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LEGISLATIVE SUMMARY



Bill C-30:

An Act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-30: AN ACT TO AMEND THE CANADA GRAIN ACT AND THE CANADA TRANSPORTATION ACT AND TO PROVIDE FOR OTHER MEASURES

1 BACKGROUND

Bill C-30, An Act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures (short title: Fair Rail for Grain Farmers Act) was introduced in the House of Commons by the Minister of Agriculture and Agri-Food and read for the first time on 26 March 2014.

Through the amendments to the *Canada Grain Act*¹ and the *Canada Transportation Act*,² the Government aims to get grain³ to its destination market more quickly. It also aims to increase supply chain transparency and strengthen contracts between producers and shippers.⁴

The bill establishes requirements regarding the minimum amount of grain to be moved by certain rail companies. It sets maximum penalties of \$100,000 a day for rail companies that do not meet these requirements. These measures are in force until 1 August 2016, or until a later date adopted by resolution by both houses of Parliament.

According to an Agriculture and Agri-Food Canada news release, the amendments to the legislation will:

[c]reate regulatory authority to allow the Canadian Transportation Agency to extend the interswitching distances in Saskatchewan, Alberta and Manitoba to 160 km, for all commodities, to increase competition among railways ...

[c]reate the regulatory authorities to add greater specificity to operational requirements in Service Level Agreements

[e]stablish regulatory authorities in the *Canada Grain Act* to address non-performance by grain companies in their contracts with producers.⁵

1.1 PERFORMANCE OF THE CANADIAN GRAIN HANDLING AND TRANSPORTATION SYSTEM IN THE WINTER OF 2013–2014

The majority of grain production in Canada is exported either in bulk or processed. Grain must be hauled over long distances to reach the consumer, and railways have always been central to the movement of grain in Canada to ports where it is exported.

The Canadian rail system is dominated by two companies: Canadian National Railway Company (CN) and Canadian Pacific Railway Limited (CP). These companies have major east–west lines, which allows shipments of grain from the Prairies to Pacific ports or the Great Lakes and St. Lawrence Seaway. Most of the handling and transportation infrastructure is built around this system.

In January 2014, agricultural groups reported that, owing to congestion in terminal and transfer elevators (where grain is transported to the railway system), grain producers have to wait three to six months to get their crops to international markets. On 10 February 2014, Pulse Canada, a national association that represents growers and processors of pulse crops in Canada, told the House of Commons Standing Committee on Agriculture and Agri-Food that as of that date there was a backlog of 51,000 cars and, as a result, 4.5 million tonnes of grains could not be moved to market, as planned.⁶

The Committee's hearings as part of its study on the grain logistics system in Canada also highlighted the consequences of these delays in terms of loss of income losses in western Canada as well as damage to Canada's reputation as a reliable supplier of grain on international markets.

A record harvest in 2013 and a particularly hard 2013–2014 winter explain, at least in part, the poor performance of Canada's grain handling and transportation system.

- Statistics Canada estimated the production of all field crops in Canada at 96.6 million tonnes (Mt) for the 2013–2014 crop year, about 25% higher than the previous crop year due to ideal growing conditions.⁷
- The extreme cold in December 2013 and January 2014 forced rail companies to reduce train lengths and slow activity.⁸

Together, these two events created a rail transportation bottleneck, causing delays in grain shipments.

In testimony before the Committee, stakeholders in the agricultural sector reported, however, that an exceptional harvest and extreme temperatures do not fully explain the poor performance of the grain transportation system. Some witnesses argued that the lack of competition in the transportation sector prevents the system from functioning optimally, resulting in a shortage of railway cars and a lack of surge capacity to meet peak demand. Other witnesses argued that grain shippers are not accountable for their performance because of a lack of reciprocal penalties for all parties along the supply chain.

1.2 GOVERNMENT INITIATIVES

Since 2012, the Government of Canada has introduced a number of initiatives to improve the grain handling and transportation system.

- In November 2012, the Crop Logistics Working Group (CLWG), established in 2011, had its mandate renewed. Its mission is to improve the performance of the grain supply chain through innovation, capacity building and stakeholder collaboration.
- In 2013, the *Fair Rail Freight Service Act* was enacted in response to a review of rail freight service. Shippers now have the right to conclude a service agreement with rail companies, and an arbitration process was established for cases where negotiations fail.

- On 21 January 2014, the federal government announced an investment of \$1.5 million over five years in a multi-sector (pulse, oilseeds and grain industries) collaboration project to improve supply chain efficiency and reliability.⁹
- On 3 February 2014, on the recommendation of the CLWG, the government announced changes to its grain monitoring program.¹⁰ Rail companies will have to report certain information more frequently, including the number of cars ordered and cancelled by clients, and the number of cars delivered by the railways.
- On 7 March 2014, the government made an order¹¹ requiring CN and CP to increase their transportation capacity over a period of four weeks in order for each to be able to move a minimum volume of 500,000 metric tonnes of grain a week from 7 April 2014. The order also requires them to report the volume of grain moved each week. These requirements are in force between 10 March 2014 and 7 June 2014. In the event of non-compliance, the order provides for fines of up to \$100,000 a day. Bill C-30 would extend these requirements to 3 August 2014.

2 DESCRIPTION AND ANALYSIS

2.1 AMENDMENTS TO THE *CANADA GRAIN ACT* (CLAUSES 2 TO 5)

The *Canada Grain Act* establishes the Canadian Grain Commission and the regulatory framework for the handling, quality certification, safety and export of Canadian grain. The bill extends the Commission's powers so that it can intervene when grain companies ("licensees" in the *Canada Grain Act*) do not respect their contracts with grain producers.¹²

The bill gives the Commission the new power to make regulations prescribing the provisions to be included in contracts between a grain producer and a grain company, including penalties in case of breach of contract (clause 5). The Commission can act, or appoint a third party to act on its behalf, as an arbitrator in legal cases concerning provisions that must be included in contracts between grain companies and producers (clause 2). If a grain company does not comply with the arbitrator's decision, the Commission can suspend the company's licence for 30 days (clause 3) or even revoke it (clause 4).

2.2 AMENDMENTS TO THE *CANADA TRANSPORTATION ACT* (CLAUSES 5.1 TO 15)

The *Canada Transportation Act* (CTA) applies for transportation matters under the legislative authority of Parliament, in order to support a competitive, economic and efficient national transportation system. The CTA establishes the Canadian Transportation Agency (the "Agency") as the economic regulator of air and rail transportation industries.

2.2.1 COMPENSATION (CLAUSE 5.1)

Clause 5.1 was added by the House of Commons Standing Committee on Agriculture and Agri-Food during its study of the bill.¹³ It enacts new section 116(4)(c.1) of the CTA, which gives the Agency the power to order a railway company:

- which does not meet its obligations regarding the level of services that it must offer (sections 113 and 144 of the CTA): to compensate any person who has incurred expenses because of a failure to meet those obligations; or
- which does not meet its obligations under the terms of a confidential contract that includes a compensation clause: to pay the shipper the compensation provided for under the contract.

2.2.2 OBLIGATION TO MOVE GRAIN (CLAUSES 6 AND 9 TO 12)

Clause 6 enacts new sections 116.1 to 116.3 of the CTA to impose new service obligations on CN and CP respecting the transportation of grain. Subject to demand and rail corridor capacity, these companies must each move at least 500,000 metric tonnes of grain per week until 3 August 2014 (new section 116.2(1)). The Governor in Council may, by order, specify the minimum amount of grain that CN and CP must move during subsequent crop years – the period that begins on 1 August in one year and ends on 31 July in the next year (new sections 116.1, 116.2(2) and 116.2(4)). The Governor in Council can also, by order, vary the minimum amount during a crop year (new sections 116.2(3) and 116.2(4)).

The Agency is responsible for providing the Minister of Agriculture and Agri-Food with advice on the minimum amount of grain that CN and CP must move in a crop year. Before giving its advice, the Agency must consult with these companies as well as with grain handling operators (new sections 116.2(5) to 116.2(7)). On the Minister's request, the Agency is also responsible for inquiring into whether CN and CP are complying with the new requirements respecting the movement of grain (new section 116.3).

Clauses 9 to 12 provide for a maximum fine of \$100,000 a day for CP or CN for violating the requirements to move a minimum amount of grain.

2.2.3 INTERSWITCHING (CLAUSE 7)

Clause 7 adds to section 128 of the CTA a new subsection concerning the terms and conditions for interswitching. Interswitching allows shippers to ship goods on the rail network using a different railway company. In general, a shipper cannot request interswitching when the loading or the unloading point is more than 30 km from an interswitching point. New subsection 128(1.1) specifies that the Agency can prescribe different interswitching distances based on specific regions or goods.

2.2.4 ARBITRATION ON THE OPERATIONAL TERMS IN A CONFIDENTIAL AGREEMENT (CLAUSE 8)

Clause 8 adds to section 169.31 of the CTA a new subsection concerning arbitration on the operational terms in a confidential agreement. This type of agreement allows shippers and railway companies to agree on operational terms for goods that differ from the prices published by the railway company. New subsection 169.31(1.1) provides that the Agency may make regulations specifying what constitutes operational terms that may be subject to arbitration.

2.2.5 ORDER OF 7 MARCH 2014 (CLAUSE 13)

Clause 13 declares valid the order made on 7 March 2014 requiring CN and CP to increase their transportation capacity over a period of four weeks in order to be able to each move a minimum volume of 500,000 metric tonnes of grain a week from 7 April 2014.

2.2.6 COMING INTO FORCE (CLAUSE 15)

The measure announced by the government concerning the minimum amount of grain that CN and CP must move will be temporary. Clauses 5.1(2), 6(2), 7(2), 8(2), 9(2), 10(2), 11(2) and 12(2) therefore repeal amendments to the CTA related to that measure. These clauses come into force on 1 August 2016, or on a later date if a resolution adopted by both houses of Parliament postpones their coming into force.

The other provisions of the bill come into force when the bill receives Royal Assent.

2.2.7 COORDINATING AMENDMENTS (CLAUSE 14)

The bill contains coordinating amendments with *An Act to amend the Canada Grain Act and the Agriculture and Agri-Food Administrative Monetary Penalties Act and to repeal the Grain Futures Act* (chapter 22 of the *Statutes of Canada, 1998*).

3 COMMENTARY

Given the urgency of the situation for western Canadian grain farmers and the nature of the amendments, reaction to the proposed measures in the bill was swift.

Rail companies have said that the bill is a heavy-handed intrusion into rail transport. Among other things, CN stated:

The legislation does not address the root cause of the current grain situation and will do little to move more grain, now or in the future. We also have deep concerns about the potential consequences of the government's proposed new interswitching rules.¹⁴

While some farm groups welcomed the bill's introduction, others thought it did not go far enough. The Canadian Special Crops Association praised the government for its quick response to the bottleneck in the grain transportation system.¹⁵ However, for

the Western Canadian Wheat Growers Association, the requirements regarding the volume of grain to move will not significantly reduce grain stores, which could reach 20 million tonnes at the end of the crop year, more than double that of the past two years. The association also believes that the penalties are insufficient.¹⁶ The chair of Alberta Barley called the legislation an interim solution and said that to have a reliable and transparent transportation system, the government needs to look at long-term solutions.¹⁷

NOTES

1. [Canada Grain Act](#), R.S.C., 1985, c. G-10.
2. [Canada Transportation Act](#), S.C. 1996, c. 10.
3. Throughout the document, the term “grain” includes grains, oilseeds, pulses and special crops (e.g., mustards, canary seed, etc.).
4. Agriculture and Agri-Food Canada, [“Harper Government Introduces Legislation to Address Rail Capacity Challenges,”](#) News release, 26 March 2014.
5. Agriculture and Agri-Food Canada [“Harper Government Introduces Legislation to Address Rail Capacity Challenges,”](#) Backgrounder, 26 March 2014.
6. House of Commons, Standing Committee on Agriculture and Agri-Food, [Evidence](#), 2nd Session, 41st Parliament, 10 February 2014, 1535 (Mr. Greg Cherewyk, Chief Operating Officer, Pulse Canada).
7. Agriculture and Agri-Food Canada, [Canada: Outlook for Principal Field Crops](#), Market Analysis Group/Grains and Oilseeds Division, 20 March 2014.
8. House of Commons, Standing Committee on Agriculture and Agri-Food, [Evidence](#), 2nd Session, 41st Parliament, 12 February 2014, 1615 (Mr. Michael Murphy, Vice-President, Government Affairs, Canadian Pacific Railway).
9. Agriculture and Agri-Food Canada, [“Harper Government Invests in Agriculture Supply Chain,”](#) News release, 21 January 2014.
10. Agriculture and Agri-Food Canada, [“Harper Government to Further Address Grain Logistics System Challenges,”](#) News release, 3 February 2014.
11. [Order Imposing Measures to Address the Extraordinary Disruption to the National Transportation System in Relation to Grain Movement](#), SOR/2014-55, 7 March 2014.
12. Agriculture and Agri-Food Canada, Backgrounder (26 March 2014).
13. House of Commons, Standing Committee on Agriculture and Agri-Food, [Third Report](#), 2nd Session, 41st Parliament, May 2014.
14. Canadian National Railway Company, [“CN disturbed by Canadian government legislation introducing heavy-handed regulatory intrusion into rail grain transportation,”](#) News release, 26 March 2014.
15. Will Chabun, [“Rail rules ‘deficient,’ minister says,”](#) *The Star Phoenix* [Saskatoon], 27 March 2014.
16. Amanda Stephenson, [“Farmers criticize federal grain-by-rail act,”](#) *Edmonton Journal*, 28 March 2014.
17. Ibid.