



Industry Background

The role of transportation brokers grew out of the desire by governments in both Canada and the United States to deregulate the surface freight transportation industry in the late 1970s.

In the United States, the regulation of both motor carriers and transportation brokers had been the responsibility of the now-defunct Interstate Commerce Commission (ICC), this authority established by the Motor Carrier Act of 1935. The interventionist inclinations of the US government during the depression shaped the development of a regulatory regime that intended to: (1) create “a level playing field” and prevent abusive practices through the regulation of competition, (2) ensure that remote areas were adequately serviced, (3) and appease the politically powerful railway sector which had been losing business to motor carriers. The result was a commercial environment where entry was restricted by an obligation upon new applicants to prove “public necessity” and rate structure controlled by “bureaus” that required public tariff filings and that approved rates on a cost-plus basis. Because the applications of new entrants for authority to haul goods in a particular shipping lane or along a fixed route could be challenged by incumbent carriers and the ICC, freight rates became inflated and service suffered. In fact, the Reed-Bullwinkle Act passed in 1948 permitted rate fixing among carriers, effectively exempting the industry from anti-trust guidelines.

The regulation of transportation brokers, technically “property brokers,” was also enacted with the 1935 legislation. The limited options available in a regulated environment, however, seriously circumscribed the role of brokers who had little to offer shippers in terms of cost savings or service gains, or carriers, who enjoyed little competition along their established routes. Before 1980 there were only seventy ICC-registered property brokers.

By the 1970s, as the mood of the nation shifted away from one that accepted heavy-handed regulation to one that sought greater productivity and economic efficiency, shippers began to demand reform. The Ford and Carter administrations pushed the ICC to loosen the regulatory noose but were predictably



opposed by the established carriers led by the American Trucking Association (ATA) and organized labor (primarily the Teamsters) who opposed any amount of deregulation.

In Canada, while motor carriers were regulated provincially, the trucking industry as a whole operated under similar constraints. Carriers were restricted in the rates they could offer through tariff bureaus and the procedures required to gain “entry” to a particular market were onerous. Moreover, because no national framework existed to regulate carriers, new entrants who desired to operate intra-provincially were forced to meet different requirements in each of the various provincial jurisdictions. As in the US, most provincial permits hinged on result of a “public convenience and necessity” hearing process. The bar to entry was set high enough that competition was seriously curtailed. No national or provincial body oversaw or regulated the transportation brokerage industry.

In the United States, the Motor Carrier Act of 1980 changed everything. The number of motor carriers grew from 18,000 in 1980 to over 50,000 by the late 1990s. While fitness tests intended to govern safety and insurance requirements were retained (and subsequently expanded,) the vast majority of the regulatory framework that surrounded rate structures and routes was eliminated. The net effect of deregulation was the emergence of more competitive commercial environment has pushed rates down and spurred improvements in service. It also meant, simply, that the entry of lower cost non-union labour started to fundamentally change an industry that had been a union stronghold for a half century. The casualties of deregulation were the ICC itself, terminated under ICC Termination Act of 1995, as well as several of the large LTL carriers. In the past decade, most noteworthy was the bankruptcy of the third largest trucking company in the United States, Consolidated Freightways, in September 2002, and the narrowly avoided insolvency of the YRC in 2009 (partially due to the banking crises and resulting recession).

The process of deregulation in Canada did not begin until 1985 but followed a similar course. The federal government took it upon itself to engineer a consensus among the various provincial authorities for the purpose of harmonizing the rules governing intra-provincial transport. The efforts culminated in the Motor Vehicle Transport Act of 1987.



Changes in the transportation regulatory regimes in both countries coincided with economy-wide transformation of business practices. Paradigms such as Total Quality Management (TQM), Just in Time (JIT) and a general trend toward outsourcing pushed shippers to explore new options in terms of transportation, and brokers became one of the principal vehicles for harnessing these options. Consumers of transportation services demanded a more predictable, quicker and controllable product. Companies who had traditionally relied on direct arrangements with several regional common carriers often downloaded the responsibility for their entire transportation portfolio to brokers who could weigh cost and service on their behalf. The role of the traditional “traffic” department was, in essence, contracted out. On the supply side, the rapid proliferation of small to medium size trucking companies – many of whom lacked a full-time sales staff – meant that capacity existed in the system and brokers became the first resort of these carriers to fill their empty trucks.

The rapid proliferation of brokers as legitimate players in the transportation industry ironically triggered the re-regulation of these intermediaries in the wake of the sweeping deregulation of motor carriage itself. Canada’s two most populous provinces – Ontario and Quebec – in 1990 and 1999 respectively, imposed structures that ensured financial responsibility and public accountability on the part of brokers. In 2012 the US Congress passed legislation that increased the minimum bond or trust security for load brokers from \$10,000 to \$75,000 (though the enactment of the regulation is currently being challenged).

The emergence of the transportation brokerage industry was therefore an outgrowth of a wider trend over the last 30 years toward a more liberal North American economic environment. The industry’s continued growth is attributable to its location at the nexus of a supply sector still suffering the hangover of seventy years of regulation and an economy anxious for greater efficiencies in the supply chain. From the perspective of Canadian brokers specializing in US-Canada transborder traffic, the aggregate volumes of freight have increased at an even quicker pace because of the massive increase in cross-border commerce following the passage of the US-Canada Free Trade Agreement in 1989 and NAFTA in 1994 and the general global trend to freer trade and greater economic interdependence.



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