REFORM OF TRUCKING REGULATION IN CANADA : PROSPECTS FOR CANADIAN TRUCKING UNDER BILL C-19

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ABSTRACT:

Bill C-19 is the most significant change in the economic regulations governing the trucking industry in Canada since the Motor Vehicle Transport Act of 1954. It represents a major policy shift towards reliance on market forces to govern the performance of the industry, yet contains safeguards to protect the public against externalities such as reduced safety. Because the Canadian trucking industry shares a large continuous border with the United States, there are additional challenges an opportunities for Canadian carriers in this new environment.

How Bill C-19 will impact the performance of the trucking industry in Canada depends on many factors. This paper describe the forces leading to regulatory reform and the legislation itself, contrasts the new with the past regulatory regime, and evaluates the potential inefficiencies in the current trucking system. The paper will argue that potential gains are limited due to the efficiency of the current marketplace, the jurisdictional scope of the legislation, and the implementation process

REFORM OF TRUCKING REGULATION IN CANADA

I. INTRODUCTION

On January 1, 1988 the new National Iransportation Act and Motor Vehicle Iransport Act (Bill C-19) came into effect. These laws establish a new direction for transportation in Canada. Bill C-19 is the most significant change in the economic regulations governing the trucking industry in Canada since the Motor Vehicle Act of 1954. It represents a major policy shift towards reliance on market forces to govern the performance of the industry, yet contains safeguards to protect the public against externalities such as reduced safety Because the Canadian trucking industry shares a large contiguous border with the United States, there are additional challenges and opportunities for Canadian carriers in this new environment.

How Bill C-19 will impact the performance of the trucking industry in Canada depends on many factors This paper describes the forces leading to regulatory reform and the legislation itself, contrasts the new with the past regulatory regime, and evaluates the potential inefficiencies in the current trucking system. The paper will argue that potential gains are limited due to the efficiency of the current marketplace, the jurisdictional scope of the legislation, and the implementation process. The primary economic benefit will be the increase in productivity of carriers gained from the ability of carriers to modify their operating techniques and networks to meet the rapidly changing needs of shippers

II. REGULAIION AND REGULATORY REFORM OF THE CANADIAN IRUCKING INDUSIRY

A. The Development of Economic Regulation in Canada

Economic regulation of trucking in Canada evolved and developed under the auspices of the provinces beginning in the 1920s. By the mid 1930s, most provinces had some form of regulation, typically entry regulation. However in 1954, the Winner Decision ruled that the Federal government not only had jurisdiction over extra-provincial transport but "...that intraprovincial operations of a company engaged in extra-provincial transport could not be separated from the extra-provincial operations Such operations were 'one and indivisible' and accordingly were under the exclusive jurisdiction of the federal government." (Schultz, p.186). The second part of the ruling was unexpected and created administrative problems for the federal government and threatened the authority of the provinces. The Motor Vehicle Transport Act (MVIA) was subsequently passed in 1954. The MVIA left the regulation of all forms of motor transport in the hands of the provinces by delegating federal responsibilities to the existing provincial agencies. The MVIA provided an alternative to the enactment of comprehensive federal legislation but the act was inadequate in dealing with an industry which increasingly served the national and international transportation market. In 1967, the National Transportation Act (NIA) was passed and it provided the means for reclaiming the authority to regulate extra-provincial motor

carriers by the federal government. Part III of the NIA gave the Federal transport ministry extensive power to regulate the extra-provincial motor carrier industry but the only means of implementation was through the provincial governments. "The federal government simply did not possess the facilities, the manpower or the regulations with which to implement Part III. The provinces did, and if the federal government was to avoid unnecessary duplication of manpower or facilities an intergovernmental agreement was essential " (Schultz, p.193). But a fundamental conflict existed between the provinces and the Canadian Transport Commission which was created to implement and in many ways direct federal transport policy. Implementation of the act would give to an agency which had no political accountability, great influence over policy which had been jealously guarded by the provinces. The provinces thus "presented the federal government with a possible trade-off: implementation of Part III with provincial cooperation if the provinces were granted membership in the regulatory authority responsible for Part III. The CTC... considered that provincial representation... was clearly unacceptable... " (Schultz, p.205). The only serious attempt to implement Part III within the original NIA failed

This divided responsibility for trucking regulation across Canada resulted in a diversity of economic regulations which differed in terms of written policy, implementation and enforcement However, there is general agreement that extraprovincial entry is regulated (through the public need test) in most jurisdictions and rate control is minimum (no control or rate filing only) except with regards to extraprovincial control in Quebec and Newfoundland. In contrast, intraprovincial regulation varied widely, from nearly no regulation in Alberta to very strict entry and rate regulation in Saskatchewan and Manitoba, and entry control only in British Columbia and Ontario. Tariff bureaus existed in Canada but they did not have an exemption from the anticombines laws as was the case in the United States. At the same time, the anticombines laws in Canada never had the teeth of the antitrust laws in the U S.

B. The Pressure for Regulatory Reform of Trucking

The driving force behind motor carrier regulatory reform in Canada was the concern and/or belief that trucking controls have resulted in economic costs far outweighing any benefits. Whether this concern would result in real policy changes is dependent on the coalition of interests who saw themselves as winners with deregulation overcoming the coalition of interests who saw themselves as losers. It is also dependent on the existence of a catalyst in the process of policymaking.

1. Economic Evidence Within Canada

Economic evidence was instrumental in rallying popular support, convincing reluctant policymakers for change and justifying policy change. Economists have long argued that economic regulation was not

needed for an industry which exhibited so few of the traditional economic characteristics of utility type industries. A long history of research existed to show the impact of regulation on prices charged by Canadian trucking. Most of this Canadian research employed a comparative approach which was feasible because of the significant differences in intraprovincial regulatory control exerted by the provinces. This situation created an economic laboratory in which performance in different provinces could be associated with the level of regulation in different provinces.

In 1981, the Economic Council of Canada completed a two-and-a-half year investigation of economic regulations including those applying to trucking (Economic Council). An investigation of trucking competition and regulation by an interagency committee, composed of Consumer and Corporate Affairs, Transport Canada and the Canadian Transport Commission was completed in 1982 (Interdepartmental Committee). Over 25 separate substudies on trucking were conducted as part of these two research programs alone.

The majority of the empirical evidence did suggest a relationship between intraprovincial rate levels and the type of regulatory environment in each province. The provinces which regulated both rates and entry, Manitoba and Saskatchewan, possessed rate levels lower than unregulated Alberta. In contrast, rates for Less than truckload (LTL) traffic in Ontario, Quebec and British Columbia were consistently higher than LTL rates in Alberta. In general these regulated provinces effectively control entry but exerted minimal rate control other than rate filing. In contrast, TL rate differences were much smaller and this is speculated to be due to the weaker influence of regulation on this sector of the industry. Studies of the cost impact of regulation yielded similar results.

A major criticism of the empirical research indicating an adverse impact of regulation on industry performance has been the inability to fully control non-regulatory factors so that only the impact of regulation is measured. The limitations of data and the multiplicity of traffic situations may make it impossible to ever achieve the level of comparativeness required to convince the purist. Another criticism is the applicability of these empirical findings to the regulation of extraprovincial traffic. With the exception of Boucher (1979), none of these studies examined interprovincial rates. Reservations with Boucher's methodology have been delineated and Boucher himself assigns minimum significance to the ambiguous results that he obtained in this sector (1979, p.40). One view is to assume that the economic structure of extraprovincial and intraprovincial trucking does not differ significantly. One would then conclude that interprovincial rates would decrease with reduced regulation of entry since most of these traffic lanes are regulated with respect to entry but not with respect to rates, including rate filing. Some soft evidence of excessive extraprovincial rates was found in the behavior of transborder trucking rates and shipper behavior. Skorochod and Bergevin (1984) observed that transborder rates between Ontario and the U.S. were so high that

it was cheaper for many shippers to ship their freight by private truck to gateways in the U.S where the freight was tendered to domestic U.S. carriers at much lower rates. The other view is that extraprovincial traffic is composed of a larger proportion of long haul traffic which is served by a different type of industry (even if the same carriers compete). Intermodal competition, for example may be a significant factor in the very long distance markets and such competition is not directly influenced by economic regulations dealing with trucking.

It cannot be said that the empirical evidence developed from the Canadian experience has fully supported the elimination of trucking regulation. Rather than convince the rational person, such evidence tended to confirm a priori beliefs held widely by economists and some policymakers particularly in the federal government. The attitude is when in doubt, let market forces govern. However the Canadian experience suggesting negative impacts was soon to be reinforced by the experience in the U.S. with its recent deregulation.

2. The Impact of U.S. Trucking Deregulation

The Interstate Commerce Commission (ICC) began relaxing regulation of interstate trucking in the U S. in 1977 and Congress officially mandated significant deregulation in the Motor Carrier Act of 1980. Both rate and entry control were significantly relaxed. This major change in policy direction in the U.S influenced the direction of Canadian policy in three ways. First the U.S. experience was seen as a normative model that would help Canada predict the outcomes her policy choices. Second, deregulated U S. and Canadian carriers competed indirectly with each other in the world market for goods of which domestic transportation is an input Finally Canadian and U.S. carriers competed directly against each other on transborder traffic lanes connecting the two countries.

Numerous analyses and evaluations of the general impact of deregulation in the U.S may be found in the literature. Glaskowsky (1987) provides a summary and interpretation of many the early studies and evidence. The majority of the research indicate that there have been significant improvements in performance and benefits to the overall shipping public. Estimates of savings exceeding $10 billion (U.S.) per year have been made though this has been severely criticized. Negative effects that had been of great concern such as the loss of service to small communities did not occur. On the other hand, several impacts of regulatory reform were overlooked when the laws were enacted. Concentration increased in certain segments of the industry, the overall financial condition of the industry decreased as indicated by an increased rate of bankruptcy, and safety was argued to have declined. Supporters of deregulation in Canada of course expect to see comparable benefits should deregulation occur in Canada However, the cautious would recognize that Canada should not expect the same level of performance improvement because Canadian provinces have never regulated rates, carriers have never utilized tariff bureaus to the degree found in the U S , and because of the lack of enforcement.

The impact of U.S deregulation is not completely unambiguous as there are questions about the longer run consequences and the influence of the economy on competitive conduct. None the less, the U.S experience seemed to reinforce the arguments that the supporters of reduced regulation had been putting forth.

Whether deregulation would significantly improve the price/service levels available to Canadian shippers was viewed as crucial to Canadian producers competing in world markets and in particular competing against U.S. competitors. It is no surprise that a major supporter of deregulation in Canada was the Canadian Manufacturers Association (CMA), many of whose members were in precisely that situation. Many of the CMA members purchased transportation in both countries or have affiliated companies in the U.S so internal comparisons could be made about the relative performance of trucking in the two countries.

No where was the impact of U.S trucking deregulation felt more directly than in the transborder trucking market. Ironically it was entry by Canadian carriers into the U.S. that had increased competition and encouraged entry into Canada by U.S. carriers. Many Canadian carriers expanded their single line service significantly in the U.S just like their U.S counterparts expanded within the U.S. However, U.S. carriers did not enjoy the same opportunities to expand into Canada because entry control has not been similarly relaxed by the Canadian provinces. Ihis disparity in economic opportunities balanced against U.S. carriers led those carriers to seek a political solution. The so called "Trucking War" involved a moratorium on Canadian applications for operating authority in the U.S. which was lifted when the two countries exchanged letters of agreement that called for joint discussion of the problem. Meanwhile where U.S carriers had successfully gained entry or already competed, there was explicit intensification of rate competition. Rate discounting was always initiated by U.S. rather than Canadian competitors.

There have been few landmark changes in the regulatory policies of any province before U.S deregulation In 1977, two provincial investigations of trucking regulation were completed. The Ontario Select Committee of the Legislature on Highway Transportation of Goods made many recommendations towards improving the form and implementation of economic regulation but basically supported continuance of the province's traditional policy of regulation. The Alberta Select Committee of the Legislative Assembly similarly did not recommend any changes to the province's basic policy supporting minimum regulation. The major exception was in Newfoundland where regulation began in 1968 and active rate regulation began after 1974.

In contrast, since U.S. deregulation all but two provinces had conducted reviews of the trucking regulations in their jurisdictions One committee, Ihe Ontario Public Commercial Vehicles (PCV) Review Committee, recommended a significant departure from traditional policy, in particular the satisfaction of fitness only requirement in order to obtain an operating certificate.

To a great degree, the U S experience had contributed to the flurry of reviews. Few changes occur in the status quo without a significant public preference for such change. It is significant that historically most shippers within a province do not have any experience with both regulated and unregulated transport environments, since most intraprovincial markets are regulated and a minority of shippers would have intraprovincial transport in both Alberta and another province. In contrast, the recent U.S. deregulation gave many Canadian shippers whose products compete in Canada and the U.S., the opportunity to experience both regulated and essentially deregulated transport environments. As noted above, the CMA heavily supported deregulation in Canada and is comprised of such shippers. The existence of a large business population in Ontario who deal in both Canada and the United States had no doubt contributed to the pressure to reduce regulation within Ontario. The transborder trucking controversy also caused most of the provinces individually or as part of the Canadian Conference of Motor Transport Administrators (CCMTA) to reexamine their international operating rights policies since a letter of agreement committed Canada to jointly negotiate with the U.S. on the matter.

3. Reform Forces Within Canada

A number of other factors led to a reevaluation of regulation independent of the U.S. experience. First, the Canadian economy had been depressed for several years in the early 1980s. During that period, the public in general and policy makers in particular were amenable to changes from the status quo to deal with pressing problems. After 50 years of regulation, deregulation had such an appeal. Second, as in the U.S., a major federal investigation (in Canada's case the studies by the Economic Council) recommended a reduction in direct regulation in trucking. Third, there was significant support for deregulation of other sectors of transportation, including airlines and the rail industry. The public support for airline deregulation was especially strong as the benefits went directly to the consumer. A final factor, was the acquiescence of the trucking industry for some aspects of reform. This is not to imply that existing carriers wanted less regulation, in fact many wanted more. Existing regulation was not always enforced effectively and this often placed regulated carriers who dutifully performed their common carrier obligations, at a competitive disadvantage. The preference of many carries was to close loopholes in existing laws and enforce them better. But the consensus was that this was impossible to do. Closing loopholes usually produced new problems of detail and complexity and in many provinces budget cutbacks were decreasing rather than increasing enforcement effectiveness. The recognition of these realities led many carriers to support reduction in regulation to a more enforceable level. Some carriers even preferred complete deregulation rather than have to compete in a partially regulated environment.

Domestic Canadian carriers also realized that it was difficult to prevent entry of major competitors into transborder markets from the

U.S. even under the current regulatory regime The larger U.S based LTL carriers for example simply purchased existing carrier licenses and by 1985, all of the U.S.. giants were represented in most of the major Canadian population centers.

Another dilemma confronted extraprovincial carriers who had to comply with the regulations of each province that they operated in The lack of uniform extraprovincial regulation had long impeded the performance and development of extraprovincial trucking because these carriers were not only confronted with many regulations but with regulations that are contradictory, inequitable and inconsistent. The trucking industry had argued long and vigorously for more uniformity and many of the problems that existed in 1967 remained in 1986. Finally, many carriers were simply dissatisfied with the environment of uncertainty that they operated in.. There was uncertainty in provincial regulations which were applied unevenly from year to year, uncertainty in the direction of government policies which were continually in flux, and uncertainty in federal-provincial jurisdiction (with respect to collective ratemaking). Some carriers found it difficult to make current and long run decisions in such as environment and were indifferent to deregulation as long as it clarified the "rules of game" in which they must compete

4. Anti-Reform Forces

The dissatisfaction of the trucking industry with certain elements of current regulatory environment, the U S. experience and other forces in favor of regulatory change were all conducive to regulatory reform. There were however, a number of important factors mitigating against regulatory reform that had to be overcome..

First, policy at any level of Canadian government is frequently the product of consensual decision making. The carriers are part of the public and their interests are difficult to ignore at the provincial level where trucking regulation was traditionally controlled. In the U.S., the ICC, which acted as a catalyst for deregulation, was more insulated from direct grassroots lobbying pressures. Second, the federal and provincial governments have done almost nothing to institutionalize regulatory reform. Consumer and Corporate Affairs, like its counterparts in the U.S., the Federal Trade Commission (FTC) and Department of Justice (DOJ), has actively supported deregulation in Canada However, unlike the U.S., there are few forces within Iransport Canada actively supporting reform. In contrast the U.S. DOT was crucial in the U.S. reform process In the early 1980s, the federal Minister of Iransportation had set an agenda for airline deregulation which could also be applied to trucking. However, there were fewer political incentives to deregulate the less glamorous trucking industry and the impact of trucking deregulation was not one easily perceived by the general public. Third, and related to the first factor, it is doubtful that a provincial regulatory body would become the catalyst for deregulation as was the case with the

ICC. Provincial boards are more responsive to provincial interests and in most cases could be overruled by Cabinet order. More importantly, the consultative role of the trucking industry in the selection of senior regulators would prevent the appointment of blatantly deregulation minded appointees. Fourth, the economic climate in Canada began to improve in 1984 and 1985. This was relieving some of the pressure to change the status quo. Fifth, there was the threat of market domination by U.S. domiciled and controlled carriers. Freer entry control could allow U.S. domiciled competition to effectively compete from a U.S. base which could result in the loss of taxes, jobs, and investment in Canada and reduced Canadian control of vital industries. The proposition was that U.S. carriers would eventually supplant Canadian carriers in the transborder market because of their size economies, financial resources, and inherent geographic advantages. In order to prevent this, regulatory policy would either have to discriminate against U.S. carriers or regulate international trucking differently from intra and interprovincial trucking. For example, the Ontario review committee suggested that one solution to this threat was to apply a market test "... to provide a braking mechanism or a safeguard against changes ... the market which might be particularly disruptive, damaging or undesirable... ". One such threat in which this might be employed, is the threat of domination of Ontario markets by giant competitors from the United States (PCV, 1983). Many provinces already had different policies with respect to intra and extraprovincial trucking, so special treatment of international trucking was not unprecedented. On the other hand, Canada's federal authorities were committed to creating more equitable opportunities for U.S. entry into Canada as a result of the letter of understanding that lifted the moratorium on Canadian entry into the U.S.

Sixth, an inherent spirit of individualism and abhorrence of government intervention is absent from the Canadian political culture. Instead...

> "Compared to Americans, Canadians have more frequently looked to their governments to take a strong role in economic development through the use of services, to maintain a sense of cultural or national identity in the face of fundamental economic forces that contradict such desires, to restrict market forces (domestic and international) so as to provide a less risky environment for Canadian firms and individuals and to achieve consensus and coordination of contending private or public sector efforts in order to avoid 'Waste and duplication'... There does not exist in Canada any fundamental belief in the virtues of competition as a method of allocating scarce resources ... our more structured, authoritarian society takes business power for granted " (Stanbury, 1982).

Consequently, Canadians are less likely to embrace the general ideal of the free market and less inclined to actively change the status quo.

Seventh, and related to the above, is the view that economic regulation is just another instrument of the state to achieve non-economic goals such as regional development. To relinquish economic regulation would eliminate the province's last remaining sphere of influence in the transport sector

Eighth, the decentralization of interprovincial regulatory responsibility makes it difficult to agree on interprovincial reform Notwithstanding the uncertainty over what is the proper balance between regulation and market forces, it is very apparent that all of the provinces must agree on that proper balance. The more restrictive entry policy employed by one province would ultimately limit the number of competitors between that province and other provinces regardless of the ease of entry into the latter. And pressure to deregulate transborder entry would not be satisfied by opening the borders of only one province. The federal government preferred an overall liberalization of economic regulation in extraprovincial transport and of course could preempt the provinces by implementing the appropriate provision of NTA. However, it had confined its role to encouraging and coordinating provincial initiatives through its participation in the CCMTA. Certainly Federal pre-emption would result in a loss of control over a significant intraprovincial market and be resisted strongly by several provinces. To many senior policymakers, reform at the federal level would inevitably result in federal-provincial conflict

C. Bill C-19, The Motor Vehicle Iransportation Act of 1987.

The combination of evidence within Canada, the U.S experience, and acquiescence of parts of the trucking industry all contributed to the perceived need to reform trucking regulation. At the same time, it was apparent that any reform that seriously threaten provincial jurisdiction would be resisted and the provinces were the only governmental agencies equipped to implement reform Consequently, the focus of regulatory reform would be on extraprovincial markets. The impetus for reform of trucking regulation in Canada would come at the Federal rather than the provincial level of government, and from the Transport Minister rather than the CTC or the Transport Department which were both under his control. The Liberal Federal Iransport Minister, Lloyd Axworthy obtained agreement from his provincial counterparts to take action on regulatory reform of extraprovincial (including transborder trucking) in June, 1984. The election of a new Conservative government did not change the federal position In February, 1985 the Council of Ministers Responsible for Transportation and Highway Safety signed a Memorandum of Understanding (MOU) with the new Federal Minister, Don Mazankowski, to undertake action on the implementation of reforms to the regulation of extraprovincial trucking. In July, 1985 Mazankowski, released A Freedom To Move, a policy paper outlining the Conservative government's plans to deregulate most of the transportation industries The section on trucking supported the Federal - provincial implementation of trucking reform by proposing to:

1. revise the MVIA to reflect the terms of the MOU signed in February, and

2. revise Part III of the NTA to replace the "public convenience and necessity" test with a "fitness" test while eliminating all rate control requirements.

There was concern with the impact of complete transborder deregulation and there was disagreement over the timetable to be set. The Council of Ministers who signed the MOU stated "... that bringing in a market test by January 1, 1988 was not part of the agreement it signed with the federal Ministry of Transport. Many would like to see the test postponed for five years. This would allow an assessment of a proposed 'reverse onus' condition which would effectively make entry by new trucking operations easier than the past." (Pollock, 1986, p.36).

The House of Commons Standing Committee on Iransport reviewed the proposed legislation in public hearing and reported its findings with regards to A Freedom To Move in December 1985. Noteworthy was the recognition in that report that the dispute between Canada and the U.S. over entry control was instrumental in the reform movement. "The moratorium and its aftermath provided the catalyst for regulatory reform in Canada which resulted in the conclusion of a Federal-Provincial Accord in February 1985 ..." (Standing Committee, 1986). The standing committee report supported the spirit and content of A Freedom To Move with regards to extraprovincial trucking. Subsequently the Motor Vehicle Transport Act (MVTA), 1986 was tabled on June 26, 1986. The proposed act labeled Bill C-19 called for a fitness test by January 1, 1988 and a three year transition period during which new service applications would be subject to a public interest test with the onus being on existing carriers to prove public interest would be hurt by the new operator. However the ruling government changed leadership in many departments including transportation and promised a revision in the direction of the government. All legislation at that time was to be reconsidered when the government's policy directions were determined. Essentially the same legislation as proposed in June, 1986 and retabled in October, 1986 when parliament began a new session (2nd session, 33rd parliament). On March 19, 1987 another Memorandum of Understanding was signed by the Council of Ministers Responsible for Transportation and Highway Safety with the new Federal Minister, John Crosbie. The Minister subsequently recommended to the Standing Committee On Transportation, which had been conducting a clause by clause examination of Bill C-19, substantial changes. These included:

1. extension of the reverse onus test from 3 to 5 years,

2. leave the public interest test undefined (and therefore at the discretion of the provincial boards),

Bill C - 19 was subsequently revised and received Royal Assent on August 28, 1987. The law became effective on January 1, 1988. Major components of the law are:

1. The MVTA establishes a uniform nationwide entry test for extraprovincial trucking operators based on fitness

2. Ihe fit, willing and able license test will be based on safety and insurance requirements

3. For a five year transition period, new service applications will also be subject to a public interest test, with onus placed on objectors to prove that the public interest will not be served by any new operator. The public interest test is not defined explicitly.

4. All key elements of the National Safety Code will be in place well before the move from reverse onus to fit, will and able in 1993.

5. Rate regulations will be eliminated and other license conditions, such as route and commodity restrictions, will be removed at the end of the transition period.

6 The federal authority is required to take appropriate action when any foreign government has engaged in unfair practices against Canadian motor carriers.

7. Requires a comprehensive review of reverse onus in four years with the option to extend reverse onus test if warranted.

In summary, Bill C-19, the Motor Vehicle Iransport Act, 1987 will continue to delegate control of extraprovincial trucking to the provincial regulatory boards. The original legislative proposal was far reaching as it required the provincial boards to apply a reverse onus test in considering entry applications, it specified the criteria to be considered in applying the reverse onus test, and at the end of three years, a fitness test would have become the sole criterion for entry. This meant relative uniformity of regulation between the provinces, relatively free entry for three years during the reverse onus test period, and completely free entry conditions when the fitness test becomes applicable.

These proposed changes from the historical regulatory environment were controversial especially with regards to concerns about domination of the trucking industry by U.S. domiciled carriers and effects of deregulation on safety. Although it carefully kept intraprovincial jurisdiction in the hands of the provinces, it removed most of the provincial discretion over extraprovincial regulation. The compromises required to gain provincial and industry consensus essentially extended the transition period and allowed the provinces to retain much of the discretion that it currently possessed in implementing the new law by

leaving the definition of public interest in their hands. Consequently, how the provincial regulatory boards implement the reverse onus procedure and define public interest will determine the degree of reduced entry control until 1993.

III. POTENTIAL IMPACT OF BILL C-19

How Bill C-19 will impact the performance and structure of the trucking industry in Canada depends on many factors. Potential gains are limited to the inefficiencies caused by the previous regulatory environment, the degree to which the market is allowed to control, and the jurisdictional scope of the legislation. The focus of this estimate of the effects of the new legislation is limited to discussing the broad area of potential rates, costs, and productivity.

A. Jurisdictional Scope of Bill C-19

An important feature of the new MVIA is that it explicitly changed the law to avoid conflict with the intraprovincial jurisdiction of the provinces. The type of regulatory structure that each province wants to maintain intraprovincially is still in their domain. This jurisdiction is substantial in terms of tonnage since less than 25 percent of domestic truck tonnage is interprovincial (transborder movements are excluded from these estimates). This is of course due to the geography of Canada where each province is composed of relatively large land masses. However the smaller interprovincial tonnage moves longer distances and therefore accounts for nearly two thirds of the revenues earned by domestic trucking.

B. Implementation

The application of reverse onus in the U.S. led to substantial decontrol of entry. In fact, deregulation of trucking in the U.S. really began in 1977 for truckload carriers when the regulators decided that entry should be easy, not in 1980 when some law was passed. A study of the potential impact of reverse onus and fitness tests in Canada concluded that the effectiveness of such tests depend largely on how regulators interpret the criteria for entry (Cubukgil, 1986). The final version of Bill C-19 leaves both the definition and the interpretation of public interest to the provinces until 1993 so that at least until than, regulation could remain very much the same if the majority of the provinces sought to maintain the status quo. In some provinces, the public interest test is so broad, a new entrant would have few barriers except administrative, if the regulators wanted to interpret the rules loosely. This is in fact true in many segments of trucking, such as truckload movements of bulk commodities. The first extraprovincial entry case decided under the new legislation concerned the application for new licenses to transport automobiles from Vancouver, B.C. to other provinces. In this case, the provincial regulatory authority ruled that the granting of the application would be detrimental to the public interest. In short reverse onus will be

less important than how each province wants to define and interpret public interest This is reflected not only in legislation, but in the personnel placed in the regulatory agencies and the availability of appeals to Cabinet.

The elimination of the fitness criterion in favor of no uniform definition of public interest is the key provision making the U.S. experience with reverse onus inapplicable in Canada Presumably this was to prevent U.S. carriers from entering the market, particularly in the LTL field. If this was the case, than competition in the TL arena will continue as usual. Entry will be fairly easy as long as the applicant is small and specialized, and even easier if Canadian domiciled. Currently no major U S truckload carrier has single line authority into Canada. However there would be no dearth of Canadian carriers competing in the TL market.

In summary, it is difficult to conclude how the regulatory environment will change under Bill C-19 as each province can potentially regulate differently until 1993. At that time, provincial discretion over what constitutes the public interest will be removed and uniform fitness test will apply across the country.

C. The Effectiveness of the Regulated System

What efficiency gains might occur if the provinces as a group move to relax entry regulation immediately, or if they do not, what might the public gain in 1993? Ihis depends very much on how stringent entry control has been. This of course will vary among markets. Contract and specific commodity authorities have always been fairly easy to obtain except in cases where provincial regulators make a concerted effort to protect local interests. The regulatory environment creates legal costs which may be a barrier to entry but such barriers are only relevant if the criteria for entry are substantial In much of the truckload sector, this has not been the case. One of the factors leading to trucking industry support for some form of regulatory change was the lack of enforcement of entry regulation. It has been estimated that in some geographic markets, 30 percent of the traffic is moved by unlicensed carriers. Finally in the transborder markets, U.S. domiciled carriers have all entered the market through acquisition of small carriers, who in many cases were insignificant competitors but held the required operating authority Transborder rate competition already exhibited the rate discounting encountered in the U.S. prior to Bill C-19

More importantly, rates have never been controlled to the same degree that rates were regulated in the U.S. Many of the significant rate declines in the U.S. were the product of both rate and entry regulations and the high utilization of tariff bureaus in the ratemaking process. Only one province actively regulates extraprovincial rates through approval of rates and the filing requirements in the few provinces which require extraprovincial filing are consistently unsatisfied. The only study of the impact of tariff

bureaus in Canada (McRae and Prescott, 1981) concluded that they have no perceptible influence on the rate level. Furthermore on cross Canada routes, railroad competition has been more effective. Most of the large LTL carriers have already set up non union TL affiliates in order to compete or actively use rail TOFC. The combination of these factors have resulted in very competitive rates in most TL market segments. Deregulation will guarantee that such competition continues and with somewhat more intensity.

In summary, it is unlikely that the radical adjustments observed in the U.S. are going to occur in Canada because of the relatively open market that already exists and the several years of anticipation and preparation that the Canadian trucking industry has had in anticipation of deregulation.

D. Empirical and Operating Evidence

Inefficiency is reflected in rates or poor service but the root causes are embodied in either excess profits or returns to carriers, the transfer of monopoly rents in the form of payments for inputs such as labor, or operating inefficiency. One means of assessing the degree of these inefficiencies in Canada is to compare current Canadian performance with less regulated U.S. performance.

There is a general perception that trucking rates in Canada are higher than in the U.S. for comparable movements. No one has quantified this perception adequately and obviously exceptions can be found. The major difficulty today is that published rates no longer reflect the actual rate paid because of confidential contracts and discounts. For example, a comparison of the published class rate for comparable LTL movements between Toronto and Vancouver (Canadian traffic lane) and between Buffalo and Seattle (U.S. traffic lane) shows that Canadian rates are from 20 to 60 percent lower depending on the weight of the shipment. However, the U.S. rates are known to be widely discounted while the Canadian rates are not. In the TL segment, quoted rates for owner operators in Canada, whom are known to be the lowest cost competitors, range from $0.68 to $0.81 per kilometer. Comparable U.S. cost per kilometer ranged from $0.56 to $0.64 as discussed below. Assuming a profit margin of 15 percent, the equivalent U.S. TL rates would be $0.64 to $0.74. Thus there is some evidence that U.S. rates are lower but it is not conclusive.

The financial condition of the Canadian trucking industry certainly does not reflect the earning of monopoly profits. Chow et al (1987) observed that financial distress was much higher for aggregated segments of Canadian trucking than for the U.S. Since 1980, a long series of consolidations have been occurring in the LTL segment of Canadian trucking as major carriers have fallen further and further into debt.

TRIMAC (1987) produced comparisons which shed light on the relative costs paid for inputs between the two countries. Their study

made 84 operational case study comparisons between Canada and the U.S. and concluded that the average cost difference is 10 percent, in favor of Canada. Ihis assumed that there were equal productivity hauling situations. Specifically the study found:

> Canadian driver costs average 92 percent of U S. costs.
>
> Canadian fuel costs average 27 9 percent more than U.S costs.
>
> Canadian repairs, tires, and cleaning are 74.1 percent of U.S. costs.
>
> Canadian vehicle ownership and licensing costs are 83.2 percent of U.S. costs.
>
> Canadian administration, interest, insurance and profit total 94.4 percent of U S costs

Ihe specific findings are significant because the major area of input cost reduction observed for carriers in the U.S. following deregulation was the reduction in unit labor costs Canadian wages appear already to be competitively priced while the only area where Canadian costs exceed U.S. costs is in fuel charges which is unavoidable because most of this differential is caused by national energy policies and higher fuel taxes in Canada rather than carrier ineffectiveness in bargaining for lower fuel rates

The rationalization of operations to increase operating efficiency is the remaining avenue for improvement in the trucking industry as profits and unit costs in Canada appear in line or are less than in the unregulated U.S. An example of the potential improvement is found by comparing the performance of a selected group of U.S truckload carriers, the Advanced Truckload Firm (ATLF) Ihese carriers were so name by the Association of American Railroads who saw such carriers as a substantial new threat to their business.

Ihe typical ATLF is characterized by extremely low costs and high growth. All IL carriers have reduced their costs under deregulation (though some of the reasons include lower fuel prices which really have little to do with the regulation issue). In 1983, the cost per loaded mile for the typical IL carrier was $.75 to $.81 per loaded kilometer. By mid-1986, the long run marginal cost was reduced to $.64. However the equivalent cost for the ATLF was only $.56 per loaded kilometer or 87 percent of the average TL carrier.

Where do such efficiencies come from. Examination of the cost components and vehicle utilization of the typical TL carrier and the AILF shows that:

1. the AILF travels fewer empty miles. Ihe typical IL carrier

travels empty over 11 percent of its vehicle miles while the AILF travels empty only 6 percent of the time.

2. the ATLF incurs lower costs per total mile in all categories of cost except overhead.

A number of strategies explain these differences. Examination of the ATLF's operating and marketing strategies indicate that they carefully select their markets and tailor service to satisfy that market. As with other TL carriers, the ATLF initially found growth by competing for TL traffic formerly transported by LTL carriers as well as for the traditional specialized commodity movement. They have, however, depended on the following markets for continued growth:

TL business previously handled by less efficient private or contract carriers,

LTL business that can be consolidated at regional centres into TL lots or added to already partially filled trailers.

Selectivity is the key to providing a premium service at a cheap price. The ATLFs actively solicit freight only where and when it contributes to building dense and balanced traffic flow movement They utilize modern marketing techniques such as telemarketing They price flexibly to encourage vehicle utilization. They invest heavily in market research and communications to identify, solicit and retain desirable customers

A number of operational techniques are used to achieve high productivity of the ATLFs. They include:

24 hour, 7 days a week dispatching,

investing and providing extra trailers which make loading and unloading more convenient for the shippers but more importantly it avoids delays associated with waiting for trailers,

making multiple pickups and deliveries to improve utilization,

owning equipment rather than relying on owner operators, this provides more equipment control, better maintenance, and allows discounts on purchase of equipment,

providing big trailers (even if capacity is not always used) in order to facilitate loading or simply to have the capacity when needed,

use relays and local P&D operations so that line haul utilization can be maximized.

employ highly sophisticated computer and communications systems to make optimal dispatching decisions as well as implement them,

instead of relying on brokers for load information, these carriers frequently have their own marketing networks set up to know what traffic is available well before the fronthaul is moved,

a terminal network to provide local P&D, maintenance, opportunities for bulk fuel purchases, reduced away from home driving, and faster response to dispatch,

tractor replacement at short intervals. By replacing equipment every two or three years, no major overhauls are needed. Thus maintenance can be decentralized at terminals since all that is needed is Preventive Maintenance and minor adjustments.

Most of the ATLFs seek growth and size for the economies of scale that are available in equipment purchases and fuel purchases. Some of these carriers are known to receive volume discounts of 25 percent or more on equipment purchases.

Many of the ATLFs employ company, non union drivers. There is a larger pool of well qualified drivers than well qualified owner operators since the former do not need to own their equipment. Company drivers are flexible about the equipment that is used and by being non union, labor costs are kept low. They also appear to be more controllable in terms of driving practices.

Finally there is decentralized management and responsibility. ATLFs do not typically use a single dispatcher. Instead, there are several dispatchers, each responsible for a set of drivers and block of equipment. Each manager is responsible for efficient utilization of his assets and sometimes bonuses are related to that achievement.

The sum result of these strategies is lower costs in almost every category of cost. Equipment costs are lower because these business strategies frequently result in annual vehicle utilization of 140,000 miles with lower empty/loaded ratios than the average carrier plus bulk purchasing of the equipment. Labor costs are lower because of the low empty/loaded mile ratio and the non union wages paid. Fuel costs are lower because fuel is purchased in bulk and available at each strategically located terminal. The only cost that is higher for the ATLF is overhead cost which is incurred in order to achieve many of the efficiencies achieved through better planning, dispatching, and marketing.

In conclusion, if Canadian trucking rates exceed those of U.S. motor carriers, the source of the higher rates is their inability to maximize operating efficiency in the form of improved equipment and

labor utilization rather than high unit costs or excess profits. This would be true for both LTL and TL carriers. But would it be possible for Canadian carriers to achieve such efficiencies without deregulation? For example, there is nothing inherent about many of the techniques used by ATLFs to achieve their cost efficiencies which Canadian carriers cannot use as well. We cannot answer this question fully at this point but theory posits that regulatory controls stifle innovation by creating obstacles to change or by reducing the incentive to change. A case in point is the crucial ability of ATLFs to select markets. Even if a carrier under the current regulatory scheme can eventually obtain authority, it must still go through administrative procedures, incur costs and lose opportunities from regulatory lag. With relaxation of entry control such as occurred in the U.S., the carrier, existing or new, has the freedom to enter new markets and exit old markets, and the opportunity to meet new demands for service which may change rapidly. These freedoms are of course threats to already existing competitors.

Thus the major benefit of Bill C-19 when the fitness test is implemented or if the provincial regulators interpret the public interest to allow eased entry, is to intensify the competitive environment and give all carriers the opportunity to rationalize operations and meet market demands for new and innovative services. Canadian carriers may not be earning excessive profits but they may be operating inefficiently and the spur to greater efficiency is the deregulation embodied in Bill C-19.

IV CONCLUSION

Regulatory reform of trucking as embodied in the Bill C-19, the Motor Vehicle Transport Act, 1987, will not bring about massive changes in the structure and performance of the Canadian trucking industry as had been observed in the United States. The legislation only applies to extraprovincial trucking leaving the large intraprovincial trucking sector under the jurisdiction of the provinces. More importantly, it left the definition and interpretation of public interest in the hands of the provinces for at least five years. Thus, any province which wants to continue a policy of strict entry control is free to do so, at least until 1993. The use of reverse onus procedures in new application proceedings will have very little impact if the definition of public interest clearly embodies the traditional concept of public necessity.

This is not to say that Canadian shippers will pay a substantial cost of regulation because regulatory control was less important than market forces in many market segments. Canadian regulation had never been as stringent or effective as its counterpart in the U.S. and thus the costs of regulation had never been as high. Extraprovincial rate regulation and tariff bureaus played a small role in competitive conduct. Intermodal rail and illegal truck competition added competitive pressures and large U.S. carriers were able to gain entry

by purchasing relatively insignificant competitors which had existing operating licenses These factors all suggest that monopolistic inefficiencies such as the earning of excess profits and the payment of monopoly rents to labour are largely non-existent Some observers would be quick to point out that this was never really expected anyway That less regulation is better for society has often been described as an act of faith Commenting on the white paper, Freedom to Move, that justified the overall transportation reform, Professor F.W. Anderson said the premise "...that competition, which is not defined, will achieve the desired goals of government...Some will hold that the truth of the central premise is self evident ." (Wilson, 1985)

However, regulation has resulted in productivity inefficiencies. A brief comparison of Canadian and U.S. carrier performance suggests that the existing economic regulations in Canada have a great influence on the operating productivity of the trucking industry. The real benefit of deregulation will be the ability of carriers to flexibly design its operating systems to meet changing market demands at least cost.

Ihe long run benefits of trucking deregulation could thus remain unachieved until 1993 when the extraprovincial markets fall under the jurisdiction of the fitness tests mandated under the new MVTA and all operating authority restrictions are eliminated. The speed at which the industry would be deregulated during this period is in the hands of the provinces Some very important provinces, such as Ontario, appear to be moving towards a less regulated environment within its jurisdiction. But free entry requires the cooperation of at least two provinces so the same obstacles that existed prior to Bill C-19 exist today.

The process of regulatory reform played a significant role in the final form of Bill C-19 and consequently, the impact it would have. The provincial-federal struggle for authority, tempered by the traditional respect for the right of each province to control its destiny resulted in reform that left the control of extraprovincial trucking policy largely in the hands of the provinces for at least the next five years. On the other hand, the forces that led to the change were largely out of the control of the provinces. Changes in the U S ignited market forces that were recognized as the catalyst for change in Canada.

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