The Impact Of CETA On The Coasting Trade Regime In Canada: Brief Analysis Of Bill C-30

December 21, 2016

On October 31, 2016, one day after the *Comprehensive Economic and Trade Agreement* ("CETA") with Europe was signed, the Canadian government introduced Bill C-30 for first reading in the House of Commons in Parliament. The Bill, which is intended to implement CETA into Canadian legislation and to enter into force by the end of April 2017, proposes significant changes to the *Coasting Trade Act*, S.C. 1992, c. 31 ("Act"). This article provides an overview of the most important changes Bill C-30 will bring to the Canadian coasting trade regime.1

The Canadian coasting trade regime

The *Coasting Trade Act* serves as the Canadian equivalent of the so-called *Jones Act*2 in the United States. In brief, the Act protects Canadian ship owners from unfair competition from countries that have lower wages or lower standards of safety, by forcing such foreign ship owners (and Canadian ship owners of non-Canadian flagged vessels (“foreign vessels”)) to obtain a coasting trade license before being allowed to use foreign vessels in Canadian waters.

Foreign or non-duty paid vessels are prohibited from engaging in any form of coasting trade activities in Canadian waters, or between Canadian ports, either directly or by way of a port outside of Canada, unless they obtain a so-called coasting trade license prior to starting the operations. Obtaining a license under the Act is only possible after the Canada Transportation Agency establishes that no Canadian-flagged or duty paid vessel is suitable and available to perform the operations.

The definition of "coasting trade" is contained in section 2 of the Act and includes any type of transportation by vessel of goods, passengers, and "*any other marine activity of a commercial nature in Canadian waters*".3

Proposed changes under CETA / Bill C-30

CETA is meant to level the playing field and break down trade barriers between the European Union and Canada. While the overall structure of the *Coasting Trade Act* is maintained, Bill C-30 proposes a long list of changes that will have the effect of giving European companies access to the Canadian coasting trade.

Bill C-30 grants market access to both "EU and Canadian entities", including third country entities that are owned or controlled by either EU or Canadian nationals. An "entity" under the Act is defined in the same manner as an "enterprise" under CETA and includes corporations, trusts, partnerships, joint ventures and "other associations". Under the proposed legislation, such entities will hence be able to operate foreign vessels in Canadian waters for any coasting trade activity which does not require a coasting trade license. An important note is that the draft legislation explicitly excludes entities incorporated under the laws of the United States.

While the definition of "coasting trade" is not altered as such, Bill C-30 does exempt a number of specific marine activities from the licensing scheme, namely (1) the "repositioning of empty containers", (2) "dredging activities" and (3) "feeder services". These activities are henceforth open to "EU and Canadian entities":

(1) Repositioning empty containers

Under Bill C-30, the licensing requirements of the Act do no longer apply to the carriage of empty containers or ancillary equipment that is affixed to the containers, as long as the carriage is done without consideration.

This last point is especially important given that, surprisingly, the text of Bill C-30 deviates from the text of CETA. CETA provides for unrestricted market access for the repositioning of empty containers on a "non-revenue basis". The proposed text of Bill C-30, "without consideration", is arguably more restrictive than what was agreed under CETA, in that in-kind payments would also be covered by the proposed wording. Transport Canada is currently developing an enforcement regime to ensure that containers being carried under this exception are indeed empty.

(2) Dredging activities

Private dredging activities no longer require a coasting trade license for foreign vessels of any registry, as long as (a) the vessel is operated by an EU or Canadian entity, or a third country entity under EU or Canadian control, and (b) the dredging activities are not pursuant to an agreement either with the Government of Canada or a Canadian government agency listed in annex 19-1 of CETA.

As a result, the proposed amendments to the Act still require foreign vessels to obtain a coasting trade license for government-issued contracts. However, for contracts over a defined threshold value4, licenses would be much easier to obtain under the newly proposed scheme, as the Canada Transportation Agency must no longer establish that no Canadian vessel is suitable and available to perform the operations.

(3) Feeder services

Vessels registered under a national registry of an EU member state will be allowed to provide feeder services, both on continuous and single trip bases, between the Ports of Montréal and Halifax, as long as the carriage constitutes either one leg of the importation of inbound goods into Canada or one leg of the exportation of outbound goods from Canada. In contrast, vessels registered under a secondary or international registry of an EU member state can only perform single trip feeder services. Once the

single trip is over, such vessels must obtain a coasting trade license for any subsequent activity in Canadian waters.

Finally, the proposed legislation also provides a definition of the notion of third country entities under EU or Canadian "control". Control means: (1) holding the securities of a corporate entity that account for at least 50% of the votes to elect the entity's directors; or (2) holding an interest in a non-corporate entity (i.e., a trust, partnership, joint venture or other association) that is entitled to at least 50% of the entity's profits or of its assets on dissolution. It should be noted that the share must be held directly or indirectly by EU or Canadian citizens — i.e., individuals. The majority share must not be held through a subsidiary. This condition restricts the complexity of the structural and organizational options available to the shipping industry when setting up their corporate structures when preparing for offering coasting trade services in Canada.

Conclusions

Bill C-30 implements the negotiated agreement under CETA between Canada and the European Union. While substantive changes may still be made to the text by Parliament, it is clear that CETA will have a profound impact on the Canadian coasting trade regime.

However, Bill C-30 cannot yet provide an answer to all outstanding questions. For one, it remains uncertain what the impact of these changes will be on the market position of Canadian ship owners using Canadian-flagged vessels. At first sight, the proposed changes appear to be to their detriment. It is also not yet clear how Transport Canada intends to monitor compliance with the specific provisions of the amended *Coasting Trade Act*. Elaborating a compliance and enforcement scheme is a work in progress — which will undoubtedly be complicated should Parliament decide to substantially alter Bill C-30.

What is clear is that the existing legal scheme will be altered significantly — and that Canadian coasting trade will become part of a larger, a more liberalized market.

1 Assuming Bill C-30 is adopted in its current form by Parliament.

2 *Merchant Marine Act* of 1920, P.L. 66-261.

3 *Coasting Trade Act*, S.C. 1992, c. 31, section 2(1)(4)(f).

4 In the current version of Bill C-30 the threshold is five million special drawing rights issued by the IMF, which is approximately $9.2 million CAD at the time of writing.

By

Nils Goeteyn,

Expertise

Insurance Claim Defence, Shipping

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.