



**WESTERN BARLEY GROWERS ASSOCIATION**  
**A strong voice for a vibrant, market responsive barley industry in Western Canada**  
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## For Immediate Release

### WBGA APPLAUDS INTRODUCTION OF FAIR RAIL FREIGHT SERVICE ACT

**Airdrie, Alberta, December 11, 2012** - The Western Barley Growers Association (WBGA) was pleased to hear the introduction of the Fair Rail Freight Service Act announced today by the Federal Government. "The Western Barley Growers and other Agriculture groups as well as a large group of rail shippers using the CN and CP lines formed the Coalition of Rail Shippers a number of years ago to try and level the playing field with the Railways," said Doug Robertson, President of the WBGA. "This legislation is the first step in a more commercial system that will evolve in Canada, and it is long overdue. We have heard from our customers in the past that although Canada produces exceptional agriculture products and crops, they have difficulty with our transportation system, and how long it takes to get products to market. This is the first step to improve that reputation."

The Coalition of Rail Shippers asked for the right to a Service Level Agreement (SLA) and a balanced dispute resolution process with consequences for non-performance by the Railways or shippers. The Federal Government has said that this Bill enshrines the right to a SLA, and will speed up the process of getting such an agreement if negotiations with the Railways fail to achieve satisfactory performance. It will give both Shippers and the Railroads a mechanism to settle disputes concerning service. Penalties will be prescribed by the courts to the Railways or shippers when performance is not achieved. Both sides will be required to meet their obligations.

"We are also happy to hear that the Federal Government retained Quorum Corporation to continue to monitor and analyze grain supply chain performance and report back to the industry and the government," said Robertson. "Monitoring performance is essential. Without a predictable and reliable rail service in Canada we cannot hope to be able to improve our trade position with our competitors. This is a big country, and when you only have two railways servicing it, you need the best from them, not their best intentions. It is our hope that this legislation will usher in a new relationship between Shippers and the Railways that is more commercially driven."

Further details about Rail Freight Service Review process can be found at <http://www.tc.gc.ca/eng/policy/acg-acgb-menu.htm>.

*Western Barley Growers Association is a strong voice for a vibrant, market responsive barley industry in Western Canada.*

For further comment, please contact:

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## Backgrounder

### **SERVICE CONTRACTS UNDER THE FAIR RAIL FREIGHT SERVICE ACT**

To exercise the new right to a service contract, a shipper will first have to request one from the railway. The railway will then be obligated to respond within 30 days. If an agreement cannot be reached through commercial negotiations, service arbitration would be available to a shipper to establish the terms of service. To access the remedy, a shipper would have to satisfy the Agency that an attempt was made to resolve the matter with the railway.

The arbitration process will be interest-based (as opposed to final offer), with a 45-day timeline. This could be extended by the arbitrator, for up to 20 days, if needed. The arbitrator's decision will be binding and non-appealable. The imposed contract would be akin to a confidential contract and have a one-year term (or longer, if both parties agree).

The new provision describes the elements that must be included in an arbitrated service agreement broadly, including the operational terms and conditions of service that a railway must comply with. These could include communication protocols and performance standards, and operational terms in the event of a performance failure (e.g., recovery plans). This broad definition of elements gives the arbitrator flexibility to impose comprehensive service contracts tailored to a shipper's needs.

The Act currently requires that decisions rendered by the arbitrator be commercially fair and reasonable to both shippers and railways. The new provision provides guidance for the arbitrator to take into consideration the shipper's transportation needs to maintain and grow its business, as well as the railway's need to operate an efficient network for the benefit of all users. In rendering a decision the arbitrator will consider the specific circumstances of the situation, including any voluntary commitments made by the shipper to the railway.

The new provision allows for an Administrative Monetary Penalty (AMP) of up to \$100,000 to be applied against a railway for each confirmed violation of an arbitrated service agreement.

### **BACKGROUND ON THE RAIL FREIGHT SERVICE REVIEW AND LEGISLATION**

The Rail Freight Service Review was launched in 2008 to address ongoing issues with rail freight service. It fulfilled a government commitment as part of the 2008 process that amended the *Canada Transportation Act*. On December 22, 2010, after extensive consultations with stakeholders, the Panel submitted its Final Report to the Minister of State (Transport). The Report recommended commercial and, if necessary, regulatory solutions to address the issues identified by the Review.

On March 18, 2011 the federal government formally responded to the Review, accepting the Panel's commercial approach and that it intends to implement a number of steps to improve the performance of the entire rail supply chain. As part of its response, the government committed to engage a facilitator to develop a template service agreement and a streamlined commercial dispute resolution process between railways and shippers. The government also indicated its intent to table a bill to give shippers the right to a service agreement with the railways and provide a process to establish such an agreement should commercial negotiations fail.

On December 11, 2012, the federal government tabled a bill to fulfill this commitment. In addition to the rail service provision, the bill also includes some administrative amendments that will streamline internal processes and make minor updates to the legislation. The new legislative provision and other amendments to the *Act* are in line with the priorities of the Government of Canada, including economic growth, job creation and prosperity for Canadians.

SOURCE: Transport Canada