

**GRAIN GROWERS
OF CANADA**



**LES PRODUCTEURS
DE GRAINS DU CANADA**

350 Sparks Street, Suite 912
Ottawa, ON K1R7S8
P: (613) 233-9954
F: (613) 236-3590
office@ggc-pgc.ca
www.ggc-pgc.ca

GGC Members:

Atlantic Grains Council

Alberta Barley Commission

Alberta Grains Council

Alberta Oat Rye &
Triticale Association

Alberta Pulse Growers

Alberta Wheat Commission

British Columbia Grain
Producers Association

Canadian Canola
Growers Association

Canadian Young Farmers
Forum

Manitoba Corn Growers
Association

Manitoba Pulse Growers
Association

Prairie Oat Growers
Association

Western Barley
Growers Association

Western Canadian
Wheat Growers Association

**Submission to
The Canada Transportation Act Review
Rail Freight Transportation
June 20, 2015**

Grain Growers of Canada (GGC) are pleased to have the opportunity to submit our comments to the Review of the *Canada Transportation Act* (the Act).

GGC provides a strong national voice for over 50,000 active and successful grain, oilseed and pulse producers through its 14 provincial and regional grower groups, from British Columbia to Atlantic Canada. We represent wheat, durum, barley, canola, oats, corn, soybeans, peas, beans, lentils, rye, and triticale farmers from across Canada.

Introduction

For years shippers have called on Government to address the challenges they constantly face when dealing with Canada's two national railways, seeking remedies to rebalance power, resulting in more normal commercial relationships. This government has made significant effort to address those concerns through the Rail Freight Service Review, subsequent legislation, the Order in Council (OIC) and Bill C-30, but challenges continue to exist. At a time when the Government is pursuing an aggressive trade agenda, moving products to markets in a timely manner, both domestically and via exports, is essential.

The flaws exposed during the recent rail transportation crisis threatened not only the livelihood of Canadian producers, with over \$2 billion lost, but also the success of Canada's trade agenda and our reputation as a reliable supplier of quality products. The grain and oilseed industry is highly export reliant and these inadequacies in the system threaten our exports, and in turn the livelihood of our farmers.

This review of the *Canada Transportation Act* is important in addressing the fundamental flaws in the rail transportation system, and implementing changes the shipping community has long been calling for to bring accountability and rebalancing of power in the relationship between shippers and the railways.

Background

Canada's agriculture and agri-food sector is a significant contributor to the economy. In 2012, the agriculture and agri-food system accounted for 6.7% of Canada's GDP. It is also a vital part of Canada's rural communities. The continued success of the industry, including our grain and oilseed producers, is contingent upon the ability of farmers to access and utilize new and innovative technology, and to capitalize on existing and new export markets.

The elimination of the Canadian Wheat Board's single desk created a new environment for Canada's cereals producers, enabling them to seek new markets and new value-added processing opportunities. In addition, improvements in crop varieties enables producers to grow grain they previously would not have been able to. For example, soybeans are now planted in areas of Manitoba and Saskatchewan, which previously had not been possible. As a result, farmers are producing more grain than ever before.

Canada's 2013-2014 crop year was record breaking, with over 90 million tonnes harvested. This was on top of the previous record breaking harvest of 2012-2013. Many factors influence crop production on a year-to-year basis, but with new and better varieties, technology and practices, yields are trending upwards.

Issues

Export and Domestic Challenges

On an annual basis, roughly 50% of Canada's total grain crop is exported, with 94% of these exports moving by rail. The grain industry is heavily reliant on railway shipping to move our products to market. Unfortunately, inefficiencies in the system are hurting the grain industry.

Canada's grain exports will continue to grow, in concert with increased grain production and Canada's aggressive trade agenda. While we strongly support the Government's efforts to open new markets and eliminate barriers in existing ones, we are very concerned that the unreliability and challenges of the rail transportation system will prevent the industry from capitalizing on the opportunities presented.

Our trading partners have taken notice of our transportation challenges. GGC's President attended the Global Grain Singapore conference in 2014 and, unfortunately, our rail system difficulties and subsequent delays in loading ships and getting products to markets were well known by many in attendance. This does not reflect well on Canada, especially when we are working hard to increase access to a number of markets.

When grain is not delivered in its full quantities on time, it means lost sales domestically and internationally. It also means lost revenue when farmers have to sell grain outside of peak price periods. It can also result in a loss of confidence in Canadian shippers.

Additionally, the value-added processing industry, such as canola crush plants, oat millers and barley maltsters, rely on shipments of raw product via the rail system. Interruption of supply due to lack of predictable, reliable and timely rail service negatively impacts these businesses. This also negatively impacts suppliers of the raw product. Despite the demand, inconsistent supply could deter companies from further investing in additional processing capacity and infrastructure.

Value-added processing is an important component of the agriculture supply chain. Developing and maintaining in-house, value-added processing creates jobs, contributes to the economy and creates marketable products. Many of the facilities are located in small rural areas, so there is great importance in maintaining these operations. Addressing rail challenges may encourage investment into additional facilities in rural Canada.

Operating Environment

In a normally functioning commercial market, the concerns of shippers would be foremost and strongly influence how the railways operate, with demand by shippers dictating railway capacity. However, given its monopolistic nature, the Canadian rail system does not operate under a normal commercial environment and there appears to be little due consideration on the part of railways to meet the performance requirements of the grain industry or other sectors.

In a time when demand to move products by rail is growing, the railways have failed to invest in increased capacity to meet the need. They have also failed to invest in the necessary infrastructure, human resources and power to move products, especially in winter conditions. The grain industry, from the farmer all the way through the value chain, has made the necessary investments in infrastructure

and capacity to meet the growing demands and to make the system as efficient as possible. Rather than running thousands of elevators across the Prairies, companies have consolidated. Many farmers have invested heavily in technology, both in the crops they grow and in the machinery and inputs used, to increase yields while minimizing inefficiencies. It is unfortunate that the railways have not made similar investments to increase their capacity.

The movement of grain from farm to port requires considerable coordination. Poor spotting of cars on a consistent basis by the railways makes it difficult to accurately plan for the efficient movement of grain and can disrupt the entire chain, costing time and money. Poor spotting includes the number of cars requested vs. the number that actually arrive, as well as the timing of car delivery vs. what was actually scheduled. Sufficient car supply overall to meet the needs of grain shippers is also an issue. Moreover, the railways are known for issuing unrealistic demands on car loading and turnaround time, penalizing companies when they do not meet the railway's own schedule.

Recommendations

Proper Definition of "Adequate and Suitable"

The Canada Transportation Act s. 113(1) clearly states that a railway must provide "adequate and suitable accommodation for the carriage, unloading and delivering of the traffic." Unfortunately, railways and shippers differ in their interpretation of what is deemed adequate and suitable service. For example, the railways may believe that spotting cars at a 70% rate is acceptable, while shippers do not.

Through various rulings, the Canadian Transportation Agency has moved closer to providing a definition, but adequate and suitable service has yet to be defined in legislation. In an environment where shippers rely on the railways to move their product expediently, railway service obligations must meet the transportation needs of shippers and any definition put forward should reflect this.

Recommendation: that adequate and suitable accommodation be properly defined under the common carrier obligations of the Act as follows: *"For the purposes of sections 113 and 114, a railway company shall fulfill its service obligations in a manner that meets the rail transportation needs of the shipper."*

Inclusion of Reciprocal Penalties in Arbitrated Service Level Agreements

CN and CP set tariffs and impose financial penalties on shippers who fail to meet their performance standards. As a result, shippers are committed to loading and unloading cars with a high level of efficiency. Similar provisions do not exist for shippers when the railways fail to meet their own obligations.

Shippers should have the ability to hold the railways monetarily responsible for the lack of adequate service that costs them time, money and sales. Even small monetary penalties may help create efficiencies in the system for shippers by holding the railways accountable to live up to their service commitments. For example, the railways should be penalized when they agree to spot cars and fail to deliver them within a specific timeframe. Holding each other financially responsible creates increased accountability between parties, and is a fundamental principle in normal commercial contracts. Railways will not voluntarily enter into service level agreements that contain reciprocal penalties for their performance. When the process goes to arbitration, under the current regulatory framework, the Arbitrator is not compelled to address this issue.

Recommendation: That reciprocal penalties be included in arbitrated Service Level Agreements at the shipper's request

Order in Council (Weekly Minimum Mandatory Volumes)

GGC greatly appreciates the undertaking of the Government to rectify the situation the industry found itself in during the winter of 2013-14. Setting weekly mandatory minimum volume requirements through the OIC was needed, and the decision to extend it through the winter of 2015 was valued. It was our hope that the mandated volumes would not be required indefinitely, although we do believe the legislative authority behind them should be retained as a safeguard, with strengthened level of service provisions rendering their future use moot.

Unfortunately, there were unintended consequences as a result of the OIC. We understand that the railways fulfilled their mandated volumes by moving grain on those corridors that ensure them the quickest turnaround time (the "low-hanging fruit") at the lowest cost, primarily those that run east-west. As a result, those commodities that ship on north-south corridors and those shipped to processing facilities (wheat, barley and canola) were negatively impacted.

For example, the Canadian oat industry exports roughly 90% of their product to the United States. In the first six weeks of 2014, oat exports to the U.S. were down to a six-year low, despite the largest oat harvest since 2009. While producers were sitting on bins full of oats, U.S. buyers were sourcing from other countries to meet their needs. This is unacceptable.

Recommendation: That the weekly minimum mandatory volume provisions of Bill C-30 be maintained as a safeguard measure in case poor service requires their implementation again in the future.

Recommendation: We request that any future Minister's guidance on volume requirements take into consideration specific commodities, and by corridor, which will help alleviate issues faced by commodities such as oats and barley.

Transparent, Timely, Useful Data Reporting

The key to assessing the proper functioning of a system is to review information and data that is provided in a timely and transparent manner, and made available to all relevant stakeholders. The *Fair Rail for Grain Farmers Act's* Regulations Amending the Transportation Information Regulations are commendable, in that they allow the government to collect detailed information on the movement of grain from both railways, with the intent of arming the government with the necessary information to properly monitor the health of the rail transportation system. The regulatory amendments allow the government to collect:

- Railway car cycle data covering all grain movements
- Weekly grain traffic by tonnage, carloads, railway car type and corridor travelled
- Railway car fleet information for railway cars used for grain transportation including the number of cars that are empty, loaded, in storage, en route or in bad order
- Railway car order fulfilment information including dates orders were placed, name of shipper, origin and destination of the grain, the total number of railway cars ordered and cancelled by the shipper and number of railway cars the rail carriers have committed, placed and/or cancelled.

This information is essential in identifying weaknesses and determining additional future measures that may be required to avoid the failures we saw last winter. Unfortunately, the government is not making the data it is collecting directly available to stakeholders, and in any case the regulatory authority itself may sunset as of August 1st, 2016.

Recommendation: That the government mandate this data collection and reporting as a permanent requirement under the Act, that its scope be expanded to include reporting on each crop, and that it be publicly released on a weekly basis, as is now required in the United States. This would create a high level of transparency that would benefit all stakeholders.

Improved Forecasting

The Minister of Transport established the Commodity Supply Chain Table in the spring of 2014, bringing together key stakeholders to collaborate across the rail supply chain in order to improve the efficiency, effectiveness and reliability of the rail-based supply chain for bulk commodities. We are supportive of this initiative and believe it should be maintained and built upon.

The next iteration of the Act should include provisions to work jointly on forecasting demands. A transportation system as complicated as Canada's needs to be built on the spirit of collaboration. The number of stakeholders and demand on the system will continue to grow and evolve. Consultations should be transparent, conducted by the Canadian Transportation Agency in conjunction with the Ministers of Transport and Agriculture, and include producer groups, handlers, railways, and non-grain commodities to better understand future demands on railway movement and the ability of railways to meet those demands.

Recommendation: That key stakeholders in the rail transportation system, including producer groups, meet regularly via a forum such as the Commodity Supply Chain Table, to report on capacity and demand forecasts.

Interswitching

Bill C-30 prescribed new interswitching rates in regulations for all commodities for the extended distance of 160 km in the Prairie Provinces. We supported this provision, as we believe that it will encourage greater rail competition. However, as with most of the measures contained in the legislation, these provisions may sunset as of August 1st, 2016.

Recommendation: That the interswitching measures included in Bill C-30 be made a permanent feature of the Act.

Schedule II: Soybeans and Chickpeas

Further to the discussion above with respect to unintended consequences of the OIC and related legislation, the mandatory weekly minimum volumes cover only the crops listed under Schedule II of the *Canada Transportation Act*. Unfortunately, soybeans and chickpeas are not presently listed under Schedule II. While originally a Southern Ontario/Quebec crop, soybeans have been expanding westward, with acres increasing in Western Canada every year. In 2014, Manitoba seeded 1.3 million acres, up from 575,000 in 2011, surpassing Quebec as the second largest soybean producing province in Canada. A similar trend is also occurring in Saskatchewan.

Producers choosing to grow these crops need to know they will be able to ship them to market. As a result of neither crop being listed under Schedule II, the railways are failing to move either in any significant quantity. Given the rapid increase in acreage and production of soybeans in Western Canada, it is important to include soybeans under Schedule II.

Although a small crop in comparison to soybeans, chickpeas are an important pulse crop. With major markets in India, the Middle East, the EU and the U.S., chickpeas need to be exported to meet the demand. Chickpeas should also be added to Schedule II, ensuring that they, along with soybeans, will enjoy the same protection as other crops recognized by the Act as being transported by rail.

Recommendation: That soybeans and chickpeas be added to Schedule II of the *Canada Transportation Act*.

Maximum Grain Revenue Entitlement

In the absence of a true competitive market, and with the vast distances required to move grains and oilseeds from country to port, the current regulatory framework aims to keep Canada competitive in global markets. The removal of the Maximum Grain Revenue Entitlement (MRE), as some stakeholders are advocating, would very likely lead to an increase in grain tariff rates with no guarantee of better service. At the height of the grain transportation crisis, over 50% of the unmoved grain did not fall under the MRE. There appeared to be no correlation between the MRE and those rail performance issues.

We feel there would be value in examining the MRE regulations to determine if they are still functioning as originally intended (I.E. as a means of protecting producers from excessive freight rates), along with determining whether or not the MRE is providing incentives to the railways for adequate investment to meet future capacity needs. However, any examination or review of the MRE should be conducted only once concrete steps to address the level of service deficiencies noted above have been taken. To do otherwise would, in our view, be an unneeded distraction.

Recommendation: That the MRE be maintained, with a review considered only once level of service deficiencies are addressed.

Conclusion

The current commercial environment in which shippers and the railways operate is one-sided, resulting in low level of service standards, which negatively impacts shippers, and Canada's international reputation. While the grain sector lost millions of dollars due to late shipments, lost customers and extra demurrage fees during the crisis, railways were cutting capacity despite increased profitability. There is a serious imbalance under the current framework, which is why the shipping community is motivated to seek help from the Government through legislative change.

Our sector would rather not have government involved in commercial arrangements. However, given the crisis of 2013-14, which was itself reflective of long-identified deficiencies in the system, we believe the only way to drive permanent change in Canada's rail-logistics is to rebalance the relationship between shippers and the railways. This can only occur via legislative change.

We have proposed several solutions that we believe would help lead to a rail freight system that is balanced, accountable and has adequate capacity for all commodities.

1. Properly Define “Adequate and Suitable”
2. Inclusion of penalties in arbitrated Service Level Agreements
3. Maintain authority to implement mandatory weekly minimum volumes when needed
4. Accommodate specific corridors and commodities in setting Minimum Mandatory Volumes
5. Transparent, timely, useful and permanent data reporting
6. Improve capacity and demand forecasting via regular meetings of key stakeholders
7. Maintain interswitching provisions contained in Bill C-30
8. Amend CTA Schedule II to include Soybeans and Chickpeas
9. Maintain MRE, with a review considered only once level of service deficiencies are addressed

Thank you for taking the time to consider our submission. Please feel free to contact Grain Growers of Canada with any questions or comments you may have.