

REVIEW OF THE VANCOUVER CONTAINER TRUCKING REGULATIONS

*(REGULATIONS AMENDING THE PORT AUTHORITIES OPERATIONS
REGULATIONS, JULY 31, 2007)*

REPORT TO THE MINISTER OF TRANSPORT,
INFRASTRUCTURE AND COMMUNITIES

TRANSPORT CANADA

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Section 1 - Background

1.1 History of the 2005 Dispute

From June 27, 2005 until August 2, 2005, owner-operator truckers who deliver and pick-up containers at the Vancouver and Fraser River Port Authorities (now Port Metro Vancouver – PMV) withdrew their services to protest an erosion of their earnings due to high fuel costs and low compensation paid by certain brokers and trucking companies. The dispute was not a labour dispute but a commercial, contractual dispute between a number of different parties who work under a set of complex arrangements. At the time, some truckers were small independent operators working directly for shippers, but the majority were sub-contractors who contract their work to shippers through brokers or larger trucking companies. This disruption caused the operations of the port authorities in the Lower Mainland of British Columbia to slow substantially, affecting the national transportation system as far eastward as Central Canada.

In an attempt to resolve the dispute between trucking companies/brokers and independent owner-operator truckers, a mediator, jointly appointed by the federal and provincial governments, recommended a Memorandum of Agreement (MOA) fixing rates and other conditions for a two-year period.

In order to facilitate the ratification of the MOA by all parties in July 2005, the Government of Canada issued an Order in Council (P.C. 2005-1356) under section 47 of the *Canada Transportation Act*, which, among other things, suspended certain provisions of the *Competition Act*. As full ratification did not occur despite this measure, a further Order in Council (P.C. 2005-1365) was issued in August 2005 to require the Vancouver and Fraser River Port Authorities to adopt the MOA as a condition of license to access the ports. Further, and in parallel with these measures, the “federal and provincial governments appointed a three person Task Force to make enquiries into the factors that led to the dispute, and to provide recommendations aimed at avoiding a recurrence while also increasing the efficiency of port operations”¹.

Subsequent to the July and August 2005 Orders-in-Council, the Government of Canada passed additional Orders in Council (P.C. 2005-1892 and P.C. 2006-3); each being a temporary, ninety-day measure, issued on the basis that they were required to stabilize the national transportation system. Upon expiry of the last Order in Council on April 20, 2006, the Port Authorities (Vancouver and Fraser River) determined that access to the ports would continue to be conditional on adherence to the MOA by prospective licensees.

¹ Final Report of the Task Force on the Transportation and Industrial Relations Issues Related to the Movement of Containers at British Columbia Lower Mainland Ports, October 26, 2005, p. 1

1.2 Federal / Provincial Task Force

The Task Force, appointed in August 2005, formulated a report and recommendations based on an extensive set of stakeholder submissions and interviews. Included in the Task Force report is a detailed background of a work stoppage in the local drayage industry that occurred in 1999, which, according to the Task Force, replicated the same issues as the stoppage of 2005: “low rates of compensation for drivers, and operating practices in the container transportation system, which limited the productivity of drivers”². Following an extensive summary of the measures taken between 1999 and 2005 to address the 1999 work stoppage, the Task Force concludes: “while it is clear that significant efforts have been made to resolve the issues that resulted in the 1999 dispute, the recurrence of the work stoppage in 2005 indicates that these measures have been inadequate”³.

In considering the report of the Task Force, which implicated the federal and British Columbia governments and the former Vancouver and Fraser River Port Authorities, Transport Canada determined that a longer-term measure was required to replace the series of Orders in Council that had been promulgated under the authority of the *Canada Transportation Act*. It was determined that the most feasible approach should involve a set of measures within a very specific regulatory framework.

1.3 Federal Regulations of November 2006

As local trucking falls under provincial jurisdiction, the federal government is limited in its authority to enact regulations applying generally to this sector. The Government of Canada can, however, make regulations that apply to certain federal entities, in this case the Canada Port Authorities located in the British Columbia Lower Mainland. Under the authority of section 62 of the *Canada Marine Act*, the Governor in Council can make regulations for Canada Port Authorities in respect of controlling access to port property. Specific authorities are established in the *Port Authorities Operations Regulations*.

The enactment of section 31.1 of the *Port Authorities Operations Regulations* (which came into effect on November 9, 2006 and were published in the *Canada Gazette*, Part II, on November 29, 2006) placed a legal obligation on the the Vancouver and Fraser River Port Authorities to prohibit access to their respective ports to a truck or other road transportation equipment for the delivery, pick-up or movement of containers into, within or out of the port, unless the Port Authority had issued a written authorization to allow access in the form of a license, and the holder of that license was in compliance with a minimum set of conditions.

² Task Force Report, p. 6

³ *ibid*, p. 8

Pursuant to this regulation, the minimum conditions required to be specified in the licence and with which the license holder had to comply and ensure compliance with, were in respect of:

- any appointment or reservation system to be established or adopted by the Port Authority for the port;
- the requirements of the Port Authority respecting the identification of trucks and other road transportation equipment and the tracking, monitoring, location and movement of these trucks and other road transportation equipment into, within or out of the port; and
- any applicable law in respect of rates of remuneration that the owner-operator of a tractor covered by an authorization is to receive for the delivery, pick-up or movement of containers into, within or out of the port.

1.4 Impact of Increased Union Certification

Over the course of 2005 and 2006, while industry stakeholders were still in the process of adapting to the MOA, Orders in Council and the initial port licensing system, a large number of owner-operator truckers became certified for collective bargaining, mostly under the jurisdiction of the British Columbia Labour Relations Board. It was understood at the time by Transport Canada that up to half of the owner-operators working at the Lower Mainland ports had been organized for collective bargaining, mainly by the Canadian Auto Workers (CAW). The Teamsters already represented a substantial number of employee and hourly-wage drivers, who were generally not defined as “owner-operators” or subject to the 2005 dispute.

The MOA effectively stabilized the rates of remuneration for owner-operator truckers over its two-year duration. However, in early 2007, several industry stakeholders expressed significant concern that, in the absence of applicable legislation, there was a high risk that rates of remuneration could decline upon the expiry of the MOA for those owner-operators not subject to collective bargaining. It was recognized by Transport Canada that such a decline in rates could lead to the same conditions that prevailed during the disruption of 2005 and, in turn, impact negatively on the national transportation system in its entirety, in addition to consequences for trucking activities at the Lower Mainland ports and renewed questions regarding the reliability and competitiveness of Canadian ports.

1.5 Formulation of 2007 Amended Regulations

Faced with the pending expiry of the MOA at the beginning of August 2007 and the uncertainty this was generating within the industry, Transport Canada undertook an assessment of the options available to create a stable remuneration regime for those owner-operators not subject to collective bargaining and who would not have protection once the MOA expired. As such, and in order to pre-empt a possible work stoppage, the federal government took the action of pre-publishing regulations on June 19, 2007, which amended the regulations of November 2006.

The proposal to amend the regulations, again directed at the Vancouver and Fraser River Port Authorities, sought to maintain stability for rates of remuneration established under the MOA and, to the greatest extent possible, reflect rates of remuneration that have been negotiated by industry and are binding under collective agreements. The pre-published regulations proposed that rates of remuneration that have been negotiated and agreed to on behalf of those owner-operator truckers that are subject to a collective agreement also be comparably applied to owner-operator truckers that are not subject to a collective agreement. The amended regulations allowed for a range of rates of remuneration to be paid to owner-operators on the basis of collective agreements, and allowed for fluidity of rates of remuneration due to the amendment or renegotiation of collective agreements.

Stakeholder reaction to the pre-published regulations was mixed. Labour groups were of the view that the proposed regulations did not go far enough in protecting a minimum rate that should be paid to owner-operators, while a number of companies, trucking associations and other business-oriented entities opposed the proposed regulations on the philosophical basis that it represented government interference in the market. Nevertheless, no other approaches were suggested to Transport Canada of a non-regulatory nature that would have the effect of protecting rate stability in the medium to long-term.

In finalizing the amended regulations, and for greater certainty that undercutting of rates and other compensation did not recur upon expiry of the MOA, Transport Canada added a provision to the amended regulations requiring that the rate of remuneration paid to an owner-operator could not be less than the applicable rate of remuneration set out in the MOA. The amended federal regulations came into effect on July 31, 2007. The federal regulations of 2007 are attached as **Annex I**.

Actions by the PMV and Province of British Columbia are intrinsically tied to the regulatory framework.

1.6 Port Metro Vancouver Measures

PMV has become more diligent in its Truck Licensing System (TLS) administration (e.g. cancellation of inactive licenses/permits) and is working closely with the Province of British Columbia to ensure more rigorous enforcement of licensing provisions flowing from the regulatory framework. The Port has also put in place a number of measures to monitor and improve efficiency of gate operations and truck turnaround times.

In addition to fulfilling the requirements imposed upon them under the regulations, PMV has also proceeded with several policy decisions designed to control the issuance of truck licenses and permits. In particular, PMV has had in place, since December 2006, a moratorium on the issuance of new licenses or permits to independent owner-operators who were not operating at the Port within a particular timeframe. While Transport Canada understands that the principal objective of this moratorium is to instill greater business discipline on the industry through a direct employer-employee relationship, the ultimate impacts of this policy decision, and impacts on the long-term stability of the local container drayage sector, remain unclear until further analysis is undertaken.

1.7 Province of British Columbia Measures

In consultation with PMV and Transport Canada, the Province established a dispute resolution mechanism in July 2007 to support the amended federal regulations and, as of February 2009, has put in place enhanced dispute resolution measures with more punitive provisions for infractions. These enhanced investigative/auditing/enforcement measures were implemented with the support of all parties and have helped to ensure that parties providing trucking services to the port are operating in a manner consistent with regulatory/licensing requirements.

The Trucking Forum, under the purview of the Province, has worked well in promoting ongoing dialogue among parties and directing the conduct of useful studies. The Forum membership includes key stakeholders engaged in trucking operations in the Lower Mainland, as well as shippers and terminal operators. The Province has also put in place a business improvement module to allow owner-operators to better understand their operating and capital costs.

A summary of the measures implemented to date by PMV and the Province of British Columbia are outlined in **Annex II – Overview of Supporting Mechanisms**. In addition, an Overview of Provincial Investigation and Dispute Resolution Program is attached as **Annex III** and the Lower Mainland Container Logistics Stakeholders Forum (Trucking Forum): Terms of Reference and Mandate are attached as **Annex IV**.

1.8 Nature and Scope of Review

Although representations received in 2007 regarding the regulatory proposal were mixed, there was clear acknowledgement by all stakeholders for the need to preserve reliability and stability in port trucking operations and therefore an understanding of why the Government of Canada put forward the regulatory proposal. All stakeholders stated support for a review of this measure to account for its effectiveness and to evaluate the overall state of the industry. It was determined that a review within two years of the coming into force of the amending regulations would provide time for the industry to adapt to the regulatory framework and accompanying licensing and dispute resolution programs.

The regulated review requirement is narrow, stipulating that only paragraph 2(b) of the regulations, referring to rates of remuneration for owner-operator truck drivers, be reviewed. However, in order to gain a complete understanding of how this industry has progressed in the last several years, the current review is supported by an assessment of the industry structure, labour relations environment and operational indicators. The results of the review are for the consideration of the Minister of Transport, Infrastructure and Communities. There is no sunset clause and the regulations continue to be in effect in the event that the review is completed and no additional action is taken.

Section 2 - Review of Analytical Findings

2.1 Adequacy of Remuneration and Overall Regulatory Framework

Please see **Annex V** for a detailed review of the collective bargaining landscape, an assessment of remuneration provisions and the relevancy of the overall regulatory framework.

The establishment of collective bargaining for owner-operators introduced market-based elements into this segment of the industry's compensatory regime. The linkage of collective agreements to the licensing regime should allow rate levels and other compensatory provisions to be renegotiated with each new round of collective bargaining and this is the underpinning of the federal regulatory structure.

A review of labour agreements indicates that the unions have been unable to bargain for a rate higher than the regulated minimum set by the MOA. In part, this may be due to the timing of the negotiations, since they took place in the context of reduced activity levels in the drayage sector due to the overall economic downturn and decline in port traffic levels. CAW Local 2006 has expressed significant concern over reduced revenues for their members due to loss of market share and over erosion in their membership base.

Despite the continued reference to the MOA rates of remuneration contained in renewed collective agreements, some stakeholders have asserted that the MOA rates (therefore, the regulated baseline rates) are artificially high and do not reflect the current cost of providing the service under existing economic conditions (see Section 3). While this may have some merit, stakeholders have not outlined to Transport Canada any robust alternative that provides greater flexibility for adjusting rates to manage economic downturns and upturns without resulting in regulatory loopholes that would lead to undercutting of rates, thereby re-establishing the conditions present in 2005.

The fundamental premise of the amended federal regulations of 2007 was to advance a sector/market approach based on the ongoing negotiation and renewal of collective agreements. This concept has worked well and has demonstrated itself to be self-sustaining, albeit within the limited period of time of this review. At the onset of the amended federal regulations in July 2007, the PMV website listed 19 collective agreements that potential licensees could select as a remuneration benchmark as stipulated in the 2007 regulations. Many of these collective agreements have completed their cycle, expiring in December 2008. A number have been recently renegotiated based on the rates that were in effect at the end of 2008, for a further period of eighteen months (to July 2010).

Notwithstanding that 24 months (since the amended federal regulations were put in place) is a relatively short time for the sector to be fully integrated within the regulatory framework, a stable situation has prevailed and ushered in better business practices overall. Continued reliance on the MOA rates, as reflected in recently renegotiated collective agreements, indicates that the MOA remains the most acceptable baseline for rates, at least for the next eighteen-month period. Table 1 below, compares the situation following the 1999 dispute, as identified by the 2005 Task Force, with the current regulatory framework.

Table 1, Comparison of Post-1999 Regime to Current Regulatory Framework

Situation following 1999 Work Stoppage	Current Regime
Licensing regime had no tie-in to compensation	Licensing regime requires designation of collective agreement or benchmark rate (MOA) for owner-operator
Undercutting prevalent	Licensing conditions and enhanced provincial dispute resolution mechanism (audits and investigations by Province) ensure rate adherence – penalties and punitive measures in place
Trucking companies with collective agreements vulnerable and at competitive disadvantage	Linkage of compensation to licensing regime minimizes leakage as result of non-adherence to rate levels
Lack of fuel escalation provision	Collective agreements provide for fuel escalation
Lack of (or ineffective) dispute resolution mechanism	Robust dispute resolution process

2.2 Sector Profile and Operating Indicators

For a detailed overview of the operational indicators and supporting analysis regarding the industry structure, market share, terminal gate transactions and waiting times, terminal reservation systems and port container drayage costs, please see **Annex VI**.

The number of trucks licensed in the PMV TLS has actually declined from around 2,400 to 2,000 trucks from 2007 to 2009. Based on anecdotal information from industry stakeholders this does not appear to have had any impact on the level of competition in the industry. This casts doubt on the view espoused by some stakeholders that cutthroat competition in the drayage sector is a simple matter of “too many trucks”, or that rate cutting has resulted from entry of more truck drivers into port drayage from the long-haul sector. The number of trucks licensed in the TLS was also remarkably stable from 1999 through 2005. However, the TLS data showed that the number of licensed companies increased by over 50 percent by 2007 in spite of the fact that the total number of trucks in the local drayage fleet was relatively unchanged. The reason for this dramatic inflation in company numbers is not clear. With the introduction of Port Metro Vancouver’s two-tiered licensing system in 2008, the number of companies (“Full Service Operators”) has now fallen to a level close to that of 1999 and 2005.

Analysis of data on actual container terminal gate entries provides a clearer picture of the industry’s structure. The data on number of gate entries by individual trucks illustrates why the licensed fleet size is not a good indicator of the level of competition. Out of approximately 3,200 trucks recorded entering the container terminal gates over a three-month period in 2006, 60 percent made less than 10 visits, and almost 30 percent visited only once.

Less than 25 percent of trucks accounted for 80 percent of gate entries in 2006. Although more recent data would be desirable, this appears to indicate that a relatively small portion of the available local drayage fleet is intensively engaged in drayage activity at the port, and within the existing PMV licensed fleet there is sufficient capacity to accommodate substantial increases in traffic.

The data on container terminal gate entries by company tends to support the contention of the larger firms that they have been losing market share to smaller firms. The change from 2006 to 2008 is dramatic. In 2006, the top 21 firms accounted for 80 percent of gate entries; by 2008 there were 106 firms accounting for the same share. These results are based on a small and unverifiable data sample, therefore suggesting that additional data is needed to confirm whether these developments are indeed taking place. While the existing analysis indicates that increased fragmentation of the industry has been characterized by a proliferation of smaller non-unionized firms, apparently licensed by the PMV, that are eating into the market shares of larger, more established companies, it is not clear how this will ultimately affect the stability of this sector.

Such developments could indicate that small, non-unionized employee-employer models are being pursued as a means of circumventing the existing regulatory requirements, thereby driving down the cost of local drayage services and placing pressure on companies utilizing unionized and non-unionized owner-operators who cannot lower remuneration without violating the regulations. Over time, the logical conclusion is that such actions undermine the collective bargaining environment that currently exists, as well as the stability of trucking services to the port. Additional analysis regarding the composition of these new firms and their employment structures is required to determine whether this fragmentation of the industry is a sign that attempts are being made to circumvent regulatory requirements or whether it indicates more positive competitive forces at play.

Analysis of industry costs indicates that cost escalation in the drayage sector has been very modest, and consequently, cost pressures are unlikely to be a major concern in the foreseeable future.

Section 3 - Stakeholder Commentary & Departmental Response

A Public Notice (attached as **Annex VII**) was prepared in English and French and was published in regional newspapers (the Vancouver Sun, Vancouver Province and a French-language equivalent) on May 9, 2009. A mail out to targeted stakeholders and associations (those that provided representations to the federal government on this issue in the past and for whom contact information was publicly available) was distributed during the second and third week of May 2009. Interested parties were asked to provide comment by June 5, 2009, although Transport Canada accepted submissions from stakeholders up to and including July 8, 2009. Transport Canada wishes to thank all interested parties for the submissions received and the views expressed therein.

Transport Canada received twelve submissions from a range of affected stakeholders including a labour union, a trucking association, other industry associations, a trucking company providing drayage services at the port, a number of container truckers, the PMV and the Provinces of British Columbia, Alberta and Saskatchewan. Please see **Annex VIII** for a list of stakeholders who submitted representations.

Seven of the twelve submissions concluded that the federal regulations contributed to stability in port container trucking and called for the regulations to remain in place. Two submissions indicated that, while the respective organizations generally do not support government regulation of the marketplace, the groups are prepared to support the regulation in principle on the basis that stability of trucking operations is of greater long-term and strategic importance. Three stakeholders were opposed to the regulatory framework.

With respect to enforcement, one submission called for continued enforcement as intended, along with a greater degree of transparency (i.e., public reporting of sanctions and suspensions as a deterrent mechanism). The issue of greater transparency in enforcement will be brought to the attention of the British Columbia Ministry of Transportation and Infrastructure and the PMV.

Similarly, stakeholders raised other issues that fall within the purview of the Province of British Columbia or that may be more appropriately examined by the Trucking Forum. One stakeholder noted that the reservation system has not improved wait time for truckers, citing incorrect reservations, understaffing of terminals, incorrect booking, EDR (earliest receiving date) being changed and delayed ships as factors. The stakeholder also noted that there is constant pressure by customers to cut rates – the main force behind company and owner-operator attempts to undercut regulatory requirement. These issues will be brought to the attention of the Trucking Forum.

A number of stakeholder submissions essentially reiterated positions established by the respective organization in the past. The three organizations opposed to the regulatory framework do so on the philosophical basis that government should not use regulation to intervene in the market. Transport Canada has responded to this previously in the context of the Regulatory Impact Analysis Statement, accompanying the 2007 regulations, to note that government is only establishing the baseline; collective bargaining by industry (i.e. the market) is intended to sustain rates of remuneration over time.

A number of submissions agreed that regulation was necessary for protecting stability of operations, but noted that the existing provisions are not responsive or flexible to downturns in the economy. As the baseline rates are fixed, any drop in the cost of shipping a container as a result of economic conditions is borne inequitably by the company, rather than a shared decline in revenues between the company and the driver. These stakeholders indicated that declining traffic volumes and prices for the movement of containers would lead to creative practices by both companies and drivers to undercut regulated rates in order to maintain/increase market share. As such, it was proposed that a “fee-for-service” approach be implemented by regulation, rather than the current fixed fee approach. As the submissions did not provide significant detail as to how such a regulatory system could be administered and enforced while maintaining stability, Transport Canada cannot fully assess the merit of such an approach for the purposes of this review. However, the Provincial Trucking Forum may provide a venue where such proposals could be discussed and evaluated in a more comprehensive manner. As participants on the Trucking Forum, the federal and provincial governments can be made aware of such proposals and the feasibility of their implementation.

An additional submission recommended that, if Transport Canada does decide to continue regulating port trucking, a strategy should be developed amongst Transport Canada, the Province of British Columbia and PMV that does not require continued economic regulatory intervention in the container trucking sector by 2011.

During the review (but not contained in submissions), some stakeholders alleged that a number of owner-operators were transferring their trucks to trucking companies for the purpose of becoming an employee driver and circumventing the rate regulations. Stakeholders have also alleged that some owner-operators are providing “rebates” or “kickbacks” to companies in exchange for more work. To the extent that new models are being utilized to circumvent the regulatory and enforcement frameworks and drive down rates, Transport Canada will need to work with the Province and PMV to understand the full implications and what actions may be available in the event that stability of trucking operations at the port comes into question, as a result of these types of activities.

Some stakeholders also indicated that the TLS moratorium in place since 2007 by the PMV in respect of owner-operators is discriminatory and will ultimately lead to instability, as these drivers are not prepared to move to another business model or exit the industry altogether, which is the presumed objective of the PMV moratorium. In this regard, Transport Canada is of the view that the port should ensure an adequate supply of truck services through the mechanisms available, but also that PMV conduct itself in a fair and transparent manner in utilizing such mechanisms.

Section 4 - Conclusions

4.1 Assessment

Since the five-week disruption of trucking activities in June and July 2005, a significant number of measures have been implemented to ensure continuity of Lower Mainland trucking operations, mainly under the guidance of the Government of Canada, the Province of British Columbia and the PMV, although individual stakeholders have also taken steps to adapt their operations in a manner that supports greater industry stability.

The local container drayage industry operating in the Lower Mainland could be characterized as consisting of a complex set of interconnected relationships amongst individual owner-operator truckers, employee truckers, brokers, small and large companies, shippers, receivers, carriers, off-dock, stuffing and de-stuffing operators, warehouses, rail yards and terminal operators. The business conditions within which these relationships function are highly competitive and are a by-product of de-regulation of the inter-provincial and intra-provincial trucking sectors, implemented in the 1970s and 1980s.

The conditions precedent to the 2005 dispute (and an earlier dispute in 1999) were largely the result of this highly competitive business environment, including low barriers to initial market entry, and it is clear that no single measure or action has been available to a particular party to allow for the reformation and stabilization of this industry. Rather, the complexities of this industry have forced all stakeholders to participate in collective solutions and, with some exceptions, the majority of affected parties have supported the various initiatives proposed and implemented by governments. These stakeholders have done so for a variety of reasons, e.g. maintaining a livelihood, market share for their company or Asia-Pacific Gateway reliability. Nevertheless, as highlighted in the Stakeholder Commentary section of this review, there remains a minority of affected parties that are opposed to a regulatory solution to the stabilization of this segment of industry on the basis of perceived intervention in the marketplace. Despite these objections, made generally at a philosophical level, there has yet to be a more effective solution, or set of solutions, proposed to the Government of Canada.

The current approach to sustaining local port drayage stability is founded on three pillars: the federal regulatory framework, the resulting licensing/permitting systems implemented by the PMV and the investigative/enforcement program of the Province. In turn, this three-pillar approach was adapted to account for the increasing collective bargaining landscape that evolved over 2005 and 2006. While it is recognized that the business models employed in the local container drayage sector will continue to change in response to competitive pressures, it is also recognized that the collective bargaining processes that have been established should be provided ample opportunity to mature and advance in order to determine whether these processes, in concert with the three pillars, can adapt or evolve effectively to the new dynamics in this industry.

The global recession and its impacts on port volumes and trucking activity specifically, and the local and national economies generally, have not been conducive to, or demonstrative of, the typical renewal environment for collective agreements. While Transport Canada understands that some improvements/changes have been negotiated in those agreements that were renewed in early 2009, predictably, the main elements of compensation remain frozen for the duration of the newly negotiated agreements.

As such, Transport Canada concludes that the existing three-pillar approach, underpinned by an evolving collective bargaining regime, has not been fully tested. Additional time and improved economic and collective bargaining circumstances are required in order to assess the regulatory framework pertaining to rate remuneration and whether modifications to this approach should be recommended to the Minister of Transport, Infrastructure and Communities. Transport Canada recognizes, as well, that changes affecting one pillar could have corresponding consequences, possibly significant, for the other two pillars.

In this regard it is important to emphasize the original objectives of the Government of Canada in putting in place specific measures, both to address the immediate impact of the 2005 disruption and the long-term operation of the local container drayage industry. These objectives are succinctly set out in the Regulatory Impact Analysis Statement that accompanied the *Regulations Amending the Port Authorities Operations Regulations*: “the amended regulations are necessary to ensure the maintenance of order and safety in the ports, the unimpeded flow of national trade, and the reliability of port operations consistent with Asia-Pacific Gateway and Corridor Initiative objectives. It is intended that the regulations as amended will contribute towards long-term stability in container trucking operations in the Lower Mainland of British Columbia”.⁴

Although the amended federal regulations were not intended to promote one set of business practices or a particular business model over others, long-term stability in port trucking operations was the objective that aligned the three pillars in supporting the existing approach. While all principal parties have complied with their obligations under the regulatory framework, it is clear that the changing structure of the industry is at least partly the result of policy and operating decisions by some stakeholders that are outside the scope of the regulatory framework, in combination with the competitive nature of this particular industry to constantly seek out ways of circumventing the existing regulatory requirements as a means to providing a lower cost service. In particular, the issue of appropriate truck supply relative to port traffic volumes is emerging as a challenge that will require further examination in addition to the issue of increasing fragmentation within the industry.

It is clear that the principal parties affected by the current regulatory approach must work more cohesively to ensure that short and long-term objectives associated with preserving the stability of local drayage operations are aligned, as it is not clear that some of the recent changes precipitated by unilateral decisions are consistent with reliable and stable port trucking operations.

⁴ P.C. 2007-1143, July 31, 2009, p. 3

Despite these emerging issues, the framework provided for by the regulatory measures under review, in combination with the dispute resolution regime put in place by the Province of British Columbia, have together resulted in maintaining continued stability in container trucking operations at Port Metro Vancouver.

In summary, most of the factors that led to the trucking dispute in 2005 – rising costs and practices in port operations, which limited the revenue potential for owner-operators – are absent in the current environment. However, one element, downward pressure on rates, appears to have returned in concert with increased fragmentation of the industry, characterized by a smaller market share spread across a much larger number of companies. As these developments have been very recent, it is not clear at this point what is driving these changes or what the impact will be on the overall stability of this sector over time. If the increase in the number of companies is a result of parties looking for any competitive advantage in a declining market, that is, fewer containers moving through PMV in 2009 than in 2008, the potential for instability will increase, at least in the short-term. Employee drivers of companies are not subject to the rate provisions of the 2007 regulations under review. The rates of owner-operators (unionized and non-unionized) are protected by the regulations and/or collective agreements, but this may not help if their employers continue to lose business and the owner-operators, in turn, have no work.

Collective agreements have been negotiated and, in some cases, renegotiated once. The dispute resolution process put in place by the Province of British Columbia has become more rigorous and strengthened in response to stakeholder concerns. PMV and its terminal operators have put measures in place with the aim of improving overall truck operations at the port in order to reduce wait times, queuing, turnaround times and overall congestion. The analysis of operational indicators appears to suggest that additional efforts are required to address truck gate efficiencies and implement a more effective, collaborative, user-friendly reservation system for all terminals. Further study of wait times outside of terminal gates and queuing at locations outside of port property would also be beneficial in determining the true progress made in improving Lower Mainland trucking efficiencies. Nevertheless, these various components have resulted in a comprehensive framework that has served to maintain stability. The Provincial Trucking Forum has emerged as a venue for ongoing consultation and productive research. These various measures have evolved and continue to evolve over time in response to changing conditions and stakeholder input.

It is difficult to isolate the impact of the regulations on the drayage sector because there have been other major changes which have influenced the industry, particularly implementation of the mandatory reservation systems by the terminal operators and changes to the TLS, including the moratorium by PMV, on new licenses for owner-operators. All of these factors have the potential to change the competitive balance among firms. The apparent increasing fragmentation of the industry is of concern if it threatens the stability of services to the port, and it would be prudent to undertake further analysis to verify the implications of these changes in the institutional and operating environment on the long-term future of the sector.

Decisions taken by individuals or companies, which, in the short-term, may appear rational, can undermine the ability of this particular sector to move to a stable, predictable operating model in the long-term. It is difficult for governments alone, whether through regulation or dispute resolution processes, to anticipate and close off every avenue for parties who choose to seek out and exploit opportunities to undercut. Both users of trucking services and suppliers must value and support a stable trucking supply model and take responsibility for the state of the industry. It is important that continuous monitoring be undertaken of all developments that may have an impact on container trucking operations to verify the implications of institutional and operational changes on the long-term future of the sector. Furthermore, ongoing, focused discussions with the key stakeholders would be useful in moving all parties towards a common objective and measures that support stability.

4.2 Recommendations

It is therefore recommended that:

- 1) No changes or modifications be made to the *Regulations Amending the Port Authorities Operations Regulations* at the present time;
- 2) Transport Canada continue to monitor the structure and practices of the local container drayage industry in the Lower Mainland of British Columbia, on its own accord and within the purview of departmental participation on the Province of British Columbia's Trucking Forum;
- 3) Transport Canada undertake an annual overview of the structure of the local container drayage industry in the Lower Mainland of British Columbia to determine if and how the industry is changing and potential impacts on stability; a summary of results will be submitted to the Minister of Transport, Infrastructure and Communities;
- 4) Transport Canada, the British Columbia Ministry of Transportation and Infrastructure, the British Columbia Ministry of Labour and Port Metro Vancouver formalize a Steering Committee structure and meet on a semi-annual basis to discuss emerging issues and recommend measures to ensure that all parties are working in a consistent manner towards the objective of long-term stability, including the assessment of existing and potential measures and their intended and unintended outcomes;
- 5) The Province of British Columbia's Trucking Forum continue to function as the appropriate venue to discuss key stakeholder input and the need for operational research;
- 6) Transport Canada continue to contribute financially and with policy support to the Province of British Columbia's Trucking Forum; and
- 7) On the basis of the above, the Minister of Transport, Infrastructure and Communities initiate a comprehensive review of the structure and operation of the local port container trucking industry in the Lower Mainland within five years following the completion of the current review.

Annex I

Regulations Amending the Port Authorities Operations Regulations

AMENDMENT

1. Subsection 31.1(2) of the *Port Authorities Operations Regulations* ([see footnote 1](#)) is replaced by the following:

(2) The written authorization referred to in subsection (1) shall specify the following minimum conditions:

(a) that the holder shall comply with and ensure compliance with

(i) any appointment or reservation system established or adopted by the port authority for the port, and

(ii) the requirements established by the port authority respecting the identification of trucks and other road transportation equipment and the tracking, monitoring, location and movement of trucks and other road transportation equipment into, within or out of the port; and

(b) that the holder shall ensure the remuneration — for the delivery, pick-up or movement of containers into, within or out of the port — of an owner-operator of a tractor covered by the authorization is in accordance with

(i) the applicable rate of remuneration set out in a collective agreement that is binding on the owner-operator of the tractor,

(ii) in the absence of a collective agreement referred to in subparagraph (i), any applicable law in respect of rates of remuneration, or

(iii) in the absence of a collective agreement referred to in subparagraph (i) and a law referred to in subparagraph (ii), a rate of remuneration that is at least equivalent to the applicable rate set out in a collective agreement, as amended from time to time or renegotiated,

(A) that is binding on any other owner-operator of a tractor,

(B) that is posted on the Internet site of the Vancouver Port Authority, and

(C) whose applicable rate of remuneration is no less than that set out in the Memorandum of Agreement between Trucking Companies (Owners/Brokers) and the Vancouver Container Truckers' Association dated July 29, 2005.

(3) Paragraph (2)(b) does not apply in respect of an owner-operator of a tractor who is transporting containers referred to in that paragraph to or from a place outside the Lower Mainland of British Columbia.

(4) The Minister shall, within two years after the coming into force of this subsection, conduct a review of the operation of paragraph (2)(b) and, taking into consideration the results of that review, decide whether to modify that paragraph.

COMING INTO FORCE

2. These Regulations come into force on the day on which they are registered.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations)

Description

The Regulations Amending the Port Authorities Operations Regulations are made pursuant to subsection 62(1) of the Canada Marine Act (CMA). The amending Regulations replace subsection 31.1(2) of the Port Authorities Operations Regulations (the Regulations) pertaining to the Vancouver Port Authority and Fraser River Port Authority (the “Port Authorities”), which came into effect on November 9, 2006 and were published in the Canada Gazette, Part II, on November 29, 2006.

The enactment of section 31.1 of the Regulations placed a legal obligation on the Port Authorities to prohibit access to their respective ports to a truck or other road transportation equipment for the delivery, pick-up or movement of containers into, within or out of the port, unless the Port Authority has issued a written authorization to allow access in the form of a license, and the holder of that license is in compliance with a minimum set of conditions.

The minimum conditions currently required to be specified in the license and with which the license holder must comply and ensure compliance with are in respect of:

- any appointment or reservation system to be established or adopted by the Port Authority for the port;
- the requirements of the Port Authority respecting the identification of trucks and other road transportation equipment and the tracking, monitoring, location and movement of these trucks and other road transportation equipment into, within or out of the port; and
- any applicable law in respect of rates of remuneration that the owner-operator of a tractor covered by an authorization is to receive for the delivery, pick-up or movement of containers into, within or out of the port.

The amending Regulations modify the condition of licence pertaining to the rate of remuneration for the delivery, pick-up or movement of containers into, within or out of the port for owner-operator truckers such that, in the absence of any applicable law in respect

of rates of remuneration, or in the absence of a collective agreement that is applicable to the owner-operator, as a condition of licence to access the port, the owner-operator is to receive a rate of remuneration at least equivalent to a rate of remuneration contained in any existing collective agreement made publicly available on the Internet site of the Vancouver

Port Authority that applies to owner-operator truckers engaged in the movement of containers at the ports. As a result of representations received during the prepublication period, the Regulations have been amended to further specify that the rate of remuneration paid to the owner-operator cannot be less than the rate of remuneration set out in the Memorandum of Agreement (MOA) between Trucking Companies and the Vancouver Container Truckers Association, dated July 29, 2005. This is discussed further below under “Consultation”. Should an applicable law in respect of rates of remuneration for owner-operator truckers be enacted, that law would prevail.

The amended Regulations are necessary to ensure: the maintenance of order and safety in the ports; the unimpeded flow of national trade; and the reliability of port operations consistent with Asia-Pacific Gateway and Corridor Initiative objectives. It is intended that the Regulations as amended will contribute towards long-term stability in container trucking operations in the Lower Mainland of British Columbia.

The MOA was recommended for a two year duration by a mediator in July 2005 as a result of discussions between two separate groups: trucking companies or brokers and independent owner-operator truckers. These discussions were commenced in response to a disruption of container trucking operations at ports in the Lower Mainland of British Columbia. On August 4, 2005, the Government of Canada issued an Order in Council, under section 47 of the *Canada Transportation Act*, requiring the Port Authorities to adopt the MOA as a condition of licence for accessing the ports. Similar Orders in Council were subsequently issued and, upon expiry of the last Order in Council on April 20, 2006, the Port Authorities determined that access to the ports would continue to be conditional on adherence to the MOA by prospective licensees. The MOA largely stabilized the rates of remuneration for owner-operator truckers for the duration of its effective term.

Several industry stakeholders have expressed significant concern that, in the absence of applicable legislation, there is a high risk that rates of remuneration could decline upon the expiry of the MOA for those owner-operators not subject to collective bargaining. Such a decline in rates could lead to the same conditions that prevailed during the disruption of 2005 and, in turn, could impact on the national transportation system in its entirety.

The amended Regulations seek to maintain the stability for rates of remuneration established under the MOA and, to the greatest extent possible, reflect rates of remuneration that have been negotiated by industry and are binding under collective agreements. The Regulations ensure that rates of remuneration that have been negotiated and agreed to on behalf of those owner-operator truckers that are subject to a collective agreement are also comparably applied to owner-operator truckers that are not subject to a collective agreement. The amended Regulations allow for a range of rates of remuneration to be paid to owner-operators on the basis of collective agreements, and allow for fluidity of rates of remuneration due to the amendment or renegotiation of collective agreements.

However, for greater certainty that undercutting of rates and other compensation do not recur upon expiry of the MOA, the amended Regulations require that the rate of remuneration paid to an owner-operator cannot be less than the applicable rate of remuneration set out in the MOA.

Alternatives

There is no alternative to regulatory action to achieve the desired objective. It has been suggested by some groups and individuals that the Government of Canada could extend or replace the MOA at the expiry of its term on August 2, 2007. In order to facilitate the ratification of the MOA in 2005, the Government of Canada issued an Order in Council (P.C. 2005-1356) under section 47 of the *Canada Transportation Act*, which, among other things, suspended certain provisions of the *Competition Act*. As full ratification did not occur, a further Order in Council (P.C. 2005-1365) was issued in August 2005 to require the Port Authorities to adopt the MOA as a condition of license to access the ports.

The Government of Canada subsequently passed additional Orders in Council (P.C. 2005-1365, P.C. 2005-1892 and P.C. 2006-3), although each was a temporary, ninety-day measure, issued on the basis that they were required to stabilize the national transportation system because an extraordinary disruption to the national transportation system was either occurring or imminent, that failure to act would be contrary to the interests of users and operators of the national transportation system, and there was no other Act of Parliament that could be used to remedy the situation. In order to support the making of a further Order in Council based on such a determination, an extraordinary disruption of the national transportation system would need to be imminent or occurring. This alone could cause important damage to the reputation of Canada as a reliable gateway and could result in costs to users. However, it is uncertain whether any of the tests set out in the *Canada Transportation Act* could be met as a result of a number of actions that have been taken to stabilize the situation since 2005. Moreover, there is no means of assuring that the issuance of an additional Order in Council would result in the negotiation of a new or extended MOA. Regulating at this time is a preventive measure to ensure the stability of the ports operating in the British Columbia Lower Mainland.

As mentioned earlier, the amended Regulations will require that rates of remuneration for independent owner-operators who are not subject to collective agreements be at least equivalent to those established in collective agreements binding other owner-operators, but no lower than the rates of remuneration set out in the MOA.

Benefits and Costs

Failure to implement the amending Regulations would likely lead to a disruption of container trucking activities at the Port Authorities, which in turn could negatively impact the national transportation system and Canadian international competitiveness, in particular in respect of Canada-Asia trade prospects and relationships.

Canada's West Coast ports currently handle approximately 8 % of the total West Coast (Canada and the United States) container trade and close to 70 % of Canada's imports from the Asia-Pacific region. The British Columbia Ports Strategy, released by the Province of British Columbia in 2005, sets a target for Canada's West Coast ports to handle 15 % of the total West Coast container trade by 2020. The Province has designated significant funding for projects designed to accommodate this growth in both overall traffic and Canadian port market share of Asian trade. The Government of Canada has likewise recognized that international trading patterns are shifting and, increasingly, substantial volumes of Canada's trade will be tied to Asian economies. Recognizing the importance of remaining competitive and the national benefits to pursuing trade with Asian economies, the Government of Canada has announced \$1 billion in funding towards projects in support of the Asia-Pacific Gateway and Corridor Initiative.

Numerous Canadian trade missions to China and other Asian countries have reported that Asian shippers value reliability and labour stability when planning vessel routings and gateway preference. Canadian officials have been reminded by Asian shippers of the damage caused to the reputation of British Columbia Lower Mainland ports as a result of the 2005 trucking disruption, which lasted four weeks and cost the Canadian economy approximately \$120 million.

Clearly, a disruption similar to that of 2005 would further damage the reputation of Canadian West Coast ports, cost the Canadian economy millions of dollars, set back federal and provincial promotional efforts designed to increase private investment and utilization of the Asia-Pacific Gateway and possibly decrease the relevance of infrastructure funding already dedicated by the federal and provincial governments and the private sector (anticipated total investment of \$5.8 billion).

Conversely, the benefits of the amended Regulations could significantly mitigate the risks of port disruption and the risk of damage to Canadian trade and competitiveness.

The amended Regulations are not expected to result in substantially higher costs to the container trucking industry in the Lower Mainland of British Columbia. Since August 2005, trucking companies have paid rates for the services of owner-operators consistent with the rates established in the MOA (for independent owner-operators) or established by collective bargaining (for dependent owner-operators). The rates contained in the MOA and in collective agreements are within a comparable range.

The labour costs associated with the adoption of the MOA and the institution of collective bargaining have been absorbed in the overall costs of logistics movements, generally paid for by the shipper. Since 2005, the marketplace has demonstrated that any additional costs in support of operational stability are sustainable. Therefore, the amended Regulations should have limited impacts on the market access of existing or prospective container trucking companies.

In conjunction with the other minimum conditions of licence, notably the requirements to comply with extended gate hours and a centralized reservation system, a stable remuneration regime would be expected to result in increased productivity in local

container trucking operations, thereby increasing the number of daily trips, increasing the efficiency and capacity of terminals, and reducing local congestion and bottlenecks.

The amended Regulations are expected to present minor costs to the Government of Canada. The Port Authorities would be responsible for some administrative, monitoring and overhead costs associated with the amendments to subsection 31.1(2), although these would not be expected to be greater than the costs presently expended by the Port Authorities to administer and monitor the current licensing system and existing minimum conditions. The Province of British Columbia has agreed to develop, implement and manage an ongoing dispute resolution mechanism for alleged contraventions of rates paid to independent owner-operators. The Province of British Columbia will assume the costs associated with this dispute resolution mechanism.

Consultation

The proposed Regulations were pre-published in the Canada Gazette, Part I, on June 19, 2007, followed by a 30-day prepublication period. During this period, Transport Canada received nine representations with respect to the Regulatory proposal. Submissions were received from the following stakeholders: labour associations, trucking companies and associations, another level of government, a port authority, and importers and exporters. In general, those opposed to the Regulatory proposal were of divergent views: either the federal Regulatory proposal intervened too extensively in the marketplace or, conversely, did not provide adequate protection of compensation levels and enforcement for independent owner-operators.

Specifically, some stakeholders opposed to the Regulatory proposal commented that, in proceeding with the amending Regulations, the Government of Canada is rewarding those that have engaged in illegal behaviour, is setting a detrimental precedent, is contravening the *Canada Transportation Act*, the *Charter of Rights and Freedoms* and the *Canada Labour Code*, and is perpetuating uncompetitive shipping rates. Transport Canada responds to these comments as follows:

- The amended Regulations are intended to provide continued stability in container trucking operations at Lower Mainland ports and not to reward those who have engaged in illegal behaviour. An assessment of the legal conduct of individuals associated with the 2005 trucking disruption is the responsibility of appropriate law enforcement agencies.
- The precedent set with respect to the amended Regulations is limited to the conditions necessary to access the Ports of Vancouver and Fraser River. The amended Regulations represent a specific action by the Government of Canada in response to a unique set of circumstances and do not represent an overarching policy.
- The Government of Canada in general, and Transport Canada specifically, have followed a course of de-regulation of the transportation sector over several decades. Transport Canada continues to advance policies and programs that support a market-based transportation framework. However, there are clear instances where a market failure may occur, whether at a broad level or within a certain segment of the transportation sector. In such instances, either to correct a market or to mitigate a

disruption of the national transportation system and economy, governments may be required to intervene.

- Transport Canada is satisfied that the amending Regulations fall within the scope of federal constitutional jurisdiction and are not in contravention of the *Canada Transportation Act*, the *Charter of Rights and Freedoms* and the *Canada Labour Code*.
- The amended Regulations require that independent owner-operators be compensated at rates of remuneration that are at least equivalent to those contained in collective agreements, and no less than the rates set out in the MOA. Such rates for container trucking have been in effect for two years and have not been demonstrated to have caused a decline in container volumes handled at Lower Mainland ports. Loss of traffic due to further trucking disruptions could be far more detrimental to sustaining the long-term volumes of containers handled at these ports.

Other stakeholders opposed to the Regulatory proposal counter that the proposal would not prevent an erosion of compensation to independent owner-operators, does not specify how enforcement would occur, does not address residual issues associated with the MOA and does not regulate employee drivers. Transport Canada responds to these comments as follows:

- Transport Canada acknowledges that the Regulatory proposal refers to “a collective agreement”, without specifying a base rate. A number of representations received by Transport Canada provide examples of how undercutting of rates could occur without appropriate safeguards. As a result, Transport Canada has addressed the need to specify base rates of remuneration in the amended Regulations. The base rates of remuneration are those set out in the MOA.
- The Province of British Columbia has agreed to develop, implement and manage an ongoing dispute resolution mechanism for alleged contraventions of rates of remuneration paid to independent owner-operators.
- A number of issues have been identified under the MOA for which there has yet to be a binding resolution. Issues associated with enforcement of rates of remuneration will be managed under the dispute resolution mechanism established by the Province of British Columbia. Rates of remuneration are intended to encompass all compensation entitled to an owner-operator either under a collective agreement or, alternatively, set out in the MOA. Issues that cannot be addressed under the dispute resolution mechanism would require an alternative venue as agreed upon by all industry stakeholders.
- The MOA did not address the issue of compensation paid to employee drivers. The intention of the amended Regulations is to provide appropriate protections to those independent owner-operators that have been subject to the MOA since 2005. Structural issues that extend beyond the scope of collective agreements or the MOA would need to be resolved by all industry stakeholders.

Although representations regarding the Regulatory proposal were mixed, there was clear acknowledgement by all stakeholders for the need to preserve reliability and stability in port trucking operations and therefore an understanding of why the Government of Canada has put forward the Regulatory proposal. All stakeholders stated support for a review of this measure to account for its effectiveness and to evaluate the overall state of the industry.

As a result of representations received by Transport Canada, the following changes have been made to the proposed Regulations published in the *Canada Gazette*, Part I, on June 19, 2006:

- In the absence of a collective agreement to which they are subject to or an applicable law, an owner-operator is to be paid a rate of remuneration that is *at least* equivalent to a rate set out in any collective agreement. This may include collective agreements as amended from time to time or renegotiated.
- Notwithstanding the above, an owner-operator cannot be paid a rate of remuneration that is less than the applicable rate set out in the MOA.
- Rates of remuneration contained in collective agreements are to be posted on the Internet site of the Vancouver Port Authority. As the amended Regulations are directed to the Port Authorities, a determination of how the regulatory requirements will be incorporated operationally within the licensing system falls within the responsibility of the Port Authorities.
- Owner-operator truckers that are engaged in long-haul trucking between the port and outside the British Columbia Lower Mainland are specifically excluded from the amended Regulations.
- A review of subsection 31.1(2) of the Regulations is to be conducted within two years of the coming into force of the amending Regulations.

Compliance and Enforcement

Section 127 of the *Canada Marine Act* provides that a person who contravenes a provision of the Act, other than section 107, or the regulations for which no penalty is otherwise provided under the CMA or under regulations made under paragraph 27(1)(a) is guilty of an offence and liable to a fine of not more than \$5,000 in the case of an individual, and of not more than \$50,000 in the case of a corporation.

Annex II

Overview of Supporting Mechanisms

The parameters of the Review are relatively narrow and relate exclusively to the remuneration provisions contained in the 2007 regulations. Nevertheless, in order to determine whether the regulatory provisions have been effective, it is necessary to examine the overall framework that has been implemented, generally by the Government of Canada, the Province of British Columbia and the PMV.

To assist in the analysis contained in sections, Transport Canada engaged the services of an external consultant to examine the changes in content of collective agreements between 2005 and 2009, the industry structure, operating indicators and a cost analysis of the local container drayage industry.

The following is an overview of the supporting mechanisms that have been put in place over the period of 2005 to 2009.

Port Metro Vancouver's Truck Licensing System⁵

An approved Truck Licensing System (TLS) License is required by any party wishing to access PMV's property for the purposes of draying marine containers to or from any of the terminals under the jurisdiction of Port Metro Vancouver. All container truckers, including long haul truckers, who access port container terminals must hold a valid TLS licence. Trucks without a TLS licence will not be granted access to PMV property.

The TLS program grants two types of licenses: the Full Service Operator License and the Independent Operator Permit.

1. Full Service Operator:

Describes a drayage company that has a direct relationship with cargo interests (shippers, consignees, shipping companies, and their agents), provides a complete dispatch service, and has sufficient equipment at its ready disposal to efficiently and competently provide services to the Port Community on an ongoing basis. Full Service Operators are granted access to the Terminal Container Reservation Systems.

2. Independent Operator:

Describes a drayage entity that gains the majority of its cargo through subcontract arrangements with other drayage firms, does not have a significant pool of equipment or access to the Terminal Container Reservation Systems, and gains access to container hauling through sub-contracts to Full Service Operators. Independent Operators may or may not be incorporated companies.

⁵ Source: Port Metro Vancouver website (Transport Canada cannot verify the exact process utilized by PMV in determining whether an applicant is an Full Service Operator or Independent Operator)

Provincial Dispute Resolution Mechanism:

In August 2007, the British Columbia Ministry of Transportation and Infrastructure announced that it would develop, manage and fund a fair and effective dispute resolution mechanism to support the new federal regulations. This included investigation and adjudication of alleged contraventions of rates paid to owner operators, including any allegations of companies undercutting minimum collective agreement rates. In the initial months, the Province conducted informal investigations and discussions with companies and drivers. The province also obtained benchmark rate information from companies. Comprehensive payroll audits were underway by December 2007.

Enhancements Effective February 2009⁶

PMV and the British Columbia Ministry of Transportation and Infrastructure implemented enhancements to the container truck licensing dispute resolution program beginning February 1, 2009. These changes sought to enhance the effectiveness of the dispute resolution program. Key enhancements to the program included:

Audits

- Greater emphasis placed on companies that do not satisfactorily pass a first audit;
- Repeat audits to be routinely conducted on all companies found in non-compliance with the licence agreement;
- Repeat audits will cover time subsequent to the first audit period, and may also cover periods prior to the months covered by the first audit;
- Audit costs will be assigned to companies found to have underpaid their drivers. The proceeds will be used to support additional enforcement of the program;
- Interest will now be charged on all monies owing to drivers.

Sanctions and Penalties

- The educational phase of the program has ended effective February 1, 2009;
- PMV will begin to apply greater sanctions and a range of penalties under the licence agreement including suspensions and termination of licences;
- A company's lack of cooperation with respect to providing records or to making payments will result in greater sanctions;
- In considering any recommendation from the Chair Arbitrator, PMV will also consider the entire record of the company concerning all of its obligations under the licence agreement, not only the remuneration provisions;
- PMV may elect to impose sanctions greater than those recommended by the Chair Arbitrator.

⁶ Source: Port Metro Vancouver website

Transport Canada understands that, as part of its administrative function of the TLS and as a means of discouraging tactics similar to those employed during the 2005 trucking dispute, PMV will cancel Licenses and Permits for those individuals found disrupting traffic on or to port property.

Incidence / Results of Audits⁷

During the period under review, the number of trucking companies subject to audit at any one time has ranged from approx 195 – 220. Full Service Operator companies number approximately 200 as of April 2009. Slightly more than one in four companies were audited by the Province of British Columbia. Of those for which audits were completed, slightly more than half were non-compliant, prompting a second audit and, in some cases, a third audit. (see Table 1)

- As of June 10, 2009, 102 investigations had been initiated into companies. Of the 102 investigations, 92 have been full payroll audits. Of these, 66 were first audits, 25 were second audits and one was a third audit. Currently, 18 investigations are active (10 first, 7 second and one third).
- As of June 10, 2009, one company had had its license cancelled, six companies have been suspended for periods ranging from 3 days to 3 weeks, and one more company has been recommended for suspension and another for termination.
- As of May 31, 2009, \$477,066 was collected for drivers (243 independent owner-operators affected).

Table 1, Audit Summary

First Audits Undertaken as of March 31, 2009	57		
Completed	49		
First audits non-compliant	29	51%	
↓			
Second Audits Undertaken as of March 31, 2009	25		
Completed	14		
Second audits non-compliant	3	12%	
↓			
Third Audits Undertaken as of March 31, 2009	2		
Completed	0		

⁷ Source: British Columbia Ministry of Transportation and Infrastructure

Port Initiatives in Promoting Operational Efficiencies

Expanded hours of operation

In 2005, the Task Force Report recommended the “the federal Minister of Transport should direct the Vancouver Port Authority and the Fraser River Port Authority to require that terminal gate operating hours be increased until trucking congestion is eliminated to the extent reasonably possible, and that both Port Authorities establish systems to continuously monitor truck delays, both inside and outside terminal gates”.⁸

To address the issue of long wait times at container facilities and the resulting impact on the number of daily trips by owner-operators, the Port of Vancouver introduced extended gate hours in April 2006. At the time, the Port noted that its objective was to increase truck gate hours of operation by a minimum of 20 percent a year over the next five years (to 2010). In April 2006, the Centerm facility was open for an extra day shift on Saturdays (8 AM to 4 PM) and both Deltaport and Vanterm were opened from 4 PM to midnight on Thursdays. Deltaport also had regular openings on Monday and Tuesday nights.⁹

As of July 2009, because of the weak economy and reduced volumes, night gates were scheduled for two nights per week at Deltaport (from 17:00 to 23:00) with no extended operating hours for the other three marine terminals (TSI Vanterm, DPW Centerm and Fraser Surrey Docks). Utilization of truck gates will be examined further in Annex VI “Operational Indicators”.

Truck Monitoring Program

The enactment of section 31.1 of the Regulations (November 2006)¹⁰ provided for a condition of license whereby the license holder must comply and ensure compliance with “the requirements of the Port Authority respecting the identification of trucks and other road transportation equipment and the tracking, monitoring, location and movement of these trucks and other road transportation equipment into, within or out of the port”. PMV’s Truck Monitoring program consists of several systems, including the:

- Truck Licensing System (TLS G4);
- Vehicle Access Control;
- Port Pass driver identification system (card swipes);
- License Plate Recognition;
- Radio Frequency Identification (RFID);
- Security surveillance cameras; and
- Mobile roadside security.

⁸ Task Force Report, October 2005, p. 57

⁹ Vancouver Port Authority Strategic Trucking Program, Project Report Update, April 2006

¹⁰ Regulations Amending the Port Authorities Operating Regulations published in the Canada Gazette Part II on November 29, 2006.

PMV has also recently commenced a pilot project with Transport Canada and some trucking firms to utilize Global Positioning Satellite (GPS) tracking devices to monitor truck movements.

Reservation Systems

Further to the conditions outlined above in respect of the identification and monitoring of trucks, the enactment of section 31.1 of the Regulations (November 2006), provided for a condition of license whereby the license holder was required to comply with "...any appointment or reservation system established or adopted by the Port Authority for the port". PMV reports that reservation/appointment systems are mandatory and in effect at all four marine container terminals. The reservation systems are proprietary systems purchased and operated by the terminals, although the TLS sets control criteria for accessing the reservation systems. Only trucking companies that are defined by PMV as Full Service Operators with contractual business arrangements with shipping lines (or other beneficial cargo owners) can access the reservation systems. The respective reservation systems in place at each of the marine container terminals are examined in greater detail in Annex VI.

Lower Mainland Container Logistics Stakeholder's Forum

In April 2006, the British Columbia Ministry of Transportation and Infrastructure launched the Lower Mainland Container Logistics Stakeholder Forum (Terms of Reference for the Forum are attached as Annex III), which has since worked to address logistical and regulatory issues affecting container truckers and lower mainland port facilities. The Forum's mandate is to "develop and implement logistics and tactical solutions and identify strategic long term solutions that improve the reliability, productivity and efficiency and reduce greenhouse gas emissions of the land side container logistics system involving trucks, inland terminals and port terminals." Under this mandate, information has/will be developed on the cost and operating performance of the components of the logistics system for the purpose of:

- Improving the quality and availability of information for all participants in the supply chain;
- Providing participants with an objective basis from which to engage in problem solving through informed dialogue; and
- Assisting in identifying areas where unnecessary costs or poor performance are experienced.

Summary of Forum Activities to Date

Dispute Resolution within the Context of the MOA

On June 26, 2006, the Forum established a working group to evaluate ways of improving the dispute resolution mechanisms under the MOA. The Forum's work served as input towards the development of new federal regulations launched in August 2007, to address this concern, as well as reasonable compensation to owner-operator drivers. The

regulations were passed requiring the PMV to establish, as part of its licensing system, a condition that all license holders compensate their non-union owner-operators at rates consistent with a collective agreement posted on PMV's website, at rates no less than those contained in the MOA of 2005. The Forum contributed important feedback to Transport Canada regarding this regulatory approach, during the 30-day consultation period.

After the Provincial dispute resolution program had been implemented and functioning for approximately 18 months, CAW representatives expressed their dissatisfaction with PMV's truck licensing system at a meeting of the Trucking Forum on December 2, 2008. The CAW expressed the view that the Provincial Government's dispute resolution mechanism, aimed at ensuring adherence to the MOA rates of remuneration, did not sufficiently penalize offenders nor act as an effective deterrent. Discussions at the December 2008 Forum meeting led to a highly productive meeting between the Provincial Government and PMV on January 22, 2009, to discuss changes to the dispute resolution program and address concerns of the CAW regarding the program's operation. It was agreed that greater scrutiny would be placed on companies that do not satisfactorily pass a first audit.

As a result, on February 1, 2009, the Province implemented enhanced sanctions for all those found in violation of their license agreement with PMV regarding payment of minimum remuneration, including first time offenders. As a supporter of stronger sanctions, the Port agreed to apply a range of penalties under the license agreement including suspensions and termination of licenses. Companies, which do not cooperate with respect to providing records, or fail to make appropriate payments, will also be subject to these stronger sanctions.

In considering any recommendation from the Chair Arbitrator, PMV has indicated it will also consider the entire record of a company regarding all of its obligations under the license agreement, not only the remuneration provisions. PMV may elect to impose sanctions greater than those recommended by the Chair Arbitrator.

Both PMV and the Provincial Ministry of Transportation and Infrastructure are confident that the changes implemented on February 1, 2009, enhance the effectiveness of the dispute resolution program. The success associated with a more effective dispute resolution process is in part attributed to the open and transparent opportunities offered by Forum dialogue. The precise enhancements set out in the Provincial Dispute Resolution Mechanism are set out in a previous section.

Costing Model for Owner Operators

In the spring of 2007, the British Columbia Ministry of Transportation and Infrastructure, in consultation with Forum members, made available on a website, a costing model it had developed for owner-operators. This was designed for use by existing and potential owner-operators to better understand their costs and overall business environment. It would also provide objective data for owner-operators to consider in respect of managing their operations.

Truck Container Logistics Efficiency Improvements

In June 2006, a Forum working group was established to examine the potential for truck container logistics efficiency improvements and consequently engaged IBI Consultants to conduct a simulation analysis of Lower Mainland container truck operations. This study focused on identifying the logistical factors that determine the number of trip cycles a truck can make in a day. The purpose of this work was two fold:

1. Improve the understanding of the overall dynamics of the port container trucking system; and
2. Produce directional results to guide how and where to focus further analysis of the port container logistics system for the development of practical solutions.

The study concluded that operating practices at the on-dock terminals are the major determinant of truck container logistics processes in the Lower Mainland. Terminal operators in recent years responded to substantial increases in container volumes through capital investment and by altering operating practices to increase throughput capacity. The study also concluded that changes in port terminal operating practices provided increases in port terminal capacity but imposed additional costs on shipping lines, trucking companies and drivers. Terminal capacity improvement was achieved through reducing on-dock container dwell time by: shifting empty containers to off-dock storage; reducing Earliest Receiving Dates (ERD's) for export containers; and, imposing higher storage charges to induce shipping lines to evacuate containers from the docks more quickly.

According to the study, as a result of industrial unrest in the drayage sector terminal operators established mandatory reservation systems at the on-dock terminals. The introduction of off-dock storage introduced a non-revenue "third leg" to trip patterns, which increased trucking costs and reduced productivity. The mandatory reservation systems have increased the complexity of managing drayage operations.

In April 2007, in its final report, IBI identified 3 issues which would assist in improving truck efficiency and owner-operator income. In order of importance the issues are:

1. Extend hours of truck operations through opening all terminals longer;
2. An active commitment by all participants to reduce truck turn times; and,
3. Reduce deadhead trips (i.e. a trip which does not result in carriage of a container for reasons of customer error, dispatch problems, or other causes) through better coordination.

Business Process Mapping Project

Further to the IBI Truck Simulation Study, the Forum membership participated in and contributed to the Business Process Mapping Project led the Provincial Ministry of Transportation and Infrastructure. The conclusions of the study were presented at the Forum meeting of May 21, 2009, and identified five problem areas associated with the processes and actions relating to the movement of containers by trucks in the Lower Mainland:

1. Vessel Arrival Uncertainty;
2. Export Cargo Uncertainty;
3. Reservation Uncertainty;
4. Terminal Service Times (hours of operation); and,
5. Empty Container Location Management.

The Forum membership has agreed to participate in projects, to be led by the Provincial Ministry of Transportation and Infrastructure, to explore solutions aimed at addressing these issues. The final Business Process Mapping Project report will be completed in the summer of 2009.

Factors Contributing to Forum Progress

A number of key factors have contributed to the progress of the Lower Mainland Container Logistics Stakeholders Forum, namely:

- A relatively narrow focus on the land side portion of the supply chain with an emphasis on examining it from a trucking perspective;
- Multi party representation at the table resulting in improved sharing of information and communication amongst the parties;
- Strong participation and commitment by Federal and Provincial government officials to the process; a project management function that established responsibilities, schedules and deliverables; and,
- An emphasis on obtaining and sharing meaningful objective data.

ANNEX III

Overview of Investigation and Dispute Resolution Program

On August 2, 2007, the Ministry of Transportation and Infrastructure (TRAN) set up an Investigation and Dispute Resolution program to deal with issues about remuneration paid to owner operators under the Vancouver Fraser Port Authority's container trucking license agreements. This was done to enforce the regulations passed by Canada under the Canada Marine Act on August 2, 2007.

All port license holders are required to pay their owner operators, at minimum, remuneration as set out in one of the collective agreements published on the Port Metro Vancouver's website. The companies undertook to pay this minimum remuneration as part of the current port license agreement through which the federal regulatory requirements are implemented.

An investigation (and audit) may be undertaken randomly, periodically, or as a result of a complaint received from an independent operator or anyone else who believes they are affected, alleging that a non-union license or permit holder is paying less than the required, minimum remuneration.

The Investigation and Dispute Resolution program is not directed at company employees or unionized drivers covered by a collective agreement. Employee drivers are covered by the *Employment Standards Act* and not by the minimum remuneration provisions of the License/Permit Agreements. Unionized drivers should use the grievance process available to them through their collective agreements.

Program History

- Three contractors were obtained in August 2007 to enable immediate program implementation (2 investigators and 1 arbitrator). These contractors set up the initial monitoring system, began to investigate companies through complaints and began collecting information from license holders as required by the port license agreement (e.g., name of the benchmark collective agreement being used by companies for payment of owner operators).
- A third investigator was obtained in December 2008.
- The investigators and arbitrators have much interaction with the container truck sector (drivers, companies and union) and the Port Metro Vancouver.
- Numerous issues have arisen since August 2007 which require continual dialogue to varying degrees.
- The program has evolved over time, with various refinements being implemented since January 2009.
- On February 1, 2009, significant announcements to the program were announced in response to concerns raised by the Canadian Auto Workers (CAW) and some

trucking companies. These included the routine conducting of repeat audits, longer audit periods and greater licensing sanctions, including for first time offenders.

- As of June 10, 2009, 102 investigations have been initiated into companies. Of these 102, 92 have been full payroll audits. Of these 92, 66 were first audits, 25 were second and one has been a third audit. Of these, 18 are currently active (10 first, 7 second and one third).
- To date, one company had had its license cancelled, six companies have been suspended for periods ranging from 3 days to 3 weeks, and one more company has been recommended for suspension and another for termination.
- As of May 31, 2009 - \$477,066 was collected for drivers (243 independent owner operators affected).

Outline of the Process

1) Submitting a Complaint

Complaints can be made by phone or e-mail.

Complaint phone line: 604-775-1155

Email address: **Container.Truck.Disputes@gov.bc.ca**

2) Preliminary Review of Complaints

When a complaint is received, the Appointee's Delegate will assign the complaint to an Investigator unless the complaint is withdrawn or unless it is clear to the Appointee's Delegate that the complaint involves the remuneration of an employee driver or an Independent Operator covered by a collective agreement.

The Appointee's delegate is an individual who assigns files to investigators, conducts file reviews and represents the Appointee (the Province) in any arbitration and prepares recommendations to the Port Authority at the conclusion of an investigation.

3) Investigation Without a Complaint

The Appointee's Delegate may initiate an investigation, (including an audit), without receiving a complaint.

4) Investigation

Any Licensee/Permittee may be the subject of investigation. The purpose of the investigation is to determine whether or not the Investigated Entity has breached the provisions of the relevant License/Permit requiring minimum remuneration of Independent Operators not covered by a collective agreement.

The Investigator may obtain information regarding the Investigated Entity from a number of different sources. These could include site investigations, an examination of records (including an audit) and interviews.

Upon request, every Licensee/Permittee must provide all information as required by the License/Permit. Non-compliance with this obligation may result, without further investigation, in a recommendation to the Port Authority to suspend the License/Permit.

Where the Investigator concludes that the Investigated Entity has breached the License/Permit obligation to pay minimum remuneration, the Investigator will inform the Investigated Entity of his/her conclusions and the factual basis for those conclusions. The Investigator will advise the Investigated Entity that, if the facts are not disputed, the Entity must correct the minimum remuneration shortfall promptly. At the same time, the Investigator will give the Investigated Entity a reasonable opportunity to respond to any errors of fact and/or to the Investigator's conclusions, and/or to provide any mitigating circumstances that the Investigated Entity believes should be part of the record of the investigation. Note that, in order to maintain the right to dispute a matter of fact, the Investigated Entity must provide a substantive response within the time limit set by the Investigator.

If the Investigated Entity duly provides a response, the Investigator will consider the response, may amend his/her previous conclusions, and will report to the Appointee's Delegate. The report will include any submissions made by the Investigated Entity to the Investigator.

The process set out in the previous two paragraphs may be repeated in the course of a single investigation, in order that violations will be addressed promptly after they are established, whether or not the investigation of other possible contraventions is complete.

The Appointee's Delegate will review the Investigator's report and may direct the Investigator to conduct further investigation and/or to provide additional information. The Appointee's Delegate may also seek additional information directly from the Investigated Entity, but is not obliged to do so. After the Appointee's Delegate is satisfied that he/she has sufficient information to make a recommendation to the Port Authority, the Appointee's Delegate will provide a report to the Port Authority with his/her conclusions and a recommendation with respect to possible sanctions and/or penalties, which may include suspension and/or termination of License or Permit privileges. The Port Authority will send a copy of the final report to the Investigated Entity and, where applicable, to the Complainant.

If the Investigated Entity continues to dispute the conclusions of the investigation, the Investigated Entity may elect to arbitrate, (or, by agreement, mediate), an issue or issues by applying to the Appointee's Delegate within seven days from receipt of the report. If the Investigated Entity requests arbitration and the Appointee's Delegate concludes that there is no reasonable dispute of fact, interpretation or conclusion, the Appointee's Delegate may decline to arbitrate or may agree to arbitrate and advise the Investigated Entity that it will seek a determination from the Arbitrator that the Investigated Entity be ordered to pay all of the costs of the Arbitration. The Appointee's Delegate will inform the Port Authority of all requests to arbitrate and, where the Appointee's Delegate declines to arbitrate, it will explain the reasons for the refusal of that request to the Licensee and the Port Authority.

Note that the Port Authority may give fourteen days notice of sanctions without waiting to see if the Licensee intends to seek arbitration.

5) Arbitration

Where a matter is advanced to arbitration, the parties to the arbitration are, subject to agreement of the Arbitration Parties or the directions of the Arbitrator, the Appointee's Delegate and the Investigated Entity. The matters to be arbitrated are limited to whether or not there has been a contravention of the License/Permit Agreement with respect to minimum remuneration and, if so, whether there are any mitigating or exacerbating factors.

Note: either Arbitration Party may request to include other participants in the arbitration, (including, where applicable, the Complainant Entity, if that Entity agrees), in order to ensure a fair and comprehensive hearing of the matter(s) in dispute.

Notwithstanding the provisions of the *BC Arbitration Act*, the Arbitrator may determine his or her own practice and procedure, but must give the Arbitration Parties an opportunity to present evidence and make representations. The Arbitrator may request any information he or she believes is relevant and may make the final determination about participants in the arbitration.

The Arbitrator determines the facts, interprets "minimum remuneration" and other provisions of the License and/or Permit Agreement as necessary for purposes of the issue(s) before him or her, and provides those determinations to the Arbitration Parties.

In the case of arbitration, subsequent to receipt of the Arbitrator's determinations, the Appointee's Delegate will prepare recommendations to the Port Authority, having regard to the Arbitrator's decision.

Subject to a contrary direction from the Arbitrator, the Arbitration Parties shall each bear their own costs related to the arbitration, one half of the fees of the Arbitrator and one half of any other direct costs related to the arbitration.

ANNEX IV

Trucking Forum Mandate and Terms of Reference

Forum Mandate

The forum mandate is: Develop and implement logistics and tactical solutions and identify strategic long term solutions that improve the reliability, productivity and efficiency of the land side container logistics system involving trucks, inland terminals and port terminals.

Under this mandate, information will be developed on the cost and operating performance of the components of the system for the following reasons:

- To improve the quality and availability of information for all participants in the supply chain,
- To provide the participants an objective basis from which to engage in problem solving through informed dialogue, and
- To assist in identifying areas where unnecessary costs or poor performance are experienced.

This will enable individual stakeholders to make better decisions for the benefit of their organizations and the system as a whole and enable the identification, monitoring and implementation of actions needed to benefit the whole system.

Forum Terms of Reference

Following are the terms of reference for the forum:

1. Acquire or develop and make available to parties involved in the port logistics supply chain, a truck costing tool that provides cost estimates of trucking activities;
2. Using appropriate analytical tools analyze the lower mainland land side logistics system affecting container trucks to provide objective information on the performance of the current system and develop potential solution options;
3. Prioritize and agree on solutions within the logistics system affecting container trucks to be implemented by members either individually or jointly;
4. Develop an action plan for the land side logistics system affecting container trucks and promote commitment from parties that will lead to implementation of the recommendations within agreed time frames;

5. Develop measures for the proposed solutions to track progress. Examples of measures dealing with truck time spent at port property might include the following:
 - average time spent at port property from truck arrival to departure from port property;
 - time spent at terminals from truck arrival to departure at peak times;
 - terminal reservations booked versus actual.
6. Where necessary members will identify actions to remove obstacles to progress;
7. Report on a regular basis to the Assistant Deputy Minister Transportation Planning and Policy of the Ministry of Transportation the measures and progress in implementation of its recommendations;
8. Recommend to the Assistant Deputy Minister a strategy for communicating to the industry, and
9. Demonstrate progress towards implementation of solutions within the first 6 months of operations.

The forum will address and may make recommendations regarding management, planning, operations, processes, or any other matters involving landside logistics affecting container trucking regarding:

- storage of containers at inland container terminals;
- loading and or unloading of trucks at inland container terminals;
- movement of empty and loaded containers by trucks within the geographic boundaries defined for this project;
- processing of trucks through gates at port terminals;
- handling, unloading and or loading of trucks at port terminals, and
- storage of containers at port terminals.

ANNEX V

Assessment of Collective Bargaining and Relevance of Current Remuneration and Regulatory Framework

Significant portions of Annex V were contributed by Transport Canada's external consultant, based on interviews with various union officials, individual owner-operators, a number of trucking companies and PMV.

Negotiation of Rates Pre-Collective Bargaining

Prior to the labour dispute of 2005, a revenue sharing model based on rates paid by shippers was the most common system for owner-operator compensation. The standard split was 70 percent to the owner-operator and 30 percent to the company. Some of the largest companies – American Cartage and Team Transport (now Port Transport) – had collective agreements with Teamsters Local 31 based on this revenue sharing model.

During the dispute in 2005, the owner-operators (represented by the Vancouver Container Truckers Association - VCTA) and trucking companies negotiated the MOA with the assistance of a mediator, which proposed a new zone-based rate structure for compensating owner-operators. While most issues were agreed to, the parties were unable to resolve the timing of a second rate increase. The mediator ultimately set the two rate increases as being 1) effective upon returning to work (August 2005), and 2) effective August 1, 2006. Subsequently, the federal government forced acceptance of the MOA by imposing a requirement for companies to sign the MOA as a condition of license to access the Lower Mainland ports:

... on July 29, 2005, the federal government issued an Order-in-Council exempting the parties from having to comply with the Competition Act and enabling the adoption of an interim licensing system which required that the trucking companies pay their owner-operators the rates stipulated in the Memorandum of Agreement ... On August 4, 2005, the federal government issued an amended Order-in-Council requiring the Vancouver Port Authority and the Fraser River Port Authority to establish a licensing system for all container trucks requiring access to a Lower Mainland port, except those trucks with drivers covered under a collective agreement. Thereafter, a licensing system was adopted which established licenses for a period of two years and required all trucking companies to sign the Memorandum of Agreement in order to have access to the ports.¹¹

The two-year licensing period was consistent with the term of the MOA, which expired in August 2007.

¹¹ Task Force Report, p. 10.

Provisions of the MOA

The primary change implemented with the MOA was the introduction of a system of trip-based rates originating or destined for the Port terminals and railway intermodal yards.¹² Taking into account the rampant undercutting that had driven rates down to an unsustainable norm, the new rates represented a substantial increase in compensation levels to owner-operators. The MOA included a table of rates to become effective on ratification, and a second table with further increases to become effective in August 2006.¹³

The MOA also included a number of provisions to improve overall remuneration for owner-operators beyond the trip-based rate, including an attempted dispute resolution mechanism (which was ultimately difficult to fully implement). The MOA specified the following:

- Owner-operators were to be paid a surcharge on the rates to compensate for increased fuel costs. The surcharge applies on a quarterly basis, with a surcharge of 1 percent on rates for each full 5-cent increment in the fuel price above \$1.05 per litre in the previous quarter. Benchmark diesel prices from the M.J. Irvine website were specified.
- Truckers were to be paid a minimum of \$200 for each callout.
- Companies were to be responsible for airtime fees for radios used for dispatch.
- Companies were to contribute 10 cents per container to a fund that to be used to audit compliance with the agreement.
- Truckers were to be paid by the companies for delays due to damaged containers. The terminal operators do not inspect containers, but provide an area before the terminal out-gate for drivers to inspect containers they have picked up. In the event a container is found to be damaged, drivers are required to exit the terminal and re-enter to pick up a different container.

However, Transport Canada understands that, in the end, the last two provisions were not implemented.

Collective Agreements

Following the dispute in 2005, the VCTA joined the CAW as Local 2006 and began a process of certification as the bargaining agent to represent owner-operators within individual companies. Following certification, negotiations were undertaken with trucking companies to formalize and extend the provisions of the MOA by way of collective agreements. The CAW was unsuccessful in certification at American Cartage and Team Transport due to a Labour Board ruling that the existing Teamsters Local 31 collective

¹² A similar system was introduced as an interim measure by Vancouver Port Authority following the 1999 dispute, to be superseded by hourly compensation; see Ports Trucking Task Force, p. 6.

¹³ MOA Schedules 1 and 2.

agreements had been extended by virtue of the union's adoption of the MOA. The CAW was subsequently certified as the bargaining agent for companies following expiration of the MOA in 2007. Team Transport now conducts business under the name Port Transport.

Teamsters Local 31 also has collective agreements with a number of companies. The largest is Canada Drayage Inc., a subsidiary of Consolidated Fastfrate Ltd., which was created in cooperation with two major importing firms, Canadian Tire and Canadian Retail Shippers Association (CRSA) Logistics, to ensure service to the port in the event of future withdrawal of services by owner-operators. CDI has a fleet of 40 leased trucks with employee drivers. Smaller companies with Teamsters Local 31 contracts include Burton Delivery Services, Cansea Transport Inc., Coard Transportation Group Ltd., RA Transport Inc., and Triangle Transportation.¹⁴

Canadian National Transportation Ltd. (CNTL) has a collective agreement with CAW Local 4001. This contract is negotiated on a national basis with Canadian National through CAW's National Council 4000, which includes various administrative, clerical, customer support, blue collar, skilled trade crane and vehicle mechanics, excavator operators and Intermodal workers in addition to owner-operators providing trucking services to CNTL.

CAW Local 2006

Membership in CAW Local 2006 peaked at around 868 in 2007.¹⁵ Current membership numbers 478.¹⁶ CAW Local 2006 negotiated collective agreements in the fall of 2005 which were implemented for the period of January 1, 2006, through December 31, 2008.

All of the agreements appear to follow a similar pattern. They adopted the MOA rates as the basis for owner-operator compensation, extending the August 2006 rates through the end of the contract period. Additional provisions included:

- A provision for the payment of waiting time in excess of one hour at customer locations at a rate of \$45 per hour effective January 1, 2006 and \$50 per hour effective January 1, 2007 to be paid in 15 minute increments.¹⁷ (Note this does not apply to waiting time at port terminals or off-dock container terminals.)
- A payment of \$50 per "dead call" unless a replacement trip can be assigned within 2 km and 15 minutes of the original trip.¹⁸ (A "dead call" is a trip which does not result in a container trip for reasons of customer error, dispatch problems, or other causes.)
- An additional fee of \$50 if drivers are required to scale a load (i.e. take a load to a weigh scale location to verify the weight).

¹⁴ Source; Port Metro Vancouver.

¹⁵ Phil Davies interview with CAW Local 2006, June 2009.

¹⁶ CAW Local 2006.

¹⁷ COLLECTIVE AGREEMENT Between KTL TRUCKING AND THE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION (VCTA - CAW - CANADA) Local 2006 January 1, 2006 to December 31, 2008 Section 11.11 Trip Schedule P. 12.

¹⁸ Ibid.

- Clarification of the application of the trip rates for import and export trips, and a process for determining a rate where a round trip rate cannot be calculated.¹⁹

The agreements also contain provisions applying to hourly employees, including hours of work, vacation pay and benefits. Hourly rates are shown in Table 4.

Table 2, CAW Local 2006 Hourly Wage Rates

CAW Local 2006 Hourly Employees Rates			
	Effective Jan 1, 2006	Effective Jan 1, 2007	Effective Jan 1, 2008
1st year of Service	\$18.50	\$19.25	\$20.00
2nd year of Service	\$20.00	\$21.25	\$22.00
3rd year of Service	\$21.50	\$22.25	\$23.00

Following negotiations in the fall of 2008 and spring of 2009, CAW Local 2006 concluded new collective agreements with 10 companies²⁰. The new agreements extend the existing MOA rates for the 18-month term of the agreements. Hourly employee rates are also unchanged. The main elements of the new agreements are set out below:²¹

- Increase of \$100 (from \$300 to \$400) for minimum pay for first 4 hours of work to owner operators for a call-out on the 6th or 7th day worked.
- Increase of \$200 (from \$200 to \$400) as minimum pay for any day an owner operator is called to work. The parties negotiated a process to allow the Employer and the Union to operate outside this daily minimum.
- Addition of requirement for Employer to pay for or supply the following: port passes; hardhats; gloves; safety glasses; and safety boots (up to \$100 per year).
- Addition of a Letter of Understanding (LOU) entitled “Administration of Article 5.01 (c) and Dispatch, Accountability, Respect and Communication”. This LOU is designed to deal with the Collective Agreement requirement that owner operators be assigned work by seniority where practical. The LOU sets out: (a) a requirement that the dispatch process be conducted through respectful communications; (b) a process for an owner operator to claim “unfair dispatch” based on a pattern; (c) a process where an owner operator who can show a pattern of unfair dispatch is entitled to make up the lost work within 20 work days of the claim being made; and (d) establishment of a Dispatch Review Committee to meet every 2 months to discuss dispatch and driver issues.

Teamsters Local 31

There are nine companies certified with Teamsters Local 31. The collective agreement between Teamsters Local 31 and Canada Drayage Inc., the largest Teamster firm, sets out standard work provisions including the following²²:

¹⁹ Ibid., p. 13.

²⁰ Interview with CAW, June 2009.

²¹ British Columbia Ministry of Labour, May 2009

²² Memorandum of Agreement between Canada Drayage Inc. and Teamsters Local 31, April 1, 2009.

- Hours of work: a standard work-day consists of 9 consecutive hours between 6 AM and 6 PM, with a standard five consecutive day work-week.
- Employees who start work before 6 AM or after 4 PM are entitled to a \$1 per hour shift differential.
- Overtime is payable at a rate of one and a half times the standard rate.
- In addition to payment for statutory holidays, employees are entitled to 2 weeks of paid vacation, rising to 3 weeks after 3 years service, 4 weeks after 9 years, and 5 weeks after 15 years of service.
- The company is also responsible for paying the cost of contributions to the Teamsters National benefit Plan for employee benefits and the Teamsters National Pension Plan.

The term of the agreement is from September 1, 2008 through December 31, 2010. Wage rates are set at \$20.60 per hour effective February 2009, rising to \$21.05 on January 2010.

CAW Local 4001

CAW Local 4001 represents owner-operators working for Canadian National Transportation Ltd. The drivers' work consists primarily of drayage operations related to Canadian National's Vancouver Intermodal Terminal (VIT) in Surrey, though an increasing share relates to drayage at port terminals. Drayage of containers from the port terminals to the intermodal yards has become more prevalent, particularly when time-sensitive service is required. For example, all inbound reefer containers at Deltaport are trucked to VIT for loading onto CN intermodal trains. CAW Local 4001 did not provide a copy of their collective agreement.

Continued Relevancy of Overall Regulatory Framework

The Task Force in its final report concluded that both the dispute that occurred in 2005 and the one preceding it in 1999 were the result of similar underlying issues: low rates of compensation resulting from rate cutting and inefficient operating practices at the port. More germane to this review is the Task Force finding that “(t)he failure of the response to the 1999 dispute was one of the causes of the dispute of 2005”²³.

In its response to the 1999 work stoppage, the Vancouver Port Authority imposed a licensing scheme requiring trucking companies wishing to access port terminals to sign an agreement (similar to the 2005 MOA) setting out rates of compensation for owner-operators. These rates basically consisted of trip rates for the first 30 days and hourly rates thereafter. The agreement was ratified by owner-operators in August 1999. Several, but not all trucking companies signed collective agreements with the Teamsters incorporating hourly wages. The attempt to move to hourly wages failed: “collective agreements that were signed following the 1999 dispute proved impossible to enforce due

²³ Task Force Report, p. 11

to rampant price-cutting”²⁴. Within months, most trucking firms quickly reverted to trip based rates and rate cutting eroded gains made by virtue of the 1999 agreement.

In examining the factors that led to the 2005 disruptions, the Task Force concluded: “... that the trucking industry’s inability to respond to changing circumstances and cost increases in a manner that maintains a reasonable income to truckers is clear evidence of market failure”²⁵.

The MOA of 2005 provided a rate framework for a two-year period. The Orders in Council of August and October 2005, and subsequently January and April 2006, as well as regulatory amendments of November 2006 essentially linked compensatory provisions for owner-operators to the port’s licensing regime. There was as well, the voluntary policy implemented by the port to require sign-on to the 2005 MOA as a condition of license to enter the port.

A number of collateral developments during this two-year period lay the foundation for the amending regulations enacted in August 2007:

- the certification of a significant number of unionized owner-operators;
- the negotiation of collective agreements between owner-operators and a number of trucking firms;
- enactment of regulations providing for conditions of access to the port;
- implementation of operational measures by the port to address issues of control (licensing regime) and efficiency of truck movements.

The establishment of negotiated collective agreements for owner-operators introduced market-based elements into the compensatory regime for owner-operators. Theoretically, the linkage of collective agreements to the licensing regime should allow rate levels and other compensatory provisions to be renegotiated with each new round of collective bargaining. The regulatory underpinnings would ensure adherence and preclude recurrence of the situation which developed following the 1999 dispute (see Table 3, below). The introduction of audits and dispute resolution mechanism by the Province of British Columbia would ensure compliance. The risk of market failure through leakage and undercutting of rates was minimized through the adoption of MOA rates as a rate floor.

Annex III above describes the dispute resolution process put in place by the British Columbia Ministry of Transportation and Infrastructure in 2007 and documents enhancements implemented in February 2009. The process established by the Province, in conjunction with the licensing activities of the PMV provides broad-based coverage (approximately 1 in 4 trucking companies subject to audit) with subsequent follow-up of non-compliant companies.

²⁴ *ibid*, p. 1

²⁵ *ibid*, p. 1 & 2

Table 3, Comparison of Post-1999 Regime to Current Regulatory Framework

Situation following 1999 Work Stoppage	Current Regime
Licensing regime had no tie-in to compensation	Licensing regime requires designation of collective agreement or benchmark rate (MOA) for owner-operator
Undercutting prevalent	Licensing conditions and enhanced provincial dispute resolution mechanism (audits and investigations by province) ensure rate adherence – penalties and punitive measures in place
Trucking companies with collective agreements vulnerable and at competitive disadvantage	Linkage of compensation to licensing regime minimizes leakage as result of non-adherence to rate levels
Lack of fuel escalation provision	Collective agreements provide for fuel escalation
Lack of (or ineffective) dispute resolution mechanism	Robust dispute resolution process

Until the Province introduced a more forceful dispute resolution mechanism in mid 2007, measures in respect of resolving disputes under the MOA were considered largely ineffective by owner-operators. Coupled with strengthened communication and exchange of information between the port and the province, the new regime, which started in 2007 (with enhancements in February 2009) was judged by parties to port container trucking to contribute to a more disciplined and stable business environment and greater degree of accountability.

Annex VI

Operational Indicators

The data collection and analysis contained in Annex VI was conducted and reported on by Transport Canada's external consultant, based on information provided by PMV and interviews with terminal operators and trucking companies.

Port Trucking Profile

Industry Structure and Market Outcomes

Industry structure is a fundamental concept for assessing the characteristics and probable outcomes of competition in markets. The basic structural characteristics include “the number and relative strength of buyers and sellers and degree of collusion among them, level and forms of competition, extent of product differentiation, and ease of entry into and exit from the market”²⁶. Research conducted for the Task Force in 2005 concluded that the local drayage sector in the Lower Mainland possessed the characteristics of a highly competitive market, including a low level of concentration among trucking firms, low barriers to entry, limited product differentiation, and limited opportunities for firms to exploit economies of scale to obtain a competitive advantage in the market.²⁷

The focus of this recent research is the impact of the regulations implemented in August 2007. While these regulations attempted to establish a market-based remuneration regime, supported by a strong collective bargaining environment, the regulatory baseline essentially extended the minimum compensation requirements implemented by federal Orders in Council in 2005 and 2006. Therefore, the research includes a detailed examination of changes in industry structure since 2005, with some comparisons to structural parameters in 1999 where appropriate and data is available.

Drayage Fleet Profile

Truck Licensing System Background

The various versions of the Truck Licensing system implemented by Port Metro Vancouver (and its predecessor, the Vancouver Port Authority) provide useful data on structural aspects of the local drayage sector. The fundamental data includes data on the number of trucks licensed by each company to serve the port, which provides an indication of trends in the industry, and can be used as a crude proxy for firms' market shares. Other data that is available is a function of the requirements for each version of the licensing system, which is currently in its fourth version. Data from all four versions of the TLS has been analyzed for this project. Information on the date and coverage of the licensing data is shown in Table 4.

²⁶ <http://www.businessdictionary.com/definition/market-structure.html>

²⁷ Final Report of the Task Force on the Transportation and Industrial Relations Issues Related to the Movement of Containers at British Columbia Lower Mainland Ports (“Ports Trucking Task Force”) Federal-Provincial Task Force October 5, 2005 pp. 21-22.

Table 4, Data Coverage – Truck Licensing System

Data Coverage - PMV/VPA Truck Licensing System						
Date	Truck License Version	Licensed Trucks by Company	Local	Long Haul	Truck Age	Truck Ownership
1999	TLS 1	X			X	
2005	TLS 2	X				
2007	TLS 3	X				
2009	TLS 4	X	X	X	X	X

The 2005 TLS data represents fleet parameters prior to the trucking dispute, which began in June of that year.

The definition of the appropriate market is a key requirement for understanding industry structure. For this analysis, the appropriate market has been defined to be the local drayage sector, that is, those firms whose primary business is providing local drayage services. For this purpose, firms have been classified as local or long haul carriers based on local knowledge of the industry and available information on firm activities and characteristics.

The current PMV Truck Licensing System (TLS-4) is the fourth version of the Port’s licensing system. The original licensing system was implemented by the Vancouver Port Authority in 1999. The Port implemented a second licensing system in 2005 as directed by federal Order in Council to “establish or continue a licensing system giving access to the Port of Vancouver to trucks and other road transportation equipment for the delivery, pick-up or movement of containers into and out of that port” and to stipulate as a condition of a license that firms be signatory to the MOA and be in full compliance with that agreement.²⁸

As an action separate from the regulatory requirements, in early 2007, PMV imposed a moratorium on new licenses for owner-operators. Licensed firms were given the opportunity to register their owner-operators between December 1, 2006 and January 15, 2007. Owner-operators who were registered during this period have been “grandfathered” and maintain the right to renew and/or reclaim an Independent Operator permit. PMV implemented the TLS-4 on June 4, 2008. TLS-4 introduced new features to the licensing system, which includes a system of licenses for Full Service Operators and permits for Independent Operators serving the port. Only Full Service Operators are permitted to make reservations for container transactions at the four port container terminals, therefore requiring Independent Operators to align with Full Service Operators in order to access the port terminals.

²⁸ Order Authorizing Persons Specified Therein to Be Parties to Certain Commercial Arrangements and Providing Specific Directives to the Vancouver Port Authority and the Fraser River Port Authority, SOR/2006-15 Canada Transportation Act, S.C. 1996, c. 10 54 Regulations Current version: as posted between Nov 28, 2008 and Jun 16, 2009.

Fleet Profile Results

The evolution of the local drayage fleet based on data from the four versions of the licensing system is shown in Table 5.

Table 5, Local Drayage Fleet Profile 1999 - 2009

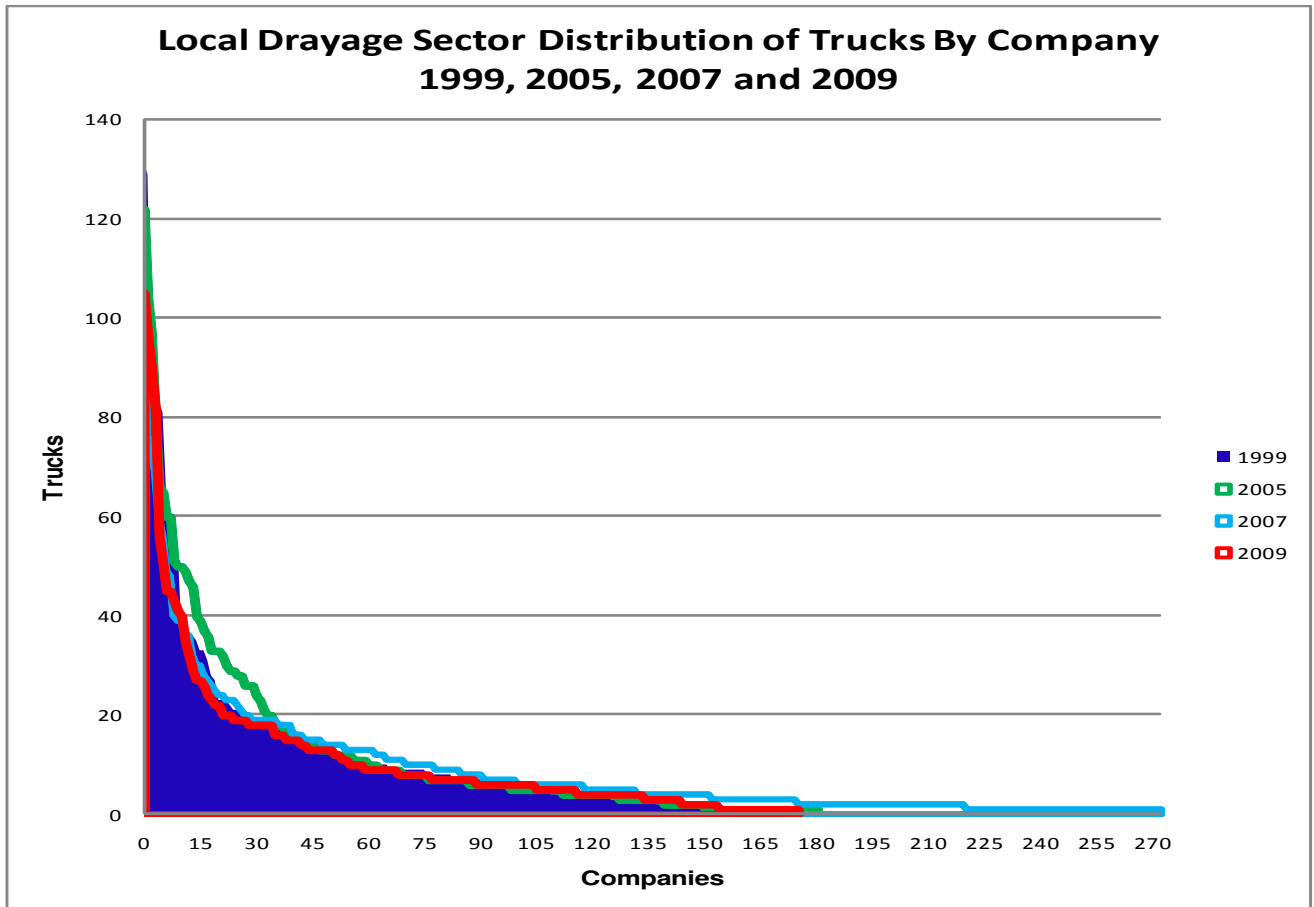
Local Drayage Sector Fleet Profile 1999, 2005, 2007 and 2009						
	1999	2005	2007	2009	% Change 2005 to 2009	% Change 2007 to 2009
Mean Co. Fleet Size	13.2	13.3	9.0	11.4	-16.5%	21.5%
Median Co. Fleet Size	7	6	4	7	14.3%	42.9%
Maximum Co. Fleet Size	131	122	98	96	-27.1%	-2.1%
Total Trucks	2335	2408	2408	2010	-19.8%	-19.8%
Licensed Firms	177	181	273	176	-2.8%	-55.1%
HH Index ²⁹	179	162	102	138	-17.2%	26.6%

Mean fleet size for local drayage firms was relatively stable from 1999 to 2005. It decreased by 32 percent from 2005 to 2007, as the number of licensed firms increased by over 50 percent, though the size of the fleet remained stable. With implementation of TLS-4 and its restrictions limiting the issuance of licenses to Full Service Operators, the mean fleet size has recovered to around 86 percent of its 2005 level. The number of licensed trucks in the local drayage fleet has actually declined by around 400 trucks, or almost 20 percent, since 2005.

Fleet size of the larger firms has declined. The largest firm had a fleet of 122 trucks in 2005; by 2009, this had fallen to 96 trucks. The distribution of trucks among firms based on TLS data for 1999, 2005, 2007 and 2009 is shown in Figure 1.

²⁹ The Herfindahl-Hirshman Index is commonly used as a measure of industry concentration. It is calculated by summing the squares of the market shares of the 50 largest firms. The HHI can range between 0 and 10,000, with a larger number indicating a more highly concentrated industry. Increases in the Herfindahl index generally indicate a decrease in competition and an increase of market power, whereas decreases indicate the opposite.

Figure 1, Distribution of Trucks by Company



Market Share

Available data on the share of truck entries at PMV container terminals provides a more precise estimate of firms’ market shares. The data used for this analysis consists of the number of container transactions by company for 3-month periods in 2006 and 2008, respectively, and data on entries by truck for a 3-month period in 2006. This data was collected by PMV, which does not have data beyond 2008.

Based on the market share data, it appears that a small portion of the licensed fleet accounts for the majority of truck movements from the port terminals. Data from 2006 shows the number of gate entries for 3,152 trucks over a 3-month period. Of these, 1,876 trucks, or 60 percent, visited the port 10 times or less, including 975 who visited the port only once.

Among the same total, 282 trucks accounted for 50 percent of movements and 725 trucks, or 23 percent of the total number of trucks, accounted for 80 percent of movements. Note that these figures include both long-haul and local drayage company trucks (only for market share data).

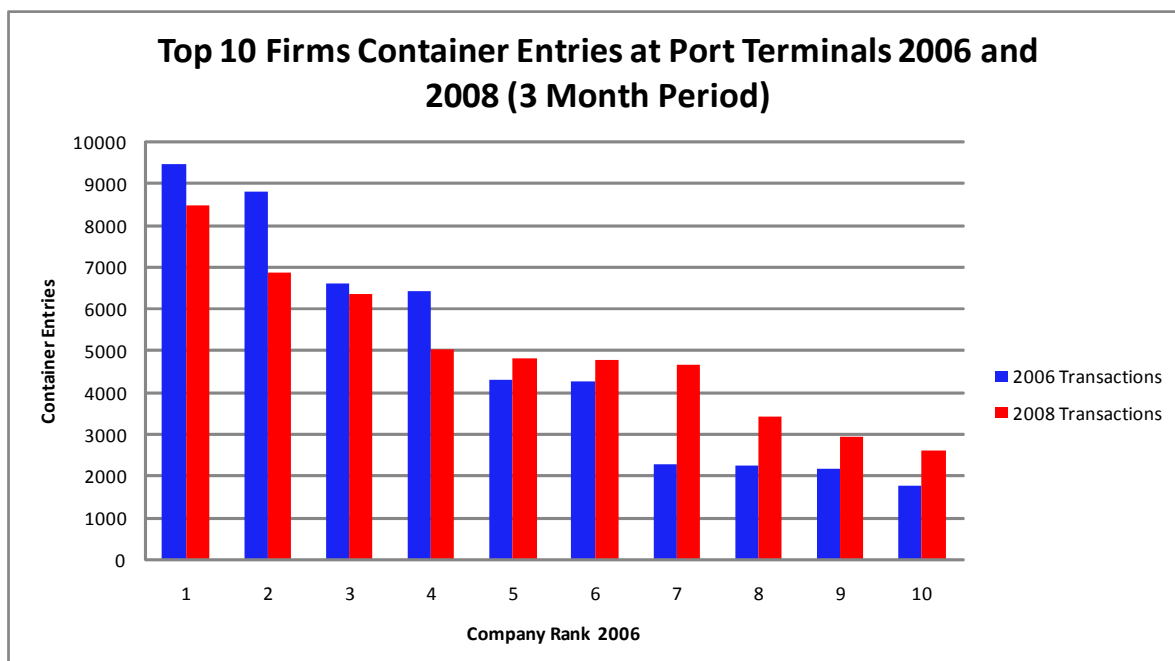
Data on container terminal entries³⁰ by trucking company shows very significant changes in the market shares of firms between 2006 and 2008. Summary statistics based on the top 80 percent of container entries are shown below as Table 6. The data indicate that activity has become much less concentrated among the larger firms over this two-year period. In 2006, the top 21 firms accounted for 80 percent of entries; by 2008 there were 106 companies accounting for the top 80 percent. The firm with the largest share in 2006 accounted for 12.3 percent of total entries; by 2008 the firm with the largest share had only 7.5 percent of total entries.

Table 6, Market Shares Summary Data

Container Terminal Gate Entry Market Shares 2006 and 2008 (Top 80% of Entries)			
	2006	2008	% Change 2006 to 2008
Mean Entry Share	3.8%	0.8%	-80.3%
Median Entry Share	2.1%	0.1%	-93.8%
Maximum Entry Share	12.3%	7.5%	-39.1%
Total Companies	21	106	404.8%
HH Index	555	231	-58.3%

The changes in the number of entries for the 10 firms with the largest market shares in 2006 are illustrated in Figure 2. Note that according to the data, the total number of entries increased by 43 percent from 80,404 entries in 2006 to 115,210 entries in 2008.

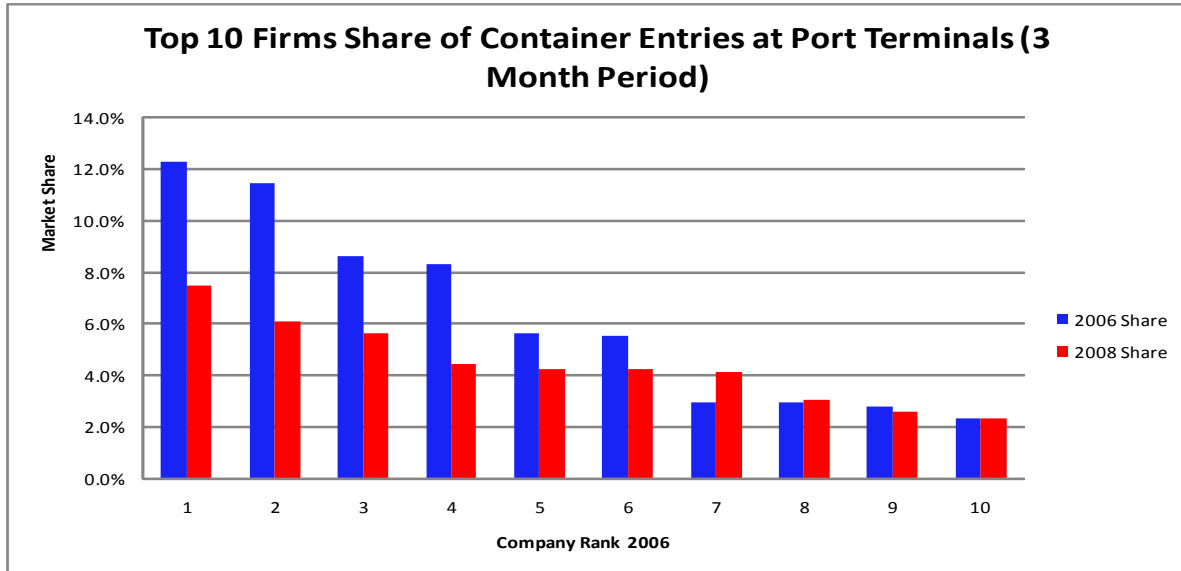
Figure 2, Top 10 Firms Truck Gate Entries



³⁰ This indicates the number of trucks licensed to one trucking firm accessing the gates of Deltaport, Vanterm, Centerm and Fraser Surrey Docks within a specific time period, i.e. three-month periods in 2006 and 2008

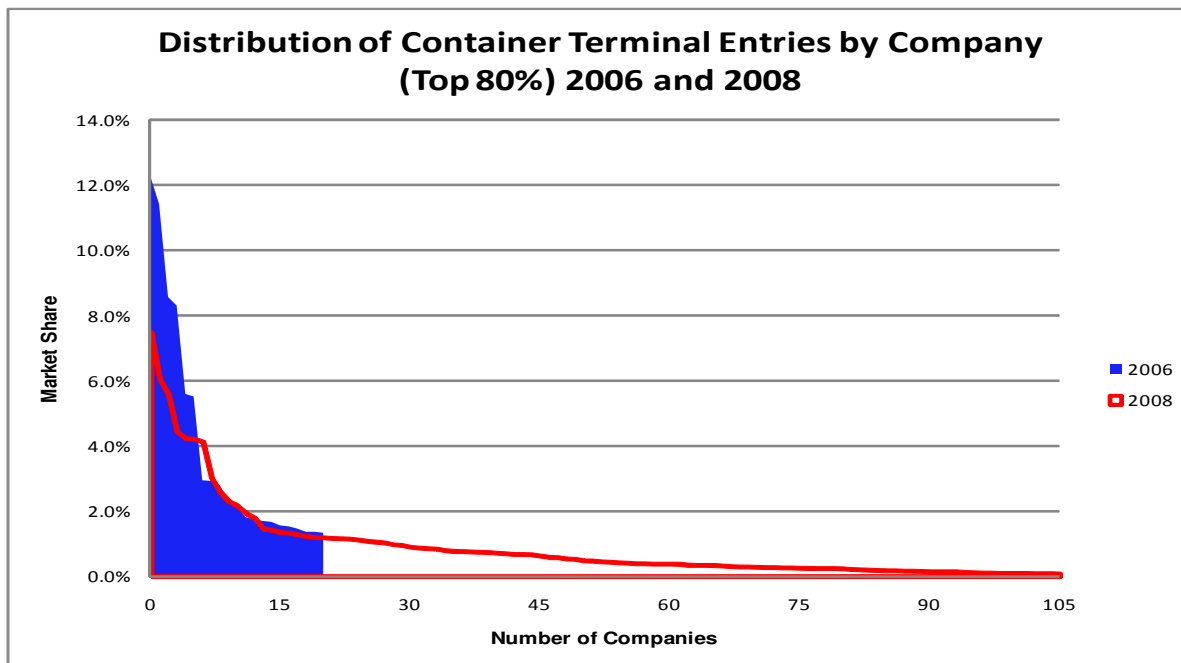
Changes in market shares for the 10 firms with the largest market shares in 2006 are illustrated in Figure 3. Based on this data, it is clear that the market became much more fragmented between 2006 and 2008.

Figure 3, Top 10 Firms Share of Gate Entries



The loss in market share among the largest firms appears to be due to incremental increases by a large quantity of small firms rather than a few large firms. This is illustrated in Figure 4, which shows the market shares by individual companies for the top 80 percent of entries at the container terminals.

Figure 4, Distribution of Gate Entries by Company



The area represented by the blue section, and the area under the red line, are identical (i.e. they account for 80 percent of container entries). However it can be seen that the distribution is radically changed - the share held by larger firms in 2006 (represented by the blue area above the red line) has been redistributed among a large number of small firms. This is consistent with anecdotal reports from large drayage operators that they have lost significant market share to smaller firms.

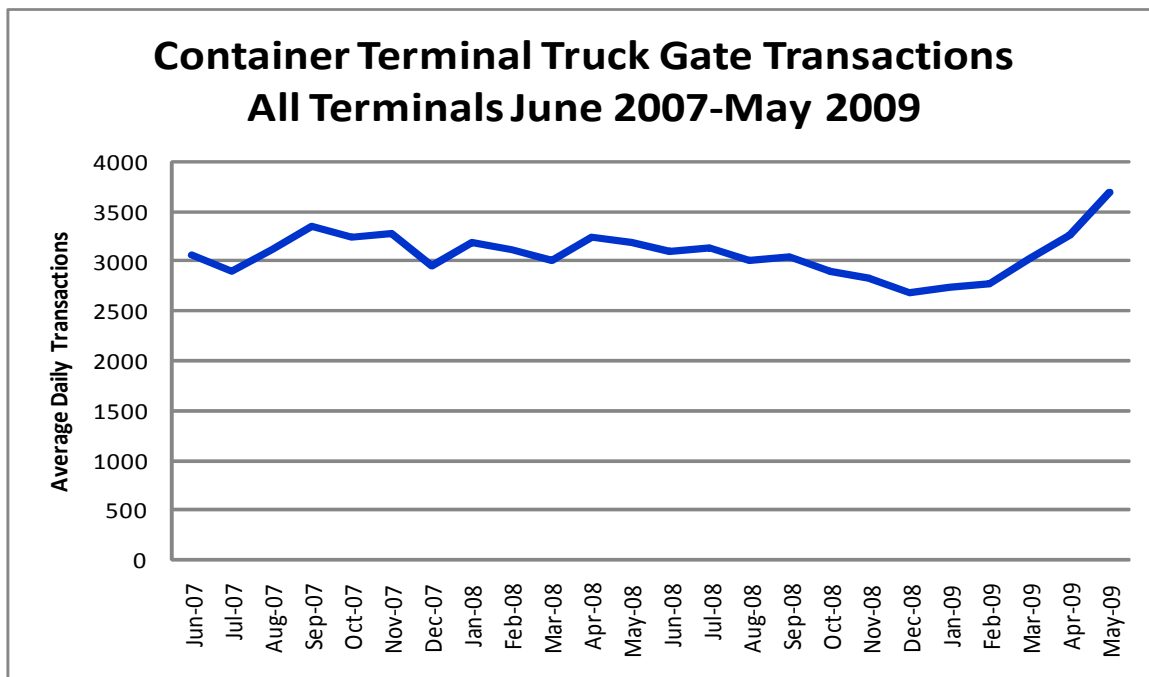
Operational Indicators

Container Terminal Truck Gate Transactions

Transport Canada’s consultant conducted interviews with representatives of the three port terminal operators (TSI Terminals (Deltaport and Vanterm), Dubai Ports World (Centerm) and Fraser Surrey Docks) to obtain information and data on current operations related to port trucking. All of the companies were extremely cooperative and provided detailed data on truck gate transactions and reservation systems compliance for purposes of this project.

Container terminal truck gate transactions for the four port terminals from June 2007 through May 2009 are illustrated in Figure 5 below.

Figure 5, Container Terminals Truck Gate Transactions – All Terminals

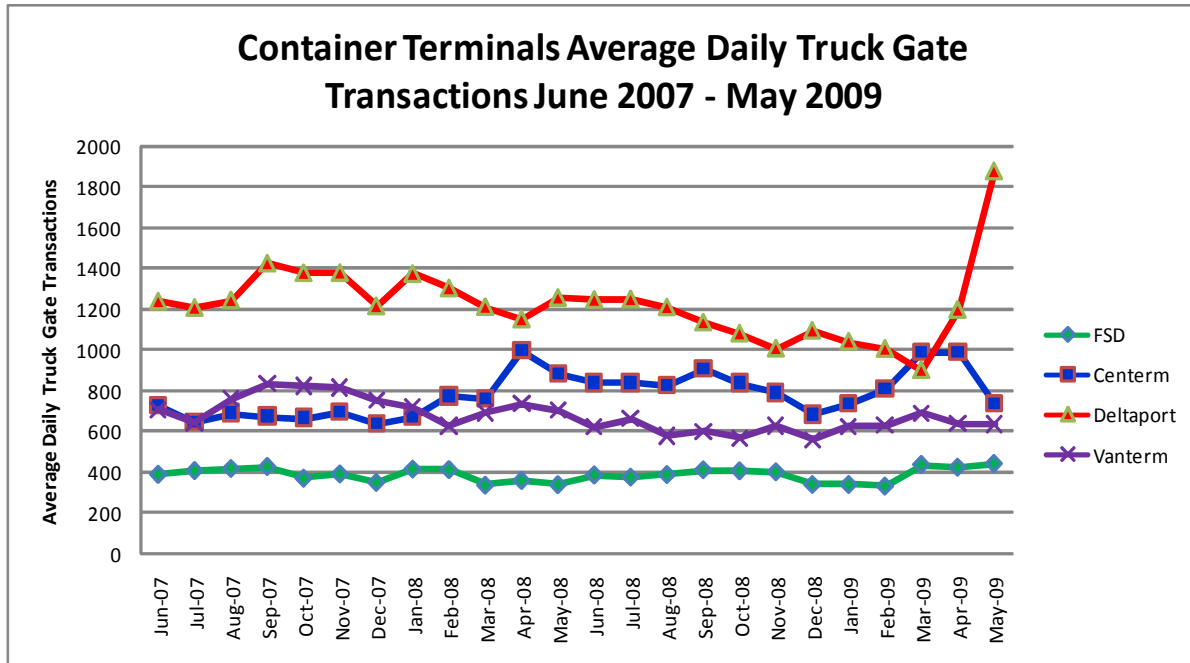


Total average daily volumes declined by around 10 percent for October 2008 through February 2009 but have since recovered and exceeded previous levels.

Industry stakeholders report that import traffic has been weak, but that exports, particularly pulp, have been strong in the early summer of 2009 as offshore customers are building up inventories while prices remain low. The imbalance between import and export demand has resulted in some shortages of empty containers for reloading, and a number of the shipping lines have been repositioning empty containers from United States ports by vessel.

Daily averages by terminal are illustrated in Figure 6.

Figure 6, Average Daily Truck Gate Transactions by Terminal



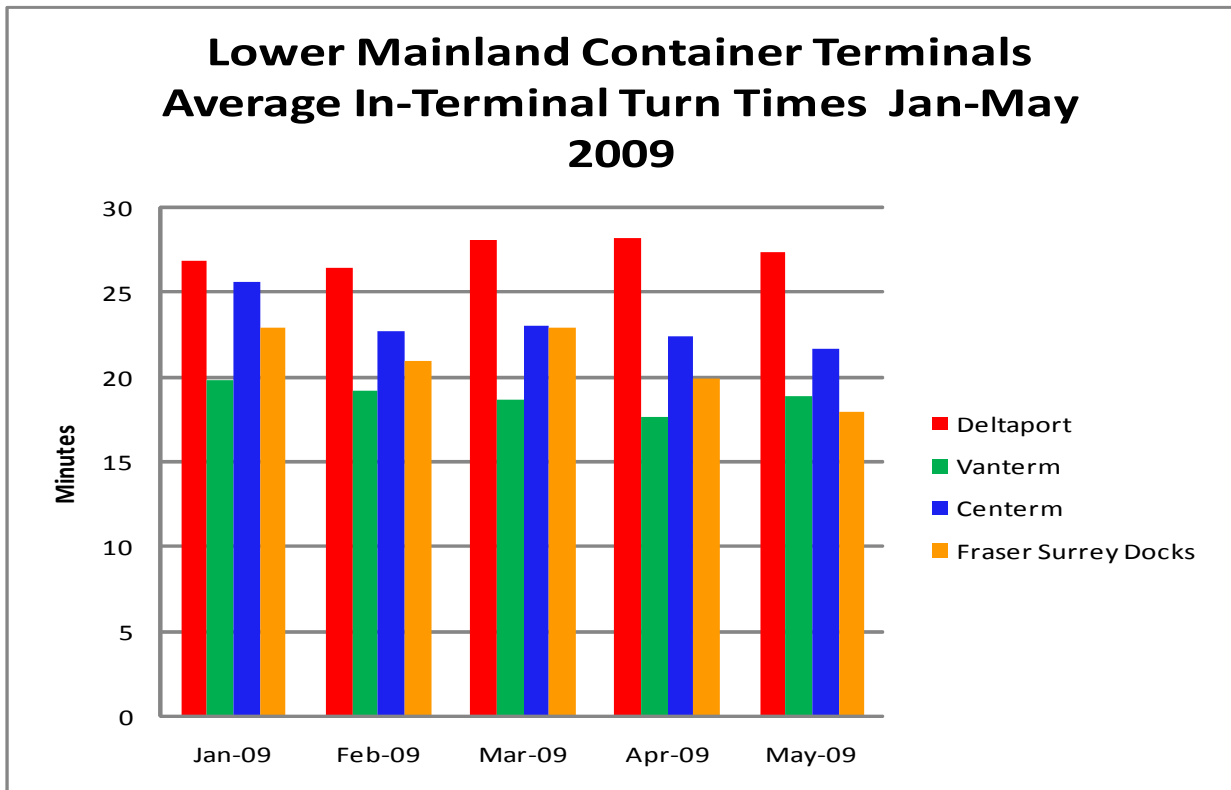
Deltaport has experienced a surge in volume due to the transfer of existing services from Inner Harbour terminals. In February 2009, the Grand Alliance (Hapag-Lloyd, MISC Berhad, Nippon Yusen Kaisha (NYK) and Orient Overseas Container Line (OOCL)) announced a cooperative agreement for vessel sharing with Zim on TransPacific routes, including service to Vancouver.³¹ Zim is contributing three 8,000 twenty-foot equivalent unit (TEU) vessels, and the Alliance is committing eight 8,000 TEU vessels. The NWX (North West Express) service which previously called at Vanterm was moved to Deltaport to more easily accommodate the larger vessels. The Grand Alliance service also calls at Deltaport. Maersk moved its TransPacific service from Centerm to Deltaport in May 2009.

Terminal Turn Times

Average turn times at the four port terminals for the first 5 months of 2009 are shown in Figure 7. Note that these figures reflect only the time trucks spend inside the terminal, and not queuing delays outside the terminal gates.

³¹ “Grand Alliance announces cooperation with ZIM on Pacific North West trade” NYK Lines February 19, 2005. http://www.nyk.com/english/release/31/NE_090218_2.html

Figure 7, Terminal Turn Times



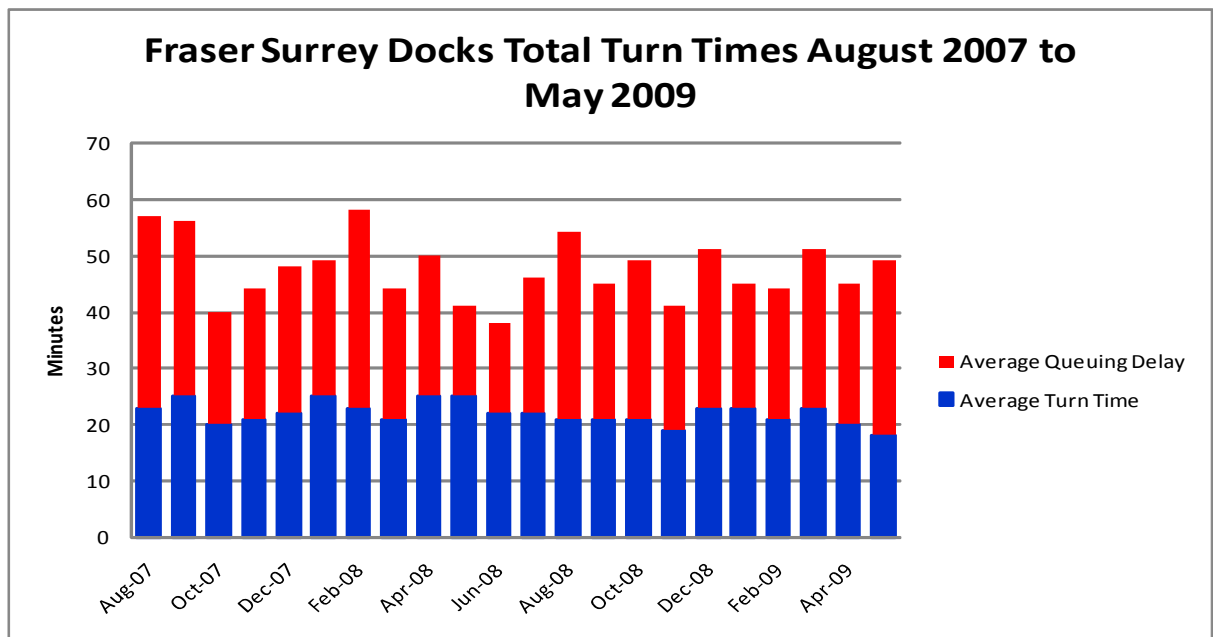
Details are broken down in Table 7.

Table 7, Container Terminal Turn Times

Lower Mainland Container Terminal Turn Times (in minutes)				
Month	Deltaport	Vanterm	Centerm	Fraser Surrey Docks
Jan-09	27	20	26	23
Feb-09	27	19	23	21
Mar-09	28	19	23	23
Apr-09	28	18	22	20
May-09	27	19	22	18
Average	27	19	23	21

Among the terminals, Fraser Surrey Docks is unique in collecting data on queuing delays as well as in-terminal turn times. Although the other terminals do not collect this data, it is a more accurate description of the total time required to access and clear a port terminal. Fraser Surrey Docks average queuing delays and turn times from August 2007 through May 2009 are shown in Figure 10. Average queuing delay over this period was approximately 25 minutes compared to 22 minutes for the average turn time, for a total of 47 minutes per terminal call.

Figure 8, Fraser Surrey Docks – Total Turn Times



These figures are similar to data collected in the fall of 2006 for the British Columbia Ministry of Transportation Container Truck Simulation project, which indicated average combined queuing and turn times of 52 minutes among the four port container terminals.³²

All of the container terminals have reduced their night gate operations in response to the reduction in container volumes. TSI reduced night gates to 3 days per week from 4 at Deltaport in July 2008, and at Vanterm to 2 days in July 2008³³. TSI night gates were eliminated completely this spring but have been re-instituted 4 nights a week at Deltaport to alleviate congestion. Centerm suspended night gates in May 2009³⁴ and has further reduced truck gate hours to 8 AM to 4 PM effective July 6.³⁵

Drayage companies have reported incidents of extreme queuing delays at Centerm starting last fall, though it appears these are now infrequent with the reduction in throughput at the terminal, and a committee has been formed with representation from the shipping lines, drayage firms and Centerm staff to resolve chronic problems. Deltaport has experienced congestion recently. Prior to reopening of the night gates, one driver reported lining up a significant distance from the terminal and waiting three and a half hours before reaching the terminal gate. The next section examines the respective reservation systems in place at port container terminals; although, based on the above anecdotal evidence, there appear to be some discrepancies between wait times and the function of reservation systems.

³² BC Ministry of Transportation Container Trucking Forum Container Simulation Project Final Report, IBI Group, April 25, 2007.

³³ TSI CUSTOMERS NOTICE = REDUCTION NIGHT GATE OPERATIONS
http://www.beacon.ca/news_popup.asp?id=130

³⁴ RECORD OF DISCUSSION May 20th, 2009 Container Stakeholder Committee Meeting Date: May 20th, 2009 Pacific Gateway Portal <http://www.myvpa.ca/containerstakeholders/>

³⁵ “Updated Centerm Gate Hours Effective Monday, July 6th, 2009”
http://portal.pohub.com/portal/page?_pageid=861,260506&_dad=pogprtl&_schema=POGPRTL

Container Reservation Systems

The Port of Vancouver has had a container reservation system in place since 2001.³⁶ Initially reservations were compulsory only for picking up full import containers, and specific lanes at each of the terminals were dedicated to these transactions. Trucks without reservations were required to queue in non-reservation lanes. Trucks with reservations were required to arrive in line at least 15 minutes prior to the closing of the reservation window. If they were late, they were required to reschedule (import pickups) or queue in the non-reservation lanes (all other transactions). Reservations were made through individual terminal websites.

The terminals implemented full mandatory reservation systems following the trucking dispute of 2005. Large shippers typically have special arrangements including speed gates or advance booking arrangements with the terminal operators.

In April 2009, led by PMV, the terminals standardized compliance requirements for the reservations systems. Appointment windows are set at 2 hours (1 hour windows with half hour grace periods before and after), and reservations must be cancelled a minimum of 2 hours in advance (up from 1 hour). For some terminals, this represented a reduction in the appointment window. A common complaint of drivers is that they may queue at the terminal gates so long that their appointment expires and, then, they may not be served by the terminal due to non-compliance. All of the terminal operators indicated they will extend appointment windows to account for special circumstances.

The PMV standardization initiative also extended to the advance notice requirement for cancellation of reservations. Since April 2009, firms must cancel a minimum of 2 hours in advance at all terminals.

Details of current reservation systems for each terminal are provided below.

Deltaport

The Deltaport reservation system is based on the WebAccess module of the Navis Terminal Operating System (TOS). TSI began using the NAVIS TOS at Deltaport on March 31, 2008. Reservations are transaction-based with separate appointments required for each transaction (import pickup, export dropoff, empty pickup, empty dropoff). Companies can make reservations up to 10 days in advance based on a shipping line booking number.

Reservation allotments are set on the basis of hourly capacity at the terminal, with allowances for labour scheduling (particularly the lunch break). Currently the capacity limitation for handling trucks is the in-gate. There are 6 pedestals to handle incoming trucks, manned by 5 checkers via intercom. Deltaport has capacity to queue approximately 150 trucks, consisting of a single queuing lane holding 70 trucks from the Deltaport Way

³⁶ Port of Vancouver Container Terminal Scheduling System, November 2008.
http://www.portvancouver.com/trade_shipping/docs/cont_term_scheduling_systems.pdf

overpass to a two-lane queuing section; capacity of about 52 trucks in the two-lane section approaching the gates; and 25 to 30 trucks from the security guard booth to the in-gate. Usual elapsed time based on normal gate processing times from the overpass to the in-gate is 1 hour. This rule of thumb is used to assess whether or not trucks have arrived in time to be in compliance with their reservation.

Users of the system have reported a number of issues with the current Deltaport system including difficulty in scheduling double-header moves (i.e. dropping off an export and picking up an import at the same time) due to an inability to coordinate drop-offs and pickups; and an inability to schedule appointments in a timely manner. One transload operator indicated that, currently, his earliest available appointment window for exports is 7 days out. On this basis, shipments may be delayed even when the shipping lines have capacity to accommodate the traffic on earlier sailings.

Under current arrangements, users of the reservation system are responsible for cancelling appointments even when they become non-compliant due to changes in terminal scheduling (i.e. a change in Earliest Receiving Date (ERD), established by the vessel and terminal operator, has repercussions for the delivery and pick-up of containers by trucking firms. However, when the ERD is changed by the vessel and/or terminal operators, the trucking firm remains responsible for cancelling reservation appointments).

Vanterm

The Vanterm reservation system has been in place for a number of years, based on the Universal TOS and TSI's in-house developed J-STEPS system. The appointment system is similar to the original Vancouver Port Authority model in that there are two classes of appointments: one for import pickups, and one for all other transactions. Import bookings require firms to supply a container number whereas other bookings do not. Current daily appointments total 980, of which 280 are dedicated to imports.

Appointments may be booked one day in advance – the web server opens at 11 AM for trucking companies to book appointments for the following day on a first come, first served basis. The Vanterm representative indicated that currently the terminal is running almost on a “non-reservation” basis since appointments are easily obtained due to reduced shipment volumes. Vanterm is not running night gates due to reduced volumes.

Centerm (DP World Canada)

Centerm's truck reservation system is based on an earlier version of Navis (installed 8 years ago) coupled with extensive in-house modifications. Reservations are mandatory for all transactions. Appointments can be booked a day in advance. In 2005, Centerm implemented a system called SCORE to allow shippers (transload operators, etc.) to book two days in advance. Centerm is working to improve the reservation system including developing an application to allow firms booking appointments to view the available time slots. The terminal is also considering updating the TOS to a new Navis system, which can be more easily customized for specific operations. DP World have found that the

requirement to engage Navis to customize their terminal software has led to implementation delays and increased costs.

In January 2009, PMV and Centerm implemented a system for checking reservation system compliance at the Port access gate prior to queuing at the terminal gates. The first day this was implemented, it resulted in a substantial queue at the port access gate, which impacted local traffic. Fewer problems have been reported since.

Fraser Surrey Docks

Fraser Surrey Docks has developed its own reservation system with the goal of ensuring flexibility for trucking firms. The system is based on gate appointments for trucks rather than specific transactions. This allows the carrier to have multiple transactions for each appointment. This system is under review, with the intention of implementing a requirement for transactional data to ensure reservations are booked on actual business and not booked on speculation. A pre-booking procedure to allow firms to book 2 days in advance has been implemented. This system is open to all firms. The normal process for booking reservations one day in advance also applies. Trucks arriving at the gate are entitled to use the next available appointment for their company.

Reservation System Compliance

The level of reservation system compliance at Vanterm, Centerm and Fraser Surrey Docks for the first 5 months of 2009 is shown in Table 8. Deltaport did not provide statistics on this measure for 2009 and, as such, figures for the last five months of 2008 are shown. The level of compliance is based on the number of appointments completed and/or cancelled within the prescribed window. The number of reservations completed is substantially less than the compliance rate, averaging between 60 percent and 70 percent as compared to the average compliance rates of 80 percent+. This indicates that a substantial number of reservations are cancelled, rather than completed or rescheduled.

Table 8, Reservation System Compliance 2009

Reservation System Compliance				
	Deltaport*	Vanterm	Centerm	Fraser Surrey Docks
Jan-09	88%	90%	85%	76%
Feb-09	88%	92%	87%	82%
Mar-09	90%	89%	88%	83%
Apr-09	90%	89%	89%	82%
May-09	85%	93%	86%	80%
Average	88%	91%	87%	81%
*Deltaport: Aug-Dec 2008				

Drayage Costs

Cost estimates in this chapter are based on the methodology in Operating Costs of Trucks and Surface Intermodal Transportation in Canada (OCTC).³⁷ The approach is described below:

*We follow essentially an activity-based approach that itemizes each case study's distance travelled, operating speeds, fuel consumption rates, and all additional work hours not driving (i.e. waiting time, loading / unloading time) where drivers and equipment are "on duty". The foregoing activity measurements result in specified costs for over the road operation of trucks. Vehicle-related costs include driver costs, fuel costs, repairs, tires, equipment ownership and licensing. The latter two costs are proportional to the number of vehicles needed to haul a given volume of freight, within a given timeframe. In addition to the direct hauling activity related costs, provision is made for assignable indirect costs for the fleet business. These include over-all administrative activity (management and supervision, billing and accounting, information technology, sales and marketing, and provision of business premises for operating the fleets), interest costs for moneys invested in equipment and for working capital of the business, insurance costs and an operator profit margin.*³⁸

In addition to a solid and consistent methodology for analyzing costs, the estimates of trucking costs developed in the 2008 edition of this report provide updated values for trucking unit costs to 2007. With this as a background, costs specific to Lower Mainland local drayage operations are estimated for this project through adjusting unit costs to values specific to the sector (where available) and through manipulation of the activity parameters to more closely match actual drayage operations. This approach to estimating drayage costs was used previously in BC Ministry of Transportation Container Trucking Forum Container Simulation Project³⁹ to estimate industry costs for the purpose of assessing potential benefits from improvements in system efficiency. Estimates of cost differentials between large trucking company operations with employee drivers and owner-operators were also developed. One of the major sources of cost differentials between these two categories is the difference in the capital stock; the estimates for large companies are based on the same assumptions as for the dry freight sector in that they are based on the purchase of new vehicles, while the owner-operator estimates are based on the use of older vehicles with a lower initial purchase price.⁴⁰

³⁷ Operating Costs of Trucks and Surface Intermodal Transportation in Canada. Ray Barton Associates Ltd. In association with Logistics Solution Builders Inc. and The Research and Traffic Group March 31, 2008. Previous editions were published as Operating Costs of Trucks in Canada. For purposes of brevity, this series of reports will be referred to as OCTC.

³⁸ Ibid. p. 5.

³⁹ BC Ministry of Transportation Container Trucking Forum Container Simulation Project Final Report IBI Group, April 25, 2007.

⁴⁰ This distinction, while useful for estimating cost differentials between these different types of operations, is not necessarily indicative of the actual capital stock differences between company-owned trucks and owner/operators. According to Port Metro Vancouver Truck Licensing System data, the average age of trucks for companies in the Full Service operator category local drayage fleet is 9.2 years for company trucks ("Owned") and 10.5 years for owner/operators ("Claimed").

To avoid confusion in comparing costs between different periods, the labeling conventions for the various cost estimates are specified as follows: the OCTC estimates are based on 2005 and 2007 data and are labeled accordingly; the 2007 drayage cost estimates are those prepared for the Container Simulation Study; and the new 2009 drayage cost estimates use updated unit cost information for wage rates and fuel prices. For owner-operator costs, inflation factors for variable costs are based on the difference between the 2007 and 2005 OCTC costs.

Operating Parameters

Activity in the port drayage sector includes the transportation of loaded or empty containers between the port terminals, rail intermodal terminals, import and export warehouses and off-dock container storage yards. Port drayage operations differ from long-haul trucking operations in that the daily workload typically includes multiple local trips between these facilities, which entails more time spent loading and unloading (including queuing for access to terminals) and lower average speeds across the urban road network.

Detailed data on drayage operations was collected in the fall of 2006 for the Container Simulation Project. A sample of drivers completed daily trip diaries and 20 trucks were temporarily equipped with Geographic Positioning System (GPS) transponders to electronically track their movements. This data provided typical values for operating parameters including time spent at terminals and travel times. These were used as the basis for cost estimates for the Container Simulation Project; as no more recent data is available, the same values are used in this project. Based on the limited data available, there does not appear to have been any major improvements to system efficiency (terminal turn times, etc.) since 2006.

Details of the operating parameter estimates used in OCTC and those for the drayage sector are shown below.

Table 9, Drayage Cost Estimate Operating Parameters 2006

Sectoral Operating Parameters: Dry Freight Long Haul vs. Port Drayage		
5 Axle Semi Unit	Dry Freight Long Haul	Port Drayage
Annual Distance (km):	80,000	47,400
Average Payload (kg)	19,155	n/a
% Travel Time	73%	48%
% Turn Time	27%	52%
Trip Running Time (hours)	5.7	3.8
Load/Unload Time (hours)	2.1	4.1
Operation - Hours/Day	7.8	7.9
Operation - Days/Year	250	250
Annual Running Hours	1,425	948
Total Annual Hours	1,952	1,975
Avg. Speed (km/hr)	56	50

Drayage trucks spend approximately half of their time engaged in loading/unloading operations, compared to 27 percent for long haul dry freight operations. The drayage operating parameters are assumed to be the same for both company operations and owner-operators.

Unit Costs

Unit cost assumptions used for the dry freight sector and for port drayage are detailed below in Table 10. The values from OCTC 2005 are shown for purposes of comparison.

Table 10, Drayage Unit Cost Estimates

Unit Cost Estimates				
	2005 Dry Freight Long Haul	2007 Dry Freight Long Haul	2009 Drayage Company	2009 Drayage Owner/Operator
Wage Rate (\$/Hour)	\$19.25	\$21.50	\$20.60	\$20.60
Labour Burden	27%	27%	27%	27%
Fuel (\$/litre)	\$1.01	\$0.85	\$0.94	\$0.94
Repairs	\$7,557	\$7,756	\$7,756	\$19,454
Cleaning	\$199	\$199	\$199	\$1,440
Transport	\$895	\$945	\$945	\$2,808
Tires	\$2,138	\$2,337	\$2,337	\$2,733

The current wage rate for port drayage is based on the existing contract between Canada Drayage Inc. and Teamsters Local 31. The Labour Burden category includes the cost of holiday pay, benefits, and other costs of employing drivers; it is shown as a percentage of total wage costs. For purposes of this comparative analysis, it is assumed that owner-operators pay themselves the same as an hourly employee with any additional income over the costs of operations accruing as profit. The “Transport” category includes any special equipment costs related to specific operating sectors; for the container sector estimates, these include parking and communications equipment.

The cost estimates for repairs, cleaning, transport and tires are based on data provided by the Vancouver Container Truckers Association on average costs in 2005. These costs have been assigned to categories consistent with those used in OCTC and updated by using inflation factors from the periodic versions of the report. These inflation factors from the 2005 edition to the most recent version (2007 data) are shown in Table 11 below.

Table 11, Drayage Cost Estimates Inflation Factors

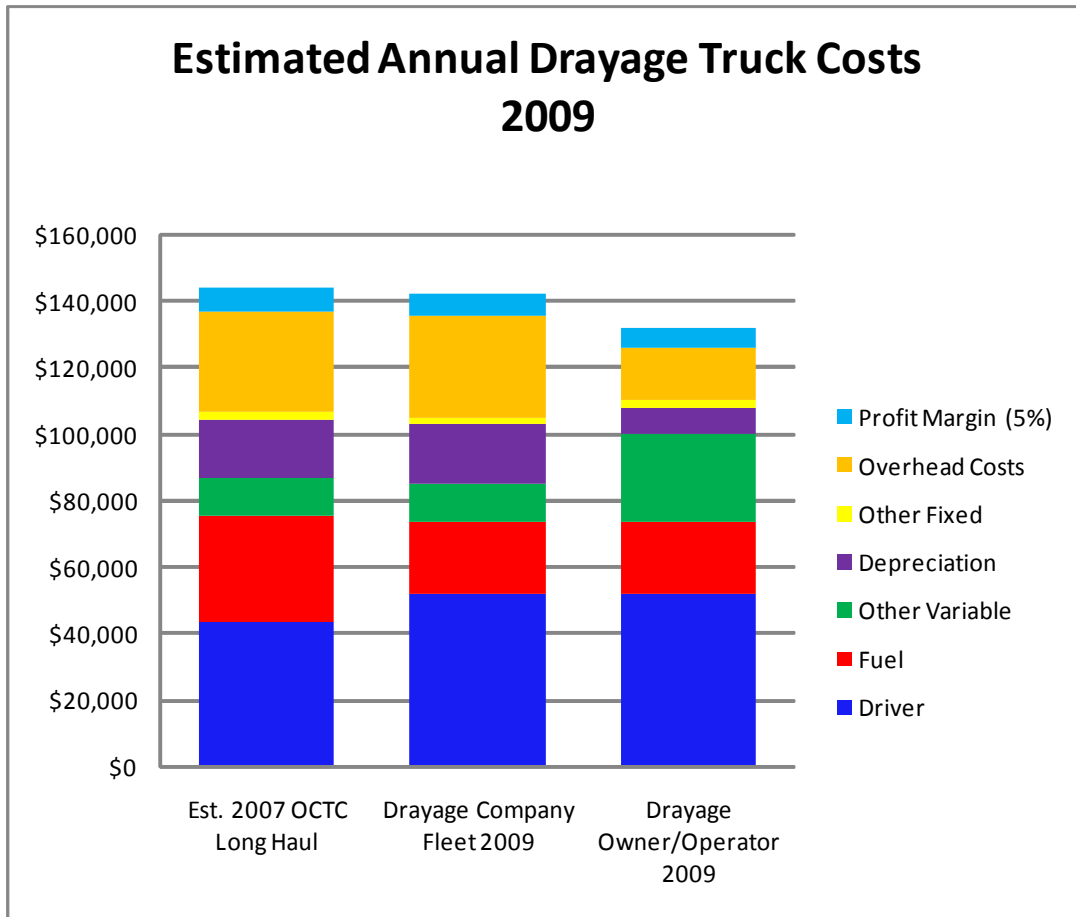
Cost Inflation Factors 2005 to 2007			
	Est. 2005 OCTC	Est. 2007 OCTC	Inflation Factors
Hourly Wage	\$19.25	\$21.50	1.12
Repairs	\$7,557	\$7,756	1.03
Cleaning	\$199	\$199	1.00
Transport	\$895	\$945	1.06
Tires	\$2,138	\$2,337	1.09
Licenses	\$2,229	\$2,229	1.00
Insurance Costs	\$4,625	\$5,457	1.18
Administration and Interest on Working Capital	\$19,273	\$21,316	1.11

Maintenance and depreciation costs for the owner-operator fleet have been estimated based on an average tractor value of \$25,000; regular maintenance costs have been assigned to repair costs, while periodic major overhaul costs have been assigned to the depreciation category. To the extent that the estimate of the tractor value is inflated, the actual depreciation cost component for owner-operators may be overstated. The depreciation estimates from OCTC suggest that tractors retain only 21 percent of their value after 5 years in long-haul service. Based on the estimated cost of \$112,815 for a new tractor suitable for this work in British Columbia, that would imply a value of \$23,691 for a five year old unit. The average age of the drayage fleet is approximately twice that, and from a cursory examination of available used truck prices it appears that a ten year old truck may be purchased for \$10,000 to \$12,000.

Drayage Cost Results

The results of the cost analysis are illustrated in Figure 9 below. Based on this analysis, total annual costs, excluding profit, for an owner-operator are approximately \$126,000, compared to around \$136,000 for a company-owned new truck. Owner-operators have lower fixed costs due to lower depreciation and lower overhead costs, but higher variable costs due to greater repair costs. Fuel costs account for approximately 16 percent for company drayage trucks and 18 percent for owner-operators, compared to the estimate of 23 percent for long haul operators, from OCTC 2007, because of lower distance travelled.

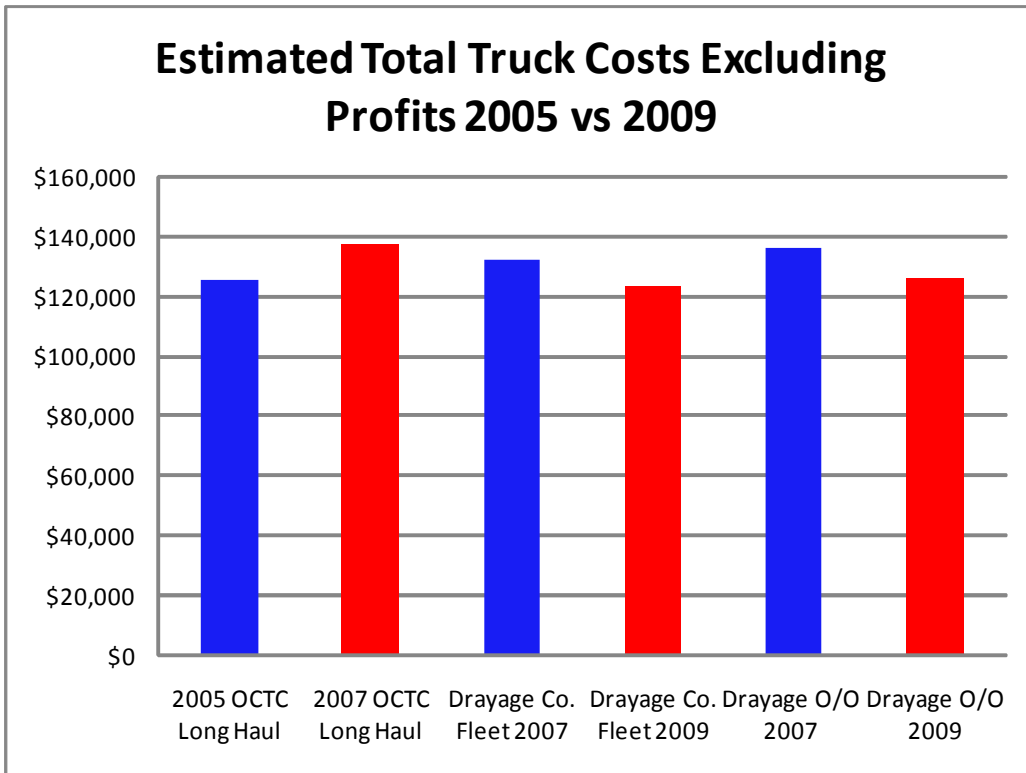
Figure 9, Estimated Annual Drayage Truck Costs, 2009



A comparison of current total cost estimates to earlier estimates is illustrated below. The OCTC cost estimates for long haul operations increased by 10 percent from the previous (2005) estimate. In contrast, the drayage cost estimates increased only 3 percent for company fleets and 2 percent for owner-operators in the drayage sector. Technically, these results are not directly comparable and due to delays in data availability, the OCTC estimates represent the change in costs from 2005 to 2007 while the drayage cost estimates use 2009 data where available.

Major cost increases for the OCTC long-haul estimates included a 12 percent increase in hourly wages and a 29 percent increase in fuel prices over the previous version. For the drayage sector, the comparable increases were 7 percent for wage costs and fuel prices, which actually declined by 7 percent from 2007 levels.

Figure 10, Cost Estimate Comparisons



The most important finding of this analysis for this project is that cost escalation in the drayage sector has been very modest over the last 2 years, primarily due to moderation in fuel prices.

ANNEX VII

Public Notice – Review of Trucking Regulations

Notice to Truckers, Companies, Brokers and Other Interested Parties Engaged in Moving Containers by Truck at Port Metro Vancouver

On July 31, 2007, the Government of Canada issued the *Regulations Amending the Port Authorities Operations Regulations* of the *Canada Marine Act*. Please refer to the **Canada Gazette, Part II, Volume 141, Extra Edition, published August 2, 2007**, for the full text.

Summary: For license holders to access the port to move containers, the amending regulations require that an owner-operator must be paid the equivalent of a rate established in an existing collective agreement and cannot be paid less than rates set out in the Memorandum of Agreement between trucking companies and the Vancouver Container Truckers Association, dated July 29, 2005 (available on the Port Metro Vancouver website). The Minister of Transport will conduct a review of the provisions of the amending regulations pertaining to rates before August 1, 2009.

Please note: The amending regulations **will continue to be in force after August 1, 2009**. The Minister will consider the results of the review to determine whether further amendments are required.

Transport Canada invites interested stakeholders to submit comments related to the amending regulations by mail, fax or electronic mail by **June 5, 2009** to:

Neil Weatherdon
Senior Policy Advisor, Ports Policy
Transport Canada
Tower C, Place de Ville, 25th Floor
330 Sparks Street
Ottawa, Ontario K1A 0N5
Fax: 613-998-1845
E-mail: neil.weatherdon@tc.gc.ca

ANNEX VII

Avis Public Examen de la Réglementation Touchant le Camionnage au Port

Avis aux camionneurs, compagnies, courtiers et autres parties intéressées se livrant au transport des conteneurs par camion au Port Metro Vancouver

Le 31 juillet 2007, le gouvernement du Canada a publié le *Règlement modifiant le Règlement sur l'exploitation des administrations portuaires* pris en vertu de la *Loi maritime du Canada*. Veuillez vous référer à la **Partie II de la Gazette du Canada, Volume 141, Édition spéciale, publiée le 2 août 2007**, pour consulter le texte intégral du Règlement.

Sommaire : Pour que les détenteurs de licences puissent avoir accès au port pour transporter des conteneurs, le règlement modifié stipule qu'un propriétaire-exploitant doit être payé l'équivalent du taux prévu dans la convention collective et pas moins que les taux prévus par le protocole d'entente entre les compagnies de camionnage et la Vancouver Container Truckers Association, en date du 29 juillet 2005 (disponible sur le site Web de Port Metro Vancouver). Le ministre des Transports effectuera un examen des dispositions du règlement modifié relatif aux taux avant le 1er août 2009.

Remarque : Le règlement modifié continuera d'être en vigueur après le 1er août 2009. Le ministre étudiera les résultats de l'examen et décidera si d'autres modifications sont nécessaires. Transports Canada invite les intervenants intéressés à soumettre leurs commentaires relativement au règlement modifié par lettre, télécopieur ou courriel d'ici le **5 juin 2009** à :

Neil Weatherdon
Conseiller principal en politique, Politique portuaire
Transports Canada
Tour C, Place de Ville, 25e étage
330, rue Sparks
Ottawa (Ontario) K1A 0N5
Télécopieur : 613-998-1845
Courriel : neil.weatherdon@tc.gc.ca

ANNEX VIII

List of Stakeholders Submitting Representations

	Name	Organization
1	Anonymous	Container trucker
2	Anonymous	Container trucker
3	Anonymous	ISL Customs Brokers
4	Paul Landry and Ron Lennox	British Columbia Trucking Association and Canadian Trucking Alliance
5	Coleman Tokei	KTL Transport Ltd.
6	Steve Sutherland	Vancouver Container Truckers Association, Canadian Auto Workers Local 2006
7	Mike Carr	Saskatchewan Ministry of Advanced Education, Employment and Labour
8	Alan Humphries	Alberta Infrastructure and Transportation
9	Sandra Carroll	British Columbia Ministry of Transportation and Infrastructure
10	Graham Kee	Port Metro Vancouver
11	Ian May	Western Canadian Shippers' Coalition
12	Kevin Ouellette	West Coast Container Freight Handlers Association