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File No. 21605

August 31, 2021

**BY MAIL AND EMAIL**

Office of the British Columbia  
Container Trucking Commissioner  
1085 Cambie Street  
Vancouver, BC V6B 5L7

**Attention: Michael Crawford, Commissioner**

Dear Mr. Crawford:

**Re: Off-Dock Drayage Reform – CTS License and Rate Order Amendments  
Consultation**

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We are counsel for the UTA Truckers Society of BC (the “**UTA**”). Capitalized terms, unless otherwise defined herein, have the meaning ascribed to them in the *Container Trucking Act* (the “**CTA**” or the “**Act**”) and the *Container Trucking Regulation* (the “**CTR**” or the “**Regulation**”).

We refer to the bulletin issued by your office (the “**OBCCTC**”) on July 5, 2021, inviting submissions on the “**Terms of Reference**” linked to the bulletin. We have now reviewed the Terms of Reference. The UTA’s main observation and complaint about the Terms of Reference is that it does not do nearly enough to address the long-standing and ongoing problems with off-dock activity in the Lower Mainland. In fact, the Terms of Reference represents a step backwards, because it will expressly permit non-tagged trucks to carry out off-dock work.

The proposed amendments to CTS License are directly contrary to OBCCTC’s bulletins of March 6, 2018, and April 17, 2020, wherein you said:

Licensees are reminded that it is a requirement of the Regulation and section 6.9 of the CTS License that they [licensees] use tagged trucks for all on and off-dock moves. [Emphasis added]

The UTA agrees with this interpretation of the Regulation. Now, however, it appears that the OBCCTC is back-tracking and, in fact, endorsing the use of non-tagged trucks for off-dock moves. Recommendations 1 and 2 would limit the tagging requirement to trucks that require access to the Port. Meanwhile, non-tagged trucks would continue to carry out off-dock moves in the Lower Mainland. The amendments to the CTS License as proposed by the Recommendation Report and Terms of Reference do not accord with the legislative intent of the CTA and the CTR.

In particular, the UTA objects to the following proposed amendments to the CTS License:

### **Truck Tags**

~~6.7~~ The Licensee ~~carries~~ must not carry out on-dock Container Trucking Services ~~using only~~ without a Truck ~~Tags~~ Tag allocated by the Commissioner on the conditions imposed by the Commissioner ~~or as reduced or increased by the Commissioner.~~

~~6.8~~**6.10.** The Licensee must assign a Truck Tag to each truck performing on-dock Container Trucking Services. [...]

The UTA submits that the appropriate course of action is to incorporate the March 6, 2018, and April 17, 2020, bulletins into the Prohibited Practices appendix of the CTS License as follows:

1. A Licensee must not do, or allow any of its Related Persons to do, any of the following:  
[...]
  - (i) carry out on on-dock or off-dock Container Trucking Services without a Truck Tag allocated by the Commissioner on the conditions imposed by the Commissioner.

By letter dated November 6, 2020, we made submissions to you on behalf of the UTA with respect to the Off-Dock Drayage Insights Report prepared by Cascadia Partners (the “**Cascadia Report**”). There, we submitted that the CTS License should be amended to specifically prohibit licensees from being affiliated with any person or entity that carries out unlicensed, unregulated off-dock container trucking services, or from



contracting with, or sub-contracting to, other persons or entities, whether affiliated or not, to carry out off-dock drayage services that the licensees could carry out themselves using their own tagged trucks. This necessary reform could be achieved through an amendment to the CTS License pursuant to s. 19 of the CTA.

It seemed at the time that the OBCCTC would implement the UTA's submissions. However, the Recommendation Report and Terms of Reference do too little to address the UTA's concerns, for three main reasons:

1. First, the Terms of Reference deal only with container trucking service providers who are affiliated with existing CTS Licensees. Unlicensed, unregulated operators will continue to undercut the UTA's members. The Terms of Reference do not provide reforms which will address the issues that have persisted since the labour disruption in 2014 or live up to the off-dock reforms agreed upon in point #5 of the Joint Action Plan.
2. Second, the off-dock reforms promised to the UTA were to close the loopholes plaguing the industry. The Terms of Reference have not closed loopholes. Rather, the Terms of Reference have, in effect, legitimized existing loopholes, or are creating new methods for CTS Licensees to deprive I/Os of off-dock work. Specifically, the Terms of Reference have legitimized the illegal activity, which was the subject of the May 14, 2020, order against Can. American Enterprises Ltd. (enclosed for your reference). The members of the UTA are already underemployed. The Terms of Reference effectively allow licensees to do an end-run around the license requirements regarding Approved Vehicle, Business Costs, Truck Tags and Sponsored I/Os, among other conditions. In essence, CTS Licensees will be able to expand their fleets with non-tagged trucks, without the attendant costs, and outside of the control and administration of the OBCCTC.
3. Third, the UTA has serious concerns about the OBCCTC's desire and capability to audit and carry out enforcement against the non-tagged trucks. How does the OBCCTC intend to audit payments made to non-tagged truckers? The OBCCTC has taken the position that its jurisdiction is limited to CTS Licensees. At present, these non-tagged truckers are illegally performing container trucking services in contravention of the CTS License, the Act, and the Regulation. There remains a very present and real risk that CTS Licensees and non-tagged truckers will continue to operate kick-back schemes and rate undercutting, despite entering "subcontracts for container trucking services". The UTA's position remains that the OBCCTC has jurisdiction, pursuant to Part 4 of the Act, to audit and carry out enforcement against any trucker who has contravened the Act or the Regulation. In the UTA's view, the OBCCTC's audit and enforcement against CTS Licensees has been ineffective. The UTA is even more skeptical of the OBCCTC's willingness to conduct meaningful and effective audits of payments from CTS Licensees to non-tagged truckers.

Please take this letter as notice to you that if you decide to amend the CTS License as described in the Recommendation Report and Terms of Reference, the UTA will petition the Supreme Court of British Columbia for *certiorari* relief to quash that decision as being a patently unreasonable exercise of your authority.

We strongly urge you and the OBCCTC to reconsider your Terms of Reference. The OBCCTC is obligated uphold the correct interpretation of the Act and Regulation, as noted in its bulletins dated March 6, 2018, and April 17, 2020. This can be achieved through an addition to the Prohibited Practices of the CTS License as noted above. If the OBCCTC does not properly administer and enforce its own constating legislation, the UTA will have little alternative but to petition the court for declarations regarding the legal effect of the CTA and the CTR, and a writ of *mandamus*, requiring you and your office to enforce Parts 4 and 6 of the CTA. We hope that it will not come to this. The limited resources of the OBCCTC are better spent on the proper administration of the Act and Regulation, rather than legal battles.

We and our clients are at your disposal if you wish to discuss this matter further.

Very truly yours,



**Per Scott A. Turner\***

\*Denotes a Professional Law Corporation

Cc: The Honourable Rob Fleming, Minister of Transportation and Infrastructure  
The Honourable Harry Bains, Minister of Labour  
Geoff Meggs, Chief of Staff, Office of the Premier  
Client



May 14, 2020

Can. American Enterprises Ltd.  
126 – 7475 135 Street  
Surrey, BC V3W 0M8

Email: lucky.brar@ameri-canlogistics.com

Attention: Mr. Lucky Brar

Dear Mr. Brar

**Re: Notice of Order against Can. American Enterprises Ltd. (“Can American”) to Comply with the Container Trucking Act (the “Act”) and Container Trucking Services Licence (the “Licence”)**

On April 17, 2020 the Office of the BC Container Trucking Commissioner (“OBCCTC”) issued a “Off-Dock Rates and Truck Tag Requirements” bulletin reminding licensees of the OBCCTC’s March 6, 2018 bulletin which advised that it is a requirement of the *Container Trucking Regulation* and section 6.9 of the CTS Licence that they use tagged trucks for all on and off-dock moves.

Can American is currently performing container trucking services (off-dock container trucking services) using some or all of the following trucks without a tag in violation of its CTS Licence:

Licence Plate Numbers: LY0457  
MY3564  
MY3562  
KD5479  
KD5481  
KD5483  
3783OP

By way of this Order I am directing Can American to immediately stop carrying out container trucking services using the trucks listed above.

Failure to comply with any part of this Order will be viewed as serious non-compliance with the *Act*, and available penalties under the *Act* include suspension or cancellation of Can American’s licence and the imposition of penalties up to \$500,000.00. This Order will be published on the OBCCTC website as required by Section 11 of the *Act*. This Order does not constitute notice of penalty pursuant to section 34 of the *Act*. However, if there is not compliance with this Order, subsequent notices of penalty will be issued.

Sincerely,

OFFICE OF THE BC CONTAINER TRUCKING COMMISSIONER

Michael Crawford  
Commissioner