CANADIAN FERTILIZER INSTITUTE
INSTITUT CANADIEN DES ENGRAIS

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Thursday, February 28, 2013

Thank you Mr. Chairman, Members of the Committee:

My name is Roger Larson and I am President of the Canadian Fertilizer Institute. With me today is Ian MacKay, CFI's transportation legal counsel. We are here today with two other members of the Coalition of Rail Shippers. We stand united with the CRS and feel the cooperation of our Coalition has provided the Government and this Committee with a clear, practical view of what rail freight customers are seeking in this legislation.

CFI represents the basic manufacturers of nitrogen, phosphate, potash, and sulphur fertilizers, as well as the major wholesale and retail distributors in Canada. Our members produce over 25 million metric tonnes of fertilizers annually, over 75 per cent of which is exported. We are a resource-based industry heavily dependent on the railways to move our goods to domestic, U.S. and offshore markets. Our ultimate customers are farmers; delivering our products to them in a timely and effective manner is critical to maintaining North America's and the world's food supply.

CFI is encouraged by Bill C-52, the *Fair Rail Freight Service Act.* We commend the Government for bringing forward this important legislation. We at CFI view it as a crucial step towards a better commercial balance between railways and their freight customers. It will give our members the right to a service agreement with the railways and it will create a process to establish an agreement when commercial negotiations fail. This is the backstop we asked for.

Our members believe that railway service problems should be resolved by commercial processes. CFI has been a leading advocate of commercial dispute resolution since the federal debate regarding railway service which started in 2006. We were the first to develop and present a timely, effective and low cost mediation and arbitration process to the *Rail Freight Service Review Panel*. This panel cited our efforts in their Final Report. We are pleased that the arbitration process contained in the Bill mirrors many aspects of CFI's proposals.

Having said this, CFI has found areas of the Bill that have given us cause for concern. The CFI supports all of the recommendations for changes made by the CRS earlier this week. Today, I will emphasize two of the six recommendations which are of particular concern to the fertilizer industry.

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CRS Recommended Amendment Two: Operational Terms

We start with "operational terms," in the CRS document this is known as Recommended Amendment Two. The scope of service agreements should be extended beyond "operational terms" to cover all aspects of the commercial relationship between a shipper and a railway. Limiting service agreements to "operational" terms excludes from consideration by the arbitrator, a number of important terms and conditions which one routinely sees in commercial agreements.

This makes little sense in practice and will result in a shipper only being able to arbitrate some of the issues that they might otherwise choose to take to arbitration. The separation of operational terms from non-operational terms does not exist in commercial agreements.

We propose to the Committee that the legislation be amendment to strike the word "operational" from "operational terms." This will allow the arbitrator to include, clauses such as force majeure, dispute resolution, and other standard contractual terms found in commercial agreements.

CRS Recommended Amendment Three: Dispute Resolution

Secondly, the Bill needs to make it clear that a service agreement may include dispute resolution terms to deal with service failures. This is CRS Recommended Amendment Three. Shippers do not wish to undertake costly litigation to deal with a service failure or wait for the CTA to intervene. In our view the most effective way to deal with service problems that arise after an agreement is established, is under dispute resolution terms proposed by the parties themselves, settled by the arbitrator if need be.

As presently drafted, the Bill would not allow the arbitrator to include dispute resolution terms, meaning the Bill is treating only half the ailment.

Conclusion

In conclusion, CFI notes that in Minister Lebel's testimony before this Committee on February 12, that service disputes related to the Canadian portion of cross-border shipments will be subject to arbitration under Bill C-52.

Almost 50 per cent of the fertilizer manufactured by our members is shipped by rail to the United States. The transportation challenges and service issues that our members face on cross-border rail movements are the same as those faced on traffic moved domestically and offshore through our ports. Our policy and regulatory authorities need to work closely with their U.S.

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counterparts in an effort to establish and harmonize a commercial dispute resolution model that addresses the total shipment on cross-border moves. It is imperative that this legislation supports the new investment our industry is making in the growth in jobs and future prosperity of our country.

Thank you – we will be pleased to answer your questions.