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November 7, 2013

Hand Delivered

Peter Xotta
Vice-President, Planning & Operations
Port Metro Vancouver
100 The Pointe, 999 Canada Place
Vancouver, BC V6C 3T4

COPY

Dear Mr. Xotta:

**Re: Unifor VCTA Concerns with
Stability At Lower Mainland Ports**

Thank you for agreeing to meet with representatives from Unifor today on the important and urgent issues facing container truck drivers at British Columbia's lower mainland ports.

Unifor Local VCTA (former VCTA-CAW Canada Local 2006) represents hundreds of owner operators and company drivers at many of the largest full service container drayage operators at Port Metro Vancouver (PMV) in British Columbia. The Vancouver Container Truckers Association was a key stakeholder during the 2005 trucking dispute at the British Columbia lower mainland ports.

We strongly believe that a large scale disruption from among the container truck population is once again imminent and we believe that the time to act is now. As you know, the last disruption in 2005 was very costly to the provincial and federal economy and to the reputation of the ports of Vancouver as a reliable and stable environment for trade. The last disruption was only resolved with the assistance of Vince Ready.

We are therefore calling on the provincial government, the federal government, PMV and all stakeholders to come together on an urgent basis with Vince Ready acting in a special capacity with clear terms of reference to make recommendations to resolve the issues leading to the current potential threat of disruption.

In brief, the areas that need to be urgently addressed are:

1. Sectoral Bargaining
2. Enforcement of Rates and Scope of Truck Licensing System
3. Waiting Times
4. Moratorium on New Licensees

Background

We start our analysis with the "Ready rates". The Memorandum of Agreement written by Vince Ready (Ready MOA) dated July 29, 2005 outlined a number of key points including the establishment of a fuel surcharge, an enforcement system, a number of rate issues including \$200 for a minimum call-out, and rates for 2005 and 2006. In the Schedules I and II outlining minimum rates, Mr. Ready identified minimum payment amounts in a grid format broader than simply to and from the Ports and he also clearly identified that these payments were to include moves to and from the CP and CN facilities. There is also no distinction in the MOA between loaded containers and empty containers. Mr. Ready also excluded the MOA from applying to collective agreements.

The objectives of the Government of Canada when putting in place specific measures, both to address the immediate impact of the 2005 disruption and the long-term operation of the local container drayage industry are set out in the Regulatory Impact Analysis Statement that accompanied the *Regulations Amending the Port Authorities Operations Regulations*:

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

1. Sectoral Bargaining

The move to legislate minimum rates through the Ready MOA and the *Regulations Amending the Port Authorities Operations Regulations* clearly indicated a shift toward dealing with the container truckers as a sector with the goal to promote stability. We understand that PMV has indicated repeatedly that it does not wish to act as an enforcer to this system but that is the reality of where we are at and most parties agree that there would be severe disruption if this system did not exist. It is due to the inherent systemic weakness in this system that we are now once again facing the possibility of disruption.

We strongly believe that a "wall to wall" approach is needed and that all container truck drivers should be represented by one union and they should bargain for an industry-wide collective agreement covering all container truck companies licensed under the TLS system. Container truck employers licensed under the TLS could also be required to come together in an employer organization similar to BCMEA.

On the dock side, there is currently a multi-year industry-wide agreement in place involving ILWU and the BCMEA. As with any ongoing labour relations relationship, we are sure there are issues but it is also clear that there is overall stability in that sector as a result.

Given that approximately 50% of the traffic from the Ports is moved by truck, having a sector wide collective agreement on the dock side while leaving the container truck side to be unregulated or dealt with in a piece-meal approach makes no sense, and history since 1999 and 2005 has shown beyond a shadow of a doubt that this system is not working but that some larger and more effective system is needed.

We propose that the federal and/or provincial governments make the necessary regulatory and/or legislative changes to allow for a labour board supervised vote for all employees and owner operators licensed under the TLS to join a union of their choice.

Any Union with a current collective agreement covering TLS licensees would be permitted to be on the ballot and the choice of which union to join would be up to the workers themselves by secret ballot vote. Once this takes place, the newly certified union would then begin bargaining for an industry-wide agreement that would cover all workers in the sector.

In terms of a regulatory impact analysis, we believe both levels of government can point to the unique nature of this sector, the impact on the economy of any disruption, and the fact that alternate methods have been tried in 1999 and 2005 without success as logical reasons for these changes.

The suggestions outlined below are intended to try and fix a broken system but we strongly believe that the sectoral bargaining proposal is the only real solution that will achieve the stated goals of stability in this sector.

2. Enforcement of Rates and Scope of Truck Licensing System

"Unionization" as a Vehicle to Undercut Rates

An unscrupulous trucking company wanting to avoid payment of the conditions outlined in the Ready MOA (and/or under a collective agreement posted on the PMV website) has a number of options which sadly have become clear in the past few years.

Non-union companies operating under a TLS license system are subject to investigation by the Container Truck Disputes Office and the recommendations can form the basis for action on the licensees by PMV. Unifor VCTA has major issues with the speed, transparency, and effectiveness of this system, but let's assume that this system actually works as intended for the sake of discussion on this point.

A non-union company that has control over its owner operators (and/or owner operators who wish to conspire to avoid payment of the rates in order to hopefully gain more work through undercutting) can simply become unionized under the applicable labour code and the jurisdiction of the Container Truck Dispute office ceases.

Since 2005, VCTA-CAW Local 2006 and Unifor VCTA have maintained the "Ready rates" in our collective agreements as we were and continue to be the largest organized union group pushing for these rates.

We have said publicly that the enforcement of rates should be on all container truck firms and individuals operating from the Ports, whether they are union or non-union and we maintain that position. We have also bargained language in our collective agreements to allow for this possibility and to demonstrate our commitments.

We have since seen many examples where groups become certified and then cease paying the rates. We have seen the entry of unions who have certified locations and yet not reached an agreement after 18 months following certification with no known bargaining going on. We have also seen the formation of a new, completely unknown union among a group of well-known associated companies that occurred shortly after PMV finally issued license suspensions and cancellations. There is no known bargaining or collective agreement in place at those companies either yet they cannot now be touched by the Container Truck Dispute office.

Clearly, there are individuals and container truck companies operating from the Ports who are ironically using unionization not as a stable way to bargain responsibly, but to undermine the rates that have been in place since 2005 – the loopholes in the regulation encourage this behaviour and these reckless actions to benefit a few seriously undermines the stability of the rates that were put in place in 2005.

Massive Growth in Unregulated Company Drivers

At the time of the 2005 dispute, most container truck drivers were functioning as owner operators and there were very few "company drivers" (i.e. drivers who operate company-owned vehicles on an hourly basis).

A review of the measures taken since then clearly establishes that the regulation of owner operator activity was a key factor and little or no attention has been paid to these alleged company drivers.

We believe that the number of alleged company drivers operating out of the ports today is at least 50% of the total trucking population, and it may in fact be closer to a 60%-40% split.

As VCTA has pointed out many times in the past, we do not believe that the actual number of real company drivers is anywhere near the actual number listed under the TLS system.

It is of great concern to us that PMV, which has extensive systems in place to track many things, has failed to pay attention to this dramatic shift in the alleged ownership structure from a point of very few company drivers to 50% or greater.

We understand the PMV simply requires ICBC paperwork and tax transfer paperwork to establish that a Company has hired a Company driver. Where is the much needed further investigation of the payment system given to these drivers? PMV could easily outline requirements under the TLS system to investigate this in order to grant company driver authorization and the province could lead a team of Employment Standards investigators to review all records related to these drivers. We believe the findings of such a joint investigation would be staggering and clearly outline the extent of the problem.

4.

We have seen so-called company drivers being paid rates of \$42 per trip with no payments toward WCB, CPP, EI or other statutory requirements. We have also been told repeatedly by these drivers that they are economic "refugees" – forced to sign over the paperwork on their truck in exchange for work and then being paid on a per trip basis with no employment standards protection. These drivers are terrified to come forward and report these abuses for fear of losing work and/or being permanently banned from the Ports or being denied an owner operator permit.

In addition, there is simply no set of minimum rates for company drivers other than the employment standards minimum wage and this will not lead to the stability that is required. Rates for a Class 1 truck driver in many collective agreements (and many non-union facilities) approach \$20 per hour plus yet the current system would allow for companies to pay as little as \$10.25 per hour, even if they were paying correctly, which we are absolutely convinced they are not.

It is critical to have a much broader investigation of the growth of company drivers and to have minimum rates and other terms and conditions of employment set for company drivers.

"Third Leg" Rate Enforcement

We have been advised that PMV has interpreted the phrase "for the delivery, pick-up or movement of containers into, within or out of the port" to mean that it is not required to investigate or audit the movement of containers on the "third leg", (i.e. the trip in between the entry or exit of a container through the Ports, normally through an "off-dock" facility.).

The schedule of rates put in place following the 2005 dispute covered trips to and from the major port terminals (Vantem/Centerm, Deltaport, and Fraser Surrey Docks) and also to and from the rail intermodal facilities (CP and CN). We have now been advised that PMV has also interpreted the language "for the delivery, pick-up or movement of containers into, within or out of the port" to mean that it is not required to direct its auditors to review and enforce these rates involving the rail-related trips also.

This now leaves us in a situation where major components of the stability agreement put in place in 2005 are under serious threat. A collapse in rates on third legs and to and from rail yards destroys much of the incentives put in place in 2005 to ensure rate stability. We have already seen employers coming to the bargaining table demanding major decreases in the 2005 rates on the basis of this one policy change.

We note that PMV has never publicly stated that it is refusing to investigate and audit "third leg" or rail-related trips nor provided a rationale for the sudden and dramatic change to the rate enforcement system.

The Ready rates should be minimum rates for all movement of containers within the grid including movement to and from rail yards.

3. Waiting Times

We have seen and listened with interest to the structural infrastructure changes implemented by the province and PMV. Changes to structural infrastructure will certainly help to clear some bottlenecks but they are not the full solution in the short or long term.

It is clear that truckers only receive payment when they pick up or deliver containers (even if they are company drivers as they are paid by the trip). We have outlined some of the problems with the system currently in place that have weakened the Ready rates and/or in areas where the Ready MOA did not address such as company drivers.

Penalties need to be imposed on the stakeholders such as shippers and terminal operators for excessive waiting times and then 100% of those penalties need to be passed directly to the affected truck drivers. We believe that calculating these penalties on a 15 minute basis makes sense but regardless of the method, penalties need to be imposed and these funds should be passed to the truck drivers who actually suffer from the delayed wait times. We were informed in October 2012 that something was going to be put in place but here we are over a year later and not one dime has flowed to truck drivers for excessive waiting times; clearly any penalties and resulting funds need to begin immediately and get into the paycheques of container truck drivers.

4. Moratorium on New Licensees

There are simply too many container trucks operating from the Ports and as a result, the undercutting continues. The moratorium put in place in 2007 over independent operator permits is important but it has simply increased pressure and temptation to classify new entrants as Company drivers with all of the problems associated with that outlined above.

PMV published a bulletin on proposed amendments to the Truck Licence Moratorium on September 30, 2010 and asked for input from the TLS holders.

VCTA-CAW Local 2006 wrote to PMV President and Chief Executive Officer Robin Silvester on October 20, 2010 with our comments on this policy change. Only 5 days later, PMV announced the following changes to the moratorium:

Effective Tuesday, January 4, 2011: The Moratorium will be lifted for "New" Licences of Local and Long Haul Full Service Companies which removes restrictions/limits on fleet size. The Moratorium will remain in effect for TLS Permits for Independent Owner Operators.

The Vancouver Fraser Port Authority continues its commitment to review the Moratorium in line with market conditions.

The Union received a response to our letter from Mr. Silvester on October 29, 2010 and all of our concerns about the lifting of the moratorium were thrown out the window: "In light of this announcement, your concerns regarding proposed modifications to the moratorium respecting fleet expansion through acquisition of existing trucks would appear moot."

These changes now mean that while new owner operators (some of whom are governed by the minimum rates) will be prohibited (as we have long advocated), the number of container truck

drivers not covered by the *Port Authorities Operations Regulations* will increase (i.e. as company drivers).

Unfortunately, we have listened to many stories of owner operators masquerading as so-called "company drivers" and have asked many times for a deep and systematic investigation of this problem with no response.

A survey of container truck drivers conducted by VCTA-CAW Local 2006 in spring 2010 indicted that many "company drivers" were not receiving pay by the hour, but rather pay by the trip with no overtime, statutory holiday pay, regular pay dates immediately following a pay period, or other provisions normally associated with "employee" status.

The new Joint Temporary Permit (JTP) program should be immediately cancelled and the 100 trucks that were licensed should be put on hold pending the outcome of a report by Vince Ready.

Summary

Unifor VCTA is calling for the provincial government, the federal government, Port Metro Vancouver and all stakeholders to come together on an urgent basis with Vince Ready acting in a special capacity with clear terms of reference to make recommendations to resolve the issues leading to the current potential threat of disruption.

We believe that a sectoral bargaining approach should be seriously investigated as part of that review by Vince Ready and that recommendations should be made to achieve that goal.

In the meantime, while we are operating under the current system, some urgent changes need to be made:

- The Container Truck Dispute office and PMV should be given express authority to audit all TLS licensees including unionized firms and company drivers.
- The province and PMV should conduct a joint massive audit of all company drivers under the TLS system to ensure that they are in fact being paid by the hour with all appropriate statutory deductions being made and severe penalties including cancellation of licenses should be imposed on any company that is found to have misrepresented the true status of their drivers. Minimum rates for company drivers should be put in place similar to the minimum rates intended to be paid to owner operators.
- The "third leg" should be enforced and the Ready rates should be paid on all containers, full or empty and should be paid whether or not they move from off dock facilities or rail yards.
- Penalties need to be put in place immediately for excessive waiting times and 100% of any funds collected should be distributed directly to the truck drivers to compensate them adequately for their waiting time.
- There should be an immediate and wide-ranging moratorium put in place for any new entrants into the TLS system, whether it be new companies, owner operators, or company drivers. Discussions between stakeholders can then focus on finding a way to grow the sector on an appropriate basis with broad consensus in the future.

Finally we note that the current suspensions put in place for actions at the Port should be cancelled. We appreciate your response to our proposals for a suspension of the penalties but we continue to believe that those drivers should not be penalized for reacting to a broken system. Quite simply, the situation was a symptom of the overall problem. Those drivers are not the problem, the system is. We implore PMV to cancel the suspensions of those drivers.

We are focussed on renewing collective agreements for our members and need a stable minimum rate environment across the board to ensure that this happens. We are currently engaged in collective bargaining with all of our certified container truck companies covering hundreds of members operating under the TLS system.

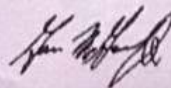
We believe that a major work stoppage is imminent and are calling on all parties to come to the table to make the necessary changes to ensure stability in this important sector.

We thank you for your time and hope to see some positive changes made in this sector in the near future. We look forward to PMV's response.

Sincerely,



Paul Johal
President, Unifor Local VCTA



Gavin McGarrigle
Unifor Area Director, British Columbia

cc. Bob Orr, Assistant to the President, CAW-Canada
Jim Sinclair, President, BC Federation of Labour

GM:cs-cope343



PORT METRO
vancouver

December 16, 2013

Mr. Paul Johal, President, Unifor Local VCTA
Mr. Gavin McGarrigle, Unifor Area Director, British Columbia
Unifor
326 - 12th Street, 2nd Floor
New Westminster, BC V3M 4H6

Dear Messrs. Johal and McGarrigle:

RE: Unifor VCTA Concerns with Stability at Lower Mainland Ports

Thank you for your letter of November 7, 2013.

During the course of the past several weeks a number of discussions and meetings between PMV and drayage community members have occurred, including recent meetings which included the Government of Canada and the Province of British Columbia.

PMV has demonstrated its strong commitment to improvements in the intermodal supply chain through:

- Millions of dollars in infrastructure improvements currently underway;
- Technology projects that will serve to better plan drayage activity and increase accountability of system participants;
- Ongoing engagement with groups such as Unifor to ensure that legitimate issues are addressed as effectively as possible.

This letter provides additional context and summarizes actions PMV proposes to address concerns expressed during the initial and several subsequent meetings.

Addition of TLS Trucks, Permits and/or Licenses:

Unifor is concerned about the impact of additional trucks entering the market, and the impact that this has on overall stability of the marketplace. PMV shares this concern and takes our role in governing the number of trucks in the system very seriously. PMV has begun a comprehensive assessment of TLS policies and procedures. Recent events have highlighted the need to conclude this assessment and begin discussions with industry regarding proposed changes to this TLS framework.

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Enforcement of Rates:

We have heard and understand concerns expressed about rate enforcement. As our President and CEO Robin Silvester indicated in his October 31 letter, we take our role in this process very seriously and continue to work with the Government of Canada and of British Columbia on this matter.

As you know, the rate enforcement process is a collaboration whereby the Province of British Columbia undertakes investigations of companies that use the services of non-union Independent Operators. Union firms and their IO drivers are presumed to be protected by their collective agreement. There have been claims by Unifor and others that union firms are also engaging in rate undercutting by various means. The TLS Licence requires participants to abide by all applicable laws and orders. Labour law allows for registration of Arbitration decisions with the Court. Therefore, provided the complainants have exercised due diligence attempts to enforce, PMV is prepared to view the refusal of an FSO to comply with a duly registered Court Order related to TLS matters, as a breach of the TLS Licence and sanction accordingly.

As mentioned during our recent discussion, other changes will be introduced in the coming months that will:

- Eliminate the ability for firms under sanction to shift physical assets between firms within the TLS, whether these firms are under common control or not;
- Increase FSO accountability;
- Expand the scope of PMV's options to sanction for noncompliance with Licence obligations.

PMV will begin discussion with industry on these potential program changes in early 2014.

Waiting Times:

Waiting times continue to be a source of frustration for drivers. As indicated in our letter of October 31, 2013 PMV agrees with the need to improve fluidity at our container terminals and on Port roadways. Major Infrastructure projects are under construction that will have a significant impact on overall fluidity, and our technology initiatives will allow better performance monitoring and ultimately increase accountability for supply chain participants.

As discussed during our recent meetings, the opportunity to better coordinate and extend gate hours of operation could have significant overall benefits; however this will require a high level of collaboration amongst all parties. PMV along with industry stakeholders recently began assessing the options available to extending gate hours of operation and hopes to announce a pilot program to extend gate hours during the first quarter of 2014.

Messrs. Johal and McGarrigle
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Sectoral Bargaining:

Your recent letter stated "We strongly believe that a "wall to wall" approach is needed and that all container truck drivers should be represented by one union and they should bargain for an industry-wide collective agreement covering all container truck companies licensed under the TLS system. Container truck employers licensed under the TLS could also be required to come together in an employer organization similar to BCMEA". Under the *Canada Marine Act*, PMV is responsible for ensuring that the Port of Vancouver remains "competitive, efficient and commercially oriented". Supporting your suggestion that the container drayage industry should move towards mandatory sector-wide bargaining, would be inconsistent with PMV's primary mandate.

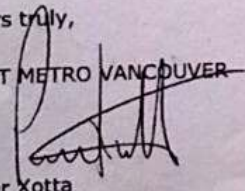
Driver Sanctions – September 17th Disruption

PMV will rescind the pending sanctions against those individuals identified as leading the September 17th service disruption on the South Shore. However, their participation in the disruption will be noted and may be taken into consideration should any of these individuals be involved in future activities warranting sanctions against them.

We look forward to continued collaboration with the Unifor and its members.

Yours truly,

PORT METRO VANCOUVER


Peter Xotta
Vice President, Planning and Operations

Cc Bob Orr, Assistant to the President, CAW-Canada
Jim Sinclair, President, BC Federation of Labour



PORT METRO
vancouver

Email: uta.bc.ca@gmail.com

December 16, 2013

Attention: United Truckers Association (UTA)

PMV President and CEO Robin Silvester provided an initial response on October 31, 2013 to your concerns, as expressed in the UTA letter dated October 22, 2013. During the course of the past several weeks a number of discussions and meetings between PMV and UTA members have occurred, including recent meetings which included the Government of Canada and the Province of British Columbia.

As stated in PMV's October 31, 2013 letter PMV has demonstrated its strong commitment to improvements in the intermodal supply chain through:

- Millions of dollars in infrastructure improvements currently underway;
- Technology projects that will serve to better plan drayage activity and increase accountability if system participants;
- Ongoing engagement with groups such as UTA to ensure that legitimate issues are addressed as effectively as possible.

This letter provides additional context and summarizes actions PMV proposes in order to address concerns expressed during the initial and follow up meetings.

Addition of TLS Trucks, Permits and/or Licenses:

UTA members are concerned about the impact of additional trucks entering the market, and the impact that this has on overall stability of the marketplace. PMV shares this concern and takes our role in governing the number of trucks in the system very seriously. In 2013 PMV has been undertaking a review of TLS policies and procedures. Recent events have highlighted the need to conclude this assessment and begin discussions with industry regarding proposed changes to this framework.

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United Truckers Association (UTA)
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As discussed during our recent meetings, the opportunity to better coordinate and extend gate hours of operation and increase the number of double-ended moves could have significant overall benefits; however both require the greatest level of coordination. PMV along with industry stakeholders recently began assessing the options available to extending gate hours of operation and hope to announce a pilot program to extend gate hours as early as the first quarter of 2014.

Truck Age Restrictions

PMV is reviewing a number of options to address Truck Age compliance through our TLS Policy review. Our goal is to ensure that all trucks licensed under TLS are well maintained and meet environmental criteria, yet recognize the need to consider older vehicles that have been well maintained and meet all environmental standards. This review is expected to be finalized during the second quarter of 2014.

United Truckers Association (UTA)

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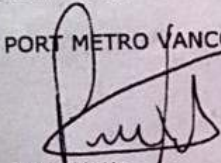
Driver Sanctions - September 17th Disruption

PMV will rescind the pending sanctions against those individuals identified as leading the September 17th service disruption on the South Shore. However, their participation in the disruption will be noted and may be taken into consideration should any of these individuals be involved in future activity warranting sanctions against them.

We look forward to continued collaboration with the UTA and its members.

Yours truly,

PORT METRO VANCOUVER



Peter Xotta
Vice-President, Planning and Operations

Cc Stephen Brown, BC Chamber of Shipping
Louise Yako, BC Trucking Association
Ian May, Western Canada Shippers Coalition
Maksim Mihic, DP World
Eric Waltz, TSI Terminal Systems Inc.