



Québec City, December 1, 2000

Mr. Barry F. McKay, Commissioner
International Commission on Shipping
2689, Dupont Street
Ottawa (Ontario) K1V 8N2

Dear Sir:

I received your invitation to participate in the International Commission on Shipping, whose main objective is "...to investigate and make recommendations on the continuing problem of substandard shipping."

You mentioned in this invitation that you wished to receive our submissions on or before the middle of July, for the purpose of possible meetings in Montreal in September 2000. Unfortunately, various important matters that we had to deal with prevented us from meeting this deadline. However, we find that the matter of substandard shipping is of great significance and, notwithstanding our late response, we wish to express our comments on the subject.

I. GROUPE DESGAGNÉS INC.

Groupe Desgagnés Inc. is a small, privately owned conglomerate whose main business involves it in numerous aspects of marine transportation in Canada. With annual revenues of around \$100 million, the company provides direct employment for 400 to 750 people depending on the season. You will find enclosed our corporate profile in Appendix "A," along with our corporate brochure.

With the exception of our ship *M/V Anna Desgagnés*, all vessels that we own or operate permanently fly the Canadian flag. Most of our operations take place in Canada, except in the winter season when we find ourselves obligated to expand into international markets.

Canadian regulations and standards are very strict, which prevents the Canadian maritime shipping industry from being competitive with convenience flags. In addition to many human and environmental problems, substandard shipping also creates unfair competition.

II. SITUATION ANALYSIS AND RECOMMENDATIONS

We are in agreement with most of the facts listed in your "Information Paper." Therefore, we will not go through each one individually, but will rather make general comments on these issues.

A) Adequacy of regulations

As you mention, sufficient marine safety and environmental standards already exist in the shipping industry. We do not need to create more regulations for the vessels themselves; the problem is not in the rules themselves, but rather in respecting them. We must make sure that all regulations are applied consistently.

The objectives of the United Nations Convention on the Law of the Sea (UNCLOS) concerning flag states and their obligations in respect of vessel seaworthiness, standards for crews and protection of the marine environment are clearly defined. We do not need to amend or add more rules; again, the problem lies with compliance. Instead, we must make sure that the rules are regularly enforced.

The International Labour Organization (ILO) has developed various conventions in regard to the rules governing crew members. These standards seem once again quite adequate; but again compliance needs to be tightened.

We also observe the same situation with shipbuilding, maintenance and operations rules developed by the International Maritime Organization (IMO)—adequate, but lacking in firm application.

Therefore, we are in agreement with your hypothesis; the problem is not in deficient or insufficient regulations, but more in the difficulty of ensuring that they are "consistently observed" and that they "effectively apply."

B) Age of vessels

We however disagree with your statement that the age of vessels is in itself one of the reasons for substandard shipping. An older vessel requires more maintenance and more frequent inspections and follow-ups to ensure that regulations are consistently applied. Whether old or new, all vessels must comply with the same standards (except for certain specific building rules such as double hulls for tankers). It is not a question of age, but one of maintenance. Groupe Desgagnés Inc. does not own a very recent fleet, but its quality easily stands up to newer, but less well-maintained fleets. The key is management and maintenance quality rather than age.

Neglect in maintenance and noncompliance with the regulations must be corrected instead of removing vessels strictly because of the age issue (except within reasonable limits, of course). Removing vessels because of their age will not prevent unscrupulous operators from neglecting vessel maintenance, endangering the environment and shamelessly exploiting crew members. In addition, forcing the retirement of very well-maintained, but older vessels would unjustly penalize operators and owners who abide by all navigation regulations, and would create unnecessary additional costs for them. The consequences would greatly affect competition in the marine transportation industry as they would increase capital costs and fees, adding a direct, new financial burden on shippers; these additional costs can be avoided by using older, albeit well-maintained vessels.

We reiterate our belief that regulations governing the age of vessels must be applied logically, in accordance with circumstances. For example, they could vary from one location to the other (ocean navigation and inland waters for instance) or from one commodity to another (salt versus aggregates or petroleum products). Variations could also concern navigation conditions (for example, for sailing in the North Atlantic, the Great Lakes or the Far North). Rules relating to a vessel's age, as opposed to maintenance, security, environmental and crew regulations, are not universal and must be adapted or at least adaptable for each set of circumstances. They have nothing to do with the success or failure of controlling unscrupulous operators.

C) Watchdog Organizations

Not only do we agree that the regulations are adequate, but also feel that the means of control are somewhat lacking and not consistently and uniformly applied.

Therefore, the real issue to address is who is responsible and what are the means at their disposal to get the job done.

Currently, responsibility lies with any state with vessels flying its flag. The state is assisted by the *Port State Control (PSC)*, which is also the responsibility of the state. Weaknesses and deficiencies are often noted within the same flag states. In our opinion, we cannot expect countries that do not share our priorities to take action to achieve our objectives. That would be the same as asking unscrupulous owners to monitor themselves.

Furthermore, a *PSC* clearly cannot be more efficient than its own home state, nor can it inspect all vessels entering the country.

Evaluating the performance of a given country's *PSC* must therefore not be left up to the *PSC*'s own country; moreover, the controls exerted by a *PSC* must be based upon stronger grounds and a more efficient system than having to inspect every vessel that enters its country.

We therefore recommend that countries seeking more stringent enforcement of the regulations (Canada, United States, Europe and others) set up an organization in charge of determining which flag states are entitled to enter their countries. Such states would be admitted into the organization and, once members, their vessels would also be admitted if they respect all the regulations.

A country must first be admitted as a member of the organization before that country's vessels are authorized to enter a country member of the organization. Membership would be accorded on the proviso that said flag states file periodic reports proving that they are in compliance with all UNCLOS, ILO and IMO rules and regulations. Performance ratings on *PSCs* would also be included. Admission criteria should be severe and strict to reflect the level of safety and work conditions that we must apply in maritime transportation.

We recommend the same approval process for classification societies, which are competing commercial companies. Our experience with certificates issued in China by very well-known classification societies is very revealing. Despite the existence of the said certificates, the systems did not work and, in some cases, had never been checked out. We therefore recommend that for vessels to be admitted to a country, the classification society must be accepted by the same grouping of countries as the one for flag states. They would first require inspection by a classification society recognized by the organization.

Classification societies that wish to be admitted should file periodic reports proving that they have fulfilled their duties by following the rules in effect. Among other things, the reports should contain all the statistics required to evaluate their performance, including statistics on all accidents, incidents and vessel detentions occurring under their watch. We do not feel that such performance monitoring can be entrusted to the International Association of Classification Societies (IACS) which, given its membership, would be both judge and judged.

To ensure public accountability, transparency and the proper chain of responsibility, we will probably have to push this concept of "admission right" further. We believe it is preferable to develop the notion of right of entry rather than proceeding by exclusion. In the latter case, it is often too late. As with classification societies, flag states and port states, all operators, owners and charterers should be required to hold an operating license issued by the grouping. They would have the right to operate in member countries if, and only if, they hold a valid operating license to do so. To be entitled to a license, applicants would have to prove that they make exclusive use of vessels that comply with UNCLOS, ILO and IMO regulations, that fly the flag of a member country and that are inspected by member classification societies, no matter where in the world the vessels are used.

This would also make it possible to identify and denounce shippers, customers, underwriters and banks who deal with unscrupulous operators. We think that banks and investors would lose interest in owners unable to operate in many of the world's leading countries members of the organization.

If these measures are not enough, we could further require that vessels authorized to navigate within the grouping of countries be insured with an insurance company that has received prior approval from the countries in question.

Lastly, if necessary, each country admitted as a member could be entitled to make regulations to force customers, shippers and charterers to use only vessels approved by the grouping.

III. CONCLUSION

It is quite clear that the rules regulating vessels (UNCLOS, ILO, IMO) are sufficient—enforcement is simply lacking.

It is also clear that the age of the vessel is not a criterion in itself—quality of maintenance is what counts most. By ensuring existing regulations are enforced, shipowners will have no choice but to comply.

Furthermore, removing vessels strictly because of their age will not prevent unscrupulous operators from continually neglecting the maintenance of their vessels, ignoring environmental issues and exploiting their crew members.

We must instead strive to ensure that all regulations are enforced. In order to do so, we must attack the problem at its source by rendering access to very important sources of revenue very difficult for shipowners who do not comply with the regulations.

This approach will require that all countries that regularly comply with shipping regulations group together in an alliance to restrict access to their countries for noncompliant vessels.

This group would agree on a convention stating that vessels requesting permission to sail in countries that are part of the alliance would have meet the following criteria:

- Sail under a flag state approved by the convention and admitted as a member of the alliance for having met all previously stated admission criteria (compliance with UNCLOS, ILO and IMO standards; evaluation of a country's PSC, etc.)
- Hold a certificate of inspection and compliance issued by a classification society approved and recognized by alliance member countries on the basis of a list of very precise and well-defined criteria
- Be operated, chartered and/or owned by a company approved and recognized by alliance member countries on the basis of criteria defined in the convention
- In the event the above criteria prove insufficient, be insured by underwriters approved and recognized by alliance member countries, once again on the basis of very precise standards to be determined as required

Lastly, each alliance member country could, if necessary, issue an internal regulation compelling shippers and customers to use alliance-approved operators and vessels.

In order to function adequately, this new system would require a total overhaul of current methods; instead of allowing the marine transportation market to remain unrestricted, the new system would limit a large part of the potential market to only those who comply with the regulations.

To successfully attain these goals, the new system would require that

- A number of major countries making up the potential market unite and decide to apply this new system
- The alliance be under its own authority and totally self-governed, independent of any maritime organization (IMO or other)
- The certificate of admissibility from this organization or group be valid in all alliance member countries and that no country require any separate certificates that would tie up entry rights in excessive red tape
- Insofar as possible one complete inspection of the vessel be performed for all compliance purposes (alliance membership, regulatory compliance, inspections for customers, etc.), to avoid the need for additional inspections

This approach does not add to the regulations for vessels themselves, but does add to regulations governing the overall process and current enforcement mechanisms.

We are convinced that if these new procedures are consistently applied and valid for all users and alliance members, they will eliminate the need for many other procedures currently used. By enforcing the new regulations, alliance member countries will gain many benefits (security, environment, etc.) that more than compensate for the amounts invested.

Financing would need to be defined; it would come from member countries and the group of admitted users and members.

As for the timeframe, 12 to 18 months should be allowed to develop the project in detail, and a starting date for the process could be sometime in the next 24 to 36 months. This would put us in a position to reach optimum efficiency within 5 years.

Please note that this concept has not been worked out in detail, but is rather a draft on which to base more thorough reflection over the upcoming months. We believe it is possible to set up an international enforcement mechanism.

This concept has the advantage of attacking the problem at the source instead of skirting it. If it is properly thought through and applied, it will allow us to ensure that

- the provisions of UNCLOS, IMO and ILO are more effectively implemented;
- substandard registries and classification societies are identified and isolated;
- instead of a "reward system for responsible operators," all unscrupulous operators are denied access to the bulk of marine transportation market opportunities;
- control exerted by flag states and port states is transparent, accountable and subject to evaluation;
- classification societies are transparent, accountable and subject to evaluation;
- the financial interests and welfare of crews are protected;
- charterers / owners are held accountable and are subject to evaluation; and
- customers, shippers, charterers, bankers and underwriters using, financing and insuring substandard operators/owners are identified and held accountable.

This is a very brief summary of the issues we consider of key importance to the future of marine transportation.

Should you be interested, we are available for a meeting or telephone conversation in order to discuss this matter in greater detail.

We hope to be able to attend the conference in Australia in April 2001, and look forward to hearing your comments.

Yours truly,

Louis-Marie Beaulieu, CA
Chairman of the Board and Chief Executive Officer
GROUPE DESGAGNÉS INC.

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Enclosures



CORPORATE PROFILE OF GROUPE DESGAGNÉS INC.

Groupe Desgagnés Inc. is a privately owned small conglomerate primarily involved in numerous aspects of marine transportation in Canada.

Corporate offices are located in Québec City with commercial offices and operational facilities in several cities including Montréal and Winnipeg. Having started as a general cargo maritime transporter, the company has successively extended its activities into the fields of petrochemical transportation, marine chartering, stevedoring, terminal operations, trucking activities and leasing of mobile cranes and other heavy equipment and containers.

With annual revenues of around 100 million dollars, the company provides direct employment from 400 to 750 people according to the season. The century old tradition of the Desgagnés family in navigation is ever so active in the organization, working today under the leadership of Mr. Louis-Marie Beaulieu, C.A., President and Chief Executive Officer.

The company owns or operates nine cargo vessels and six tankers which carry general cargo, dry and liquid bulks, heavy equipment, containers, and passengers on the Great Lakes, the St. Lawrence River, the Atlantic Provinces, the Eastern Canadian Arctic, and also on the international seas.

With a strong capital structure, the company has been dealing with the Canadian Imperial Bank of Commerce for several decades and its auditors are Arthur Andersen. The company possesses a strong tradition and strives for perfection in its highly technical fields of operation.

For three years, our company was selected as one of Canada's 50 Best Managed Private Companies over 1,000 participants. This annual contest is sponsored by Arthur Andersen, CIBC, National Post, and People Soft. The main selection criteria were:

- decisions made by the company and actions taken to satisfy its clients' needs;
- use of management tools both innovative and efficient;
- participation of the employees in the entrepreneurial strategies, their motivation and their productivity;
- company revenue growth, its results and the number of employees.

The company is presently implementing the stringent International Ship Management Code (ISM) throughout its fleet and all of its tankers have already been accredited. Management is also implementing a quality management system in accordance to ISO 9002 requirements.

The company can also rely on an Emergency Response Team. This team is well trained and able to react rapidly to any incident/accident that may occur. It is part of our commitment to protect a precious resource – Canadian waters.

We are known for our ingenuity and our determination to fulfil our commitments. Through the years, we have worked for an impressive list of clients who can attest to our high values of commitment and responsibility which are part of our company's philosophy along with an ongoing search for excellence.

More particularly, our subsidiary Transport Desgagnés Inc., which is the owner of all the vessels, is specialized in general cargo marine transportation. In addition to having national and international operations, it has also been doing business in the various regions of the Arctic for decades, effecting numerous voyages each year and often handling over 100,000 m³ of cargo annually in about 40 different ports.

The company will soon celebrate its 35th year of service in the Arctic communities, with whom we have always had a very good relationship. Moreover, our highly experienced team is well accustomed to serve them.

Our coastal navigation division performs several contracts of affreightment with Canadian and American shippers in the Great Lakes—St. Lawrence network and on the Eastern coasts of Canada and USA. Our vessels transport dry bulks, namely salt, pig iron, grain, coal, and various other minerals, as well as containers and all types of general cargo. We are also specialized in the transportation of heavy lifts (transformers, locomotives, etc.).

Our liquid bulk division, Petro-Nav Inc., commercializes and operates six oil/chemical tankers on the Great Lakes, St. Lawrence River, Eastern Atlantic Coast and in the Canadian Arctic and has contracted with major Canadian oil companies. We also charters additional tanker vessels as needed to respond to the requirements of oil majors.

Our division Relais Nordik Inc., also provides maritime servicing to remote communities sprinkled along the Middle and Lower North Shore of the St. Lawrence River from April to January using the M/V *Nordik Express*, a cargo-passenger vessel. She travels along 900 kilometers of spectacular northern coastline servicing 14 localities twice a week, carrying passengers and containerized cargo. In each terminal, our service includes receiving, marshalling, packaging, transportation and delivery to the client. The vessel can carry 200 passengers as well as containers for dry and perishable goods. Each year, we carry around 6,000 passengers and up to 20,000 mt of cargo.

Our international branch is involved in worldwide shipping business and trades on all seas but more particularly in Asia, Europe, and USA.

Another division, Tessier Ltée, with its head office in Baie-Comeau, concentrates its activities in the leasing of heavy machinery, transportation by truck, stevedoring, transportation of heavy lifts, and various kinds of material handling. With a fleet of cranes, lift trucks, trailers, trucks, and other heavy equipment, it is involved in the mega hydro-electric and industrial projects of the Québec's North Shore and developed a vast experience and first-class relationship with clients such as Hydro-Québec, Reynolds Aluminium, Iron Ore Company of Canada, Quno Corporation, Wabush Mines, Dominion Bridge, and several others.

We also have our own ship repair department with a team of specialized workers such as welders, mechanical engineers, electricians, etc. This team is also recognized for its ingenuity. Included in their list of credits is the salvage of various vessels. In 1991, they refloated the *Rio Orinoco* which had stranded off Anticosti Island with a full load of asphalt that had hardened due to the cold weather. Most recently, in December 1999, they also succeeded in refloating the M/V *Alcor*, a very delicate operation as the vessel's hull was almost broken in half.

We are also enclosing our new corporate brochure that depicts the soul of our company, our passion for maritime operations and our determination to share the force of the waves with our expertise and experience.