Brief to the Senate Committee on Foreign Affairs and International Trade
on the Maritime Provisions of CETA and Bill C-30

April 6, 2017

The Shipping Federation of Canada, which is the voice of the owners, operators and agents of ships engaged in Canada's internatonal trade, strongly supports the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union, which represents a positive development for Canada's maritime industry on a number of fronts. Not only will the agreement generate additional trade in goods between Canada and the E.U., it will also create demand for related transportation services, thereby generating new economic opportunities for Canadian ports, trade routes and businesses. This being said, we have serious concerns that the maritime provisions of Bill C-30 are currently drafted in such a way that key stakeholders - and Canadian exporters in particular – will not have access to to the full range of potential benefits linked to those provisions.

THE ISSUE

Chapter 14 of CETA (which covers maritime transportation) provides that ships of E.U. entities may reposition their empty containers between Canadian ports on a non-revenue basis. Although this is an activity that is currently restricted under Canada's *Coasting Trade Act*, its liberalization would render Canadian trade routes more logistically efficient and competitive, while also offering Canadian exporters additional capacity at a more competitive price than is currently the case. This is particularly true at ports such as Halifax and Saint John, where empty containers are often in short supply.[1]

OUR CONCERN

The wording used in Bill C-30 to implement these provisions is such that only a very limited number of E.U. shipowners would actually be able to reposition empty containers between Canadian ports, thereby minimizing their potential benefits for Canadian exporters and the logistics network overall. This is because C-30 stipulates that the only party which may engage in empty container repositioning is the "owner" of the vessel, and defines the owner as the party with rights to the ship's "possession" and "use." This approach is of great concern to us, as it fails to accurately reflect contemporary business practices within the container shipping industry, particularly as they relate to the closely intertwined concepts of vessel ownership and vessel operation.

This is especially true in cases involving vessel sharing agreements, under which container shipping lines agree to share space on board one another's vessels along certain trade routes, with each line deploying a certain number of vessels on a rotating basis in order to prevent over capacity on those routes. As

[1] There is abundant literature on the costs of repositioning ocean containers and the need for containerized export cargoes to have access to empty ocean containers so they can be used for exporting cargo overseas. The availability of the right type of containers, as well as the need to provide such containers to the exporter at a reasonable cost, are instrumental to the feasibility of any given containerized export project and to the competitiveness of the cargo being exported.

currently written, Bill C-30 would only allow the E.U. owner of a ship that is serving as the "master carrier" under a vessel sharing agreement (i.e. the owner whose ship is serving as the transporting vessel) to reposition its empty containers between two Canadian ports.

In other words, the remaining E.U .owners who are also partners in the agreement would NOT have the right to reposition their empties on the same voyage, **despite the fact that they all share operational control of the vessels involved in that agreement** (i.e. they agree and consult on the deployment and use of those vessels, and on issues such as sailing schedules, service frequency, ports to be served, port rotation, type and size of vessels to be used, the addition or withdrawal of capacity, etc.).

The fact that this concept is nowhere to be found in Bill C-30 is a cause of significant concern, not only because it creates a Canadian legislative regime that is out of step with contemporary business practices, but also because it deprives Canadian exporters of the full benefits of a more logistically efficient and cost effective transportation system.

OTHER APPROACHES

The significance of the concept of operational control in the container shipping industry has also been acknowledged by the U.S. Customs authorities, which have issued a number of rulings on the applicability of the *Jones Act* to the repositioning of empty containers by foreign flag ships. In those rulings, the U.S. authorities have consistently stated that ship owners who are members of vessel sharing agreements in which all of the partners share joint operational control of the vessels involved, may reposition their empty containers between U.S. ports regardless of whether they are the "master carrier" on a given voyage or not.[2]

PROPOSED SOLUTION

If CETA is to be fully and effectively implemented, and if Canadian exporters are to truly benefit from the agreement's empty container repositioning provisions, then any partner in a vessel sharing agreement which is an E.U. entity should be able to transport its own empty containers between Canadian ports, as well as the empty containers of any of the other E.U. entites who are parties to the agreement, using any of the vessels that are named in that agreement.

We believe that this can be achieved by amending Section 92 of Bill C-30 (which amends the *Coasting Trade Act* to allow eligible vessels to engage in empty container repositioning), as follows (new text is underlined):

> **92 (1) Subsection 3 (1) of the Act is replaced by the following:**
>
> **Prohibition**
>
> **3 (1)** No foreign ship or non-duty paid ship shall, except in accordance with a license, engage in the coasting trade.
>
> **(2) Section 3 of the Act is amended by adding the following after subsection (2):**
>
> **Repositioning of empty containers**
>
> **(2.1)** Subsection (1) does not apply in respect of carriage between one place in Canada and another, without consideration, by any of the following ships, of empty containers that are owned or leased by the ship's owners <u>or operators</u> and any ancillary equipment that is permanently affixed to the containers:

[2] These benefits are extended to vessels of foreign nations which are found to extend reciprocal priveleges to U.S. vessels

(a) a non-duty paid ship whose owner or operator is a Canadian entity or an EU entity;

(b) a foreign ship that is registered in the first, or domestic, register of a member state of the European Union and whose owner or operator is a Canadian entity, an EU entity or an entity that is under Canadian or European control;

(c) a foreign ship that is registered in a second, or international, register of a member state of the European Union and whose owner or operator is a Canadian entity, an EU entity or an entity under Canadian or European control;

(d) a foreign ship that is registered in a register other than the Canadian Register of Vessels or a register referred to in paragraph (b) or (c) and whose owner or operator is a Canadian or EU entity.

AN ADDITIONAL NOTE ABOUT CONTAINERS

Bill C-30 also provides a restrictive definition of the term "empty container" which is inconsistent with what was envisioned under CETA and would again limit the ability of Canadian exporters to fully benefit from the agreement's repositioning provisions.

More specifically, C-30 stipulates that eligible parties may reposition empty containers and any ancillary equipment that is **permanently affixed** to those containers. This is in contrast to the approach taken by other countries (including the U.S. and Germany), which have liberalized the repositioning of empty containers, while also extending this right to the repositioning of vessel equipment such as empty cargo vans, empty lft vans, empty shipping tanks, and stevedoring equipment and material (in the case of the U.S.).

This being said, we are not necessarily suggesting that Bill C-30 be amended to include the repositioning of vessel equipment (particularly since CETA is silent on this subject). We do, however, believe that the Bill's definition of empty containers should be broadened to include equipment that is NOT permanently affixed to the container, provided such equipment is essential to the container's proper functioning. In this respect, we would suggest that Bill C-30 define the term "empty container" as per the proposed amendment below, which is based on the language found in the Customs Tariff Schedule (98.01):

92 (2) Section 3 of the Act is amended by adding the following after subsection (2):

Repositioning of empty containers

(2.1) Subsection (1) does not apply in respect of carriage between one place in Canada and another, without consideration, by any of the following ships, of empty containers that are owned or leased by the ship's owners or operators and any ancillary equipment ~~that is permanently affixed to the containers~~ necessary to ensure the safety, security, containment and preservation of the goods (carried in those containers).[3]

[3] The words "carried in those containers" are not part of the Customs Tariff definition, but were added by us .