HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Transport, Infrastructure and Communities

TRAN • NUMBER 069 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Wednesday, September 13, 2017

Chair

The Honourable Judy A. Sgro

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● (0940)

[*English*]

The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)): I'm calling to order the meeting of the Standing Committee on Transport, Infrastructure and Communities, pursuant to the order of reference on Monday, June 19, 2017, to study Bill C-49, an act to amend the Canada Transportation Act and other acts respecting transportation and to make related and consequential amendments to other acts.

I welcome our witnesses who are here to help us get through Bill C-49 and let us know what your thoughts are. I'll open it up by everybody introducing themselves.

Cereals Canada, would you like to start?

Mr. Cam Dahl (President, Cereals Canada): Certainly. My name is Cam Dahl, and I'm the president of Cereals Canada. Cereals Canada is a value-chain organization covering the entire country, going from the development of seeds, and of course, including farmers, right through to the grocery shelf.

The Chair: Thank you.

Chemistry Industry Association of Canada, do you want to introduce yourself?

Mr. Bob Masterson (President and Chief Executive Officer, Chemistry Industry Association of Canada): Yes. Thank you, Madam Chair.

I'm Bob Masterson, president and CEO of the Chemistry Industry Association of Canada. I'm joined today by Ms. Kara Edwards who is our transportation specialist and an expert in all matters related to Bill C-49.

Thank you.

The Chair: That's going to be interesting.

Grain Growers of Canada, go ahead.

Mr. Jeff Nielsen (President, Grain Growers of Canada): Good morning.

I'm Jeff Nielsen, I'm a producer in Olds, Alberta, and president of Grain Growers of Canada. I'm here with my executive director, Fiona Cook.

The Chair: Okay.

Going back to Mr. Dahl, would you like to lead off with your presentation?

Mr. Cam Dahl: Certainly.

On behalf of Cereals Canada, I want to thank the committee for the invitation to appear before you today. It's not usual for a committee to be holding hearings like these when Parliament is not sitting, and it's definitely not usual for a committee to be holding marathon sessions such as you have been holding. We recognize this and thank you for the high priority you are placing on this legislation. It is absolutely critical for Canada's agriculture sector.

As I mentioned, Cereals Canada is a national value chain organization. Our membership comprises three pillars: farmers, shippers, and processors in crop development and seed companies. Our board has representation from all three of these groups. All parts of the value chain look for transportation reform as a key requirement for the success of our sector.

Canada exports more than 20 million tonnes of cereal grains every year, worth about $10 billion. Virtually all of this grain moves to export position by rail. The profitability of every part of the Canadian agriculture value chain depends on the critical rail link to our markets.

Agriculture has a strong growth potential. The Barton report indicated that Canada has the potential to become the world's second-largest agriculture and agri-food exporter in just a few short years. The report set a target of $75 billion in exports in 2025. This is up from $55 billion in 2015. Modernized transportation legislation is critical if Canada is to meet this growing demand and maintain our reputation as a reliable supplier.

Agriculture is not just about exports. The industry employs Canadians. One in eight jobs in Canada depends on agriculture. Our ability to meet these growth targets and our ability to increase the number of Canadians employed by the sector depend upon moving production to market in a timely manner. I want to stress this next point: “timely manner” must be defined by the international marketplace. We will not achieve these goals if transportation providers limit our ability to satisfy world demand.

These are the implications of Bill C-49, which is before you today. The first message I want to deliver on Bill C-49 is to quickly return this bill to the House for third reading. The bill will help introduce better commercial accountability into the grain transportation system, it will help improve grain-movement planning, and it will improve transparency and reporting.

I do not want to leave the impression that the grain sector has received all that it requested in this bill. There are provisions that the industry had requested: continuation of the extended interswitching provisions from the Fair Rail for Grain Farmers Act is an example of provisions that have not been brought into the legislation. However, no piece of legislation is perfect, and we believe that the bill should proceed. Cereals Canada has some suggestions for technical amendments to Bill C-49, which are outlined in detail at the end of the written brief you have received.

I want to touch briefly on why we're here and why we have the need for legislation.

Flaws in the grain handling and transportation system were highlighted in 2013 and 2014 when the system suffered a significant breakdown. The systemic failure impacted the entire value chain and damaged Canada's brand and reputation as a reliable supplier of agriculture products. This resulted in lost sales and it resulted in decreases in price. The crisis cost farmers, grain-handling firms, exporters, Canadian value-added processing, and ultimately the Canadian economy.

This was not the first time the transportation system failed one of Canada's largest sectors. This is clearly demonstrated by the multiple past reviews and commissions, such as the studies conducted by the late Justice Estey and by Arthur Kroeger and the report from the senior executive officers, and the list goes on. It is a long list of reports on grain transportation. History shows that if the underlying structural issues are not addressed, transportation failures will recur. Canadian agriculture and the Canadian economy cannot afford to let this happen again.

Railway monopolistic power is a key reason the grain transportation environment does not function to maximize the profitability of the entire value chain. Virtually all shippers are served by one carrier and are subject to monopolistic pricing and service strategies. Therefore, the government has a critical role to play in establishing a regulatory structure that strikes a measured and appropriate competitive balance.

I stress the word competitive. System reform will be successful only if the legislated and regulatory structure for grain transportation is adjusted so that it mimics the conditions of a competitive environment.

It is worth noting that the record size of the 2013 crop, over 70 million tonnes in western Canada, is often cited by the critics of reform as the cause of the breakdown in 2013 and 2014. However, this level of production is not an anomaly. Rather, it is the new normal. Grain production in Canada continues to grow, as does world demand.

This year, 2017, I'm sure many of you have heard—and Ms. Block is in the affected part of the province—there was a drought in many parts of Saskatchewan, yet western Canada is still going to produce one of the largest crops we have ever seen. We expect it to be between 63 million and 65 million tonnes. We have to be able to meet growing demand with growing supply.

I'm not going to go into the details of our amendments; you have them. But in summary, Bill C-49 will move us towards a more accountable and reliable grain-handling and transportation system. This is good news for everybody involved, including our customers.

The grain, oilseed, and special crops industries have been united in their call for measures that will help ensure accountability in the performance of the railways. Bill C-49 will help correct the imbalance in market power between the railways and captive shippers.

The legislation includes the following key positive elements: tools that will allow shippers to hold railways financially accountable for their service performance; improved processes for the Canadian Transportation Agency if issues do arise; clarification of the railway responsibility in the Canada Transportation Act by better defining “adequate and suitable” service; and increased requirements for reporting and railway contingency planning.

If passed, Bill C-49 will help balance railway market power and will help mimic what would happen if we had open competition. This is good economic and public policy.

While the most important part of the railway legislation is the increase in railway accountability, all of these provisions are important. Improving CTA processes is important to ensure that problems are caught and addressed before they snowball into major failures. Together with clarification of the meaning of “adequate and suitable”, this will help ensure that the Canadian transportation system meets the expectations of our customers both within Canada and internationally.

No piece of legislation is perfect, and Bill C-49 is no exception. Cereals Canada has presented a number of technical amendments. The adoption of these amendments should not significantly delay the passage of the bill, and the adoption of these amendments will significantly improve the transparency of the legislation. These are the first four amendments in our brief. They will also help align North American regulations between Canada and the U.S.

The amendments will also help to improve operational planning, as stated in the fifth amendment in our brief. It will also help give improved access to competitive tools to help improve the imbalance in market power. These are the last three amendments.

I welcome any of your questions on my verbal remarks or on the more detailed brief that has been circulated.

● (0945)

The Chair: Thank you very much, Mr. Dahl.

On to the chemistry industry and Mr. Masterson.

Mr. Bob Masterson: Thank you again, Madam Chair.

It is an honour to be among the witnesses to appear before this committee as it conducts this very important business on the review of Bill C-49, the transportation modernization act. In our brief time with you today, we want to share three key messages on behalf of Canada's chemistry sector. These are included in the brief before the committee, which provides additional details on our thoughts on Bill C-49.

Briefly, here are our three comments. First, it's important that you recognize that the chemistry industry plays an important role in the Canadian economy, and efficient and competitive rail transportation is critical to our business success. The second key point I wish to emphasize is that we enthusiastically applaud the work of Minister Garneau and his department. They've listened, and both the transportation 2030 agenda and Bill C-49 are highly responsive to the long-standing concerns expressed by our industry regarding Canada's freight rail system. Finally, while we do want to see Bill C-49 advance promptly, and we do not wish to introduce any new measures, we do believe that some amendments are necessary to ensure that the provisions of the act will indeed meet their intended objectives.

Let me begin by providing you with information about our sector, to underscore how important Bill C-49 is to the growth prospects of our industry. Canada's chemistry industry is vital to the Canadian economy. We are the third-largest manufacturing sector, with over $53 billion in annual shipments. Nearly 73% of that is exported, making us the second-largest manufacturing exporter in the country.

Like many people in the country, you probably don't give much thought to the role of chemicals in the economy, but it's important to note that 95% of all manufactured goods are directly touched by the business of chemistry. That includes all the key sectors of the Canadian economy: energy, transportation, agri-food, forestry, mining, and metals. Likewise, the goods the industry produces are also critical to communities and to quality of life for Canadians. This does include some dangerous goods: products such as chlorine, used to purify drinking water; and sulphuric acid, used in the manufacture of agricultural fertilizers.

Equally important, chemistry is a growing sector, both globally and within North America. During the past five years, more than 300 global-scale chemistry investments, with a book value of more than $230 billion Canadian, have been announced in the United States alone. Unfortunately, Canada has missed out on much of that initial wave of investment, but there are some promising prospects for capturing a share of the next wave of investments.

More than three-quarters of the chemistry industry's annual shipments in Canada move by rail. That accounts for 14%, or nearly one-seventh, of all freight volumes in the country. This makes rail costs and service two of the most important factors when investors are deciding whether to locate a next new facility or expand operations in Canada—or not. This makes a well-functioning and competitive rail freight market vital to the competitiveness of our industry and its investment prospects.

As mentioned earlier, we wish to stress that we applaud the government's efforts and are supportive of the rail freight measures to advance “a long-term agenda for a more transparent, balanced, and efficient rail system that reliably moves our goods to global markets”, as outlined in transportation 2030. Regarding Bill C-49, we believe the government has struck a balance between the needs and concerns of both shippers and rail carriers. We also believe the provisions of the bill are highly responsive to the concerns we have shared during consultations both with the Emerson panel, and more recently, with Minister Garneau leading up to the publication of transportation 2030.

Specifically, Bill C-49 addresses the important issues of data transparency and timeliness, market power, shippers' rights, reciprocity, fairer rates, and extended interswitching. The bill also proposes important measures to incorporate best available safety technologies by incorporating in-cab video and data gathering systems that have been used for many years in other transportation industries.

Taken together, the package of measures in Bill C-49 has the potential to make a meaningful contribution to a more balanced relationship between shippers and carriers, where the realities of today's transportation system mean a normal market environment cannot exist. Therefore, we believe that Bill C-49 presents a rare instance where our sector welcomes government involvement in creating market conditions.

The key word I want to stress in what I've just said, however, is the “potential”. Again, we do believe Bill C-49 is responsive to shippers' needs, we do believe it makes an important effort to establish a more balanced relationship between shippers and carriers in an otherwise non-competitive marketplace, and we are not here today to propose a suite of additional measures for your consideration.

● (0950)

Nevertheless, we are concerned that specific measures outlined and described in the bill may not achieve the desired outcomes. Specifically, with respect to the data transparency provisions in the bill, we would strongly recommend that these provisions include commodity-specific information on rates, volumes, and level of service that would support investment decisions and assessment of fair and adequate service. In this regard, we also recommend that the availability of information to shippers be expedited by establishing a firm early timeline for the implementation of the regulations.

On a closely related note, we recommend that the act include specific requirements for railways to provide the highest level of service that can be reasonably provided. We see ambiguity in the current language that stops short of equating “adequate and suitable” with the highest reasonable level of rail service. This should be clarified for all parties.

With respect to the Canadian Transportation Agency's powers and informal resolution process, we recommend that the agency's powers be increased, providing it with the ability to independently investigate issues on its own initiative and ensure informal resolutions are implemented and effective, and that policy-makers and stakeholders are then able to measure and analyze the broader trends in freight rail performance.

Finally, and perhaps most importantly to us, the intent of the long-haul interswitching provisions in the bill are most welcome. As noted in the government's own discussion paper, the previous competitive line rate measures were little used and provided no appreciable contribution to establishing a more balanced environment between shippers and carriers. We are, however, concerned that the range of limitations and specific exclusions on long-haul interswitching in the bill will likewise lead to its underuse and ineffectiveness. Many of our members are captive shippers. For many, trucking is not an option. For over 50% of our members, trucking becomes economically unviable at a distance of 500 kilometres. As such, we recommend the elimination of those limitations specifically related to toxic-by-inhalation products, to traffic originating within 30 kilometres of the interchange, and to exclusions pertaining to high-volume corridors.

Madam Chair, in my brief time with you, I'll stop here and welcome any questions you may have. Thank you again for the opportunity to speak to you today.

● (0955)

The Chair: Thank you very much, Mr. Masterson.

Now we'll go on to the Grain Growers of Canada, with Mr. Nielsen, please.

Mr. Jeff Nielsen: Thank you, Madam Chair, and committee members.

Thank you for the opportunity to provide comments on this important bill. Grain Growers of Canada represents 50,000 grain, pulse, corn, oilseed, and soybean farmers from across Canada. We have members from the Atlantic provinces to the Peace Country of British Columbia. We are the only national farmer-run group representing all the grains that are exported around the world. Given our dependence on export markets, farmers like myself are highly dependent on a reliable, competitive rail system.

I run a family-owned, incorporated grain farm in south central Alberta near Olds. I grow wheat, malt barley, and canola. Right now, we're in the middle of the harvest. Luckily, we had rain today and I got the day off and I came here. It is important for me to come here personally to speak as a farmer on my thoughts about Bill C-49.

We greatly appreciate the work this committee has done in the past, including the excellent study on the former Fair Rail for Grain Farmers Act, and the recommendations made to the government. As Cam mentioned, the Barton report brought to light how important agriculture is, how the government views the goals, and how agriculture can grow to $75 billion in exports by 2025. We're thankful the government has that recognition and had the Barton report presented to Parliament.

The Grain Growers of Canada welcomed the announcement of this new legislation back in December, and we are hopeful for third reading of this bill and royal assent as soon as possible to avoid any of the handling issues with this year's crop, as we are heading well into fall now and winter is on its way. My entire crop is shipped by rail. I need a rail system that will not only perform for me but for our customers. These customers, we know, can go elsewhere. It is imperative that Canada has a rail system that is effective and responsive to get our crops to export position.

With that, I see opportunities within Bill C-49 to look at the ability to hold railways financially accountable for service provided. I want to give an example of how this would work for my farm.

Currently, there's no avenue to penalize the railroads for poor service. This lack of accountability impacts all players in the supply chain and, ultimately, farmers. I market my crops throughout the year when I see best-price opportunities for my farm and for my financial needs. Let's say I decided to sell 200 metric tons of canola in February because I saw a price signal there, and also in February I have an input bill that my farm needs to pay. It is not that I like choosing February, because it's minus-20 and I might need to shovel snow, but I'm quite willing to haul grain any time of year when I have signed contracts.

Here comes February. It's cold, it's snowy, and I'm out there ready to haul grain. The auger's in the bin, and I get loaded up and the elevator calls me that the train's not here. It has been put off for a few weeks. Then I call again and find the train has been put off for another few weeks. Now it's late April, and I'm getting my machinery ready to seed next year's crop. I have delayed paying my farm account, because I hadn't had the grain sales that I thought I had contracted for in February.

It has had a great effect on me personally and on my farm. My grain company has been affected, too. They had sales booked for that canola for an offshore customer. That canola did not reach port in time and those ships may have had to wait in Vancouver harbour for a lengthy period of time. That costs money too. It's called demurrage, which sooner or later will be passed back to me as a producer.

On the flip side, my grain company is fined by railroads if a train is not loaded within a set period of time, yet my grain company cannot fine the railroads for not supplying the train on time as scheduled. I've seen cars sit there for well over a week after they've been filled, yet there's no penalty issued to the rail companies then. That delay in moving that train for that week also delays the next train from coming in, which starts a snowball effect of delays.

We are all very familiar with the mess that happened in the winter of 2013-14. As a grain producer, I experienced it in many ways. I believe I lost marketing opportunities since I could not sell into certain markets because there were no opportunities for grain to be delivered. We saw contracts that were set for December and not delivered until well into the spring. That, of course, affected farmers' financial cycles as far as paying their bills and such. We saw customers, and I'll point to oats here specifically, who lost business. Those customers in the U.S. who wanted Canadian oats went to Scandinavia to fill their needs.

As I mentioned before, our customers have other choices. If we continue to allow the railroads to provide irregular, spotty service, we will lose those customers forever. Winter on the Prairies happens. Sometimes it's more severe than others, but it happens every year.

● (1000)

One of the other provisions we welcome in Bill C-49 is the increased requirement for reporting and railway contingency planning. It is hoped that our rail companies will quickly adopt and publish sound contingency plans to demonstrate that they have the capacity to get our products to wherever on time.

In the fall of 2013, farmers, grain companies, and Stats Canada knew that we were going into a large crop, which as Cam has pointed out, is now the norm. We are producing more grain continually, yet our rail companies, in the fall of 2013, were not ready. Winter hit and things literally went off the rails.

Data collection is another key point. It is important that we have a complete dataset. I commend the work of the Agriculture Transportation Coalition and Quorum Group for the information they provide, which has filled in significant gaps and helped us work with railroads to hold them more accountable in the last couple of years.

In Bill C-49, we also appreciate the ability of the Canadian Transportation Agency to play a larger role in areas such as improved dispute resolution. We see increased clarity of railway responsibility in the act when it comes to the definition of adequate and suitable service. One of the clear benefits I see of these two items is a much-needed assurance to me, as a producer, that if there are issues, they will be identified and hopefully dealt with prior to any severe impacts and the potential loss of sales or customers.

Grain Growers of Canada has a few recommendations we feel will strengthen the bill. I reiterate that it is critical that we have this legislation passed as soon as possible to ensure the smooth movement of this year's crop.

Grain farmers support maintaining the current maximum revenue entitlement, MRE, with the adjustments for capital spending, as proposed in Bill C-49. The MRE is working well at this time, and changing it slightly to recognize and incorporate the investments made by each railroad should encourage more investment and will gain infrastructure for the future as a result. The point there is our hopper car fleet, I believe. As we know, it's aging badly.

One glaring omission of grains under the MRE is soybeans. On behalf of our members, we ask that soybeans be included as one of the crops under the MRE's schedule II. Soybean acreage is increasing year over year in the prairie provinces, and naturally, those products are shipped by rail. This update reflects the current needs of an industry that were not anticipated at the time the MRE was set. This truly will be a modernization of the act. Once Bill C-49 is fully in effect, and we've seen the proposed improvements, a comprehensive review of the MRE can be undertaken, but not before.

I would like to quickly speak to long-haul interswitching. In the previous Fair Rail for Grain Farmers Act, we saw interswitching increased to 160 kilometres. This provided a very useful tool for our grain companies to obtain more competitive terms of service.

To illustrate how important interswitching is, I draw your attention once again to oats. Oats are a corridor-specific commodity being used by major processors in the U.S., and they need to get to the buyer in a regular, timely fashion. Many customers were lost as a result of the 2013 winter crisis, and the industry is still trying to get those markets back. The extended interswitching provision has helped many oat growers. Given the usefulness of that tool, we, as the Grain Growers of Canada, are concerned that the long-haul provisions set out in Bill C-49 may not be as effective or address some of the needs of all our producers.

We ask that you review the attachment to our submission for the recommendations from the newly reinvigorated crop logistics working group, of which I am a member. The group has proposed amendments to the long-haul provisions that we believe will ensure the security and market reliability the previous extended interswitching provided. Already this year we are seeing increased demand in the U.S. for some of our crops due to the poor quality in the U.S., and it must go by rail.

● (1005)

Grain producers are working hard to provide the world with top-quality grain, oilseeds, pulses, and corn. We believe strongly that the goals set out for increased exports are achievable and we are ready to work with the government to meet those goals. However, we need this legislation to pass as soon as possible to ensure that we can rely on the grain-handling system to get our products to export position.

I thank you for the time.

The Chair: Thank you very much, Mr. Nielsen, in particular for your personal challenges. Sometimes we forget just how difficult it is out there.

We'll move on to our questions.

Ms. Block.

Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC): Thank you very much, Madam Chair.

I want to thank each one of you for joining us today. I do appreciate your attendance.

As you pointed out, Mr. Nielsen, we know that the timing of these hearings doesn't dovetail very well with our agricultural community, but as it has been pointed out, this is important work that needs to be done. Your testimony here today is crucial in providing the committee with the information needed to ensure that the right balance is struck in addressing the underlying issues that exist in our transportation system. But we know that this is not the first time that your input has been solicited to aid parliamentarians in our deliberations on how to structure legislation that ensures market access and an efficient means of transportation for our shippers and producers.

Every witness so far has testified that there needs to be some changes to this legislation, and all have identified issues with the provisions around long-haul interswitching. Because I have such a limited amount of time to ask each of you questions, I have two questions that I would like each of you to answer.

Does Bill C-49 enhance competition in rail service, and, on balance, do you prefer the extended interswitching at 160 kilometres, as previously outlined in the Fair Rail for Grain Farmers Act, or do you prefer the LHI provisions in this bill? I'll have each one of you answer those questions.

Mr. Cam Dahl: I'll give just a quick response to both of those questions. Yes, Bill C-49 will improve the competitive balance when it is passed, which is why, on balance, we are asking that the legislation be brought to royal assent as quickly as possible. This bill will improve railway accountability, will improve transparency, and will move us closer to what we would have if market competitive conditions existed.

That being said, the extended interswitching was used. It was extensively used by the grain industry and it was an effective tool. Given our desire to have Bill C-49 in law as quickly as possible, our approach to you today has been to offer some amendments to the long-haul interswitching. That would make those provisions more effective.

Mr. Bob Masterson: I think the first answer is, yes, we do believe that the provisions of Bill C-49 will make a more balanced and competitive rail freight environment, but we have to remember the word “balanced” is important. We're not just saying that as a means to keep the peace. Our competitive position depends on the railways also being competitive and profitable. No one's here to punish them, but it hasn't been a balanced relationship up until now. We believe the provisions in this bill will create a more balanced relationship that will allow all of us to have commercial success and to grow our businesses in the future.

To your second question, of course, it depends, and unlike perhaps the agricultural community, with large volumes in a fairly tight geographic boundary, our industry is spread coast to coast and it really depends on the individual circumstances of individual producers in a very heterogenous sector. That said, there have been people who took good advantage of the earlier provisions and did quite well. They were pleased with it. That's one of the reasons why in the consultations as a sector we asked for something that was permanent, something that was available to all sectors, and something that truly provided relief for the opportunity for competitive commercial discussions between service providers on an ongoing permanent basis.

I hope that helps. Thank you.

● (1010)

Mr. Jeff Nielsen: Thank you. I agree with the previous comments. When you look at what we heard in December, when this bill was announced, it was really a godsend. It hit a lot of the avenues we've been searching for. When you look at reciprocal penalties, look at data collection, and is it “adequate and suitable”, these are things we've been asking for in this industry for a long time. We need to have railroads that are accountable. As Cam mentioned, they're a monopoly, a duopoly if you want it call it that. I'm only on one main line. I could access another main line, but it's a good distance away from me, so I'm restricted there.

As far as the long-haul interswitching is concerned, we've done a lot of work with the crop logistics working group at presenting the amendments. As Cam and the rest of us have all mentioned, we need to see passage of this bill soon. We're coming into a large crop this fall. We need to make sure this crop gets to market and gets to export.

Thank you.

Mrs. Kelly Block: I want to address the sense of urgency that I am picking up on from our witnesses today. The question that comes to me as a result of that urgency is this.

We had the Fair Rail for Grain Farmers Act sunset in the middle of this past summer. You are, then, in fact without any remedy when it comes to interswitching, except for the 30-kilometre right. Is that what's precipitating the urgency to get this law passed, so that you are negotiating contracts with certainty and with terms that you can actually go to the railways with?

Mr. Cam Dahl: Yes. The protections that the grain industry had under the Fair Rail for Grain Farmers Act were valuable tools. From my perspective it wasn't just the message that was sent to Canada, but the message sent to our customers. I visit many of our customers internationally, and one of the first questions I am always asked, whether I'm in Bangladesh or in Japan or in Nigeria, is a question about Canadian logistics. I cannot stress enough the harm to our reputation that was caused by that 2013 and 2014 failure. We cannot afford another one.

As Jeff said, we have a large crop to move, despite the drought conditions we have in the Prairies, and we need to have tools in place that will help ensure that if problems begin to develop, they don't turn into the large, systematic failure that we had in the past.

The Chair: Thank you very much.

We will move on to Mr. Sikand.

Mr. Gagan Sikand (Mississauga—Streetsville, Lib.): Thank you, Madam Chair.

My question is for Mr. Masterson.

First, thank you for being here. I appreciate your opening remarks and I'm very pleased that the ministers heard you. It's a sentiment that's been reiterated by many of our witnesses.

Correct me if any of my facts here are wrong. You said there was a $200-billion investment in the United States and that 14% of rail volume is made up of chemicals. To the best of my knowledge, in the United States the chemical industry also has access to barges to move their products—

Mr. Bob Masterson: That's correct.

Mr. Gagan Sikand: —and we don't have that here in Canada. I can imagine there are some implications from this difference within the industry.

Could you just speak to that, please?

Mr. Bob Masterson: This is a question that came up in discussions previously. Does Canada need something that the U.S. has that we don't have? There are a number of factors that say, yes, we do need it. To answer the question from Madam Block, yes, we need it urgently.

The United States has a number of factors that assist in transportation issues. One is that industry and people are much more consolidated and concentrated. When it comes to our business of chemistry, their resources—natural gas, petroleum products, and others—are located much closer to coasts. Texas is on the coast. Louisiana is on the coast. It's easy to get stuff to market, and especially through barging.

In Canada we have tremendous resources, largely in the petrochemical industry concentrated in western Canada—specifically Alberta—and there is something called the Rocky Mountains between Alberta and the west coast that prevents our moving any volumes at all by barge.

Canada is, then, a different marketplace. We have much longer distances to market, and in our case fully 60% of every tonne of product that we move goes across the border into the U.S. Those are long distances. Our industry, like many, is deeply interconnected. Volumes move between Alberta and Texas and back into Ontario, and even into Mexico, on an ongoing basis. That is not going to be accomplished by moving millions of tonnes of product by truck.

We have to make the system we have.... If we want the economy to be strong and to attract investment into our sector, we have to make sure that the economy is working as efficiently as it can in all areas. What you've heard regularly from the stakeholders who have been here is that the rail freight market has not been efficient and competitive for many years.

● (1015)

Mr. Gagan Sikand: Thank you.

I think Mr. Graham is going to take the remainder of my time.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you.

Mr. Masterson, I'll start with you, but I have only one question for you before I carry on.

Railways carry much more hazardous materials than just toxic inhalation substances. Some of them are called “special dangerous” in the industry, which crews just call “bombs”. Some substances are not even permitted on trucks.

The large carriers argued to us on Monday, I think it was, that if you have access to trucks, you're not a captive industry. You said that is clearly not the case.

Are there any other options for many of these companies besides trains?

Mr. Bob Masterson: This is a great question to turn over to Ms. Edwards. She is an expert not only on Bill C-49 but also on all matters on dangerous goods.

Kara, are you comfortable with that?

Ms. Kara Edwards (Director, Transportation, Chemistry Industry Association of Canada): Often rail is the safest mode for highly dangerous goods to travel, or, depending on the volume, you can transport it in cylinders as well that would go by road but in small volumes. With the other traffic on the road, with different conditions, often rail is the safest mode to transport dangerous goods, particularly TIH products and other very dangerous goods.

In Canada, I think we have to also look at how many of these very highly dangerous goods are travelling in high volumes. There is only a handful of TIH products that travel by rail. Often in our membership a lot of companies, let's say with chlorine, will not transport by road because the risk has been deemed too high.

Mr. David de Burgh Graham: Thank you.

Mr. Bob Masterson: If I could, I'll just add an anecdote to help you understand that.

Styrene is another dangerous good. Previously, shippers in Canada would only ship that by rail. Our industry had a company in the Kelowna area of British Columbia. They took that styrene and turned it into resins that then supplied a small but important regional recreational boating manufacturing industry. Unfortunately, the short-line railway that served that facility decided to close. Neither of the two large class 1 railways picked that short-line railway up, so they suspended service.

Well, there was no way.... It wasn't that it couldn't be delivered by truck. It was a decision by the shippers that they would not move that product by truck. With the rail out of service, the plant that made the resins closed. With the plant that made the resins closed, the boating manufacturers closed.

There are goods that need to move by rail for very good reasons, and they have to be able to get to market. It's not just our members because, again, we supply other industries. The goods have to get to them at the end of the day.

Mr. David de Burgh Graham: I was in Kelowna last week at caucus, and they found that the track is now a bicycle path.

I have only a few seconds left. I had a number of questions for Mr. Nielsen, but I won't have time to get through them.

Very quickly, a freight car has a service life of about 40 years. How old are the freight cars in service right now?

Mr. Jeff Nielsen: Actually, I think they're over 40 years, some of them. They have been modified and they have been upgraded, but within the next 10 to 15 years, we're going to see the majority of our cars decommissioned.

Mr. David de Burgh Graham: Thank you.

Mr. Cam Dahl: I'll just make a quick distinction between the hopper cars that the Government of Canada owns, which were bought in the 1980s, and the private cars that the railways own and lease, which are modern, high-capacity railcars.

● (1020)

Mr. David de Burgh Graham: Thanks.

The Chair: Thank you very much.

Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin (Trois-Rivières, NDP): Good morning, Madam Chair.

I want to officially say hello to all my colleagues on this third day, which is bringing us some perspective. Outlines are starting to take shape, and I'm sure our committee will not ignore them. Let's hope the government will follow suit.

My first question for the witnesses has to do with what I refer to as the diffusion effect. The drafting of a bill is not akin to writing a novel or drawing up a business contract. Two of your organizations insisted that the definition of adequate and suitable service must be changed.

I would like to hear your opinion on that issue, since even I am really confused. I feel that, if a service is adequate, it must also be suitable. I feel that synonyms are being used to try to cloud the issue.

You want those two terms to be revised, but what words or underlying definitions would you like to see used?

[*English*]

Mr. Bob Masterson: I think in our comments we provided some suggestion. In our written submission, we suggested that the ambiguity be removed, and we'd speak of the highest reasonable level of rail service that could be provided. Perhaps Ms. Edwards could expand on that.

Ms. Kara Edwards: I think a key part of that is understanding at what point there is no longer adequate service. It needs to incorporate that, as well. I think the Western Canadian Shippers' Coalition did a very eloquent job of explaining the key differences yesterday.

We could propose and submit a legal text to the committee as well, if that's of interest going forward. We didn't bring a copy of the text to specifically note the word changes. They were only very minor, though, but it could save a lot of time and court cases in the future to clarify that early on.

Mr. Cam Dahl: Just quickly, I'm not a transportation lawyer, so I'm not going to say that the amendments in Bill C-49 are perfect, but the bill does propose to tighten up or better quantify the definition of "adequate and suitable". "Adequate and suitable" really is how the railways are held to account. Bringing in that broader definition does help improve accountability.

Is that the perfect definition? Probably not, when lawyers give us different legal texts, perhaps, but it is a significant improvement over what is in the current Canada Transportation Act.

Mr. Jeff Nielsen: I disagree with the previous two comments.

Thank you.

[*Translation*]

Mr. Robert Aubin: Of course, we are open to any suggestions you could send us.

Mr. Masterson, you gave us concrete examples to help us understand the reality on the ground, especially in my case, as I may be light years away from that world.

In your report, you also recommend that the agency's inquiry powers be increased. Could you give me an example of what the agency could do to be more effective if it had increased powers?

[*English*]

Mr. Bob Masterson: Again, I'll turn to Ms. Edwards. She spends a lot of time with the folks involved in the transportation agency and is in a better position to speak on our members' behalf.

Ms. Kara Edwards: With regard to the agency's powers, we believe, if they're expanded for shippers, it gives one more opportunity for remedies to be available. Additionally, with some of the limitations of the agency right now, it might not be as easy for them to see how certain cases fall into the larger system. By expanding their powers, they can take certain cases and be able to see if they're consistent or if things are being followed through after measures are put in place. That's what we meant within our submission.

[*Translation*]

Mr. Robert Aubin: Thank you.

I still have one minute left.

I will quickly put a question to Mr. Nielsen.

I think you mentioned that soybeans were left off the schedule and should be included on the list. That is an anomaly, and I agree with you that soybeans should be in the schedule.

Should Bill C-49 provide a review mechanism for products on the lists, since we know that agriculture changes quickly? Eating habits change and industry habits change, as well. The market changes, and we can understand that a farmer may decide to change what they grow even though that involves high costs. Should there be a mechanism to review the list regularly?

● (1025)

[*English*]

Mr. Jeff Nielsen: I don't really agree with that. We're seeing just with the ability of our farming community the adoption of technologies that have really advanced how we as farmers take care of soils yet provide some of the best-quality crops in the world, and we're increasing those crops.

We're increasing those variety crops with technology to develop better breeding techniques. Soybeans are now less than 40 miles from me. Will I ever be able to grow them in my area? I'm not sure yet. I'm in a different climatic zone, but there's the ability to see those crops expand. Some of the crops are very good for our soils, so once again, we need to see some of those abilities to enter new crops into this agreement.

[*Translation*]

Mr. Robert Aubin: Thank you.

[*English*]

The Chair: Thank you very much.

Mr. Fraser.

Mr. Sean Fraser (Central Nova, Lib.): Thank you very much, Madam Chair.

Thanks to our witnesses for being here.

Before I begin, if you'll indulge me for just a moment, I'd like to communicate that I'm here with a bit of a heavy heart today. In Nova Scotia, we lost an absolute political giant yesterday with the passing of Allan J. MacEachen, who served as deputy prime minister and minister of foreign affairs and was responsible during his time in the health portfolio for implementing medicare. Despite all these incredible accomplishments in Ottawa, back home he's best known for his service to his constituents. As a young parliamentarian from Nova Scotia, I hope to emulate that today and over the course of my career.

In that spirit of standing up for Atlantic Canada, I can't help but notice that with the extended interswitching provisions that existed under Bill C-30 a specific sector and a specific region were impacted. Perhaps, Mr. Masterson, you may be best positioned to answer, although Mr. Nielsen pointed out that he has members in Atlantic Canada too. How does this bill service different sectors across the entire country, not just those in one important region?

Mr. Bob Masterson: From our perspective, as I mentioned, we have a very heterogeneous industry. It's from coast to coast. It's very complex, with a large number of different products. Our view is that this strikes the right balance in the measures that are proposed. If they can be adjusted as discussed, they will bring benefit coast to coast.

We've not identified any regional shortcomings in the provisions that are here at this time. We feel that it will benefit all shippers across the country.

Mr. Sean Fraser: I forget which witnesses—I believe there was more than one—commented specifically about the importance of data and transparency. Right now I understand there's a disparity between even what the bill proposes and what exists in the United States, for example.

I don't want to get into the territory where we're starting to interfere with the proprietary information of the railways, but what can we realistically expect to see? Is harmony between the U.S. and Canada the gold standard here? What kind of data would make it most effective for shippers without compromising the proprietary information of railways?

Mr. Cam Dahl: That's a great question. Of course, data is key to the concept of accountability. Data is also key to the goal of the legislation in allowing for contingency planning and for capacity planning in advance. That data is absolutely critical.

Some of the amendments we have brought forward tighten up that time window with precisely those objectives of the bill in mind, to ensure, for example, that some of that data is coming forward within a week and is available and useful to shippers, as opposed to three weeks after the fact where it's not as useful. It might be useful for an academic in a university, but not for somebody who's planning for a late train to Vancouver.

Similarly, with some of the provisions of some of the data requirements coming into effect, to your comment about what is happening in the U.S., the railways are already providing that information to the Surface Transportation Board in the U.S. It's not something new. There aren't new systems that have to be brought into place.

This is absolutely critical for contingency planning and for capacity planning, and there's no reason to delay that a year after the bill comes into place.

Mr. Jeff Nielsen: I totally agree with that. When we talk about CN and CP both providing that data to the Surface Transportation Board in the U.S., it's no different from what they could be providing to us.

When you look at Quorum Group, which is supported through the federal government, their reporting period is weeks, maybe up to three to four weeks after, before they can get some of this data. The Agriculture Transportation Coalition group is going from the industry perspective. They do not get the information from the railroads. We're trying to work with it.

● (1030)

Mr. Sean Fraser: On the timeliness issue, Mr. Dahl, I know you just mentioned that a week might be reasonable, as opposed to three or four weeks. I'm sure you're going to say real-time data is the best data.

What is the reasonable window that you can be working with that's going to make a difference for business decision-making?

Mr. Cam Dahl: That's why there are three very specific proposals in the brief that has been given to you.

They are proposals 1(a) through 1(c) that tighten up that timeline, as well as some of the specific provisions for proposed section 51.4, proposed subsection 77(5), and proposed section 98. Those amendments are brought in specifically to move that reporting time frame from what would be three weeks in total to about a week. That's in line with what we see in the U.S.

Mr. Sean Fraser: Shifting gears for a moment, I think you're spot-on in discussing that in a world of the global marketplace, timely transport of our goods is absolutely essential. One of the things I find governments aren't very good at is communicating to the people who live in the communities we represent that international trade is good for small businesses and it's good for workers in our communities.

Has anybody done an economic impact on what the losses are for our failure to transport goods in a timely way, using perhaps the 2013 example where you mention that we lost markets to Scandinavia? Is there any kind of economic assessment that we can trumpet at home to say that if we don't do this, we're going to lose jobs in our communities?

Mr. Jeff Nielsen: I believe that there has been. We had data.... Sorry sir, I can't think of the number that we stated in grain loss sales from the 2014 crop year, but it was a significant amount of dollars. As Cam mentioned, it's our reputation.

There are harvests going on somewhere within the whole world almost every month. We have to compete in that marketplace when our crops come off at this time of year—September, October. We have to make sure that we have those markets.

Winter is hitting, and as Bob has mentioned, we have the Rockies to the west of me. We have to get the grain through those Rockies. It's a bit of a challenge, but we need to be able to guarantee our customers that we are a reliable supplier of a quality product.

The Chair: Thank you very much, Mr. Nielsen.

Mr. Badawey.

Mr. Vance Badawey (Niagara Centre, Lib.): Thank you, Madam Chair.

I'll preface my questions by stating that on Monday we had a strong theme of safety and passenger rights. Yesterday we had a strong theme of safety and business practice, which ultimately lends itself to safety. Today we're hearing about service levels to the customer.

As I said yesterday, a lot of what we're discussing regarding safety has to do with business practice. How do we lend ourselves to the broader transportation strategy of Bill C-49, building in a better business practice, a better level of service, and being able to bring our product to market, nationally and internationally?

I want to drill down a bit. In my former life at the municipal level we were all about these issues. We considered how to apply ourselves, our daily business at city hall, so as to allow business to be in a more effective and friendly environment. That's what I see here. One of the things we did back then, which I can see happening now on a national level, was to sometimes enter into the business world, not as a government but as a partner. Back then we entered into a partnership with a short-line railway because the class 1s abandoned us. To keep what happened in nearby jurisdictions from happening in ours, we bought a railway, which we ran and operated. We brought a short-line operator on board to make sure the companies that depended on those railways continued to be healthy and got the service they needed.

I want this to be a dialogue like we had back then, the same kind of dialogue here in Ottawa. Business often finds itself abandoned by the traditional transportation services. That could be on the water, the railways, the roads, or in the air. It could have to do with the government or the private sector. One example is short-lines. We all know this service attaches itself directly to business and provides a link to a broader transportation network. Often the future of business depends on that link and that network.

My question to you is twofold. First, can the product be moved by truck or other method of transport? I think I got that answer earlier when you said no. We know that some companies ended up closing because those lines were abandoned and nobody picked up the ball with a short-line operator.

Second, Bill C-49 addresses the broader transportation network and the broader transportation strategy. Do you, being in the business every day, have any recommendations on how this bill could give short-line operators a mechanism that would allow them to pick up on these abandoned lines so that local economies are not hurt and local communities remain healthy?

● (1035)

Mr. Bob Masterson: From our perspective, short-line railways are very important, and we've stressed that their importance has been underplayed in the transportation 2030 agenda. Many of our producers carry product on that crucial first mile, and more important, when you're trying to reach a forest products mill in northern Saskatchewan, you're on the short-line for the last mile as well.

The short-lines are essential, and this is true beyond the provisions of Bill C-49. We've argued in past submissions to the finance committee that, because short-lines play such an important role in the manufacturing sector, we ought to consider putting some of the investment incentives we use for manufacturing into the short-line railways. Perhaps the tools we use to stimulate investment and growth could be applied to make sure those short-lines are on a sustainable financial footing. We should bear in mind that when these short-lines fail it's devastating for our members, our customers, and for many communities.

Mr. Vance Badawey: This is a dialogue. It's what I'm trying to get out of this in considering the recommendations we bring forward for Bill C-49. It could also affect the deliberations of the finance committee and other committees, as well as future transportation or economic strategies.

Taking it a step further, we can see that a lot of the problems exist because of the capital side of it. There's no question that they're abandoning these lines because the ballast, the rails, or the ties are deteriorating. Instead of putting the capital in, they abandon these lines altogether because they're not getting acceptable returns. Do you find there's a need, not just from the operating side but also from the capital side, to take action before these situations happen?

I say this because we have a lot of capital assets in the form of infrastructure. There is rail, water. There is the St. Lawrence Seaway, where the docks and the canals are falling apart and no capital is being put into those assets. Before it gets to the point of having to abandon these assets, what role do you see government playing to ensure that they're preserved?

Mr. Bob Masterson: Here are two quick responses from us. Then we'll turn it over to our colleagues.

First, what we feel is very important, and the provisions in Bill C-49 will help with this, is the data access and timeliness to support decision-making. Anecdotally, our view is that the Port of Vancouver, in particular, is getting quite congested. We think about growth plans. We think about a new $6-billion to $10-billion facility in Alberta. Then you have to start to think that the market for that is not North America; it's Asia. How's it going to get there? Anecdotally that's there, but that's why we need the data and the provisions that are here in Bill C-49 to help us understand where the pinch points are.

Second, again, we broadly applaud the work of both the former minister and the current minister. When we look at the transportation infrastructure plans that were announced earlier in the year, we see they will make important contributions to addressing many of the concerns. Anecdotally, again at least, we've been assured that there's opportunity to address short-line issues in there.

The Chair: Thank you very much.

Go ahead, Mr. Shields.

Mr. Martin Shields (Bow River, CPC): Thank you, Madam Chair.

Thank you for being here this morning. I appreciate the information you're bringing to us.

Going to the LHI, saying that it's regional and doesn't apply, we have exclusion zones in this one. We had Teck here yesterday, talking about the monopoly and the exclusion zones. That's a problem.

Now we go to you and your world. Tell us about exclusion zones.

Mr. Bob Masterson: Absolutely. We mentioned in our submission and our comments what we think.

If the desire is create a more competitive relationship and more balanced relationship between shippers and carriers, why put in other additional limitations? This is not a competitive marketplace. We should do the maximum we can. Certainly it's our view that those limitations should be removed.

Mr. Martin Shields: You're saying the exclusion zones should be gone in the corridors.

Mr. Bob Masterson: Absolutely.

Mr. Martin Shields: Okay. Thank you.

Moving to Grain Growers of Canada, thank you for mentioning the oats. People may not know, but the area you live in is the most valued for oats in the horse-racing industry in North America. You ship to the U.S. because they are the best quality oats for the racehorse industry. You have to get access to the U.S. market, and you grow those oats in your area. Thank you for mentioning that. They need to be put in there.

One of the things may be an understanding where the farm industry is. I relate the farm industry to the day traders in the market, in a sense. You are technologically advanced. You're day traders, and day traders need access to markets and need things to move. I think people don't understand how technically advanced you are. Maybe you want to touch on that again.

● (1040)

Mr. Jeff Nielsen: Thank you.

I don't grow oats. I find them one of the itchiest crops around. Barley is much better shovelling than oats.

Mr. Martin Shields: Yes, it is.

Mr. Jeff Nielsen: It's a very good point. I get market updates three or four times a day. I have market advice coming to me. I look at the opportunities for future contracts for my crops. Usually a certain percentage every spring already has a forward contract. I'm looking at my financial timeline, when I need to make payments for land, equipment, machinery, or whatever. I'll pick certain months that I find a good price, and then I know my bill payments are due that month.

That's where, if there are glitches in the system, there are glitches in my finances. I have, fortunately, with maturity, a very good banker now that will allow me some leverage, but we look at the next generation, the younger farmers coming on. They don't have that ability. They don't have that credit rating built up with a bank.

Mr. Martin Shields: And with the income tax thing.... Never mind.

Anyway, we have a word in here, “adequate”. Some of us were more recently in the education system. I spent a lot of time in both the public and advanced education, and the bell curve says adequate is C. I think we all relate to what a C is. To me that's adequate. That's not a gold standard.

Mr. Dahl, do you want to respond to that, because you mentioned it?

Mr. Cam Dahl: Yes.

The terms “adequate” and “suitable” have been part of transportation law and jurisprudence for a long time. That, in fact, is the minium standard that the railways have to meet. That's the reason why those words are used. That's the lowest. That's the point at which the agency can start looking at remedies for shippers. That's not a goal. That's the bare minimum.

Mr. Martin Shields: Right. We're talking about up to a 40% increase in the next 10 years, and we have problems with it now. In the rail system, if we expand that by up to 40%, which is the goal in the next 10 years, and if we're operating at a minimum, what's going to happen?

Mr. Cam Dahl: That's why a key point in looking at what we need from our transportation system needs to be defined by the markets. It needs to be defined by what farmers like Jeff are supplying and what customers around the world are demanding. What we can supply to the market should not be defined by what our service providers want to meet.

What level of service is required is something that needs to come from the marketplace. It's something that needs to ensure that Canada is meeting the demand both here at home and in the U.S. and offshore markets as well.

Mr. Martin Shields: I'll go back to the chemistry industry. If you're competing with the U.S. and you have exclusion zones, how much of a disadvantage does that put to you in, when you compare with somebody going to Canada or the U.S. through our market?

Mr. Bob Masterson: It's hard to quantify a specific disadvantage from a specific measure. What do we know? I mentioned earlier that our industry has seen over $250 billion of new investment in the United States in the last five years. Historical patterns say Canada should have seen 10% of that. We should have seen $25 billion to $30 billion of new investment in our sector in Canada in the last five years. We've not seen that. We've seen about $2 billion. We know we have a lot of work to do to make business conditions attractive so that people want to invest here.

Going back to your earlier question, maybe C was good enough in the 1970s, but in today's world, for individuals who are moving product from their family farms or for the economy as a whole, when we want to attract a greater share of the global market and attract investment, I can guarantee you that a C is not enough.

I would add one more thing that I think is really important on the data question asked earlier. We have to distinguish between individual claims. There will always be reasons that things don't happen when they should, but the most important information that will come out of this will be those broader trends. Is the system performing the way it's supposed to?

If you look at the United States, one major class 1 railway within the last year had a change of ownership, and within six months, the Surface Transportation Board was able to issue letters and call people in to Washington to say their service wasn't good enough and had to change. I don't think we have the ability today, and that's where we need to get to.

● (1045)

Mr. Martin Shields: Thank you.

The Chair: Thank you very much for that.

Mr. Hardie.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Thank you, Madam Chair.

This will only be received and understood by a few, but the answer to “adequate and suitable” service is 42.

Mr. Bob Masterson: And a half.

Mr. Ken Hardie: Is there rationing of rail capacity in Canada? Is there enough to go around?

Mr. Cam Dahl: That's a complicated question. It depends when you ask.

From a grain perspective, if you ask that question in the middle of July, the answer is no. If you ask that question in the middle of November, the answer is yes, because there are peak demands in international markets, as well as domestically. It depends on the time of year and it depends on the conditions.

Mr. Ken Hardie: Do you think there's dysfunctional competition between various sectors or shippers?

Mr. Cam Dahl: I don't see that, but what I do see in particular with the grain industry is a sector that's absolutely captive to rail. There's no way we're going to move 20 million tonnes of wheat by truck to Vancouver. If there is a crisis and you're a rail company and you have a choice between moving something that you might lose otherwise or something that you can move two or three months from now, what choice would you make?

Mr. Jeff Nielsen: We had a famous past chairman of one of the railroads who made a public statement that grain is in the bin. They'll move it when they get to it, and they have the whole 12-month period to move it.

We cannot let our grain go in 12-month increments.

Ms. Fiona Cook (Executive Director, Grain Growers of Canada): That's an excellent question, though, because it speaks to the need for data. Can we really, at any given time, know what the capacity of the system is? I would say we can't right now, so we need the data and a system-wide dataset to be able to assess where we're at, at any given point in time.

Mr. Ken Hardie: Part of the reason for my question is that there is a very robust debate out in British Columbia right now about pipelines. Pipelines, of course, would offer an alternate form of transport that currently might be taking up capacity of railways.

I want to talk about the exclusion zones. There are the two that I understand: Kamloops to Vancouver; and between Quebec City and, I think, Montreal.

Mr. David de Burgh Graham: It's between Quebec City and Windsor.

Mr. Ken Hardie: Okay, Quebec City and Windsor. Thank you for that.

Are we not dealing with a couple of corridors, though, where there's pretty adequate competition because of the fact that you have that concentration of service along those two corridors? Do we in fact need extended interswitching along those corridors? You do have the competition.

Mr. Bob Masterson: Windsor-Quebec, for instance, is a very long distance, and while you might have two class 1s reasonably close together, I would have to even calculate the distance in the centre like Toronto. Elsewhere in that corridor those distances are easily beyond that.

The short answer is no. Again, if the goal is to increase competition, we know those companies that have been given, under the earlier provisions, the opportunity to force competition for moving their product did very well, and had improved rates and were more competitive because the opportunity was there. We don't understand why it would be artificially restricted because of a geography.

I'll leave it at that.

Mr. Cam Dahl: I would just concur. This is, of course, not one of the primary issues for the grain shippers, but I don't see the reasoning for the exclusions also.

Mr. Jeff Nielsen: Going back to your previous question on capacity, when you look at the U.S. marketplace, both CN and CP do have rail lines into the U.S., but with this loss, as Ms. Block mentioned about the 160-kilometre interswitching, we're missing opportunities right now to get grain in there because we were relying on those two railroads instead of doing the interswitch at BNSF.

If we're looking at having to ship hopper cars onto CN and CP lines in the U.S., the cycle time there is a lot longer, up to 30 days, to get those cars back into Canada whereas say Saskatchewan to Vancouver is 10 days. That's out there and back. There could be capacity restraints there as well.

● (1050)

Mr. Ken Hardie: In the time I have left I wouldn't mind hearing from Mr. Dahl and Mr. Nielsen on the whole issue of producer cars because we've received signals in some of the testimony so far that they are almost a thing of the past. I don't know if that's correct or not, but the other issue is whether they are available, and how they are handled by the railways. In the Fair Rail for Grain Farmers Act study we did earlier we heard very strong signals that in situations like that the producers should be considered as shippers as well with the rights that go along with that.

Your thoughts, please.

Mr. Cam Dahl: I'm a former commissioner of the Canadian Grain Commission so I'm somewhat familiar with producer cars. Producer cars are actually a right that is enshrined in the Canada Grain Act and have existed since 1918, I think. Don't quote me on that date. The right for producers to load their own hopper cars and ship their own hopper cars has existed in Canada for a long time and still continues to exist.

The use of producer cars goes up and down over time. It depends on market conditions, and it depends on the year, but they are still utilized, and they are still an emergency valve, as it were, for producers and are not impacted by Bill C-49 at all.

Mr. Ken Hardie: Thank you.

The Chair: Thank you very much. I have to move on.

Ms. Block.

Mrs. Kelly Block: Thank you very much, Madam Chair.

An observation I would make is that, to a witness, the optimism that has been expressed in the intent of this legislation can't go without being noticed. I appreciate that you have highlighted some of the good provisions in this bill that you strongly support.

If the technical amendments you're suggesting aren't made to this bill, how will your industry be affected? I put that question to each one of you.

Mr. Cam Dahl: The reason that the technical amendments have been brought forward is to help ensure we meet the intent of the bill in terms of improved service, accountability, and transparency. If we don't see some of those improvements, the ability to meet that intent won't be as high. This would make the bill better and improve the chances of our getting to those intents.

Mr. Jeff Nielsen: I agree with those comments. We're very happy with a lot of the intent of the bill. We're just asking for some minor amendments to it. As mentioned, we need to see this go through now. We're into week six or seven as far as the crop year goes and as far as the shipping calendar goes. As you mentioned, without the 160-kilometre interswitching in place right now, there could be some blips. I think there are already some blips in the market as far as getting our product into the U.S. is concerned.

Mr. Bob Masterson: In our case I think it's difficult to say what the impacts will be. What we have said is that there's a lot of ambiguity there. We believe that if we want to realize the intent we should remove that ambiguity and tighten things up as much as possible.

At a minimum, if the committee decides it needs to move the bill forward as is, we're looking for a very strong and short timeline for review. Within two to three years at the most, we should be able to look back and ask, “Do we have the right information? Are we making better decisions? Is there better balance between shippers and carriers?” That has to be a formal requirement to review these provisions in the event that they cannot be strengthened as recommended by the various parties.

Mrs. Kelly Block: Thank you very much.

Just going back to your comment, Mr. Nielsen, about our being in week six or seven of the shipping season, I would like to hear you expand on what the implications are in regard to what is available to our shippers, our producers, right now in negotiating those contracts.

Mr. Jeff Nielsen: I'm not sure about negotiating contracts, but I'm just thinking now that the Agriculture Transportation Coalition does a weekly roundup of what cars have been available to the grain companies on certain train runs. Right now, both railroads are sitting at the low nineties. Right now they have a pretty good rating as far as supplying cars on time to certain facilities is concerned.

The concern is that as winter progresses, and if there are some delays in getting products to certain corridors, we will see that spread. Throughout last year we saw maybe one ranging around 80%, the other one ranging around 70%. That is where we saw the delays.

If you're only supplying 70% of your cars on time in a certain period of time, it is then that there's a backlog, and that's when it starts to snowball. That's when we get all the delays. That's when we'll get demurrage at the west coast or demurrage at Thunder Bay or wherever. We just need to speed this along.

● (1055)

Mrs. Kelly Block: What I would follow up on with the time I have left is the observation you made, Mr. Masterson, about building into this bill a provision to review the impacts of any of the amendments being suggested or that have been made in the introduction of this bill. The recommendation was made yesterday by one of our witnesses to include that in this bill. They noted there wasn't one in the bill.

Have you made that formal recommendation in your submission to...?

Mr. Bob Masterson: We have.

Mrs. Kelly Block: Okay. Thank you very much.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

My next question is for Ms. Edwards, but other witnesses who would like to add a few words should feel free to do so.

Earlier, you talked about the transportation of dangerous goods. You told us that trucks were not really an option, although they were used in some cases. Their use was completely prohibited in other cases, since trains were safer.

Do you think the Canada Transportation Act should contain a section specifically dedicated to the transportation of dangerous goods?

[*English*]

Ms. Kara Edwards: I think that the transportation of dangerous goods is adequately regulated through the Transportation of Dangerous Goods Act. There is a very good relationship among industry, government, and all stakeholders involved in keeping those regulations up to date and responsive to the needs and interests of communities, government, and industry. I think it's being appropriately regulated through the TDGA at the moment.

[*Translation*]

Mr. Robert Aubin: Thank you.

Bill C-49 introduces what I call reciprocal penalties. That may be a step in the right direction.

Do those penalties seem symbolic or are they sufficiently robust to change the balance of power in contract negotiations?

[*English*]

Mr. Cam Dahl: This is something that will be subject, of course, to contractual negotiations between shippers and carriers. Yes, I do anticipate that they will be robust enough.

Mr. Jeff Nielsen: I guess this goes back to Ms. Block's comment too. If we have a contract in place—this is between the shipper and the grain company, or to the end-user or the customer—and the grain company has the guarantee it wants that it will get the product to export position and that there is a reciprocal penalty in place if it doesn't, that hopefully will filter through to better service, if a few of these incidents happen.

We don't want to see them happen. We just want better service.

Mr. Bob Masterson: I'd just add that it will depend, and that's why we've made the recommendations we have to remove some of the ambiguity. You need the data and information.

In a case such as ours, you need it on a.... What happens with grain movement is irrelevant to chemical movements. We need data for our own industry and our own sector to help us decide whether we had adequate service. Then you're back to the question of whether we have enough clarity on adequate and appropriate levels of service.

If those continue to be grey areas and we lack the data, it becomes very difficult to find the means to impose reciprocity, if all you're doing is argue before the different boards and hearings about whether you were harmed or not.

I think, again, that the job of this committee is to hear what the stakeholders have said and to look to remove as much ambiguity as we can now, so that we don't take up government's time further down the road. Let's get it right at this point.

[*Translation*]

Mr. Robert Aubin: Thank you.

[*English*]

The Chair: Now we have about a minute or two left. Is there anyone who has a pertinent outstanding question that they would like to get an answer to when we have such a great panel?

Mr. Badawey.

Mr. Vance Badawey: Thank you, Madam Chair.

I just want to go back to what Mr. Hardie was asking and trying to drill down on, and Ms. Cook, you alluded to it. That's data, information.

Can you be more specific in terms of what exactly you're looking for in terms of that data?

● (1100)

Ms. Fiona Cook: Again, it's asking the railroads what their plans are, as is done in the U.S. The Surface Transportation Board asks the class 1 railways to set out their plans for the upcoming year. Again, it's having an idea system-wide—and this goes back to Mr. Masterson's point, too—of all of the players that depend on the rail supply chain. What is the actual availability of rail capacity at a given point in time? It's not an easy question, but you need data.

Mr. Vance Badawey: It's not necessarily proprietary.

Ms. Fiona Cook: No.

Mr. Vance Badawey: You're just looking for data to, again, enable you to do your business better.

Ms. Fiona Cook: It's to make decisions based on timely information, exactly.

Mr. Vance Badawey: And it's efficient.

Ms. Fiona Cook: Yes.

Mr. Vance Badawey: Thank you.

The Chair: Thank you very much to the witnesses. You could see this morning that everybody's very interested in all of your comments. We're doing the very best we can, as parliamentarians, with this piece of legislation.

Thank you very much for being here.

We will suspend now for the next panel.

● (1100)

(Pause)

● (1115)

The Chair: We are reconvening our meeting on the study of Bill C-49.

We have with us in our next panel the Mining Association of Canada, Teck Resources Limited, the Forest Products Association of Canada, and the Shipping Federation of Canada.

I welcome all of you and look forward to hearing your remarks.

Would the Mining Association of Canada like to open up this panel and start their 10-minute presentation? Mr. Gratton, would you please start?

Mr. Pierre Gratton (President and Chief Executive Officer, Mining Association of Canada): Thank you very much, Chair and members of the committee, and clerk and fellow witnesses. It's a pleasure to be here.

My name is Pierre Gratton. I'm president and CEO of the Mining Association of Canada. I'm joined by my colleague, Brad Johnston, whom I think you met yesterday. He is the general manager of logistics and planning for Teck Resources Limited and is someone who works with the railways on a daily basis.

I'll begin by saying just a few words about the mining sector, which, as you know, is an economic stalwart, contributing some $56 billion to national GDP in 2015 in what was a down market. We're major employers, with some 373,000 people working directly and another 190,000 working indirectly for our sector. We pay the highest industrial wage in the country. We're active in both urban and rural settings. Proportionally, we're the largest private sector employer of indigenous peoples and a major supporter of indigenous businesses and are thus a powerful partner in indigenous economic reconciliation.

While increased mineral prices have returned some confidence to the global mining industry, increasing domestic uncertainty and business costs are raising questions over whether Canada is well positioned to take advantage of the next upswing. We are seeing Australia, our major competitor, rebound at a far greater rate than we are currently in Canada, which is concerning.

The effectiveness and reliability of rail freight service are critical to Canada's mineral investment competitiveness throughout the ups and downs of the commodity cycle. There are significant costs associated with transporting goods to and from the mine site, and companies need to get their goods to their international customers on time. I can report that our members' customers are closely monitoring this bill and its potential impacts as a measure of Canada's reliability as a source for raw materials.

If railways are the arteries of our trading nation, then the mining industry is the lifeblood upon which they depend. We account for 20% of Canada's exports and over half of total rail freight revenue generated each year, making us the largest single customer group of Canada's railways. I would just ask you to imagine the state of Canadian rail without mining and the impacts it would have on grain, forest products, and all other rail-reliant industries in Canada.

Despite this, we are continually facing an unlevel playing field in the rail freight market, which manifests itself as significant and perennial service failures. The reason is that the Canada Transportation Act is an imperfect surrogate for competition in a monopoly marketplace. Many shippers are captive to one railway and are beholden to railway market power as a result.

It's crucial to get this bill right on this third legislative attempt in four years. We hope the committee is also encouraged by Minister Garneau's boldness in introducing an ambitious package of reforms. On this note, we are highly supportive of a number of provisions in the bill, including new reporting requirements for railways on rates, service, and performance; the addition of a definition of “adequate and suitable” rail service that confirms railways should provide shippers with the highest level of service that can reasonably be provided in the circumstances; and strengthening the prohibitions against railways shifting liability onto shippers through tariffs.

We want profitable railways, but not at the expense of national economic growth. That is why we support the objectives of Bill C-49, with minor adjustments that will ensure its intended outcomes are achieved. I will now address three areas where we think that's necessary.

The first is data transparency. Enhancing railway data transparency is not only consistent with the government's commitment to data transparency and evidence-based policy, but critical to improving the functionality of rail freight markets. Robust disclosure would inform public policy-making, improve railway-shipper relations, and avoid unnecessary and costly disputes. All parties having a clearer picture of respective capacity and limitations would better compel them to achieve the optimal workable outcome.

While Bill C-49 proposes positive measures to address service-level data deficiencies, we're concerned that, as written, certain transparency provisions will not lead to meaningful data on supply chain performance. Of specific concern is the requirement in subclause 77(2), a measure that would align the Canadian and U.S. systems.

● (1120)

Our concern is that the U.S. model is based on internal railway data that is only partially reported. It doesn't represent shipments accurately or completely. It was created decades ago when large-scale data storage and transmissions were not technologically possible. With the data-storage capabilities that exist today, there is no rationale for such a restriction in either the waybill system for long-haul interswitching outlined in clause 76, or for system performance outlined in clause 77.

To ensure the appropriate level of data granularity and to ensure the proposed legislation reflects Canada's unique rail freight context, MAC recommends an amendment that would require all waybills to be provided by the railways, rather than the limited reporting that is outlined in subclause 77(2). This modest enhancement is consistent with the direction of this bill, but with the added benefit of modernizing a system that was designed decades ago.

While MAC is supportive of Bill C-49 improvements to costing data collection and processing by the agency, we also raise one minor but important consideration related to final arbitration.

Currently, arbitrators request an agency costing determination only when the two parties agree to make the request. However, railways habitually decline to co-operate with shippers for this request, thus limiting the ability of the parties involved to be equally informed. We know of no legitimate rationale for a railway to decline an agency costing determination, other than to deliberately frustrate the process. To ensure that the right level of transparency and accessibility is struck so that remedies under the act are meaningful and usable, we recommend that shippers be granted the right to an agency costing determination. Often confidentiality considerations are raised, but the committee should note that in agency proceedings redacted decisions protect confidentiality. Further, FOA processes are already confidential. We are not proposing any changes to these practices.

The second issue addresses level-of-service obligations. In proposed subsection 116(1.2), this bill would require the agency to determine whether a railway company is fulfilling its obligations by taking into account the railway company's and the shipper's operational requirements and restrictions. Identical language is also proposed to govern how an arbitrator oversees level-of-service arbitrations.

Our members are concerned that the proposed language for determining whether a railway has fulfilled its service obligations does not reflect the reality of Canada's monopolistic rail freight market. The quality of service that a railway company offers is influenced by how it allocates its resources. These decisions include purchasing assets, staffing, and construction. All those restrictions are determined solely by the rail carrier. Their consideration and fulfillment of service obligations leaves the shipper structurally disadvantaged. The goal of the agency should be facilitating the correct decision based on the facts, not a balanced decision between the parties. To address this, we recommend either striking out this requirement or making the restrictions themselves subject to a separate review.

Third and last, Bill C-49 proposes a long-haul interswitching remedy that demonstrates in principle a creative approach to addressing a long-standing competitive imbalance in our rail freight market. By design, however, when the number of non-entitlement provisions are taken into account, a remedy that could hold significant promise if implemented more liberally, becomes unduly restricted to the exclusion of many. As proposed, it mirrors the current competitive line rate remedy that it proposes to replace.

However, CLR has been largely inoperative for the past three decades because class 1 railways have declined to compete for traffic and are not naturally compelled to do so by market forces. Hypothetically, even if the railways chose to compete using long-haul interswitching, Bill C-49 includes a number of provisions that would make LHI unusable or would create unnecessary barriers for many captive shippers, including a long list of excluded traffic, including by cargo type or geographical restriction. Unless these are revisited, the remedy as proposed will de facto confirm in policy and law the captivity of a host of shippers, the very same shippers it purports to assist.

● (1125)

To conclude, we acknowledge that this bill represents a bold and holistic attempt to addressing the anti-competitive challenges inherent in Canada's monopolistic rail freight market, and the disproportionate burden that shippers endure as a result. For this reason, its direction should be lauded.

The amendments we are seeking are modest and highly consistent with the legislative package. They continue to allow the railways to be profitable and have operational flexibility, but are material enough, and definitely important enough, to make a critical difference if not taken into account. In fact, we fear that without these amendments, this bill may leave us in the same situation that the previous bills have done in the past, not ultimately solving the issues we have been challenged with.

Thank you for your time, and I would be pleased to answer questions.

The Chair: Thank you very much.

We will move on to the Forest Products Association.

Mr. Joel Neuheimer (Vice-President, International Trade and Transportation and Corporate Secretary, Forest Products Association of Canada): Thank you, members of the committee, and thank you very much for having me here today on behalf of the members of the Forest Products Association of Canada.

FPAC is the voice of Canada's wood, pulp, and paper producers, a $67-billion a year industry. Our sector is one of the largest employers of indigenous peoples in Canada, including 1,400 indigenous-owned forest businesses. As the third-largest manufacturing industry, it is a cornerstone of the Canadian economy, representing 12% of Canada's manufacturing GDP. We export 33-billion dollars' worth of goods to 180 countries. We are also the second-largest user of the rail system, transporting over 31 million tonnes by rail in 2016.

As Minister Garneau said in his May 18, 2017, speech in Edmonton, “The challenge of our time is to further enhance the utility, the efficiency and the fluidity of our rail system.”

FPAC believes that the primary goal for transportation policy is a freight system that is even more competitive, efficient, and transparent, to reliably move Canada's goods to global markets. This is most likely to emerge if guided by commercial decisions and competitive markets. At the same time, there are some markets where competitive forces are limited or non-existent, and where there is a legitimate and necessary role for regulation and other government action, including a number of the types of concepts being considered in Bill C-49.

Forest industry mills are normally located in rural, remote communities, and served by one single rail carrier hundreds of kilometres away from the next competing railway. That causes an imbalance of power between these mills and the railways. Poor service costs our members in the hundreds of millions of dollars every year, including the cost of things like lost production, alternative transportation costs, additional storage, additional management and overhead costs, and long-term business impacts.

While the railways are one of our most important partners on Canada's supply chain infrastructure needs, as well as reducing GHGs, FPAC members need Bill C-49 to help balance the playing field when it comes to their business dealings with railways.

Bill C-49 needs more robust and workable measures than what are currently included. Without these changes, Canada's economy and the jobs that our member companies and other industries provide across the country will continue to be threatened. Urgent action is needed. The economies of over 600 communities across Canada depend on their local forest products mills. Making Bill C-49 work the way it is intended to will enable our members and other industries to create more middle-class jobs and help prevent economic failures in communities, such as but not limited to things like mill shutdowns resulting from poor rail service. In the case of a large pulp mill, for example, this would mean losses in the range of $1.5 million a day.

FPAC supports Bill C-49's wording on reciprocal penalties. However, to be truly effective, there are some critically important amendments that should be made, which are consistent with the minister's intent for this bill.

FPAC urges the government to make changes in five key areas. The specific wording changes and rationale behind each of these is outlined in the detailed annex that is included with my remarks this morning. I would like to focus today on a few of these important changes.

First is the improved access and timelines to agency decisions. As is, the bill will weaken the agency's ability to respond quickly to urgent rail service issues, unless it is amended so that the agency controls its own procedure. The U.S. equivalent to the Canadian Transportation Agency, the Surface Transportation Board, or STB, recently began a service-related investigation on one of the class 1 railways in the United States. The STB did not have to wait for the U.S. Secretary of Transportation to instruct them to do this. They recognized that there might be a problem and they began to investigate.

Why can't we have the same set-up here in Canada? Who wants to wait for the Minister of Justice to ask the police to investigate every time someone may not be following the law? Bill C-49 needs to be amended to make this so, to help ensure that Canada's supply chain is working well in delivering for the 600 forest communities, hundreds of other communities, and millions of workers it supports across Canada.

The second one relates to the definition of “adequate and suitable”. As currently written, the bill tells the railways that if they provide the highest level of service they can reasonably provide in the circumstances, they cannot lose a service complaint. The objective of our proposed wording change is to make the intent absolutely clear, without the need for protracted litigation about what this clause really means. The final outcome on this component of the bill must prevent current failures, such as the following that our members must live with. At a minimum, give the Canadian Transportation Agency the mandate to investigate, on its own, these types of matters.

● (1130)

When members ask why their traffic has been left behind or why they have not received empty cars that have been sitting at the railway's serving yard, they hear it is because priority is being given to another commodity sector.

We have members who have product to ship to current and potential customers, whose facilities are accessible by rail, but they cannot get enough railcars or are not served frequently enough and are being discouraged by the rates that are quoted. These types of service issues are not isolated, and they cost our members in the hundreds of millions of dollars annually.

Third is long-haul interswitching. The bill needs to be amended to eliminate the unnecessary prerequisites for using this remedy as well as the many exclusions. Without important amendments, long-haul interswitching will not be a usable remedy for the majority of captive forest products traffic.

Next is data disclosure. As currently worded, the interim provisions in the bill dealing with rail performance data will provide supply chain participants with data that is too aggregated and too out of date to be of any real use in their planning. The time frames for reporting and publication need to be shortened. For example, the bill says requirements will be set out in a regulation in a year. Can we not do better than that with so much at stake? Also, more granular detail needs to be published, such as, but not limited to, commodity-specific information regarding such things as grain, coal, lumber, pulp and paper; results by railcar type, on a weekly basis; and by region, for example, east and west.

Oversight of railway discontinuance processes needs to be strengthened. As currently worded, the bill will prevent the creation of viable short-lines by allowing railways to suspend service before the process is completed, thereby making it more difficult for an alternative railway to take over. Making these changes will mean Canadians in communities across the country will be served by a more reliable and competitive freight transportation system.

FPAC members take great interest in transportation issues because they account for up to one-third of their input costs. The availability of an efficient, reliable, and cost-competitive transportation system is essential for the future investment in our sector and to support the families across Canada that rely on our industry for their livelihoods.

Members of the committee, for the 230,000 Canadians across Canada directly employed by the forest sector, a more competitive freight transportation system, as outlined here, will ensure increased access to the rail system, more reliable service throughout the supply chain, more competitive rates, and a more competitive supply chain.

I will now be happy to answer any questions you have.

Thank you very much.

The Chair: Thank you very much.

Now we move on to the Shipping Federation of Canada.

● (1135)

Ms. Karen Kancens (Director, Policy and Trade Affairs, Shipping Federation of Canada): Thank you. Good morning, Madam Chair, and thanks for the opportunity to appear before the standing committee on Bill C-49, the transportation modernization act.

My name is Karen Kancens. I'm here with my colleague Sonia Simard on behalf of the Shipping Federation of Canada, which is the voice of the owners, operators, and agents of foreign-flag ships that carry Canada's imports and exports to and from world markets.

Our members represent more than 200 shipping companies whose vessels make thousands of voyages between Canadian ports and ports overseas every year, carrying hundreds of millions of tonnes of commodities, ranging from dry bulk commodities such as grain and coal, to liquid bulk such as crude oil and oil products, to containerized consumer and manufactured goods.

These ships play an essential role in the Canadian economy by facilitating the movement of Canada's international trade, and they do so safely, securely, and efficiently day in and day out. Indeed, ocean shipping is one of the world's most highly regulated industries, and foreign-flag ships are subject to a stringent regime of safety, environmental, and crewing regulations when sailing in Canadian waters, which are enforced by Canadian authorities as part of Canada's port state obligations.

Like many of our colleagues who have spoken before us, we also have a strong interest in Bill C-49's rail provisions, as we believe that the development of a more efficient rail freight system will have a positive impact on all of the elements of the logistics chain, from carriers in the rail, marine, and trucking sectors, to ports and marine terminals, to inland distribution centres and warehouses, and beyond.

That being said, we'd like to focus our comments today not on Bill C-49's rail provisions but on its maritime provisions, which we believe will also have a beneficial impact on the fluidity of the trade chain overall.

We're especially interested in clause 70 of Bill C-49, which proposes to allow all foreign-flag ships to reposition their empty containers between Canadian ports on a non-revenue basis, which is an activity that has been closed to them up until now due to the prohibitions of the Coasting Trade Act.

It's worth just backtracking a bit and noting that this isn't a new or a revolutionary concept. It's actually something that our container carrier members have been asking for and that our association has been advocating for over the last decade.

Indeed, discussions on this subject between the government and our industry had advanced to such a degree that, in 2011, Transport Canada was on the verge of introducing an amendment to the Coasting Trade Act to allow for the repositioning of empty containers by foreign-flag ships. However, those discussions were subsequently placed on hold when empty container repositioning became a negotiating item in the CETA between Canada and the European Union.

Now that those negotiations are over, Bill C-49 essentially seeks to complete the discussions that were placed on hold in 2011, when we had reached general agreement, including from some domestic ship owners, that empty container repositioning should be open to all ships regardless of flag or ownership.

Why is this issue important? It's important because a significant aspect of the container shipping industry involves moving empty containers from locations where they are not needed, or where there is a surplus, to locations where they are needed or where there is an exporter who needs empties so that he can load them with cargo for an overseas customer.

Because up until now the Coasting Trade Act has prohibited foreign-flag carriers from using their own ships to carry out this activity, they have had no choice but to employ alternative solutions such as moving the empty containers by truck or rail, or more commonly, importing them from overseas. However, none of those solutions represents the most productive use of the carrier's transportation assets, and all of them come at a price not only for the carrier but also for the exporter in the form of a less cost-efficient transportation option, as well as for the logistics chain in the form of reduced fluidity and overall efficiency.

● (1140)

The maritime provisions of Bill C-49 would address these issues by giving carriers the flexibility to use their transportation assets, their ships, and their empty containers in the most productive and cost-effective manner possible for the ultimate benefit of everyone in the supply chain.

Although we very strongly support Bill C-49's provisions on the repositioning of empty containers, we have a concern that the actual wording the bill uses to define the party that is eligible to reposition empty containers may be too narrowly focused and that this may make it difficult to achieve the full benefits of liberalizing this activity.

More specifically, subclause 70(1) of Bill C-49 provides that the party that may reposition its empty containers is the owner of the ship, which is defined in subsection 2(1) of the Coasting Trade Act as the party that has the “rights of the owner” with respect to both the ship's possession and its use. We see a potential problem in how this definition will be applied in cases involving vessel-sharing agreements, in which a number of container carriers enter into an agreement to share space on one another's ships and which are used extensively in the container shipping industry.

It's not clear to us at this point how the partners in such an agreement would have the rights of the owner with respect to the ship's possession other than in cases where it's their ship that's being used to reposition the empty containers. Indeed, depending on how the ships in a given vessel-sharing arrangement are allocated, a ship owner may only have the ability to reposition its empty containers on every fourth or fifth voyage, which would reduce the significant potential benefits of liberalizing this activity.

We believe that if Bill C-49's provisions on the repositioning of empty containers are to be fully and effectively implemented for the benefit of all parties, then it must be made clear that any partner in a vessel-sharing agreement may reposition its own empty containers, as well as those of the other partners in the agreement, using any of the vessels named in that agreement. Although there may be various ways of achieving this, including through additional guidance and clarification from Transport Canada, it's our view that the optimal solution is to amend subclause 70(1) of Bill C-49 to clearly indicate that the party that is eligible to reposition empty containers encompasses not only the ship owner, as defined in subsection 2 (1) of the Coasting Trade Act, but all the partners who share operational control and use of that vessel as part of a larger vessel-sharing agreement.

We believe that the introduction of such an amendment represents the best means of ensuring that Bill C-49's maritime provisions are implemented in a way that reflects the realities of how the container shipping industry operates, and this for the benefit of all stakeholders, from shipping lines to Canadian importers and exporters to the supply chain overall.

We thank you for your attention and look forward to any questions you might have.

The Chair: Thank you all very much.

We'll go to Ms. Block for questioning.

Mrs. Kelly Block: Thank you, Madam Chair, and thank you all for being here today. It's good to hear from another group of stakeholders. I look forward to the questions and answers that we're going to hear over the next hour.

I noted earlier today that this is very important work and mentioned how important your remarks are today in providing this committee with the information we need to ensure that the right balance is struck in addressing the issues that exist in our transportation system.

We know that this is not the first time your input has been sought to aid us as parliamentarians in these deliberations. In fact, we know that the Minister of Transport has had the CTA review for almost two years and that broad consultations have been done by Transport Canada and many others, seeking input into how to structure the Canada Transportation Act going forward. It's important that we get it right. It's important that we structure legislation that ensures market access for our producers and an efficient means of transportation.

I will note that every witness to testify so far has recommended changes to this bill, and all have identified issues with the long-haul interswitching provisions, with the exception perhaps of the last witnesses to testify here this morning.

I would pose a question to all of you, and you can each take your turn in answering it. What will be the long-term implications for your industry if the technical amendments that you are proposing are not made to this bill?

● (1145)

Mr. Pierre Gratton: As you rightly noted, this is the third time in four years that I'm appearing before a transport committee on a proposed bill to address these types of issues.

I would make the following observation. My sense is that through this bill, which is the most comprehensive attempt to get at these issues, the witnesses and the shippers are becoming more focused in their recommendations, because this bill is actually making a serious attempt to address the issues. Our recommendations are getting really into the details. That's a good thing.

However, to answer your question, our view is that we're just falling short, particularly in the area of data. If we don't make these amendments—especially the one related to data—we will not be further ahead and will be back in another four years looking at another bill.

There is even a concern within the mining sector that without at least the amendments dealing with data, some of our members if not all of them could find themselves slightly worse off than they were under the current regime. That is the concern. There would still be more to come through regulations, so I say that with some caution.

Nevertheless, we feel that it's so close to making a very meaningful difference to the regime we've been struggling with for 20 years. It's just falling short, and if we don't go the extra mile, we will have really missed a tremendous opportunity.

Mr. Joel Neuheimer: I'll just start by saying, as Pierre said in his remarks, that what we're looking at in the context of the long-haul interswitching looks a lot like the competitive line rates that we already have. While in theory this is a very powerful concept, in reality, with the exemptions that have been built into it, it is not going to have the desired impact that the minister wants it to have. It's not going to help us as captive shippers.

I'll give you three quick examples showing why that's the case. Example one is that all the traffic that moves between Quebec City and Windsor will be excluded. Two is that all the traffic that moves between Kamloops and Vancouver will be excluded, and three is that we won't be able to move any toxic inhalation hazardous products. Just finishing on TIH, as you just heard from the chemistry session in the last session, TDG is already regulated under the TDG regs. I think we're good there, so why would you make it harder for us to move the things we need to make the stuff that helps pay the bills here in Canada?

As to the two geographic exemptions, it just so happens that's where you have the lion's share of our forest product traffic moving in the system. To be quite frank, what I would suggest, if these exemptions cannot be made, is that you just strike this part of the bill and go back to what we have. We'd probably be better off with what we already have.

Thank you very much for your question.

Ms. Karen Kancens: To switch tracks just a bit, from our perspective, we've been working on empty container repositioning for the last 10 years. We've made slow and steady progress. We're now on the verge, where we have an amendment that would allow foreign-flag ships to reposition their empty containers between Canadian ports.

It's a big deal because it gives a carrier the flexibility to use its assets in the most efficient way possible, and those effects trickle down through the chain. But because of the way the bill is written, and because of the lack of clarity in terms of which party is actually eligible to reposition its empties, we almost have a missed opportunity. We'll have this amendment come into effect and it could be that when you have a vessel-sharing agreement, which, by the way, is the way the container shipping industry operates, we're going to be in a situation where your carrier can reposition its empties in one-fifth of the cases only when they're acting as the master carrier. It would be a missed opportunity.

● (1150)

The Chair: Thank you very much.

Mr. Badawey.

Mr. Vance Badawey: Thank you, Madam Chair.

I do want to note my appreciation to all of you for coming out today. There's no question that we all have a role in contributing to the overall economic growth of the nation, and you guys are contributing to that today.

We want to get this right. We want to ensure that what we hear, we're going to discuss. I was told by our team today that this has been a continuation of dialogue over the course of the years, and the expectation is to in fact get this right from their end, your end, and our end as a committee. I appreciate your participation.

I want to ask one thing of you before I ask my question. For any information and any recommendations—you mentioned the details, Mr. Gratton and Mr. Neuheimer, that you've passed on—could you pass that on to us as well? Albeit it may be for a second or third time, I'd appreciate that. That way, when we go into the room, we can really ensure that those details are being discussed.

I want to ask a question with respect to the indigenous communities. For the northern communities, Mr. Neuheimer, you touched on this a bit, and I believe you did as well, Mr. Gratton, especially in line with your business interests. It's in terms of mining in northern communities and remote communities that are sometimes so remote that service costs and the balancing of the playing field become next to impossible.

My question is very simple. How do we become an enabler—I use this word a lot—for you and what you're doing in these communities to really level that playing field, to contribute to lesser service costs and ultimately to allow those communities, some of which are indigenous, to have available to them a strengthening in the development of their economy, thus creating more jobs for them and ultimately ensuring that access to growth and to goods—affordable goods—is available to them?

Mr. Joel Neuheimer: Thanks very much for your question. We will make sure that you have the detailed annex that we submitted as part of our remarks this morning, with pleasure.

I have just a couple of quick thoughts. If you go ahead and make the changes we've outlined in relation to “suitable and adequate”, I think it would go a long way to speaking to what you're talking about. It's the same thing with our suggested changes on the long-haul interswitching that we were just talking about.

Really, for me, I think the easiest change at this point with this bill is to really give the agency the power to investigate on its own if something doesn't pass the sniff test, let's call it. You know how it works. Our unique geography is what makes us such an incredible nation, but the realities of what you've just touched on.... I mean, think about it. Any time you make a large purchase.... Imagine you're trying to buy a pickup truck. You're living in one of those communities you're talking about and there's only one dealer in town. You're not looking forward to what you're going to have to pay, and you're probably not looking forward to what your after-service might be, so if by chance something does go wrong, it would be great to have our watchdog able to look at those things to make sure these communities are getting the service they deserve.

Mr. Pierre Gratton: First, I should just make the observation that we have members with mines that have no railways at all, so investing in infrastructure, which we're seeing particularly in northern Canada by this government, is very much supported by our sector. I should acknowledge that. Otherwise, I would make most of the points that Joel just made. On the issue of data, which we feel is the simplest and easiest change to make, it would provide....

Why is data so important? If we have access to data that actually identifies how many railcars get to a particular location, at what time, and so on, throughout the system, that would show whether the railways are meeting their obligations. It could also help reveal whether there are other reasons beyond the railways' control. That would allow all of us to have a better understanding of how well our system is going, whether we might need to invest resources in infrastructure to improve the functionality of our rail system, or if in fact the railways are doing what we certainly believe they are doing from time to time, which is sweating their assets and not providing good service. Having such data, we believe, would, on its own, have the ability to influence railway behaviour.

If you do nothing else—and it's the simplest thing to do—just extend the breadth of data that is disclosed, recognizing that there are certain things for which confidentiality is required, but those are pretty minimal. I think with the technology we have today it's fully possible to go further.

I thought we had circulated this, but perhaps we haven't. These are the detailed amendments we are proposing to the bill.

● (1155)

Mr. Vance Badawey: Do you find, gentlemen and ladies, as well that with this data collection we can actually also highlight and recognize the integrated network of transportation, and with that the need for the infrastructure dollars to follow that strategy ultimately, which Minister Garneau is proposing and attempting to put in place?

Mr. Pierre Gratton: Absolutely. I think that's absolutely critical; otherwise, we really are operating in a bit of a vacuum. We don't know where the pressure points are.

Mr. Vance Badawey: Exactly. Thank you.

The Chair: You can have just a quick comment.

Mr. Joel Neuheimer: If you don't know the data and if you don't know how well or how poorly the system is working, how do you know how to make a well-informed decision about where to invest in infrastructure? I think that's the point that Pierre is making.

Mr. Vance Badawey: Thank you.

The Chair: Thank you very much.

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

Ladies and gentlemen, I want to welcome you and thank you for sharing your expertise with us.

I want to continue discussing the issue of adequate and suitable service. Sometimes, “adequate and valid” is used. However, regardless of the interpretations, the concept is still somewhat vague. That fact has been pointed out by many witnesses, including you, this morning.

The issue of data is also brought up again and again. Is that not a solution? Shouldn't the new definition you want for adequate service contracts be evidence-based? It is possible to connect what is handled differently. Data is considered to be too general, confusing and lacking, and the definition is dealt with afterwards. Can you propose a better definition of what adequate service is? It seems a bit vague to me.

I feel that the best way to be clear may be to establish a link with data.

What do you think about that?

[*English*]

Mr. Joel Neuheimer: We've provided a very specific amendment in relation to the "suitable and adequate" issue that you've just asked about. That's in our submission, and I hope that will be helpful to you. What it boils down to is that we need to be as explicit as possible that they must meet the highest level of service possible in the situation in question. We have to make sure that in the definition that's included with this bill, there is as much precision as possible about what is acceptable and what is not.

If there is a flood and their tracks get washed out, it's pretty hard to expect that the bus service is going to run on time as usual. However, if there isn't some kind of natural catastrophe and things are as they normally operate here, given the weather we have during the 12 months we have here in Canada, they should be able to deliver a bus service on a regular schedule, and when it arrives, it should have working equipment and be safe for the shippers who are using it. That's how I would try to answer your question.

Merci.

[*Translation*]

Mr. Robert Aubin: I am not involved in the industry, but with all due respect for your proposal, I feel that "highest level possible" is still a vague concept. It cannot be quantified.

Are you and your industry satisfied with your proposed definition that I read?

Does it enable you to establish concrete business relationships?

● (1200)

Mr. Pierre Gratton: It may be better if I ask my colleague to answer your question, since he deals directly and daily with railway companies. I think he could give you a specific answer.

Mr. Robert Aubin: Great.

[*English*]

Mr. Brad Johnston (General Manager, Logistics and Planning, Teck Resources Limited): "Adequate and suitable" is currently defined in the act, and in our original submission—and I speak on behalf of Teck in this answer—we asked for one small change to the language, that "adequate and suitable" be based on the requirements of the shipper as opposed to the means of the railway. There's a very specific reason for that, and it goes to when a forecast turns into an order, for a mining company or even a forestry company. In our case, where obviously Canada's an exporting nation, "adequate and suitable" mean that we can export our goods in a timely fashion.

It goes to my comment yesterday. It's not if the trains will come; it's when. That's because in our case or in the case of a mining company—someone shipping copper, zinc, or coal—we have a vessel sitting at a port. That's not an abstract concept. It's as much looking forward as it is reporting on the past. "Adequate and suitable" mean what I need in order to meet my shipments, or my sales, or the delivery of my goods to my customers in Asia, South America, and Europe.

[*Translation*]

Mr. Robert Aubin: You say that it's not "if" but "when" the train will come. For me, that also involves the number of cars that will arrive. But that has to be consistent with the contract you have concluded with a railway company and with its capacity to deliver the number of cars you really need.

[*English*]

Mr. Brad Johnston: That's right, and that's adequate and suitable. In the case of Teck, we give forecasts to the railway going out four years and very specifically over five months. Then for ourselves or for a forestry company or a shipping company—I'm going to use a technical term—we schedule a laycan. The vessel is going to arrive at the port. It's coming. Once again, there's no "if" about that. We don't want to have a debate about whether we will get the trains. There can be no such debate because that falls short of the common carrier obligation. That is not adequate and suitable service. It's not an abstract concept.

If we just change the language in the act to say "according to the requirements of the shipper", that will satisfy what you're addressing.

Mr. Joel Neuheimer: To try to clarify what I think you're looking for, let's say you're a mill operating in northern Quebec and you're typically ordering 10 cars a week that arrive on a given day of the week, and all of a sudden you get three cars. Hopefully the next week it's made up, but if on a chronic basis, on a repeated basis, you're ordering 10 cars a week and you're only receiving four or six or seven over an extended period of time, it doesn't feel as if that's meeting the needs of the shipper. So to go back to what they were saying, it needs to meet the needs of the shipper, and this is how I would try to add a little more precision maybe to what you're looking for, if that answers your question.

The Chair: Thank you very much for your answer.

Go ahead, Mr. Graham.

Mr. David de Burgh Graham: Thank you, Madam Chair.

I will start in the water. For ships, are there Canadian-flag ships currently moving these, or is it all done by rail and road?

Ms. Karen Kancens: Could you repeat your question?

Mr. David de Burgh Graham: For the empty containers being moved, are there any Canadian-flag ships that do this, or does this just not happen?

Ms. Karen Kancens: Theoretically, because the activity right now is prohibited to foreign-flag ships under the Coasting Trade Act, a foreign-flag ship could apply for a waiver to carry out the activity, which has happened in the past, so then you will get a domestic ship that will oppose the waiver and say it can carry the empties.

We're aware of a case where that happened. The carrier needed to reposition 400 empties, I think it was, from Montreal to Halifax. The domestic ship owner said it could do that movement and the cost would be $2,000 per container, so that was an $800,000 cost. The cost of transporting those containers on board the ship would have been $2,000 for the domestic ship, and the cost for the foreign-flag ship importing them would have been $300 per container, so it's almost seven times more.

Theoretically, yes, the domestic ship could reposition empties. It will never happen because, even though the foreign-flag carrier's options are not perfect in terms of using rail or importing from overseas, costs will never amount to the $2,000 per container that the domestic ship owner is charging. It exists as an option, but it's one that has never been used, and it won't be used.

● (1205)

Mr. David de Burgh Graham: For the owners, the leasers of the containers, these are not revenue-generating moves.

Ms. Karen Kancens: No. We're only talking about the repositioning of their own containers, ones that they own or lease, on a non-revenue basis, so it is purely for logistical purposes.

Mr. David de Burgh Graham: Thank you. Now I'm going to jump out of the water and onto the train tracks.

The mining industry is unique in that some mines don't have any rail, and there are some places that have nothing other than rail, and those rails don't connect to anything. I'm thinking of Quebec Cartier Mining or Quebec North Shore and Labrador Railway where, if you don't get there by train, you're not getting there. Then you only have one company, so there are absolutely no alternatives. How well did that work?

Most of the competition increasing things in Bill C-49 don't really apply to those areas.

Mr. Pierre Gratton: In the case of, for example, the Iron Ore Company of Canada, they own and operate their own railway. Obviously, that's how they manage.

Mr. David de Burgh Graham: By vertical integration, then.

Mr. Pierre Gratton: Yes.

Mr. David de Burgh Graham: That makes sense. One thing that I'm enjoying teasing—I guess you could say—the larger railway companies about since Monday is their saying that you are not a captive shipper if you have access to trucks.

I think a railway industry should be defending rail, but that's just me. How do you feel about that? If there's access to trucks, are you then not a captive shipper?

Mr. Pierre Gratton: Trucking can be much more expensive. It depends on the length of the route. It's also not as safe. Trying to move the kinds of volumes that we would move across the country by truck would just be uneconomical, and in some cases, with some bulk commodities, it's just not feasible at all. You're not going to move metallurgical coal in the volumes Teck produces by truck. It's just not an option.

Mr. David de Burgh Graham: Thanks. I'll go to the forestry industry with the same question.

What do you think of trucks as an alternative to making you not captive?

Mr. Joel Neuheimer: If you think about the government's priority to reduce greenhouse gases, it certainly doesn't make very much sense, does it? If you think about the government's priority to reduce greenhouse gases, we should be shipping by rail more of the products that Pierre and I are describing here and representing here this morning and getting more trucks off the road. It might even be better for our highway system to take those trucks off the road. Wouldn't that be interesting as an impact?

Here's some quick math for you. If we're at a facility using 10 railcars a day, that would be the equivalent of 25 trucks a day, so for a seven-day week, that boils down to 175 trucks a week versus 70 railcars. It's a question of the magnitude of the products we're shipping, and hopefully, it's just a question of common sense, dare I say.

Mr. David de Burgh Graham: That's a perfect segue to my next question.

My riding is mostly forestry lands, a very heavily forested riding. We lost the railways in 1987. They ripped them out. We lost log driving three years later in 1990, and now we have a two-lane highway with 500,000 trucks a year on it that takes care of our logging industry. What can we can do, from your perspective, to protect these rail lines and bring them back? Is there an appetite to bring them back to this kind of place?

Mr. Joel Neuheimer: I think you'd want to do some kind of cost-benefit analysis in the situation you're describing, but I'm very sympathetic to the point you've just made. We have two specific members who have been hurt in the same way you've just described in the example you've given.

The fifth key ask that we had in our remarks this morning was about making it harder for railways to discontinue rail lines. There's already a number of hurdles in place, but I think the one we need to worry about in the bill and the part we need to have removed is that we need to prohibit, for example, hypothetically, a class 1 from suspending service in that kind of situation, if it's no longer economically viable for them, and give somebody else a chance to come in and run it before it disappears. Once the tracks come up, it's quite difficult to put them back.

To try to go back to my fifth ask, I think it's key to what you're trying to avoid happening again.

Mr. David de Burgh Graham: Right, and in my riding you couldn't track in, so I appreciate that. Thank you.

The Chair: Thank you, Mr. Graham.

We go on to Mr. Fraser.

● (1210)

Mr. Sean Fraser: Thank you very much.

I'll start with Ms. Kancens and the marine transportation issue. One of the things that I'm trying to wrap my head around now is that most of these things have a bit of a trade-off, and I think it's helpful to know that it's not on a commercial basis that we're talking. Really it's about fluidity of trade.

Where these empty containers are being shipped or trucked now, I assume that they are required to hire a Canadian trucking company or rail line to move these empty containers. Is that right?

Ms. Karen Kancens: Yes.

Mr. Sean Fraser: Has any economic impact assessment been done that measures the input to the Canadian economy that these European container owners are putting into the Canadian transportation system versus what would actually be achieved by a more effective and efficient transportation system by allowing businesses to ship reliably?

Ms. Karen Kancens: Just as a point of clarification, you mentioned "European". I want to be sure that we take this out of the CETA context.

Mr. Sean Fraser: Sure.

Ms. Karen Kancens: This is about empty-container repositioning on a Canada-wide basis. It's not part of the CETA trade agreement.

In the context we're looking at this, with Bill C-49, I would caution perhaps that when we talk about the costs of repositioning empty containers, the costs are not only financial. Yes, you will always have an extra financial cost, especially when you're using truck or rail, but there are other costs.

Let's say you're a shipowner and you're doing a regular service from Montreal to Halifax. You have a pile of empty containers at Montreal and you have a customer in Halifax who needs 300 containers for export. Your ship is going from Montreal to Halifax in any case. It's part of your regular run. Right now you can't load those empty containers on your own ship. You have to put them on rail or you have to import them. If you're putting them on rail, you're subjecting those containers to additional moves. They're not just going from the port to the ship. They're going to the rail yard and they're being put on the railcars. There are more moves. There is more handling of the container. Yes, of course you have your additional external cost associated with the rail movement, but you also have logistical delays. Your containers are being moved at the convenience of the railway, not at the convenience of the carrier and of the exporter. You're adding elements to the chain, which are costs, yes, but there are also other elements in the form of time, in the form of additional moves.

By the way, the railways would much rather not haul empties, because they generate more revenue hauling laden containers. You're making what could and should be a very simple logistical process a lot more complicated than it needs to be, and you're adding a lot of trade-chain impediments along the way, so I would caution you to maybe not think of it only in terms of costs.

Mr. Sean Fraser: I certainly don't. My inclination is to accept that the benefits from efficiency and the opportunity costs that you just laid out favour the logistical efficiencies that you're describing.

Right now, if there is an increased cost, presumably to the producer, or the importer or exporter here, are they paying the additional costs of moving these empty containers? Is the buck passed down to a Canadian company somewhere along the line?

Ms. Karen Kancens: You know, a lot of things go into the exporter's final transportation costs, so it's often difficult to isolate what the specific cost elements are. But yes, there is no question that if your carrier is paying additional costs to reposition those empties, especially if they're not internalized and they're using an external provider such as the railway, those costs will in some way be passed to the exporter. Can I quantify them? No. But certainly there is a cost that will go to the exporter that they wouldn't encounter if the empties were being repositioned on the carrier's own ship.

Mr. Sean Fraser: In an era when we're seeking to embrace trade, when we know that globalization is happening whether we like it or not, I take it that your opinion is that by implementing this change, we'll allow Canadian businesses, particularly in the import and export business, to create more jobs and all the good things that come with it.

Ms. Karen Kancens: I don't know that I'm going to go that far. Ultimately, yes, but I look at it this way. Right now we see the greatest lack of empty containers in Halifax. On the east coast of Canada, they particularly need refrigerated containers to load agri-food and seafood. If that exporter doesn't have access to empty containers to load his exports, it's a potential lost business opportunity if the empties can't get there on time. If they are coming via another mode, there is an additional cost.

Is it going to create additional jobs for the Canadian economy? I think you could make that argument for any initiative. Certainly it's going to help that exporter in Halifax who needs the containers to be able to conclude a deal with his customer overseas.

● (1215)

Mr. Sean Fraser: You're playing to my biases—the lobster fishery and a port in my own riding. I do appreciate it.

With respect to the specific change that you've discussed about ownership versus who has an interest in this sort of partnership, if we don't make this change, what will be the fallout? Will you still see things moving by rail and truck inefficiently, or will you see empty containers sitting in ports for a few extra weeks?

Ms. Karen Kancens: Again, to be clear, for the change we are asking for, whether it's accomplished legislatively or whether it's accomplished through additional guidance from Transport Canada, we have the amendment in clause 70. That will allow the repositioning of empty containers by foreign-flag ships. We're worried, though, that it's not clear that all of the partners in a vessel-sharing agreement would be able to reposition their empties, because you have the question of ownership to be eligible to do so. The worry is not that carriers won't be able to reposition their empty containers; it's that in a vessel-sharing agreement, not all of them would be able to do it.

Mr. Sean Fraser: That's right, and—

The Chair: Thank you very much, Mr. Fraser. Your time is up.

Mr. Shields.

Mr. Martin Shields: Thank you, Madam Chair. I appreciate the information from the witnesses and their expertise this morning.

There was one thing that popped out from the Mining Association. It was the arbitration piece. You mentioned that many times you have requested and they have failed to meet with you. Do you have any information or sense of how many requests you made, and how many denials there have been percentage-wise? Do you have any idea?

Mr. Pierre Gratton: First of all, I would say that most can't get that far, but those who do actually go to arbitration, those who have the resources and the capacity to do so—

Mr. Martin Shields: That's where I was going next.

Mr. Pierre Gratton: Right, and this is one of them.

Mr. Brad Johnston: The question you're asking refers to the final offer arbitration process—

Mr. Martin Shields: Yes.

Mr. Brad Johnston: —which in itself is an expensive and difficult process for a shipper to undertake. Nevertheless, specifically answering your question, I have knowledge of.... They're confidential processes so I'll talk only about ones I've been involved in. I can't talk about when or the content, but I guess I can talk about what didn't happen. In 50% of cases that I'm aware of currently, railways did not co-operate in seeking a costing determination from the agency. I am aware that the percentage is increasing over time.

Mr. Martin Shields: You can't even get into the game, basically, or to state your case 50% of the time.

Mr. Brad Johnston: No, that's not correct. We can launch a final offer arbitration under certain circumstances. That's the choice of the shipper. What we're talking about is seeking an expert costing determination from the agency to inform the arbitration and the arbitrator as to whether the position of either the shipper or the railway is reasonable or unreasonable. It is our view that there's no legitimate reason to deny or not co-operate in a request for a costing determination from the agency. When the railway does it, it's only for the purpose of frustrating the process. Our ask is that this hole be closed in the legislation.

Mr. Martin Shields: How much is it? You're a big operator. Would you identify a cost for this process for you? You're saying most can't.

Mr. Brad Johnston: A final offer arbitration process would cost a shipper like Teck in the millions of dollars to undertake. It's expensive and it's time-consuming, but it is the one remedy that we have and it's one that we want to ensure that the legitimacy of is maintained.

Mr. Martin Shields: Is there any carry-over from whatever decisions or information you find that is of any advantage to other shippers?

Mr. Brad Johnston: No.

Mr. Martin Shields: It's very specific.

Mr. Brad Johnston: The process itself is such that not just the content is confidential but the actual fact that it's taking place is confidential, so it's not transported from one shipper to another. Of course, we're informed by it for future arbitrations that we undertake, but no, it doesn't go from one shipper to another. The costing determinations are absolutely confidential.

● (1220)

Mr. Martin Shields: What is your ask specifically?

Mr. Brad Johnston: Our ask specifically is that, in a final offer arbitration process, when a shipper makes a request for a costing determination from the agency, that costing determination be provided to the arbitrator within, let's say, five days of the request. It will not rely on co-operation from the railway. That's very important.

Mr. Pierre Gratton: I just want to emphasize the point I made at the outset, and which you've acknowledged. This is a very expensive process. The vast majority of those who use the railways can't get that or can't afford to do that. That's why the other measures we're all proposing, whether they deal with data or long-haul interswitching and so on, are so important. We don't want to have to get to.... I mean, this is a last resort. Teck, I think, is the biggest customer of the railways in the country. Is that not right? We don't want to have to get to that point. If we do, we want it to work well.

The other measures we're talking about are to ensure that the system actually works such that we don't actually have to get there in the first place.

Mr. Martin Shields: Okay.

Is there any response from you on this one?

Mr. Joel Neuheimer: Yes, I would say on the final offer arbitration tool specifically, as Pierre has said, the changes that we too are asking for would basically be let's make it easier to use, and let's make it cheaper to use, and more accessible for shippers to use if, as a last resort, you have to go there.

Again, I would settle for just giving the agency the power to investigate matters that deserve a closer look on their own. I would be happy with that change to the bill and I would just leave final offer arbitration the way it is, but if that's the one you want to focus on, let's make it easier to use.

Our shippers are what's known as manifest shippers, so they depend on a hodgepodge of client commodities being shipped, whereas they're shipping unit trains, which are entirely different phenomena and it changes the dynamics of the relationship. That being said, it makes it even harder for members of my association to use that type of tool and without being too dramatic, that's one of the reasons why I don't see any of my members sitting beside me here this morning, because given the outcome of some of those matters and the way the railways can treat them after that kind of a case, it doesn't always work out well for the shipper. It's the job of the association to show up at places like this and propose changes to tools like that.

Thank you.

The Chair: Thank you very much.

Mr. Hardie.

Mr. Ken Hardie: Thank you, Madam Chair.

To Ms. Kancens, one of the things we expect to hear this afternoon from the SIU is about some problems they have with labour standards as they are applied on some of these foreign-flag ships. Are you aware of any provisions to require certain things of these vessels as they're going about this business in Canada?

Ms. Karen Kancens: Let me make it clear that foreign-flag ships are the ships that carry Canada's international trade. They carry virtually all of our overseas trade and half of our transborder trade. Thousands of these ships trade between Canadian ports and ports overseas. They're nothing new. They're here. They're the way that we move our trade.

Foreign-flag ships are subject to a stringent regime of regulations: safety, environmental, labour. Again, this is nothing new—

Mr. Ken Hardie: I'm sorry, by whom? Who applies these regulations to them?

Ms. Karen Kancens: All of the regulations are developed on a global basis by the International Maritime Organization and the International Labour Organization. They're then implemented domestically through domestic legislation. Here in Canada they're enforced by Transport Canada and other regulatory authorities as part of Canada's obligations as a port state.

Mr. Ken Hardie: But do those regulations brought in by Transport Canada apply to the crews on foreign-flag vessels?

● (1225)

Ms. Karen Kancens: Because it's foreign-flag shipping, foreign-flag ships are subject to regulations that are developed internationally, so then they are applied in Canada. Canada enforces them.

Sonia, maybe I'm going to leave that one to you, because I don't think I'm doing a good job on this.

Mr. Ken Hardie: I have other questions. Basically, the suspicion is that we're using cheap foreign labour that is provided by people who are not well treated. I think in the fullness of time we're going to need some comfort that's it's not the case, but I don't know that anybody can provide us with that comfort at this point.

Ms. Sonia Simard (Director, Legislative Affairs, Shipping Federation of Canada): Could I maybe have a try for about two minutes?

Mr. Ken Hardie: No.

Ms. Sonia Simard: No, I cannot?

Mr. Ken Hardie: I don't have two minutes to give you, unfortunately. I have other questions.

Ms. Sonia Simard: Okay.

Mr. Ken Hardie: But I wouldn't mind a follow-up if you wanted to provide something. That would be quite instructive.

The other thing is that it's the old “thin edge of the wedge” argument. Okay, we're going to allow this to happen, what's next?

So what's next?

Ms. Karen Kancens: We hear that argument every time there's any discussion about opening up the Coasting Trade Act. The Coasting Trade Act has historically played an important role in protecting and promoting Canadian marine industries. We have no interest in opening it up for the sake of opening it.

The fact that it plays an important role doesn't mean that we shouldn't take a step back periodically and see whether it continues to meet the needs of the Canadian economy, whether it continues to meet the needs of importers and exporters, and whether there are very targeted amendments, like the empty container repositioning provision, that we can make to the act, which improve the logistics system overall without violating any of the underlying principles of that act.

Mr. Ken Hardie: Okay, I'm going to have to leave it at that.

To the Mining Association, Mr. Gratton and Mr. Johnston, I'm hearing about two dynamics in your problematic relationships with the railroads. One is their pricing strategies and the other is the service issues.

Is it one or the other or both that are the primary drivers of your concerns?

Mr. Pierre Gratton: It's both, and how they play out. It's changeable depending on the circumstances, depending on who you are, depending on the shipper. You could experience one or both, and it changes over time.

Mr. Ken Hardie: Take us through a typical transaction.

How is it set up? How can and does it go off the rails?

Mr. Pierre Gratton: Joel gave an example in the forestry sector, which is the same experience in the mining sector. You expect a certain number of cars on a certain date and that number doesn't show up. We had one member who was told by the railways that they weren't going to serve them at all. On the service side, it can really vary.

In terms of pricing, they get to control the price. There is no competition, so they set it the way they choose to set it. They pass on costs very liberally. I recall when B.C. first introduced its carbon tax, the very same day the railroads were announcing they were increasing their rates to pass the cost of the carbon tax on to the shipping community. That's what you can do when you have a monopoly situation.

Brad, do want give specific examples from your experience?

Mr. Brad Johnston: I think—

The Chair: Very briefly, Mr. Johnston.

Mr. Brad Johnston: Okay.

To echo what Pierre said, we're talking about meeting very specific delivery windows for our customers for our exports. At times, we can wait weeks, if not months, to satisfy our orders. We provide forecasts. We have vessels coming. We have orders. When we don't meet them, it's a very big financial penalty to a company like Teck. As I said, yesterday, it has been in the range of $50 million to $200 million over different periods over the last decade.

The Chair: Thank you very much, Mr. Johnston.

Ms. Block.

Mrs. Kelly Block: Thank you very much, Madam Chair.

My next set of questions will be for the Mining Association.

Mr. Gratton, I want to ask you a question around the three-week delay in providing data. Earlier this week, we heard testimony that Canadian railways already provide more detailed information in regard to the operations happening in the United States. They provide that on a weekly basis.

I'm wondering if the present government, with Bill C-49, should have moved to more closely align the railways reporting requirements in Canada with those in the U.S.

● (1230)

Mr. Pierre Gratton: My understanding is that this bill does more closely align with the United States. What we're saying is that it's not adequate. The U.S. system was designed decades ago. There is the issue of the amount of data that's made available, because in the United States it's a sampling of data, it's not all data. Then it's the issue that Joel has also addressed, which is the timeliness of that information. It can be very dated.

We're saying with the technology that we have now, there's no reason why the information on waybills can't be uploaded and provided. There's no reason.

I know that people like to say we should at least align with the United States. I think we haven't been for decades. Now we have an opportunity to go beyond what the U.S. provides and provide information that we all need to hold the railways to account, but also, as we discussed earlier, to identify those infrastructure challenges that we may have in different parts of the country.

Mrs. Kelly Block: I also want to follow up on the reference you've made to competitive line rates in comparison to the long-haul interswitching. I had an opportunity to ask our Transport Canada officials on Monday to describe the difference. A number of witnesses have made that comparison.

I'm wondering if you could describe the differences between competitive line rates and long-haul interswitching, or the similarities which then make it ineffective as a remedy.

Mr. Pierre Gratton: Brad, I think I'm going to ask you to take that one.

Mr. Brad Johnston: I'd say the similarities are that they both have issues. In competitive line rates, as they exist today, essentially the railways don't compete against one another. That's why it's been an ineffective remedy, and it's been little used over the last 20 or 25 years.

Long-haul interswitching, for the mining sector, just because so many areas essentially are geographically barred.... This morning we even had a discussion trying to figure out who in the mining industry might be able to use it. It's not at all clear to us. Certainly, anyone operating in British Columbia, in the entire province, is barred from using long-haul interswitching as it's defined. That's quite astonishing, but in fact, that's the way we interpret it. With respect to areas in the east, in Ontario or Quebec, because of the corridor definition between Windsor and Quebec City, I can't figure out who might actually be able to use the thing. To be candid with you, unless that geographic piece is fixed, I don't know, at least in mining, who might even use it. Therefore, I haven't spent a lot of time thinking about it.

Mrs. Kelly Block: I recall during our study on C-30 that we heard from various stakeholders such as the forestry industry and the mining industry that they would like the same opportunity for interswitching and extended interswitching that had been provided to grain farmers through the Fair Rail for Grain Farmers Act. When you relate that back to the exemption corridors or the exclusion zones, have you seen any rationale that makes sense to you for why these zones or corridors were created and put into this piece of legislation?

Mr. Pierre Gratton: We can only assume the railways fought against it and that's why we have these exclusion zones. This attempt essentially maintains the C-30 provisions. Essentially there is a piece of Canada in the Prairies that could benefit from this, much as they did through Bill C-30. I think this has just found a different and more creative way of accomplishing the same thing. I assume if it were more opened up in central Canada or in eastern Canada it would simply force the railways to be more competitive with one another, and they don't want that.

● (1235)

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

I also want to thank Mr. Hardie, who has asked a number of questions I was planning to ask. To return the favour, I will give the next two minutes to Ms. Simard, so that we can hear her answer, which also interests me.

[*English*]

Ms. Sonia Simard: To be clear, we're talking about introducing something for seafarers working at a lower wage. Actually, those vessels that are coming to Canada have been coming for more than 120 years. These vessels are regulated by a body of conventions that Canada has helped develop, including the labour requirements on vessels. These are the laws that apply to those vessels. However, to imply that all the seafarers on board ocean-going vessels are badly treated would be quite a disrespect to the seafarer professions. These seafarers work on carriers, and there are over 1.6 million seafarers working on ocean-going vessels. That's more than 55,000 ocean-going vessels trading internationally.

Are there cases when one ship comes to Canadian waters and doesn't have good standards? Yes, it's possible. Do we have cases in Canada where we drive on the highway over the speed limit? It is possible. Does it make all of us non-compliant and subject to road rage? I don't think so. That's the same thing for a very large industry that works with over 55,000 vessels. These are regulated by standards. Those standards are enforced by the Canadian authorities and they have working conditions that allow people to survive on board vessels and thrive as a carrier of seafarers.

To put things in context, can I have 30 more seconds?

Mr. Robert Aubin: I have time. Go.

Ms. Sonia Simard: It's the thin edge of the wedge. We're not asking to blow up the Coasting Trade Act, as has been mentioned; we're not here for that.

I'm going to bring you back, however, to another example, that of the U.S. We know they have the Jones Act. It is very strict in ensuring that they protect their domestic fleet. The concept of liberalizing the moving of empty containers is in the Jones Act, so is the ability to use it in vessel-sharing agreements so that the partners in vessel-sharing agreements in the U.S. can move their empty containers. We are not, then, asking to blow up the Coasting Trade Act with this amendment. We're just asking that the amendment be implemented and fully implemented to recognize that container carriers operate under vessel-sharing agreements.

Does that help?

[*Translation*]

Mr. Robert Aubin: Yes, thank you.

[*English*]

The Chair: We could push it a little bit, Mr. Aubin, if you have another request.

All right. Thank you all very much.

We've completed our first round. Before we dismiss the witnesses, does anyone have any special questions that they didn't get a chance to get out?

I'm looking over on this side. Now that I have done so, I'll have to look over on this other side. I'll have to look at anyone who has a really important question that you want to get answered.

Mr. Badawey.

Mr. Vance Badawey: Thank you, Madam Chair Sgro. I have a question to the shippers with respect to the discussion we've had on Bill C-49 about operational remedies, when moving containers around utilizing marine resources.

I want to touch on one thing that we haven't touched much on for the last couple of days and that may be very relevant to you. That is the capital side of shipping, and the Shipping Federation's opinion and recommendations on the overall system when it comes to both salt water and the Great Lakes.

What is your position on Canadian ports being allowed to access the Canada infrastructure bank and the financial instruments contained within the infrastructure bank to help fund expansion projects? Will this be helpful, in your opinion, in making Canadian ports more competitive?

I want to expand that question to also include not only Canadian ports that are designated as port authorities, but also the St. Lawrence Seaway itself on the Great Lakes. Is there opportunity, in your opinion, to expand on the capital side to enhance the business opportunities for yourselves, speaking on behalf of your organization, as well as for others who ply the waters of Canada and those beyond the borders of Canada?

● (1240)

Ms. Karen Kancens: On the infrastructure side and with respect to having ports access the Canada infrastructure bank, yes, conceptually it could be helpful. I think we would want to look at it from a trade corridor and a network perspective.

You have a port such as the Port of Vancouver, which is growing exponentially, which is building all kinds of infrastructure. You can see how this would be useful to them.

If you come to the St. Lawrence Seaway or to the St. Lawrence-Great Lakes system, we have infrastructure needs in this part of Canada as well, so this is potentially interesting. We have been making a case for quite some time for the need for more icebreakers to support the system here and to support navigation through the winter months, which is a huge aspect of having a reliable trade corridor, and also for potential infrastructure needs on the east coast.

Theoretically, then, yes, it would be helpful. I might just try to punt that question a little bit, though, and say that we'll expand on it in our written comments.

Mr. Vance Badawey: Madam Chair, that's why I asked the question. I ask that such information to be passed on to us—more detailed information.

Ms. Karen Kancens: Yes.

Mr. Vance Badawey: As I stated yesterday, Bill C-49 is meant to be injected into the overall transportation strategy establishing, of course, one of the five pillars that Minister Garneau has announced, which is trade corridors. The more information we can have about what your needs are to make more robust the opportunity for our participation and performance in a global economy, the better. Since, as you stated earlier, you are a part of it, we need to hear what those needs are. That way, when we are actually making the infrastructure investments, they will be made appropriately, for better value and a better return, to therefore position Canada better on the economic global stage than is the case today.

Ms. Karen Kancens: Yes, absolutely.

Mr. Vance Badawey: Great. Thank you.

The Chair: Thank you to all of our witnesses. This has been tremendously informative. We thank you for taking the time to participate and helping all of us as parliamentarians.

We will now suspend until the next panel.

● (1240)

(Pause)

● (1345)

The Chair: We're calling the meeting back to order as we continue our study of Bill C-49. We have with us at this panel François Tougas, appearing as an individual, the Canadian National Millers Association, and the Canadian Canola Growers Association.

I welcome all of you. Thank you for coming.

Who would like to start off? Go right ahead, sir.

Mr. Gordon Harrison (President, Canadian National Millers Association): Thank you very much for the opportunity to appear. It's greatly appreciated. We are very happy to be here after requesting to be here.

The Canadian National Millers Association is Canada's national not-for-profit industry association representing the cereal grain milling industry. Our member companies operate milling establishments across Canada, and a number of them operate establishments in the United States or have affiliated companies with milling facilities in the U.S.

By virtue of where the Canadian milling industry capacity is situated and the regional markets served, the Canadian industry can quite correctly be described as a participant in a North American industry. It is a North American market for this industry, and the industry is integrated much like the rail transportation networks are throughout North America.

We are, however, an independent Canadian not-for-profit organization. We do not directly represent members of the U.S. milling industry except for those who are members in good standing of the CNMA by virtue of their operating facilities in Canada.

In light of the few minutes that are available for everyone to speak, I'd like to start by advising the committee at the outset that the CNMA supports the recommendations that are set out in the amendments to the bill as submitted and presented by the Western Grain Elevator Association. Members of the WGEA are the predominant link between grain producers and our member grain processors and others who are processors in Canada. This is the case for the majority of wheat and oats milled in western Canada.

I would like to touch upon a number of points as context for the committee's consideration of all the submissions you've heard. They are the following.

Our members are primary processors of wheat, oats, rye, and other cereal grains. By “primary processors”, we mean the step in the supply chain at which grain is transformed from a commodity that generally is not consumed to commodities that are consumed and are ingredients in food products and other products at the consumer level.

Top of mind for most people who think of foods that contain such ingredients are bread, other bakery products, pasta, breakfast cereals, and cookies, but I'd like to emphasize that you'll find wheat flour and other products of grain milling in products that are in every aisle of the grocery store, including pet foods, which contain products of grain milling. There are many products that contain or are derived from milled grain products. Those milled grain products are derived from grains across Canada, but predominantly the grains that are produced in western Canada.

There are also very few food service chains or restaurants, if any, whose menus are not largely based on foods based on cereal grains and manufactured from the products of grain milling. During the duration of these hearings, I was reflecting on this. I think Canadians will have consumed approximately 200 million meals containing bakery products, pasta, breakfast cereals, and snack foods, which in turn contain other products of grain milling.

These businesses, from the very largest to the very smallest, operate on a just-in-time delivery basis. The major manufacturing companies or the further processors of milled grain products—such as bakeries for frozen bakery products, or pasta, but principally those further processing manufacturing industries—have only a few days of ingredients in stock, and not just wheat flour and other milled grain products, but all grain products. In that sense, the supply chain beyond the milling industry operates on a just-in-time delivery basis, just like the automotive industry.

The CNMA's interest in rail transportation policy in Bill C-49 is that the cereal grain milling industry is heavily reliant on rail transportation, not only for inbound unprocessed grains but for outbound processed products. Two-thirds of Canada's wheat milling capacity is located off the Prairies, outside of Alberta, Saskatchewan, and Manitoba, and is situated in B.C., Ontario, Quebec, and Nova Scotia primarily. These mills require rail service to receive approximately three million tonnes of wheat and oats annually. This represents a very predictable demand for rail transportation: in my estimate, 34,000 cars annually for inbound grain, and perhaps another 6,000 to 10,000 cars for the movement forward of milled grain products and by-products.

● (1350)

This demand doesn't fluctuate significantly by crop year, is not variant on the size of the Canadian crop for any commodity. Rather, it can be easily forecast a year in advance because it's based on a domestic and a nearby export market, the United States of America.

Having noted some of the ridings held by committee members, it might interest you to know that during the dramatic shortfall in service in the 2013-14 crop year, there were mills in Mississauga, Montreal, and Halifax that actually ran out of wheat, in some cases more than once. That meant that major bakeries were within two to three days of running out of flour, and major retail grocery establishments probably within four to five days of running out of bread on shelves.

In hindsight—and that is now a long time ago and we're not here to whine about what happened back then—we came very close to having a serious interruption in our grains-based food supply. How would we have explained that to Canadians who had gone to the store and found no bread, or to fast-food restaurants which would have had nothing to put their ingredients on in those menu servings?

Other than the extended switching rights, the provisions of the Fair Rail for Grain Farmers Act did not recognize or assist the rail service requirements of Canada's milling industry. The same can be said for U.S. establishments. In fact, that intervention provided an impediment to service to our industry. As we see it, there are no provisions of the CTA that presently speak to the very predictable and forecastable service needs of the Canadian milling industry, and in most respects the same can be said about the amendments proposed by Bill C-49. The act, as it exists and even as amended, doesn't really speak directly to or recognize the needs of domestic processors.

Those processors really do not have the capacity to receive and unload grain in the way that grain elevators have on the way to export markets. Almost all mill locations are urban. They're in multi-mix environments, in some cases surrounded by residential development, commercial development, and they are equipped to handle only a few cars at a time. The largest capacity of a mill that I'm aware of, without using a transfer elevator nearby, is about 15 cars at a time.

In regard to Bill C-49, it really remains important that under the amended act the definition of “shipper”, as I understand the proposed amendments, will remain, “a person who sends or receives goods by means of a carrier or intends to do so.” That's an extremely important aspect of the legislation as it exists today, and that does ensure that processors, including millers, have access to the benefits of the same provisions of the act.

The key point I want to make is that grain rail service is not only about moving grain to port for onward movement to export markets. It's about moving grain to mills in Canada and the United States, meeting the needs of Canadian and U.S. consumers. The Transport Canada question-and-answer document that was circulated about 10 days ago speaks of global markets. I want to emphasize that North America, Canada and the U.S. combined, is a global market of 400 million people. From our investigation, the recommendations of the WGEA and those carefully considered points of the crop logistics working group will go a long way to meeting the substantial improvement that is described by the WGEA in these amendments. We are supportive of those recommendations.

I must emphasize, however, neither their submission, nor any other that I've read to date, speak to the importance of rail service to cereal grain milling establishments. There are actually many, and the Canadian population relies upon the timely operation of those facilities and the delivery of foods from those facilities.

I've provided some very brief correspondence to the Honourable Marc Garneau, to the clerk, which I gather will be subsequently distributed once it is translated.

Thank you for your attention.

● (1355)

The Chair: Thank you very much.

Now we`ll go to the Canada Canola Growers Association.

Mr. Jack Froese (President, Canadian Canola Growers Association): Good afternoon, Madam Chair and members of this committee.

I am Jack Froese, the president of the Canadian Canola Growers Association. I farm at Winkler, Manitoba. Thank you for inviting me here today to speak with you about Bill C-49, the transportation modernization act.

CCGA is a national association governed by a board of farmer directors who represent the voice of Canada's 43,000 canola farmers from Ontario west to British Columbia. In any given year, over 90% of Canadian canola, in the form of raw seed or the processed products of canola oil or canola meal, is ultimately destined for export markets in more than 50 countries. We are the world's largest exporter of this highly valued oilseed.

Canola farmers critically rely on rail transportation to move our products to customers and keep those products price-competitive within the global oilseed market. Farmers occupy a unique position in this grain supply chain, and that is what fundamentally differentiates this supply chain from other commodities. Farmers are not the legal shippers, but we bear the cost of transport as it is reflected in the price we are offered for our products from the buyers of our grains and oilseeds, who are the shippers.

Simply put, farmers do not book the train or the boat, but they pay for it. Transportation and logistics costs, whatever they might be at a point in time, are passed back and paid for by the farmer.

Farmers independently strive to maximize both the quantity and quality of their production each year. Once harvested, they sell their grain into the system, based on their particular marketing plan, with the overall goal of capturing the highest possible prices at a given time in a dynamic and ever-fluctuating global commodity market.

Transportation of grain is one of several commercial elements that directly affect the price offered to farmers in the country. When issues arise in the supply chain, the price that farmers receive for their grain can drop even at times when commodity prices might be high in the global marketplace.

In periods of prolonged disruptions, space in grain elevators becomes full and grain companies stop buying grain and accepting deliveries. This can occur even when the farmer has an existing contract for delivery, seriously affecting farmers' ability to cash flow their operations. This is a major reason that western Canadian farmers have such an interest in transportation. It directly affects personal farmer income, and beyond that, they critically rely on the service of Canada's railways to move grain to export position. We have no alternative.

It is a complex system, transporting western Canadian grains an average distance of 1,520 kilometres from the Prairies to tidewater, but we need to make it work to the benefit of all parties and the broader national economy as a whole.

The competitiveness and reliability of the canola industry, which currently contributes over $26 billion annually to the Canadian economy, is highly dependent on this supply chain providing timely, efficient, and reliable service. In terms of direct impact on Canadian farmers, canola has been the number one source of farm revenue from crops every year for over a decade. It is a major contributor to grain farmers' profitability.

The 2016-17 crop year that just passed at the end of July set new record levels of canola exports and domestic value-added processing. Strong performance by the railways absolutely supported this achievement. Overall, it was a banner year for railway movement of grain and its products.

That stated, we need to remain future-oriented when we consider public policy changes. The last several years of reasonably good overall total movement and relative fluidity of the supply chain should not lessen our focus on seeking to improve, as fundamental issues still exist beneath the short-term positive headlines.

Spring 2017 saw a record level of canola planted in Canada, the largest single field crop in the country, for the first time surpassing wheat. The most recent, late August, government estimates of production for this fall is 18.2 million tonnes, down slightly from last year due to challenging weather, but still surpassing the five-year average by over one million tonnes.

We are an optimistic and goal-oriented industry with a record of achieving success. When we look forward to 2025, we see demand for our products rising further, both domestically and internationally. In this future, rail transportation will be even more important as our industry strives to reach our strategic goal of Canadian farmers sustainably producing 26 million tonnes of canola every year.

● (1400)

To support this, Canadian farmers and the industry will need an effective and responsive rail transportation system, not just for transportation of the current crop sizes but for those of the future. Moreover, farmers will not be able to capitalize on the opportunities from Canada's existing and future trade agreements without a reliable and efficient rail system that grain shippers and our global customers have confidence in. That is a key point: with such a strong reliance on exports, we do need to remain cognizant of the customer service aspect of our export orientation in the agricultural sector.

Canadian canola and other grains are well known for their quality characteristics and sustainable supply, which are market differentiators. But at the end of the day, they remain fungible commodities, and alternatives exist. The reliability of our transportation system affects buyers' confidence in the global Canadian brand. We know, because we hear directly about it.

For the remaining comments, I'll defer to Steve Pratte.

Mr. Steve Pratte (Policy Manager, Canadian Canola Growers Association): Thank you.

Just very briefly, Bill C-49 attempts to address several long-standing issues in the rail transportation marketplace. You've heard from grain sector representatives, including grain shippers and farm groups, yesterday and this morning, regarding their perspectives on various commercial and legal aspects of the bill, including around reciprocal penalties, long-haul interswitching, and other elements. You've clearly heard from witnesses in other sectors that Canadian class I railways are in monopoly positions. Most grain shippers are served by only one carrier and are subject to monopolistic pricing and service strategies.

The grain sector, from farm groups through the value chain to exporters, has been consistent in its discussions with government since the 2013-14 transportation crisis, and there's been a consistent message. Canada must address the fundamental problem of railway market power and the resulting lack of competitive forces in the rail marketplace. In our view, the government has a clear role to establish a regulatory structure that strikes a measured and appropriate balance and, to the greatest extent possible, creates the market-like forces that do not exist, which in theory should create more market-responsive behaviours of all participants.

This is the reality, a long-standing fact that has led to over a century of government intervention to varying degrees in this sector. Bill C-49 is the current approach before us to bring a more commercially oriented accountability into this historically imbalanced relationship. Bill C-49 appears to make progress in several areas towards this goal, and does reflect a consideration of what Canadian rail shippers and the grain industry have been telling successive governments for years about the core imbalanced relationship between shipper and railway. For that, we thank you.

In our view, the true impact and success of this bill and the measure of its intended public policy outcomes will only really become apparent and known once the shipping community attempts to access and use the remedies and processes this bill will initiate. As Bill C-49 was designed to balance two competing interests—that of the shipper and that of the rail service provider—a true measure of success will likely take several years to fully gauge and appreciate.

In closing, two areas that CCGA would like to briefly highlight, from a farmer's perspective, are the themes of transparency and long-term investment, specifically as they relate to data disclosure and the economic regulatory environment of grain transport in Canada.

One element of Bill C-49 that is of particular importance to farmers is the issue of transparency.

The publication of new railway service data, received by the minister of transport or the Canadian Transportation Agency, is important not only for stakeholders and analysts monitoring the functioning of the grain handling and transportation system but also for government itself—for the twin functions of on-going monitoring and assessment of the system, and when required, the ability to develop prudent public policy and advice to the minister in times of need.

This new information, in conjunction with the comprehensive reporting of the existing grain monitor program, will provide farmers with valuable insights into the performance of the system. As the bill currently reads, clauses 51.1, 77(5), and 98(7) specify timelines associated with this reporting. CCGA would respectfully submit that these timelines are too lengthy and that consideration should be given to shortening them.

In addition, the new proposed annual railway reports to the minister at the beginning of each crop year, contained in clause 151.01, are very positive. CCGA would respectfully submit that the minister of transport consult with the minister of agriculture as to what those reports could specifically contain to be of greatest utility to both government and grain stakeholders.

Lastly, modernizing the economic regulatory environment to stimulate investment, such as the suite of actions aimed at the maximum revenue entitlement, is well intentioned.

One of these policy objectives is to spur investment in grain hopper car replacement by the railways through the calculation of the annual volume related composite price index, as effected by clause 151(4).

CCGA would submit that consideration should be given to having the Canadian Transportation Agency closely monitor these actions and, during its annual administration of the MRE, include a summary comment within its determination.

We appreciate being here to address the committee this afternoon, and we do look forward to the question period.

● (1405)

The Chair: Thank you very much.

Mr. Tougas.

Mr. François Tougas (Lawyer, McMillan LLP, As an Individual): Thank you for the invitation to appear before the committee today.

I should start by commending the members for their non-partisan approach to this bill, as well as for their fortitude, doing this all week long, and the hours that you're maintaining.

I'm here in my capacity as counsel to shippers, railways, governments, intermediaries, and investors in the areas of rail law and policy. My credentials are attached to my formal submissions.

I should say also that my comments today are informed by more than 60 negotiations and processes with the Canadian National Railway Company and Canadian Pacific. I'm speaking from the position of having seen these negotiations and processes among different categories of commodities as well as railways. Transport Canada consulted with me extensively in the run-up to Bill C-49. Unfortunately, Bill C-49 leaves many shippers without access to a viable remedy. While I have many things to say about the act and the bill, I'm going to confine my remarks today to two areas in particular on data disclosure and rail service, and I'm also going to try to address some points that have arisen since the beginning of the week.

My first point is on costing data. Bill C-49 looks to gather some data similar to that available in the United States. However, the bill will not change the fact that data about CN and CP is much more readily available to shippers in the States than to shippers in Canada. Shippers in the States have access to detailed rail costing data to calculate a carrier's costs of transporting goods, without invoking a proceeding before the U.S. Surface Transportation Board.

Rail carriers in the States are required to report detailed financial and statistical data, which is available publicly on the STB website. CN and CP must provide these reports to the STB too, but Canada does not require it, so shippers in Canada are at a considerable disadvantage in relation to their U.S. counterparts. The STB established the uniform rail costing system, URCS, to “provide the railroad industry and shipper community with a standardized costing model [that can be] used by parties to submit cost evidence before the Board.” Shippers can, by this and yet other means, assess the freight rate competitiveness of CP's and CN's American operations, but not their Canadian operations.

In Canada, the only situation in which a shipper can get rail cost data is in the confidential final offer arbitration, FOA, process. FOA has become increasingly difficult to use for a number of reasons. As you've heard already from other witnesses, an FOA arbitrator has the right, under the act as it presently stands, to get information from the agency but generally will not do so without first getting that class I rail carrier's consent. That's the problem that I think you have an opportunity to fix. CN and CP can merely refuse to consent, leaving the arbitrator in such cases without a critical piece of evidence to make a final offer selection between the shipper's offer and a carrier's offer. In this manner, CN and CP can neuter the FOA process, making it less available and less viable.

While shippers in Canada should have access to the same quantity and quality of information available to the shippers using CN and CP services in the States, for now, I'm advocating something simpler; just require CN and CP to co-operate with the agency in providing the cost of shipments that are submitted to final offer arbitration. I have some recommended language there before you. This committee is already amending subsection 161(2), so this would be the addition of a paragraph (f). It would just add one more item to the list of items that a shipper has to submit to start a final offer arbitration. With this amendment to the act, the FOA process has a better chance of avoiding disputes, reaching good conclusions, and satisfying the parties.

I'll move on to performance data. Railway performance data is also not available in Canada. Bill C-49 proposes to compel the disclosure of a subset of certain U.S. information. As a result, U.S. shippers will end up with more data about CN's and CP's operations than shippers in Canada. Ideally, each class I rail carrier would submit all data from every waybill, including the information required by proposed subsection 76(2), which is dedicated right now just to the LHI remedy.

● (1410)

This information is readily accessible to the rail carriers in real time and is easily transferable. That would allow any so-inclined shipper in Canada to assess the extent to which a rail carrier is providing adequate and suitable accommodation for its traffic without having to resort to a legal process, which is what is required right now.

Currently the agency and arbitrators must determine service cases in the absence of performance data. The creation of a database and publication of all waybill and clause 76 information would settle or eliminate many disputes. However, I propose something more modest. I propose three things. First, give the agency the authority and the obligation, as it has for other parts of the act, to make regulations in this area, given its wide-ranging expertise. Second, require service performance information for publication for each rail line or subdivision. System-wide data as presently contemplated by Bill C-49 will do nothing to identify service failures in any region or corridor, much less those faced by any shipper. Third, Bill C-49 seeks to limit commodity information. I've added paragraph (11) to current subclause 77(2)—you can see the language before you—to require each class I rail carrier to report their service performance in respect of 23 commodity groups, just as is required by the STB of CN and CP in the United States—no difference.

Moving on to service levels, both the level of service complaint remedy and the SLA process were designed, along with the statutory service obligations, to compel railways to do things they would not otherwise do. The agency has done an admirable job of determining the circumstances in which it will determine whether a rail carrier has fulfilled its statutory service obligations. This is not a system that needs any further inclination toward rail carriers, which have been performing very, very well financially. Only the most egregious rail carrier conduct gets attention from shippers, which are otherwise prone to sole-service providers and very reluctant to bring proceedings.

Personally, I would not have amended the LOS provisions, but if it must be done, I'd make a few changes—three of them, in fact.

First, I'd change the opening words of proposed subsection 116 (1.2), as presently contemplated in Bill C-49, to reverse the logic. Right now, it doesn't say what happens if a rail carrier doesn't provide the highest level of service they can provide. I would reverse the finding requirement so that the level of service is no less than the highest that can be reasonably provided in the circumstances.

Second, Bill C-49 would require the agency, in both the LOS and the SLA process, to consider the rail carrier's requirements and restrictions, which are all outside the control of the shipper and well within the control of the rail carrier. For example, a rail carrier decides how many locomotives to acquire, whether to terminate thousands of employees, eliminate or reduce service, limit infrastructure, or invest in technologies. It is entirely inappropriate for the agency to have to determine whether a shipper should receive a portion of the capacity that has been restricted by decisions of a rail carrier. I would strike the offending provisions entirely, just as you have it before you there.

Third, Bill C-49 imposes an obligation on an arbitrator to render decisions in a balanced way. Now, I would have thought they were already doing that. They enjoy a reputation for fairness and impartiality, and they have enjoyed deference from the appellate courts. Arbitrators are rarely appealed. There's no need for such a provision. The SLA process exists precisely because a rail carrier will not provide what the shipper requires. If it turns out, upon examination, that a shipper doesn't require the service it seeks, the shipper won't get it. That's what the agency will decide. I would strike that proposal altogether.

I've been asked a few times, and contemplated that this would arise, which one of these I would take if I could only take one. Well, it may be that the LHI provisions, if they're amended in accordance with the requests of various parties who've appeared before you, will be helpful to some people. But for sure I would make sure that my priority one amendment is made—that is, demand and require of a railway that it provide its consent to a rail carrier costing demand by the shipper in the FOA process.

Finally, we should return to a periodic review of the act. I would recommend at least every four years. I heard Mr. Emerson say two, and I'd be content with that too.

Thank you very much.

● (1415)

The Chair: Thank you very much.

Thank you to all of you.

Ms. Block.

Mrs. Kelly Block: Thank you very much, Madam Chair.

Thank you to all of you for joining us here today.

I want to make the statement that I appreciate the balanced testimony we've heard from all of our witnesses over the past three days in terms of pointing out where things have been structured very well and then identifying those places where they feel the bill needs to be amended. I also appreciate the common themes that have arisen over the past number of days.

With that, I want to ask a couple of questions of you. First, what will be the long-term implications for your industries, and the industry as a whole, if the amendments that you've suggested aren't made?

Mr. Gordon Harrison: I think the amendments that have been proposed by the major grain supply chain stakeholders have been very carefully considered based on a great deal of experience. I believe they are worthy, have merit, will improve the efficiency and the responsiveness of the system, and speak to the need that has been spoken to by the last presenter, which is the transparency of data that is obligated to be provided, gathered, and published in a very timely fashion. I really appreciate the remarks that it should be no less robust and transparent than users of the system, shippers, have in the United States.

The implications would potentially be lost opportunity. Secondly, there's potential for another precipitous and perhaps economically damaging intervention in the future if we ever again face the kind of circumstances we did three crop years ago. Ultimately, an awful lot of time and effort were wasted in doing better. Doing better is absolutely essential to our economy.

Thank you.

● (1420)

Mr. Jack Froese: I would say our future depends on it. We can ill afford to go back to what we had in the past. If we look at where agriculture is going, with biotechnology we're raising better crops and bigger crops using every technology available to us. We're going to be looking at more volume to be handled in the future. We have set the lofty goal of 26 million tonnes by 2025. We've always achieved our goals in the past. We are going to have to make sure that we can do all the trade agreements, and if the transportation system isn't there to back it up, the trade agreements don't mean a whole lot.

To have the timing of the transportation to meet, to coincide, with the needs of the consumer is extremely important. I know we have had consultations with our Japanese buyers, and they tell us it's extremely important that they get their shipments on time.

Mr. François Tougas: Let me answer you by posing a question to you, which is, why aren't the remedies used? I know some of you have asked that question. If you approach it from that perspective, you can see what's going to happen to industry over time.

If we look at the Canada Transportation Act as a constant work in progress—which I think we have to admit has been going on for about 100 years or more—then the process that we're in now is really an opportunity to try to get further ahead than where we were. What's actually happening is that the remedies are being eroded, and that's why I'm talking about the things that I'm talking about today.

This can't be surprising. We have a market structure that lends itself to a natural monopoly occupied by the two railways. I wouldn't blame it on their conduct; it's a market structure problem. We address that with remedies in the act. When those remedies are weakened, when they do not do the job that they were intended to do, it makes it hard for those shippers to deliver on their production. That's the simple point I would make.

I know some of you also asked, is it this reason or that reason that this remedy is being used or not being used? On Monday I heard the railways talk about this subject. The reason why the remedies aren't being used is that it gets harder and harder to use each one of those remedies. The shippers are primarily scared of retribution from the carriers for exercising those remedies, and they're expensive. I'm part of the problem, right? I'm a lawyer, and lawyers are people, too, but it costs a lot of money to engage counsel. The harder the process is, the more money it's going to take to solve the problem.

You heard testimony this morning about how much it might cost to do an FOA process for one shipper. Other shippers can exercise some of the remedies for cheaper, but very few shippers have access to a lot of remedies. Most shippers have access to one, sometimes two remedies. You have to make them usable. That's really the point I would emphasize, and I would make that point about LHI as well.

Sorry to go on so long.

Mrs. Kelly Block: No. Thank you.

The Chair: Mr. Graham.

Mr. David de Burgh Graham: Thank you.

I want to stay on remedies and look for remedies for the remedies. Can you go into a bit more detail on the remedies? Where did they originate? Take a couple of specific examples. Where did they originate, and how did they die?

Mr. François Tougas: Many of the remedies we have in the act today actually came as a result of possibly a maverick, Don Mazankowski, back in the eighties. The advent of the National Transportation Act of 1987 introduced final offer arbitration and the competitive line rate mechanism. It changed the interswitching mechanism to the thing we have today. Those were bold.

CLR, as you've heard, doesn't work. The railways have refused to compete with one another on that basis. They don't have to. There's no law that requires them to compete with one another. What we're talking about, again, is a market structure problem. When you create a remedy, you want that remedy to be effective, to act as a surrogate for what the market is not going to be able to do.

I practise in the area of antitrust law, and in antitrust economics, the main thing we want is for competition to occur. In a natural monopoly environment, like the one we have here with the railways —not for their entire systems but for large parts of their systems— you want every mechanism available to allow those rail carriers to compete without restrictions. That's where I would say LHI has largely gone wrong. It imposes a bunch of unnecessary restrictions that really will keep those railways from having to compete with one another and with others.

Have I answered that adequately? I may not have.

● (1425)

Mr. David de Burgh Graham: Yes, that's a pretty good start.

As for other solutions, yesterday Teck talked to us about running rights, and I noticed a lot of people didn't know what that was. I know you have some knowledge about this. Can you talk a bit about this?

Mr. François Tougas: Yes. I've written in this area probably the least read articles in Canada on this subject.

There are many types of running rights regimes. It's a good scaremongering tactic by the carriers. I've heard on numerous occasions about how it would devastate the economy. As the Teck witness mentioned yesterday, running rights are already used throughout North America every single day. There are lots of running rights mechanisms, and there are lots of different forms of them. What they are particularly afraid of is wide open access, with anybody running over anybody's lines. I think there are lots of steps on the way there.

I could go on for days on this subject, but I think in Canada, we have some opportunities to correct our transportation system to introduce direct competition, that is, running rights. But if we're not going to do that, then we should have remedies that provide indirect competition that is effective and viable for the shippers to use.

Mr. David de Burgh Graham: One of the issues that came up earlier today was a concern about premature discontinuance of the line. I wonder if you had thoughts on that and remedies for that.

Mr. François Tougas: I think right now the railways have obtained the ability to discontinue rail lines on a basis that I think is reasonable for the rationalization of their networks. I've always been a little bit concerned about how easy it is for them to go through that process, but that is the process.

What happens now is that if you allow them to discontinue service before that process is run, you're essentially stranding a bunch of shippers on those lines that are about to be abandoned. I think that's a mistake. Reasonable people can differ on that issue. That might be a place where you allow communities to take over those lines immediately or for other parties to come in and run them, on a reasonable basis, as short-lines.

Short-lines get squeezed for both their operating revenue and their capital requirements. This is probably worth spending some time on, probably more time than we have today.

Mr. David de Burgh Graham: We heard from the short-lines yesterday that their operating ratio is in the 98% range, as opposed to the large carriers being in the 50% range.

I'll come back to another question I've asked a number of panellists, and I'll open it up to everybody.

We were told by the large railways that any company that has access to trucks is basically not a captive client. I'm wondering what your thoughts are on that.

Mr. François Tougas: Okay, well, that's ridiculous.

The Chair: We appreciate your honesty.

Mr. François Tougas: For a slightly more nuanced answer, think about it like this. I heard one comment that if they have access to trucking for 25% of their production, that party is no longer captive. Well, there is the other 75% that's still captive, and that's the thing we're looking for.

Let's just take a sawmill, for example, that's trying to ship its product to 3,000 destinations in the United States, and it's stuck in northwest British Columbia. There is one option, and that option is Canadian National Railway. Now, they could truck to Edmonton and connect to CP. Anybody who hasn't completely lost their minds will realize that this is a much more expensive option. We heard, the railways have said it, that trucking is more expensive once you get beyond a distance. The railways can't compete at the shorter distances, they say. I question their number, but let's just take it for what it is. You still have to get your stuff off the truck and then back onto a railcar. Well, that cross-docking is an expensive process.

Have I used up all the time?

● (1430)

The Chair: No. You can keep going.

Mr. David de Burgh Graham: There are remedies—

Mr. François Tougas: I could do an example like this for virtually every shipment in Canada. Anybody who would want to use trucks to move coal would similarly have lost their mind. I did this calculation once, put 25 million tonnes on the road, and you're talking about one truck every two and a half minutes, 24 hours a day, 365 days a year. The roads couldn't tolerate it. No bridge could tolerate it. That's only one commodity. It is simply not real to say that somebody is not captive because they have some access to trucking.

The Chair: I think Mr. Harrison was trying to put something in there.

Mr. Gordon Harrison: Just a quick comment. Trucking is not an alternative to moving grains out of Prairie provinces into processing facilities anywhere else in Canada. It's impractical for reasons of costs, in addition to those of logistics.

The Chair: Thank you.

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

I thank the witnesses for joining us.

I would like to begin the conversation with Mr. Harrison.

In your opening remarks, you provided us with a new perspective. For a few days, we have been hearing many producers of grain and ore complain about railway companies. People are saying that those types of productions are growing, that they are trying to export more to international markets and grow the economy. This afternoon, you are bringing us the notion of just-in-time production, the concept involving smaller productions. You are saying that most mills are not equipped to receive many cars.

Does Bill C-49 provide any benefits for you? I will let you tell me, but I am under the impression that railway companies would perhaps have to offer you different treatment than the one large productions get. Am I mistaken?

[*English*]

Mr. Gordon Harrison: The just-in-time delivery aspect takes place at the milling and beyond stage. Before that stage there is some latitude in milling establishments, provided that the pipeline or the flow of grain is continuous and as anticipated. The milling industry can't deliver just-in-time if the milling industry is allowed to run out of grain.

Eastern Canadian grain—Ontario, Quebec, and Atlantic grain—is not generally substitutable for grain of western Canadian classes and quality. You can't make the same products. In addition to that, to operate a mill efficiently you need different grades and classes and protein levels of western Canadian wheat. In the case of oatmeal, you need specific varieties that have to be declared and delivered.

If you have your inventories drawn down to a level, like we experienced three years ago, where you can't do the blending that is required and you can't achieve the end-use performance required, you can't do just-in-time delivery of the end-use performance that a large further processor would wish.

Mills in Canada would have anywhere from four weeks to, perhaps, a few months of storage, but if your rail service is interrupted for weeks on end, which is what happened—and we would never want anyone to experience that again—that's where you would get into the disruption of just-in-time delivery. The people who are trying to do that just-in-time work and put those products with short shelf life out there in the marketplace don't have the luxury of going to other suppliers on that kind of turnaround time.

That's the way it has become. It requires an adequate supply of raw materials and, beyond the primary manufacturer, an adequate and continuous supply of those products.

I hope that answers your question.

[*Translation*]

Mr. Robert Aubin: Yes, it does. Thank you.

On a different note, you would really have to be psychic to know what recommendations will be unanimously supported in this committee over the next few weeks. There are many proposals on the table. Nearly everyone agrees that the legislation should be reviewed on a regular basis. Some have suggested that this be done every two years, and others, every four years.

I would like to rephrase the question. Once Bill C-49 has been passed, regardless of the amendments made to it, how much time do you think will be needed to measure its effectiveness? In other words, should the first review of the legislation be done after a year, two years, three years or four years? Then, we could establish the cycle.

● (1435)

[*English*]

Mr. François Tougas: My view is that we already have some precedents to help us address how quickly a review should occur. I'll give you the answer first. I think it should be two years, but I would live with four. Here's the reason.

The SLA mechanism was introduced through Bill C-52 in 2013. Last year we had precisely zero SLAs go before the agency. The year before that, we had two. The year before that, we had five.

That's the record: five, two, zero. Why is that? Maybe it's not working. Maybe there's a need to review that mechanism. Just as in the case of any other mechanism that we use, we should be constantly reviewing it in a continuous improvement kind of environment.

I know it's very difficult at the parliamentary level to do that, but this committee has been doing it forever. You guys actually have the expertise. You have lots of people whom you can resource to do a proper review of each of the remedies—how they're working, how the act is working in an integrated or unintegrated fashion. This can all be done. I think you could do it two years from now, but I wouldn't go any further than four years.

[*Translation*]

Mr. Robert Aubin: Mr. Harrison, do you want to answer the question?

[*English*]

Mr. Gordon Harrison: I would add that growers have spoken today about the future, and the future for producers of all crops including wheat is that the crop genetics and agricultural practices will see a continuous line of growth in the commodities that need to be moved.

In contrast, we're not going to see such robust growth, because of population growth, in Canada—it's a little below that in the United States.

The point I want to make is that the circumstances of the marketplace can change rather quickly, and the performance of any aspect of supply chains could change rather quickly. I would agree, particularly after these amendments are made, that there's a need for review in a timely fashion. I find the example to be excellent. Things can change very quickly, but we certainly know that there will not be less demand to move agricultural commodities, because producers are going to be needing more and more capacity to get commodities to market, including our market.

I hope I didn't misstate.

The Chair: Mr. Fraser.

Mr. Sean Fraser: Thanks very much. I'll start with the lawyer at the table to talk about dispute resolution, mostly because it's one of my favourite subjects, being a dispute resolution lawyer myself before I got into this.

On the final offer arbitration piece, you hinted at the fact that there might be fewer disputes if we had an effective mechanism. One of my great frustrations sometimes, in my previous career, was getting a new file, because it meant that something had gone so wrong that somebody wanted to pay legal fees to sort it out rather than invest those dollars into growing their business.

Can you expand a little on how making participation in this process mandatory, essentially, would actually reduce the time for which shippers or producers are pulled into the dispute resolution process?

Mr. François Tougas: That's a very good question. If I had it my way, we would do it differently from the way I'm articulating. I'd be asking a lot of you.

Ideally what would happen is that shippers would have an opportunity to get a sense of the railway's costs before they went into the final offer arbitration process. That's what the ideal would be. Then they could assess: “Whoa. It really is costing the railway this much; I'm not getting ripped off.” Right now, they can't tell that. They're clueless about it.

Mr. Sean Fraser: On that point, before we get too deep into it, is better data disclosure even within the realm of possibility right now?

Mr. François Tougas: If you made the data that's found in clause 76 available to you and you had in Canada a data disclosure system like the URCS that I described, then you could do it, but not with these amendments. It would take quite a bit more.

Mr. Sean Fraser: Then we're getting into the realm of disclosing the railways' proprietary data to the industry publicly.

● (1440)

Mr. François Tougas: Nonsense. Let me just get on that one, because I hear that a lot too.

They do this in the States. The URCS requires this data disclosure right now. CN and CP have to disclose that data in the United States; there's no reason that it can't be disclosed in Canada.

Further, this bill does a lot of aggregation, even on the performance data, that does not occur in the States. CN and CP have to report individually what they are doing in the United States. They have big operations in the States.

This is just such a red herring.

Mr. Sean Fraser: Before we get into the initial portion, I like the path we're going down.

In terms of the data disclosure, is the gold standard here to just say let's harmonize with the U.S. and that's a perfect outcome or...?

Mr. François Tougas: No, that isn't the case. I know that it's a very tempting thing to say, but I can tell you that U.S. shippers are frustrated by what they have. What they have is more than what we have on this front, but what we should do because of our modern data ability—data gathering and data transferring abilities—is to make this stuff transparent. Why should it be transparent? If it was a normally functioning market, you wouldn't need that transparency. The market would take care of everything by itself. Because they're monopolies—that's why we talk about data disclosure. This hiding behind the veil of confidentiality is just a red herring. It does not occur in the United States. There is some data that is kept confidential until you get inside a process. So now, just to bring it back to where you started, if you can get into the final offer arbitration process, nothing works more like a charm, from a railway's perspective, than saying, “uh-uh, no, I'm not going to tell you my cost.”

Good luck, shipper, trying to find out whether your rate is high or low.

Good luck, arbitrator, trying to find out whether the offer of the carrier is reasonable in relation to anything, because their shipper doesn't have anybody else's rates. They're confidential. The rates are confidential, so you can't do a comparative thing. All you have is the cost to compare your rate against.

Mr. Sean Fraser: You made another comment about the requirement you would strike that says that the decision should be made in a balanced way. Is your problem there that it's superfluous and could be interpreted in an unpredictable way or is your fear that where there might be a correct outcome, the balance that might be struck might not be the correct legal outcome? What's the fear here?

Mr. François Tougas: First of all, it does look like the former point, so I'll concede that, but it's really on the latter point that I'm trying to focus my comments.

If an agency decides, for example, that this x level of service is required in these circumstances in order to meet the adequate and suitable standard that everybody seems to have problems with, which, by the way, I don't have a problem with, but if the agency has to make a decision that is now balanced between the two, the agency has to give meaning to those words. What is that meaning? Does it mean, "oh, I was going to give you an adequate and suitable standard, which I think is this, but because the act says I have to do something balanced, provide some equilibrium, does that mean that I have to take into account how much money you're losing and how much money you're losing off the deal?" The agency is the impartial arbitrator. It is at the very least superfluous, but, I think, much more dangerous, much less benign.

Mr. Sean Fraser: I think I'm out of time. Thank you.

The Chair: Thank you very much.

We go now to Mr. Badawey.

Mr. Vance Badawey: I was actually enjoying that, two lawyers going back and forth. That was just good. Thank you.

I want to make two comments before I ask a question.

Thank you, guys, for being here and for your input into this whole process.

I also want to thank you folks across the table. You've taken the partisanship out of this whole process and really, really embraced being in this together to ensure that these folks are being looked after well into the future, so I want to thank you as well.

With that said, I have questions with respect to, one, reciprocal penalties, and, two, as mentioned earlier, short-line operations.

The first question is with respect to reciprocal penalties. What are your thoughts on the reciprocal penalties?

Mr. Steve Pratte: From the perspective of grain producers, which, as several grain groups have mentioned, are not legal shippers, when our bulk shippers, our smaller specialty crop and containerized shippers, and/or the value-added processors have all consistently talked about reciprocal penalties for over a decade as something that they see as tightening up just that conceptual and not legal relationship between the shipper and the railway, we as a producer group are 100% in support of the reciprocal penalties as a concept and in terms of their application. As far as their perspectives go, I will let their submissions to you stand on that. But certainly there is that balanced accountability, if you will, in all of the other aspects of the supply chain currently, other than between the shipper and the rail provider, in the eyes of our shippers and in our eyes as well.

● (1445)

Mr. Vance Badawey: Are there any other comments?

Mr. François Tougas: I accept all of those comments, but I would do one thing on reciprocal penalties for sure. I would allow the agency a lot more latitude in the setting of those reciprocal penalties than they currently have. Right now, when you invoke a process, the agency has the ability to award a return of expenses incurred, hard costs. I would give the agency a fair bit of latitude on the magnitude of those reciprocal penalties.

Let's say you order 16 cars—we heard that example this morning—and you get 10 cars. What's the penalty? Is it $100 a car? That shipment could be worth $100,000 or a million dollars, depending on what's in the... So it's not much of a return. The penalty has to be meaningful. In order to do that, rather than prescribing it, I'd give the agency the authority to do that.

Mr. Vance Badawey: Great.

My next question is with respect to short-line operators. I think you were the one who mentioned earlier about the responsibility when a line is abandoned. We all try to protect the economy of the area, and a lot of times that area economy is dependent upon that infrastructure or service.

In your opinion, besides defaulting to municipalities, which are also stretched for both capital and operating funds, how can we move forward with respect to a realistic strategy to react to the abandonment of rail lines, and therefore preserve the services available for industry that depend on these very services in partnership with a short-line operator?

Mr. François Tougas: I've been listening to you on this topic, so I can tell that you have a fair bit of experience in this.

This is complex. I act for some short-lines—strapped for cash, hard to get capital, hard to get customers, and they're squeezed oftentimes by the class I rail carrier to which they connect. I think it's that connection problem, the terms on which the short-line railway can obtain abandoned infrastructure or a short-line piece of class I infrastructure.... The terms on which they obtain it and the terms on which they get to operate it after that I think need to be looked at.

I might have even gone so far, heaven forbid, as asking to have a look at those contracts before they're approved, so that there is some oversight body. This is very uneven bargaining power between the class Is and the shorties.

Mr. Vance Badawey: Are there other comments?

Go ahead.

Mr. Steve Pratte: As we heard from the witness from the Western Canadian Short Line Railway Association yesterday, we see in the grain sector that, when viable, the short-lines play a very prominent role in that kind of collection system of grain, from country, from lesser used lines historically, and can act as quite a funnel for grain into the main line system of the class Is hook and haul.

Certainly, as mentioned yesterday, with the provincial authority over those rail lines, certain provinces have historically gone out in front of others in terms of helping those short-lines, but it is an important part of our sector's grain movement, collection, and distribution.

Mr. Vance Badawey: Do you also find that there may be opportunity for partnership with the end-users?

What I mean by that is a lot of times obviously the short-lines make their way on to a main line. It is, I guess, up to the main lines to actually allow access to those main lines. As well, it may find itself on a ship. It might find its way on a truck.

Do you think there's opportunity for partnership and/or integration there, as well, with an overall broader strategy?

Mr. Steve Pratte: Certainly I would think in cases where, let's say, it's producers who are the shareholders of that particular short-line to their benefit and transport, they would be contracting with an end terminal for the export. So they're already in interaction with that actual shipper, for instance, off the west coast.

I would say there is that commercial piece there already. The facilitator of that movement, though, is the class I for the long haul.

The Chair: Thank you very much.

We'll move on to Mr. Shields.

Mr. Martin Shields: Thank you, Madam Chair.

I appreciate the expertise you bring to this and your sharing it with us.

Going to the Millers Association, I think you bring a different context to it. It's not just real time, but it's shelf life that you deal with. It's a real factor in its service.

Do you want to reiterate how critical that piece is? It's a two-part... versus others, because of that factor.

● (1450)

Mr. Gordon Harrison: I'll try to take as little time as possible.

Essentially, in order to serve customers in the milling industry well, you don't need just one type of wheat of a particular origin, you need a number of them. You have to have an inventory of all of those at all times. You can't have the kind of interruption we experienced some years ago that affected so many mills adversely in North America.

If you want to provide level of service to someone who wants to make a bagel instead of a whole wheat loaf of bread or flatbread or a tortilla or frozen dough, you have to have those ingredients. These various ingredients are predominantly from western Canada, and CWRS wheat is the real workhorse. You have to have that raw material in order to provide the service, and beyond the mill's door, that service, mostly within a 150-kilometre radius, is just in time. If you miss a delivery as a milling company, it's not that you missed today's delivery to a big bakery, but you might have missed the 11 o'clock shipment to the bakery as opposed to the 7 p.m. shipment. The just-in-time aspect is beyond that.

The shelf life of fresh goods, which accounts for much of the consumption, is very short. Those further processors who are making packaged goods....massive tonnage as compared to things with a longer shelf life, is short. It's a matter of several days. It really depends whether you're satisfying a retail market or a food service market.

I'll stop there. Thank you.

Mr. Martin Shields: That's very important.

Canola growers, you did mention something about infrastructure and cars. In the world I live in one of the things I hear about on grain, that is on the grain-carrying cars going through the national parks, is the need to have newer cars so they don’t spill grain, and I hear that constantly. But that's not what you're talking about.

Mr. Steve Pratte: It actually is in the fact that—again, it was talked about briefly yesterday—the age of the currently owned public fleet, which is that amalgam of the federal government's fleet and that of the two provinces of Alberta and Saskatchewan, which purchased in the mid seventies, early eighties. Originally, those were 40-year lives, and those aren't dictated by the company, that is an international railway standard that they adhere to because they do cross the 49th. Under that agreement, in 2007, the operating agreement with the two class Is for the movement of Canadian grain, they were given an extra 10-year service life, so they were up to 50. We are approaching that 50-year mark, and as that rolling stock, which is of a different design and different carrying capacity from what we see now in the marketplace with new builds, the gates at the bottom of those hoppers indeed are becoming...you are seeing numbers when cars are received that are rejected for mechanical failures. The gates in the bottom of the hoppers, as they are gravity-fed, there are instances there where they are spilling product across tracks.

Mr. Martin Shields: You didn't talk about long haul.

Mr. Steve Pratte: Yes. From a producer's perspective, we would defer to our shippers, and you would have heard their testimony yesterday as far as their perspectives on that go. Because of, as Mr. Froese mentioned, the nature of the structure of our industry, if it's good for them and that fluidity is maintained and they can access those markets and that competition, in economic theory, it's good for that producer as well.

Mr. Martin Shields: It comes down to you at the bottom line, right?

Mr. Steve Pratte: Correct.

Mr. Gordon Harrison: To comment on long haul, it was a disappointment that the extended interswitching rates were not extended, and others have expressed that before this committee, I'm sure—I read a couple of the submissions. There has also been an observation that there is a prerequisite in order to have access to long-haul interswitching rights, and we would support others who would have recommended that that be removed. Anybody who is now going to be denied access to extended interswitching should, by choice, have access to long haul for those reasons that are set out for its very existence, and at their entire discretion, not as a consequence of a hurdle to jump over to satisfy an audit requirement, if you will, of the agency.

Thank you.

Mr. Martin Shields: What about exclusion zones?

Mr. François Tougas: You've heard testimony already that those exclusion zones essentially mean the remedy, if it's going to be viable at all, will be viable for I think the group that my colleague here was intending to have replaced with long-haul interswitching that used to have access to extended interswitching. The difficulty is this. To give you a very quick example of how it happens, imagine a shipper that is trying to get into the zone, that has only one interchange between where they are and the zone they're trying to get to. Let's take a shipper that is north of Kamloops, British Columbia, trying to get to Vancouver. There is only one place to interchange, and that's at Kamloops, and it's excluded. That means everybody in northern British Columbia is excluded from access to the LHI remedy. A similar situation would arise in the Quebec-Windsor corridor.

It's not so much about competition within the corridor—yes, sure, they have competition, great—it's the people who are outside the corridor trying to get into the corridor, that's the problem. I would eliminate those restrictions altogether, those geographical restrictions. I would get rid of a couple of other restrictions while I was at it. Why make that remedy so hard? It looks to me to be quite a bit harder than the CLR remedy, and just is not getting used, and I would fix the rate mechanism that's attached to it. That's how I would deal with LHI.

● (1455)

The Chair: Thank you very much.

Mr. Hardie.

Mr. Ken Hardie: Thank you, Madam Chair.

Mr. Harrison, you mentioned, quite often of course, that yours is a just-in-time system, you need just-in-time delivery. You mentioned the difficulties in 2013-14. We recognize that there were some pretty extraordinary conditions there, a nasty winter as well as a bumper crop on the Prairies that those producers wanted to have moved. Outside of 2013-14, does your membership experience frequent difficulties with their just-in-time delivery?

Mr. Gordon Harrison: Frequent, no, but it's not unheard of, however. I think what you've touched on is very important. We're going to have a bumper crop every year from now on, and we're going to have weird winters a lot more often than we've had them in the past, based on our experience of recent years, so the demand for service is going up, and predictability is highly important.

I want to come back to just-in-time again. It's just-in-time for the milling company to meet the customers' needs. It's not just-in-time for the processor. It's well in advance so that the processor can store grain of the right quality, protein level, variety, and all that stuff.

I hope people haven't fixated on just-in-time, but that's the way it works when the mill has to deliver.

Mr. Ken Hardie: In the past, how many of your operators have been basically stranded by the abandonment of a rail line?

Mr. Gordon Harrison: Very few, in fact. I can't think of a case in point. Most milling establishments that are of some age have been situated predominantly close to the populations as opposed to in rural parts of the country. The majority of milling capacity is close to the population in the eastern one-third of North America.

Mr. Ken Hardie: I'm sorry if I have cut your answers short. I have more questions than I have time for, as usual.

We get this cat-and-dog thing going between shippers and railroads. What about the governance of the railroads? Are your interests not represented on those boards of directors at all?

Mr. Gordon Harrison: Are you talking to me?

Mr. Ken Hardie: We'll start with Jack.

Mr. Jack Froese: Not really. I mean, we've convened a lot of conferences and stuff like that, but the railroads are never there. I'll give you an example, talking about service-level agreements. Our local elevator has a call that they have a unit train coming in. They don't source the grain until just hours before the train arrives. You have basically 48 hours. Their agreement says that they have to fill that train in 48 hours, and so they have to gather that grain just before that period to make sure that they don't fill the elevator with something that might not move in the event that the train doesn't come.

When the train does come, and they load it in 48 hours, the train will sit there for a week.

Mr. Ken Hardie: We've heard those stories before, but do those stories percolate up or down to whatever levels in the railroad operations, their governance, or their decision-making process, to have an impact on the way the railways manage themselves? I'm seeing blank looks across the piece.

● (1500)

Mr. Gordon Harrison: Railways used to own milling companies and big milling companies. I have just come from our annual conference from a hotel that used to also be held in part by railways. Those integrations were gone decades and decades ago.

We have just had a meeting for the first time in my 28-year history where railways were not represented there, not because we're at war with one another. It just didn't happen this time because of the focus of our organizations. No, our processors are not there.

The other thing I have to share is that under federal law the milling industry is designated as being for the general advantage of Canada, just like railways are under the act. We were recognized for a century as an essential producer of goods, and railways have been recognized for more than a century as an essential provider of those raw materials, and that's the reality, but no, we're not directly represented, to the best of my knowledge.

Mr. Ken Hardie: When we met on Bill C-30, the Fair Rail for Grain Farmers Act, a lot of the interest that we heard about interswitching was to basically get access to Burlington Northern Santa Fe and get that grain moved.

In a conversation with you a little bit earlier, Mr. Tougas, we were talking about the fact that, on those excluded zones, Quebec to Windsor and Kamloops to Vancouver...and this is when the penny kind of dropped for me. What the LHI is supposed to do that it may not do, which is really not to give access to Burlington Northern Santa Fe, is spur competition between the two railroads in Canada.

Mr. François Tougas: Yes, certainly that has to be one of the objectives. I would have said that by the nature of the exclusion zones the main thing that's happening is eliminating competition that might be possible between CN and CP.

Really, the LHI is dedicated to the idea of what the rate is going to be for the origin portion to connect to that connecting carrier. In those zones.... Let's just take Kamloops again. If you're heading west, you could be coming in on CN into Kamloops, or you could be coming in on CP into Kamloops. If you're trying to switch to the other one, that would be the connecting carrier. There's only one connecting carrier there that's not the same as the origin carrier.

In Quebec, in the Quebec-Windsor corridor, you have the same two railways that are essentially vying for business, but if you're in the Maritimes or you're in northern Quebec, it's CN, CN, or CN. Those are the choices.

To the extent that the American railways can get into the LHI system, I actually think that's a positive. I don't go for the fearmongering about how much business BN is going to get out of this. You've heard the answer already. How many cars actually moved under extended interswitching? It's a tiny number. CN's own witness admitted it, right? It's not a big number at all, so I just don't buy into this “it's a catastrophic kind of problem”.

On top of it, if it is going to be a problem, that's the good part, right? If there's actually going to be competition that gets created out of the system, that's a win, not a loss.

The Chair: Ms. Block.

Mrs. Kelly Block: Thank you very much, Madam Chair.

Perhaps I'll continue with that line of questioning, but maybe in a bit of a different direction. I have two questions.

First, what other remedies are available to U.S. shippers beyond better data information?

My second question, which was asked earlier this week by one of my colleagues, is this: should our Canadian government prioritize transportation in its NAFTA negotiations? We're in the midst of that and we're discussing transportation issues. Embedded in that are trade issues, and we know that we're going to have discussions here in Canada at the end of next week.

Perhaps you could answer those questions for me.

Mr. François Tougas: On the last one as to whether we should prioritize transportation in NAFTA, the systems are very different. I don't think that the goal, or even an important goal of NAFTA would be to harmonize our rail transportation policy and systems. They are very, very different. I think that would be a pretty darned tall order to try to do, particularly in the current environment. I think we have enough troubles at home that I would make a priority dealing with the domestic issues that we're facing in rail transportation. There are plenty of those to go around. My whole career is built on it. I depend on these problems, so do my kids.

On the first question, whether the remedies exist for U.S. carriers, I think you would hear from American shippers that they would love to have final offer arbitration and don't. They're looking at it. They've been looking at it seriously for a number of years. They don't have it. They have a completely different system. You do have access to a rate reasonableness mechanism before the Surface Transportation Board, and it's used. It's more rule-oriented down there, not surprisingly, than our system is, but they have access to that.

They have all that data, and they have another thing. The Mississippi is a brilliant of example of this. I heard the rail carriers on Monday talking about all this alleged other competition that we have in Canada. By the way, in case they missed it, there's no river in the west that goes to Vancouver from the Prairies, so there is no river competition, but in the Mississippi you have all seven class I railways touching it, or going down that spine. You have the river traffic and you have truck traffic. That's a competitive environment. That's what it looks like when you have a bunch of players. Welcome to reality. In Canada, with a very diverse geography—and by diverse I mean topographically and by the remoteness of our industries—we just need to have a system that deals with the remedies.

If you take just LHI by way of example again, if you want to make that remedy work for people who are remote—and this is where our production facilities are, particularly in the bulk resource sector—in the grain sector these are so remote that they need a remedy, because we're not building any new railways. That is not going to happen. We cannot do that in North America, so we have to rely on the systems that we have now.

Going back to the short-line point earlier, infrastructure is very hard to come by. Giving that up, I think, is a huge mistake. Whenever we have an ability to maintain infrastructure, I think we should. I don't know that we should go to the extent of subsidizing all that activity. Somebody smarter than me is going to have to figure that out. I would definitely make the remedies that we have available for our infrastructure work in a way that makes it accessible and viable for shippers to use in those circumstances. You also heard earlier that nobody's lining up to do this stuff. We don't have hordes of shippers trying to get access to the remedies, waiting for their turn. This is the most reluctant thing they do in their business, so when they use it, it's because it's a last resort and it has to be viable.

● (1505)

Mrs. Kelly Block: Thank you.

The Chair: Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

I would like to continue the conversation with Mr. Tougas.

It seems to me that you quietly debunked a myth, in your opening remarks, and I want to make sure that I have understood correctly.

You say that we are not in a process of harmonizing the U.S. system and the Canadian system. At most, Bill C-49 helps us compare ourselves to what is being done in the United States, and my understanding is that this is not really beneficial.

Is that the idea behind what you said?

[*English*]

Mr. François Tougas: I will answer that by saying that while our systems are very different, to the extent that we have an opportunity to grab better systems from other places, I think we should do so. If somebody has a better idea, we should do it, and right now they have a data disclosure system that is better than ours. It's not great, but it's better than ours. We should grab that, and we should fix it so that we can make it usable in our system. Bringing it holus-bolus, the way it is right now, into Canada, I don't think accomplishes a ton of stuff. Worse than that is that we're not grabbing it all, we're only grabbing part of it. For example, we've left off the commodity list, you don't have to report commodities. So what if all boxcars moved at this speed this week? That's one of the things that's going to be reported. Who cares? You need it corridor by corridor. You need it railway by railway.

[*Translation*]

Mr. Robert Aubin: I think that confirms my thoughts.

If I may, I have a friendly little criticism. You answered a question by someone—seemingly not someone at the table—asking you which of your amendments you would prioritize. By doing so, you shrunk our playing field.

Did you agree to do so because it's really the priority, or are the recommendations you have submitted part of a coherent set that would help us become a leader instead of a pale copy?

● (1510)

[*English*]

Mr. François Tougas: My recommendations do not all stand together. You could take one out and the rest would work. They're not a whole. I prioritized them because people came up to me—nobody here from this committee—and asked me, “If you could only have one, which one would it be?”

I've said the one that it would be, because I'm looking at it. We have an LHI bill in front of us, essentially, and if it's is going to go through, fixed or unfixed, then the other remedy that gets used is final offer arbitration. There's only one rate remedy, final offer arbitration, and that is it. If we're not going to fix the LHI system, you have to make the FOA system work better than it's currently working. That's all I'm saying.

[*Translation*]

Mr. Robert Aubin: Thank you.

[*English*]

The Chair: We have completed our first round and have a few minutes left. Does anyone on this side have any pertinent questions that you seek answers to?

Then I'll look over to this side. Mr. Hardie.

Mr. Ken Hardie: I don't know if anybody is in a position to answer this question. I you look at our two national railways, CN and CP, unlike their American cousins they cross the border and they have routes very deep into the United States. I have to wonder out loud if there are some things they do in the States that somehow disadvantage their operations here in Canada. Is there preference given to what they are able to do down there that somehow works against our interests here?

If nobody has a really good idea, I wouldn't want you to speculate on something such as this, but I'll just put it out there.

An hon. member: That's a great question.

Mr. François Tougas: I'm embarrassed to admit that I don't actually know the answer to that question. It's rare that I don't have an opinion, but I don't.

Mr. Ken Hardie: Thank you.

The Chair: That's it. You've been a great group of people. Thank you very much.

I wouldn't want to have to rate all the panels, because all of you have been very informative.

We will now suspend for our next panel to commence.

● (1510)

(Pause)

● (1525)

The Chair: Could all the members please take their seats? Thank you very much.

Welcome to our next witnesses. We will very much appreciate listening to you and having your very helpful comments, I hope, on Bill C-49.

We will open the floor with the Seafarers' International Union of Canada. Mr. Given, would you like to start off?

Mr. James Given (President, Seafarers' International Union of Canada): Thank you very much, Madam Chair. Thank you for having us here today, members of the committee.

My name is Jim Given. I am the president of Seafarers' International Union, and I'm also chair of the Cabotage Task Force worldwide for the International Transport Workers' Federation. .

The SIU is concerned about the proposed amendments to the Coasting Trade Act that build upon amendments to the act put forward through the CETA implementation bill, Bill C-30. They will allow, for the first time, foreign vessels to engage in maritime cabotage without first having to obtain a coasting trade waiver.

The Coasting Trade Act requires that no foreign ship or non-duty ship engage in cabotage without a licence. The broad definition of coasting trade under the act means that maritime activity of a commercial nature in Canadian waters is restricted to Canadian-flagged vessels, including the carriage of goods and passengers by ship from one place in Canada to another. Under the current system, a foreign ship may be imported into Canada to engage in coasting trade if the Canadian Transportation Agency, on application, determines that no available or suitable Canadian-flagged or Canadian-crewed vessel can be used for the required operation.

Changes to the Coasting Trade Act by Bill C-30 will now allow foreign ships owned by European Union citizens or flagged by a European Union member state to engage in the following cabotage activities without a coasting trade waiver: transporting empty containers between two Canadian ports, dredging activities, and the carriage of goods between the ports of Halifax and Montreal as one leg of the importation or exportation of goods to or from Canada.

In addition, subclause 70(1) of Bill C-49 would further amend the Coasting Trade Act to allow any foreign vessel, regardless of flag, to perform the repositioning of empty containers between Canadian ports without obtaining a coasting trade licence.

As a labour union that represents Canadian seafarers working in the Canadian seafaring industry, the SIU cannot support these amendments, because they actively undermine legislation in place to support the domestic Canadian maritime industry and Canadian shipowners.

We strongly support maintaining the current coasting trade waiver system, which already includes a waiver system for foreign vessels. This method ensures the fair practice of giving Canadian shipowners who employ Canadian seafarers the first right of refusal for any available work.

The SIU has previously stated that giving away cabotage rights to the European Union through CETA was an unnecessary concession that has the potential to cause harm to the Canadian seafaring industry.

Canada already has a liberalized version of maritime cabotage, and further relaxation of these restrictions, specifically those involving dredging and feeder services between Canadian ports, does not benefit Canadian shipowners or Canadian seafarers who depend on competitive Canadian labour and domestic market trade for their livelihoods.

Further to these issues are the specific concessions allowing both first and second registry vessels to gain access to the Canadian market. As announced by Minister Garneau, the proposed amendment to allow the movement of empty containers by any vessel, regardless of flag, was done at the request of one shipping federation in Canada, which represents very few or no Canadian-flagged shipping operators. While the SIU does not speak on behalf of Canadian shipowners, it is troublesome to us and our membership that the majority of proposals and concerns from Canadian shipowners and Canadian seafarers appear to have been ignored in favour of one organization representing global shipping agents in Canada.

The domestic maritime industry is a source of direct and indirect employment for over 100,000 Canadians. When discussing global shipping, it is important to distinguish that the Canadian vessel registry, or Canadian first registry, is much more advanced in terms of working conditions and requirements than the majority of global maritime flag states. Global shipping is a highly unregulated industry and one that has seen deteriorating labour and wage conditions define it increasingly over the years. For example, some first registries, and many second registries, are qualified by the ITF, the International Transport Workers' Federation, as being flag of convenience vessels. What this translates to is an underpaid and under-represented work force of mostly third world seafarers who work in an unsafe and unregulated industry with few to no working regulations in place.

In Canada, a maritime accident involving an FOC vessel could lead to months or even years of trying to track down the true owner just to begin the process of seeking compensation, which we know, through experience, is never actually achieved.

Second vessel registries are so under-regulated that a vessel registered in a second registry of an EU country is not even permitted to operate cabotage inside its own flag state. Allowing second registered vessels to operate cabotage inside another country's domestic market is not a common practice and not one Canada should be responsible for initiating.

● (1530)

This is a major global issue that has yet to be dealt with in a sufficient and acceptable way to secure the safety and well-being of all seafarers. To allow this sort of shipping to take place, unrestricted, inside Canada's domestic maritime industry would be unprecedented. The SIU of Canada is actively involved in securing the rights of all seafarers working in Canada. We will work diligently to ensure that any foreign vessel brought into Canada to operate in Canadian cabotage is in compliance with federal standards of labour, and ensure that foreign crews are being paid the prevailing industry wage and being protected as stipulated by the temporary foreign worker program.

We remain concerned about oversight when it comes to foreign vessels operating in Canada. Establishing an effective monitoring and enforcement regime will be essential to ensure full compliance with the conditions and requirements of the new market access provisions of the Coasting Trade Act. In order for Canadian domestic stakeholders to remain competitive, there must be a system to ensure that foreign operators are strictly adhering to Canadian rules and standards, including labour standards and prevailing wage conditions for the crew, and not flag state law.

Again, the SIU's priority is to ensure that Canadian workers have opportunities for employment in the Canadian maritime industy. We believe the proposed amendments to the Coasting Trade Act contained in Bill C-49 undermine the importance of maintaining cabotage restrictions in place to protect Canadian maritime transportation, strengthen commercial trade, and maintain a qualified pool of domestic maritime workers. While securing employment opportunities for Canadian seafarers remains the primary mandate for the SIU, we also have a responsibility to ensure that all seafarers, both domestic and foreign, are properly treated. Canadian seafarers have an international reputation for being the most well-trained and highly qualified maritime workers in the world. As such, Canadian seafarers and Canadian vessel operators should reserve the right to retain the first opportunity to engage in any domestic maritime operations prior to permitting access to foreign operators.

We remain committed to working with our partners in government in order to establish a workable and acceptable solution to the growing amount of trade in Canadian ports. We believe Canada's international trade ambitions can be achieved while supporting a strong domestic shipping policy that does not facilitate unrestricted market access to foreign vessel operators. Without a strong Canadian domestic fleet crewed and operated by Canadians, our country would be dependent on foreign shipping companies to move goods to, from, and within Canada, with no commitment to uninterrupted service.

On behalf of the Seafarers' International Union, we once again thank the committee for having us here. I will close by saying that this is a very welcome change to be sitting at this table in front of the committee. We thank you for that.

● (1535)

The Chair: You're welcome.

Next is Ms. Clark from Fraser River Pile & Dredge.

Ms. Sarah Clark (Chief Executive Officer, Fraser River Pile & Dredge (GP) Inc.): Thank you.

Good afternoon. My name is Sarah Clark, and I serve as president and chief executive officer of Fraser River Pile & Dredge, located in Vancouver, British Columbia. Our company proudly conducts dredging operations in B.C. and across the country. I would like to thank the chair and the honourable members of the committee for hearing us today.

I'm actually here to speak to you on behalf of a coalition of dredging companies that operate from coast to coast. I'm going to share my time today with my friend and colleague Jean-Philippe Brunet, the executive vice-president of corporate and legal affairs for Ocean group of Quebec. We sincerely thank you for the opportunity to present our views on the consequences of amending the Coasting Trade Act as outlined in Bill C-49. For us, this is a fresh opportunity to be heard on the impacts of the amendments to the Coasting Trade Act, an opportunity we previously had in respect to amendments to the same act, under Bill C-30, the Canada-E.U. comprehensive economic trade agreement implementation act.

To be very clear from the onset, the Canadian dredgers are eager to compete in a marketplace fuelled by healthy trade relationships. We simply ask that we continue to compete on a level playing field, where risks and opportunities are equal for all. Unfortunately, CETA was a bad deal for Canadian dredgers. There's no reciprocity for us in the European market, but there's streamlined access for Europeans in the Canadian market. We therefore submit that Bill C-49 represents an ideal opportunity to address this inequity and provide workable policy solutions.

Let me say a few words about the dredging industry in Canada and the critical role it plays for Canada as a maritime and trading nation. Ours is a geographically expansive country that relies on a complex transportation network to move people and goods. As stated by Minister Garneau on May 16 of this year, Canadians rely on the economically viable modes of transportation to travel and move commodities within the country, across the border, and to our ports for overseas shipments. At his announcement regarding the trade and transportation corridors initiative on July 4, Minister Garneau highlighted the digging of deepwater ports as being critical to the development of Canada's north, underscoring the essential role dredging plays in the creation and maintenance of our transportation network and, as a result, our national and economic sovereignty.

Opening routes to Canadian and international shipping vessels brings consumer goods to Canadian markets and takes our export products around the world. Without dredging, ports in major cities across the country would be inaccessible to global trade and transportation. Industry operations, both coastal and inland, would not be able to function. The companies that comprise our coalition actively comply with rigorous government regulations concerning labour, environmental protection, safety, and operating standards while regularly submitting to routine major inspections that are amongst the most rigorous in the world. Canadian dredging companies also provide well-paid, middle-class salaries, which in turn fuel local economies across the country.

We are here with you today to do our part to ensure that the Canadian dredging industry is provided a level playing field on which to compete sustainably and responsibly, to create more jobs, and to continue to contribute practically to Canada's economic success. Unfortunately, these important goals have been put at some risk by the effect of the proposed amendments to the Coasting Trade Act contained in Bill C-49. Proposals in Bill C-49 are of course contingent upon the coming into force of elements of Bill C-30 on September 21, 2017. We understand that the spirit of CETA reflects the wishes of both governing bodies and peoples to create better economic ties and a more prosperous future. We support the government's effort to expand trade and to make our economy as vibrant as possible. At the same time, we wish again to express our concerns about the negative impact. We believe the amendments to the Coasting Trade Act contained in Bill C-30 unfairly advantage foreign dredging companies at the expense of Canadian firms, Canadian workers, and ultimately, Canada's transportation infrastructure. Bill C-49 builds on a foundation laid by Bill C-30 that is highly problematic for Canadian dredgers.

As I've said, we are fully prepared to compete. We do so every day in our industry, both in Canada and abroad. Under CETA, there was no negotiated reciprocity for our industry.

● (1540)

CETA opens up the Canadian market to European firms while keeping the European market closed to Canadian dredging firms. This would normally be considered an unpleasant by-product of doing business in the global market, but several factors intervene to create a situation where non-Canadian firms could gain a structural and market advantage over Canadian firms. If a level playing field is not created and maintained, Canadian dredging companies will face structural disadvantages when bidding on contracts, as we pay market rates and benefits that reflect the skills of our crew members in Canada.

For example, foreign crews are typically compensated at about a third or less of the rates we pay. In 2015, the average monthly salary for a chief engineer on a Canadian vessel was $15,000 U.S., while the same position on a Dutch crew was about $7,000 U.S. As salaries represent about one-third of our vessel's operating costs, non-Canadian companies will operate at a significant advantage over Canadian companies, leaving Canadian seafarers out of work. In this scenario, the playing field is inherently uneven, to the detriment of Canadian companies, and, ultimately, to our employees and their families.

Prior to Bill C-30, foreign-flagged vessels were required via the Coasting Trade Act to obtain a coasting trade licence. Jim outlined that process very well in his presentation, which would include paying duties, and following shipping conventions, worker visa requirements, and employment standards. However, even that structure faced monitoring and enforcement challenges. Under CETA, non-Canadian dredgers will have greater access to our waters, and therefore greater opportunity for non-compliance.

Before making our key recommendations, I will now ask my colleague, Jean-Philippe Brunet, to say a few words about Quebec in particular.

[*Translation*]

Mr. Jean-Philippe Brunet (Executive Vice-President, Corporate and Legal Affairs, Ocean): Good afternoon.

The dredging market in Quebec is very small. We are talking about some 200,000 cubic metres out of a total 3 million cubic metres in Canada. The dredging season is very short—from April to June and from September to November. There are not many major contracts. A number of us are competing for those contracts. The largest contract would be about 50,000 cubic metres. Those are the contracts Europeans are interested in securing. They are not interested in small contracts.

However, those 50,000-cubic-metre contracts help us depreciate the equipment that requires a lot of investments, as well as offer small marinas good prices.

It should be understood that 80% of the global market, with the exception of China and the United States, is controlled by four European dredgers. They call the shots around the world. They have very significant response capabilities.

We work all along the St. Lawrence River. We go to small and large places. We provide our employees with very beneficial jobs, helping them have a very worthwhile career. We are also trying to develop the foreign market to ensure that we can employ them year around.

Thank you.

[*English*]

Ms. Sarah Clark: Today, we've highlighted a number of issues associated with the proposed and recently enacted amendments to the Coasting Trade Act. However, we would not come to you with problems were we not also prepared to recommend solutions we believe are reasonable and fair to all.

First, we ask that this committee recommend to the government the establishment of an operational enforcement protocol, led by Transport Canada, binding on the deputy ministers of all relevant departments and agencies. I wish to be clear that we are not seeking the establishment of a new enforcement arm of government. To do so would not be fiscally prudent or organizationally necessary. We simply ask that the government take note of the number and seriousness of the enforcement issues at play where foreign crews on foreign-flagged vessels are concerned. These include temporary foreign workers through IRCC and CBSA, a labour market impact assessment through ESDC, tax administration through CRA, safety inspections through Transport Canada, labour practices through ESDC, and workplace health and safety issues through ESDC, to say nothing of wage disparity and pressure.

Departments must speak to each other, and they must co-operate rapidly and meaningfully in order to enforce an intersecting group of important laws. It's not enough just to have done that inspection of the vessel or to check for its basic safety. We are assured that many of the positions on our vessels would be subject to visas for temporary foreign workers, and to be able to fully police that will take an effort of coordination across departments. After two years of engagement with the government, we have yet to see a concrete plan of action for enforcement. Right now, interdepartmental coordination is not governed by a clear process. It is under-resourced and puts the onus on the industry and workers to help police our waters. To us, this seems unacceptable for Canada as a modern maritime trading nation.

Second, we ask the committee to seek from the Government of Canada a firm commitment that enforcement will be funded appropriately and meaningfully, to ensure that Canadian dredgers can compete on a fair and level playing field with non-Canadian vessels, whether it be with respect to—

● (1545)

The Chair: Ms. Clark, my apologies for interrupting. Could you do your closing remarks? We've passed your 10 minutes.

Ms. Sarah Clark: Yes. Thank you.

Our final recommendation is that this committee seek a firm commitment from government in the form of a formal mandate to Canadian NAFTA negotiators to seek reciprocity with the U.S. and Mexico for Canadian dredgers and related operators.

Let me be clear. In the wake of CETA, what is at stake here is the basic viability of the Canadian dredging industry. Reciprocity is the entire point of free trade. Let Canada be a champion of full reciprocity on the water for our industry, our workers, and all who seek to make Canada a world leader in dredging and maritime trade.

We thank committee members sincerely for their consideration.

The Chair: Thank you, Ms. Clark.

We now have Mr. Fournier, from the St. Lawrence Shipoperators.

[*Translation*]

Mr. Martin Fournier (Executive Director, St. Lawrence Shipoperators): Madam Chair, ladies and gentlemen members of the committee, thank you for giving us an opportunity to share our comments and concerns with respect to Bill C-49, and more specifically the amendments proposed to the Coasting Trade Act.

I will introduce myself. I am Martin Fournier, Executive Director of St. Lawrence Shipoperators, an association whose mission is to represent and promote the interests of Canadian ship operators in order to support their growth and ensure the development of shipping on the St. Lawrence River.

St. Lawrence Shipoperators consists of 15 members—15 Canadian ship operators that have a fleet of more than 130 vessels that employ Canadian sailors. The fleet navigates the St. Lawrence River, the Great Lakes and the east coast, in addition to serving the Atlantic and Arctic provinces. Our members provide thousands of people with quality jobs and generate significant economic spinoffs in Canada.

According to a study carried out by the Council of Canadian Academies, the Canadian shipping industry employs between 78,000 and 99,000 individuals and generates between $3.7 billion and $4.6 billion in employment income. Just the activities of the inland fleet, which operates on the St. Lawrence River and in the Great Lakes—the area generally covered by our members—create more than 44,000 direct jobs and generate more than $2 billion in provincial and federal revenues. Therefore, the domestic marine industry plays a a key role in the competitiveness and prosperity of Canada and of the entire North American economy.

It is important to point out that marine transport operations between various Canadian ports are covered under the Coasting Trade Act, whose aims include supporting domestic marine interests by reserving the coasting trade of Canada to Canadian registered vessels. That information comes directly from Transport Canada's website. Among other things, the act stipulates that transportation between two Canadian ports must be provided by Canadian-flagged vessels with Canadian crews.

In the United States, since 1920, the Merchant Marine Act, better known as the Jones Act, has been protecting the U.S. domestic marine industry by ensuring that coasting trade is handled by U.S.-built vessels that are U.S.-flagged and U.S.-owned, and are operated by U.S. crews. Many other countries around the world, including European countries, have laws that protect their market.

It should be noted that, during the negotiations that led to the economic agreement with Europe, countries of the European Union did not open their market to Canadian ship operators. Only Canada agreed to concede a portion of its market, with no reciprocity.

When a country opens its market to foreign partners that do not operate based on the same rules and are not subject to the same requirements as Canadian ship operators with Canadian-flagged vessels, that favours foreign ship operators at the expense of the very competitiveness of our ship operators and domestic interests.

According to a study carried out in 2015 by Ernst & Young and Innovation maritime, the crew costs for European vessels authorized to operate in Canadian waters under the economic agreement represent only 30% of the costs of a Canadian crew. The wage gap between Canadian crews and crews from other countries, including those provided for under Bill C-49, will be even larger.

This is the second time in less than a year that amendments have been proposed to the Coasting Trade Act. The first time was under Bill C-30, which concerns the implementation of the economic agreement with Europe. The second time was through this bill, which makes certain concessions for the European Union that are criticized by the domestic marine industry.

Canada must also take action to protect its marine industry and refuse to give up its market to foreign companies. This is a matter of the vitality and sustainability of Canada's domestic shipping industry.

I want to mention that, during the latest electoral campaign, the Liberal Party wrote to us that it had no intention of amending the Coasting Trade Act and even recognized the importance of the act for the market. St. Lawrence Shipoperators feels that free trade agreements generally benefit the Canadian economy and supports Canada's efforts to increase trade and the competitiveness of its economy. However, we are concerned about the consequences of loopholes in the Coasting Trade Act and concessions made in trade agreement negotiations that affect the domestic marine sector.

St. Lawrence Shipoperators and its members, as well as a number of stakeholders and industry representatives that participated in the work of the industry-government working group on the implementation of the economic agreement, have repeatedly expressed their concern with regard to the system's effectiveness and the measures currently in place to monitor and effectively control foreign vessels' coasting trade activities. Many examples and situations justify those concerns. The addition of new coasting trade activities in the economic agreement or any further opening of the Coasting Trade Act is of little comfort in that regard.

● (1550)

We have requested the establishment of an oversight system on a number of occasions. The request was also made to the Standing Senate Committee on Foreign Affairs and International Trade, which studied Bill C-30. There was even a recommendation to that effect.

So it is essential that an oversight system be established and that it include all the government departments and agencies involved, meaning Transport Canada, the Canada Border Services Agency, the Canadian Transportation Agency, Immigration, Refugees and Citizenship Canada, and Employment and Social Development Canada.

St. Lawrence Shipoperators has always been opposed to any opening of the Coasting Trade Act that would allow foreign vessels to transport cargo between two Canadian ports. Unfortunately, we are witnessing a gradual erosion of the act.

This market is reserved for Canadian vessels that, pursuant to regulatory requirements and Canadian standards, are designed, built and refined to handle the numerous challenges of navigation in Canadian waters and waterways. With their adherence to those standards, some of the highest in the world, Canadian vessels are making navigation safe and protecting the environment. These national vessels are operated by crews that are solely and exclusively composed of Canadian mariners, who are among the best qualified and best trained in the world. They are knowledgeable of and experienced in navigation in Canadian waters and they are aware of the challenges inherent in sailing here. Reaching those high standards ensures greater safety and respect for the environment. But that comes with significant operating costs that Canadian shipowners must bear, unlike many other foreign owners.

The particular circumstances of the Great Lakes and the St. Lawrence Seaway, economically and in terms of both maritime and environmental safety, requires that the protection measures, of which the Coasting Trade Act is part, must be maintained.

So it is important to preserve maritime jobs and the expertise that has been built in Canada over centuries. Opening the Coasting Trade Act is risking the loss of priceless knowledge and economic wealth that is of direct benefit to companies and workers here.

For those reasons, St. Lawrence Shipoperators and its members oppose any opening of the Coasting Trade Act and any change to it. We are asking for a single body to control and oversee cabotage activities to be conducted in Canadian waters by foreign vessels.

Thank you.

[*English*]

The Chair: Thank you all very much.

We'll move on to our first questioner, Ms. Block.

Mrs. Kelly Block: Thank you very much, Madam Chair.

I want to thank our witnesses for joining us today. It is good to turn our attention to another part of Bill C-49 which sees the Coasting Trade Act amended.

I have a couple of questions. They're probably broad questions that any one of you could answer. The first is, can you identify for this committee how Bill C-49 goes further than Bill C-30?

● (1555)

Mr. James Given: I'll attempt it, just because I like to talk.

Bill C-30 deals with the EU and with CETA and is limited to EU first and second registry vessels. If you look at the expansion of the movement of empty containers, it's being opened up to any flag vessel, which would be Panama, Liberia, all of the FOC flag states.

I look at a flag such as that of the Marshall Islands, which many ships that would be trading in this trade fly. The actual flag state of the Marshall Islands is in Reston, Virginia. That's where you pay to get the Marshall Islands flag mailed to you. It goes, then, from the European Union to all flag states.

Mrs. Kelly Block: Would anybody else like to provide an answer?

No? Okay.

I thought I heard one of you say that you had received assurances that the Coasting Trade Act would not be amended during the review of the Canada Transportation Act. Were you consulted, then, on the amendments that you see in Bill C-49?

[*Translation*]

Mr. Martin Fournier: No, we were not consulted about Bill C-49.

[*English*]

Mrs. Kelly Block: Okay.

Then I would ask, can you provide me with either a real or a hypothetical example of what will happen if this provision passes? What are some of the implications of this to your industries?

[*Translation*]

Mr. Martin Fournier: At the beginning, when we heard what was included in the economic agreement with Europe, one of our concerns was that it was going to open a crack in the Coasting Trade Act. We were afraid that the crack would grow bigger. Bill C-49 shows that our fears were justified, because we are told that opening the Coastal Trade Act to the shipping of empty containers does not just apply to European vessels, but also to vessels of all flags.

So we can already see the crack getting bigger. What is coming next? We do not know, but we are expecting other demands along those lines that will widen even more the scope of the concessions that have been made as part of the agreement with Europe.

[*English*]

Mrs. Kelly Block: Does anybody else want to answer that?

Mr. James Given: When you look at the industry as a whole and you start opening up cabotage to foreign carriers, it has a snowball effect. The rates conditions and working conditions on board foreign-flag vessels, and some of these are actually first registry European vessels, second registry European vessels, and especially Ethos sea vessels, are far below what the standard is in Canada.

We have vessels that are currently... There's one in Vancouver where the wage rates on board are as little as $2.50 per hour. We have other scenarios where we go from $1.75 an hour and up. When you look at the working conditions, the safety conditions, the environmental standards, and everything else on board these vessels, it's very lax.

There is no international control on flag of convenience vessels. That's why they're called flag of convenience. The owner of the vessel is in one country. The beneficial owner, the registered owner, is in another country. Their crew could be from three or four different countries. The insurance agent is from another country. There are layers and layers in order not to get to that real beneficial owner.

I'll keep this brief. We've had situations where people have been hanged on board ships, on flag of convenience ships, in order for them to avoid Canadian standards or any other standards. There is a huge discrepancy and there is no control over what goes on aboard those ships, because a lot of it is left to flag state control.

When you look at the flag of convenience countries, the flag state control does not exist. A seafarer who is injured, a seafarer who is cheated wages, a seafarer who has anything on board that ship, who lacks food, who lacks anything, has to look at an outside resource such as the ITF in order to try and get that fixed, and it's a long difficult process because it's the Wild West in shipping.

Shipping was the first globalization industry, and we certainly understand trade. We understand everything else. Our industry is built on trade, but you cannot compare Canadian flag and Canadian conditions, which thank God we're in Canada, to an FOC or a foreign-flag vessel.

● (1600)

Mrs. Kelly Block: Do you have something to add?

Ms. Sarah Clark: I have a good example of this. The current vessel that we use now for dredging the Fraser River was purchased from one of the European dredging companies. It was flagged in a port of convenience. We spent millions of dollars to bring that vessel to Transport Canada's safety standards, especially in the area of fire separation which was non-existent within the vessel. Not only did we bring it up to current Canadian standards so that the crew were protected should a fire break out on the vessel, the crew is also trained to a very high level in firefighting. When they're out in the middle of the Fraser they can't rely on someone coming to rescue them, nor in the middle of the St. Lawrence.

Our crews are doing two fire drills a month covering scenarios that they may encounter in engine rooms, etc. It's not simply an exercise with a fire extinguisher. They are fully trained firefighters on board. They are already on a vessel that has been brought up to today's standards. What Jim is saying is those vessels that we're competing against or we could be competing with, are not built necessarily to the standards, nor are they training their crews to those standards.

The Chair: Thank you very much.

On to Mr. Badawey.

Mr. Vance Badawey: Thank you, Madam Chair.

I have to say as well, thank you, folks, for coming out today. You represent the “how” of executing trade quota strategies. I again want to thank you for that, for being here, but as well for the future efforts you guys are going to participate in to really ensure that those strategies are put in place and executed.

Mr. Given, you answered the first question I was going to ask, and that was on labour conditions. I've always looked at things under a triple bottom line lens: economic, environmental, and social. In your opening dialogue you talked about the economics of this issue. You talked about, to some extent, the environmental side of it as it relates to an integrated transportation network that includes shipping, which of course is the most environmentally friendly mode of transport. The last part was social and labour, and of course you touched on that.

The next part I want to touch on, the question to all of you, is how then the dollars follow the strategy. Currently, as part of Bill C-49, we are looking at positioning Canadian ports to be allowed to access the Canada infrastructure bank, which includes financial instruments to help fund expansion, sustainable infrastructure projects—somewhat the business you're in, Ms. Clark—to ensure that dredging occurs in those areas that need to be expanded upon for bigger vessels with a lot more draught needed. Do you feel that this will be of assistance to Canadian ports being more competitive? That's my first question.

I want to expand my question to also include, not just Canadian ports, but the world of ports. There's an anomaly that we call the St. Lawrence Seaway. I say anomaly because, at least in my part of the world, the Welland Canal, albeit a port, is not technically considered a port.

To some extent, when it comes to its management of asset, in my opinion, it's not up to par, not being abided by. Therefore my question is, when you take all of that into consideration as part of the whole network, do you think, firstly, that under Bill C-49 it is appropriate to have those dollars available to the Canada infrastructure bank? Secondly, is it appropriate to have investment dollars at the ready to expand the St. Lawrence as well as the Welland Canal?

Ms. Sarah Clark: I can't speak for the Welland Canal, but I can speak for the west coast, which has highly competitive ports, not only Vancouver but also Prince Rupert. Our company just finished the expansion in Prince Rupert a month ago.

For Canadian ports to have access to increased funding I think is very appropriate. I know that they have had struggles with their debt room in the past, and we fully back their being able to have access to the types of funds they need to keep the west coast of Canada as competitive or more competitive.

Maybe you want to speak about it.

[*Translation*]

Mr. Jean-Philippe Brunet: Any additional money that serves to strengthen the maritime system would be welcome. Currently, some east-coast ports, in Quebec, are in a sad state in a number of respects. We have activities in all those ports. The port of Quebec City, which is one of the oldest, has difficulty in maintaining its wharves. We are regularly asked to shut down some areas of activity because the wharf is in bad condition. So, the system certainly needs money and that would be a good thing.

I wanted to tell Mrs. Block about one of our concerns about the opening of the European market that has happened, and that we can see in this bill. I feel that it should be of interest to everyone. The Europeans are going to be able to come to Canada with foreign equipment. We have been assured that there are going to be all kinds of ways to make sure that the equipment is adequate. However, if there is foreign equipment for private contracts, it is also going to come with foreign workers.

It has to be a fair fight. We are not afraid of competition, but give us the chance to be competitive. When you implement the agreement, do it in no uncertain terms and tell the Europeans how things are going to work here. That is very important for us.

● (1605)

[*English*]

Mr. James Given: Mr. Badawey, you talked about the St. Lawrence Seaway and especially the Welland Canal. It's an area that I think is close to both of our hearts, since we're from that area. I think this is one area where we agree.

When you look at port infrastructures, when you look at the Welland Canal, when you look at the seaway property along the canal, this is where your international freight and domestic freight complement each other, where you have international trade and domestic trade working together. Those ports need to be developed. There needs to be money put into them. The development has to continue in order to facilitate the trade that the country wants and that the workforce wants. Domestically and internationally they can work hand in hand to do that. I'm glad you raised the Welland Canal. It has always baffled me why that property isn't developed, because it used to be booming along there.

The Chair: You have 45 seconds.

Mr. Vance Badawey: This is the last question, with respect. I want to hear from Mr. Fournier as well.

Right now you represent an area of the country that's very valuable to this entire bill strategy. What are your thoughts on the social, the environment, and of course, the economic issues, the benefits this bill is bringing forward to then contribute ultimately to the overall transportation strategy?

[*Translation*]

Mr. Martin Fournier: Actually, a strong maritime industry has infrastructure to match the transportation needs. That means having ships that meet the highest standards in terms of energy and operational efficiency. It also means having crews that are well trained and that meet the highest standards. A strong maritime industry has all those aspects: social, environmental and economic. That is how we will be able to develop the Canadian maritime industry and make sure that it prospers.

[*English*]

The Chair: Thank you very much.

We'll go on to Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

My thanks to each one of you for being here.

I confess that I do not have a lot of questions on the basic content of your testimony, because I share your position. However, I do have some questions on the industry, so that I can understand it better.

I would like to explore the issue of the Canada Infrastructure Bank that Mr. Badawey was talking about. It seems to be well-received, since it is seen as a source of funding. However, the information we have at the moment indicates that port projects to be funded by the Canada Infrastructure Bank would be for $100 million and more.

In the port in the city I represent, Trois-Rivières, projects of $100 million and more are very rare. Perhaps the port of Vancouver has some that go over $100 million, but the Canada Infrastructure Bank is of no use with projects with a budget lower than that.

Is this not another case of what looked great the night before does not look at all good in the morning, as seems to be the case with Bill C-49? Or do you have projects that are worth that much?

Mr. Jean-Philippe Brunet: We do not represent ports. So the projects are not—

Mr. Robert Aubin: I know, but your industries could access it.

Mr. Jean-Philippe Brunet: It could certainly include dredging work, for example. Perhaps it would be appropriate to amend the program so that more projects could be included; $100 million is a lot of money. At the same time, it is not a lot given the scale of the work that needs to be done. With the exception of the port of Vancouver, which is in good shape, other ports probably need significant investment.

● (1610)

Mr. Robert Aubin: Thank you.

Mr. Fournier, in one of your recommendations, you mentioned the importance of a single body. Could you explain that recommendation some more? What would be involved and why is it important?

Mr. Martin Fournier: What we are asking for is, when a foreign vessel arrives here and applies to engage in cabotage in Canadian waters, we make sure that it has all—

Mr. Robert Aubin: Are you talking about dredging?

Mr. Martin Fournier: I am talking about everything, coastal shipping and dredging. If the vessel is coming to do work that is currently governed by the Coasting Trade Act, we are asking that, once it has arrived, it can submit a proper application so that we can check whether it has received all the permits from Employment and Social Development Canada, and that the risk factors posed by the workers can be checked. Work permits also have to be checked, and we have to be sure that the crew will be paid according to Canadian standards and at Canadian rates.

All those things have to be verified before a vessel is given permission and, if so, the permission has to be validated regularly. We know that, in the past, vessels have conducted activities here without having a permit.

Mr. Jean-Philippe Brunet: We are not asking for a new agency to be created, but we are asking that there be real oversight, culminating in final permission from Transport Canada and Employment and Social Development Canada. It is not complicated.

Mr. Martin Fournier: Actually, those requests are made at the moment, but no one makes sure that everything has been completed before the final authorization is issued. Doing it that way would make sure that there is some rigorous control.

Mr. Robert Aubin: Thank you,

I have a technical question, I completely understand the difference between some vessels that fly foreign flags and Canadian vessels in terms of working conditions and a number of requirements.

But, how about a vessel belonging to a Canadian owner, but flying a foreign flag? Is that vessel subject to Canadian rules or the rules of the country it represents?

Mr. Martin Fournier: It is subject to the rules of the country whose flag it is flying. If it is registered in a foreign country, it follows the rules of the country whose flag it is flying.

Mr. Robert Aubin: Are you saying that a Canadian shipowner could provide conditions that are equivalent to those in the country where the vessel is registered?

Mr. Martin Fournier: Yes, if the vessel flies that flag.

Mr. Jean-Philippe Brunet: If it is involved in cabotage, the sailors have to be Canadian. There is that slight difference.

[*English*]

Ms. Sarah Clark: May I just add on your question on the infrastructure bank, with projects that are over $100 million, there is an expansion of Deltaport planned by the port of Vancouver that is estimated to be in the $2.5-billion range. That would definitely be a project that the port may seek assistance on. It is also a very good example of where the European dredging community is very focused, because of the amount of dredging which is in that project.

We are a prime candidate to compete for that project. It's something we might even partner with our colleagues at Ocean group on. However, if we can't, it's a very good example of where we might not be able to compete if they are not held to that same level playing field.

[*Translation*]

Mr. Robert Aubin: Thank you.

[*English*]

Mr. James Given: If I may, I wanted to touch on what you talked about with regard to a Canadian owner who owns a foreign-flag ship who decides to flag his ship outside of Canada. There are many. They do it for many reasons, not just crew costs. They do it for taxation. To flag a ship outside of Canada, Liberia or Panama or somewhere, your taxation costs are minimal. You usually pay, like with the Marshall Islands, $1,000 to fly their flag, and thank you very much and have a nice day. They'll tax you a bit on something, but it's not much, not compared to Canada.

You also have safety standards. The International Labour Organization, ILO, and the International Maritime Organization set minimum standards. They're not maximum, they're minimum. Not all flag states participate or are signatory to the ILO conventions. Their wages may actually be below the ILO minimum.

When it comes to the IMO enforcing ballast water, emission treatments, sulphur, you have Canadians who are investing millions and billions of dollars to renew their fleets, to bring those environmental standards up. Whereas the norm is that on the international stage on the older ships, you burn the lowest, cheapest gas you can buy. It's the throwaway that you can't burn anywhere else, and the emissions are high.

If you take Canadian ships as the perfect example, with the new tonnage, the new scrubbers, and the new emission controls, you're taking 500 to 600 trucks off of the road and putting that cargo into a vessel, or dredging with Canadian dredges. Your environmental footprint is less. Your social impact, of course, is doing business in Canada, which we all expect. There are many, many things other than just wage rates. Taxation is a huge one when it comes to flagging the ships offshore.

● (1615)

The Chair: Thank you very much.

Mr. Hardie.

Mr. Ken Hardie: Thank you, Madam Chair.

Having negotiated with kids and dogs, I know that things can happen incrementally. You give a little, and all of a sudden you've lost your whole ice cream cone kind of thing. This is the concern that I have with respect to the cabotage issue.

As I understand it, what's being permitted now is for any ship to move empty containers from one port to another. You can correct me if I am wrong Mr. Given, but I understand there are no Canadian ships that are doing this business, or none that are interested in doing it at the price they're willing to pay. In fact today, if empties have to go from Montreal to Halifax, they go by train. Correct me if I'm wrong, but I don't think we're losing out on anything at this point.

My question is, if they get their foot in the door here, what do you see next?

Mr. James Given: I actually look at this outside of the Montreal-Halifax corridor. A lot of that traffic now goes by train. I know you get into issues sometimes of double-stacking and having to unload to go under underpasses, etc.—the infrastructure.

I look at the north, the Arctic sealift that happens every year with some of our partner companies. They do move some empty containers. The issue is that right now if those containers need to be moved, they can be moved by a foreign ship. They apply for a waiver with the CTA. That waiver application goes out to all the Canadian companies, and it asks whether they have a Canadian-flag vessel that can do this work. If they reply no, then the foreign-flag vessel gets its permit to move whatever they need to move. It's not stopped. Commerce is not stopped because of cabotage.

Another part of the issue that you have to look at is whether a Canadian would do it if there was revenue there. I don't know. I can't speak on behalf of the shipping companies. Knowing the shipping companies the way I do, I'm sure that if there was a buck to be made they would do it.

When you look at the non-revenue basis, they say it costs $2,000 to move an empty container on a Canadian ship and $400 on a foreign ship. Well, absolutely. If we want to give the okay to the exploitation of foreign crew and to the non-payment of taxes and to the non-payment of everything else, you can move a container for $400. Personally, I don't think that's what Canada is all about.

Mr. Ken Hardie: Okay. Basically, then, the money isn't in it at this point; therefore the Canadian shipping operators for the most part are taking a pass on moving empty containers.

Mr. James Given: I can't speak to whether they are or aren't. I know that in the Arctic they do; in certain areas they do.

Mr. Ken Hardie: That would be pretty small potatoes compared with, say, Montreal to Halifax.

Let's move on.

Ms. Clark, on the issue of labour, you and I share a bit of history in some of the projects in Metro Vancouver, notably the Canada Line project, in which there was an Italian contractor digging one or both of the tunnels. I don't know whether they were Italian, but their crew was Itallian, and there was a huge dust-up over the wage rates, etc. We've seen this movie before.

With respect to the dredging, correct me again if I'm wrong, but I understand that there's actually a hurdle, a certain size of project—it has to be of a certain value or above—before a European competitor can bid on it. Is that correct?

Ms. Sarah Clark: Yes, it's about $7.5 million, which is a very low hurdle.

Mr. Ken Hardie: It is?

Ms. Sarah Clark: Yes. That's public. Private doesn't have a hurdle, and ports are considered private.

Mr. Ken Hardie: Ports are considered private.

Looking, then, at your book of business over, say, an average year, what percentage of your projects would be over $7 million, would you say?

Ms. Sarah Clark: I would say 80%. Our main dredging contract is with the port of Vancouver. We have an 11-year contract to maintain the shipping channel, which is worth over $7.5 million a year.

Mr. Ken Hardie: Is that counted as one job, or is it just a series of —?

Ms. Sarah Clark: It's counted as one job. Then we do a series of smaller dredging projects on an annual basis. But the larger projects, such as the LNG projects or the expansion of Deltaport terminal 2, are well over that level.

As I said, private doesn't have that hurdle, and we do a lot of private dredging on the river, on the island, and up the coast.

● (1620)

Mr. Ken Hardie: Do you think that those contracts would be even big enough to attract their attention?

Ms. Sarah Clark: It all depends on how they feel they need to set up in Canada to be able to compete on the larger projects and what kind of vessels they have available. It's not just dredging vessels; they can use barges with heavy-duty cranes on them to do dredging as well.

Mr. Ken Hardie: Okay.

Going back to the example of the Canada Line and some of the others, two of you have mentioned that we need oversight, that we need people monitoring. Do a bit of a deeper dive into that. What sort of things do we need to be taking care of?

Ms. Sarah Clark: I'm glad you asked that question, Member Hardie. We had a good meeting this morning with Transport Canada as they are trying to work this out.

They right now have advance notification, whereby the firm would put in their application and show that they are eligible to opt out of the coasting trade licence because they are eligible under CETA. It only covers that eligibility.

Then, the other requirements, such as the safety standards, visa requirements, and the taxation, are all managed by other departments. We've been strongly asking for the past two years that there be a mechanism whereby one department takes the lead and coordinates across the other departments informationally to ensure that all those requirements are met, because we can see even under the coasting trade licence that they have struggled interdepartmentally.

When we met with them today, they even emphasized that we the industry are part of the policing mechanism to catch anyone who is in non-compliance. We said that we need to know, then, that these vessels are here. That was one discussion that we had: please notify us.

That is our first recommendation today: that there be a protocol led by Transport Canada to ensure that this coordination goes on.

The Chair: Mr. Fraser.

Mr. Sean Fraser: Thank you very much.

Mr. Hardie launched down the line of questioning I had sketched out, so forgive me if we're a little bit repetitive, but I'll give you a chance to add a bit more colour. I'll start with Mr. Given.

We had some testimony earlier today that I'm trying to square mentally with what you've just given. It was from someone who was a big advocate for adopting the proposed mechanism in the Coasting Trade Act. We essentially heard that the movement of empty containers by Canadian-flag ships isn't happening and is never going to happen.

I think you've suggested that there may be some examples up north to contradict this, but is this something, under anything like the rules that we have in place today, that you could conceivably see happening?

Mr. James Given: I've heard the testimony. My point is that Canadian companies right now, under the current coasting trade system, have an opportunity to move them if they want to. If they don't want to, the foreign ship or foreign company that applied for the waiver is free to move them. There are certain ones that do, and I know they go by rail and by truck. I wish they would go by ship. It would be more environmentally friendly.

However, in the north and in some of the other areas where they do, to take that away, I don't understand it, and I simply don't understand why we would expand on something where provisions are already there without opening the coasting trade.

Mr. Sean Fraser: On that issue, if I recall accurately the testimony from earlier today, she explained the waiver process and said that on at least one occasion what happened was that we put it out and asked if anyone was interested. When somebody says, "Yes, we can do it at this cost," all of a sudden the economic option for the owner of the containers is to import new containers rather than move them within Canada, which strikes me as a strange inefficiency.

Do you have a comment on whether that's the reality we're facing? Are we going to leave containers sitting empty and bring new ones into Canada?

Mr. James Given: It's my understanding right now, and I stand to be corrected, that the only company that has provisions to have containers in Canada for more than six months is Maersk Line, through a special provision. Other containers do get moved around. We see the field of them sitting in Montreal. We see the empty containers everywhere along rail yards.

Again, knowing shipping companies, present company excluded, they won't leave anything sitting around too long if they can make a buck.

● (1625)

Mr. Sean Fraser: Let's explore why there's such a cost differential for Canadian-flag ships. You mentioned safety regulations, labour standards, and environmental rules, which are mostly quite good. We've adopted them in Canada because we think they're the right policy. Is it the fear that the foreign-flag ships is not going to comply with Canadian laws in Canadian waters, or is it that they're not going to follow the same standards that drive up the cost for Canadian-flag ships globally?

Mr. James Given: We've proven that they don't follow the same regulations when they're in Canada. There are two issues at play. The ship gets a coasting trade waiver. That covers the ship. The crew then apply for work visas through the temporary foreign worker program.

There are two separate issues. When we look at Bill C-30, as with Bill C-49, nothing is changing when it comes to the provisions under the immigration act for that crew. The problem is that the crew members are never told what their wages are supposed to be. They're never told what their rights are when they're working in Canada, because under the TFW program, for all intents and purposes, they're Canadians. They're never told any of this, and they're paid their regular wage, which is $2.50 or $1.90. They're paid that until someone catches them. Also, there's no enforcement. No enforcement officer goes down unless they get a call. If you're a foreign crew member and you don't know that, or you're too afraid to call because of repercussions, you're not going to make that call.

We've had some very good discussions with the ESDC over the last little while where we're going to change some of that process. However, ESDC was also very clear with us that it doesn't chase a shipping company around the world to try to collect our tax, because they should be paying taxes while they're in Canada. The taxation issue on a foreign ship is a big one, along with crew costs.

Mr. Sean Fraser: If I can explore this a little further, at risk of outing myself as an enormous nerd, when we start looking at the freedom of the high seas and going back to 16th century Dutch philosophy, I don't think we can properly enforce anything that's taking place on the high seas. However, if we got to a stage where we could actually say foreign vessels have to abide by the same standards and if we had an effective enforcement mechanism in Canada, is their ability to operate more or less how they want outside of Canadian waters still going to render Canadian-flag ships uneconomical?

Mr. James Given: That's perhaps an unanswerable question. When you get into international waters, it's covered by international law and the law of the sea. When you get within the 200-mile limit or the 12-mile limit of Canada, the law then changes. However, again, working under cabotage, the crew members on board the ship are, for all intents and purposes, Canadian crew.

The vessel itself is covered by a temporary waiver. They still have to comply with the flag state, if flag state law exists. Then they are covered by IMO conventions that are enforced through port state control within Canada, if they have the resources to actually go down and inspect every vessel and enforce them. Transport Canada does a fantastic job, but remember, Transport Canada has been broke for about 12 years, so they're working with what they have.

Again, the system that is in place now is the one that is best placed to inspect the vessels and to enforce the legislation and the IMO and ILO conventions.

The Chair: Thank you very much.

Mr. Shields.

Mr. Martin Shields: Thank you, Madam Chair.

We appreciate your being here to inform us.

Mr. Fraser, I would not call you a big nerd, but I'd call you a tall guy.

Mr. Sean Fraser: I was one step away from referencing Hugo Grotius, so we'll wait. You can reserve judgment.

Mr. Martin Shields: Thank you.

It's an interesting conversation. Do you belong to the international convention that develops the rules out there? Do you belong to the organization? Do you participate in developing those standards?

Mr. James Given: Actually, I do, through the International Transport Workers' Federation. I'm an expert for them, for the ILO and the IMO.

Mr. Martin Shields: I understand flag of convenience. I understand how it operates. What percentage of the world operates under the enforced rules that you're talking about and have been part of?

Mr. James Given: When you look at cabotage, the Center for Seafarers' Rights did a survey for us just a month ago, and we looked at United Nations member countries. Of course, we excluded the countries that were landlocked, and then we looked at the countries that had two ports or more. Sixty-seven per cent of those countries have some form of cabotage. So the idea that cabotage is unique to Canada or we're doing something wrong compared to the rest of the world is false. Sixty-seven per cent of United Nations countries with two or more ports have some form of cabotage.

● (1630)

Mr. Martin Shields: You're talking about labour standards, safety, training—all of those things that are in the IMO that you're involved in developing. What percentage of those countries enforce that?

Mr. James Given: The traditional maritime nations, when you look at Canada, the United States, Norway.... Sweden is the first registry. Norway is the first registry. Denmark is the first registry. Germany is the first registry. They're not their second registries. Those countries are strong maritime nations. It's when you get into the FOC countries—Liberia, Panama, and all of those countries that don't enforce shit—

Mr. Martin Shields: I get that.

Mr. James Given: —it's left up to the rest of the world to try to enforce it.

Yes, I did say that. Excuse me.

Mr. Martin Shields: Are the countries that are signatories to this, that develop these, enforcing them in their own waters?

Mr. James Given: Yes, but remember, ILO is a minimum standard.

Mr. Martin Shields: I get that.

Mr. James Given: Let's take the Philippines. When a Philippines overseas worker leaves the country to work on a vessel, he leaves with a POEA contract—a Philippines overseas employment—and a lot of times those state the minimum ILO conditions of work. I was an ITF inspector. I inspected foreign ships. Last year the ITF collected over $22 million U.S. in unpaid wages, where the Filipino and the Indonesian wouldn't even get the ILO minimum in their overseas employment contract. They would go six to seven months without any pay, or if they did get paid, it was half of what the ILO recommendation was, because there's no enforcement. We can say as governments, we can say as NGOs, we can say as unions and companies that we're going to enforce the ILO and IMO, and we're going to enforce all of that, but there's no enforcement on the high seas.

Mr. Martin Shields: We're talking about in Canadian waters, because that's the piece we can deal with. I'm looking at whether other countries will enforce the minimum. You're saying no.

Mr. James Given: No.

Mr. Martin Shields: Okay.

Ms. Clark, you talked about enforcement of existing laws and regulations. You said the existing regulations—I think we've heard the same from others—are good, and you said all those pieces are there, and you said existing staff could do this, and you just said there would be no cost increase when you said that, because the rules are there, the regulations are there, existing staff are there, and you said you just have to do it.

Ms. Sarah Clark: I think that's the basis of our point. We have the conditions. We meet all the standards that Canada requires. Whether it be in wages, safety, taxation, or environment—which was raised by Mr. Fournier—we are compliant. We are audited. And we believe in those standards for our crew. It's not just wages; it's the standards we provide on the ship as well for living conditions. These people are on the ship for two weeks at a time, and in your case longer maybe when you go south.

A voice: It's three weeks.

Ms. Sarah Clark: It's three weeks. We're supplying these very well-paying, middle-class jobs to people who are very skilled and who have taken the time to have that training and spent the money on that.

Mr. Martin Shields: We're saying the rules and regulations are there and the existing staff could enforce them—

Mr. Jean-Philippe Brunet: Do you mean staff of Transport Canada or...?

Mr. Martin Shields: They're your words, not mine. You said the existing staff—

Ms. Sarah Clark: Our issue is with the government staff.

Mr. Martin Shields: I'm just taking the words you said. I'm trying to clarify it. You said the existing rules and regulations there the existing staff can enforce, suggesting that they weren't.

Ms. Sarah Clark: We know of cases where they have not been. In fact, the SIU went through a case a few years ago where they were not being.... And we know that Transport Canada, as well as the other agencies, have struggled with resources to be able to enforce them, and also struggled with the coordination mechanism to make sure that vessel and that owner are complying with all of the regulations.

Mr. Martin Shields: That's what I was trying to get at.

Ms. Sarah Clark: Okay, sorry, yes. I apologize, and on your example of the Hebron project we understand that one of the European dredgers came in, did the work in a month or so, with a full foreign crew, even though they had a coasting trade licence.

Mr. Martin Shields: And nobody knows that we're here.

So again, you believe that all the rules and regulations are there. There is existing staff. They just need to do it.

Ms. Sarah Clark: We don't believe there is enough staff.

Mr. Martin Shields: You didn't say that.

Ms. Sarah Clark: Sorry. We're not here today asking for money. There have been other groups under CETA that have asked for money for their industries. We're not asking for that. We think the money is much better spent within the agencies of the government to reinforce the ability to enforce those requirements.

Mr. Martin Shields: Thank you.

Ms. Sarah Clark: We think it's understaffed right now.

Thank you.

Mr. Martin Shields: Thank you for clarifying that. I appreciate that.

Thank you, Madam Chair.

● (1635)

The Chair: Mr. Sikand.

Mr. Gagan Sikand: Thank you, Madam Chair.

Kelly asked earlier if you had been consulted. Now you're obviously here, but I heard a few mixed responses. You said this morning that you were speaking to Transport Canada, and I saw Martin saying no. So could we just go through the panel.

Have you been consulted for these amendments?

Mr. James Given: I am going to try to give you an answer without giving you an answer.

I've had many meetings. Everyone of course knows my concerns when it comes to cabotage, and Bill C-30, and CETA, and Bill C-49, and China and whoever the hell else we have on the list, but when it comes to consultation, this is part of the consultation process.

Mr. Gagan Sikand: Excluding this.

Mr. James Given: Excluding this?

Mr. Gagan Sikand: Can I get a yes and no because I have to split my time with my colleague.

Mr. James Given: Maybe.

Mr. Gagan Sikand: Okay.

Mr. Jean-Philippe Brunet: Before they signed the agreement, we were not consulted at all, but for the implementation we asked several times for meetings. We got information meetings.

Mr. James Given: Are you talking about CETA or Bill C-49?

Mr. Gagan Sikand: Bill C-49.

[*Translation*]

Mr. Martin Fournier: There was no consultation on Bill C-49.

As we mentioned, there were consultations about the economic agreement with Europe from the time when it was signed. Before it was signed, there was no national consultation with industry. We know that international companies were consulted, but not the industry in Canada. So we can say that there was not really any consultation in that respect.

Once the agreement was signed, a working group met for almost two years. Almost everyone involved took part. Certain things that we asked for on a number of occasions appeared in Bill C-30. However, the main request was to establish this single body, and that was completely forgotten.

[*English*]

Mr. Gagan Sikand: Thank you.

Jean, you mentioned four firms that are interested in operating in Quebec. Where are they based? What country are they based out of?

Mr. Jean-Philippe Brunet: It's all the same. They're Belgian and Dutch, and not only in Quebec. It's all over Canada.

Mr. Gagan Sikand: Sarah, you were saying there's a bit of divergence in pay between a Canadian operator, a captain, $15,000, and a Dutch one would be $7,000. Can you paint a picture of your overall operating expenses? I know you were saying you are trained in firefighting. So can you give us an idea of the metrics that add to your operating costs?

Ms. Sarah Clark: Our crew costs are about a third of our costs. Fuel is another third, and everything else would be thrown into the last third.

So when I gave you the numbers, this is information that this industry has been sharing, we're actually giving you the more optimistic number around what's being paid. Jim is probably painting a better picture of what's actually paid. So when we say crew costs are about a third of ours, they're actually probably less than a third of ours in a lot of cases.

Mr. Gagan Sikand: My last question is do you have contracts outside of Canada?

Ms. Sarah Clark: At present we don't. We work across Canada.

Mr. Jean-Philippe Brunet: We do. We have contracts in the Dominican Republic, Mexico, and the British Virgin Islands.

Mr. Gagan Sikand: And then when you operate outside of Canada, are you still operating at Canadian standards?

Mr. Jean-Philippe Brunet: Yes, with Canadian crews.

Ms. Sarah Clark: Here's the problem for Canadian dredgers and the reason we're discussing reciprocity. We both have vessels that could work. Ours formerly went all over the world. Our problem is that our markets are so far from us. We can't work in the United States because of the Jones Act. For Jean-Philippe on the east coast, there was no opening of any European market for him other than under CETA, so we have to go to South America, Australia, or New Zealand.

Our mobilization costs are so high that it's very hard for us to get to other markets and be competitive, and it gives the companies a lot of time, because these dredgers are not cheap. They are very expensive to buy. Our cost would be between $30 million and $60 million for the size of vessels we have, and the ongoing annual maintenance is high. When you're planning your business, you don't want to just base it on the contracts as they arise in Canada, but it's very hard for us to be able to travel to other places as well.

Mr. Gagan Sikand: Thank you. I don't know whether there's any time left.

The Chair: There remains two minutes.

Mr. David de Burgh Graham: I can start with that.

I've heard on a couple of occasions today that ships are more environmentally friendly. I would like to know whether you could back that up, especially given the use of bunker oil.

● (1640)

Mr. James Given: I'll talk about the Canadian domestic fleet. For our domestic fleet there has been a newbuild program ongoing now for a few years. I look at Canada Steamship Lines, or at Algoma Central, or Groupe Desgagnés. They have all updated their fleets, and they have all gone to cleaner-burning fuel. They are all now looking at fitting some of their older tonnages with scrubbers. It's a known fact that is backed up by I think everyone when it comes to transportation that ships are the more environmentally friendly way to transport cargo.

Mr. David de Burgh Graham: You have expressed concern that flagged ships from all over the world are going to come to move empty containers. These are non-revenue moves. Companies are only allowed to move their own containers. You can't show up and move somebody else's containers. Is that correct?

Mr. James Given: When I look at the language, I don't know whether that has been clarified yet when it comes to sharing agreements for charter, for ownership, for all of those different things. You have to get a really good explanation of what "non-revenue basis" means. They still talk about $400 and $500 and still talk about certain other things, so you have to dig a little deeper.

Foreign ships always come in. They come in and out. When it comes to import and export, this has been happening since Christ was a cowboy, and it will continue to happen. But those are different movements. They come in, they don't do any domestic trade, and then they go back out.

What they want to try to do now is probably pick up something in the middle, because they are not going to leave the ship here: the season's too short; the seaway closes; they have to get the ship back out. They want to try to pick something up in between their movements, in order maybe to pay for fuel or do something.

What's "revenue"? Is revenue covering costs? Is revenue not covering costs? Maybe you can answer that one for me, because I don't know.

Mr. David de Burgh Graham: I would, but they don't give me any time.

The Chair: Ms. Block.

Mrs. Kelly Block: Thank you very much. I hope that's not any of my time.

I have a few questions that have come to mind throughout some of your testimony. They may not be directly linked one to the other, but I am going to follow up on something my colleague Mr. Sikand asked regarding labour costs and the wages that are paid.

I guess I've always believed that we have similar safety standards and labour costs to Europe's. Can you provide any insight for me as to why those wages are so different? Why does a Canadian captain earn $15,000 and someone from Europe earn $7,000? How can they operate so cheaply?

[*Translation*]

Mr. Martin Fournier: I can give you a simple example. A study conducted two years ago by Ernst & Young and Innovation maritime gave the example of a Danish crew that could, under the economic agreement, come to Canada to engage in cabotage. The Danish vessel could have a Danish captain and a crew from the Philippines, Ukraine, or wherever, because the flag on the vessel allows it. In Canada, the crew would have to be completely Canadian. So it is impossible to compete with them. The Danish captain might have a level of remuneration that is comparable to what is offered here. But the rest of the crew would be paid under different conditions. It is as simple as that.

[*English*]

Mrs. Kelly Block: Earlier today we heard that most empty shipping containers are moved from port to port by train or truck and not by sea. Would you confirm that? If this is the case, how does Bill C-49 impact Canadian seafarers' jobs?

[*Translation*]

Mr. Martin Fournier: Yes, most empty containers are moved by train, not by ship. The problem with Bill C-49 is that it is widening the crack that was opened with the economic agreement with Europe. Even before that agreement, we had discussions and we were asked what we thought about the possibility of allowing empty containers to be shipped on foreign vessels. We said no to that. It was all forgotten, then the question came up again with CETA. Then there was the agreement on shipping empty containers, on bulk shipping, on loaded containers between Montreal and Halifax, and on dredging. Now there is talk about the shipping of empty containers being open to everyone. In some ports, questions have been asked about the fact that it is just between Montreal and Halifax and why it is not possible for other ports, like Quebec City and Sept-Îles. In addition, other countries are asking why shipping empty containers would not be open to them as well, now that it is open to the Europeans.

As you can see, the crack is being opened, one change at a time. That's exactly what is happening. That is what we were afraid of at the outset when the issue of transporting empty containers was raised for the first time.

● (1645)

[*English*]

Mrs. Kelly Block: I have another question that came to mind. Maybe you've already touched on this and I missed it. Are there tangible safety concerns that you have for allowing expanded cabotage?

Mr. James Given: Absolutely.

As I said earlier, I was fortunate enough—and I still am—to be involved with the ITF and to inspect foreign-flagged vessels that come into Canada and travel around the world. There is absolutely no comparison. You have 5% of the owners who run foreign-flagged vessels who are good owners—I'll stretch it to 8%—and then you have that great big group who aren't, and there is no control.

You have a ship flagged Panama that never goes to Panama. Who's inspecting it? Who's making sure that the safety regimes and everything are in place? If the ship comes to Canada, port state will control for Canada, thank God. Transport Canada, which does a great job, will go down and inspect it under the international conventions. It may still not be up to the Canadian standard, but it may pass the international standard.

If you look at the database for Transport Canada on ship inspections, you will see a list hundreds of ships long and how they've been detained when they come to Canada for no firefighting, no pollution control, no food, no this, no that. They get caught when they come here, but flagged Panama, flagged everywhere, there's no inspection regime; the ship never goes there.

I'm not a geography major, but I know a ship flying the Marshall Islands flag has a heck of a time getting to Reston, Virginia. The controls aren't there. I make light of it and I shouldn't, because it's a very serious situation.

In Australia just recently, there was a foreign-flagged vessel running in their cabotage with two crew members dead, because they couldn't get medical care. It happens all the time, all around the world, and I don't think it's something we want to be a part of.

The Chair: Thank you very much.

Mr. Aubin.

Ms. Sarah Clark: Madam Chair, I need to excuse myself.

I know my colleague, Jean-Philippe, can answer any further questions.

The Chair: Thank you, Ms. Clark. We appreciated your comments today.

[*Translation*]

Mr. Robert Aubin: Thank you very much.

I hope you have a good trip back.

My next question is a hypothetical one, of course, but it might help me to understand some points better.

Reciprocity is not in the agreement, but let's imagine for a minute that it is there.

Accepting that transporting containers and dredging seem to me to involve two completely different approaches, I would like to know if the Canadian industry could be competitive, given the rules, the salaries and the working conditions. If not, are we doomed to be limited to the Canadian market and to protect it because we are the only ones that operate under those rules?

Mr. Jean-Philippe Brunet: I can answer that as it pertains to dredging.

As we explained just now, Europe is not so far away: you have Saint-Pierre-et-Miquelon, Guadeloupe and St. Martin. We already have a presence in those areas and we are competing with European dredgers right now. They choose the bigger contracts, because they have equipment of the right size. But we try to find our niche and to fit in. So, yes, we actually can be competitive. Even if it takes us two weeks to get from Canada to the Dominican Republic, we still manage to win contracts.

Mr. Robert Aubin: Is it the same for continental Europe?

Mr. Jean-Philippe Brunet: There is so much to do there that you need a lot of equipment. In order to get there, the transportation costs would be too high. Anyway, they already take care of their own market over there.

Mr. Robert Aubin: Earlier, you talked about Belgium and the Netherlands. I assume that there is a link between all the canals they have to maintain and dredging, which is why those countries have developed such a big industry.

Mr. Jean-Philippe Brunet: Exactly.

Mr. Robert Aubin: Do you want to add anything, Mr. Fournier?

Mr. Martin Fournier: I think that Mr. Brunet dealt with the dredging issue well.

As for whether it would be possible for Canadian shipowners to compete in Europe if ever the market were reciprocal, the answer is no. As I mentioned just now, European vessels have much lower operating costs than ours.

There is another factor. Most of the Canadian fleet are lakers. The vessels are not designed to sail on the open sea, which is what you need to get to those markets.

Be that as it may, the main reason is that the operating costs are different from ours.

● (1650)

Mr. Robert Aubin: In terms of the dredging industry, we thought it was a long way away, but it is clearly coming sooner than expected. The Northwest Passage in the Arctic will be a source of contracts for your industry. It is both near and far, given the vastness of our territory.

Mr. Jean-Philippe Brunet: For the time being, we don't know what the situation is there. The mapping of the North is not complete. There may be high volumes, but right now, the routes in demand are those that are navigable right now. That's still a long way away and it requires extensive mobilization. In addition, the dredging period is very short. You need high-performance equipment for a large volume in a very short time.

Mr. Robert Aubin: The expansion prospects for your industry are extremely limited.

Mr. Jean-Philippe Brunet: Yes, they are minimal.

Mr. Robert Aubin: Okay.

Thank you.

[*English*]

The Chair: Thank you very much.

We have completed our preliminary list. Are there any questions on this side that have to have answers? I guess there are none on that side either.

Mr. Graham.

Mr. David de Burgh Graham: I wanted to pick up where we left off. I was having fun.

For comparison, I was trying to think of a good example of cabotage in land terms, which more people understand. I have an 18-wheeler in Virginia, and I drive it up to Ottawa, and I unload it. I have another load I have to pick up in Montreal and I have to get it back to Virginia. With the cabotage rules we're bringing in today, I can take my trailer from Ottawa to Montreal to pick up my next load, whereas the current system is that I have to deadhead my truck to Montreal and hire someone else to tow my trailer to Montreal. Is that not correct? Would that not be an equivalent to...?

Mr. James Given: I'm not an expert in the trucking industry, but I'll attempt anything. If you're looking under NAFTA, I know there are provisions in NAFTA right now that allow for cross-border trucking between Mexico and the United States. From what I understand, that provision has never been implemented when it comes to trucking in the United States, because the teamsters have had them tied up in courts since NAFTA was actually negotiated. Again, I'm not an expert on trucking.

Let me put it in terms of airlines, which I'm not an expert in either. A Canadian aircraft goes from Toronto to Berlin. Is it considered cabotage?

Mr. David de Burgh Graham: If it has to come back from London, and it has to deadhead between them—

Mr. James Given: It's all considered cabotage.

Mr. David de Burgh Graham: —are you going to tell me you're going to have to get a larger jumbo jet, like a, what are those things called...?

Mr. James Given: It's considered cabotage.

I have another example that goes right to maritime. Oil or bitumen leaves the tar sands and goes to Texas, where it's processed, put back in a ship, and brought back to Canada. That's all cabotage because of the origin of it. That's the definition under Transport Canada. This is one of the areas you get into. According to the owner of that ship, and this is a specific one, his definition of cabotage doesn't kick in until the ship enters Canadian waters, but the real definition is when the ship is loaded with the cargo in Texas, because it's a Canadian-originating cargo. That whole trip is cabotage. It is the same with the airlines.

Mr. David de Burgh Graham: In the circumstances of this bill, C-49, what we're talking about moving is empty, not loaded, containers. If I—

Mr. James Given: It's still considered a product. The container is the movement of the product.

Mr. David de Burgh Graham: It's an empty container. It's an empty trailer. If you're talking about moving the empty container from where it was unloaded to where it's going to be loaded, why should you have to hire a third party to move that container? That's what I'm trying to figure out.

Mr. James Given: Again, that movement is taking place. I think we've established that it takes place by rail or truck. Now the foreign ship operator wants to move it. Why?

Mr. David de Burgh Graham: Because the ship arrives with the container. The ship wants to move their container. They're not moving someone else's container. They're moving their own container to the next port where it's going to be loaded, and they're going to leave. I'm trying to see where—

Mr. James Given: It's still a cabotage run, and under the definitions of cabotage that are there, that's cabotage. That's considered cabotage, because you're moving something between two Canadian ports.

This has to be perfectly clear. That shipowner still has the ability to move that. All he has to do is apply for a waiver, which he'll get if no Canadian shipowner wants to move that particular container.

If you look at all of these years where it's been done by rail and truck, why all of a sudden is it open? Under CETA, it was open for certain reasons, and I believed the reasons that I was told. There were compromises made. It was a negotiation. That's what was done. However, to open it more, to liberalize it more under Bill C-49, is opening the gate to any flag, to any rogue owner, and anything that they want to do.

Concessions were made in a trade negotiation. We all understand that. Concessions are made every day. How they got to that concession...like I said, it was explained to me and I accepted it. Now it's a conscious choice of whether we open it up to more cabotage. We're not in a negotiation with anyone but ourselves right now on what we're going to do with cabotage.

● (1655)

The Chair: Thank you very much

Mr. Badawey, a short question.

Mr. Vance Badawey: It has resurrected something that happened in our community a few years back. We had a foreign vessel come in to our harbour and it was transiting the canal, and every individual on that vessel was sick, with no idea what they were sick from.

Mr. Given, in your experience with a foreign vessel coming in, what is the protocol? I'll tell you what the protocol was then, and this was only about five or six years ago. The protocol then was that nobody would touch it. Health Canada wouldn't touch it. We ordered the seaway not to allow that vessel into our community, because we didn't know what they were sick from.

It got to the point, just based on human response and wanting to help, that I sent my fire department out there. We are a city of 20,000 people, and I had to send my fire department out to what could have been an international incident. Who knows what they were actually stepping into?

Again, when it comes to labour conditions and protocols within our waterways and allowing something like this, what do you see as a proper protocol when these vessels come in and, as you mentioned earlier, there are health-related issues that have to be dealt with?

Mr. James Given: Again, I'm going to take the easy way out and go back to the waiver system. It's put in ahead of time, there are screenings done, and basically everything is looked at, Mr. Badawey.

That kind of incident happens more than you think, and there isn't a protocol. Again, as you've said, nobody wants to get involved with it. The only protocol I know is with ITF inspectors who go down and try to help these guys. That's the job I used to do. Then we hope that somebody in the community will get involved. Church groups right now get involved with giving winter clothing to these crew members when they come to Canada in the fall, because they're not prepared for it and they don't have it.

Unfortunately, people die on ships because there is nowhere to turn and there's nobody to turn to. There are international conventions. There's a new convention, which is the convention for seafarers' rights, which goes a lot further than what we've ever had. Again, enforcement is the key, but enforcement is only as good as the people who do it.

Mr. Vance Badawey: Thank you.

The Chair: Thank you very much.

Thank you to the panel.

Before I suspend, I want to ask the committee if we could have 15 minutes for committee business either following our next panel, which ends at 6:45, or 15 minutes of our lunch hour tomorrow, for some committee business. What are the wishes of the committee, either 15 minutes following our next panel tonight or 15 minutes of our lunch hour tomorrow for committee business?

Mr. Vance Badawey: Don't we have time now, Madam Chairman, between now and the next set of panellists?

The Chair: No, the next set of panellists is at 5:15.

Mr. Vance Badawey: I have 6:30 on our schedule.

The Chair: That's because we squeezed a half an hour of our lunch hour to keep things moving along here.

Mr. Vance Badawey: Excellent, you're so efficient.

The Chair: Tomorrow night we will be finished at 7:15 rather than 7:45, as of our schedule now.

What's the thought process of the committee?

Mr. David de Burgh Graham: We have an hour-long lunch tomorrow.

The Chair: We could take 15 minutes of our lunch hour tomorrow and discuss committee business.

Is everybody in agreement with that? Okay, tomorrow we'll take 15 minutes of our lunch hour.

Mr. Vance Badawey: Madam Chair, would there be an opportunity this evening to possibly put a notice of motion forward?

The Chair: Let's do our committee business tomorrow, and following a discussion with the committee, we can see where we go from there. That would be my suggestion.

● (1700)

Mr. Vance Badawey: Okay.

The Chair: I'm going to suspend until the next panel gets in.

● (1700)

(Pause)

● (1715)

The Chair: I'll call back to order the meeting on our study of Bill C-49. We welcome representatives from Air Canada and WestJet Airlines, as well as an assistant professor from the University of Ottawa.

Mr. McNaney, would you like to start off?

[*Translation*]

Mr. Mike McNaney (Vice-President, Industry, Corporate and Airport Affairs, WestJet Airlines Ltd.): Thank you Madam Chair and members of the committee for the invitation to speak with you this evening.

My name is Mike McNaney and I am vice-president of Industry, Corporate and Airport Affairs at WestJet. Also with me this evening is my colleague, Lorne Mackenzie, senior manager, Regulatory Affairs.

[*English*]

On behalf of over 12,000 WestJetters, we are pleased to participate in your deliberations with respect to Bill C-49 and the critical role that companies such as WestJet play in connecting the economies and people of Canada to each other and the rest of the world.

Our investments and growth over the last 21-plus years have led to downward pressure on airfares, market stimulation, and incredible job creation in many sectors of the economy, including aerospace, tourism, and regional economic development.

[*Translation*]

Our success in a very tough, low-margin industry is a testament to our frontline employees who strive every day to provide our guests with quality service.

[*English*]

Our award-winning culture of care and guest service is a source of tremendous pride. It is not just what we do; it is who we are, and it influences our approach and our respect for the obligation we have to ensure our social and economic licence is strong.

In addition to various awards over the years, this year we were very pleased to be recognized by TripAdvisor as the best airline in Canada and a Travellers' Choice Award winner for mid-sized and low-cost airlines in North America. As members know, this award is based on authentic reviews by the travelling public.

Before providing you with an overview of our views on the legislation, I want to provide a broader context of WestJet operations today.

WestJet is in the midst of an extraordinary evolution from the carrier that launched in February 1996 with 200 employees, three aircraft, and five destinations, all in western Canada. In 2016, we carried over 20 million guests. Getting 20 million-plus guests where they need to be, safely and on time, is a logistical and operational challenge. Things will go wrong, and we do our best to get it right when they do.

We operate approximately 700-plus flights a day, carrying approximately 70,000 guests daily, with a WestJet plane departing approximately every two minutes. Our current fleet consists of 161 aircraft, including Bombardier Q400s, as well as narrow body and wide body aircraft from Boeing. This year we begin taking delivery of the newest version of the 737, the 737 MAX, and in 2019 we take delivery of our first 787 Dreamliner. With respect to the Toronto-manufactured Bombardier Q400, next year we will become the third-largest operator in the world of Q400s with the delivery of our 45th Q400 aircraft.

Based on our most recent economic impact study, utilizing our 2016 operating data, our investments and growth strategy in 2016 has supported over 153,000 jobs in Canada, a labour income in excess of $5.3 billion, over $12 billion of GDP expenditure activity, and an aggregate economic impact greater than $17.3 billion. These employment and economic benefits accrue throughout the country.

In terms of communicating with our guests, we are continuously working to find innovative ways to effectively meet their needs. In April 2016, we became the first Canadian carrier to move its social media team to a 24-7 operation, open 365 days a year. We took this step in recognition of the fact that more and more consumers utilize social media to communicate with companies in real time. Our social media response team now sits in our 24-7 operations control centre to respond to guest questions and concerns in the moment. We also still maintain the more traditional communication means of email and phone contact for guests who wish to reach out to us through those means.

The operations control centre, or OCC, is responsible for all facets of our daily operations: flight schedule, crew scheduling, maintenance, responding to weather, operational delays, and guest services. The composition of this team includes experts from all areas of our business. To say this service has been well received would be an understatement. How our guests interact with us on service issues and questions is now 57% through social media, 34% through email, and 9% through telephone.

In the last year, we have also made the following enhancements, in co-operation with the Canadian Transportation Agency. We developed and posted on our website a plain-language, searchable summary of the provisions of our tariffs related to events most likely to be of concern to travellers, such as denied boarding, flight delays, and misplaced baggage. We placed a full page article on our inflight magazine describing our customer service department and how our guests can get information on their rights should something go wrong. We added a link to every electronic itinerary to make our guests aware of their rights and where to go for additional information.

That brings me to the aspects of Bill C-49 dealing with passenger protection. WestJet supports these provisions and the broad framework the bill sets out to create.

I do want to note for the committee that WestJet currently has enforceable penalties for many of the areas in which the legislation calls for enhanced regulation. These include lost or damaged baggage, delays and cancellations, and tarmac delays. Our obligations are outlined in our tariff, which is accessible online and is used by both us and the CTA to resolve complaints.

● (1720)

Bill C-49 will bring uniform standards to all of these issues, and we are supportive of that action.

Within the context of rights and obligations, I would like to encourage the committee to more broadly examine the role of our partners in the travel supply chain. This would include airports, air traffic control, border services, immigration, aviation security, as well as Transport Canada. Our performance is scrutinized by Parliament and the public, and rightly so. However, all these organizations should have the same performance reporting requirements, as well as overall accountability for the services they provide.

You will no doubt have seen media reports over the past several weeks concerning breakdowns of airport baggage systems, understaffing at air traffic control centres, CATSA funding shortfalls, and delays in processing security clearances for aviation employees. How will all these elements of the supply chain, all of which are critical for operations and all of which are completely outside the control of an airline, fit into the new regime established by Bill C-49, as far as accountability is concerned?

Concerning joint ventures, WestJet supports in principle the Government of Canada's approach to airline joint ventures. Airline partnerships are a critical component of our business model. WestJet does not belong to an international alliance. What we do have is 45-plus code-share and interline partners who are all offering greater choice and flexibility for Canadians. These partnerships, coupled with our domestic and international networks, are bringing tourists to all parts of Canada and providing the international connectivity our economy needs.

While we support the JV policy initiative, we have questions that we are discussing with Transport Canada as we seek further clarification on certain points.

With respect to foreign ownership, the foreign ownership provisions outlined in Bill C-49 are ostensibly already in effect, with exemptions granted to two potential ULCCs. Our policy preference with respect to foreign ownership is that any change in the limit should be on a reciprocal basis, particularly with respect to the United States. The government has opted for a unilateral approach, and obviously we respect the government's decision.

Within the context of this unilateral policy change, we believe it is critical to ensure that Canada maintain a strong “control in fact” test. This is a test administered by the Canadian Transportation Agency to ensure that new carriers are controlled and run by Canadians. We believe that Canadian carriers should make their network decisions in Canada for the benefit of Canadian communities, the travelling public, and workers.

I would also like to remind members that we have recently announced the creation of our own ULCC. This was done without foreign investment or any proposed policy change. The objective is straightforward: to provide Canadians with more choice for their travel dollar. We are engaged with both the CTA and Transport Canada on the necessary regulatory approvals to commence service in mid-2018.

With respect to the CATSA provisions that will allow small airports to purchase CATSA services and large airports to top up services, we consider these measures to be stopgaps.

Delays caused by factors such as passenger screening are becoming more and more frequent in our operation. It is a disturbing trend. From a policy perspective we have been frustrated for several years by the government's unwillingness to fully allocate funds collected from the ATSC and tie these funds directly to screening services, the services our guests are paying for when they pay the air transport security charge.

The provisions in Bill C-49 are a stopgap measure that will allow the industry to spend more money to provide services that we believe the ATSC should be covering. We have recommended comprehensive reforms to the funding model and governance of CATSA. We urge this committee to recommend that all money collected from the ATSC be allocated to screening services at Canada's airports.

Before concluding, I want to briefly comment on another aspect of commercial aviation that is certainly of interest to consumers and Parliament. You may have seen the news from StatsCan last month that base air fares in Canada, domestic and international, were on average down 5.4% in 2016 as compared with 2015.

At WestJet, our average fare in 2016 was $162, down $13 from 2015. Our average fare in the first six months of this year was $158, a further drop from the first six months of last year. To provide perspective on these numbers, our average profit per guest in the first six months of this year was $8.34. I provide these figures to give context when discussions turn to the concept of financial penalties.

● (1725)

[*Translation*]

In conclusion, WestJet recognizes that Bill C-49 has the potential to benefit the aviation industry and Canadian consumers. We look forward to participating in upcoming sessions with the committee in order to improve the overall travel experience for Canadians.

[*English*]

The Chair: Thank you very much. Now we move on to Air Canada.

Please introduce yourselves. You have 10 minutes for your opening comments.

[*Translation*]

Ms. Lucie Guillemette (Executive Vice-President and Chief Commercial Officer, Air Canada): Good evening, Madam Chair.

[*English*]

Good evening, members of the committee.

[*Translation*]

My name is Lucie Guillemette and I am the executive vice-president and chief commercial officer at Air Canada.

I am joined by my colleagues David Rheault and Fitti Lourenco.

We are here today to speak about the modernization of the Canada Transportation Act, specifically the intent to improve the traveller experience.

Air Canada is Canada's largest airline. In 2016, Air Canada and its regional partners carried close to 45 million passengers, and operated on average 1,580 scheduled flights each day, offering direct service to more than 200 destinations on six continents.

Since 2009, Air Canada has grown by more than 50%, extending the reach of its global network and achieving its ambition to become a global champion.

We employ 30,000 people and 3,000 of our employees were hired in the last three years alone, providing a significant boost to job creation in this country.

Headquartered in Montreal, Air Canada operates four hubs: Pearson airport in Toronto, Vancouver airport, Trudeau airport in Montreal and Calgary airport. We open Canada to the world and provide travellers unparalleled international access.

[*English*]

We've launched new training programs for front-line staff, introduced on-board customer service management programs, improved and clarified our customer service plan, and created new policies for family seating, family check-in at airports, and the carriage of musical instruments. We have also pioneered flight passes and branded fares, offering more choice and flexibility to our customers, who can select the attributes and features that are most meaningful to them.

We recognize that valuable services and features for leisure vacationers vary significantly from those for business passengers, and we aim to meet the needs of all our customer segments, domestically and internationally.

The airline industry is extremely competitive, and we view service as an important differentiator. Financial stability and sustainability has allowed us to invest significantly to improve passengers' experience. For example, we have renewed our fleet and acquired modern aircraft, such as the Boeing 787 and the Bombardier C series. We've reconfigured our cabins, introduced a new premium economy cabin, and improved the inflight entertainment systems. We've invested in a new website and have developed new applications that simplify the passenger experience.

For all our efforts, we are very proud to have been recognized by Skytrax as the best in North America and to be the only international carrier in North America to receive a four-star ranking. I can assure you that we are committed to continuing our efforts to improve the experience of our passengers on the ground, in flight, and post-travel.

In the current regime, carriers have different standards and offer different compensation in a system based on complaints. Having a clear set of standards for all carriers would be appropriate, without, however, imposing an undue financial burden on carriers or limiting their ability to distinguish themselves through the customer service policies they offer.

Although Bill C-49 takes positive steps in laying the groundwork for the regulatory process, we have concerns, and I would like to address a few now.

Number one is simplifying the regime. The proposed regime would be applicable for flights to and from Canada. This creates complexity for carriers and confusion for passengers, since other regimes are applicable in other countries, which could provide for different rules, different exemptions, and different levels of compensation. For example, in a situation of denial of boarding on a flight departing from the United States to Canada, should we apply the Canadian or the U.S. regime? To simplify the regime and make it effective, we suggest that it be limited to flights departing from Canada, as the American regime is limited to flights departing the United States.

We also submit that in the case of code-share flights, the claim shall be made with the operating carrier, as in the European regime. These adjustments would simplify the regime for carriers and passengers, allow for the speedy and timely issuing of compensation, and avoid the risk of double compensation.

Second, on baggage liability, Air Canada agrees with the principle of harmonizing the rules of liability related to baggage. The bill should, however, acknowledge that passengers are already protected by the Montreal Convention, in the case of international travel, which provides clear and consistent rules that are applicable internationally. We therefore submit that the rules provided in the bill should be limited to domestic travel and harmonized with the rules of the Montreal Convention. This would also simplify the rules for carriers and avoid confusion for passengers.

● (1730)

Number three, apply one decision to all passengers on the same flight. In its current form, the bill could also allow for a generalized type of compensation, which would fail to consider the particular circumstances of each passenger. For example, if one passenger submits a claim and is compensated for a delayed flight, the same claimant compensation could potentially be applied to all passengers on that flight. The decision to extend compensation to other passengers should not be arbitrary, but should take into account each passenger's individual circumstance. A connecting passenger who arrives late on the first leg of the trip but catches the next flight is not ultimately delayed.

Number four is on future amendments. Future changes should be transparent and involve all stakeholders, including passengers and carriers. As it stands, Air Canada is concerned that the bill could give the Canadian Transportation Agency powers to create regulations outside of the specific situations provided in the bill. We ask that the committee clarify this language to specify that the regulatory power of the CTA is consistent with the scope of the bill.

Number five is joint ventures and foreign ownership. The amendments to how joint ventures are examined by the government are very positive. In our own experience and from other examples around the world, joint ventures are innovative ways for carriers to expand their networks, add new destinations for passengers, find efficiencies, and offer more pricing options for passengers. Joint ventures allow us to develop the Canadian aviation infrastructure by building international superhighways.

While giving the Minister of Transport the ability to consider joint ventures is excellent, as his department is best-equipped to understand the complexities of our industry, some of the amendments are not in line with best practices around the world. One example is the ability for the minister to review a new joint venture at the two-year mark from approval. The initial period of any joint venture is devoted to better co-operation between partners while the most important changes that pertain to network and fares take more time to implement. We propose that the term for review be lengthened and start from implementation versus approval of the joint venture.

The bill also suggests sanctions that are too punitive, given the commercial nature of JVs. Indeed, the sanction of imprisonment could dissuade a potential partner from even considering the possibility of a joint venture. These issues alone could be a significant barrier to make any use of the benefits of the bill. We ask that the committee consider the suggestions in our submission carefully on this issue.

With respect to foreign ownership, Air Canada is supportive. However, we ask that adjustments be made so that foreign investors cannot negatively influence Canadian carriers or circumvent the spirit of the bill. We also recommend changes that would allow for a ready implementation of the new ownership structure.

● (1735)

Finally, I would like to stress that we operate in a very complex environment. The collaboration and efficiencies of many other stakeholders are instrumental to the overall improvement of the traveller experience. These include airports, CATSA, CBSA, and Nav Canada.

Unfortunately, the airline is too often left to manage all of the negative consequences, but we do it because it is the right thing to do for our customers. While the bill would require carriers to provide the CTA and Transport Canada with data, I would submit that all other agencies and organizations required and involved in the transportation system should be equally accountable for their operations, and submit data in a public and transparent manner.

We also invite the government and the committee members to study the measures that could be implemented, so that all government-controlled agencies contribute to the improvement of the traveller's experience and support the growth of traffic by Canadian carriers. After all, we are powerful economic enablers. If the world indeed needs more Canada, we want to bring it to them.

I thank you for the opportunity to present our views. We look forward to your questions.

The Chair: Thank you very much.

We will now go to Marina Pavlovic, assistant professor at the University of Ottawa faculty of law.

Professor Marina Pavlovic (Assistant Professor, University of Ottawa, Faculty of Law, As an Individual): Good evening, Madam Chair, and committee members. I would like to acknowledge that we are on unceded Algonquin territory.

Thank you for the opportunity to present and to bring a research perspective to the discussion of Bill C-49, particularly to the section on an air passenger bill of rights, which is undoubtedly an issue of importance to Canadians.

I am an assistant professor at the common law section of the faculty of law at the University of Ottawa, and my area of expertise is consumer rights in the contemporary cross-border network digital economy. My work covers areas such as consumer protection, dispute resolution, and access to justice. I am also a consumer groups' appointed director at the board of the Commission for Complaints for Telecom-television Services, CCST, which is Canada's communications industry ombudsman. However, I appear in my personal capacity, representing my own views.

Most recently, my work has focused on the wireless code, a bill of rights for Canadian wireless consumers, as well as dispute resolution, including ombuds schemes for consumer complaints. It is my expertise in these broad areas of consumer protection, particularly with the wireless code, that I'm bringing to the table.

While the telecommunications and air travel industries are definitely very different, there are significant parallels when it comes to consumer rights and consumer redress. My comments will focus on clauses 17 to 19 of the bill, which deal with the proposed regime to establish an air passenger bill of rights.

I will focus my remarks around three topics: the need for this bill of rights, the passengers' rights or carriers' obligations in the bill, and redress mechanisms related to the rights in the bill.

As to the need for the bill of rights, the current regime of complicated tariffs and related individual carriers' contracts is overly complex and ineffective. Consumer rights regarding air travel are varied and fragmented. They depend on a number of factors, and it is difficult, if not impossible, for consumers to know ahead of time what rights they have and what the appropriate redress mechanisms are. Market forces alone cannot resolve this issue. Canadians need an air passenger bill of rights that will provide uniform, minimum rights for consumers, or conversely, set minimum obligations for the carriers.

Similar regimes for air passenger rights exist in other jurisdictions, and in Canada they exist in other industries as well. As I already mentioned, as an example, the wireless code sets a mandatory code of conduct for the wireless service providers, and a recently established television service provider code sets minimum rights for consumers with respect to television services.

A mandatory code that would apply to the industry as a whole is the appropriate way to set minimum consumer rights. It is to the benefit of consumers, and it is to the benefit of the industry. For consumers, it provides a clear set of rights that are found in a single place. A clear set of rights builds and enhances consumers' trust in the industry. It also promotes competition in the marketplace. It offers the carriers an opportunity to distinguish themselves from the competition by setting higher levels of customer service. The bill of rights is the floor; it is not the ceiling.

This brings me to my next point on the actual passenger rights or carrier obligations in the bill. Bill C-49, in effect, does not establish the bill of rights for consumers. Proposed subsection 86.11(1) would set the broad parameters of issues that the future bill of rights in the form of regulation must cover. It is the foundational step for the bill of rights to come. These parameters, the list of issues that the bill of rights should cover, are thorough but the list is not an exhaustive one. It provides for ministerial discretion, both in breadth and in coverage, as well as in the form of future regulations.

Passenger rights on the list are similar to the rights in other regimes and correspond generally to the most common types of complaints that are increasingly being reported by the media. However, there may be other kinds of disputes about which we have not yet heard. It is therefore imperative that the list stay as is or be expanded. Similarly, the committee should not decrease the list. By doing so, certain rights would be chipped away, creating a multi-tier system, which is what we have today. That also includes the geographical scope to cover claims that include flights to, from, and within Canada.

Proposed subsection 86.11(4) provides that the rights form part of the carriers' tariff, unless carriers offer more advantageous terms. The spirit of this provision is that the bill of rights would set the minimum standards, and that the carriers may adopt a suite of rights that goes beyond this.

● (1740)

My concern, however, is with the drafting, which leaves a lot of discretion and does not provide information on who will assess—and when, how, and how frequently—whether individual carriers' terms meet the obligations of the bill of rights, exceed them, or are actually below them. The wireless code uses wording that in my view is clearer and more precise and does not leave room for discretion. It is a mandatory code of conduct for providers of certain regulated services.

My view is that this provision ought to be redrafted to ensure that the rights under the bill are always included in the tariff, so as to avoid case-by-case assessment, as well as that consumers cannot waive those rights by contract.

You may have heard or will hear concerns about the form and process by which the bill of rights will come into existence, from a broad list of topics in Bill C-49 to a detailed set of rights. I believe the Canadian Transportation Agency is best placed to lead this. However, it is imperative that the process be open and inclusive and offer an opportunity to all stakeholders, including individual consumers and public interest organizations, to participate in creating the bill of rights. A similar process before the CRTC, the Canadian Radio-television and Telecommunications Commission, has been used for both the wireless code and the TV service code, and it has worked very well.

I also believe that regulations, rather than an act, provide a more appropriate mechanism for the bill of rights. I have, however, some concerns about the timelines and the feasibility of getting a broad list of topics into the actual bill of rights. It is subject to political will, and sometimes priorities shift. There have certainly been instances in which the legislation required a regulation of this type and there have been years if not decades without it. I'm not suggesting a specific timeline, but I invite committee members to consider the impact of any delays.

Lastly, I would like to briefly address consumer redress under the new regime.

A bill of rights and an effective redress mechanism are essential components of a robust consumer protection regime. A set of rights without an effective redress mechanism is ineffective, in the same way that a redress mechanism without a clear set of guiding principles leads to different outcomes and creates different rights.

Under the proposed regime, the CTA retains its role as dispute resolution provider for air passenger claims. It will not be able to do that effectively without a significant change of its processes and staffing. While this is not on the table before you right now, I also invite you to consider whether there are aspects of Bill C-49 that may actually relate to this.

I strongly believe that proposed section 67.3, which provides that only an affected person can file a complaint, is very limiting. There is a significant body of empirical research that it is consumers themselves who pursue claims, mainly because the value of the complaint does not justify the transaction costs. Actually, very commonly the transaction cost is much higher than the value of the complaint itself. However, there is also research in consumer literature that provides that it is important to allow other parties, such as public interest organizations, to have standing to file complaints, perhaps as a mechanism to challenge systemic problems. I strongly believe that proposed section 67.3 should be amended to allow third parties to file claims.

Concerning the collective aspects of consumer claims, there are complaints that will be highly fact-specific to a single consumer but that there are events that will affect a number of consumers, most commonly all of those who were in the affected aircraft. Proposed section 67.4 gives CTA discretion to apply the decision to all of those affected, but it is not clear whether there will be a specific mechanism to trigger it or whether they would do so on their own.

Finally, proposed subsection 86.11(3) provides what is a common provision in other jurisdictions and other dispute resolution schemes, that consumers cannot double dip and obtain compensation for the same events through different compensation schemes.

In its brief, Air Canada proposed that this provision be significantly limited. My strong view is that the provision as it stands is broad enough to allow CTA to craft a rule to avoid this. For example, CCTS, the Canadian communications ombudsman, has a rule along those lines in its procedural code.

I hope that these comments and recommendations will be useful to the committee. I would be pleased to provide to the members a policy brief summarizing my key points and recommendations and any relevant documentation that may help you navigate—no pun intended—these issues and understand them from not only the industry's perspective but from the perspective of consumers who are your constituents.

Thank you for this opportunity. I will be happy to answer any questions.

● (1745)

The Chair: Thank you very much. Thank you to all of you.

We will now open it up for questions, starting with Ms. Block.

Mrs. Kelly Block: Thank you very much, Madam Chair, and thank you to our witnesses for joining us here this evening. It's good to change our focus now and discuss Bill C-49 within the context of our aviation industry.

Similar to our earlier hearings, we do appreciate your being here to provide your comments to the committee and ensure that we have the information we need to reach our goal, which I think is a shared goal, of ensuring that Bill C-49 strikes the right balance in meeting the needs and concerns of both the airlines and the customers they serve. I'm going to dig in quickly to the questions I have, because I know that the five or six minutes I have goes by very quickly.

First, to Air Canada, regarding the cost of screening at airports, are you concerned that the proposals in Bill C-49 amount to what we could call an extra tax on the flying public?

Mr. David Rheault (Senior Director, Government Affairs and Community Relations, Air Canada): My name is David Rheault. I'm the senior director of government relations for Air Canada.

In our brief, we have expressed concern about the precedent that this change opens. In the current system, passengers already pay a fee for security, charged when they purchase a ticket. Right now, the amount collected from passengers exceeds the budget of CATSA. In the past year, the number of passengers has significantly increased, the amount collected from passengers has increased, yet CATSA's budget remains relatively stable. The consequence of that is that you have more traffic and fewer resources to screen the traffic, which causes delays and waiting times, which ultimately causes Canadian hubs to be less competitive than foreign hubs. This is an opening for CATSA to have an agreement with airports to buy more services.

The concern we raise in that respect is that passengers already pay for that, so you open the door to a system that is user-pay plus. Passengers pay when they buy their tickets, airports will charge airlines, and ultimately this will have an impact on the cost of travel. We say, if you want to open a door to the possibility of buying extra screening for extra service, you must set a service level standard that would be guaranteed by the actual funding from passengers. If airports want to do more, they could buy from CATSA, but at least the public floor should be clear and standards should be set.

Does that answer your question?

● (1750)

Mrs. Kelly Block: Thank you.

I could pose that very same question to WestJet, and I will.

Mr. Mike McNaney: In a very rare occurrence, I completely agree with Air Canada. It doesn't happen very often.

In all seriousness, yes, I fully agree with that answer. It all goes back to what David was saying in terms of the funding that's provided. From time to time, we get to periods such as Christmastime and the summertime. When we as an industry—the air carriers, CATSA on the ground, the airport authorities—know we're going to have a crunch time, we all work like heck to expedite those lines and get through that glut and the problem that has occurred.

To be honest, I've often questioned why we do that because, again being honest, if I'm looking for a means of creating public pressure to actually get all the funds that are raised for the ATSC, the air travellers' security charge, to actually go to that service, we need to stop fixing the problem on a regular basis. We will never do that, because we have to deal with our guests and we have to make those connections, but we hold flights and we'll pull people out of the line. You've all seen it when you travel during the summer and winter months. We all do our best to actually overcome those issues, and frankly, from time to time, I think that's defeating to us in the long term.

Mrs. Kelly Block: In my last minute and a half, I'll pose this question, and if you don't get time to answer it fully, I'll come around to it in another round of questioning. I'll pose it to both of you.

With an eye on the consumer, what other measures could the government have included in Bill C-49 that would have helped or lowered the overall cost of flying in Canada?

Mr. Mike McNaney: The most straightforward thing, and it's a debate as to whether it would actually be germane to what this legislation is attempting to achieve, is the broader issue of aeronautical charges and how we deal with AIFs, airport improvement fees, in Canada, which gets into a broader issue of airport governance. I'm not convinced that necessarily would be germane to this legislation, but in terms of your broader question, that is the next big issue.

A component of that, which I alluded to in my comments, is that as far as I can tell, information will be requested of all these other elements or organizations of the supply chain: CATSA, CBSA, airport authority operations, baggage handling, and so on. The question becomes what gets done with it, and then who's accountable in the end. At this point, all I see is the point of the spear pointed at the air carrier in terms of financial penalties, and so on. If an airport has taken over sole responsibility for de-icing and the air carrier is not engaged in the contract or the management of de-icing, when the de-icing process goes down and we end up with delays, from what I see in this legislation, everyone is still going to be pointing at me in terms of paying money for it when it's something clearly not in my control.

On the expansion of this notion of accountability, yes, you can request constant repetition of the information, but we have to have something other than just pointing at one entity when these things go wrong. Again, to be somewhat direct on it, a number of these entities, frankly, derive their mandate from this institution.

The Chair: Mr. Sikand.

Mr. Gagan Sikand: Thank you, Madam Chair, and thank you to everyone for being here today. My questions are going to be directed toward the airlines. I appreciate your opening remarks and welcome them.

That said, do the airlines, Air Canada and WestJet, understand why passengers are frustrated with the level of service they sometimes receive from your airlines? Do you understand why they feel powerless or lacking in rights?

Ms. Lucie Guillemette: I'm happy to answer that. First and foremost, we have to recognize that for any airline, and I'll speak for Air Canada, the level of customer service that we provide is critical for us. As in any business, we always aim to do better. It would be wrong of me to try to convince you that we don't have those types of issues, but what we need to recognize is that the airline industry is a very complex one, and at times we do get into situations where we fail from a customer service point of view. What is really important is how we recover.

In our opening statement, I was suggesting the fact that we are investing in better tools for us to be able to provide compensation faster or to get to customers faster, to be able to respond more quickly to inquiries.

We carry 45 million passengers a year. There's no doubt that issues will occur. To echo the earlier comment, when we talk about the different stakeholders in any process, if we really want to improve the process for customers, it's best for all of us to understand really where the choke points or the failures are. If we understand that better, we can aim to improve it, but yes, of course, we understand that customers can be frustrated.

● (1755)

Mr. Gagan Sikand: For sure. Thank you.

Mr. Mike McNaney: Last week I had an opportunity to help with check in at one of our bases out west, a relatively small base. We do these base visits on a regular basis. We meet with WestJetters and our guests. I had a chance to talk to probably 20 or 30 guests over the course of the day. In answer to your question, based on the conversations I was having with them, although I never actually posed that specific question to them, there's a fundamental thing that occurs and it was quite obvious as I was watching people coming into the airport. When you enter into commercial aviation travel, you lose control from the very moment you step into the airport.

As we were saying, we have service failures. We recognize that. We have 700 flights a day. Part of the issue, and it's a challenge for us that we have to deal with, is that regardless of how seasoned a traveller you are, when you step into this process of commercial aviation, you lose control of where you can go, when you can go, and how you can go, and that creates a frustration that we certainly understand.

Mr. Gagan Sikand: Again this question is for both airlines. Do you think it's reasonable for passengers to expect the same compensation and service levels across all carriers?

Ms. Lucie Guillemette: When it comes to expecting the same service levels across all carriers, we all compete with each other. We hope that we have differentiators, but I would expect that Canadians would be able to be confident in understanding that if there is a service failure, what it is that an airline provides. I would expect that we should make those competition levels clear to customers. We should post them adequately. We should make it easy and timely for customers to be able to be compensated.

When it comes to whether the compensation should be equal, even in an environment today where there is no legislation, we still compensate customers for service failures. If, for example, flights are delayed, even if there is no legislation, we still do compensate passengers who are travelling within Canada.

So the expectation is—

Mr. Gagan Sikand: Just to follow up on that, is it reasonable for them to expect to have the same rights and compensation across all carriers?

Ms. Lucie Guillemette: Are you asking whether they would expect to have the same level of compensation?

Mr. Gagan Sikand: Yes, and rights.

Ms. Lucie Guillemette: Yes, but the airline should also be able to expand a compensation if they choose to.

Mr. Gagan Sikand: Can I get a quick “yes” or “no” from WestJet?

Mr. Mike McNaney: Yes.

Mr. Gagan Sikand: Thank you.

With the remaining time I have, I'm going to switch gears here a bit.

In Canada, 2.5 million people suffer from allergies. What have your airlines done to implement some policy or safety standards for those who suffer from anaphylaxis?

Mr. Lorne Mackenzie (Senior Manager, Regulatory Affairs, WestJet Airlines Ltd.): I can speak to that. I'm Lorne Mackenzie from WestJet.

It depends on the nature of the allergy. There are a variety of animal allergies versus foods and peanuts. For each type of allergy, there's a different response. The bottom line is to ensure safety for all guests, of course, and for the individual who has a severe allergy, as well as providing a buffer zone from the source. There's guidance from CTA decisions that give clarity around what those expectations are. We have to put that language in our policies and procedures and in our tariffs to ensure that people with allergies have an understanding of what they can expect when they fly with us.

Mr. Gagan Sikand: Air Canada?

Ms. Lucie Guillemette: In the case of Air Canada, we have a similar buffer zone and we also ask our crews to speak to passengers surrounding the individual who may have an allergy. We've taken very similar steps.

Mr. Gagan Sikand: Thank you for your responses to my questions.

The Chair: Thank you very much.

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

My thanks to all the guests for joining us this evening.

Many aspects of Bill C-49 bother me, some of which deal with the air component.

My first question is for the Air Canada officials, not as a way to single out the company, but because the example I have in mind directly concerns them.

A few years ago, a joint venture agreement between Delta and Air Canada was being negotiated, if memory serves, and it was blocked by the Commissioner of Competition. The Commissioner of Competition ensures the safety of consumers and travellers. If the commissioner says that this agreement is not in their best interests, I'm fine with that.

In Bill C-49, the role of the Commissioner of Competition becomes advisory and the minister may decide to override his recommendations for reasons he deems valid. Does this mean that it would be possible to establish joint venture agreements—to which I'm not fundamentally opposed—that the minister deems valid, but the Commissioner of Competition does not?

● (1800)

Mr. David Rheault: It is difficult to speculate and foresee situations that have not happened yet.

Mr. Robert Aubin: Let me ask you a concrete question. Will the agreement with Delta be reinstated if the Commissioner of Competition is no longer an obstacle?

Mr. David Rheault: Right now, the new system proposed by the bill provides for the involvement of the Competition Bureau, but also for clear authorization by Transport Canada.

The Competition Bureau will be involved and competition-related issues will be raised. However, the public policy principle means to consider the broader interests of air infrastructure development and the potential that those agreements can have.

We are convinced that the finest expertise in the matter is at Transport Canada, and the Competition Bureau, of course. However, given the fundamental importance of those joint ventures for the development of the Canadian industry, the department must consider the broader interests. Transport Canada is mandated to weigh all the factors and make good decisions.

There are statutory review mechanisms to ensure there is monitoring and conditions for authorization in place, to see what the outcome might be for consumers, among other things.

Mr. Robert Aubin: We can agree that it is not always a team effort. The commissioner has an advisory role.

I will now turn to you, Ms. Pavlovic. I quite agree with you that Bill C-49 does not have a passenger bill of rights, but outlines the general principles that might lead to the creation of one.

In your opening remarks, you said that there were omissions, even in the general principles that must guide the Agency in its consultations. What aspects are missing from Bill C-49?

Prof. Marina Pavlovic: Thank you for your question.

[*English*]

I think it's very difficult to pinpoint very specific issues, because this is really a very broad list of issues. For the lack of better words, the devil is going to be in the details, in the way these issues are implemented. For me, and this may not necessarily be something my co-panellists agree with, ministerial discretion is very important, because new issues will arise and may actually arise after the bill has been passed, which will allow CTA to add them to that specific list.

One question concerning which I think some consideration may be warranted is whether there are any human rights issues that may be raised. We have seen a few cases—and there is currently a case before the Supreme Court of Canada, which is on a standing issue, not even on the substance—of overweight passengers who are asked to pay for two seats or are taken off the flight. Any issues that may impact human rights more than commercial or economic rights that are currently in the bill may warrant some exploration concerning whether some of these could be put into the bill of rights in the future.

[*Translation*]

Mr. Robert Aubin: Thank you. I'm certainly interested in receiving your brief and your recommendations.

In the one minute I have left, I will turn to the representatives from WestJet.

At the Trois-Rivières regional airport, which is located in a municipality I represent, there have been plans for charter airlines heading south. However, it was impossible to carry them out because the security measures were not available. Those measures could have been available had the associated costs been paid, as mentioned in Bill C-49.

Do you agree with this double standard for airports, meaning that some have the services covered, while others have to pay for them?

● (1805)

[*English*]

Mr. Mike McNaney: It would be very difficult for me to admit in public that I endorse a double standard. Sometimes it happens.

Speaking seriously, though, to your question, as a general principle I go back to our brief and our statement that the totality of the ATSC should go towards screening, and it doesn't. You then end up with shortfalls across the system.

If you have a small airport, as in the example you've given, I don't think we want to be ridiculously strict on how things can go. If we can find another way to bring in service to that community and you can drive that connectivity, then perhaps that airport would pick up some element of the cost.

I think we have to have some flexibility. As a general principle, I would want all of the ATSC to go to aviation security. Then if we had to have something for smaller airports, or airports of a different size, as happens in the U.S., which has programs for airports in a given population area and for the number of carriers they get.... If we had to look at something like that, so that smaller airports could actually make a go of it, then I think we should do so.

The Chair: We go on to Mr. Hardie.

Mr. Ken Hardie: Thank you, Madam Chair.

Your story, when it comes to air passengers' rights, is a kind of good news, bad news thing. The bad news is that alarming stories come out in the media a few times a year. The good news is that they only come out a few times a year. For the most part, things go well.

But I have to ask what on earth is going on when you have a name on a no-fly list and it turns out to be a six-year-old kid and still the family cannot fly? What happened to that poor family who came to the airport with their kids, weren't allowed on the plane, and then were dinged another $4,000 the next day to get on a plane?

Is this a systems failure, or is it a customer service failure? What kind of training—and I'm sorry, I'm picking on Air Canada because they are the two that are most recent in memory, but I'm sure everybody has their moment.... What's going on there? Do you need government to step in and teach some common sense here?

Ms. Lucie Guillemette: The answer to that is no. We don't need to be regulated to tell us to do the right thing. However, when you ask the question, is it a training issue, is it a tariff issue, or what is it? In those two particular cases, I don't think you're looking for the answer as to what happened in those specific areas, but the bottom line is that there are situations at times—those two, for example—that on the surface do appear to be pretty dramatic. When we fail and when it is our fault, if it's a training issue or we didn't use good common sense or good judgment, most often we are in contact with the customer as some of these stories unfold in the media. It doesn't make it right, but when we say that we want to improve, it's exactly what we mean.

I can't comment on the one on the no-fly list, because truthfully I don't have all the details, but in many cases, in some of the stories you read at times it is our failure, but at times, as you say, it's a training issue or it's a situation occurring in an airport environment, usually when there is a pretty large irregular air operation. I'm not suggesting that it makes it right, but again, the truth of the matter is that we are trying to improve these things, and to be honest with you, we're not at all opposed to having a set of guidelines under which to operate or to report on these situations. They are our customers and we need to do right by them.

Mr. Ken Hardie: I do submit that it's, in some respect, a corporate value sort of thing as to what you default to when something such as that comes up, but we'll move on.

Let's talk about joint ventures.

Ms. Pavlovic, joint ventures have been problematic over time. Some have been challenged, and we heard about one just this evening. To your mind, what triggers should the airlines be watching for when they're trying to put together a joint venture that would draw at least concerns about anti-competitive behaviour?

● (1810)

Prof. Marina Pavlovic: I think your question is a little outside my area of expertise. I could comment broadly in terms of consumer interests.

Mr. Ken Hardie: Please do.

Prof. Marina Pavlovic: My view of the Canadian aviation marketplace is not necessarily the same as industry's, in the same way that my view of the telecommunications industry is also very different. I think we have almost virtualized monopolies. The restrictions on foreign investment in Canada are significant, and we don't have enough investment. If we could, probably the marketplace would be a bit more diversified and consumers would have more choice, but consumers have very little choice. Right now, there are few airlines that offer services, so this is pretty much what they can do, in the same way that in telecommunications there is some competition but not a lot.

I can't really comment specifically. There are different mechanisms in place, including the new process suggested that goes through the Competition Bureau and Transport Canada. In those kinds of instances, participation by public interest and consumer groups is really relevant to provide more targeted expertise as to what kind of impact that would have on consumers directly, but this is as far as I can really go with your question.

Mr. Ken Hardie: I have one final quick question.

What is the gap between the amount of money collected to pay for CATSA services and the amount of money actually spent on CATSA services? This question goes to some of your earlier comments about the cost-plus-plus regime that could be settling into place here.

Mr. David Rheault: I don't have the exact amount with me. We can provide that to the committee.

I know we did some analysis in our submission for the Emerson panel. I'm trying to go by memory, but I think it was at the time about $100 million, or something such as that, but I need to check and get back to the committee.

Mr. Ken Hardie: Thank you.

Mr. David Rheault: Maybe I could just add that, over the last five or six years, Air Canada has collected almost $90 million more from its passengers on ATSC and remitted it to the government, so this is a significant amount of money.

The Chair: Thank you.

Mr. Graham.

Mr. David de Burgh Graham: Thank you.

On competition, I just have to say that last week I flew to Kelowna on Air Canada and came back on WestJet. On WestJet, the granola bars are much better than the pretzels, so thank you.

I have a very quick question for you.

To build on Mr. Aubin's point, my riding has a number of airfields but one international airport, Mont-Tremblant International. It has seasonal service that's not very frequent. To get customs, it costs a fortune. Does CATSA cost recovery put airports such as mine in danger?

Mr. Mike McNaney: No, I don't think it does. If we are actually collecting the totality of the funds that are appropriate, then no, it shouldn't.

To the earlier question a few moments ago, CATSA, in the corporate plan submission—I'm not sure of the exact name of it—that it made to the government in July outlined that it's going to be facing further funding crunches, if the means by which it receives its funds are not consistent with how many passengers they're getting.

The biggest issue over the past several years—and in an equal effort, Madam Chair, to annoy both sides of the House, this was under Conservative governments and under Liberal governments—is that for many years this funding has not reached the level it should. You've had a multi-year experience of passenger counts across the country increasing. WestJet has been exponentially increasing its capacity in the market, Air Canada has, Porter Airlines has, Air Canada carriers have through Air Canada's capacity purchase agreements. A heck of a lot more people are flying today than was the case even 10 years ago. What hasn't kept pace with that is the CATSA funds actually flowing on a one-to-one basis. You pay it; it goes into security.

For your smaller airports, then, what you face is to some degree the reality of the policy for the past five to six years whereby CATSA has been starved of the totality of its funds. If you change that system, then perhaps you have to look at some top-ups.

It has happened on a per-budget basis that you look at some top-ups for smaller airports. Again I go back to the United States, which has a very different model, but the United States' federal government does provide direct financial support in a quantum exponentially beyond anything we do in Canada for small regional airports. It's probably something we should take a look at from the standpoint of the economic development that this then unleashes.

Thank you for your earlier comments. We're going to put that on Youtube as an ad.

Some hon. members: Oh, oh!

● (1815)

Mr. David de Burgh Graham: Most airlines these days overbook flights. I don't think that's a mystery to anybody. The United Airlines incident a few months ago certainly put that into the forefront.

On both of your airlines, if you have more seats sold than there are seats on the plane and there are no volunteers willing to leave the terminal, what do you do?

Ms. Lucie Guillemette: Before I answer that I just want to make a little bit of a distinction, because I think it's important.

When we look at our statistics and at our performance in cases of denied boardings, it's important for us to recognize what is truly an oversell, meaning it was a commercial decision for us to oversell a flight as distinct from a case in which we end up overbooked. It may not seem important, but it's an important distinction to make.

Even if a flight wasn't oversold at all and we end up in a situation in which we have more passengers than seats, it might be as a result of irregular operation or because we had a downgauged aircraft. Irrespective of the reason, if we were in a situation in which we didn't have any volunteers on board—and even prior to the incidents in the spring this was in our provisions—we would never, without a volunteer, remove a passenger. By that I mean we would come on board and would ask for volunteers.

At that point in time, truth be told, the compensation level might change to such point in time as we got a volunteer. If we never did, our operations control systems would probably help us in looking to see whether there's an ability to upgauge an aircraft, but we would deal with the situation as events progress.

Generally, I have to tell you, we don't face that kind of situation when we have voluntary programs. We at times know that we have a situation coming, so we pre-move passengers. We contact them, we pay compensation in advance to move them, or we'll buy seats on another airline. A multitude of things can occur. In truth, I don't recall in my experience at Air Canada in revenue management having been through a situation in which we had no alternative. We always have alternatives.

Mr. David de Burgh Graham: I have time for one more question.

Does it require, in your view, a bill of rights to raise customer service across the industry so that you're all rising together, so that you're not having to fight over who has better customer service? By putting in the bill of rights you all have to rise. Is that an advantage? Is that going to help us improve customer service overall?

I've flown in Asia, and the customer service is way better than anything we get in North America.

Ms. Lucie Guillemette: I think there's a two-prong answer.

When you speak about customer service, airlines should want to do that on their own. As I said earlier, we don't need regulation, but we're in favour of having standards across the industry if it makes it better for customers to have clarity in terms of what they can expect if something does go wrong. We're highly motivated to have repeat business and happy customers, to do what's right. It doesn't mean that we don't fail at times, but we're very motivated to do that on our own.

Do we believe some of the provisions could improve the industry at large? For sure. As we noted earlier, if we had a better understanding of all the steps within the process, where there are failures, for sure the industry could improve.

The Chair: Thank you.

Sorry, you'll have to try to answer somebody else's question to get your point across at this moment.

Mr. Shields.

Mr. Martin Shields: Thank you, Madam Chair.

I appreciate your being here this evening. It's a service that I've used from both airlines, and I appreciate that we have this service in Canada. I've flown on airlines around the world. Some are a little more scary than what we have in Canada, and some that I've flown on in some countries are a lot more scary. I appreciate what we do to get people around our country.

There are a couple of other things.

WestJet, you didn't get the opportunity to answer regarding the joint ventures, or I didn't hear it.

Mr. Mike McNaney: I'll have to cast my memory back to some of the questions posed on it. There was a question about what carriers can do in terms of dealing with consumer concerns, and so on, and what's an initial metric. I think the first metric on it would simply be the concentration on the given city pair, or city pairs, that the venture wants to start to get engaged in. What happens to the totality, then, of competition and service if two entities are co-operating on a given route?

One thing that does get a bit lost from sight in terms of joint ventures is that if it's working appropriately, and I have no reason to suspect it would not, it actually is providing further alternatives for consumers and further options to then connect to wherever else, in whomever's network, which ultimately simply drives further connectivity.

● (1820)

Mr. Martin Shields: You both might want to answer this if we have enough time. I'll start with WestJet.

There are a lot of pieces that you've referred to that end up in that ticket price. A lot of farm organizations, for example, have been here through the last couple of days. They're the end guy that produces and has no way to get it back. You must have some similar things that price into that ticket in the sense of the things that go on in an airport. Can you define a few of them quickly? Who else do you pay out of that ticket price that you have no control over?

Mr. Mike McNaney: What we're both familiar with, as are most consumers, is the airport improvement fee, which is an add-on to the ticket. Sometimes there is confusion that this is the totality of the funds that then makes its way to that airport for that service. We have what are called “aeronautical fees”, or you might think of them as landing fees or gate fees, that come out of the airfare itself to pay for those services to the airport in question.

As I mentioned at the closing of my comments, when you shake it all down, the totality of suppliers and costs that go to the airport authority and suppliers we have on the ground, WestJet made, on average, for those first six months, $8.34 or $8.35 per passenger, or “per guest” as we call it. What that underscores is that it is a volume business. When we talk about a $5 shift here or a $5 shift there on an AIF, or some other charge, it is very important to us when you put it in the context of $8.34.

Going back to my earlier comments—and yes, I'm trying to grab everything I can possibly say at this moment—in terms of accountability under this legislation and the entities, yes, we're all going to be providing information, but as far as I can tell, there is only one entity that is going to be asked for compensation.

Mr. Martin Shields: With Bill C-49, do you see an increase in that cost to the passenger at the end?

Mr. Mike McNaney: I suspect it will. I saw a comment in one of the presentations given on I think it was the first day, and the commentary was that it shouldn't if the air carriers “up their game”.

I find that somewhat puzzling. I can't up my game if I'm taking delays because we have guests stuck in CATSA. I can't up my game if we have delays in conveying information with regulatory authorities in the other country for aviation security purposes and I'm not getting information back as to whether I can go or it's no-go with that passenger or passengers, and therefore, I'm delaying the flight. I can't up my game if there are delays at de-icing facilities that I do not control and that I do not operate. There's no way around that.

Mr. Martin Shields: Air Canada.

Mr. David Rheault: I would just add to the the issue of cost, tax and fees, in addition to what Mike just said.

In our submission for the CTA review panel, our first principle was that the industry should be acknowledged as an economic enabler and the taxation regime should reflect that. In addition to what Mike stated, we also have in Canada what we call airport rent, which is a fee that the airport has to pay to government and that goes into general revenue. This money is not put back into the system. That represents a significant amount of money. In fact, it was billions over the last years.

What we basically say is that any amount that's taken from the industry should at least be put back into the industry.

Mr. Martin Shields: Is this piece of legislation going to affect your bottom-line ticket prices?

Ms. Lucie Guillemette: I think it would be a little bit difficult for us to assess. Certainly in some areas when we look at maybe the compensation costs, things like that. To be truthful, we haven't formulated a view on what the incremental cost overall would be. We have to assume that in some circumstances, for example, like I said for compensation purposes, it's important that we understand the impact of the proposal.

Mr. Martin Shields: Because the regulations haven't been written, that makes this...? Okay.

I would have assumed you would have done some financial analysis on what this might do to you.

Mr. David Rheault: If I could just add something, right now you have some principles under which there will be some compensation or indemnity payable to passengers. Right now we already have rules in our tariff that provide for compensation in most of these situations. It depends on what will be the regulation to apply that. That's why it's difficult for us to say exactly what the impact would be. Those are representations that we will make in the consultation process.

● (1825)

Mr. Martin Shields: I just assumed there are tech guys in the background examining all sorts of ideas of where this could go, and you'd have all sorts of documents that would tell you what might happen.

Anyway, I'm probably out of time.

The Chair: You are.

Mr. Badawey.

Mr. Vance Badawey: Thank you, Madam Chair.

I thank you for coming out tonight. I don't want to necessarily get into what's happened. I want to get more into what's going to happen moving forward.

Two of the themes we've really concentrated on in the last couple of days have to do with both safety as well as business. How do we become more of an enabler for you to be more competitive and to add more value and better service to the customer?

I want to start off with the safety part first. We talked with the rail industry about video-voice recorders. You obviously know what's happening there with Bill C-49 and what it's recommending.

My question to you is with what you have now in your industry, which is not necessarily a video recorder but a voice recorder, do you find that with that in place—and although it's not accessible, I get that, but it can be, if you really wanted it to be with new technology—you can use the voice recorders when it comes to safety, when it comes to prevention of and when it comes to reaction to?

Have flight recorders, voice recorders, served or would the airlines request further capacity or capabilities with those flight recorders?

Mr. Mike McNaney: In terms of the use of the recorders for learning purposes or for broadening safety, to some degree I'll have to check back with the ranch, the head office in Calgary, on some details for you on that. I think one particular aspect of commercial aviation is the specifics of the operations of a flight, so if something is occurring that shouldn't be occurring that information is being conveyed back and forth to our OCC. The voice recorders are certainly obviously a piece of getting to the bottom of an issue that may have occurred, but for the actual data in terms of what's going on with the aircraft and how it's performing, there's robust communication on that front that actually is not necessarily germane to the voice recorder itself.

Mr. David Rheault: I would agree with that.

I'm not an expert.

We should have in safety...and perhaps we can come back with something more specific, but in general we have very strong safety procedures in place to ensure that our operations are safe. If you have more questions regarding the use of the cockpit voice recorder, we can get back to you on this.

Mr. Vance Badawey: Essentially your voice recorders are being used in a reactionary manner versus being proactive for discipline or anything like that. They're not being used for that. There's no desire to use it for that.

I'm just going to cut right to the chase. Right now with some of the comments being made about the video-voice recorders for the rail industry, there's a lot of opinion on how far we should go with legislation, how far with the ability for, in this case, CP and CN, or any others that might be out there. What capacities would they be able to be afforded with respect to discipline, keeping an eye on, etc.?

Is there any desire with the airline industry to have that same capacity?

Mr. Mike McNaney: Just in terms of WestJet, I'm not aware of any discussions internally about that.

Mr. Vance Badawey: Good. That's a careful answer. Thank you.

Going to the business part of it, right now, as I mentioned earlier in this dialogue from the past few days, we've been teasing out not only those issues having to do with Bill C-49, but ultimately ways that Bill C-49 can contribute to the broader national transportation strategy, especially the strategy that has been outlined by the minister—the trade corridors strategy not only for moving goods but also moving people globally.

How do you see this bill, from the standpoint of your industry, being integrated with other methods of transport in the movement of people and goods to better position Canada with respect to that resource being available to the consumer, to the customer, whether it be business or the daily traveller?

● (1830)

Mr. Mike McNaney: That's a good question, and I can honestly say we didn't prepare for that one beforehand.

I would go back to some things from the earlier questions in terms of establishing overall expectations for consumers and creating a bottom-level base that the industry has to adhere to from a service standard viewpoint. There's some utility in that.

In terms of the broader corridor issues, I don't think there's much, to be honest. I think some of the other issues we've talked about that are not in this legislation would speak to this—some of the accountability issues we've talked about from other levels, with other actors involved, and I think some of the comments that were made a few moments ago about recognizing aviation as a commercial enabler.

By and large, I don't get the sense that we are necessarily seen as a commercial enabler. We are the only mode of transportation that has 100% user pay. I look at some of the other modes and the way they are governed and the extent to which public funds are made available to them, and that doesn't occur with our sector.

If we wanted to actually drive those corridors further and commercial aviation were to play a strong role in that, we should look at some of the policies that exist for these other modes of transport under this rubric and see whether we can apply them to aviation.

Mr. Vance Badawey: That's a good point. I'll put out the request that you folks go back, and when we take this to the next level—pass Bill C-49—start looking at satisfying some of the recommendations that are contained within the strategy overall and at how the airline industry can integrate data, or logistics and distribution of goods globally, or even the movement of people. How can you participate and as an enabler add to Canada's being better positioned because we have that proper transportation infrastructure in place?

Thank you for that.

Mr. David Rheault: To answer that question with respect to Bill C-49, I think the review regime that is proposed for joint ventures is very positive. This can help to develop Canadian infrastructure and develop new gateways through Canada to open our country to the world and enhance the movement of passengers and goods.

Mr. Vance Badawey: Great. Thank you.

The Chair: Thank you very much.

Ms. Block.

Mrs. Kelly Block: Wow. I didn't realize it was my turn already. Thank you very much for that.

I want to ask a question of Air Canada.

In your submission, on your last page in your conclusion, you state:

> Air Canada, therefore urges caution and asks the government to strike a balance with the implementation of Bill C-49 so as not to put Canada or Canadian airlines at a competitive disadvantage.

Do you believe that Bill C-49 has done this?

Mr. David Rheault: No, we don't believe that. What we basically say in our submission is that we are in a very competitive environment, which is worthwhile, yet the principle of Bill C-49 to have some established compensation and a certain regime also has to take into account the broader issue of the competitiveness of the industry.

This is a submission we would be making in the consultations for the drafting of the regulation, because we believe that the regulation should take into account also the competitiveness of the industry and the circumstances in which these regulations should be applicable when you compare them with what has been done in other jurisdictions.

Mrs. Kelly Block: I'm going to see whether I heard you correctly.

You believe that Bill C-49 does strike the right balance in terms of continuing to ensure that there is a competitive advantage for your airlines.

Mr. David Rheault: I'm sorry if I didn't express myself clearly.

Basically what we said is that the way the balance will be struck will depend on what the regulation is and at what level of compensation and in which circumstances you will apply it. What we say in our submission is that you have to be conscious, when you establish those levels, that they might have an impact on competitiveness.

When Bill C-49 was tabled, all public statements from the minister were clear that the intent was not to put at stake the competitiveness of the air industry. This is a message that is well noted by us, because we operate in a very complex and competitive environment and we want to make sure that the regulations that will implement Bill C-49 take that message into account.

● (1835)

Mrs. Kelly Block: Okay.

You've also stated in your submission that changes would be required to the definition of “Canadian” in Bill C-49 to ensure that the policy objectives underlining the new foreign ownership rules are met. Can you tell us more about that? How would you want to see that definition change?

Mr. David Rheault: That's a very good question.

We have proposed some wording in the annex of our submission. Basically, we want to add the notion of “owned directly or indirectly by a foreign entity” or the notion that a foreign entity cannot be affiliated or be acting in concert. These notions are taken from other corporate law to make sure that the intention is to place certain limits on foreign ownership, but we want to have language that clarifies those limits and that makes sure the intention is not circumvented or that some entity could not do indirectly what they could not do directly, if I'm clear.

Mrs. Kelly Block: Yes, we—

Mr. David Rheault: Maybe I should state it in French so the translator could get it better than me.

Mrs. Kelly Block: No, often we have been admonished in the House for trying to do that very thing.

I think that's it for my questions, Madam Chair.

I want to thank you again for being here.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: I will once again turn to the Air Canada representatives.

I just want to make sure I understand one of your first recommendations. You talked about streamlining the system and making it more efficient by applying it only to flights that leave Canada, as is the case in the U.S. system, which is limited to flights that leave the U.S.

Let me use my last trip as an example. I was going to Rwanda. Let's say that, as a consumer, I go to Air Canada to buy the ticket, and since there is no direct flight, I have to go through Brussels. Does this mean that, because my departure is from Canada with Air Canada, you will be responsible for me all the way? If I were denied boarding in Brussels, not on the Air Canada flight, would I have to talk to you or the people in Brussels?

Mr. David Rheault: First, the system must apply to flights that leave Canada. The NEXUS program, which is linked to Canadian jurisdiction, is the simplest. When you come back, say, from Belgium, the European system is in force. If two systems are in force for the same flight, the situation becomes complicated for passengers and complex to manage for the carriers.

Mr. Robert Aubin: What happens if I have a problem with my connecting flight in Brussels, not when I leave Montreal?

Mr. David Rheault: If you have a problem in Brussels, it will be handled under the European regulations already in force. You will have to deal with the airline operating the flight.

Mr. Robert Aubin: Even though Air Canada sold me the ticket, as part of its joint venture?

Mr. David Rheault: Yes. The European regulations specify that it is the responsibility of the air carrier operating the flight because it is in charge of the operation. We would like to see an amendment that incorporates this principle—which is already in force in European regulations—into Canadian regulations.

Mr. Robert Aubin: Thank you.

I will now turn to Ms. Pavlovic to discuss the bill of rights.

It seems to me that we don't have to reinvent the wheel when it comes to creating a bill of rights. A number of countries have done it before us.

Is there a particularly compelling model from which we could draw inspiration to draft our own Canadian bill of rights?

[*English*]

Prof. Marina Pavlovic: Let me first just add something on the geographical links.

Limiting it to flights that depart Canada would make sense if every other country in the world had equivalent protection. The European Union does, but there are a hundred other countries that do not have equal levels of protection or do not have any protection.

By doing that, we then exclude a number of people from any kind of protection. I think it's very important, and again the devil is going to be in the details to figure out how we're going to operate it, but there is really no uniformity across the world.

To your actual question, I think the European Union directive is a good start. It is not fully transferable to Canada, and we ought to be careful about importing things that work in one jurisdiction to other jurisdictions, but I think they have spent much more time thinking about this than we have, and we can learn certainly from their successes but also from their mistakes.

● (1840)

[*Translation*]

Mr. Robert Aubin: Mr. Rheault, would you like to add anything?

Mr. David Rheault: I'd like to go back to what Ms. Pavlovic said.

This could be a topic for an international convention, such as the Montreal convention, that standardizes some of the rules in terms of responsibility.

Here is an example of what happens when the system is applied outside Canada: when a passenger leaves Israel for Canada with a stopover in Europe, three systems apply to that passenger, at different levels and with different carriers. This complicates the administration for us, the carriers, but it also makes the process more difficult to understand for passengers, who want to know on which door to knock and what compensation they are entitled to. It becomes very difficult to manage for us, which delays things.

Mr. Robert Aubin: That's why I would prefer to deal with the one I bought the ticket from.

[*English*]

The Chair: Do you have another question, Mr. Aubin?

[*Translation*]

Mr. Robert Aubin: Yes, I will be very brief.

There is increased competition between companies. Let me give you two examples of changes made in recent years. The flight attendant/passenger ratio increased from 40 to 50, and the cap for foreign capital funding was changed. Is it acceptable that the changes apply to only a few companies that, I suspect, lobbied more aggressively because that's what they needed at the time? When changes are made, would it not be better if they applied consistently to the entire industry?

Mr. David Rheault: For us, it's the level playing field principle, or equal competition. It is an important principle.

There have been legislative changes, such as the exemptions granted to certain carriers with respect to foreign ownership. It is a matter of principle to us. We feel that all carriers should be able to enjoy the same rules because we operate in the same industry and compete for the same passengers. So the same system should apply to everyone.

[*English*]

Mr. Mike McNaney: Very quickly, in terms of the foreign ownership, one other piece that we do have to recognize is that there is no WTO for commercial aviation services. There's no one global agreement, so when all the bilaterals go across all the different jurisdictions in which we operate, nationality is part of the agreement. Regarding that 49%, if you eliminate that or go beyond it, you're going to get into issues of whether you qualify as a Canadian operator, for example, in this instance, under a bilateral agreement with another nation.

There is broader context, and that's why the U.S. is at 25%, and the EU will go up to 49%. It is very interesting that some of those carriers and entities perceived to be the largest that are going to be in the global sphere have 0% foreign ownership, because they view the airline as a competitive asset in terms of their economic growth.

The Chair: Mr. Fraser.

Mr. Sean Fraser: Thank you very much, Madam Chair.

I think we'll probably only have time for one or maybe two questions. Most of us here fly twice a week when the House is sitting, and I have to say, most of the time the service is actually pretty good. I mentioned the other day during the opening panel how frustrating it can be when you see those videos on the Internet of egregious treatment, because we're all familiar with the frustrations we come across when a flight might be overbooked and you have to sit through that awkward auction, or when you have trouble finding a seat next to your child. I recounted one instance where my size 16 basketball shoes rolled out on the carousel at the end of a long flight, and it is very frustrating.

With this bill of rights, WestJet, I appreciate your answer saying you can live with this, it's good, and you'll look forward to the details in the regulation.

Air Canada, you proposed a handful of amendments that, to be frank, give me some cause for concern. When I'm looking at rights, what I'm hoping for is, through competition, you guys are going to raise the roof and hold each other to account and give me the best possible travel experience.

When I look at the proposed amendments, instead of raising the roof, I fear you're asking us to lower the floor in the name of harmony and ease of operation. When I look at adopting the Montreal Convention when it comes to baggage, or the departure from a location within the U.S., or the carrier obligations such as the EU's that you mentioned, are we risking lowering the floor? To me, that's not a conversation about rights.

Mr. David Rheault: I just want to add something. If you take the specific example of baggage liability, if you apply the limit of the Montreal Convention to domestic travel you will actually raise the floor, because the limit of liability in the Montreal Convention is around $2,000 right now, while different limits and passenger tariffs will vary from $500 to $1,500.

What we say, basically, is that if there is a limit that is applicable internationally, why don't we just have the same limit domestically so it's easier for us to manage? The customer would be aware that there is a new limit for both. The system is simpler for us, which makes it more efficient.

● (1845)

Mr. Sean Fraser: I would love to dig down more on this.

I have one more question and we only have about one more minute.

There was an important issue that Ms. Pavlovic raised about third parties being able to launch claims for causes of action for systemic problems. This is a conversation going on with human rights around the globe right now.

Can an NGO bring a case on behalf of a large group of complainants who can't bring it forward themselves? Is this something you think is possible, reasonable, and workable, within the context of the aviation industry and the context of the air passenger bill of rights?

Mr. David Rheault: In our submission before the panel, this is a point that we made, that you have to have a direct interest to be entitled to file a claim. That's a principle that we submitted to the CTA review panel. This principle is included to a certain extent in Bill C-49, and we're comfortable with that, although we have proposed some amendments to give it more clarity.

Mr. Sean Fraser: I think we're out of time.

If Ms. Pavlovic had an opportunity to comment, could we maybe allow a short answer?

The Chair: I think we could manage another minute.

Prof. Marina Pavlovic: Thank you.

There is currently a case before the Supreme Court of Canada that is going to be heard on October 2, on standing by non-parties to challenge some of the provinces. I think it is important to have third-party standing. It's not necessarily to encourage the complaints industry—and you might hear from somebody tomorrow who is in that business—but to provide for a legitimate challenge of systemic practices that an individual consumer cannot do.

I strongly suggest to include language that would allow third parties with some interest, not random third parties, to have standing in these kinds of issues.

The Chair: Okay, thank you all very much.

Everybody seems satisfied with all of the answers, so I think you've done a good job.

Thank you all very much for coming this evening.

We will now adjourn for the day.