of Eastern Canadian ports).³¹

3.0 CONCLUSIONS - BENEFITS AND PITFALLS

The main themes arising from the SCOT hearings included: the need to maintain the ports status quo (this was disregarded by the Minister in his National Marine Policy); improving port competition by levelling the playing field among differing ports (addressed by the Minister in making all competing ports commercially oriented); responding to shipper requirements (by making the BoD more local and limiting federal appointments to a minimum); port labour (left by the minister until the outcome of the West Coast port labour inquiry is completed); and, conflicts with municipalities (making all ports pay property taxes, but allowing for negotiations in terms of fee for services).

Other concerns raised by the regional shipper hearings included: the federally-appointed majority on port BoDs (the federal presence will be a clear minority); and, establishing an internal ports bureaucracy as a ports desk/secretariat

replacing CPC (this will be a short-term, small group negotiating the divestiture of regional/local ports).

A further concern about the proposed ports reform process is that it tends to be focused on getting the federal government out of operating "money-losing" facilities. This approach may put at risk the national transportation network that has been developed during the past century. On the other hand, the evolution of a viable, intermodal, continental transportation network may mean the federal government no longer has to support various elements of this commercial activity.

An essential issue from a Canadian perspective is how are regional interests and concerns to be weighted within the evolving port reforms? The country's national transportation infrastructure was developed to aid the economic integration of Canada's disparate regions. Does port reform mean the end of transportation as a regional economic development tool? The SCOT did recommend the continued subsidisation of ports from federal economic development funds. However, this recommendation was dropped from the Minister's proposal. Will it be revived in the House of Commons?

But what is best for Canada's ports? Today, Canadian ports face considerable competition from their continental U.S. counterparts. Canadian ports no longer operate in a semi-monopolistic mode with defined hinterlands as the development of a viable and efficient intermodal continental transportation system enables shippers to export and import cargo via cost-effective continental routings. Such routings may not include Canadian ports. To continue to provide effective service to Canadian shippers (and to attract their traffic), Canadian ports must focus on their primary business - ensuring efficient throughput. This means, the port administration must be focused on the business of their port - not on the red tape and bureaucratic wrangling accompanying governmental operations, nor on patronage appointments to port BoDs. Canadian ports must be freed from the strictures of the federal system to operate unfettered in a competitive commercial marketplace.

The Minister appeared to be taking ports towards a not-for profit corporate model. But is this going far enough? Should Canadian ports not be moved further towards full corporatisation with the federal government initially owning all shares. As corporate ports prove their commercial worth in competitive settings, some of the federal shares could be sold to enable both the employees and the local/regional community to gain partial ownership and thus a greater say in the ports' operations. Over time, Canadian ports could become candidates for full privatisation; an incremental approach allowing for a transformation without the need for another round of public hearings and Parliamentary input. Such a

phased approach for the full commercialisation of Canadian ports would smooth the ongoing operations and development of this important economic activity.

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