Submission To The
Review Panel On The
Statutory Review
Of The
Canada Transportation Act

EXECUTIVE SUMMARY

Context

- The Forest Products Association of Canada (FPAC) is the voice of Canada's wood, pulp and paper producers nationally and internationally. We welcome this opportunity to provide input into the Canada Transportation Act Review. In particular, FPAC welcomes the Review objective "to provide an independent assessment of how federal policies and programs can ensure that the transportation system strengthens integration among regions while providing competitive international linkages."

- The forest products industry accounts for 12% of Canada's manufacturing GDP and exports about $30B in manufactured goods throughout the globe to more than 180 countries. As such, the industry is an intensive user of the surface and marine transportation modes by shipping more than 58M tonnes of freight on a yearly basis, of which 28.5M tonnes or about half is shipped by rail. Competitive transportation service is required to access the international marketplace and ensure a viable forest products industry as transportation alone represents about one-third of the production costs of any forest products firm.

- This submission speaks about the importance of transportation as a key driver of our industry's competitiveness. It makes a number of recommendations on how to improve its efficiency and ability to support a competitive industry that best supports Canada's future growth and prosperity.

The Challenge

- The transportation system has been under stress in recent years. This is the result of the economic recovery taking hold and the increasing shipments from a number of industries putting pressure on the capacity of the entire transportation system, especially rail.

- Last year's difficult winter crisis and the exceptional measures put in place by the government to cope with the difficulties faced by grain shippers illustrate those challenges. More difficulties are expected to arise in years to come as the outlook for our sector and many others has improved markedly given the decline in energy prices, improved exchange rates and the solid US recovery now taking hold. The transportation system is already constrained and any increase in demand will have a significant ripple effect on the level of congestion throughout the system, including at Canada's ports and border crossings.

- As the forest industry is the third most important user of rail services in Canada overall (first in Quebec and second in British Columbia), we believe it is critical that this CTA Review focuses on addressing **the imbalance of market power** between shippers and the railways. As the former Minister of Transportation, Denis Lebel, stated to the House of Commons Standing Committee on Transport, Infrastructure and Communities on February 12, 2013: "We are not dealing with the normal free market. The reality is that many shippers have limited choices when it comes to shipping their products. It is therefore necessary to use the law to give shippers more leverage to negotiate service agreements with the railways. The intent is to create the conditions that will allow for successful commercial negotiations that will normally be possible in a free market."

- FPAC fully agrees with Minister Lebel. There are some markets where competitive forces are limited or non-existent, requiring a role for regulation or other government action. The reality for forest product shippers is that most rural and remote communities in our sector are "**captive**" to a single rail carrier. In fact, eighty per cent of FPAC member mills that can access rail service are served by a single railway. This means that, of all shippers, the forest products industry is the one with the least negotiating power when dealing with the railway, especially when the distances involved to connect to another railway are factored in. FPAC estimates that the failure to provide adequate service easily costs the forest industry an extra half a billion dollars per year.

Conclusion

- This FPAC submission makes a number of key recommendations to first and foremost rebalance the relationship between our industry and the railways. We are also making other recommendations meant to improve the fluidity of the entire transportation supply chain. Any changes in policy or legislation must have a positive impact on the competitiveness of Canada.

- Taken together FPAC's recommendations are aimed at improving the **optimal capacity or "right-sizing"** of the transportation system so that the forest products industry and other

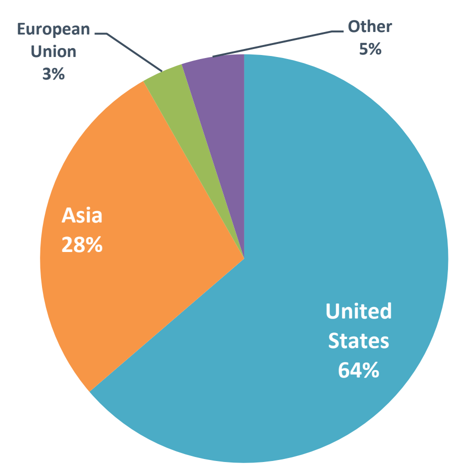
Canadian sectors retain their reputations as reliable global suppliers. Key decisions and actions must be taken now towards strategically increasing the capacity of the transportation system especially given the long lead times involved in making it a reality. That is the way to meet growing demands in the decades ahead and ensure job-creation and prosperity in Canada, especially for rural communities.

1. Introduction – Right-Sizing Canada's Transportation System

On behalf of the members of the Forest Products Association of Canada (FPAC), the more than 200,000 employees of the forest products industry and 200 forest dependent communities, we would like to thank the Government, Members of the Review Panel and the Secretariat for this opportunity to offer suggestions on improving Canada's transportation system, as well as preparing it for anticipated growth associated with the economic recovery. FPAC is the voice of Canada's wood, pulp and paper producers nationally and internationally in government, trade, and environmental affairs[1]; and welcomes the Review objective "to provide an independent assessment of how federal policies and programs can ensure that the transportation system strengthens integration among regions while providing competitive international linkages."[2]

The forest products industry in Canada has a bright future with its ability to create new economic activity through new market development and innovation in both traditional pulp, paper and lumber and new products, using wood fibre in everything from car parts, to clothing to cosmetics and green chemicals. FPAC's Vision2020 has set the ambitious goals of generating an additional $20 billion dollars in new products and new markets, of further improving our environmental performance by 35%, and by refreshing the workforce with 60,000 new employees by the end of the decade.

Chart 1: 2013 Export Market Shares



Current Economic Contribution[3]

The forest products industry produces a GDP of $20 billion. FPAC members include the largest manufacturers of forest

[1] FPAC members are global leaders in the sustainable management of one of Canada's most valuable renewable resources.

[2] Review Discussion Paper, page 1, paragraph 5.

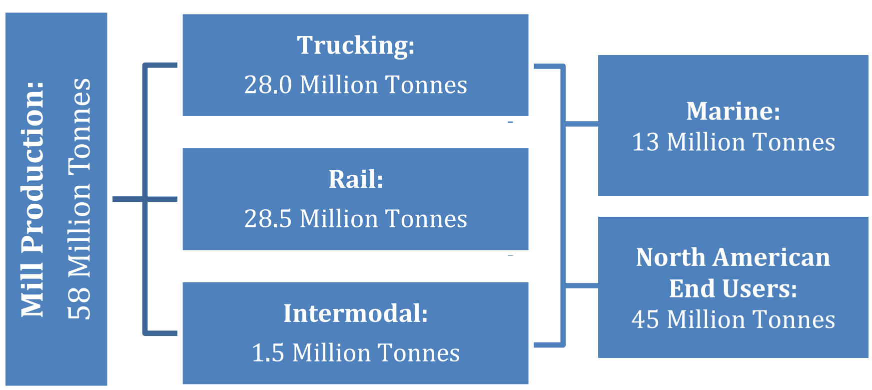
[3] Unless otherwise specified all data sources cited in this submission are from Statistics Canada.

products in Canada. The industry in fact accounts for 12% of Canada's manufacturing GDP in 2013 and is present in rural communities across the country. Industry sales were $58 billion including $29 billion in exports. The main destinations are the United States, numerous countries in Asia, and the European Union. Chart 1 reflects how the forest products industry has lessened its dependence to the US market over the last decade from nearly 80% of all exports to 64% in 2013. Asia now accounts for nearly a third of all forest products exports from Canada, and forest products are Canada's largest exports to China.

As a result, Canada's forest sector is a critical user of the full transportation system to ship its products to more than 180 countries. Trucking, rail and marine transportation are all used at some point to get forest products to customers around the globe.

As shown in Chart 2, the forest products industry moves about 58 million tonnes of forest products on the Canadian transportation system every year. About half of this is by rail, the other half by trucks. About 13 million tonnes of products are shipped via marine transportation to reach customers on other continents.

Chart 2: Forest Products Use of the Transportation System

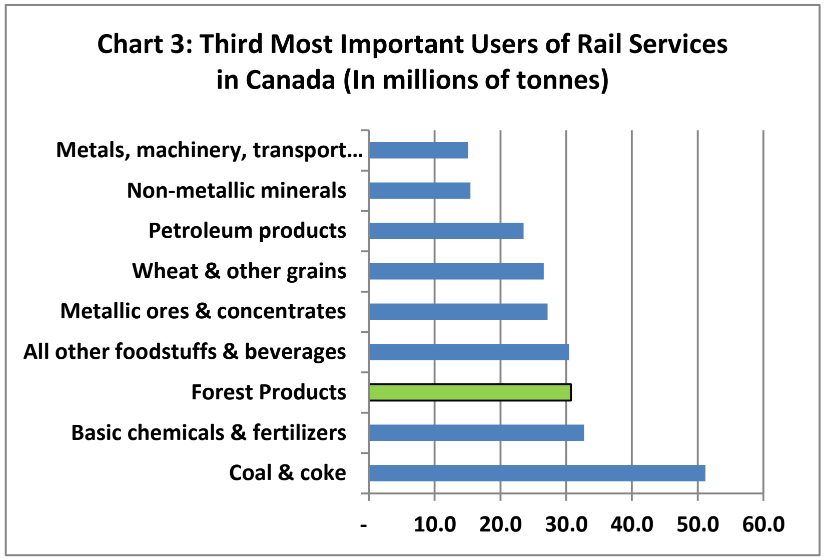


Source: FPAC estimates using Canada Trade Online, Rail, and FPAC production data, 2011.

As shown in Chart 3, the forest products industry is the third most important rail shipper in Canada. The sector moves 30M tonnes of freight or 11% of all freight moved by rail in 2012. Forest products activities have generated more than in $1.6 billion in freight revenues to CN and CP in 2013 by operating in nearly all provinces of Canada. In some provinces such as British Columbia, forest products represent about a quarter of all freight carried on the rail system. **Transportation alone represents about one-third of the production cost of any forest products firm**

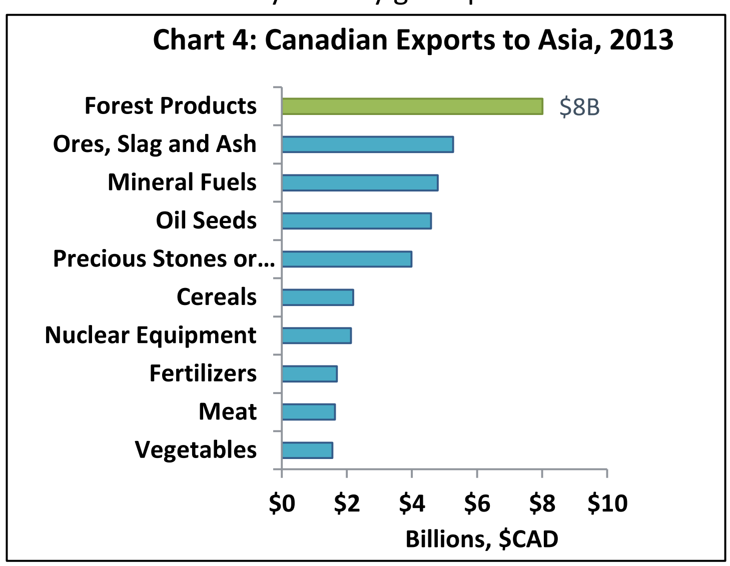
Outlook Going Forward

The forest products industry has a positive outlook. Through the challenges of recent years, the sector has transformed and innovated as it seeks new ways to maximize value from Canada's forests. The signing of new free trade agreements such as those with the European Union and Korea will also be helpful to the sector's continued prosperity.



At the same time exports to the United States are rebounding with housing starts recovering to around the one million mark annually.[4] By including sales to Asia, the industry is operating at a "functional" level equivalent to 1.4M US housing starts. Once the sector crosses the 1.6M threshold, industry will need to significantly invest in re-opening new facilities to meet extra demand. **As the industry considers its capital investment plans, one of the critical factors influencing these decisions is the efficiency of Canada's transportation system**.

The forest products sector is trying to further improve its export performance, but is being constrained by an over-crowded transportation system. This includes demands on the system by grain producers and increasingly by the energy industry.



The existing system lacks adequate capacity to effectively serve its clients year round across a range of commodities, especially as trade flows move beyond north-south to east-west. This is particularly true with the establishment of significant exports to the Asia Pacific regions where the forest products industry is the Canadian export leader (Chart 4).

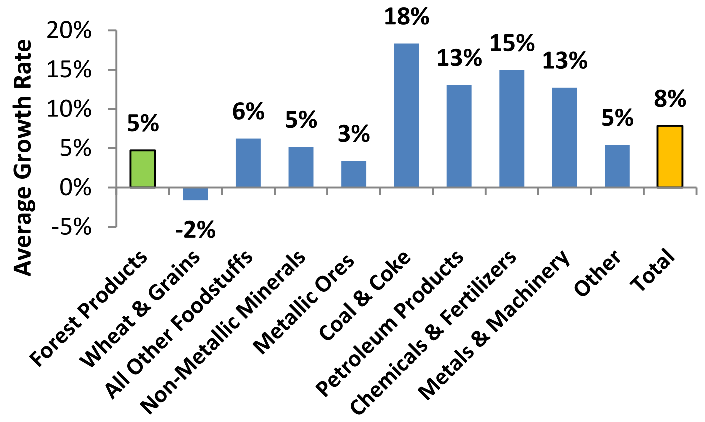
Improving the optimal capacity or "right-sizing" the transportation system is necessary to ensure

[4] US National Association of Home Builders, 2014.

that the forest products sector and other Canadian sectors retain their reputations as reliable global suppliers and can, as alluded to in the Review's discussion paper, "best support Canada's future growth and prosperity"[5]. To meet growing demands in the decades ahead, key decisions must soon be taken towards strategically increasing the capacity of the transportation system especially given the long lead times involved.

As an illustration of the future potential demand, FPAC estimates that the current forest products freight tonnage on rail could easily increase by 10 million tonnes or 33% from the current level. The most optimistic forecast projects an increase of up to 20 million tonnes or 66% of what is now being shipped. This would be in addition to the above average growth already experienced by several commodities since 2010 (Chart 5) and on top of the growth expected for those sectors.

Chart 5: Average Increase in Tonnes Carried: 2010-2012



This is clearly unsustainable. **The transportation system is already constrained and any increase in demand will have a significant effect on the level of congestion throughout the system and particularly at Canada's ports and border crossings.** More than $10 billion or 13M tonnes of freight in forest products exports pass through these ports each year.

In addition to rail, there is a complex web of legislative and regulatory initiatives related to marine transport, border security, infrastructure, and trucking issues that impact logistics and the bottom lines of FPAC member companies. This submission is primarily focused on rail policy, but also includes requested policy changes in the following areas:

- Overall changes to the *Canada Transportation Act* (CTA): See p. 16
- Trucking: See p. 16
- Marine: See p. 17

[5] Review Discussion Paper, page 1, paragraph 4

2. Goals

FPAC's goals for this Review are to achieve outcomes that will help to create a more competitive freight transportation system that includes:

- Increased access to the rail system;
- More reliable service throughout the supply chain; and,
- More competitive rates and a more competitive supply chain.

3. Rail Freight Service – The Need For A More Competitive System

FPAC members are pleased that the Review's discussion paper highlights "competition"[6] as a key issue for this process to examine. Effective competitive access is a matter of ongoing and significant concern for FPAC members.

The Government's Rail Freight Service Review (2008-2011) concluded that the railways enjoy the benefit of **market power** in their commercial relationships.

The Government confirmed this when then Transportation Minister, Denis Lebel, spoke to the House of Commons Standing Committee on Transport, Infrastructure and Communities on February 12, 2013, concerning Bill C-52 – *The Fair Rail Freight Service Act*,

> "It is essential for the committee to understand why this legislation is necessary. We are not dealing with the normal free market. The reality is that many shippers have limited choices when it comes to shipping their products. It is therefore necessary to use the law to give shippers more leverage to negotiate service agreements with the railways.
>
> The intent is to create the conditions that will allow for successful commercial negotiations that will normally be possible in a free market."

FPAC agrees that the primary goal for transportation policy is an efficient transportation system and that this is most likely to emerge if guided by commercial decisions in competitive markets. We also appreciate that the Panel's deliberations and recommendations **need to strike a delicate balance between reliance on market competition and on regulation. There are some markets where**

[6] Review Discussion Paper, page 1, paragraph 4

competitive forces are limited or non-existent, requiring a role for regulation or other government action.

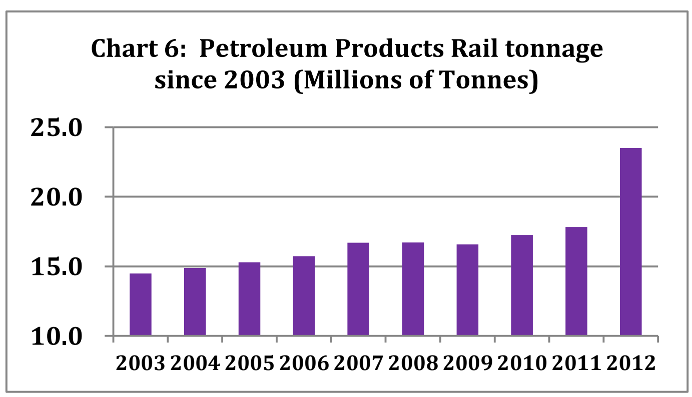
For most of its history, railways in Canada have been heavily regulated and basically treated as utilities. Through various enactments from 1967 to date, railways have been deregulated and privatized to the point where they are now very profitable commercial entities making market-based decisions. The key concern for rail customers is that the railways have monopolistic power.

Effective railway competition is vital to the economic security of Canada whose large geographic expanse necessitates long overland movements of commodities to ports and markets. Moreover, Canada is an open-economy that relies to a significant degree on its exports to generate economic growth.

Transportation is a significant cost element in the delivered price of our members' goods and a major determinant in their international competitiveness. The industry is one of the major users of transportation services for the products that are shipped annually and also for the related volume of inbound raw materials consumed in the production process.

FPAC members sell their products in the international marketplace. To access these markets **they require competitive transportation service. However, considering the lack of rail competition in Canada, forest companies need economic regulation to provide some measure of protection against the significant market power of the railways.** In the absence of a more stringent regulatory framework, the forest sector's ability to compete in export markets will be lost.

The economic viability of FPAC members, and the communities they support, is vanishing while rail carriers thrive. As outlined in the Review's discussion paper, "complicating matters further, the most profitable and efficient transportation business may at times be at odds with the competitive success of other companies, sectors and regions, which can give rise to pressures for government intervention."[7]



This imbalance of power is damaging the overall Canadian economy putting the government's trade and prosperity agenda at risk, and has led to

[7] Review Discussion Paper, page 4-5, paragraph 6.

both excessive freight rates[8] and inadequate service. As the oil and gas sector increasingly turns to rail to move their products (Chart 6), concerns related to excessive rates and inadequate service continue to escalate.

Bill C-52 was a step in the right direction by establishing the right to a shipper-initiated Service Level Agreement that brings consequences for non-performance by the railway. However, this is just one tool when companies need a much more complete tool-box. Action must be taken to address railway market power. The remedy that was provided in Bill C-52 (Service Level Agreement arbitration) could be improved because it entails a lengthy and expensive process limited only to those without a contract. This does not help the majority of our members.

Whatever the government does going forward, it needs to act in a manner that does not further reduce the already constrained capacity of the rail freight system in Canada.

Further changes in government policy are required to increase pro-competitive measures within the CTA and to help provide some balance to the relationship between shippers and railways. This would significantly improve the competitiveness of Canada's resource-based industries and allow them to secure their rightful role as resource superpowers in global supply chains.

This is why our first recommendations focus on the Level of Service provisions contained in sections 113-116 of the CTA. These are the foundation upon which all of the competitive access provisions are built. Without reasonable assurances of adequate rail service, rate levels are largely meaningless. Accordingly, the requested policy changes contained within this submission are predicated upon the continuation and effectiveness of the level of service provisions in the CTA.

FPAC is recommending:

> **Recommendation 1:**
>
> **1. To strengthen the Level of Service provisions within the Act i.e. under the heading of "Adequate and suitable accommodation" – "For the purposes of sections 113 and 114, a railway company shall fulfill its service obligations in a manner that meets the rail transportation requirements of the shipper."**
>
> **For full details, refer to Annex 1.**

[8] A 2007 FPAC study, conducted by Travacon Research Limited (currently being updated), a recognized expert in railway costing analysis, concluded that well over 80% of production of the forest products industry is captive to one railway. This study estimated that this monopoly power forces the industry to pay $280 million in excess freight charges, above what it would pay in a competitive system. The total freight bill would be 13% higher than under railway competition.

This recommendation would only be a first step in addressing the power imbalance between shippers and the railways. In addition to the rail freight rate and service issues at the place of origin (where our members' products get picked up at their respective mills), there are also a number of issues that negatively impact the delivery of products during the trip and when reaching their final destination. For example:

- the railways are unfairly transferring all liability for incidents that may occur during a trip onto the shipper (e.g. CP Rail's Tariff 8 Item 54);
- with respect to destinations, railways have already begun to identify preferred hubs and destinations that they want our members to use and those do not always include the hubs and destinations that our members continue to require because of their specific business needs; and,
- the railways have a movement underway to impose additional fees and in some cases embargoes on shipments that are destined for what have been deemed "congested areas" that FPAC members must access.

Overall, our members believe that these issues are further undermining and eroding shippers' rights to reach certain destinations.

4. Forest Product Sector Shippers' Captivity and Railway Monopoly Power

The 2000-01 CTA Review rightfully underlined a serious divergence of perspective between shippers and railways on the matter of differential pricing (See Info Box 1 for more information on this concept). Shippers see differential pricing as unfair and an abuse of market power. Railways see differential pricing as legitimate and essential to the long-term survival of their operations. Moreover, the railways believe differential pricing should be unfettered.

Info Box 1: Differential Pricing

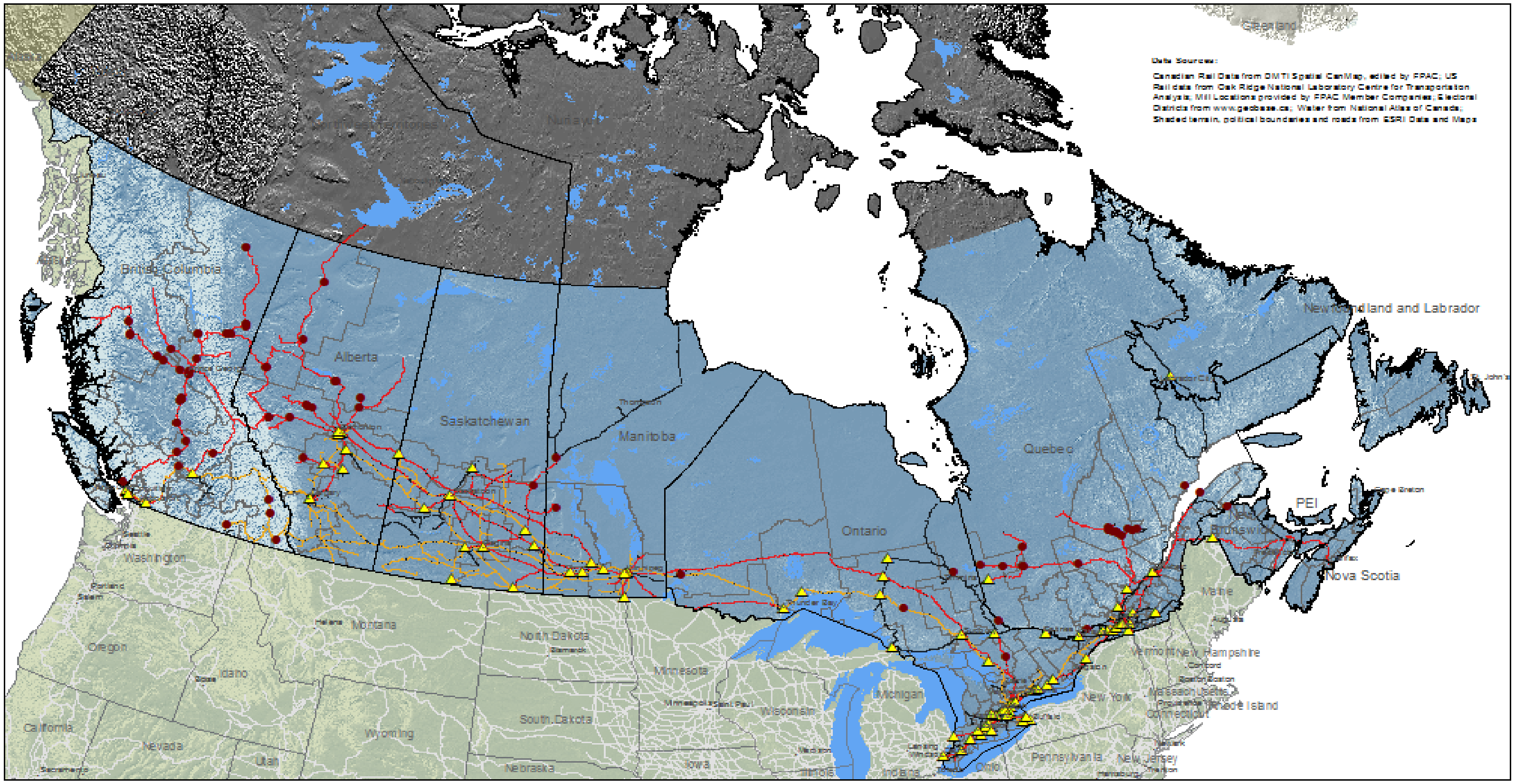
In network economics, differential pricing can allow a self-financing, network-type industry to recover its full capital cost. This would be done by allowing railways to charge different industrial mark-ups according to their degree of captivity to a rail service provider.

By charging highly captive shippers more, railways can induce a reduction in demand allowing this extra capacity to be diverted where profit margins are greater.

In network economics, this produces the lowest overall reduction in demand, and the "least-distorting" reduction in terms of shipper preferences thus achieving optimal economic efficiency.

The former CTA Panel concluded that both are extreme views that are not conducive to an efficient, effective and competitive rail system. The Panel rejected assertions that differential pricing should be unfettered, arguing there are economic and public interest arguments for limiting its use and/or mitigating its more extreme effects. However, the panel also said that differential pricing is not evidence of a lack of competition.

Captive* FPAC Member Company Mills and Rail Networks



FPAC Mills

- Rail - Captive*

Rail Networks

- CN
- CP
- Other
- Rail Network - USA
- Interswitching Locations

* These mills:
- Lack access to effective competition
- Require statutory safeguards to provide access to another rail carrier; and the opportunity to obtain rates and service characteristic of a competitive market

0 250 500 1,000 km

FPAC continues to feel that differential pricing is particularly harmful to industries holding the "short end of the stick", that is with a limited ability to negotiate. While the differential pricing approach may meet the economic efficiency test**, FPAC feels this pricing approach fails unequivocally to meet the most basic public interest test. This is why the current regulatory and legislative safeguards need to be strengthened.**

Why? Most rural and remote communities in our sector are served by a single rail carrier. In fact, **eighty per cent of FPAC member mills that can access rail service are served by a single railway (See Network**

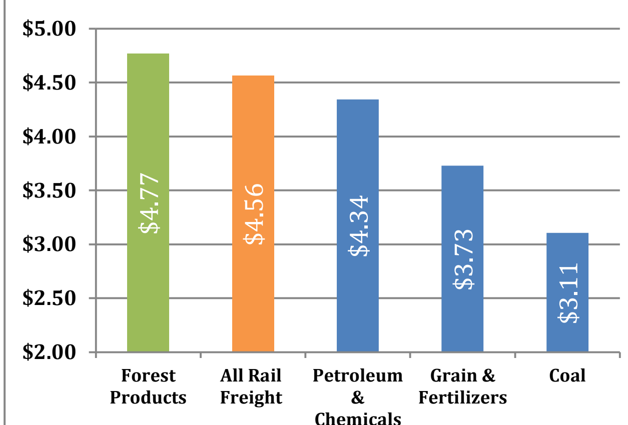
Chart 7: CN and CP Rail revenues per carload, by commodity groupings, 2013

Canadian National			Canadian Pacific		
Petroleum & Chemicals	$	3,173	**Forest products**	**$**	**3,121**
Forest Products	**$**	**3,168**	Sulphur & Fertilizers	$	3,081
Grain & Fertilizers	$	2,815	Industrial/Consumer Products	$	2,983
Automobile	$	2,473	Grain	$	2,968
Coal	$	1,666	Automotive	$	2,760
Metals & Minerals	$	1,160	Coal	$	1,900
Intermodal	$	1,156	Intermodal	$	1,323
Average	$	2,230	Average	$	2,591

Note: Sourced from CN and CP financial reports. Ideally, this table would have differentiated between unit trains and manifest trains. This level of disaggregation was not available.

Map above). This is a result of geography, the nature of the products and the volume to be moved. Forest product shippers find themselves captive to that single carrier for service, which gives the railway wide latitude in setting rates and providing service. This can be illustrated by the fact that the forest products industry almost always pays above average rates and revenues per carload against other comparable sectors. (Chart 7 and 8)

Chart 8: CN Revenue Tonne Mile for Select Industries, 2013



As railways further develop their focus on high velocity routing, our sector and other sectors become more vulnerable related to the distance to a competing railway. The destinations of our members' products are more fragmented (i.e. not going to destinations that are directly situated on the railways' high velocity routes). These factors make the forest products industry less attractive to the railways, thus putting the sector at a serious disadvantage given railway market power.

Info Box 2: Railway to Trucking Conversion Factor

- A 350 thousand tonne pulp mill would require 14,000 truckloads annually or close to 40 empty trucks each and every day at the mill assuming the mill operates 365 days/year.
- A 500 million board feet sawmill would require some 9,600 empty trucks per year or 40 trucks per day assuming the mill operates 5 days/week.

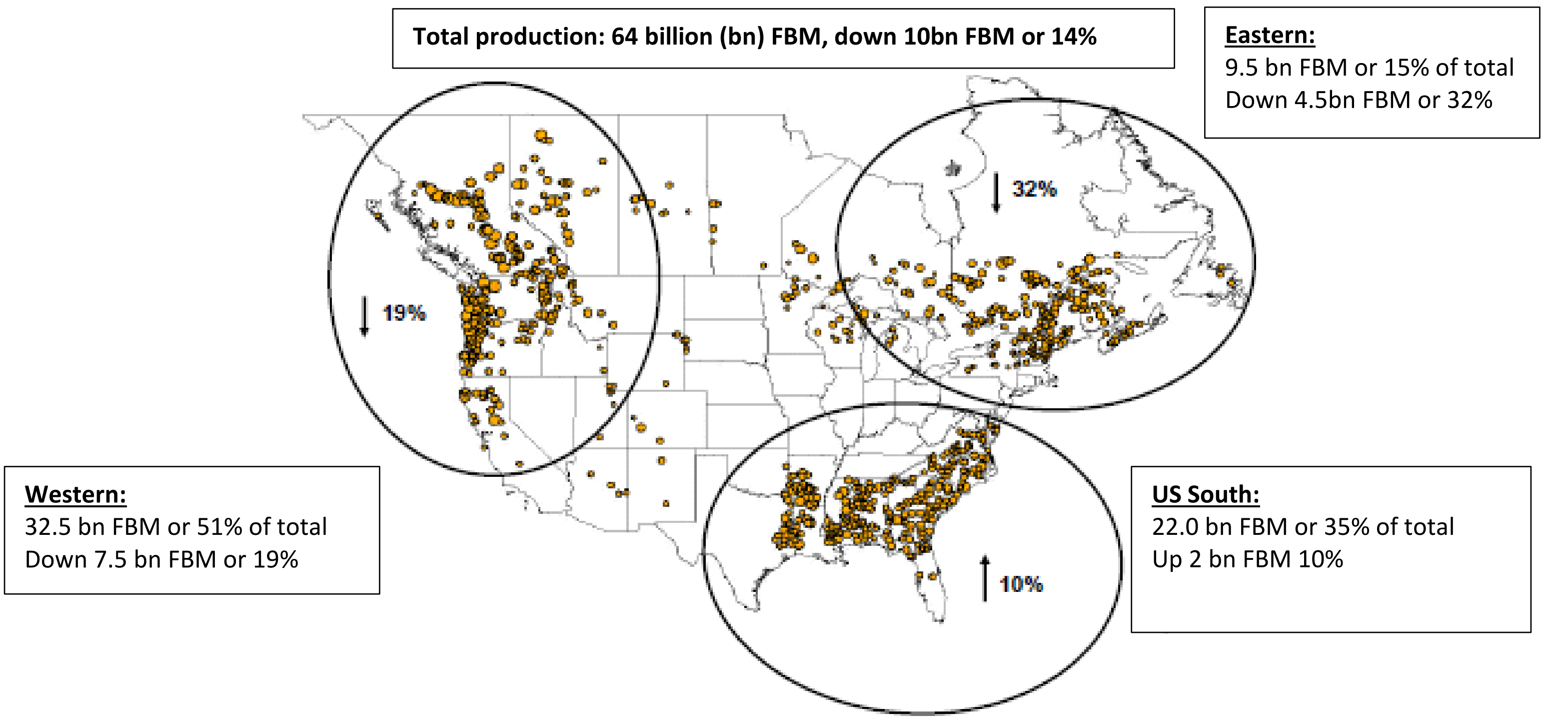
Although trucking provides a limited alternative, it is not a viable replacement for rail because of the logistical and human resources implications. Logistically, the large volumes shipped and the long distances required to reach tidewater and market destinations across North America often preclude the utilization of truck transport. For instance, it takes an average of 3.5 trucks to compensate for one rail carload and remote regions simply do not have the industrial capacity to provide the number of truckloads a typical pulp mill operation would require. On the human resources front, it should be noted that the trucking industry already reports a significant shortage of truck drivers. As shown in **Info Box 2**, remote regions are simply not able to accommodate the number of truckloads and truck drivers a single mill can require in any given year to deliver its product to markets. For these reasons, remote mills are captive to rail transportation.

As a result, demand for rail transportation is highly "inelastic" or insensitive to price given the logistical and industrial organization of the industry. **This means that, of all shippers, the forest sector is <u>the</u> *de facto* industry with the least negotiation power when dealing with the railways**. This is not up for debate. The model now supported by transportation authorities has meant a significant pricing differentiation for numerous segments of our industry. That pricing model is exacerbated by the focus of the railways on improving its operating performance by transferring costs to those with the least negotiating power on the network.

Worse, when they cannot transfer these costs, railways have a significant incentive to reduce their service standard. This service standard is now well below the needs of the forest products industry and organizations have been forced to find alternative means of delivering their products to market. In fact, FPAC has surveyed its member companies and all of them have reported significant rail service issues resulting in significant costs, including: loss of production, transportation, unforeseen offsite inventories, administrative, lost business, bonding, and taxation. **FPAC estimates that the failure to provide adequate service costs the forest industry an extra half a billion dollar per year.**

This is not a viable model for the forest products industry. This is why the transportation authorities must strengthen the legislative and regulatory means by which the industry can improve its negotiating position with the railways. For example, the economic value between species of trees have started to alter in recent history as transportation charges start to influence where a species can be competitive. Members report buyers in the state of Florida are pursuing European options for supply due to increasing costs and more importantly decreasing service. Transportation is thus one of the most significant drivers of competitiveness for the forest products industry. As illustrated in a recent Bank of Canada study[9], the failure to improve the power imbalance will mean the forest industry will continue to divert its investments to other regions of the globe, thereby restraining Canada's economic development.

Map 1: Massive North American re-organization of Lumber Production
<u>in Response to Increasing Production Costs</u>[10]



Note: Percentage change for each region indicative of change between last two economic cycles.
Source: TimberMart-South and CIBC World Markets Inc. taken from CIBC Institutional Equity Reseach report *Forest Products Tour 2013 What We Learned*, October 22, 2013

[9] See Bank of Canada Discussion Paper 2014-7, *Why Do Canadian Firms Invest and Operate Abroad? Implications for Canadian Exports*, Martin Coiteux, Patrick Rizzetto, Lena Suchanek and Jane Voll.
[10] FBM is a unit of measure standing for "foot, board measure" representing the volume of a one-foot length of a board one foot wide and one inch thick.

Divestment has already begun. Canadian forest product firms now own 20% of the southern US production. Map 1 illustrates how lumber production and investment are being massively re-aligned outside of Canada to access fibre and to respond to increasing production costs and the lack of competitiveness on the transportation front. Essentially, Canadian firms are making their strategic investment in the southern United States where a majority of US housing starts are occurring. The map also shows that current production is down in both the eastern and western regions of Canada.

While differential pricing may make sense from an economic efficiency standpoint, this is happening at the expense of the Canadian industry and the communities dependent on that industry for their survival. And this is precisely where the legislation fails the public interest test.

The influence Canadian rail carriers are having on the buying habits of lumber consumers cannot be underestimated. Forest products "buyers" are worried about the deteriorating service levels, increasing transit times, inability to deal with winter weather, and increasing costs. The industry is under threat to lose market share due to a customer's wish to lessen their dependence on CN and CP.

While there are some regulatory and legislative options for shippers, they are rarely used — they are too costly to pursue and not sufficiently strong to ensure a true commercial resolution of the issue at hand in a timely and productive fashion. In fact, a review of the dispute resolution procedures over the last few years has shown that these mechanisms are rarely used by the forest products industry. This is not because there are limited disputes but because the mechanisms are too weak to meet the needs of the forest industry shippers.

Canada has a National Transportation Policy that is supposed to encourage railway competition, but for many captive shippers outside of the inter-switching limits, the CTA's competitive access provisions appear to be more illusory than real. To enhance competition in the railway sector, it must be recognized that competition and market forces are the primary agents in providing viable and effective services in the railway sector. As outlined in the Review's Discussion Paper, "The Policy states that government regulation and intervention should generally be limited to cases where the market cannot otherwise achieve satisfactory economic, safety, security, environmental and social outcomes."[11] The CTA requires substantive additional provisions to enhance competition in the railway sector and to fulfill the objectives of the National Transportation Policy.

[11] Review Discussion Paper, page 4, paragraph 2.

FPAC is recommending:

Recommendation 2:

To strengthen the key tools within the Act to make the system more competitive by:

a. **Extending inter-switching, including out to 900 kilometres across Canada.**
b. **Making public railway costing inputs and Canadian Transportation Agency manuals.**
c. **Deleting all references to "network" in the Act.**
d. **Making the multi-party Final Offer Arbitration process more accessible.**
e. **Deleting the requirement in the Act to have regard to effective, competitive alternatives.**
f. **Strengthen Rail Line Discontinuance requirements.**
g. **Providing shippers with the right to secure and use private equipment to ensure adequate service.**

For full details, refer to Annex 1.

5. Other Recommended Policy Changes to the *Canada Transportation Act*

As demonstrated earlier, the forest products industry is an intensive user of the full transportation system. As such, FPAC wishes to submit non rail-related changes that would seek to improve the fluidity and functioning of the overall transportation system.

FPAC is recommending:

Recommendation 3:

Overall Changes to the *Canada Transportation Act*

1. **Ports/Terminals – Implement extended hours of operation (e.g. Montreal and Vancouver) to maximize efficiency and reduce congestion.**
2. **Re-establish the "public interest" test within the *Act*.**
3. **Strengthen the investigative powers of the Canadian Transportation Agency, to independently investigate, and resolve as may be necessary, anti-competitive or abusive behaviour.**

For full details, refer to Annex 1.

Trucking

Further to the input that FPAC members have submitted in this area to the Canada-United States Regulatory Cooperation Council (RCC), FPAC is recommending:

Recommendation 4:

Create a more competitive market for truck transportation services, including a number of measures to harmonize and streamline the system, as well as increase capacity.

For a full list of these recommendations, please see the detailed version of these recommendations in Annex 1.

Marine

Further to the input that FPAC members have submitted in this area to the Canada-United States RCC, FPAC is recommending:

Recommendation 5:

Create a more competitive market for marine transportation services, including a number of measures to harmonize and streamline the system, as well as increase capacity.

For a full list of these recommendations, please see the detailed version of these recommendations in Annex 1.

6. Conclusions

FPAC is asking for amendments to the CTA that will support job creation, economic growth, and long-term prosperity in Canada. Without these changes and in turn a "right-sizing" of the transportation system, Canada's economic security now, and in the future, is in doubt.

FPAC looks forward to continuing its ongoing dialogue with the Government on these recommendations.

ANNEX 1

COMPREHENSIVE LIST OF ASKS

The railway level of service obligations contained in sections 113-116 of the CTA are the foundation upon which all of the competitive access provisions are built. Without reasonable assurances of adequate rail service, rate levels are largely meaningless. Accordingly, the requested policy changes contained within this submission are predicated upon the continuation and effectiveness of the level of service provisions in the CTA.

Rail

1. Strengthen the level of service provisions within the CTA so that the level of service provided by the railway must meet the rail transportation requirements of the shipper. Currently, section 169.37(b) of the CTA requires an arbitrator to have regard to the service that the shipper requires for the purposes of service level agreement arbitration. The service that the shipper requires should be the focus of the level of service obligations set out in sections 113 to 115 of the CTA as well.

2. Strengthen key tools within the CTA to make the system more competitive by:
   a. Extending interswitching out to 900 kilometres across Canada.[12]
   b. Making railway costing inputs and Canadian Transportation Agency manuals publicly accessible.
   c. Deleting paragraph 169.37(d) from the CTA to remove consideration of the railway's "network" obligations from the service level agreement arbitration provisions.[13]
   d. Making the multi-party Final Offer Arbitration process more accessible by removing the existing barriers (e.g. regarding confidentiality and commonality of issues) to using the remedy.[14]

[12]Regulated interswitching allows shippers who are served by a single railway to secure rates and services from competing railways. Regulated interswitching has existed in Canada as a means of obtaining rail competitive access since 1904. Agency-established interswitching rates are an important component of the competitive access provisions of the CTA and reflect the broader policy objectives set out in Section 5 of the CTA.

[13] In Case No. 14-02100 (Louis Dreyfus Commodities Canada Ltd. v. Canadian National Railway Company), the Canadian Transportation Agency clearly stated, particularly at paragraph 23 of the decision, that the service obligations of a railway are owed to each individual shipper. The obligation to provide service to a shipper is not impacted by the railway's obligation to provide service to other shippers.

[14] Final Offer Arbitration (FOA) has been the remedy most frequently utilized by railways customers who are dissatisfied with their freight rates.

e. Deleting the requirement, in the context of Final Offer Arbitration and in s. 120.1, to have regard to effective, competitive alternatives.
f. Strengthening the Rail Line Discontinuance requirements to ensure they address the economic impacts related to the communities affected by the discontinuance.
g. Provide to shippers the right to secure and use private equipment to ensure adequate service.

Overall Changes to the Canada Transportation Act

3. Overall changes to the CTA:

a. Implement extended hours of operation at key ports and terminals (e.g. Montreal and Vancouver) to maximize efficiency and reduce congestion.
b. Re-establish the "public interest" remedy within the CTA that allows the Canadian Transportation Agency to provide relief against actions that prejudicially affect the public interest in relation to national transportation.[15]
c. Strengthen the investigative powers of the Canadian Transportation Agency, to independently investigate, and resolve as may be necessary, unreasonable terms and conditions imposed by rail carriers whether pursuant to a tariff or by way of a policy that is implemented without tariff publication.

Trucking

Further to the input that FPAC members have submitted in this subject area to the Canada-United States RCC, FPAC members ask that the following requests be adopted.

[15] Sections 59 to 63 of the *NTA, 1987* contained provisions which enabled a person who had reason to believe that the effect of any rate established by a rail carrier or that any act or omission of a rail carrier could prejudicially affect the public interest in respect of rates for, or conditions of carriage of goods within, into or from Canada, to apply to the Agency to investigate the matter. Should the Agency find the act, omission or rate was prejudicial to the public interest it was empowered to remove the prejudicial feature in the relevant rates or conditions specified for the carriage of goods or make such other order as it considered proper in the circumstances. This provision was removed from the *Canada Transportation Act* on the basis that public interest considerations should be left to Parliament and not the Agency. However, the public interest test was retained in the CTA as a condition to obtaining running rights. There are many instances where industries or groups of shippers may be prejudicially affected by railway rates, acts or omissions. The prejudicial impact of such activities may extend to the receivers of goods, to other industries and to the communities or regions of Canada in which the affected shippers are located. There is good reason to re-enact the public interest remedy to permit the Agency to deal with railway conduct which affects more than one shipper and results in disadvantage to others.

Repositioning of Empty Foreign Trailers by Foreign Drivers Engaged in International Commerce

FPAC supports the revised interpretation of U.S. and Canadian immigration rules to allow a foreign driver to reposition an empty foreign trailer that is in service as part of the international flow of commerce; that is being jointly sought by the Canadian Trucking Alliance and the American Trucking Associations.

The current rules are inconsistent with present day logistics practices. They hurt the reliability and predictability of the North American supply chain. They cause unnecessary fuel consumption and put more trucks on the road than are necessary. They also impede compliance with truck driver hours of service regulations.

This results in higher and unnecessary costs for the U.S. and Canadian shipper. Resolution of this issue would make the sector more competitive, safer, and help reduce its environmental impacts.
Canada's former Minister of Citizenship and Immigration, Jason Kenney, has written to U.S. Homeland Security Secretary, Janet Napolitano, stating Canada would change its rules if the U.S. reciprocates. Canada has also previously proposed to have this issue dealt with by the Regulatory Cooperation Council.

Boat Tails on Transport Trailers

The use of boat-tails on the end of freight trailers delivers reduced fuel consumption and fuel saving (e.g. as much as 3,800 litres or 1,000 gallons of diesel per year) thus providing a win-win from both the reduced environmental impact with reduced greenhouse gas emissions and cost savings points of view.

At the same time as manufacturing standards in both countries are being established, regulatory alignment should be a priority. The relevant agencies are the U.S. Department of Transportation and in Canada it is the various provinces that regulate truck length standards.

Harmonization of Measures to be Applied in the Area of "Heavy Vehicle Roll Stability"

In recent years, both the U.S. and Canadian federal governments have introduced regulatory requirements for stability control devices to be installed on all new light duty vehicles. With the U.S. National Highway Traffic Safety Administration (NHTSA) in the process of seeking to make Electronic Stability Control (ESC) systems mandatory on all new heavy trucks manufactured in the United States, Transport Canada should be working towards the same type of goal via a manufacturing standard. Joint implementation of this could be done by establishing a minimum standard for roll stability and providing the option to the industry to meet this standard with either of the two technological options currently available, including ESC and Roll Stability Control (RSC).

The joint implementation of this initiative would lead to significant savings in the sector's risk to public safety including accident related fatalities and injuries; as well as operating costs related to considerations such as downtime due to vehicle rollover; vehicle equipment and cargo replacements; possible fines and insurance costs; potentially jeopardizing customer goodwill and future business.

Joint Implementation in Canada and the U.S. of "Mandatory Electronic Recording of Compliance with Truck Driver Hours of Service Regulations."

FPAC members support the mandatory call for all heavy trucks to be equipped with electronic logging devices where the driver is currently required to complete a paper logbook under the hours of service regulations.

The U.S. Federal Motor Carrier Safety Administration (FMCSA) has stated its intention to mandate ELDs in a January 2011 Notice of Proposed Rulemaking. The FMCSA has estimated that the paperwork savings alone would offset the entire cost of a requirement for drivers who are required to use logbooks to transition to ELDs. The Canadian Council of Motor Transport Administrators working group is developing a National Safety Code technical standard for ELDs.

ELDs can reduce driver fatigue, reduce costs and increase efficiency related to the use of logbooks, and improve regulatory compliance which in turn, can improve road safety and level the playing field among all carriers.

Marine

Further to the input that FPAC members have submitted in this subject area to the Canada-United States Regulatory Cooperation Council (RCC), FPAC members ask that the following requests be adopted.

- Harmonize safety, environmental and regulatory standards across both countries.
- Harmonize and streamline reporting and vessel clearance requirements between both countries.
- Align Canadian and U.S. marine security regulations.
- Remove user fees as barriers to trade.
- Increase icebreaking assets.
- Streamline pilotage services.
- Remedy the situation regarding double scanning or no scanning of ocean containers.
- Give consideration to seaway infrastructure (maintenance, technology and research).
- Seek reciprocity for the Seafarer's Identification Document.
- Harmonize ballast water regulations and remedy the State of New York's implemented ballast water management discharge standards.

- Harmonize regulations for ship emissions, taking into account fleet requirements.

Regarding the Great Lakes and St. Lawrence region:

- Streamline reporting requirements for marine shipments within the Great Lakes region;
- Mutually recognize regulatory oversight regimes relating to Canadian and U.S. flagged vessels operating on the Great Lakes and the St. Lawrence Seaway;
- Harmonize environmental (ballast water management) and emissions requirements across the Great Lakes and the St. Lawrence Seaway; and,
- Harmonize and streamline pilotage services.

ANNEX 2

FPAC MEMBERS VIEWS ON STATUTORY REVIEW OF THE *CANADA TRANSPORTATION ACT* – SPECIFIC ISSUES

On June 25, 2014, when the Honourable Lisa Raitt, Minister of Transport launched this Review, there were a number of key issues that were identified. The following lists each of the 10 specific issues that were identified and provides FPAC members views on each of them.

1. **Whether adjustments to the current transportation legislative and policy framework are required to support Canada's international competitiveness, trade interests, and economic growth and prosperity.**

   See sections #1, #3, and #4 above.

2. **How strategic transportation gateways and corridors can be developed and leveraged to support Canadian prosperity through linkages to global markets.**

   Ports/Terminals – Implement extended hours of operation (e.g. Montreal and Vancouver) to maximize efficiency and reduce congestion.

3. **How the quality and utilization of transportation infrastructure capacity can be optimized through, for example, improved alignment of transportation policies and regulations and/or the use of innovative financing mechanisms.**

   See sections #1, #3, and #4 above.

4. **How technological innovation can contribute to improvements in transportation infrastructure and services.**

   Through Transport Canada initiatives such as the Commodity Supply Chain Table, technological innovation can help to supply more robust data with which to evaluate the performance of the supply chain.

   Trucking – see "Boat Tails on Transport Trailers", "Harmonization of Measures to be Applied in the Area of Heavy Vehicle Roll Stability" and "Joint Implementation in Canada and the U.S. of Mandatory Electronic Recording of Compliance with Truck Driver Hours of Service Regulations" requests outlined above.

5. **Whether adjustments to transportation safety and environmental regimes are needed to continue achieving high standards for safe and sustainable transportation, given increasing system volumes/demands.**

   Liability must be assigned appropriately:

   a. Shipper is responsible for proper identification, classification, safe loading, and proper means of containment.
   b. Carrier is responsible for movement of the goods.
   c. Receiver is responsible for safe unloading.

6. **How safety and well-being concerns related to rail transportation (including the movement of dangerous goods) through communities can be addressed.**

   Liability for dangerous goods must be assigned appropriately:

   a. Shipper is responsible for proper identification, classification, safe loading, and proper means of containment.
   b. Railway is responsible for movement of the goods.
   c. Receiver is responsible for safe unloading.

7. **How to address rapid changes in the north and associated challenges for the continued safety, security, and sustainability of the northern transportation system, and specifically, the federal role in supporting the northern transportation system.**

   Any policy changes made in this area should promote greater competition in supplying transportation carrier services to these areas and ensure that any transportation policy changes do not create unintended consequences, across all modes, and have a positive impact on the competitiveness of Canada.

8. **How federally-regulated passenger rail services can be delivered to meet travellers' needs while minimizing costs to the public purse.**

   FPAC members do not have any specific views on this issue at this time.

9. **How the vitality of the Canadian aviation sector, air connectivity, and Canada's ability to attract visitors and transiting travelers can be maintained and augmented in light of the range of cost factors and competitive global markets.**

   FPAC members do not have any specific views on this issue at this time.

10. **Whether current governance and service delivery models for key federal operations, assets and agencies -- including the Canadian Transportation Agency, Canadian Pilotage Authorities, the St. Lawrence Seaway, and airport and port authorities -- can be improved.**

    FPAC would like to see the investigative powers of the Canadian Transportation Agency strengthened to be able to independently investigate, and resolve as may be necessary, anti-competitive or abusive behaviour.

December 18, 2014