Public Policy for Ports
To Be or Not To Be
Corporatised or Privatized?

By

Michael C. Ircha, PhD, P.Eng., MCIP
The Transportation Group
Professor of Civil Engineering
Acting Vice-President (Academic)
University of New Brunswick
Fredericton, NB E3B 5A3

Tel: 506-453-4801
Fax: 506-453-4908
Email: ircha@unb.ca
Internet: www.unb.ca

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Abstract

To operate efficiently in the North American integrated and competitive transportation system, newly created Canada Port Authorities (CPA) need to be freed from federal government control, regulations, restrictions, and involvement. The *Canada Marine Act* of 1998 established a modified version of the former Canada Ports Corporation. The centralized Canada Ports Corporation has been eliminated and CPA expenditure levels have been increased, but at what cost? The *Act* and subsequent regulations restrict CPA independence, autonomy and ability to act decisively in the face their competitive challenges. This proposal offers an alternative approach for dealing with the competitive needs of CPA by incorporating them as "for-profit" business enterprises with the possibility of future privatization through a multi-stage process. These steps should help the federal government achieve it's goal of creating autonomous, financially self-sufficient, and competitive ports.

Introduction

During the 1990's, the federal government undertook a process of port reform. In establishing a National Port System (NPS) comprised of the 19 Canada Port Authorities (CPA), the *Canada Marine Act* of 1998 did not adequately address the need to make these major ports business-like in their competitive setting. The *Act* retains considerable federal control in the regulation and governance of CPAs. The *Canada Marine Act* reflects several elements from the federal government's earlier National Airport System (NAS). The NAS led to the long-term leasing of the government's 26 national airports to local non-profit Canadian airport authorities. However, a significant divergence between the airport model and the ports system lies in their governance systems. Locally appointed directors at Canadian airport authorities are independent and have full autonomy to manage their facilities.[1] In the ports' case, almost all directors are appointed by federal Cabinet upon the recommendation of the Minister of Transport (with user group representatives being selected from a list of proposed nominees). There are also restrictions in the *Act* making various qualified individuals ineligible to serve as port directors.

Beyond these important port governance issues, the *Canada Marine Act* restricts, to a degree, the CPAs' ability to diversify to take advantage of revenue generating opportunities in non-port related endeavors. From a financial perspective, the *Act* precludes CPAs from using federal lands and assets as collateral for commercial loans. The *Act* established CPAs as federal

agents in place of their former status as Crown agencies. As federal agents, CPAs are not funded by government but rather are expected to borrow from commercial lenders. More recent legal interpretations suggest the Crown may be ultimately responsible for CPA borrowing obligations. Hence, to limit potential federal liabilities, restrictive borrowing ceilings have been placed on ports. These actions limit the CPAs' ability to raise capital for port investments. As federal agents, CPAs are exempt from various taxes, but they are required to make payments-in-lieu of taxes [PILT] to adjacent municipalities - a concern for former Harbour Commissions that were converted to CPAs as they had not paid grants-in-lieu of taxes in the past.

This proposal suggests an alternative for dealing with the competitive needs of CPAs by incorporating them as "for-profit" business enterprises with the possibility of future privatization through a multi-stage process. Other national port reform initiatives (specifically Britain, New Zealand and Australia) provide suitable models to consider for further Canadian port reform.

Canadian Port Reform

As commercial enterprises, major Canadian ports need to operate freely, unfettered by the constraints of federal reporting relationships and bureaucratic red-tape. They need to be able to devise innovative and creative responses to the many challenges facing them. Competitive flexibility and adaptability in the North American continental transportation system requires autonomous and independent commercial ports. Contemporary port reform reflected in the *Canada Marine Act* sought to free CPAs from federal control and regulation, but this was achieved only to a limited degree.

The need to further untie major Canadian ports from the strictures of the federal government can be best exemplified by the restrictions to their commercial freedoms in the *Canada Marine Act*. Current restrictions on CPAs emerged from the actions of Transport Canada, Treasury Board, and the Department of Finance in their attempt to protect the federal interest.[2] These restrictions and added regulations include CPA conformance to freedom of information legislation (a privacy concern for commercially-oriented ports), environmental assessment, the *Official Languages Act,* and quarterly report submissions to Treasury Board. These federal requirements were incorporated in the *Canada Marine Act* despite the detrimental effects they might have on the CPAs commercial operations. Earlier, the port of Montreal's CEO suggested, "the legislation [*Canada Marine Act*] needs clarification and improvement, because as it currently stands it is more restrictive than what we have already on operational and responsibility matters" (Taddeo 1996).

But what is really needed for Canadian ports? In the face of continental and global competition, a more radical alternative is required. Canada Port Authorities must be unshackled

from federal government strictures and allowed to operate freely in a competitive and business-like manner. This may sound radical in the current Canadian context, but it is important to reflect on port reform lessons from other countries. From a global perspective, port reform has had a definite shift to the economic right. Many ports have moved from their former status of comprehensive (as a public agency, the port provided all services including dock labour) towards the landlord model (reflected in most Canadian ports) and operationally to commercialization, corporatisation and privatization:

- **commercialization** - a process where the government retains ownership and control of ports but introduces and emphasizes commercial principles in the way the port manages its business (similar to the Canadian Crown corporation model - the former Canada Ports Corporation and current Canada Port Authorities; Port of Fremantle in Australia),

- **corporatisation** - a process of legally restructuring the port as a for-profit private business enterprise under the country's company laws, making full payment of taxes and other obligations required of private firms, although ownership may remain vested with the government (New Zealand approach; also in Tasmania and Queensland in Australia), and

- **privatization** - the transfer of public assets to the private sector by liquidating the port through the outright sale or long term lease of the property and assets by tender or through the flotation of shares on the stock market (Transport Canada’s divested ports and harbour; British Trust ports; several ports in Victoria and South Australia).

As shown in table 1, various national and state port systems can be placed along a continuum ranging from departmental systems (e.g. Transport Canada's former public harbours and ports) to commercialized ports (current CPAs) to corporatised approaches (New Zealand and some Australian states) to privatized models (Britain and others). Table 1 also shows that despite recent port reform, Canada’s major ports remain within the commercialized category; although, Transport Canada’s divestiture of smaller ports and harbours has shifted many of their former facilities to the privatized category. Establishing CPAs as a hybrid model in their role as federal agents did not shift them far enough to the economic right. Increasingly, government regulations have tended to shift them back to the left in the model outlined in table 1.

The *Canada Marine Act* reinforces the commercialized nature of the major ports. But is this enough? To be truly competitive, Canadian ports need to shift further to the right of the continuum shown in table 1. Incorporating Canadian ports as “for-profit” companies allows them to act independently and autonomously as a truly commercial business. Over time, as these independent port corporations should gain competitive experience and become financially viable, the next logical step would be privatization.

This paper proposes an alternative to contemporary Canadian port reform. One that moves CPAs from their commercialized state to a corporatised one and eventually, if financially feasible, to privatization.

Such an alternative is not as radical as it may at first seem. The recent report of the Canada Transportation Act review panel suggested that in their view, “a for-profit organization is a potentially attractive alternative for airports and ports that are financially viable - in other words, at most NAS airports and Canada Port Authorities”(CTA 2001, p. 159).

Initial Stage - Port Corporatisation

In 1996, Transport Canada retained an independent financial consultant to review the viability of Canada's major commercial ports. The Nesbitt Burns study considered the capability of major commercial ports to operate as viable businesses within the requirements of the then proposed *Canada Marine Act*. The Nesbitt Burns report found that 13 of Canada's 19 major commercial ports were, “in strong financial positions with stable cash flows, liquid reserves and activities which are less exposed to direct international competition [such as handling bulk and neo-bulk commodities]” (Nesbitt Burns 1996, p. 32).

Table 1 - Government Intervention in International Ports

Port Operating System	Level of Public Sector Intervention			
	Department	**Commercializatio n**	**Corporatisation**	**Privatization**

Landlord (private terminals)	Canada's National Harbours Board (< 1982); and Transport Canada facilities	Canada Ports Corporation (1983), Local Port Corporations (1983); Harbour Commissions; **Canada Port Authorities (1999)**; South Australia (1994), **New South Wales (1995), Western Australia (1998)**	**New Zealand (1988) Australia: Queensland (1994), Victoria (1995), Tasmania (1997)**	**Britain: Associated British ports (1983), Trust Ports (1991), Australia: Victoria, South Australia (2000)**
Compre -hensive (public operation)	Britain: nationalized ports, Australia: Queensland, Victoria, South and Western Australia	British Trust Ports, New Zealand: Harbour Boards, Australia: New South Wales (1989), Tasmanian Marine Boards		

Note: Current port institutional structures shown in bold.

The study further showed that these 13 ports have all the ingredients necessary to be successful as they all "generate funds from operations which, together with existing reserves, are sufficient to finance sustaining capital expenditures resulting in financial self-sufficiency." The 13 commercial ports that Nesbitt Burns found to be capable of serving as fully viable business operations included:

- five of the seven former Local Port Corporations - St. John's, Halifax, St. John, Montreal, and Prince Rupert,

- two of the seven former Canada Ports Corporation Divisional Ports - Port Saguenay/Baie des Ha! Ha!, and Port of Trois-Rivières,

- six of the nine former Harbour Commissions - Hamilton, Windsor, Thunder Bay, North Fraser, Nanaimo, and Port Alberni.

Of the remaining six ports considered in the Nesbitt Burns study, four faced extraordinary financial situations. These ports could become financially self-sufficient with rescheduled debts and other steps. These four ports included:

- two former Local Port Corporations - Quebec (required a $26.3 million refurbishment of several of its key piers) and Vancouver (had a debt of $140 million to build its Deltaport container terminal, straining its cash reserves),

- a former Harbour Commission - Fraser River (faced a $3 million-a-year dredging bill due to federal government user pay policies), and

- a former CPC Divisional Port - Sept Îles (had a $31 million loan from CPC's Interport Loan Fund, converted to commercial debt on proclamation of the *Canada Marine Act*).

In addition, the remaining two major ports evaluated in the Nesbitt Burns study had other commercial viability issues. These ports included two former Harbour Commissions:

- Oshawa - in the midst of an ongoing waterfront land-use controversy limiting the port's ability to generate new business coupled with significant dredging costs that could eliminate existing reserves, and

- Toronto - depends on a significant municipal subsidy to remain viable (based on previous land transfers to the Toronto Economic Development Corporation - an ongoing contentious issue).

Each of the 19 ports evaluated in the Nesbitt Burns study have been or are in the process of being converted to CPAs. Each should be considered for incorporation as for-profit businesses under the relevant business corporation legislation either nationally (under suitable federal statutes) or, more appropriately, within their respective provinces with all shares initially being vested with the federal government. The *Canada Marine Act* should be amended to remove the requirement for the Minister to issue CPAs with letters patent of incorporation without share capital and replaced with the requirement that CPAs incorporate as normal, for-profit business enterprises. This amendment would change the CPAs' corporate mission from cost-minimisation to profit-maximization for the federal government shareholder.

With federal government ownership of these port business enterprises, appropriate rules could be established to ensure significant public policy objectives continue to be addressed, such as: retaining public access to port facilities, continued community involvement in port matters,

maintaining safety and dealing with environmental concerns, and ensuring ports do not misuse their potential market monopoly powers. In the latter case, Canada Transportation Act review panel felt, "... these concerns are minimal because of the nature of the marine services market and the extent of competition among ports"(CTA 2001, p. 160).

Operating CPAs as corporatised ports for a period of time (likely a minimum of two years) prior to considering privatization would allow port boards and management to adjust to new commercial realities and to stabilize their operations. The following Australian case outlines the implications and benefits of port corporatisation.

Tasmanian Port Corporations (Ircha, 2000)

Australia is a federal system, similar to Canada, in which constitutional responsibilities are divided between federal and state governments. In the ports area, however, the significant difference between Canada and Australia is that in the latter, the state not the federal government is responsible for ports.

Tasmania is Australia's only island state. Much of Tasmania's trade is by sea to the mainland, primarily across the Bass Strait to and from Melbourne. There are four competing port corporations in this small island state - Hobart in the south (including its responsibilities for several smaller ports on the east and west coasts), and Burnie, Devonport, and Launceston in the north.

Tasmania's port reform legislation, *Port Companies Act 1997,* incorporated its four port authorities as private companies under the state's Corporations Law. These ports have rights, responsibilities and reporting relationships similar to other private firms. As corporate entities, Tasmanian ports have two principal objectives:

- to facilitate trade for the benefit of Tasmania, and
- to operate their activities in accordance with sound commercial practice.

Although some Tasmanian port managers suggest these two principles are contradictory, most have accepted the challenge they offer. Facilitating trade may mean short-term reductions in port dues and other charges in exchange for helping firms build markets and generate increased cargo-throughput in the longer run.

The state's role with respect to the four Tasmanian port corporations is limited to an annual audit and setting borrowing limits. The four port corporations have two shareholders - Tasmania's Ministers of Transport, and Finance. The State could, if it wished, sell off part or all of the shares of port corporations to the public. Port corporations are expected to pay annual dividends to the shareholders of 50 percent of the ports' pre-tax profits.

In 1997, when the *Port Companies Act* was passed, the initial port board members were those in place with the former elected Marine Boards. Allowing these members to remain for a three year transition period was, in part, a political compromise to allow for the smooth introduction of port reform.[3] Under the *Act*, the shareholders' nominating committee is comprised of the port corporation chair and the secretaries (deputy-ministers) from the Premier's Office, Finance, and Transport. It is expected that port board composition will change over time. Some port managers see this as an opportunity to attract more entrepreneurial, business-oriented board members.

Being incorporated led to increased port operational costs including: payment of corporate income tax, land tax equivalents (property taxes), and annual dividends to the State's shareholders. This increased financial burden forced the ports to work smarter. In all cases, cost cutting occurred by shedding surplus staff through attrition. Hobart had a 57 percent reduction (from 120 to 52 staff), primarily due to reduced government reporting requirements under port reform. Similar cuts were made at other ports: Devonport, 50 percent reduction (from 80 to 40), and Launceston, 43 percent reduction (from 65 to 37). Improved operational efficiency was achieved by better training and multi-skilling amongst the remaining staff.

Hobart faced considerable challenges by their geographical disadvantage in being located in south Tasmania with the main trade to the north to Melbourne. They met this challenge by diversifying into a variety of port-related activities. Hobart continues to provide stevedoring services through a flexible labour arrangement achieved through enterprise bargaining. The port's stevedoring staff provide high quality service to their shipping customers. So much so that Hobart's stevedoring operations have been extended to other ports such as Melbourne and Adelaide. Hobart's operations have diversified by: redeveloping Elizabeth Pier on the waterfront (converting a transit shed into a top-level hotel, restaurants and other commercial facilities), establishing a fishing centre to use their cold storage facilities to attract New Zealand fishers from the Southern Ocean to clean and pack their fresh fish and ship it back home by air, attracting cruise ships to home-base in Hobart (using the airport to transfer passengers), and setting up a deep-water marina on the waterfront to attract larger ocean-going recreational vessels.

Tasmanian port reform, and in particular, the steps taken by Hobart Ports as a corporatised entity, have been cited as being the most progressive in Australia (Meyrick 1998, p. 63). Port corporatisation in Australia and similar steps in New Zealand offer models for Canadian ports to consider and possibly emulate.

Subsequent Stage - Port Privatization

The Nesbitt Burns study showed that most CPAs could be considered for privatization. There are two conventional methods for privatizing public sector assets such as ports:

- the liquidation of public assets at fair market value (by negotiated sale, competitive bidding or a call for tenders or proposals) to a privately owned company (including one that may be incorporated by the current managers and employees, otherwise known as a "management-employee buy-out" or MEBO), or

- a share floatation where share value is based on the market value of the port (land, facilities and good-will).

Both of these approaches have been used by the federal government in previous public sector privatization. Two airplane manufacturing Crown corporations, Canadair and de Havilland, were sold outright to Bombardier and Boeing Aircraft respectively. Other Crown corporations such as Air Canada and CN were privatized through share floatation (Air Canada in a two tranche share issue, CN as a full share issue).

An incremental privatization approach was used in New Zealand's port reform process. Corporatised commercial ports were initially allowed to float up to 49 percent of their shares on the open stock market. After two years, full share issue was authorized by the government enabling several New Zealand ports to increase the proportion of private holdings of their share capital. The New Zealand model of first corporatising their major commercial ports and then floating shares in a two tranche process appears to be an appropriate model for Canadian ports (Patrick 1993).

Emulating the New Zealand incremental approach provides the federal government and the CPAs with time:

- to stabilize and grow their operations and commodity throughput following the transition to full corporate status,

- to evaluate the market value of port assets (including federal lands, buildings, equipment and other assets), and

- to enhance the stock market's perception of Canadian ports as viable investment opportunities.

The Canada Transportation Act review panel strongly supported port privatization as ports provide a purely commercial service. Their rationale for this support included:

> In for-profit corporations, ultimate authority resides with those who bear the consequences of corporate decisions - the shareholders - and several well

> developed legal and market mechanisms encourage corporate directors and managers to run the corporation in shareholders' interests.... An important source of market control is the equity market, which offers both an evaluation of managerial performance and a mechanism shareholders or outside investors can use to change the [CPAs] management and direction (CTA 2001, p. 159).

There are a number of other factors to be addressed in any port privatization including:

- ensuring continued public access to the port's facilities and other public policy objectives,
- providing a fair return to the federal government for the public lands and assets being disposed,
- allowing the marketplace rather than political considerations to determine the continued viability and operations of the facility,
- permitting diversification into non-port related endeavors to maximize return on investment, and
- requiring the port to economically justify the need for investment capital from commercial lenders (rather than seeking funds from government sources).

The privatization option could be limited in Canada, as many of CPAs may not be seen as attractive investment opportunities due to their size, cargo throughout, domestic and US competition, and the over-supply of competing port facilities in various regions. Considering full port privatization requires further financial and market evaluation of corporatised CPAs to determine which ports, if any, should be consolidated or assisted financially to make privatization more viable. An independent financial evaluation of the corporatised CPAs being considered for potential privatization is required (dealing with issues beyond those tackled in the 1996 Nesbitt Burns study). Such an evaluation should determine the financial viability of each corporatised port and its suitable for privatization. In addition, the evaluation should outline the appropriate method of sale (either through a share floatation or direct sale).

The share floatation method is likely the most appropriate method of privatizing Canadian public ports as it allows small and large investors (including port employees, public and private institutions, local and provincial governments, and others) to benefit from the activities of privatized ports.

Selling a public port directly to a private company may generate concerns about industry concentration and fears that private monopolies might be created. However, some of these concerns could be handled through appropriate limitations and conditions in the sale of the public port. For example, in the sale of a small Nova Scotia port to the Irving Corporation, Transport Canada required the port be operated as a public-use facility for at least three years following its transfer to J. D. Irving Ltd. During this period, the company was restricted in its ability to sell the port assets. If the company ceased to operate the port during this period, the federal government could recover the port assets for a nominal amount ($1). In the following five year period (eight years from the date of transfer), any proceeds from the sale of port assets were to be shared with the federal government according to an agreed upon formula (Irvings 1996).

After a suitable period of time and dependent on individual port circumstances (in terms of investment attractiveness), each corporatised CPA could float a share issue in a relevant stock market (for example, the Vancouver Stock Exchange for West Coast ports and Toronto and Montreal Stock Exchanges for Great Lakes and East Coast ports). The initial floatation should be for a minimum of 51 percent of the capital assets of the port as the New Zealand experience found the stock market reluctant to invest in facilities in which the government continued to own the controlling shares. Alternatively, if feasible and publicly acceptable, the corporatised port could be sold directly to a private company (including a MEBO, as in several British ports).

The financial gain from the sale of CPA shares should be divided equally between the port and the federal government. In this way, the federal government would receive a fair return on its initial port investments and the port gains a source of capital for further port development. The rationale for dividing the proceeds of the sale equally is based on the British Trust port model where the central government provided the basic assets and the port authority, over time, contributed to the commercial development of the assets (Finney 1993). In many cases, the local business community promoted port development to attract commodity throughput. In turn, such local enterprise generated revenues for both the port and its federal owner. As an example, Port Alberni boasts of having three successful terminals developed with local funds and no federal contribution.[4] Hence, a substantial portion of the gain from the sale of the corporatised CPA should remain with the port. At a subsequent point in time, the remaining shares could be sold in the stock market to generate further returns for the federal government and additional capital for port investment.

Throughout the sale period, the federal, provincial and municipal governments must evaluate their need for continued involvement in the governance of corporatised and, subsequently, privatized CPAs. Directors are normally elected by shareholders to represent their interests in corporate decision-making. In the corporatised situation, as the sole shareholder, the federal government could continue to appoint directors as outlined in the *Canada Marine Act* (with possible changes to enable users to directly appoint directors). As corporatised

CPAs become privatized, the directorships need to reflect the interests of significant shareholders (in the case of the federal government, this may mean retaining a sufficient percentage of shares to ensure a directorship, if this is desirable or necessary). If the provincial and municipal governments wish representation on the port's board, they would have to purchase sufficient shares to permit them to appoint directors. In addition, the CPA itself might retain some of the shares to acquire future capital for port development.

In the move towards full privatization, the federal government and the corporatised CPAs must consider whether or not limitations on share holding would be required for fully privatized ports. For example, should there be:

- limits on the percentage of shares that any given individual, firm or government may acquire and hold?
- restrictions on the resale of port shares?
- ceilings on non-Canadian ownership of shares to retain the national interest in Canadian ports?

In all cases, consideration must be given to the implications of such limitations on the value of the corporatised CPA's shares in the market place. In addition, other constraints may be required such as limiting newly privatized ports from selling port assets (particularly waterfront and other port lands) without some share of any capital gain returning to the federal government (for a defined period of time). This constraint prevents the rapid resale of profitable port assets that could lead to embarrassing questions for the federal government about the initial valuation of the facilities (as was the case in Britain with the resale of the Medway Trust Port in 1993).

In some cases, there may be merit in consolidating certain corporatised CPAs. However, such decisions should reflect sound business strategies defined and implemented at the local port level rather than being part of an overall federal approach. Retaining a portion of their shares enables corporatised CPAs to enter into strategic alliances with other local competing ports by either exchanging share ownership or by acquiring, through the purchase of publicly traded shares, the controlling interest of other ports. Such strategic alliances and consolidation opportunities might exist on:

- the West Coast - with Fraser River Port Authority and North Fraser River Port Authority being located within the geographic jurisdiction of the Vancouver Port Authority,
- Lake Ontario - port facility rationalization may be feasible among

the Hamilton, Toronto and Oshawa Port Authorities,

- the St. Lawrence River ports - developing strategic business alliances among the several CPAs such as Montreal, Trois-Rivières, Quebec and Saguenay/Baie des Ha! Ha!, and

- the Atlantic Region - by improving business relations between competing ports such as the Saint John Port and Belledune Port Authorities in New Brunswick, and St. John's Port Authority and Argentia in Newfoundland.

British Port Privatization (Ircha 1999)

Extensive commercialisation and privatization of British ports did not occur until the election of the Conservative Government in 1979. In late 1982, the 19 ports under the jurisdiction of the British Transport Docks Board were reconstituted as Associated British Ports (ABP) and in the following year, 49 percent of the company's shares were sold in the stock market. This successful floatation led to the sale of the remaining shares the following year (at almost 2.5 times the value of the initial share offering). As a private port company, ABP continued to expand and generate profits for its shareholders. The success of ABP led the government to consider further privatization, particularly of the country's numerous Trust ports (similar to Crown corporations).

The *1991 Ports Act* enabled all British Trust ports to transform themselves into companies for sale. The government received proceeds from the sale by a complex formula that depended on competitive bidding to establish the port's market value and a "claw-back tax" from "windfalls" arising from future land development profits. The *Act* also encouraged the sale of ports to management-employee buy-out companies (MEBO) with an unspecified, but limited, fiscal advantage for such teams.

Initially, five Trust ports took advantage of the legislation to privatize: Tees and Hartlepoole, Clyde, Forth, Medway, and Tilbury. Four of the ports were sold by competitive tender and the fifth, Forth Ports floated a share offering. Tees and Hartlepoole was the first port sold with four bidders involved including a MEBO. Teeside Holdings Ltd was the successful bidder at £180 million even though it submitted the second highest bid (Maritime Transport Services Ltd had offered £202 million) (National Audit Office 1993).

Clyde Trust Port had three bidders in its competitive tender. The MEBO was successful in acquiring the port with the highest bid of £26 million. Medway trust port was also sold to its MEBO with a final bid of £29.7 million. The Medway sale subsequently generated controversy

in 1993 when the port was sold to Mersey Docks and Harbour for £75 million (making millionaires of some of its top management team). The Port of Tilbury was also sold to a MEBO for £32 million. Forth Ports Authority generated £112.7 million through a combination of shares and loans.

In total, the government received £169 million from its share of the gross proceeds of £380 million. The residual funds were returned to the former Trust ports for their capital development. The rationale for splitting the generated revenues between the central government and the Trust ports lay in the difficulty of differentiating claims to the funds. The central government owned the port lands but significant local investment and promotion contributed to the growth of Trust ports over time.

Several trust ports resisted the government's privatization efforts arguing that such a move would not be in the best interests of their port customers. In a recent analysis, Baird suggests that by initially undervaluing the trust port assets (up to a 75 percent discount), there was a significant transfer of value from the public to the private sector (primarily into the hands of the former port managers through MEBOs). He also argues this transfer did not inject more business-like managers into the British ports system:

> Curiously, in most instances the same people (i.e. former public officials) were running the ports after privatization as was the case before privatization. In the UK, it was not the case that the "private sector" was brought in to "sort things out" in what might have been regarded as an "inefficient" public ports sector. In reality, most ports were already "commercial" and profitable and were sold to existing management... (Baird 1999).

Despite these criticisms, the British port privatization experience provides a model to be considered when privatizing corporatised Canadian ports.

Implications of Port Corporatisation and Privatization

Shifting from the contemporary commercialization of major ports within the *Canada Marine Act* to future corporatisation, and eventually, privatization requires changes to port governance, finances, use and disposal of federal lands and assets, and the ability to handle failure.

Port Governance

Creating corporatised and eventually privatized CPAs requires a change in their governance structure. The *Canada Marine Act* provides for board appointments by the Minister of

Transport, the province and municipalities in which the port is situated, and the “remainder nominated by the Minister in consultation with the users.” There are no requirements in the *Act* for the Minister to accept any of the nominations provided by users. The restrictions on potential members from user groups should be relaxed to allow a user nominated majority on the board and allowing users not having a “material” contract with the port to serve as directors (broadening board representation). The board's chair should be elected by the directors rather than being appointed by the Minister.

When CPAs are fully incorporated as business enterprises under appropriate national or provincial legislation, the structure of their boards should reflect normal business corporation requirements. An earlier study of corporate boards found that action-taking groups averaged 6.5 members with non-action groups averaging 14 members (Mintzberg 1983). Corporatised CPA boards should be restricted to about seven to nine directors to enable them to be action-oriented and capable of responding quickly to competitive challenges.

The appointment process in the *Canada Marine Act* needs to be modified for corporatised ports. Having the Minister appoint user representatives is unacceptable in autonomous corporatised and privatized CPAs, as the current appointment process tends to perpetuate federal influence on CPA boards. This issue was raised by the Canada Transportation Act review panel where they suggested “reducing the number of federal appointments and increasing the role of interested parties in selecting board members would help to confirm the operational independence of CPAs.” The panel went further to recommend, “that the number of directors on Canada Port Authority boards appointed directly by the Minister of Transport be reduced to two” (CTA 2001, p. 170).

Commercial organizations need the wisdom and professional contributions from suitable private sector directors. Such boards require an effective balance of the various skills directors can provide along with their assorted business experiences. Hence, current restrictions on the qualifications of board members should be removed.

With the sale of corporatised CPA shares on the open market, the question of port governance again changes as the shareholders will demand a stronger say in who represents their interests on the port board. Following the first tranche of at least 51 percent of total shares, the composition of the board should be reviewed to ensure shareholders are satisfied with its composition.

Finances

As business enterprises incorporated under national or more appropriately, provincial legislation, corporatised CPAs will not be federal agents and thus they will be liable, like all other private corporations to full taxation (corporate, income, property and so forth). There is legitimate concern within the ports community that such taxation will lead to higher port operating costs

making them uncompetitive with their US counterparts.

Incorporating CPAs as full business enterprises will increase their operating costs. However, the impact of port charges on users are relatively minor in terms of the full costs of transporting goods. For example, in considering the full operating costs for a worldwide shipping conference service, port charges amounted to only seven percent of the total (Canada Ports Corporation 1989, p. 46). Most Canadian commercial ports have the capacity to increase their port charges as many have not done so for a number of years. Increasing port charges to cover the cost of further taxation should not significantly distort transportation costs. But these additional costs do mean that in the integrated North American transportation system, Canadian ports will have to continue to improve their efficiency to remain competitive and seek additional revenue generating opportunities (as shown in the Tasmanian case above).

Allowing major commercial ports to operate at less than their true costs (by not requiring payment of relevant taxes) perpetuates public subsidization. In response to concerns about economic distortion created by government subsidies to various industrial sectors in recent years, government subsidies have either been eliminated or made transparent. Making CPAs fully corporatised and privatized as business enterprises should eliminate hidden subsidies to ports and their users. If there is a valid concern about the impact of taxation on the competitive situation of Canadian ports versus their US competitors (as argued by CPAs, particularly on the West Coast), then the federal government could consider providing open and transparent subsidies to "level the playing field."

As corporatised entities, CPAs should contribute share dividends to the federal shareholder based on the port's retained earnings. Providing annual share dividends rather than a fixed stipend ensures the development of business-like, profit-oriented CPA management.

Federal Lands and Assets

Changing CPAs to corporatised business entities with the federal government as the sole shareholder removes the need to restrict ports from using federal lands as collateral for commercial loans. This is particularly the case in the proposed multi-stage privatization process in which the assets and real property are sold in the share issue (providing a direct return to the federal government and working capital for the port). Corporatisation and privatization simplifies the transition process while still protecting the federal interest in lands and assets until their sale at market value.

Consequences of Failure

What happens if future corporatised and privatized ports fail? The simple answer is that these enterprises operate in a manner similar to other businesses and suffer the same consequences for

poor business judgement. In the extreme, privatized ports could become bankrupt and their assets disposed to recover funds to repay creditors. To protect the interests of terminal operators and others who invested in and operate facilities on the basis of long term leases, the port asset to be disposed would likely be the remaining term of such leases and the port's physical facilities (wharfs, storage facilities, land, and so forth). The concern in such business failure could be the removal of any constraining conditions incorporated by the federal government in the port's charter. This aspect should be considered in corporatising and privatizing ports to ensure public use and other public policy objectives are protected despite the possibility of transfer of land title and assets through bankruptcy proceedings.

Benefits and Costs of an Alternative Approach

Corporatising and subsequently privatizing Canada's major ports is not a matter to be considered lightly. These federal assets have been developed over a considerable period of time with a significant infusion of public funds and support. The public may believe they are not receiving a fair return for the disposal of the assets they helped to develop. Others will be concerned that ports play a strategic regional and national role in the Canadian economy and should not be divested as this will reduce public involvement in their management and operations.

The clear benefit to the federal government, the transportation industry including port users, the ports themselves, and the general public is the development of Canada's major ports as business-like, profit-oriented, competitive enterprises. The removal of federal ties to the corporatised and privatized CPAs will enable them to operate efficiently by reducing bureaucratic and other government restrictions. Corporatised and privatized CPAs will be more flexible and better positioned to adapt to the changing demands of the competitive transportation marketplace. As pointed out by the Canada Transportation Act review panel:

> ... transformation of ... CPAs into for-profit entities would likely yield substantial benefits. For-profit infrastructure providers have strong incentives to minimize costs and deliver high-quality services that respond to customer needs. There would be little incentive for over-investment or 'gold-plating' of facilities. Privatization would lead to a once-and-for-all determination of appropriate compensation for the government's past investments.... Privatization would also facilitate a much needed rationalization of ... port infrastructure (CTA 2001, pp. 160-161).

The benefits of corporatised and privatized commercial ports do not come without cost. Corporatised ports will bear the burden of increased operating costs from exposure to full taxation. If such taxation clearly leads to uncompetitive situations, the federal government may

be required to establish a transparent subsidy to offset some of the taxation burden to ensure a "level playing field" among competing ports. Further, an appeal process should be established for port users to enable them the opportunity to challenge charges and levels of service provided by the port. Such appeals could be dealt with by the National Transportation Agency in a manner similar to Canada's private railways.

Conclusions

This proposal suggests a radical alternative for restructuring major Canadian commercial ports by proposing they be fully incorporated as business enterprises, and eventually, be privatized. This approach moves CPAs further to full independence than the current *Canada Marine Act.*

But why are these suggestions considered so radical and not discussed as part of ongoing contemporary port reform? In the past, Canada's port reform process has tended to focus on incremental changes to the status quo. In part, this conservative approach reflected concerns about disadvantaging Canadian ports relative to their US counterparts. This problem should be dealt with in a more transparent manner with either direct federal or provincial subsidies to commercial ports.

The future for Canada's major commercial ports is bright provided they can act independently. They need to be freed from the federal government and its restricting regulations. Creating independent ports means incorporating them as for-profit business enterprises and eventually privatizing them through the sale of shares or divesting them directly to willing buyers. Such steps have been successfully instituted in other countries. Privatizing Canada's major ports helps both the federal government receive a return on its port investments and provides corporatised CPAs with access working capital for the development of their port infrastructure.

The Association of Canadian Port Authorities has lobbied the Minister of Transport seeking an early review of the *Canada Marine Act.* The Canada Transportation Act review panel also recommended this review "be initiated by the beginning of 2002" (CTA 2001, p. 172). The key question to be asked during the *Canada Marine Act* review is whether Canada's major commercial ports are to be corporatised and privatized or not to be?

Endnotes

1. As pointed out by David Bell, Director-General for Airport Programs, Transport Canada, "[Canadian airport authorities] have no economic regulation, total pricing freedom and a local independent board of directors." Presented to the Awareness and Consultation Session, Greater Fredericton Airport Authority, Fredericton NB, November 1998.

2. David Bellefontaine, President and CEO, Halifax Port Corporation, private communication, November 21, 1996.

3. Chris Faulkner, Chief Executive, Port of Launceston, personal communication, April 5, 2000.

4. Hugh Anderson, Chair, Port Alberni Port Corporation, comments made at the PILTS Workshop, Association of Canadian Port Authorities Ports/Government Interface Conference, Ottawa, February 26, 2002.

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