

2006

Governance of Canadian and American Ports

Border Policy Research Institute

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Recommended Citation

Border Policy Research Institute, "Governance of Canadian and American Ports" (2006). *Border Policy Research Institute Publications*. 51.
https://cedar.wvu.edu/bpri_publications/51

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Introduction. This article discusses differences in the governance of seaports within the U.S. and Canada, with particular emphasis upon ports located on the Georgia Basin – Puget Sound waterway shared by the State of Washington and the Province of British Columbia. The article reveals how regulatory contexts affect the ability of ports to compete within and outside the region and concludes with an assessment of the advantages of regional port cooperation.

Three globally significant ports are located on the Georgia Basin – Puget Sound: the ports of Tacoma and Seattle, separately operated by two Washington State port authorities, and the port of Vancouver, in British Columbia. Table 1 shows the utilization of the three for container traffic, relative to other ports in North America. The three ports compete for Asian trade with each other and with North America’s largest container ports, Los Angeles and Long Beach. The competition takes place not only at the broadest global levels, as shipping firms calculate their most advantageous routes, but also at the local level. As the ports race to expand and upgrade their facilities, located in each case in thriving urban areas, competition is affected by funding sources and public reactions to such spillover effects as noise, pollution, and land conversion for infrastructure and warehouses. As public-private enterprises, ports receive public funding and therefore are required to be accountable to the public, not just to their private clients. Port authorities must, of necessity, think globally and act locally.

Roles of a Port. The importance of governance to port competitiveness becomes clear upon considering a deceptively simple question: “What is a port?” The prime definition of a port is to serve as a link in the transportation chain. In addition to moving cargo onshore and offshore, ports must provide for the efficient movement of cargo between transportation modes. This “intermodal” connection generally involves the movement of cargo from ships to railroads or trucks, which may take the cargo to its ultimate destination or to a warehouse for storage until the ultimate user requires the goods. Based on this definition alone, it would make sense for the ports of Seattle, Tacoma, and Vancouver to coordinate their activities in order to ensure adequate infrastructure, create a rational cargo-handling system, and compete most effectively with other West Coast ports.

A second definition of ports focuses on their economic role. Ports are engines of regional economic development, as is often emphasized by the ports themselves. All three Puget Sound ports periodically release economic impact studies compiling their local, regional, and even national value. In 2005 the port of Vancouver created 30,100 direct jobs, generated by five port-related sectors: maritime cargo, cruise industry, capital investment in port facilities, shipbuilding and repair, and non-maritime enterprises. Federal, provincial, and local taxes and revenues generated in the year 2004 were estimated at ap-

proximately \$763 million, including payments by the Vancouver Port Authority itself, by employers and employees in all five of the port’s employment sectors, and by cruise ship passengers.¹ The port of Tacoma reported creation of 10,978 full-time jobs in 2005,² while a 2003 port of Seattle report estimated that Seattle’s seaport generates 17,927 direct jobs.³ Seaport activity at Tacoma and Seattle is estimated to generate \$107.5 million and \$210.9 million, respectively, in state and local tax revenue.

These economic benefits, plus the indirect benefits accrued through more broadly defined port-related activities, motivate the ports to compete with each other for shippers’ business. Port users, especially shipping companies, are the targets of such competition, and ports compete by offering faster turnaround times, more and larger facilities for carriers, and lower costs.

Ports are not solely business enterprises, however. They are hybrids which allow private enterprise to occur within a public framework. A third definition of ports, therefore, is that they are government agencies defined by law. As such, U.S. and Canadian laws establish different ground rules on each side of the border, thereby affecting the competition between the port of Vancouver and the ports of Seattle and Tacoma. While the transportation and economic requirements of ports do not vary considerably across the international border, the legal and political contexts in which the ports function are very different.

U.S. Port Governance: Local Control. In the post-9/11 world, Americans have started to think of ports as a part of our national infrastructure that should be regulated by the federal government. Because the Constitution gives the federal government authority over harbors and over foreign commerce, it would be logical to assume that the federal govern-

Table 1. Ranking of North American Ports by Container Traffic, 2005

	TEUs
Los Angeles, CA	7,484,624
Long Beach, CA	6,709,818
New York, NY	4,792,922
Oakland, CA	2,272,525
Seattle, WA	2,087,929
Tacoma, WA	2,066,447
Charleston, SC	1,986,586
Hampton Roads, VA	1,981,955
Savannah, GA	1,901,520
Vancouver, BC	1,767,379

Source: American Association of Port Authorities. TEU stands for “twenty-foot equivalent unit,” a standard container measurement. A 40-foot container is 2 TEUs.

ment controls ports. In fact, state and local governments are the primary operators and regulators of ports, with the result that port planning and investment decisions are largely decentralized. The federal government does play a role, but its functions are diffuse and largely uncoordinated.

The U.S. has no national port authority or port policy, and many commentators and government agencies have expressed concern over the absence of a strategy for the marine transportation system that would take into account the needs of ports, waterways, and intermodal connections. A new cabinet level Committee on the Marine Transportation System (CMTS) is intended to provide a more holistic approach to marine transportation, although its makeup demonstrates the fragmentation of federal agency control in this area. The four “core agencies” of the CMTS are each located within a different department of the federal government: the Maritime Administration, within the Department of Transportation, tasked with promoting “the development and maintenance of an adequate, well-balanced United States merchant marine”; the National Oceanic and Atmospheric Administration, within the Department of Commerce, which provides oceanographic and meteorological data to ports and is also charged with protection of marine species subject to the Endangered Species Act; the U.S. Coast Guard, the federal lead agency for maritime security, now within the Department of Homeland Security; and the U.S. Army Corps of Engineers, primarily associated with port dredging and channel improvement, but also the lead agency for regulating wetland development.

Federal agencies thus are involved in the navigational, commercial, environmental, and security interests of ports. The federal government also helps to fund ports. Federal expenditures for the commercial marine transportation system as a whole, including ports, waterways, and intermodal connections, averaged \$3.9 billion per year between 1999 and 2001. This funding went to 13 federal agencies, with the largest expenditures by the Army Corps of Engineers for its dredging and harbor activities, followed by the Coast Guard.⁴ Unlike federal expenditures on highways (approximately \$25 billion per year) and aviation (\$10 billion per year), which are primarily supported by user assessments, most federal funding for marine transportation is drawn from the general fund.

The main seaport-related user fee is the Harbor Maintenance Tax (HMT), a 0.125% ad valorem fee on imports unloaded in deep water harbors.⁵ The HMT is deposited in the Harbor Maintenance Trust Fund, most of which is used to recover Corps of Engineers dredging costs.⁶ In 2002, it was estimated that the HMT averaged around \$125 per import container in the ports of Seattle and Tacoma.⁷

Although federal law and agencies clearly affect port operations, Washington state law, not federal law, defines and governs the port authorities of Seattle and Tacoma.⁸ Port au-

thorities are municipal corporations classified as “special districts,” a category which also includes school districts, fire districts, emergency medical districts, and approximately seventy other categories in Washington. State law grants ports a wide range of powers, including the “acquisition, construction, maintenance, operation, development and regulation within the district” of improvements and facilities. Ports are specifically authorized to engage in economic and industrial development projects. Ports may exercise eminent domain to acquire property, construct and operate sewer and water utilities, issue tax-exempt bonds, and even levy taxes – a power envied by Canadian ports. A port may levy up to 45 cents per \$1,000 of assessed valuation on all property within its district bounds for general port purposes. In 2006, the port of Tacoma levied



Port of Seattle, courtesy NOAA

18.59 cents per \$1,000 of assessed value, estimated to result in a total collection of \$11.9 million.⁹ The port of Seattle’s 2006 rate was 23.4 cents per \$1,000 of assessed value, yielding a projected collection of \$62.7 million.¹⁰ The ports control some of the most valuable property in the two cities, including 1,400 waterfront acres in Seattle.

A port district is formed by referendum, and the voters also elect commissioners to administer the districts and oversee their development and operation. Port commissions have many of the powers of a city council. In Seattle, for example, the port commission is a part-time, five-member panel, with a two-person staff. The day-to-day work is done by the port’s professional staff of 1,600 and its CEO, referred to by one journalist as “one of the most powerful men in Seattle.”¹¹ Port authorities were among the earliest special districts to be established in Wash-

ington, which adopted legislation in 1911 to allow for their creation. Government of ports by special district was intended to prevent control by private monopolies and to give “the people” power over public commerce. In 1911, the port of Seattle became the first autonomous municipal corporation in the nation to engage in port terminal operation and commerce development.¹² The port of Tacoma was formed seven years later. Although it seems odd that two ports only thirty miles apart should function independently, much less compete with each other, each port is an independent local government, answerable only to its own commission and home-county voters.

Canadian Port Governance: Gradual Devolution of a Top-Down System. Compared to American ports, Canadian ports are top-down entities. Canada’s constitution, the British North America Act of 1867, placed navigation and shipping under the federal government’s exclusive jurisdiction. In 1936, the government created the National Harbours Board, which attempted to implement a centralized command and control system, including a central set of port charges. Port administration nonetheless became fragmented, with ports operating under different laws and agencies. Reform in the 1970s, led by the Canada Ports Corporation Act, established Local Port Cor-

porations for the larger ports. This was not a complete devolution of control, however, as the Boards of Directors for these ports were appointed by the federal Minister of Transport and the ports' budgets were approved by Ottawa.¹³

Continuing concerns over port efficiency and competitiveness prompted the federal government in 1995 to conduct cross-country hearings to provide input and generate recommendations for a national marine policy. This led to the adoption of ports' current governing law, the Canada Marine Act, effective in 1999.¹⁴

While the Canada Marine Act allows Canadian ports greater local autonomy than the previous system, it still classifies port authorities as "agent[s] of Her Majesty in right of Canada"¹⁵ and limits their activities to "port activities related to shipping, navigation, transportation of passengers and goods, handling of goods and storage of goods."¹⁶ Economic development activities and non-seaport activities, such as the port of Seattle's operation of SeaTac Airport, are not within the purview of Canadian ports.

The Canada Marine Act classifies Vancouver and 17 other major ports as Canadian Port Authorities, or CPAs. For each CPA, the federal government negotiated "Letters Patent," which have been described as the ports' articles of incorporation. The port of Vancouver's Letters Patent specify:¹⁷

- The makeup of the Board of Directors: nine Directors; six appointed by the federal government, one by the province of British Columbia, one by the provinces of Alberta and Manitoba, and one by port area municipalities;
- An annual "Gross Revenue Charge" to be paid to the federal government, based on percentages of gross revenue;
- A detailed legal description of the federal property under port jurisdiction; any changes in property ownership must be processed through Ottawa, through Supplementary Letters Patent; and
- A cap on borrowing.

Perceptions of Subsidization. Both Canadians and Americans perceive that the ports on the opposite side of the border operate with unfair advantages.

Because Tacoma and Seattle are deep water ports that usually do not require dredging to keep the waterways clear, the HMT is perceived in Washington as a tax that gives Vancouver a cost advantage while providing little in return. Executives of both ports have testified before congressional committees that the port of Vancouver has gained business as a result of the HMT. Earlier this year, for example, the CEO of the port of Seattle stated that the HMT is "being touted by Vancouver, BC officials as a reason for shipping lines to use the Canadian port instead of either the Ports of Seattle or Tacoma."¹⁸ Based on the \$125-per-import-container estimate cited earlier, the HMT results in a cost of over \$200 million per year to customers of the ports of Seattle and Tacoma.

Canadians perceive Seattle and Tacoma ports as benefiting from unfair advantages because of their relative freedom from restrictions imposed at the federal level. The 2005 British Columbia Ports Strategy characterizes U.S. ports as having "ready access to local government financing," being able to "raise taxes for port development," getting "direct federal investment," having the authority to issue "tax-exempt municipal

bond financing," and benefiting from "federal government investing in port security." B.C. ports, in contrast, have "different property tax regimes," "pay stipends to federal government," "no federal investment," "taxable market debt financing," and "limited federal investment in port security."¹⁹

A 2004 study in *Canadian Ports Magazine* concluded that, "[c]onverted from US to Canadian dollars, the ports of Seattle and Tacoma, for example, received \$53.6 million and \$11.1 million respectively annually as a result of their tax levies in their counties." In contrast, the article noted, the Vancouver Port Authority made "payments in lieu of taxes" (PILT) of \$5 million to surrounding municipalities. "Revenues collected from port tenants must fund this payment, putting the port at a competitive disadvantage." Comparing property taxation levels between Seattle and Tacoma tenants and those in Vancouver, the article found that, converted from US to Canadian dollars, tenants at the ports of Seattle and Tacoma paid \$20,000 and \$4,000 per acre respectively, while the Port of Vancouver's tenants paid \$40,000 per acre in property taxes. Therefore, "port tenants in Vancouver suffer a direct competitive disadvantage because of taxes as well as the indirect burden of the Vancouver Port Authority's property tax payments." The article concluded, "Many in the port community are waiting to see what, if anything, will be done to put Canada's major ports on a level playing field with competitors in the United States."²⁰

In summary, ports in Washington claim that Vancouver has an unfair advantage because it does not have to charge the HMT. The Vancouver Port Authority claims that Washington ports have an unfair advantage because of their tax and finance structure. Neither set of contenders, of course, mentions the other side's concerns or concedes any advantages to its side.

Conclusion: A Time for Regional Cooperation? In their very different ways, ports in the U.S. and Canada reflect the turn of the nineteenth century rather than the start of the twenty-first century. The classification of ports as "special districts" in Washington, governed by part-time elected boards, occurred at a time when ports were more local in scale, not the behemoth operations of today. The effort to maintain central control over ports in Canada harkens back to a time when such control seemed possible because the scope of port operations was not as extensive as it is today.

Ideally, port governance would include elements of both approaches, including national planning and local implementation, and both countries seem to be heading slowly in that direction. The U.S. is taking steps to establish a national framework for marine transportation, in recognition of the fact that ports are not strictly local operations, but are integral to national economic and security goals. In Canada, reforms that would give more local control, especially over the day-to-day business decisions made by ports, have been under consideration for years.

If port governance structures in the two countries converge to similar models, perhaps the ports might tend toward cooperation, as well as competition. As everything about international trade becomes super-sized – cargo quantities, ships, the revenues involved, security needs, infrastructure requirements, traffic jams, and ports – some ports have been driven to consider multi-port cooperation in order to remain com-

petitive. The ports of Long Beach and Los Angeles jointly funded the Alameda Corridor, intended to improve rail and highway access to the two ports, and have taken joint action to implement an air pollution control plan.²¹ The port of Vancouver and two nearby smaller ports, the Fraser River Port Authority and the North Fraser Port Authority, are considering creating a single Lower Mainland port entity in order to reduce the pressure on the port of Vancouver.²²

From a bird's eye view, cooperation between the Puget Sound – Georgia Basin ports would make sense. The ports of Seattle, Tacoma, and Vancouver all compete with the megaports of Los Angeles and Long Beach for West Coast business. If their container capacity were combined, the three Northwest ports would be almost as large as the port of Los Angeles. They share advantages that could jointly be marketed to shippers, including deep water and the ports' proximity to Asia (i.e., they are a day closer than the California ports). They also share challenges, including traffic congestion, concern about air pollution, and a finite land base for future expansion, that might be addressed more rationally on a regional basis.

Further, joint action by the ports might help to counter the growing power of shipping companies, which have consolidated to the point that the top seven container lines in the world own 50 percent of all vessel slots and the top twenty-five own 84 percent.²³ Port competition is a perpetual tension between ports and carriers, which place increasingly heavy demands on ports. Because the major carriers own such large market shares, while ports are fragmented and compete against each other, the carriers can push for deals that require ports to economize in locally harmful ways: through lower labor costs, increased infrastructure invading hinterland neighborhoods, and a reluctance to require external costs such as pollution to be internalized by shippers.

As long as port governance, taxes, and subsidies vary significantly on opposite sides of the border, any concept of cross-border regional port planning or competition will be unthinkable. Ports will focus on the other ports' perceived ability to get a bigger piece of the pie, rather than determining whether the pie can be enlarged to benefit all. However, if global trade reaches its projected magnitude over the course of the next several decades, the costs – economic and local – of each port's individual race to meet the needs of the megacarriers may become too high. In that case, the obscure details of port governance will help to determine whether the ports can adapt to global competition in ways that meet local needs, or whether the ports will become remnants of the commercial model that was in effect when their governance structures were adopted a century ago.

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