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Chair

Mr. Mervin Tweed

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•(0915)

[English]

The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)): Good morning, everyone.

Welcome to the second meeting of the Standing Committee on Transport, Infrastructure and Communities and our consideration of Bill C-8, An Act to amend the Canada Transportation Act (railway transportation), pursuant to the order of reference of Monday, October 29, 2007.

In order to open up the meeting and allow for questions and answers, I am calling clause 1 of Bill C-8, thereby permitting members to hold general discussion and ask our witnesses questions. It's just a formality to do that.

Joining us today we have the Minister of Transport, Infrastructure and Communities, the Honourable Lawrence Cannon, who will introduce Bill C-8 and answer questions.

I welcome you and ask you to proceed.

Hon. Lawrence Cannon (Minister of Transport, Infrastructure and Communities): Thank you very much, Mr. Chairman.

Before I begin my formal remarks, I would like to say that of course I'm happy to be here early in this new session, and I want to congratulate you, as well as the two vice-chairs of the committee, for your election. And to the new members and the veterans, I look forward to working with you all.

I'm pleased to appear before the SCOTIC committee today to discuss Bill C-8, which improves the shipper protection provisions of the Canada Transportation Act. These are the provisions that deal with the potential abuse of market power by the railways.

I have with me today Helena Borges, director general of surface transportation policy, and Alain Langlois,

[Translation]

our legal counsel.

[English]

Bill C-8 is the reinstated version of the former Bill C-58, which had been referred to this committee before the previous session of Parliament was dissolved. It is the third and final bill amending the Canada Transportation Act. These bills have all been based on extensive consultations dating back to the statutory review of the CTA that took place in 2000 and 2001.

Bill C-3, the International Bridges and Tunnels Act, received royal assent in February of 2007. As well, Bill C-11, which amended provisions related to the Canadian Transportation Agency, air travel, mergers and acquisitions, rail passenger services, railway noise and the grain revenue cap, received royal assent in June of this year.

Bill C-8, by far, is the shortest of the three bills. However, it is extremely important to rail shippers, the hundreds of companies that use railways to ship their goods. This bill is also important for the growth of international trade and the competitiveness of our economy as we experience unprecedented levels of trade with the Asia Pacific region. The bill will provide the regulatory stability that the railways have been seeking, which will, in turn, ensure that much-needed capacity investments are made on the key trade corridors. Improved capacity will help our railway industry and shippers to remain competitive with their counterparts in the United States.

[Translation]

I am sure that most of you have heard many complaints from shippers about railway service and rates. Shippers are looking for stronger statutory remedies to improve their leverage in negotiations with railways. I had very positive feedback from shippers on the former Bill C-58. Shippers expressed strong support for it to be reinstated and passed as quickly as possible.

The railways feel that Bill C-8 reintroduces too much unnecessary regulation. I believe that it establishes a better balance between shippers and railways. Passage of the bill will put an end to the extensive debates that have taken place and will provide both sides with regulatory stability.

When I announced tabling of the former Bill C-58 on May 30, 2007, I also indicated that the government would conduct a review of railway service to commence within 30 days after the bill is passed. I will speak more on this later.

These two initiatives, Bill C-8 plus a review of railway service, fulfill an important commitment I made to shippers: that I would address their concerns about railway service and rates.

[English]

The CTA is the legislative framework that regulates the economic activities of the railways. The act generally relies on market forces to govern the relationship between shippers and railways. However, as I noted earlier, there are a number of sections that protect shippers from the potential abuse of market power by the railways.

I want to note that the legislative and policy framework for railways in Canada has worked quite well. CP and CN are among the most efficient railways in the world. They both operate networks in the United States and compete quite successfully against their U.S. counterparts. They don't require any operating subsidies from government. Their financial success means they have the capital funds necessary to maintain and expand their infrastructure and to acquire new equipment.

While the framework has worked well, it's not perfect. Transport Canada officials have heard increasing complaints over the last few years about poor railway service and high freight rates. I have heard many similar complaints in my capacity as minister. Also, I know that many members of the previous committee heard from shippers and others, even when the former Bill C-11 was being reviewed by the committee and the House.

These complaints may stem from the strong performance of the Canadian economy and the fact that the supply of transportation services, including rail freight services, has been quite tight relative to demand throughout North America. Railways are of critical importance to many Canadian shippers in domestic, continental, and international markets, especially to shippers of bulk commodities, who often don't have any practical alternatives. Shippers need reasonable access to efficient and reliable service at fair rates.

I believe the time has come to rebalance the legislative framework in favour of shippers.

• (0920)

[*Translation*]

During the consultative process in the summer of 2006, I encouraged the railways to develop a commercial solution that would complement amendments to the shipper protection provisions. The railways developed a commercial dispute resolution proposal for discussion with shippers. Significant progress was made. Unfortunately, the two sides were unable to reach agreement. I still support a commercial approach, since it would be more expeditious, less costly, and less confrontational than regulatory remedies.

With your permission, I would like to briefly describe the provisions in the bill.

The existing section 27 of the act requires the agency to be satisfied that the shipper would suffer substantial commercial harm before granting a remedy. Shippers have long objected to this test. It is being dropped under Bill C-8.

The bill amends the notice that a railway must give for increasing freight rates from 20 days to 30 days. This will provide more time for shippers to make the necessary adjustments to their shipping plans.

There are two new provisions that deal with shippers' concerns about railway freight rates and ancillary charges. I want to clarify the difference between these two terms, since different remedies apply to each.

[*English*]

I'll deal with freight rates first, since it is the easier concept to understand. Freight rates are simple rates applied to the movement of

traffic from point A to point B, for example, for moving wheat from Moose Jaw to Vancouver.

When you look at the various rates and charges levied by railways, the payment for freight rates are the big-ticket item. Now, I want to point out that the intended remedy for freight rates is final offer arbitration.

Aside from the rate application applicable to the movement of traffic, railways levy various other charges. These charges can either be levied in relation to the movement of traffic or in relation to the provision of non-typical railway services provided by the railways.

Now, the best example of a charge that may be imposed by a railway in relation to the movement of traffic is demurrage, which is the amount paid when cars are not loaded or unloaded within the free time provided by the railways. Examples of charges that may be imposed in relation to non-typical railway services provided by a railway include car cleaning, weighing, or storing of the cars.

The amounts paid by shippers for the various charges imposed by a railway are less significant than that amount stemming from the applicable rate for the movement of traffic. However these charges have become an issue with shippers over the last few years. Amongst the concern frequently heard is the fact that these charges, or their associated terms and conditions, are unilaterally established by railways and are often unreasonable in light of their purpose.

With respect to these charges, a new provision is being added that will give the agency the authority, upon complaint by one or more shippers, to review such charges and associated terms and conditions that are contained in a tariff of general application. Now, the agency is also given the authority to order the railway to amend the tariff if it finds the charges or associated terms and conditions to be unreasonable.

The bill contains a number of factors to guide the agency. The agency will determine the period of time any revised tariff will be in effect, provided that such a period does not exceed one year.

[*Translation*]

Shippers were hoping that the issue of charges could be addressed through changes to the final offer arbitration (FOA) provisions. In our view, the agency review approach is more effective. It provides for a "one-stop shop" to address complaints. The FOA approach could require a number of FOA applications to accomplish the same thing, because FOA decisions are normally limited to the applicants.

The FOA provision is one of the more popular shipper remedies. A shipper can apply to the agency for FOA if the shipper is not satisfied with the railway's freight rates for the movement of traffic or any of the associated terms and conditions. Under FOA, the railway and shipper each make their final offer, and the arbitrator selects one of them without modification. This encourages the two sides to narrow their differences.

Bill C-8 expands the availability of the FOA remedy to a group of shippers. In order to qualify for group FOA...

Editorial Note: technical difficulties

• _____ (Pause) _____

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• (0940)

[*English*]

The Chair: Welcome back. Please excuse the interruption, but I think everything is working now, technically.

Mr. Minister, I'd ask you to proceed.

Hon. Lawrence Cannon: Thank you, Mr. Chair.

[*Translation*]

I was saying that this is to ensure that both the matter and the offer are common. Without sufficient commonality, the group FOA would simply be a series of individual FOAs with little in common. This would be unworkable and unfair to the arbitrator.

Group FOA is a new concept, and will undoubtedly be subject to challenges as the parties seek to clarify what is meant by "a matter being common to all shippers" and "a joint offer, the terms of which apply to all of them". We will have to rely on the good judgment of the Canadian Transportation Agency and the courts. I want to emphasize, however, that this is a remedy that is aimed at helping shippers—it is quick, effective and less costly. There will be practical restrictions on what qualifies as an eligible group FOA to ensure that it be an effective and expedient remedy. However, it is not intended that shippers must be facing exactly the same circumstances in order to be eligible for group FOA.

Under the new group FOA provision, the agency must be satisfied that the members of the group have attempted to mediate the matter with the railway. This is consistent with the government's preference for encouraging commercial solutions before regulatory remedies are pursued.

[*English*]

Bill C-8 permits parties to a single final offer arbitration to suspend the arbitration process by mutual agreement in order to pursue mediation. This provides both parties with an alternative without jeopardizing the shipper's right to final offer arbitration. The FOA process will resume if mediation fails.

Shippers strongly support group final offer arbitration and are eager to see it implemented.

Bill C-8 ensures that the line transfer and discontinuance provisions apply to lines that are transferred to a provincial railway but revert back to the federal railway. This will ensure that interested parties, including governments, have an opportunity to acquire such lines before service is formally terminated. This provision closes a potential loophole.

A complementary provision requires CN or CPR to make payments to local municipalities if a grain-dependent branch line reverts and is subsequently closed. These payments are \$10,000 per mile per year over a three-year period.

A new provision requires CN and CPR to maintain and advertise a list of sidings that grain producers use to load their own cars and to give 60 days' notice before closing such sidings.

• (0945)

[*Translation*]

I also want to speak briefly about the commitment to commence a review of railway service within 30 days of the bill being passed. This commitment has been a priority for shippers and has been well received by them.

The objective will be to focus on solutions to the problems that we have been hearing about for the past year or so. The review may include an assessment of the effectiveness of the level of service provisions of the Canada Transportation Act. We will be looking for innovative solutions to a challenging issue.

Shippers and railways will be consulted on the scope and terms of reference for the review. I expect Transport Canada to contact interested parties for their views later this year.

The government has taken significant steps to address shipper concerns through Bill C-8 and the railway service review. Many, if not most of us, have heard serious complaints about railway performance. Shippers have been waiting for these improvements for over five years and are very supportive of Bill C-8. They want this bill passed expeditiously.

[*English*]

For their part, the railways may object to some of the provisions but they want regulatory stability. I believe that Bill C-8 provides this and a better balance between shippers and railways.

We have an opportunity to take corrective action. I encourage members to support Bill C-8. I hope that once the bill is passed, shippers and railways will become re-engaged in discussions on a commercial dispute resolution mechanism.

Thank you very much for your attention.

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

We'll now open the floor for questions.

Mr. Volpe, you have seven minutes.

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

Thank you, Minister, and members of the department.

Those of us from the official opposition find ourselves in a really felicitous situation, because we see before ourselves a bill that we presented 24 months ago, although it seems like only yesterday. I guess we were kind of hoping for a different type of legislation from a different government. But we want to compliment you on seeing the wisdom of some of the legislation that the Liberal government presented some 24 months ago. You probably think that's partisan of me but it isn't; it's just a little bit of a preamble.

When the predecessor to Bill C-8 came before the House last spring, we didn't really have much of an opportunity to debate it because it came very close to the end of the session. So you'll forgive me if I put some of the questions into a particular context.

I don't mean to chew up the time, but from our perspective Bill C-8 should focus—and our questions will focus—on the maintenance and growth of transportation infrastructure to help a very valuable sector and component of the Canadian domestic product, but also communities throughout Canada. So our interest in Bill C-8 will be determined in part by the extent to which all of the amendments nurture that growth or maintain the level of infrastructure required to allow our producers to be competitive as they are being more productive.

Secondly, we want to make sure there is protection of the interests of not just the shippers but the producers as well. As I said, we didn't have an opportunity to debate this at any great length in the House, and we probably won't be able to do that except here in committee, but that too is a concern.

The third major issue is competitiveness, and I'm not sure if what's in the bill is going to ensure that competitiveness. Minister, you alluded to the fact that you want to guarantee that the railway companies will be able to continue to offer a good quality of service, and encourage investment at any rate. I'm looking forward to seeing how the bill will do that. We'll probably get to do it in committee.

But there are two other issues, and I ask for your comments. One is on the way the bill is going to work out. On the question of service, you said you were going to initiate a review within 30 days of the passage of the legislation. I'd like to understand why you wouldn't do that right now.

Secondly, there's a clause that says shippers will no longer need to prove financial damage. I understand the reason why you wanted to put that in. I think you said you wanted to shift the balance back to the shippers. We want to make sure there isn't any frivolity in any of the issues, so I'd like you to address that.

Finally, the big concern for a lot of the smaller producers is the shutdown of lines. I was encouraged by one of your amendments that said you have to go through a process. Then I immediately took away my enthusiasm when it said that in the event that they go through the process and decide to shut the lines down anyway, you will make sure they return a fine to the local municipalities. That's great, but they will still be without service. That goes back to what I said earlier—that we want to make sure we maintain infrastructure, if not grow it.

I've gone on a little bit because we didn't have a chance to debate this at great length in the spring, but I'd like to have some of your comments in response to those concerns.

• (0950)

Hon. Lawrence Cannon: Thank you very much for your comments.

At the outset, let me say that I share the principles you put forward. I think we unanimously, on all sides of the House, want to see this industry grow. We all wish to see Canada become competitive.

I won't go into the initiatives we've taken over the last several months, but let me say at the outset that I am in complete agreement with you. The railway industry is thriving and prospering well. Both CPR and CN—pursuant, of course, to its privatization and commercialization—have been able to successfully continue their growth rate and become part of a larger marketplace, and certainly leaders in that marketplace in North America.

This having been said, of course, our concern—and your concern, as I understand it—is to make sure that our producers, with the shippers, are able to get the products to where they have to be so that they remain competitive. I think we're all in agreement with that.

Your first question wondered, why not do the service review now, rather than put it off for 30 days. It's my view, Mr. Volpe, that it's important that we get this legislation passed and that we focus on the piece of legislation. My officials have already begun preliminary discussions and laid the table, but we don't want to get off track. We want to make sure that once this is done we'll be able to focus all our attention on the service review.

It's precisely for that reason that we've decided to proceed in this manner. First things first: we get the piece of legislation through; then we settle the service review.

Regarding the second issue, the shutdown of lines, I'll ask Helena Borges to address it.

• (0955)

Ms. Helena Borges (Director General, Surface Transportation Policy, Department of Transport): As you mentioned, Mr. Volpe, there is an elaborate process—not totally addressed in this bill, but it was addressed through Bill C-11—whereby, if one of the main railways, either CN or CP, no longer finds a line suitable for its business, which is providing the transcontinental business, it offers it up for sale to what are called short line railways. We have about 40 of those in Canada right now.

Those short lines are, in fact, providing a lot of the service to the smaller shippers on these smaller lines and then feeding into CN and CP. In fact, there hasn't been an abandonment of a lot of rail lines in the past 10 years. Even though the railways have shed some of their lines, these have been picked up by the small short lines, and we're comfortable that the provisions allow that to happen and that most of the shippers have service.

There are situations, if it is in an area where there isn't a lot of industry, that you may not have it, but there is trucking available throughout most of Canada.

We are, through other programs, helping the short lines ensure that they have good infrastructure to continue the service, through the funding programs the minister has announced through the Building Canada Plan.

So we are taking various measures to protect the smaller rail lines and ensure that they provide service. The objective of the law is make sure there are opportunities for other companies—or for municipalities, if it's related more to passenger service—to take on the lines.

The Chair: Mr. Laframboise.

[Translation]

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

Mr. Minister, in your presentation, you make two important observations. In the fourth paragraph on page 2, you say, in connection with Bill C-8, that:

the Bill is also important for the growth of international trade and the competitiveness of our economy, as we experience unprecedented levels of trade with the Asia-Pacific region.

This is a very important observation. But, since your government has never used any WTO provisions at all to curb unreasonable competition from foreign economies, we will be importing more. Then, clearly, the value of our dollar restricts our exports.

That brings me to your second observation. On the fourth page of page three, you say:

Transport Canada officials have heard increasing complaints over the last few years about poor railway service and high freight rates.

Tell me if my interpretation is correct. Bill C-8 probably will fix the problem of freight rates that are too high. That will provide help to our exporters, who are sorely in need of it. But it will not solve the other part of the problem, the mediocre railway services. You are going to start a review 30 days after the bill is passed. But until then, what will happen if the railway companies react badly to the decision on freight rates and decide to provide even worse service to firms that challenge those rates? Will they have to wait for the end of the review that will start in 30 days and end who knows when? You are telling us that the review will start 30 days after the bill, but you do not tell us when it will end. We must be able to address that issue. It is not impossible that the mediocre service provided by our railway multinationals, who control all rail service, will become even worse for anyone challenging the rates.

What do you think, Mr. Minister?

Hon. Lawrence Cannon: Thank you, Mr. Laframboise.

I have to say that you are quite right in your assessment of the essential reason for the bill. Costs are indeed too high, and I am sure that you will have seen that the bill also deals with the entire question of ancillary charges. Procedures are already being put in place that will allow these things to be corrected.

As I said in my answer to your colleague a few moments ago, what we want to do first and foremost is make sure that the final offer process can start as soon as the bill is passed and becomes law, with no further delay. The process itself gives our partners, the shippers especially, a guarantee that things are moving forward.

In the meantime, we have given them the undertaking that we will look at service levels. We will do this subsequently look that we are sure that we get that stage right. You asked me how long we think that it will take; my answer is about six months. But our shippers

cannot be penalized in the meantime. Because of the mechanisms proposed in the bill, we can start to look at the financial aspects as soon as it is passed.

I am being handed a document here that lists the responsibilities of the railways. Basically, Mr. Laframboise, the service provisions of the bill place a host of service responsibilities on the railways. Specifically, they authorize the Canadian Transportation Agency to investigate complaints and provide it with the power to require corrective action if necessary. The bill does not change these provisions in the slightest. They are still there, but the government has undertaken to examine services, as the bill states. What follows clearly explains the act's provisions on service levels.

A railway's service obligation is that the railway company is required to furnish adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage; to furnish adequate and suitable accommodation for the carriage, unloading and delivering of the traffic; to receive, carry and deliver the traffic without delay, and with due care and diligence; to furnish and use all proper appliances, accommodation and means necessary for receiving, loading, carrying, unloading and delivering the traffic; and to furnish any other service incidental to transportation that is customary or usual in connection with the business of a railway company. The traffic must be taken, carried to and from, and delivered on the payment of the lawfully payable rate.

You see that a railway company must provide people with suitable facilities for transporting, delivering and transferring of goods. And a company that has or operates a railway forming part of a line that links or intersects with another railway must also provide all reasonable facilities.

This is exactly what we want to review, but in the meantime, the other elements, that I hope the committee will move to adopt, will already be under way; there will already be a process designed to provide the basic balance and fairness, if you will, that we want to see in the market.

• (1000)

Mr. Mario Laframboise: Mr. Minister, you will concede that we must send a clear message. If we control ancillary charges, demurrage costs and things like that, we do not want the result to be that there are more lay days and fewer services for the customers. That is the kind of message I want to pass on to you.

We must be sure that railway companies clearly understand that, because those other charges have been controlled, limited and reduced to a reasonable level, it does not mean that they can take their sweet time, and say that because demurrage costs are lower, they can lay over for two days, three days, a week or more, and be quite happy to do so with the result that the shipper has no service. That is what I want to be sure of.

Hon. Lawrence Cannon: I share your view.

[English]

The Chair: Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair, and thank you, Mr. Minister, for appearing here.

Bill C-8, obviously, is really taking care of some low-hanging fruit in terms of fixing some of the chronic problems that we have right now. My concern is that, especially coming from Windsor, where I've seen the rail system not have the proper investment and also with the rules and procedures that are in place, it's lowered our productivity as a country. There's no doubt about that.

Hence, what I'm really interested in right now are assurances with regard to the study that's being proposed. I'd like to know how much money has been earmarked for that study, and whether it's going to examine productivity with, for example, comparisons to the United States system and also with Europe and maybe some other countries in Southeast Asia.

• (1005)

Hon. Lawrence Cannon: I'll let Ms. Borges answer that.

Ms. Helena Borges: The level of service review is going to address the type of railway service that we have in Canada, and it will definitely compare to what is happening in the United States and Europe and Asia.

You should know, however, that both Canada and the United States have the most productive rail system of anywhere in the world because they are dedicated on rail lines for freight. Most of the other ones are sharing them with passenger. They don't have equivalent systems across countries. So when you're looking at a continent, even in Europe, they're not as efficient as they are in North America. But it will definitely look at that.

It's going to be looking at a variety of things, and we've already started discussions with the shippers, as the minister said, and the railways on the terms of reference. The kinds of things we want to look at are: what is the service they're providing today—what is the demand for the service; what are the kinds of cars; are they providing enough cars, not enough cars; what's the time it takes to get the product from origin to destination?

We're also going to be looking at the railway operations and the way that has evolved over the last few years when demand has been increasing a lot, and making sure that there aren't inefficiencies in the system there, so you get at the question of productivity and making sure that the products getting to the export market, particularly to the ports, are getting there as efficiently as possible and empty cars are returning as efficiently as possible.

We will probably be conducting it through an independent monitor who will get the data for us. We already have somebody engaged on the green sector. We want to do this for all the sectors of the economy—we're looking probably at 12 to 15 sectors—making sure that across the system we get a good measure of what's happening today and what we foresee in the future in terms of continued growth—can that service support the growth?

The issue of investment that you mentioned will come out of that discussion, because we will see whether or not the capacity that is in place today is sufficient capacity to address the needs of the future.

Mr. Brian Masse: What has the department earmarked in terms of a budget for this?

Ms. Helena Borges: We will earmark whatever is necessary. We already have a preliminary budget for the study. Some of that will

come into the next fiscal year. We will provide whatever is necessary for the review.

Mr. Brian Masse: Mr. Minister, I guess what I worry about a little is that we get this bill passed and the study doesn't get launched. There's nothing mandating the study to happen. So I'd like your assurances that it's actually going to happen.

Second of all, do you envision a role for this committee with regard to that study?

And lastly, will there be a commitment to maybe engage municipalities with this study too, seeing that often their land use issues really affect the use of the rail operations, be it rail and road crossing conflicts, as well as other usages?

Hon. Lawrence Cannon: I'd say at the outset that there are provisions. The provisions in this piece of legislation clearly indicate that 30 days after the adoption of this piece of legislation, this kicks in—the level of service study will kick in. So that's quite clear.

We want to make quite sure that there are no loopholes that would prevent us from doing that. That's the commitment we've made to the shippers and to the railways.

Second of all, I think that we do have—I might be mistaken here, but I do believe that in the other pieces of legislation we've put forward.... I'm not talking about the one that deals with the bridges and tunnels, but Bill C-11 does indeed provide for municipal input in terms of how they can express their views and their concerns, particularly in areas where there's strong urbanization. I know that there have been long discussions between my friend Mr. Laframboise, who's a former mayor, and myself, who's a former town councillor and your predecessor in that position, on how I think it's extremely important that, yes, municipalities do have a buy-in to this. There are pieces at least in the legislation that was adopted more recently and sanctioned in the month of June to be able to enable that. That concern, I think, is addressed.

Mr. Brian Masse: Will this study as well include hazardous materials? I know that the United States has been doing some work on that and actually looking at even restricting some hazardous materials through larger municipalities, I believe Washington, Cleveland, and Dade County, where there's a series of issues especially with chlorine. Will there be assurances that hazardous materials will be well examined in this usage as well?

• (1010)

Hon. Lawrence Cannon: Yes, that is the case. Also, on another front, as you know, there is a review that is underway. It will be concluding, if it has not already concluded, and formalizing the final recommendations to me in a very short while regarding all the regulations that should govern the industry. Certainly what we wanted to do here is to modernize, literally, our regulations in terms of safety and security, so that is another opportunity where this committee will be able to express its opinion on that issue.

This is my sixth visit to this committee, I believe, Chairman, and I certainly have no problems coming back when we've done the level of service review to be able to discuss with parliamentarians and members from all parties where we want to go from here.

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

The Chair: Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair, and thank you, Minister, for appearing.

I will be splitting my time with Mr. Fast, if that's all right.

Minister, there's no question that this bill is about more jobs in all parts of Canada, international competitiveness, the Atlantic Gateway, the Pacific Gateway, and even in fact the effect for all parts of Canada. As a small business owner for 20 years, getting furniture from Montreal across to Alberta was extremely difficult and cumbersome. Indeed, I would like to compliment you and the government in bringing this forward, because since coming to this place in 2004, this has been the number one issue for stakeholders, including cattle producers, farmers, lumber companies in Quebec and British Columbia, manufacturers in Quebec and Ontario, and even ethanol and potash producers out of Saskatchewan, and importers and exporters from all parts of the country.

My question is very simple. Has there been any group of shippers that does not like the direction this legislation is taking us in?

Hon. Lawrence Cannon: Thank you for your question, Mr. Jean.

I alluded at the very beginning of my presentation to the consultations that have been taking place. They go back to 2000-01. Shortly after I took office, I was made aware of the issues the shippers were facing, the complaints they were lodging. I met with the railway industry, and quite clearly action was required.

I have not heard of one shipper who is opposed to this piece of legislation. I think that all parliamentarians around the table have been made aware of those representations. We, as parliamentarians and lawmakers, have the obligation to correct a situation when we see that the situation, for multiple reasons, is not working.

We strongly believe that Canada needs to be competitive. We have to be able to get our products to their destination as soon as possible, as efficiently as possible. As a government, we have put forward a series of measures, whether it be the Atlantic Accord, whether it be the Ontario-Quebec Continental Gateway, the Asia Pacific Gateway, ways to seamlessly integrate our transportation network to assure our producers that our products are there. There are the port mergers in B.C., working with the authorities in Prince Rupert to make sure we can get our products to market as fast as possible. I think this government is dedicated to that principle. We've quite clearly indicated it in Advantage Canada, which the Minister of Finance has alluded to on numerous occasions. We're building our infrastructure. We're talking about short-line rail, and we want to be able to make sure that as a government, through the Building Canada Fund, we put the amounts of money that are required to make sure the infrastructure is there, and capable and efficient, to be able to undertake all these important tasks.

So, yes, to respond to your question, I haven't heard any shipper complain. They all want to be able to get their products to their final destination as efficiently as possible. I think that as parliamentarians we are committed to doing that, and hopefully this piece of legislation will see swift passage.

• (1015)

Mr. Brian Jean: Thank you.

The Chair: Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair, and thank you, Minister, for appearing before us today.

I'm certainly pleased that this legislation is moving forward. As I recall, this is probably the third, if not the fourth, iteration of this bill, and I'm glad to see that we appear to be moving towards some consensus on this.

But there are going to be those who are still asking why we are actually introducing additional regulation into this industry. Many of us—certainly those on this side of the table—would typically hold the view that we believe strongly in free enterprise and a free market, and that for the most part it does a good job of ensuring best prices and best service. Yet we hear complaints from communities across Canada who claim they're not being served properly. They believe they're being held captive by the railways.

The same holds true for suppliers. They feel that they're being held hostage by an industry that is not truly free and open and served as well as it could be.

My observations certainly indicate that, really, the railway industry in Canada is essentially an oligopoly dominated by two main players. Many of the communities in Canada are served by only one of those, so it's not surprising that they would feel that they're underserved and that the services that are provided are overpriced.

If the railway industry were a truly free and open marketplace where we had many players, would we expect that this kind of legislation would still be required?

Hon. Lawrence Cannon: Well, that's a hypothetical question. It's as if we go back to the 1990s, when we started talking about deregulating the long-distance telephone industry in Canada, which, as everybody knows, was owned by Bell Canada.

At the outset, if we focus on the issues that are at hand, the issue basically is to make sure we develop the proper tools to ensure that the complaints, the issues you've raised, Mr. Fast, are addressed.

We feel that final offer arbitration, commercial dispute resolutions, and the review of level of services, all the tools that are there, will ensure stability within the marketplace, will ensure stability in terms of the relationship that must be developed between the shippers, the producers, and of course the railways.

We are, of course, in a situation where, yes, you're absolutely right, we have two main owners of the railways in Canada. What we have to be able to do is put forward the best tools to make sure that, optimally speaking—and I come back to what I was saying to Mr. Jean previously—we remain competitive, we remain strong, economically speaking, and we continue on the trajectory that has been launched over the last several years; and that in terms of obstacles to seamless integration—I use the expression largely, but I use it also in terms of efficiency—we are able to find a proper resolution to that. What we are doing here today, I believe, will settle many, many of these issues.

I certainly have the privilege of listening to a lot of my caucus members, because we do have a strong representation from the western part of this country, who have expressed and voiced concerns over the last number of months that we do something, that we finally act on this issue, because, as you say, in many ways it is a situation where small communities do not feel that they are part of it. It is a lifeline to these small communities, and we have to make sure that these lifelines and these railways work efficiently and that they work cooperatively with the folks who are there.

I certainly want to thank you, and I want to thank the other members from our caucus for having so strongly defended this issue.

• (1020)

The Chair: Mr. Bell.

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

Thank you, Mr. Minister, for appearing.

I have a couple of questions. On page three of your presentation, in the fifth paragraph, you make reference to having encouraged the railways to develop a commercial solution that would complement amendments to the shipper protection provisions. You said significant progress was made, but unfortunately they were unable to reach an agreement, and you still support a commercial approach. I'm wondering how you feel that fits in with what's provided in this bill.

Secondly, I want to make a comment. I'm glad to see the issue has been addressed with respect to the incidental charges included in this bill. I know that was a concern of the shippers. I'm wondering what issues from your discussion remain to be resolved in terms of the proposed review of the services. I'm thinking of running rights, for example, about which it was indicated that there was not agreement. I think the comment was that the main proponent of expanded running rights had dropped their support and focused on the other changes.

Is that simply a shift of priorities? The running rights.... I'm thinking of the port of Prince Rupert, which you made reference to, and the port of Vancouver. We know how important the Asia Pacific is going to be. The whole Asia Pacific initiative, which was started by our government and has been carried on by yours, has huge potential for Canada and certainly for British Columbia. And rail access is vital to the success of the gateway.

We know that by 2020 the indications are that rail container shipments through the port of Vancouver will be up 300% from the current roughly two million containers, or 20-foot equivalents, to somewhere between five million and seven million. That's huge, and we have to have a system that's able to handle that.

I wonder if you would comment on that.

Hon. Lawrence Cannon: Thank you, Mr. Bell, for those questions.

Actually, we had looked at a commercial dispute resolution mechanism, and I think I've mentioned it in my comments and also publicly. We have tried and we came extremely close, I must say, to resolving that issue. Both parties were amenable to that, but at the end of the day it broke down. So I had no other recourse than to go to the next step and put in final offer arbitration or group arbitration.

I'm not against that either, of course, because it wouldn't be in the piece of legislation. But it was my first belief, Mr. Bell, that through a commercial dispute mechanism we would be able to get there. However, it didn't pan out that way.

We've left it in there. We encourage it. As a matter of fact, I believe it's an effective and useful tool, because it is a tool that saves a lot of time and is efficient and is less costly.

We've gone to group final offer arbitration because group final offer arbitration enables the smaller shippers to be able to bundle together, to come together with other shippers, to be able to strike a deal. You know, final offer arbitration, once there is a deal that is struck, generally speaking, is a benchmark. So what we've done is open the tool kit, we've put that in front, and we recommend the usage of this way of going about finding a way to resolve the problems that pit the shippers against the railways.

On the running rights issue, I'll let Ms. Borges respond to that because it's highly technical. But I do want to reassure you, of course, that we are extremely committed to seeing growth, particularly in the Vancouver area out west. We want to be able to maximize the full potential of the Asia Pacific Gateway and I think that all parties in the House are open to that. That's an objective we all share commonly.

We've gone through a process where we're encouraging port mergers and finding ways to be able to maximize our potential.

You're absolutely right to talk about the phenomenal growth that is going to take place in the next several years. The potential is enormous for the Canadian economy and we want to be able to work with our partners, particularly the province of British Columbia, its premier, and the city of Vancouver and any other interested parties, in making that happen.

I'll let Ms. Borges speak to the running rights issue.

• (1025)

Ms. Helena Borges: As you know, running rights are basically a mechanism whereby one railway uses the line of another railway. We do have lots of examples of running rights in Canada, particularly in western Canada, where both CN and CP have reached a commercial agreement whereby both railways operate over CP's line in one direction and over CN's line in the other direction, through the Rockies. In the past couple of years they have also introduced what are called co-production agreements in the lower mainland to maximize the use of the lines. These are really for efficiency reasons: you get better efficiency if you're operating in the same direction and have one railway doing it.

So it is not discouraged in law; it is encouraged. But most of these are commercial arrangements that we would like to encourage, so that the railways deal with each other and compensate each other fairly.

Now, a couple of years ago there were some parties who were asking the government to introduce what are called forced running rights, where we would force a railway to allow another railway in. The panel looked at that, but came up with a compensation mechanism that would have required the host railway to charge the other railway a fair rate for using the line. When you start looking at that, it becomes very expensive. We don't believe the government should get involved in setting those rates and how the operation happens; those should be decided between the two companies.

Since then that issue has really lost favour with the shippers. I think most of the provisions in here are what the shippers are looking for, being more related to railway service and railway rates than the relationship between railways. There are provisions in the act, however, that deal with running rights; so if a railway wants to seek authority from the Canadian Transportation Agency to use the rail line of another carrier, there are provisions in the act that already allow for that, but they do have to make their case and they have to be prepared to pay for the use of the line.

The Chair: You have 30 seconds.

Mr. Don Bell: You're aware, I presume, that the chambers of commerce—starting with the North Vancouver Chamber of Commerce, as supported by the B.C. Chamber of Commerce and then the Canadian Chamber of Commerce—raised the issue of these running rights and this line-switching because of delays some shippers were experiencing with product, particularly grain products, coming into the lower mainland

I don't know if you have any response to that.

Ms. Helena Borges: I can tell you just last Friday I spent a whole day with the terminal operators on the north shore, and we're looking at these very issues. The issue is really much more one of looking at how do we accommodate the growth that is happening, and future growth.

The railways were at the meeting as well, and I think we've come up with a series of measures over the next few months, including doing a study of the north shore terminals and the rail access there as part of the Asia Pacific Gateway initiative, looking at how we can improve the rail and road access into the terminals and to make those work a lot better.

We did something similar last spring at Deltaport, on the Roberts Bank rail corridor, where we announced a series of grade separations for the line through all the communities along there. As a result of that initiative, the railways are going to be investing about \$60 million in lengthening the sidings to allow more, and longer, trains to accommodate growth at that port. So we're going to be looking at the north shore and trying to do a similar initiative up there.

The Chair: Monsieur Carrier.

[*Translation*]

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

Good morning, Mr. Cannon. We are always happy to have you here.

With arbitration now being open to a group of shippers, as the bill describes, could you tell me if this is as a result of requests from

shippers who have expressed a desire for this kind of recourse, that is to be able to form groups?

Hon. Lawrence Cannon: It is likewise a pleasure for me, Mr. Carrier, to be here and to find you in such good form.

As I mentioned before, when we started these multilateral discussions, there were a number of complaints, specifically from shippers who felt that they were not being dealt with appropriately and, as a result, were not being getting proper service. All through the process, they proposed operating with the final offer principle. We encouraged a commercial solution to resolve disputes. So the parties came to an understanding in principle. They sat down and tried to resolve their differences. They came very close to doing so, but in the end they could not make it work.

Today, we have a bill. The shippers' preferred tool was final offer arbitration. We agreed to that for several reasons, the first being that the commercial resolution mechanism had not worked. It was an important step, but since it did not work, we must clearly have another step, which, in one sense, seems to me to be more suitable.

In another sense, and this is one of the reasons that I am in favour of it, it allows small shippers to be able to get together with others with a view to having their differences resolved. Often small shippers have neither the financial resources nor the flexibility to do these things, particularly when they are going up against big companies.

I will add another reason that led me to move in this direction and to keep the possibility of recourse in the bill. It provides a commercial solution that is frankly cheaper and more transparent.

In this bill, we have provided the parties with tools that, in my opinion, are going to allow any disputes that arise to be fairly resolved. I do not think that there will be a constant demand for final offer arbitration. Once we have been able to establish the rules and the appropriate mechanisms, they will form the basis for the process.

Practically speaking, we are trying to put some discipline back into the industry so that we can maintain our competitiveness and assure ourselves that products and services are delivered in the most effective and efficient manner.

• (1030)

Mr. Robert Carrier: You mentioned in your presentation that you prefer commercial resolutions to complaints being made to the Canada Transportation Agency. Since Bill C-58 and this one have been tabled, have you noticed a reduction in the number of complaints registered?

Hon. Lawrence Cannon: I am told that there has been no change since the previous bill and this one were tabled, Mr. Carrier. There has been no difference.

Mr. Robert Carrier: Have you checked the impact on local rail lines, which have a good deal of importance in Quebec, like the Quebec-Gatineau Railway that links your community to Quebec City? Was there an impact, or have you had discussions with the government of Quebec and other provincial governments so that these rules fit together logically?

Hon. Lawrence Cannon: Actually, for local lines in Quebec or elsewhere, there is a mechanism in the bill that allows differences to be resolved, just as the director general mentioned just now.

What happens sometimes is that there is talk of closing, or a plan to close, these local lines, especially in the West. The bill contains a mechanism that may well correct that.

In the new Building Canada plan, we are introducing something that was previously developed between the federal and Quebec governments. This provides funding agreed between the two levels of government specifically to assist local rail lines. So private-sector contributions, as well as contributions from the two governments, have allowed an investment of \$75 million to help these companies upgrade their rail lines and improve their infrastructure. My counterpart in Quebec, Ms. Julie Boulet, announced this last year in Trois-Rivières. This has allowed improvements to the network.

So we have taken that initiative and we have, in effect, included mechanisms both in the bill and in the new Building Canada plan. We have made the option available and relevant to all provinces of Canada. So we will have an appropriate mechanism for our involvement.

• (1035)

[English]

The Chair: Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chair, and thank you, Minister, for being here.

It's interesting, because we know the discussions on this go back to 2000 or 2001. Over those periods of time—and I'm from Ontario and I don't have the western perspective—the cattle that used to come in now don't come by rail; grain that used to be transported by rail is not nearly as prevalent. Why? What I'm hearing, especially on the grain side, is it's because of the cost and reliability. Sometimes it's the reliability. They've been able to have the cars come into the grain elevators to get unloaded, make sure they're going to be there, and they don't show up. Those are the two issues.

The charges for railways seems to have gone at their discretion. Some of those charges that are being added in, those extra charges—whether they're for the cleaning, the storage, the weighing—seem to have been at the railways' discretion.

I think the final offer of arbitration is good. The only thing that I raise, and it's always something in the back of many people's minds, especially in the rural areas, when you hear of arbitrations is that it's good for small shippers, and that's important. Mainly out where I come from, that's what we have, smaller shippers.

So I'm glad to see the shippers, when I've talked to the few in the short while I've been involved in the committee, accept the concept, because it is a good concept.

I just want some clarification or surety that it doesn't become some sort of a judicial nightmare in terms of being able to go through the process and it becomes so costly and so time-consuming that it won't be productive.

Hon. Lawrence Cannon: I'm glad you point that out. It's extremely important to indicate. That's why we've gone the route of group final offer arbitration. We've done so because not all the shippers have exactly the same capacity to be able to go negotiate with the railways, so we've introduced this mechanism. It's my belief, and I was rallied to the argument that was put forward that at the end of the day, in terms of time consumption, final offer arbitration as a mechanism will certainly offer the opportunity of having smaller shippers sit down and work with larger shippers. Therefore they will be able to share the cost and the judicial burden that's incurred with the legal burden, but at the same time will benefit from it.

It's my view that once we have one of these settlements in place, that settlement will be able to be used as a benchmark for eventual dispute settlement mechanisms or commercial mechanism dispute resolutions. This seems like a big tool, and it is an appropriate tool to be able to bring the parties together. I've indicated at the outset that we still think that commercial dispute resolution mechanism is a useful tool, so we put that there. So all the tools are there, basically, to be able to make sure that once and for all we can make appropriate headway, both from the shipper's perspective and from the railways', and that everybody is happy with the way we are going about this.

• (1040)

Mr. Jeff Watson (Essex, CPC): Mr. Minister, thank you very much for appearing before the committee.

One of the things I heard on Bill C-3, for example, was that somehow it wasn't very conservative to curb the market activities of private business monopolies. In this case there may be the question, this being a conservative government, about how conservative it is to be involved in the free market activities of big companies such as railways.

I would submit, on the other hand, that it is very conservative to ensure broader competition rather than monopoly or oligopoly. You've stated that in some regions of Canada rail in fact operates as a monopoly.

Could we have your comments on that and on why our government is bringing this forward?

Hon. Lawrence Cannon: Well, first of all, governments and politicians generally react to issues and complaints that are brought forward. Our role here as politicians—as legislators, I should say—is first and foremost to make sure that we look at the issues, that we analyze them in the proper context and perspective, and bring the appropriate tools to bear to correct the situation.

That, fundamentally, is what we're doing. We're not engaged in a political science course 101 to find out whether or not this is conservative in nature, right-wing in nature, leftist in nature. I think what we're doing here is taking a balanced approach.

It's a balanced approach that fundamentally looks at an issue. We've alluded to it. This issue has been discussed, looked at, thrashed around over the last seven years. We've been able, I think, after a lot of discussion, to come up with a solution that is satisfying to the parties, satisfying to the lawmakers of this table and of course of the Parliament of Canada, and certainly, I believe, will strengthen the Canadian economy as we move forward.

I'm very proud to see that as parliamentarians we're doing the right thing here and are getting this piece of legislation and getting the job done.

The Chair: Thank you, Mr. Minister.

Mr. Maloney has advised me that he had to step out, but he has five minutes and will share the time with Mr. Volpe and Mr. Bell.

Hon. Joseph Volpe: Thank you, Mr. Chairman.

I just want to come back to a very brief, I guess technical question, Mr. Minister. It's for Madam Borges. It is about how the collective will of shippers is going to be determined.

Will it be voluntarily, by two or more shippers, with their submissions then applying to all? Or do you foresee the establishment of an organization or a series of organizations that must receive some authentication or registration by Transport Canada as part of the process? Have you gone that far yet?

Hon. Lawrence Cannon: My first approach on that, Mr. Volpe, would be that of course it's a sectoral approach: the fertilizer industry, the grain handlers.... It's a sectoral approach.

But I'll let—

Hon. Joseph Volpe: But in that sectoral approach, do you still have a certification or authentication system?

Ms. Helena Borges: The provision requires that in the group FOA the matter be common to the shippers who are asking for the matter to be resolved. When they file their application with the agency, there is a provision included in the legislation that allows the railway to contest, if they believe that the matter is not common to all of them, and to appeal to the agency.

The agency will review it and make sure that it is common to the group of shippers. The shippers have an opportunity to respond as well, once the agency determines that the matter will proceed.

So it's really upon the shippers to come in with a matter that is very similar for all of them. And the offer—it's one offer—has to apply to all of them. It's not multiple offers, because this would drag out the process a lot.

It's the matter and the offer that have to be common.

•(1045)

The Chair: Mr. Bell.

Mr. Don Bell: Pursuing that same line of questioning, one of the problems in the past that I've heard identified is that some shippers feel they have been, for want of a better term, bullied by some of the railways and that there is a risk in complaining.

There is the ability to group together both in terms of sharing legal costs and for protection, if you want to call it that, so that it isn't just one person being singled out. If these have to be matters common to all of the shippers, that fact reduces to some degree their ability to share costs. I'm thinking of commercial associations in the past that will group together, where one may not be affected as much as another, but they group together to share the costs, because the next time they'll seek the support of the others in another way.

As long as there's an agreement that it applies to all of them and that there is some thread of legitimacy in terms of application, as opposed.... I can see this becoming bureaucratic.

You say on page 5 of your presentation, Mr. Minister, that it's a new concept and undoubtedly will be subject to challenges as the parties seek to clarify, and that we have to rely on the good judgment of the agency. I guess the issue will be that if problems persist, we may have to adjust the legislation to provide direction to the agency as to what is intended by Parliament.

Hon. Lawrence Cannon: I agree with that last statement, but I'll let Ms. Borges answer.

Ms. Helena Borges: We're really trying to balance two competing objectives here. We heard the comments you made from a lot of the shippers, and that it was very important to have a timely resolution of the matter. The final offer arbitration is very timely. It gives you a quick black-and-white response—there's no grey zone. In fact, the response is whatever offer comes in from the shippers or the railways.

To limit that we need to make sure it is a common matter. The agency has a lot of expertise in dealing with these kinds of issues, so I think they will be able to determine that. The offer has to be common, otherwise the arbitrator would be left in the very difficult situation of trying to reconcile different offers from different shippers. The individual FOA is still there and available if a shipper has a very particular case and wants to go at it alone. But this one is really to allow the group that finds it more cost-effective, or in the case of some sectors where the issues are identical and it doesn't matter what shippers they are, it allows them to band together and solve it in one shot.

The Chair: Thank you, Ms. Borges.

I have to advise people sitting at the back of the room that we are now concluding this portion of our meeting and will be going in camera for about ten minutes. We ask that the pertinent people stay, and the rest will have to vacate the room very briefly.

I want to thank the minister and his staff for attending today and providing us with very frank and straightforward answers. I'm sure that if there are other questions from the committee, we will have access to the department to get those answers.

We'll take a two-minute adjournment.

Thank you for coming, and I'll ask that the room be cleared.

[Proceedings continue in camera]

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