



The Mining Association of Canada | L'association minière du Canada

*Standing Committee on Agriculture and Agri-Foods  
Bill C-30 Fair Rail for Grain Farmers Act – Speaking Notes  
April 2, 2014*

Mr. Chair, Members of the Committee, Clerk, and fellow attendees:

I am Pierre Gratton, President and CEO of the Mining Association of Canada (MAC). With me is Brendan Marshall, Director, Economic Affairs. MAC is the national voice of Canada's mining and mineral processing industry. Thank you for this opportunity.

The Canadian mining industry is a major economic driver, contributing over \$52 billion in GDP in 2012, employing approximately 400,000 people, and accounting for \$92 billion (or over 20% of the value) of Canada's total exports. As a consequence of this international reach, the mining industry is one of the largest users of Canada's transportation sector. The mining industry represents the single largest industrial customer group of Canadian railways and consistently accounts for over half of the total rail freight revenue and the largest share of total volume carried.

Having recently polled our membership, I can report that poor rail service has been causing a range of challenges for miners since the fall of 2013, including unacceptable ratios (50-60%) of cars ordered versus cars delivered, resulting, in some instances, in the downscaling of production at operations. Just today I learned that CP Rail verbally communicated that it will no longer transport uranium; a decision contrary to the common carrier obligation that could adversely affect investment in Canada's world class uranium resources and undermine all of the excellent work and leadership this government has undertaken to secure access to Asian markets for uranium.

There is a cost to the Canadian economy resulting from poor rail service. Railways do not produce the goods for exports that allow trade to grow, our economy to expand, and employment to increase; rather, they are an essential conduit for Canadian industry to receive crucial inputs and get its goods to market. Without a healthy and reliable railway network, Canada's reputation and success as a trading nation are seriously hampered.

With respect to this bill, MAC is sympathetic to the grain growers' difficult circumstances and to the government's motivation in assisting them. However, we are very concerned about unintended consequences that will befall other Canadian sectors reliant on rail service, including mining, as a result of measures contained in Bill C-30.

Specifically, MAC has three areas of concern:

### **1. Grain Volume Commitments:**

Enacting grain sector specific volume commitments will exacerbate existing rail capacity constraints to the detriment of all the other shipping sectors, including ours.

Mining companies are also concerned that enacting grain sector specific volume commitments will undermine the legal remedies available to shippers in the *Canada Transportation Act*. How can mining companies, forced to operate outside the provisions of Bill C-30 upon enactment, make a service case against a railway that is legally obligated through pain of penalty to serve grain companies? A railway's unwillingness to break the law requiring it to move grain is a defense against the legal remedies available to other rail customers seeking to address their service challenges.

### **2. Limited Extension of Interswitching Provisions to the Prairies**

MAC is concerned the new interswitching provision will result in the railways being forced to do more short hauls, which are operationally more expensive than longer ones. A consequence of this is a reduction in rail freight revenue due to the interswitching rate being federally regulated – which will lead the railways to make up for lost revenue by either reducing service to better optimize their assets and/or increase rates for shippers that are captive or have uncompetitive options.

While MAC is not opposed to interswitching regulations in principle, we would encourage appropriate consultation on their potential positive and negative impacts on the effectiveness of Canada's rail network as a whole before implementing them.

### **3. Regulating Improvements to Service Level Agreement Mechanism**

Finally, Bill C30 proposes amendments that would give the Canadian Transportation Agency the authority to regulate prescribed elements in arbitrated Service Level Agreements (SLA), the details of which would be determined through a consultation process. While this measure may seem promising, MAC does not believe this regulation will be effective.

The Service Level Agreement provisions in the Canada Transportation Act mandate that an arbitrator take a rail company's service obligations to other shippers into account before rendering a decision. If Bill C-30 passes, an arbitrator will be bound to consider the railway's legal obligation to transport grain against the elements of service that a non-grain shipper is seeking, superseding any regulation designed to enhance a non-grain shipper's position in an arbitrated Service Level Agreement.

## **Suggestions for Improvement:**

In summary, we do not think this legislation will address the challenges faced by all shippers and that it could make the situation worse for some. I am also very concerned by an approach to rail reform that attempts to address rail issues piecemeal, one commodity at a time. We support a collaborative approach to addressing rail service challenges in Canada and strongly advise against government or Parliament picking winners and losers. Exacerbating the rail service challenges miners already experience for the sake of the grain community is not the right way to go.

We need to take a step back and look at the whole supply chain and the kind of transportation system Canada needs to succeed as an export-driven country, rich in natural resources. We need solutions that are based on commercial, market-based principles. A long standing MAC recommendation to ameliorate the commercial balance between railways and their customers, for example, would be the insertion of a new stand-alone section in the Act that would define “adequate and suitable accommodation” and “service obligations”. This would not “regulate” the railways; it would merely define an already existing measure available to shippers to pursue in their contract negotiations with the railways.

Secondly, we need policies informed by accurate data. The President and CEO of CN appeared before this committee last night and emphasized in his presentation the need for better alignment across the supply chain, for facts to inform policy development, and accountability for performance. MAC supports the spirit of these remarks, and recommends the government require railways to provide both regular monthly public rail performance data on a sector basis, and confidential company-specific performance data upon request.

Such a measure, as is already being undertaken in the grain sector, will provide all parties with the tools to quantitatively understand the nature of rail service challenges, and causally identify why service failures occur, where the capacity chokepoints are forming and, based on such analysis, determine what can be done to fix the problems.

Increased transparency should improve the relationship between railways and shippers, as both parties, in possession of the same facts, will be more motivated find solutions that are mutually beneficial, and provide the government with better information to guide its own actions.

## **Conclusion**

While MAC remains sympathetic to the agriculture sector’s difficult circumstances, and acknowledges the government’s motivation is to try to ameliorate the situation, we would be remiss not to raise concern about unintended consequences that will befall

other Canadian sectors reliant on rail service, including mining, if the measures currently contained in Bill C-30 become law.