



FREIGHT MANAGEMENT
ASSOCIATION OF CANADA

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DE GESTION DU FRET

Canadian Perspective North American Rail Scene

NEARS Spring Conference

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Presentation outline

- The Basics and US – Canada Comparisons
- Shipper – Railway Relations & Railway Law
 - Bill C-49 the *Transportation Modernization Act*
- “Harnessing Technology for Rail Efficiency”
- Canadian Border Services Agency
- NAFTA – and Other Free Trade Agreements
- The Freight Management Association of Canada



We're Lobbyists

- More on FMA at the end of the presentation
- U.S. counterpart organization is the National Industrial Transportation League (NITL)
- FMA works with NITL on cross-border issues and on global transportation issues as part of the Global Shippers' Forum
- We advocate for shippers on freight transportation by all modes



US-Canada Comparisons

- U.S. Network: 140,000 route miles, 560 railroads
- Cdn. Network: 27,000 route miles 57 railways
- In Canada: three Class 1s: CN, CP, VIA
- BNSF, CSX, NS, UP all have operations in Canada
- Federally regulated companies: 32
- Provincially regulated companies: 25

Sources: AAR, RAC, CTA



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Railway Laws

- Laws governing commercial aspects of freight railways
 - U.S. – *Staggers Rail Act* as amended
 - Canada: *Canada Transportation Act* (governs commercial activities of airlines, railways and some aspects of shipping)
- Bill C-49, the *Transportation Modernization Act* currently in Parliament will amend CT Act, including some aspects of shipper-carrier relations



Government Oversight

- Executive branch of government:
 - U.S.: DOT – Federal Railroad Administration
 - Canada: Transport Canada
- Regulator:
 - U.S.: Surface Transportation Board
 - Canada: Canadian Transportation Agency (CTA)
CTA: regulator for commercial activities of airlines, railways, coastal and ocean shipping



Other Government Oversight

- Accident investigation:
 - U.S. National Transportation Safety Board (NTSB)
 - Canada: Transportation Safety Board of Canada (TSB)
- Canadian Rail Safety Oversight:

Railway Safety Act – administered by Transport Canada



Transportation Policy

CT Act Policy Statement includes the following statement
“... (a) competition and market forces, both within and among various modes of transportation, are the prime agents in providing viable and effective transportation services;....”

Railways have pricing freedom



The Shipper's Perspective

- Rail freight is not a “normally functioning competitive market”
- While 57 railways in Canada, (incl. passenger & tourist), freight is dominated by CN and CP
- Some rail competition, but many shippers are captive to one railway



Limited Competition

- In the case of the rail freight market, CN and CPR together control 93% of the market by revenue.
- Based on 2016 annual reports of CN, CPR, and the Railway Association of Canada (RAC), total rail freight & miscellaneous revenues in Canada were \$12.649 billion.
- CN's Canadian freight revenues were \$7.971 billion and CPR's Canadian freight revenues were approximately \$3.635 billion. CN alone accounts for 63% of the market based on revenues and CPR for 30%



Transportation Policy - Regulation

- The CT Act states further:
“(b) regulation and strategic public intervention are used to achieve economic, safety, security, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces....”
- The CT Act attempts to provide a legal and regulatory regime that is a surrogate for real competition and that re-balances the bargaining power between the buyers and sellers in the rail freight market



The Rail Shipper Provisions in CT Act

- the *Level of Service* or Common carrier provisions.
- Regulated Inter-switching.
- Final Offer Arbitration to settle rate disputes
- Competitive Line Rates (CLR)
- Complaints on Ancillary and Penalty Charges.



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What works

Sections 113 – 116: the *Level of Service* or Common carrier provisions.

These provide a mechanism for shippers to file complaints on service failures and possibly obtain relief from the Agency for such failures.

The Agency can order the railway to take specific actions



What works – Regulated Inter-switching

- Section 128: Regulated Inter-switching. This provision is a surrogate for real competition. It allows a shipper to obtain competing rates from an origin served by one federally regulated railway, if the interchange with the second railway is within 30 km (19 miles) of the origin point.
- Regulated but compensatory Rates origin to interchange. Rates posted on Agency website
- Has been in Canadian railway law since 1904
- An effective competitive access provision



Competitive Switching - US

- STB Ex Parte 711 – Response to NITL Petition in 2011
- STB response in 2016
- Still waiting for STB Decision



What works

- Sections 161-169.3 Final Offer Arbitration
This provision allows shippers to file for arbitration of a rate dispute.
- The railway and the shipper each make an offer and the arbitrator must pick one of the two offers. The arbitrator cannot offer a compromise.
- Often leads to a negotiated agreement.



What Doesn't Work

Section 129 -136: Competitive Line Rates (CLR). Permit shippers to obtain competing rates from an origin served by one federally regulated railway, if the interchange with the second railway is more than 30 km from the origin point. Before the Agency will mandate a “regulated” rate from origin to the interchange point with the second railway, the shipper must obtain a rate from the connecting railway through direct negotiation.



Questionable

- Section 120.1: Complaints on Ancillary and Penalty Charges.
- New in 2008, part of Bill C-8.
- Provides a mechanism for shippers to challenge the arbitrary and growing list of ancillary and penalty charges imposed by the railways in tariffs that apply to more than one shipper.
- FMA had to fight this to the Supreme Court of Canada to clarify that reference to such charges in a confidential contract is not a barrier to the use of this provision.



Missing Provisions

- U.S. Law and regulations requires the railroads to provide a 10% waybill sample to the STB and this information is made available to shippers in aggregated form. No such provision in Canada
- The STB has the power to undertake investigations on its own initiative. The CTA can only investigate on receipt of a formal complaint by a shipper or if so ordered by the Minister of Transport



Bill C-49

- Bill C-49, the *Transportation Modernization Act* is currently going through the Parliament of Canada and will amend the *Canada Transportation Act*
- It includes a number of provisions, some of which may help rail shippers



Bill C-49

The main areas of amendment are:

- establishing new air passenger rights;
- liberalizing international ownership restrictions for Canadian air carriers;
- **improving access, transparency, efficiency, and sustainable long-term investment in the freight rail sector;**
- require railways to install voice and video recorders in locomotives;
- allow foreign-flagged carriers to move empty containers between Canadian ports



Shipper-Railway Commercial Relations

C-49 includes rail-shipper amendments in the following areas:

- DATA DISCLOSURE
- AGENCY INQUIRY POWERS
- RECIPROCAL PENALTIES
- SHIPPER REMEDIES
- LEVEL OF SERVICE: DEFINITION OF “ADEQUATE AND SUITABLE”
- LONG-HAUL INTERSWITCHING



Data Disclosure

- Support a more transparent freight rail system that incentivizes commercial relationships by requiring Class I railways to:
 - Submit more confidential data to the Canadian Transportation Agency (Agency) and Transport Canada for policy and regulatory purpose.
 - Make publicly available more data and metrics on performance, service, and rates
 - Not as good as U.S. provision, but an improvement on the current situation



Agency Inquiry Powers

- More frequently use the existing Ministerial Inquiry Power by:
- Directing the Agency to inquire into systemic or emerging issues of concern related to the rail system and report back with any findings and recommendations within a specific timeframe.
- Making the subsequent report public (minus confidential or commercially sensitive data).
- **Note:** FMA recommended that the Agency should make inquiries on its own initiative, like STB. The government is still considering this.



Reciprocal Penalties

- Allow balanced reciprocal financial penalties tied to service to be established in arbitrated Service Level Agreements (SLA), to incent efficient and optimal rail service.
- For the first time, the law will provide for compensation to shippers for costs where railways failed in service commitments.



Long-Haul Interchange (LHI)

- Replace the Competitive line Rate provision with a new mechanism of Long-Haul Interswitching (LHI) to provide relief to captive shippers, with the following key features:
- Applies across various sectors (e.g., grain, forestry, mining) and most regions of Canada.
- Covers shippers who are captive, facilitating the movement of traffic to the nearest interchange in Canada.
- Available through a streamlined application process to the Agency (30 working days).
- Rate originating railway can charge is based on comparable commercial traffic instead of cost-based rates, and applies for distances up to 1,200 km or 50 % of the total haul in Canada, whichever is greater.



Long-Haul Interchange (LHI) Cont'd

Major exclusions

A shipper cannot apply for LHI rates:

- For traffic originating in the Quebec-Windsor corridor or the Vancouver-Kamloops corridor
- For Toxic Inhalation Hazard (TIH) or radioactive materials
- For Dimensional loads
- For Intermodal or motor vehicles or parts

Many uncertainties on how it will be administered



Marine Provisions in C-49

- Amend the *Coasting Trade Act* to permit ships of any registry to move their empty containers between Canadian Ports. This is to give effect to one of the terms of the Canada – EU CETA agreement. The *Coasting Trade Act* is the Canadian equivalent to the U.S. *Jones Act*
- Amend the *Canada Marine Act* to give Port Authorities the power to access additional commercial financing arrangements for infrastructure investments



“Harnessing Technology for Rail Efficiency”

- Canadian Railways active in the AAR on research undertaken through TTCI
- Canadian Rail Research Laboratory (CaRRL) at University of Alberta. Railways, Transport Canada, & TTCI are supporters
- The Railway Research Advisory Board (RRAB) coordinates financing of research projects, primarily from railways and Transport Canada
- RRAB members: CN, CP, RAC, Railway Supply Industry, National Research Council, Transport Canada, CaRRL, and FMA
- RRAB established in early 1990s



Current Technological Developments

Railway Ground Hazard Research Program (RGHRP)

- Commenced in 2003
- Research into geotechnical issues under and above railway rights-of-way under a variety of conditions, especially with increased axle loadings
- Focus on Canadian climactic and operating conditions
- Led to improved forecasting and mitigation strategies and new monitoring technologies.



Technological Developments

Railway Tank Car Monitoring Research Project

- Currently being considered by the RRAB
- Project will evaluate remote monitoring devices to quantify the operating environment experienced by tank cars
- Of interest following from the Lac Megantic Accident

Other Developments

- Wayside and on-board detection systems in wide-spread use
- Positive Train Control (PTC) is not currently mandated for Canadian railways
 - Transport Canada & Railways considering “Enhanced Train Control”
 - comparable to PTC, but functionality will vary with territory
- Bill C-49, if passed will mandate locomotive cab voice and video recorders in all CN, CP, and VIA locomotives



Canadian Border Services Agency (CBSA)

- Responsible for Customs and Border Security
- No recent reports of significant border delays for rail shipments from the US to Canada
- Rail carriers required to transmit cargo and conveyance data electronically to CBSA
- Data must be received and validated at least two hours before arrival at the border crossing
-



CBSA – CBP Integrated Cargo Security Strategy

- Canada Border Services Agency (CBSA), Transport Canada (TC) and the United States (U.S.) Customs and Border Protection (CBP) jointly developed the Integrated Cargo Security Strategy (ICSS) to facilitate the movement of secure cargo under the principle of "cleared once, accepted twice."
- In 2012, CBSA and CBP in collaboration with CN, commenced the Prince Rupert pilot project designed to facilitate cargo entering the U.S. by rail after arriving at the Port of Prince Rupert in British Columbia. This allowed for examinations at the perimeter before the cargo moved by train to the U.S. land border at International Falls, Minnesota. Pilot Ended in 2015
- Resulted in enhanced joint mitigation of national security concerns at the perimeter in Prince Rupert. CBP and CBSA agreed to permanent implementation at Prince Rupert



Canadian International Trade and NAFTA

<u>Share</u>	<u>Export %</u>	<u>Import %</u>
• United States	76.4	52.2
• European Union	7.7	11.4
• China	4.1	12.1
• UK	3.3	1.5
• Japan	2.1	2.9
• Mexico	1.5	6.2

Ranked by Export. 2015

Source: Global Affairs Canada



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International Free Trade Agreements

- NAFTA with U.S. and Mexico since 1994
- European Free Trade Association since 2009
(Iceland, Liechtenstein, Norway, Switzerland)
- Korea since 2015
- Eight other bilateral FTAs, primarily with Latin American Countries and also Israel and Jordan
- Comprehensive Economic & Trade Agreement (CETA) with 28 EU Countries, including the UK
 - went into effect September 21 2017
- Transpacific Partnership (CPTPP) – 11 countries signed
January 2018

Source: Global Affairs Canada



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NAFTA

- In 2015, total trilateral merchandise trade, as measured by the total of each country's imports from its other two NAFTA partners, amounted to over USD \$1.0 trillion – more than a threefold increase since 1993.
- In 2015, NAFTA partners represented 28% of the world's gross domestic product (GDP) with less than 7% of the world's population.
- Since the implementation of NAFTA, the North American economy has expanded, with the combined GDP for Canada, the U.S. and Mexico reaching USD \$20.7 trillion in 2015.



NAFTA RENEGOTIATIONS

- Round 7 Mexico City ended March 5
- Six Chapters Successfully “closed”, primarily technical chapters
- Round 8 tentatively Scheduled for Washington in April no date published
- News reports of informal discussions taking place in Washington
- Reports of progress on the auto sector provisions
- Pressure to reach an “agreement in principle” before the Mexican and US election seasons begin



FREIGHT MANAGEMENT ASSOCIATION

- Founded in 1916 - 100th anniversary in 2016
- National Association for shippers with Canadian operations
- 90 member companies including several U.S. based companies
- Membership consists of purchasers of transportation services from all industrial sectors
- FMA members purchase over \$4 billion annually in transportation & contribute over \$100 billion a year to Canada's GDP.
- Canadian Member of the Global Shippers' Forum
- US Member is NITL



FMA Sales Pitch

- Role is government relations on freight transportation issues
- To all levels of government and international agencies
- Cover all modes of freight transport
 - air cargo
 - marine
 - rail
 - trucking
- Have your voice heard in Ottawa and internationally.
- We invite you to join FMA



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Questions?

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