

# GRAIN TRANSPORTATION IN CANADA- DEREGULATION

by

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## I. Introduction

The transportation of grain in Canada is deeply rooted in politics, regulation and conflict between western grain shippers and the railways. The problems began before the turn of the nineteenth century and it has continued even into the first part of the twenty-first century. Nevertheless, grain has been an important export of Canada, a livelihood for Western farmers and a source of revenue to the railways in Canada. In the crop year 2008-2009, the transportation of Western grain provided the Canadian National and Canadian Pacific Railways with revenues in excess of \$964 million.

This review however is confined to the regulatory developments that have occurred in grain as they relate to wheat after the period 1995. We shall review the important studies that were involved in the deregulation of grain transportation. In particular, the elimination of the transportation subsidy, the recommendations of the Canada-United States Joint Commission on Grains and the Western Grain Panel Marketing Report which led to some of the changes in the *Canadian Wheat Board Act*, and the Estey Grain and Arthur Kroeger Reports leading to amendments to the *Canada Transportation Act*. Then we shall review the studies that monitored the industry after deregulation and briefly describe some of the issues that grain transportation continues to face. First, however, we shall provide a brief background.

## II. Background

The regulation of western grain transportation[1] goes back to the late 1800's. In 1897, the Federal Government and the Canadian Pacific Railway (CPR) signed the Crow's Nest Pass Agreement. This Agreement set rates for the movement of agricultural produce by rail from the Prairie Provinces to tidewater. It fixed rates at half a cent an imperial ton mile.[2] CPR accepted the rates in lieu of a payment of \$34 million under the Agreement.[3] These rates were subsidized rates as it was 20% below the prevailing rates for the movement of wheat. The reason for the subsidized rates was to ease the hardship faced by Western farmers which they felt was imposed upon them by the railways.

In 1925, these rates became statutory as they were embodied in the *Railway Act* Pursuant to the Agreement, grain producers absorbed 18.7%

of the cost of transporting grain, the remainder being paid by the federal government. In 1927, the statutory rates were extended to Canadian National Railway and to exports of grain and flour to ports on the West Coast and Churchill. Since then crow rates were extended to cover several other crop based products. By the late 1950s, the statutory freight rates had become non-compensatory. For example, in the 1970s of the total variable costs incurred by the railways, 32% was paid by the shippers, 18% by branch line subsidies and the remaining 50% was unrecoverable costs. The railways responded to this by slowing down shipments to grain terminals and by reducing investment in the grain handling system. In 1984, the *Western Grain Transportation Act* replaced the Crow's Nest Pass freight rates. This Act set a formula for determining freight rates on the basis of a multiple of the Crow rate. Thus it maintained the old principle of fixing rail transport charges on the sole basis of distance, with no allowance for timing or volume.[4] It institutionalized the payment of the subsidy and also increased rates to compensatory levels. The benefit under the Act was set at \$658 million. By 1989-90, the benefit was \$720 million which covered 70% of the freight cost the remaining 30% being paid by shippers.

Faced with the challenge of eliminating a large deficit in the mid 1990s, the government scaled back the payment of the benefit in 1993-1995 and by 1995 the benefit was \$565 million with farmers paying half the cost of transporting grain. The government also faced international pressure on eliminating trade distorting transportation subsidies (Uruguay Round Agreement on Agriculture).

### **III. Regulatory Developments in Grain Transportation Over the Past Few Years (1995-2000)**

#### ***a) Elimination of Transportation Subsidies***

The absorption of the cost or subsidy by the Federal government ended when the Minister of Finance in his budget speech announced the end of the subsidy programs in 1995.[5] In lieu of the subsidy, the government offered a onetime payment of \$1.6b to registered landowners tax free.[6] The *Western Grain Transportation Act* was repealed in 1995 and with that Western grain transportation subsidy came to an end after 98 years.

Further, to protect the farmers, the maximum rates that could be charged by the railways for the transportation of 58 grain commodities were set under the *Canada Transportation Act*. The demise of the Crow rate did not bring about a strong reaction from the farmers.[7] Its abolition enabled Canada to honour some of its obligations under the revised

General Agreement on Tariffs and Trade to reduce agricultural subsidies which were described as anti-competitive. Further, it discouraged efficiency, frustrated efficient pricing, distorted market signals creating situations which moved Prairie grain to Thunder Bay and then back to Winnipeg for export to the United States in order to collect the subsidy. Finally, given the size of the deficit at that time and the changed attitude of the federal government to subsidies, its abolition helped to alleviate some of the governments fiscal problems. The elimination of rail freight subsidies initiated a process of gradual deregulation, one of the major deregulatory events that began in the 1990s.

***b) Canada - United States Joint Commission on Grains***

The Canada-United States Joint Commission on Grains was set up in September 1994 to improve the understanding between the two countries with respect to grain production and marketing systems. In October 1995 the Commission issued its final report to the U.S. and Canadian governments regarding possible solutions to current trade difficulties and trade distorting elements of the respective cereal grain marketing systems.

The Commission's recommendations pertaining to grain handling and transportation fell under the category of infrastructure. Six recommendations were made: the two countries provide reciprocal access to each other's grain infrastructure; the two countries effectively coordinate competition law enforcement in an integrated North American market; the two countries standardize trucking regulations - county, state, provincial and federal; the two governments assess the long-term viability of the Great Lakes-St. Lawrence Seaway, funding of its operations and upgrading of the system; Canada deregulate its rail transportation system and the ownership of its grain car fleet be resolved in a non-trade distorting manner; and the two governments monitor the use of the river system with respect to grain movement and agree to seek solutions to problems.[8]

***c) Western Grain Panel Marketing Report***

In July 1995 the Honourable Ralph Goodale, Minister of Agriculture and Agri-Food, appointed the Western Grain Marketing Panel Report to conduct a comprehensive examination of the western grain marketing issues and make recommendations. The nine-member Panel in its unanimous report made recommendations in three basic areas: Institutions related to grain marketing (i.e. the Canadian Wheat Board, Winnipeg Commodity Exchange, and the Canadian Grain Commission); Marketing

Systems (Wheat marketing, barley marketing, and other grains, oilseeds and special crops); and Grain Handling and Transportation.[9]

It made four recommendations on the latter area: plans should be developed for a new grain car allocation system and plans for a new ownership of government hopper cars should be completed and implemented as soon as possible; the situation of farmers captive to one railway should be considered when reviewing the CTA; the government should institute more rigorous controls on strikes and lock-outs including greater freedom to use replacement workers; and Transport Canada should take a leading role in resolving problems of vessel delays at the Port of Vancouver.[10]

**d) *Changes to the Canadian Wheat Board Act***

On June 11, 1998, Parliament of Canada enacted Bill C-4, *An Act to Amend the Canadian Wheat Board*. The amendments were designed to make the CWB a more effective marketing institution for wheat and barely in Western Canada. The major amendments relate to: governance (the CWB will consist of fifteen members - ten are farmers elected to represent their regions across the Prairies and five are appointed by the Federal Government one of whom is the President and CEO); Crown status (CWB ceases to be an agent of the Crown and is not a Crown Corporation); funding (borrowings by the CWB are unconditionally and irrevocably guaranteed by the Minister of Finance); and flexibility in pricing and marketing (for example, permitting the CWB to enter into a contract with a producer to purchase wheat or wheat products at a price not specified in the section 32 of the Act on any terms and conditions that the CWB considers appropriate).

These amendments were a move in the right direction as they attempted to alleviate the growing concerns of western grain farmers[11] and the Province of Alberta.[12] They also enabled the government to keep its 1993 promise to western grain farmers. Despite the positive thrust of the amendments, it failed to introduce a fully competitive system through the continuance of a single-desk seller.[13] Pressures to introduce more than one seller will continue together with international pressures to keep up with world developments.

**e) *Estey Grain Review***

In December 1998, the final Report of Willard Estey on Western Grain Handling and Transportation was submitted to the Federal Government. The report contained 15 recommendations pertaining to handling and transportation of grain.

Regarding the transportation of CWB grain, the review made several recommendations. First, that the maximum statutory rate scale for the rail movement be repealed.[14] The result of this recommendation will mean that the preordained freight rates (controlled under sections 149-153 of the Canada Transportation Act (i.e., CTA)) will be replaced by negotiated contract rates. Further, there will be a guaranteed reduction in freight cost for a period of six years. Second, it recommended that the provisions of the CTA relating to various methods of seeking access to other connecting lines be simplified and clarified so as to better serve the national interest in obtaining competitive and efficient transportation by rail.[15] The effect of this would result in open access to the existing CN and CP lines. Further, it made recommendations on the abandonment of branch lines (eg. consolidation of CTA provisions so as to give an opportunity for the community to acquire the abandoned lines as a complete unit and to run it, etc.).[16] In addition, it made recommendations regarding the Final Offer Arbitration provisions of the CTA. Third, the Review made recommendations on the disposal of hopper cars and its allocation policy so as to increase the supply of rail services. It recommended that the right of first refusal of the railways to buy these cars be removed or allowed to expire before the sale is undertaken and that it would be of interest to the government to dispose these cars. Further, it recommended that the car allocation policy group system be discontinued and the matter of allocation of cars be left to the railways.[17] Fourth, the Review recommended that the federal government, in conjunction with the St. Lawrence Authority work to encourage the utilization of the Seaway as an alternative transportation route to the movement of grain and to promote sales of Board grains to markets which can be economically served by the Seaway.[18] Overall the Review recommended that the Canadian Wheat Board have no operational or commercial role in the handling and transportation of grain.

***f) Minister of Transport Policy Statement***

On May 12, 1999, the Minister of Transport announced in a policy statement that the Federal Government agreed with Estey's vision that the western grain handling and transportation system should be made more efficient, accountable and beneficial to farmers by moving to a more commercially-oriented environment with appropriate safeguards to protect the public interest. To give effect to his vision, the Minister of Transport in consultation with the Minister responsible for the Canadian Wheat Board and the Minister of Agriculture and Agri-Food appointed Mr.

Arthur Kroeger to develop operational details so as to implement the Federal Government's plan for the 2000-01 crop year. By the end of September 1999, Mr. Kroeger prepared three reports after consultation with various stakeholders to give effect to Willard Estey's recommendations.

**g) Arthur Kroeger Reports**

The recommendations of Mr. Kroeger fall under four groups: 1. *The Revenue Cap* - should replace the present rate cap (12% reduction from revenues in the base year 1998 and future rate reductions determined by competition). 2. *Railway Competition* - should be increased. 3. *Final Offer Arbitration* - should be revised. 4. *The Transportation Role of the Canadian Wheat Board* - should be superseded by commercial, contract-based arrangements.[19] *The Revenue Cap*: The end of the freight cap would represent an end to over 100 years of control on grain freight rates. Three options were considered but the option recommended sets the initial revenue cap at 8% (i.e., \$2.44 per tonne) below the 1998 level, assuming a movement of 30 million tonnes.[20] Further, reductions would then be expected to follow in subsequent years. Proponents of this option suggest that this is the option that Estey would have recommended had he the benefit of the Agency Report. However, Mr. Kroeger recommended a reduction of 12% rather than 8% as proposed above. This would set the initial revenue cap at \$838 million, or \$112 million below the 1998 level. Further, Mr. Kroeger recommended that competition rather than regulation should be relied upon to effect rate reductions in future years. *Railway Competition*: Mr. Kroeger agrees with the finding in the stakeholders' report that "the existence of effective competition [in the rail] is a fundamental pre-requisite to the operation of a de-regulated system".[21] Despite consideration of various options no consensus was reached other than the fact that competition was required and that proposals for a commercial system are predicated on the existence of a strong competition between the railways. Consequently, the option chosen was before making a recommendation the government should examine a range of possible actions (open access, inter-switching, and competitive line rates).

*Final Offer Arbitration (FOR)*: The report took Willard Estey's recommendation on FAO as a starting point but could not agree on the recommendation that offers should be submitted to the arbitrator simultaneously by the railways and the shipper. This proposal was not agreed to by all parties as the railways indicated that this would place

them at a disadvantage. There was however consensus on one issue that negotiations were preferable to arbitration, that arbitration should be used as a last resort and a check list should be followed before having recourse to it. Mr. Kroeger believes that the proposed system should be implemented with the modifications suggested.[22]

*The Transportation Role of the Canadian Wheat Board:* In his report, Willard Estey observed that: 'As part of its sales function, the Board currently has a dominant role in the transportation of Board grain to export points through its powers of calling in grain from the farmers, developing delivery schedules, controlling rail car allocation and otherwise influencing rail operating practices.' There was a diversity of opinion on the subject. The Canadian Wheat Board insisted that its role is essential, a view challenged by the grain companies and the railways. Estey adopted the latter view (so that the Board's role would begin at the port). Three options were considered: 1) Estey's model; 2) 20% Estey's model; and 3) 70-80% Estey's model. On the assumption that the government remains intent on effecting major change, Mr. Kroeger, recommended that the above Option (i.e., 3) be adopted. Though it falls short of a full implementation of Willard Estey's recommendation, it would move the system a long way in that direction. It was also recommended that to give the new system as commercial a character as possible the option should also contain the following elements: a) a transition to tendered contracts in three years starting with 25% and increasing by the same amount over each year, with provision for a fully contractual system; b) the transition over the first three years should be mandatory; c) the board should assume custody of the grain only when it is loaded on board a ship together with an arrangement to share any gains between grain companies and producers for blending; and d) the system should be structured in such a way that the grain companies would have the maximum scope to compete for producers' grain.

***h) Bill C - Implementing Reforms in the Marketing and Handling of CWB Grain***

On May 10, 2000, the Minister of Transport, David Collenette, together with Ralph Goodale, the Minister of Natural Resources and the Minister for the Canadian Wheat Board, and the Minister Lyle Vanclief, Minister of Agriculture and Agri-food announced a package of reforms on Canada's Grain Handling and Transportation System.[23]

The Reform Package (based on Estey and Kroeger) proposed by the Ministers contains 6 components: replacement of the rate cap with the

revenue cap; creation of a more commercial and competitive system for moving grain from country elevators to ports (by tendering of Canadian Wheat Board shipments); improvements to the FOA provisions of the *Canada Transportation Act*; funding for prairie grain roads; improvements to branch line rationalization; and private monitoring of the impact of changes.[24] The first three Reforms indicated above are to be implemented by August 1, 2000. Additional details of these three reforms are provided hereafter. First, the revenue cap to be established provides for an annual estimated reduction of \$178 million in railway revenues. This represents an estimated 18 percent reduction in grain freight rates from 2000-2001 levels. Second, logistical services for 25 percent of the grain shipments of the Canadian Wheat Board through the ports of Vancouver, Prince Rupert, Thunder Bay and Churchill will be tendered in 2000-2001. This percentage will be increased to 50 percent in 2002-2003. Third, the *Canada Transportation Act* will be amended to facilitate the transfer of branch lines to community-based shortlines and to simplify the Final Offer Arbitration process.[25]

*i) Amendments to the Canada Transportation Act*

An Act to Amend the Canada Transportation Act went into effect on July 26, 2000. The amendments deal with a revenue cap, the final offer arbitration and the abandonment of a branch line. First, the revenue cap will result in a reduction of estimated revenue from freight rates by \$178m. This is approximately an 18 percent reduction in grain freight rates from the 2000-2001 levels. Second, the final offer arbitration provision will provide for: a summary process for disputes of less than \$750,000, an exchange of offers after ten days, a faster process for dealing with disputes (i.e., 30 days for disputes of less than \$750,000 and 60 days for disputes of more than \$750,000) and a three person arbitration panel. Third, the branch line amendments facilitate branch line rationalization and the measures to achieve this include the following: compensation (transitional) of \$10,000 per mile for three years to affected municipalities or districts when a grain line is closed, operation of the remaining part of the branch line for three years, discouraging de-marketing (i.e., purposefully deferring maintenance to make operations uneconomic) of grain lines by ordering improvement of services and identification of lines for discontinuance in the three year plan. Fourth, section 116 was amended to provide for running rights to protect grain shippers in the event a railway breaches its level of service obligations.

**IV. Regulatory Developments in the Grain Transportation Over the**



**Past Few Years (2000-2010)**

**a) Grain Monitor**

To give effect to the government's reform regarding monitoring the grain handling and transportation system, the grain monitoring program was established. The objective of the monitoring program is to provide information and analysis on the performance of the grain handling and transportation system. The monitoring will assess: the effects on farmers; whether the Canadian Wheat Board (CWB) marketing mandate is affected; the effect on grain handling efficiency; the effect on railway efficiency; the effect on port efficiency, and; the overall performance of the Grain Handling and Transportation System (GHTS). Transport Canada established a framework for the Grain Monitor and the contract was awarded to Quorum Corporation to undertake the monitoring. Since 2001, it has published annual reports, quarterly reports and supplemental reports.

**b) Canada Transportation Act Review Panel CTARP**

In May 2001, the CTRA Panel recommended that the grain handling and transportation system be moved to a more commercial basis, which could lead to repeal of the revenue cap on grain rates. It was of the opinion that there was no reason to treat grain transportation any differently from transportation of other commodities.

**c) Canadian Transportation Act - Revenue Cap**

The *Canada Transportation Act* (s. 151) requires the Agency to determine each railway company's revenue cap annually and whether each cap has been exceeded by the railway companies. The caps apply to revenue the railways derive from the movement of grain from Prairie origins to terminals at Vancouver, Prince Rupert, Thunder Bay and Churchill. The current "revenue cap" regime came into effect on August 1, 2000.

The CTA determined that both CPR and CPR exceeded its revenue in four of the years since the cap regime came into effect as shown in Table 1 hereafter.

**Table I - CN and CP Excess Revenue Above its Cap**

	2003-4	2004-5	2005-6	2006-7	2007-8	2008-9
CPR	\$321,912	-	\$1,495,535	\$3,760,353	\$33,806,200	-
CN	-	\$118,714	\$2,700,949	-	\$25,961,880	\$683,269

Source: News Releases of the Canadian Transport Agency.

It also determined the Volume Related Composite Price Index (VRCPI) to be used to establish railway-specific revenue caps for the movement of western grain each year (3.5% - 2001/2003; 0.9% - 2002/2003; 2.4% -

2003/2004; 0.9% - 2004/5; 4.4% - 2005/6; 6.6% - 2006-2007; 3.2% - 2007/8; and a 8% - 2008-2009). The VRCPI is essentially an inflation factor that reflects forecasted price changes for railway labour, fuel, material and capital purchases by CN and CPR. Over the last few crop years this index has seen significant fluctuations as a result of changing fuel prices and, in one instance, a legislatively mandated adjustment. In response to a request from the Minister in June 2007, to adjust the VRCPI, the CTA adjusted it. This had a downward impact of the adjustment on the revenue caps.

***d) Straight Ahead - A Vision for Transportation in Canada***

The Minister of Transport released its vision of grain transportation in February 2003. Regarding grain transportation it indicated that the government: 1. will continue to monitor the impact of its May 2000 grain policy reforms before making decisions on further policy changes; and 2. proposes that the *Canada Transportation Act* be amended to require railways to publish a list of sidings available for loading grain producer cars and to give a 60-day public notice before removing such sidings from operation. (*Sidings are the places where farmers load their grain into rail cars. This provision would give farmers time to make alternative arrangements or to work with the railway to keep such sidings in operation*).

***e) Amendments to the Canada Transportation Act***

On February 29, 2008, Bill C 8 on the Canada Transportation Act received Royal Assent. The new amendments specifically applicable to grain transportation was: requiring railways to publish a list of rail sidings available for grain producer car loadings together with a 60 days' notice before removing such sidings from operation. Other amendments of a more general nature that could affect grain shippers are: permitting the Agency, upon complaint by a shipper, to conduct its investigation on charges and to establish new charges; ensuring that the discontinuance process applies to railway lines that are leased to local railway operators and subsequently revert to a federal railway; extending the final offer arbitration to groups of shippers; and allowing for the suspension of any final offer arbitration process, if agreed to by the parties.

**V. Issues For Further Consideration**

***a) Hopper cars and allocation of cars***

From 1972 to 1986, the federal government acquired 14,000 hopper cars for the handling of Western Canada grain, today there are approximately 12,100 railways cars in the government fleet. The Canadian Wheat Board

has about 4,000 cars and the provinces of Alberta and Saskatchewan have another 2,000. These government cars are provided to the two railways in about equal numbers without charge for the transportation of grain from the Prairies to the ports of Vancouver, Prince Rupert and Churchill for export or to Thunder Bay for export or domestic purposes.

The Allocation of these hopper cars is considered to be the most complicated segment of this industry. The federal government has no direct involvement in car allocation. It did have a significant role prior to 1995, pursuant to the *Order Respecting the Allocation of Available Railway Cars* under section 115 of the *Canada Grains Act*. The repeal of the Order shifted responsibility for allocation from government to the industry. The latter established the Car Allocation Policy Group (CAPG) to develop broad high level car allocation principles. It allocated cars between Board and non-Board grain.[26] The Grain Companies expressed concern about the split between Board and non-Board grain and the railways expressed concern that car allocation, a key element of the rail system, was controlled by a third party. The Estey Report recommended that “the CAPG system be discontinued. Cars supplied by the railways should be allocated on the basis of conditions published by the railways. Notice requesting cars should be given on a timely basis by the shipper, or within a minimum period of notice as set out in the railways’ published conditions. The railways should provide special arrangements for longer-term reservations of cars, in which case a prescribed fee may be applied.” Further, “in times of scarcity of cars, there may be need for a standing referee available to the shipper, appointed to the federal Minister of Transport, ... Where the shipper and the railway are not able to agree with respect to fees or damages, it is recommended that the dispute be settled according to the Final Offer Arbitration.”[27]

In the 1996 federal Budget, the federal government announced its intention to sell its fleet of hopper cars. The matter of ownership was a contentious issue. On March 9, the government announced that it would open negotiations with the Farmer Rail Car Coalition (FRCC).[28] In November 2005, the government reached an agreement in principle to lease the grain hopper cars to the FRCC. However, a final agreement was never concluded and on May 4, 2006, the government decided not to proceed with the transfer of the cars to the FRCC.

Given the peaks in demand for transportation of grain (due to seasonality) and the inadequate supply of hopper cars to meet the peak demand,

hopper car rationing is inevitable. The Western Grain Elevator Association called for reforms due to the railway shortfalls, inefficiencies, and failures.[29]

**b) Rates**

A 2008 study commissioned by the Canadian Wheat Board argues that Canadian National and Canadian Pacific Railway have taken more than \$100-million a year in "unreasonably excessive returns" for transporting Prairie grain to port. Bob Friesen, President of the Canadian Federation of Agriculture says that they're victimized by the railway monopoly. Jim Feeny, a spokesman for CN, said his company disputes the conclusions reached in the consultant's report.[30] To fan the flames, the Canadian Transportation Agency (CTA) in mid-February cut rail grain rates by eight per cent under the revenue cap retroactive to Aug. 1, 2007. CN sought leave from the Federal Court to appeal the Feb. 19, 2008, decision. Shortly thereafter, E. Hunter Harrison, president and chief executive officer, said: "With the latest CTA decision, the government of Canada is effectively transferring income from one sector of the economy – railways – to another – farmers – in what we believe is an unfair ruling on rate cap inputs." In the US too, agricultural shippers took aim at rail captivity. They expressed their frustration in their testimony before the House of Small Business Committee on May 1, 2008. They endorsed bills offering improved oversight and commercial protections to shippers with limited rail access (H.R. 2125 and S. 953) and called for the elimination of several antitrust exemptions for the railroads (H.R. 1650 and S.772).[31]

A new independent study (John Edsforth) was released on June 16, 2010 commissioned by the Agricultural Producers Association of Saskatchewan, the Canadian Federation of Agriculture, the CWB, the Keystone Agricultural Producers, the National Farmers Union, and the Wild Rose Agricultural Producers. The study indicates that Western Canadian farmers have been paying \$200 million per year (for the 2008-9 crop year) more for rail service than was considered fair under former WGTA legislation.

**c) Service Shortcomings**

Service failures and shortcomings by the railways have been a longstanding complaint of shippers especially captive shippers. A survey of 262 shippers by NRG Consultants states that "*overall satisfaction is low*". The NRG found that 62% of rail shippers suffered serious financial impact as a result of poor rail freight service. This has also been

acknowledged by CN. Peter Ladouceur, assistant VP of sales and marketing of CN, at the shippers State of the Logistics dinner promised that "You're going to see a new CN ... You're going to see CN come out in a more customer-centric manner. We won't be driving our agenda only, all the time, as we have done in the past 10 years." [32] Ladouceur admitted CN has bullied its customers in the past and that they are going to be a lot more cognizant of the fact that there is a thing called a supply chain and that it's not just about CN. At the same time, CN was of the opinion that rail companies cannot be held responsible for every hiccup that delays the movement of goods. Further, the Canadian Industrial Transport Associations proposal to the ongoing Review Panel to link penalties to failures is not necessary and is really not manageable and would lead to major disputes. Surface appearances are deceptive and the root cause would have to be determined.

***d) Re-regulation/Deregulation?***

CN in March 2008 urged the Canadian government to stay the course toward a commercial framework for grain transportation. The CEO for CN rail indicated that "Rail rates for grain transport in Canada are among the lowest in the world and significantly less than those in the United States." He indicated that the creeping re-regulation of grain transportation runs counter to long-standing government policy. He indicated that deregulation revived the Canadian rail industry over the past decade, producing lower rates and improved service, while allowing railways to generate sufficient profits to significantly step up investment in their networks. Accordingly, he urged the government to stay on the path toward a deregulated grain sector. In a later news release, CN called for a fully de-regulated grain transportation environment to drive innovation and investments critical for increased efficiency in the system. [33]

Recently, the government has reduced the number of grain commissioners by five. Some observers interpret this as an indication that the government is interested in introducing further deregulation.

**VI. Concluding remarks**

Other issues that are not contained in the reform package have yet to be addressed. The most important issue is how to ensure that the pro-competitive provisions of the CTA pertaining to rail will work. Rail competition is a pre-requisite if deregulation in the grain handling and transportation system is to work. In the past, most of the provisions such as running rights and competitive line rates have not proved to be very successful.

Some observers feel that the reforms to-date only partially deregulate grain handling and transportation. Further, the present proposed marriage between a competitive transportation system and a wheat monopoly is unlikely to bring about the gains that should arise from a truly competitive system. A fundamental issue is whether the CWB should retain its role as the single-desk buyer? This role, it is alleged is hindering the grain handling and transportation system from being fully deregulated. As a result, the allocation of cars and the determination of freight rates are still being negotiated by the CWB and the railways rather than by the grain companies and the railways. Further, grain control is being retained by the CWB and the farmers cannot sell their grain to the grain companies or to whom they like. As a result, the efficiencies that should arise from a truly deregulated grain handling and transportation system cannot be realized.

Finally, advocates of free trade and trade liberalization question whether the CWB (as a government and private enterprise) should even exist as a single desk buyer or seller for Canada, even if deregulation in the grain handling and transportation system is fully achieved, as this form of organization is no longer in line with developments that have occurred with the major sellers of wheat in world markets.[35]

#### Endnotes

[1] Grain movements must originate in western Canada and be: destined to export markets through West Coast ports (excluding US ports), Thunder Bay, Armstrong or Churchill, or destined to domestic eastern markets through Thunder Bay or Armstrong.

[2] Canadian Pacific Railway signed the Agreement agreeing to the rate in return for the federal government's financing of the 500 kilometres of track between Lethbridge, Alberta and Nelson, B.C. The government wanted the track through the Rockies because the Americans were building rail lines up from Idaho and the federal government feared that British Columbia might align itself more with the U.S. It was an issue of retaining sovereignty.

[3] CPR for its part agreed in part to: i) accept the control of CPR rates by G-I-C or a Railway Commission; ii) reduce rates on certain westbound goods and reduce rates by three cents per hundred pounds on grain and flour from all points on its main line, branches or connections west of Fort William and Port Arthur and all points east. The rate reductions were fixed under the contract. The government for its part was to provide a subsidy of \$11,000 per mile for the construction of a rail line from Lethbridge through the Crow's Nest Pass to Nelson, B.C.

[4] The *Western Grain Transportation Act* allowed the railways to apply for lower rates, however not many instances for the application of variable rates occurred.

[5] The subsidies under the *Western Grain Transportation Act* accounted for ninety-two percent of all freight subsidies. For example in 1993/94 and 1994/95, payments under the *Western Grain Transportation Act* were \$633m and \$644m of the total freight subsidies of \$683.3m and \$696.1m. See *Transportation in Canada 1996*, Annual Report, Transport Canada TP 13012E, 1997.

[6] This amounted to about \$20,000.00 to each of the registered landowners.

[7] See "No tears for the Crow," *Globe and Mail*, Tuesday, August 1, 1995, p. A18; "Mourners few as Crow dies," *Globe and Mail*, Monday, July 31, 1995, p. 1; and "Crow rate died without a squawk," *Financial Post*, Thursday, August 3, 1995, p. 9.

[8] *Canada - United States Joint Commission on Grains*, Final Report, Volume 1, October 1995, pp. 95-98. In addition two recommendations were made relating to handling under the grading and regulatory regimes: methods should be standardized and a common basis for the science of measurement should be developed, in addition both countries should sell on the basis of specifications.

[9] *The Western Grain Marketing Panel Report*, July 1, 1996, pp. iv-v.

[10] *Id.* p. v.

[11] Farmers challenged the *Canadian Wheat Board Act* on grounds that it violated the Charter of Rights and Freedoms. In addition, a few farmers challenged the law by trucking wheat across the border to the U.S. without first obtaining a permit. For example, see "Farmers against board's monopoly to stand trial," *Calgary Herald*, Tuesday, February, 24, 1998, p. D4.

- [12] The Province of Alberta indicated its intention to circumvent the export permit provisions of the Act by introducing a provincial scheme. See "Alberta campaigns against Wheat Board's monopoly," *The Globe and Mail*, Thursday, September 19, 1996, p. B3.
- [13] See Carter, Colin and R.M.A. Loyns, "The CWB: Hallmark or Millstone in Prairie Grain Marketing?," *Policy Options*, June 1996, pp. 53-55.
- [14] See recommendation 7, in The Hon. Estey, Willard Z., *Grain Handling and Transportation Review*, Final Report, December 21, 1998, p. 61.
- [15] See recommendation 8, *opus cit.* pp. 61-62.
- [16] See recommendation 10, *opus cit.* p. 63.
- [17] See recommendations 5 and 6, *opus cit.* pp. 60-61.
- [18] See recommendation 1, *opus cit.* p. 1.
- [19] See Letter of Arthur Kroeger to The Honourable David M. Collenette, P.C., M.P., September 1999, pp. 11-12.
- [20] Letter of Arthur Kroeger to The Honourable David M. Collenette, P.C., M.P., September 1999, pp. 3-4 and *Rates and Revenues*, pp. 18-19.
- [21] Letter of Arthur Kroeger to The Honourable David M. Collenette, P.C., M.P., September 1999, p. 5 and *Competition and Safeguards*, Working Group #3, Appendix #C, Consultations on the Implementation of Grain and Handling and Transport Reform, September 1999.
- [22] *Id.* p. 7.
- [23] See *Government of Canada Announces Measures to Improve Western Grain Handling and Transportation System*, News Release, Transport Canada, No. H034/00, May 10, 2000, pp. 1-5.
- [24] *Id.* p. 3.
- [25] *Id.* p. 1.
- [26] "The cars allocated for Board grains are in turn allocated by the Board to the CGO's [Grain Companies] according to sales contracts and delivery schedules. The Board controls two thirds to three quarters of the grain shipped each year and thus has a significant role in this process. The objective for this third party involvement appears to have been to ensure equitable access to available cars, particularly in times of scarce supply. Allocation of cars designated for non-Board grain products is made by the railways."
- [27] The Estey Report, December 31, 1998, pp. 30-31.
- [28] The revenue caps contain a cost of maintenance imbedded in it, so in June 2005, Transport Canada asked the Agency to make available an appropriate methodology to be used to adjust the railway caps in the event that the government transferred the fleet to the FRCC. After consultation, the Agency came up with a methodology that provided for the removal of hopper car maintenance cost that were embedded in the revenue caps. This would result in a slight decrease in railway revenue (0.4%).
- [29] Grain Transportation, the Need for Regulatory Reform, Western Grain Elevator Association, Speaking Notes Agricultural Producer's Association of Saskatchewan, Annual Meeting, December 1, 2006.
- [30] Railways gouging farmers for grain transport, groups charge, March 26, 2008, [www.globeandmail.ca](http://www.globeandmail.ca);
- [31] Small town ag shippers take aim at rail captivity, STB, May 2, 2008, [www.americanshipper.com](http://www.americanshipper.com); and Rail antitrust legislation passes House judiciary hurdle, May 1, 2008, [www.americanshipper.com](http://www.americanshipper.com); Railways gouging farmers for grain transport, groups charge, March 26, 2008, [www.globeandmail.ca](http://www.globeandmail.ca)
- [32] Get ready for kinder gentler CN, exec tells shippers, April 8, 2010, [www.todaystrucking.ca](http://www.todaystrucking.ca)
- [33] CN challenges creeping re-regulation of rail grain transportation in Canada, March 3, 2008, [www.cn.ca](http://www.cn.ca); and De-regulating rail environment key to further improvements in Canada's grain logistics system, April 8, 2008, [www.cn.ca](http://www.cn.ca)
- [34] In the U.S. the private sector is responsible for wheat trading, in the EU the marketing of grain is carried out by private companies, in Australia the Australian Wheat Board (the single-desk monopoly) is to be privatized by 2000, and in Argentina the government after 1991 is no longer involved in the grain trade. *The Western Grain Marketing Panel Report*, July 1, 1996, pp. 51-62.