



COMMENTS ON SUPPLY CHAIN REGULATORY REVIEW
Submitted to the Treasury Board of Canada
5 February 2024

We are writing on behalf of the Shipping Federation of Canada, which is the national voice of the owners, operators and agents of ocean ships that carry Canada's international trade between Canadian ports and markets throughout the world. Our seventy member companies represent over 200 shipping lines whose vessels carry a wide array of imports and exports, ranging from dry bulk commodities such as grain, coal and iron ore – to liquid bulks such as crude oil, oil products and renewables – to containerized consumer and manufactured goods.

All of our members' ships are foreign-flagged, underscoring the fact that Canada is wholly reliant on the international fleet to carry its waterborne trade, as it does not have a policy approach that supports the ability of its domestic fleet to compete internationally. Indeed, international shipping carries the vast majority of Canada's overseas trade and thus plays an essential role in the Canadian economy and the prosperity of all Canadians.

As key supply chain stakeholders, we are very interested in this round of the Treasury Board's regulatory review process, especially as relates to the transportation and border operations themes. It is worth noting that many of our comments on these subjects will build on the submissions we made to the Treasury Board during the first two rounds of the review, conducted in 2018 and 2019. Although we were disappointed that our recommendations did not result in any concrete action on the regulatory constraints and impediments we identified at that time, we are optimistic that the lessons learned from the supply chain challenges of the last several years will result in more fulsome consideration not only of our comments and proposals, but those of all stakeholders who have a stake in the outcome of this process.

1. BORDER OPERATIONS

Regulatory Role of CBSA and Other Government Departments in Managing Canada's Borders

In its final report released in the fall of 2022, the National Supply Chain Task Force expresses the view that all federal departments and agencies whose mandates intersect with supply chain operations must have an understanding and appreciation of the impact of their regulatory activities on the efficiency of Canada's transportation network, and be incentivized to adjust their operations and requirements in response to specific supply chain constraints and challenges. Although we fully support these comments, we believe they are particularly relevant for the Canada Border Services Agency (CBSA) which, in its role as the primary regulator and manager of Canada's border processes, imposes an overly complex and inconsistent patchwork of regulatory reporting requirements on ships trading in Canadian waters. This provides countless opportunities for error and delay that ultimately serve as impediments to the efficient flow of trade to and from Canadian ports. The fact that CBSA has extremely limited operational flexibility and enforces its regulations primarily from a "security" as opposed to a "trade facilitation" standpoint

(though both are equally important elements of its overall mandate) serves to amplify these challenges even further.

In order to comply with CBSA requirements, which are mainly set out in the *Reporting of Imported Goods Regulations* (and the related Memorandum D3-5-1, entitled *Marine Pre-Load, Pre-Arrival and Reporting Requirements*) marine carriers must submit multiple transmissions for any given voyage, which in many cases involves providing the same data elements and documentation over and over again. In addition, CBSA regulations require some information (such as pre-arrival data) to be sent electronically through a unique identifier (called a carrier code) that can only be obtained through a cumbersome application process, while other information (such as that related to vessel clearance and calls at multiple Canadian ports) must be submitted through a combination of e-mail, fax and paper-based processes that vary according to the CBSA office involved. In addition, a number of other government departments and agencies – including Transport Canada, the Canadian Coast Guard, and the Canadian Food Inspection Agency – as well as Canada Port Authorities - impose their own reporting requirements on ships entering and exiting Canadian waters, further increasing the number of (often identical) data elements that carriers must provide for any given voyage, via platforms that have no ability to share information or otherwise communicate with one another.¹

Recommended Changes to CBSA Border Management Regulations

We believe that the current Treasury Board review provides a much-needed opportunity to address the above noted issues, and to develop a more seamless border management process for the benefit not only of marine carriers, but of the importers and exporters who rely on ocean-going ships to transport their goods to and from world markets. We have a number of specific recommendations to make in this respect, but will begin with the most obvious, which is the need to modernize CBSA reporting requirements and processes for Canada's waterborne imports, as set out by the *Reporting of Imported Goods Regulations*.

This could be achieved in a number of ways, including by implementing mandatory electronic reporting capability at all CBSA offices, thus eliminating the need for paper-based reporting that continues to exist at CBSA offices at some Canadian ports of call. Another important reform would be the implementation of a "first port of arrival" clearance capability for ships entering Canadian waters, thus eliminating the need for subsequent clearance requirements at secondary ports of call within Canada on the same voyage. In addition, we would strongly recommend that the process for obtaining a "carrier code" (which is the unique identifier that all marine carriers must hold in order to transact business with CBSA) be simplified and that it become a purely electronic process (including in cases where a carrier needs to obtain a "bonded" carrier code).

In parallel to the above, we would also recommend changes to the current requirements for ships leaving Canadian waters with export cargo on board, which are set out in the *Reporting of Exported Goods Regulations*. In particular, we strongly recommend that CBSA implement mandatory electronic reporting for marine exports, which currently exists as a paper-based process that in some cases even involves the submission of data by mail. Moving to electronic reporting for outbound cargo would not only harmonize reporting processes on the import and export sides, but would also have the added value of generating

¹ Reporting requirements for international vessels entering and exiting Canadian waters are set out in a number of different regulations that are enforced by various departments and agencies. These include the *Reporting of Imported Goods Regulations*, the *Reporting of Exported Goods Regulations*, the *Reporting of Goods Regulations*, the *Transportation Information Regulations*, the *Marine Transportation Security Regulations*, the *Port Authorities Operations Regulations*, the *Transportation of Dangerous Goods Regulations*, the *Vessel Traffic Service Zones Regulations*, and the *Immigration and Refugee Protection Regulations*. Please note that this list is not exhaustive and does not include additional reporting requirements are imposed in specific circumstances (rather than being imposed as a matter of course).

better quality data on Canada's marine exports, which is currently compiled by Transport Canada on the basis of the paper submissions that carriers provide to CBSA.

We believe these are important and necessary regulatory changes that will contribute to a more efficient and streamlined process for the flow of waterborne goods into and out of Canada, which should be viewed as easily achievable "low hanging fruit" in the continuum of actions that will be necessary to build a more robust and resilient supply chain for the future. We therefore urge the government to move swiftly in implementing these changes, while also working to streamline and modernize all regulatory reporting requirements for international vessels trading in Canadian waters and their associated platforms, as per our more detailed comments in the next section.

2. DATA SHARING AND DIGITIZATION

The National Supply Chain Task Force's final report also has a strong focus on the need for a national supply chain data and digitization strategy, and we are pleased to see that the recently created National Supply Chain Office (which is also a direct outcome of the Task Force's report) has identified this as a key element of its overall supply chain strategy. The successful implementation of such a strategy will require a modern and agile regulatory framework which ensures that data-sharing commitments by stakeholders are based on incentives rather than penalties, that data is used only for explicitly stated and previously approved purposes, and that appropriate safeguards regarding the storage, transmission and sharing of data are in place. It will also be important to ensure that the strategy's primary focus is on connecting existing digital platforms rather than building new ones, and that government departments and agencies are prepared to join the digitization effort, ideally by migrating to a "single window" reporting model for collecting data from supply chain stakeholders.

Moving to a "Maritime Single Window" Reporting Model

With respect to the latter point, we believe that an early and realistically achievable win for the Supply Chain Office's planned new data and digitization strategy is the implementation of a "maritime single window" (MSW) reporting model in Canada. Under such a model, all regulated information related to the arrival, departure and stay of international ships in Canadian waters would be submitted electronically through a single portal, thereby minimizing opportunities for redundancy, delay and error. Use of this model would not only significantly streamline the unnecessarily complex patchwork of reporting requirements that vessels trading in Canada currently face (as per our earlier comments), but would also enable government departments and agencies that play a role in regulating shipping activity to harmonize and increase the interoperability of the data systems each of them currently operates individually – for the benefit of the transportation supply chain overall.

The International Maritime Organization (IMO), which is the United Nations Agency that regulates shipping activity, is the leading proponent of the MSW concept and has spent the last decade systematically laying the groundwork for the concept's implementation by individual countries. This includes the development of a comprehensive suite of tools for member states (which includes Canada) to use when moving to an MSW model, including a "Compendium on Facilitation and Electronic Business," which is basically a reference manual that sets out the technical and operational standards that software developers can use when creating an electronic, single window reporting platform. The IMO has also set January 1, 2024 as the deadline by which member states should have a maritime single window system in place, and although there is no enforcement of this deadline per se, many countries have used this date as an impetus for taking the necessary steps to implement MSW functionality on a national basis.

Given the above, we are both surprised and concerned that there has been virtually no uptake of the MSW model from any of the federal departments or agencies involved in Canada's marine border processes, be it CBSA, Transport Canada, the Canadian Coast Guard or another authority. The lack of

federal leadership on this issue means that Canada is essentially squandering the significant work the IMO has already done to facilitate the transition to an MSW model by member countries – at a time when the government is actively seeking concrete solutions for addressing Canada’s supply chain challenges, particularly in the data and digital realms.

Successful implementation of the MSW concept in Canada would require regulatory amendments to the vessel reporting requirements (and methods) prescribed by the various departments and agencies referenced earlier in our submission, and a commitment from them to work towards increasing the interoperability of their respective data systems. Such action is long overdue in a context where Canada’s regulatory authorities have always had a “silo” approach to managing the information they require from marine (and other) stakeholders and a longstanding institutional resistance to adopting a more modern approach. Transition to an MSW model would also fit squarely within the mandate of the data and digitization project that is being undertaken by the Supply Chain Office, given its potential role in extracting greater value from the data that flows through the maritime ecosystem overall, and in serving as a springboard for connecting the data transmission systems that are already operated by individual supply chain stakeholders into an integrated information hub that ultimately benefits the system as a whole.

3. CBSA REGULATIONS GOVERNING IMPORTED CONTAINERIZED CARGO

Enhanced Enforcement of Radiation Screening Requirements

Another critical issue we wish to bring to the Treasury Board’s attention is CBSA’s regulatory requirements for the screening of containerized cargo arriving at Canadian ports, which not only have an impact on supply chain efficiency and resilience, but also on the ability of Canadian ports to capitalize on opportunities to increase and diversify their traffic in future years. Our specific concern relates to CBSA’s recent decision to more stringently enforce its requirement that all containerized import cargo bound for a Canadian port must undergo radiation screening at one of five ports (Prince Rupert, Vancouver, Montreal, Halifax and Saint John), as these are the only ports in Canada that are equipped with fixed radiation detection portals. This essentially means that vessels with containers on board which are destined to any other port in Canada face the possibility of having to divert to one of these five in order to undergo radiation screening, even if they operate in the bulk or breakbulk trades and are carrying a minimal number of containers.

The most significant impact of CBSA’s increased enforcement of this requirement is being borne by small and remote ports across Canada, many of which handle containerized cargo that supplies local communities, provides input for industrial activity, or otherwise supports regional economies. As a concrete example of the foregoing, a number of mining sites in the Canadian Arctic rely on material and supplies from overseas to sustain their operations, which is sometimes packed into containers for ease of handling and then delivered directly to the mine site on board seaborne vessels. Those vessels now face the prospect of having to divert to a scanner-equipped port before proceeding to their destination, and of therefore having to absorb extensive new costs due to additional fuel, crew and vessel operating expenses. These vessels will also be subject to substantial delays in what is an already short shipping season, due not only to the additional time spent at sea because of the diversion, but also to the additional time spent at berth waiting for the containers to be unloaded, scanned and reloaded before the vessel can proceed to its planned discharge port. This combination of factors will increase the cost of industrial activities that are already operating in a very high-cost environment, and will likely jeopardize the economic and operational viability of some such activities altogether.

From a broader perspective, CBSA’s container scanning requirements will essentially discourage container shipping activity at all ports other than the five noted above, including during times of port congestion or disruption, when the availability of alternative routings and discharge ports is essential to maintaining

supply chain efficiency and resilience. Similarly, the prospect of vessel diversions and the lack of suitable scanning equipment will serve as a strong disincentive for establishing new container services at what are currently non-container ports, even in instances where there is a solid business case and willing proponent to bring such projects to fruition.

The Treasury Board's current regulatory review provides a much-needed opportunity to address these concerns, which we believe can be achieved through a combination of regulatory and fiscal measures. From a regulatory perspective, CBSA's current "blanket" approach to container scanning (under which 100 percent of marine containers entering Canada must theoretically be scanned for radiation) should be replaced with a more nuanced, risk-based approach to determining which containers need to be scanned and by which method (i.e. through the use of fixed or mobile equipment), and developing an appropriate framework and criteria for the possibility of scanning containers at the load port overseas. Just as importantly, from a fiscal perspective, the government must ensure that CBSA has the necessary facilities, infrastructure and personnel to conduct radiation screening in the most efficient and effective manner, including by identifying additional ports where radiation screening technology is needed and making the necessary investments in this respect, and facilitating the use of mobile scanning equipment at non-containerized ports in order to reduce lengthy wait terms for berth availability at dedicated container terminals. We believe that this combination of measures is the optimal means of ensuring that CBSA's container scanning policy continues to ensure the safety and security of all Canadians, while facilitating the flow of trade that is so critical to our ongoing economic competitiveness.

Bonding and Examination Requirements

Another significant regulatory barrier to the expansion of container services at Canadian ports is CBSA's highly burdensome requirements for ports wishing to establish themselves as bonded facilities, and the amount of time it takes to receive the CBSA accreditation that is essential for ports to be able to receive bonded import containers. The length and complexity of the current application process, and the non-existence of even the most minimal service standards for processing / finalizing such applications on CBSA's part, hinders the ability of Canadian ports to pursue and leverage business opportunities that would not only make better use of the capacity that exists in regions such as the Great Lakes, but also increase supply chain efficiency and resilience by providing additional routings and cargo discharge options.

A related issue, and one that not only impedes the development of new port container services, but also constrains efficiency at existing ports, is CBSA's infrastructure requirements for container examination facilities (also known as CEFs), which is where targeted containers are brought in order to be examined for contraband and other illicit goods. Although CEF requirements are set out in very general terms in section 6 of the *Customs Act*, they are subject to a lengthy, complex (and at times illogical) CBSA implementation process that makes the construction of new examination facilities and the acquisition of new equipment challenging at best, and next to impossible at worst.

As an example, the Vancouver-Fraser Port Authority's new CEF at the Deltaport terminal opened in 2019 to great fanfare and the promise of a new era in container exam efficiency based on the use of fixed, large-scale imaging technology that would streamline and modernize the exam process at Canada's busiest port. Although five years have passed since then, CBSA has yet to procure, let alone use, this technology, thereby squandering its potential to significantly increase the efficiency of CBSA exams and the flow of traffic to and from the CEF. Similarly, the Halifax Port Authority spent over a decade negotiating with CBSA over the Agency's lengthy and extraordinarily detailed design requirements for the construction of a new CEF at that port, while the Saint John Port Authority had no choice but to conduct exams at a temporary, makeshift site on the port terminal due to CBSA's inability to approve the design of a permanent facility.

These are all longstanding issues which have a direct impact on the efficient flow of cargo through Canadian ports and must be resolved if the government is serious about the need to address Canada's supply chain challenges. It is therefore essential that CBSA's regulatory requirements regarding the designation of bonded warehouses, the construction of new exam facilities, and the acquisition of new equipment and technology be modernized and clarified, and that this be viewed as a priority item in the development of a supply chain strategy for Canada.

4. ADDITIONAL COMMENTS

Increased Reliance on Extra Regulatory Powers

A somewhat different, but nevertheless important, issue we also wish to bring to the Treasury Board's attention relates to the ongoing erosion of the normal regulatory process that has been occurring in the marine mode over the last several years. More specifically, we believe that the *Canada Shipping Act* has increasingly opened the door to the use of extra-regulatory instruments such as Interim Orders and Ministerial Orders to regulate certain aspects of shipping activity, which were first introduced in 2018 by means of an omnibus budget implementation bill, and further strengthened this past spring, by means of Bill C-47, another omnibus budget implementation bill.

This is of concern because Interim Orders are not meant to be used under normal circumstances, but in cases where immediate action is required to deal with a direct or indirect risk to marine safety or the marine environment. As such, they are not subject to the basic safeguards provided in the regulatory process (including prepublication, consultation with stakeholders and impact assessment) and could remain in effect for a period of up to three years. Similarly, Ministerial Orders also exist outside the normal regulatory process and despite their potentially significant impacts on shipowners and vessels, are subject to minimal publication requirements and can remain in effect for a period of up to two years.

Given their scope and potential duration, as well as their impact on normal vessel operations, we believe that these kinds of orders should be implemented with a great deal of caution and that their use should be circumscribed by the appropriate safeguards, including consultation with relevant entities before being made. Although we first raised these issues with Parliament in 2018, the fact that the use of these uncircumscribed, extra-regulatory powers has only increased since then, points to a troubling trend that we strongly urge the Treasury Board to address in its current review.

Implementation of International Conventions

As a final comment, and as noted at the beginning of our submission, virtually all of Canada's seaborne trade is carried on international vessels sourced from the global fleet. These ships are strictly regulated through the framework of conventions developed by the International Maritime Agency (IMO), which cover every facet of shipping activity – from safety and security to environmental protection to trade facilitation – and help ensure a stringent yet predictable regulatory environment for ocean ships regardless of where in the world they trade.

Canada is a founding member of the IMO and has a strong record of contributing to the development and implementation of many international conventions over the years. This being said, we take this opportunity to highlight the importance of ensuring that whenever a new convention comes into force (or an existing convention is amended), the government moves swiftly in making the legislative and regulatory changes that are required to implement the new rules in Canada, and publishing the related requirements. We are concerned that Transport Canada's regulatory processes are sometimes out of step with the IMO's timelines for the implementation of new conventions, and that this deprives ships calling Canadian ports of the regulatory certainty they need to operate as safely and efficiently as possible for the benefit of the supply chain as a whole.

We thank the Treasury Board for this opportunity to contribute to the Supply Chain Regulatory Review, and trust that our comments and recommendations will be given due consideration. We look forward to seeing the outcome of the review process, and in the meantime, would be pleased to provide any additional input or information as required.

Sincerely,

A handwritten signature in black ink, appearing to read "CH Hall", is positioned above a vertical line that serves as a separator between the signature and the typed name below.

Chris Hall
President and CEO
SHIPPING FEDERATION OF CANADA