



May 21, 2024

HAP Enterprises Ltd.  
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## Commissioner Decision HAP Enterprises Ltd. (CTC Decision No. 07/2024)

### Introduction

1. HAP Enterprises Ltd. (“HAP”) requires access to marine terminals in the Lower Mainland and is a licensee within the meaning of the *Container Trucking Act* (the “Act”).
2. Bagri Bros. Enterprises Ltd. (“Bagri Bros.”) is a Related Person of HAP (as defined in the *Container Trucking Regulation*) (“Regulation”) and requires access to marine terminals in the Lower Mainland and is a licensee within the meaning of the *Act*.
3. KAPA Logistics Ltd. (“KAPA”) is a Related Person of HAP and performs container trucking services but is not a licensee.
4. Thunder Bal Distributors Ltd. (“Thunder Bal”) is a Related Person of HAP and performs container trucking services but is not a licensee.
5. HAP Transportation Group Ltd. (“HAP Group”) appears to perform container trucking services but is not a licensee.
6. HAP, Bagri Bros., KAPA, Thunder Bal and HAP Group each have the same four directors.
7. JSP Transport Ltd. (“JSP”) performs container trucking services but is not a licensee.
8. Section 16(1)(b) of the *Act* states that a licensee must carry out prescribed container trucking services in the Lower Mainland in compliance with:
  - (i) this Act and the regulations,
  - (ii) the license, and
  - (iii) if applicable, an order issued to the person under the Act.

9. Section 18 of the *Act* allows the Commissioner to impose any conditions on a license that the Commissioner considers necessary.
10. Under sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide container trucking services are established by the Commissioner via the Rate Order and licensees must comply with those statutorily established rates. Section 23(2) states:

A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

11. The regulated minimum rate for directly employed operators (“company drivers”) prior to July 1, 2023 was \$27.62 per hour if a company driver had performed less than, and \$28.88 per hour if a company driver has performed more than (or equal to), 2340 collective hours of container trucking services for any licensee or licensees (hourly rates are inclusive of benefits). On and after July 1, 2023, the regulated rate for company drivers was \$27.62 per hour if a company driver has performed less than, and \$28.88 per hour if a company driver performed more than (or equal to), 2340 collective hours of container trucking services for any licensee or licensees (hourly rates are inclusive of benefits).
12. Section 6.3 prohibits a licensee from subcontracting out container trucking services to any party who is not a licensee. Section 6.15 of the 2022 CTS licence states: “The Licensee must carry out Container Trucking Services using only Truck Tags allocated by the Commissioner on the conditions imposed by the Commissioner.” Section 6.16 requires licensees to assign a truck tag to each truck performing container trucking services.
13. Under section 31 of the *Act*, the Commissioner may conduct an audit or investigation to ensure compliance with the *Act*, the *Regulation* or a licence.
14. HAP has been the subject of two previous decisions. In 2016, the Commissioner found that it had failed to pay the regulated rates for all container movements performed by its drivers during the audit period and had attempted to collect unrelated overpayments from its drivers before paying them for unpaid trips. The Commissioner issued an administrative penalty of \$4,000.00: HAP Enterprises Ltd. (CTC Decision No. 17/2016).
15. In 2020, the Commissioner found that two complaints that HAP had failed to pay wages for pre and post trip inspections, made unauthorized payroll deductions, breached its record keeping obligations and failed to pay the regulated rates were unsubstantiated. While the auditor determined that HAP had failed to pay vacation pay, overtime, or statutory holiday pay, the Commissioner determined at the time that those entitlements were outside the scope of the *Act*.

The Commissioner found that HAP was in compliance with the Act. See HAP Enterprises Ltd. (CTC Decision No. 8/2020).

### Complaints

16. On or around March 15, 2023, the Office of the BC Container Trucking Commissioner enforcement team observed an untagged truck with license plate LG1774 that appeared to be owned by HAP moving container CRXU52698822 at or near Kennedy Road in Pitt Meadows, B.C. (“Complaint #1”). The truck identified in Complaint #1 and the trucks identified in all of the other complaints below appeared to be owned by HAP because the trucks displayed a HAP logo and/or were carrying a container on a chassis with the letters “HAPZ” on it.

17. On or around May 9, 2023, untagged trucks that appeared to be owned by HAP were observed moving containers at or near 18000 block of Blundell Road in Richmond, B.C. (“Complaint #2”) as follows:

Unit Number	Container Number	License Plate
50	TRIU804062 0	PW5667
51	OOLU676803 5	RD0087
28	TEMU 950988 5	5865 2P
28	SMCU 450407	5865 2P

18. On or around December 6, 2023, an untagged truck identified as Unit 308 that appeared to be owned by HAP was observed at the Coast 2000 off-dock facility moving container GESU6746666 on a chassis owned that appeared to be owned by HAP (“Complaint #3”).

19. On or around January 26, 2024, an untagged truck with the license plate 4132-9K that appeared to be owned by HAP was seen moving container EITU1827403 on HAP chassis HAPZ45638 between facilities within the Lower Mainland (“Complaint #4”).

20. On or around January 30, 2024, an untagged truck identified as Unit SO1 with the license plate 4989-K that appeared to be owned by HAP was seen moving container CMAU9276530 on a HAP chassis HAPZ45503 between facilities within the Lower Mainland (“Complaint #5”).

21. On or around January 31, 2024, an untagged truck identified as Unit 305 with the license plate VG 0809 that appeared to be owned by HAP was seen moving container GATU8747199 on River Road in Delta (“Complaint #6”).

(collectively the “Complaints”)

## Investigation

22. On April 18, 2023, the OBCCTC advised HAP that it had begun an investigation (the “Investigation”) into whether the container movement observed on March 15, 2024 (Complaint #1) was authorized, as the *Act, Regulation*, and CTS licence together prohibit licensees from carrying out container trucking services within the Lower Mainland with untagged trucks and from subcontracting container trucking services to an unlicensed company. HAP was required to produce certain records in accordance with Appendix D of its CTS license and invited to provide a response.
23. During the Investigation, the OBCCTC received additional complaints that HAP appeared to be moving containers within the Lower Mainland in breach of the *Act, Regulation*, and CTS licence. HAP was advised about Complaint #2 on June 15, 2023, about Complaint #3 on January 3, 2024 and about Complaints #4, 5 & 6 on February 9, 2024. The Complaints were added to the Investigation as they arose and HAP was required to produce certain records and a response to each.
24. During the initial stages of the Investigation, HAP failed to provide payroll records and trip sheets for the drivers involved in Complaint #1 and #2 (“Required Information #1”). HAP maintained in its April 19, 2023 and June 21, 2023 correspondence that these container movements were performed by trucks owned by KAPA or Thunder Bal and that all but one of the containers in Complaint #1 and #2 were moved to locations outside the Lower Mainland as part of long haul moves and were therefore outside the scope of the *Act*. HAP maintained that Unit 28 in Complaint #2 was moving a “less than load” container between facilities in the Lower Mainland and therefore outside the scope of the *Act*.
25. HAP agrees that HAP, KAPA and Thunder Bal have the same owners, but argues they are “operated separately and do not cross paths.”
26. After HAP’s failure to provide the Required Information #1 based in part on its assertion that KAPA and Thunder Bal moved the containers involved in Complaint #1 and #2, I determined (in reasons dated June 23, 2023) that KAPA and Thunder Bal were “related persons” (“Related Persons”) and I reiterated my request for the Required Information #1 of the Related Persons. I was provided the Required Information #1 on June 26, 2023 and August 30, 2023.
27. HAP also failed to provide the information for Complaint #3 sought in the January 3, 2024 letter (“Required Information #2”). It asserted that it did not own the truck seen moving a container on December 6, 2023. As a result, I advised Bagri Bros. on January 8, 2024 that I understood that it shared the same location, chassis, and logo as HAP and asked that it provide the Required Information #2. I also invited Bagri Bros to provide a submission. Bagri Bros. replied on January 26, 2024, that it has “no record and does not control or own” the truck, trailer and/or container identified in Complaint #3.

28. On February 9, 2024, the OBCCTC wrote HAP about Complaint #4, 5, and 6 and advised that an investigation had determined containers EITU1827403 and CMAU9276530 identified in Complaint #4 and #5 were loaded onto ocean carriers on January 30 and February 10, 2024 respectively.
29. At various stages of the Investigation, the OBCCTC sought clarification on information provided by HAP. The OBCCTC requested additional information on August 25, 2023, September 7, 2023, January 8, 2024 and April 24, 2024.
30. HAP provided submissions in response to the Complaints on April 19, 2023, June 16, 2023, June 21, 2023, June 26, 2023, August 30, 2023, September 11, 2023, January 8, 2024, February 17, 2024 and April 24, 2024 (collectively the "Submissions").
31. In addition, counsel for HAP provided correspondence on April 29, 2023 outlining why HAP was not obligated to provide certain records related to JSP.

### Licensee Response

32. According to the Submissions, KAPA and Thunder Bal provide "non-Vancouver port container drayage services" and move marine containers between rail yards and facilities in the Lower Mainland to Washington and Oregon state. KAPA and Thunder Bal do not have access to the marine terminals in Vancouver whereas HAP does have such access through its licence.
33. HAP acknowledges that HAP, KAPA and Thunder Bal have the same owners, but argues they are "operated separately and do not cross paths."<sup>1</sup> I do not accept HAP's assertion here, and note that the complicated relationships between these companies and how they cooperate to perform container trucking services has been difficult to decipher.
34. HAP, KAPA and Thunder Bal all display the "HAP" logo on their trucks and HAP asserts this logo represents the umbrella group of all three companies – the "HAP Group."
35. I also understand that HAP, Thunder Bal, and KAPA all operate from commonly shared yards (i.e. HAP Delta, HAP Scott Road, New Scott HAP, Old Scott HAP).<sup>2</sup>

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<sup>1</sup> HAP Submission – April 19, 2023

<sup>2</sup> On August 25, 2023, I advised HAP that on my review of the trip sheets provided by Thunder Bal and KAPA those companies and HAP used the same terminology for "yards" and I understood that to mean that HAP, KAPA and Thunder Bal operated out of each of the yards. I invited HAP to correct my assumption and I was not provided a response.

Complaint #1

36. I understand HAP to be stating that a non-licensed company (KAPA) moved container CRXU52698822 from a location outside the Lower Mainland (Moses Lake, Washington) to a rail yard in the Lower Mainland and not between “facilities” in the Lower Mainland.
37. HAP maintains in its Submission (April 19, 2023) that untagged Unit 20 moved container CRXU526988-1<sup>3</sup> from the Euro Asia Terminal in Richmond, B.C. on March 8, 2023 to Moses Lake in Washington State. Container CRXU52698822-1 was then moved to the CP Rail yard (located near Kennedy Road in Pitt Meadows B.C.) on March 15, 2023 where it was transported by rail to Montreal where it was loaded on an ocean carrier destined for Dublin, Ireland.
38. HAP provided an interchange document from Euro Asia Terminal in Richmond B.C. showing that Unit 20 picked up the container on or around March 8, 2023. The carrier listed on the interchange document is HAP and the ocean carrier identified is MSC Tuxpan.
39. HAP provided a bill of lading dated March 10, 2023 from [REDACTED] issued to “HAP Logistics” listing the contents of container CRXU526988-1 and the Vessel Voyage MSC Tuxpan. An invoice was issued by KAPA to [REDACTED] for the container move between Moses Lake and the CP Rail yard.
40. HAP provided an undated “cargo control document” from the Canada Border Services Agency issued to KAPA authorizing container CRXU526988-1 to enter Canada via its destination on MSC Tuxpan. The attached “ACI manifest”<sup>4</sup> shows Unit 598 from KAPA entered Canada with container CRXU526988-1 on March 10, 2023.
41. HAP also provided an ICBC registration document showing Unit 20 is owned by Thunder Bal.
42. HAP provided a trip sheet dated March 15, 2023 for Mr. K. Brar driving Unit 20. The trip sheet details a variety of container moves from 7:45am to 5:15pm between facilities in the Lower Mainland including moving container CRXU526988-1 from HAP’s yard in Delta to the CP Rail railyard.
43. The time sheet and the wage statement for Mr. Brar was issued by Thunder Bal and state he worked 114.25 hours and was paid a gross of \$3,344.00 for the pay period of March 1-15, 2023.

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<sup>3</sup> There appears to be a dispute about the exact number of this container. The OBCCTC identified it as CRXU52698822 in its April 18, 2023 letter and HAP stated in its April 19, 2023 submission that the container number CRXU5269882-1 and the trip sheet provided by HAP identifies the container as CRXU526988-1. Given the closeness of the container numbers to the approximate time it was seen and recorded as being at the CP Rail yard, I will assume these are the same container and will identify it as CRXU526988-1.

<sup>4</sup> I understand ACI Manifest to be a report generated by the Canadian Border Services Agency.

The time sheet does not record the cumulative number of hours the driver worked or his hourly rate.

### Complaint #2

44. HAP maintains that the container movements in Complaint #2 were either long haul moves or were movements within the Lower Mainland that were not involved in the transportation of goods to and from a marine terminal.

### TRIU8040620

45. HAP states that container TRIU8040620 was a long-haul container move from Vancouver to Oregon State and back to Vancouver. A bill of lading and a “receiving and shipping tally report” (“Tally Report”) issued by [REDACTED] list the container cargo loaded in Astoria, Oregon and destined for Serbia via the ocean carrier MSC-C-50462. HAP is listed on the Tally Report as the shipping agent. KAPA issued an invoice to [REDACTED] to move the container for TRIU8040620 from Astoria, Oregon to Vanterm.
46. HAP provided the ICBC registration showing the truck that moved container TRUI8040620 is owned by Thunder Bal and the trip sheet provided for Unit 50 shows TRIU8040620 was moved empty from Coast 2000 Terminal Ltd to HAP Delta at 9:51am to 10:30am on May 9, 2023.
47. The time sheet and the wage statement for the driver of Unit 50 on May 9, 2023 was issued by KAPA and states he worked 128.75 hours and was paid a gross of \$3,895.50 for the pay period of May 1-15, 2023. The time sheet does not record the cumulative number of hours the driver worked or his hourly rate.
48. The container was then moved to Astoria, Oregon where it was loaded and returned to a facility in Vancouver. A HAP truck then picked up the container from a location in the Lower Mainland and moved it to Vanterm.

### TEMU9509885

49. HAP provided an invoice to [REDACTED] on KAPA letterhead for moving container TEMU9509885 between Astoria, Oregon to Deltaport in Delta, B.C.
50. HAP states that this was a long-haul container move from Vancouver to Oregon State and back to Vancouver. A bill of lading and a receiving and shipping tally report (“Tally Report”) issued by [REDACTED] list the container cargo loaded in Astoria, Oregon on May 10, 2023 and destined for Ukraine. HAP is listed on the Tally Report as the shipping agent. A cargo control

document naming KAPA as the carrier was issued by CBSA and authorizes TEMU9509885 to enter Canada to be loaded on the MSC Julie MC319R. HAP provided an ingate report showing container TEMU9509885 entering Deltaport on May 11, 2023 by HAP Unit 140. An invoice was issued by KAPA to [REDACTED] for moving container TEMU9509885 for the long haul move from Astoria, Oregon to Deltaport.

51. HAP provided the ICBC registration showing the truck that moved container TEMU9509885 is owned by KAPA and the trip sheet provided for Unit 28 shows container TEMU9509885 was moved empty from Coast 2000 Terminal Ltd. to HAP Delta on May 9, 2023. According to the trip sheet and HAP's submission, the driver moved containers between facilities in the Lower Mainland all day in preparation for long haul moves.
52. The time sheet and the wage statement for the driver of Unit 28 on May 9, 2023 was issued by Thunder Bal and states he worked 122.5 hours and was paid a gross of \$3,393.00 for the pay period of May 1-15, 2023. The time sheet does not record the cumulative number of hours the driver worked or his hourly rate.

#### OOLU67680

53. HAP provided an invoice on Thunder Bal's letterhead to [REDACTED] for moving the container from Seattle, Washington to [REDACTED] in Richmond, B.C.
54. HAP maintains that container OOLU676803 was moved from Seattle, Washington and delivered to [REDACTED] in Richmond, B.C. HAP included a "Vendor Interface" document showing container OOLU676803 being moved from Seattle, Washington to [REDACTED] in Richmond on May 8, 2023. An undated "ACI manifest for Canada" shows that Unit 229 with licence plate 71057P entered through the Pacific Highway border crossing with container OOLU676803. An invoice issued to [REDACTED] issued by Thunder Bal shows a container movement between Seattle and Richmond, B.C.
55. HAP provided the ICBC registration showing the Unit 51 that moved the container is owned by Thunder Bal and the trip sheet provided for Unit 51 shows the container was moved loaded from HAP's yard on Scott Road to [REDACTED] on May 9, 2023. According to the trip sheet and HAP's submission, the driver moved containers between facilities in the Lower Mainland all day in preparation for long haul moves including moving an empty container MSCU7437719 from Coast 2000 to HAP's yard in Delta in preparation for a long haul driver who loaded the container in Washington State and returned to Vancouver where the container was "in-gated" to a marine terminal by a HAP driver.



56. The time sheet and the wage statement for the driver of Unit 51 on May 9, 2023 was issued by Thunder Bal and states he worked 108 hours and was paid a gross of \$3,192.00 for the pay period of May 1-15, 2023. The time sheet does not record the cumulative number of hours the driver worked or his hourly rate.

#### SMCU450407

57. HAP included an invoice issued by HAP to [REDACTED] dated May 5, 2023 and attached a cargo manifest report for moving pallets and skids to Matsqui Place and Truckberg in Abbotsford, B.C. These goods appear to have arrived via CNRU284398 where they were transloaded into SMCU450407 to be delivered to and from HAP's yard to Abbotsford and Matsqui.
58. HAP states that on May 9, 2023, container SMCU450407 was used by Thunder Bal to move "non-port business" goods until it was ready to move back to the port on May 10, 2023. HAP maintains that the container was picked up by HAP on May 8, 2023 from Fraser Surrey Docks where it was delivered to a transload yard. It was then moved by HAP back to Fraser Surrey Docks on May 10, 2023 following the completion of the container move on May 9, 2023.
59. The trip sheet provided for Unit 28 shows the driver moving the container loaded from HAP's yard on Scott Road to TruckBerry in Abbotsford and lists "HAP" as the job number. The container is then onto Abbotsford where it was unloaded then moved to "Matsqui Place" and then subsequently moved to "Delta HAP."
60. The time sheet and the wage statement for the driver of Unit 28 on May 9, 2023 were issued by Thunder Bal and state he worked 122.5 hours and was paid a gross of \$3,393.00 for the pay period of May 1-15, 2023. The time sheet does not record the cumulative number of hours the driver worked or his hourly rate.

#### Complaint #3

61. HAP at first denied that it owns Unit 308 or that it moved container GESU6746666 on December 6, 2023 and said that it therefore could not provide the Required Information sought in the January 3, 2024 correspondence. Furthermore, HAP claimed the interchange document that identified HAP as the owner of the truck that entered Coast 2000 was a case of "mistaken identity" and HAP have "updated their interchange records off (sic) HAP Enterprises Ltd." They also stated that the lack of any chassis identification details prevented HAP from cross-referencing which truck might have been involved.
62. When advised of the chassis number (HAPZ682) and the trailer licence plate (4736DK), HAP maintained it was not their trailer and speculated it could have been a "rental unit."

63. An investigator met with a representative of Coast 2000 and requested under section 32 of the Act copies of relevant information related to Complaint #3. The investigator was provided a photograph of a driver wearing a HAP safety vest along with a picture of the container on a chassis that appeared to have a chassis number HAPZ682.
64. On April 24, 2024, HAP was provided a copy of the photograph provided by Coast 2000 that appeared to identify the driver wearing a HAP safety vest along with the container being on a chassis identified as HAPZ682 and again requested the documentation requested in the January 3, 2024 correspondence.
65. On April 24, 2024, HAP advised that JSP was contracted to move a loaded container GESU6746666 from Burlington Northern Railway in Seattle, Washington to [REDACTED] in Richmond, B.C. as a long haul move. HAP included a brokerage confirmation from HAP Transportation Group Ltd. identifying the container move, a Coast 2000 interchange report now showing JSP's Unit 308 as the carrier, and bill of lading between [REDACTED] and [REDACTED].

#### Complaint #4 and #5

66. HAP maintains that containers EITU1827403 and CMAU9276539 were moved between 10610 Timberland Road in Surrey ("Timberland Road") and 10663 Scott Road in Surrey ("Scott Road"). HAP explains that Timberland Road is a location where it parks its trucks, chassis, and containers and is for the "sole use of HAP Enterprises Ltd." HAP also explains that Scott Road is leased by HAP to park its containers, chassis and trucks.
67. As I understand HAP's argument, moving containers "from one parking lot to another" does not establish that either location meets the definition of "facility" as defined in the 2020 Off Dock Insights Report produced by Cascadia Partners Ltd for the Ministry of Transportation and Infrastructure ("Insight Report").<sup>5</sup> Furthermore, it argues that these containers were moved by a "yard truck" which is says cannot drive over 30 km/h or perform container trucking services that generate any revenue.
68. HAP included payroll records for the pay period of the driver who moved the containers on January 23 and 30, 2024. The wage statement shows he was paid \$30.33 per hour and \$45.50 per hour for overtime during that pay period but I was not provided the cumulative hours of the driver to determine if he had worked less than 2,340 hours for any licensee.
69. Regarding the truck moving container GATU8747199 on or around January 31, 2024, HAP provided an HAP Transportation Group Ltd. Broker Rate Confirmation along with a Hapag container trace

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<sup>5</sup> Off-Dock Drayage Insights, BC Ministry of Transportation & Infrastructure, September 2020.

report that states the containers was picked up at CP Rail yard and delivered to Quincy, Washington by JSP.

70. The investigator sought information confirming certain information about JSP including a copy of JSP's trip sheets to confirm the movement of the JSP truck but counsel for HAP argued that such a request is of HAP is outside the scope of the Act.

#### Complaint #6

71. HAP provided an invoice showing container GATU8747199 was moved directly from a "facility" in the Lower Mainland (CP Rail yard) to a location outside the Lower Mainland (Quincy, Washington).

#### **Findings**

72. I do not agree that HAP, KAPA, and Thunder Bal are "operated separately and do not cross paths" as asserted by HAP. I find that HAP, KAPA and Thunder Bal shared trucks, payroll, and/or invoicing for the moves identified in Complaint #1 and Complaint #2. I also note KAPA and Thunder Bal's customer invoices – and the lack of any invoice between KAPA or Thunder Bal and HAP – for the movement of containers TRIU804062 and TEMU 9509885 on or around May 11, 2023 to marine terminals in the Lower Mainland. And I note both companies' reliance on HAP (who is the only company who can access the marine terminals) to complete the transactions for which they contracted by moving the containers to the marine terminal. Both are further evidence of integration or a partnership between HAP, KAPA and Thunder Bal.
73. Given the complexity of relationships between HAP and the other non-licensed companies, along with the difficulties deciphering where each container was moved, by which company, which company own the trucks that moved those containers, and which company paid the drivers for the move, a number of the arguments advanced by HAP first need to be addressed.

#### Complaint #1, #2 and #3: Subcontracting Container Trucking Services

74. I do not agree that the movement of containers by a non-licensee or the designation of a container move as "domestic" or "long haul" or "less than load" are trump cards that end the analysis of whether a licensee has met the conditions set out in the Act, Regulation, or its CTS license. The Act, Regulations and the CTS license define a "container" and set out the conditions under which certain companies require a license and set conditions on that licensee.
75. In this case, the evidence shows that the container moves identified in Complaint #1 and #2 were between facilities in the Lower Mainland. The fact that the same container eventually left, or returned from outside of, the Lower Mainland does not change the fact that a container was moved between facilities in the Lower Mainland. Similarly, it does not matter whether the

container transited through a marine terminal or carried goods or was not fully loaded with goods that transited through a marine terminal. The definition of “off-dock trip” only requires the movement of a “container” between “facilities” in the Lower Mainland. Based on the evidence before me, I find that the containers identified in Complaints #1-3 are “containers” that moved between “facilities” in the Lower Mainland.

76. Using the example of container TRIU804062 identified in Complaint #2, I find HAP’s designation of the container movement as a “long haul” container movement outside the scope of the Act inaccurate if not misleading. The colloquial terminology of “long haul” is not used in the legislation. However, “long haul” refers to container movements between a marine terminal and a location outside the Lower Mainland. These moves are carved out under s. 2(1)(b) of the *Regulation* from the “prescribed container trucking services” for which a licence is required. Additionally, the *Regulation* defines “off-dock trip” to mean “one movement of one or more containers by a trucker from one facility in the Lower Mainland to a different facility in the Lower Mainland...” If a container does not travel between two “facilities” in the Lower Mainland, it is not an “off-dock trip” and therefore does not attract the regulated rate.
77. The trip sheets provided for Unit 50 show it moved the empty container from Coast 2000 to HAP’s Delta yard where it was presumably stored and on or around May 9, 2023 moved other containers within the Lower Mainland. The fact that the container was ultimately destined to travel to and from Astoria, Oregon by another truck does not change the fact that Unit 50 moved the container between two “facilities” within the Lower Mainland. Such a move fits the regulatory definition of an “off-dock trip” and attracts a regulated rate if moved by a licensee.
78. Turning to HAP’s argument that the containers in Complaint #1 and #2 and #3 were transported by a non-licensee, the Act and s. 6.3 of the CTS license provide that a licensee cannot subcontract out work under a container trucking services contract to a non-licensee.

79. For ease of reference, I have outlined in a chart the evidence of the different companies' involvement in the container movements in Complaints #1 and #2 and #3:

Date	Truck Unit	Container	Driver	Payer of Wages	Owner of Truck Unit	Contract	Subcontractor	CBSA document
March 15	20	CRXU52698822-1	K Brar	Thunder Bal	Thunder Bal	KAPA		KAPA
May 9	50	TRIU8040620	G Singh	KAPA	Thunder Bal	KAPA	HAP	Thunder Bal
May 9	28	TEMU 9509885	K Chouhan	Thunder Bal	KAPA	KAPA	HAP	KAPA
May 9	51	OOLU676803 5	K Hansen	KAPA	Thunder Bal	Thunder Bal		
May 9	28	SMCU 450407	K Chouhan	Thunder Bal	KAPA	HAP	KAPA	
December 6	308	GESU6746666	Unknown	Unknown	Unknown	HAP Group	JSP	

80. As previously stated, on June 23, 2023, I determined that HAP, KAPA and Thunder Bal were Related Persons and HAP has not disagreed.

81. Section 6.3 of the CTS license prohibits a licensee from entering any Subcontract for Container Trucking Services with any party that is not a licensee.

82. Subcontract for Container Trucking Services is defined in section 1 of the CTS license as follows:  
*an agreement, arrangement or understanding by which a Related Person or other party undertakes to transport any or all of the Containers to which a particular Container Trucking Contract applies whether or not such transport results in the delivery of those Containers to a final point of delivery specified in the Container Trucking Contract.*

83. Container Trucking Contract is defined in section 1 of the CTS licence as follows:

*an agreement, arrangement or understanding by which a Licensee is required to complete Container Trucking Services by transport of one or more Containers to a final point of delivery in accordance with the terms of the agreement, arrangement, or understanding.*

84. When read together with these definitions, section 6.3 prohibits any licensee who has an "agreement, arrangement or understanding" with a customer to perform container trucking services from subcontracting out any or all of those container moves to a Related Person or another party. There is currently no prohibition in the CTS license against a licensee acting as the subcontractor where the main contract for container trucking services is between a non-licensee and a customer.

85. HAP entered a Container Trucking Contract with [REDACTED] to transport container GESU6746666 within the Lower Mainland and subcontracted out the container moves in question to KAPA, a non-licensed Related Person.
86. As KAPA is a non-licensed Related Person, HAP is in breach of section 6.3 in relation to the movements of container GESU6746666 on May 9, 2023.
87. In all the other container movements involved in Complaint #1 and #2, HAP does not appear to have entered into a Container Trucking Contract as defined in the CTS license. Rather, KAPA, Thunder Bal and HAP Group held the contracts. Therefore, HAP is not in breach of section 6.3 of the CTS license for the movement of containers TRIU8040620, TEMU 9509885 and OOLU6768035 on the dates in question.
88. Perhaps it is an oversight in the definition of Container Trucking Contract in the container trucking licence, but the result of the language as it currently stands is that a licensee is not clearly prohibited from accepting subcontracting work from a non-licensee who holds a contract for container trucking services. In 2022, the-then Commissioner “amended licence language respecting the prohibition on subcontracting with unlicensed parties for off-dock CTS”<sup>6</sup> with the objective of “prohibit[ing] licensees from using unlicensed affiliated companies (and untagged trucks) to conduct CTS.” Although that is effectively what is happening here, the language of section 6.3 of the licence does not apply.
89. In this case, the main contracts were between KAPA and Thunder Bal and the customer and HAP appears to have accepted subcontracting work to the marine terminal. KAPA and Thunder Bal, Related Persons to HAP, have thus performed off-dock moves associated with HAPs on-dock moves without truck tags and without being required to pay the regulated rates.
90. KAPA and Thunder Bal’s introduction of untagged trucks to perform off-dock moves in conjunction with a licensee performing the on-dock trip legs means that the untagged trucks belonging to or run by these non-licensees effectively have access (albeit indirect) to marine terminals via their Related Person,<sup>7</sup> and increases the number of trucks involved in the Lower Mainland on and off-dock industry overall. Allowing for the addition of unregulated trucks in this way could lead to a situation where there will be too many trucks chasing too few containers that go through the port. If licensees are required to compete against an unlimited number of trucks instead of the fixed number determined by the Commissioner through the allocation of licenses and truck tags, the

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<sup>6</sup> CTS Licence Amendments Consultation Guide, OBCCTC, April 2022 page 8.

<sup>7</sup> Non-licensees may contract with licensees to move containers to marine terminals but generally do not (instead generally perform exclusively off-dock work), in part because the cost of contracting with a licensee is prohibitive. Non-licensees can generally only coordinate with licensees to move containers to marine terminals profitably when they are Related Persons.

stability of the industry will be affected. The inability of the Commissioner to control the number of trucks performing on-dock and off-dock moves can mean licensees undercut each other in order to secure business. In addition, the number of truck tags are based on a truck moving a container both on-dock and off-dock and if a licensee is able to secure a truck tag meant for both on dock and off dock but hand off the off-dock container moves to an untagged truck, the licensee is now free to chase even more containers from the port which will lead to more trucks chasing too few containers at the port. The result of any imbalance in the tagged truck to container ratio will cause instability in the industry including encouraging undercutting of rates paid to drivers.

### Complaint #3

91. I am unclear why HAP was initially unable to identify the truck or the chassis or the container given that it eventually was able to provide documentation regarding the container and the driver.
92. I am equally unclear why a loaded container that was moved between Washington State to a customer's location in Richmond B.C. would then arrive empty at Coast 2000 via the same truck. I suspect that JSP moved the container from Washington State to the customer and then moved the container to Coast 2000. Again, the trip between the customer in Richmond and Coast 2000 is an off-dock trip.
93. My review of the documentation suggests that HAP Transportation Group Ltd. contracted with the customer and subcontracted to JSP. As HAP Transportation Group Ltd. is not a licensee, it is not subject to the prohibition against subcontracting.

### Complaint #4 and #5

94. A "facility" is defined in the *Regulation* as "a location in the Lower Mainland where containers are stored, loaded, unloaded, trans-loaded, repaired, cleaned, maintained or prepared for shipping, but does not include a marine terminal."
95. An "off-dock trip" is defined as "one movement of one or more containers by a trucker from one facility in the Lower Mainland to a different facility in the Lower Mainland, but does not include:
  - a. an on-dock trip, or
  - b. a movement of a container from one location in a facility to a different location in the same facility."
96. Section 6.16 requires a licensee to assign a truck tag to each truck performing container trucking services.
97. HAP appears to agree that the two yards between which containers EITU1827403 and CMAU9276539 were moved on January 29 and 30, 2024 are each used to store containers and are located on different streets and require a vehicle to move a container along a legal road between

the two yards.

98. I do not understand from HAP's Submissions that it is arguing that the container movements on January 29, and January 30, 2024 were not off-dock trips because the containers moved from one location in a facility to another location in the same facility. However, in case I am wrong, I would find that these two non-adjacent addresses that are separated by a legal road are separate facilities. I would note that many of the entries in KAPA and Thunder Bal trips sheets identify each yard as separate locations (i.e. Hap Delta, HAP Scott Road, New Scott HAP, Old Scott HAP).
99. I am unclear how the Insight Report assists HAP as it refers to facilities as those "that store empty containers throughout the Lower Mainland."<sup>8</sup> Regardless, I must apply the regulatory definition of facility and it explicitly includes locations where containers are stored. As such, I find that HAP's yards store containers and therefore qualify as facilities.
100. Finally, I do not find the fact that the vehicle involved was a shunt truck apparently capable of driving only up to a certain speed or that the move may not have generated revenue are relevant to the definition of an "off-dock trip." As I understand, shunt trucks are normally used within a facility to move containers. However, in this case, HAP used a shunt truck to move a container from one facility to another facility and that truck travelled on a public road and has its own license plate. I assume that it is a vehicle that can move a container and therefore meets the definition in the CTS license of an Approved Vehicle. In addition, even if I were to accept HAP's submission that the container movement was not revenue generating, I would still find that the container move was an off-dock trip. There are plenty of container moves that are not revenue generating, including dead runs, for which drivers must still be paid. The fact is, a driver was required to perform container trucking services work and the vehicle moved a container between facilities. HAP was therefore required to pay the regulated off-dock rate and use a tagged truck.
101. I have reviewed the wage statements for the driver involved in the container moves and the driver was paid the regulated rate for the off-dock trip for working less than 2,340 hours but I was not provided with any documentation to substantiate that the driver has worked less than 2,340 hours for any licensee.

#### Complaint #6

102. Based on my review of the invoice and container tracking report, I am satisfied that container GATU8747199 was moved directly from a "facility" in the Lower Mainland (CP Rail yard) to a location outside the Lower Mainland (Quincy, Washington). This is not an "off-dock trip" as defined in the *Regulation*. I am unclear why the truck would have been seen on River Road in Delta, B.C., but I was not provided with evidence of the route taken by the driver. I will note that if

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<sup>8</sup> Insights Report page 3.



the driver, for example, loaded the container at any facility between the CP Rail yard and another location in the Lower Mainland, this would be an off-dock move.

### Decision

103. As described above, I find the following:

- KAPA and Thunder Bal contracted with [REDACTED] for container movements involving TRIU8040620 and TEMU 9509885 and subcontracted the on-dock leg of this work to HAP. Therefore, HAP is not in breach of section 6.3 of the CTS license for the movement of containers TRIU8040620, TEMU 9509885 on the dates in question.
- Thunder Bal contracted with [REDACTED] for container movements involving OOLU676803 and used an untagged truck owned by Thunder Bal and the driver was paid by KAPA. As HAP did not perform any of the container movements, HAP is not in breach of the CTS license.
- HAP contracted with [REDACTED] to move container SMCU450407 between facilities in the Lower Mainland and subcontracted off-dock container movements to KAPA in breach of section 6.3 of its CTS license.
- HAP moved containers EITU1827403 and CMAU9276539 between facilities without a tagged truck in breach of section 6.15 and 6.16 of its CTS licence.

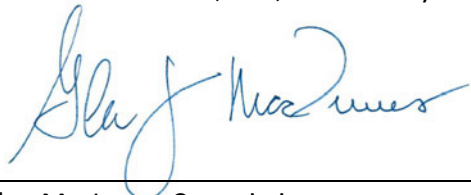
104. I am unable to determine from the payroll records provided for the drivers of containers SMCU 450407, EITU1827403 and CMAU9276539 whether those drivers were paid the regulated rate as HAP did not provide hourly rates, or the cumulative experience hours of the drivers.

105. I have previously addressed the importance of licensees using tagged trucks when performing container trucking services, including ensuring that the work performed is accounted for in the performance assessment of the licensee. See for example: [Tri-R Transport Ltd.](#) (CTC Decision No 03/2023); [Goodrich Transport Ltd.](#) (CTC Decision No. 06/2023); [Ferndale Transport Ltd.](#) (CTC Decision No 07/2023). As stated above, the absence of recorded information about untagged trips also hinders the OBCCTC's ability to ensure drivers are correctly paid and its ability to ensure that there is a balance between the number of trucks/drivers and the amount of work available.

106. As I was not provided any evidence from HAP about the hourly rate paid to its drivers involved in performing container trucking services or the cumulative hours each driver has worked if HAP is claiming they were to be paid in accordance with the lower regulated rate when they moved containers SMCU450407, EITU1827403, and CMAU9276539 identified in Complaint #2 and Complaint #4 and #5, I will provide HAP with an opportunity to provide that information before I issue a supplemental decision, and order HAP to do so ("Order").

107. Upon receipt of the information set out in the Order, I will issue a supplemental Commissioner's Decision and any necessary orders for payment.
108. This decision will be delivered to HAP and published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 21<sup>st</sup> day of May, 2024



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Glen MacInnes, Commissioner