Review of the *Canada Grain Act* and the Canadian Grain Commission: Discussion Paper Prepared on Behalf of Agriculture and Agri-Food Canada

COMPAS Inc., Public Opinion and Customer Research, with the Assistance of Tom Halpenny, www.triticumconsulting.ca.

May 19, 2006

Note on Process and Public Forums

COMPAS was engaged by Agriculture and Agri-Food Canada to lead the independent review of the Canadian Grain Commission and the Canada Grain Act. The Commission sets and maintains the standards for grain while the Act provides a legal definition for the Commission and its responsibilities.

Stakeholders in the grain sector are welcome to provide counsel and feedback by making a submission to grain@compas.ca or by completing the questionnaire at www.compas.ca/grain. Queries may also be addressed to the project leader, Dr. Conrad Winn, at 416-598-0310 ext. 40.

COMPAS is a research firm specializing in customer, stakeholder, and public attitudes. We are being assisted on this project by Saskatchewan agriculture consultant Tom Halpenny (www.triticumconsulting.ca).

We will produce a final report by end of summer. The schedule of forums is as follows:

I - Monday June 12, 2006
11:30-16:00 Hours
Best Western Stoneridge Inn & Conference Centre
6675 Burtwistle Lane
London, Ontario N6L 1H5

II - Monday June 19, 2006
09:30-14:00 Hours
Grande Prairie Inn
11633 Clairmont Rd.
Grande Prairie, Alberta T8V 3Y4

III - Tuesday June 20, 2006
09:30-14:00 Hours
Red Deer Lodge
4311 – 49th Ave.
Red Deer, Alberta T4N 5Y7

IV - Wednesday June 21, 2006
09:30-14:00 Hours
Delta Bessborough

601 Spadina Cres. E.
Saskatoon, Saskatchewan S7K 3G8

V - Thursday June 22, 2006
09:30-14:00 Hours
Delta Regina
1919 Saskatchewan Dr.
Regina, Saskatchewan S4P 4H2

VI - Friday June 23, 2006
09:30-14:00 Hours
Victoria Inn
3550 Victoria Ave. W.
Brandon, Manitoba R7B 2R4

VII - Monday June 26, 2006
09:30-14:00 Hours
The Fairmont Winnipeg
2 Lombard Place
Winnipeg, Manitoba R3B 0Y3

VIII – Thursday June 29, 2006
11:30-16:00 Hours
Crowne Plaza
505 Sherbrooke St. E.
Montréal, Québec H2L 4N3

Contents

Preface

Canada has been a major player in grain for a century. The world marketplace has experienced change with Ukraine, Kazakhstan, and Brazil and other new exporters playing a significant role. Unchanged is Canada's leadership in the quality and quantity of our exports. Dozens of countries and tens of millions of people benefit each year from imports of Canadian grain—either as stand alone commodities or to mix with other grains to make them more useable.

The ingredients in our export successes are many—weather, soil, the diligence of farmers, the efficiency of grain companies, the quality of scientists, and the effectiveness of the regulatory system for guaranteeing quality.

At the centre of the regulatory regime have been the *Canada Grain Act* and the Canadian Grain Commission (CGC). The distant origins of the current *Act* include the *Canada Grain Act* of 1912 and regulations that followed Confederation.

A regulatory system with such history merits respect. But even the most successful system needs periodic re-appraisal. A need for re-assessment is especially strong in an era of rapid change in the farming, transportation, food safety, food production, and importing behaviour of nations. The *Canada Grain Act* was amended in 2005 to require a comprehensive, independent review to be presented to Parliament. COMPAS was selected for the task following a competitive-bid process. A public opinion and research firm, we are assisted by Saskatchewan-based agriculture consultant Tom Halpenny.

This paper is a discussion document. We seek to foster exchanges of opinion and analysis prior to and during fora scheduled for late June (Details to be posted at www.compas.ca/grain). We invite people to submit perspectives that we have not considered and facts of which we may be unaware at the fora, by email (grain@compas.ca), and by completing a survey at www.compas.ca/grain. By end of April, we had invited almost 500 stakeholder organizations, experts, officials, and decision-makers to complete the survey.

Our preliminary observations about the *Act*, the Commission, and the sector are intended to foster discussion and encourage feedback. They should not be interpreted as conclusions, recommendations, or as a guide to how our final report will be structured.

Conrad Winn
President

1.0. Scope of the Review

COMPAS was engaged to review the *Canada Grain Act* and the *Act*'s instrument, the Canadian Grain Commission. Together, the legislation and the Governor-in-Council or cabinet regulations permitted by the legislation define the powers of the Canadian Grain Commission to assure the quality and quantity of exports by inspecting and weighing grain.

COMPAS' review necessarily focuses on the *Act* and the Commission. Yet the *Act* and Commission are only a part of the system intended to help farmers and the grain sector. Many organizations play a significant role in the grain sector but are not a subject of this review. A partial list of other public sector or public sector/private sector organizations with legal roles in the grain sector includes:

- The Prairie Grain Development Committee, a council of farmers, grain companies, exporters, AAFC, Canadian Wheat Board (CWB), CGC and plant breeders who recommend varieties for registration to the Canadian Food Inspection Agency (CFIA);
- The Canadian Food Inspection Agency (CFIA), which regulates grain safety for human consumption in collaboration with Health Canada, and makes annual decisions about variety registration;
- The Canadian Wheat Board, single desk seller of western wheat and barley;

- The Canadian International Grain Institute (CIGI), which does marketing-oriented research with financial support from CWB and AAFC and under sponsorship of CWB, AAFC, and CGC;
- Measurement Canada, the federal agency responsible for certifying scale accuracy at elevators;
- The agricultural research scientists in AAFC, CGC, and university labs, whose advancement of knowledge has historically helped give Canada a competitive edge; and
- The Ministers and Departments of Foreign Affairs and International Trade, whose contributions may be vital in an era when national governments may help their exporters by striking bilateral trade agreements or through more direct sales efforts.

We welcome continuing counsel from stakeholders[1] in the sector as we develop the thinking that will form the basis of recommendations to be submitted in summer, 2006.

2.0. Guiding Principles and Priority Objectives

2.1. Guiding Principles—Fairness and Efficiency

We will seek to guide our final analysis and recommendations by the principles of fairness and efficiency. Decent people can disagree about what is fair, as has been recognized for thousands of years.

[1] In our perspective, stakeholders encompass organizations involved in the grain sector including farmers, companies, non-profits, regulators, and government departments, plus individual people who are experts as a result of long term involvement as employees or directors in the preceding organizations or as a result of expertise derived from independent research or scholarship.

In a spirit of transparency, we provide some detail with respect to our perspectives on fairness by enumerating a few applications:

1. It is fair for the *Act* to privilege farmers as a whole because of their vulnerability—they have relatively few competing locations and grain companies to sell to, foreign competitors are heavily supported by their governments, and the enormous economic stress on grain farmers is unlikely to abate to any significant degree. But it would not seem fair to privilege individual farmers in situations where only a small number of farmers would stand to benefit.
2. Many of the CGC's regulatory requirements seem fair, but their application does not always seem fair. For example, bulk shipments by vessel require CGC official inspection and weighing, as do rail shipments to Mexico, but not rail or truck shipments to the United States. Loads sent by container are not monitored as carefully as other shipments.
3. The culture of the CGC seems very fair-minded. But the absence of quick, fully arms' length recourse for disputes with the CGC does not satisfy the principle that decisions should not only be fair but they should also seem to be fair.
4. Fairness requires respect for the principle of commercial freedom while fairness may also require reasonable action by government.

The idea of efficiency is no less complex than fairness. An action that may be efficient for the grain sector today could be an inefficient foundation for the sector tomorrow. Technology can enhance efficiency, and sometimes business practice needs to adapt to accommodate it.

Efficiency and fairness may collide, as in the case of compulsory inspection. Grain shipped to a terminal elevator at a port location must currently be weighed and inspected upon both entering and leaving the terminal. For some shipments, these may be the third and fourth inspections en route from farm to ship. Optional outbound port inspection may be more efficient than mandatory inspection, but it may be less fair, as discussed in section 5.0.

2.2. Priority Objectives

These objectives reflect the categories of important objectives that stakeholders have mentioned so far. We intend for our recommendations to be as consistent as reasonable with these priority objectives.

2.2.1. Re-Affirm the Core Objectives of the *Act*, including Producer Protection

The *Canada Grain Act* prescribes the object of the Commission: "… The Commission shall, in the interests of the grain producers, establish and maintain standards of quality for Canadian grain and regulate grain handling in Canada to ensure a dependable commodity for domestic and export markets."

We anticipate re-affirming the continuing validity of the Commission's role to benefit producers, create a level playing field between producers and grain handlers, and ensure a dependable commodity.

2.2.2. Brand Strength (Quality Assurance, Quantity Assurance)

Canada has established a strong global reputation for being a reliable supplier of commodities of high, consistent quality, especially documented in the case of CWB grains.[2] System enhancements need to continue to reinforce this image because a strong image can continue to reinforce sales. Canada's reliable and efficient system of establishing standards, third-party inspection and weighing, and industry regulation all contribute to building and maintaining Canada's global reputation for quality and quantity assurance.

[2] In 1995, the Western Grain Marketing Panel conducted a survey of Canada's customers, revealing that Canada scored very well in its reputation and ability to be a reliable supplier of quality grain to the world. Stakeholders responding to this review indicate that Canadian grain quality is perceived as being superior to the competition. More recent customer survey information from the CWB indicated that approximately 70% of customers ranked Canadian products better than the competition in terms of quality, consistency and reliability. Source: Ward Weisensel, Chief Operating Officer, Canadian Wheat Board, April, 2006.

2.2.3. Commercial Liberty

A key objective is to engage and support private enterprise. This fosters a healthy and vibrant industry – one that rejuvenates itself, offers competition and opportunity and can meet the overall objectives of quality assurance and quantity assurance.

2.2.4. Operational Efficiency and Budgetary Effectiveness

The structure of Canada's quality and quantity assurance system must continue to eliminate inefficiency and sustain continuous improvement. Cost containment has been a pre-eminent consideration for the CGC in the past decade as its fee-for-service revenue sourcing is limited. New costs introduced into the system inevitably end up resting with farmers. Given the financial strain, efficiency is extremely important, but equally important is adequate funding to achieve the objects described in the *Canada Grain Act*.

2.2.5. Public Good

Key elements of the grain handling system provide a public benefit. A test for any intended changes will be to ensure that there is no erosion of benefits to the public. Research relating to grain quality, grain safety, and system effectiveness are essential to support Canada's brand. The benefits of quality assurance accrue to Canadians as consumers of these primary products, as taxpayers reaping the rewards of this productive, export-oriented sector, and as citizens of a country whose international reputation is reinforced by the sector's achievements.

3.0. Challenges Facing Grain Farmers and the Sector

3.1. Introduction

The passages that follow identify key challenges facing the sector. Other challenges exist as well, but we do not see them as central at the present time.

3.2. Cost-Price Squeeze

The entire sector faces a cost-price squeeze as a result of high transportation costs and the rising loonie. Rising energy prices have given grain farmers a double whammy. The costs to farmers of transporting their grain to regional terminals and far-off ports continue to climb. Rising energy prices draw international capital, driving up exchange rates and making the purchase of Canadian grain more expensive and less appealing.

Foreign competitors are becoming more efficient producers, more effective at providing quality product, and more astute at selling. A traditional competitor, the U.S. grain industry, is benefiting from new bilateral trade agreements that may threaten Canada's traditional markets.

For their part, buyers are creating an inflation of expectations. Grain suppliers are expected to provide ever more customized products with rising nutritional value and improved baking and manufacturing qualities, all at prices that are stable or falling. Buyers demand ever more assurance that the grain they order is what they get. Emerging processes for guaranteeing identity preservation, traceability and food safety will likely become the next benchmarks for quality.

The good news is that all the participants in the Canadian system have become more productive. For example, our elevator system, greatly reduced in capacity, has become much more efficient at segregating grain thanks in part to just-in-time processes made possible by tight cooperation among marketers, railroads, truckers, and farmers.

The bad news is that there appear to be few remaining efficiencies available to the sector. The limited possibility of greater efficiency is true of the elevator and rail system, whose just-in-time processes, requiring intense collaboration, could be vulnerable in periods of high volume. The limited prospect of greater efficiencies is also true for farmers, who ultimately bear the burden of increased costs and are the catch basin of cost pressures.

Farmers play on a non-level playing field with large, integrated transnational players. The concentration of ownership of grain terminals at Vancouver is a public matter.[3] For many farmers, the non-level playing field is seen as a factor driving down the potential for farm profitability and discouraging younger generations from remaining or become producers.

3.2. Maintaining Capability

The cost-price squeeze on grain farmers and the resulting collapse in profitability are eroding human capital. Workforce replacement is a problem for farmers, plant breeders, grain marketers and handlers, university scientists, technicians, and agencies such as the CGC. The ability of the sector to attract a replacement generation will be vital to ensuring that the sector retains a critical mass to be able to sustain its competitive position globally.

No segment will be more important to foster than Research and Development (R&D). R&D is vital for responding successfully to new buyer pressures for quality assurance, safety assurance, identity preservation, traceability, enhanced manufacturing performance, and greater nutritive value. Replacing the outdated Kernel Visual Distinguishability (KVD) process with technology for quick and accurate identification of CWB grain varieties requires R&D.

Canada's level of commitment to R&D in the grain sector seems low by any standard. It is low by Canada's historical efforts, low compared to our toughest competitors, and especially low in light of the importance of technology-based solutions to the emerging quality challenges we face in international markets.[4]

The grain grading and variety registration systems in Canada have historically positioned Canada as a leader in delivering quality. Stakeholders are nonetheless cautioning that the Canadian grain industry and governments are complacent. We are being told that investments in research are crucial to maintaining Canada's position.

[3] See the Remarks to the Standing Committee on Agriculture and Agri-Food by Gaston Jorré, Senior Deputy Commissioner of Competition, Competition Bureau, November 12, 2005.

[4] On Canada's lag in agricultural R&D investments relative to Australia and other countries, see the observations of University of Minnesota agricultural economist Philip Pardey as reported in *Meristem Land & Science: PRRCG Report* (April 15, 2006).

Maintaining the critical mass of infrastructure at a level that can sustain Canada's grain industry is paramount. Identifying critical mass thresholds is vital for preserving the market we have, building the market we could have, and preserving opportunities for higher value-added product. This is a public policy matter of strategic importance.

Maintaining a critical mass of infrastructure will not be easy in a sector that has had to become dynamic by force of circumstance. A high dollar and higher than historic transportation costs have helped drive some grain farmers to the livestock sector or biofuels. These changes have boosted demand for grain products with quality traits that may be different from the quality criteria of existing grades. The rise of new grain products places increased stresses on the quality assurance system and hence on the CGC while the decline of traditional grain exports threatens the income available to the Commission from fees.

3.3. Market-Responsiveness

There is general agreement that the visual inspection enabled by the Kernel Visual Distinguishability (KVD) process

- has served as an efficient and effective method of segregation,
- imposes restrictions on the registration of varieties,
- limits Canada's ability to respond to new market needs and opportunities, and
- should be replaced, but not before a technology or process to rapidly identify varieties becomes available.

It is not yet clear what the replacement technology or process will look like. It is not clear whether identity preserved systems can adequately meet Canada's needs for food safety, whether from natural or terrorist sources. Nor is it clear that identity preserved systems will be sufficient for addressing the challenge of co-mingling with similar grains with different end use characteristics.

Grading is key to the grain system by assuring standards. Grading provides an indicator of certain quality traits for sales and marketing purposes and serves as a basis for commercial settlement. Information about sales by grade is used by farmers as a market signal for what they should be producing.

Grading factors have to be responsive to customer needs as well as easily measurable for purposes of commercial settlement. New complexities are arising as a result of grain sales based on specifications that exceed or differ from the provisions of the grades. These transactions involve quality traits that are not a direct grading factor (e.g. falling number in wheat or oil content in canola).

Sales involving special traits pose challenges. On the one hand, such sales often fail to provide effective market signals to producers. On the other hand, it becomes a challenge to test such shipments for inherent quality at every point of potential commingling because of cost and delay. Until a rapid system of testing becomes available, it may not be reasonable to adopt some quality traits as grade factors. Without a rapid testing system, Canada's grading system may not be able to be as responsive to customer needs as desirable.

In the particular case of some pulse and special crops, we are told, the grades are not close enough to market specifications to be useful sales tools in some markets. This is an area that may need greater industry coordination and leadership. Issues regarding the difference between primary and export standards may also need resolution.

Anticipating the future will be an important skill for all grain industry participants. The quality assurance system will need to be rigorous on the one hand and flexible and responsive on the other. The ability to trace the source of grain products will become essential. In a bulk handling system where grain is commingled, how can problems be traced to their true source? This is a fundamental challenge for addressing liability and biosafety issues.

Plant breeding technology allows the development of plants with novel traits that will have unique market value, but may threaten the marketability of existing grain. Seeds with unique traits delivering nutraceutical, pharmaceutical or unique health benefits will need a method of getting to market without compromising conventional grain. Identity preservation and closed loop systems based on certified processes such as the CGC's Canadian Identity

Preservation Recognition System (CIPRS), HACCP or ISO will be critical to maintaining system integrity.

3.4. Sales and Branding

The CWB has a well founded reputation for sales success. As a consequence, producers of CWB grains may perceive and experience a benefit from a positive Canada brand greater than that for producers of non-CWB grains. One challenge is to pinpoint cost effective ways of strengthening the brand benefit to the non-CWB grains.

Another consequence of CWB success in creating goodwill among foreign buyers is that Canada has not appeared to need an advertising or mass marketing program to build brand attachment among end users, including retail customers. An intriguing question is whether doing so would make sense.

In recent years, a decline in the number of central buying agencies abroad appears to have reduced the need for active involvement by the government of Canada in grain sales and marketing. But recent bilateral trade agreements involving the United States pose a potential threat to Canadian grain in foreign markets. Such events prompt one to ask how the Departments of Foreign Affairs and International Trade and the federal cabinet could assist beyond the ways in which they have.

In the particular case of non-CWB grains, the overseas sales of some commodities are so small as to prompt these groups to wonder about the value to them of CGC quality assurance processes.

Some non-CWB players are keeping a watchful eye on the U.S. practice of establishing joint offices in foreign markets. One might ask whether non-CWB sales meet the threshold for following suit and, if so, whether government should be providing additional logistical or financial assistance for market development.

4.0. Institutional Issues to Consider

1. The Rights of Farmers The *Act* priorizes the interests of farmers over other stakeholders. Some stakeholders want farmers' interests balanced with other interests on grounds of fairness. Given our earlier observations about fairness, readers will not be surprised that we believe this priority should be retained in legislation and in the mandate of the Commission. As in other aspects of our thinking, we do remain open to feedback.
2. Assistant Commissioners The role of Cabinet-appointed, regionally based, CGC Assistant Commissioners is problematic. On the one hand, they elicit admiration and appreciation from staunch supporters. On the other hand, their appointment by cabinet instead of the Chief Commissioner runs against principles of organizational accountability and non-partisanship. We invite recommendations.
3. Commissioners The Chief Commissioner, the Assistant Chief Commissioner, and the Commissioner are cabinet appointments. It has been suggested that the existence of an apparent executive triumvirate produces costly delay. We are open to evidence that the triumvirate structure is problematic but remain to be convinced.
4. Dispute Resolution The CGC makes rules, polices rules, implements rules, and then adjudicates its own decisions. Only the wealthy with non-time-sensitive issues can afford to take the CGC to court, say some critics. One solution is to create an Ombudsman office. Successor to the Grain Appeals Tribunal but with a larger mandate, the new office would have a separate budget, be located in a separate building, and have the authority to provide quick mediation and adjudication on all disputes and to assign liability. With respect to adjudicating CGC decisions, we are open to the idea of assigning greater authority to overturn decisions that are unfair applications of universally applied rules than to overturn rules that are applied uniformly.

5.0. Operational Issues to Consider

1. Contracting out CGC Services As distilled in the Appendix, past reviews indicated that all grain exports need to be certified for quality and weight, but that accredited service providers other than the CGC would be acceptable.[5] The CGC is hampered in some respects by its physical labour capacity at port position. Terminal operators report a lack of available CGC staff for inspection at peak times, increasing delays and costs. A separate detailed analysis of inward weighing and inspection is underway, the results of which will be available for comment in this review. The CGC strives to provide service at a reasonable price with fees remaining at 1991 levels. The Commission's revenue crunch is a serious matter, to which we return below under issue # 8. Some intriguing questions to consider are how much of the Commission's services should be covered by fees and how the Commission's remaining activities should be funded if some of its services were contracted out.
2. Liability in the Case of Contractors There has been talk of the CGC's accrediting independent service providers to carry out weighing and inspection on a competitive basis. The benefits to the sector would be greater efficiency and accessibility. Where would liability rest under this model? Could such suppliers afford the especially large liability of making an error in the case of sea-going vessels? Should and could the CGC protect itself from any liability for conduct by its accredited agents?
3. Liability for Misrepresentation All organizations and individuals in the grain sector should be held liable for misrepresentation. We are inclined to believe that the legislation should be modified to make clear that the privileging of farmers as a whole is not intended to extend to individuals engaged in misrepresentation. Much of the success of the grain industry has depended on the honesty of farmers. Ineligible, non-registered varieties of grain can sometimes mimic in appearance registered eligible grain of higher commercial value. Expensive tests conducted days or

[5] 2002 Review of the *Canada Grain Act* and the CGC, Dauk, Livingstone, McAuley.

weeks later may be necessary to uncover fraud. We are open to the idea of a staged introduction of liability, beginning with a fine and concluding with complete liability once new and better technologies and processes become available for tracing product.

4. <u>Liability and Prevention in Respect of Inaccurate Weighing</u> We have received some communication about poor calibration and incorrect weighing at some primary elevators. We solicit advice about the frequency or infrequency of such error, possible technological or oversight solutions, and liability consequences.
5. <u>Liability for Changes to the Certificate Final</u> Concerns have been expressed about the CGC's role in requiring grading at port while refusing to accept liability in the event that the grade is changed after a ship sets sail. For practical reasons, not all tests can be conducted before a vessel departs. Testing for ineligible varieties requires time-consuming, lab-based testing, and the cost to retain a vessel until the composite sample can be tested is prohibitive. It would seem reasonable for the government of Canada through the CGC to assume some liability. But what should the limit to liability be and should the CGC be held liable if the Certificate Final and outbound grading become optional?
6. <u>Harmonize primary and export grade standards</u> Having primary and export grade standards that are different may provide flexibility in assembling export cargoes, but can mask effective price signals to producers. It also can encourage inefficiencies in handling and mixing grain at terminal position to prepare it for export. Wherever possible, the primary and export grade standards should probably be the same.
7. <u>Strategic Investments in Product Safety</u> The effects of BSE at home and of terrorist events around the globe make clear the vital importance of product safety and the sales benefits of being known for product safety. Many stakeholders feel Canada is not investing heavily enough in research and systems to ensure the security of Canada's food system. Canada's approach to food safety as it relates to grain has been described as a commercially-driven safety approach; it deals only with those issues that have an immediate commercial consequence. It may

well be of strategic importance for Canada to invest in the R&D and the regulatory guidelines to ensure product safety in the event of seed borne food safety crisis or a terrorism-motivated contamination.

8. Public Funding of the Quality Assurance System Stakeholders feel strongly that mandatory elements of the quality assurance system should be paid for by taxpayers. Some express concern that budget pressures within the CGC weaken decision making. With limited financial resources, the CGC strives to deliver an optimal level of services for quality control. Faced with a revenue crunch, the CGC is accused by some stakeholders of wrongly using service fees to cross-subsidize research. In their judgment, research should be fully funded by government. The Commission's revenue crunch needs to be addressed, and not just for this reason. On the one hand, the CGC faces a prospect of lower exports and hence lower fees to itself. On the other hand, Canada's quality assurance system, always integral to our export success, is becoming even more important because of the inflation of expectations among buyers, discussed in section 3.1.
9. Make R&D Investment a Strategic Priority Heavy investments in research investment by Australia and other competitors have helped them gain international recognition. Faced with the initiatives of other nations, Canada needs to make a quantum leap in R&D in order to protect our position. Canada can remain a grain exporter for the foreseeable future but we have a geographic shipping disadvantage. Canada must increasingly compete in high quality, high value markets. Canada's producers cannot compete in low cost, price competitive markets and sustain profitability at the farmgate. Success tomorrow will require research investment today because research is the primary tool to help extract more from the marketplace and offset transfers from government.
10. Where to Locate the Grain Research Lab (GRL) The Grain Research Lab (GRL) has been an integral support for Canada's quality assurance efforts. Its role is especially important at a time of transitioning from KVD and during an era in which several of the world leaders in agriculture are making immense R&D investments. Is it essential that the GRL continue

to be a part of the CGC? Is there a more appropriate organizational location for the GRL? Would the GRL be more effective and better resourced within AAFC or as a stand-alone agency? Irrespective of its organizational position, a physical co-location with other research-oriented units at the recently proposed Centre of Excellence for Grains in Winnipeg could well offer opportunities for research collaboration and synergy.

11. Keeping in Touch with Stakeholder Realities Regulators in any sector normally elicit criticism because their decisions may disadvantage some stakeholders while privileging others. We have received some feedback that the substance and tone of some of the CGC's communication reflects a lack of awareness and understanding of some of the impacts of their decisions. It would have merit if the CGC were to adopt practices that maximized the prospect of being seen as fair. One option is to require that the CGC executive committee meet regularly at pre-announced locations across the country to facilitate access to it by stakeholders.
12. Licensing and Security The CGC recently announced that August 1, 2006 all elevators and grain dealers will be either licensed and secured, or exempted, or subject to criminal prosecution. Stakeholders are largely supportive of compulsory licensing and security for grain companies. A concern is to apply rules fairly. One cautionary note is that the licensing fee and security requirements can present some financial challenges for smaller companies as they must maintain dedicated collateral to support the bond. These requirements may discourage new entrants to the industry. The CGC has been working on more flexible ways that companies can meet their security requirements. Another concern is that exempting producer car loading sites may not be consistent with policy. Transparent guidelines for exemptions are required.
13. Intra-Company Shipments The large, vertically integrated companies with collection and distribution divisions in Canada and processing facilities in other countries have argued that their shipments should not require inspection and weighing. Internal company discipline protects quality. Mandatory inspection and weighing merely raises costs. Such

Intra-company shipments appear to be a case of efficiency and fairness in collision. It is almost certainly more efficient to exempt intra-company shipments. But it may not be fair to privilege large, multinational companies. Nor might it be reasonable, and hence fair to the grain sector as a whole, to exempt multinationals from inspection on internal shipments. Doing so might increase the risk of failing to identify disease or contamination until it is too late. Such flawed shipments might do more harm to the reputation of Canadian grain producers than to the multinational firm involved.

14. <u>Exports to the U.S. and Policy Consistency</u>. The selective application of regulations poses an ultimate challenge to the legitimacy of those regulations. The CGC exempts land shipments to the U.S. from mandatory inspection and weighing. The reasonable justification is that buyers and sellers across the Canada-U.S. border have closer relationships than in the case of other trans-national sales. The resulting challenge for policy-making is to determine if the reasonableness of the exemption is sufficient to outweigh the undesirability of exemptions in general.
15. <u>Containers and Policy Consistency</u>. The global shift to containerization is undeniable—74% of total shipments in 2004, up from approximately 45% a decade earlier[6]. Containers are the dominant mode in China and Asia generally. In the short-term, container traffic faces infrastructure and regulatory barriers in Canada. Our country lacks the facilities for handling a jump in container traffic. Meanwhile, regulations prohibit marine containers from residing in Canada for more than 30 days, a period that is insufficient for inland loading of containers. To this point, respondents to the COMPAS stakeholder survey (www.compas.ca/grain) are inclined for container inspection to be optional rather than mandatory. A policy challenge to consider is whether the cost of inspecting containers can be justified given the limited opportunity for product commingling or contamination. Is a federally mandated quality assurance process

[6] Source: TranSystems Corporation presentation to Regina REDA Strategic Leadership Forum, February 8,9, 2006, Regina, SK.

required for these shipments, or does it add cost with limited benefit? Would the cost of mandatory inspections of bulk container product to destinations other than the US provide an overall benefit?

6.0 Concluding Comment

Overall, there has been support for a strong grain quality assurance system in Canada. Stakeholders differ on how to organize it for optimum effectiveness. The depth of commitment to it is not uniform. The grading system is seen as effective, although it needs to be more closely attuned to the natural evolution of market demands.

In practice, not all of Canada's products are unique, and there are other suppliers of grain. Much of Canada's competitive advantage has been the quality assurance system, which has not been readily duplicated by competitors. Global pre-eminence in quality assurance remains essential for Canada's continued success as an exporter.

The *Act's* intent of protecting producers is widely endorsed, more strongly by some, and less by others. Producers remain the principal beneficiary of a strong quality assurance system and a regulated grain handling system, but producers are not the only beneficiaries. Organizations and individuals both within and outside the grain sector benefit as well.

We look forward to comments and direction from stakeholders. These preliminary observations about the *Act,* the Commission, and the sector are intended to foster discussion and should not be interpreted as final conclusions or recommendations.

Appendix

Past Reviews

There have been a number of reviews and studies in the recent past that remain useful to examine. Some stakeholders expressed frustration with yet another review as previous recommendations have not been fully addressed. Consequently, important issues remain unresolved today. Stakeholders continue to indicate a strong sense of importance associated with getting the grain quality assurance framework right for the future.

2002 Review (Dauk, Livingstone, McAuley)

This independent review was requested by the Minister of AAFC in April, 2002. The Terms of Reference for the review stated “To recommend any changes to the *Canada Grain Act* needed to ensure that the CGC can continue to be an effective organization given changes occurring in the grain industry’ and ‘To recommend how to optimize the contribution of the CGC to the Agricultural Policy Framework’.

The report authors consulted with a cross section of stakeholders from producer groups, grain handling and processors, provincial governments and other federal departments. Their intent was to identify and comment on broad directions rather than specific implementation details.

The report authors made a number of recommendations, the more notable of which were:

- sunset KVD within three years,
- to separate elevator licensing and security/bonding requirements,
- have an appointed Board govern the CGC, with a CEO responsible to the Board,

- ensure all exports are weighed and inspected to support Canada's brand,
- enable the CGC to accredit private sector organizations to provide mandatory and optional services

The complete set of recommendations is listed below.

2002 CGC/CGA Review Recommendations
Licensing and security of grain handlers/dealers should be separated. It should be mandatory for all grain buyers and handlers to have licenses. The CGC should have responsibility for licensing standards.
The Minister should consult to develop the mechanics of a mandatory security program for all grains with the following features: self-financing, actuarially sound, and claims being less than full coverage to leave producers to bear some responsibility.
KVD should be sunsetted in three years and an affidavit system should be established for varietal identification and accountability. The CGC should police improper declarations and GMO's and be the arbiter for disputes.
CGC review standards committee processes to ensure the grade standards reflect the needs of grain customers and appropriate market signals flow to producers.
Primary and export standards should be brought closer together.
The CGC should be governed by an appointed Board of Directors with the majority being grain producers complemented with industry expertise. A CEO would be charged with leading the CGC, responsible to the Board.
To avoid overlap, government departments and agencies should accredit another department or agency to undertake work on their behalf
The CGC should accredit private companies to provide mandatory or optional services to the grain industry. The CGC should retain standard setting and third party arbitration roles for disputes on grades and services to the industry.

All grain exports from Canada need to be certified using CGC specification for quality and weight in order to facilitate branding of Canada as a high quality grain exporter. Other services should be optional.
Government needs to bring the industry together to come to a common understanding of what the Certificate Final should represent.
The federal government should commit to funding that portion of CGC operations and research that is deemed to be serving the public interest, including the cost of setting grain standards. Services to facilitate a commercial transaction should be on a cost-recovery basis.
A panel of producers, government and marketing experts should provide advice to the GRL on crop research priorities.

One notable comment that did not result in a formal recommendation is found on page 19 of the report that states ‘ To provide clear delineation between public and commercial services, or regulator and service duties, cost recovery services should be provided through a newly established separate for profit entity of the CGC. This entity would be functionally set apart in the budget process but would essentially be within the CGC, and in some cases would draw upon the same staff.’

1999 CGC Program Review

In 1999, the CGC examined their services to assist in setting future directions. They consulted widely to develop this framework. Some changes were implemented by the CGC, and others required legislative and regulatory amendments. At that time, the CGC faced considerable financial challenges, an operating pressure that has not diminished. The CGC’s fee structure remains at 1991 levels. At the same time, there has been declining export, and hence declining revenue from services. The conundrum is that the infrastructure required to provide services has not diminished, so the cost of delivery continues to increase while revenues decline.

This program review adopted a principle that clients who benefit from the services should pay for them. The review identified three categories of costs; 1) public interest (e.g. grain safety, research services), 2) Quality assurance system services (e.g. shared industry benefits) and 3) Client specific services. Often there is considerable overlap and the report attempted to prorate costs in relation to the flow of benefits.

There were many specific program recommendations, but the following recommendations remain significant:

- The *Canada Grain Act* should be changed to provide more flexibility in mandatory inspection and weighing requirements.
- It proposed modifying the grading system to provide for a single standard for each grade (replacing separate primary and export standards).
- The report proposed a quality assurance fee to be assessed at the point of delivery into the handling system.
- Accreditation of companies to provide services now offered by the CGC will be explored in the future.

The full 1999 Program review is available in pdf format at http://www.grainscanada.gc.ca/Pubs/corporate/ProgramRev/programreview-e.PDF

1998 Governance Review (Livingstone, Mitchell)

The authors identified three shortcomings in the model of governance for the CGC:

- the rationale for the current ‘commission’ structure is not well understood

- the role of the Assistant Commissioners is not understood or appreciated, and their accountability to the Chief Commissioner is unclear.
- the 'CEO' role of the Chief Commissioner is not sufficiently clear, nor is his/her relationship with the rest of the organization.

They further note that in their consultation no one was of the opinion that the biggest problem with the CGC was its governance of how the Commissioners or Assistance Commissioners were organized and mandated.

The authors provided the assessment that despite its theoretical merits, the current system was not able to meet the needs of the Commission or the industry. They observed that at that time it was unclear if there was enough work to keep three Commissioners employed full-time, and indicated the natural tendency for the Commissioners to involve themselves in matters that are the province of the Executive Director (personnel matters, day-to-day management).

They outlined four options and recommended one. The options were:

Recommendations	Comment
Improved Status Quo- clarifying roles of the Commissioners and relationships with senior management; defining the role of the Assistant Commissioners and clarifying the Commission role in the regulation of grain handling as opposed to Ministerial action.	- The authors questioned if this was the optimal structure for executive management of the Commission - Is it the best way to have a strong regional voice on the Commission?

Recommendations	Comment
Full time Chief Commissioner CEO with a Part Time Board – turn Commission into a Board, all appointed by the Governor-in-Council (GiC); give CEO clear active responsibility for management	- requires Chief Commissioner with good executive management skills and experience. - monthly Board meetings to conduct business - would require legislative change
Full time Chief Commissioner Chairman, with a Part time Board – All appointed by GiC	- role would be more 'outreach', less executive management
Chief Operating Officer appointed by Board	- Essentially same model as a private sector Corporation, but is an atypical model for a government organization

Of these four options, the 1998 Governance Review authors recommended a Full time Chief Commissioner CEO with a part time board (second option).