Supplementary Submission to the Senate Committee on Foreign Affairs and International Trade on CETA and Bill C-30's Maritime Provisions

April 24, 2017

Further to our appearance before the Senate Committee on Foreign Affairs and International Trade on CETA and Bill C-30's maritime provisions (which took place on April 6, 2017), you will find below our responses to several assertions that were made during the hearing and to questions from the committee for which there was insufficient time to provide a verbal response.

1. Will CETA's maritime provisions increase the number of foreign flag ships sailing in Canadian waters?

We would like to begin by dispelling any perception that may have been created during the hearing that the implementation of Bill C-30's maritime provisions regarding the repositioning of empty containers and the establishment of feeder services between Montreal and Halifax will lead to the **sudden appearance** of foreign flag ships in Canadian waters. Any such perception is incorrect, as **foreign flag ships are already here, and have been so for a great many years and in significant numbers**.

The fact of the matter is that foreign flag ships are the ocean-going vessels which carry virtually all of Canada's overseas trade and half of its trans-border trade. In that capacity, they make thousands of voyages to and from Canadian ports every year, carrying hundreds of millions of tonnes of cargo, ranging from dry bulk commodities such as grain and coal - to liquid bulks such as crude oil and oil products - to the containerized consumer goods that are the hallmarks of an affluent and modern society. Given the above, any suggestion that CETA's maritime provisions will lead to a sudden influx of foreign ships into Canadian waters – and that those waters were previously plied exclusively by domestic vessels – is simply false and unreflective of how Canada's world trade has moved to and from international markets for the last half century and more.

Given that ocean-going foreign flag ships are the primary means by which Canadian importers and exporters move their goods to and from overseas markets, it stands to reason that if CETA achieves its objective of significantly increasing trade in goods between Canada and the European Union, then we may indeed see an increase in the overall number of foreign flag ships calling Canadian ports (and the more successful CETA is in this respect, the greater that increase is likely to be). However, any such increase will **not** be due to CETA's very limited maritime provisions, but rather, to its elimination of 98 percent of EU tariff lines for Canadian goods and the new export opportunities this will create for

Canadian producers, processors and manufacturers – opportunities which we expect could be positive for the Canadian economy overall.

In this respect, we would argue that the primary objective of CETA's maritime provisions should be seen as having less to do with bringing additional foreign flag ships into Canadian waters than with enabling foreign shipowners to manage their **existing assets** in a more efficient manner. As an example, CETA's provisions on the repositioning of empty containers will make it easier for shipowners to maximize the use of ships which are already in Canadian waters by allowing them to use those ships to transport empty containers between Canadian ports, rather than having to move them via rail or truck, or via an import movement from overseas. Consequently, the impact of liberalizing this activity will not be to increase the number of foreign flag vessels entering Canadian waters, but rather, to enhance the logistical efficiency of the transportation system that serves those vessels – and this for the overall benefit of the Canadian importers and exporters who rely on that system to move their goods to and from world markets.

2. Will CETA's maritime provisions reduce opportunities for Canadian shipowners?

Under the current legislative regime governing Canada's coasting trade, foreign flag ships must obtain a coasting trade license from the Canadian Transportation Agency in order to carry goods from one place in Canada to any other place in Canada (and such a license can only be granted if the Agency determines that no suitable Canadian vessel is available to carry out the activity). CETA's maritime provisions would liberalize this requirement by allowing **eligible** foreign flag ships to reposition their empty containers between Canadian ports or establish limited types of feeder services between the ports of Montreal and Halifax without having to obtain a coasting trade license, subject to strict registration and ownership requirements (as illustrated in the table found in Annex 1).

It is difficult to see how the liberalization of either of these activities would have a negative impact on domestic shipowners, as neither activity has been sustainably carried out by the domestic fleet in the past. Indeed, according to Transport Canada's own testimony before this Committee, CETA's feedering provisions were restricted to movements between the ports of Montreal and Halifax specifically because there are no domestic ships which currently are – or have been - engaged in this activity as part of an international transport movement. As far as the repositioning of empty containers is concerned, the freight rates that domestic carriers have sought for such moves have always proven to be uncompetitive when compared to the cost of the other available options, which include repositioning the empties by either rail or truck, or importing the empties from abroad on board the applicant's ship.

As an example of the above, we are aware of an international shipping line which applied for a coasting trade waiver to move 400 empty containers from Montreal to Halifax. A company operating vessels in domestic service opposed the waiver, saying the containers could be moved on their vessel at a cost of $2,000 per container (for a total cost of $800,000). This does not compare favourably to the cost of moving the containers on the shipping line's own vessel which would be about $300 per container, or a total cost of $120,000. Therefore, the cost of having to adhere to the provisions of the *Coasting Trade Act* for this particular shipment would have been almost three quarters of a million dollars. Moreover,

this would increase the Canadian exporter's costs by $1,700 per container, which would almost certainly be a "deal killer" in terms of the exporter's sale to his overseas buyer.

Given the above, any suggestion that CETA's provisions liberalizing the repositioning of empty containers would take business away from domestic shipowners is not accurate. The fact of the matter is that the repositioning costs charged by domestic carriers are so prohibitive that the use of domestic vessels to reposition empties is simply not a viable option. As a result, such activity does not exist, and empty containers are either repositioned by rail or they are imported from overseas aboard the foreign carrier's ship. As noted earlier, the true impact of liberalizing this activity is that eligible foreign shipowners will be able to use their transportation assets (i.e. their ships) more productively, which will make the logistics chain operate more efficiently and provide exporters with empty containers at a more competitive cost.

3. Will Canada's safety, environmental and labour apply to European and foreign ships while those ships are in Canadian waters?

All foreign vessels entering Canadian waters are subject to a stringent regime of environmental, safety and crewing regulations which are enforced primarily by Transport Canada. The implementation of Bill C-30's maritime provisions would have absolutely no impact whatsoever on this regime, meaning that **the full force of regulations that currently apply to foreign ships sailing in Canadian waters would apply in equal measure to any ships that enter Canada as a result of C-30's maritime provisions.**

As an illustration of the reach and effectiveness of those regulations, one has only to look at the thousands of foreign flag ships which deliver trade to and from Canadian ports year in and year out safely and efficiently. Although any industrial activity – including both domestic and international shipping operations - comes with a level or risk, the available data on accidents and incidents (as well as a number of recent reports) indicate that we have a history of safe shipping in Canada, and that vessels operating in Canadian waters are governed by a strong regulatory and safety framework[1].

This framework is based on the web of international conventions that has been developed by the International Maritime Organization (IMO) and the International Labour Organization (ILO). Those conventions establish detailed technical regulations on the safety and security of every aspect of shipping activity, from navigation and seaborne operations - to the prevention of maritime pollution – to the training and certification of seafarers and the labour standards on board. National governments, which form the membership of the IMO, are required to implement and enforce those rules through domestic legislation and regulations.

[1] Report from the Council of Canadian Academies, commissioned by the Clear Sea Center for Responsible Marine Shipping, *Commercial Marine Shipping Accidents: Understanding the Risks in Canada*, 2016 (hereunder "Clear Sea Report"):

> *Evidence also indicates that marine shipping has fewer incidents and accidents compared to other modes of transport, and fewer fatalities* (page 5);
> *The regulatory and safety framework that governs marine shipping in Canada is well developed and continues to evolve* (page 20);
> *Most of the reports submitted to the TSB from 2004 to 2015 indicated that pollutants were not released. The low number of pollution events made it difficult to perform any meaningful analyses* (p. 32) .

One key way of ensuring compliance with these conventions is through a country's **flag state** responsibilities. As flag states, countries must ensure that the ships flying their flag (i.e. ships registered in their national registries) meet the international standards set out in the conventions they have ratified and possess all the relevant certifications. These certifications are issued by classification societies, which are specialized marine engineering firms that play a key role in the shipping industry by developing technical standards and rules for the design and construction of ships, approving designs against their standards, and conducting surveys during construction to ensure that the ship is built in accordance with the approved design and rule requirements.

An equally – if not even more - important way of ensuring compliance with international standards and navigational safety is through a country's **port state** obligations. As a port state, Canada has both the right and the responsibility to police foreign flag ships sailing in Canadian waters, which includes boarding and inspecting ocean-going vessels to verify their compliance with the safety, security and environmental standards established under IMO Conventions. Canada is part of two regional enforcement networks that conduct such inspections – the Paris MOU (which is an enforcement network of 27 countries that covers the coastal states of the North Atlantic Ocean) and the Tokyo MOU (which is an enforcement network of 18 countries that covers the coastal states of the Asia-Pacific region). These regimes are two of the world's most rigorous in ensuring compliance with international conventions, and play a major role in eliminating the operation of sub-standard ships throughout the world's waters.

4. Can Bill C-30's maritime provisions be amended in a manner that goes beyond the outcomes that were negotiated under CETA?

As noted in our written submission to the Committee, we have concerns that the wording used in Bill C-30 to implement CETA's provisions on the repositioning of empty containers is too narrowly focused on the "master carrier," as a result of which the **EU partners** in vessel sharing agreements (VSAs) will be excluded from the ability to reposition their empty containers on voyages where they are not acting as the master carrier.

Although the subject of VSAs was not included in the CETA negotiations, it nevertheless remains the case that excluding EU partners who are not the master carrier in a VSA from the ability to reposition their empties will significantly detract from the potential benefits that the liberalization of this activity would provide not only to shipowners, but to the Canadian importers and exporters who rely on an efficient and cost effective logistics network. It is therefore our view that amending Bill C-30 to allow **both the owners AND the operators of EU-owned vessels** to engage in empty container repositioning would result in a regime that is fully reflective of contemporary business practices within the container shipping industry, and ensure the CETA's repositioning provisions can be implemented by all of the EU entities in a vessel sharing agreement, regardless of whether they are the "master carrier" on a given voyage or not.

The fact that the US, which has one of the strictest cabotage regimes in the world, **does** allow VSA partners to reposition one another's empty containers (regardless of the country of origin of the owner / operator) provides a strong precedent for moving in this direction, particularly since the US rationale for doing so is based on its recognition of the role of vessel sharing agreements in the container shipping

industry, and by extension, the operational control that this confers on the parties to the agreement with respect to the vessels being used.

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We trust that the information provided above answers any outstanding questions the Committee may have about the role of foreign flag shipping in the Canadian economy and its strong record safety record in Canadian waters. We also trust that we have clarified our position on strengthening Bill C-30's provisions on the repositioning of empty containers as relates to the EU partners in a vessel sharing agreement.

We look forward to reading the Committee's report on CETA and Bill C-30, and would be happy to provide any additional information as required.

Respectfully submitted,

Michael Broad
President
Shipping Federation of Canada

ANNEX 1
ELIGIBILITY FOR EMPTY CONTAINER RESPOSITIONING AND FEEDERING UNDER CETA

UNDER BILL C-30		
Vessels under the following types of registries:	**Which meet the following ownership requirements:**	**May engage in the following activity without a coasting trade license:**
Any registry	Owned by a Canadian or EU entity	Reposition their owned or leased empty containers (and any ancillary equipment that is permanently affixed to those containers) between Canadian ports on a non-revenue basis.
Domestic (EU) registry	Owned by a Canadian or EU entity or an entity under Canadian or EU control	Carry cargo **(container, bulk, breakbulk)** from the Port of Halifax to the Port of Montreal or vice versa, on a **single trip OR continuous basis**, if such carriage is one leg of the goods' importation into / exportation from Canada.
Second (EU) registry	Owned by a Canadian or EU entity or entity under Canadian or EU control	Carry **containerized cargo** from the Port of Halifax to the Port of Montreal or vice versa, on a **single trip basis** only, if such carriage is one leg of the goods' importation into / exportation from Canada. Once the single trip is over, such vessels must obtain a coasting trade licence for any subsequent activity in Canadian waters