

North American port reform: the Canadian and American experience

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

Tel: 506-453-4801
Fax: 506-453-4908
E-mail: ircha@unb.ca

Published in the *International Journal of Maritime Economics*, Vol. 3, 2001, pp.
198-220

ABSTRACT

Port reform is a global initiative that reflects the swing of national economies and international lending agencies to the neo-liberal right. Similar to steps being taken elsewhere, Canada began a national port reform process in 1993 that culminated in the implementation of the *Canada Marine Act* in 1999. This paper considers North American port reform from the Canadian and US perspectives. It provides an overview of the concepts of port privatisation and structural adjustment programs, the development of ports policy in both Canada and the US, and discusses the effectiveness of contemporary Canadian port reform. The research approach taken was to review the process of Canadian port reform and compare it to the US approach that has evolved over time. The paper concludes that despite the lack of contemporary reform in US ports, they remain efficient, effective and competitive (both domestically and internationally with Canadian ports). The Canadian port reform process is a step in the right direction by making major ports more commercial, but more needs to be done to free these facilities from the

strictures and constraints of the federal government.

Keywords: port, administration, reform, privatisation, structural adjustment

INTRODUCTION

Much of North American trade is continental, primarily between Canada and the US. Both are each other's major trading partner. In 1997, the US accounted for 75 percent of Canada's total trade (exports, 82 percent and imports, 68 percent). Similarly, Canada accounted for 22 percent of US trade, larger than with any other nation. During the past several decades, continental trade has grown in importance for both countries. The creation of the Free Trade Agreement between Canada and the US in 1989 and the subsequent North American Free Trade Agreement that included Mexico contribute to continued integration of these national economies on a continental scale. These trade agreements directly impact Canadian ports by encouraging a shift from the country's traditional east-west commerce to a north-south trade. Since most of this north-south trade is by surface mode (road and rail), overseas trade and cargo throughput in Canadian ports have diminished on a relative scale. Although Canada maintains both a multilateral (supporting the World Trade Organization and seeking trade partners abroad) and a bilateral trade policy (NAFTA), Canada's primary international economic success has come from its continental trade with the US. As such, the marine sector with its focus on overseas trade, is not as important in Canadian transportation policy as it is in other more maritime-oriented nations.

Canada's major commercial ports were initially re-structured in 1983 through the adoption of the *Canada Ports Corporation Act*. This *Act* dealt with Canada's major commercial ports but did not directly address the institutional structure of other public ports such as Harbour Commissions and the smaller Transport Canada facilities. Over time, growing continental competition (induced by improvements to intermodal systems), federal bureaucratic interference, Ministerial directives, and growing domestic and continental competitive forces led to a need for further port reform.

An internal review of Canadian ports within Transport Canada commenced in 1993 and was supplemented in 1995 with extensive public hearings on marine reform by the House of Commons's Standing Committee on Transport (SCOT). In December 1995, the Minister of Transport issued a white paper on ports, the *National Marine Policy*, followed by tabling the *Canada Marine Act* in Parliament in June 1996. This port reform legislation received Royal Assent in June 1998 after having been passed twice by the House of Commons (in April and December 1997 - before and after the 1997 federal election). The *Act* came into force on January 1, 1999.

US ports reflect a variety of governance structures, primarily at the local, state and bi-

state levels. There is no national ports plan or strategy as the American *Constitution* limits federal activities in ports. Despite this limitation, the federal government provides dredging services through the Army Corps of Engineers, navigation aids through the Coast Guard, and other port related services through the Maritime Administration (MARAD). There have been no attempts to rationalize US ports on a national basis, although there are some recent efforts at regional port coordination. For example, as pointed out in a 1998 MARAD report, six East Coast ports (New York - New Jersey, Baltimore, Hampton Roads, Wilmington (NC), Charleston, and Savannah) have agreed "to share information on rates, charges, rules, and conditions of service information, but not set rates collectively."

This paper considers North American port reform from the perspective of Canada and the US. It provides an overview of the concepts of port privatisation and structural adjustment programs, the development of ports policy in both Canada and the US, and considers the effectiveness of Canadian contemporary port reform in enabling major commercial ports to become more flexible, adaptable and competitive.

PORT PRIVATISATION

Defining "privatisation" in today's international ports system leaves one fraught with frustration. The term is loosely used to refer to all manner of steps taken to enhance the commercial side of port operations. Part of the definition problem arises from the purpose of privatisation; ranging from the ideological belief in the superiority of market discipline to the pragmatic need to redress failed national economic development efforts (particularly in the developing world). Wade (1992) argued that from an ideological perspective, privatisation is a sub-field in neo-classical economics known as neo-liberalism which, as a general rule, tends to view short-run optimal resource allocation (as derived from market forces) as the key factor for maximizing the rate of long-term economic growth.

Bienen and Waterbury (1989) define "privatisation" as ranging from "government disengagement and deregulation to the sale of publicly-owned assets." Savas (1990) adds to the confusion by suggesting some US writers use privatisation to mean contracting for services, while non-American writers "restrict their use of the word to mean denationalization." Savas goes on to suggest that "privatization is a broad policy to improve the economic performance of governments and nations.... It is a response to the recognized need for structural reform of government agencies, state enterprises, and national economies...." The UNDP (1991) suggests privatisation is a process of "marketisation", the opening of public enterprises to market forces. Gustaff de Monie (1992) argues privatisation refers to the transfer of port property from government to the private sector, but he further acknowledges that privatisation also relates to leasing facilities, licensing operations and granting concessions. In other words, it seems it is not ownership that counts in privatisation but rather the sector delivering the services.

The main objective of port privatisation in its many guises appears to be ideological and/or financial. The introduction of commercialisation in ports to enhance service quality or improve trade appears as a tertiary consideration. From a neo-liberal perspective, there is a fundamental belief in privatisation as opposed to service delivery by public bureaucracies. Public port often adopt bureaucratic traits as identified by Goss (1993):

... a bureaucracy, tends to develop ideas and objectives of its own. First among these is its own survival. Second will be its expansion.... Such bodies are not subject to the disciplines of the market.... Being either supported by taxes of some kind or having an essentially monopolistic position they may be able to continue for many years without responding to new technological solutions....

Thus in Goss' view, creativity, innovation and efficiency tend to be stifled in the typically rule-bound environment of larger bureaucracies. The proliferation of constraining rules and regulations in ports and shipping lead to delays in cargo handling, higher freight rates, and lower productivity. Neo-liberals have a strong desire to inject a commercial, competitive stimulus into ports forcing them to operate efficiently in an increasingly competitive global economy.

Structural adjustment can be considered a neo-liberal program emphasising limited public sector intervention in the national economy, monetary rather than fiscal policy, and increased commercialisation and privatisation of public sector enterprises. Global port reform tends to be guided by this view. Although structural adjustment has occurred within the industrial world, it was introduced to the developing world by the International Monetary Fund (IMF) and the World Bank in the early 1980s. These institutions demanded dramatic changes in the economy of countries seeking international loans and financial support as a means of ensuring these investments stimulated national economic development. The objective of structural adjustment programs was to stabilize faltering national economies and introduce specific macro-economic elements to induce sustained growth.

In the ports sector, structural adjustment programs led to increased interest in institutional reform by economic and trade deregulation, and the commercialisation, corporatisation and privatisation of ports and their activities. These reforms concentrated on changing the ownership structure of the ports (from public to private), modifying the institutional structure of port services, and altering port labour practices.

International port reform generated by structural adjustment programs led to considerable change. As shown in the following list offered by Thomas (1993), many ports now have the ability to:

- operate autonomously and with commercial freedoms (Ghana's annual port performance contract),

- enter into management contracts with private firms for delivery of cargo-handling services (Thailand, Gulf states, Morocco),
- lease terminals and other facilities to private companies (Canada, United States, Europe, India, Malaysia, Hong Kong, Taiwan),
- enter into agreements with private firms to build, operate and transfer (BOT) port terminals and facilities (Karachi, Barbados),
- grant concessions for terminals permitting the private sector to use facilities but retaining owner control (Mexico, Bristol),
- corporatise their operations by transferring public statutory ownership to a share company subject to national company law (New Zealand, Malaysia), and
- privatise their operations by transferring by direct sale some or all the port's land and facilities from the public to the private sector (Britain).

In general, the contemporary swing of the economic pendulum to the neo-liberal right has led to a range of restructured public port authorities including:

- **commercialisation** - a process where the government retains ownership and control of ports but introduces and emphasises commercial principles in the way the port manages its business (similar to Canada's Crown corporation model),
- **corporatisation** - a process of legally restructuring the port as a private business enterprise under the country's company laws, although ownership may remain vested with the government (exemplified by New Zealand's restructuring of its Harbour Boards into commercial operations), and
- **privatisation** - 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 (as demonstrated in the sale of Britain's

Trust Ports).

RATIONALIZING NORTH AMERICAN PORTS

Canadian ports

Under Canada's *Constitution Act* (formerly the *British North America Act*), ports and harbours along with navigation and shipping are federal government responsibilities. Despite this concentration of ports authority at the national level, prior to reform Canadian public ports administration was anything but homogeneous. Canada's 369 commercially designated public ports were a diversified, multi-layered and loose-knit mixture of Crown corporation ports (Canada Ports Corporation), Harbour Commissions, and Transport Canada's public harbours and port facilities. The common element among these ports was their link to the federal government through various statutory reporting relationships to the Minister of Transport.

The first attempt to rationalize Canadian ports in more than a half century came with the adoption of the *Canada Ports Corporation Act* in 1983. The *Act* established Canada's major commercial ports as federal Crown corporations. This legislation sought a balance between national coordination through the Canada Ports Corporation (CPC) and local commercial responsiveness by incorporating major ports as subsidiary Local Port Corporations (LPC) with their own boards of directors (with the federal Minister of Transport nominating the directors for governor-in-council [Cabinet] appointment). Seven CPC ports were given LPC status: St. John's, Halifax, Saint John, Quebec, Montreal, Vancouver, and Prince Rupert. Prior to adopting the *Canada Ports Corporation Act*, the federal government cancelled \$727 million worth of the former National Harbours Board debt and unpaid interest to enable CPC ports to operate without the burden of past debts.

Thus in 1983, Canada's national public ports system was divided into three separate systems: Canada Ports Corporation (CPC) - a federal crown corporation comprised of seven semi-autonomous Local Port Corporations (LPCs) and seven smaller, centrally administered Divisional Ports, nine Harbour Commissions - semi-autonomous federal ports operating under their own Act of Parliament, and some 346 smaller commercial ports administered by Transport Canada's Harbours and Ports Directorate.

Despite the commercialisation thrust of the 1983 *CPC Act*, over time, bureaucratic rules, regulations and the constraints of the *Financial Administration Act* prevented LPCs from operating as true commercial entities. Delays in obtaining CPC and Treasury Board approvals for financing port development and dealing with land transactions resulted in Canadian ports being unable to tap emerging opportunities (in contrast to their US competitors). For example, Anthony (1993) pointed out that the Vancouver Port Corporation (VPC) required federal cabinet approval to spend its own retained earnings, a lengthy process ranging from four to 26 months.

Similarly, disposing of federal port land can be an expensive and time consuming process. Again the VPC pointed out that it took almost two years and cost more than \$250,000 to dispose of a \$95,000 parcel of land. The creation of CPC and its subsidiary LPCs may have addressed the problems of the 1970s, but the legislation did not create commercial and market-responsive institutions needed to meet the growing pressures of continental and global economic competition of the 1990s.

In 1993, the newly elected Liberal Government instituted an in-depth programme review of all federal departments. All government activities were under scrutiny with the focus being to improve efficiency, cut costs, and do things differently. Although the initial emphasis in Transport Canada was on major programs (airlines, airports, and subsidies), by late 1993, the review was expanded to include the marine sector. The marine review process was initiated with a senior level seminar examining port privatisation initiatives in New Zealand and Britain with a review of the current status of Canadian and American ports.

In parallel with Transport Canada's internal review, in 1995 the House of Common's Standing Committee on Transport (SCOT) undertook a set of cross-country hearings to contribute to the Minister's proposed national marine policy. This policy included other marine related matters along with ports. Following publication of the SCOT report, Transport Canada held a series of regional workshops to solicit shippers' opinions. The SCOT recommendations and shippers' workshops assisted in the preparation of the Minister's December 1995 white paper, *National Marine Policy* and the June 1998, *Canada Marine Act*.

Standing Committee on Transport

In late 1994, the Minister of Transport asked the House of Common's Standing Committee on Transport (SCOT) to conduct a broad review of Canada's marine sector. Their terms of reference required consideration of Canada's port system, St. Lawrence Seaway, pilotage services, and ferries to identify competitive challenges, define essential federal roles, develop options to reduce subsidies and consider commercialisation options, obtain regional views on priorities, and build consensus on solutions and future directions. The SCOT undertook 17 days of intensive hearings in ten cities across the country during February and March 1995. During their review, the SCOT received 176 written submissions and heard from 260 witnesses representing 140 organizations.

A major theme emerging throughout the SCOT hearings was the desire by major ports to retain the current system with minor modifications to improve local autonomy. The pervasiveness of this status-quo theme led the SCOT to ask port managers why they would not want to be more independent. The President of the Quebec Port Corporation, Ross Gaudreault (1995), responded by suggesting that "when you have a good model, you don't change it. As a whole the local port [corporation] works well." The desire for status-quo was reflected in the recurring request that port directors continue to be nominated by the Minister rather than by

port users. For example, both Ron Longstaffe (1995), Chair of the Vancouver Port Corporation and Andre Gingras (1995), Chair of the Montreal Port Corporation recommended to the SCOT hearings that the appointment of the majority of port directors be made by the federal cabinet on the recommendation of the Minister of Transport.

The consistent theme of seeking a modified status-quo may be surprising to some. However, Canadian ports have a long history of central control and dependence on federal financial support. It would be difficult for port managers and their directors to actively seek to cut their ties to the federal system. Ircha (1997) demonstrated this dependency on the federal government in an earlier study of Canadian port managers. He found that the port managers and directors exhibited many of the characteristics displayed by career civil servants (rather than those of commercially-oriented entrepreneurs).

During the past two decades, competition among the differing Canadian port regimes intensified. The issue was not competition *per se*, but rather that the financial obligations of the three types of federal ports differed, distorting the "playing field." As suggested by Gingras (1995), Chair of the Montreal Port Corporation, Transport Canada's harbours and ports could charge lower rates for the use of their facilities because they did not have to be financially self-sufficient nor pay grants in lieu of property taxes to local municipalities; in contrast to financial requirements of LPCs.

The SCOT recommendations were disappointing to those who anticipated the emergence of a new, business-oriented, commercial era for Canada's ports. They reinforced the current system with modifications. This moderate step towards commercialisation likely reflected the difficulties the SCOT had in balancing the interests of ports, their host municipalities, and regional differences across the country. The SCOT's moderate recommendations should not be surprising as Keyes (1995) indicated "our role is to reflect what we heard and what most wanted in the way of reform and that is, that the federal government continue to have responsibility for a national ports system."

Transport Canada regional workshops

Following the release of the SCOT report, Transport Canada held five regional workshops across Canada for invited shippers (and other participants) during May 1995. Each of the five workshops emphasized the need for local port user groups to form the majority on the port's boards of directors, not federally appointed members. This emphasis was clear in Winnipeg where Heads (1995) reported: "the workshop was strongly of the opinion that the government should **not** appoint the majority of members of port Boards." A further concern raised in Ontario and reported by Mealing (1995) was that the SCOT recommendations stopped short of the need to create a corporate structure or to privatise Canada's commercial ports to enable them to fully compete in the continental and global marketplace.

Overall, the shippers' hearings supported the SCOT's port-related recommendations, but the participants wanted the federal government to take further action. For example, as reported by Pelletier (1995), one of the Quebec groups "agreed with the principles of the [SCOT] Report, but it must go further as regards autonomy...."

Federal port reform proposals

In August 1995, the Minister's proposed marine policy was presented to the Canadian Port and Harbour Association (CPHA) by the Deputy-Minister of Transport. The proposed policy limited the federal government's involvement to ports of national significance, to be incorporated as Canada Port Authorities (CPAs) and to a small number of isolated ports serving remote communities. All other regional/local ports (including some CPC Divisional Ports and most of the Transport Canada facilities) were to be divested to provincial, municipal, community, or private groups. CPAs were to be members of a National Ports System (NPS) managed by autonomous boards of directors with limited federal oversight. The criteria for CPAs included financial self-sufficiency, being essential for international and domestic trade, having a diversified traffic base and serving a vast hinterland, and being linked to major rail lines and highway infrastructure. The Canada Ports Corporation as a national port institution headquartered in Ottawa was to be eliminated.

Many elements of Canada's semi-autonomous Harbour Commissions were incorporated in the proposed CPA approach. Incorporating CPAs as federal agents rather than as agencies of the Crown allowed them to "carry the Canadian flag" in overseas marketing (an issue raised in the SCOT report) and retain their federal status in negotiating property taxes with adjacent municipalities. As federal agents, CPAs would not be eligible for federal guarantees of loans, hence, the financial marketplace, not the federal government would exert commercial discipline on them - a major step towards ports commercialisation. The Minister's initial proposal for CPAs went further than the status-quo modifications proposed by the SCOT.

At the 1995 CPHA Conference and in subsequent meetings with federal officials, the port managers and directors expressed dismay over the proposed ports policy. Port chairs, directors and managers lobbied federal members of parliament, ministers and, in at least one case, the Prime Minister, to voice their opposition. A major concern was the proposed CPA governance structure where local port users would directly appoint board members (as is the case in Canada's Local Airport Authorities as part of the National Airport System). In part, this concern arose from the Canadian approach to political patronage appointments. The former Progressive Conservative government had appointed many port directors in 1992-93 prior to their defeat in 1993. The incoming Liberal government did not remove the PC appointments until their three year terms had been completed. When this occurred, many of the new Liberal appointees found themselves facing their own imminent demise with the proposed port reform. Needless to say, they were dismayed at this prospect and lobbied successfully for retaining

Ministerial (thus political) control over the appointment process.

The major ports also argued they served a large hinterland, hence locally appointed directors would not necessarily reflect broader regional interests. For example, Longstaffe (1995), Chair of the Vancouver Port Corporation argued, "with over 60% of our export cargo coming from the prairie provinces, we are as much the port of Saskatoon or the port of Grande Prairie as we are the port of Vancouver." The *Canada Marine Act* modified the Minister's initial governance structure by having selected port users to provide a list of nominees for the Minister's consideration and nomination to Cabinet for appointment to the CPA's board of directors. At issue is to whom are the appointed directors accountable? Ministerial appointment begs the question of how ports can function in an unfettered, commercial manner when the directors' allegiance may rest with the federal government rather than with the local port user groups they purportedly represent. For example, concerns were raised in Halifax over the Minister's board appointments. Cayo (1998) reported: "the guiding principle for the restructuring of the port is supposed to be good business practice, but familiar political games are being played in the appointment of [Halifax's] directors. Local port people - at least the ones who don't regard 'local' as a synonym for 'loyal Liberal' - are steamed."

Initially the Minister expected to introduce marine reform legislation to Parliament in 1995. Various delays, including the October 1995 Quebec Referendum, led to the release of the Minister's white paper, *National Marine Policy*, in December 1995. Further delays arose from the January 1996 transfer of the Minister to another portfolio. In June 1996, the new Minister of Transport introduced the *Canada Marine Act* to Parliament for its first reading.

The *Canada Marine Act* was given third reading by the House of Commons in early April 1997 but failed to be adopted by Senate before Parliament was prorogued for the 1997 federal election. The Liberals won the election and re-introduced the *Act* to the new Parliament. It was proclaimed in June 1998, for implementation in January 1999, commencing a new era of Canadian port reform.

Early US port reform

As discussed by Ircha (1995), the Progressive Era in the US and Canada from 1890 to 1920 significantly impacted government systems (including the development of port authorities) at all levels. The rapid growth of urban centres resulting from massive immigration coupled with the general inability of government officials to provide appropriate services led to a widespread call for reform. During this period, municipal and state governments were tainted with scandals, inquires into blatant graft, nepotism, bribe-taking, patronage, and with ward and city "bosses" providing government jobs in exchange for future votes. The increasing complexity of government and the general inability of politicians and officials to cope led the reformers to demand a change - a shift to rational public administration.

Increasingly the city and its services (including the waterfront) came to be seen as a

business rather than a political process. Reformers argued municipal (and port) affairs should be conducted in a business-like manner. One means of achieving this involved fragmenting council authority by establishing separate boards and commissions. In turn, this led to the creation of quasi-autonomous port authorities in the US and in some cases, Canada. As shown by Denning (1985), port authorities as products of the Progressive Era, shared similar institutional patterns: "they enjoy some degree of autonomy from local politicians and democratic controls, raise the bulk of their capital funds in the municipal bond market, and profess to behave in a nonpartisan and business-like manner."

In the 19th century, a common waterfront development strategy involved the federal government providing navigation channels and private industry building port facilities. By the early 20th century, as indicated by Fair (1954), "for one reason or another, private industry or enterprise was found to be objectionable or at least inadequate without some public central [port] authority." Thus, most US port communities converted their waterfronts from private operations (primarily owned and operated by the railroads) to public agencies (port authorities). This enabled the waterfront community to seek federal port aid, regulate public access to the port, maintain and develop public port facilities, and promote trade. The National Association of Port Authorities (now the American Association of Port Authorities) was established at the first conference of port authorities in New York City on December 9, 1912. By 1915, the scope of the Association was broadened to include Canada and Latin America.

Public port authorities proliferated during the Progressive Era. Today, most major ports are administered by public authorities. American port authorities vary from state wide systems and bi-state approaches to independent public agencies and municipal or county ports. By the mid-1970s, local governments owned an estimated 70 percent of public port facilities. Local government port authorities were by far the dominant form in the US providing publicly-owned terminal facilities operating on a "common-carrier" basis for general cargo commodities (often containerized).

The initial impetus for public involvement was the concept of the port serving as a "public highway" - assuring free and equitable access to all legitimate users of the waterfront. Over time, this concept evolved into a "community utility" approach where the port was viewed as a foundation for the commercial development of both the city and its region. Economic impact continues to be a dominant theme in justifying US port expenditures.

As outlined by Fair (1954), generally US port authorities are relatively autonomous, operating outside normal government bureaucracies (controlling their own funds), have no conflicts or ambiguities in relations with other government units, have staff appointments removed from partisan politics, have limited authority related to port affairs but with broad discretion, may have overlapping political boundaries (for example, bi-state and multi-municipal authorities), may enter contracts and business arrangements without continued government supervision, and often receive financial advantages including exemption from taxation.

Federal government's ports role

The US federal government has maintained a distant relationship from ports. As pointed out by Schenker (1976), "the United States has never had a national port plan, and no commercial port or group of ports has ever been under the complete control of the national government. The port industry, historically, has been decentralized." This distancing stems from the American *Constitution* in which individual states lost their power to tax goods crossing their borders to the Congress. The *Constitution* limited discrimination among states, stating: "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another..." As indicated by Marcus (1977), the *Constitution* established a federal policy dictum: "the exercise of governmental policy affecting ports was legally mandated to be free from competitive or discriminatory bias."

Initial federal involvement in port development came with the creation of the US Army Corps of Engineers (COE) in 1779. In the early 1800s, the COE was given the primary responsibility for planning waterways, roads and railways. The federal government provided funds to state-initiated projects for improvements to rivers and harbours.

By the mid-1970s, Marcus (1977) pointed out, "federal authority over ports and harbors [was] fragmented among more than 50 federal organizations, several more state, federal-state or local organizations, and many quasi-governmental or private organizations or groups." The primary federal agencies with port responsibility include the COE, Maritime Administration (MARAD), and the US Coast Guard. Traditionally, the COE has been responsible for constructing and maintaining channels, harbours and waterways for navigation, flood control and shore protection. These works included deepening and widening channels, disposal of dredged materials, building jetties and breakwaters and other harbour works. Local ports were responsible for maintenance dredging near or among their piers and berths. In the mid-1980's federal funding for these port works changed to a partial user-pay basis. The *Water Resources Development Act* of 1986 limited the federal contribution to equal federal and local shares for the project development study, 75 percent federal and 25 percent local shares for the portion of a dredging project exceeding a draught of 45 feet and equal shares for draughts not exceeding 45 feet.

The non-federal share of these costs were financed by a harbour maintenance tax based on the value of domestic and international cargo handled at US ports (0.04 percent of the cargo value). The funds raised were directed to the Harbour Maintenance Trust Fund. In 1998, the US Supreme Court ruled the Harbour Maintenance Tax was an unconstitutional tax on exports. In its ruling, the Supreme Court held, "that the tax, which is imposed on an ad valorem basis, is not a fair approximation of services, facilities, or benefits furnished to exporters, and therefore does not qualify as a permissible user fee." As a result, the US government is seeking a new, more equitable formula to support major dredging projects.

The Maritime Administration contributed to port development in the past, primarily through port promotion and port-related research activities. However, the Reagan Administration in the mid-1980s reduced MARAD's port activities. Today, the primary burden of identifying port problems and undertaking relevant research on port issues has shifted to the AAPA. The US Coast Guard constructs, maintains and operates aids to navigation in ports and waterways including vessel traffic control systems.

Given the *Constitution's* requirement to avoid discriminating among ports, the impact of various federal actions have to be considered as these actions can affect the competitive balance among ports. Federal expenditures for channel dredging or port facility financing may aid one port to the detriment of another. Implementing various federal programmes in specific ports may influence operations and development (for example, providing ice breaking services, establishing vessel traffic control operations, and so forth may favour one port over another due to unique geographic circumstances, weather and climatic situations, and traffic volumes).

As Hershman and Kory (1988) pointed out, "this combination of state-level laws establishing port governance and finance and federal-level laws setting up subsidies and constraints results in a complex legal framework in which Ports operate in the United States." The result of this fragmented system is that port managers and directors adept at finding their way through the complex federal-state maze to win subsidies and minimize constraints generally have successful ports. Despite the problems of seeking federal and state support in this fragmented system, the process has the advantage of maintaining the local autonomy of port authorities allowing them to compete successfully.

NORTH AMERICAN PORTS AS PUBLIC ENTERPRISES

In both Canada and the US, ports function more as public enterprises rather than private operations. In the US, the parent government for public port enterprises is either at the local or state level (with the important exceptions of bi-state level ports such as New York/New Jersey). In the Canadian case, Canadian Port Authorities have been provided with increased local autonomy and higher spending authority, but essentially, they remain tied to the federal government through various regulations, reporting requirements and Ministerial appointments to their Boards. As pointed out by Taddeo (1999), President of the Montreal Port Authority, despite recent port reform, it is "ironical that we have to submit quarterly reports to Transport Canada."

The term "public enterprise" connotes a paradox, which of the two objectives - public or enterprise - should be emphasized by the directors and managers of the port facility? David Olson (1988) differentiated between these paradoxical goals of public enterprises. The "institutionalist" school, representing a more classical "liberal" approach, emphasizes the public side of the ports operations and enhances accountability by placing ports within a government

departmental structure. Institutionalists seek mechanisms to allow political leadership to direct port policies (such as board appointments) and monitor port performance through budgetary control and administrative oversight. At the other end of the spectrum, the "functionalist" school reflects a more "conservative" approach, focussing on the enterprise side of seaports and seeking to improve port performance by enhancing operating, legal and financial flexibility; thus, replacing political control with marketplace commercial discipline. This hybrid nature of public enterprises puts pressure on port managers to not only consider the enterprise function of their organization but also to respect public values and accountability. Public enterprises thus generate conflicting goals and objectives, as suggested by Denning (1985), "port authorities are typically expected to pursue a number of often competing ends. Their primary goal remains however the maximization of waterborne commerce."

US ports

Given various levels of parent governments for US port authorities, it is not surprising that a wide range of institutional structures result. Olsen (1988) pointed out there was also a wide variation in the appointment or election process for port directors such as:

- whether they have a policy board (most do) or not (Seward),
- whether the board is appointed (most) or elected,
- if appointed, whether by the mayor (Los Angeles), by the city manager (Long Beach), by the governor (Massport), or by two governors (New York/New Jersey),
- also if appointed, whether approval of appointees is required by the legislature (San Francisco) or not (Portland),
- whether board positions are formally reserved for specific groups such as shippers, labour, business, political parties, or areas of the city (Milwaukee) or not (Oakland),
- if board members are elected, whether by districts (Port Hueneme) or at-large (Tacoma), and
- if such elections are by partisan ballot (Seattle pre-1960) or by nonpartisan ballot (Seattle post-1960).

These selection processes are but one of many differences among US port authorities. Other variations can be found in their employee hiring practices, opened versus closed meeting requirements, audit reports, financial reporting relations and restrictions, borrowing authority limits, taxing authorities if any, and access to local or state loans or grants.

Ports as public enterprises have significant financial advantages over private organizations. All US public port authorities receive public subsidy in some form including: direct funding from the port's parent government, tax supported obligation bonds, direct taxation levied by the port authority, taxes levied by the local government in support of the port, exemption from taxation (local government property taxes and federal taxes on port income), and indirect subsidies by a variety of non-charged services provided by the parent government. A MARAD (1994) survey of fifty US ports found that 16 percent received short term financial assistance from local and state governments and 30 percent obtained long term financial aid. A more recent MARAD (1999) survey of US ports showed that state and local government loans, grants and other tax revenues contributed 18.7 percent of their total capital. The major sources of revenue for US ports in 1998 were the issuance of tax-exempt revenue bonds (40.9 percent) and port revenues (33.8 percent). The majority of US ports operate as landlord system - where the port authority owns (or has possession of public) waterfront land and facilities leased on a long-term basis to private operators.

As public enterprises, almost all US ports view their major role as regional economic engines stimulating development and jobs. This emphasis on economic development often leads to reduced port prices coupled with enhanced levels of service. Such price and service competition among ports reduces port net revenues leading to a greater reliance on state and local government subsidies to cover their financial shortfalls. As outlined in MARAD (1998), the net income for US ports in 1996 shows that 77 percent of the ports in the survey reported net profits with 23 percent having losses. "Although 42 percent of the profitable ports had net incomes above \$5 million in 1996, profit margins are still considered low." Thus subsidized US ports generally aim at being break-even operations, the model sought by the institutional school rather than seeking the enterprise objective of profit-maximization.

American ports can be compared to major Canadian ports (CPAs) which have been incorporated as not-for-profit businesses under the *Canada Marine Act*. In the Canadian case, CPAs receive no subsidy, are expected to be financially self-sufficient, and provide revenues both to the federal government (an annual stipend based on gross revenues) and to local municipalities (payments in lieu of property taxes). As a result, port pricing systems in these competing port systems differ.

US ports continue to be efficient enterprises despite their multitude of organizational approaches and institutional structures as their focus remains ensuring and promoting cargo throughput. Their "enterprise" approach, emphasizing local autonomy and supporting economic development, allows US ports to compete vigorously with each other and with their Canadian

counterparts.

Canadian ports

Canadian ports as public enterprises are subject to various government regulations (Treasury Board and other federal departments and agencies) and at times, ports have been slow to adjust to emerging competitive forces. Political appointments to the boards of Canada's major ports has led, in some cases, to decisions favouring public interests over commercial needs (e.g. maintaining Montreal as a year-round port through subsidized ice-breaking creating inequitable competition for the Atlantic ports of Saint John and Halifax).

Contemporary Canadian port reform in the *Canada Marine Act* shifts major commercial ports towards enhanced "commercialism" by dissolving the Canada Ports Corporation, changing the status of major commercial ports to federal agents, and establishing CPAs as not-for-profit, business-like corporations. CPAs are directed by boards with user representatives forming the majority (these representatives being appointed by the Minister from a nomination list), expected to raise capital funds from commercial banks (with no liability being transferred to the federal government), operate with higher spending authority, and make payments to the federal and local governments.

IMPACT OF CANADIAN PORT REFORM

The *Canada Marine Act* established Canada Port Authorities (CPAs) as not-for-profit organizations with many powers and responsibilities similar to corporations established under the *Canada Business Corporations Act*. CPAs have a mandate to operate with full commercial discipline. Some members of the ports community see this new commercial environment as a major step forward allowing CPAs to be innovative and responsive to market opportunities; others expect the legislation will result in higher operating costs and uncertainties about the future use of federal port lands. Nineteen CPAs have been established, including all seven of the former Canada Port Corporation's Local Port Corporations, eight of the nine Harbour Commissions, and four Canada Port Corporation's Divisional Ports.

The adoption of the *Canada Marine Act* created some concerns about port governance, limitations and constraints on the port-related activities of CPAs, financial limitations, and additional administration costs.

A significant change in the *Act* was the appointment process for CPA directors. The Minister had earlier stated that local port users would select the directors (similar to Canada's National Airport System). The *Act* now has selected port users nominate potential directors for government appointment. Non-federal appointments are limited to those made by: the municipalities named in the letters patent (one), and the province in which the port is situated (one). The federal government appoints the majority of directors on the 7 to 9 member board. The *Act* indicates "the remainder [are to be] nominated by the Minister in consultation with the

users." The Act is silent on what happens if the Minister does not wish to nominate a person from the lists provided. As a result CPAs are not truly independent as their governance continues to be controlled by the federal government.

The *Act* defines who may serve as a director, providing limits on the representation of commercial port users on the board. Port user nominees are restricted to individuals who are not officers nor employees of port user companies. Public sector nominees are limited to those who are not government employees nor elected officials. This restriction (imposed to avoid apparent or potential conflicts of interest) likely means the continuation of non-qualified members (such as members of unrelated professions including doctors, lawyers, accountants, engineers, and others, who may have little knowledge of the ports industry). This will likely occur despite the *Act's* requirement that:

Directors of a port authority shall have generally acknowledged and accepted stature within the transportation industry or the business community and relevant knowledge and extensive experience related to the management of a business, to the operation of a port or to maritime trade.

This is ambiguous and leaves scope for potential abuse. What is the federal government's intent? Under these governance provisions, it appears the government wants to restrict port users to a minor role in governing CPAs.

Having non-business representatives as directors could lead to ports engaging in non-cargo-related waterfront activities to meet local, regional or national political priorities rather than the port's commercial interests. What commercialisation goal is the federal government seeking with the *Canada Marine Act*? Given the potential for continued political patronage appointments, will this type of port governance achieve commercialisation? Did the federal government really want to make ports truly business-like? Or, did political considerations lead to diminishing the ports' commercialisation process?

The new *Act* limits CPAs to "... engage in activities within the port related directly to shipping, navigation, the transportation of passengers and goods and the handling and storage of goods." In addition, CPAs are required to ensure any existing wholly-owned subsidiaries carry out only the business and activities authorized under the negotiated Letters Patent (articles of incorporation) for the port authority. The CPAs are further prohibited from incorporating any further wholly-owned subsidiaries. In other words, CPAs are expected to focus on port-related business and are restricted from undertaking other commercial activities that could yield additional revenues. Ports are restricted from being involved in activities such as recreational marinas, and land-side development (residential, commercial or industrial). This constraint will likely restrict some of the innovative marketing initiatives being undertaken by Canadian ports.

The federal government's return from providing assets and lands to the CPAs is a "charge on the gross revenues of the port authority" as an annual stipend. David Bellefontaine (2000A)

indicated that the general formula for setting the CPA's annual stipend to the federal government is 2 percent on the first \$10 million in gross revenues, 4 percent on the next \$10 million, 6 percent on the following \$40 million, then 4 percent on the next \$10 million, and finally, 2 percent on revenues over \$70 million. As pointed earlier by Dowd (1996), the requirement for an annual stipend is set out in the *Act* prior to provisions for debt servicing, implying that commercial borrowings are based on second lien status. In turn, such status leads to higher costs for commercial port loans.

CPAs are limited to pledging the revenues generated from the use of federal lands rather than the physical assets themselves as collateral for loans from commercial banks and other financial institutions. Restricting the borrowing capacity of CPAs in this manner will likely lead to higher interest rates for the loans being provided and reduce the actual amounts available. As indicated by David Bellefontaine, President of the Halifax Port Authority (2000B), the port has already felt the impact of these restrictions in its recent bid to attract Maersk/Sea-Land to develop a major container hub. The HPA has a maximum borrowing capacity of \$25 million for capital expenditures - a far cry from the \$250 to \$450 million needed to construct a major container terminal to meet the Maersk/Sea-Land proposal. Tom Dowd (2000) suggested that Halifax is not the only Canadian port with an inadequate capacity to borrow funds for capital projects. Even if the debt limits of these major ports was raised, without providing stronger security to the lenders, the resulting debt servicing costs would likely make these ports uncompetitive with their US counterparts.

The Harbour Commissions that have been re-established as CPAs face considerably higher operating costs in this new reform environment. Harbour Commissions now pay annual stipends to the federal government (in the past they retained their earnings for future investment) and make payments in lieu of property tax to their host municipalities (again, this was not paid in the past). Fraser Port estimates that these new costs will amount to about \$3 million. North Fraser Port Authority faces a new \$1.2 million payment in lieu of municipal property taxes with its net revenues of \$300,000.

The *Canada Marine Act* has added further administrative costs to all CPAs as they now must conform to various federal regulations including: access to information legislation (operating with greater transparency and accountability to users and the public), environmental assessment panels (including incurring the costs associated with the EAP study and implementing recommendations), and the *Official Languages Act* (ensuring all documentation is in both official languages).

As a result of these changes, CPAs face severe revenue generating restrictions; such restrictions cannot be aimed at creating independent, financially self-sufficient, business-oriented ports. There is a need for new innovative financial tools such as tax-exempt revenue bonds and taxing authority as occurs within the US port system.

The *Canada Marine Act* does not appear to be legislation that will result in its stated

objective of "making the system of Canadian ports competitive, efficient and commercially oriented." Will the *Act* lead to significant port reform? This is not likely in its present form. Additional changes are needed to create a meaningful, fully commercial ports system.

Since the tabling of the Minister's white paper, *National Marine Policy*, the divestiture of Transport Canada's smaller ports and harbours has been progressing, but not as quickly as first expected. In many cases, time has been spent clearing title to define the lands owned by government. As indicated by Brian Mosher (2000), port divestment follows a strict hierarchical process with the facilities being offered first to other federal government departments (by the end of 1999, 64 Transport Canada sites had been transferred to the Department of Fisheries and Oceans), then to the provinces (32 sites have been transferred to Newfoundland, New Brunswick and Ontario), and then local interests (35 sites have been transferred). Four port sites have been demolished and Transport Canada's interest has been terminated at 11 sites. Transport Canada is currently negotiating the transfer of a further 79 sites across the country. Initially, municipalities were to be offered port facilities, however they were removed from the list by Treasury Board as Newfoundland and Quebec has legislation specifically prohibiting local governments from taking over federal property.

The municipal sector is particularly concerned about the federal government's apparent policy of retaining "winners" - the commercially viable major ports as CPAs - and divesting "losers" - the smaller regional/local ports. For example, an editorial in the *Municipal World* (1995) argued:

The classification of ports as commercial (profitable) and non-commercial (not profitable) is an attempt to disguise the underlying intention: to retain income generating operations and download those that are a fiscal liability, either upon the province or a municipality.... The federal government should also be reminded that no matter what its budgetary intentions are, downloading unprofitable harbours on other levels of government is neither economically, nor politically, an acceptable strategy.

A further concern is how regional interests are being considered within port reform. Traditionally, Canada's national transportation infrastructure has been developed by the federal government to aid the economic integration of Canada's disparate regions. Does port reform, mean an end of ports being considered as regional economic development engines? Such a step would be in stark contrast to importance of such economic development in competing US ports.

The *Canada Marine Act* appears to have created an unwieldy system for designated CPAs. Constraints on port operations, financial limitations and creating a federal government dominated board of directors will not likely introduce the business-like elements of competition, efficiency and effectiveness being sought by many within the ports community. A revamped

approach that allows Canadian ports to act in a true business-like fashion, unhampered by political interference is required. In the face of these many challenges, the Association of Canadian Port Authorities (formerly CPHA) recently established a task force to review the *Act* and make recommendations for change to the Minister.

CONCLUSION

Although the Canadian port reform process is a significant step in the right direction in making CPAs more business-like and independent of the federal government, it does not go far enough. Additional steps are required to allow CPAs to operate as "for-profit" business enterprises with sufficient flexibility and access to financial resources to compete effectively domestically and with US ports. The federal government's divestment strategy for smaller Transport Canada facilities reflects, in some cases, a more significant shift towards business-like independence. Recent divestiture of smaller ports transforms most of them from public ports into private sector operations albeit with conditions to ensure public access is maintained to the port facilities over a specified period of time.

Is the shift of major Canadian ports to this form of enhanced commercialisation sufficient? Adopting a not-for-profit corporate approach with continued government appointments to the board of directors may not create the competitive, business-like commercial ports the government initially sought.

Given the port reform experiences elsewhere, what might be appropriate for major Canadian ports is a shift to privatisation through a multi-stage process. The first stage of commercialisation is in place with establishment of CPAs. This could be followed with full business-like incorporation (as in New Zealand). Such corporatisation ensures there is no question about the port's mandate and objectives (to maximize profits to augment shareholder value, regardless of whether the shareholder is the federal government or private investors). This step clarifies the public enterprise paradox. In time, following corporatisation, major commercial ports could be considered candidates for privatisation through the sale of shares on appropriate stock markets. Such a step enables the regional community and port employees to acquire a financial interest and greater say in their local port. The revenues generated from the share flotation might then be divided between the federal land owner and the local CPA (in a manner similar to the British Trust ports).

In the US case, despite some recent fledgling attempts to coordinate port activities on a regional scale, there are no steps to develop a national strategy for port reform. However, given local or state ownership and intense competition among ports, national level reform may not be needed. US ports operate efficiently, effectively and competitively - both domestically and internationally with Canadian ports.

The difficulty facing Canadian ports is the "unlevel playing field" that has been created

between themselves and their US counterparts. The *Canada Marine Act* was, in part, designed to level the playing field for domestic port competition. It may have achieved this in Canada, but it has not helped Canadian ports compete with US facilities. There is a need to further change the *Act* to increase the autonomy of major ports and provide them with improved access to financial resources to enable them to compete more effectively internationally. Such access could be in the form of tax-exempt revenue bonds and possibly providing provincial and municipal taxing authority to major ports. In addition, Canadian ports, like their US competitors, must be given greater freedom to become involved in other port-related activities as “economic engines” supporting regional development and generating additional net income to subsidize “commercial/port related” activities.

The Canadian port reform process was a step in the right direction. The newly established task force on the *Canada Marine Act* of the Association of Canadian Port Authorities will likely identify the many changes needed to continue the commercialisation of Canadian Ports by ensuring the creation of a level playing field both domestically and internationally.

REFERENCES

Anthony, R.J., Frank, D., and Frank, R. (1993), *Evaluation of Options for the Administration of the Port of Vancouver*. Horizon Pacific Ventures Ltd: Burnaby, B.C., p. 4.

Bellefontaine, D.F. (2000A), Disengaging government from ports, presented to Port Privatisation: The Global Record and Outlook Conference, Lisbon, Portugal.

Bellefontaine, D.F. (2000B), President and CEO, Halifax Port Authority, personnel communication.

Bienen, H. and Waterbury, J. (1989), The political economy of privatization in developing countries. *World Development*, **17**: 617-632.

Cayo, D. (1998), The politics of a super-port. *Globe and Mail*, Monday, November 2, p. A21.

Denning, M. (1985), Structure, policies and performance: public ports as public enterprises. Annual Meeting of the American Political Science Association, New Orleans.

Dowd, T. (1996), University of Washington, Seattle, personal communication.

Dowd, T. (2000), University of Washington, Seattle, personal electronic communication.

Fair, M.L. (1954), *Port Administration in the United States*. Cornell Maritime Press: Cambridge Maryland, p. 41-43.

Gauldreault, R. (1995) *Proceedings of the House of Common's Standing Committee on Transport*, February 14, No. 24, Quebec City hearings, p. 19.

Gingras, A. (1995), *Proceedings of the House of Common's Standing Committee on Transport*, February 13, No. 23, Montreal hearings, pp. 38-39.

Goss, R.O. (1993), "Port privatisation: the public interest". 12th International Logistics Conference, Alexandria, Egypt.

Heads, J. (1995), Marine transport policy workshop. Transport Canada regional workshop, Winnipeg, Manitoba, p. 3.

Hershman, M.J., and Kory, M. (1988) Federal port policy: retrenchment in the 1980s. In M.J. Hershman (ed.), *Urban Ports and Harbor Development*, Francis & Taylor: New York, p. 100.

Ircha, M.C. (1995), U.S. ports: evolution and structure. *Maritime Policy & Management*, **22**: 281-294.

Ircha, M.C. (1997), Reforming Canadian ports. *Maritime Policy & Management*, **24**: 123-144.

Keyes, S. (1995), *A National Marine Strategy - Report of the Standing Committee on Transport*. Canada Communications Group: Ottawa, p. 8.

Longstaffe, R. (1995), *Proceedings of the House of Common's Standing Committee on Transport*. February 20, No. 26, Vancouver hearings, pp. 14-15.

MARAD (1994), *Public Port Financing in the United States*. Office of Port and Intermodal Development: Washington D.C., p. 15 and pp. 26-28.

MARAD, (1998), *A Report to Congress on the Status of the Public Ports of the United States: 1996 - 1997*. Office of Ports and Domestic Shipping, U.S. Department of Transportation: Washington D.C., p. 48.

MARAD (1999), *United States Port Development Expenditure Report*. Office of Ports and Domestic Shipping, U.S. Department of Transportation: Washington D.C., p. 18.

- Marcus, H., Short, J.E., Kuypers, J.C., and Roberts, P.O. (1977), *Federal Port Policy in the United States*. U.S. Department of Transportation: Washington D.C., pp. 22 and 40.
- Mealing, N. (1995), Marine policy issues consultation workshop. Transport Canada regional workshop, Thorold, Ontario, p. 11.
- de Monie, G. (1992), A new role for port authorities. Seminar on the challenge of increased port competition, IPER, Le Havre.
- Mosher, B (2000), Regional Director, Transport Canada Ports and Harbours Directorate, Atlantic Region, Halifax, personnel communication.
- Municipal World*, (1995), National marine strategy - an exercise in 'downloading'. **105**: 2 and 26.
- Olson, D.J. (1988), Public port accountability: a framework for evaluation. In M.J. Hershman (ed.), *Urban Ports and Harbor Development*, Francis & Taylor: New York, pp. 307-333.
- Pelletier, R.B. (1995), Summary: marine policy workshop. Transport Canada regional workshop, Ste-Foy, Quebec, pp. 2-3.
- Savas, E.S. (1990), A taxonomy of privatization strategies. *Policy Studies Journal*, **18**: 343-355.
- Schenker, E.R. (1976), *Port Development in the United States*. National Academy of Science: Washington D.C., pp. 15-16.
- Taddeo, D. (1999) cited in L. Ryan, Chartered Institute of Transport in North America explores maritime issues. *Canadian Sailings*, December 20, p. 17.
- Thomas, B.J. (1993), Social and labour problems caused by structural adjustments in the port industry. Department of Maritime Studies and International Transport, University of Wales Cardiff.
- UNDP (1991), *Guidelines on Privatization*. United Nations: New York.
- Wade, R. (1992), East Asia's economic success: conflicting perspectives, partial insights, shaky evidence. *World Politics*, **44**: 270-320.