

# WORLD TRADE ORGANIZATION

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**Negotiating Group on Maritime Transport Services**

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## COMMUNICATION FROM CANADA

### Response to Questionnaire on Maritime Transport Services

The following communication is circulated at the request of Canada to Members of the Negotiating Group on Maritime Transport Services.

#### I. Market structure

##### Vessels

##### 1. Canadian registered fleet, as of 31 December 1993

Vessels 1000 GRT and over (Excluding Ferries and Passenger)				
Type of Vessel	Number of Vessels	GRT	DWT	% DWT
Dry bulk carriers	78	1,372,158	2,087,344	83.0
Tankers	30	199,050	307,754	12.2
General cargo	13	77,394	86,917	3.5
Combined passenger/cargo	4	9,178	5,313	0.2
Ore/oil carrier	1	20,118	26,440	1.1
TOTAL	126	1,677,898	2,513,768	100.0

Source: National Transportation Agency (NTA).

Twenty-five Canadian companies control 98 vessels registered in 18 different countries.

Description of vessels

These 98 vessels are distributed by type as follows: 60 bulk carriers, 9 general-cargo vessels, 8 RoRo ships, 6 container ships, 5 tankers, 5 offshore supply vessels, 2 barges, 2 tugs and 1 OBO.

The table below lists this distribution with corresponding tonnages (GRT and DWT).

Canadian Controlled Foreign-Flag Fleet Types of Vessels with GRT and DWT			
Type of Vessel	Number	GRT	DWT
Bulk carriers	60	1,760,800	3,089,604
General cargo	9	69,431	91,426
RoRo ships	8	71,858	83,707
Container ships	6	109,851	115,463
Tankers	5	66,378	132,212
Offshore supply vessels	5	10,836	9,453
Barges	2	18,090	15,494
Tugs	2	861	837
OBO	1	50,489	113,706
TOTAL	98	2,158,594	3,651,902

## 2. Quantity - Year: 1993

Mode: Marine			
Sector	Unloadings (000) tonnes	Loadings (000) tonnes	Total Freight Carried* (000) tonnes
International:			
United States	28,026	41,683	69,709 31.1%
Rest of World:	43,983	110,469	154,452 68.9%
TOTAL	72,009	152,152	224,161

\*Includes pipeline, mail, parcel, couriers etc.

Source: NTA Annual Review (1993).

Value - Year: 1993

Canada's International Trade (United States, Mexico and Rest of World)		
Mode	Total International Trade	
	\$ Billions	% Trade
Marine	60.9	17.1%
Truck	197.9	55.6%
Rail	48.9	13.7%
Air	30.9	8.7%
Other*	17.6	4.9%
TOTAL	356.2	

\*Includes pipeline, mail, parcel, couriers etc.

Source: NTA Annual Review (1993).

3. Value - Year: 1993

Mode	Imports		Exports	
	\$ Billions	% Share	\$ Billions	% Share
Marine	30.4	17.9%	30.5	16.3%
Truck	107.7	63.5%	90.2	48.3%
Rail	11.8	7.0%	37.1	19.9%
Air	17.9	10.6%	13.0	7.0%
Other*	1.7	1.0%	15.9	8.5%
TOTAL	169.5		186.7	

\*Includes pipeline, mail, parcel, couriers etc.

Source: NTA Annual Review (1993).

## 4. Quantity - Year: 1993

1993 International Tonnage by Canadian Flag		
Vessels Flag	Tonnage ( '000,000)	% Share
Canada	39.6	17.7%
Foreign	184.6	82.3%
TOTAL	224.2	

## 5. This information is not available.

Organization of cargo

## 6.

Canadian international shipping tonnages - 1993			
	(in metric tonnes)		
	Imports	Exports	Total
Liner Shipping	7,180,021	10,500,946	17,680,967
Dry Bulk	34,550,416	110,866,747	145,417,163
Liquid Bulk	28,358,390	14,490,184	42,848,574
Other	1,920,246	16,293,963	18,214,209
TOTAL	72,009,073	152,151,840	224,160,913

7.

1993 International waterborne shipments		
Preliminary - Metric Tonnes Summary		
EXPORTS		
Liner Shipping		
Conference	4,559,213	3.0%
Non-conference	5,941,732	3.9%
Non-liner	141,650,894	93.1%
TOTAL EXPORTS	152,151,839	
IMPORTS		
Liner Shipping		
Conference	3,709,484	5.2%
Non-conference	3,470,537	4.8%
Non-liner	64,829,052	90.0%
TOTAL IMPORTS	72,009,073	

Information with regard to trade carried by consortia is not available.

8. Nil.

9. Nil.

10.

Liner cargo		
EXPORTS		
Total Liner	10,500,945	
Containerized Liner	7,085,862	67.5%
IMPORTS		
Total Liner	7,180,021	
Containerized Liner	6,024,332	83.9%

11. Canada does not maintain records on the proportion of cargo moving on through rates. However, based on responses from a 1993 survey of shipping conferences it is estimated that around 40 per cent -50 per cent of liner cargo is moving on through rates.

Ports and auxiliary services

12.

Canadian international shipping tonnages - 1993		
BY SERVICE AND COMMODITY TYPE		
MAJOR CANADIAN LINER PORTS		
(metric tonnes)		
Total national/international port traffic in major national ports	=	224,160,912
Estimated share of this traffic which is		
Containerized	=	5.9%
Bulk	=	91.0%
General cargo	=	3.1%

13. With regard to maintenance and repair of vessels, foreign suppliers are not currently present in this market but are present in all other sub-sectors.

14. Yes, "foreign suppliers" are present in the market of operating in the inland movements of international waterborne trade cargoes by truck, rail and water.

**II. Regulatory structure**General

1. Marine transportation regulation in Canada is the responsibility of Transport Canada which is a multi-modal department with specific Groups dedicated to Air, Surface, and Marine transport. The regulatory structure for Marine is divided into two primary aspects:

(a) Economic regulation, and

(b) Safety and Pollution Prevention regulation

(a) Economic regulation which is vested in the departmental policy groups has little or no impact on individual foreign-flag vessels operating into Canadian Ports.

(b) Safety and Pollution regulation is vested in the Marine Group and to be more specific in the Ship Safety Branch of the Canadian Coast Guard.

It should be noted that Canadian regulations applicable to foreign-flag vessels are based almost exclusively on the various Conventions such as SOLAS and MARPOL agreed to at the International Maritime Organization. Accordingly, any foreign-flag vessel which complies with these conventions will for the most part comply with Canadian regulations.

To ensure that foreign-flag vessels do in fact comply with the various convention requirements, Canada, as signatory to two separate Port State control memoranda, conducts a rigorous Port State Control programme.

Other Departments/Agencies include:

Health Canada (general application)

Industry Canada (investment reviews) (general application)

Department of Citizenship and Immigration (general application)

Department of Consumer and Corporate Affairs (general application)

Department of Agriculture (general application)

Canadian Coast Guard (sectoral application)

National Transport Agency (sectoral application)

2. None, laissez-faire.

3. Liner services are unregulated, there are no requirements for liner companies to be licensed or to file documents with the Government of Canada. Shipping conferences are permitted under Canada's Shipping Conferences Exemption Act, 1987 and conferences and their member lines are required to file with the National Transportation Agency of Canada (the Agency) - see sections on Competition Law and Shipping Conferences.

4. In Canada, any party (multi-modal transport operator, general or bulk shipping line, shippers or intermediaries) is able to rent or lease trucks, railway carriages, or barges and related equipment for the purpose of inland forwarding of cargoes. If these resources are a purchased service from a qualified carrier, that is the end of the matter. If the acquiring party wishes to function directly as a "for hire" carrier, and not as a purchaser of these services, then separate entry conditions must be satisfied for each mode.

General legislation for rail services is comprised in three Acts:

*Railway Act, 1985:*

Provides a framework for the internal management of railway companies, regulates various transactions between railways, e.g. traffic agreements, and sets various other duties, powers and privileges of railways companies.

*National transportation Act, 1987:*

In relation to railways, establishes a regime of economic regulation, e.g. entry and exit controls, specific regulated prices, etc. provides for regulatory supervision and "public interest" hearings on a variety of matters, and provides ownership concentration thresholds for the review of acquisitions.

*Western Grain Transportation Act:*

Regulates railway prices and substantial elements of their operations and investments in the transportation of grain produced in the Prairie region of Canada.

Under this regulatory regime, railway companies have a "common carrier" obligation which requires that they make provision in their operations and investments to furnish "adequate and suitable" accommodation to all of the traffic that is offered to them, and to carry equivalent traffic under essentially the same prices and conditions of carriage. They also are required to act reasonably to facilitate every form of through movement, which may involve other railways, other modes, and other facilities such as ports, and to offer no particular barriers or hinderance to any region, commodity or person.

In parallel, and subject to their legislative obligations, they have discretion to construct their prices and services according to market demands, and may enter into alliances and other forms of contracts or business arrangements.

Surface transportation services in Canada are subject to the requirement that the carrier obtain the appropriate operating licences and be in compliance with provincial or federal highway safety requirements.

A truck carrier can provide door to door interprovincial or international intermodal service. A local operating licence is required if the truck movement is wholly within a single province, or an extra-provincial licence if the movement crosses a provincial or national border.

A drayage movement wholly within Canada is considered as cabotage, and the driver must be Canadian and the tractor must be Canadian registered.

General legislation for truck operations in Canada is comprised in:

*The Motor Vehicle Transport Act, 1987*

- Federal legislation which authorizes the federal government to regulate entry to the commercial truck and bus industry for extra-provincial and international carriers.
- Entry to the trucking industry is based solely on safety fitness and possession of adequate insurance.
- The Act provides for safety regulation of commercial vehicles and drivers.
- The Act also delegates the administration of federal regulations to the provincial jurisdiction who enforce the regulations on behalf of the federal government.

***Provincial regulation***

- Commercial truck operators must also comply with certain highway safety regulations in the provinces in which they operate.



### *Coasting Trade Act*

With regard to the marine mode in Canada, the Coasting Trade Act (federal legislation) reserves the coasting trade to Canadian ships and extends the jurisdiction of the coasting trade laws to include offshore development on the Canadian Continental Shelf. It also includes all commercial marine activities in addition to the carriage of passengers or goods. Foreign or non-duty paid vessels may temporarily enter the coasting trade on payment of duty, where it can be established that no suitable Canadian ship is available for a particular movement or service.

5. The current ports system is comprised of three federal regimes, a large residual grouping of private, one provincial and two municipal regimes. There are no statutory requirements for the federal government to own ports. The following sections describe the current system.

### ***FEDERAL REGIMES***

#### *Ports Canada*

The Ports Canada system (comprised of local port corporations (LPCs) and divisional ports) is governed federally by the Canada Ports Corporation Act and Financial Administration Act. Port operations are also regulated by corporate by-laws. Ports Canada ports have either national or regional importance.

LPCs have the following characteristics:

- international traffic;
- national or regional significance;
- are financially self sufficient.

Ports which do not meet the above criteria are administrated by the Canada Ports Corporation (CPC) in Ottawa. These non-corporate or divisional ports may, however, shift within the Ports Canada system to become LPCs.

The Ports Canada system has evolved since its formation in 1983 with the incorporation of seven largely autonomous LPCs.

#### Local port corporations

St. John's (1985)  
Halifax (1984)  
Saint John (1986)  
Quebec (1984)  
Montreal (1983)  
Vancouver (1983)  
Prince Rupert (1984)

#### Divisional ports

Belledune  
Sept-Iles  
Port Saguenay  
Trois-Rivieres  
Prescott  
Port Colborne  
Churchill

The CPC submits annual reports, corporate plans, capital budgets, and individual submissions for each LPC, for review by the Minister of Transport. The Minister submits the capital budget to Treasury Board and the corporate plan to the Governor in Council for approval. All land transactions must also be approved by the Governor in Council. In addition, the CPC and each LPC provide quarterly and annual financial statements to the Receiver General.

### *Public harbours and ports*

The primary objective of the public ports system is to assist commercial navigation. Access to remote communities and socio-economic development at the regional and local levels are also objectives consistent with the National Ports Policy.

The Harbours and Ports Directorate of Transport Canada is responsible for the management, control and development of public port facilities at 524 sites across Canada.

The Public Harbours and Port Facilities Act sets out the responsibilities and powers of the Governor in Council and Minister regarding public harbours and ports. Any area of water within the federal jurisdiction may be declared, by Order in Council, to be a public harbour. Any port facility, regardless of location, may also be declared to be a public port facility.

The Minister of Transport may appoint a harbour master for any public harbour or a wharfinger for any public port facility to collect user fees.

The Harbours and Ports Directorate enforces the same Order in Council regulations at all public harbours and ports. Tariffs are uniformly applied for harbour dues, wharfage, berthage, storage and utilities (power, water). Lease charges for upland areas and waterlots vary by harbour and port, as these charges are based on appraised market values at each location.

The Minister reports to Parliament on the financial operations of the Harbours and Ports Directorate within nine months of the end of each fiscal year. The annual capital budget is approved as part of the Coast Guard's capital programme. While financial self-sufficiency is not an operational requirement, the approval of capital projects involving dedicated users requires full cost recovery.

### *Harbour commissions*

Harbour Commissions are located in two provinces: Ontario (Oshawa, Toronto, Hamilton and Windsor); and British Columbia (Fraser River, North Fraser, Nanaimo and Port Alberni).

Harbour Commissions are largely autonomous corporate entities for whom, with the exception of Toronto, the majority of Commissioners are federal appointees. The rest are appointees from surrounding municipalities. They operate on a commercial basis and can hold land in their own right. They are neither crown corporations nor agents of Her Majesty.

All Commissions report directly to the Minister of Transport or to the Governor in Council as is the case for Toronto and Hamilton. The Harbour Commissions Act sets out certain powers for the Minister and Governor in Council:

- Tariffs require approval by the Governor in Council
- The Minister may fix limits for land purchases and capital expenditures up to a certain limit
- Direct payment of reserve funds to the Receiver General.

The primary federal control of the Harbour Commissions is in the appointment of the majority of the Commissioners. The other Commissioners are appointed by local municipalities.

*Residual port grouping: private/provincial/municipal ports*

In addition to ports under the regimes described in earlier sections, there are 87 ports with a variety of forms of administration and traffic flows. Most of these ports are private ports operated by a single industrial user. Ten of these ports are located in declared public harbours that have no public port facilities. The federal government receives revenues from harbour dues and waterlot leases at these ports but plays no role in port development.

Private ports may permit access to facilities on a fee or contract basis. Private ports, unlike federal ports, are subject to municipal zoning by-laws and pay municipal taxes. Navigation within the port limits is federally regulated; company officials may, however, perform the duties of a harbour master. A federal official is appointed in the case of a declared public harbour.

*Private services*

Most ports regardless of what regime they operate under have private terminal facilities. They are found more exclusively at the local port corporations and harbour commissions which operate under the landlord model. There are also public terminal facilities at these ports.

Private terminals are operated under a lease agreement between the port and the terminal operator and the government does not have any involvement in the negotiation of these leases. Similarly, stevedoring services are provided by private stevedoring companies.

6. There is no official national definition of "international maritime transport"; however, the general interpretation of this term would include all marine movements between Canada and any other country.

7. Canada does not use the term "national shipping enterprise".

Market access

8.(a) No restrictions.

8.(b) No restrictions.

8.(c) No restrictions.

8.(d) Canadian practice is largely reflected in the commitments made in Part I of the Canadian schedule with respect to the fourth mode. Temporary entrants, including in the maritime transport sector, may enter as:

Business Visitors ("A natural person who stays in Canada without acquiring remuneration from within Canada and without engaging in making direct sales to the general public or supplying services, for the purposes of participating in business meetings, business contacts including negotiations for the sale of services and/or other similar activities including those to prepare for establishing a commercial presence in Canada: Entry and stay shall be for a period of no more than 90 days".)

Intra-Corporate Transferees ("Natural persons of another Member who have been employed by juridical persons of another Member for a period of not less than one year and who seek temporary entry in order to render services to (i) the same juridical persons which is engaged in substantive business operations in Canada or (ii) a juridical person constituted in Canada and engaged in substantive business

operations in Canada which is owned by or controlled by or affiliated with the aforementioned juridical person"). Intra-corporate transferees include:

"Executives are natural persons employed by a juridical person who primarily direct the management of the juridical persons or establish goals and policies for the juridical person or a major component or function of the juridical person, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the juridical person."

"Managers are natural persons employed by a juridical persons who direct the juridical person, or department or subdivision of the juridical person, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or recommend hiring, firing, or other personnel actions and exercise discretionary authority over day-to-day operations at a senior level."

"Specialists are persons in the employ of a juridical person who possess knowledge at an advanced level of expertise and who possess proprietary knowledge of the juridical person's product, service, research equipment, techniques, or management."

As indicated in its draft schedules immediately prior to 15 December 1993, Canada also permits temporary entry of "crew members remaining on board a vessel", "replacement crew members", "marine surveyors" and "port captains".

9.(a) To register a vessel in Canada, the owner of that vessel must be a citizen of Canada or a corporation incorporated under the laws of and having its principal place of business in Canada.

9.(b) There is no specific requirement with respect to the legal form of any other service supplier in the maritime sector except for licensed customs brokers who must take the form of a partnership composed of persons who are Canadian citizens or permanent residents.

10. The acquisition of control of a Canadian business with respect to any transportation service by a non-Canadian is subject to approval for:

- (1) all direct acquisitions of Canadian businesses with assets of \$C5 million or more
- (2) all indirect acquisitions of Canadian businesses with assets of \$C50 million or more, or
- (3) indirect acquisitions of Canadian businesses with assets of between \$C5 million and \$C50 million that represent more than 50 per cent of the value of the total international transaction.

Approval is required from the National Transportation Agency prior the acquisition of any federally regulated transportation undertaking with assets or annual gross sales in Canada in excess of \$C10 million. For these purposes, a transportation undertaking means any business principally engaged in any transportation activity under federal jurisdiction within Canada, excluding (a) those operated by a person whose principal place of residence is outside Canada, and (b) those engaged in the transport of goods and/or passengers solely between Canada and any other country.

11. Ships registered in Canada have the right, and indeed an obligation in certain circumstances, to fly the Canadian flag. Through registration, the ship acquires an international identity as a Canadian ship. Rules for the registration of ships vary from country to country, and are linked to tests such as qualification of owners, financing arrangements, beneficial ownership or control.

Section 6 of the Canada Shipping Act sets out the test in Canada, which is based upon qualification to own a British ship. An owner must be a British subject within the meaning of the British North America Act 1948, or a body corporate incorporated under the laws of a Commonwealth country which has its principal place of business within that country.

11.(a) No.

11.(b) No.

11.(c) No.

#### National treatment

12.(a) Direct preferential treatment granted exclusively to Canadian operators as follows:

##### *Marine Atlantic*

In order to provide a safe and efficient ferry transportation service between Bar Harbour, Maine, the United States and Yarmouth, Nova Scotia, Canada, a grant is provided by the Federal Department of Transport to Marine Atlantic Inc. (a crown corporation). Total funding available to Marine Atlantic Inc. is determined by the Government of Canada. This funding was enacted under the Marine Atlantic Acquisition Authorization Act in 1986.

##### *Victoria Line Limited*

The Victoria Line Limited, which is a provincial crown corporation, operates a ferry service between Victoria, British Columbia, Canada and Seattle, Washington, United States; Its first year of operation was - 1993-94.

- Received capital infusion from British Columbia Government of \$4.7 million. This was a one time infusion of capital.
- The British Columbia Government covered the 1994 deficit of operating costs which amounted to \$717,000
- It is expected that within 2-3 years this service will be self-sufficient.

12.(b) There are no discriminatory tax measures in place with the exception of an exemption from taxes on income and capital of a non-resident person earned in Canada from the operation of a ship in international traffic on the basis of reciprocity with the country in which the person resides.

#### Access to and use of port facilities

13. All of these services are available at major international ports.

14. Pilotage for the most part is compulsory in Canadian waters however, there are specific areas where pilotage is non-compulsory. Navigational aids/communication facilities such as vessel traffic services in the harbour are mandatory depending on the conditions. Towing and tug assistance may be ordered by the pilot and some ports require tugs for the use of certain berths. Also an environmental officer may order the use of a tug for pollution prevention.

15. All of the services listed above under question 13 are available on a non-discriminatory basis to vessels engaged in maritime transport.

16. No. There are no discriminatory measures which restrict access to sea-ports on the same terms as national services suppliers. Ports do not discriminate regarding the entrance of maritime transport vessels owned or operated by foreign nationals.

17. No. There are no measures which discriminate between foreign and national vessels engaged in maritime transport with respect to the access and use of port and harbour facilities.

18. No. There are no measures which mandate the use of terminal facilities and there is no discrimination in this respect between foreign and national maritime transport services suppliers.

19. No.

Most-favoured-nation treatment

20. No, there are no measures which provide for some form of cargo-sharing with partner countries.

21. Not applicable.

22. No.

23. There are no discriminatory measures in place with the exception of an exemption from taxes on income and capital of a non-resident person earned in Canada from the operation of a ship in international traffic on the basis of reciprocity with the country in which the person resides.

24. No.

25. Section 11 of the Coasting Trade Act which reads as follows:

" 11. (1) Where the Minister of Transport is of the opinion that a government of any country has engaged in unfair, discriminatory or restrictive practices with respect to the use of Canadian ships in commercial activities in waters of that country, the Minister of Transport and the Secretary of State for External Affairs shall seek elimination of those practices through consultations with the government of that country.

(2) Where the consultations referred to in subsection (1) fail to result in the elimination of the practices referred to in that subsection, the Governor in Council may, on the recommendation of the Minister of Transport and the Secretary of State for External Affairs, take such action as the Governor in Council considers appropriate."

26. As noted in Canada's list of MFN exemptions, Canada maintains the following measures:

- To register a vessel in Canada to provide international maritime shipping services the owner must be a citizen of Canada or of a Commonwealth country, or a corporation incorporated in Canada and having its principal place of business in Canada or a Commonwealth country.
- There is an exemption from taxes on income and capital of a non-resident person earned in Canada from the operation of a ship or aircraft in international traffic on the basis of reciprocity with the country in which the person resides.

Moreover, in accordance with GATS Article XIV, Canada maintains legislation permitting it to implement the decisions of the United Nations Security Council in so far as these are taken pursuant to Chapter VII of the United Nations Charter or taken in times of war or other emergency in international relations (the Special Economic Measures Act).

#### Government procurement

27. Canada has made no commitments under the WTO Code on Government Procurement or NAFTA with respect to services, with reference to those goods purchased by the Department of National Defence, the Royal Canadian Mounted Police and the Canadian Coast Guard which are not identified as subject to the Agreement (i.e., there are no commitments with respect to strategic materiel) or procurement of transportation services that form a part of, or are incidental to, a procurement contract. Nevertheless, Canada does not in practice reserve the transportation of non-commercial cargoes to Canadian bottoms.

28. There are no special measures in place.

#### Competition Law

29. Canada does not apply extensive regulation to international marine transportation. Bulk, tramp and non-conference liner operations are not regulated. Conferences fall under the Shipping Conferences Exemption Act, 1987, (SCEA) which exempts certain conference practices from the provisions of Canada's antitrust legislation, the Competition Act. Exempted practices include:

- (a) use of a common tariff;
- (b) use of loyalty contracts (subject to further conditions as explained in the section on Shipping Conferences);
- (c) establishment of terms and conditions respecting the use of service contracts;
- (d) port allocation among members;
- (e) regulation of sailing times and types of service;
- (f) cargo and revenue sharing, and
- (g) regulation of conference admission and expulsion of members.

The Competition Act remains applicable to practices that are not covered by the SCEA exemption. These include certain practices such as predatory pricing that are the subject of specific exceptions in the SCEA legislation (see the answer to question 31 below).

- (a) As noted, the application of the Competition Act to the marine transport sector is limited to the SCEA, 1987. This exemption for liner conferences is subject to various conditions which are discussed in questions 30-34. Only consortia that are members of conferences are covered under this exemption. There are no specific regulations applying to maritime consortia operating outside of a conference.
- (b) Under the SCEA, 1987, conferences are permitted to establish door-to-door rates, however, they are not allowed to negotiate jointly with carriers for the inland transportation of the goods.
- (c) The Competition Act contains specific provisions that deal with abuses of a dominant position. Generally, these are defined as situations in which a person or persons:
  - (i) Substantially or completely control, throughout Canada or an area thereof, a class or species of business; and
  - (ii) Engage in a practice of anti-competitive acts; with the result that
  - (iii) Competition is lessened substantially in a market.

This provision is applicable to shipping conference practices that are not specifically exempted under the SCEA, 1987.

- (d) The Competition Act does not contain specific provisions relating to the regulation of shippers councils. Such councils are free to operate so long as they do not offend the general provisions of the Act relating to conspiracies, abuse of a dominant position and other matters. These provisions could be applicable, for example, if members of a shippers council who produce or sell the same goods and services entered into agreements regarding the prices to be charged for such goods or services.

As noted below, the SCEA, 1987 contains specific authorization for the designation of organizations or associations of shippers by the Minister of Transport, to represent the interests of shippers under the Act. In general, groups designated in this way would still be subject to the Competition Act, in so far as their activities are not actively supervised by the Minister under the SCEA.

#### Shipping conferences

30. Regulation of conference admission and exclusion of members is an exempted practice under the Competition Act.

31. Conference agreements are required to be filed with the National Transportation Agency pursuant to the Shipping Conferences Exemption Act, 1987. Complaints or objections of a conference agreement based on the applicability of competition and antitrust laws would have to be addressed by the Bureau of Competition Policy.

32. Tariffs applied by conferences are required to be filed with the National Transportation Agency, however, the Agency does not have the power to enforce compliance.



33. Yes, Section 4(3) of the SCEA requires that the conference agreement must give member lines the right to take an Independent Rate Action. The conference may require a maximum of fifteen days notice of any independent action.

34.(a) The Shipping Conferences Act, 1987 requires that a copy of each standard form of loyalty contracts be filed with the Agency. Loyalty contracts, subject to the following conditions, are permitted under the legislation:

- (i) the agreement may be terminated by either party after ninety days written notice,
- (ii) the non-contract rate cannot exceed the contract rate by more than 15 per cent,
- (iii) the contract does not permit rebating, and
- (iv) the standard conference loyalty contract form cannot demand a 100 per cent commitment by the shipper.

34.(b) Agreements between conferences and outsiders are not specifically addressed in the legislation.

34.(c) Service contracts are permitted, but must be filed with the Agency. The contracts are completely confidential and the terms and conditions respecting the use of service contracts by its members are controlled under the conference agreement.

#### Shipper/carrier relations

35. The Minister of Transport may designate any organization or association of shippers, as representing, in the opinion of the Minister of Transport, for the purpose of the Shipping Conferences Exemption Act (SCEA), 1987, the interests of those shippers. As of today, only the Canadian Shippers' Council has sought designation.

36. Pursuant to Section 20 of the SCEA, members of export conferences shall, upon written request, meet with any designated shipper group and "shall provide the designated shipper group with information sufficient for the satisfactory conduct of the meeting".

In the event that the parties are unable to resolve their differences, there are dispute settlement mechanisms under the Shipping Conferences Exemption Act, 1987, the National Transportation Act, 1987 (NTA), and the Competition Act.

- 1. The Agency offers informal mediation services when requested by both parties. It can be used when there is a dispute between a shipper and a conference respecting rates or conditions associated with the movement of goods. Unless the parties agree otherwise, the mediation of the dispute must be completed within 30 days.
- 2. Section 13 of the SCEA, provides a mechanism whereby any person may file a complaint with the Agency if it is felt that any conference agreement or interconference agreement or any practice of a conference or any member thereof is likely to have, by way of reduction in competition, the effect of producing an unreasonable reduction in transportation service or an unreasonable increase in transportation costs.

The Agency's process in such a case is guided by its General Rules. The Agency would investigate the complaint and render a decision that would be binding on the parties involved.

3. Section 59 of the NTA provides a mechanism whereby any person may complain to the Agency if it is felt that a rate, act or omission by a carrier, or any two carriers, is prejudicial to the public interest.

The Agency's process would be the same as that of Section 13 of the SCEA. The only difference being that an Agency decision would have to be rendered within 120 days from receipt of the complaint, unless otherwise agreed upon by the other parties involved.