

Articles

**Deregulation Of Truck Equipment Cabotage: A
Canada-United States Initiative**

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I. ECONOMIC DEREGULATION

Over the past 16 years, both the United States and Canada have moved from systems of stringent economic regulation for the truck transportation industry to effective total deregulation within and between each of the two countries.

On January 1st, 1988, the *Motor Vehicle Transport Act* of Canada terminated the public necessity and convenience test as the standard for economic regulation of the truck transportation industry operating be-

tween Canada's ten provinces, as well as between all points in Canada and the Canadian-United States border. The new Federal legislation established a reverse onus test for entry control to Canada's extraprovincial trucking industry; however, as in the United States, the reverse onus test proved a slippery slope into effective deregulation.

On January 1st, 1993, long after the establishment of de facto deregulation, the reverse onus test in the *Motor Vehicle Transport Act* was sunsetted. From that date forward, all extraprovincial licensing in Canada has been based upon a fitness test only. Economic regulation for truck transportation within most provinces has also come to an end. Under the terms of the Canada Agreement on Internal Trade, all intraprovincial truck transportation economic regulation is to cease effective January 1st, 1998.

Deregulation of the United States truck transportation industry began administratively under the Interstate Commerce Commission in the late 1970s. By the mid 1980s, legislative deregulation caught up with de facto deregulation, and interstate and foreign commerce truck transportation in the United States was virtually wide open. The passage of TIRRA in 1995 and the sunseting of the Interstate Commerce Commission in January, 1996 has brought about full deregulation of the truck transportation industry operating in the United States, whether in intrastate, interstate or foreign commerce. Subject to road tax, immigration, customs and other administrative requirements, the United States and Canadian truck transportation industries are relatively free to provide services between and within the two countries.

While this paper does not deal with immigration issues, it should be noted that NAFTA regulations currently in place in Canada and the United States prohibit Canadian drivers from participating in cabotage in the United States, and prohibit U.S. drivers from participating in cabotage in Canada. The proposed changes for customs regulations in both countries will not affect existing immigration regulations.

II. UNITED STATES-CANADA CABOTAGE REGULATIONS

Customs regulations currently in place in Canada and the United States as they relate to the movement of commercial motor vehicles between the two countries were enacted during a period of relatively strict economic regulation. At that time, very few U.S.-based vehicles operated into Canada, and very few Canadian vehicles operated into the United States. Accordingly, restrictions placed upon the use of foreign-based equipment within each of the two countries were of nominal consequence. The constant growth of trade between Canada and the United States, much of it moving by truck, together with deregulation, has cre-

ated a situation wherein freedom of movement for the Canada-U.S. truck transportation industry of the 1990s is now impeded by the restrictive customs regulations of the 1960s.

Both Canadian and United States customs tariff regulations allow the relatively easy movement of commercial motor vehicles across the border between Canada and the United States, provided the equipment is engaged in international commercial transportation. There are, however, significant restrictions as to what that equipment can do while in each host country. In general terms, each of the two regulations prohibit cabotage and each provide for limited "interstate" or domestic transportation operations within very restrictive guidelines.

For the North American truck transportation industry, cabotage may be best described as the use of a commercial motor vehicle for the movement of goods between two points within a country in which that equipment is not based. A Canadian motor vehicle would be engaged in cabotage in the United States if it moved goods locally between Detroit and St. Louis; conversely, a U.S.-based commercial motor vehicle would be engaged in cabotage in Canada in moving goods domestically between Toronto and Montreal.

Canadian NAFTA tariff regulations as described in Canada Customs Memorandum D3-5-8, and as interpreted by Canada Customs, permit two forms of equipment cabotage.

A. INCIDENTAL MOVE:

A U.S.-based commercial motor vehicle entering Canada with a partial load carried in international commercial transportation is permitted to pick up goods in Canada and discharge those goods in Canada, provided however, that the pick up and delivery of those goods within Canada are intermediate to, and occur before the delivery of the import load that was on the vehicle when it entered Canada. Similarly, after picking up a partial export load, the U.S. vehicle is permitted to pick up and discharge goods within Canada, provided the pick-up and discharge of those goods takes place in a direct line between the pick-up point of the partial export load and the exit point of the vehicle from Canada. This type of cabotage was originally designed to allow a Canadian carrier to more efficiently use a U.S. trailer during the era of trailer interchange for cross-border operations. Generally speaking, the permitted incidental move is of very limited benefit to truckload operators; and recognizing the extent to which U.S. less-than-truckload carriers have moved into the Canadian marketplace, the incidental move now has very limited use for the LTL operator as well.

B. REPOSITIONING MOVE:

Canada Customs' interpretation of the tariff regulation, and its own administrative practice set out in Canada Customs Memorandum N-560, permits a U.S. vehicle which has entered Canada with an import load, and has a pre-arranged export load available for movement from Canada back to the United States, to move goods domestically between two points within Canada. That domestic move is permitted, provided that the pick-up point and the delivery point for the domestic move are intermediate to and in a relatively direct line between the delivery point of the import load and the pick point of the pre-arranged export load. Any deviation from the direct route or any pick-up or discharge of goods beyond the import delivery point and the export pick-up point is regarded as a contravention of the tariff regulation. That strict interpretation of the tariff regulation and the Canada Customs Memorandum substantially diminishes the operator's ability to reduce empty miles through the use of a repositioning move. While the Canada Customs strict interpretation is currently being disputed in legal proceedings, that interpretation is nonetheless used for the purpose of this article.

To the extent that the current U.S. Customs regulation permits cabotage, it is somewhat more restrictive than the existing Canadian regulation. The U.S. regulation permits a Canadian vehicle to carry merchandise between points in the United States while it is in use on a regularly-scheduled international trip, and in circumstances where the local carriage is directly incidental to the international schedule. This type of repositioning move would ordinarily be most valuable to a truckload carrier; but as most truckload international operations are not regularly scheduled, this type of permitted cabotage is infrequently available to most Canadian truckload operators. The type of less-than-truckload operation conducted by Canadian-based vehicles moving into and out of the United States is such that this particular repositioning move is of nominal value only to most operators.

Another form of cabotage permitted in the United States allows a Canadian-based truck trailer to carry merchandise between points in the United States on its departure from the United States back to Canada. The use of that trailer locally, however, is prohibited unless the local move is made in a relatively direct line between the point at which the trailer made its inbound delivery, and the proximate Canada-U.S. border point through which the trailer originally entered the United States. This type of cabotage, which was originally designed to allow greater utilization of rail equipment which had been loaded into the United States and was returning empty into Canada, offers limited benefit to the Canadian truck operator.

Recognizing the drive towards competitiveness fostered by deregulation, as well as the commercial imperative of reducing empty miles in all truck transportation operations, the current customs regulations in Canada and the United States fall short of promoting the achievement of these ends.

III. COMPARATIVE ANALYSIS OF THE CANADA AND UNITED STATES CUSTOMS REGULATIONS PROPOSALS

The Canadian Trucking Association (CTA) and the American Trucking Associations (ATA) are currently co-sponsoring a proposal designed to significantly liberalize Customs Regulations as they relate to the movement of commercial motor vehicles between the United States and Canada as well as within each of the countries. At the present time, commercial motor vehicles which are based in either Canada or the United States are permitted to operate into and out of each of the countries in international transportation service, without a formal customs entry or the payment of duty otherwise applicable to that class of equipment.

Commercial motor vehicles operating in this form of international transportation may be required to exit the host country within a limited and fixed time period; and in both jurisdictions, current Customs Regulations severely restrict the use of foreign-based equipment in domestic transportation services (cabotage).

In July of 1994, the Board of Directors of the CTA initiated a proposal for liberalization of Customs Regulations, and delivered the same to a special subcommittee of the ATA. Each of the two Associations canvassed affected members, and began the exchange of further proposals designed to lead to a much greater latitude in cabotage operations in the two countries. A task force was created to deal with the several proposals, and a task force meeting was held in Ottawa, Canada on November 29, 1994. That meeting involved Association executives, industry leaders, and Canadian governmental officials. From early December 1994 until mid-August 1995, a series of proposals were exchanged between the CTA and the ATA; and from time to time there has been informal comment on these several proposals from Customs officials in both Canada and the United States. At the date of this article, final proposals for each of the Canadian and U.S. regulations have been filed with Canada Customs and the United States Customs Services respectively; and each is designed to be, to the greatest extent possible, a mirror image of the other. In other words, the proposals for new latitude in equipment cabotage are designed to be reciprocal for U.S.-based equipment operating in Canada and Canadian-based equipment operating in the United States.

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This analysis is designed to review the two proposals comparatively, so as to allow the reader the opportunity of fully assessing the extent of reciprocity that is contained in these two draft regulations.

Each of the draft regulations are designed to deal with only a limited range of the commercial motor vehicles or conveyances otherwise covered by the existing Canadian and U.S. Regulations. For that reason, there are aspects of each Regulation which will not be changed inasmuch as the Regulations will continue to deal, in the future, as in the past with types of transportation equipment and/or service not Intended to be covered by the liberalization.

To the extent that each of the regulations remain unchanged for certain classes of commercial equipment or conveyances, those aspects of the regulations are excluded from this analysis.

A. PREAMBLE AND GENERAL STATEMENT OF THE INTENT OF
THE REGULATION

Each of the draft regulations contains a preamble or opening which identifies the subject matter to be dealt with in the regulation. The Canadian preamble, adopted from the current regulation, deals with the duty-free importation into Canada of foreign-based conveyances engaged in international commercial transportation of passengers or goods. The included foreign-based conveyances are identified by an appropriate Customs tariff reference. The Canadian version is drafted very expansively so that it continues to include conveyances (commercial motor vehicles railway equipment, containers, aircraft and motor vessels) and includes such conveyances, whether foreign-based in the United States or Mexico.

The United States preamble is more restrictive than the Canadian preamble in that it deals with the admission to the United States of foreign-based trucks, buses and taxicabs, without formal entry or payment of duty, when such equipment is engaged in international traffic.

While the scope of application of each draft regulation is somewhat different for the purposes of the new regulation as it is directed to defined commercial motor vehicles, the stated intent in each regulation is effectively a mirror-image of the other, and consequently they can be regarded as reciprocal.

CANADA
INTERNATIONAL COMMERCIAL
TRANSPORTATION

UNITED STATES
CODE OF FEDERAL
REGULATIONS

This Memorandum outlines and explains the conditions under which foreign-based conveyances engaged in the

TITLE 19 - - CUSTOMS DUTIES

CHAPTER I - - UNITED STATES

international commercial transportation of passengers or goods may be imported into Canada, without payment of duties.

LEGISLATION

Tariff item 9801.00.00 reads:

Foreign-based conveyances of heading No. 86.09 or of Chapters 87, 88 and 89, other than cargo containers less than 6.1 metres in length or having an internal capacity less than 14 cubic metres, engaged in the international commercial transportation or passengers or goods, under such regulations for each mode of conveyance provided for in this heading as the Governor in Council may prescribe.

Most-Favoured-Nation Tariff	Free
General Preferential Tariff	Free
United States Tariff	Free

REGULATIONS

REGULATIONS RESPECTING VEHICLES, AIRCRAFT OR VESSELS ENGAGED IN THE INTERNATIONAL COMMERCIAL TRANSPORTATION OF PASSENGERS OR GOODS

Short Title

1. These regulations may be cited as the International Transportation (Tariff Item 9801.00.00) Regulations.

B. "FOREIGN-BASED" DEFINED

The current United States regulation contains a definition of "foreign-based trucks . . ." and that definition is carried forward into the U.S. draft regulation. For the purposes of the U.S. draft regulation, foreign-based means "trucks . . . however owned, which have their principal base of operations in a foreign country . . ." The current Canadian regulation contains no definition of a "foreign-based conveyance."

Pursuant to the implementation of the NAFTA, Canada created a new regulation known as the NAFTA Temporary Admission of Conveyances or Containers. That Regulation applies only to conveyances which are based in the United States or Mexico, and the regulation contains a

CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 123 - - CUSTOMS RELATIONS WITH CANADA AND MEXICO

SUBPART B - - INTERNATIONAL TRAFFIC

s. 123.14 Entry of foreign-based trucks, buses, and taxicabs in international traffic.

(b) *Admission without entry or payment of duty:*

Commercial motor vehicles, however owned, which have their principal base of operations in a foreign country and are engaged in international traffic may be admitted without formal entry or the payment of duty.

definition of the term “based in the United States or Mexico.” That definition from the NAFTA regulation has been adapted for the purposes of defining “foreign-based” in this Canadian draft regulation. The proposed Canadian definition of “foreign-based” is more specific than the U.S. definition, and provides that a foreign-based conveyance or container will include one that has its ordinary base of operations or source of control outside Canada. In addition, a foreign-based conveyance includes one that is registered and licensed outside Canada.

These two definitions of “foreign-based” are not identical; but they are clearly comparable and are intended to be reciprocal. Nonetheless, the different language used in each case warrants further examination in order to ensure that, for all practical purposes, Canadian “foreign-based” and United States “foreign-based” are effectively equivalent.

CANADA

Interpretation

2. In these regulations, and for the purposes of tariff item No. 9801.00.00 “foreign-based” means,

(a) in respect of a conveyance or container, that the conveyance or container

(i) is owner or leased by a person whose domicile or corporate domicile is outside Canada,

(ii) in the normal course of operation, leaves from and returns to a point outside Canada, and

(iii) is controlled from outside Canada; and

(b) in respect of conveyance, that conveyance is registered and licensed outside Canada.

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s. 123.14 Entry of foreign-based trucks, buses, and taxicabs in international traffic.

(b) *Admission without entry or payment of duty:* Commercial motor vehicles, however owned, which have their principal base of operations in a foreign country and which are engaged in international traffic, may be admitted without formal entry or the payment of duty.

C. “INTERNATIONAL COMMERCIAL TRANSPORTATION” (CANADA) AND “INTERNATIONAL TRAFFIC” (UNITED STATES)

Each of the draft Canadian and U.S. regulations represents a departure from the current regulations of each country. The current U.S. regulation refers to “international traffic” and effectively defines trucks engaged in international traffic as “arriving with merchandise destined to points in the United States, or arriving empty or loaded for the purposes of taking out merchandise” The current Canadian definition of “international commercial transportation” is equally narrow, although it suf-

fers from obvious ambiguity. Currently, "international commercial transportation" in the Canadian regulation means any:

transportation which results in or is intended to result in the carriage of goods . . . for hire or reward (a) from outside Canada to a place inside Canada; (b) from inside Canada to a place outside Canada; or (c) from a place outside Canada in transit through Canada to another place outside Canada.

The intent of both draft regulations is to redefine international traffic and international commercial transportation to include (a) the participation of a commercial motor vehicle in the whole or any part of transportation which results in the movement of goods from a point in one country to a point in the other country; (b) a cross-border movement of the commercial motor vehicle, empty, for the purposes of repositioning or maintenance; and (c) the inclusion in the definition of "international" of what would otherwise be "local traffic" or "domestic transportation" where the domestic use of the vehicle is either preceded or followed by the operation of the vehicle either into or out of the country. This inclusion of a domestic move in the "international" definition is proposed by Canada and is intended to better define the very narrow limits within which a foreign driver could operate in a host country in the event that the two countries agreed upon an amendment to immigration regulations designed to allow the trucking industry in both countries some small additional flexibility in their international operations.

It should be noted that the use of the Canadian phrase "international commercial transportation" and the use of the U.S. phrase "international traffic" are intended to have the same meaning.

Beyond that, the language used in these two draft sections is very similar and is regarded as effectively reciprocal.

CANADA

5. For the purposes of Section 6(3) or Section 8, "international commercial transportation" means:

- (i) any transportation or part thereof which results in, or is intended to result in the transportation of goods for hire or reward:
 - (a) from outside Canada to a place inside Canada;
 - (b) from inside Canada to a place outside Canada; or
 - (c) from a place outside Canada in transit through Canada to another place outside Canada;
- (ii) any domestic transportation of

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Any such vehicle shall be considered to be engaged in international traffic if it is:

- (a) a commercial motor vehicle arriving with merchandise or passengers destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise or passengers from the United States;
- (b) And shall include:
 - (i) the delivery or pick-up of any merchandise which originated in or is destined for a foreign country;
 - (ii) any local transportation of merchandise where such transportation

goods where such transportation is preceded or followed by the use of the vehicle in cross-border transportation either into or out of Canada; and

(iii) any arrival in or departure from Canada of the vehicle for the purposes of repositioning or maintenance.

It is proposed that "for hire or reward" be deleted; or alternatively there be added the following words:

"any transportation of persons or goods by or on behalf of an enterprise engaged in an activity of financial return, where the persons or goods are conveyed . . ."

is immediately preceded or followed by the use of the vehicle in cross-border transportation either into or out of the United States; or

(iii) any entry or exit of the vehicle to or from the United States for the purpose of repositioning or maintenance.

provided, however, that this paragraph shall only apply to vehicles based in a foreign country that applies a similar definition of "International Traffic" to vehicles based in the United States.

D. "DOMESTIC TRANSPORTATION" AND "LOCAL TRAFFIC" AS DEFINED AND PERMITTED

Current Canadian regulation and administrative practice allows for the very limited use of a foreign-based conveyance for domestic transportation in Canada. While there is much confusion and some dispute as to what constitutes "domestic transportation," we will take domestic transportation to mean the use of a conveyance to move merchandise between two points in Canada, regardless of whether the goods are in fact moving in international transportation. Within that context, the current Canadian regulation is interpreted by Canada Customs and administered to permit a narrowly defined repositioning move which is geographically restricted by the destination of an inbound international move and the origin of a subsequent outbound international move. In addition, there is very limited use that can be made of a foreign-based conveyance in conjunction with the international inbound or outbound movement of less-than-truckload shipments.

The current U.S. regulation is even more restrictive, allowing a foreign-based vehicle to carry merchandise between points in the United States, while the vehicle is in use on a regularly scheduled trip and only where the local traffic is directly incidental to the international schedule. In addition, a foreign-based truck-trailer may be used to carry merchandise between points in the United States on its departure for a foreign country, and only within the very limited conditions which are prescribed for the U.S. domestic use of foreign railroad equipment.

For the purposes of this comparative assessment the use of the Canadian phrase "domestic transportation" and the use of the U.S. phrase "local traffic" are intended to have the same meaning.

Effectively, as the U.S. and Canadian truck transportation services

operate today between the two countries, the two regulations, where strictly interpreted by Customs officials, allow extremely limited use of foreign-based equipment in a host country.

The two draft regulations, differently worded, effectively allow full use of foreign-based vehicles for domestic transportation in each of the two countries. The Canadian proposal contains certain restrictions on the definition of "domestic transportation" which are subject to further review, and which may be found to be irrelevant and warrant deletion.

The U.S. draft regulation includes the authority to transport merchandise domestically, and to fully reposition foreign-based vehicles locally in the United States. The draft Canadian regulation includes authority to use foreign-based vehicles in the domestic transportation of goods within Canada. There is no reference to equipment repositioning because the use of the term "goods" in the current Canadian regulation includes transportation equipment itself.

Each of the two draft regulations contain a statement to the effect that the right to use foreign-based vehicles in local transportation is premised upon the condition that the country in which such vehicles are based accords reciprocal treatment for vehicles based in the host country.

Once again, while the language of the two draft regulations differs somewhat, the language in the two regulations is similar and these sections are effectively reciprocal.

E. THE DEFINITION OF INCLUDED ANCILLARY EQUIPMENT

The current Canadian regulation includes a definition of ancillary equipment, and that definition has been expanded in the draft regulation to include in the definition of ancillary equipment any equipment which enhances the safe or efficient operation of the vehicle. This is intended to include all bogeys, convertors, or connecting devices ordinarily used by the truck transportation industry in the operation of the variety of tractor-trailer equipment now in operation in both Canada and the United States.

The current U.S. regulation makes no reference to ancillary equipment whatsoever. Accordingly, the U.S. draft regulation now includes, for local use in the United States, commercial motor vehicles and ancillary equipment. The definition of ancillary equipment is set out in the draft U.S. regulation. It is intended that "ancillary equipment" will have an identical meaning in each of the two draft regulations.

CANADA

ANCILLARY EQUIPMENT

3. In these regulations, a reference to a vehicle, an aircraft or a vessel includes a

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(d) *Use in local traffic:* Foreign-based commercial motor vehicles admitted under this section shall not engage in

reference to any ancillary equipment necessary to ensure the safety, security, containment and preservation of passengers or goods transported by the vehicle aircraft or vessel, or necessary to enhance the safe or efficient operation of the vehicle, aircraft or vessel. Ancillary equipment, when engaged in transportation as provided for herein, may be imported pursuant to Tariff Item No. 9801.00.00 without customs documentation.

Domestic Transportation

8. Every foreign-based vehicle or container as described in Schedule "A" hereto that is engaged in the international commercial transportation of goods may, within the period of time prescribed in paragraph 6(3), engage in the domestic transportation of goods in Canada, without restriction, provided the country in which such vehicle is based accords Canadian-based vehicles or containers reciprocal treatment.

9. "Domestic transportation" means the transportation of goods which have an ultimate origin and destination within Canada.

local traffic in the United States unless the vehicle comes within one of the following exceptions:

(1) Commercial motor vehicles and ancillary equipment may transport merchandise, reposition vehicles, and be repositioned in local or international traffic in the United States, provided the country in which such vehicles are based accords United States based vehicles reciprocal treatment; or

(2) Other foreign-based commercial vehicles may transport merchandise or passengers in local traffic in the United States, while in use on a regularly scheduled trip if such carriage is directly incidental to the international schedule.

(a) Definitions. For the purposes of this part the following definitions apply:

(1) "Ancillary equipment" means any equipment which enhances the safety, security containment, handling and preservation or merchandise carried in commercial motor vehicles.

(d) *Use in local traffic:* Foreign-based commercial vehicles admitted under this section shall not engage in local traffic, in the United States unless the vehicle comes within one of the following exceptions:

(1) Commercial motor vehicles and ancillary equipment may transport merchandise, reposition vehicles, and be repositioned in local or international traffic in the United States, provided the country in which such vehicles are based accords United States-based vehicles reciprocal treatment; or

(2) Other foreign-based commercial vehicles may transport merchandise or passengers in local traffic in the United States, while in use on a regularly scheduled trip if such carriage is directly incidental to the international schedule;

§ 123.16 Entry of returning commercial motor vehicles in international traffic.

(b) *Use in local traffic.* Commercial motor vehicles, in use in international traffic, which may include incidental

local traffic in a foreign country or in this country, shall be admitted under this section. However, such vehicles taken abroad for use in local traffic in a foreign country, otherwise than in the course of a regularly scheduled trip in international traffic shall be considered to have been exported and must be regularly entered on return except those vehicles operating in local traffic in a foreign country under rules or regulations applicable to foreign-based vehicles in that country which are reciprocal to the treatment received by foreign-based vehicles under section 123.14 shall on their return to the United States be admitted without formal entry or the payment of duty.

(d) Definitions. For the purposes of this part, the following definitions apply:
 (2) "Commercial Motor Vehicle" means any vehicle, bus, taxicabs, machine, tractor, trailer, semitrailer, container, chassis, including dollies and other connecting devices propelled or drawn by mechanical power and used on the highways in the transportation of merchandise, or any combination thereof.

F. LIMITS ON EQUIPMENT CABOTAGE

The current Canadian regulation requires that a foreign-based commercial motor vehicle imported into Canada under the regulation be exported from Canada within thirty days of its original entry. The current U.S. regulation makes no reference to a time frame within which a foreign-based vehicle which enters the United States must be removed from the United States. Recognizing that the two industries are satisfied to allow full equipment cabotage as between Canada and the United States, it is proposed in the two draft regulations that the defined foreign-based vehicle must exit the host country within one year after its initial arrival in the country. During the course of the one-year period after arrival in the host country, the defined vehicle may be used freely in domestic transportation within the host country. Each exit of the vehicle from the host country terminates that period of permitted domestic use; and each re-entry of the vehicle into the host country renews the authority to use that vehicle in domestic traffic for another one-year period.

The two draft regulations are intended to allow a vehicle to remain

in the host country in limited circumstances for a period beyond the one-year limit. The defined circumstances of overstaying the one-year limit are virtually identical in the two draft regulations. While neither regulation speaks to the issue, the two industries are agreed that the violation which arises from a vehicle overstaying the one-year limit should be a violation which begins at the expiry of the one-year limit, and not go back to the date of original entry of the foreign-based vehicle into the host country.

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(3) Every foreign-based vehicle described in Schedule "A" hereto, imported under Tariff number 9801.00.00 that is engaged in the international commercial transportation of merchandise shall, subject to subsection (4) be exported from Canada within (1) one year of its date of arrival into Canada and shall operate with the proper vehicle license issued by the appropriate provincial and/or Federal licensing authority.

(4) The period of one year referred to in subsection (3) may be extended for an additional period not exceeding thirty (30) days on the authority of a Canada Customs Officer, where the Officer is satisfied that good cause for such extension is shown.

UNITED STATES

(e) *Minimum movement*: A foreign-based commercial vehicle operating pursuant to paragraph (d)(1) of this section may remain in the United States, provided the vehicle exits the United States within 365 days of its date of arrival in the United States, however, if good cause is shown, the Port Director may authorize one thirty (30)-day extension of this period.

G. THE DEFINITION OF INCLUDED COMMERCIAL MOTOR VEHICLES

For the purposes of expanded equipment cabotage within the two countries, it became necessary to define those vehicles which would be included in this liberalized program. A draft of the vehicles to be included in the Canadian Regulation (Canadian Schedule "A") used Canadian tariff definitions of commercial motor vehicles for the purposes of developing an included list. The list of commercial motor vehicles to be included in the U.S. regulation is drawn from definitions included in the U.S. Federal Motor Vehicle Safety Regulation, 49 CFR Part 390. In addition to definitions taken from that U.S. legislation, the U.S. definition includes "ancillary equipment," previously referred to. The two definitions are attached. These definitions require close examination to ensure that they will in fact cover the same types of commercial motor vehicle equipment.

It should be noted that the Canadian proposed Regulation includes "containers."

Containers are dealt with in the United States under a wholly separate regulation; and it is intended that the "containers" regulation be amended in a fashion which will be complementary to the proposed amendment for "vehicles."

In any event, the Canadian inclusion of "containers" is given on a reciprocal basis and will be available for U.S. containers in Canada when it becomes available for Canadian containers in the United States.

Definitions:

(a) Definitions

(1) "Ancillary Equipment" means any equipment which enhances the safety, security containment, handling and preservation of merchandise carried in commercial motor vehicles.

(2) "Commercial Motor Vehicle" means any vehicle, bus, taxicabs, machine, tractor, trailer, semitrailer container, chassis, including dollies and other connecting devices propelled or drawn by mechanical power and used on the highways in the transportation of merchandise, or any combination thereof.

(4) "Tractor" means a self-propelled motor vehicle designed an/or used primarily for drawing other vehicles.

(5) "Trailer" means a non-power, cargo carrying, unit which is designed for use in combination with a truck tractor including a chassis on which another merchandise carrying unit is place.

(6) "Truck" means any self-propelled motor vehicle designed and/or used for the transportation of merchandise including a tractor-trailer combination.

IV. CANADIAN TRUCKING ASSOCIATION PROPOSAL

A. INTERNATIONAL COMMERCIAL TRANSPORTATION

This memorandum outlines and explains the conditions under which foreign-based conveyances engaged in the international commercial transportation of passengers or goods may be imported into Canada, without payment of duties.

1. Legislation

Tariff item 9801.00.00 reads:

Foreign-based conveyances of heading No. 86.09 or of Chapters 87, 88 and 89, other than cargo containers less than 6.1 metres in length or having an internal capacity less than 14 cubic metres, engaged in the international commercial transportation of passengers or goods, under such regulations for each mode of conveyance provided for in this heading as the Governor in Council may prescribe

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Deregulation Of Truck Equipment Cabotage

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Most-Favoured-Nation Tariff	Free
General Preferential Tariff	Free
United States Tariff	Free

2. *Regulations Respecting Vehicles, Aircraft or Vessels Engaged in the International Commercial Transportation of Passengers or Goods*

a. Short Title

These Regulations may be cited as the *International Commercial Transportation (Tariff Item 9801.00.00) Regulations*.

b. Interpretation

In these Regulations “foreign-based” means:

- (a) in respect of a conveyance or container, that the conveyance or container,
 - (i) is owned or leased by a person whose domicile or corporate domicile is outside Canada,
 - (ii) in the normal course of operation, leaves from and returns to a point outside Canada, and
 - (iii) is controlled from outside Canada, and
- (b) in respect of a conveyance, that conveyance is registered and licensed outside Canada.

3. *Ancillary Equipment*

In these regulations, a reference to a vehicle, an aircraft or a vessel includes a reference to any ancillary equipment necessary to ensure the safety, security, containment and preservation of passengers or goods transported by the vehicle, aircraft or vessel, or necessary to enhance the safe or efficient operation of the vehicle, aircraft or vessel. Ancillary equipment, when engaged in transportation as provided for herein, may be imported pursuant to Tariff Item No. 9801.00.00 without customs documentation.

4. *International Commercial Transportation*

For the purposes of Section 6(1), “international commercial transportation” means any transportation which results in, or is intended to result in, the transportation of goods or passengers for hire or reward:

- (a) from outside Canada to a place inside Canada;
- (b) from inside Canada to a place outside Canada; or
- (c) from a place outside Canada in transit through Canada to another place outside Canada.

For the purposes of Section 6(3) or Section 8, “international commercial transportation” means:

- (i) any transportation or part thereof which results in, or is intended to result in the transportation of goods for hire or reward:
 - (a) from outside Canada to a place inside Canada;
 - (b) from inside Canada to a place outside Canada, or
 - (c) from a place outside Canada in transit through Canada to another place outside Canada;
- (ii) any domestic transportation of goods where such transportation is preceded or followed by the use of the vehicle in cross-border transportation either into or out of Canada;
- (iii) any arrival in or departure from Canada of the vehicle for the purposes of repositioning or maintenance.

5. *Terms and Conditions*

(1) Save and except as provided in subsection (3), every vehicle, aircraft or vessel imported under tariff item 9801.00.00 of Schedule 1 to the Customs Tariff that is engaged in the international commercial transportation of passengers or goods shall, subject to subsection (2), be exported from Canada within 30 days of its date of arrival into Canada and shall

- (a) in the case of a vehicle, operate with the proper vehicle license issued by the appropriate provincial licensing authority;
- (b) in the case of an aircraft, comply with the requirements of the Aeronautics Act and any regulations made thereunder; and
- (c) in the case of a vessel, comply with the requirements of the *Canada Shipping Act* and the Coastwise and Foreign Shipping (Customs) Regulations.

(2) The period of 30 days referred to in subsection (1) may be extended for an additional period not exceeding 24 months from the date of arrival into Canada where, at the expiration of that 30 day period, the departure of the vehicle, aircraft or vessel from Canada is delayed owing to

- (a) the equipping, reconditioning, reconstructing, refurbishing or repair in Canada of the vehicle, aircraft or vessel;
- (b) a major equipment breakdown of the vehicle, aircraft or vessel;
- (c) adverse weather conditions;
- (d) the detention of the vehicle, aircraft or vessel under the authority of any court order, or under any Act of Parliament or of the Legislature of a province or any regulation made thereunder, or
- (e) a delay in the delivery of goods for loading for export on the vehicle, aircraft or vessel.

(3) Every foreign-based vehicle described in Schedule "A" hereto, imported under Tariff number 9801.00.00 that is engaged in the international commercial transportation of goods shall, subject to subsection (4) be exported from Canada within (1) one year of its date of arrival into Canada and shall operate with the proper vehicle license issued by the appropriate provincial and/or Federal licensing authority.

(4) The period of one year referred to in subsection (3) may be extended

for an additional period not exceeding thirty (30) days on the authority of a Canada Customs Officer, where the Officer is satisfied that good cause for such extension is shown.

6. *Incidental Domestic Transportation*

A vehicle imported under Tariff Item 9801,00.00 of Schedule 1 to the Custom Tariff may engage in the transportation of passengers or goods from one point in Canada to another point in Canada only if such transportation is incidental to the international commercial transportation of the passengers or goods and

- (a) in the case of a vehicle entering Canada empty or without a substantial payload, the point to point transportation is not made prior to the time of loading at the first scheduled point in Canada of passengers departing Canada or of loading goods for exportation;
- (b) the point to point transportation is not over territory outside the territorial limits of Canada;
- (c) the vehicle has not entered Canada for the purpose of an in transit movement through Canada to a point outside Canada.

7. *Domestic Transportation*

Every foreign-based vehicle or container as described in Schedule "A" hereto that is engaged in the international commercial transportation of goods may, within the period of time prescribed in paragraph 6(3), engage in the domestic transportation of goods in Canada, without restriction, provided the country in which such vehicle or container is based accords Canadian-based vehicles or containers reciprocal treatment. "Domestic transportation" means the transportation of goods which have an ultimate origin and destination within Canada.

B. GUIDELINES AND GENERAL INFORMATION

Tariff item No. 9801.00.00 and Regulations pursuant thereto apply solely to foreign-based conveyances described therein which are temporarily imported into Canada for use in the international commercial transportation of goods or passengers. No formal Customs accounting is required. Vehicles, aircraft and vessels arriving in or departing from Canada may be required to report at the request of a Customs Officer, for the purpose of examination.

Foreign conveyances classified under tariff item No. 9801.00.00 when transporting passengers or goods which have not been cleared or checked by Customs must also comply with the requirements stipulated in Customs Memoranda D3-2-2, Air Cargo; D3-4-2, I-Highway Cargo; D3-5-2, Marine Cargo, and D3-6-6, Rail Cargo, relative to cargo control procedures.

Paragraph 4(1)(a) of the Regulations requires that domestic trans-

portation pursuant to Sections 5 or 6 must conform with carrying rights granted by the appropriate provincial or federal licensing authorities.

1. Time Limits

Under normal circumstances vehicles, aircraft and vessels entitled to importation under tariff item No. 9801.00.00 shall be exported from Canada within the time limit fixed in the Regulation. This period may be extended by a Customs Officer where the officer is satisfied that, after the expiration of the permit period, the departure of the conveyance is delayed for reasons specified in subsection 6(2) or subsection 6(4) of the Regulations. In such instances a form E 50B, Vehicle Permit, shall be issued for the conveyance for a specified period of time sufficient to accommodate stated contingencies and provide for compliance by exportation. Conveyances reported under the post audit system do not require approval from Customs for extension of the time limit nor is a form E 50B required for each instance. However, such equipment may only remain in Canada beyond the time limit fixed by regulation, where it is in compliance with the conditions set out in subsection 6(2) or subsection 6(4) of the Regulations. Verification of circumstances where post audit equipment is in Canada beyond the permitted limit will be conducted as part of audits.

2. Enforcement and Control

Complaints of alleged violation of incidental domestic transportation privileges shall be directed to:

Department of National Revenue, Customs and Excise
Licensing Division
Ottawa, Ontario, K1A 0L5

for investigation and appropriate action.

Carriers importing vehicles into Canada pursuant to tariff item No. 9801.00.00 may be subject to periodic audit of internal records relative to the movement and use of such equipment in Canada by Transport and Traffic Audit, Investigations Division, Ottawa, Ontario.

At the discretion of the Customs Officer concerned, forms E 50B may be issued for monitoring purposes.

Where it is established that misuse or diversion of conveyances imported under this tariff item has occurred, sanctions will be directed at the person who diverted the conveyance. These sanctions could take the form of duties in accordance with subsections 88(1) or 89(1) of the Customs Act, or seizure action under subsection 110(2) of the Act, or ascertained forfeiture under paragraph 124(1)(b) of the Act.

3. *Immigration Requirements*

Employment and Immigration Canada should be contacted concerning immigration requirements when conveyances will be operated in Canada by persons who are not Canadian citizens or permanent residents of Canada.

Services Provided By The Department Are Available In Both Official Languages. This Article Is Issued Under The Authority Of The Deputy Minister of National Revenue Customs And Excise.

V. AMERICAN TRUCKING ASSOCIATION'S PROPOSAL

A. UNITED STATES CODES OF FEDERAL REGULATIONS § 123.14 ENTRY OF FOREIGN-BASED TRUCKS, BUSES, AND TAXICABS IN INTERNATIONAL TRAFFIC

1. *Definitions*

(a) *Definitions.* For purposes of this part, the following definitions apply:

(1) "Ancillary equipment" means any equipment which enhances the safety, security containment, handling and preservation of merchandise carried in commercial motor vehicles.

(2) "Commercial Motor Vehicle" means any vehicle, bus, taxicabs, machine, tractor, trailer, semitrailer, container, chassis, including dollies and other connecting devices propelled or drawn by mechanical power and used on the highways in the transportation of merchandise, or any combination thereof.

(3) "International Traffic" means:

A. A commercial motor vehicle arriving with merchandise or passengers destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise or passengers from the United States;

B. And shall include:

(i) the delivery or pick-up of any merchandise which originated in or is destined for a foreign country;

(ii) any local transportation of merchandise where such transportation is immediately preceded or followed by the use of the vehicle in cross-border transportation either into or out of the United States; or

(iii) any entry or exit of the vehicle to or from the United States for the purpose of repositioning or maintenance.

provided, however, that this paragraph shall only apply to vehicles based in a foreign country that applies a similar definition of "International Traffic" to vehicles based in the United States.

(4) "Local traffic" shall mean, except as provided in paragraph 3 of

this section, the transportation of merchandise or passengers between points in the United States, or between points in a foreign country.

(5) "Tractor" means a self-propelled motor vehicle designed and/or used primarily for drawing other vehicles.

(6) "Trailer" means a non-power, cargo carrying, unit which is designed for use in combination with a truck tractor including a chassis on which another merchandise carrying unit is placed.

(7) "Truck" means any self-propelled motor vehicle designed and/or used for the transportation of merchandise including a tractor-trailer combination.

2. *Admission Without Entry or Payment of Duty*

(b) Admission without entry or payment of duty. Commercial motor vehicles, however owned, which have their principal base of operations in a foreign country and are engaged in international traffic may be admitted without formal entry or the payment of duty. Such vehicles shall not engage in local traffic except as provided in paragraph (d) of this section, United States-based vehicles operating in local traffic in a foreign country under rules or regulation in that country which are reciprocal to the treatment received by vehicles based in that country under this section shall also be admitted back into this country without formal entry or the payment of duty.

3. *Deposit or Registration by Vehicle not on Regular Trip*

(c) Deposit or registration by vehicle not on regular trip. In any case in which a foreign-based commercial vehicle admitted under this section is not in use on a regularly scheduled trip, (except as provided in paragraph (d)). The district director may require that the registration card f or the vehicle be deposited pending the return of the vehicle for departure to the country from which it arrived, or the district director may take other appropriate measures to assure the proper use and departure of the vehicle.

4. *Use in Local Traffic*

(d) Use in local traffic. Foreign-based commercial vehicles admitted under this section shall not engage in local traffic in the United States unless the vehicle comes within one of the following exception:

- (1) Commercial motor vehicles and ancillary equipment may transport merchandise, reposition vehicles, and be repositioned in local or international traffic in the United States, provided the country in which such vehicles are based accords United States-based vehicles reciprocal treatment; or
- (2) Other foreign-based commercial vehicles may transport merchandise or passengers in local traffic in the United States, while in

use on a regularly scheduled trip if such carriage is directly incidental to the international schedule;

5. *Minimum Movement*

(e) Minimum movement: A foreign-based commercial vehicle operating pursuant to paragraph (d)(1) of this section may remain in the United States, provided the vehicle exits the United States within 365 days of its date of arrival in the United States, however, if good cause is shown the Port Director may authorize one 30-day extension of this period.

6. *Penalty for Improper Use*

(f) Penalty for improper use. The use of any commercial vehicle referred to in this section in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

B. SECTION 123.16 ENTRY OF RETURNING COMMERCIAL MOTOR VEHICLES IN INTERNATIONAL TRAFFIC

1. *Admission Without Entry or Payment of Duty*

(a) Admission without entry or payment of duty. Commercial motor vehicles, whether of foreign or domestic origin taking out merchandise or passengers for hire or leaving empty for the purpose of bringing back merchandise or passengers for hire shall on their return to the United States be admitted without formal entry or the payment of duty upon their identity being established by State registration cards.

2. *Use in Local Traffic*

(b) Use in local traffic. Commercial motor vehicles in use in international traffic, which may include incidental local traffic in a foreign country or in this country, shall be admitted under this section. However, such vehicles taken abroad for use in local traffic in a foreign country, otherwise than in the course of a regularly scheduled trip in international traffic shall be considered to have been exported and must be regularly entered on return, except those vehicles operating in local traffic in a foreign country under rules or regulations applicable to foreign-based vehicles in that country which are reciprocal to the treatment received by foreign-based vehicles under section 123.14 shall on their return to the United States be admitted without formal entry or the payment of duty.

