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Chair

Mr. Bev Shipley

Standing Committee on Agriculture and Agri-Food

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• (1530)

[English]

The Chair (Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC)): I'd like to call to order the Standing Committee on Agriculture and Agri-Food. Pursuant to the order of reference of Friday, March 28, 2014, we are considering Bill C-30, An Act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures.

Colleagues, we have with us today the Honourable Gerry Ritz, the Minister of Agriculture and Agri-Food, and the Honourable Lisa Raitt, Minister of Transport.

Welcome to our ministers and to those who are here with them: Greg Meredith, assistant deputy minister at the strategic policy branch, Agriculture Canada; and Scott Streiner, assistant deputy minister in group policy with the Department of Transport.

We welcome you to our committee on a very important but also significant act that is now before this committee. We will be setting up meetings throughout the week to deal with as many witnesses as we can. I appreciate that you would take the time today, right at the start and from the get-go to be a part of that.

I'll turn this over to Minister Ritz to make an opening statement.

Minister, you have 10 minutes, please.

Hon. Gerry Ritz (Minister of Agriculture and Agri-Food): Mr. Chair, it is indeed a pleasure to be here with Minister Raitt and our support teams to talk about this and the attention this committee is bringing to this critical issue for our farmers, our commodity shippers, and of course, for our overall economy here in Canada.

As you know very well, over the past month the backlog of grain and other commodities as well has negatively impacted our economy here in Canada. Agriculture is a key component of Canada's economic success, accounting for one in every eight Canadian jobs. Our hard-working farmers do more than put food on our tables. They drive jobs and economic growth across Canada, exporting more than \$50 billion last year alone to markets around the world. Last year Canadian grain farmers produced a record crop for our growing global marketplace that is hungry for Canadian products. As is the case in most resource sectors across western Canada, farmers are also having difficulty getting their world-class products to market.

To help address these issues, three weeks ago our government brought in an order in council requiring a minimum of one million tonnes of grain to be moved each week, backstopped by penalties of up to \$100,000 a day. The volume requirement of one million tonnes

was not chosen arbitrarily. This is a tonnage commitment by both CN and CP that will move grain in an efficient manner while not hampering movement of other commodities. That last part is key, Mr. Chair, as our government has been clear that we do not want to incent one commodity by disincenting another.

That OIC was aimed to help get the grain moving faster in the short term. At the same time, we promised to introduce legislation that would address the medium- and long-term challenges that this backlog has highlighted. Last Wednesday our government delivered on that promise. This emergency legislation will put into law clear and achievable measures to support a world-class logistics system against Canada's agricultural products and other commodities to market in a predictable and timely way.

There are four key components to this bill.

First, we will require additional, more timely, and accurate data from the railways to increase the transparency of railway, port, and terminal performance across the entire supply chain, including reporting on a corridor-by-corridor basis.

Second, we will amend the Canada Transportation Act to include the authority to set volume requirements in extraordinary circumstances in order to mandate, for instance, that certain grain volumes be moved in peak periods similar to the direction the OIC took. This change will provide greater predictability for all shippers by allowing for specific volume performance requirements should they be required to meet demand. It will also help to ensure the entire supply chain is prepared in advance to respond to peak demands.

Third, our government is creating the regulatory authority to enable the Canadian Transportation Agency to extend interswitching distances to 160 kilometres, from the 30 kilometres that was set in 1987. This is for all commodities across the Prairies. Expanding this distance will increase the access that all prairie shippers have to the lines of competing railway companies, leading to increased competition. Specifically with respect to grain, with this increase 150 grain elevators will now have practical access to more than one railway compared to the 14 that have that claim today. It's a gain of some tenfold. This will increase competition among railways and give shippers access to alternative rail services by getting more elevators within that scope.

Fourth, we will amend the Canadian Grain Act to strengthen contracts between producers and shippers. The amendment will provide the Canadian Grain Commission with the authority to regulate grain contracts between farmers and grain elevators. If necessary, regulations could be created in contracts that will require grain companies to compensate producers if they do not honour their contracts in a timely way.

In addition, we are establishing regulatory power to add greater clarity to service level agreements as requested by all shippers across Canada. These measures will be concrete and comprehensive. We also announced an accelerated review of the Canada Transportation Act, with an initial focus on rail transportation.

Mr. Chair, last week the Minister of Transport and I held a stakeholder round table in Winnipeg on the contents of this bill. I then held subsequent round tables in Saskatchewan and Alberta. We met with a wide cross-section of shippers who play an important role in powering our economy now and well into the future.

All shippers highlighted the importance of the measures in this bill and appreciated the work being done by all parliamentarians to move this legislation ahead expeditiously. Our common goal is to improve Canada's rail system for the transportation of goods over the long term, for improved capacity, predictability, planning, and accountability for all commodities within the supply chain. This bill will help entrench Canada's reputation as a world-class exporter of all commodities. Our government means business when it comes down to getting our commodities moving to the marketplace.

Shippers and our overall economy require a system that works today and tomorrow with the capacity to move what is produced. The entire supply chain must work to build the capacity for our shippers to meet our growth plans well into the future. Our government remains focused on a way forward that will benefit all shippers, while continuing to grow our resource economy.

• (1535)

The legislation we have introduced will strengthen Canada's ability to leverage our trade agreements and maintain our reputation as a reliable supplier of high-quality produce.

We're taking immediate action with this legislation. Farmers and indeed all shippers are counting on all sides of the House of Commons to do the right thing and help us get these critical measures in play as quickly as possible.

Mr. Chair, I look forward to any questions the committee may have.

The Chair: Thank you very much, Minister.

I'll go to Minister Raitt for comments, please.

Hon. Lisa Raitt (Minister of Transport): Mr. Chair, it's very nice to be at this committee. I don't often appear here; I don't ever appear before the agriculture committee actually, but it's delightful to be here, especially with my friend Minister Ritz.

What we're talking about is the fair rail for grain farmers act.

Minister Ritz has explained what we're doing with this proposed legislation. I want to focus on the benefits to stakeholders, and how at each stage of the supply chain, the bill can benefit all Canadians.

As we've outlined, the legislation will increase supply chain transparency. It's also going to help ensure that the entire grain handling and transportation system is working at the top of its capacity. When we do this, it will address the grain backlog, but it will also aid in the maintenance of Canada's strong rail-based supply chain system, a system that involves all parties to remain competitive in markets both here and internationally. That's incredibly important.

As well, the bill will help maintain this country's strong reputation as a reliable commodity supplier. This reputation is really important because as Canada continues to strive to increase market share internationally, we need to be able to deliver our goods to those markets.

Given the bumper harvest of 2013 and the expectation that we will continue to see an improvement in crop yields, a strong supply chain is essential. A key tool to accomplish this effort will be the reports that we now require from rail carriers to demonstrate that they're meeting established targets.

We announced these reports through an order in council earlier this month and we are solidifying this requirement now. The bill also sets up specific monitoring of the railways to ensure proper monitoring of the supply chain.

As Minister Ritz has noted, we are confident that CN and CP will succeed in their efforts to achieve the reasonable targets the government has established. They are currently ramping up to these levels. They have been given, as you know, until the week of April 7 to move one million tonnes per week.

Last Thursday the railways provided the demand and volumes report for the first crop week, and I am pleased to inform the committee that the targets were exceeded.

As we've said before, this is an issue that affects more than just western Canadian farmers, producers, and shippers. It actually affects our trade and Canada's ability to supply our markets around the world. The truth is we need to demonstrate to those markets that Canada can supply the quality and quantity of commodities that they need.

Our government has invested \$1.4 billion in the Asia-Pacific gateway and we want to see the benefits of this commitment realized. We don't expect the action regarding the movement of the grain backlog will have any negative impact on the shipping of other commodities through our supply chain.

Further to this, Mr. Chair, the federal government will soon launch an initiative called the commodity supply chain table. It's a table where we'll provide a national forum for supply chain partners who ship commodities, whether they're grain, oil, potash, lumber, or any of our other essential resources.

As for the suite of legislative actions we introduced on March 26, the intent is that we accomplish three goals: first, the bill will maximize the amount of product that will be moved by rail in the coming months and minimize the grain carry-over into the new crop year; second, the bill will improve the reliability and the predictability of the transportation of all the commodities moved by rail in Canada; and finally, as I have noted, the proposed fair rail for grain farmers act will ensure an efficient, effective, and reliable supply chain that will allow Canadian businesses to remain competitive in domestic and international markets.

I'll make one final point.

The movement of Canadian commodities by rail is just one aspect of our entire supply chain. Our government is going to continuously assess all aspects of rail shipping in the supply chain because we want to improve the transportation system in the long term.

We know that our transportation system is absolutely crucial to ensure jobs, growth and long-term prosperity for all Canadians. We know that by passing this legislation we'll continue to strengthen both the transportation system as well as our economic future.

As Minister Ritz pointed out, I'm happy to answer any questions that you have about this important legislation. What I can't answer, my officials certainly will.

Thank you very much for your time.

• (1540)

The Chair: Thank you, Minister Raitt.

I want to thank both of you for coming.

As a little reminder, when we have the ministers here, it is a great opportunity to talk about policy, while departments will talk about implementation. We want to be careful that we don't cross over into those particular areas.

We are going to our five-minute rounds.

I welcome Jeff Watson, the Parliamentary Secretary to the Minister of Transport.

I also welcome Malcolm Allen. I never really know if you're on this committee or not.

He shows up a lot because of his great interest in it—

Mr. Pierre Lemieux (Glengarry—Prescott—Russell, CPC): He's here today.

The Chair: I welcome you, Mr. Allen. You have five minutes.

Mr. Malcolm Allen (Welland, NDP): Thank you, Chair. It's always great fun to be back with my colleagues.

What a double treat we have today with two ministers. It's almost a two-for-one, if we can use the vernacular.

Minister Raitt, you talked about your department and this legislation trying to reduce the carry-over. Conservative estimates, I've been told by shippers and farmers on the Prairies, are that 20 million tonnes will be a carry-over. Does your department have any sense of what the carry-over will be?

Hon. Lisa Raitt: I'll have Minister Ritz talk about it as well, but what we know is this. How we set the number of one million tonnes was based upon what the rail companies can move. It was a stretch goal; it wasn't something that they're currently doing. If you take a look, you'll see that CN came out with some numbers today. They recognize the fact that they were moving about 2,900 cars per week in February. They've increased that. They will be hitting 5,500 cars per week. That's a big jump.

That's what we wanted to accomplish both with the directive and again with this legislation going forward. Those are the numbers that we believe are attainable and achievable, and that's why we set them. They're important numbers, because we don't want them doing 2,900. We want them to be doing the 5,500 cars per week that we set out, each, of course.

With respect to the carry-over, I'll turn to Minister Ritz for his comments.

Hon. Gerry Ritz: Generally there's a carry-over every year, Mr. Allen. It depends. Some years it's as little as five million tonnes, and some years it's north of 10 million. With the size of the crop this year, there is an expectation across all sectors that there would be some 15 million tonnes of carry-over, or in that vicinity. What we're trying to do with this order is move as much as we possibly can to get as close to that 15 million tonnes as possible.

Mr. Malcolm Allen: By the sounds of things from the shippers, they're saying that you need to move more than this, but that's a debatable point. I guess that at the end of the season we'll find out whether it's 15 million tonnes, 20 million, or 25 million. The high end—

Hon. Gerry Ritz: A lot of it will depend on when the high end comes off this next fall too.

Mr. Malcolm Allen: I understand that the high end is 25 million. The problem is that the contract ends on July 31.

In any case, one of the major pieces that has been criticized to date by the Saskatchewan agriculture minister, and by the parliamentary secretary for foreign affairs in your government, is over a number of points. Farm groups and canola groups have all said the same thing. They need mandatory service level agreements, not a voluntary one. One of the things that failed last year under this service review was that the request was for a mandatory one, and it didn't get there. I don't see that in the legislation. But the parliamentary secretary...

There are two questions, Minister Ritz. One, will you push for mandatory SLAs? Two, will there be an amendment here that talks about short lines? Right now that is absent.

• (1545)

Hon. Gerry Ritz: Short lines can be captured under an SLA. We'll leave the final configuration of that SLA, as to what it's going to be shaped like, to a lot of the witnesses who you'll be hearing from over this next week. I'm anxious to see, come Thursday when you do a compilation of what everybody has brought forward, how that will shape amendments that have to be tabled, as I understand it, Friday morning. I'm not going to prejudge that. I want to make sure that all the commodity groups, not just grain groups, have a chance to chime in on that, because everybody is part of this.

When it comes to short lines, most of them are represented also by an elevator along that system. A lot of them are privately owned farmer terminals, and so on. They would certainly have the ability to configure an SLA with the rail at that point.

Mr. Malcolm Allen: The other side of the coin that is a concern of many at the moment is this idea of efficiency and the rail companies simply turning around, basically scooping what is easiest for them to do, and leaving the others behind, which really speaks to the depressed price.

As you know, Minister, everyone quotes the Davidson price, if you will, for an inland price, and says that it's kind of an average of where things are. The differential between the inland price and the outgoing price in port is significant. In some cases, it's north of \$6 a bushel. Based on the fact that prices are so depressed, is there going to be a guarantee for commodity groups that, indeed, rail companies are actually going to scoop up things and not just simply cherry-pick the easiest and sweetest ones, run them back and forth, and say, "Look at us, aren't we marvellous", and say that as the rail companies they've been able to do it?

Hon. Gerry Ritz: There are two separate issues there, Mr. Allen. One is the stretch basis that we saw shaping up over the last weeks and months, in that the line companies say we can't move the products, so we're not going to put out a bid other than really cheap, and if you have to sell at that price, we're basically going to take it. That's changing already. We're starting to see that basis start to rectify itself. A lot of the futures out there...I know that canola is back over \$11 next fall. We're starting to see that right itself as the market reallocates and as grain is starting to move and fill those boats that are sitting on the west coast.

Sorry, can you refresh my mind on the other part of your question?

Mr. Malcolm Allen: There's a concern that the railroaders will simply cherry-pick the easy ones to do.

Hon. Gerry Ritz: The order in council is a blunt instrument, and of course it's based on volume, but as we start to adjust our metrics, which is part of this legislation, and the regulations within this legislation which are the fine points, we'll start to get a better idea on a week-by-week, quarter-by-quarter basis as to where grain is moving and what's happening. It isn't just grain. It's all commodities. They all have to share that same trackage. It will give a much better idea of what's out there to be moved.

In terms of the order in council, basically those numbers stay in play until the end of this crop year, August 1, and then both Minister

Raitt and I sit down with all the commodity groups and with the railways and start to plan out the coming...what they're going to need to move their commodities to market, what sales they've made, what they're going to need to start to put that plan in play.

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

We'll now move to Mr. Lemieux, for five minutes, please.

Mr. Pierre Lemieux: Ministers, thank you so much for being here with us this afternoon to talk about this legislation.

I would like to follow up on the issue of service level agreements. Maybe I'll get each of you to respond to the question, because you're both coming at it from two slightly different angles.

Certainly in the opposition they've made the suggestion that service level agreements should be in the legislation. There is a clause, clause 8, which states:

The Agency may make regulations specifying what constitutes operational terms for the purposes of paragraphs (1)(a) to (c).

They're talking about having been much more prescriptive in the legislation about service level agreements, whereas this is taking a more regulatory approach.

I would like to ask each of you in turn about some of the reasoning that goes into taking a more regulatory approach rather than a more prescriptive, detailed, legislative approach to something like service level agreements.

Hon. Gerry Ritz: I think the biggest thing is that markets annually ebb and flow. Even during the year they'll right themselves; they'll change. It's a matter of sitting down and planning throughout that year what is sold, what you expect to move, and putting a plan in play.

If it's in legislation, it's hard and fast and has to measure up to that level. With regulations they can be adjusted in order to facilitate more potash that year. If there is a failure in grain, then you can adjust and move more potash should that be required.

It gives you that ebb and flow on a scale that's much easier to administer than something locked in legislation. That's generally the reason for it.

• (1550)

Hon. Lisa Raitt: Mr. Ritz is exactly correct. Trying to utilize legislation to define something means that you have to get it right completely. If you have it on a regulatory basis, it makes a lot more sense. You can actually do better consultation and you can have it adjusted.

More important, what we're doing is we're having the Canadian Transportation Agency be involved in this as well. They have the skills and the ability to make the right decisions with respect to service level agreements.

I think it's important for the committee to note too that service level agreements are not mandatory. These exist if a shipper wants to have them. It's not about putting an agreement on two parties that are unwilling. The shipper has to want to have one. So far they have opted to go the line of memorandums of understanding between themselves and rail carriers to set out their own contractual relationship. If they wanted to have SLAs, they have a process to have an arbitrated one put in place by the CTA. But as we're hearing from consultations, it's not adequate for shippers in order to bring them to the point where they want to utilize the SLAs.

Now is the opportunity to disconnect it from an actual act, to put it in a regulatory process, which, as Minister Ritz said, is more flexible, more nimble. Equally important is the consultation that goes with this in order to ensure that when the CTA makes considerations, they have the right information before them. What we don't want to have are any unintended consequences associated with moving in one direction or another that could affect our entire supply chain.

My point of view is that the supply chain as a whole has to be stable and it has to be reactive to what our needs are. It cannot be fixed in time and it cannot be fixed in statute. It has to be able to breathe.

Mr. Pierre Lemieux: Right. Very good. Thank you.

In the few moments I have left, let me ask a question about the speed of the legislation. Certainly we as a committee know that we will be working long and hard this week. I'm wondering if each of you could comment on the urgency of the legislation and the speed with which you feel it must move into implementation.

Hon. Gerry Ritz: The most important point, ladies and gentlemen, is to send a signal to our buyers both domestically and globally that Canada is in business and we can get those products in a timely way to fill those boats that are sitting out on the west coast. We're looking at Thunder Bay opening up. Minister Shea has reallocated more icebreaking capacity to actually get it open on time. We're welcoming that.

Last year the port of Churchill was fully subscribed beyond the five-year average of what they could handle. They are looking to do more this year. The other unknown corridor right now that we have no metrics on at all is product going south. We know there is a huge opportunity there that hasn't been fully addressed to this point either.

Hon. Lisa Raitt: The other aspect of why it's important to deal with this legislation now is that, along with what we're saying in terms of mandatory information and the materials that Gerry outlined, there is an ability to create balance in the Canada Transportation Act. Right now the minister can be obliged—myself as Minister of Transport—to provide a retrospective analysis of how the grain handling system behaved in the year previous. What we're doing in this legislation is we're ensuring that conversation happens up front at the beginning of the season, bringing together all the players in the chain, including Agriculture Canada and ourselves before the CTA. The CTA can then help us make a determination

whether or not we need to have mandatory volumes going forward based upon hard facts.

What we're doing is we're being very proactive. We're ensuring that we're planning at the beginning, up front so that we can handle these things as they move along. It was not in the act before and it is something that should be in the act now. That's why it's important to move this ahead as quickly as possible, so that we can react for next fall.

Mr. Pierre Lemieux: Right. Thank you.

The Chair: Thank you very much for your time.

Now we'll go to Mr. Eyking for five minutes please.

Hon. Mark Eyking (Sydney—Victoria, Lib.): Thank you, Ministers, for coming here today.

I guess it's too bad you have to come here today. When you look at the rail act of last year, Bill C-52, an act to amend the Canada Transportation Act (administration, air and railway transportation and arbitration), was a great opportunity and we could have had a rail act then. There were recommendations and we wouldn't have this \$8 billion loss right now. That being said, we have to go forward over the next few days in our committee and roll up our sleeves to try to get some recommendations to you.

I have three questions. I'll ask the three of them and then you can figure out how you are going to answer them.

First, will your government accept the amendments that farmers are going to be bringing to the table here over the next few days? Are you open to these amendments?

My second question deals with regulations. We talk about regulations, but Bill C-30 creates more of a legal authority to produce regulations. I'm guessing that you have more draft regulations on hand. Will those regulations be given to our committee so we can look at them before we vote on the bill?

It was already mentioned about how the government will deal with the shippers and the railroads and try to lay out a precise definition of what service levels the railways are expected to deliver.

The third question is how will the performance be measured? How will damages be paid to farmers if those services have failed?

Minister Ritz, perhaps you could comment on the comments from the Minister of Agriculture for Saskatchewan who said that it is too late of course, but there's not enough teeth in there and not enough penalties or compensation in this framework to go back to farmers.

• (1555)

Hon. Gerry Ritz: Let me start with the last point first. I've had meetings with Lyle Stewart as late as Thursday afternoon, talking about the way forward.

At the table on day two we also had potash, which is a major commodity in Saskatchewan. They're very concerned that their own provincial government is going too far in grain and it's going to affect their capacity to move.

That's why we're putting forward a balanced approach, working with the numbers the railway say they can do without disincanting, say, potash, or coal, or timber, or all of the other bulk commodities.

I would say penalties don't move grain. It will maybe get somebody's attention, but it's the regulations we put in play, it's the transparency along the full supply chain that is fully missing.

You made reference to Bill C-52. There's much more comprehensive enhancement of the full supply chain in here and it actually builds on the foundation that Bill C-52 provided.

I would say to my colleague Minister Stewart that penalties don't move grain, and by expanding this or that isn't necessarily going to do it. It's the full package we have here all dovetailed together.

When you talk about damages paid to farmers, I look at it from a different direction, Mr. Eyking. I look at it from farmers not paying the bills for things they don't control: demurrage and storage and all of these other things that pile up when they've already sold their grain. They've dumped it in the pit at the elevator. It's no longer theirs, and yet they're held hostage at this juncture by the shippers, by the railways, by the ports, by everybody all the way along. We saw it this year in a stretched basis. They were offered far less than what it was worth in the world price.

I'm more concerned about the bills the farmers are forced to pay than damages accruing and paid to farmers. That's very hard to administer. If we can put service level agreements in play that allow the shippers and the railways to work out their differences, then those costs don't continue to hemorrhage down to the farm gate. That's the point I want to make on that.

On the regulations and amendments, of course we'll look at any amendments that come forward. That's the nature of the committee hearing. You are masters of your own destiny. I know the right amendments will come forward at the end of the day from what you've heard.

It's hard to write the regulations ahead of time when you're not sure exactly what all the amendments will be. I've done a number of round tables, I'm not even sure how many now, in different areas across western Canada in the last two months. I have a pretty good idea what a lot of people are going to say. I know they're fine-tuning their asks. All of the shippers are starting to coalesce around the crop logistics working group that I put together in 2011, looking at logistics as we made changes to the single desk of the Wheat Board.

There's some fine-tuning being done in that respect, so I'm not going to predetermine what those regulations will be, or predetermine whether or not an amendment will be acceptable.

Hon. Lisa Raitt: What else is important to note is that we have equally announced that we are going to accelerate the Canada Transportation Act review, which is a mandatory review every 10 years. It takes place over 18 months. We're going to launch it in the summer.

The importance of that is, even before the official launch we are already looking at the rail aspects associated with it. One of them is SLAs. As the minister has pointed out, we've been conducting a number of round tables to start the conversation about these issues.

These are not issues in and of themselves. They're very complex. They have an effect on the entire chain. When you think about the CTA review, one of the things we want to have a serious conversation about is the capacity of the system itself. Also, how do we encourage and incent investment in this system to increase the capacity? If we keep enjoying the fact that we can sign more free trade agreements and move more goods to market, we want to have a system that can actually do that.

This is a very important measure, and I'm sure we'll hear about our service level agreements. I would encourage committee members to remember that it's not just one commodity that moves across this transportation system of ours. There are many commodities. We have to do it in concert with one another and we have to realize we want to encourage investment in this rail infrastructure.

• (1600)

The Chair: Thank you, Mr. Eyking.

We'll now go to Mr. Watson, for five minutes, please.

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

With respect to the idea of penalties, I presume, Mr. Chair, not only are the complaints from shippers not something new—they've been complaining about railways since Confederation—but if the idea of penalties was so simple and so popular, it would have occurred a long time ago, presumably.

The Canada Transportation Act, for example, is not new. It certainly isn't ours either. It was brought forward under a previous government and this issue has not been addressed there. I presume that's because, while it may be popular, it's not necessarily simple. I think the approach of having this done under review is sensible.

We did take a look at this with respect to Bill C-52 at the transport committee. There were a number of issues raised at that particular time. I guess what we're driving at is the difference between penalties for failure or breach of obligations versus liquidated damages. That's where the nub of this issue broke down in the committee.

Our government, of course, with Bill C-52, put in place the administrative monetary penalties to deal with issues of breach of service. The liquidated damages in commercial contracts are actually uniformly dealt with in courts. Is that not the case? Right.

In fact, it's difficult to presume a full range of potential penalties for a full range of potential situations and then enshrine all that in a piece of legislation. I think that's the issue of what I understood in your statements earlier today. Is that a fair enough assessment?

Hon. Gerry Ritz: Well, that's the nature of a regulatory package as opposed to a legislative package, because it does allow you to make those adjustments as you need them, as you require them.

Mr. Jeff Watson: One of the other complexities, of course, is that something that focuses specifically on the relationship between a shipper and a railway company excludes other potential indirect supply chain impacts, the performance of terminals, for example. Is that a fair assessment as well?

Hon. Gerry Ritz: Anything that's set up in an SLA has to take into account the full supply chain. It has to be from gate to plate. You have to look at all of those, and whoever caused the problem, the slowdown, or the stoppage would have to be addressed in those SLAs. It's a very complex system. It's not something I think you can actually write legislation for. One size does not fit all. Again, it underscores the need to have regulations that are adaptable as you move forward.

Mr. Jeff Watson: If liquidated damages were put into the legislation, could that not also impair the ability of shippers to actually sue in court for damages or limit what they could receive in damages in court?

Hon. Lisa Raitt: If you're talking about liquidated...you're getting into the realm of my old profession, which was a lawyer. Let me tell you what my concern is when you get overly prescriptive, as you are talking about doing. Suddenly the two companies aren't talking about how to move the grain. They're talking about how to mitigate the legal risk between them if the relationship breaks down.

What we tried to do with the bill last year was to encourage companies to do the deal themselves because, as I can tell you coming from a labour background, the best deal you're going to get is the one you do yourself. That's what that was about: trying to bring them together.

What we're taking a look at now is more discussion around the SLAs. It's important to take a look at it because we want to ensure that if we put a process in place, it's well utilized and it makes a lot of sense and that we continue to improve and to make sure we're moving every commodity we can.

If you create an environment in which everybody defers and reverts to lawyers, you're going to end up with a system that's going to focus on the litigation side of it as opposed to the transportation side of it, and we want people to be moving goods.

Mr. Jeff Watson: That's an excellent point, Minister.

The planning ahead provisions and the process of bringing everyone together could actually cause railway companies, for example, if we want to single them out specifically, to invest more in rolling stock. Presumably an economy in which all sectors are booming, not just grain, which had a bumper year this year, but

everybody's sector or sphere, could help the railway companies in their own long-range planning and investment. Is that a fair assessment?

Hon. Lisa Raitt: That's a very good assessment, and it just makes a lot of sense that you share information in a space where you're not breaching any commercial or any confidential information. They can then have better information to bring back to their boards of directors for determination of capital plans or plans going forward. Here's the point: These are not small companies. These are billion dollar companies on either side. The grain companies are billion dollar companies. The rail companies are billion dollar companies. They're very sophisticated commercial clients that we want to help facilitate and invest in our supply chain, instead of always trying to figure out who should have what advantage at what time.

That's why we have to make sure that we get the consultation right, that we do it in the context of the CTA review, and that where we can move forward, we do move forward. We want to move the grain now, and we want to facilitate the movement of all commodities in the future.

• (1605)

Hon. Gerry Ritz: Mr. Watson, you made the point that rolling stock might be the answer. That might be a little bit simplified. At the end of the day, part of the concern I have is that the railways are fixated on a five-year average and they'll increase by 2%. That means if I'm a little elevator and I had 100 cars last year, next year I might get 102, but I'm growing, or I need 120 and I have no ability to put that on the table and say "No, I need this," to give them a signal that their capacity needs to grow as well.

All of the resource sectors I've met with have said the very same thing. They're growing at 6% to 8% and they're held to that 2%. That does not grow the economy. That does not allow our resource sectors to even draw in investors from offshore into the country. That's part of the paradigm these new metrics will actually help us to show when, starting in August, the minister and I sit down with all of the companies, all the commodity shippers and the railways and ask them what their growth predictions are so we won't be blind-sided by these types of things coming at us.

Mr. Jeff Watson: That will send the right signal to the rolling stock manufacturers too.

The Chair: We're running over the time.

Madam Brousseau, go ahead, please, for five minutes.

Ms. Ruth Ellen Brousseau (Berthier—Maskinongé, NDP): I'd like to thank the ministers for being here.

Honestly, I think we've seen some red flags over the last few months. You know, there is a bumper crop. We've definitely asked many questions in the House of Commons about this issue. One thing we've brought up is increasing fines from \$100,000 to about \$250,000, a mechanism for actually compensating our farmers. We need quick and clear timelines to implement these measures and regulations and also mandatory price reporting for better transparency.

I would just like to go over what the Saskatchewan minister brought up. He actually said, "At first blush...the legislation itself is deficient. We made some substantial asks and they weren't numbers that we pulled out of the air."

I was wondering if you could comment on how you got 11,000 cars a week when he's asked for 13,000 cars a week. Perhaps you could also comment on increasing fines to \$250,000. What we have right now is up to \$100,000, which is not given back to farmers as compensation.

Hon. Lisa Raitt: Certainly. On the subject of cars, I sat down with the CEOs of both CN and CP. We reviewed what the best record was in the movement per week in each of the corridors associated with grain. When you add up what the best was in each corridor—and they're not at the same points in time; it's the best at a certain point in time—we came to the number of 5,500 cars each, because it's pretty much fifty-fifty between the two rail companies.

To contrast that, the best in one year that has ever been done in the last decade was 9,800 cars a week. We've gone to 11,000, so we are pushing the limit on what can happen, but we have to do it because we have to be respectful of the other commodities. The number 13,000 has been sent out there. That number is not based upon railway numbers; that's based upon somebody else's metrics.

What we have to make sure is that we do not break our chain. It's important to keep the chain going for everybody, for our intermodal, for our coal, for our oil, for our potash, for everything that we need to move in this country. It's the right number. They are moving it, and that's what we wanted from the directive. That's what we want from the act. We'll continue to monitor it for next year.

As for the fines, \$100,000 is the fine that's set out in the Canada Transportation Act as it is right now. I have to tell you, as a deterrent people can scoff at it and say the railway companies can afford it, and all that stuff. The railway companies have a strong incentive right now to ensure that they're moving western Canadian grain out of the country as fast as they can. It's not about monetary penalties; it is about their reputation, and it is about this country's reputation, and it's about our relationship going forward in this supply chain. They're very well aware of the pressure that's on them and they will—they will—rise to the challenge and they will move this grain.

• (1610)

Hon. Gerry Ritz: And they're publicly traded.

Ms. Ruth Ellen Brosseau: Because of this grain crisis, we've had a lot of troubles domestically, but also internationally. I think we have a black eye, and I've seen some comments that you guys have made in some articles citing the fact that it's very tough. We've actually had a vessel from Japan leave and go to the States to fill up. What in this legislation will actually ensure that this won't happen again?

There is a sunset clause after two years, and after the dismantling of the CWB, there was no afterthought logistics-wise, so here we are two years later in this big crisis, and farmers are really paying the price. I want some kind of assurance that this won't happen again. Farmers are working hard. We're going to have more and more crops, big bumper crops like we saw this year, but is it worth it when we can't transport it, when they're not getting paid? We need some kind of assurance that this will not happen again domestically, but also for our contracts, our international trade agreements, that this will not happen again.

Hon. Gerry Ritz: Well, there have always been problems with logistics in Canada for decades.

Ms. Ruth Ellen Brosseau: Not this bad, though.

Hon. Gerry Ritz: Yes, actually it has.

Ms. Ruth Ellen Brosseau: Has there been—

Hon. Gerry Ritz: The first years that I farmed in the 1970s, we had piles of grain that we couldn't move. A lot of it spoiled and never did move. So this not the first time, but we do have an opportunity here to get this right. We have an opportunity with all of the commodity groups, all of the shippers out there saying that there are concerns in capacity and so forth.

You talked about the two-year review; yes, that's because this is emergency legislation and that is the procedure, the protocol. It can be renewed by a vote in Parliament, or it can also coincide with the results of the CTA review, to a larger piece of legislation and regulation, and actually be very timely in that it all comes together within that same two-year timeframe. We have an opportunity here to go out and prove to our buyers around the world that we are a country of repute, that we can actually get our commodities to them in a timely way.

We saw an excess number of boats sitting in harbour this year. There was one vessel that left from Japan that was here to pick up some grain, but they were speculating on it. They weren't necessarily contracted at that particular point, which is both good news and bad news. We just could not fill them, which is unfortunate because Japan is a very premium customer for us. I will be in Japan early in April to reinforce the fact that they should come with their cheques; we have the product and we have the capacity to get it to them.

Ms. Ruth Ellen Brosseau: Why did it take so long?

Hon. Gerry Ritz: I'll speak to that too.

We had a very late harvest. Actually, even in my area it really wasn't known on the ground until we were into the early days of November what the quality and quantity was going to be. It was a very late harvest; we were fortunate nothing got frozen. Nobody had any idea of the capacity and the quality and quantity that would be out there.

Having said that, the railways did move more off the combine than I've ever seen moved before. That's called cash flow. That's a good thing. That's called surge capacity. What we need is that surge capacity. We need overall capacity throughout the year, but we need that surge capacity at harvest time for cash flow. We need it before the road bans go on right now in the spring. We also need it at the end of the crop year.

Those are some of the plans that Minister Raitt and I will be working out with all of the commodity shippers. They all have surge capacity that they require at certain times, and we want to make sure that we can address all of them.

The Chair: Thank you very much.

We'll move now to Mr. Payne, for five minutes, please.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Ministers, for coming today. It's obviously a really important issue that we're working on here.

I'm from Medicine Hat, and we're captive to the CPR, and have been captive for as long as I can recall. I worked for an international petrochemical company, and I can tell you that regularly, there were difficulties with the CPR. They wouldn't move the product; they wouldn't get the cars on time, demurrage, and so on. I know you've heard all of that. There's also a huge fertilizer plant in my riding. Those are some of the issues that go beyond grain.

One of the things I wanted to talk about is the interswitching. I can recall when it went to 30 kilometres, and now the proposal is to go to 160 kilometres. I'm looking at a map, and it includes Medicine Hat. Ministers, I'm so delighted that this is going to happen; however, I would like to get a little information on what that means in terms of other railways, in particular the Burlington Northern, which is close by my riding. Will they be able to come up? Will they be able to bring cars up to help move the grain and other products?

Either or both ministers, please comment.

Hon. Lisa Raitt: There are 18 interswitching points in the three prairie provinces.

What we have said in this legislation is that currently, if you're within a 30-kilometre radius of one of these interswitching points, you can have the carrier that is your carrier, the one that you're captive to, bring you, at a regulated rate under the Canadian Transportation Agency, to that interswitching point, where someone else can pick you up and take you on the long haul. We've expanded that radius from 30 kilometres to 160 kilometres. As Minister Ritz points out, on the grain side it's going to.... He'll tell you what the statistics are in terms of your choice.

It always starts with the same thing. You have to do a deal with the shipper to take you to your end destination or your terminus point. This allows you to choose how to get to that interswitching point. It allows you to choose who takes you from that interswitching point.

The carrier that you have will take you there at a regulated rate. Basically, that's the theory behind going from 30 kilometres to 160 kilometres.

It was developed at a time when we wanted to discourage railways running together so closely, especially in urban areas. That's why 100 years ago we came up with the interswitching concept. It was kept in the last Canadian transportation review, and indeed we're looking at it again this time.

I don't know whether or not the people who ship in your area, Mr. Payne, are going to utilize this ability to contract with another carrier at the interswitch point, but we have made it possible for them to do so if they're in that radius.

Hon. Gerry Ritz: What it actually reflects, Mr. Payne, is the new reality. Over the past two decades rail lines have rationalized, and so have grain companies. We're basically running on main lines, and then there are huge terminals, elevators, as opposed to the over 2,000 that there were in 1987, when they went to 30 kilometres.

This will make a difference, as I said in my opening remarks, of moving from 14 elevators that have access to interswitching now to over 150—tenfold or elevenfold. That gives them that competitive potential.

Mr. LaVar Payne: Certainly, from the map it looks very positive.

Obviously, the other railway, BN in particular, would have to deal with CP in this particular case.

• (1615)

Hon. Gerry Ritz: They run together in the U.S., so there's no reason to believe they wouldn't do a partnership again.

When I was attending the round table in Calgary, I left the airport and was heading downtown where the meeting was. I saw a train with a long line of grain cars, oil cars, and a couple of commodity cars. There was a CP engine and a BNSF engine on it. They're already working together in that partnership.

Mr. LaVar Payne: Could they be using BNSF's grain cars to come up on this interswitching, to load cars to ship south or wherever?

Hon. Gerry Ritz: Yes.

You see a mixture of cars now, U.S. cars, Canadian cars. In a mile-long train, you'll see a multitude of different cars.

Mr. LaVar Payne: Yes, I've actually seen some of those cars, but I just wanted to make sure that with this legislation this would be able to happen. I think this is extremely positive in terms of being able to help get our grain, as well as the other products, to market. As you said earlier, this is not rocket science. There are companies right across the country, whether it's coal, or forest, or petrochemicals, that are expanding. We need the railways to wake up and get with it.

Do I have any time left, Mr. Chair?

The Chair: You don't. You're right on time.

I'll go to Mr. Malcolm, or Mr. Allen, I should say, for five minutes.

Mr. Malcolm Allen: It's okay, Mr. Chair. It's my mother's fault.

Some hon. members: Oh, oh!

Mr. Malcolm Allen: They give you two first names, and it's just the way it is. It's the old adage in the ag committee, as long as they don't call you late for dinner, everything's well and good.

There are all kinds of documentation. Minister Raitt, I was interested in hearing you reflect upon your previous career and the whole idea of how you bring parties to the table and try to get them to come to a deal. Of course, in my previous career, I would be on the other side of the table trying to get the deal. The problem is, when you come to the table, you have to come at least as close as possible to being equals, so that one can actually have the leverage to get a deal. If you're powerless, you don't get a deal unless there's generosity on the other side to give you something, rather than trying to get something in a bargaining fashion.

Part of the problem in this, it seems to me, is there are two railroaders in this country ostensibly. Yes, there are short-lines and there are some others. I have a couple in my neck of the woods. There are some others, but ostensibly there are two main lines across this country, especially in the Prairies: one in the south, and one in the north. Some folks call it a duopoly, and some call it a monopoly, depending on whether you're in the south or the north. In some parts of the south in this country, in the Prairies, you just see it as a straight-out monopoly.

To use one of the pieces that I've been looking at, and as folks look at this act, the objective in the old board game Monopoly is to get all four railroads, and you do well if you own them all and somebody else lands on them. In this case, we only have half that number. Clearly what happens is they set the tempo in a lot of different ways. The question becomes one of how we balance that with the shippers, which you say are billion-dollar companies, and railroads are billion-dollar companies, but farmers aren't billionaires. How do we balance that piece? Shippers are saying they're powerless to deal with the railroads. That's what they're telling us. That's what they said last year when they came here and tried to get a service level agreement. They said they felt powerless because the railroads basically said no, they're not doing it. You don't have a choice to go to somebody else.

How do farmers work into this equation? As Minister Ritz said, how do we get things to them, since they really are the ones who are left holding the short end of the stick when it comes to the two of them, as all these costs flow back at them?

Let me mention something, and then I'll get you to comment. This is a Portland thing because it's easier to get statistics from the States, but here it's hard. Basically the average bid in Saskatchewan, on March 24, which was last week, was \$5.54 a bushel, and in Portland it was \$11.19. The basis was greater than what the farmer got, which was \$5.66, and that was to Portland. The biggest problem we have is getting the port of Vancouver's price and the inland price. That transparency isn't there.

How do we get a level playing field? How do we get transparency in the system for Canadian farmers so they really know what the heck is going on out there?

• (1620)

Hon. Lisa Raitt: Mr. Allen, it's pretty funny. When we were on the other side on back-to-work legislation, you didn't like it very much when we tried to tell the arbitrator what terms he had to consider in making up deals, but here on the other side, the more terms we give to the arbitrator, the happier people seem to be in terms of this issue.

That's a serious question and it deserves a serious answer, and it's this. The transportation of grain by rail certainly is a large cost to the producer, to the farmer, and that's something that's passed on from the shipper. That's why we still have a regulated rate, in a sense, for the shipment of grain. The railways cannot exceed a maximum revenue in terms of the shipment of grain.

When they do exceed it above a cap that is set by the Canadian Transportation Agency, the money is put into a fund that goes into research. That's how that system and that process are set up.

What the government is saying is that we understand this is a very large part of the cost associated with getting your grain to market, and we all accept and recognize that this is an important piece of rail transportation, so that's why we have a maximum revenue. We can have a lot of discussions about whether that makes sense, but those are discussions for the CTA, because this really is a complex issue.

From my perspective, as you move forward in talking about how to ensure a balance in the system, the more reliable and efficient our transportation, the quicker we can get that grain out of country elevators. That's where farmers deliver. That's where they have to deposit. The problem this year, as you know, is that the elevators were full because they weren't moving down the chain.

We focus on making sure that the system can move, that you unload in the terminal at the end of your destination, and that completely along the way you have every step of the process working together. We believe that the legislation helps to do that in a number of ways and that at the end of the day it will be beneficial for the farmer. The sooner we can move along and the more investment we have in the chain, the better efficiency we will have. The relationship with shippers and rail and the farmers is incredibly important.

We agree with you on one point: it's not the farmer or the producer who should be paying the price when we have big companies involved in moving the grain. As you know, shippers are trying to make their dollars, and when they have very little capacity, they have the ability to buy the grain at a very low price because of market demand.

As one final point, I would say, and I think it's important to create this baseline, that a Liberal government deregulated CN, and it's probably one of the best things they ever did, because it—

• (1625)

Hon. Wayne Easter (Malpeque, Lib.): Yahoo.

Voices: Oh, oh!

Hon. Lisa Raitt: I know, Wayne. I'm giving you some props. I hope you stick by it and that you don't try to overregulate—

The Chair: I should have cut her off, because we're over time.

Hon. Lisa Raitt: —because you guys are sounding kind of wonky right now.

Voices: Oh, oh!

Mr. Pierre Lemieux: Right on. Talk to Ralph.

Hon. Lisa Raitt: I may start quoting back at you what your former minister of transport said when he started this process at CN. But it has been a very good investment. It has been good for this country. They have done much better operationally than what had been done in the past. It was the right path to take. I stand by our private system of railways. The market has to drive this process.

The Chair: Thank you very much.

Hon. Gerry Ritz: Before you move on, Mr. Chair, if I may speak to Mr. Allen's point, I think the other thing that needs to be pointed out in this legislation is the regulatory framework for the Quorum group to have more oversight and week-by-week reporting, which was never done. It was usually a three-month retrospective that told you what went wrong, but it didn't really map out what to do.

Now we have the ability to report week by week on a quarter-by-quarter basis so we can actually see in a very timely way where these types of things, these roadblocks, are happening and then react to them. Again, that speaks to the regulations within the legislation as opposed to a legislative fix.

The Chair: Thank you very much.

Mr. Dreeshen, please, for five minutes.

Mr. Earl Dreeshen (Red Deer, CPC): Thank you, Ministers, for being here today.

In the last little while, our committee certainly has talked with a lot of farm organizations, port managers, grain companies, and with the railway operators as well. We are getting the picture. With what happened back in Winnipeg three weeks ago, I think we're starting to see it now as we're driving up and down the roads and seeing the volumes of grain that are now moving.

The other thing is that we're dealing with the legislation here. That's what we're studying. We want to ensure that our economy continues to grow and that our transportation logistics are going to be growing with that as well.

Minister Ritz, you mentioned some of the concerns and issues. Some of our commodities are moving at 6% and 8% increases, yet there seems to be a standard 2% growth that the rail companies are looking at. Eventually they're going to have to start explaining why it is they aren't making the types of adjustments so that we can see a great deal of change. They'll have to discuss that.

I'd like to go back to the Canada Grain Act and the changes that are going to take place there. We have contractual obligations between farmers and grain companies. It's known that farmers haven't been able to deliver on their old contracts, some going as far back as November. At the same time, as was stated, in case people didn't understand the rationale for the changes, and the basis, companies are unwilling to take this grain that they have contracted for. They're paying some cash prices for grain at lower amounts in order to fill up some of the calls they have. I'm wondering if you could go through just what the significance will be with regard to some of the changes we're looking at as far as the Canada Grain Act is concerned.

Hon. Gerry Ritz: Sure. In terms of the changes that we're proposing, right now in the contracts between the grain companies and farmers the only variance is called buyer's preference. What that means is the buyer, the grain company, can buy it at their whim, whenever they see fit and are able to move it. That's very prescriptive and has not helped our farmers. As we saw, that base has spread. I myself know farmers who still have contracts from October. There are very few of them left. They are cleaning them up, but there are some left from October.

This can't be retroactive, but moving forward we'll use the Canadian Grain Commission as the arbitrator, the adjudicator. What we're proposing is that if a grain company has listed a contract, or a broker has listed a contract with you for October and they haven't taken it by the end of November—that's a 30-day grace period—then you come to the Grain Commission and they will work on your behalf. They will assess penalties. This is the prescriptive area.

Again, we'll look at what recommendations come forward. In my mind it could be storage fees for the amount of the contract, 10,000 bushels or whatever it is. Also on the value of that contract they start paying interest at prime rate plus one, or whatever the regulations would call for. It starts to put an incentive in place to encourage them to actually honour those contracts that they have gone out there and done.

All of the grain companies assured me they weren't buying market share last year when they issued these contracts. They were sold orders. If that's the case then they could have taken them and moved them as well rather than moving the \$5 wheat.

Mr. Earl Dreeshen: You started in with what Quorum was looking at and the metrics they're going to be looking at. I'm sure that for both departments this is important. I wonder if either one of you, or both of you, could explain that. Perhaps you could go through the significance of the numbers and of actually having those numbers on a week-to-week basis and being able to check, especially with different corridors and so on.

•(1630)

Hon. Gerry Ritz: Yes, the biggest problem right off the top was Quorum never had access to the north-south corridor and they never had access to the corridor beyond Thunder Bay. There never really was any information as to what was available there for capacity or what was available there to move more product into some of the millers in the U.S.

There's also a two million to three million tonne market moving out of Chicago and around the globe that we've never really had access to. They're assessing how that could be run. That could be BNSF. It could be a number of different things. This will give Quorum access to much more technical data, much more timely data. The railways have been good at putting out a briefing book that really had nothing in it. It takes a lot of time to assess all the way through that and then find out there's really not the information you want. The new regulations will be much more prescriptive into what's acceptable, what's required, so that we can do a week-by-week analysis, corridor by corridor, so we know exactly where capacities are and where they're not, for all commodities.

Mr. Earl Dreeshen: Minister Raitt.

Hon. Lisa Raitt: Yes, I want to circle back. The information will be incredibly important. As we proceed we'll probably define even different information that we want to get, and we'll do that through the CTA regs.

There's one thing I do want to point out. Our two most efficient corridors in this country are the west coast and Thunder Bay. The question about defaulting to those two corridors is the fact that we want to move this grain as quickly as possible, so why wouldn't we pick our two most efficient corridors to do that?

A lot of the decision-making behind those corridors.... I would submit as well that our government is very acutely aware of the issues with respect to Thunder Bay, with the heavy ice that is there. Our coast guard is there with the U.S. coast guard making sure that we break the ice up so we can start moving the grain. We have a role to play, and we're there to play that role.

Finally, with respect to the utilization of the Vancouver corridor—Malcolm, I think you mentioned it before—there's the issue of picking up the quicker routes to get it out. People have been pointing to the fact that the port of metro Vancouver and English Bay have a number of vessels waiting for grain. Why wouldn't we send the grain to the vessels that are waiting for it? It makes absolute sense that we utilize our efficient corridors. That's what the railways are doing right now in order to meet the one million tonnes of grain a week, and that's what we want them to do.

The Chair: I want to thank the ministers for taking the time to be part of these discussions as witnesses. You've been very thorough, very up front. I think all of us appreciate that very much. We will be taking a short break while we switch witnesses.

•(1630)

_____ (Pause) _____

•(1635)

The Chair: I want to welcome back the two assistant deputy ministers, Greg Meredith and Scott Streiner. From the Department of Justice, we have Demeena Kaur Seyan, Alain Langlois, and Sara Guild. They are not at the table but will be there for backup.

There will not be opening remarks as you have been at the table, so we are going to the first round of five minutes, with Mr. Allen, please.

Mr. Malcolm Allen: Thank you to the department for hanging around.

The minister used a number in the carry-over of about 15 million tonnes. Most of the industry is telling me the minimum carry-over is 20 million tonnes, and some were expecting 25 million tonnes. Can you tell me how you came up with 15?

Mr. Greg Meredith (Assistant Deputy Minister, Strategic Policy Branch, Department of Agriculture and Agri-Food): I think the way the math would work is you look at what has been shipped offshore first, so we know that figure. We know roughly what's stored in port terminal. We know what's in elevators in the country. Therefore, knowing the crop, we do a little subtraction and come up with a number. Then we look at rail performance. The real variable in all of that is how rail will perform.

You were seeing higher numbers earlier in this exercise. I think the minister is counting on the railways to make good on their commitments, and that will work aggressively to keep the carry-out as low as possible, but you can't predict precisely.

•(1640)

Mr. Malcolm Allen: No, one can't predict precisely considering we don't know what's in the country. We have an estimate. I have to be truthful. The grain companies, and the folks I'm talking to are the major grain companies, Cargill and Richardson, are saying 20 million tonnes at the lowest. That's their low end, and I think they would know since they contracted. They're saying they're contracting December and January for new contracts at the moment, for old grain, not new grain, not stuff that is going to go in the ground. They are saying this is the carry-out stuff they are talking about.

I hear your numbers. I hope the minister was right at 15 million tonnes. The difficulty is that it looks as if it's going to be a higher number, which then raises complications for next year's crop.

Mr. Meredith, where do you see us headed with that if the carry-out is, and I don't care if it's 15 million or 20 million tonnes; it's much higher than normal since the normal is five to seven million tonnes. What do you see as that kind of difficulty over the next year or two? I've heard folks make predictions that this is a two-year carry-out never mind what we grow this year. If we get another bumper crop, heaven knows what that means to be truthful. What's the agriculture plan around what this means for farmers in the short term, because it's a two-year term?

Mr. Greg Meredith: I think a couple or three points are germane, Mr. Allen.

We don't yet have a really granular visibility on a lot of the grain that is moving in and out of the country through other areas like the St. Lawrence or down south. The minister mentioned that when he talked about the enhancements to the grain monitoring program. We should have much increased visibility on where that grain is going and how much is going. That will be another set of data that will help us forecast what the carry-out will be.

You are quite right that the carry-out is going to be substantial. The minister mentioned that the average is about eight million tonnes. Last year it was only five. The average crop over the last little while is about 55 million tonnes depending on what's planted. This year we had 76 million tonnes, significantly above average.

Let's say we have an average year of 55 million tonnes and we do somewhere between 15 and 20 million tonnes in carry-out. You can see we're still going to be faced with a fairly significant amount of grain. This year has been a learning period in several ways. I think the grain companies will scale their marketing programs sufficiently so they'll be able to calibrate the rail performance better. That's our hope. They've experimented with other means of moving the grain this year and they'll probably explore that. We know that farmers are looking at more permanent storage on farm and also adopting other temporary storage practices and making sure they're moving that grain first.

These are the kinds of considerations we have over the next little while.

Mr. Malcolm Allen: I know the Chair is going to cut me off, but let me just say this to add a layer of complexity, not that I'm trying to do that, but the reality is that I didn't make the ice.

The St. Lawrence Seaway is not open, sir. Let me just tell you that. The top hat ceremony downbound at the Welland Canal was supposed to be on Friday, which I would have attended. Obviously it's in my riding. It's not happening.

Mr. Streiner, your minister said quite clearly that they have as many icebreakers in Canada in the Lakehead that aren't moving out of there either.

I can tell you that it looks like the St. Lawrence Seaway is not going to be a place where they move things very quickly for a substantial period of time, unless that ice gets out of there. Pray for sun and warm temperatures and maybe we can melt Lake Erie because right now it's frozen solid, except for Port Dover.

• (1645)

The Chair: Thank you very much.

We will now go to Mr. Zimmer, for five minutes, please.

Mr. Bob Zimmer (Prince George—Peace River, CPC): I think my colleague, Malcolm, is done so there you go, I can talk now.

I have some questions.

In my neck of the woods in northeastern B.C., Prince George and Peace River, I have a lot of farmers and I'm hearing a lot of talk. We hear rhetoric from the other side. We hear rhetoric maybe from all sides.

Our people on the ground really want to hear what the actual number is of grain cars moving, and when that order in council took effect. Could you go through some of that basic information, talk about 500 or 1,000 per week? Can you quantify that? I know that's about 100 tonnes a car, but can you give us the baseline information again, please?

Mr. Scott Streiner (Assistant Deputy Minister, Policy Group, Department of Transport): The order in council took effect on March 7. It requires the railways to ramp up over a period of four weeks to one million tonnes per week. That equates to roughly 5,500 cars per railway, because as the minister has indicated, it's split half and half.

The railways have submitted their required reporting for the first week and now into the second week of their obligations and they're exceeding their ramp-up, but they still have to reach one million. That's the requirement. We will be keeping a close eye on those weekly reports to make sure they're there.

Mr. Bob Zimmer: That brings me to the second question.

What triggers the fine of \$100,000 a day? What is the mechanism that follows the data and triggers that response?

Mr. Scott Streiner: I assume you're asking about the existing order in council.

Mr. Bob Zimmer: Yes.

Mr. Scott Streiner: For the purposes of the order in council, it's an order made under subsection 47(1) of the Canada Transportation Act, so the enforcement provisions are there in the legislation.

What would be required would be for there to be evidence of a failure to meet the requirements under the order. If that evidence was there, the minister would refer the matter for prosecution, and upon conviction the fine would be imposed by the courts.

Mr. Bob Zimmer: How is that \$100,000 quantified, then? For our farmers out on the Prairies, how is this quantified and how do they understand that? What time period does it take to go through the process fully before that fine is brought forward?

Mr. Scott Streiner: That would depend on the speed of the prosecution, frankly, and the speed of the court system. There are a number of legal steps that would have to be followed.

What we're talking about is a fine upon conviction, not an administrative penalty. Needless to say, prosecution and conviction take longer than an administrative penalty would.

Mr. Bob Zimmer: Got it.

There are a lot of farmers in my riding, too, and they have a lot of grain sitting in their bins that we're concerned about. We're also concerned about the other commodity groups. I have a lot of forestry in my riding, too, and a lot of mills that are also seeking access to that same crammed logistics system that exists today. They're concerned that some of this capacity directed to farmers is somehow unfair.

Maybe fairness is a hard question for you to answer, but how can the other commodity groups be assured that they still have access to that same track and the same logistics system that our farmers have?

Mr. Scott Streiner: I'll provide perhaps a partial answer to the question because it starts to move a little into policy choices, and of course, those policy choices reside with ministers.

What I will do is reiterate what the ministers have said here and have said publicly, which is that the one million tonne objective was, in their eyes, ambitious but reachable. It was established in an attempt to surge capacity towards what was clearly, objectively, the most pressing problem facing the rail network, which was moving grain because of the extraordinary crop and because of the winter conditions. There was an attempt to balance that with the needs of other commodities and not to set that bar so high that transportation of other commodities would be affected.

That was the policy approach which the government adopted and so far, as we've seen, the railways appear to be meeting the targets that were set for them.

Mr. Bob Zimmer: Thank you.

The Chair: You have half a minute.

Mr. Bob Zimmer: Actually, I'm good with time. My next session will take longer.

The Chair: I'm sure Mr. Eyking will appreciate it. Five minutes, please.

Hon. Mark Eyking: Thank you for coming.

I have a couple of questions.

First, is there anything in the new regulations that is going to have a cost review on the whole system?

Second, will the government's new power to regulate contracts between farmers and grain companies require that the grain companies limit the amount they deduct from the farmer's grain cheques as the basis for a "demergence", so to speak? Can you disclose fully how that basis is calculated?

Those are my first two questions. If you keep the answers short, I'll have another question.

• (1650)

Mr. Greg Meredith: Mr. Eyking, I can talk to you about what's in the amendments that would affect the CGC. Those provisions would be respective clauses that would include performance and then penalties or compensation. It's up to the CGC to make those

regulations. Whether it would be on the basis or whether it would affect the basis, I doubt it because that would extend beyond penalties to regulating the actual price.

They would have the capacity to look at the farmer's out of pocket for storage. Alternatively, if the farmer had to sell into the cash market at a price lower than the contracted price, they would have the ability to make regulations about keeping the farmer whole.

Hon. Mark Eyking: And that will come in this.

Mr. Greg Meredith: That will be in the regulations.

Mr. Scott Streiner: Mr. Chair, with your permission, may I request a clarification?

In terms of your first question, Mr. Eyking, you said a cost review for the system. Are you referring to the transportation system? Could you clarify that?

Hon. Mark Eyking: The whole system, the whole supply chain, there hasn't been one for 20 years.

Mr. Scott Streiner: No. There hasn't been a cost review for 20 years. There's nothing in the legislation providing for a cost review.

As Minister Raitt noted, we will be accelerating the initiation of the Canada Transportation Act review. Minister Raitt will be considering what should be scoped into the mandate for that review. I can probably say that input from members of Parliament among others would be welcome in terms of establishing that mandate.

Hon. Mark Eyking: The other thing is, in layman's terms, you have farmers in the Fraser Valley who can't get enough grain. You have farmers in the Peace Valley who are trying to move their grain. When this all comes into play and they're still not getting more grain, they're still very low on grain in the Fraser Valley for their livestock.

You talk about the Grain Commission monitoring or being a policeman on this, but how are we going to change that around? Who's going to be the police to say, "Okay, you have grain, and it's not moving here; we're not getting grain in; somebody has to act"?

How is this going to change that situation?

Mr. Greg Meredith: I don't know that there is a magic bullet.

Part of the problem for the feed mills and the feedlots is there's not as much grain coming back out that's been cleaned in some of the silage that comes back out of the ports. The port terminals are about 40% down what their normal stocks would be at this time of the year. That's part of the issue.

What I would point to in terms of the enhanced reporting requirements that will be part of our grain monitoring program is the much more timely and granular perspective on where the problems are. It's going to be reporting by corridor and it will be weekly uploads. It will be weekly spotted cars with much more detailed information and much more real time than we have now.

Hon. Mark Eyking: That's the monitoring thing.

How is it going to work? Is somebody going to call up and say, "This is not happening. We want to see this in a week's time"?

Mr. Greg Meredith: There is no magic bullet there.

What I'm suggesting is that a better understanding of how the entire supply chain is working will help us understand what more needs to be done, if anything, in order to get those bottlenecks cleaned out.

Hon. Mark Eyking: Who would compensate the farmers who are not getting the grain? Could you foresee a situation where we have all this grain in Canada but we could lose livestock with not enough feed? Is that conceivable?

Mr. Greg Meredith: I haven't seen any evidence of that.

I have heard about shortages and not as many cars as preferable going into the feedlots and the feed mills per se. We haven't had anybody identify yet that there would be an animal welfare problem or anything of that scale.

Hon. Mark Eyking: I'm just wondering that all of a sudden we are going to be exporting more grain and still the internal domestic consumption is not going to be really dealt with. That's my last kind of—

Mr. Greg Meredith: It would be speculative of me to go down that road.

Hon. Mark Eyking: Do you have any comments on that?

Mr. Scott Streiner: I would just make two observations.

I would note that the order in council that was issued on March 7 requires the movement of a million, or to ramp up to a million tonnes per year. That's not all to export; that's movement, so the movement to domestic clients and to North American clients south of the border counts as well.

The other point I would make is that the government did commit, and has reaffirmed this commitment, to establishing a commodity supply chain table, something which was called for by the rail freight service review. We'll be moving forward with that. It could provide a forum, using the data that Greg talked about, to talk through some of these issues and bring greater transparency and greater cooperation between the different supply chain partners.

•(1655)

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

We'll go to the second round. Just so members know, we have some business to attend to at 5:10 p.m.

Mr. Lemieux, for five minutes, please.

Mr. Pierre Lemieux: Thank you, gentlemen, for being here.

I would like to ask you to highlight the difference between the order in council and this legislation. The order in council was a very first step. It was a very definitive step. It's easy to either forget that it happened now that the legislation is here, or to ask what the differences are between those two different mechanisms. There definitely are differences, even though at first blush they seem to be striving to achieve the same thing, which is one million tonnes of movement of grain a week.

I'm wondering if I could ask you to explain the differences, the very practical differences, between the order in council, which in fact would be in effect today, and the legislation, which we want to get into effect quickly.

Mr. Scott Streiner: I would make a couple of points. With respect to the order in council, the legislation actually does two things specifically that are connected to the order in council that was issued. First of all, it extends the million tonnes per week requirement from the automatic expiry date of 90 days after the order was issued through to the end of the crop year. The order in council in effect is extended to the end of the crop year.

Second, the legislation confirms that the order in council that was issued under subsection 47(1) of the CTA is valid. Just in case there was any legal ambiguity, it confirms the validity of that order in council.

Third, it creates the ability for the Minister of Transport and the Minister of Agriculture and Agri-Food to establish similar volume requirement on a go-forward basis if circumstances demand it. At the end of the crop year, the current million tonnes per week requirement will expire, but the ministers can set a requirement without the need to resort to an order in council for volume requirements on a go-forward basis. Those may cover the entire next crop year, they may cover part of it, or they may cover none of it if the ministers determine that it's not required. Now there is a legislative provision that will allow for ministers to take that sort of action without resort to an order in council and on the basis of advice provided to them by the Canadian Transportation Agency, which in turn is required to consult with supply chain partners.

Those are the main differences. The only other thing I would underscore, and it comes back to an earlier question about the \$100,000 per day, is that under the order in council the fine would apply upon conviction, as I said earlier, which requires prosecution. Under the legislation it will be an administrative monetary penalty, so it will be easier to apply in the event of non-compliance.

Mr. Pierre Lemieux: Very good. Thank you.

Mr. Meredith, is there anything you want to add?

Mr. Greg Meredith: No, I think that's a fulsome answer. [*Technical Difficulty—Editor*]...his last observation that was quite important in terms of speed and responsiveness of the system to a breach of obligation.

Mr. Pierre Lemieux: Thank you.

Let me ask another question. There has been discussion about what's commonly known as the revenue cap but is accurately known as the maximum revenue entitlement, or the MRE. I'm wondering if you can explain to the committee how the MRE works.

I know the legislation does not involve itself with the MRE, so you may or may not have a comment on that, but I think it would be useful for the committee to know how it works.

Mr. Scott Streiner: The MRE is actually set through a fairly complex formula, which is in the legislation but is actually set on an annual basis by the Canadian Transportation Agency.

The purpose of the MRE is to manage, to limit, the amount of revenue that a railway can make per tonne, per amount of grain moved. It is sometimes misunderstood as a cap on total revenue. The railways will continue to make money on grain moved if they move more grain. The railways have argued that because the amount they can earn on a per tonne or a per quantity basis is limited, it still affects their economic incentives to surge capacity into the grain sector. But it shouldn't be misunderstood as preventing them from earning more money after they've moved a certain amount of grain.

That's the MRE as it currently stands. As I say, it is set each year by the CTA. As the minister noted earlier, any excess earnings are put into a special fund and used for research purposes. The MRE is not, as you note, addressed in the current legislation. However, given the fact that this issue has been raised in the past in reviews of the legislation, there is every reason to expect that it would be raised by stakeholders in the context of an accelerated CTA review.

• (1700)

Mr. Pierre Lemieux: I agree with you. We did a study where we had witnesses before this legislation was tabled in Parliament, and there was talk about the revenue cap, or the MRE. I would say the stakeholders were of the opinion that the impact of the MRE, or the existence of the MRE, was not in fact adversely limiting rail movement of grain, but it was other factors that were. I'm sure we'll come back to this when we have other witnesses come in this week. Even though it's not in the legislation, I think you're right that it might be covered in the future review of the CTA.

Mr. Scott Streiner: I should probably clarify that the assessment of the MRE's impact, not surprisingly, varies depending on whether you speak to shippers or railways.

Mr. Pierre Lemieux: Exactly.

Mr. Scott Streiner: This is probably one of the reasons that, given the complexity of the formula and the divergence of views, a more careful look at the issue through a consultative process is appropriate.

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

We now go to Madam Brousseau for five minutes, please.

Ms. Ruth Ellen Brousseau: I'd like to thank our witnesses once again.

I think we could all agree that we're all on the same page. We have to get this done and get it done right. I know we're all willing to work longer hours. We'll decide that when the committee sits in camera shortly after this. One thing I really want to make sure is that we're going to work hard, and we're going to have witnesses come in. We want to make sure that this will be the best legislation possible. A lot of people, even some Conservative members, have come out and said that we need to do more, that we need to amend this bill. I just want to make sure that we can do this and work together to get it done right.

I want to go over the timelines. This is a big framework and a lot of it is going to be done with regulations. The minister is going to have more power. I was wondering if you could give us an idea of timelines for these regulations, and when you expect these changes to be made. We're going to work hard for the next two weeks and send it off before we head out for our two weeks back home. I was

wondering if you had timelines set up for the regulations so that we can get that out there as a reassurance for farmers, and also domestically and internationally.

Mr. Scott Streiner: I should probably preface the answer on this by saying that there hasn't been a formal decision on timelines, and ultimately, a decision on how much to attempt to accelerate the process would rest with ministers, not with officials. The regulatory process, as I think all members know, follows a number of normal stages. That process can be accelerated when conditions require it. I think both ministers have expressed a sense of urgency around this situation, but the extent to which the regulatory process would be accelerated would ultimately depend on a policy choice. In any event, any regulatory process would still go through some period of consultation and of gazetting so that the public were fully aware of what the government intended to do.

Ms. Ruth Ellen Brousseau: This could be another few months. The ministers were adamant that this has to be done as soon as possible. If all goes according to plan, it should still be approximately a few months.

Mr. Scott Streiner: Highly accelerated regulatory processes can be very quick, but I would not want to quantify how fast.

Ms. Ruth Ellen Brousseau: Okay, you don't want to comment on that.

Mr. Greg Meredith: Maybe I would just add to Scott's response that there are certain pieces of the legislation that do come into force very quickly.

Ms. Ruth Ellen Brousseau: Yes, order in council.

Mr. Greg Meredith: The portion of the act that overtakes the OIC, for example, to sustain the volume requirements comes into effect with the legislation on April 7, or the first Monday after royal assent. That facility will be in place right away. Then there are ministerial decisions that can be taken to seek exemption from pre-publication in the *Gazette* process, which would speed things up as well.

Ms. Ruth Ellen Brousseau: Would compensation for farmers be decided in regulatory measures, if that were to come to fruition at the discretion....?

Mr. Greg Meredith: From shippers to farmers, yes.

Ms. Ruth Ellen Brousseau: Okay.

I was wondering if you could comment on mandatory price reporting for better transparency. We know we have that in the States. That's something I think a lot of people have been calling for here in Canada. Is that something that has been considered, floated around?

Mr. Greg Meredith: Price discovery is really very important for farmers. It is a bit of a challenge because, as you know, a farmer at any given time could have multiple crops on his or her field. That means they have to do multiple investigations of futures markets, port prices, and inland terminal prices. This has been talked about in the sector for some time, but it is not contemplated in this legislation.

Ms. Ruth Ellen Brosseau: I was wondering about interswitching distances, from 30 to 160. How did you get to 160 exactly?

Mr. LaVar Payne: [*Inaudible—Editor*]

Ms. Ruth Ellen Brosseau: We had to include LaVar's riding.

Yes, I got it.

Voices: Oh, oh!

• (1705)

Mr. Scott Streiner: It goes to an earlier round of questioning.

Mr. Malcolm Allen: Or 148....

Mr. Scott Streiner: It seems highly precise.

Again, the choice of 160 was ultimately a policy decision. But there was, I think, a desire when we were looking at the interest switching provisions and at extending them for a period of two years, extending the limits to ensure maximum opportunity for competition and for additional railway service to come into support grain farmers on the Prairies.

Ms. Ruth Ellen Brosseau: I get that, but why 160 exactly? How did you get to that number? I know the reason that you were expanding it, but why 160 and not 150?

Mr. Scott Streiner: Probably the best way of explaining the impact of 160 as opposed to the other number is to provide you with a map which shows the difference between 130 and 160 and shows how you get full coverage across the Prairies. I think some of the members may already have it.

Ms. Ruth Ellen Brosseau: Is that available?

Mr. Scott Streiner: We can certainly provide a copy of that map to the committee.

Ms. Ruth Ellen Brosseau: Thank you.

The Chair: Thank you very much, Madam Brosseau, for your questions.

We'll now go to Mr. Watson, for five minutes, please.

Mr. Jeff Watson: Chair, interswitching sounds... [*Inaudible—Editor...*] cabotage for the airlines.

Officials, thank you for appearing this afternoon.

I'll start first of all with what was Bill C-52, the Fair Rail Freight Service Act. I try not to say that too quickly because I can't say it five times fast.

Bill C-52 in part attempted to address the issue of service level agreements which are voluntary, as you know, by making some improvements. The first was the creation, if you will, of administrative monetary penalties which would be imposed, if I recall correctly, by the Canadian Transportation Agency after

arbitration. It would be per violation. That was some attempt to establish the punitive measures for breach of obligations for services.

Is that a fair representation of what was done with Bill C-52?

Mr. Scott Streiner: There's just maybe a nuance. The service level agreements as you note are voluntary in the sense that the two parties are invited to negotiate them on a commercial basis. But it's important to note that the Fair Rail Freight Service Act and the changes to the CTA provide the shipper with the option to have a service level agreement, SLA, arbitrated if they can't negotiate one. So in that sense they're not fully voluntary. The railway can have an SLA imposed upon it through the arbitration process if a shipper and a railway aren't able to reach one through a negotiation.

The administrative monetary penalties, AMPs, that can be imposed by the CTA for non-compliance, are an attempt to focus the mind of railways and ensure that they will in fact comply with the obligations set out in the SLA.

Mr. Jeff Watson: One of the issues raised by the opposition and certainly raised also by shippers during the discussion on Bill C-52, and we're hearing it raised again here in the discussion of Bill C-30, relates to punitive damages, liquidated damages, compensation for shippers. If I understand the opposition, and I'll try to frame this appropriately what I think I'm hearing, they're suggesting to make service level agreements mandatory, define their operational elements in the Canada Transportation Act, and add a penalty regime. It's essentially the resurrection, if you will, of the arguments made on Bill C-52. There were a number of persuasive arguments on why that was somewhat difficult. It certainly wasn't simple, and it may have some unintended consequences.

First of all, is there any other commercial regime for addressing commercial contracts where in fact liquidated damages are set out beforehand in a piece of legislation? We're dealing with commercial contracts here.

Mr. Scott Streiner: There is not another regime where liquidated damages are set by an arbitrator in advance as part of an arbitrated agreement.

Mr. Jeff Watson: That's correct.

Were one to be imposed, a regime of penalties in this regard, could that disadvantage shippers by limiting their right to sue the railway in court for any damages after a breach has been confirmed?

• (1710)

Mr. Scott Streiner: That concern was expressed by the government at the time that Bill C-52 was being considered, that paradoxically perhaps these sorts of penalties through arbitration might work against shippers in getting full compensation for liquidated damages.

Mr. Jeff Watson: There was another issue raised, and I'll take this from the railway's perspective. In the case of a service level agreement, is it possible that railway companies could be penalized for poor performance or failure to meet obligations by other elements of the supply chain, say, the performance of a terminal hampering the railway's ability to meet its particular commitment? Is that a concern?

Mr. Scott Streiner: That's a concern that's been expressed by the railways around a hypothetical provision of this sort, yes.

The Chair: A very short question.

Mr. Jeff Watson: Instead of asking a very short question, I'll just conclude with a comment, Mr. Chair.

Deferral of this to a regulatory environment, the Canadian Transportation Agency, probably not only on an ancillary basis is good, but it will prove what we already know. It's not simple to do this, though it may be popular. I look forward to the results of that particular exercise.

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

Mr. Pierre Lemieux: If the committee consents, I have a nice coloured picture of a map. It's only in one language, so I'd need the consent of the committee to table it, but if you'd like to see it now, I

can table it and then you can have a look at the different interswitching distances.

The Chair: It may just help show—

Mr. Pierre Lemieux: It will be sent to the clerk for distribution once it's translated.

Ms. Ruth Ellen Brosseau: Is that available online?

Mr. Pierre Lemieux: I don't know actually. If you want it now, I can table it now, or it can be sent by e-mail later.

The Chair: This way all members have access.

Ms. Ruth Ellen Brosseau: It's not bilingual. We're not going to take it if it's not bilingual.

The Chair: Okay, then it's off.

Mr. Pierre Lemieux: Agreed. You'll just have to wait.

The Chair: We will get it translated and bring it back. She doesn't want it. There we go.

Thank you very much, witnesses, for your time.

We're going to break and go into closed session for some business.

[Proceedings continue in camera]

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