

July 19, 2022

**Dear National Supply Chain Co-Chairs and Task Force Members:**

On behalf of Forest Products Association of Canada (FPAC), we are writing to thank you for your ongoing attention to matters of supply chain performance and provide a written summary of our recommendations for inclusion in the Task Force's final report.

As you know, FPAC provides a voice for Canada's wood, pulp and paper, and wood fibre-based bio-materials producers nationally and internationally in government, trade, and environmental affairs.

Canada's forest products industry generates some \$72 billion dollars in revenues each year, operates in more than 600 forest-dependent communities, and directly employs as many as 200,000 Canadians across the country. We exported \$45 billion worth of goods to the global market in 2021, representing roughly 7% of all Canadian exports. Our sector is also one of the largest employers of Indigenous peoples in Canada and includes some 1,400 Indigenous-owned businesses.

As pandemic-driven shutdowns spread across Canada in early 2020, forest product manufacturers were deemed essential and continued to ship goods to domestic and international markets. Despite significant market demand—particularly for lumber and medical-grade pulp producers—underperforming transportation supply chains have limited the extent to which our sector could meet global demand for Canadian wood, pulp and paper, and bio-products.

FPAC has long understood the severity and impact of these issues for Canadian shippers—members have been forced to curtail or shutdown production, have lost customers, have incurred huge opportunity costs, and seen investors become wary of expanding Canadian production capacity. If we hope to continue supplying world-class goods to our trading partners worldwide, it is imperative that transportation supply chains be optimized.

In addition to the points raised by FPAC during Transport Canada's recent Commodity Supply Chain Table meeting in Edmonton and its bilateral meeting with members of the Task Force, we have organized our observations and recommendations for federal action in support of improved supply chain performance in the attached annex. **Recommendations are informed by the urgent need for commercial and, if necessary, regulatory**

**solutions that improve the reliability, accessibility, and efficiency across the transportation network for shippers.**

Once again, we thank the Task Force and supporting staff at Transport Canada for their efforts and attention to these matters. We look forward to discussing these recommendations in more depth at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Joel Neuheimer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Joel Neuheimer  
Vice President, International Trade, Transportation, HR, Corporate Secretary



## Annex #1 – Detailed FPAC Recommendations for National Supply Chain Task Force

### General Comments

Since 2016, the federal government has not articulated an adequate long-term strategic vision for Canada's transportation supply chains, instead adopting a reactive posture as disruptions multiply and headwinds intensify. Among FPAC member companies, there are many who believe that on-the-ground issues are not being adequately addressed by existing policies, regulations, and legislation, and that regulators like the Canadian Transportation Agency (CTA) lack the resources and/or political mandate to act in support of shippers who are persistently left lacking for suitable and adequate service at competitive rates. In addressing transportation supply chain issues on a national scale, we believe that the federal government can play a much more effective role in

- a) fostering productive dialogue among stakeholders;
- b) enforcing performance standards for transportation carriers, and;
- c) investing to ensure adequate Canadian trade infrastructure.

Stakeholder Dialogue—As the scope and frequency of disruptions to transportation service have increased, forums and processes that were conceived with the express intent of facilitating information exchange on transportation issues (e.g. NRCan's Rail Working Group, Transport Canada's Commodity Supply Chain Table, stakeholder consultations, working groups, initiatives, etc.) appear increasingly one-way—shippers and associations who take the time to attend and contribute to these discussions do not see adequate reciprocity from government partners or transportation carriers in terms of information-sharing and engagement towards solutions.

FPAC would like to see Transport Canada use its power as a convenor to facilitate regular discussions on the state of transportation supply chains, with obligations for carriers (i.e. class 1 railways, container shipping lines, for-hire trucking firms) to attend and make themselves available for questions.

Enforcing Performance Standards—As one of the associations that originally requested the Canadian Transportation Agency's (CTA) own-motion investigation into possible freight rail service issues in the Vancouver area, FPAC was pleased to see the CTA's own-motion power preserved via the Supreme Court's rejection of CN's application for leave. This effectively ensured that the CTA could continue to conduct investigations in a manner that is distinct from proceedings requiring the direct engagement of shippers to initiate complaints. However, the threshold for this sort of investigation appears to remain very high and could benefit from further clarification—without that clarity, the process does little to protect shippers from established practices that, in the view of CTA staff, may not be sufficiently systemic in nature.



FPAC would like to see the CTA better equipped to take a more aggressive and proactive approach to enforcing level-of-service obligations. In our view, the U.S. Surface Transportation Board and Federal Maritime Commission represent strong practical examples of this approach. At a minimum, there is a need for additional resourcing. The massive volume of consumer complaints related to air travel that the CTA must process has been limiting its ability to take up rail shipper complaints in a timely manner. The CTA's discretion to use its own-motion power should not be dictated by a lack of resources.

Investing in Canadian Trade Infrastructure— While FPAC was encouraged by the additional funding allocated in the 2022 Federal Budget for supply chain-focused investments through the National Trade Corridors Fund (NTCF), we believe that the operational and environmental impacts of all future infrastructure projects supported by the NTCF should be reported publicly by Transport Canada. At present, very little information is available to stakeholders regarding the high-level impacts of NTCF investments on the performance of Canada's key transportation infrastructure—rather, the success of this program continues to be defined by the total amount of funding allocated.

FPAC suggests two key criteria be used to drive NTCF decisions: investments made should be able to have a demonstrated impact on eliminating a bottleneck(s) in Canada's freight supply chain and should be able to demonstrate that a reduction in GHG emissions is achieved via that investment. We also believe that Transport Canada should ensure that resiliency and flexibility for shippers are prioritized (e.g. contingency measures like increased warehousing space<sup>1</sup> are essential given the lack of reliability across all modes). Finally, Investments made through the NTCF should also be subject to short-, medium-, and long-term evaluation based on their contributions to supply chain fluidity and emissions-reduction – these evaluations should be shared publicly by Transport Canada.

To ensure Transport Canada is taking an evidence-based approach to selecting NTCF investments, FPAC suggests that the department commission an independent benchmarking study that compares Canada's freight transportation infrastructure, intermodal connectivity, regulatory environment, and overall performance with other national jurisdictions. Jurisdictions against which Canada could be compared should be selected based on the similarity of their geography and demography, as well as the composition of their economies.

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<sup>1</sup> For manufacturers of perishable products with limited storage options on site (e.g. pulp & paper), there is a constant risk of lost production in the event of a disruption to rail or truck service – depending on the severity of the disruption, this can lead to curtailments and shutdowns. We have heard anecdotally from our members that warehouse capacity is especially tight in Alberta and at the Port of Vancouver.

Given our current transportation corridors run through extremely difficult geographic terrain, and urban environments where there is no additional land available for expansion, now more than ever, it is essential for Canada to have a long-term vision and goals to build the freight supply chain necessary to meet current and future needs (e.g. Pacific Gateway Strategy).

Other General Recommendations—In order to better define a national transportation strategy, FPAC suggests that a permanent national steering committee of supply chain participants be established to identify the top bottlenecks across Canada’s supply chain on an ongoing basis—with a view to seeing federal government dollars invested, in collaboration with industry partners, to address those bottlenecks accordingly—and assess freight supply chain partners respective performance in keeping the chain moving efficiently. FPAC also suggests that the Task Force revisit recommendations advanced in the [Canada Transportation Act Review Report](#) led by the Honourable David Emerson, P.C., O.B.C., many of which remain highly relevant in our current context.

## Freight Rail

Canada’s freight rail system provides perhaps the clearest illustration of the systemic issues that limit our national trade competitiveness—the Canadian market is dominated by the dual monopolies of CN and CP, with no real competitive pressures to improve service standards, offer competitive rates, staff operations adequately, or fund large-scale infrastructure development. This broken market has created a situation in which rail carriers are far more attentive to shareholders’ priorities than those of shippers or the Canadian economy, particularly those that produce lower revenues per tonne-kilometre.

Forest product shippers have expressed a clear preference for shipping products and receiving inputs via rail, but service and order fulfilment challenges have hampered their ability to move typical volumes of product—let alone increase the proportion of goods moving via rail. Alarming, member companies have informed FPAC that in some cases, their customers prefer to receive products via truck to ensure greater reliability and avoid arbitrary fees. In a recent survey of FPAC member companies, 88% of respondents agreed that rail service and fulfillment issues are “having a negative impact on customer confidence and global competitiveness of [Canada’s] forest sector”.

FPAC and its members have participated in federal consultations discussing road-to-rail modal shift and climate-related contingency planning, consistently articulating the same perspective—to make meaningful progress in getting more goods onto rail and improving the resilience of the system against climate- and human-made disruption, the federal government must first ensure that the freight rail system is performing well enough to support this transition.



## Recommendations

Transport Canada’s forthcoming “Regulations Amending the Transportation Information Regulations (Freight Rail Data)” [*Canada Gazette*, Part I - May 7, 2022] represent an expansion of publicly available performance data that is long overdue. FPAC has submitted a representation on the regulatory proposal that makes several recommendations—among them, that Transport Canada create an annual report on the state of Canada’s railways using the data that is collected via the regulatory mechanism. Within this report, Transport Canada should ask rail carriers to explain and discuss any significant performance issues (e.g., above-average terminal dwell, lengthening cycle times, large swings in the number of train-operating employees) that might have occurred over the previous year. Task Force members can review all of FPAC’s recommendations on this proposal in Annex #2.

While it has not been included in the proposed Freight Rail Data regulations, FPAC firmly believes that Transport Canada and the Canadian Transportation Agency should take a more active role in monitoring on-time performance and reporting out to the Canadian public, and if possible, should compel Class 1 rail carriers to provide them with on-time performance data across commodity groups and geographic areas for aggregation and publication. Even in the absence of formal penalties for inadequate performance, we believe that the prospect of greater transparency (and therefore public accountability) regarding on-time performance may well compel carriers to make the requisite improvements to their operating practices.

FPAC also supports several amendments to the Canada Transportation Act, including the following:

- Repeal of Long Haul Interswitching (LHI)—this remedy, which has proven entirely ineffective, is based on a methodology that produces an “average captive rate” rather than a truly competitive rate for shippers. Further, it has served as a useful tool for rail carriers in arguing that a complainant shipper looking to access a remedy like Final Offer Arbitration has access to alternative remedies—when in fact, access to LHI offers no meaningful advantages. For that reason, FPAC believes that the repeal of LHI would be more useful to shippers than attempting to modify the remedy.
- Amendment of Final Offer Arbitration—FPAC supports the amendment of this provision within the Act to bring arbitration under the purview of the Canadian Transportation Agency, rather than commercial arbitrators. In our view, this change would increase the resources and contextual information available to arbitrators and address problematic power dynamics and information imbalance between carriers and shippers.
- Prohibition on Confidential Contracts that Bar Access to Shipper Remedies — Railways routinely require shippers to contract out of shipper remedies as a condition of entering a confidential contract, substituting instead a conventional commercial arbitration process that either does not reflect shippers’ rights



under the Canada Transportation Act or explicitly negates them. Shippers are then faced with the choice between (a) signing away their rights and (b) paying tariff rates that are significantly higher than what has previously been negotiated and leaving themselves exposed to further unilaterally imposed rate increases. FPAC would therefore support an outright prohibition on contracting out – this would be similar to the kinds of provisions commonly found in consumer protection legislation.

## Marine Shipping

Though the severity of pandemic-driven cost increases and logistical bottlenecks in the marine shipping space has receded from its peak, the outlook for containerized and breakbulk traffic moving through Canadian ports still appears bleak. In FPAC's view, it appears that neither Canada Transportation Act nor the Shipping Conference Exemption Act (SCEA) are providing aid to shippers in any meaningful or timely fashion. As a short-term measure, we believe that the Minister of Transport should invoke Section 49 of the Canada Transportation Act to begin an inquiry into the behaviour of container shipping lines since the beginning of the COVID-19 pandemic.

In the absence of proactive Ministerial direction, we believe that the Canadian Competition Bureau should examine the available evidence on carrier behaviour to determine if any civil or criminal wrongdoing has taken place. As you know, FPAC has also taken part in a study completed on behalf of a shipper consortium that investigates the impacts and legal underpinnings of Canada's container shipping market—this study has been shared with the Bureau, as well as the Canadian Transportation Agency and Transport Canada. Perhaps the clearest recommendation to emerge from that report is the urgent need to repeal the SCEA, which FPAC views as anti-competitive and harmful to shippers.

## For-Hire Trucking

While forest product shippers would prefer the logistical, environmental, and cost-saving benefits of a functioning freight rail system, they do remain reliant on for-hire trucking to move product from facilities to customers, transloads, and ports. Carrier capacity is perhaps the most pressing issue within the for-hire trucking space, largely due to a persistent shortage of available drivers that is expected to worsen as large numbers of drivers retire. For shippers, this has produced a situation wherein additional human and financial resources must be allocated to manage the volatility of capacity and rates.

While solutions to this issue are hard to come by, FPAC does believe that the Minister of Transport could adopt a convening role with Provincial counterparts to identify opportunities to reduce barriers to entry (e.g. high costs of: insurance, licences, training). This forum could also play an active role in harmonizing training requirements across

provinces to allow for more fluid labour mobility between provinces. Another opportunity to help fill current and future needs in this area is via increased immigration. Finally, Transport Canada could work with partners at Employment and Social Development Canada to improve the accessibility of requisite training programs to under-represented demographics within the trucking labour force (particularly Indigenous peoples, women, and New Canadians).

Another opportunity to help ease shortages in this area would be to harmonize vehicle weights and dimensions, as well as related requirements on our roads across Canada.





## Annex #2 – FPAC Recommendations Regarding Freight Rail Data Regulations [Canada Gazette, Part I - May 7, 2022]

**Recommendation #1:** Transport Canada should include data on traffic volumes at the subdivision level wherever possible (factoring in confidentiality concerns).

**Recommendation #2:** In the absence of defined performance standards for rail carriers, Transport Canada should offer 4-week and 52-week rolling averages for key data points by commodity and/or car type, including:

- Origin and destination dwell times
- Number of loaded cars not moving en-route
- Segment transit times
- Loaded cars not moving by major destination area
- Empty cars online
- Locomotive fleet status (i.e., the number of locomotives online, in storage, and in bad order status [e.g. not working because of a functional or mechanical issue])
- Number of train operating employees (i.e., the number of locomotive engineers and conductors that are available to move traffic)

**Recommendation #3:** Transport Canada should include greater detail on fleet sizes and storage, including the average daily number of railway-controlled (owned or leased) cars (excluding foreign and private cars) in service, in storage, and ordered.

**Recommendation #4:** Transport Canada should provide more detailed data on how operating employee counts break down regionally (i.e., sub-provincial).

**Recommendation #5:** Transport Canada should include data on loaded cars received at interchange by commodity and/or car type.

**Recommendation #6:** Transport Canada should provide some measure of variability in addition to average dwell times.

**Recommendation #7:** Transport Canada should provide contextual data for all metrics, including:

- Car counts to be included for origin dwell metrics
- Commodity detail to be included in terminal dwell metrics
- Commodity detail to be included in segment transit time metrics.
- Total number of loaded cars arriving in each Major Destination Area during the week

**Recommendation #8:** Transport Canada should provide clarification or clearer definitions in relation to the following:

- Commodity type – by STCC (Standard Transportation Commodity Codes) (first three digits) for all commodity types and commodity sub-types
- Train Operating Employees – short term versus long term disability by duration



- Through trains (Terminal Dwell Times) – trains that stop in the terminal area only for a crew change (without picking up or dropping off any cars) should be included in Terminal Dwell Time indicators

**Recommendation #9:** Transport Canada should create an annual report on the state of Canada’s railways using the data that is collected—within this report, Transport Canada should ask rail carriers to explain and discuss any significant performance issues (e.g., above-average terminal dwell, lengthening cycle times, large swings in the number of train-operating employees) that might have occurred over the previous year.

**Recommendation #10:** When Transport Canada begins to publish data, it should provide back-dated information covering at least 12-18 months prior to the Regulations’ final implementation to create a baseline moving forward.

**Recommendation #11:** Transport Canada should commission an annual review of the regulations by a third party to evaluate their relevance and integrity.

- FPAC has documented clear inconsistencies in the Transitional Metrics that neither Transport Canada nor the railways have adequately explained. It is crucial to ensure that data published is accurate and relevant to shipper needs.

