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Chair

Mr. Mervin Tweed

Standing Committee on Transport, Infrastructure and Communities

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● (0905)

[*English*]

The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)): Good morning, everyone, and welcome to meeting number three of the Standing Committee on Transport, Infrastructure and Communities. Pursuant to the order of reference of Monday, October 29, 2007, we are examining Bill C-8, an Act to amend the Canada Transportation Act (railway transportation).

Joining us today, we have our guests: from the Railway Association of Canada, Mr. Cliff Mackay; from Canadian Pacific Railway, Mr. Marc Shannon; from Canadian National Railway, Mr. Jean Patenaude; and from Ottawa Central Railway, Mr. James Allen.

It's my understanding that Mr. Mackay will be presenting. We have 10 minutes. I'm not opposed to your sharing the 10 minutes, but then we'll go to a question and answer session from the committee.

Mr. Mackay.

Mr. Cliff Mackay (President and Chief Executive Officer, Railway Association of Canada): Thank you, Mr. Chairman.

I intend to speak for most of the time, and then I'm going to ask my colleague Mr. Patenaude to say a few words as well.

The Railway Association of Canada, as many of you know, represents some 60 railways across the country, which number represents virtually the whole railway community in Canada: the large class 1 freights, the short lines, regional railways, intercity passenger and commuter railways, as well as a number of tourist operators. I'm very pleased on their behalf to be here today to speak on Bill C-8.

Just to give some background, the state of Canada's transportation system is far different today from what it was 10, 15, or 20 years ago. The current reality of Canada's transportation infrastructure is that there is no longer any excess capacity in the system. Our transportation system is coping with current demand; however, it's widely recognized that our current system will not be adequate to facilitate the projected growth in traffic for the future. This is particularly true with intermodal containers moving through our west coast ports as a result of the growth in the Asian market.

The federal government has recognized the overall transportation challenge associated with this increased trade and has implemented the Asia-Pacific gateway and corridor and the national policy framework for strategic gateways, and it has recently announced both an Ontario-Quebec continental gateway and corridor and the Atlantic gateway. All of these initiatives are being funded under the Build Canada fund.

For its part, Canada's class 1 freight railways have estimated that they need to invest at least $2 billion in infrastructure and rolling stock in the next decade or two just to accommodate the west coast growth. As such, it's imperative that railways be provided with regulatory certainty as well as the ability to attract the investments necessary to match the level of infrastructure necessary to allow for the growth in our economy.

The days of relying on excess capacity to meet growing traffic are clearly over. The bottom line is that putting in place regulations that would create greater regulatory uncertainty simply will not help us to meet the challenges of the future.

Let me speak just briefly, then, Mr. Chairman, about deregulation. Deregulation has proved to be a resounding success. It started with legislated reform in 1987, which allowed railways and customers to make separate commercial deals, and it developed further from that point with the amendments to the Transportation Act in 1996. If you measure what's happened as a result of all of this, as measured by revenue per tonne-kilometre, average freight rates in Canada declined 31% in real terms from 1988 to 2006. This has allowed shippers not only to move more goods but to move them at lower cost.

I should say that since deregulation, particularly since the mid-1990s, railways have spent more than $15 billion to improve their systems. This was double the amount of investment that took place during the same period of time under the regulatory regimes of the 1970s and early 1980s. Over the coming year alone, railways will be investing more than $2.5 billion in their infrastructure, which represents something in the order of 20% of our total revenues.

Railways, Mr. Chairman, face stiff competition, not only from other modes of transport, such as truck, but also from other railways. This fact was recognized recently by the OECD in a report. They say the clearest example of competition between integrated railways occurs in Canada, where two largely overlapping networks are capable of providing a wide range of substitute services.

Railways can lose business to competitors, and they do lose business to competitors. We need to continually strive to improve our services to our customers.

One example of some of the new things we're doing is that recently the class 1 railways have developed, in collaboration with shippers, a process called commercial dispute resolution—CDR, in short. CDR is a commercial option for shippers to address and resolve issues concerning rail freight rates and service and ancillary charges without having to go to the much more cumbersome and sometimes costly processes that are provided by government through the CTA.

Unfortunately, the members of the shippers council have not yet formalized the CDR process. Our understanding is that they are seeking to expand this process to the U.S. jurisdiction.

Our view at the moment is that clearly the CDR was developed to operate in Canada in the context of the Canadian regulatory environment, and the U.S. environment is very different. We hope that in the near term the shippers will reconsider and come back to the table. We think this is an initiative that is very good for them as well as for us.

● (0910)

Let me now turn and speak very briefly about Bill C-8 itself. The RAC understands and appreciates that the federal government undertook significant efforts through consultation with shippers and railways to propose a legislative framework that balances the interests of both parties. Bill C-8 is the outcome of this effort. However, notwithstanding all this effort, the RAC continues to believe that Bill C-8 is not necessary and we do not support the bill going forward.

Having said that, we understand there are a number of other parties who very much wish the bill to go forward, and in that context we would ask the committee to address our concerns in their deliberations about the current legislation.

Contained within our written submission, which is somewhat longer than my comments this morning, we'd like to propose changes in three sections—sections 27, 120, and 169—of the Canada Transportation Act. As such, we respectfully would submit the following for your consideration when you review the bill in detail.

Clause 1 of Bill C-8 proposes to repeal subsection 27(2) of the Canada Transportation Act, which requires the agency to satisfy itself that a shipper would suffer substantial commercial harm prior to granting a remedy or recourse. This provision is consistent with commercial principles enshrined in the various provisions of the act and essentially directs the administrative tribunal charged with the administration of the act to look at the commercial realities before imposing a regulated measure. Over the years, the provision has not prevented the shippers from obtaining redress when required, and it has acted as a reminder to all the parties and to the regulator itself that regulation is not to replace commercial relations. As such, the RAC recommends that subsection 27(2) be retained in the act.

The second point has to do with clause 3. Bill C-8 proposes to introduce an additional recourse to the agency for shippers. The intention is to provide a recourse with respect to charges established by railways for incidental or ancillary charges for services such as transportation services, things such as demurrage, car storage, and car switching services. These are services that are not associated with the core activity of actually moving the cargo. The proposed wording for this recourse in Bill C-8 is vague, in our view, and could be interpreted as applying to both incidental charges and transportation rates. The RAC believes that clarification should be added to ensure that it deals only with charges associated with the provision of incidental services.

I should say, Mr. Chairman, it's our understanding that there has been consultation with the government and with shippers, and I think there is general agreement that some clarification of this part of the act is necessary.

The third and last point, Mr. Chairman, has to do with clause 7. Here, Bill C-8 proposes to extend the final-offer arbitration recourse process to groups of shippers. First, the RAC believes that group FOA is simply not necessary. We think the existing system works. Second, the RAC believes that if the committee were to decide to proceed with group FOA, there is clearly a requirement for a certification process that should apply equally to all who choose to participate in this process. The legislation at the moment does not clarify that matter.

In conclusion, Mr. Chairman, as I said at the beginning, the days of existing capacity being available to meet the needs of Canada's rail system are clearly over. We no longer have overbuilt railways. As an industry, we are facing this new reality by investing heavily in new infrastructure and rolling stock to meet future demand. We need a stable and predictable regulatory environment that will ensure long-term financial sustainability. It's recommended that the proposed changes in Bill C-8 be implemented by the committee in order to better ensure a favourable climate for investment in the future.

Thank you, Mr. Chairman. I now ask for Mr. Patenaude to say a few words.

● (0915)

The Chair: A few minutes.

Mr. Jean Patenaude (Assistant General Counsel, Canadian National Railway Company): Thank you very much, Mr. Chairman.

CN certainly appreciates the opportunity to appear before you today on Bill C-8. I'd just like to address something that Minister Cannon raised when he was here, and Mr. Mackay alluded to, and that's the commercial dispute resolution process. As the minister mentioned, in the summer of 2006 he basically challenged the railways to find a commercial solution to concerns that had been expressed by some of the shippers. We strongly agreed that this was the appropriate way to proceed, and as a result, both CN and CP worked very hard to develop the commercial dispute resolution process—the CDR, as I'll refer to it—as we believed that it addressed the needs of both the shippers and the railways.

The CDR represented a significant number of compromises by the railways, but we were quite willing to make those compromises in order to attain the regulatory stability that is essential in order for the railways to continue to reinvest large amounts of capital into the railway system. We were also anxious to find a less confrontational way to settle disputes with our customers. The CDR was intended to deal with disputes related to level of service, transportation rates, and the application of optional services fees.

What we proposed was a two-step process specifically to address the concerns that had been expressed by the shippers. First, the shippers had said that the railways did not listen, or that it was hard for the shippers to find someone in authority to speak with them when there were issues. We agreed, at the request of the shippers, that we would submit any dispute that they were raising to compulsory mediation. This would ensure that there would be someone with authority who would be listening to the shippers to try to find a solution.

In addition, if the mediation did not solve the problem, we proposed that in addition to existing statutory remedies the shippers would also have the option of going to binding commercial arbitration. The shippers had mentioned that they wanted to find commercial solutions to problems that are really of a commercial nature. So we proposed binding commercial arbitration, a system that basically works in most of the other areas of business in this country. We want to make it clear that we were not asking them to renounce or to give up any of their statutory remedies. We presented this proposal to a number of shippers and their representatives. Many of our customers were quite interested in the proposal.

Unfortunately, some of the shippers, through their associations, insisted, as Mr. Mackay said, that the CDR apply to U.S. as well as Canadian movements, and this was something we could not agree to; therefore, the discussions were not successful. However, we still have maintained the CDR in a contract form. We've put it up on our website and it is available for all customers who wish to take advantage of it. Many of our customers told us they like the proposal, but they saw no need to sign on at this time as they had no problems with our services. They indicated that if in the future problems arose, they would be interested in using the CDR.

I suppose it's not surprising that shipper associations did not rush to accept the CDR. They knew that if the process failed, the minister would introduce legislation, which of course is exactly what happened with Bill C-8. We have a number of specific concerns with the bill, as Mr. Mackay has referred to, but in the end our biggest concern is the continuing move toward re-regulation of the rail sector. Mr. Mackay referred to the deregulation of rail in Canada and how it's been a resounding success. It has triggered innovation and improved efficiency in the rail system and the rail industry to the benefit of all, including shippers. It has allowed the railways to improve service and asset utilization, and by any measurement, the railway service offering is dramatically better than it was ten years ago. Transit times are shorter and more reliable, car velocity is higher in real terms, and rates have decreased.

These improvements have led to a financial performance that has enabled the railways to make further capital investment in the rail system, and Mr. Mackay has referred to that. But in order to invest, there is a need for stability, and we need a regulatory regime that allows us to continue doing the things necessary to make our railway more efficient. We are concerned that this legislation is likely a step backwards.

The provisions of the FOA group create another adversarial process. To us it really is building a ring for us to fight with the shippers, whereas there should be a better process, such as the mediation and arbitration process. A very important thing is that unlike class action proceedings in law, there is no requirement for the group of shippers to show that they are in fact a true group, and in fact there's also no need in the current legislation that the decision apply equally to all of the group members.

● (0920)

We know that shippers do not like paying optional charges. They are in place to drive efficiency and discipline in the system. The railways cannot afford to have shippers use the yards and the equipment as warehouse space. Many shippers with private car fleets keep them parked in the railway's yards because they lack sufficient storage space of their own. All these things create congestion in the yards and affect the railway's efficiencies. Yards are there to sort cars, and congestion is expensive to CN, to the system, and ultimately to the customer.

We don't question the right of shippers to final-offer arbitration. This is a remedy they have now. We understand that there is a need for a remedy, but we do have many concerns with the FOA process as it currently exists.

The Chair: I think I'll stop you there, and perhaps the rest can come out through questioning of the committee members, if that's agreeable.

Mr. Jean Patenaude: I had essentially finished.

Thank you very much.

The Chair: Thank you.

We'll go to Mr. Volpe.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Thank you, Mr. Chair, and thank you, gentlemen, for appearing before us this morning.

I know this is a touchy situation for a lot of people, especially for you, because you've been painted by everybody as the group that needs to be looked at rather warily. So why don't I just defer to type and say that that's exactly where I come from.

Mr. Patenaude, just before we go into the substance of C-8, can you just very briefly tell me why it is that CN is the subject of a headline every second day with respect to safety in its system?

Mr. Jean Patenaude: Well, I guess any incident on the railway becomes first-page coverage, and—

Hon. Joseph Volpe: It's not CP; it's CN.

Mr. Jean Patenaude: Yes, that's true. But the minister asked for the Railway Safety Act to be reviewed, and there was a committee established. We participated extensively in that committee. I think—

Hon. Joseph Volpe: You forbade him from publishing the results.

Mr. Jean Patenaude: I don't think the committee has reported yet.

Hon. Joseph Volpe: But you've already had a couple of reviews. They can't take two years to get an answer to a question that started two and a half years ago.

Mr. Jean Patenaude: I understand now which issue you're referring to. Basically, CN did not ask them not to publish the results. We said that if they published the results, we wanted them to also publish CN's answer to those results. That was the only request we made to the minister.

Hon. Joseph Volpe: Right. You can see from that particular question and answer why some of us are troubled by some of the positions that are taken.

I want to be as balanced and fair as the next person. I've gone through the Government of Alberta position, and they essentially take the side of the shippers. In fact, on virtually every single issue they say you don't have the position to stand on and that as a result of —as you call it—deregulation, the pendulum has swung too far towards you, and it's time to go back in the other direction in order to achieve a balance.

As I read your submission, you're essentially focusing on two things. One is the removal of proof of commercial harm. The Government of Alberta's position is that it's not really removed at all. Why do they disagree with you? I mean, they consulted with you. You made submissions to them in both Calgary and Edmonton. Is there a philosophical difference here, or has somebody got hold of the wrong facts and is making recommendations on the basis of pure self-interest and nothing else? By the way, I don't know what the self-interest of Alberta is, other than the fact that they say the transportation industry, and especially the railways, are integral to the success of the Alberta economy. That sounds reasonable to me.

● (0925)

Mr. Cliff Mackay: My understanding, Mr. Volpe, is that the Alberta position is that there are other provisions that would look after commercial harm. Our view is that the provision has been around for many years. It's not unusual commercial practice, when you get into disputes, to have a two-step process. Step one, you determine the validity of the dispute, and then step two, you try to determine what is reasonable recourse. Part of that recourse, of course, depends on what commercial harm was inflicted as a result of somebody not doing what they were supposed to do. Our view is pretty simple. That's pretty standard practice. It's worked for many years in the CTA, and I guess we look at it logically from the other way around. We're not hearing good and valid arguments to say why we should deviate from standard commercial practice. The only argument we've heard to date is that they're going to do it, but they're going to do it using some other provision of the legislation. There still will be some determination of commercial harm. We're just sitting here asking, why fix it if it isn't broken? That's really where we're coming from.

Hon. Joseph Volpe: But everybody else is coming from an entirely different position. There are no exceptions to the words “everybody else”. The only ones who take your position are, really, the railways. Governments, shippers, farmers, and others have all said to us privately and publicly, and in writing, that your position is an untenable one.

Mr. Cliff Mackay: Obviously, we disagree. I guess I would simply offer the observation that most of the representations that have been made with regard to this issue are either from shippers directly or from those who see a common interest with shippers, for whatever reason. If there is a dilution of the need to determine commercial harm, that would obviously skew the process, to some degree, to the interest of shippers. I mean, that seems fairly obviously to me, Mr. Volpe.

Hon. Joseph Volpe: A lot of things seem to be fairly obvious until I start talking to people on an individual basis. Then they put forward a position that has a certain amount of coherence and would appear to be unassailable, from their perspective, and then along came Bill C-58.

I asked the minister last week, because he used some rather specific language.... When a minister says it's time for us to reintroduce balance into the system, and understanding a little bit of where the government would be coming from—and I don't mean to be partisan here, from my colleagues opposite, but this government is seen to be generally, philosophically speaking, much more favourable to a deregulated system than not—for a minister of a government from that persuasion to say that the balance has to be brought back toward more regulation, would suggest, even to the most cynical person, that maybe some of the issues are a little bit more egregious than people would normally give them credit for being.

Mr. Cliff Mackay: All I can say to that is that if you examine the record in terms of what's happened to actual rates in the last 10 to 15 years, what's happened to the level of service, the fluidity of the system, and the ability of the system to actually deliver on the demands, it's a pretty good news story, as I said in my opening remarks.

Having said that, I should say there are lots of people out there who feel that for one reason or another, either on the service side or on the rate side, they've got a particular story to tell. One of the things that has happened and is true is that particularly in the last 10 years there has been a massive change in the way in which rail services are managed and delivered, not only in Canada but in the whole of North America. We have moved from the days when railways did not run to precision schedules, where our capacity utilization was abysmal—if you look at our operating rates back 10 years ago, that clearly proves it—and we're now operating the system much more efficiently, much more fluidly, at much better productivity rates than ever in the past.

That has resulted in change, there's no doubt about that. Some of those changes have been positive and some of those changes have been negative, from the point of view of shippers. There are lots of shippers out there who, today, will complain to you that they don't want to bring crews in on the weekend because they have to pay them time and a half to load the railcars. But if they don't, they get charged with demurrage because they have the railcars for too many days. Well, that's part of the general change that has gone on in the whole North American industry, because every time a railcar sits stopped, that's utilization that's not happening. And if you want to have an efficient transportation system, you have to be able to address those sorts of questions.

So there's lots of pushing.... Sorry.

● (0930)

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chair.

My first question goes to you, Mr. Mackay. I am surprised. In your presentation, I sense some disappointment with the bill that has been tabled today.

But if the presentation that the Minister of Transport, Infrastructure and Communitiesmade to us last week is anything to go by, the situation that you are experiencing today has been known since 2000-2001. According to what he told us about Transport Canada, discussions on these questions have been going on since then. In 2006, he asked to hear your opinion and for you to come up with a commercial solution to these disputes. He told us that, unfortunately, the two camps had not been able to find common ground.

That concerns me greatly. Today, we have to discuss this bill. I too would have preferred you to have come to an agreement for a commercial solution. It is as clear as day that the shippers would feel that you are taking advantage of them. That is the reality. You are probably right in saying that the situation has changed and that you have practically no more capacity on the network. That puts you in a monopoly situation. From time to time, it looks like you are asking for a higher price for things than perhaps they are worth.

I have difficulty understanding why you would not have taken the hand that the minister was extending to you and come to a commercial solution.

Explain that, Mr. Mackay.

[*English*]

Mr. Cliff Mackay: You're right. We're disappointed with it as well, and we did try very hard.

My colleague, Monsieur Patenaude, referred to the CDR process. That was the major effort that was made to try to address the request of the minister to find a commercially based approach to dealing with some of these issues as opposed to looking at a legislative solution. We believe we came very close. Unfortunately, toward the latter parts of those discussions, some of the shippers took a very, very firm position that notwithstanding that they had generally a fairly comfortable feeling about how the whole process would work in Canada, they wanted us to make a commitment to extend exactly the same process to our operations in the U.S.

That caused a major problem for us. The U.S. regulatory environment is very different from the Canadian one. The nature of how business gets done there is quite different. It is much more confrontational; it's much more litigious than it is in Canada; and, frankly, the implications of introducing that sort of process into the U.S. business environment were very substantial, not just for CN and CP but for a whole range of other railways and other business arrangements that exist south of the border.

We didn't say that we would never do the U.S. option, but we said, look, why don't we proceed with the Canadian option now and see what we can do to sort something out further down the road on the U.S. side?

It was just too big a pill to swallow all at once without really understanding what was going on in the U.S. system, and if you follow that system at all, sir, you'll probably be aware that there are a number of disputes and issues going on in Congress and other places south of the border. There's a very difficult and complex environment in the U.S. at the moment. That was the straw that unfortunately broke the camel's back, and we were not able to get there.

But let me reiterate that, frankly, we'd go to a meeting this afternoon to restart that process. We think it's the right way to go.

Mr. Marc Shannon (Senior Counsel, Legal Services, Canadian Pacific Railway): May I just add one thing?

I think Mr. Mackay has explained this very well, and as Mr. Patenaude said, the commercial dispute resolution process that was essentially discussed and negotiated with shipper groups is still available to shippers. It is a process that both railways offer on their websites. It is in essence an offer to anybody who wishes to sign up that they can participate in the commercial dispute resolution process. As Mr. Mackay said, and let me just highlight, the reason there wasn't, at the end of the day, a consensus and final agreement on it was that the Canadian railways were not prepared to extend it to U.S. transportation.

● (0935)

[*Translation*]

Mr. Mario Laframboise: Mr. Shannon, in fact, my colleague asked the minister's representative if there have been fewer disputes between the shippers and yourselves since Bills C-58 and C-8 have come to us for consideration. We are told no, there are the same number of disputes and unresolved situations.

This means that, even with a bill, you still cannot come to a friendly understanding on independent cases. That was our question. Are there fewer disputes brought to arbitration? No. There are just as many.

The fact that a bill has been tabled does not prevent you from keeping your monopoly. It is difficult for us to believe you. You tell us that there will be a meeting this afternoon in order to settle the dispute. But it is five past noon. It is too late. We are going to pass the bill. Your monopoly and your short-term profit-driven vision is going to mean that you are going to have to live with this bill.

In the past, I have not seen you trying to come to terms with your clients in any kind of open way.

The products from our regions must be delivered. The opposite is something that we want to avoid. In the last two or three years, we have not felt the will on your part to settle differences in the quickest way. Transport Canada tells us that things remain the same, and that there has been no move forward. You have not tried to settle differences as quickly as possible. Quite the opposite, you have dug in your heels. It is difficult for us to believe you today.

[*English*]

Mr. Marc Shannon: With respect, I don't believe that is the situation, certainly with Canadian Pacific. The vast majority of dealings we have with our shippers are resolved amicably. We have really relatively few commercial complaints, and most of those we're able to resolve without going to dispute resolution.

I don't think this bill, at least as far as CP is concerned, responds to actual disputes, actual problems. It certainly responds to lobbying by certain groups, but I don't believe, first of all, that there are a large number of disputes with CP.

Perhaps I can quote an economist who I was speaking to recently. If in fact CP is a monopolist, we're an extremely ineffective monopolist because we simply do not earn monopoly profits.

The Chair: Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you, gentlemen, for appearing here today.

I'm looking at the amendments here that you're suggesting, but I do need to go back. If I go to my riding and talk...I don't have another business that is universally more despised than the railroad industry. That's just a fact. I don't think it's all railroads. CP and CN are in my neighbourhood.

If you talk to the people adjacent to your properties, if it's not the trains idling for hours where we couldn't get them to stop or move away from personal properties, it's shippers. Maybe you don't have complaints because they feel intimidated and they actually don't complain to you, but they don't want anything else done because they're scared they're not going to get their cargo moved after that. There are the derailments—a whole series of things—and it's a sad situation, quite frankly.

It could be a great Canadian conspiracy to hold the railroads in such despise.

I'll not only give you an opportunity to respond, but obviously you've seen the evidence come forward with all the groups and organizations expressing concerns and wanting a new process. We've been through several machinations of legislation. Now it's boiled down to Bill C-8.

What can you say in terms of these amendments that you're proposing right now that would be, I guess, more fair to your business?

And second, what would it do for productivity in Canada if your amendments went forth? Would it assist in better operations overall? It's obvious that you have to do some public relations in an entirely different way. If you haven't heard that enough here today, you'll hear it continually if nothing changes.

What would your arguments be back to those who would raise concerns about these amendments in the bill for your operations and how, in your opinion—I would like to hear it—it would benefit the shippers and so forth that you're serving if these amendments went forth?

● (0940)

Mr. Cliff Mackay: Let me speak to each one directly.

With regard to the commercial harm, I've already spoken to our point of view there. We just think it's good commercial practice that if you do get into a dispute and there is a need to determine what the recourse is—how do you fix it?—then obviously you need to look at what the commercial harm was. It just seems to us to be self-evident.

There is going to have to be some process that's going to have to happen anyway, so why not have it in the act and make it clear and just be done with it? That's just a matter of making sure the system works well.

With regard to the ancillary services, most people would agree there needs to be clarity between what's a service and what's a rate. In other words, what's a charge for something different and what's part of the rate? You don't want confusion there. It needs to be clear, and that's in everybody's best interest.

Mr. Brian Masse: And on that point, would you prefer that to be left to regulation or be specifically prescribed?

Mr. Cliff Mackay: We would prefer that it be dealt with here and now through an amendment with the committee. We think there's a fairly strong consensus on that issue. It's the kind of direction that really is best coming from the legislators, as opposed to leaving it to a regulatory process.

The third item I mentioned had to do with group FOA. And again, this is a matter not so much of a major impact on the productivity of the system, but it's just basically making sure that if you're going to have a group FOA process, then for heaven's sake, let's make sure it works well.

Our view, when we looked at the legislation, was that it doesn't define what the basic criteria are for who should be a group. That's why we're suggesting that this question that the group should be equal in terms of their interests is good direction for the regulators and for the people who are going to make the detailed rules. That's really what we're suggesting.

As I say, our broad concern with the legislation—and we know there is obviously a dispute with this position—is that we think the current system doesn't work badly. We believe we're continually improving our service. And with all due respect to your comments, I hear them too.

Having said that, the bigger public policy issue for all of us is ensuring that we have the right kind of investment climate going forward, that we can all make the investments necessary to make sure we stay ahead of the curve when it comes to the demand, because it's growing and there is no excess capacity out there any more. We are just a little concerned that if you move the pendulum back the other way and you start creating uncertainty as to what the rates will be or how the system will work, you're going to impact the investment climate, and that's our broader issue.

Mr. Brian Masse: I'm glad you mentioned excess capacity, because one of the more intriguing things that's been brought up here today is that right now you're saying redundancy in the identification system isn't necessary. I would argue that for any transportation system—we've seen it at the Windsor-Detroit border where, on the surface, we don't have that redundancy—it makes not just passengers but also freight and so forth very vulnerable.

The minister is going to launch a study in 30 days. What are your suggestions, in terms of the study? I would like to hear from your organizations, especially in terms of what should be done about excess capacity.

What really concerns me is that if we don't have the capacity, then deregulation probably has failed, in a sense, because there hasn't been proper investment in the infrastructure to make sure we're not dependent upon a few locations and that once again we're not ending up with a breakage in the system.

Mr. Cliff Mackay: Let me first speak to your comment on deregulation. If we had not had deregulation, we would be in a major crisis today. Since deregulation, we have invested more than twice as much as we ever invested under regulation.

Under the regulatory regime, it just didn't make any business sense to invest, because you couldn't get a reasonable return on the capital from the investment. So one of the major successes of deregulation has been that it's opened up the investment climate, and it's resulted in huge investments in the last 10 years particularly. We're investing at levels that were unheard of back in the time of the regulated railway business.

Just coming around to your question, capacity is a major ongoing issue for us. If you look across the system, there are two places where we still have some room to play. There is the Maritimes, on both the port side and the rail side. We're not bumping up against the capacity numbers yet, thank heaven. The opening of Prince Rupert on the west coast has allowed for some capacity growth above and beyond what we're able to do.

Again, capacity is not simply a railway issue; capacity is a system issue. The ports have to be right. The terminal operators have to be right. The railways have to be right. The inland terminals have to be right. The trucking industry has to be right in terms of all the things they do. The border has to work. All of those things have to happen. If any one of those things doesn't happen, we are starting to get into problems.

The great benefits of the productivity improvements that you've seen in the last 10 years have been reductions in rates and, frankly, a better product for the shipper compared to what they used to get. Having said that, it also means that we're having to operate the system much closer to the margin in order to achieve the returns on investment that are necessary for us to attract the capital out of the marketplace. So that's a real issue, and it's an ongoing issue. There's no doubt about it.

● (0945)

Mr. Brian Masse: I just want to make this clear, though. You're saying there's no more excess capacity, but you're saying most of the problem with that is not the volume on the lines itself but the mechanisms—be they the ports, the terminals, and so forth—at the end.

Mr. Cliff Mackay: It very much depends on where you look in the system. If you look out on the west coast, just to take that as one example, some of the big issues are the interfaces with the various players—port authorities, marine company shippers, terminals, us, truckers—and making all that work efficiently.

We've made major improvements there. One of the largest and most important things that happened out there was the co-production agreement between CN and CP, under which we're now moving much more efficiently by sharing lines than we were ever able to do back in the old days when we were operating as separate entities out in that area. That's one example.

Another one from your area, which I know you're very familiar with, is making the border work, and that's a big issue. For us, thank heaven, the border is working reasonably well for railways. We move over 100 miles of trains a day across the border.

Mr. Brian Masse: Lastly, very quickly, do rail separation grades have a big benefit?

Mr. Cliff Mackay: Absolutely. If we can solve some of those problems, there's also a huge benefit from the point of view of community relations.

The Chair: Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair and gentlemen.

This legislation doesn't come as a surprise to you. This is about the third or fourth version of this bill that's been floated. It just happens that I think we're at a point now where we're almost ready to adopt this legislation.

I bring a west coast perspective to this, as does Mr. Bell. Mr. Bell, of course, is from north Vancouver, which does have a very busy waterfront.

I'm a native of Vancouver. I now live in Abbotsford, but I also live in a community that is the number one agricultural community in B. C. It has the largest farm gate revenues in the province. Again, it's critically dependent on rail service.

I am assuming most of you have had a chance to review the report that was prepared by Seaport Consultants. It was commissioned by the B.C. Wharf Operators' Association and a number of other organizations. It's the 2005 *Study of Rail Service and Capacity Issues in the Lower Mainland*.

Mr. Cliff Mackay: I may have seen it, but I must tell you I don't recall it right off the top of my head.

Mr. Ed Fast: We've had a chance to review it. I'd like to read into the record some of the conclusions that report reached.

First of all, “Rail service at the level of the terminal operator in the Vancouver area is quite poor”. I can't imagine any other term other than perhaps “abysmal” that would describe that in more graphic terms.

“There is strong evidence...that the railroad level of service to terminal operators has deteriorated in recent years”. It goes on to conclude, “The Canada Transportation Act has too weak a definition of level of service”. It goes on to say, “The terminal operators have stated that they want amendments to the Act to provide legislative certainty that will allow them to proceed with their business and that of Canada under viable relationships with the railroad”.

That's sort of the context in which this played out.

Then I want to move on to an issue that I believe may have been mischaracterized here. First of all, there's a reference in these conclusions to the fact that a number of the terminal operators tried to quantify their losses. The small number that were able to do so quantified their annual losses at $20 million.

They went on to conclude that the railroads have imposed these costs on the terminal operators as part of a drive to improve railroad asset utilization and financial performance—read profits. Quite frankly, I'm a big fan of private business making profits, even when they're big profits. But there's also a social responsibility to reinvest, which I'm sure you've done. In fact, Mr. Mackay referred to the fact that there has been a doubling of investment since deregulation.

They finally go on to say there's a strong market position—I think they're saying there's a virtual monopoly in many areas of the country—and an unbalanced commercial relationship between the railroads and other parties in the transport chain. Of course, that's where final-offer arbitration comes in. It's something the shippers really want badly. It's intended to level the playing field. When an individual shipper has a dispute with a company like CN that made $2.2 billion in 2006 alone, that's not a level playing field. To revert to normal commercial dispute resolution mechanisms to solve those problems is unrealistic.

To the representatives of CN and CP, did either one of your companies ever propose final-offer arbitration in your discussions with the shippers? Was FOA ever one of the suggestions you made as being acceptable to you?

● (0950)

Mr. Marc Shannon: Final-offer arbitration has been in existence for many years, and we've gone through some final-offer arbitration cases. Generally, rather than proposing final-offer arbitration, which we see as not being a terribly satisfactory approach to things, our approach has been to suggest mediation with normal commercial arbitration afterwards, if necessary.

Mr. Ed Fast: Of course, mediation doesn't have any certainty to it.

Mr. Marc Shannon: It doesn't.

Mr. Ed Fast: Commercial arbitration may, but again we're talking about quite an unbalanced playing field, because you have the financial resources of these huge railways going up against the small shippers.

Mr. Marc Shannon: Some of the FOAs and disputes that we've been involved in have been with shippers that absolutely dwarfed Canadian Pacific in overall size, assets, annual income, and profits.

Mr. Ed Fast: Some of them are very small shippers, would you agree? You have the other end of the spectrum as well.

Mr. Cliff Mackay: Yes. The question of balance when it comes to small shippers is a legitimate public policy question. We have never questioned that. But to say that some of the people we do business with are small, disadvantaged companies...we do business with some of the largest corporations in the world. Wal-Mart can look after themselves, thank you very much. So can Dow Chemical.

Mr. Ed Fast: The little guys cannot, and big complaints are coming from the little guys.

Mr. Cliff Mackay: That's why we have never said there isn't some need within the system. Our view has always been to let the commercial market world work as much as possible.

I want to briefly address the question of a monopoly.

Mr. Ed Fast: Before you go on, I want to ask Mr. Patenaude the question as well.

Mr. Cliff Mackay: Sure.

Mr. Jean Patenaude: We're in the same position, but that is why we favour mediation. Mediation is a non-confrontational approach, and we have been involved in a number of mediations. I'm very happy to say that in all those in which I've been personally involved, we've resolved the issues. In mediation we normally pattern the solution to the benefit of both parties. We both walk away from it happy.

That is why, in our approach to the shippers, we're saying let's start by talking; let's start through mediation. We know that mediation is not always successful, but let's do what other people do in the business and go to commercial arbitration. We have numerous contracts with shippers across Canada in which we have built-in commercial arbitration. That's what we do. We use those provisions. We think those provisions are better than the FOA approach where the winner takes all.

● (0955)

Mr. Ed Fast: For small shippers that don't have the financial resources available, commercial dispute resolution can be a horrifically expensive proposition for their bottom line. That's why they're unhappy with the current state of affairs.

You've had a chance for some six years to try to resolve this, and you're saying that mediation has worked for you? The results of this study and our consultations with the shipping industry indicate that mediation isn't the solution you may be suggesting it is.

The Chair: You're time is up, I'm sorry.

Is there any comment to Mr. Fast on that statement? If not, I'll go to Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): Thank you.

By nature of background, let me first of all say that I fully appreciate the role the railways play in the economy of Canada. I've said they are the economic backbone.

As you know, the gateway initiative was started by our previous Liberal government in recognizing the potential growth from the Pacific Rim, not only for opportunities for western Canada but for all of Canada, and the opportunities for the railway systems as the prime mover of goods from the ports, not only to other parts of Canada but into the United States as well.

We enjoy the advantage, for example, through the ports of Prince Rupert and Vancouver, of being anywhere from one and a half to two days closer to Shanghai, a major Asian port, by natural sea route. The only way we can maintain that advantage of earlier contact and getting those goods into central Canada or Chicago or the midwest is by having an efficient rail system that can take advantage of those one to two and a half days and deliver those goods.

Mr. Mackay, you talked about the investment the railways have made. The Government of Canada, again through the commitment of the previous government, and followed up by this government, invested federal moneys in the Port of Prince Rupert. It isn't just the railways that are making these investments. The benefit to the economy of Canada has been recognized. We're talking about container cargo being up 300% by 2020. We recognize that there has to be an improvement to the way the railways operate, both in terms of capacity and efficiency, I guess you'd say, of existing assets. There's going to have to be an investment, and the investment will pay back in profits.

My concerns are the issues my colleague, Mr. Volpe, mentioned earlier about the safety record of CN in particular, which this committee is investigating, as well as the ministers panel. There are concerns of ours relating to the efficiency and the continuity, if you want to call it that, of services. Derailments can affect the confidence in terms of overseas shippers and their ability to take advantage through our ports of that one-and-a-half-day or two-day advantage we have. If we're going to have derailments as frequently as they seem to have happened, it tends to erode some of that confidence. I just put that out there as a point.

More particularly, there are two aspects that I'm interested in.

One is the issue raised by B.C. Chamber of Commerce and the national chamber of commerce about shipments to the grain terminals. I guess it's the switching or the right-of-service access in Vancouver. I gather that's being addressed, but that has been a major concern.

The other is the whole issue.... I think I heard you suggesting that the shippers were basically the cause of the discussions of the CDR not proceeding. The minister made a reference in his presentation the other day that unfortunately the two sides were unable to reach an agreement. One of the things we heard from the shippers is that the legal cost to support a complaint under CDR is in the neighbourhood of $100,000. That's just the legal costs.

I guess the concerns I have are that we talked.... Mr. Fast made reference to the size. There has been an image of intimidation, that in a somewhat monopolistic approach, the railways, by virtue of size, have been able to be bullies, if you want to call it that, with some of these shippers. I guess that's the reason for the kinds of provisions that are being suggested in Bill C-8. It's to try to level the playing field.

You said the group FOA needs to work well, and you say it must be equal in terms of their interest for group FOA. I'm saying it also has to be fair. What we were hearing in the presentations in fact is the necessity for having the system apply to all the parties in a group FOA and apply to them once the decision is made. But it's not necessarily realistic that the problems be equal in terms of the impact initially, because it's the very nature of the service and the way railways run that it may vary. But they may have a common thread in terms of a particular concern, and by grouping together they can assist themselves financially in managing to meet the financial clout, if you want to call it that, of the railways in competing.

● (1000)

I'd appreciate your comment.

Mr. Marc Shannon: May I comment on that last point, because I do understand exactly what you're saying. I'll make two comments about it.

First of all, there is currently in legislation a provision for an expedited FOA that would be lower cost. That's in there for claims of smaller amounts, and we have done those. They have a 30-day trigger, and of necessity they require the dedication of fewer resources on both sides. That's just one general comment.

My other comment on the group FOA is that I've heard a couple of times now the comment that this shouldn't take us by surprise because it has been there for a while, and that's correct. When it was first introduced, however, it contained a provision that said that the remedy being requested by the shipper—and the shipper sets the ground rules in any FOA—should apply equally to all. So if a group of shippers get together and they decide “We have an issue, it's common to us, and we now need a remedy”, under the original drafting, that remedy as they state it had to apply equally to all of them—you know, whether it's a cents-per-tonne mile or whatever. We're saying that has now been removed, and we'd like to see clarity, the kind of clarity there had been to indicate that we wouldn't be fighting, in effect, 20 FOAs all at once, but rather one.

Mr. Don Bell: Mr. Shannon—

The Chair: I'm sorry, we're at seven minutes.

Monsieur Carrier.

[*Translation*]

Mr. Robert Carrier (Alfred-Pellan, BQ): Thank you, Mr. Chair.

Good morning, gentlemen. You know, I am sure, that our role is to try and get the economy working and to balance out the forces between the different parties. This is why we are studying this bill.

What struck me in your presentation, Mr. Mackay, was figure 1, which shows us clearly that freight rates are quite stable. There has even been a slight drop. Volume has increased slightly, as well as the workers' productivity. This is positive, but I wonder how volume has remained the same in a competitive environment in which rates have not increased. How do you explain the fact that volume has remained so stable and has not increased? Is this competition, or poorly organized rail transportation?

[*English*]

Mr. Cliff Mackay: In the early part of that chart, if you look at the piece around the 1990s as opposed to what's been going on since about 2000-01, you'll see the volumes are fairly stable, but you'll see they've started to go up in the last four or five years. In the 1990s two issues were at work.

One, the competitiveness of the trucking industry was quite robust. It was quite strong. Fuel prices were still fairly low. The congestion issues and the labour issues some of the trucking industry ran into in the last few years were not as strong, so they were taking a larger share. The other very important thing is that the border was working better for the truckers, so they were taking a larger share of the overall freight market than they are today.

What's happened essentially since 9/11 is you've had a combination of rapid increases in fuel costs, congestion issues at the border, and growing congestion issues, particularly in the heavily populated areas for trucks around Toronto and Montreal, those sorts of things, combined with some difficult and growing labour shortage problems in the trucking industry. So the overall share of freight being moved by trucks has gone down in the last few years compared to what it used to be. That's been a change.

The other big change that has gone on—and this has been particularly in the last five to six years—is that the investments I referred to have started to kick in, and in combination particularly with what's gone on on the west coast as a result of the growth of the Asian trade, that has led to that increase in volume from the latter part of the period. So you've had a combination of things.

This is an overall chart, so it doesn't look very dramatic, but it's been pretty dramatic.

● (1005)

[*Translation*]

Mr. Robert Carrier: In the same vein, I was wondering if the freight rates you indicate include ancillary charges too. Is this just the base transportation rate? The ancillary charges that you bill to shippers are a source of great friction. Are they included in the chart that you are showing us?

[*English*]

Mr. Cliff Mackay: No, this table tracks basic rates. It doesn't track rates that come and go on an ancillary basis. It's much more difficult to get that, because it varies all over the place.

[*Translation*]

Mr. Robert Carrier: So the picture could be quite different if the ancillary charges were added. That would perhaps explain why the volume is not increasing.

Mr. Jean Patenaude: Ancillary charges are not for the movement of freight, they are costs that, in many cases, the shipper need not pay but often decides to anyway. Take freight cars, for example. A shipper has 24 or 48 hours to unload a car at no charge. If he takes a week to do it because he has decided to use the car as a parking or storage facility, that is when we bill for its use. The costs are not required most of the time. If he unloaded the cars during the time when they were free, the costs...

Mr. Robert Carrier: But the shippers are telling us that ancillary charges are getting rather steep.

Mr. Jean Patenaude: No one wants to pay for parking if there is a way to avoid it.

Mr. Robert Carrier: Forgive me, we are pressed for time. We have to ask our questions quickly.

The federal government has undertaken to review the entire rail transportation system within 30 days of this bill being passed. Do you have faith in that study, that will give you the opportunity to talk once more about your problems, and those raised by the shippers, with the goal of reaching a mutually acceptable solution?

[*English*]

Mr. Cliff Mackay: We will very much participate in the rail service review the minister has said he wants to launch after the bill has been dealt with. From our point of view, we see it as an opportunity to do a number of things. First, it's an opportunity, obviously, to talk about service issues, if there are any out there, and what they are and what their nature is.

We hope it's also going to be an opportunity to sort the wheat from the chaff. One of my personal frustrations, frankly, when we get into rail service issues is it's all anecdotal. There is very little factual information out there. It's this story or that story, or somebody told me this or somebody told me that, and it's on both sides, the rail side and the shippers' side.

One of the things we would very much welcome would be a little more good analytical work on the general picture out there. We believe our services have been improving over time; others would disagree with us, but that's what we believe, and we would like the opportunity to show people what we're doing and why we're doing it. So we welcome it in that context.

● (1010)

The Chair: Mr. Watson.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair. Thank you to our witnesses for appearing today.

I have a lot of things to cover, and unfortunately I don't think I'm going to get to all of them here today. I want to get to the question of investment.

I want to be clear on this point. Will the passage of Bill C-8 in this form cause you or any of the companies you're representing, Mr. Mackay, to not make certain investments in Canada? If that's the case, which ones?

Mr. Cliff Mackay: The short answer is no, we will invest. We need to invest. It's part of our business. It's very important.

The point I'm trying to make today to the committee is to be careful how far you go down that road. Every step you take toward further re-regulation, if you want to characterize it that way, is a step closer to having negative impacts on the perception of the investor. Investors don't like regulation, generally speaking. They like to know that the company they give the money to is going to do what they need to do to get the return on investment so that they can make their money. That's the message I'm trying to leave with everybody today.

Mr. Jeff Watson: That's a little clearer. I think all that good money coming in from trade from Asia is enough to ensure that there'll be a lot of investments moving forward.

There's another impression that I think you've left here, and I want to clarify this in front of the committee today. You've almost left the impression that the removal of the commercial harm provision, which we're proposing in Bill C-8, equates to no test at all for shippers. I don't think that's a fair assessment. There still is the test remaining to prove that they actually need the relief. Is that not correct? You essentially want to require them to have two tests instead of one. Of course, there is no commercial harm test in any other economic legislation in Canada, as far as I understand it, but you would still like to require shippers to have two tests instead of one. Is that correct?

Mr. Cliff Mackay: What we're saying is that in most commercial dispute settlement processes, two things happen. The first thing that happens is to determine whether or not there's a legitimate basis for recourse or for restitution. In other words, did we break the rules? Did we do something we shouldn't have done? That's step one.

Step two is, okay, you broke the rules, what's the recourse, what's the restitution? In most circumstances, if that's happening in the commercial world, you go and look at the dollars and cents and what damages were created and you make a determination on that basis. And that's basically all we're saying.

If you're suggesting that somehow or other that will happen anyway under this process, you're probably right. But we don't understand why you would withdraw that second normal commercial test. We simply don't understand the logic of not doing that.

Mr. Jeff Watson: The Commissioner of Competition has suggested, as far back as 2001, that it was necessary to remove something like that. It is something that doesn't exist in any other economic legislation, so perhaps we view that as an unnecessary hurdle. The agency would still have to be convinced that the relief is necessary in order for it to be granted.

I want to move on to group FOA. You've suggested somehow that group FOA is adversarial, to use your term. I actually think group FOA presumes the exact opposite. If you're going to be adversarial in a group FOA, or an individual FOA, and take extreme positions opposite from each other, you stand to lose more when the arbitrator picks one solution over another. I think actually what FOA does is to force you to more common ground in the middle, so that each side is roughly pretty close. I don't see how that becomes adversarial.

You've suggested that you prefer mediation. It's still in Bill C-8. Does that mean we can expect that resolutions will happen in the mediation stage, as opposed to having to get to group FOA?

Mr. Cliff Mackay: I'll let my colleagues comment because they've had direct experience with this process.

Mr. Jean Patenaude: We wanted compulsory mediation. We wanted to force the parties into a room to talk about the issues, clarify what the issues are, understand, because sometimes with the FOA, after you've put your offer on the table, that's it, you can't change it and you're stuck with that. And if you've done that without having had the benefit of having a frank discussion with your customer, or with the customer having a frank discussion with you to see what are the limitations around what that customer is asking.... I have found mediation to be extremely useful in understanding the other side and educating each other about their concerns and our concerns.

As I said, and maybe I should touch wood, in all the mediations that I've been involved in we ended up with a good resolution and both parties left happy. But in FOA there's only one winner; the winner takes all, and to us, it's not conducive to the proper resolution of the disputes as they've been framed.

● (1015)

Mr. Jeff Watson: Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Paul Zed (Saint John, Lib.): Thank you, Mr. Chair. Colleagues, welcome.

First of all, Mr. Mackay, or “Mackaye”, as you would be called in New Brunswick—

The Chair: Maybe we should get clarification.

Mr. Paul Zed: It's not Mackie.

Mr. Cliff Mackay: I know and I come from Inverness. Somebody changed it about 200 years ago. I blame my ancestors for that.

The Chair: Okay, what is it? Mackay. Thank you.

Mr. Paul Zed: Well, in the Maritimes it's “Mackaye”, and it's really about the Maritimes and Atlantic Canada that I want to talk. I thought I would remind you that perhaps 200 years ago your family changed your name, but the roots of CN and CP are in our region.

One of the concerns I have, to be blunt, is that there is a focus, if you will, on the west and on central Canada, and the capacity issues of the region in Atlantic Canada are very much being driven by the perceived lack of competition and the lack of reinvestment, real or perceived, of both of the major railways in our region. The previous Liberal government started, as my colleague Mr. Bell mentioned, on these gateway initiatives and the current government has accepted that principle, and I think it's the right principle. The Atlantic gateway is something that is now on the horizon, and I want to give you the opportunity to assure me and the public and this committee that in all of this fervour to look at changes that are occurring, Atlantic Canada is not going to be forgotten.

No one is arguing against deregulation, but what I think I would like to hear from you, sir, and from the two companies you have as member groups, is a commitment that there will be a renewed focus on an Atlantic strategy for competition. I'm hearing from a lot of shippers that are very concerned. They too are afraid to speak out. It's like the banks. We're now at four or five banks. If one shipper doesn't go with CP, then CN is his only option, and CP is his only option to CN.

On the terminal operators in ports, I represent the city of Saint John, which is the deepest seawater port in the world, a very large port in Atlantic Canada. The national government here in Ottawa is looking at a gateway strategy that's going to reinvest. I'd like to hear from you about CN and CP's plans. I'd like to hear—not today—that you're going to look at an Atlantic strategy, a maritime strategy, and I'd also like to hear that you're interested in reinvesting in the region. Thank you.

Mr. Cliff Mackay: Let me start, and then I will ask my colleague from CN to speak, but I'm also going to ask Mr. Allen to say a few words.

One of the things we haven't talked about today is the role that short lines play in all of this, and frankly, it's a very important role, particularly in the context that you just raised, sir.

First, let me say bluntly that we are participating in the Atlantic gateway strategy. We will participate in the Atlantic gateway strategy. It is important to us, not only from the point of view of the class 1 railways, but also from the point of view of a number of short-line railways that are frankly critical in that area of the country. So I think I can say pretty emphatically, sir, that my members, the members of the RAC, do see the Maritimes and that transportation corridor as an important strategic corridor in the future.

Mr. Bell mentioned the transit times coming out of China. If you switch that and you talk about India, then you're talking about a different competitive factor going in to the east coast. There are significant time advantages to moving stuff out of India into the east coast, and I think that dynamic is going to start to play in the next few years, and it's going to be pretty important. So I think I can say broadly, absolutely, sir, that the railway industry sees Atlantic Canada as a strategic place to stay in play.

Let me turn to Jean Patenaude, and I will ask James to speak a little bit on the short-line side.

● (1020)

Mr. Jean Patenaude: For sure, we're there. We're in St. John's and we're in Halifax, and we have capacity there. Capacity is not an issue on the east coast. What we want is more business,and we are working with the ports. We are working with shippers internationally through our CN WorldWide. We have established bases around the world, and we're trying to get more capacity to be brought in through the ships to Halifax and St. John's and Montreal. We have the capacity, so we're trying to drum up the business.

The Chair: Mr. Allen.

Mr. James Allen (General Manager, Ottawa Central Railway): Thank you, Mr. Chair.

In representing the short-line industry in this great country of ours, certainly everybody in this room knows—and I've heard all your comments about Canadian National and Canadian Pacific—there are 45 short-line operators out there who, for the most part, are mom-and-pop operators—15 employees.

In my own case, I have 33 employees, and we operate 20 minutes south of Parliament Hill.

We are dependent on the health of our shippers. We are dependent on CN and CP because we can only move traffic *x* number of miles. Some short lines are 20 miles. In our case, we operate on approximately 225 miles.

In Atlantic Canada there certainly is economic activity going on. That port of Belledune could be a real winner for all of us if it ever gets developed. But in terms of the rest of the country, short lines play an integral part in moving traffic. Somewhere between 25% and 30% of all traffic handled by the class 1 railways—traffic that originates or is destined—is on a short-line railway.

But we are small. People don't think we're railways. We have the same big locomotives. We have the same tracks to maintain as the class 1 railways do, but we're mom-and-pop; we're cornerstore operators.

The Chair: Thank you.

Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chairman.

Thank you to the witnesses for coming out.

Actually, Mr. Allen, I'd like to just follow up on that, if you wouldn't mind. It's interesting that in one of the areas of my constituency right now there is a line that had been shut down. Now a short-line railway is interested in coming in and being a part of it, supported by the local county municipality because they see this as an opportunity to start to remove goods. It will likely take some trucks off the road, but obviously they want to make sure they can get their products from point A to point B so they can get on the main lines and away they go.

How does Bill C-8 specifically affect you?

Mr. James Allen: At the end of the day I guess the short answer is that whatever impacts the class 1 railways is going to have a huge impact on the short-line industry. We just don't have the resources, quite frankly, as I said, being mom-and-pop operators, to be able to do some of these kinds of things we've been talking about today. So we are very concerned about our ability to survive.

All short-line operators have lost business with companies that have closed down. Quite frankly, when that happens it becomes very difficult. If a short-line operator loses 1,500 carloads from one of his major accounts, you just don't make that up overnight. It may take you three or four years to get back to that level.

Mr. Bev Shipley: I think that's the important part because of where you take your products to hook onto. And reliability is the thing we're hearing about, the consistency of being able to have a product picked up on time when they say it is going to happen. Yet I think it was you, Mr. Mackay, who said there is actually little factual information on service, etc.

When you've known for a number of years the issues around what CN and CP have been facing, why would you not be developing a database of information along with the shippers?

● (1025)

Mr. Cliff Mackay: We have tried to do that, and we are doing that, but frankly, it wouldn't hurt to have a bit of a push from third parties. It's difficult sometimes to get shippers to cooperate in some of these things.

Mr. Bev Shipley: If I was in the business you're in, or any business, and I was seeing those sorts of issues there, I would be building a database so that you would have the information to come with us to substantiate your claims. I don't think you've done that.

I'd like to explore the following just a little more then. You said earlier that there is absolutely no capacity left. You also talked about the rail, that it's the system that takes it. What component of a no capacity...in terms of your having to invest $15 billion since deregulation? If you invested the $15 billion, yet you have no capacity...could you help me with that, please?

Mr. Cliff Mackay: The investments actually allowed us to keep up, and in some cases stay a little ahead of the curve in terms of the growth. What's gone on is that at the same time as we've been investing, the volumes have grown very substantially.

I'll give you just a couple of indications of that. Mr. Bell mentioned earlier the container traffic going through the west coast. We expect that to continue to grow at double digits for the foreseeable future—huge growth. The other one has been what's been going on particularly in the Canada-U.S. border. Our volumes continue to go up. As I said recently, we're now moving over 100 miles of trains a day.

Just to give you some sense of market share, back in the late nineties we were moving about 46%, 47% of the freight across the border, relative to trucks; we're now moving 55%, 56%. So, again, there have been shifts as a result of a whole bunch of things changing in the marketplace.

Most of what we've been doing is trying to invest to stay ahead of that curve. We need, frankly, to continue to do that. There's a lot of stuff in the pipeline that needs to be done yet.

Mr. Bev Shipley: I've heard that you aren't supportive of it particularly, and yet, on the other side, I'm feeling the sense that you know the bill will go, whether there will be...and in that 30 days I think you're looking forward to the option of having that review done.

I haven't seen, actually, anywhere where you've talked about the financial impact of Bill C-8 on you and what that actually would be, or if you've done any work on it to help us with what that impact would be.

Mr. Cliff Mackay: I can't give you any hard numbers. My colleagues may have a view specifically from a particular company's point of view, but I must tell you, we haven't tried to do a financial impact analysis of Bill C-8.

Our largest concern, as I said earlier, sir, is not so much with the specifics, although we do believe some change is necessary to the current act in front of you; it's more with the perception that may be created that we're shifting back towards regulation of prices, and that perception is something quite—

Mr. Bev Shipley: I think, too, what I—

The Chair: Thank you, Mr. Shipley.

We'll go to Mr. Maloney, who has agreed to share his time with Mr. Volpe.

Mr. John Maloney (Welland, Lib.): Thank you, Mr. Chair.

I just wanted to address the discontinuance of service on a line that could otherwise be called a short line. On grain-dependent lines there's a three-year compensation to the municipality. How is that compensation calculated? How does compensation to the municipality assist the shippers?

With those short lines that service sectors other than the grain industry, perhaps other resources, what happens in that situation? Could or should there be a right of first refusal to other short-line operators, and would other short-line operators welcome such a possibility?

Mr. Jean Patenaude: The process for line discontinuance and transfer was established in 1996, and it basically is a time-geared process where if a railway has identified lines that it thinks it wants to get rid of, it identifies those lines in a plan, it publishes the plan, and that line has to be in the plan for 12 months before it can start any process.

Then the process is you advertise that it's available for sale or transfer to whomever wants to buy it, to continue to operate it, and then if someone says they're interested, that negotiation takes place and the law says it takes place during six months' time. They negotiate the sale, and if the sale goes through, that's fine, then there's a sale. That's how Mr. Allen's railway was established, presumably.

If no one comes forward to purchase that line, because they are marginal lines for the most part, then it has to be offered to the government in a series, depending on whether the line crosses a border or a provincial border. It goes to the federal, the provincial, and the municipal governments, and now it also has to be offered to urban transit authorities, where there is an urban transit authority, because they might need it for urban transit purposes.

If there is no one who comes forward and wants to buy the line, then the line can be discontinued. If it's a line that is identified as a grain-dependent branch line, then there is $10,000 per kilometre that is being paid to the municipalities through which that line runs. I presume the intent at the outset was that whatever traffic was operating on that line—in most cases it was very little—would now be shifting to trucks, to roads, and it was to help the municipalities cope with that process.

● (1030)

Mr. John Maloney: What if it's a sector other than grain?

Mr. Jean Patenaude: No, that's specific for grain-dependent branch lines. There's no provision.

Mr. John Maloney: There's no provision.

Mr. Marc Shannon: To be clear, though, the discontinuance process is the same; it's just the $10,000 a month for three years that is different.

Mr. John Maloney: Go ahead, Mr. Volpe.

Hon. Joseph Volpe: Thank you.

Gentlemen, as I understand from your responses, you really only have two serious objections to this bill. Just so I can clarify things in my own mind, I take it that you really don't have any problems with the issue of publishing rates—that is, getting into a closer understanding of what the expected profits should be over provision of a particular service. Is that a fairly accurate understanding?

Mr. Cliff Mackay: That's correct, but let me be clear. Publishing rates that are general rates are absolutely no problem. However, we do a lot of confidential commercial contracts with large shippers, and the publishing of those details would be, of course, of great concern not only to us but to our customers.

Hon. Joseph Volpe: Am I correct in understanding that you have no objection to a review of service so that the general public, and of course your customers, can have a better understanding and a better level of expectation of the kinds of service standards that you're going to set for everybody?

Mr. Cliff Mackay: That's correct. We've said we will participate in that process.

Hon. Joseph Volpe: I know I'm not going to have enough time, so I'm going to do this in two stages.

I think everybody around the table wants to be fair to every person who appears before the committee. I've looked at your section 3 and section 7 proposals. I'm wondering, and I might go through one and then the other, if you could be a little bit more specific about exactly what you are proposing, because what you've suggested is.... It's a principle on a position.

I asked the minister last week on section 7 about an authentification and certification process. I'm wondering whether you can be more specific, because otherwise I'm not going to pay any attention to this at all. What is it you want when you say you want a certification process that the shippers have to go through? The minister says they're going to do something sectoral. What do you want?

Mr. Jean Patenaude: On the group FOA, the minister referred to it as a class action. When you go into every province, a class action has a two-step process. First of all, you have a certification of a class; you say they are a group that has the same issue and they can go as a group to the court. We're saying we should have a classification process for this group of shippers in the same manner. It works; it works in the class action recourses in the province, and we see no reason it should not work here.

As Mr. Shannon was saying, however, if for some reason someone thinks it's too cumbersome, the original bill had another clause that said the offer shall apply equally to all members of the group. That was a form of certification, if you will, and it was a very easy, very slow, and very non-invasive form that would ensure that at least you would have a homogeneous group. You would end up with one FOA for this group of shippers; you wouldn't have single issues with the 20 or 30 members of that group. That's what we're trying to clarify.

● (1035)

Hon. Joseph Volpe: Maybe I'm not making myself sufficiently clear. Do you want to put down a model that we can digest?

Mr. Cliff Mackay: We can do that if that's the committee's will. There's no problem with doing that.

Hon. Joseph Volpe: I don't think the committee is in the position to consider the general idea. You either accept what the minister has proposed through the bill—and the committee will dispose and through its disposition hand it off to the House—or you provide an alternative. I don't think committee members are in a position to examine every alternative out there for you just so you can say yes, well, they heard us. We heard you, and we're asking you what you specifically want.

Mr. Cliff Mackay: If the chairman is so disposed, we can easily provide that to his office.

The Chair: We'd appreciate it if you would, and I'll see that the committee members get it today.

Hon. Joseph Volpe: I suppose you want me to wait for another round.

The Chair: That's right, if you wouldn't mind.

Go ahead, Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair.

We have the study of rail service and capacity issues in the lower mainland, a final draft for circulation, and there is an executive summary here. Can I get unanimous consent of the committee to get it translated into French, because it's only in English, and once it is translated, to have at least the executive summary tabled with the committee?

The Chair: I see no problem with that.

Mr. Brian Jean: Excellent.

My first question deals with the ancillary charges referred to in this discussion so far. You mentioned that shippers have a choice whether or not to have those charges. I'm wondering if you would share with us what percentage of gross or general income those ancillary charges make up overall, so that we can see over the last 10 years whether or not they've grown substantially as a percentage of overall gross income.

Would you be prepared to table that?

Mr. Cliff Mackay: I don't have that with me, but I would certainly be happy to go to my colleagues and try to get that data for you.

Mr. Brian Jean: The reason I made that request is that I have had an opportunity to hear a lot of complaints—primarily about the ancillary charges, to be honest.

I would like to find out a couple of things. Let's say we have a farmer in western Canada—and this is the major complaint I've heard—who arranges for maybe six cars to come to load their product. On a Monday they have a group of individuals there ready to load the cars. Indeed, maybe they have 10 people or so, and they're all ready to go and are at the railroad waiting, and the cars don't show up. Nobody calls them; nobody tells them anything. In fact, the cars don't show up on Monday, Tuesday, and maybe even on the Thursday or Friday, or even the next week. Yet those shippers are expected to have these people on call, ready to go to load the product into the cars.

Finally, when the cars come, the shipment is late for the boats that have been waiting for the shipment, or, in essence, some other transportation mode that has been waiting. Indeed, the farmer or shipper has to go to tremendous cost; sometimes the cost, I've been told, is actually over and above any profit they would make. Indeed, it's sometimes even over and above the cost of the product itself; it would be cheaper for them to just dump it. While I know this is second-hand information, I've heard it from a lot of people in different parts of the country.

So my question to you is this. Does the railroad pay the shipper for their staff in those four or five days they're waiting and they receive no call? Does the railroad pay the shipper for any lost revenue as a result of the wait or delay and the extra charges? Does the railroad pay for the ship waiting for the product to be delivered? Does the railroad pay for any late shipments at all? Is there any performance guarantee as to when that load is supposed to come in, or are any promises made?

The reason I ask is that I used to order furniture from Montreal. I had a choice, as I could order it by truckload or railroad load. If I didn't need the shipment in a month, I would send it by railroad; if I needed the shipment in a month, I would have to bring it from Montreal to Fort McMurray and pay the much more expensive rate for trucks. The reality was that I could not get any guarantee or certainty from the railroad, even though the railroad was less expensive.

● (1040)

Mr. Cliff Mackay: I'll ask my colleagues to speak to that, because you're really asking about the terms of contracts, very specifically.

Mr. Brian Jean: I'm asking in relation to demurrage. If there is a delay caused by the railroad, do you make it up to the farmer?

Mr. Marc Shannon: Let me just say, first of all, if there is a contract and the contract contains specific terms and conditions about when traffic is to be delivered, then there may in fact be a variety of different guarantee payments. Typically, however, the way the railways operate is they don't provide service to meet a specific timeline; doing that generally would increase costs significantly.

It's true, you order a car and the car is spotted. With grain shippers, if they select one of the products under the CP MaxTrax system that includes shipping commitments and the railway does not supply the car within the specific time provided under the program, then there will be payments to shippers, yes.

Mr. Brian Jean: So, indeed, if you're a large corporation such as Wal-Mart or somebody like that with a balance of power equal to the railroad's, then you could negotiate those commitments in the contract. But I'm talking more about the little guy without the contract, who is really left with no option but to use the railroad.

Mr. Marc Shannon: I'm sorry if I wasn't clear. My last example related to grain shipments, whereas you asked about grain shippers.

Typically, very few farmers ship grain directly, so we deal with the grain shipping companies: Viterra—which used to be the Saskatchewan Wheat Pool—and Agricore United. If those companies select one of our products that does in fact contain commitments on car supply or car delivery, then, yes, there will be payments if the railway fails on those commitments.

Mr. Brian Jean: Now, are those—

Mr. Marc Shannon: That's in a tariff.

The Chair: Your time is up.

Mr. Brian Jean: Five minutes goes fast.

The Chair: We've completed our round, so I am going to open the floor for brief questions.

I have Mr. Volpe, Mr. Laframboise, Mr. Masse, and Mr. Jean. As I recognize you, I'll add you to the list.

Hon. Joseph Volpe: I just want to finish what we had started, gentlemen.

Just as an aside, Mr. Mackay, or "Mackaye", reminds me that in Chinese Mandarin or Cantonese, you see the same symbols and they are two different languages. I don't know, I'm just a poor immigrant kid. I don't understand this.

Mr. Jeff Watson: It's the little guy from Shawinigan.

Hon. Joseph Volpe: I want to go back to your observations on section 3, because the Government of Alberta submission really does say this issue about commercial harm is a non-issue. I think they even use the terms. It's some art and some science, but the agency is still obliged to consider all commercial factors and therefore the harm factor.

Is this an accurate assumption on their part, or, as Mr. Watson referred to earlier on, is this an exaggeration by the Competition Bureau that says maybe there is no need for this? You took some pains to say you don't think you should be tested twice, that one test is sufficient when you're providing relief. I'm really not clear on your position, since everybody else says the agency will determine the relief, if any, that's going to be determined, and it gives a list of factors it must consider, including the commercial impact. What's the problem?

Mr. Cliff Mackay: As I said earlier—and obviously I think we're going to end up agreeing to disagree here—from our point of view, it seems to us that if commercial harm is going to be a part of the process in the determination of the recourse, then why the heck wouldn't we just leave the clause alone? It's just that simple. We just don't follow the logic. With all due respect to the Alberta government, they look at it from the point of view that the glass is half empty as opposed to half full. I think it's just that simple. That's where we're coming from. We don't see any benefit to taking it out. That is the simple way to put this.

● (1045)

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Thank you.

I want to come back to clause 3.

Mr. Shannon, in an earlier answer, you told me that things were going well and when Transport Canada says that there many complaints, that was close to wrong.

Mr. Patenaude, your answer to one of my colleagues was that disputes with shippers were being settled and that everything was going well. If we have this bill before us, it is surely because something is not working.

You have difficulty with clause 3 because it is vague, but surely something is not right because we are expecting complaints about freight rates. You seem to agree with that. We are adding "and associated terms and conditions". You charge for things other than transportation and that causes problems. Do not come here and tell us that everything is going wonderfully in the best of all worlds. If that were the case, we would not have the bill before us.

I am really trying to help you. You tell us that clause 3 does not meet your needs because it is too vague. But it is vague because you are sending bills for charges that have nothing to do with transportation. You are adding incidental services or other terms and conditions. Of course these things bother the shippers. I would like you to tell us what kind of situations bothering the shippers you can fix.

There has to be something else. I really want to help you and get the bill clarified, but if someone has gone to the trouble of adding the words "and associated terms and conditions" to freight costs, it must be because there are things happening in real life that you are not telling us about.

Could you enlighten us about that?

Mr. Jean Patenaude: Of course, not all disputes are resolved by mediation. I wish that were the case, but clearly some remain. Many disputes are resolved by mediation or outside the recourse provided by law. These provisions are there, of course, because others are not resolved.

At the moment, there is recourse for transportation charges, and that is binding final arbitration. This is for transportation charges only, getting freight from point A to point B.

Clause 3 seeks to introduce a new recourse to the Agency for other costs: storage fees, interchange fees, demurrage, merge fees. These incidental service fees have nothing to do with transportation. In many cases, shippers do not even have to incur them. Some do, some do not. It is a bit like a menu. Shippers have said that railways often raise these fees without consulting them. The fees are not for transportation. They have said that they have not had an appropriate recourse to challenge the increases or the conditions that railways may require. The recourse is to the Agency, and deals with the ancillary costs not the transportation.

We think that the clause is drafted ambiguously. We could propose wording that would clarify it. Even the shippers will agree that the wording would not be a problem because the intention is to take ancillary charges to the Agency while fees for transportation go to arbitration.

[*English*]

The Chair: We'll go to Mr. Masse.

Mr. Marc Shannon: May I make one additional comment in response to that?

The Chair: You may, very briefly, sure.

Mr. Marc Shannon: When one looks at the legislative summary that accompanies Bill C-8, clause 3 deals with incidental or ancillary charges not directly related to the movement of traffic, such as demurrage. So really, I think all we're saying is that the intent expressed in that summary should be reflected in the clear wording of the legislation.

The Chair: Go ahead, Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

Now I want to move to a little bit of a different subject, which is transborder trade, and get your analysis of current procedures, especially the role they should take in terms of the study.

Actually, there's a fair amount of scrutiny that goes on in your operation that doesn't go on in other types of transport and trade.

I want to get from you firsthand what your experience is with the United States. What efficiencies can we create to move goods and services across the border?

Mr. Cliff Mackay: Sure. Let me start with that. Thank you very much for the question.

First, as I said earlier, the border works reasonably well for rail. That being said, there are a number of issues that we very much want to continue to pursue with our U.S. colleagues.

There are a number of specific issues on the harmonization of procedures and processes, some of them having to do with operating rules, so we can move trains more efficiently. For example, there are different rules in the U.S. than there are in Canada with respect to where you should position cars that have dangerous goods in them relative to the power unit on the train. There are these sorts of things.

We'd like to get a standardized approach to that sort of thing. It would be much more efficient at the border if we could do that. There are things like where we switch crews. We'd like to get a wider zone at the border. So there are a number of technical things in that area that would make a significant difference in terms of efficiency at the border.

Another one that, frankly, is very egregious and that we're very annoyed with, if I can put it bluntly, is that the Americans are now charging us $7.75 for an agricultural inspection fee for every car that goes across the border. Well, I'm here to tell you that we don't move a lot of tomatoes. But every car that goes across the border gets charged this fee. And we frankly feel that it's quite egregious, and we'd like to see the U.S. government address that question and change that.

Yes, there are a bunch of issues that we want to continue to address in the longer term. There are questions on the broader infrastructure, such as, in your area, the CP tunnel, and on further infrastructure improvements on the U.S. side of the border, particularly in the Detroit area. Some of those issues are also with us.

● (1050)

Mr. Brian Masse: Yes, and that's part of the Bioterrorism Act. There's a series of administrative penalties being put in place unilaterally. In fact, there's a discussion right now on another one that might be put in place.

Quickly, if I can, Mr. Chair, I would like to know if the operators are being scrutinized. During mad cow, for example, the truckers in my community had their McDonald's hamburgers confiscated crossing the border, even though it was American beef. They had sandwiches taken from them, and so forth.

Mr. Cliff Mackay: We run a very, very strict security process for our employees who are crossing borders.

Mr. Brian Masse: What about those who are...? We have, for example, some truckers who could have come from another country 20 years ago, five years ago, whatever. They're still Canadian citizens. They're fingerprinted, photographed, and so forth. Are you having the same type of problem with—

Mr. Cliff Mackay: Not to the same degree as the trucking industry, but we have for many years been very strict about our security clearance processes and that sort of thing. So in some respects, the standard was there well before the U.S. started to impose it.

Mr. Brian Masse: Thank you, Mr. Chair.

The Chair: Mr. Jean.

Mr. Brian Jean: Thank you, Mr. Chair.

Very quickly, I'm wondering, Mr. Mackay, if you would be able to table with the committee the list of your top 20 ancillary charges that have been charged by the railroads, specifically CN and CP, over the last years, along with that other request I had in relation to percentage of total income.

Mr. Cliff Mackay: Certainly, we'll follow up on that.

Mr. Brian Jean: Thank you very much.

Also, you asked the question as to why they plan on removing the substantial commercial harm test, and I have to tell you—practising law, I have seen that test before—it's very hard to meet the standard required and it's very expensive to prove the evidence itself, and I think you're aware of that. That's why I think the test has to go, quite frankly.

We have heard some evidence in relation to costs and I'm interested in finding out more. Of course, my understanding is that under the act, mediation is required before group FOA is even able to take place. I understand mediation costs somewhere over $100,000. I understand lawsuits would cost, probably, a minimum of $500,000, simply from my interest in the past—I don't know if that's the case, but I would suggest at least—and group final-offer arbitration could cost less than $10,000. Indeed, for smaller companies this is an awesome opportunity, especially because, as a group, they can pool their resources to, in essence, take on Goliath.

I'd like your comments on that.

Mr. Cliff Mackay: I'll ask my colleagues, since you're talking about legal costs and they're beyond me.

Mr. Marc Shannon: We do all sorts of mediations, most of them through the agency mediation service, which has proven to be excellent. I think our success rate is somewhere about 98% on those mediations, and both parties walk away satisfied.

Those can be done extremely cheaply, so there have been some small issues that we have done by conference call, and the whole mediation may last two to three hours and result in a resolution.

On bigger issues that demand more time, typically we go to the other party. The agency has certainly been more than willing to locate themselves where the complaining party is.

The Chair: I'll give the last comment and question to Mr. Volpe.

● (1055)

Hon. Joseph Volpe: Generally, I guess what we've been wrestling with is the question always of both rates and service. It seems to me that everything comes back to the same question. As you said earlier on, if your rates have actually dropped in real terms by 31%, this certainly would not be reflected in the responses of the shippers who think they're not getting the service they would expect.

You've indicated that you're going to work fully with that review on services. I'm wondering whether—and this is a piggyback onto Mr. Jean's question—you have any problems with listing, first of all, the ancillary services for which you will charge, and then how you come up with those costs. Is that a problem for you at all?

Mr. Cliff Mackay: No, that sort of information is generally available to the shipper community anyway.

Hon. Joseph Volpe: I'm glad you said that, because I think the impression most of us have, and I don't presume to speak for anybody else, is that there is always a surprise element when it comes to paying for those services.

Mr. Cliff Mackay: All I can say is I don't know where you get that impression. If you're a shipper and you call a railway and ask for an ancillary service, you will get told what that costs.

Hon. Joseph Volpe: But if I expect my cars on Thursday and they don't show up until the following Wednesday....

Mr. Cliff Mackay: Well, that depends on the nature of the contract you signed with the individual carrier. It's very similar to any other commercial contract. If you pay a little more, you get a different kind of service.

Hon. Joseph Volpe: I'm sure we'll be talking again.

Thank you.

The Chair: Thank you.

I would like to thank our guests today. It has certainly been informative, and I know there's been a request for some information to flow, through you, Cliff. If you would send it to me through our office, we'll get it out to the membership.

I know Mr. Jean has made a commitment to have a document translated, and then it will be sent through my office to the members.

Mr. Brian Jean: My translation would be very poor indeed.

The Chair: We'll expect it when it is translated. Other than that, thank you very much.

I do want to advise our committee that if you do have any amendments to Bill C-8 , I would ask that you get them to Mr. Doug Ward, legal counsel, as soon as possible. I'd like to say Thursday noon at the latest, and that way we can get the information back to you so we can be prepared for next Tuesday.

With that, and seeing no other questions, the meeting is adjourned.

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