# A SURVEY OF FOR-HIRE TRUCK TRANSPORTATION ACROSS THE CANADA-UNITED STATES BORDER

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For-hire truck transportation is the subject of extensive regulation in both Canada and the United States. The object of this study is to examine the operation of motor common carriers across the Canadian-United States boundary and to evaluate the effect of the various regulatory, administrative, and procedural requirements as they pertain to such traffic. Basically, three movements are discussed—goods originating in Canada and destined for points within the United States; goods originating within the United States and destined for points within Canada; and goods moving in transit through either the United States or Canada.

The paper is divided into two broad sections; Part I is concerned with the various controls, economic and safety, placed on such traffic. Part II on the other hand, attempts to evaluate government policy and practice as they affect the flow of goods by motor vehicle between the two Nations.

## I

In the United States, federal regulation of for-hire truck transportation was inaugurated with the passage of *The Motor Carrier Act of 1935*. Under the terms of that Act, power to regulate common and contract carriers was vested in the Interstate Commerce Commission. By section 206 of the *Interstate Commerce Act*, operations in foreign commerce are prohibited unless there is in force a certificate of public convenience and necessity issued by the Commission.[1] The term foreign commerce is defined in the Act as:

> "commerce, whether such commerce moves wholly by motor vehicle and partly by rail, express or water, (A) between any place in the United States and any place in a foreign country, or between places in the United States through a foreign country; or (B) between any place in the United States and any place in a Territory or possession of the United States insofar as such transportation takes place within the United States."[2]

For the purposes of insurance, the designation of an agent of service of

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1. 49 U.S.C. §306 (1964).
2. 49 U.S.C. §303(a)(11).

process, and requirements governing qualifications, maximum hours of work of employees, safety of operations and equipment, the term has been further extended to include transportation between places within a foreign country or between a place in a foreign country and another foreign country insofar as such transportation takes place within the United States.[3]

Standing alone, sections 206 and 203(a)(11) clearly indicate that for-hire operations that originate or are destined for points in a foreign country are subject to the full regulatory powers of the I.C.C. and that a certificate of public convenience and necessity must be obtained from the Commission if they are to operate legally.

The American Act, however, contains an exemption for traffic originating in and destined for points located in a "commercial zone". The commercial zone section provides:

> "nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operations or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone . . ."[4]

In considering the extent of the exemption referred to above, the Commission at first took the position that the section did not have any extraterritorial application. In *Ex Parte No. M.C. 37, Commercial Zones and Terminal Areas,* the I.C.C. was of the opinion that:

> "As a practical, rather than a regulatory, matter it may be conceded that the commercial zones of such municipalities lie, in part, in the adjacent foreign country, that between such municipalities and some immediate adjacent points in the United States, on the one hand, and adjacent or contiguous points in such foreign countries, on the

3. Enacted under *Public Law 522,* July 22, 1954. 49 U.S.C. 303(a)(11).
4. 49 U.S.C. §303(b)(8).

other, there is performed partially within the United States purely local transportation of a type comparable generally with that within the exemption provided by section 203(b)(8). However, our jurisdiction over foreign commerce extends only to the portion thereof performed within the United States, and it does not appear that the exemption provided to section 203(b)(8) can properly be claimed for any operation conducted in part in a foreign country, or stated another way, that the commercial zones contemplated by section 203(b)(8) include any territory beyond our own borders."[5]

In effect, this determination required carriers operating between border twin-cities to obtain certificates of public convenience and necessity from the I.C.C. even though they met the criteria established by that body to determine commercial zones. The mere fact that part of the operation was conducted in a foreign jurisdiction was deemed sufficient to take them out of the commercial zone exemption.

Enforcement of this ruling, however, appears to have been sporadic, and the issue was considered again in *Peter Verbeem v. United States of America.*[6] In reversing the prior finding in *Ex Parte No. M.C. 37,* supra, Levin, D.J., concluded that the exemption in question is clearly directed "to relieving the Commission of the burdensome and highly expensive task of regulating purely local cartage operations. It is common knowledge that the United States borders at Mexico and Canada are dotted with 'twin-cities', one of which is on each side of the border. No reason appears why the regulation of purely local cartage between such cities would be any less burdensome to the Commission, or more important to the economy of this country, than the regulation of cartage between Kansas City, Kansas and Kansas City, Missouri, or between New York City and Newark, New Jersey."[7]

Since *Verbeem* a carrier operating between "contiguous" municipalities has been exempt from the necessity of proving public convenience and necessity for purely local movements regardless of whether the municipalities are located in separate jurisdictions. This was not true, however, for "commercial zones". The regulations pursuant to which such zones were determined continued to speak of municipalities "within the United States".[8] Thus, while local operations between Detroit-Windsor were exempt, the two cities being "contiguous"[9] doubt

5. 46 M.C.C. 665 at 686-687.
6. 154 F. Supp. 431. Affirmed 356 U.S. 676.
7. *Ibid.*, at 434.
8. See 48 C.F.R. §1048.101 amended to January 1, 1969.
9. On this point see *Ed Goyeau Contract Carrier Application,* 8 M.C.C. 359 at 360. For a

existed as to the status of such cities as Fort Erie, Ontario-Buffalo, New York and Sarnia, Ontario-Port Huron, Michigan.

It was not until the Commission's decision in *Rio Grande Border Municipalities—Commercial Zones and Terminal Areas; Ex Parte No. MC-37* that this matter was clarified. There the Commission noted that

> ". . . by its own clear terms, the statutory partial exemption bespeaks of operations in both interstate and foreign commerce. It is inconceivable that the framers of the statute could have envisaged anything other than applicability of this provision equally to wholly local operations across national borders, for wholly local foreign commerce could not be performed in any other manner.
>
> It is clear, therefore, that 'the transportation of passengers or property in interstate and foreign commerce . . . within a zone adjacent to and commercially a part of . . . [a] municipality' must comprehend wholly local operations across national borders, in essentially the same manner as such international operations are comprehended within the phrase 'the transportation of passengers or property in interstate or foreign commerce . . . between contiguous municipalities.' "[10]

Subsequent to this decision the references to municipalities "within the United States" were deleted from the Federal Regulations.[11]

Difficulties associated with 303(b)(8), however, continued to plague the I.C.C. While it was conceded that operations in foreign commerce were subject to the Commission's control, and while *Verbeem* and *Rio Grande* established the applicability of 303(b)(8) to municipalities located at the border, the question still remained as to the I.C.C.'s authority over that portion of operations that extended into a foreign country.

One of the grounds for the Commission's decision in *Ex Parte MC-37* had been the I.C.C.'s belief that its jurisdiction extended only to that portion of foreign commerce that was performed within the United States.[12] Similarly, Levin, D.J., had recognized in *Verbeem* "that the Commission is not concerned with purely Canadian operations."[13]

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definition of contiguous see *G. Arredondo Transfer Company, Inc. et al.—Petition for Determination of the Commission's Jurisdiction over Motor Carrier Operations between the United States and Mexico at Laredo and Hidalgo, Texas,* 1968 Federal Carriers Cases ¶ 36,183 at 36,183.

10. 1969 Federal Carriers Cases ¶ 36,321 at 36,321.01 May 7, 1969.
11. See 34 F.R. 9870, June 26, 1969.
12. *Op. Cit.* at 686.
13. *Op. Cit.* at 435.

Past decisions of the I.C.C. appeared to confirm this viewpoint. In *Bridgeways, Inc., Extension of Operations—Alternate Canadian Routes* an American carrier sought authority to transport general commodities from the cities of Port Huron and Detroit over highways in Ontario to Buffalo and Niagara Falls, New York. The applicant, it should be noted, already possessed regular route authority to serve these points wholly within the United States. If successful, however, some 105 miles would be cut off each trip. While recognizing that such commerce was clearly transportation in foreign commerce as defined in the Act, the application was denied on the basis that the Commission's jurisdiction went only to that portion of the undertaking performed within the United States and that "we are without jurisdiction to authorize applicants to operate over highways not within the United States."[14]

Similarly, in *Nadeau Transport Limited, Extension—Ground Pulpwood* the Commission refused to limit the proposed service from specific points in Canada on the ground that "although the traffic originates at only two Canadian origin points, our jurisdiction extends only to the international boundary, and we see no need on this record to restrict the grant herein to traffic originating at specific points beyond the confines of the United States."[15]

What the Commission seemed to be saying was that it would not look beyond operations within the United States when considering the grant or denial of authority. On the basis of this reasoning and making use of the commercial zone exemption, certain carriers attempted to argue that no authority need be obtained for the movement of goods in foreign commerce where such movement originated or was destined for a point entirely within a zone located at the international boundary. Their reasoning ran as follows: ". . . no authority is necessary to perform a motor-carrier service between Buffalo and Fort Erie, Ontario, Canada, or points on the United States-Canadian boundary, since this involves transportation in foreign commerce between contiguous municipalities and is partially exempt under section 203(b)(8) of the Act . . . that operations beyond Fort Erie take place entirely in Canada, and that this

14. 47 M.C.C. 359 at 361.

15. 72 M.C.C. 385 at 388. Similar pronouncements as to the scope of I.C.C. authority can be found in *Independent Motor Carriers, Inc., Common Carrier Application*, 26 M.C.C. 519 at 523; *MacKenzie Coach Lines, Inc. Common Carrier Application*, 27 M.C.C. 224 at 225; and *Smith Transport, Limited, Common Carrier Application*, 27 M.C.C. 533 at 534.

phase of the operation cannot be considered by this Commission in determining whether through transportation service is involved . . ."[16]

The particular operation involved in the above proceeding concerned the movement of goods between the international boundary line on the Peace Bridge and "a point on the public highway at the Peace Bridge Plaza at Buffalo" where the freight or vehicles were interchanged with United States carriers.

Defendant's contention was decisively rejected. The Commission noted that it had "frequently considered the transportation situation in a foreign country, in determining whether authority should be granted, or is necessary, to conduct that portion of a through operation in foreign commerce taking place within the United States. Moreover, the I.C.C. in *Reid Transports, Ltd., Common Carrier Application*[17] had determined that the 203(b)(8) exemption did not apply "to transportation which is part of a continuous movement to or from a point outside the zone, even though the movement beyond the zone limits be within a foreign country". The operation under review was transportation " 'under a common control, management, or arrangement for a continuous carriage or shipment', from and to points in Canada beyond the Buffalo commercial zone . . . and therefore falls within the exception to the 203(b)(8) exemption . . .", and requires an appropriate certificate of public convenience and necessity.[18]

*Fess* indicated that the Commission was prepared to consider operations within a foreign country when determining whether the full regulatory controls of the I.C.C. applied. Proof of public convenience and necessity would have to be established for undertakings in foreign commerce that extended beyond the confines of a recognized commercial zone even though such operations penetrated the United States for only a short distance to a point where interline could be achieved.

In many respects, the jurisdictional setting in Canada parallels that which exists in the United States. From a constitutional point of view, control over motor vehicle operators engaged in international transportation falls clearly within the purview of the federal government. Such works are encompassed by the exceptions enumerated in section

16. *Consolidated Truck Lines, Limited et al. v. Graydon Fess and Wittmeyer Trucking Co., Inc.*, 83 M.C.C. 673 at 674 (1960).

17. 63 M.C.C. 342 at 346.

18. *Consolidated Truck Lines, op. cit.* p. 676. On the willingness of the Commission to consider evidence of the proposed operation beyond the border see *N. J. Matlock Common Carrier Application*, 81 M.C.C. 497 at 501.

92(10) of *The British North America Act*. The relevant portions of that Act read as follows:

> "92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say,—
>
> 10. Local Works and Undertakings other than such as are of the following Classes:—
>
> (a) Lines of Steam or other Ships, Railways Canals, Telegraphs, and other Works and Undertakings connecting the Provinces with any other or others of the Provinces, or extending beyond the Limits of the Province."

Any doubt that existed as to the scope of this provision has been dispelled by the decision of the Judicial Committee of the Privy Council in *Attorney-General for Ontario and Others v. Israel Winner and Others.*[19]

The federal government, however, deemed it advisable to adopt the individual provincial transport boards constituted in each province in exercising this authority. This was affected through the passage of *The Motor Vehicle Transport Act.*[20] That Act stipulates that:

> "3. (1) Where in any province a licence is by the law of the province required for the operation of a local undertaking, no person shall operate an extra-provincial undertaking in that province unless he holds a licence issued under authority of this Act.
>
> (2) The provincial transport board in each province may in its discretion issue a licence to a person to operate an extra-provincial undertaking into or through the province upon the like terms and conditions and in the like manner as if the extra-provincial undertaking operated in the province were a local undertaking."

It should be noted that in considering applications under authority of this Act, the various Boards sit as federal bodies. For the purposes of the Act, an extra-provincial undertaking is defined as a "work or undertaking for the transport of passengers or goods by motor vehicle, connecting a province with any other or others of the provinces, or extending beyond the limits of a province."[21] The Act is deemed in force in a province upon proclamation by the Governor in Council[22] and the Governor in Council maintains the power to "exempt any person or the whole or any part of an

19. [1954] A.C. 541.
20. *Statutes of Canada* 1953-1954, C. 59.
21. *Ibid.*, s.2(b).
22. *Ibid.*, s.7.

extra-provincial undertaking or any extra-provincial transport from all or any of the provisions of this Act."[23] At the present time, the Act is in force in all ten provinces and the two territorities of Canada.

The *M.V.T.A.* has created considerable confusion. Rather than one federally appointed board or commission overseeing for-hire operators in extra-provincial undertakings, there exists an independent board in each province. Furthermore, while in general these boards require a finding of public convenience and necessity, there is no uniform standard by which this is measured. The degree of proof necessary in order to obtain a licence may vary depending on where the application is brought. Moreover, a carrier who wishes to engage in transportation in more than one province is required to make application before each provincial board within whose jurisdiction he wishes to operate. A favourable finding in one province is no guarantee that a similar conclusion will be arrived at in another or by the I.C.C. This imposes additional burdens on any company contemplating entering the field of international traffic.

In addition, there exists a divergence of judicial opinion on the question whether an extra-provincial licence is required where a carrier merely wishes to partake in an international movement that originates entirely within a province but is destined to a point outside that province. Section 3(2) of the *M.V.T.A.* speaks of licences to operate an extra-provincial undertaking "into or through the province", but fails to mention operations "out of" the province. The Manitoba Court of Appeal in *Re Kleysen's Cartage Co. Ltd. and Motor Carrier Board of Manitoba* has held that "having regard to the history of the legislation, an extra-provincial undertaking must obtain a licence from the Motor Carrier Board of the Province into or through which it goes and it does not require a licence for its extra-provincial operations from the Province in which such traffic originates."[24]

In contrast, the Ontario High Court in *Regina v. Canadian American Transfer Ltd.* arrived at the opposite conclusion.[25] Wells, C.J.H.C., was "unable to share the view of the majority in the Manitoba Court of Appeal. . . . an extra-provincial undertaking is not limited to connections between the Provinces but is also applied to situations where the undertaking involves going into some other jurisdiction and is contained in the words 'extending beyond the limits of a province'. Section 3 of the statute is quite clear that where a licence is required by the law of the

23. *Ibid.*, s.5.
24. 48 D.L.R. (2d) Headnote p. 716. Monnin, J.A., dissenting.
25. [1970] 1 O.R. 262.

province for the operation of a local undertaking that no one shall operate an extra-provincial undertaking in that Province unless he holds a licence issued under the authority of this Act. With respect, it would seem to me that the word 'through' also covers a transport into a foreign country from some point in Ontario. It is necessary for the exporter to drive through the Province of Ontario to the international border and I can see no reason why it should not apply to that as well as to the entry to a Province on the other side. . . ."[26]

Subsequent to this judgment, leave to appeal to the Court of Appeal of Ontario was denied.[27] Thus, as far as Ontario is concerned it would appear that extra-provincial operations out of the province require a licence under the *M.V.T.A.* At the same time it would appear that *Kleysen* is still governing in the province of Manitoba. This anomalous situation could be corrected by a final determination of the issue by the Supreme Court of Canada. The same objective might be achieved through implementation of Part III of the *National Transportation Act.*[28] However, while Part III was declared in force as of May 15, 1970, the provisions of that Part only apply to persons or extra-provincial undertakings exempted under section 5 of the *M.V.T.A.*[29] To this date the power under section 5 has not been widely implemented. Furthermore, as a practical matter, it is doubtful that a great deal of international transport escapes economic regulation by this means. The fact remains that a carrier must obtain authority at one end of his line-haul or the other. For the most part, extra-provincial operations are subject to economic and safety regulation whether they move "into or through" or "out of" a province.

For a more detailed examination of the exercise of control over for-hire operations in Canada we turn now to an examination of current practices in the Province of Ontario. Under the terms of the *Public Commercial Vehicles Act and Regulation* 503,[30] the Ontario Highway Transport Board has been empowered to oversee commercial motor vehicle operating authorities. The Board, it should be noted, does not issue licences but furnishes a certificate of public necessity and convenience to

26. *Ibid.*, at 267. Two other cases in Ontario at the County Court level are noteworthy here. In *Regina v. Constable Transport Ltd.*, [1967)] 1 O.R. 357, McMillan, Co. Ct. J. followed the decision in the *Kleysen* case. Matheson, Co. Ct. J., however, in *Regina v. Beaney* [1969] 2 O.R. 71 was of the opinion that *Kleysen* was not binding in Ontario and refused to follow it.

27. [1970] 2 O.R. 116.

28. *Statutes of Canada*, C. 69 (1966-1967).

29. See above p. 11.

30. *The Public Commercial Vehicles Act*, R.S.O. 1960, c. 319 and *Regulation 503*, R.R.O. 1960, as amended to July 1967.

the Minister of Transport who may then issue a licence in accordance with the terms of the Board's certificate.[31] The discretion referred to in section 3(2) of the *M.V.T.A.* would appear, thus, to reside with the Minister in Ontario. As Laidlaw, J.A., remarked in *Re Reimer Express Lines Ltd.* " 'Provincial transport board' as defined by s.2(h) of the Act means 'a board, commission or other body or persons having under the law of a province authority to control or regulate the operation of a local undertaking'. It follows at once from my conclusion that the Minister of Highways has authority under the law of the Province of Ontario to control or regulate the operation of a local undertaking, that he is empowered by the *Motor Vehicle Transport Act* to issue a licence to a person to operate an extra-provincial undertaking into or through the province."[32]

From a practical point of view applications made pursuant to the *M.V.T.A.* are subject to the same general requirements as intra-provincial operations. In considering the application for leave to appeal in the *Reimer* case above, Laidlaw, J.A. was of the opinion that "it could not have been the intention of Parliament in passing the *Motor Vehicle Transport Act* in 1954, that there should be a distinction made in respect to a local carrier and an application in respect of a carrier seeking a licence to carry on an extra-provincial undertaking."[33] An applicant seeking to obtain a grant of authority to conduct motor carriage to or from points in Ontario and points in a state or states of the United States must be prepared to prove public necessity and convenience at a public hearing where other carriers whose interests may be affected can be present to object.

For the purposes of regulation, the Ontario Board's concept of foreign commerce appears broader than that expressed by the Interstate Commerce Commission. The difficulty experienced with commercial zone exemptions has not found its counterpart in the province. There are no provisions respecting such zones in the *M.V.T.A. The Public Commercial Vehicles Act*, on the other hand, exempts from regulation commercial vehicles confined in their operation to one urban zone, but defines an urban zone as "an area consisting of one urban municipality and lands adjacent thereto and within a distance of three miles therefrom but does not include any part of any other urban municipality."[34] Detroit-Windsor

31. *Ibid.*, s. 4.

32. 9 D.L.R. (2d) 42 at 46 (1957).

33. Unreported judgment quoted by Wells, J. in *Regina v. Northern Quebec Transport Ltd.* [1965] 1 O.R. 473 at 476.

34. *Op. cit.*, sections 1(i) and 1(m). The three mile provision does not apply to Metropolitan Toronto.

and other border twin-cities are considered separate urban municipalities and carriers wishing to operate between them must possess appropriate authority from the Ontario Board.

Grants of authority from both the I.C.C. and the O.H.T.B. are normally confined to points within their respective jurisdictions. A typical certificate from the Ontario Board would authorize the carriage of goods to the international boundary at specific border crossing points for furtherance to points in the United States of America as authorized, and return. Similarly, the I.C.C. generally takes the view that its jurisdiction "extends only to the international boundary" and does not restrict its grants to named points in Canada.[35] It must be understood, however, that the principles of "res judicata" or "stare decisis" do not apply to the decisions of either agency and both have deviated from this practice on occasion.[36]

In Ontario, a licence may be restricted to named points within the United States as the result of some agreement reached between the parties to the hearing. The I.C.C. in *N.J. Matlock Common Carrier Application*, while acknowledging that the "fact that the grant of authority made herein does not specifically refer to service to and from points on the international boundary should not be construed as an attempt on our part to regulate that portion of the proposed operation which will be conducted over Canadian highways", nevertheless issued a certificate permitting service between Seattle, on the one hand, and Fairbanks, Alaska, on the other.[37] A much broader principle was annunciated in *John Kostek Common Carrier Application*. In its determination, the Commission concluded that "so long as applicant here utilizes the highways of the United States to engage in an operation in foreign commerce, he is subject to our jurisdiction and, of necessity, may be limited by the terms of any authority granted even as to the points which may be served beyond the border."[38]

From a practical point of view, however, the exercise of extra-provincial jurisdiction by both the I.C.C. and O.H.T.B. is more the result of agreements and arrangements made between the parties to a hearing than a conscious attempt to interfere in each others affairs. More important from the standpoint of the flow of international traffic is the fact that a

35. See *Nadeau Transport, op. cit.*

36. Ontario denials are always given without prejudicing the right to reapply. On the American viewpoint see *Baltimore & Annapolis Railroad Co. v. Red Star Motor Coaches, Inc.*, 44 M.C.C. 243.

37. 81 M.C.C. 497 at 501.

38. 64 M.C.C. 813; 11 Federal Carriers Cases, ¶ 33,330.

certificate from the I.C.C. authorizing service to a point located on the international boundary encompasses the port of entry at such point and a carrier so certified may serve the international boundary.[39] Thus, a carrier authorized to serve Buffalo as part of an authorized route between Buffalo and New York City could also serve the international boundary at Buffalo. It would appear, however, that such service must be a "specific incident" to the carrier's line-haul service and that the carriage of traffic originated or interlined at Buffalo for furtherance to points in Ontario is precluded.[40]

In contrast, a certificate issued by the Ontario Board authorizing service, for example, from Toronto to Windsor does not include the right to serve the international boundary at Windsor and carriers wishing to perform such service must obtain the necessary authority from the Board.

One other factor affecting the movement of goods across the border and the need for operating authority will be briefly mentioned here. This concerns the statutory exemptions for certain types of commerce by motor carrier. *The Public Commercial Vehicles Act* of Ontario defines a public commercial vehicle in such a manner so as to exempt from the requirement of obtaining a certificate of public convenience and necessity "a commercial motor vehicle or trailer used only for the transportation from a farm or forest of goods other than live stock and milk that are products of such farm or forest".[41] Provisions in the *Interstate Commerce Act* are much broader. Section 203(b) exempts from certification the operation of school busses, taxicabs, farm vehicles used to transport produce to and from the owner's farm, vehicles operated by agricultural cooperative societies, transportation incidental to air, and more important vehicles carrying ordinary livestock, fish, agricultural and horticultural commodities.

A detailed discussion of what constitutes an exempt operation is beyond the scope of this paper. The important point, for our purposes, is the fact that the broad provisions in section 203(b) enable an Ontario carrier carrying such goods to operate within the United States without obtaining I.C.C. authority. In the opposite direction, an American trucker who is

39. *Kingsway Transports Limited—Purchase—Charles A. Kuhns Delivery, Inc.*, 85 M.C.C. 287 at 300.

40. *Red Star Express Lines of Auburn, Inc. et al. v. Maislin Brothers Transport Ltd.*, 1969 Federal Carriers Cases, ¶ 36,320. See also *Eugene Menard and Theresa Menard Common Carrier Application*, 67 M.C.C. 365 at 366-367; *Consolidated Freightways Inc., Extension—Seattle, Wash.*, 74 M.C.C. 593 at 596-597. Compare the *Kingsway* case cited above that distinguished both *Menard* and *Consolidated*, 85 M.C.C. 287 at 299-300.

41. *Op. cit.*, section 1(i).

not required to obtain a certificate from the I.C.C. for the carriage of the same goods within the United States is faced with the necessity of proving public convenience and necessity if he wishes to operate within the province.

In conclusion, it may be said that unless a carrier meets the requirements of one of the exemptions mentioned above, a grant of authority from both the I.C.C. and applicable provincial board in Canada is required for for-hire operations between the two nations. Furthermore, there is no assurance that a favourable finding by one agency will be followed by the other. In each case it is necessary to prove public convenience and necessity according to the standards and criterion demanded by the particular body you are applying to.

So far we have been concerned with entry control as administered by the I.C.C. and Canadian authorities. In both jurisdictions, however, there exist other considerations that bear heavily on the movement of goods between the two countries. Under the *Interstate Commerce Act*, carriers involved in foreign commerce must meet the prescribed requirements in respect of insurance, the designation of an agent of service of process, provisions covering maximum hours of work of employees, and safety of operations and equipment.[42] Tariffs must be filed, published and posted in a manner determined by the Commission, and the Commission has the power "to reject any tariff filed with it which is not in consonance with this section and with such regulations."[43] The Commission may require annual, periodic or special reports from all motor carriers and "shall at all times have access to and authority, under its order, to inspect and examine any and all lands, buildings, or equipment of motor carriers . . . and shall have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of any person controlling, controlled by, or under common control with any such carrier, as the Commission deems relevant to such person's relation to or transactions with such carrier."[44]

In addition, Canadian carriers operating in the U.S. are subject to the federal highway use tax.[45] Furthermore, a Canadian company engaged in

42. Matters in relation to qualifications and maximum service of employees and safety and operation of equipment have been transferred to the Department of Transport. See *Public Law 89-670*, October 15, 1966.

43. *Ibid.*, § 317.

44. *Ibid.*, § 320.

45. See John Munro, *Trade Liberalization and Transportation in International Trade*, Vol. 8, *Canada in the Atlantic Community*, University of Toronto Press, 1968, p. 155. Note, this tax is applicable on the purchase of a state plate. Quebec has reciprocity with New York State and a carrier from that province operating in the state is not subject to this levy.

trans-border operations, and using Canadian employees in the United States may find itself liable for unemployment and social security taxes under the *Federal Insurance Contributions Act*. While enforcement of these provisions has been sporadic, and union practices have done much to eliminate the use of Canadian drivers in the United States, it is still possible for a firm to face the imposition of this tax on all wages that can be attributed to employment in the United States. A recent decision of the Court of Claims has declared that an employer is subject to F.I.C.A. taxes "irrespective of what percentage of employee's total service" takes place within that country.[46] In essence, this amounts to a form of double taxation in that Canadian carriers make full contributions to the Canada Pension Plan and Unemployment Insurance scheme.

American domiciled carriers encounter similar difficulties when operating into Canada. As with the case of entry control, the practices in effect in Ontario will be used to illustrate some of these matters. As previously mentioned, the provisions of the *Public Commercial Vehicles Act* and *Regulation 503* are applied, in general, to applications for extra-provincial authority. Thus, while non-resident carriers are permitted to obtain insurance from an authorized insurer located in the state of their residence, the same limits apply as those required of intra-provincial operators.[47] However, all persons to whom an extra-provincial operating licence for the transportation of goods is issued shall be exempt from compliance with Section 13, 14, 15 and 16 of *Regulation 503* made under *The Public Commercial Vehicles Act* if bills of lading in the form required in the province from which the shipment originates are used and a copy of such bill of lading for each shipment is carried on the vehicle."[48] These sections relieve the carrier from requirements covering conditions that must be included in every bill of lading and conditions "deemed to be a part of every contract for the transportation of goods for compensation". Section 24 in respect to Tariffs of Tolls is similarly deemed not to apply to extra-provincial operations and rates and charges for the transportation of goods must be filed in the manner prescribed in section 25 to 29 regardless of the number of vehicles possessed by the licensee.

Two other provisions of Regulation 503 have an impact on United States carriers operating here. Section 20 empowers the Board to examine "all books, records and documents used in connection with the business of the holder of an operating licence". Under Section 21, applicants seeking

46. *Inter-City Truck Lines Limited v. The United States*, Docket #389-67. Decided March 14, 1969.

47. *Regulation 503*, section 17(1) and 17(3).

48. These conditions appear on the back of every "x" license.

operating authority are required to file with the Department "a certificate of the Workmen's Compensation Board certifying that he has provisionally complied with *The Workmen's Compensation Act*." While section 20 is seldom enforced, even in respect to domestic carriers, section 21 has the effect of requiring a carrier resident in the U.S. to maintain two systems of compensation for employees.[49]

Moreover, the *Ontario Corporations Act* requires a foreign corporation doing business in Ontario to register and obtain an extra-provincial licence.[50] Furthermore, under the provisions of the *Motor Vehicle Fuel Tax Act*, 1965, a carrier entering Ontario from another jurisdiction is subject to a tax on any diesel fuel carried in his vehicle in excess of 40 gallons.[51]

In addition to the above, there are customs procedures and restrictions to comply with. On the whole, it may be said that Canadian practices are more suited to the free flow of such commerce than those in existence in the United States. Goods inbound to Canada may be cleared at the border or at one of the approved inland Highway Sufferance Warehouses. The Sufferance Warehouses are a beneficial aid to the smooth flow of traffic in that they relieve congestion at the border and can offer the services of specialized customs personnel. American equipment may enter under either of two systems—the permit system or the post audit system. If proceeding under the permit system, the carriage of domestic freight is prohibited. Under the post audit system, the carriage of domestic freight that is "directly incidental to the international movement of the vehicle" is permitted but such freight can only be loaded once inbound and once outbound.[52] The term "directly incidental" would appear to encompass the movement of international freight from Buffalo to Toronto and the carriage of domestic freight from Toronto to Hamilton if the carrier is picking up a load for transport to the United States in Hamilton. It should be noted, however, that this provision does not apply where a carrier is hauling a U.S. trailer into Ontario under a "transferable plate". Transferable plate certificates issued by the Ontario Highway Transport Board restrict such movements to international freight only.[53]

Under both Canadian and United States regulations, vehicles carrying international freight may enter duty free. Furthermore, in the United

49. This does not apply to in transit operators.

50. R.S.O. c. 71, *Part IX, Extra Provincial Corporations*, s. 433 to 459 and R.R.O. *Regulation* 61, sections 44 to 48.

51. *Statutes of Ontario*, 1965, c. 76, s. 11.

52. See *Customs Memorandum D-3*, June 28, 1967.

53. For a discussion of transferable plates see below p.34.

States such vehicles may carry on their return journey domestic U.S. freight that is reasonably incidental to the vehicle's prompt return to Canada. The major difficulty associated with U.S. border practices arises from the fact that most goods must be cleared at the border. American regulations do provide for the clearance of goods at point of destination. To do so, however, places the carrier at the mercy of local customs inspectors. Delays of two days or more are not uncommon under this scheme. The result is that trailers must be loaded in such a manner as to allow for easy inspection at the port of entry.

Further burdens facing international trucking operations between Canada and the United States arise from the various state and provincial government regulations in respect to highway use taxes, and sizes and weight limitations. These provisions are complicated and involved. By way of example a carrier who in Ontario is permitted a maximum length of 65 feet and a gross weight for a five-axle combine of 74,000 lbs. cannot operate this type of equipment in New York State where he is restricted to a length of 55 feet and a gross weight of 71,000 lbs.[54] Again, doubles may be used in Illinois, New Jersey, Delaware, Maryland, New Hampshire and on designated highways in Michigan, but not in New York, Pennsylvania, Rhode Island, Vermont, Connecticut, Maine or the District of Columbia.[55] The maximum allowable gross combination weight in Ontario is presently 126,000 lbs.; in Michigan, on designated highways, 136,000 lbs.; and in New York 73,280 lbs. At the same time, Ontario imposes no third structure taxes while New York levies a state highway use tax and Ohio a truck axle-mile tax.[56] While these restrictions vary as much between the individual states as they do between the various states and Canadian provinces, they nevertheless present serious obstacles for trans-border operations.

The above illustrations are by no means exhaustive of the regulations, procedures and requirements that carriers in both the U.S. and Canada face when entering a foreign jurisdiction. They do, however, indicate the

54. For restrictions on sizes and weights in Canada see Automotive Transport Association of Ontario (Inc.), *Restrictions on Motor Vehicle Sizes and Weights in Canada*, Corrected to December 31, 1969. New legislation to be effective March 1, 1971 will further increase the permissible maximum gross in Ontario. The U.S. data is taken from American Trucking Associations, Inc., Section of State Laws, Reciprocity and Taxation, *Summary of Size and Weight Limits and Reciprocity Authority*, in effect as of July 31, 1969.

55. *Ibid.*, thruway exception in Massachusetts and New York.

56. The New York Highway Use Tax is imposed on trucks, tractors, trailers and semi-trailers with a gross weight in excess of 18,000 lbs. In Ohio, commercial motor vehicles with three or more axles are subject to the truck axle-mile tax. See Commerce Clearing House, *State Motor Carrier Guide*, Volume 1, Taxes and Fees, ¶ 8305 and ¶ 8341.

complexities that face those who venture forth, even after operating rights have been obtained. The problems involved in meeting these various standards not only involve the outlay of significant sums of money, but are difficult for the individual carriers to administer. Taken together they do much to off-set any benefits that might be expected to flow from the ability to operate a single line-haul between the two countries.

Regulatory policy and these numerous other requirements have acted as a definite break on de-nationalizing cross-border trucking activities. Very few Americans can now provide a through service into Ontario, and while a considerable number of firms possess I.C.C. authority, the certificates that the latter hold restrict their movements to immediate border points or areas within a limited radius of such points. Typically, goods destined for points in the United States beyond the border zone are taken to the boundary by Canadian carriers where they are interlined or interchanged at the customs compound or at one of the participating carriers' terminals. The reverse is true where the movement occurs in the opposite direction. The most common characteristic of this traffic is the two or three line haul.

To this point we have been concerned with the carriage of goods from points in the U.S. to points in Canada or from points in Canada to points in the U.S. There exists, however, a third movement of traffic that is significant for both countries. This involves traffic in transit and has been the subject of international agreement between the two nations. The *General Agreement on Tariffs and Trade* stipulates that:

> "There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods, of vessels or of other means of transport."

If entered at the proper customs house, "such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered."[57]

57. See *Article V, Freedom of Transit*, para. (2)(3).

American practice, in general, complies with this agreement. Such traffic is not subject to full regulation by the I.C.C. While carriers must file evidence of insurance, designate an agent for service of process in each state through which they pass, and meet safety standards, no certificate of public convenience and necessity is demanded.[58]

In contrast, Ontario government officials originally adopted a very restrictive attitude in respect to such movements. Fearful that the province would become a U.S. truck corridor for the carriage of goods between Michigan and New York, the right to conduct in-transit operations was given very reluctantly. Indeed, it was not until 1952 that operations in transit through the province were placed on a regular, firm basis. The debate on second reading of Bill 129 was indicative of the seriousness with which the government viewed this matter. The purpose of the measure, Premier Frost noted, was "to give limited powers to the government to issue very temporary permits for travel across the province. Our purpose, of course, of this, is to limit it pretty generally to defense requirements . . . There are ways and means of meeting a situation, where we can restrict traffic, where we can get paid for it, and where we can set the days and times."[59] The acting Minister of Transport took a similar view. He assured the House "that the regulations will be very strict . . . that they will require to have a licence to operate in Ontario, and they will also have to pay the gasoline tax on the amount of gas it is estimated would be used on that journey." He reminded the Legislature that the amendment was temporary and could be brought "to a very sudden end at any time, if they do not live up to the regulations."[60]

The class "L" licence that emerged was a very confined one. It authorized the carriage of goods in transit through Ontario between the states of Michigan and New York but only over the route or routes specifically spelled out in the licence. The maximum number of trips permitted on any one day was limited, and operations "on a holiday, after 12 noon and on Monday, Tuesday, Wednesday, Thursday or Friday preceding a holiday; or on a Saturday after 12 noon, during the period from and including the 1st day of April to and including the 31st day of October" were prohibited.[61]

Over the years there has been a steady erosion of these restrictions. It

58. 49 U.S.C. § 303 (a)(11). See also *Information Bulletin #162-61 of the Michigan Intra-State Motor Traffic Bureau, Inc.*, November 6, 1961.

59. *Debates and Proceedings, Twenty-Fourth Legislature of Ontario*, Vol. 31, D1-G7 at E3-4. *An Act to Amend the Public Commercial Vehicles Act.*

60. *Ibid.*, F2-3.

61. See *Regulation 502*, R.R.O. 1960.

would now appear that the test of public convenience and necessity for a class "L" licence will be met by proof that the applicant has been authorized by the federal government to carry goods in bond, and that the Interstate Commerce Commission "has approved of the said applicant operating public commercial vehicles between areas in appropriate relationship to the proposed route through Ontario."[62] The appropriate bond and cargo and liability insurance must be carried, and the routes that may be used are still prescribed. A fixed charge is levied per trip and "L" licences must be renewed on an annual basis. However, operations are now prohibited only on holidays.[63]

Indicative of this new flexibility is the increase both in licensees and number of trips made since these operations were authorized. In 1953, 21 licensees made a total of 12,050 trips. By 1970 the corresponding figures were 74 licensees and 63,400 trips.[64] Moreover, the vast majority of applications for "L" privileges are not the subject of public hearings. Of 15 such applications made in the years 1967 and 1968, 14 were considered in chambers.[65] Furthermore, all 15 applications were granted. The fears and apprehensions present in 1952 would appear to have been largely allayed.

## II

The above discussion completes our analysis of the parameters in which for-hire trucking across the Canada-United States boundary operates. As we have seen, there are very few matters on which legislation and control in one jurisdiction compliments that in effect in the other. This applies at all levels—from the obtaining of the licence, to size and weight limitations on vehicles, and the incidence of fees, permits and highway taxes. We turn now to a more detailed appraisal of government policy in respect to these movements.

Generalizations concerning the approach and policies followed by the regulatory agencies when considering applications for trans-border rights are extremely difficult to make. Cases may be found and statements cited that clearly contradict one another. It must be remembered, however, that these agencies are expected to operate with great flexibility when bringing their expertise to bear on the issues before them. In the words of Mr.

62. *Ibid.*, s.3. See also certificate issued to *Ringle Express, Inc.* dated June 8, 1970.

63. O. Reg. 70/65. For the purposes of regulation, the term "holiday" includes Sundays.

64. *Special Report No. 4-1970, Special International Statistics* Year ending March 31), *prepared by the Automotive Transport Association of Ontario, June 10, 1970.*

65. *See Annual Report of the Ontario Highway Transport Board* for the years ending December 31, 1967 and December 31, 1968.

Justice Fortas, they "do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adopt their rules and practices to the Nation's need in a volatile changing economy. They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday".[66]

Nevertheless, a review of I.C.C. findings indicates a willingness on the part of the Commission to look at the proposed operation in its entirety when reaching a decision on an application involving international transport. On more than one occasion it has gone beyond the principle expressed in the *Nadeau* case and considered factors in addition to those which affect the United States side of operations only.[67] This was true in the *Kostek* case cited above.[68] Moreover, contrary to what John Munro indicates in his book, *Trade Liberalization and Transportation in International Trade*, the rationale expressed in *Clarke Robertson's Transportation Limited, Extension—Petroleum Products*, was followed on re-examination in *Joseph Balazs Sr., Common Carrier Application.*[69] As Commissioner Murphy stated, "while we are well aware that our regulatory jurisdiction does not extend beyond the borders of the United States, we, of necessity must look to the overall substance of the proposal, that is, both the interstate and foreign aspects, in order to determine whether authority within the United States is required and, if so, to what extent. For to deny an application without giving any consideration to the totality of the proposal could leave foreign consignees helpless if the traffic is destined to points beyond our border and where, as here, none but the applicant can meet shippers reasonable transportation requirements."[70]

To the same effect was the decision of Division I in *Imperial Truck Lines, Inc., Common Carrier Application.* There the Commission rejected the contention of respondents that it could not consider any portion of the operation taking place beyond the boundaries of the United States and concluded that "we have frequently considered the transportation situation in a foreign country in determining whether authority should be granted, or is necessary, to conduct that portion of a through operation in foreign commerce taking place within the United States."[71]

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66. *American Trucking Associations, Inc., et al. v. Atchison, Topeka and Santa Fe Railway Co. et al.*, 387 U.S. 397 at 416.

67. See above p. 7.

68. *Ibid.*, p. 16 and *Consolidated Truck Lines, op. cit.* at 676.

69. Munro, *op. cit.* p. 144-5 and 98 M.C.C. 522.

70. 98 M.C.C. 522 at 527.

71. 1968 Federal Carriers Cases, ¶ 36,188 at 36,188.01.

The facts of each individual case and the class of service proposed would seem to play a more significant part in the determination of the Ontario Highway Transport Board. On occasion the Board had recognized the advantages of a single line haul. In *Maislin Transport Incorporated* the Board found that public necessity and convenience required such service despite evidence that the applicant was in serious financial difficulty.[72] More recently; in the application of A.J. (Archie) Goodale, the Board was "inclined to agree with Mr. Sommerville's* argument that a through service is of considerable benefit to the public."[73]

It should be remembered, however, that at the time of the *Maislin* application there was only one other carrier authorized to provide a similar service, and that the *Goodale* proceeding involved the very specialized "K" type carriage "for the transportation of heavy-duty machinery, boilers, transformers and similar equipment that require special loading devices and cannot be carried on a standard truck, trailer or semi-trailer."[74]

The Board's recent decision in the application of *Roberval Express Ltee.* is, perhaps, more indicative of its approach to this question.[75] There the Board concluded that to grant the application to establish a through service between points in the province of Ontario and points in the province of Quebec would be tantamount to its going on record "that interchange of trailers and transfer of goods no longer has a place in the transportation complex of this country".[76] Indeed, before both the I.C.C. and Ontario Board, it would seem that an applicant has a duty to show that interline or interchange facilities are unsatisfactory before "through" rights will be conferred.

In recent years, two decisions of the Ontario Highway Transport Board have dealt at length with applications to provide extensive through service between the United States and the province. *Transamerican Freight Lines Incorporated* concerned the grant of authority to carry general commodities from points in the United States to all major points in southwestern Ontario.[77] Hearings on the issue were conducted over an extensive period of time, and the application was opposed by most of the

72. *Application of Maislin Transport Incorporated.* Decision June 15, 1956.

73. *Application of A.J. (Archie) Goodale.* Decision March 5, 1970 at p. 3.

74. *Regulation 503, op. cit.*, s. 2(1)(9).

75. *Application of Roberval Express Ltee.* Decision dated July 15, 1970.

76. *Ibid.*, p. 2.

* T.J. Sommerville of Rapoport & Sommerville, Toronto, Canada.

77. *Application of Transamerican Freight Lines, Incorporated.* Decision dated August 24, 1965.

major carriers of international traffic. In its decision the Board made the following remarks. It recognized that "primarily when one talks about international freight moving by truck we are faced with a transfer problem at the border" and that "the time in transit on freight moving between southern Ontario and major eastern United States points has been highly excessive." These delays, declared the Board, could not be attributed solely to the time consuming function of clearing customs.[78] The flexibility available to domestic industry on intra-provincial services, it concluded, was "not being provided by the transportation industry on the movement of international freight between the United States and Canada", and it was "difficult to escape the fact that southern Ontario and especially the eastern portion of the United States are closely integrated in an economic sense and a significant public benefit could be achieved by providing for a more efficient movement of goods between these two major economic areas."[79]

For these reasons, the Board granted the application in substantially the terms applied for. The decision, however, was appealed by the respondents to the Ontario Cabinet. The Cabinet, to this day, has yet to render a final determination in the matter and no vehicles have run under this authority.

Of equal interest is the fate of the *Application of Automobile Transport, Inc., et al.*[80] This application was brought shortly after the conclusion of the Canada-United States Auto Pact and concerned the carriage of wheeled vehicles for and on behalf of the Ford Motor Company from points of entry on the international boundary to points in the Province of Ontario. In this proceeding the Board once again recognized that "a single line service is preferrable to one in which interlining with a connecting carrier is required," but noted that "other factors, however, have to be considered which may or may not out-weigh, the benefits which the public, including the transportation industry, will derive from a through single line service." One of these factors was whether Canadian carriers would be able to obtain "Interstate Commerce Commission authority to operate in the United States, and if so, would the various State requirements make it impossible for them to operate within the United States without a large financial outlay?"[81] Moreover, the Board found that "whereas damages and delays inevitably occur in

78. *Ibid.*, p. 4-5.

79. *Ibid.*, p. 7.

80. *Application of Automobile Transport, Inc.; E. and L. Transport Company; Nu-Car Carriers, Inc.; and K.W. McKee Incorporated.* Decision dated Dec. 5/66.

81. *Ibid.*, p. 3-4.

any motor vehicle transportation system, the damage and delays are not of such proportion as to warrant the change of the present policy of having American carriers operate in the United States of America, and Canadian carriers operate in the Province of Ontario. This policy would appear to be in line with that of the Interstate Commerce Commission policy, whereby very few Canadian carriers can penetrate beyond the municipalities of the international boundary."[82]

The fate of these two applications would tend to indicate an overly restrictive policy on the part of Ontario officials. The temptation to draw such a conclusion, however, should be tempered by some practical considerations. The references to I.C.C. practices quoted above were only part of the considerations entertained by the Board in arriving at its conclusion to deny the application of *Automobile Transport*. At the time of the hearing, the impact that the Auto Pact would have on the economy of the province and the effect on presently licenced carriers was far from clear. In addition, Ford's two main competitors, General Motors and Chrysler, had not voiced any criticism of the present scheme. Moreover, the Board was of the opinion that with better use of "transferable plates" and more cooperation between shippers and carriers the deficiencies encountered by the company could be overcome.[83] In view of the Board's policy to consider each case on the particular facts before it and in the absence of further evidence, it would be unjustified to raise the fate of these two cases to the position of principles of general application.

From a more positive point of view, the provision by the Ontario government for the issuance of transferable plates has contributed greatly to the smooth flow of goods from the United States into the province. A carrier wishing to obtain these plates must make application to the Board. As a general rule, only one such plate will be granted for every five power units registered by the applicant.[84] Possession of the plates allows the holder to hook on to an American trailer and haul that trailer into Ontario without the trailer being subject to further licence or carrier fees. Problems associated with the physical transfer of freight at the border are, thus, eliminated. No similar scheme exists in respect to Canadian trailers entering the U.S. In the calendar year 1969 some 44,713 U.S.-owned trailers moved to and from the border by this means.[85] The major drawback to this scheme is that such movements are restricted to the

82. *Ibid.*, p. 5.
83. *Ibid.*, p. 4-5.
84. See Vice-Chairman Kingsmill's remarks in the *Application of Andres Bell Construction Ltd.* Decision dated November 15, 1967.
85. *Special Report No. 4-1970, Special International Statistics*, op. cit.

carriage of international freight only, and the pick-up and delivery of domestic goods is prohibited.

Even if the ability to provide a single line service were achieved, the international trucker would still face the prospect of dual registration fees. This results from the fact that only very limited reciprocity agreements are in effect between Ontario and the various states in the United States. Under Section 10 (e) of Ontario *Regulation 227* tractors or semi-trailers registered in a reciprocating state and owned by a resident of such state are exempt from registering in the province when operating within 20 miles of the point of entry between Michigan and Ontario or between points of entry located in the Niagara Frontier. For all other border points the exemption is 10 miles.[86] Michigan, on her part, permits Ontario trailers to operate within an area extending 8 miles beyond the city limits of Detroit, Port Huron and Saulte Ste. Marie. The corresponding exemption in New York is 10 miles.[87] These agreements, however, do not apply to power units. In addition to the above, all three jurisdictions exempt from registration commercial vehicles, trailers or combinations thereof transporting objects and materials used in cultural or artistic exhibitions provided the sole object of such presentations it not financial gain.[88] With these exceptions, any substantial through operation requires full licensing of equipment in both the home jurisdiction and point of destination.[89]

This situation, however, will be radically changed when Ontario's new vehicle registration scheme comes into operation April 1, 1971. The new plan will do away with registration fees for trailers. Regulation 227 has been amended by Ontario regulation 19/71 andnow proviedes

> "10.(a). Where a trailer is being operated into or out of Ontario and displays a valid registration plate issued by another province or state or where the owner is in compliance with the provisions of the law of the province or state in which he resides in respect to registration of trailers, the trailer is exempt from registration".

Transferable plates will no longer be required and U.S. trailers will be permitted free entry into the province.

The most recent detailed discussion of international for-hire transportation between the two countries can be found in *Ex Parte MC-*

86. R.R.O. amended to September 1969.

87. See C.C.H., *State Motor Carrier Guide*, Vol. 1 at ¶ 9523 and ¶ 9533.

88. *Ibid.*, and *Regulation 227*, S10 (f)(iii).

89. In this regard, it should be remembered that widespread agreements exist between the various states that provide for some form of reciprocity in respect to registration fees.

*73.* This was a proceeding instituted by the I.C.C. to consider whether "public convenience and necessity considered on a national basis, require that all common carriers of property by motor vehicle, regardless of their country of origin, be authorized by appropriate procedures to conduct for-hire operations between ports of entry on the United States-Canadian and the United States-Mexican international boundary lines, on the one hand, and, on the other, the nearest practical point in the United States at which such carriers' equipment or traffic may be interlined or interchanged with carriers subject to this Commission's jurisdiction."[90] It should be noted that it was not the intention of the I.C.C. to de-regulate international carriage but merely to overcome the inhibiting affect of the *Fess* decision referred to above.[91] The Commission's concern centered on the border area and its immediate environs only. Authority for extensive penetration of the United States would still have to be established in the usual manner.

Some 42 parties from both Canada and the United States made submissions in this matter. Of these, thirty-seven registered their opposition to the proposed rule. The most common arguments employed were that the Commission lacked authority to institute such a proceeding; that the delays that did occur at the border were due entirely to customs procedures; that adoption of the proposal would tend to increase the number of carriers in international service, add to the present congestion and further hinder the flow of freight; and that the rule should not be adopted without assurance that Canadian authorites would reciprocate.[92] In short, it was alleged that there had been no complaints from shippers or receivers in respect to international traffic and that existing interline facilities and arrangements were quite adequate to handle present demands for service.[93] Customs regulations, labour union restrictions, equipment restrictions and licencing requirements were all looked on as more important impediments than the need for certification.[94]

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90. *Transfer of Equipment or Traffic at or Near Ports of Entry on the United States-Canadian and the United States-Mexican International Boundary Lines,* 110 M.C.C. 730 at 731.

91. *Ibid.*, p. 732-733.

92. See initial statements of *Maislin Bros. Transport Limited* and joint statement of *Bulk Carriers Limited, Control Transport Inc., Inter-City Trucking Service, Inc., Liquid Cargo Lines, Ltd., Ogden & Moffet Co., and Overland Express Ltd.*

93. *Ibid.*, see also the joint statement of *Consolidated Truck Lines Limited, Direct Winters Transport Limited, Inter-City Truck Lines Limited, and Canal Cartage (1968) Limited.*

94. *Ibid.*, and statement of *The Niagara Frontier Tariff Bureau, Ex Parte MC-73,* p. 752-753.

In determining that the adoption of the proposed rule was unwarranted, the Commission made the following remarks. It did not feel that the difficulties "allegedly met by carriers in foreign commerce" could be remedied by the agency, and noted that the "many delays in crossing the border admittedly are caused, not by the transfer of lading from one trailer to another, but from the time consuming processes of thorough customs inspection." Those that might have been expected to benefit most by the new rule had been singularly lacking in participating in the proceeding. Only a single shipper and "one Canadian carrier had filed a statement in support of the proposal." The only conclusion possible was that no "substantial adverse effect is being or will be suffered by the motor carrier industry or by any other interested party under the present scheme of regulation."

The Commission was mindful of the fact that "traffic cannot today cross our international borders as easily as it can cross state lines" and that "it is in the public interest to foster international trade between this country and our neighbours." Nevertheless, carriers wishing to operate in foreign commerce would still be required to comply with the "applicable rules of practice and procedure, including the filing of certificates of shipper support, and a showing of fitness and public convenience and necessity."[95]

The submission and findings arrived at in *Ex Parte MC-73* serve to underline the conclusion that there does not appear to be any intense demand by the carriers themselves—both Canadian and American—for extensive through rights. This view is supported by the fact that very few broad applications involving such grants have been made to either agency. Moreover, despite the numerous controls and regulations facing trans-border trucking operations, it would seem that more and more freight is moving across the boundary by this means. In terms of dollar value, the percentage of domestic exports moving from Canada to the United States by motor vehicle has shown steady growth in recent years. In 1964 this mode accounted for 22.6% of all such exports. By 1968 this percentage had grown to 37.1%.[96]

In addition, some of the larger carriers of international freight have found it convenient to purchase subsidiary operations within a foreign jurisdiction. While both the I.C.C. and Ontario Board have power to control such transactions, there are no prescriptions forbidding acquisitions of motor carriers by non-residents in the statutes and

95. *Ex Parte MC-73*, op. cit., "Discussion and Conclusions", p. 739-44.

96. Automotive Transport Association of Ontario, *Special Report No. 3, Exports by Mode of Transport (Based on dollar value) 1963-1968.*

regulations governing either agency. Under the *Interstate Commerce Act*, Canadian purchases of American firms are subject to the same standards as domestic transactions.[97] Similarly, the Ontario Board has never exercised its powers under sections 4 and 5 of the *Public Commercial Vehicle Act* to prevent an American concern from establishing a base in the province on the grounds of nationality.[98] Direct Winters Transport Limited, Canadian Freightways Eastern Limited, and Wallace Transport Co. Limited are examples of trucking operations in Ontario that are the products of purchase by large United States concerns. The Overland Express Limited, on the other hand, has wholly-owned subsidiaries in the states of Michigan and New York.

It seems clear that an efficient through service cannot be achieved through the efforts of any one agency or the change in any single piece of legislation. While on occasion it has been recognized in both the United States and Canada that single line service is preferable to two or three line haul, and that goods moving internationally face impediments not associated with interprovincial or interstate traffic, neither the I.C.C. nor the Ontario Highway Transport Board has been able to effect any significant improvement in present practices. Their remedial power goes only part way to solving this problem. With the host of other laws and regulations impinging on trans-border trucking, and with present carriers content to leave things as they are, it is doubtful that any significant changes will be effected in the near future. Full implementation of Part III of *Canada's National Transportation Act* would simplify the present regulatory structure in Canada, but at the present time the government's intentions in this regard cannot be evaluated. In the final analysis, it may be that the costs and restrictions imposed by state and provincial rules and regulations are more important barriers to international for-hire transportation than the policies and procedures followed by the various regulatory bodies. Until such time as sufficient information is available to weigh all of these factors, the effect of wholesale deregulation cannot be conclusively determined.

97. On this point see *Ryder Truck Lines, Inc.—Control and Merger—Harris Express, Inc.*, 104 M.C.C. 328 at 332-333.

98. *Public Commercial Vehicles Act*, op. cit.