

March 21, 2014

Introduction

On behalf of the members of the Forest Products Association of Canada ("FPAC"), thank you for the opportunity to offer our views on the Third Party Liability and Compensation Regime for Rail.

The Canadian forest industry supports more than 230,000 employees and 200 rural communities and is one of the largest customers of freight rail services in Canada. In 2011, the overall rail network carried 282 million tonnes of freight. Of this, about 30 million tonnes (or 11% of the total) were forest products. In terms of tonnage carried, forest products were the 2nd most important commodity products carried by rail next to coal (source: Statistics Canada). In 2012, CN and CP's combined rail freight revenues from forest products were \$1.5 billion (source: CN and CP annual reports).

Forest products are inherently bulky products and commodities. Also, forests and manufacturing sites tend to be remote from markets. Accordingly, freight represents one of the most significant input costs for the forest sector. Any decisions or factors that affect either freight services or costs are of key concern to our members.

The forest products industry is fragmented, being made up of many entities ranging from very small family enterprises to larger companies that employ several thousand Canadians. The range of shippers is even broader and even more diverse. FPAC urges you to recognize the relative market power of the major freight carriers compared to that of shippers, and to ensure that policy decisions do not erode the few protections that shippers have in such an imbalanced market relationship.

Key Principles and Recommendations

FPAC would like to outline a number of broad principles to aid Transport Canada in considering the appropriate policies and regulations with respect to the third party liability and compensation regime for rail.

1. Safety must be the first priority

Any policy or regulation must continue to incent all participants in the rail transportation business to place safety first and to encourage best practices by all participants (e.g. Chemistry Industry's TransCAER program). Transport Canada should reaffirm that railway companies

cannot shift liability to shippers, for example through indemnification clauses. Any offloading of the responsibility for liability coverage to the shippers would not be in keeping with this principle; and would run the risk of creating a **“moral hazard”** such as a conscious or unconscious tendency to take risks because the costs and risks are borne by others. The result could be that the risk of rail accidents could actually increase. Rail carriers need to be incented to focus on safety proactively and, as noted by the U.S. Surface Transportation Board, “... a rail carrier cannot be indemnified for its own negligence, recklessness, or willful misconduct, as that would be contrary to public policy in encouraging safe rail operations.” Rail carriers should continue to bear the risk and costs associated with every aspect of their own undertakings.

An appropriate allocation of responsibility to carriers and shippers (e.g. proper classification of goods being picked up by the railways; loading and unloading at facilities) will insure all players in the transportation system take responsibility for safety.

2. Cost should follow risk

All policies and regulations should recognize the actual risks of various commodities and should apportion costs relevant to the risk profiles of those different commodities.

3. Compensation for Damage and Pollution

Regulations and policies must ensure that railway companies are accountable for compensating for damages caused by their operations to people and property including damages to the environment.

With these three broad principles in mind we would offer two additional recommendations with respect to implementation of any regulatory changes:

- We recommend that all liability insurance coverage, and experiences, be transparent and independently verifiable
- We recommend that any policy or regulatory change not undermine the common carrier obligation of the railways whether directly or indirectly

FPAC is conscious of Transport Canada’s need to balance risk and economic efficiency. The appropriate allocation of responsibility to carriers and shippers (e.g. proper classification of goods being picked up by the railways; loading and unloading at facilities) will insure all players in the transportation system act responsibly both from the point of view of risk and economic efficiency.

Looking Forward

A safe, efficient and effective rail transportation system is important for all Canadians and particularly important for the jobs and economic opportunity of our sector. To be able to take full advantage of the Government's trade agenda we need to get our products from the loading dock to our customers economically and efficiently, and without compromising safety.

FPAC looks forward to continuing our ongoing dialogue on this and other freight related transportation issues, including on the apportionment of costs and applicable responsibility for safety within the supply chain.

If you have any questions concerning this submission, or if you require any clarification of anything within this submission, please contact me.



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