

# **CANADA MARINE ACT REVIEW**

**SUBMISSION OF THE WESTERN PROVINCES**

**BRITISH COLUMBIA**

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# WESTERN PROVINCES CANADA MARINE ACT REVIEW 2002

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## 1. Executive Summary

The Western Provinces are major users of the Canadian marine transportation system. Collectively, the Western Provinces generate 48 percent of the volume of annual national marine exports representing a value of \$23 billion. Eighty-five percent of this activity flows through West Coast ports. Foreign trade is critical to the western economy and an efficient, reliable and low cost marine transportation system is essential if western shippers and ports are to remain competitive in global markets.

A major opportunity for Canada's marine transportation system is to capitalize on the geographic advantages of our ports and realize the full potential for gateway development, in conjunction with intermodal services. A competitive marine transportation system will help enable western shippers to compete more effectively and will facilitate continued development in the container and cruise passenger business.

The *Canada Marine Act* governs a critical element of the Canadian marine transportation system and its effectiveness as a policy instrument to ensure an affordable, efficient and responsive port management structure is therefore of great importance to the Western Provinces. Our recommendations were developed after consultation with various stakeholders, and were guided by the marine policy objectives outlined in the *Canada Marine Act*, supplemented with additional governing principles.

### Financial Issues

The Western Provinces acknowledge that ports are of national significance, are substantial economic generators, must have the financial flexibility to be competitive with US ports and be responsive to the needs of port users. Canada's port authorities must be able to access sufficient capital funds for strategic infrastructure and land acquisition requirements and be able to make such investments on a timely basis.

The annual charge on gross revenue should be established in the context of port capital requirements and the federal government's reduced risk exposure.

Given the magnitude of port capital requirements, the Western Provinces believe the federal government should participate in port investments of national strategic importance.

There is a need to enhance port authority financial flexibility by removing existing borrowing limits. Opportunities for developing and implementing innovative financing tools for Canadian ports should be examined. Such improved financial flexibility must be accompanied by increased public accountability.

Leases and rental agreements should be excluded from the definition of fees under Section 2(1) of the *Canada Marine Act*, in the interest of administrative and regulatory efficiency. It would be expected that such agreements would have defined dispute resolution mechanisms.

The federal government must be consistent in identifying the level of and responsibility for Payments in Lieu of Taxes (PILT) for federal real property under the jurisdiction of port authorities and all other external agencies. The determination of PILT and other taxation of port and marine facilities must be viewed in the context of all of the factors that influence the competitiveness of Canada's ports and be sensitive to the role of ports as economic generators.

### **Governance Issues**

Port authorities must be accountable, responsive to stakeholders and develop performance measures as a way to maintain efficiency. The scope of activities that port authorities may perform as agents of the Crown must be revised in conjunction with the granting of increased financial flexibility to enable them to operate with commercial discipline and achieve financial self-sufficiency.

### **Real Property and Environmental Issues**

Port authorities should be granted wider powers in managing property and assets brought under their administration, with appropriate provisions to ensure recognition of regional and local growth strategies. There are opportunities to enhance port efficiency and responsiveness and to provide a source of additional capital through the sale of surplus land.

Port authorities and the federal government should jointly develop best practices to manage environmental risks. The federal government should also develop ways to ensure that port authorities receive the appropriate level of legal protection and indemnity for actions beyond their control.

## **Other Issues**

Stakeholders seem to be satisfied with the provision of pilotage and marine navigation services on the West Coast. However, in the interest of sustaining a competitive marine transportation system, the federal government should review all options for reducing the level of costs for the provision of Canada's marine navigation services. The results of cost reduction initiatives should be made public annually.

Federal investments in the Great Lakes/St. Lawrence Seaway system must not be to the detriment of other ports and must not disadvantage one marine trade flow over another.

To help establish an international reputation for reliability and responsiveness, consideration should be given to the development of port best management practices.

The Western Provinces believe security is a national issue and that marine security measures in the national interest should be financed by the federal government. Direct user fees, related to the cost of marine security measures associated with commercial shipping activities, should not be on the basis of volume or tonnage.

## 2. Introduction

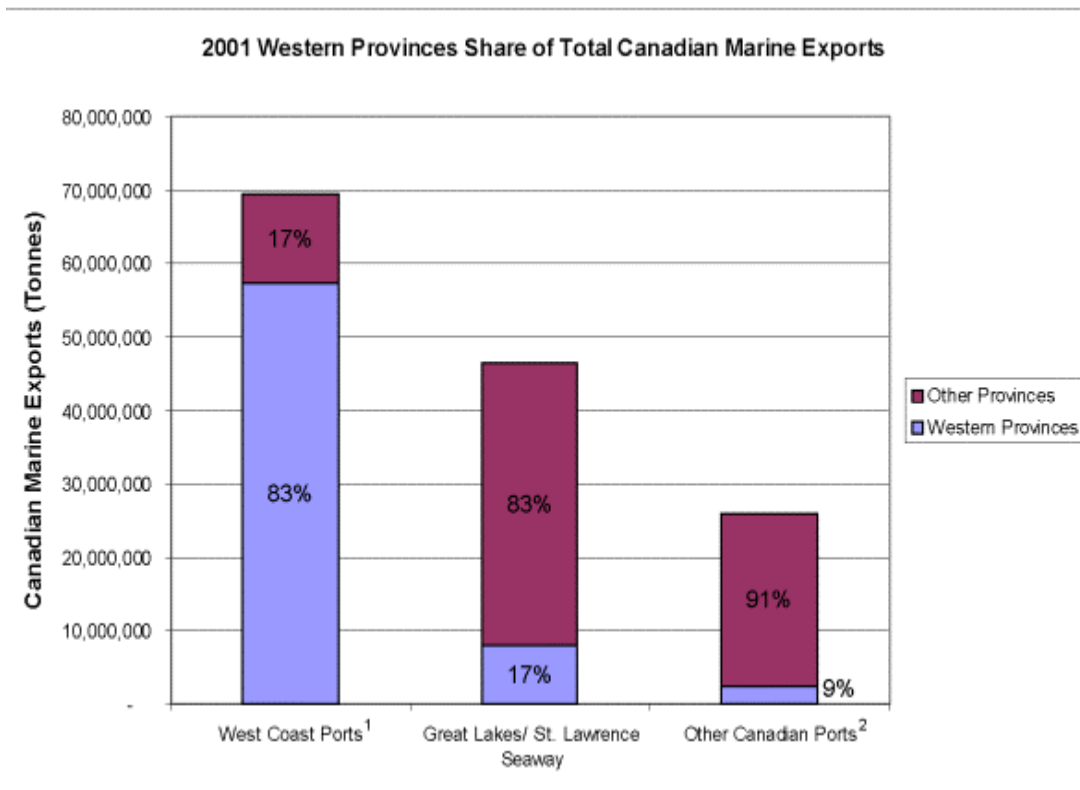
The Western Provinces of British Columbia, Alberta, Saskatchewan and Manitoba welcome the opportunity to provide our views on the *Canada Marine Act*.

An efficient, low-cost marine transportation system is essential for maintaining the competitiveness of western shippers because foreign trade is critical for sustained economic growth in western Canada. Competitive port and marine services enable shippers of bulk commodities such as grain, coal, potash, sulphur, chemicals and petroleum products, and containerized cargo to sell their products throughout the world. Continued trade growth will put pressure on the Canadian marine transportation system to adapt and respond to emerging commercial trends.

The Western Provinces are major users of the Canadian marine transportation system, accounting for about 48 percent of total national marine exports, or 68 million tonnes annually. The four provinces ship about 57 million tonnes annually through West Coast ports, primarily bulk commodities, which represent about 83 percent of total export volumes handled at these ports. Over 70 percent of western Canada's exports are handled at the Port of Vancouver.

About 8 million tonnes are shipped from the four provinces through the Great Lakes/St. Lawrence Seaway System, which represents about 17 percent of total Canadian export volumes through the Seaway. Thunder Bay, through which the western provinces connect to the Great Lakes/St. Lawrence Seaway System, is the primary inland port for Manitoba and Saskatchewan. The value of marine exports from the western provinces is about \$23 billion, more than half the total annual value of Canadian marine exports (\$44 billion).

Maintaining the competitiveness of the national marine transportation system is of paramount importance. Port authorities, terminal operators and ocean carriers need to work with land-based carriers and governments to prevent bottlenecks and any resulting increase in costs for western shippers. Canadian maritime logistics service providers and port operators must provide effective and efficient service or shippers may be forced to divert cargo to the alternative U.S. rail and port systems.



Note 1: Market shares of West Coast ports that handle export shipments from the four western provinces are: Vancouver (88%), Prince Rupert (3%), and other B.C. ports including Campbell River, Nanaimo, Kitimat, Sidney and Port Alberni (9%).

Note 2: Other Canadian ports that handle the western provinces' export shipments include the ports of Churchill, Halifax, Saint John, Yarmouth, Cornerbrook and Port Hawkesbury.

Three principal port authorities - Vancouver, Prince Rupert and Thunder Bay - serve our region. National ports such as Vancouver, Montreal, and Halifax play a major role as gateways for intermodal shipments and other rail traffic destined for Canadian and U.S. markets. The Port of Vancouver handles over 8 percent, or 5.2 million tonnes, of inbound intermodal and other shipments totaling 63 million tonnes annually. The value of import marine cargo shipments is \$48 billion annually. Growing export shipments of value-added goods from the western provinces are also handled by the national ports system.

British Columbia's smaller port authorities and smaller ports play a significant role in the provision of marine services, handling an estimated 70 million tonnes of marine freight annually. Fraser River Port handles over 20 million tonnes of cargo and is the largest autoport in Canada.



| <b>2001 Canada International Marine Trade Volume</b> |  |                            |  |                            |
|--|--|----------------------------|--|----------------------------|
| <b>Province</b>                                      | <b>Export Volume<br/>(‘000 Tonnes)</b> | <b>Export<br/>Volume %</b> | <b>Import Volume<br/>(‘000 Tonnes)</b> | <b>Import<br/>Volume %</b> |
| <b>British Columbia</b>                              | 27,175                                 | 19                         | 6,501                                  | 10                         |
| <b>Alberta</b>                                       | 18,357                                 | 13                         | 163                                    | 0                          |
| <b>Saskatchewan</b>                                  | 18,214                                 | 13                         | 13                                     | 0                          |
| <b>Manitoba</b>                                      | 4,159                                  | 3                          | 78                                     | 0                          |
| <b>Western provinces (sub total)</b>                 | 67,905                                 | 48                         | 6,755                                  | 11                         |
| <b>Rest of Canada</b>                                | 74,028                                 | 52                         | 55,776                                 | 89                         |
|  |  |                            |  |                            |
| <b>Canada Int’l Marine Trade<br/>Volume (total)</b>  | 141,933                                | 100                        | 62,532                                 | 100                        |

Source: Statistics Canada Trade Merchandise Data 2001 custom tabulation prepared for Alberta Transportation

The marine transportation system contributes significantly to the financial health of railways, shipping lines, port terminals, and trucking companies, and supports employment in the communities where ports are located. For example, CP Rail has noted that the Ports of Vancouver and Montreal are critical to its bottom line, because 45 per cent of rail traffic moving on its rail network is handled at these two ports. The Port of Vancouver is a growing home port for cruise ships, currently handling over 1 million passengers on 330 sailings annually to and from Alaska, with each sailing injecting more than \$1 million into the local economy.

The Canadian marine transportation system is a partnership involving port authorities, terminal operators and transportation access providers. All players must make investments in the system and there is a need for co-ordinating such investments on a systems basis. Historically, West Coast ports have been largely oriented to bulk commodity exports and there is currently available capacity. Even still, bulk and commodity export terminals cannot be passive. They may need to make new capital investments to replace ageing facilities and equipment. They may also have to make investments to attract new or different lines of business. The major growth opportunities now are in the areas of container and cruise traffic development...an area where port authorities themselves have had to take the lead in making investments.

Ports serving the Western Provinces are competitive now but steps are needed to maintain this position. Ongoing capital investments are needed at the ports and terminals to maintain efficiency. Large, strategic investments are required to secure a share of the growing lines of business in the container and cruise passenger trade. Finally, to eliminate congestion and ensure a reliable, efficient, overall marine transportation system, investments are needed in road and rail access.

The Western Provinces believe that maintaining the competitiveness of Canadian ports requires them to provide superior value relative to U.S. ports. Canadian ports serve North American markets and form part of competing global supply chains and logistics networks. Port competitiveness must be considered not only in a domestic and North American context, but also in the context of the international and North American maritime and commercial framework within which Canadian ports must compete.

### 3. Governing Principles

The Western Provinces endorse a major goal of the Canada Marine Act - making the system of Canadian ports competitive, efficient and commercially oriented - and believe that the statement of National Marine Policy contained in Section 4 of the Act remains valid. Furthermore, to ensure that the national marine transportation system provides reliable and affordable services to western shippers and other port users, the following supplementary principles guide the comments and recommendations of the Western Provinces:

- **Enhanced competitiveness of the Canadian port and marine system should be fostered through the implementation of cost-effective infrastructure improvements that support sustained growth of the western economy and communities with major port and marine facilities;**
- **Port users should share equitably in the benefits of marine policy reform through reductions in service costs;**
- **The marine transportation system should be customer-oriented, providing greater service reliability and on-time performance through the use of modern logistics; and**
- **Port authorities should be economically self-sufficient, with greater financial flexibility to operate on a commercial basis, while recognizing the need for increased public accountability.**

#### **Canada Marine Act Objectives**

##### Section 4

1. It is hereby declared that the objective of this Act is to:
  - (a) implement a National Marine Policy that provides Canada with the marine infrastructure that it needs and that offers effective support for the achievement of local, regional and national social and economic objectives and will promote and safeguard Canada's competitiveness and trade objectives;
  - (b) base the marine infrastructure and services on international practices and approaches that are consistent with those of Canada's major trading partners in order to foster harmonization of standards among jurisdictions;
  - (c) ensure that marine transportation services are organized to satisfy the needs of users and are available at a reasonable cost to the users;
  - (d) provide for a high level of safety and environmental protection;
  - (e) provide a high degree of autonomy for local or regional management of components of the system of services and facilities and be responsive to local needs and priorities;
  - (f) manage the marine infrastructure and services in a commercial manner that encourages, and takes into account, input from users and the community in which a port or harbour is located;
  - (g) provide for the disposition, by transfer or otherwise, of certain ports and port facilities; and
  - (h) coordinate with other marine activities and surface and air transportation systems.

## 4. Canada Port Authorities Implementation Issues

### 4.1 Financial Issues

The Western Provinces believe a major challenge for the *Canada Marine Act* review relates to the constraints on the port authorities' ability to finance the infrastructure improvements required to maintain competitiveness and to meet customer needs in a reliable and efficient manner. Before deciding on the appropriate use of specific policy tools, port financing issues need to be put in context. The competitive position of Canadian ports must be placed not only in the domestic context but also in the context of what is occurring in the United States and globally. With the evolution of globalization and free trade, the real competition is with ports of other countries.

Ports must continually upgrade their facilities in response to changes in maritime logistics and shipper supply chains practices and technological innovation. In order to provide the facilities required for emerging business needs and priorities, Canadian ports need a full complement of financial tools at their disposal

U.S. ports have made significant advances in modernizing and expanding terminal facilities and are a competitive threat to Canadian ports. The American Association of Port Authorities projects that U.S. ports will invest more than \$1 billion annually on infrastructure improvements in coming years to promote more efficient intermodal transportation.

The flexibility of U.S. ports in financing infrastructure improvements enhances their competitiveness with Canadian ports and allows them to capture business growth opportunities, expand traffic volumes and attract new customers. U.S. ports have used innovative financing methods to fund capital improvements, including public-private partnerships to develop new terminal and handling capacity and the issuance of tax-exempt general obligation and revenue bonds. In addition, U.S. federal and state governments make substantial public investments in port infrastructure.

The Association of Canadian Port Authorities (ACPA) and other marine stakeholders have advocated increased flexibility for port authorities to use innovative financing mechanisms, consistent with commercial business practices. The ACPA maintains that the *Canada Marine Act* should be amended to eliminate financing and borrowing restrictions. Such amendments would increase opportunities for port authorities to gain access to capital for infrastructure investments needed to operate their facilities in a more commercial manner. The ACPA also suggests that port authorities should have enhanced ability to reinvest operating surpluses and that direct public investment should be provided to finance infrastructure improvements under appropriate circumstances.

The financial tools advocated by the Association of Canadian Port Authorities are consistent with sound business practices and are supported in principle by the Western Provinces. However, the Western Provinces ask that the federal government respond favourably to shipper, terminal operator and local government concerns regarding the need to improve the effectiveness of stakeholder participation in governance matters. Any increase in financial flexibility must be accompanied by effective board oversight of port management.

#### **4.1.1 Annual Charge on Gross Revenue**

Under Section 8(2)(h) of the *Canada Marine Act*, port authorities are required to pay the federal government an annual charge or stipend from their gross revenues. This reduces the ports' ability to reinvest in operational and infrastructure improvements. A reduction or discontinuance of this annual charge is consistent with the National Marine Policy objective that Canada's national ports should serve as economic generators – or strategic assets that support broad national interests – rather than revenue generators.

The annual charge on gross revenues reduces the flexibility of port authorities to use retained earnings to finance infrastructure improvements. Increased operating profits, as a result of the reduction or elimination of stipend payments, could provide an effective mechanism for improving port authorities' access to capital for infrastructure improvements. The ACPA points out that the gross revenue charge has the effect of draining their capital reserves.

The Western Provinces believe the annual charge should reflect the key role ports play in supporting trade and economic growth and that they are an important part of the transportation infrastructure that enables and facilitates trade and commerce. Thus, ports are enablers of economic wealth creation across the country. The stipend should not constrain capital improvements and service enhancements that maintain the competitiveness of the ports and their shippers, thus generating economic benefits for the regions they serve.

The federal government must recognize that investments in port infrastructure (such as new container and cruise ship facilities) and environmental protection are highly capital intensive. The high cost of land lease agreements and the high sunk costs of terminal investments result in significant barriers to overcome before new investments can be considered financially attractive. In addition, the requirement for capital investment is a response to business opportunities and changes in international markets. Ports must be able to respond in a timely manner.

Port capital investments, as with most large capital investments, require long lead times for planning, environmental approvals and consultations. Port authorities need the financial flexibility to accumulate capital for such investments so that they can respond in a timely manner to the needs of customers and shipping lines, while providing reliable and affordable service for shippers and other users. To ensure that port authorities can operate with commercial discipline and be financially self-sufficient, the annual rent payable must be set at a level that permits the funding of development costs out of operating revenue.

While recognizing that the stipend formula must provide a reasonable return on federal assets, the level of the annual stipend should reflect the federal government's reduced risk exposure. The level of the stipend should offset the higher financing and taxation costs borne by port authorities and users, encourage the efficient use of assets and reward management innovation.

#### ***Recommendation 1***

***Review the level of the stipend payable by port authorities and revise to reflect the increased infrastructure costs borne by ports and the reduced risk exposure of the federal government as a result of the move to commercial port operations.***

#### ***Recommendation 2***

***Adjust the annual stipend for port authorities that demonstrate a business case for increased infrastructure investment to capture specific market opportunities. The stipend formula should be reduced or eliminated for port authorities that satisfy this criterion on a case by case basis.***

#### **4.1.2 Access to Federal Funding**

Port authorities are currently prohibited from applying for federal grants or other federal infrastructure funding under Section 25 of the *Canada Marine Act*. The restriction is consistent with the national marine policy objective of fostering commercial discipline and the financial self-sufficiency of port authorities.

In some instances, the capital cost of major port improvements that would allow ports to better meet customer needs, open up markets and increase revenues may exceed the financing capabilities of port authorities. For example, a port authority may not be able to finance the magnitude of intermodal infrastructure investment required to take advantage of the growing container traffic market opportunity, using only retained earnings and other financial tools available to port authorities.

International shipping is a highly competitive business where ports in many other countries receive either direct or indirect government financial subsidies. Until such time as the issue of government funding is addressed in World Trade Organization trade negotiations and other forums, Canadian Ports will be at a competitive disadvantage internationally.

International capital markets consider the port industry to be a mature industry. It is often characterised as having some form of public-private partnership potential for managing the associated business risks. Shipping lines and terminal operators weigh Canadian investment opportunities against the rewards and risks of other international investment options. The availability of federal funds for port authority investments will make a Canadian investment more attractive to potential private partners. Major maritime investments are not taking place in Canada at the same pace or to the same degree as our competitors. As a result, Canadian port authorities face the constant risk of losing major clients or business opportunities. Their customers are rearranging their service network as they form new partnerships with international carriers and terminal operators who are investing heavily in both landside and waterside port improvements.

The Western Provinces believe marine legislation should be revised to provide for direct federal investment when port authorities are unable to totally finance strategic infrastructure projects or to facilitate public-private partnerships. Such projects must be supported by a business case and not contravene international trade obligations.

### **Recommendation 3**

***Amend Section 25 of the Canada Marine Act to enable port authorities to be eligible for federal funding for infrastructure improvements. Port authorities should be eligible to apply for federal financial support where a business case can be made and the competitiveness of other Canadian ports would not be adversely affected.***

#### **4.1.3 Borrowing Limits**

Most port authorities reinvest any operating surpluses in port operations and infrastructure. These revenues usually are not sufficient to fund large-scale infrastructure improvements and port authorities must access private sector financing.

Section 28 of the *Canada Marine Act* gives the Minister of Finance the authority to impose limitations on the borrowing capacity of port authorities, establish terms and conditions and the time frame of any borrowing. This limits the opportunities of port authorities to access the capital required for maintenance and infrastructure improvements. In addition, restrictions placed on port authorities' ability to pledge federal real property under their jurisdiction impede their flexibility to manage debt.

Restrictions on the ability of port authorities to pledge the federal real property under their management control is a significant hindrance to the normal commercial operations of the respective ports. It is also at odds with the *Canada Marine Act* principle of financial self-sufficiency.

The federal government must ensure that port authorities have the necessary tools to access the required capital for maintenance and infrastructure improvements. The Western Provinces believe the level of borrowing capacity for each port authority should be determined by capital markets, similar to the process used for other commercialized transportation infrastructure organizations, such as Canada Airport Authorities. Appropriate mechanisms to ensure public accountability would have to accompany such financial flexibility.

### **Recommendation 4**

***Amend Section 28 of the Canada Marine Act to remove borrowing restrictions to provide port authorities with increased financial flexibility to operate ports in a commercial manner, subject to increased public accountability.***

## ***Recommendation 5***

***Investigate opportunities for developing and implementing innovative financing tools in order to remain competitive with U.S. ports.***

### **4.1.4 Fee and Leases**

Some stakeholders, including the ACPA, have stated that the definition of “fees” in Section 2(1) of the *Canada Marine Act* needs to be amended to explicitly exclude lease and rental agreements. This would promote administrative efficiency by reducing litigation concerning land use agreements and other rental and lease arrangements negotiated by port authorities.

Many existing leases were assigned to port authorities when they were established and the new port authorities operated under a different legal framework from the port corporations they replaced. The resulting changes in the business relationships between port authorities and tenants have led to complaints to the Canadian Transportation Agency, in some cases. The complaints focussed on lease rates and terms and conditions of lease and rental agreements. Such disputes create business uncertainty, are not consistent with normal commercial practice and are administratively inefficient. Under commercial practice, the parties to an agreement usually define an appropriate dispute resolution process.

## ***Recommendation 6***

***Amend the definition of fees in Section 2(1) of the Canada Marine Act to explicitly exclude leases and rentals, to facilitate administrative and regulatory efficiency.***



#### **4.1.5 Payments in Lieu of Taxes**

Port authorities currently make Payments in Lieu of Taxes (PILT) to the municipalities in which they are located. PILT is one of many factors that influence the overall competitiveness of Canada's ports. The Western Provinces support the ongoing work related to the development of best practices regarding the taxation of port properties. All stakeholders need to view ports as economic generators, not just revenue sources, and must be sensitive to how their actions may affect the competitive position of ports and terminals.

There is some inconsistency in the way the federal government handles PILT for marine facilities on federally owned lands. For example, the federal government provides PILT for marine facilities on federally owned lands managed by the St. Lawrence Seaway Management Corporation. The Western Provinces are concerned that having port authorities continue to make PILT directly might negatively affect the competitiveness of Canada's ports by limiting the revenue available for reinvestment in port operations and maintenance. Ports fulfil a vital role in meeting Canada's economic objectives. Continuation of this approach is just one factor that hampers the achievement of a principal objective of the *Canada Marine Act* ("marine infrastructure that...will promote and safeguard Canada's competitiveness and trade objectives").

#### ***Recommendation 7***

***Ensure consistency by the federal government in identifying the level of and responsibility for PILT for federal real property under the jurisdiction of port authorities and all other external agencies. The determination of PILT and other taxation of port and marine facilities must be viewed in the context of all of the factors that influence the competitiveness of Canada's ports and be sensitive to the role of ports as economic generators.***

## 4.2 Governance Issues

### 4.2.1 Board of Directors

The governance provisions for port authorities under the *Canada Marine Act* should be reviewed to improve the oversight of port management and financing strategies. To safeguard the public interest, options for enhancing the accountability of port authority Boards must be considered in conjunction with options for increasing the financial flexibility of port authorities to manage property and assets under their jurisdiction.

The *Canada Transportation Act* Review Panel report concluded that port authorities are subject to a carefully designed governance regime with a high degree of transparency. However, the *Canada Transportation Act* Review Panel noted that reducing the number of federal appointments and increasing the role of interested parties in selecting board members would help confirm the operational independence of port authorities.

The Western Provinces believe port authority boards should be responsive to the interests of port users and other marine transportation stakeholders. Port authority Boards must not represent narrow interests or specific users. Boards should include broadly based industry representation from the region served by the port. To avoid conflict of interest, shippers and other users should be represented by independent third parties with appropriate business management and transportation knowledge.

Port authority Boards should include representatives with extensive knowledge of the needs of shippers, producers and other stakeholders in the region served by the port. To ensure the promotion of trade opportunities and economic development in the Western Provinces, regional interests should be represented on the Boards of port authorities whose facilities have strategic importance for their shippers.

In some instances, stakeholders have expressed disappointment with the current process of advisory committees nominating Board members, when their recommendations are ignored. As a result, stakeholders feel they are not being heard and are seeking assurances that they will be given a stronger voice in the management of port authorities. The federal government should clearly define and respect the roles given to port authority advisory groups. Such groups can assist each port authority in the port planning process and reflect the views of different stakeholders, including shippers, producers, terminal operators, carriers, local government, labour groups and other interested parties.

## **Recommendation 8**

***Investigate opportunities for broadening industry and local government representation from the region served by each port authority while recognizing that port authority Boards should not represent narrow interests or specific users. To avoid conflict of interest, shippers, local government and other users should be represented by independent third parties with appropriate business management and transportation knowledge.***

### **4.2.2 Agent Status**

Port authorities are agents of the federal Crown when they perform port operations outlined in Section 28 of the *Canada Marine Act* (engaging in activities related to shipping, navigation, transportation of passengers and goods and handling of goods and storage of goods). Agent status supports contractual arrangements, marketing and other business activities conducted by port authorities. In addition, agent status provides protection from the application of municipal taxation, land use decisions and liability for environmental risks that may adversely affect the economic health of port authorities.

Agent status also places controls on some operations of port authorities, including legislative constraints on borrowing limits set out in Letters Patent, provisions governing the management of real property and compliance with other federal legislation and regulations.

Implementation of proposed options for increasing the financial flexibility of port authorities will require legislative revisions to refine the scope of agent status conferred on port authorities by the *Canada Marine Act*, to enable them to operate with commercial discipline and achieve financial self-sufficiency.

## **Recommendation 9**

***Constraints on the operations of port authorities due to regulatory requirements that impede commercial discipline must be removed by amending the Canada Marine Act to clarify the scope of activities that port authorities may perform with respect to agent status conferred on them by the Act.***

### 4.2.3 Performance Reporting

The *Canada Transportation Act* Review Panel report recommended that port authorities should invest in the development of better performance measurement systems. The Review Panel suggested that performance indicators should be developed to monitor changes in service quality and corporate productivity and that resulting information about port performance should be publicly released.

The Western Provinces support the development of performance measures by port authorities, to encourage efficiency improvements that reduce marine transportation and handling costs for shippers and other port users. A 1998 study of the western grain logistics system by McKinsey and Company, commissioned by the Western Provinces, found that poor logistics performance of bulk grain movements and variability in product availability at port increased total system costs for users by \$50-\$100 million per year.

The development of comprehensive performance measurement systems by port authorities would help to identify areas where service and efficiency could be improved. Performance indicators would also provide benchmarks for measuring changes in system reliability and logistics practices – with the benefits accruing to different stakeholders through marine infrastructure and service improvements.

The Western Provinces recognise that benchmarking port performance is a difficult task. The scale of operations of the various port authorities will have a significant impact on potential performance, as will the composition of cargo, the geography and navigational challenges facing the port and the institutional setting in which it operates.

#### ***Recommendation 10***

***Each Canada Port Authority should invest in the development of performance measurement systems to improve public accountability and to foster efficiency improvements in the marine transportation and handling system for the benefit of all stakeholders.***

## 4.3 Real Property & Environmental Issues

### 4.3.1 Real Property Management

Real property management of Canadian ports generally involves structures extending from the land (or territory) into the water (or aquatory). Thus, port structures are covered by a legal regime that is generally quite different from that which applies to land. For example, there may be complications if the legal regime for the inter-tidal zone differs from that below low-water mark, since port structures will generally have to pass through both if they are to serve large ships.

Except for a single use port, real property management at ports is essentially the same as the planning functions performed by local municipal governments and transportation authorities. However, ports have the added dimension of the co-ordination and management of marine navigation, the provision of navigational aids, dredging activities and management of marine environmental compensation areas.

In addition, each province by virtue of its constitutional authority, has jurisdiction of real property laws and legislation that impacts the management of real property at Canadian port authorities in different ways. The *Federal Real Property Act* and Treasury Board Guidelines do not facilitate the flexibility, commercial practices, and market-timing consideration needed to undertake port development projects.

Western Provinces believe that port authorities should be granted wider powers in managing property and assets brought under their administration given that each port authority must produce a land management plan (and obtain consent from the Minister). This approach is preferable to obtaining Ministerial approval or legislative restrictions on the capacity and power of port authorities in dealing with issues that may contribute to their economic viability.

In the interest of fostering a healthy port-community interface, appropriate mechanisms should be defined to ensure that port authorities are responsive to regional and local growth strategies. Such a partnership is essential to the achievement of an efficient and seamless marine transportation system.

The acquisition, disposal, and the retention of proceeds from the sale of property are the standard tools required to complete land/terminal development projects. Port authorities should have these basic tools.

## ***Recommendation 11***

***Grant port authorities wider powers in managing property and assets under their administration, with appropriate provisions to ensure that local and regional growth strategies are taken into account.***

### **4.3.2 Environmental Risks**

Port authorities are not exempted from the *Federal Real Property Act* thus providing the federal government with the legislative tools to meet port authority environmental responsibilities and reporting requirements regarding risk. Management of all federal property is subject to federal environmental regulations and general environmental provisions.

Transport Canada and the port authorities may have different perspectives when defining reporting requirements. These types of perceptual differences may result because port officials have a detailed knowledge of the actual business of running a port, terminals etc. and thus a more accurate measure of the true risks.

Concerning environmental protection, there are existing international standards, such as the International Standards Organization (ISO 9000 and 14000). The ISO is a worldwide federation of national standards bodies from more than 140 countries whose work results in international agreements, published as international standards. The mission of the ISO is to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services. It is the view of the Western Provinces that Transport Canada and the port authorities should work together to decide on how to adopt such best management practices. Other Canadian federal government departments have used these best management practices to meet their obligations under the *Federal Real Property Act*.

With respect to environmental risk, port authorities have raised the concern that Board members should have the appropriate level of legal protection and indemnity for environmental issues, given the roles and responsibilities of third parties to ensure environmental protection in and around ports.

## ***Recommendation 12***

***Port authorities and the federal government should jointly develop best practices to manage environmental risks and investigate ways to ensure that port authority Board members are not exposed to undue liability for actions involving environmental matters beyond their control, despite their best due diligence efforts.***

## 5. Pilotage, Navigation Services & Marine Service Fees

The Western Provinces support the need to protect Canada's coastal and inland waterways. At the same time, the marine navigation system must be responsive, accountable and competitive. The Western Provinces suggest that it is necessary to review all options for reducing the level of costs for the provision of Canada's marine navigation services. For example, there is a need for a transparent examination of services the Canada Coast Guard (CCG) delivers that are of a commercial shipping nature, those that are provided as part of a larger policy role asserting Canadian sovereignty, or those related to recreational boating, environmental or fisheries enforcement activities.

Stakeholders have raised an issue relating to the control of navigation at public ports and waterways. With the enactment of the *Canada Marine Act*, the divestiture of public ports and the deproclamation of public harbours, there is a growing awareness of the limited ability of local port operators to control activities on bodies of water related to the ports in which they have an interest. Such activities include the use of fast recreational craft, long-term live-aboards, long-term boat storage, derelict boats and inhibited water access for legitimate users. Issues related to noise, safety and pollution dominate the concerns. The majority of the issues relate to navigation and are therefore under federal power. The ability of the CCG to take action is constrained by the limitations of the relevant legislation (*Navigable Waters Protection Act* and the *Canada Shipping Act*). As a result, there appears to be a lack of devolution of control over navigation on definable bodies of water that would provide stakeholders with the effective and low cost means to deal with such activities.

The Canadian Transportation Agency Review Panel on Pilotage completed its report in 1999. Transport Canada gave directions to the Pilotage Authorities in response to various recommendations.

The Panel recommended that the Pilotage Authorities, in partnership with pilots and all interested parties with a legitimate interest in pilotage, regularly examine all aspects of their operations and report specific steps to improve efficiencies and reduce costs in their Annual Reports to the Minister. Transport Canada asked the Pilotage Authorities to follow through on this recommendation. The Minister of Transport should confirm if these examinations have been made and publicly report on the findings.

The Panel recommended that the Pilotage Authorities should be required to hold regular consultations with interested parties on financial, operational and planning issues that affect them. Transport Canada asked the Pilotage Authorities to report on the implementation of the consultations starting in their 2000 Annual Reports. Transport Canada should confirm that these consultations are being held.

The Canadian Coast Guard and the Pilotage Authorities should further pursue structural, organizational and efficiency improvements to reduce the costs for shippers. For example, participants at the National Marine Conference in May 2002 suggested the creation of a non-profit entity to take over certain CCG functions such as vessel traffic management, buoy tending, icebreaking, and dredging. The cost and provision of these services and the degree of user cost recovery should be benchmarked against appropriate international standards and best management practices.

### ***Recommendation 13***

***Review all options for reducing the level of costs for the provision of Canada's marine navigation services by the Canada Coast Guard and Pilotage Authorities. The results of cost reduction initiatives should be made public annually.***

## **6. St. Lawrence Seaway System**

The St. Lawrence Seaway System is part of the Great Lakes-St. Lawrence River Waterway that extends from Thunder Bay to the lower St. Lawrence ports. The waterway is an important trade route for the Prairies. The Western Provinces endorse the objectives for the St. Lawrence Seaway System in the *Canada Marine Act* as their achievement will benefit our trade and in turn the economy of the Prairies.

Stakeholders in the St. Lawrence Seaway System have identified a need for new capital investment by the Government of Canada. The federal government is examining options for maintaining the long-term viability of the Great Lakes/St. Lawrence Seaway System.

Prospective federal investment in the St. Lawrence Seaway System could provide a competitive advantage to the Great Lakes St. Lawrence River Waterway over other trade routes and ports within Western Canada that serve our region. This could harm their ability to provide economic benefits to Western Canada, and adversely affect their financial health.



Section 79 (b) of the *Canada Marine Act* gives the Minister of Transport the authority to construct and maintain works that are necessary for the operation of the Seaway, and establish fees for specific Seaway services. Federal investments in non-routine maintenance and rehabilitation projects must have demonstrated benefits for shippers and other Seaway users, and exceed costs to taxpayers.

#### ***Recommendation 14***

***Federal funding for Seaway capital improvements must be fair and equitable for other ports. The federal government must balance the support it provides to marine transportation infrastructure across the country, in order not to disadvantage one marine trade over another.***

## **7. Strategic Maritime Transport Issues**

The title given to the *Canada Marine Act* suggests that the legislation may cover a broad treatment of issues that are important to Canada's economic objectives and to Canada's domestic and international trade interests. While the *Canada Marine Act* is an important first step in modernising some aspects of Canada's maritime infrastructure and port services, it falls short of an overall maritime transport policy. The Western Provinces believe that there are policy issues in addition to *Canada Marine Act* implementation issues that should be considered.

### **7.1 Supply Chain Reliability & Responsiveness**

The realities of the international "just in time" marketplace dictate that the freight transportation system must display the attributes of reliability, reduced transit time, economic efficiency, low cost, and damage minimization. Such attributes are necessary if Canada is to be competitive. Canada's port policies must be flexible enough to accommodate the needs of not only the largest ports but also those ports, such as Prince Rupert and Thunder Bay, that are in the process of repositioning their service offering in response to changes in the international marketplace.

Any disruption of port services is a serious impediment to a reliable and cost effective maritime logistics and transport system. All stakeholders in the Canadian marine transportation system have a role to play to ensure that port services are reliable, efficient and responsive to user needs. The development of port best management practices would assist in this endeavour.

## **Recommendation 15**

***Consider the establishment of port best management practices so that Canadian ports become internationally known for their supply chain reliability and responsiveness.***

### **7.2 Security Issues**

The introduction of the North American Free Trade Agreement (NAFTA) in 1995 resulted in further economic integration of the Canadian and American economies. Canada's major ports thus service markets on both sides of the border. Issues such as national security, smuggling, and the effectiveness of the Canadian portion of maritime logistics networks, vis-a-vis their U.S. counterparts, have become important public policy questions.

The issue of who pays for port policing and security measures was an important topic during the discussion surrounding the implementation of the *Canada Marine Act*, predating the national security policy issues that arose since September 11, 2001. The Review Panel's guidance document does not raise this issue. The Western Provinces are not suggesting re-instituting the Ports Canada Police. Rather, we make the point that port policing has been a long-standing federal responsibility.

In hindsight, emphasis on budgetary cost cutting in the mid-1990s, resulting in the dismantling of the Ports Canada Police, failed to adequately address national security or human security (i.e. people smuggling) interests. The Western Provinces suggest that national security interests must be viewed in a much broader context than solely within a maritime transportation policy.

The Western Provinces support the general principle of 'user pay' embodied in the *Canada Marine Act*. There is a concern that if security user fees are introduced, shippers may pay a disproportionate share of the direct or indirect costs associated with the activities required to address national security challenges. Western Canadian bulk shippers are responsible for the largest volume of marine cargo.

The Western Provinces believe that the federal government should finance the costs of all security measures in the national interest. While port authorities and participants in the marine transportation system are important stakeholders in the development and implementation of risk mitigation measures, they should not be asked to pay for the full cost of measures that are of national benefit. User fees to pay for national security concerns should not be levied on the basis of volume or tonnage tax.

## **Recommendation 16**

***The federal government should finance the costs of marine security measures in the national interest. It is further recommended that any direct user fees implemented to pay for security measures arising from commercial shipping activities should not be levied on the basis of volume or tonnage.***

## **7.3 Building a Vibrant Maritime Transport Industry in Canada**

Building a vibrant maritime transportation industry in Canada will require a government policy framework that balances the competitive needs of our domestic maritime industry with the needs of Canadian importers and exporters. To reach such balance, the federal government will need to consider the full complement of fiscal, regulatory, and service support tools available. While Canadian ports, the St. Lawrence Seaway and pilotage authorities play a vital role in facilitating maritime trade and commerce, other subjects require federal policy attention. Some of the areas where there are remaining policy gaps are as follows:

- Limited focus on Canadian shipping policy,
- Preoccupation with domestic inter-modal policy harmony, and
- Fragmentation in federal transportation policy-making.

The Western Provinces suggest that the absence of clearly defined national maritime policy objectives at the federal level could have a number of negative consequences. Enhanced efforts are required by Canadian trade officials to actively pursue reductions in barriers to transportation services (including maritime transport services) as a negotiating priority in the World Trade Organization or other forums such as the North American Free Trade Agreement (NAFTA). In particular, the NAFTA – Transportation Consultative Group on Maritime Ports Policy has identified technical trade related issues that should be addressed. Examples of such issues include developments in cargo liability insurance, gaps in existing maritime statistics, changes in maritime legislation and international shipping policy.

Building a vibrant maritime and port industry in Canada also will require consideration of the impact of policies developed in other jurisdictions to address both global competitiveness and ways to mitigate and alleviate the local impacts of port and waterfront development.

## 8. Conclusions & Summary of Recommendations

The Western Provinces believe that the continuing evolution of Canada's ports and seaway policy should be founded on the concept that Canadian ports compete on the basis that they provide superior value when compared to U.S. ports. Given that Canadian ports serve North American markets, they form part of competing global supply chains and logistics networks. The Western Provinces encourage the federal government to consider the competitiveness of the various Canadian ports not only in a domestic and North American context, but also in the context of the international maritime and commercial framework within which Canadian ports must operate.

The future of Western Canada's ports presents both challenges and opportunities. Our ports must have the financial tools with which to respond to the capital requirements of expanded or revised capacity. Our ports must continue to work with other suppliers of transportation services and infrastructure to ensure a seamless, reliable and cost effective delivery system for port users. Our ports must be able to position themselves to take advantage of the growth opportunities in the cruise ship and container traffic markets. To do all of this, they must be able to compete effectively. Our recommendations to the federal government concerning the review of the *Canada Marine Act* are in response to these challenges and opportunities.

### Financial Issues:

#### ***Recommendation 1***

Review the level of the stipend payable by port authorities and revise to reflect the increased infrastructure costs borne by ports and the reduced risk exposure of the federal government as a result of the move to commercial port operations.

#### ***Recommendation 2***

Adjust the annual stipend for port authorities that demonstrate a business case for increased infrastructure investment to capture specific market opportunities. The stipend formula should be reduced or eliminated for port authorities that satisfy this criterion on a case by case basis.

### ***Recommendation 3***

Amend Section 25 of the Canada Marine Act to enable port authorities to be eligible for federal funding for infrastructure improvements. Port authorities should be eligible to apply for federal financial support where a business case can be made and the competitiveness of other Canadian ports would not be adversely affected.

### ***Recommendation 4***

Amend Section 28 of the Canada Marine Act to remove borrowing restrictions to provide port authorities with increased financial flexibility to operate ports in a commercial manner, subject to increased public accountability.

### ***Recommendation 5***

Investigate opportunities for developing and implementing innovative financing tools in order to remain competitive with U.S. ports.

### ***Recommendation 6***

Amend the definition of fees in Section 2(1) of the Canada Marine Act to explicitly exclude leases and rentals, to facilitate administrative and regulatory efficiency.

### ***Recommendation 7***

Ensure consistency by the federal government in identifying the level of and responsibility for PILT for federal real property under the jurisdiction of port authorities and all other external agencies. The determination of PILT and other taxation of port and marine facilities must be viewed in the context of all of the factors that influence the competitiveness of Canada's ports and be sensitive to the role of ports as economic generators.

## **Governance Issues:**

### ***Recommendation 8***

Investigate opportunities for broadening industry and local government representation from the region served by each port authority while recognizing that port authority Boards should not represent narrow interests or specific users. To avoid conflict of interest, shippers, local government and other users should be represented by independent third parties with appropriate business management and transportation knowledge.

### ***Recommendation 9***

Constraints on the operations of port authorities due to regulatory requirements that impede commercial discipline must be removed by amending the Canada Marine Act to clarify the scope of activities that port authorities may perform with respect to agent status conferred on them by the Act.

### ***Recommendation 10***

Each Canada Port Authority should invest in the development of performance measurement systems to improve public accountability and to foster efficiency improvements in the marine transportation and handling system for the benefit of all stakeholders.

## **Real Property and Environmental Issues:**

### ***Recommendation 11***

Grant port authorities wider powers in managing property and assets under their administration, with appropriate provisions to ensure that local and regional growth strategies are taken into account.

### ***Recommendation 12***

Port authorities and the federal government should jointly develop best practices to manage environmental risks and investigate ways to ensure that port authority Board members are not exposed to undue liability for actions involving environmental matters beyond their control, despite their best due diligence efforts.

## **Pilotage, Navigation Services and Marine Service Fees:**

### ***Recommendation 13***

Review all options for reducing the level of costs for the provision of Canada's marine navigation services by the Canada Coast Guard and Pilotage Authorities. The results of cost reduction initiatives should be made public annually.

## **St. Lawrence Seaway System:**

### ***Recommendation 14***

Federal funding for Seaway capital improvements must be fair and equitable for other ports. The federal government must balance the support it provides to marine transportation infrastructure across the country, in order not to disadvantage one marine trade over another.

## **Strategic Maritime Transport Issues:**

### ***Recommendation 15***

Consider the establishment of port best management practices so that Canadian ports become internationally known for their supply chain reliability and responsiveness.

### ***Recommendation 16***

The federal government should finance the costs of marine security measures in the national interest. It is further recommended that any direct user fees implemented to pay for security measures arising from commercial shipping activities should not be levied on the basis of volume or tonnage.