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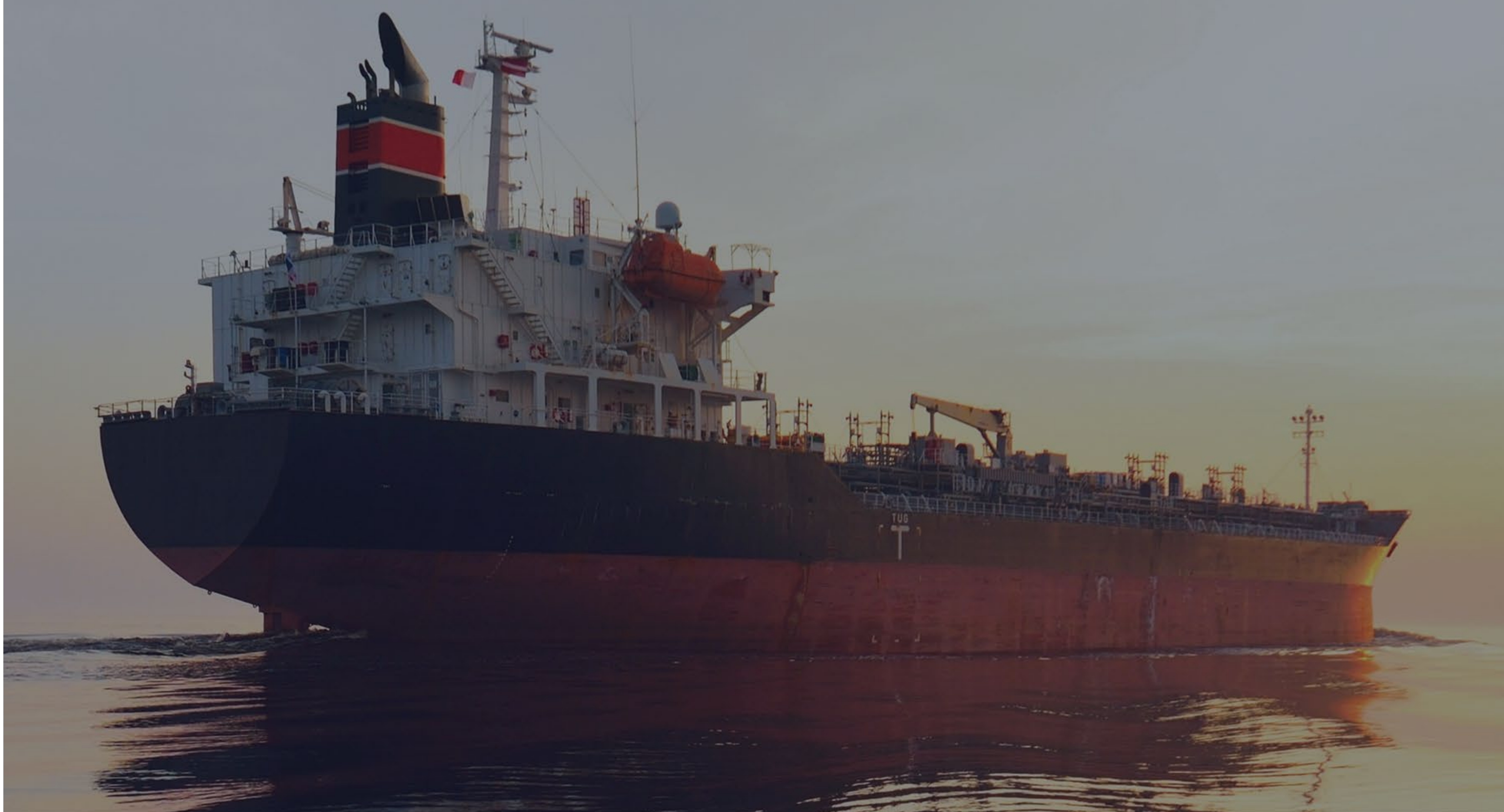
International Trade Solutions

IMPORTING A VESSEL INTO CANADA



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REFERENCE GUIDE FOR VESSEL OWNERS AND OPERATORS

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1 INTRODUCTION

The following information is intended to provide vessel owners and operators with an overview of the regulatory and legislative environment and processes & procedures required when planning to import vessels into Canada's coasting trade.

1.1 History and Application of the Coasting Trade Act

The Coasting Trade Act, legislated in 1992, was established to broaden the geographic limits of the Canada Shipping Act beyond the Territorial Sea (12 Mile limit) to include the Continental Shelf when involving petroleum exploration and/or production activities. As the majority of commercial coasting trade activity is within this expanded zone, and as the regulations are unique in the global perspective, we provide detail below of its history and application. For coasting trade activity within the original Territorial Sea, the same legislation applies.

Prior to reviewing specific regulations, it is beneficial to briefly review the Government of Canada's position with regard to offshore petroleum exploration on the continental shelf.

In June 1983, the Canadian government declared that the Continental Shelf Zone or 200 nautical miles off Canada's shores (whichever area is the greater) were to fall under the purview of the Customs and Excise Offshore Application Act. This legislation effectively ensured that offshore petroleum exploration and development would fall under the provisions of the Customs Act.

As a result, Mobile Offshore Drilling Units (MODU) and support vessels are treated as though they operate inside Canada's internal waters and are subject to customs duty and tax. However, in February 2014, as part of Economic Action Plan 2014, the Government of Canada announced the elimination of tariffs on MODUs used in offshore oil and gas exploration and development.

The initial coasting trade legislation spawned a series of additional legislation from other government departments and agencies to further regulate the offshore petroleum industry. Changes, in addition to the Customs Act, include:

- Coasting Trade Act
- Customs and Excise Offshore Application Act
- Immigration and Refugee Protection Act
- Excise Tax Act
- Canada Shipping Act

Each of these legislative areas addresses operational and commodity tax considerations for vessels; additional legislative changes were also effected in areas relative to taxation. Therefore, we recommend consulting with a financial advisor on income taxation matters as well as Canada's participation in International tax treaties.

The following sections provide a brief overview of the regulations that govern the permanent or temporary importation of vessels.

2 THE COASTING TRADE ACT

The Coasting Trade Act (CTA) governs the operation of vessels in Canada's coasting trade, including Canada's Continental Shelf Zone, or 200-mile limit, whichever is greater.

The CTA limits vessel operations within these waters to Canadian-registered vessels that have been Canadian-built or duty-paid. Provisions of the Act provide for the temporary entry of vessels, provided no Canadian registered vessel is available or capable to perform the required tasks. The CTA prioritizes the first right of refusal to any work in Canada to:

- Canadian-flagged, duty-paid or Canadian-built vessels;
- Canadian-flagged, non-duty paid vessels;
- Foreign vessels.

No preference is given to duty-paid or Canadian-built vessels unless registered in Canada.

Section 4(1)(c) of the Coasting Trade Act requires that vessels entering Canada for temporary periods must pay applicable duty and tax under provisions of the Customs Tariff and Excise Tax Act.

2.1 Coasting Trade Licence Application Process

The Canada Border Services Agency (CBSA) administers the Coasting Trade Act and, therefore, when a foreign or non-registered duty-paid vessel wishes to work in Canada, an application must be submitted to this authority. This application is reviewed by the CBSA and the Canadian Transportation Agency. The success of an application is dependent upon the suitability and availability of any Canadian-registered vessels to perform the scope of work.

Authorizations for temporary importation are issued for a maximum period of one (1) year with the potential for yearly renewals being filed prior to the expiration of the current authorization.

2.2 Special Exemption for Seismic Vessels

As of June 29, 2012, a special exemption was included in the Coasting Trade Act that removed the requirement for foreign seismic vessels to obtain a Coasting Trade Licence when undertaking exploration for oil and gas resources on the Continental Shelf of Canada. **Note:** The requirement for seismic vessels to obtain a Coasting Trade Licence still exists for activities conducted in the Territorial Seas of Canada.

2.3 Special Exemptions Under CETA

As of September 21, 2017, under the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), the Government of Canada agreed to allow European Union entities to provide the following services without the requirement of a Coasting Trade Licence:

- Feeder service between the Ports of Halifax and Montreal
- Repositioning of empty containers
- Dredging services

For more information on vessel importations under CETA, please contact us at +1 800-763-2255 or via email at info@pfcollins.com

3 THE CUSTOMS AND EXCISE OFFSHORE APPLICATION ACT

With the introduction of the Customs and Excise Offshore Application Act, CBSA jurisdiction was extended to the Continental Shelf Zone. This extension included the requirement to pay any applicable duty on vessels used to support drilling and production operations. Where a vessel operates, the duty rate is typically 25% of the fair market value, subject to any free trade agreements that may be applicable. Customs regulations provide for the pro-rata payment of duty for each month the vessel is in Canada, provided temporary use authorization has been received under the Coasting Trade Act.

In addition to the duty cost for temporary importation, Goods and Services Tax (GST) is assessed at a rate of 5% of the monthly duty-paid value of the vessel. The GST is a business transfer tax, similar to the European VAT, and is fully refundable when the importer is a GST-registered entity.

4 OTHER CONSIDERATIONS

4.1 Immigration for Foreign Crew and Project Personnel

The Government of Canada has also extended the jurisdiction of the Immigration and Refugee Protection Act to cover the areas of the Continental Shelf. This extension requires that all personnel working in the area must obtain a work permit from Immigration, Refugees and Citizenship Canada prior to any employment. Where Canadians are available to perform the work, it is expected that they will have first opportunity to fill the required positions.

Service Canada is a government department that issues Labour Market Impact Assessments (LMIA) for crew onboard foreign vessels approved by CBSA on a Coasting Licence. As part of the LMIA approval, advertising may be required for many of the positions onboard, with limited variances to the advertising requirements. Once the advertising campaign is completed, applications for foreign workers must be submitted. This should include a succession plan that would see Canadian personnel gradually replace more senior foreign personnel during the period of the contract.

Regulations under Service Canada require that foreign workers working in Canada be paid at least the minimum standard wage rates for similar occupations in Canada. In addition, these employees are required to pay income tax in Canada on these earnings. This may be a contentious issue with foreign workers who, often when employed on international vessels, are subject to minimum, if any, taxation.

When vessel operations are related to offshore oil and gas exploration or production, petroleum directorates, such as the Canada Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB), and the Canada Nova Scotia Offshore Petroleum Board (CNSOPB), may require that local benefits provisions be met; these requirements may be over and above the requirements from Service Canada.

4.2 Excise Tax on Fuel

Another important cost consideration for vessel operation is fuel purchases. In Canada, a Federal Excise Tax of $0.04/L (litre) Canadian Dollar (CAD) is imposed on marine diesel fuel. In Newfoundland and Labrador and Nova Scotia, additional Provincial excise fees apply: $0.035/L CAD in NL and $0.011/L CAD in NS. These taxes are added to the normal domestic fuel price.

4.3 Transport Canada Inspections

Upon arrival of the vessel at its first port of call in Canadian waters, the vessel will require inspection to comply with the requirements of the Department of Transport, Ships Safety, Coast Guard and the C-NLOPB/CNSOPB. This inspection is a pre-requisite for the issuance of a Coasting Trade Survey Certificate (SIC 10), which is required for any vessel seeking to obtain a Coasting Trade License. Fees for this inspection service vary according to vessel size (GRT). It is advisable to have early discussions with these departments to ensure that Marine Operations Managers are fully aware of their requirements.

It is advisable to send to Transport Canada a copy of the vessel class certificates for their review prior to the inspection of the vessel. PF Collins can present them to the Ships Safety Division on your behalf.

5 SUMMARY

Whether you will be temporarily importing a vessel for project operations in Canada or are planning to register a vessel in Canada, there are many regulations to consider. We hope this guide has been helpful in providing an overview of the legislative requirements for the importation of vessels into Canada's Coasting Trade.

It is important to recognize that the mandate of the Canadian Transportation Agency is to protect the interests of Canadian vessels to ensure their employment wherever they are available and capable to perform the scope of work. In making their decision, the suitability and availability of the vessel to perform the work will carry the most weight; little consideration is given to the economic and financial impacts of their decision.

PF Collins has handled the majority of applications for vessel imports into Canada's east coast coasting trade for the past three decades. We are pleased to provide additional information or address any questions or concerns in further detail and look forward to putting our expertise to work for you.

FOR ADDITIONAL INFORMATION OR QUESTIONS, CONTACT US:

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