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**Seafarers' International Union of Canada:**

**Submission for the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities study on Canada's Temporary Foreign Worker Program**

**Executive Summary**

The Seafarers' International Union of Canada (SIU) has been serving seafarers working aboard vessels on Great Lakes, St. Lawrence River, East Coast and West Coast since 1938. SIU Canada currently represents 3,500 members.

For the purposes of this Committee, we respectfully submit that the temporary foreign workers program, together with the growing use of foreign flagged vessels in Canada, has cost our union more than 2,100 jobs to date.

Under the previous government, temporary foreign work permits were granted to foreign maritime workers crewing foreign ships operating in Canadian waters. This is in direct violation of the *Coasting Trade Act*, which requires that ships carrying passengers or goods between Canadian ports ("cabotage") may only use foreign workers if no qualified Canadian workers are available.

Moreover, in our view, this fails the labour market impact assessment, a necessary condition to displace qualified Canadians in favour of temporary foreign workers. It should be highlighted that these foreign workers are exploited with wages at \$2 an hour.

Since 2013, the SIU estimates that approximately 4,000 temporary foreign work permits have been issued by the Government of Canada for domestic shipping despite 25 per cent of Canadian maritime workers being unemployed.

To prevent further damage to the Canadian domestic shipping industry, the SIU Canada submits that that the committee considers our proposed five recommendations:

- 1. Amend the Temporary Foreign Worker Program to allow for SIU Canada to have the right of first refusal to crew foreign flagged ships**
- 2. Ensure all work permits issued by the Government of Canada are first vetted through a proper Labour Market Impact Assessment**
- 3. Enforce existing laws for Temporary Foreign Workers to the Maritime sector**
- 4. Enforce laws requiring payment of prevailing wage if/when Foreign Workers have been selected**
- 5. Enforce the existing Canadian cabotage law (*Coasting Trade Act*)**

Canadian Seafarers are trained through various universities and colleges both in Canada and the United States. Their training meets - and exceeds - International Standards, allowing Canadian Seafarers to boast as the best trained in the world. Training is subsidized through industry partners with no government funding.

Vessels manned by SIU members have one of the best safety records in the world, resulting in lower insurance costs and greater reliability of operations for the employers but most importantly, for the protection and well-being of SIU members. Reflecting their qualifications, training and reliability, Canadian Seafarers receive – depending on their rank – an average wage of \$23 per hour.



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SIU Canada appreciates this Committee's due consideration of our members' concerns. The remainder of our submission provides greater details and is divided into five sections. Of note, the appendix provides the relevant legal text of the *Coasting Trade Act*, as well as the definition of cabotage.

- I. Effect of Temporary Foreign Worker Program on Canada's Sailors
- II. Recommendations
- III. Backgrounder on Sailors in Canada
- IV. About the Seafarers International Union of Canada
- V. Appendix

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## **I. Effect of Temporary Foreign Worker Program on Canada's Sailors**

- a. SIU believes that Canada's Temporary Foreign Worker Program (TFWP), as it currently stands, has been inappropriately applied in the Canadian shipping industry.*

First, the required Labour Market Impact Assessments for the Temporary Foreign Worker Program should reveal that there are Canadians, including our members, who are trained and capable to perform seafaring in the domestic shipping industry.

Second, cabotage laws have been violated under the TFWP by allowing foreign crews to operate in Canadian waters. This clearly impedes the *Coasting Trade Act*. Consequently, the application of the TFWP in the domestic seafaring industry has caused a loss of good-paying Canadian jobs, and, has put the Canadian shipping industry at risk.

- b. SIU asserts that The TFWP, in its current application, puts safety, the Canadian environment and job security at risk.*

In the context of the Canadian seafaring industry, the TFWP contributes to a failure to promote safety in our domestic bodies of water. In part, this is because foreign crews are not as well trained as Canadians. This is exacerbated by the fact that non-Canadian crews do not have local knowledge of our domestic waterways. By allowing foreign crews to operate in Canadian waters, this poses security risks as crews are not properly vetted and it is impossible to do so. This can allow foreign crews to enter with false documentation.

Under the TFWP, employment and financial security is at risk for domestic and foreign crews alike. Foreign crews are over-worked and often exploited with a \$2 an hour wage, which infringes on Canadian labour law. This wage also diminishes the good paying seafaring jobs in Canada whose wages reflect the training, local knowledge and experience that Canadian seafarers undergo. Moreover, Canadian sailors in the shipping industry risk losing their skill set if domestic jobs are not maintained. Aside from diminishing wages and skill-sets, this depletes well-compensating maritime jobs.

Environmental damage can incur to the Canadian coastline and bodies of waters, as foreign crews are not trained to operate in Canadian confined waterways nor winter conditions.



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- c. *SIU attests that by allowing foreign workers to enter Canadian waters under “Flags of Convenience”<sup>1</sup> tax avoidance and lowers labour standards are encouraged.*

When a ship is registered in a country, it is subject to the laws and the country of its flag state, regardless of the nationality of the ship's owner. Registering a ship under a Flag of Convenience encourages tax avoidance since many FOC countries are tax havens and have lax registration requirements, like Panama. Seafarers pay the price in poor conditions and lower wages since labour laws in FOC states are substantially weaker than those in Canada. Further, ships registered in FOC countries do not require the employment of nationals, allowing ship-owners to seek out the cheapest labour, and contributing to downward pressure on seafaring wages.

## II. Recommendations

- 1. Amend the Temporary Foreign Worker Program to allow for SIU Canada to have the right of first refusal to crew foreign flagged ships.**

This proposed amendment would reaffirm pre-existing cabotage laws enshrined in the *Coasting Trade Act*. This would also re-instate that Canadian seafaring expertise in domestic waters, is not only a natural preference, but a priority. This amendment would protect domestic jobs, the environment of the Canadian coastline as well as national security.

- 2. Ensure all work permits issued by the Government of Canada are first vetted through a proper Labour Market Impact Assessment.**

This recommendation seeks to remedy issues of noncompliance in the Temporary Foreign Worker Program. Currently, the TFWP stipulates that a Labour Market Impact Assessment (LMIA) must be conducted to verify that there are no available and qualified Canadians to perform the work. Since 2013, there have been readily available Canadian seafarers, and the failure to apply an LMIA has resulted in a loss of 2,100 domestic jobs to date.

- 3. Enforce existing laws for Temporary Foreign Workers to the Maritime sector**

The current TFWP laws should be enforced in maritime sectors that benefit the region, including local employment. With many seafarers residing in the Maritimes, the seafaring industry is especially vulnerable if proper LMIA are not conducted in the maritime industries.

- 4. Enforce laws requiring payment of prevailing wage if/when Temporary Foreign Workers are allowed in**

This will ensure that the prevailing wage reflects the extensive training and earned qualifications required under Canadian seafaring standards. Further, this will ensure compliance with both domestic and international labour laws. Finally, Foreign Workers will not be financially exploited.

- 5. Enforce the existing Canadian cabotage law (*Coasting Trade Act*)**

This recommendation does not seek to change or alter any legislation; the objective of this proposal is for the government to enforce and adhere to Canada's current federal cabotage laws.

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<sup>1</sup> A flag of convenience (FOC) ship is one that flies the flag of a country other than the country of the ship's owner.



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### **Background: Sailors in Canada**

The Merchant Marine has a history in Canada dating back to 1920 and made its mark during the Second World War when tens of thousands of men and women aided the war effort by delivering needed supplies to allied forces. Thousands of those Seafarers lost their lives in service to their country. After WWII much of Canada's Merchant Fleet was sold off but remains a vital part of the Canadian economy.

Today, Canadian Seafarers are trained through various universities and colleges both in Canada and the United States. Training meets and exceeds International Standards allowing Canadian Seafarers to boast as the best trained in the world. Training is funded through industry partners with no government financing.

Canadian Seafarers are paid an average of \$23 per hour – depending on rank. These sailors also have yearly earning potentials of \$75,000 to \$200,000, again depending on rank.

Working aboard Canadian vessels requires a highly educated, trained and dedicated workforce willing to spend extended time away from home.

SIU members have acquired the reputation of being amongst the best-trained and most qualified sailors in the world. Life aboard ships requires skills and a continuous commitment by sailors and ship officers to ensure safety aboard. To achieve these objectives, provisions for training and upgrading of members are an important part of all collective agreements in effect with the SIU.

The SIU believes well-trained and qualified sailors know how to work safely. At all times, they work in a manner to ensure their safety and the safety of all other personnel aboard. As a result, vessels manned by SIU members have one of the best safety records in the world, resulting in lower insurance costs and greater reliability of operations for the employers but most importantly, for the protection and well-being of SIU members.

### **III. About the Seafarers International Union of Canada**

The Seafarers' International Union of Canada (SIU) has been representing seafarers working aboard vessels on Great Lakes, St. Lawrence River, East Coast and West Coast since 1938. SIU members have acquired the reputation of being amongst the best-trained and most qualified sailors in the world. SIU Canada represents over 3500 qualified, Canadian seafarers across Canada.

In September 2015, SIU Canada launched two lawsuits to challenge the former government's decision to grant temporary foreign work permits to foreign maritime workers crewing foreign ships operating in Canadian waters.

This legal action followed two years of repeatedly writing to the government on these issues. In the lead-up to the lawsuit, the SIU had intensified its efforts, writing dozens of letters to the former Ministers of Citizenship and Immigration, Public Safety, and Minister of Employment and Social Development and their officials regarding their failure to enforce immigration law and protect Canadian jobs.



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#### **IV. Appendix**

##### **1. Coasting Trade Act (S.C. 1992, c. 31)**

###### **Regulation of Foreign Ships and Non-duty Paid Ships**

**3** (1) Subject to subsections (2) to (5), no foreign ship or non-duty paid ship shall, except under and in accordance with a licence, engage in the coasting trade.

(2) Subsection (1) does not apply in respect of any foreign ship or non-duty paid ship that is

(a) used as a fishing vessel, as defined by the *Coastal Fisheries Protection Act*, in any activity governed by that Act and that does not carry any goods or passengers other than goods or passengers incidental to any activity governed by that Act;

(b) engaged in any ocean research activity commissioned by the Department of Fisheries and Oceans;

(c) operated or sponsored by a foreign government that has sought and received the consent of the Minister of Foreign Affairs to conduct marine scientific research;

(c.1) engaged in seismic activities in waters above the continental shelf of Canada that are in relation to the exploration for mineral or non-living natural resources of the continental shelf of Canada;

(d) engaged in salvage operations, except where such operations are performed in Canadian waters; or

(e) engaged, with the approval of a person designated as a pollution response officer under section 174.1 of the *Canada Shipping Act, 2001*, in activities related to a marine pollution emergency, or to a risk of a marine pollution emergency.

(3) Nothing in this section precludes a foreign ship or a non-duty paid ship from rendering assistance to persons, ships or aircraft in danger or distress in Canadian waters.

(5) Subsection (1) does not apply to any ship that is owned by the Government of the United States and used for the sole purpose of transporting goods of Canadian or United States origin owned by the Government of the United States to supply Distant Early Warning Sites.

###### **Issuance of licence: foreign ship**

**4** (1) Subject to section 7, on application therefor by a person resident in Canada acting on behalf of a foreign ship, the Minister of Public Safety and Emergency Preparedness shall issue a licence in respect of the foreign ship, where the Minister is satisfied that

(a) the Agency has determined that no Canadian ship or non-duty paid ship is suitable and available to provide the service or perform the activity described in the application;



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(b) where the activity described in the application entails the carriage of passengers by ship, the Agency has determined that an identical or similar adequate marine service is not available from any person operating one or more Canadian ships;

(c) arrangements have been made for the payment of the duties and taxes under the *Customs Tariff* and the *Excise Tax Act* applicable to the foreign ship in relation to its temporary use in Canada;

(d) all certificates and documents relating to the foreign ship issued pursuant to shipping conventions to which Canada is a party are valid and in force; and

(e) the foreign ship meets all safety and pollution prevention requirements imposed by any law of Canada applicable to that foreign ship.

(2) For greater certainty, the issuance of a licence pursuant to subsection (1) does not affect the application of any law of Canada that imposes safety or pollution prevention requirements in respect of ships.

**Issuance of licence: non-duty paid ship**

5 Subject to section 7, on application therefor by a person resident in Canada acting on behalf of a non-duty paid ship, the Minister of Public Safety and Emergency Preparedness shall issue a licence in respect of the non-duty paid ship, where the Minister is satisfied that

(a) the Agency has determined that no Canadian ship is suitable and available to provide the service or perform the activity described in the application;

(b) where the activity described in the application entails the carriage of passengers by ship, the Agency has determined that an identical or similar adequate marine service is not available from any person operating one or more Canadian ships; and

(c) arrangements have been made for the payment of the duties and taxes under the *Customs Tariff* and the *Excise Tax Act* applicable to the non-duty paid ship in relation to its temporary use in Canada.

2. “Cabotage” also known as “coasting trade,” refers to the domestic transportation of goods or passengers by ship between two places within Canada. Under Canadian law, generally, foreign ships are not allowed to engage in Cabotage. A foreign ship may only engage in Cabotage if no Canadian vessel is available and a special permit to do so has been issued by the Canadian Transportation Agency (a “CTA Waiver”). Since 2013, over 260 CTA Waivers have been issued to foreign-flagged ships to engage in Cabotage in Canada.