

Conseil de
l'orge du
Canada



Barley
Council of
Canada



Barley Council of Canada

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Re: Barley Council of Canada: Canada Transportation Act Review
Panel Submission

December 5, 2014

barleycouncil.com

Introduction

The Barley Council of Canada (BCC) is Canada's national value-chain organization that represents the interests of all stakeholders in the entire barley value chain. Our Council members include all Western Canadian provincial barley producer commissions and associations (representing approximately 21,000 barley farmers), Quebec and Maritime grain producer organizations, the national organizations for both the feed milling and cattle feeding industry, the entire Canadian beer and malting industry, the barley varietal research community and life science industry; and lastly, some owners of major western grain procurement and handling facilities. We are national in scope and represent the entire barley industry from coast to coast.

The Barley Council of Canada (BCC) is focused on applying a coordinated effort to support the following areas which include: barley research and varietal development, market and trade development efforts for feed, food and malting barley, innovation and sustainability and finally, policy initiatives that will enhance profitability and sustainability for all members within the barley value-chain.

Background

The grain transportation crisis that occurred this past winter and continued throughout the remainder of the crop year has had a significant and detrimental impact on most members within the entire barley value chain industry. These include (and are not limited to the following): lost revenue and lost revenue opportunities, reduced future sales and forward delivery pricing options, reduced cash flow and financial obligation challenges, lost export sales and future export sales opportunities, increased costs for limited alternate modes of transportation delivery options and finally, perhaps most importantly, Canada's global reputation as timely, reliable exporters has been significantly compromised.

In our view, the cost to the Canadian and agricultural economy as a direct result of this past years' crisis has been significant.

Industry Facts at a Glance

- 21,000 barley farmers in Western Canada
- Barley production has declined by over 35% to only approximately 7.5 mmt today
- Domestic cattle/feed barley consumption accounts for approximately 50% of production
- Malting Industry requires @ 1 million tonnes of malting barley annually
- 90% of cars used by Canadian malting Industry are "leased fleet cars"
- Malt exports total @ 585,000 mt/yr = \$365 million in export sales
- Malting and feed barley exports total @ 1.36 mmt/yr = \$393 million in export sales
- U.S accounts for @ 50% of malt exports and over 33% of malting/feed barley exports
- Fraser Valley BC feed mills require 125-150 railcars/wk for dairy, hog & poultry industry
- 163,000 jobs created in production, marketing, distribution & sales of Canadian beer
- \$5.8 billion in government revenues generated from product, income and corporate taxes from the sale of beer in Canada (Conference Board of Canada report)

Over the past two decades, there have been a number of grain transportation reviews, studies, and federal commissions established, most notably those chaired by Arthur Kroeger and retired Supreme Court Justice Estey, to provide insight and recommendations on future operational and structural issues that would be required to meet Canada's future grain handling and transportation needs.

For many BCC members who have been involved and participated in each of the previous study and commission reviews, there had always been the initial feeling of hope and optimism that meaningful regulatory and legislative reform would be enacted to respond to Canada's future transportation needs... for farmer's, processor's, exporter's, grain handler's and most importantly, for our domestic and export customer's...only to see the final regulatory outcomes fall short on "balance". There has been much effort over the past several decades to remove regulatory barriers and increase efficiencies and competitiveness; however, there continues to be in our view a significant lack of "balance" in the grain transportation system; both structurally and commercially.

It is our sincere hope that this Panel will recognize and understand the concerns and regulatory provisions and recommendations proposed by all stakeholders in the grains and oilseeds industry for this review. Most importantly, that this Panel will address the infrastructural requirements, power capacity needs, service responsiveness and obligations, and finally, the need for contractual accountability and non-performance consequences. It is critical that this Panel propose solutions that provide meaningful regulatory/legislative changes that address the needs of the farmer, processor and shipper in getting our product to our customers.

Western Canadian Grain Handling and Storage Rationalization

Over the past 30 years, Canadian farmers, grain handlers, processors and exporters have invested considerable amounts of capital in the construction of significantly expanded on farm storage, value-added processing facilities and increased terminal capacity and upgrades. Most notably, has been the dramatic transformation and complete rebuild of Western Canada's grain handling network/facilities and the significant increase in capacity utilization and handling efficiencies.

Consider the following:

In 1962 there were 5,223 country/primary elevators located in the Western Canada with a combined storage capacity of approximately 10.24 million tonnes (Source: Canadian Grain Commission). Crop production of the 3 major grains (wheat, oats and barley) was approximately 25 million tonnes.

In 1980, there were only 3,324 country/primary elevators with a combined storage capacity of approximately 8.75 million tonnes. Crop production for all grain and oilseed commodities was approximately 35 million tonnes.

By 2000, there were only 848 country/primary elevators in Western Canada with a combined storage capacity of approximately 6.8 million tonnes. Crop production in Western Canada had now increased to approximately 52 million tonnes.

Today (2014), elevator facilities located in Western Canada total only 327, with a combined storage capacity of 6.5 million tonnes. Western crop production estimates for this year are approximately 56 million tonnes.

This dramatic evolution in Western Canada's infrastructural changes to high throughput, 50-100 car multicar loading facilities, augmented by considerable increases and investment in "on farm storage", value-added processing and the closure/abandonment and/or privatization of railway branch lines clearly demonstrates that farmers, processors and grain handling companies have "done their part" to respond to the railways' decades old requests for a more efficient grain handling network. To coin a phrase; our industry has "walked the talk".

It is within this context, whereby our industry who has collectively invested huge sums of capital in infrastructure is extremely frustrated and angered by the inability of the railways this past winter and (for some time now) to satisfactorily address/respond to the shipping requirements of the entire grains industry. Particularly so, when, the railways simply blamed it on the "cold weather" and pointed to issues surrounding the safety and effectiveness of high pressure rail car brake lines in cold weather over the length of an entire rail car train shipment.

This would suggest that the resulting financial damages caused to Canada's economic prosperity was, and will continue to be held hostage by the inability to resolve issues surrounding the effects of cold weather on railcar brake lines!!!! Quite frankly.... this is inexcusable and unacceptable!

Fair Rail for Farmers Act: Bill C-30

The BCC recognizes that the initial "Order in Council (OIC)" which mandated the railways to move approximately 5,000 cars per week each to export positions on the West Coast and Thunder Bay was a bridge mechanism to address the enormous backlog of grain committed for export overseas markets.

Our Council supported this measure and the ensuing legislation, recognizing that this was a temporary measure to help mitigate an extremely serious situation. However, in our submissions to the Canadian Transportation Agency in June and October, 2014, regarding future car allocation mandates, we had respectfully requested that any future OIC require the railways to provide service/cars to meet the needs of farmers, shippers, and processors in ALL corridors; specifically, the traditional allotment of producer cars and the provision of cars and power to service both the U.S southern corridor and eastern corridor (beyond Thunder Bay). The omission of such a directive thus far has had a detrimental operational and financial impact to many of our members.

The OIC which specifically directed railways to meet weekly car shipment targets to West Coast and Thunder Bay terminals only, had, (in our opinion) created additional unintended consequences. Specifically, there is the believe that perhaps rail service emphasis was focused first within the Provinces of Alberta and Manitoba because of the closer proximity to terminals and corresponding faster railcar turn- around times.

Consequently, we believe there is merit in having the Panel consider recommendations that take into account the historical production and shipping patterns of each Province and that rail service is provided accordingly based on those historical patterns.

While we believe each Province has some unique advantages and disadvantages in terms of proximity to certain markets; and the availability to utilize/access main line and branch line service corridors, it must be noted that Saskatchewan has proportionally a greater dependence for rail service on railway short lines.

Saskatchewan has the most branch short lines of any Province, resulting in loading the most producer cars. The Province also has the largest number of producer car loading sites outside of the short line rail network.

Because of the emphasis on moving grain via high throughput multi car loading facilities in order to hit the mandated weekly car shipment target requirements, producer car availability has been extremely difficult to access, not just in Saskatchewan, but in all Provinces.

In moving forward, this Panel needs to “re-affirm” the legislative “rights” of producers to have access to producer cars in a timely and reliable fashion, commensurate with historical allocations. Railways need to be held accountable to provide this continued service and this must be recognized in the Panels’ final recommendations to the Minister and enshrined and enforced within the Act.

Finally, the Fair Rail for Farmers Act amended a section within the Canada Transportation Act to allow the CTA (Agency) to determine “operational terms” that will be included in Service Level Agreements (SLA’s) between shippers and carriers.

We overwhelmingly endorse our grain handling partners’ recommendation that this new clause within the Act be amended in order to clearly articulate that the meaning of “operational terms” includes financial accountability not just for railway performance but for shippers also. In other words, reciprocal financial penalties for all parties involved within a shipment/delivery contractual agreement.

Industry Perspective

We believe it is generally recognized that the two railways (Canadian Class 1 carriers) operate essentially as a “duopoly” and in many instances as a “monopoly” because of their regional dominance and/or exclusive geographic service area. It is also recognized that virtually all bulk grain and resource based commodities depend exclusively on railway service to get their product into export position to service their global customers. In a word, all commodity shippers are “Captive” customers for the Class 1 Carriers. It is our position that in the absence of regulatory and legislative provisions which enable shipper’s the ability to negotiate meaningful service level agreements (SLA’s) that provide both predictable and reliable rail service and accountability; then we are merely setting ourselves up for continued future transportation service failures. Hence the need for “balanced regulatory provisions” that enable captive shipper’s the ability to enter into meaningful binding two way commercial service delivery contracts.

It is our Council’s position that “it is in Canada’s National Economic Security Interests” to ensure that there is reliable, predictable and accountable rail service delivery and availability for all shippers in order to protect and enhance Canada’s economic growth and prosperity.

Over the course of the past year, there have been numerous media articles which have reported railway carriers have over the course of time, reduced their “power fleet” (re: locomotive fleet) and their power/locomotive operating crews by as much as 30%; presumably, to maximize profits via the reduction in operating ratios, while at the same time trying to maintain existing (or arguably lack of) rail service.

In a recent Canadian Transportation Agency (CTA) decision in an application by Louis Dreyfus Canada Ltd. against the Canadian National Railway Company pertaining to rail service obligations, the Agency came to the following conclusion:

“The Agency recognizes that railway companies are free to make business decisions with respect to asset acquisition and utilization: for instance by using a smaller car fleet where utilization is optimized, that is “sweating the assets”. However, in light of the level of service obligations set out in sections 113 to 115 of the CTA, a railway company cannot do so at the expense of service. Business decisions relating to the size of the car fleet must not result in the railway company breaching its level of service obligations...”

“The industry phrase “sweating the assets” implies meeting the demand with the lowest possible cost in terms of infrastructure, car supply, crews and locomotive power. High efficiency operations with low operating ratios provide the best return to railway shareholders. However, running a very lean operation has implications for the railway company’s ability to manage surges in demand or operational challenges such as infrastructure outages or adverse weather.”

The Agency further concluded that;

“To allow a railway company to invoke the limited size of its fleet as a defense for an alleged breach of its level of service obligations would amount to allowing the railway company to refuse to transport traffic, or hold off providing service until it finds it convenient to do so. This would be contrary to the intent of paragraph 113 (1) (c) and subsection 113 (2) of the CTA.”

The Barley Council of Canada is encouraged and supportive of the Agency’s recognition and decision pertaining to service obligations in this particular case, however, without future consideration and implementation of definitions within the CTA (The Act) that are clear and definitive re: the term “suitable and adequate service”,we are merely setting ourselves up again for future failure and transportation congestion/backlogs.

The inability of the railways to provide the necessary service obligations because of lack of surge capacity and service delivery contingency plans (due to unavailable additional power and crews)

exacerbated by “cold weather conditions” is no excuse and cannot be tolerated nor allowed to happen again.

An analogy to the grain transportation shipment crisis blamed on cold weather is like allowing the airline industry when faced with regional airport closures due to major snowstorms saying to the general public that due to the backlog in air travel flight connections and stranded travellers.....ALL existing booked flights will ALL be pushed back several days for the next 6 months in order to “catch up” so to speak.

This simply does not happen. Airlines have additional surge capacity (planes and crews) to work through the backlog in an efficient and expedited fashion and get back on serviced route schedules in a reasonable timeframe. The railways need to be required to do the same.

Hypothetically speaking, it could be argued that Canada’s future increases in export trade and “Gross Domestic Product (GDP)” productivity could conceivably be limited and hampered due to a Carrier’s decision to as the CTA describes “sweating the assets”. In other words, maximize shareholder returns with little or no need/desire in wanting to increase infrastructural spending to meet the increased export commodity demand requirements; simply because it will reduce the overall returns (short term) and affect current shareholder values. The result could be, that it is now not only shippers held captive but by extension Canadian GDP growth as well!

It is our hope that the Panel will be able to clearly identify the extent to which the national transportation system has capacity and adaptability to respond effectively to evolving international and domestic conditions and markets. In other words, what are the 10 to 20 year commodity export projections and do the railways have the capability/capacity to meet those demands...both presently and in future basis shipper projection requirements.

CTA Review Panel: Guiding Pillar and Policy Principles

It is our view that when the Panel is deliberating how best to address the needs and requirements of captive shippers for future rail service, the Panel members advice and recommendations to the Minister should be guided by these simple principles which are already enshrined in todays’ business environment: They are:

- 1) In any service/contractual agreement, both parties are commercially accountable and responsible for their performance obligations and
- 2) The terms and conditions of the performance obligations are well defined including compensatory provisions for costs arising from the failure of delivering on those obligations.
- 3) Clearly defined dispute resolution mechanisms, timelines and procedures are identified within the contractual agreements.

From a policy and principles perspective, it is our view that the Panel needs to satisfactorily address the following questions:

- 1) Are the recommendations commercially viable and attainable?

- 2) Are the recommendations balanced and commercially reasonable and fair?
- 3) Do the recommendations provide clarity, predictability and transparency?
- 4) Do the recommendations adhere to the policy objectives as described under Section 5 of the Canada Transportation Act regarding the needs of the users and enabling competitiveness and economic growth throughout Canada?

It is our position that the regulatory and/or legislative changes that our Council sees as necessary to help alleviate the current rail service delivery problems, meets all of the above pillars and principles.

Barley Council of Canada Recommendations Summary

- 1) Within Section (5) of the CTA (Act) the National Transportation Policy preamble declaration should have the following wording inserted to recognize the significant economic importance of the transportation system. It should read as follows:

It is declared that **“it is in Canada’s national economic security interests”** that a competitive and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users.....

- 2) There needs to be commercial accountability with financial consequences stipulated within Service Level Agreements (SLA’s) for non-performance failures on the part of either party to the SLA. The wording “operational terms” within the existing CTA (Act) needs to clearly identify that financial accountability for railways AND shippers’ performance is included within the definition of “operational terms’ ...not just for shipper’s as is presently the case via penalties built into railway tariffs.

Farmers’ and grain handlers/shippers are financially accountable to each other for their contractual obligations.....by extension....it is imperative that this be extended to include obligations between railways and shippers. It is a matter of “fairness and commercial balance” for all parties within the entire delivery, handling and shipping value-chain.

- 3) The need for a more precise and clearer definition of the term ‘suitable and adequate’ as it pertains to railway service obligations described within the Canada Transportation Act. There should be NO room for subjective interpretation as is currently the case. Furthermore, the railways service obligations should be based on servicing 100% of the producer car and grain handling facility requests for service...not a lower threshold capacity of 80% as is currently suggested by the CTA (Agency).

As previously mentioned, the recent CTA (Agency) decision regarding the Louis Dreyfus vs Canadian National Railways level of service decision, provided these additional comments:

“...the Class 1 railway companies now have sole discretion over the operation of their railways, including the size of the motive of power and hopper fleets, the allocation of

cars and assignment of motive power and crews. The means for providing suitable and adequate service lies entirely in the hands of the railway companies.”

“It is clear that a railway company’s statutory duty to furnish adequate and suitable accommodation for traffic cannot be achieved solely on a reactive basis. Predictability, sustainability and foreseeability are basic requirements for a well-functioning service to individual shippers and for the logistics system overall.”

“The statutory level of service obligations placed on a railway company imply that it must make an effort to identify measures in advance of the course of events and to consider necessary arrangements that can address the needs of its customers... These level of service obligations are initiated by a shipper’s request for service which, in turn, is to be responded to by the railway by, when necessary, adding capacity or adjusting frequency or timing, in order to fulfill its obligations”.

It is our Council’s view that the Agency couldn’t be any clearer in its decision as to what those service obligations should be. It is our position that this needs to now be FULLY described within the CTA regulations and the Act.

- 4) The BCC recommends that there should be some mechanism established that publishes/measures monthly performance results of cars requested and cars shipped (including a specific category for producer cars), and cycle delivery times. Quite simply, improvements and enhancements in the transparent communication, measurement and monitoring of performance and service obligations (by all parties).
- 5) That for the purposes of Canada’s labour laws and the resulting economic impacts to the entire Canadian economy because of various rail employment disputes resulting in rail work stoppages; rail service needs to be deemed an “Essential Service”. The captive reliance of all commodity industries on rail service to “get their product to market” needs to take precedent. As highlighted earlier **“it is in Canada’s national economic security interests”**.
- 6) That the railways provide annually to the CTA an inventory of power, crews and cars that are operational and/or available on short notice to meet the projected shipping requirements of ALL commodity sectors. Including operational contingency plans for cold weather events and cyclical surge capacity requirements that will confidently meet the needs of all shippers, for all commodity sectors, in all corridors.
- 7) That the Panel recommend that the regulatory and legislative changes that may be proposed by the Panel be implemented NO LATER THAN when the provisions under the existing Fair Rail for Farmers Act may/will sunset.

It is our hope the Panel will provide meaningful and commercially balanced recommendations to the Minister that will effectively address the needs of ALL shippers in Canada. We have been down this road too many times before....the stakes could not be higher. Reliable and predictable rail service is critical to Canada's future national economic security and prosperity in both rural and urban communities.

We welcome the opportunity to meet with you at your earliest convenience to answer and address any questions and comments that you presumably will have.

Sincerely;

The Barley Council of Canada
December 2014