



CANADIAN OILSEED PROCESSORS ASSOCIATION

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A PROFILE OF THE CANADIAN OILSEED PROCESSING INDUSTRY

**FOR DISCUSSION WITH
THE HONOURABLE CHUCK STRAHL
MINISTER OF AGRICULTURE AND AGRI-FOOD**

February 6, 2007

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INDEX

Overview	1
Policy Position Initiatives	2
1. Biodiesel Fuels	2
2. International Trade (WTO) Negotiations	2
3. Regulatory Enhancements to Canadian Food Supply Trans Fats Reduction	3
4. Domestic Regulatory Regimes and the Federal-Provincial Agreement on Internal Trade	3
5. Review of the <i>Canada Transportation Act</i>	4
Economic Value of the Oilseed Processing Industry	5
Member Company Plant Locations	6
2006 Crushings of Oilseeds	7
2006 Supply/Disposition of Vegetable Oils	7
2006 Supply/Disposition of Oilmeals	7
2006 Exports of Vegetable Oils	8
2006 Exports of Oilmeals	8

ATTACHMENTS

Attachment #1	COPA Policy Position – The Biodiesel Fuel Initiative
Attachment #2a	IASC – A New Vision for the International Trade of Oilseeds and Oilseed Products – A WTO Development Round Sectoral Initiative
Attachment #2b	Oilseed Processors Level Playing Field Coalition Joint Declaration
Attachment #2c	IASC – Trade Liberalization Significantly Increases Global Production, Consumption and Trade of Vegetable Oils and Protein Meals
Attachment #3	VOIC Letter to the Honourable Tony Clement re the Trans Fat Task Force Report – TRANSforming the Food Supply
Attachment #4	VOIC Letter to the Honourable Chuck Strahl re the Completion of the Agriculture and Food Goods Chapter under the AIT
Attachment #5a	WCSC Analysis of: “Framework for Commercial Dispute Resolution” CN/CP “Proposal for Canadian Shippers”
Attachment #5b	WCSC Letter to the Honourable Lawrence Cannon re the CN/CP Commercial Dispute Resolution proposal

CANADIAN OILSEED PROCESSORS ASSOCIATION

OVERVIEW

The **Canadian Oilseed Processors Association (COPA)** is a federally incorporated non-profit industry association. **COPA's Association Office** is located at:

2150-360 Main Street, Winnipeg, Manitoba, R3C 3Z3

Phone: (204) 956-9500

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E-mail: copa@mts.net

Its **Members** are as follows:

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P.O. Box 99

Lethbridge, Alberta, T1J 3Y4

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Fax: (403) 327-3887

Cargill Limited

P.O. Box 5900

Winnipeg, Manitoba, R3C 4C5

Phone: (204) 947-0141

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COPA is a **MEMBER** of the following:

- | | |
|--|-------|
| ▪ Canadian Agri-Food Trade Alliance | CAFTA |
| ▪ International Association of Seed Crushers | IASC |
| ▪ Vegetable Oil Industry of Canada | VOIC |
| ▪ Western Canadian Shippers' Coalition | WCSC |

The **Main Objectives of the Association** are to:

- Promote, foster and develop the processing of oilseeds and the further processing of oilseed products into refined oil, protein meal and other products;
- Provide a forum for discussion and study of all matters pertaining to oilseed processing and provide to its members the means of distribution of information pertaining to all matters affecting the industry;
- Broaden the scope of both domestic and export market opportunities for Canadian oilseed products;
- Act on behalf of members by making recommendations and representations to Government on legislation, policy and programs of significance to the business of oilseed processing in the areas of trade policy, transportation policy and regulatory issues; and
- Establish and maintain effective relationships with all persons and organizations directly or otherwise involved with the industry.

POLICY POSITION INITIATIVES

1. BIODIESEL FUELS

COPA members continue their long-standing support for a nation-wide renewable fuels policy in Canada. COPA members are strong, positive supporters and participants in the Canadian Renewable Fuels Association.

COPA members believe that the taxation and fiscal policy measures for a national renewable fuels standard must be supported at both the Federal and Provincial levels and that the Canadian model should reflect harmony with the USA model.

A Canadian biodiesel initiative will have quality standards that are neutral with respect to feedstock, are acceptable to the petroleum diesel producers and the engine manufacturers and are set by the Canadian General Standards Board.

COPA members believe that a Canadian Biodiesel Industry will add demand for 2.5 million tonnes of additional oilseed processing capacity and value to farm gate oilseed producer returns.

See Attachment #1

2. INTERNATIONAL TRADE (WTO) NEGOTIATIONS

COPA members appreciate the strong support that Ag. Canada has provided to this industry in pursuit of a global trade reform level playing field sectoral initiative for all oilseeds and products. Members of COPA strongly believe that Canada must make every effort to support the continuation of the current Round of WTO negotiations to a successful completion.

While regional or bilateral trade negotiations are conducive to maintaining the negotiating momentum among willing participants, they should not be considered as an alternative to a comprehensive resolution to the current impediments to the broad policy initiative for agricultural trade reform under the Doha Round

COPA is a member of the International Association of Seed Crushers and the Level Playing Field Group of Oilseed Producing Nations that is seeking a sectoral initiative for open trade in all oilseeds, vegetable oils and oilseed products moving in global commerce. (See Attachments #2a and #2b)

International studies completed by LMC – Oxford, England and IPC – Washington, U.S.A., estimate that a global sectoral initiative in oilseeds/products would result in a substantial expansion of this industry; consumer demand by +30-40%, world production by +25-40% and international trade by +35-45%. (See Attachment #2c)

For COPA members, international tariff free market access remains the principal objective of this WTO negotiation. Elimination of trade prohibitive tariffs, tariff

escalation and discriminatory tariffs in large importing markets such as India, Pakistan, Korea, China and Japan remains a high priority for value-added oilseed processors in Canada. In addition, trade distorting instruments that must be addressed at the WTO are: (a) the differential export taxes employed by Argentina (applied to soybean, soybean oil, biodiesel exports) and Malaysia/Indonesia (applied to palm oil), and (b) the generalized system of preference tariffs applied by EU to developing nations (i.e. UAE, China) that unintentionally encourages the export of value-added oilseed processing capacity from Canada.

3. REGULATORY ENHANCEMENTS TO CANADIAN FOOD SUPPLY TRANS FAT REDUCTIONS

The members of COPA are in support of the Government of Canada's efforts to reduce the consumer intake of trans fats. COPA is a member of the Vegetable Oil Industry of Canada (VOIC), which is a coalition of interests involved in vegetable oil production from farm to consumer product. VOIC is a member of the Health Canada Trans Fat Task Force and has supported the general direction of that initiative but with some concerns which we have expressed to Health Minister Clement (see Attachment #3).

All COPA members are undertaking action on initiatives that will lead to the reduction of trans fats. But, as the VOIC position outlines, the Health Canada Task Force looked only at processed vegetable oil products and did not fully examine the link between naturally occurring trans fats in ruminant sources and the impact on human health. This short-coming has the potential to compromise the intentions of the recommendations of the Task Force.

Additionally, the vegetable oil manufacturing industry is concerned that the capacity of CFIA is inadequate to ensure that imported food products are sufficiently inspected to ensure compliance equally with our domestic requirements.

4. DOMESTIC REGULATORY REGIMES AND THE FEDERAL- PROVINCIAL AGREEMENT ON INTERNAL TRADE

As a member of the Vegetable Oil Industry of Canada (VOIC), COPA is encouraged that efforts are being undertaken to complete the Agriculture Chapter under AIT in a way that would make dispute resolution panel reports enforceable. We have earlier expressed our concerns in this area to you in writing on January 19 (see Attachment #4).

The vegetable oil processing industry in Canada has recently been involved in two dispute resolution panels in Ontario and Quebec. Despite the findings of those panels, and despite the obligations of the provincial signatories under the AIT, the regulatory restrictions on the manufacture and trade of vegetable oil food products as dairy alternatives and supplements continue to limit consumer choice for healthy vegetable oil products on the grocery store shelf.

Our industry, through VOIC, was a participant in Health Canada's recent working group to revise the Canada Food Guide to Healthy Eating. Based upon the most

current nutritional science, that working group will recommend the promotion of vegetable oil and vegetable oil based products into a new “Milk and Alternatives” food group in the Canada Food Guide.

But the regulatory inconsistencies contained in the provincial legislation that limit the use of vegetable oils in certain dairy food blends, analogs and replacement products restrict the ability of the food oil industry to give effect to the new Food Guide recommendations. In order to implement the new Health Canada Food Guide on nutritionally sound vegetable oil alternatives, the AIT-inconsistent regulations must be eliminated.

5. REVIEW OF THE CANADA TRANSPORTATION ACT

The members of COPA operate oilseed processing facilities across western and central Canada that are highly dependent on rail shipment to access continental markets and export ports for offshore movement of processed oilseed products. In many cases, the COPA plants are captive to only one rail carrier.

Provisions of the *Canada Transportation Act* that facilitate effective commercial competitive access negotiation on rates and service for long haul captive rail shippers vis-a-vis monopoly carriers is of crucial importance to this industry.

COPA is a member of the Western Canadian Shippers’ Coalition (WCSC) which represents most of the shippers of bulk commodities in western Canada. The WCSC is also a member of the ad hoc Coalition of Rail Shippers advocating for reform of the current CTA rail legislation.

The majority of rail shippers in Canada, together, unanimously as a group were in support of a package of CTA legislative reform provisions that had been negotiated on May 5, 2006 with Transport Canada. COPA alone had negotiated an agreement with Transport Canada for a multi-party Final Offer Arbitration clause which was included in the revised legislation with the support of all shippers in Canada.

Since then, the railways have indicated that mode of regulatory reform is unacceptable and have proposed the alternative Commercial Dispute Resolution (CDR) option.

The concern of most shippers, including COPA members, is that the CDR proposal focuses on carrier interests and cannot therefore serve as a valid basis for a shipper/carrier dispute resolution process. All shippers, including COPA members, are taking the position that a more balanced proposal that can be enshrined in legislation is required for dealing with monopoly carriers. This position has been conveyed to the railways and to the Minister of Transport. COPA requires the support of the Minister of Agriculture on this position.

Attachments #5a and #5b outline this industry position on the railway proposal to replace the May 5, 2006 Shipper-Transport Canada Agreement with their own CDR proposal.

ECONOMIC VALUE OF THE OILSEED PROCESSING INDUSTRY

The oilseed crushing industry makes a large and positive contribution to the Canadian economy. It is a processing industry and as such it provides enhanced strength to the economy through value-added contributions and the financial multiplier effect. The direct economic benefits of the oilseed processing industry to the economy arise from: farm returns on seed purchases; value-added from crushing; value-added from refining, packaging and retailing; and an estimated multiplier effect.

The value of the processing industry as a domestic market outlet for producers was approximately \$1.5 billion in 2006. Calculations based on Statistics Canada's data indicate that the value-added benefit of a crushing enterprise alone is equal to about \$50 per tonne, while the benefit from refining, packaging and retailing is approximately \$100 per tonne. Based on a 2006 crush of 5.2 million tonnes, the value-added benefit of the crushing industry was \$260 million in 2006. In addition, the amount of crude canola, soybean and sunflower oils which were further refined in Canada, 1.1 million tonnes in 2006, contributed \$330 million to the processing industry. The total value-added benefit of crushing and refining was, therefore, approximately \$590 million in 2006.

Beyond the value-added benefit is the multiplier effect created by expenditures on oilseed products; this is estimated by economists to be 3, \$2 generated for each \$1 of value-added benefits. Thus, a multiplier effect of \$1.2 billion can be added to the estimated \$590 million value-added figure for 2006. The total of the direct economic benefits of the industry as discussed above equalled \$3.3 billion in 2006.

In addition to the direct economic benefits, the development of domestic supplies of edible oils and protein meals contributes positively to the Canadian balance of payments, since domestic sales represent import replacements. The value of import replacement in 2006 was \$1.0 billion. Also, exports of oils and meals yield a positive contribution to the Canadian balance of trade. In 2006, this contribution was equal to \$1.3 billion. The total contribution to the Canadian balance of payments by the processing industry was \$2.3 billion in 2006.

2006 ECONOMIC VALUE OF THE INDUSTRY

DIRECT ECONOMIC BENEFITS^E

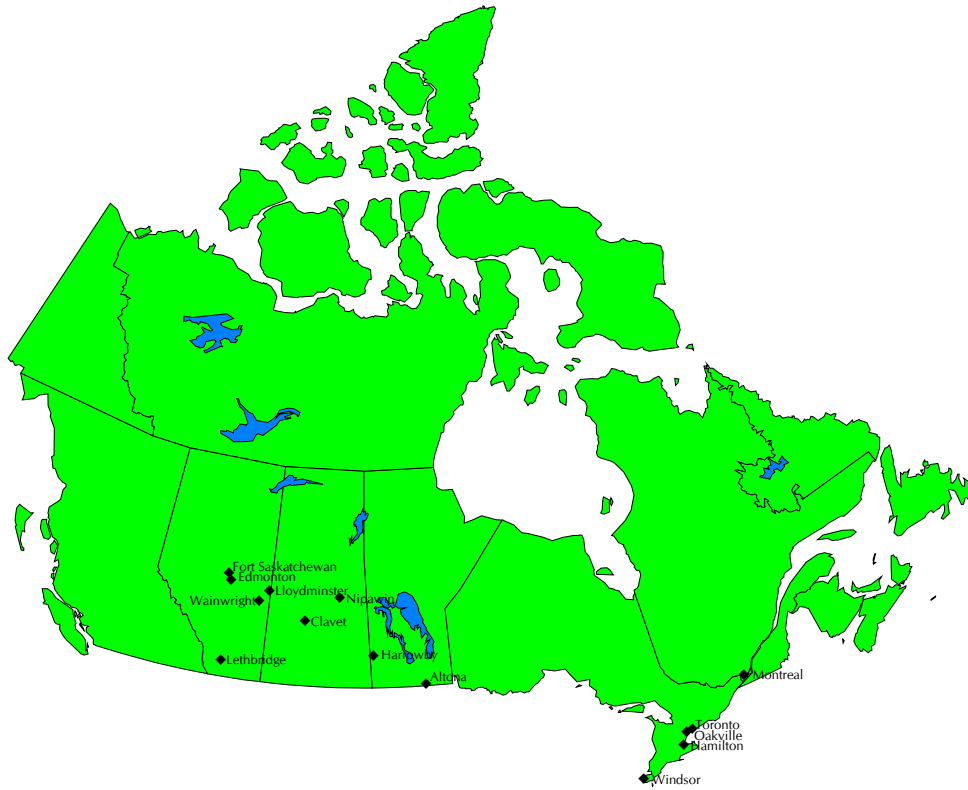
Farm returns from seed purchases by crushers	\$1,510 million
Value-added from crushing	\$260 million
Value-added from refining and processing	\$330 million
Estimated multiplier effect	<u>\$1,180 million</u>
TOTAL DIRECT ECONOMIC BENEFITS	\$3,280 million

CONTRIBUTION TO THE CANADIAN BALANCE OF PAYMENTS^E

Domestic oil sales value	\$650 million
Domestic meal sales value	<u>\$360 million</u>
Total Import Replacement	\$1,010 million
Export oil sales value	\$1,020 million
Export meal sales value	<u>\$245 million</u>
Total Export Earnings	<u>\$1,265 million</u>
TOTAL CONTRIBUTION TO THE BALANCE OF PAYMENTS	\$2,275 million

MEMBER COMPANY PLANT LOCATIONS

OILSEED CRUSHING, EDIBLE OIL REFINING, FOOD OIL PACKAGING



	TYPE OF OPERATION		
	<u>Oilseed Crushing</u>	<u>Edible Oil Refining</u>	<u>Food Oil Packaging</u>
ADM AGRI-INDUSTRIES COMPANY			
- Windsor, Ontario	◆	◆	
- Lloydminster, Alberta	◆	◆	
BUNGE CANADA			
- Montreal, Quebec		◆	
- Toronto, Ontario		◆	◆
- Oakville, Ontario			◆
- Hamilton, Ontario	◆		
- Altona, Manitoba	◆	◆	◆
- Harrowby, Manitoba	◆	◆	
- Nipawin, Saskatchewan	◆	◆	
- Edmonton, Alberta			◆
- Fort Saskatchewan, Alberta	◆		
- Wainwright, Alberta		◆	
CANBRA FOODS LTD.			
- Lethbridge, Alberta	◆	◆	◆
CARGILL LIMITED			
- Clavet, Saskatchewan	◆		

2006 CRUSHINGS OF OILSEEDS

	<u>Crushings</u>	<u>Oil Produced</u>	<u>Meal Produced</u>
	'000 tonnes		
Canola	3 584	1 546	2 101
Soybeans	1 477	275	1 167
Sunflower Seed	60	25	21
Flaxseed	125	42	78
TOTAL	5 246	1 888	3 367

2006 SUPPLY/DISPOSITION OF VEGETABLE OILS^E

	<u>Production</u>	<u>Imports</u>	<u>Exports</u>	<u>Domestic Use</u>
	'000 tonnes			
Canola Oil	1 546	71	1 232	385
Soybean Oil	275110	31	364	
Sunflower Oil	2552	1	76	
Linseed Oil	429	12	39	
Other Oils	49159	19	189	
TOTAL	1 937401	1 295	1 053	

2006 SUPPLY/DISPOSITION OF OILMEALS^E

	<u>Production</u>	<u>Imports</u>	<u>Exports</u>	<u>Domestic Use</u>
	'000 tonnes			
Canola Meal	2 101	1	1 516	580
Soybean Meal	1 167	1 332	112	2 378
Sunflower Meal	21	2	0	23
Linseed Meal	78	1	13	66
Other Oilmeals	29	74	25	78
TOTAL	3 396	1 410	1 666	3 125

2006 EXPORTS OF VEGETABLE OILS^E

	<u>Canola Oil</u>	<u>Soybean Oil</u>
	'000 tonnes	
United States	732.3	25.2
Germany	140.1	-
Italy	-	0.2
Netherlands	176.2	-
Kenya	-	0.5
Lesotho	-	0.2
Liberia	-	0.1
Tanzania	-	0.3
Yemen	-	0.5
China	41.2	-
Hong Kong	24.1	-
Japan	10.8	-
Malaysia	22.9	-
Pakistan	-	2.0
South Korea	20.9	-
Taiwan	25.4	-
Australia	0.1	0.5
New Zealand	0.2	0.3
Cuba	-	0.6
Guatemala	--	0.1
Haiti	-	0.6
Mexico	29.5	-
Other	8.3	0.1
TOTAL	1 232.0	31.2

2006 EXPORTS OF OILMEALS^E

	<u>Canola Meal</u>	<u>Soybean Meal</u>
	'000 tonnes	
United States	1 493.0	108.9
Algeria	-	2.7
Japan	0.3	-
Philippines	13.7	-
Taiwan	8.6	-
Mexico	0.8	-
TOTA	1 516.4	111.6



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COPA POLICY POSITION THE BIO DIESEL FUEL INITIATIVE MARCH 2006

INTRODUCTION

COPA continues its long-standing support for the development of a national renewable fuels policy in Canada. Vegetable oil based Bio Diesel substitutes for petroleum fuels offer significant well documented environmental benefits but also have an enormous potential to add significant value for the Canadian Oilseed producer as well as increased value-added manufacturing and diversity. COPA was a founding member in the Bio Diesel Association of Canada which has subsequently merged with the Canadian Renewable Fuels Association. COPA's views on Bio Diesel as they are expressed within the CRFA are separately outlined hereunder to further highlight and support the development of an effective Bio Diesel Framework within Canada.

TRADE POLICY AND FISCAL POLICY MEASURES

1. Bio Diesel Policies must be nation wide in their application.
2. A renewable fuels policy specifically related to Bio Diesel and independent of ethanol needs to be established.
3. COPA supports a "total detaxation" level – balanced between Federal and Provincial cooperation in the range of 25 to 35 cents per litre for every litre blended with petroleum diesel and that program should be administered as a blender credit. Specifically COPA recommends that the Canadian model be set in harmony with the USA program which at current incentive rates are US\$1.00/gallon for virgin veg oils and pure animal fats and US\$0.50/gallon for recycled oils.

QUALITY STANDARD SPECIFICATIONS

1. Any program to support Bio Diesel must be neutral to its impact on Feed Stock but must also clearly define technical standards that have acceptance by the Petroleum Diesel Fuel Producers and OEM's.
2. A high quality Bio Diesel product and cold-flow characteristics are key.
3. Standards for Bio Diesel products in Canada should be set by the Canadian General Standards Board with industry input and consultation.

INCLUSION TARGETS

1. COPA supports the establishment of recommended Bio Diesel inclusion targets but supports detaxation of Feed Stock as a fuel blender credit at the retail level. Mandated inclusion of Bio Fuels without a detaxation incentive has the potential to misalign production capacity with effective consumptive demand.
2. To be sustainable, practical and reflective of both market demand and capacity development COPA recommends a mandate of B2 by 2010 and a target of B5 by 2015.

FEED STOCK INCLUSION

1. COPA recommends that the quality standard specification should govern eligibility of Feed Stock for use in Bio Diesel. Different types of oil will qualify if they can meet the minimum quality standard specifications.
2. COPA recommends that a separate regime of support and quality standard specifications should be considered for fixed-installation boiler fuels but also governed by CGSB.

A CANADIAN INDUSTRY

1. COPA strongly recommends that all of the above be designed to support creation of a Canadian Bio Diesel industry.
2. It is COPA's view that this type of Bio Diesel program would add approximately 2.5 million MT of Oilseed Processing in Canada (over and above existing capacity) and would elevate the viability of the Oilseed industry at the farm gate immeasurably.

International Association of Seed Crushers



A New Vision for the International Trade Of Oilseeds and Oilseed Products

A WTO Development Round Sectoral Initiative

The members of the International Association of Seed Crushers Council today announce their support for an oilseed industry sectoral initiative under the auspices of the World Trade Organization. The IASC seeks a broad agreement for the liberalization of global trade in oilseeds, oilseed products and edible oils.

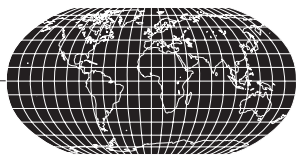
In pursuit of this objective, IASC member associations agree to solicit the support of their national trade authorities and WTO negotiators for a global sectoral agreement, which harmonizes, reduces, and ultimately eliminates all trade distorting policies and practices for oilseeds, oilseed products and edible oils. Such an agreement would accommodate and define the necessary degrees of staging and/or phasing as agreed to by the participants.

The IASC Council envisions that this endeavour will provide a global trading environment, which is conducive to the expansion of production, processing, trade, and consumption of all oilseeds, oilseed products and edible oils. The Council urges all WTO members to avoid trade distorting policies at production or trade levels (i.e. tariff and non-tariff trade barriers, export incentives, export subsidies, export taxes, product-specific supports, etc.).

The Council firmly believes that an open and unfettered food trade system is essential to the efficient provision of food for the world's next billion citizens and beyond. The elimination of trade barriers will reduce food costs for consumers while creating a larger global marketplace for producers.

The IASC intends to convey this message directly to the Chairman of the WTO Agricultural Negotiating Committee without delay, and agrees to provide any supporting discussion requested.

31 March 2003



O I L S E E D P R O C E S S O R S
LEVEL PLAYING FIELD COALITION

1300 L Street NW Suite 1020 • Washington DC 20005-4168
202.842.0463 • 202.842.9126 fax • nopa@nopa.org • www.nopa.org

Oilseed Processors'
JOINT DECLARATION
September 2005

In order to establish an international Level Playing Field (LPF) during the Doha Development Agenda negotiations on agriculture, our national associations hereby endorse the following reciprocal objectives to be implemented as part of a WTO Sectoral Agreement which provides that member countries eliminate all trade barriers for oilseeds, oilseed products, and edible oils:

- Eliminate import tariffs for oilseeds, oilseed products, and edible oils.
- Eliminate export subsidies for oilseeds, oilseed products, and edible oils.
- Eliminate differential export taxes (DETs) on oilseeds, oilseed products, and edible oils.
- Provide export credits only in conformance with WTO rules and disciplines.

In addition to the above LPF objectives, we support the following mutual undertakings:

- To actively encourage our respective governments to provide an increasing portion of domestic support for agriculture in a decoupled form.
- Not to implement any other trade distorting practices.

ABIOVE
Associacao Brasileria Das Industrias
de Oleos Vegetais
Sao Paulo, Brasil
Carlo Lovatelli, President

CIARA
Camara de la Industria Aceitera de la
Republica Argentina
Buenos Aires, Argentina
Raul Padilla, President

COPA
Canadian Oilseed Processors Association
Winnipeg, Canada
Richard A. Watson, Chairman

FEDIOL
Federation de l'Industrie d'Huilerie de la CE
Brussels, Belgium, European Union
Arnd von Wissell, President

NOPA
National Oilseed Processors Association
Washington, DC, United States
Wayne Teddy, Chairman

AOF
Australian Oilseeds Federation
Melbourne, Victoria, Australia
Warren Burden, President

Associação Brasileira das Industrias de Óleos Vegetais, São Paulo, Brasil
Australian Oilseeds Federation, Melbourne, Victoria, Australia
Cámara de la Industria Aceitera de la República Argentina, Buenos Aires, Argentina
Canadian Oilseed Processors Association, Winnipeg, Canada
Fédération de l'Industrie d'Huilerie de la CE, Brussels, Belgium, European Union
National Oilseed Processors Association, Washington, DC, United States



INTERNATIONAL ASSOCIATION OF SEED CRUSHERS

**TRADE LIBERALIZATION SIGNIFICANTLY INCREASES GLOBAL PRODUCTION,
CONSUMPTION AND TRADE OF VEGETABLE OILS AND PROTEIN MEALS**

The majority of IASC members have long advocated for trade liberalization and in 2003 the IASC issued a Vision Statement for a WTO Sectoral Initiative in the trade of oilseeds and products. These IASC members believe that the removal of trade barriers in this sector would have a significant and positive impact on the global production, consumption and trade of all oilseeds as well as the value-added processed vegetable oils and protein meals produced by this industry.

Recent studies give strong support to this belief. One, commissioned by IASC members from LMC International (Oxford, England, June 2006) supports the view that producers and consumers, especially those in low-income countries, will benefit substantially from trade liberalization. Another independent report by the IPC (Washington, USA, October 2005) concludes that trade liberalization combined with the effects of rising populations and incomes, especially in developing countries, as well as emerging biodiesel demand will contribute positively to production, consumption and trade of oilseeds and products.

In summary, the LMC study concludes that:

- Vegetable oil demand would rise by more than 40% and oilseed meal demand by 30% in low-income countries.
- Global vegetable oil production would increase by about 30% and oilseed meal production by about 40%
- In total, world trade would expand by 35% for vegetable oil and by 45% for oilseed meals.

The LMC conclusions reflect solely the removal of trade barriers in the oilseeds sector and they do not look at the impact on other related agricultural sectors such as cereals, meat and dairy. If other factors were taken into account, such as population expansion, income growth and rising demand for biofuel requirements, the impact on demand in our sector could well be much greater.

The IPC study factored into its model the demand estimates for human consumption, industrial purposes as well as biodiesel use. In brief the IPC study estimates that:

- Global oilseed production (7 major oilseeds) would increase by about 25% (from 350 mmt to 435 mmt)
- Palm oil production would increase by 39% (from 29 mmt to 40 mmt) to meet these increased levels of consumption and trade requirements.

December 2006

SECRETARY GENERAL'S OFFICE

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November 6, 2006

Honourable Tony Clement
Minister of Health
Minister's Office – Health Canada
Brooke Claxton Building, Tunney's Pasture
Postal Locator: 0906C
Ottawa, Ontario, Canada
K1A 0K9

Dear Minister:

**Re: VOIC (Vegetable Oil Industry of Canada) and Trans Fat Task Force Report –
TRANSforming the Food Supply**

VOIC (Vegetable Oil Industry of Canada) is an industry advocacy group representing 75,000 oilseed growers across Canada, oilseed processors and suppliers of fats and oils to the food industry, and makers of oilseed-based food products such as margarine, cooking oil, salad dressing, mayonnaise and dessert toppings. Members include the Canadian Canola Growers Association, the Canadian Oilseed Processors Association, Archer Daniel Midland Agri-industries, Bunge Canada, Canbra Foods, Cargill Limited, AarhusKarlshamn US and Canada, Loders Croklaan, Unilever Canada and Rich Products Corporation.

VOIC has a primary concern for the health of Canadians. The ability of business to make products that improve the health of Canadians is a necessary component to achieving these improvements in public health.

We wish to advise you of initiatives VOIC members have made in reducing trans fat in their products and their contribution to the overall goal of reducing trans fat in the Canadian diet.

We would also like to advise you of some issues arising from the recommendations of the Health Canada Trans Fat Task Force that require the government's attention.

Regarding VOIC member initiatives, **Rich Products of Canada**, makers of Rich's Whip® Topping™ for instance, has reformulated more than 500 products, mostly targeted for the food service industry, to remove trans fat. Products include icings, fillings and mixes, beverages, bagels, partially baked breads and rolls, pizza dough, bread and roll dough and cookies.

Unilever Canada was a retail pioneer in trans free margarines with Becel® which was introduced to Canadians over 25 years ago. More recently, all Unilever retail tub margarines are virtually trans free. Unilever has also reduced trans fat in all of its savoury line of products, including Knorr & Lipton branded soups. Furthermore **Unilever Foodsolutions** offers the Canadian foodservice and food manufacturing industries a comprehensive range of virtually trans free margarines, shortenings, emulsified shortenings, frying oils and pastry roll-ins.

VOIC oilseed processor members, members of the **Canadian Oilseed Processors Association (COPA)**, have also taken leadership on the trans fat issue.

Canbra Foods has developed a trans free retail margarine, a trans fat free griddle fry product, trans fat free popping/topping products, non-hydrogenated margarine and shortening products for baking applications and non-hydrogenated margarine for food service applications. Canbra has also significantly increased production of a high oleic/low linolenic trans fat free frying oil that replaces deep frying shortenings without giving up on functionality.

Archer Daniel Midland (ADM) has pioneered the development and production of “enzyme interesterified” shortening and margarine products minimizing trans isomer formation. Enzymatic interesterified shortenings and margarines utilizing soybean oil and fully hydrogenated soybean oil contain stearic acid as the major saturated fatty acid, along with considerable amounts of omega-6 and omega-3 fatty acids. Additionally, each product in the ADM NovaLipid line of fats and oils is specifically formulated to contain little or no trans fat.

Bunge Oils Canada has provided the Canadian food industry with many different new products that have allowed both large and small companies involved with the food service, bakery and margarine businesses to completely remove trans fats from hydrogenation from their finished products.

Cargill Specialty Canola Oils develops, produces and markets high-performance canola oils and solid shortenings that deliver zero trans and low saturate solutions to the food industry. Its business is backed by an intellectual property position in the genetic engineering of canola, and by a leading team of molecular biologists specializing in oil modification. It develops proprietary planting seed, contracts with growers in Canada and crushes and refines canola into premium oils sold to food processors, food service and inedible uses. High oleic sunflower oil is also available.

In addition, new VOIC member **AarhusKarlshamn (AAK)** produces a complete line of highly functional, no *trans*, non-hydrogenated fats offered under its Cisao, Cebes, and EsSence brands. Offerings include trans free bakery shortenings, spray oils, frying oils, margarine hardstocks, confectionery coatings and filling fats. EsSence trans free fats are unique in that they are relatively low in saturated fat as well. AAK has also introduced a patent pending, non-hydrogenated, trans free puff pastry roll-in shortening.

Loders Croklaan – another new VOIC member – produces a wide variety of trans-free fats and oils for use in various applications such as: bakery and frying shortenings, compound coatings, confectionery, dairy-based products, caramels, cookie fillings, crackers and icings. The trans free products, sold under the SansTrans and Freedom Series brands, are all non-hydrogenated and based on palm or palm kernel oils which have been publicly endorsed as a reasonable, trans free alternative to partially hydrogenated vegetable oils.

We believe the Health Canada Trans Fat Task Force, comprised of government, non-governmental organizations, academia and industry – including VOIC – made considerable progress in understanding the trans fat issue including the source, health impacts and the opportunities and challenges associated with alternatives to partially hydrogenated vegetable oil.

VOIC is supportive of the overall direction of the Task Force’s final recommendations. However, during the course of the Task Force’s discussion, it became clear that further work must be completed before regulation can be contemplated and enacted. This work, which as a matter of Government of Canada standard practice, will be conducted through the regulatory impact analysis, and we believe, should focus on:

- The degree to which alternatives to trans fat could lead to an increase in Canadians’ consumption of saturated fat, derived primarily from animal-based products such as dairy and beef. Certain saturated fatty acids, like trans fatty acids, are known for increasing “LDL” cholesterol, the primary biomarker for coronary heart disease risk.
- The level and types of trans fatty acids found in ruminant sources, that is meat and dairy (between 2% and 5% and as high as 8% in the case of lamb), and their potential health significance needs to be better understood. Currently, the Task Force is recommending that the 5% limit would not apply to food products where the trans fat sources are exclusively from meat or dairy. Yet, as Health Canada notes: “To date only a few studies have attempted to differentiate between the effects on coronary heart disease risk of industrially produced and naturally occurring trans fats and the data are too limited to be conclusive.” (p.24) Unfortunately, the Task Force’s mandate, established by the House of Commons, did not allow it to sufficiently understand the potential health significance of naturally-occurring trans fat.

For the reasons above, VOIC is concerned about the report's recommendation to exclude combination foods where the trans fat sources are exclusively from meat and dairy. We are concerned that a maker, say of a meat pie, might substitute a low trans fat vegetable fat used to make a pastry crust with an animal-based fat such as butter or lard in order to qualify as "exclusively meat or dairy" and thereby avoid the 5% limit set for all other finished foods.

VOIC also believes that the impact on the Canadian oilseed grower of canola and soybeans and the Canadian oilseed processor needs to be better understood particularly if regulation were to drive Canadian food makers to substitute partially-hydrogenated oils with saturated fat.

In addition, we strongly believe that the potential for a Canadian regulation limiting trans fat needs to be better understood in the context of Canada's trade obligations under the North American Free Trade Agreement and the World Trade Organization. The Task Force did not have the international trade expertise to make this evaluation.

Canadian food and agricultural products are largely traded within a global context. Imported products, along with domestically produced food products will be subject to any regulatory limit on trans fat established by the Canadian government. It is important to recognize that imported products, which may not meet the Canadian regulation but are traded broadly in other jurisdictions, will have to be reformulated for the relatively small Canadian market. There will be costs associated with this reformulation and in some cases an exporter may choose to forego the Canadian market entirely due to the reformulation costs.


It is also important to recognize that a regulatory limit on trans fat will place additional inspection, analytical and enforcement pressures on the Canadian Food Inspection Agency to ensure that any imported product complies with the regulation. Canadian makers of food products will find it unacceptable if, on the one hand, they are complying with regulation and competitive imported products are not sufficiently inspected and analyzed to ensure compliance with the regulation.

VOIC emphasizes the need for the Government of Canada to fully appreciate the enforcement demands of any regulation established and ensure that such enforcement is practical and will be routinely and fairly applied so that domestic food makers are not placed at a competitive disadvantage to foreign producers.

We offer our thoughts regarding some ongoing concerns in the spirit of working with governments to reduce trans fat in the Canadian diet in the interests of consumers. We understand the report is before the Standing Committee on Health and are asking the Committee to consider the content of this letter – both industry progress in reducing trans and our ongoing concerns – as part of its deliberations.

We were pleased to be part of the Trans Fat Task Force and if VOIC can be of further assistance to the Committee or officials as this policy development process moves forward, please contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. McPhee', with a long horizontal flourish extending to the right.

Sean McPhee
President
416-214-1232

cc. Hon. Rob Merrifield, Chair of the Standing Committee on Health
Carmen DePape, Clerk of the Committee



January 19, 2007

Hon. Chuck Strahl
Minister of Agriculture and Agri-Food
Sir John Carling Building
930 Carling Avenue
Ottawa, ON
K1A 0C5

Dear Minister:

Re: Completion of the Agriculture and Food Goods Chapter under the Agreement on Internal Trade (AIT)

VOIC (Vegetable Oil Industry of Canada) is an industry group representing 75,000 oilseed growers across Canada, oilseed processors and suppliers of fats and oils to the food industry, and makers of oilseed-based food products, such as margarine, cooking oil, salad dressing, mayonnaise and dessert toppings.

VOIC is encouraged by efforts under the Council of the Federation and the Committee on Internal Trade to complete the agriculture chapter to embrace all technical measures as well as efforts to make dispute resolution panel reports enforceable. We do, however, have some concerns and we raise these for the consideration of Ministers of Agriculture as well Committee on Internal Trade Ministers at their upcoming meeting in Toronto on February 2, 2007.

We note the caveat in the written commitment to complete the agriculture chapter such that it includes all technical measures "... ensuring that any new agreement does not interfere with Canada's orderly marketing systems." It is imperative that this caveat not be used as an excuse to restrict competition of alternatives or to restrict how primary products covered by marketing systems (milk, eggs, poultry) are used or processed by the food processing industry. An example of this type of trade restriction is the amendments made under the Milk Act by Ontario following the repeal of the Edible Oil Products Act, which the dispute resolution Panel advised in its report would be inconsistent with the AIT. Marketing systems should be limited to managing the marketing and distribution of primary production and not prevent market access for alternative products or restrict how primary products are used or processed.

Given the above, VOIC and its members are concerned that some Canadian provinces continue to restrict the manufacture and sale of products that consumers can use as alternatives to standard dairy products, particularly in Ontario and Quebec. Governments have a clear precedent established in AIT jurisprudence to eliminate these restrictions. In the AIT dispute against Ontario brought forward by Alberta and British Columbia, the panel found unambiguously that “Dairy Analogs and Dairy Blends are subject to the Agreement.”

Apart from the economic injury inflicted by these restrictions and damage to the credibility of the Agreement on Internal Trade, governments responsible for these restrictions are denying Canadian consumers healthful products that a substantial body of evidence indicates would improve the health of Canadians and reduce health care costs.

Vegetable-oil-based dairy alternative products (analogs) and products that combine vegetable oil with dairy ingredients (blends) can be used by consumers to reduce their intake of saturated fat and increase their consumption of polyunsaturated essential fatty acids -- a key step in reducing the risk of coronary heart disease. According to the World Health Organizations’ (WHO) *Diet, Nutrition and the Prevention of Chronic Diseases*: “Saturated fatty acids raise total and low-density lipoprotein (LDL) cholesterol.... (the) replacement of saturated and trans fatty acids by polyunsaturated vegetable oils lowered coronary heart disease risk.”

Furthermore, Health Canada’s revision of Canada’s Food Guide to Healthy Eating – spurred by evolving nutritional science and changes in food supply and use – is expected to result in direct promotion of vegetable oil and vegetable oil-based products as well as the inclusion of non-dairy alternatives in a new “Milk and Alternatives” food group.

These are important steps in addressing the health care costs associated with diet-related chronic disease. According to Health Canada, cardiovascular disease alone costs Canadians \$18.5 billion per year, including \$6.8 billion in direct costs and \$11.7 billion in indirect costs. The department advises the population to seek controlled intakes of energy, total fat and types of fat, in line with the WHO recommendations noted above.

It’s time Canadian governments act now to eliminate these harmful and AIT-inconsistent restrictions, which prevent consumers from accessing healthful products in key markets across the country.

VOIC is aware that Canadian governments are engaged in discussions to remove remaining domestic barriers to interprovincial trade in agricultural and food goods. Specifically, British Columbia, Alberta, Saskatchewan, Manitoba, PEI and the Yukon Territory have recently agreed to remove all technical barriers to trade in agriculture and food goods. This undertaking is in addition to the obligations of the Agreement on Internal Trade that have been in place since 1995. It also provides a model for other Canadian governments to resolve remaining agricultural trade issues.

VOIC applauds the leadership of British Columbia, Alberta, Saskatchewan, Manitoba, PEI and the Yukon Territory. However, VOIC is also aware that restrictions on trade in alternatives to standard dairy products are already covered by the AIT and have been since 1997. In addition, in February 2001, an intergovernmental work group recommended that all provinces and territories defer to federal regulation of dairy alternatives to ensure an open market in these products, and – since then -- two internal trade panels have found measures that restrict trade in dairy alternatives in Québec and Ontario to be inconsistent with the AIT.

Despite their AIT obligations, the recommendations of an intergovernmental committee and the findings of internal trade panels -- as well as the compelling imperatives of policy changes at the federal level, consumer choice and health, and economics – some provinces (Ontario and Quebec, principally, as noted above) maintain restrictions on the manufacture and trade of dairy alternatives.

VOIC strongly believes it is time to resolve this issue. The policy of restricting the manufacture and sale of dairy alternatives is neither in the interest of Canadian consumers and their health nor in the interest of Canada's agri-food industry generally.

We ask that Canadian governments deal with this issue as part of the current review of domestic trade issues in the context of changes in health public policy. We ask that you and your government take a leading role in eliminating these internal trade restrictions, and put the interests of consumers and their health as the top priority.

Yours sincerely,



Sean McPhee
President
416-214-1232
www.voic.ca

cc. Right Honourable Stephen Harper
Hon. Tony Clement
Hon. Maxime Bernier
Provincial Ministers of Agriculture, Health and Internal Trade



What It Is

- ❖ VOIC (Vegetable Oil Industry of Canada) is an industry group representing 75,000 oilseed growers across Canada, oilseed processors and suppliers of fats and oils to the food industry, and makers of oilseed-based food products, such as margarine, cooking oil, salad dressing, mayonnaise and dessert toppings. Members include the Canadian Canola Growers Association, the Canadian Oilseed Processors Association, Archer Daniel Midland Agri-Industries Ltd., Bunge Canada, Canbra Foods, AarhusKarlshamn US and Canada, Loders Croklaan, Unilever Canada and Rich Products Corporation.

Its Vision

- ❖ A unified, singular, national vegetable oil voice – with North American reach – that promotes domestic vegetable oil interests and the healthfulness of vegetable oil.

Its Mission

- ❖ VOIC promotes Canadian vegetable oil interests (including international interests that trade in Canada) – from farm to fork – with governments, media, opinion formers and consumers in order to:
 1. Raise awareness of the healthfulness of vegetable oils, vegetable oil-based food products and products made with vegetable oil among Canadian consumers and influencers of consumers' opinion;
 2. “Clean up” domestic regulatory barriers and policies to eliminate barriers to the vegetable oil industry in order to spur innovation and growth;
 3. Encourage federal, provincial and territorial governments to adopt a more aggressive open market position in terms of internal and international trade.



Western Canadian Shippers' Coalition

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4 August 2006

WCSC ANALYSIS OF:

“FRAMEWORK FOR COMMERCIAL DISPUTE RESOLUTION” CN/CP “PROPOSAL FOR CANADIAN SHIPPERS”

BACKGROUND

On May 5th, a group of shippers and shipper association representatives (Coalition of Rail Shippers) met with officials from Transport Canada and Paul Fitzgerald, Senior Policy Advisor to the Minister of Transport, Infrastructure and Communities. After some compromise by all parties, agreed on certain enhancements to shipper relief provision in the rail section of the Canada Transportation Act which include the following:

- a) a multi-party FOA provision without the requirement that the terms of the offer must apply to all of the applicants equally;
- b) increasing the short form FOA process from \$750,000 to \$5,000,000;
- c) a clarification that FOA applies to ancillary charges;
- d) allowing persons such as terminal operators to commence FOA proceedings;
- e) allowing a group of shippers who have a common interest to file a joint level of service complaint;
- f) deleting subsection 27(2) of the CTA which requires a shipper to establish substantial commercial harm before relief may be granted

It was also agreed that these measures would be introduced to the House prior to the summer break. Subsequently, the CNR and CPR were informed as to the specifics of the proposed legislative changes. Part of that process resulted in a delay in the introduction of the proposed changes and the anticipated date of introduction was not met. Notwithstanding a commitment from Mr. Fitzgerald to an early Fall introduction date, there was scepticism in the shipper community which held that the railways had once again prevailed and the new legislation would never see the House floor. The “Framework For Commercial Dispute Resolution” document may be indicative of two important points:

- 1) The railways are not convinced they will succeed in blocking the shipper enhancements;
- 2) The railways are very concerned about the potential impact of those enhancements.

OVERVIEW

The proposal is cleverly drafted and in subtle and not-so-subtle ways pushes a number of important “political” buttons:

- 1) It provides an apparently new business-to-business approach that alleviates the need for legislative solutions to what is becoming and increasingly embarrassing problem for the government, namely the monopolistic behaviour of our two class I railways, CN in particular.
- 2) It avoids the dreaded “re-regulation” tag and eliminates the requirement for Transport Canada to “add to our regulatory burden”.
- 3) It purports to address two key problem areas with the current dispute resolution measures: cost and timeliness.
- 4) It purports to allow for the continuance of current shipper protection measures.

ANALYSIS

- 1) The proposal is not new as mediation and binding arbitration are currently available provided both parties agree.

Shippers are opposed to either process becoming mandatory for reasons well articulated by the Review Panel on page 71 of their report:

“The Panel believes that the FOA provisions have two important hallmarks of effective economic regulation:

- First, the arbitration process encourages parties to reach commercial settlement of their disagreement by its all-or-nothing approach.
- Second, the provisions require the arbitrator to assess whether the shipper has alternative, effective, adequate and competitive means of transporting goods, implying that where markets work, they should be left to work.

Some carriers suggested replacing FOA with commercial arbitration. This suggestion ignores the fact that FOA exists to provide relief to shippers that find themselves without alternative, effective, adequate and competitive means of transporting their goods. The Panel finds it difficult to believe that a commercial arbitration scheme would provide effective relief to a shipper in these circumstances.”

Neither the proposed mediation nor arbitration processes provide for penalties in the event of a breach of the concluding agreement. The option of litigating agreement breaches is not an attractive one for shippers due to the costs and time involved.

- 2) "Re-regulation" is a label that has become synonymous with anti free-enterprise behaviour and government intervention in private commercial enterprises. In fact, the rail freight network in Canada is a monopolistic system wherein the carriers have managed to thwart, blunt or render irrelevant nearly all shipper protection measures in our current legislation. The resulting commercial imbalance is more like the relationship between a public utility and its customers than a competitive marketplace. On a comparative basis, Canadian rail carriers are remarkably under regulated.
- 3) While Mandatory Mediation may offer some benefits in the area of cost reduction for the process itself, the true cost of an FOA must account for the financial impact of the award. The mediation/arbitration process will, by its nature result in cut-the-baby-in-half type resolutions that will offer substantially less financial relief to shippers than the FOA process.

With respect to Commercial Arbitration, the potential for timelier and less costly dispute resolution is difficult to foresee as the proposal offers no time constraints, or certainty, unlike the FOA process.

- 4) While the proposal supports the continuance of current shipper relief measures, Final Offer Arbitration and Level Of Service complaints, there is no benefit to shippers offered from those that currently exist. The reason enhanced regulatory protection measures for shippers are being proposed is because of the short-comings of the provisions the proposal offers to maintain.

CONCLUSION

At first blush this proposal has some appeal, however closer scrutiny reveals it is not new and is a poor alternative to the promised regulatory changes resulting from the May 5th meeting in Ottawa.

Ian May



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17 January 2007

The Honourable Lawrence Cannon
Minister of Transportation, Infrastructure and Communities
Tower C – 330 Sparks Street
Ottawa, Ontario
K1A 0N5

Dear Minister Cannon:

There is concern among the members of the Western Canadian Shippers' Coalition (WCSC) that your good office is not aware of the current status of the CN/CP Commercial Dispute Resolution (CDR) proposal. In fact it is our understanding that you may be of the belief that the proposal is close to acceptance by some or all members of the rail freight shipping community. Speaking for WCSC members, this is certainly not the case.

I have enclosed the latest correspondence between the WCSC and CN on the subject of the CDR in order to keep you fully apprised of the status of the latest CDR proposal and our membership.

As you will read, we are still counting on the implementation of regulatory changes to the Canada Transportation Act that will help bring a greater measure of balance in market power between bulk commodity shippers and our two largest rail carriers.

Should you wish to discuss this important matter further, it would be our pleasure to meet with you at your convenience.

Yours truly,

Ian May
Chair



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January, 2007

Mr. Vee Kachroo
Vice President, Sales and Marketing
Canadian National Railway
935 de La Gauchetiere Street West
P.O. Box 8100
Montreal, PQ H3B 2M9

Dear Mr. Kachroo:

Thank you for sending the latest version of CN's Compulsory Dispute Resolution (CDR) proposal which was received and distributed to our members on December 5, 2006. As you may be aware, the Western Canadian Shippers' Coalition (WCSC) is comprised of members who are well experienced in logistics, the movement of commodities by rail and negotiations with carriers. In addition, many WCSC members have experience with the current legislation. These comments reflect that experience as well.

We have carefully reviewed all three documents including: the Power Point presentation, "Customers Can Now Sign-on to CN's Commercial Dispute Resolution (CDR) Agreement"; "Railway proposal dealing with Incidental Service Charges & Conditions"; and the updated version of the "AGREEMENT FOR THE COMMERCIAL RESOLUTION OF DISPUTES ("CDR")".

Our specific comments on the CDR proposal are set out in "Appendix A". Those remarks however, are not the focus of this letter. CN Rail is well familiar with the membership of the WCSC, the nature of their businesses (each of them ships on CN), their transportation needs and particularly their knowledge of what does and does not constitute an equitable arrangement for resolving disputes relating to the transport of their goods. In our view, the latest version of the CDR proposal is too focused on the carrier's interests to form the basis of a carrier/shipper agreement on dispute resolution.

We are strongly of the view that the shipper relief provisions of the Canada Transportation Act must be amended to provide a more equitable marketplace wherein shippers can expect a meaningful opportunity to negotiate rates and service with carriers. A CDR which may be terminated unilaterally is not an alternative to legislative amendments. The CDR proposal as currently written is ample proof of the validity of shippers' concerns over CN's market dominance. The significant monopoly power of rail carriers must be moderated through legislative change, not by way of a one-sided agreement.

We would be willing to give consideration to a more balanced and plausible proposal, but it must be understood that such a proposal would not be a substitute for the legislative changes supported by our members.

Yours truly,

Ian May
Chair

C.c. Jim Foote

APPENDIX – A

– WCSC COMMENTS ON CN'S CDR (dated November 10, 2006) PROPOSAL

We are of the view that CN's CDR Agreement and Appendices will not benefit WCSC members for the following reasons:

- (a) Mandatory mediation is not needed for rate arbitration. The final offer arbitration (FOA) provisions contained in the CTA which are designed to stimulate negotiations and encourage commercial agreements, have achieved that result. We are of the view that mediation should be a matter of agreement and not mandatory. Clearly, mediation is not required in rate disputes where FOA is used as set out in clauses 2(a) or 3.1(b). In those cases where mediation will be of assistance, the agreement of the parties should be readily forthcoming.
- (b) The Agreement applies only in respect of traffic that originates and terminates in Canada (clause 2(b)). This prevents the CDR from applying to the Canadian portion of the traffic originating in Canada and destined to the United States. The limited scope of this provision and the manner in which it is drafted will likely result in disagreements between CN and our members as to the traffic which is included or excluded under the Agreement. All shippers have been very clear and steadfast in their insistence that the Agreement must apply to all traffic, including that moving within the United States. The question of a lack of Canadian jurisdiction over such traffic is not relevant in the context of a commercial arrangement and should not be part of this discussion.
- (c) Clauses (d) and (e) of paragraph 3.3 provide that the Agency will appoint an arbitrator from among the Agency members or staff unless a specific list of potential arbitrators and a process for appointing a person from that list has been agreed to between CN and an association representing the customer. In the likely event that CN and WCSC members will not be able to agree on appropriate arbitrators and the manner in which they are selected, arbitrations will be conducted by Agency members or staff. This is a matter of concern as it brings up the question of Agency jurisdiction which would not be at issue in a commercial arrangement involving a private arbitrator. Additionally greater involvement by the Agency is at odds with Minister Cannon's preference for a "commercial solution".
- (d) Clause 3.3(g) provides that unless otherwise agreed by the parties, the award of the arbitrator will become part of a confidential agreement between the parties with respect to line haul rates and service issues. We are of the view that unless the parties otherwise agree, the award should

be contained in a tariff. This is consistent with the manner in which the arbitrator's final offer selection is dealt with under Part IV of the CTA.

- (e) In paragraph 4.1 under Line-haul Rate Dispute Resolution, the arbitrator will be required to consider the "reasonableness" of the proposed rates in relation to transportation market conditions. While it is stated that the reason for this provision is to exclude the customer's manufacturing costs, the customer's product selling price or other factors not related to the transportation market, this requirement could also exclude consideration of the relationship between railway costs and freight rates found in a competitive rail transportation marketplace. The limiting of the arbitrator's consideration in this manner is particularly unwarranted.
- (f) In paragraph 4.2 dealing with Level of Service Matters, the arbitrator is required to consider whether the customer is requesting a service covered by CN common carrier obligations "or a service over and above such obligation". This distinction is inappropriate and is not found in the level of service provisions in the CTA. For example, paragraph 113(c) of the CTA obligates a railway company without delay and with due care and attention to receive, carry and deliver the traffic. This applies to all traffic as do the other requirements of these sections. The Arbitrator should not have regard to considerations which are not found in the level of service provisions of the CTA. Either a suitable and adequate accommodation for traffic is being provided or it is not. It is also noteworthy that paragraph 4.2 provides that the award shall only apply for a period of one-year from the date of the application.
- (g) Paragraph 4.3 requires that the arbitrator, in determining the correctness of the application of the various incidental service tariff items, be guided by the wording of the tariff items and will not be permitted to amend tariff rates or conditions. This is extremely limiting in nature and unfavourable to our members because the arbitrator's decision must be based on the provisions contained in the railway tariff itself. This will limit disputes under this section to matters such as the time of placement or the condition of rail cars, etc. but not to the fundamental issues such as to the appropriateness of the rates or conditions.
- (h) CN has recommended that the CTA be amended to allow the Agency to deal with the level of charges and conditions for Incidental Services as matters of general application to all shippers. Under this approach, a shipper would be obligated to intervene in any application respecting charges for and conditions relating to an ancillary charge or incidental service in order to ensure that he is not prejudicially affected by an Agency decision of general application. This will likely result in the requirement for numerous interventions in Agency proceedings with the attendant time and expense involved. Moreover, any WCSC members who may have

different ancillary charge provisions in their confidential contracts may be detrimentally affected by this approach. On the termination of a contract, CN could easily advise the shipper that he will be required to accept the standard provisions contained in the tariffs unless agreement is reached on the line-haul rates. In rate arbitration proceedings, the shipper will be required to convince an arbitrator not to adopt rates and conditions (which have already been approved by the Agency) but rather give effect to the contractual provisions that previously existed and more appropriately apply to the shipper's traffic. Accordingly, this proposal will result in additional uncertainty to shippers as well as increased costs and a loss of flexibility in negotiating contracts with CN. This provision further tips the negotiation balance in the railway's favour, exactly the opposite result shippers are seeking in the revised legislation.

- (i) Paragraph 4.4 imposes a requirement on the arbitrator to consider whether the customer has an alternate access to another railway either through direct physical connection or through traffic solicitation rights by agreement between the railways or interswitching. In such event, the arbitrator shall select CN's proposed rates. The FOA provisions in the CTA require that an arbitrator have regard to whether effective competition exists for the shipper bringing the application. These CTA provisions do not specifically direct an arbitrator to select the offer of the rail carrier as a result of a finding with respect to the existence of competition. Accordingly, this section of the Agreement significantly limits the choice of the arbitrator. We also foresee disagreements with respect to the existence of appropriate connections. This is a condition that will create numerous opportunities for procedural disputes and litigation, precisely what the CDR proposal is allegedly designed to avoid.
- (j) Paragraph 5, the Cancellation Clause, entitles CN to terminate the Agreement upon 60 days written notice, served on the customer in the event that the CTA is amended to implement group final offer arbitration, expanded limits to interswitching or other such fundamental amendments. The inappropriateness of this provision is obvious. It is completely unreasonable to make the CDR proposal conditional upon the absence of legislative changes to the CTA.
- (k) Appendix I sets out Rules Governing Arbitration. These rules significantly limit the discretion of an arbitrator and, not surprisingly, favour CN. We have concerns with the appointment of an arbitrator from among Agency members or senior staff as is required in Rule 4(1).

Rule 6(1) requires an applicant to disclose his entire case including a summary of the important legal principles and key authorities to CN which will then be entitled to deliver a written statement of defence together with any claim or counter-claim. These rules will allow CN to make a claim

against a shipper and set aside the efficacy of the amendments made to the CTA in 2000 that require the simultaneous filing of final offers and evidence in support of the final offer.

We also question the meaning of Rule 9(2) that the parties will have the rights to a full opportunity to present their case and to be treated equally and fairly in an arbitration. Does this mean that the rail carrier is entitled to continue bringing new evidence and calling further witnesses as it chooses? Further, the matters to be contained in the arbitrator's award as set out in Rule 11(2) are extensive and will almost certainly guarantee that appeals will be initiated in any arbitration of substance. For these reasons we are strongly of the view that the arbitrator should be entitled to establish his own rules of procedure unless otherwise agreed to by the parties.

- (l) Appendix II deals with Incidental Services and relates to Items Subject to Commercial Process to resolve application Disputes. This document appears to be a propaganda piece prepared to justify the existence of the ancillary charges contained therein and to suggest that shippers are the cause of the problems giving rise to the requirement for these charges.
- (m) IS THE LATEST ITERATION OF THE CDR PROPOSAL OF ANY VALUE TO SHIPPERS?

It is possible that a service dispute could be arbitrated more cost effectively under this proposal should the areas of concern we have identified be addressed. However, we have difficulty in comprehending how shippers will benefit from a commercial rate arbitration process in which an arbitrator is entitled to issue any decision he chooses. This process will have a tendency to drive parties further apart in making their final offers as opposed to final offer selection which requires parties to "sharpen their pencils" in an effort to come closer together.