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Mr. Mervin Tweed

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● (0910)

[*English*]

The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)): Good morning, everyone, and welcome to the Standing Committee on Transport, Infrastructure and Communities.

This is meeting number four, pursuant to the order of reference of Monday, October 29, 2007, on Bill C-8, an act to amend the Canada Transportation Act on railway transportation.

Joining us today, from the Coalition of Rail Shippers, is Mr. Robert Ballantyne, who is chairman of the Canadian Industrial Transportation Association; Mr. Wade Sobkowich, executive director of the Western Grain Elevator Association; and Marta Morgan, vice-president, trade and competitiveness, Forest Products Association of Canada.

We welcome you to the committee.

As in previous meetings, we'll ask you to make your presentation of ten minutes and then we'll have questions and answers from the committee members.

I would ask Mr. Ballantyne to please begin.

Mr. Robert Ballantyne (Chairman, Canadian Industrial Transportation Association, Coalition of Rail Shippers): Thank you very much, Mr. Chairman. We'll be a lot less than ten minutes with the opening remarks.

Again, we do appreciate the opportunity to appear before the standing committee to discuss Bill C-8.

The Coalition of Rail Shippers is comprised of 17 industry associations, and I would like to read who they are. They comprise the Animal Nutrition Association of Canada; the Canadian Canola Growers Association; the Canadian Dehydrators Association, those are the alfalfa producers; the Canadian Wheat Board; the Forest Products Association of Canada; the Grain Growers of Canada; Inland Terminal Association of Canada; Pulse Canada; the Canadian Chemical Producers' Association; the Canadian Fertilizer Institute; the Canadian Industrial Transportation Association; the Mining Association of Canada; the Propane Gas Association of Canada; the Western Canadian Shippers' Coalition, which also has in their membership the Alberta Forest Products Shippers Association and the Canadian Oilseed Processors Association; the Western Canadian Wheat Growers Association; and the Western Grain Elevator Association.

This coalition, as you can see, is very broad, and the member companies of the associations represented in the coalition account for at least 80% of CN and CP's revenues.

The group represents widely varying industries, as you can tell, including agriculture, primary industries, resource processors, manufacturers, and retailers from all parts of the country.

The three witnesses represent all members of the coalition and we will be able to give a variety of perspectives in answer to your questions.

I won't reintroduce my two colleagues, as you did introduce them, Mr. Chairman.

The fundamental problem with railway freight is that the market does not work in a normal competitive manner, and the bargaining power between the CN-CPR dual monopoly and rail shippers is tilted very much in favour of the railways. Bill C-8 and the announced service review begin to redress this imbalance.

This bill has come out of a long process of discussions, negotiations, and ultimately a decision by the minister and his staff to move forward.

Shippers represented by the CRS group are in many different businesses, but at the end of the process this was a package that could address everyone's most significant concerns. This bill is an excellent starting point to achieving balance between shippers and railways, and as such, the members of CRS support the passage of Bill C-8 , as written, as soon as possible.

An important part of the package is the announcement that the government will undertake an independent review of railway service within 30 days of the passage of the bill. The CRS group strongly supports this initiative that will address service problems faced by shippers in industries across the country. The amendments in Bill C-8 will facilitate a climate that will promote more normal commercial dialogue between buyers and sellers in the rail freight market.

We will not repeat the comments made in our submission to this committee. I will just finish by saying that the CRS group urges rapid passage of this important piece of legislation, as written.

We would be pleased to answer any questions the members may have.

Thank you, Mr. Chairman.

The Chair: Thank you very much for your brief and to-the-point submission.

Mr. Volpe, welcome.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Thank you very much.

Welcome, and thank you for your presentation. I'll try to be as succinct as you have been.

Is there anything at all that you don't like about this bill?

Mr. Robert Ballantyne: No. As we have said, we think this is an excellent starting point.

When one is a witness in a court one should never offer any additional information, but I'm going to do it anyway. I should say that this didn't address all of the issues that shippers raised when we were originally discussing this with Transport Canada, but we think it's a good bill and there is nothing about it that we dislike.

Hon. Joseph Volpe: The reason I asked that—I wasn't trying to be cute—was it's just that in my experience in Parliament, I don't want to say it's a unique situation but it certainly is rare for a bill to come forward that would satisfy almost completely one position that's advanced for any kind of change. I've not seen it. It has probably happened, but I haven't seen it. And I wondered, when I looked at the list of members, these are not small organizations, they're not prone to being bullied, they're quite capable of handling themselves, and yet the language that we've used and we've heard the minister use and we've even heard others use is that—not to put too fine a point on it—it would appear that the railways, the transport measures or mechanisms, are engaging in predatory practices against people who don't look like they are weak prey. Like all parliamentarians, we want to strike a balance. We want to see what's happening here.

While I already accepted that there has to be a balance, I felt I needed to at least express that view. If I had some of the farmers, the local producers, coming forward and saying that they are at the mercy of anybody who wants to take their product.... That doesn't seem to be the case, though.

● (0915)

Mr. Wade Sobkowich (Executive Director, Western Grain Elevator Association, Coalition of Rail Shippers): Could I respond to that briefly?

That is a very good question, and it is a very unique situation that we found ourselves or put ourselves in. The fact that the railways take advantage of all shippers has gotten to the point where we, as shippers in Canada, have decided to get together and try to reach consensus on what sort of most significant changes we would like to see. The reason you're seeing everybody on that list supporting this bill is because of the background work that has been done to reach consensus.

Every single shipper on that list had other things they brought to the table and other things they had to leave behind because we knew that the strength in reaching agreement would be powerful and that we could bring you a piece of legislation where there wouldn't be disputes between the shippers. It was because of the background work that was done, and the reason why it was done, again, is because things have gotten so bad out there that we felt this was our best chance to get some change.

Hon. Joseph Volpe: You appear to have succeeded in convincing both the department and the minister and, if I read the mood of the committee, the largest portion of members of the committee. It remains to be seen whether the House will feel that way, but you would appear to be—pardon the pun—on the right track.

An hon. member: Let's not switch the subject.

An hon. member: Could somebody derail this train of thought? Some things just can't be pardoned.

Voices: Oh, oh!

Hon. Joseph Volpe: As you can see, you're not the only ones who have critics.

If I could pose a different question, we had some discussions here when the railway companies came forward, and they had to do with two areas, one about the issue of demonstrating commercial harm and the other one having to do with final offer arbitration. The question I asked of the minister and of them, which I will repeat for you as well, is this: Would you be in favour of a certification process for those who would be part of a final offer process so that before it is initiated people would register to be a part of that process?

Mr. Robert Ballantyne: No, we wouldn't be in favour of that.

Hon. Joseph Volpe: Why not?

Mr. Robert Ballantyne: We don't think it's necessary.

If a group comes together for final offer arbitration, under the existing provisions of the bill, the agency will have a role in determining whether the members of that group are legitimate or not. We think the administration of that provision that will be carried out by the agency is enough of a process to ensure that the members of the group clearly have the same problem. The way that provision is written requires that the members of any such group have the same complaint. We think, why go to a bureaucratic process of registration when the agency already in place can handle that on an administrative basis?

● (0920)

Hon. Joseph Volpe: I suppose the answer to that would be an objective observer would say that in a clash of Titans somebody is asking for the government to be involved in mediating the commercial relationship, because that's the net impact of all this. If that is an underlying principle accepted by both parties or all parties in that intervention, because we have to include government in this, why would it be inconsistent to make the system much more objective by putting in an authentification or registration process so we know who the players are from the beginning?

Mr. Robert Ballantyne: I think you'll know who the players are from the beginning anyway, because the group would have to come together and file a complaint, and in the complaint that would be filed with the agency, clearly, the members of that group would be enumerated in the complaint. Also, the nature of the complaint and how it applied to all members of that group would have to be spelled out in some considerable detail.

As I say, we would see a formal registration process as an unnecessary bureaucratic approach to something where there's already an administrative approach in place that can deal with this quite satisfactorily.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you very much, Mr. Chairman.

Ladies and gentlemen, thank you for being with us today. My first question is for you, Mr. Ballantyne.

Mr. Shannon, Canadian Pacific's legal counsellor, told me, when I asked him if it was a monopoly, that there was no monopoly. He was quite offended by that.

You talked about the Canadian Pacific and Canadian National monopoly. I would like you to explain to me how it works, so that the people who will read this fully understand the monopoly the companies are operating.

[*English*]

Mr. Robert Ballantyne: Yes, I can, Mr. Laframboise.

It manifests itself in a number of ways, but I think the simplest way to start describing it is to say there are certain parts of the country where there is only one railway option, and a couple of places come to mind. In the Atlantic provinces, for example, CP has largely withdrawn from anything east of Montreal, so from Montreal through to the port of Halifax, and in New Brunswick and so on, the only viable rail option is Canadian National. The same is true in northern British Columbia since CN bought the British Columbia Railway. There are other places—southwestern British Columbia, the coal areas, where Canadian Pacific is the only game in town.

The reason we've used this term “dual monopoly”, as opposed to “duopoly”, is that there are places where there is no competition between the two companies. And some of the other practices they follow are ones that one would expect to see from a monopoly supplier, in terms of a certain arbitrary approach to the kind of service they'll offer.

An anecdotal situation: One of the companies in our membership, the Canadian Industrial Transportation Association, was receiving seven switches a week, one a day, at their plant, and this was in Montreal. The railway involved arbitrarily said, I think with a day's, or two days', advance notice, they were not going to serve them seven days a week any more, they were only going to serve them five days a week.

So that's the kind of thing....

[*Translation*]

Mr. Mario Laframboise: Thank you.

Go ahead, Ms. Morgan.

Ms. Marta Morgan (Vice-President, Trade and Competitiveness, Forest Products Association of Canada, Coalition of Rail Shippers): I am going to give you an example specific to the forestry industry. We have mills throughout the country, in more than 300 communities in all provinces. We recently conducted a study on rail services and costs incurred by our companies. In the course of that study, we found that more than 90% of our producers have no alternative to rail. So one company serves them, and trucking is not an option due to the distances involved. They have no other option in terms of rail either, because there is only one company. So that is an indication for one industry, but for an industry that is spread across the country.

● (0925)

Mr. Mario Laframboise: And one that you represent very well, Ms. Morgan. My second question is for you, because people in forestry in Quebec told me that you were their representative. And I am pleased with that.

The railway companies would have preferred, among other things, an amendment to proposed clause 120.1, because they find it abusive, to use their term. That clause reads as follows:

> 120.1 (1) If, on complaint in writing to the Agency by a shipper who is subject to any charges and associated terms and conditions for the movement of traffic or for the provision of incidental services that are found in a tariff that applies to more than one shipper other than a tariff referred to in subsection 165(3) [...]

They felt that amendment was too broad, not clear enough. They would have preferred seeing it not apply to incidental tariffs, as they told us.

So I would like you to explain all of these types of tariffs, because I am under the impression they did not tell us the whole story.

[*English*]

Mr. Robert Ballantyne: Yes, I can do that.

Let me find my papers here.

Mr. Wade Sobkowich: While Bob's looking, perhaps I could tell you that from the grain industry's perspective, the main one is demurrage. Demurrage would be the main type of tariff that would fit into that category. There would then be a fuel surcharge tariff that's fairly recent but something that would also fit into that category.

From our perspective, that clause—proposed section 120.1, I think it is—allows a shipper to take to the agency anything in an incidental tariff, be it a charge, a term, or a condition, that they think is unfair. In other words, any tariff the railway has the ability to set, the shipper should have the ability to challenge.

[*Translation*]

Ms. Marta Morgan: We have had two problems in recent years. First of all, incidental tariffs have increased randomly. The act as such provides no options for shippers who want to challenge these tariffs, because one shipper cannot bear the costs resulting from final offer arbitration. That would not be worthwhile, from a financial point of view.

In addition, as Wade said, sometimes the tariffs themselves are not the problem, but the way that they are applied. For example, the issue of demurrage has posed a problem in terms of service in recent years.

I will continue in English.

[*English*]

The shipper will order a certain number of cars that the shipper will be prepared to unload at a certain time and will have crew there and shift on. They won't receive the cars that they ordered. They'll receive the cars on a different day, perhaps all bunched up, perhaps what they ordered, perhaps more. And there are charges associated with the cars, once they arrive, if you don't unload them in a certain amount of time.

[*Translation*]

It is the combination of the tariffs and the way that they are applied. On these issues, shippers have had no recourse under the existing legislation.

[*English*]

The Chair: Thank you.

Mr. Masse.

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

Thank you for appearing today.

As you may be aware, the Railway Association of Canada appeared before the committee on Tuesday. I understand the reasons for your tactics in terms of wanting to get something done here, especially with the short window of potential Parliament that we have, and this could be lower hanging fruit, so to speak, of revitalizing our rail industry and relationships. But they actually identified three sections that they wished to have changed in this bill if it were to go forward. Maybe I can get your comments on that.

The first was clause 1, the repealing of subsection 27(2). They're asking for that to be retained in the current act. In clause 3, they're identifying that it's too vague and would like to have more definition about that. Then, clause 7, which is FOA—final offer arbitration—they're saying is unnecessary. Second to that, if it does exist, there should be a certification process.

Perhaps I can get your comments on those three elements and whether you're still continuing with your position of having the bill adopted in its current state without amendment.

● (0930)

Mr. Robert Ballantyne: Yes, that is our position, that's our preferred position, that the bill be passed as written. I do understand there are, for example, several administrative issues that related to the timing of this bill and Bill C-11, which has become law. That will mean there will be some technical changes, and that's of course understandable. In terms of the issues of substance, yes, we think that clause 1 of the bill, which deals with subsections 27(2) and 27 (3) of the act, should be repealed. This is something that, as I recall, was recommended by the statutory review committee back in 2001. We think this is a hurdle that is particularly difficult because "substantial commercial harm" isn't particularly well defined, and our understanding is that the Competition Bureau doesn't look favourably on these kinds of provisions. So we think the repeal of that is fundamental and very important.

With regard to clause 3, we think the wording is fine the way it is. It's clearly meant to deal with charges other than what would commonly be called the freight rate or the charge for the movement of traffic. So we think this covers it off all right, but I would assume that when the Transport Canada people come for the clause-by-clause next week they'll do whatever they feel is appropriate there. We've had some discussions with them about the kind of change they want to make, and while we would prefer to see it left the way it is, they'll play it however they think is appropriate.

I'm sorry, on your other point...?

Mr. Brian Masse: The final offer arbitration they are claiming is unnecessary, and then if it does exist, what they would prefer is a certification process that should apply equally to all. That's what they say.

Mr. Robert Ballantyne: As I was responding to Mr. Volpe, first of all, we think it is necessary, fundamentally necessary. If somebody had to say to me which is the most important provision in the bill, I would say probably this one. They're all important, but if you pushed me, that's probably what I would say.

For reasons that Marta has mentioned, the issue of group FOA is useful, or it would be useful to shippers just from the sheer cost of mounting an FOA. Sharing the costs is an important issue especially for smaller shippers, and also there's some obvious strength in numbers in making the case that it applies to more than just one company.

As far as a formal registration process is concerned, as mentioned to Mr. Volpe, we think the administration of the provision by the agency is really simple enough and straightforward enough that once a complaint is filed on behalf of a group who will all have to be identified, and the nature of the complaint, how it applies to the group will be evident within the complaint itself. Therefore we think the agency can make a judgment as to whether the group is a legitimate group or not, without a formal registration process.

Mr. Brian Masse: On another note, while you're here, I do want to ask, with regard to the study, what are the things you primarily want to get out of the study in terms of objectives right now? Maybe you can highlight those things you'd like to see come forth from the study.

● (0935)

Mr. Wade Sobkowich: Sure I can.

This study is extremely important to us. We view the changes in the bill as a very good move to balancing out the power of the railways and giving the shippers more of an ability to challenge a problem after it's happened. We view the railway service review as trying to get in front of problems before they occur, and the main objectives we have in a review of railway service would be.... I'm just going to read them here. It says:

> To end inadequate service provided by railways to freight shippers, as defined by shippers, by correcting: inadequate car supply; for example unreasonable shortfalls between cars requested by a shipper and cars supplied by the railway company serving that shipper; unsatisfactory performance in the transit, spotting and switching of loaded or empty cars; and unsatisfactory and/or unreasonable provision and application of railway ancillary services in spotting, pick-up, carriage, storage and delivery of loaded and empty rail cars.

Those are the three objectives supported by our coalition in that review.

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

The Chair: Thank you.

Mr. Jean.

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

Thank you very much for coming here today and providing evidence.

Seventeen industry associations, 80% of CP and CN revenue.... What I'd like to talk about today is just a little bit of information about how you got here, the process that brought you here.

I heard the list of shippers, and I can imagine your memberships are very extensive. Did you just bring this forward in the last couple of months, or is this something you've been working on for a period of time? How many people were involved, and how much debate was done by your organizations?

Mr. Robert Ballantyne: No, we've been working on this together for quite a long time. I'm just trying to remember whether it started with Bill C-26 or Bill C-44.

There have been a number of coalitions that have tried to come together, and as Wade mentioned, there were a number of people who had specific concerns that were not really shared by others in the group.

Anyway, in April 2006, the group really gelled. It really came together. Transport Canada had been saying to the shippers for a long time, "You have to sing from the same hymn book, otherwise we don't know what you want." So we took that message to heart. The group came together. We exchanged some written information back and forth with the surface policy people at Transport Canada, and we ended up in a big meeting on May 5, 2006. I may be wrong, but it may even have been in this room.

A voice: It was in this room.

Mr. Robert Ballantyne: I can't remember how many people there were. There must have been about 80 or 90 people in this meeting, from both the government side and the shippers.

We came to a consensus in the dialogue with Transport Canada and a representative from the minister's staff as well. As a result of that, the government brought forth a proposal that was largely something that the shippers liked.

They did their consultation in series, I guess, rather than in parallel, with the railways. After they talked to the shippers, they discussed it with the railways, who were very unhappy with what they saw.

The CEOs of the two big railways organized a meeting with the minister, and they attempted to stall any further legislative action by offering a commercial dispute resolution process. That was kind of interesting, because the only time they'd ever done that, as far as I know, was when they were faced with legislation they didn't like. So that delayed the whole process through the summer of 2006.

Their first offer on CDR was only if the shippers decided that they would forgo any change in the legislation. The shippers basically said "No, that's not a condition we'll live with, but we're certainly prepared to talk to you about CDR."

We spent the better part of the year talking to them about that, and as the minister said to you last week, I guess it was, those negotiations weren't successful.

CN and CP have subsequently put up their own versions of their commercial dispute resolution on their websites. To the best of my knowledge, no shipper has taken that up. I noticed that, in the discussion with the railways on Tuesday, they were very careful not to indicate whether any shipper had or hadn't taken them up on that.

Anyway, that went on. There was dialogue, and so on, with the minister's office and with Transport Canada. It finally led to Bill C-58, which, as I said earlier, didn't give the shipper community everything they wanted, but it's a good start, and we support the bill as written.

● (0940)

Mr. Brian Jean: Indeed, you feel that the shippers have made a compromise.

Mr. Wade Sobkowich: Definitely.

If I could just jump in and make a few comments, I can't stress enough how much water we've put in our wine already to get to this point. We were around this table, and the Western Grain Elevator Association, as did the rest of the shipper associations, came with much more. We recognized that if we were going to get anywhere, we needed to agree with each other and we needed to agree with Transport Canada, and that's what we did. We left a lot of stuff behind in order to get there.

Mr. Brian Jean: As a litigator in northern Alberta for years, I always discovered that usually the best result is when both parties leave unhappy, unfortunately, with litigation. It sounds like the compromises have been made.

Now, my understanding, quite frankly, living in western Canada, is that these complaints have been around for years. Since the 1980s even, I've heard of complaints from shippers of grain and from manufacturers of products. Is that correct? So this has been going on for some 30 years.

Ms. Marta Morgan: Yes. These are long-standing issues that shippers have had with the railways. We have a system of having a dual monopoly railway, and until there are ways to either introduce effective competition, or as in the case of this bill, to provide pro-competitive remedies, I think shippers will continue to have issues with the railways.

We believe that this is a modest, sensible, and practical solution to the situation we find ourselves in that will give shippers some additional pro-competitive remedies to address some of the more recent issues that have arisen. These include ancillary charges, for example, which have been increasing, and the dramatic increase we've been experiencing in the last few years in service problems.

Mr. Brian Jean: I think this will be my last question, or fairly close to it. Overall, if this works out well, as the shippers seem to think it will—thousands of shippers across Canada, probably tens of thousands of shippers across Canada, who you represent are saying that this is a good bill—what are the ultimate results for Canadians?

Mr. Robert Ballantyne: I think, first of all, that over time it will facilitate a better relationship between shippers and railways. At the start it won't; somebody is going to go away unhappy. But once the bill becomes law, everybody will learn how to live with it.

I think these changes to the act really will facilitate a better relationship between shippers and railways, generally. I think what it will do for Canada, generally, is that it will be one factor in keeping Canadian industry competitive, especially in export markets, in that there will be a device for shippers to negotiate freight rates that, one would hope, will be reasonable for the railways and also reasonable for the shippers, and in a way that they can stay competitive, whether that's in domestic or export markets.

I think this is probably one of the big gains for the economy, generally.

● (0945)

Mr. Wade Sobkowich: If I might, I'll just read from my notes the things we've been saying. Without this bill, what's going to happen is that this will continue to result in—and I'm talking about the grain industry—lost grain sales domestically and internationally; lost revenue, because grain will continue to be sold outside peak price periods; a large potential for significant vessel demurrage bills; lost confidence in Canada as a reliable supplier; and higher costs to farmers.

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

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

I have some questions. I noted, Ms. Morgan, that in your presentation you say that the Forest Products Association Of Canada had a study done by Travacon Research that concluded that the forest products industry is paying almost $280 million per year more in freight rates than it would. And that doesn't include demurrage and storage, I presume. Or does it? Is that all-encompassing?

Ms. Marta Morgan: It is just freight rates.

Mr. Don Bell: It is just freight rates. If I understand it, you represent roughly 25% of CN's total revenues, shall we say. If, therefore, the other 75% comes from grain and mining products and the other products that are represented by your bigger coalition here, is it fair to say that we could be talking about $1 billion? Have the other industries done any comparable studies to show what you feel are the extra costs to you?

Mr. Robert Ballantyne: I'm not aware that anybody has done any studies to show what the extra costs are.

Mr. Don Bell: The forest products industry did.

Mr. Robert Ballantyne: Yes, aside from forest products.

Ms. Marta Morgan: I think it's difficult to make an exact extrapolation, because what it really depends on is where are your mills, and which railway is servicing your mills, and what amount of competition do you have? So different industries will have a different balance there and a different balance of issues.

But certainly, for our industry, $280 million a year is a lot of money—and that's not even counting the additional costs from the service disruptions that we face on an ongoing basis. If we translated this, for example, into what it would cost to build a brand-new mill, the money we would be saving from competitive freight rates would allow us to build a brand-new, world-class paper mill once every three years in Canada. So from an industrial competitiveness perspective, it's a significant cost component for our industry.

Mr. Don Bell: And then in addition to that, you're paying 10% to 15% more annually for your demurrage and storage charges. As I understand it, that seems to be a fairly constant theme through most of your presentations.

Are the charges more or less universal? I'm thinking in terms of the FOA approach, the group final offer arbitration approach, challenging these. Are the charges more or less universal, or do they vary from area to area? I'm talking of demurrage and storage now.

Mr. Robert Ballantyne: They would definitely vary from industry to industry.

Mr. Don Bell: What about the nature of the stock involved? Is it the rolling stock?

Mr. Robert Ballantyne: If a group FOA were done, it would likely be done by either shippers in the grain industry or shippers in the forest products industry. So I guess the easiest lines to draw would be based on the industry. They would be sectoral lines.

Mr. Don Bell: I guess the support for the FOA is based on the pretext of strength in numbers.

My concern was with some of the provisions in the requests that it be common to all carriers. From my experience, having been in industry and having represented a varied industry, in this case the retail food industry, the complaints I can see that might apply wouldn't necessarily apply equally, but the remedies would apply equally. Your group is aware of that.

I would personally resist any effort in this or interpretation. My concern with the interpretation is whether the hardship has to apply equally, or just that there are varying degrees of the same complaint within a group FOA.

Mr. Wade Sobkowich: You would never have a situation where the result would apply to each shipper equally. It's impossible. Shippers are different; they have different operations, they have different sizes, they're in different places. It's impossible to have an equal application.

Mr. Don Bell: But there would be equal application, in that whatever is determined—for a rate, for example—would apply equally. The effect may be different, depending on the distance from the source or the other applications.

I guess the other question I had was that we heard comments about car supply and the issue of demurrage and storage charges being a source of frustration, given that they've escalated. Of course, one of the compensation questions was about there being demurrage and storage charges if the cars are late and or aren't provided on time, yet one has to have a crew come in, who then have to wait for a couple of days, and there's no compensation for that. The railways said, well, you have options; you can have a guaranteed service. In other words, you can pay more and you get a....

I'm just wondering how much more costly it is. Is that an option that's really offered to you, so you can have a guaranteed service and compare the cost of having your extra crew standing there for two or three days against the extra cost of having their premium service?

Mr. Wade Sobkowich: If I can speak for the grain industry, there are very limited options, if any at all, for premium service. Certain of our members have tried to get into commercial contracts with the railways, which have been resistant. By default, we look at their tariffs and are subject to the terms of their tariffs. Those apply to everybody in the grain industry.

So if I could just run through what happens on demurrage—

Mr. Don Bell: Just one comment.

The reason for my question is that the railways told us those premium services are available, and people get what they pay for.

● (0950)

Mr. Robert Ballantyne: I was here when the railways said that. I'll comment after the meeting.

Mr. Wade Sobkowich: Go ahead, Bob, by all means.

Mr. Robert Ballantyne: Following from Wade's comment, as the railways mentioned when they responded to that, confidential contracts are in place between individual railway companies and individual shippers. Because the contracts are confidential, nobody knows the terms and conditions.

I think, generally, it's known that in some instances there are some performance guarantees by the railways, and these might be things like a unit coal train undertaking to deliver so many tonnes per week or whatever.

But my members in the Canadian Industrial Transportation Association tell me—and our membership is varied, as we have retailers, coal companies, manufacturers, a very wide range of members—the railways are going away from confidential contracts and going back to tariff pricing. So I suspect that in almost every case there are no real performance guarantees that would put the railways in a position where they would have to pay a financial penalty for service failures, which of course is not the case when the shoe's on the other foot. If the shipper keeps a car longer, they pay demurrage.

If I can take just a minute, Mr. Chairman, I would go back to a question Mr. Laframboise asked about some of these charges.

CN's tariff 9000 is a chargeable service tariff, and I suspect that's probably where demurrage is and that sort of thing, but they have others: terminal switching services, automotive services, dimensional services, unit train services, fuel surcharge tariff on bulk and carload services, fuel surcharge tariff on intermodal traffic, currency exchange surcharge tariff, movement of private cars in Canada and in the U.S., bill of lading charges. So even to submit a bill of lading, if you do it electronically, you don't pay. If you do it by paper, you have to pay something extra for it. Miscellaneous service charges, toxic inhalation hazard charges, and dray and trucking charges—those are all from CN.

Here's the CP list. Tariff 6666 is supplemental carload services tariffs comparable to the first in demurrage and so on: fuel surcharge tariff, U.S. switching tariff, currency exchange tariff, rules and regulations on international import-export traffic, and rules and regulations on domestic and intermodal traffic.

Those are some of the tariffs CN and CP have on various charges they impose on shippers over and above the quite legitimate freight rate for movement of traffic.

The Chair: Thank you.

Monsieur Carrier.

[*Translation*]

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

Good morning to our guests.

The Railway Association of Canada, that we met with on Tuesday, showed us using a diagram that freight rates in Canada are among the lowest in the world. So it is a very good situation for them.

I would like to hear your reaction to that, get an explanation or hear your position on that statement.

● (0955)

[*English*]

Mr. Robert Ballantyne: Yes, the bare freight rates are among the lowest in the world. It depends how you do the measurement. Some work was done, and I think it was by a transportation institute in Australia some years ago, that compared the freight rates in a whole lot of countries. Of course, they were all put into the same currency in that study, into U.S. dollars, and at the time—and that was in the mid-1990s—given the exchange rate on Canadian dollars, the Canadian bare freight rates were, I think, the lowest in the world; the U.S. was second.

But that isn't the whole story. You would expect in a country of large geography like ours that the freight rates would tend to be low. There are more charges associated with the terminal activities—they tend to be expensive—and less with the line haul, so the longer the line haul in terms of average freight rates, they would be fairly low. But it means the total freight bill can be relatively high, because we have such big geography in this country. Then there is the issue of all the ancillary charges we talked about that are also charges the shipper has to pay.

I've never seen a study that has included all those issues, but to some extent the lowest freight rates are a bit of a smokescreen.

[*Translation*]

Mr. Robert Carrier: In your view, proportionally speaking, are you calling into question the base freight rates or the incidental tariffs that you are charged and that you mentioned earlier? How much of the problem do they cause? Is the problem primarily due to the base freight rates or to incidental tariffs?

Ms. Marta Morgan: In the legislation as it currently stands, there is one option that works very well for shippers when they have a problem with base freight rates and that is final offer arbitration. Under the current act, that is the only method that has proven effective for us, but it is very costly. It can cost a million dollars per case. So there must be a major problem with base freight rates for us to turn to final offer arbitration.

What we are seeking through Bill C-8 is to cover other aspects that have arisen, incidental tariffs and service, because for these two services and the related tariffs, shippers have no recourse when a problem arises. That is the fundamental problem. The companies have the option of offering these services, setting the prices they want, but the shippers, on their side, have no power, because they must absolutely use CN or CP. So the power always remains in the hands of the railway companies. So there is an imbalance. There is a slight imbalance in the base freight rates, because at least we have final offer arbitration, but as regards the other aspects, there is no balance in the legislation as it currently stands.

Mr. Robert Carrier: There is a point in your presentation that, compared to the one presented by the Railway Association of Canada, struck me: you agree on the need for a review of the entire railway system within 30 days of the passage of the bill. The Railway Association of Canada says that there are no documents clearly outlining the position or the facts, so it is rather anecdotal. On your side, you invoke a number of arguments; it invokes others. So the association has confidence in the study, in the same way that you too believe it will be a good thing.

Do you think that ultimately, the solution or the conclusion of the study will perhaps come about through government involvement in rail transportation, or do you think that one side or the other should pick up the tab?

● (1000)

[*English*]

Mr. Wade Sobkowich: We think that we need to have balance in any solution, and usually when we're dealing with dual monopolies, as Bob explained, which is different from duopolies, we need to have some discipline. Usually, in order for that discipline to be maintained, it needs to be legislated.

I'll just read a couple of points from the terms of reference that we're proposing in our level-of-service review. We are suggesting that the review

> ...recommend measures including amendments to the CTA or other legislation that...will constitute a financial disincentive which is significant enough in magnitude to induce a railway company to change any practices which result in inadequate service [and] will enable a shipper to be expeditiously compensated for loss or damage incurred as a result of inadequate service [and] then to implement the measures recommended by the railway service review as soon as possible after the completion of the level of service review and enshrine those measures in legislation, regulations, or policy directions.

So we're suggesting that the solution have a tie to government.

The Chair: Thank you.

Just before I go to Mr. Fast, you listed all the charges. Is that done arbitrarily, or is that done in discussion with the shippers?

Mr. Robert Ballantyne: It is, I think, pretty much done arbitrarily. The railways have, under the Canada Transportation Act, the right to issue tariffs, which they do.

There may in some instances be some negotiation and discussion with the railways, to some extent possibly on the level but also on the application. There may be instances when, for example on demurrage, on the surface it may look like demurrage should have covered, say, two days for cars, but there may be some other circumstance that the railway might be willing to recognize was such that there shouldn't be two days of demurrage. It would depend on a case-by-case basis.

The Chair: Thank you.

Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Since the chair raised the issue, I'll ask: What percentage of your total rail costs do the ancillary charges represent? Do you know that figure, and if not, would you be able to get that figure to this committee?

Ms. Marta Morgan: We estimate that it adds 14% to 15% to our total rail bill.

Mr. Wade Sobkowich: Ours would be in the same area, I would imagine, perhaps a bit higher.

Mr. Ed Fast: That's surprising, because I believe the testimony we heard from the railways was that it was less than 1%, something along those lines. So it's around 14%, 15%, is that right?

Mr. Wade Sobkowich: I'm going to double-check and get back to you, but I believe that's correct.

Mr. Ed Fast: That's pretty significant.

I want to discuss one other issue that goes back to your discussion, Mr. Ballantyne, on the issue of CDR, commercial dispute resolution. You seem to indicate there were discussions about it, but in the end it was not seen as being a viable way of resolving disputes, and that's why you're supporting legislation that provides for group FOA, final offer arbitration.

In his testimony before this committee, Mr. Patenaude, who was, I believe, representing CN, made the following statement, and I quote:

> 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.

Do you agree with that statement? If not, why not?

Mr. Robert Ballantyne: No, I don't agree with that statement. I was here when Mr. Patenaude made that statement. I know him quite well, as a matter of fact. He was very careful that he didn't indicate that any shipper had signed up for it. As I say, I don't know for certain, but as far as I know, no shipper has signed on to their offer of commercial dispute resolution.

I guess the politest way to say it is I would have a difference of opinion with Mr. Patenaude as to whether there are or aren't service problems. There are some statistical things out there that are available, and I will read one to you.

Canadian Transportation & Logistics magazine carries out a buyer trend survey every year of people who buy freight services by all modes. In this year's, they've just published the results. They asked shippers: for what percentage of your current rail shipments do you consider trucking to be a viable option? Forty-one percent of them said that of their rail shipments, zero were likely to be able to be switched to truck, so that shows how dependent a lot of people are on rail. Of those who did make a switch where they diverted traffic from railroad to trucking, 65% said the reason they switched was poor service by the railway.

We at CITA do a survey every year of our members, a benchmarking survey. The independent person who does this survey for us asks people to indicate how they feel about the various modes of transport that they use. We covered air freight, courier, marine, LTL or less than truckload, truckload, intermodal, and rail service generally. In the last three years—we've only been doing this for three years—air freight has come out in the "excellent" category two out of the three years, and rail's come in the "poor" category three out of three years.

There is statistical evidence. We would expect in any service review that is done as announced by the government, as Wade has mentioned, there will be data developed by the shipper community as input to that study.

● (1005)

Mr. Ed Fast: I have one last question, if I might, and it has to do with the impact on consumers. You've indicated there are significant costs you are incurring right now that this act will spare you. Do you expect that those cost savings will be passed on to consumers to a significant degree?

Ms. Marta Morgan: To the extent that freight shipments are being made within Canada for Canadian consumers, the answer to that would be yes. The customers of the railways are not monopolies. The customers of the railways are existing in extremely competitive economic circumstances, and any cost savings that are achieved are generally passed on, particularly if they're achieved industry-wide, to consumers just because of the competitive nature of the business.

In our industry, probably between 60% and 80% of our products are exported, depending on the product. So some of those benefits would go to Canada by virtue of being a stronger competitor in export markets and some of the benefits would accrue to Canada by virtue of Canadian consumers paying lower prices.

The Chair: Thank you.

We'll go to Mr. Maloney, and I'm advised that he's going to share his time with Mr. Bell.

Mr. John Maloney (Welland, Lib.): Clause 2 of the act makes provision to increase the notice period for increasing tariffs from 20 days to 30 days. I assume that when you reach an understanding on cost with your customers you build the freight rates into your cost price. It's true that 20 days to 30 days is a 50% increase, but 30 days is, in my opinion, not an awful lot when you have to consider that when you're doing your price structures it may be six months in advance of the cost to your consumers. Do you have any comments? Is this adequate for your purposes? Would you like to see more of a notice period?

Mr. Robert Ballantyne: I think most shippers are prepared to live with this. Your point is well taken that in a lot of markets a lot of railway customers are in, they have to hold the price for a lot longer than 30 days. There are all kinds of fluctuations in the input costs they have. But as far as I know, most of the shippers are prepared to live with this 30 days, even though there will be times and places when that will cost them some money.

● (1010)

Ms. Marta Morgan: Yes, it's acceptable to us.

Mr. John Maloney: I'll move on to another point. When a line is going to be abandoned, or a lease is up, and say a short line doesn't take over, there is a compensation formula to municipalities for, I believe, a three-year period of $10,000 a mile or something. That would have helped the municipality to improve the transportation or road infrastructure, I assume, but over a period of time those roads get beat up pretty badly. Is there something there we could consider that would increase the length of time that railways would be responsible for this, like increased compensation to municipalities? Could you live with that as well?

Mr. Robert Ballantyne: First of all, and Wade can comment on this, my understanding is that this provision is only for grain-dependent branch lines. It isn't general across the country. It's only in grain-dependent....

Mr. Wade Sobkowich: Some grain shippers have complained that there was no notice provided when the railways decided to make that move, so this provision is something that was put in for that reason, and it's something they support. By virtue of the fact that we're supporting the passage of the bill as written, it means that the grain shippers are supporting that provision.

Mr. Don Bell: Back to the question of ancillary charges, if I understand, Ms. Morgan, you said in response to a question from the other side that ancillary charges represent about 15% of your total rail charges. I just want to clarify that figure of 15%, and that this portion of your charges are increasing roughly 10% to 15% per year, from the submissions that we have here.

Ms. Marta Morgan: Yes, I think that would be accurate.

Mr. Don Bell: Okay. This strikes me that it's a little bit like buying a car where you're quoted a base price of $20,000 and then the question is, do you want an engine, doors, a window? The list you provided seems like that to me.

The other question I was going to ask was about the issue of the track.

Mr. Sobkowich, what is a duopoly versus a dual monopoly? You said there's a difference, and I'd like to know what that is.

Mr. Wade Sobkowich: A duopoly is when you have the choice between one or the other, and a dual monopoly is when you have two co-existing monopolies. So if I'm a grain elevator and I'm planted in the middle of Saskatchewan, and I only have CN running up to me, CP is operating in Saskatchewan, but they don't service my elevator.

Mr. Don Bell: That answers my question. Thank you.

The Chair: Mr. Watson.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for appearing.

When I come to the commercial dispute resolution process that occurred with the railways, maybe I missed it, but I'm not sure I heard a reason why the process eventually fell apart. In the railways' opinion—and Mr. Ballantyne, if you were here, you probably heard it—they said it's because you wanted the commercial dispute resolution mechanism to apply to their U.S. operations, and they said that they just couldn't tolerate something like that. Do you agree that's the reason why? Or were there other factors or other things that caused this process not to come to fruition?

Mr. Robert Ballantyne: I would say that was the main reason. The shippers felt that if CN and CP were offering this, they should offer it for each of their entire systems, and that in this instance the border shouldn't make a difference because a lot of the traffic for many of the companies that are represented in the coalition is cross-border traffic. I would assume you, Ms. Morgan, have a lot. Wade probably has some. The fertilizer people do a lot of movement across into the United States, and felt that if they were going to offer it, let's make it for each of their whole systems.

The other thing is there's a lot of traffic that's interchange traffic between railways, whether it's into the United States to other railways, or whether it's between CN and CP or even to other short lines. I will ask my colleagues here.... If I my memory doesn't serve me right on this, they'll correct me, but my recollection is that each of the commercial dispute resolutions CN and CP were offering were only for their own system. In other words, even in Canada, they weren't going to be extended so that if it was an interline move between, say, CN and CP, it would cover that.

● (1015)

Mr. Wade Sobkowich: Bob is exactly right, that this was one of the major issues. When we sat down with CN, for us, at the time, it wasn't so much the transborder shipments, it was just the fact that the railways came out with this commercial dispute resolution process and they put it before us and said take it or leave it, and they wouldn't move on it and they wouldn't offer any terms that were any better for us than the current FOA provisions under the Canada Transportation Act. Why would they? What's the worst that could happen to them? We would have to use the Canada Transportation Act, so why would they relinquish anything? That was the main problem.

The railways will say we just wouldn't agree to their commercial dispute resolution process. The reason why we wouldn't agree is because they would never agree to any terms that went any further than any of the rights that shippers had under the Canada Transportation Act, and they had no motivation to do it.

So we're hopeful that with the strengthening of the shipper protection provisions there will actually be more of an impetus to arrive at a satisfactory commercial dispute resolution process as an alternative, because a commercial dispute resolution process is just that, it's commercial. It's something that's arrived at between the parties without government involvement. But we need the legislative backstop. We need to have a fair and reasonable final offer arbitration process and the ability to challenge ancillary tariffs if we're going to have any chance at arriving at a fair and reasonable commercial dispute resolution process.

Mr. Jeff Watson: The railways said the group FOA would be a much more adversarial process than compulsory mediations. I personally disagreed about that. I think if you take very extreme adversarial positions, you tend to lose more. A group FOA would force the final offers to come a lot closer to the middle. What are your thoughts on whether this would become more adversarial?

Ms. Marta Morgan: Our experience with the existing FOA provisions in the act is that because of the way the FOA provision is designed—which is essentially baseball-style arbitration, where each party puts its best offer forward, and then the arbitrator chooses one or the other—it is actually an effective way to bring people closer together rather than further apart, because no one wants to put the offer on the table that's so outrageously ridiculous that the arbitrator will never choose it.

Similarly, in group FOA we would expect that this process would actually bring the parties closer together. This doesn't mean that it's going to be a friendly process. By the time a shipper and a railway get to the point where they are in FOA, they clearly have some strong disagreements. But the FOA process will give them a mechanism that's fair and reasonable to resolve those disagreements, and it's an approach that doesn't have within it the incentive for them to be more polarized going in.

The Chair: Thank you.

Next we have Mr. Zed, and it's my understand that he's prepared to share his time with Mr. Volpe.

Mr. Paul Zed (Saint John, Lib.): Absolutely. He's my leader.

The Chair: Mr. Volpe.

Hon. Joseph Volpe: He's only a year and a half late in saying that.

The Chair: We'll make sure the blues show that correction in Mr. Zed's opening statement.

Hon. Joseph Volpe: I hope you don't take from that, lady and gentlemen, that we are not as serious about this as you are. We do take the issue very seriously, as I think you probably have come to understand through some of the questions that have been raised by all members of all parties.

I want to go back to what I said earlier. It would appear to me, and it's reinforced now through your responses, that you're really asking for government to be much more engaged than it has been. That's a strange thing for those of us here to hear. And as I said when the railways were here on Tuesday, we have a government that is perceived philosophically to be more hands-off on industry but is actually much more engaged in the marketplace. So that tells all of us that the situation is not always as it appears to be. So I'll repeat the compliments on having convinced somebody, everybody, that you're in the right.

But I want to come to another question that I asked the railways, and since you were here, you heard it. I asked them if they wanted to change something, propose an amendment, what would it be, and the amendment they proposed—and I'm not sure it's what you would have agreed to—refers to section 169.2 and it goes back to FOA. I asked you a few minutes ago about making that process a little bit more systematic, and you referred to it as a bureaucratic position. But I'm going to read something to you—I don't have a copy—for your reflection, and it would change section 169.2, which I think you have before you. It says that:

> The Agency shall not have any matter submitted to it for a final offer arbitration under subsection (1) arbitrated unless the shippers who are submitting the matter demonstrate to the satisfaction of the Agency (not to anybody else) that the matter is common to all of them and that they are making in respect of that matter a joint offer the terms of which apply equally to all of them.

Why would you have a problem with that?

● (1020)

Mr. Robert Ballantyne: I think our feeling is that the way it's written covers it off quite adequately and that it doesn't need this. My recollection is that in an earlier version of the bill, either when it was Bill C-44 or Bill C-26, it had a provision like that in it, and when Bill C-58 came forward that additional wording was removed. I think it was considered somewhat redundant. We think that the way it's worded right now is quite adequate.

Proposed subsection 169.2(3) says:

> The Agency shall not have any matter submitted to it for a final offer arbitration under subsection (1) arbitrated unless the shippers demonstrate, to the satisfaction of the Agency, that an attempt has been made to mediate the matter.

So they're putting some reasonable hurdles in there anyway, and also proposed subsection 169.2(2) says:

> A matter submitted jointly to the Agency for a final offer arbitration shall be common to all the shippers and the shippers shall make a joint offer in respect of the matter, the terms of which apply to all of them.

That's in the bill as it stands and which we've said we support.

Ms. Marta Morgan: There is some history on this, as Bob has mentioned. In the previous bill on this issue, the term "equally to all" had been included. Shippers would be very opposed to the inclusion of the term "equally to all"—that the solution should apply equally to all—for the reason that Wade discussed earlier, which is that shippers by nature are different. Some are smaller, some are larger. Some are shipping one place, some are shipping another. The matter at hand may in fact be common to all of them, but it is inevitable that the solution will not necessarily be equal to all of them because of this diversity.

It is the strong view of the shipper community lawyers that this provision could become the equivalent of the commercial harm test on the issue of level-of-service complaints, and become a significant barrier to shippers who are wishing to bring these claims.

So I think this is a way for the railways trying to get that language back in there that was in previous bills, which shippers had expressed their concerns about at that time.

● (1025)

Mr. Wade Sobkowich: That's a very good explanation, Marta.

To add, going into an FOA or a group FOA is not something shippers are going to take frivolously or lightly. They're going to look at all other options before they'll go into a process like that, and the fact that they have to put forward an offer that's common to all is the key, because if they're unable to do that they won't be able to go into the process to begin with. The fact that the outcome has to be common to all is in fact the same as what it would take to certify a group, in our view. So it's covered.

The Chair: Mr. Shipley.

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

Thank you to our witnesses for coming out.

We've had a lot of discussion this morning around the ancillary charges. It's in every document we receive, regardless of whether it's from the shippers, from the monopolies, as you would call CN, CP, and others. So what I'm finding is that there's a big spread here somewhere, and I want to make sure that we're talking about the same thing.

CP—CP, not CN—talked about less than 1% of revenues. They have it broken down into different things—0.3%, 0.7%—different percentages, but in the end, it's less than 1% of their revenues. What you're talking about is 14% to 15% in terms of increase in ancillary charges or other charges that you have.

I wonder if we could have you table those for this committee's use, as we go forward. I can't remember, Mr. Chair, whether we asked for the tabling of those documents from CP, but that is something we might get. There's a big spread here, and we need to be certain about what those are.

I don't know if you have any comments on that.

Mr. Wade Sobkowich: The only comment I'd make, to start off, is that regardless of the impact—and let's say it's somewhere in between, I don't know off the top of my head—of the ancillary charges, the principle in Bill C-8 is that you would have the right to complain or to file with the agency, if you feel the charges and the terms and conditions of the tariff are unfair. That's a fair process and that's what we're asking for.

Mr. Bev Shipley: I understand that. I only want to make sure that one isn't using the numbers to the best advantage to keep them low, and another isn't using them to the best advantage to keep them high, so we face this big discrepancy. I think we need to have everything on the table, as much as we can. So I'd appreciate that.

I want to say to you that I've been very impressed with the amount of work you've done and presented. On other committees, you know, we've never had—not in my experience, which is relatively short compared with some here—the work that you've done, and I think you've said to water down the wine so that you have a consistent message. I want to commend you for that. I think many organizations could learn from that as they come to a federal government, in terms of dealing with bills and their issues around them.

The railways—and it's been talked about before—have absolutely no reserves, no capacity left. Those were the words they used in their comments to us. So there's a concern that the investment needed.... From 1996, there's been $15 billion go into the investment. They're afraid this will cut the investment initiatives by those private investors to make it happen. So there's no capacity left. Therefore, there's a sense that it may curtail investment needed to expand and improve the service.

Can you talk to me, then, about the expansion of the service that has happened under the great times before, and that has benefited you?

Mr. Robert Ballantyne: I have a couple of comments. First, in terms of capacity, there are places on the network that are at or very near capacity, but certainly there are places where the rail network is not at capacity. In regard to the new container terminal that has opened up at Prince Rupert, CN has indicated that they have a fair amount of capacity in that line at least as far as Edmonton. I think there's capacity from the port of Halifax to central Canada.

Certainly the CN-CP main lines through the mountains from Vancouver are pretty much at capacity and they have been spending money on that, which I think they did and will continue to do because there's a demand and it's in the interest of their shareholders that they service that.

So that's one thing. The other thing they have been doing is more co-production agreements, and these are good. They get together, for example, down the Fraser Canyon, both railways. CN and CP run on CN in one direction and on CP back on the other, and that's a pretty tough piece of railroading there, in the Fraser Canyon.

So things like that are good. Things like that, of course, don't cost a lot of capital money. But I think to some extent.... Well, I guess "blackmail" is a little bit too strong a word, but on the issue about whether they would have the same incentive to invest if these changes are made to the act, I guess that remains to be seen. I would be very surprised if it changed anything.

I notice that in the most recent issue of the Canadian Pacific employees' magazine they were big about a substantial investment they have made northeast of Edmonton, near Fort McMurray. They've invested quite a lot of money in building new track. They've done that when this bill has been in play, so I think as long as the market is there and as long as they are making a lot of money, which they are....

I think CN and CP, the railways, told you this the other day. The investment community tends to look at operating ratio. CN has driven their operating ratio down, I think, to the low 60% range. The operating ratio is the operating expenses on the numerator and operating revenues on the denominator. That's probably about the lowest among the big class one railroads in North America. CP's is pretty good as well.

So I think this bill will probably have some impact on their revenues in total, but I wouldn't think it's going to change their operating ratios very much.

● (1030)

The Chair: Thank you.

We've completed our round. Everyone has had a chance to ask questions. We're going to open the floor up for a couple of minutes each, for each question.

I have Mr. Volpe, Mr. Laframboise, and then Mr. Masse.

Hon. Joseph Volpe: Mr. Ballantyne, I just wonder whether we could pursue that same point for another moment or two, because in some of the submissions we've seen and heard, the railway companies say that actually the climate of investment will be severely diminished and that their return on investment is considerably lower than the return on investment by any of the shippers. I think some of the figures I saw showed a 10% disparity. So their position is—and I know you know this to be their position—that this legislation will put a chill on the investment climate.

You've just indicated that's not the case and you've used a particular standard. But I detected—or perhaps I misread—a little bit of hesitation in your response, that you are concerned that there might not be the same kind of investment and that your shippers, your coalition, would suffer from services....

We're going to have a review, but there won't be much to review if they withdraw services by not making investments in a growing climate, from your perspective.

Mr. Robert Ballantyne: If you detected any hesitation, it's only that it's in the future, and I can't say for certain that they wouldn't. I would anticipate that they will continue to make investments as appropriate to handle the markets that present themselves.

We seem to be in a time of growing demand for transportation services in all modes. The world economy is growing. The way manufacturing and sourcing is done is pretty much on a global basis. So there is likely to be substantial growth, and I think they will continue to meet that growth. That's the business they're in.

● (1035)

Mr. Wade Sobkowich: Can I just add to that?

What the railways are saying when they make that statement is that they are going to be unduly harmed by this legislation. What we're talking about here is improving shipper protection provisions or mechanisms to resolve problems after they've occurred. If the problems don't occur in the first place, these provisions don't get used. And we're just asking for a fair and reasonable way—and this bill gives us a fair and reasonable way—to resolve disputes.

So if the railways are saying that they're going to be unduly harmed by implementing a process that resolves disputes with shippers in a fair and reasonable way after the problem has already occurred, then it speaks volumes to the way the railways are treating shippers today.

The Chair: Mr. Laframboise.

Ms. Marta Morgan: I have one other point to add on that.

I think that all industries who operate in competitive markets also have to raise capital for the capital investments that they need. To argue that a fairly minimal restraint on monopoly power will have significant impact on your capital investment is, to me, an argument that doesn't hold water. In our industry we operate in competitive markets. We invest in capital as we need to, and the other shippers who are dealing with the railways are in the same position.

This bill will not create competition between the railways. They will still not have a competitive market. They will have some fairly modest measures in place to allow shippers to respond to egregious difficulties, because—trust me—a shipper will only take a railway to a level-of-service complaint or an FOA when they cannot resolve the issue bilaterally and when the difficulties are quite serious. We would prefer to resolve these issues on a commercial basis, and these are really measures of last resort from the perspective of our member companies.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Thank you very much. My question is for Ms. Morgan.

The Railway Association of Canada sent us a copy of the letter that it had sent to the Senate following the appearance of your association before the Senate committee. It contained harsh words towards forestry producers, among others, saying that you had little evidence that would allow you to say that forestry producers and forestry products would be the captives of a single rail transportation service provider.

For my part, I think that you are right, but I am having some trouble. It will be necessary to counter what they are saying, because their comments were based on the OECD report produced in 2005, which deals with all the rail transportation systems throughout the world. The report states that Canada is an example because there are two networks. I will quote the report:

> [...] the two dominant rail networks operate over parallel tracks and are capable of providing a wide range of similar services [...]

So that means there is competition. But the evidence you have provided shows that that is not true everywhere; Mr. Ballantyne told us that. It is untrue, namely, in the forestry sector. I would like you to explain the day-to-day situation for your forestry producers who are grappling with a single service provider.

Ms. Marta Morgan: I think it goes back to the explanation Bob gave earlier today. In urban areas, for example, there is often competition between the two, CN and CP. But for us, our mills are located in rural communities, in communities where only one of the two rail companies is present, either CN or CP. Normally, CN serves our industry. So there is a real urban- rural division in Canada. Recently, when we did our overview, all of our mills told us that 90% of them had no other rail service and that the distances were too long for trucking services to be economically viable.

● (1040)

Mr. Mario Laframboise: Perfect. Thank you.

[*English*]

The Chair: Mr. Masse.

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

You gave a list of auxiliary charges that would make a banker blush. What I'd like to know is did those fees come in as other fees did a straight-out drop or depress, or did they sit...? What's the history of those fees? Are they relatively new in the last three years, four years, or ten years? What has been the history?

Mr. Robert Ballantyne: I think demurrage has been around probably for a hundred years. Some of the other ones are fairly new. The fuel surcharge is fairly recent, just when the crude oil prices started to become quite volatile. So that's a fairly recent charge.

Things like the charge for submitting a paper bill of lading are quite new. There the railway is saying to its customers they want to go to electronic data interchange. And that's fine; we all like the idea of electronic data interchange. But the railways are in a position where they can tell their customers to do electronic data interchange, otherwise they're going to pay extra. Not very many other businesses can do that.

I would say a lot of these are fairly new. Some of them have been around for a long time. Weighing of cars, storage of cars, some of those things have been around for a long time.

Mr. Brian Masse: What about the new charges the U.S. is imposing unilaterally, like the Bioterrorism Act? I think it's $750 per railcar, if I'm correct. Who's eating that cost right now? Is it being passed on directly to you, or to the railway? They would have to pay it, I assume, under the current structure, but is that then being moved toward you?

Mr. Robert Ballantyne: I'm not absolutely certain of that. I'd have to check with some of my members, but I'll venture a guess that it is being passed on. That charge has been applied to virtually all modes. The truckers pay it, the railways pay it, the marine, and if you're a passenger flying on an airplane to the United States, you pay it too.

Mr. Brian Masse: Yes, it's a grab. It's ridiculous, because some Chilean peach is seen as a security threat.

Mr. Robert Ballantyne: The counterpart in the United States to our association is the NIT League, the National Industrial Transportation League, and we lobbied jointly with the NIT League against that charge. We were unsuccessful, but we did that jointly. We had good support from the U.S. shipper community on that.

Mr. Brian Masse: Yes, we failed on that too.

Quickly, Mr. Chair, to the researchers, could I request a list of those charges from both organizations? I think there's a discrepancy between what we're getting as testimony in terms of the true content and the value of them percentage-wise, and perhaps we could have that information.

Thank you, Mr. Chair.

The Chair: Yes.

I can advise the committee that at the end of the last meeting a motion by Mr. Jean was for information on the amount of money the railroads derive from ancillary charges, and what percentage this makes up, versus the revenue they derive from freight rates, and also the top 20 ancillary charges. We've asked that of the rail companies, and we would ask the shippers if they would kindly provide, through the chair, the same information.

Mr. Jean.

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

First of all, let me say I'm astonished the NDP is arguing against another tax, but it was a pleasure to see.

Mr. Ballantyne, you were here last time, and I want to give you the opportunity, as well as Ms. Morgan and Mr. Sobkowich, to answer this question. I posed it to the railway but I didn't really receive an answer. I'm going to read it verbatim.

Let's say we have a farmer in western Canada—and this would obviously apply to loggers or whoever else—and this is a major complaint I've heard: they arrange for the cars to come, maybe six cars to come to load their product. On a Monday, they have a group of individuals there ready to load the car, maybe ten people or so. They're all ready to go, they're at the railroad waiting, and the cars don't show up. Nobody calls from the railroad, nobody tells them anything. They don't show up, not Monday, not Tuesday, maybe Thursday, maybe Friday, maybe even the next week. The shippers are expected to have these people on call, ready to go, to load the product into the cars.

Then, finally, when the railcars come, the shipment is late to the boats. A boat has been waiting for the shipment, or some other transportation mode has been waiting. The farmer or the shipper has to go to tremendous costs, and sometimes the cost, I've been told, is over and above any profit they would make—indeed, even sometimes over and above the cost of the product itself. It would be cheaper for them to just dump it.

I have heard this, and I know this is second-hand information, but 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 the staff for those four or five days they're waiting and they receive no call? Does the railroad pay the shipper for any lost revenue and any delay? Does the railroad pay for the ship waiting for their product to be delivered? Does the railroad pay for any late shipments? Is there any payment by the railroad?

● (1045)

Mr. Wade Sobkowich: No, there isn't.

You're talking about grain, so maybe I can just talk about it briefly.

You've described it perfectly. What happens is that the grain shippers will put in an order for cars. Let's just pick a number, let's say 7,000 cars in a given week, all for grain shippers. The railways will come back and say that they can't give 7,000, but they'll give half of that, and they'll bring them on Tuesday. So now the company's been rationed back to half the number of cars it needs.

Then Tuesday comes around, and they have the elevator staff there. I don't know if people appreciate what it takes to build a train, but you have to dedicate your staff to that for that particular day. So the company will have shut down farmer deliveries to that particular station for that day. Maybe they wanted to have those cars previously inspected so they can be certain of the grade of grain going into the cars. So they have the Canadian Grain Commission there, which they are paying.

Tuesday comes, and the cars don't show up. There's been no communication in advance. Somebody contacts the railway, and they say, “Oh yeah, they're coming tomorrow”. So you do the same thing the next day. You shut down farmer deliveries. Now you've lost two days of farmer deliveries, and you've paid the CGC for two days, and you've paid your staff for sitting around for two days.

The cars don't show up on Wednesday. Maybe they show up on Thursday. So they show up. Now you have 24 hours to load those cars, otherwise you don't get your rail incentive. There's a discipline imposed on the grain company to make sure it adheres to the timeline. They have to load those cars quickly. Twenty-four hours seems like a long time to load 100 railcars, but if you do the math, it's about 14 minutes a car, and that includes repositioning and everything like that. It's not a lot of time.

They load the cars, and now the cars are going. A company will plan its logistics so that the cars are not arriving at a destination or at a terminal elevator on top of each other, creating bunching. And they'll also plan to meet a vessel. So now the train is going at a time when you didn't plan for the train to actually arrive at the terminal. And maybe the terminal elevator was sitting around for a few days without any cars to unload, and all of a sudden it gets a glut.

Perhaps it has missed a vessel. Perhaps you've been paying $25,000 a day in vessel demurrage to hold that vessel while waiting for that trainload of canola to arrive.

Mr. Brian Jean: I do want an answer from Ms. Morgan, as well.

Mr. Wade Sobkowich: Sure, I'll get to the point.

You pay all these extra costs. To add insult to injury, you're paying demurrage, because the cars were bunched at the terminal elevator. And the railways do not pay any of those. They do not compensate the shipper for any of those added costs.

Ms. Marta Morgan: I have a fairly brief answer: no, no, and no. The railways do not compensate the shippers for any additional costs.

In our industry, one of the things that's been happening, particularly in the solid wood industry, is that reliability of service is becoming more and more important.

We think about a product like lumber as a commodity product. When our companies are selling to customers like Home Depot, for example, Home Depot wants them to bring in the lumber, stock the shelves, manage the inventory, and know when they are empty. The cost of unreliable service begins at the mill, but it extends right the way through to the end of the shipment in ways that it probably didn't just ten years ago.

Mr. Robert Ballantyne: Certainly, for our membership, it is the same. The answers are no, no, and no.

Mr. Shannon, when he was here from CP the other day, alluded to the fact that in some cases, there are contracts. There are still some confidential contracts between shippers and railways. There may be some instances whereby the railway has some financial penalty, but I would guess that they're very few and far between now, and probably less than they've ever been since confidential contracts came in in 1987.

The Chair: Seeing no more questions, I would like to thank our guests today for your information and input into Bill C-8.

I do want to advise the committee that on Tuesday we will be doing clause-by-clause. If you have any amendments, I would appreciate it if they're submitted to Madame Ouellette by noon today so they can be distributed to the membership and dealt with.

On Thursday of next week, we're going to go to the CP Rail review. That's the final piece of the puzzle for Mr. Bell. I'll announce more next Tuesday and Thursday. Thank you.

The meeting is adjourned.

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