



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Agriculture and Agri- Food

AGRI • NUMBER 024 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Monday, April 7, 2014

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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 want to welcome everyone today to our 24th meeting of the Standing Committee on Agriculture and Agri-Food.

Today, we're doing clause-by-clause.

Consideration pursuant to Standing Order 75(1), consideration of clause 1, short title, is postponed.

We shall move into the act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures.

Colleagues, today with us we do have, from the Department of Agriculture and Agri-Food, Greg Meredith, assistant deputy minister, strategic policy branch; from the Department of Transport, Lenore Duff, director general, surface transportation policy; from the Department of Justice, Sara Guild, counsel, agriculture and food inspection legal services; Demeena Seyan, counsel, agriculture and food inspection legal services; and Alain Langlois, senior legal counsel, transport legal services.

I want to welcome each of you to this meeting. Hopefully, it will run along fairly smoothly so that we aren't here all night. But just so you know, there is a motion on the floor that, if we haven't got through it by 11 o'clock tonight, then we will move through those motions.

With that, to my colleagues, if you would take the bill, we shall start. How does committee want to move through this? Do you want to do it by section or do you want to do it by subsection? I will take direction from the committee on how you want to proceed with it. There have been amendments, as you know, that have come forward. Some of these clauses do not have any amendments. But I'm open to direction from the committee, if you want to do clause-by-clause or take the subsection within the clauses.

I'm going to do clause-by-clause, then, without the subsections. We will get to those subsections as we hit them.

On clause 2, the Canada Grain Act is amended, adding the following. There's a number of sections to it.

Shall clause 2 carry?

(Clause 2 agreed to)

The Chair: Shall clause 3 carry?

(Clause 3 agreed to)

• (1535)

The Chair: Hearing no debate, shall clause 4 carry?

(Clause 4 agreed to)

(On clause 5)

The Chair: We do have proposed amendments for clause 5.

We have LIB-1, reference 6511663, moved by Mr. Eyking.

Mr. Eyking, would you like to speak to your amendment, please.

Hon. Mark Eyking (Sydney—Victoria, Lib.): Thank you, Chair.

It's already explained in the amendment here. It indicates that in clause 5 on line 39 it's going to be changed to:

including, but not limited to, provisions respecting the rights of grain producers to deliver grain to licensees in a timely manner, the fairness, accuracy and transparency of basis calculations affecting the price paid by licensees to grain producers at Prairie delivery points, and compensation.

My amendment adds some very important details around these key issues.

First, of course, is the ability of farmers to deliver when their contract says that it can. Second is some clarity and transparency around how grain companies calculate that basis deduction of grain prices.

Mr. Chair and colleagues, we've had many witnesses bring up this point. We had Mr. Cherewyk, from Pulse Canada. He is the chief operating officer from Pulse Canada. He brought this forward. We had Brett Halstead from the Canola Growers Association. We also had Matt Sawyer from the Alberta Barley Commission and Ian McCreary. So we had many witnesses who brought this forward, wanting something in here that does more for farmers and gives them what they deserve.

It's pretty self-explanatory, so I move that this amendment be put in that clause.

The Chair: Mr. Payne.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Chair.

Thank you for putting forward your amendment.

We just got rid of the Wheat Board. I'm not sure that we need any kind of pricing that we would see. We're letting the market do the pricing, and we've also had other witnesses, such as Richard Phillips, who said that in reality you can't regulate everything.

So I have a little bit of difficulty in what you're proposing here.

Thank you.

The Chair: Mark.

Hon. Mark Eyking: I think, Chair, if anything, we found that this is not about the Wheat Board. This is about nothing having been put in place when the Wheat Board was gone.

When you see the quotes from Ian McCreary, they say that at the end of the day there is nothing that has been put in the legislation since the Wheat Board was taken away that would make sure that farmers get their share and makes sure there is some sort of mechanism that their grain would be delivered on time. That's what this is all about.

Mr. Payne, you've heard all the witnesses here stating that they want more teeth and they want more legislation to make sure they get their fair share and that they get the service that was provided for them. You cannot dispute that this would put some teeth into that one section there to make sure that we're achieving that.

● (1540)

The Chair: Mr. Lemieux.

Mr. Pierre Lemieux (Glengarry—Prescott—Russell, CPC): That's great. Thank you, Chair.

I understand that this is dealing with basis calculations. I get that. But I do have some concerns. These clauses of Bill C-30 deal with the Grain Commission ensuring that contracts are honoured. But I don't think it's the role of the government to be involved in fairness and accuracy. Those are very general terms for us to be legislating and their interpretation is wide open here. I don't think it's for the government to look at something and say, "Well, that's fair" or "That's accurate".

Mr. Chair, I would say that the clause, as it stands right now, is sufficient, and as I mentioned, it ensures that contracts relating to grain must be honoured.

The Chair: Mark.

Hon. Mark Eyking: I can quote Ian here. He states it. He says, "We require transparency both for prices and grain flow. We need an improved information process that approves the market information." He says that we can go some distance by getting better information out there to the public.

The numbers are out there. When you look at the basis price you see what.... I know that when you look at the price the Wheat Board got before and what they're getting now....

We're not sitting here saying that we want the Wheat Board back, but we're saying that you need somebody here who is going to monitor your prices, the transportation. You need some sort of watchdog and regulatory process that's going to guarantee that the farmers get their fair share here. Just stating, "Okay, we're going to move so many cars of grain" is not necessarily going to put more money into farmers' pocket if they don't get their contracts delivered on time and they don't receive the price that they're due.

The Chair: Mr. Dreeshen.

Mr. Earl Dreeshen (Red Deer, CPC): Thank you, Mr. Chair.

I also think that in a lot of the discussions people were recognizing the contractual aspect of the basis. You're looking at elevation, you're

looking at cleaning, and you're looking at inspections, at all of these other types of things that each individual grain company keeps unto themselves.

You can ask, and you can find out what it is going to be, but I think that when you take a look at the main issue as far as what the witnesses are saying, it's that people were saying, "This basis is wide because we cannot take your grain." I think that somewhere in this conversation we have got to the stage where people are saying, "Look at how much has been lost because of this." On those contracts that were brought in for November and should have been paid out here in March, there's been nothing lost. I think that somewhere people have this concept that this is what is taking place, other than the extra storage they have, as well as the interest that they would have there.

I think we're trying to put too many different aspects of this into this one component of the amendment. I believe we should be letting the market forces find their way through this.

Hon. Mark Eyking: If you just let the market forces deal with it, then the farmer who says, for instance.... I visited farmers right across the Prairies last fall. They had grains that they had sold at a certain price. How can you say it's all right that they kept that grain from November all the way to the following April? I'm a farmer—I grew vegetables—and if I had to keep my crop right to April, with the storage of keeping it, and losing the price that you were going to get in November and having to wait...who's paying for it? That's where you get the \$8-billion loss.

You can blame it all on the railroad, and the railroad is a big part of this, but it's also who's handling it and whether you are meeting your contracts. How can you say to your farmers that if they store this for the whole fall or winter they're not losing any money? I can't see where you get the logic in that.

Mr. Earl Dreeshen: In response, Mr. Chair, that's exactly opposite to what I have said. When you have these prices that you have contracted in November, that is the price you are going to receive. The basis, the spread of the basis, came about because of them saying, "Hey, we can't move this now, so don't bring in any other grain that we have to deal with."

You know what your price is. If you say that you're going to get \$10 for canola in November, once you deliver it that's what you're going to get. You're not going to have a loss in that particular timeframe.

Unfortunately, as I indicated, we are putting these two things together and we're making this assumption that it's like when the stock market goes down, that you only made that loss when you sold at the bottom. The reason why it is where it is was that they were saying they could not take it. That's why the spread was there. You have to look at all aspects of it in order to make a wise decision to work our way through it.

● (1545)

The Chair: I'm going to hear one more comment. We're starting to go back over some of the same things.

We'll hear from Mr. Eyking, and then if there's one more rebuttal.... Then we'll call the vote.

Hon. Mark Eyking: Well, when you look at all the witnesses we brought forward here, I think that in all due respect to all these witnesses who came in.... I just listed them off, and the clerk.... It's all quoted there. They state that there has to be something better here to help these farmers get what's due to them. You can't just say that the free market system is going to do it and there should be nothing watching out for them, because if you let that happen, they're just going to get less and less.

I guess the Conservatives must be saying that they are not agreeing with any of these submissions brought forward by all these witnesses, whether it's the canola growers or.... They all came forward here, like Pulse Canada. They want to see something better that makes sure their farmers get their due here, and I think here is where it fits in very nicely, right here, in that context. But if you're not going to have anything, and if this bill that we're putting forward is all about the railway only, then I think you're losing the purpose of it.

The Chair: Mr. Lemieux.

Mr. Pierre Lemieux: Thanks.

I'll just conclude with the comment that it's not the role of government to insert itself in a contractual sense between a buyer and a seller. Those two negotiate their terms. They decide if they're going to enter into a contract or not. It is not for the government to be in there trying to determine if what they are actually negotiating is accurate or fair. If one or the other side feels that it's not accurate or fair, then they don't enter into the contract. However, this provision allows, if there's a contract breach, for it to be arbitrated. That's what the witnesses were asking for.

This clause, as it stands right now in the legislation, allows the commission to arbitrate. There is a strategy here for when contracts break down. They can be arbitrated by the commission. The way it's worded now is fine, but what you're proposing is very problematic.

The Chair: Mr. Eyking.

Hon. Mark Eyking: As we've heard in the last comments, Mr. Chair, I think when we look at it, we're looking at transparency of what the farmer gets. There isn't enough in this that's going to guarantee.... I know the parliamentary secretary well. There's some process that can follow, whether it's going to be somebody looking at whether the farmer was done wrong or done right. I think if you have enough teeth going forward, and all the players at the table know there's transparency here, there's less chance that the farmer's going to get screwed. I don't see that right now. I don't think there's enough teeth here.

I think we have to respect all those witnesses who came here last week. There's no way the parliamentary secretary can state that these witnesses didn't state that they wanted something in there for more transparency.

The Chair: I think we're at the end of the debate.

Shall the LIB-1 amendment carry?

Hon. Mark Eyking: Can we have recorded vote on these amendments?

The Chair: Sure. If you want it recorded you just have to ask for it.

(Amendment negatived: nays 5; yeas 4)

The Chair: We'll move on to NDP-1, reference number 6501550, moved by Madame Brosseau.

Open up the discussion, please.

Ms. Ruth Ellen Brosseau (Berthier—Maskinongé, NDP): Thank you, Mr. Chair.

This is along the same lines. It just goes into

(s.4) establishing a system of mandatory reporting, to the Commission, on the price at specified points throughout the movement of grain, including the delivery of grain to elevators, the discharge of grain from elevators, the handling and treating of grain in elevators, and the shipping of grain to or from elevators, as well as the price at port of export;

So what this basically does is it establishes a requirement for mandatory price reporting, including the price at port and export. We think it's important based on some of what the witnesses said here at committee last week. It does target specific areas along the supply chain, and we think it's important to have this in. We can't forget that a lot of the witnesses said that this bill is a good step forward and that we are all here to make it better. So that's why we have submitted this amendment to the bill.

• (1550)

The Chair: Mr. Allen.

Mr. Malcolm Allen (Welland, NDP): The additional piece of this is actually about price transparency. If we look at the U.S. model, which is similar to ours, in a sense, it's an open market.

This is not about a wheat board; this is actually about information flows. In an open market, the only way you can make a business decision and enter a contract is to have certain information. If it's information that's privileged and kept by companies that say they will refuse to give it to you—for instance, the price at export, because certain companies are privately held—then how do you make your transaction?

In the U.S., the USDA comes out with a weekly report. It actually reports the number of vessels in port. It reports on the price. It reports on the sales. It reports on the basis. It reports on the unloads. Why does it do all of that? It does all of that so that the market can be open and people can make a decision. When it comes time to sell, I can decide to sell now because the price seems to be higher and the basis seems to be lower, or I can decide to hold my grains because the basis is higher and the price seems to be lower. That's instead of me having to guess or to search everywhere under the sun and maybe get the information or maybe not.

As we've seen the basis widen, I've used numbers that lots of folks have told me are not quite accurate. Others have used other numbers that folks have told them are maybe closer or maybe not so close. In an open market, you actually have a bid price and a buy price. When you go to the stock exchange to buy a stock, you actually know what the price is, and you know what you can sell it at, because that's a seller's price. Surely we want farmers, when they're selling, to have information that should be publicly available.

Basically what we're saying here is that if we actually want this to be transparent, let's use the Grain Commission to simply make the prices transparent so that you have one place, similar to a stock exchange, to go look for the pricing. That's really all you're doing. You're not actually telling folks what to do. You're not saying you can bring this much here and then, unlike the previous amendment, which talked a little bit about respecting the rights of grain producers to deliver grain, it has nothing to do with delivery. This is just price transparency so that you can make a decision as an elevating company or a transport company or a grain farmer. In this particular case, you actually know what the prices are and you can make your decision based on that information.

It's that simple, Mr. Chair; it's not any more complicated than that. I think in an open market, you would actually want that type of information to make an informed decision. Otherwise the information may actually start to change. Trying to find the Port of Vancouver price is not a simple one. Some of the private grain operators don't post their price. When you sell to them, you have no idea other than somebody might tell you that they hear the price is x.

This will actually open it up. I don't think my friends across the way would suggest that the U.S. isn't an open market, and that's exactly what they do with price transparency. They had what we have now, and farmers realized that even when they decided to put competition on the northern piece of rail going to the west coast, the railroaders just simply split the basis difference between themselves. This put an end to it, because now there was transparency in pricing.

That's really all it's trying to do, Mr. Chair. It's simply to get some information into the hands of those who want to enter into a contractual arrangement, whatever that arrangement happens to be. It's their call to make. They just need to have information to make I think more informed decisions.

The Chair: Thank you, Mr. Allen.

We'll go to Mr. Dreeshen, please.

Mr. Earl Dreeshen: Thank you very much, Mr. Chair.

I'd like to read out one of the things Richard Phillips said, "Pulse Canada has a contract to do a bunch of that research to determine the metrics and measure things. I think that sort of work is absolutely key, and the government has funded a project for that." So it is something that we are looking at.

In terms of the actual market mechanisms that exist and what we're doing right now, farmers are making these calls from their combines. They recognize what is out there and the different companies they can go to. The amendment states "including the delivery of grain to elevators", so you have to then be able to talk about the different options that exist there, whether you have an on-farm pickup or whether you're looking at the trucking allowances that many companies will throw on as an incentive to try to bring things in.

When you start to expand the discussion so that this comes into a particular bill, I feel that will make it much too cumbersome. When you look at the options you have, whether you're going to use forward contracting, the street prices I just mentioned, futures contracts, and all these types of things the individual farmer has at his hand, if we are going to give them marketing freedom from that

perspective where they can go out and they can make those decisions, then that's what those who were supporting marketing freedom were talking about. They are now saying let's move forward on this.

So I do think, especially with that one line in there, when you're talking about our being able to take this thing from the moment it's swathed to the moment it gets to the port, we are going too far in this, and there should be other options.

• (1555)

The Chair: Mr. Payne, please.

Mr. LaVar Payne: Thank you, Chair.

With all due respect to my friend Malcolm Allen across the way and the U.S. as an open market, he might recall that we actually were in Washington regarding...what was that, Malcolm? Oh yes: COOL. So much for the open market. Also, of course, we've always had softwood lumber, so....

I'm not certain, but this looks like it potentially is a new agency that might require something else in the act. Anyway, enough said.

The Chair: Mr. Eyking.

Hon. Mark Eyking: Thank you, Mr. Chair.

I think this clause dovetails with our previous clause. It's all about transparency.

The honourable member over there says there are more efficiencies. Yes, we sell products on the cellphone and on computers. The issue is that many farmers don't always have the luxury that some other farmers have in regard to who's going to buy and how many rail lines they can go on. Sometimes they're kind of stuck, and I think that if nobody's watching out for how much they're getting paid at the end of the day.... I mean, this is what it's all about, because when you see the numbers.... The numbers are out there. Farmers used to get 90% when you had the single desk, and now they're down to 40%.

But I think that at the end of the day—and Mr. Allen stated it—in the United States there is way more transparency. There's way more transparency in the system. There's a watchdog. You just can't let the total free enterprise system deal with this when some farmers don't have the luxury of having a lot of different buyers to sell to.

You guys are representing these farmers out west. You must know that some of them don't have the flexibility to have so many different buyers and so many different rail lines coming right to their backyard. I think those are the farmers we have to watch out for, those who are not getting.... I don't want to push it as far as saying that they're getting ripped off, but they're getting more deducted than they should from what they should be getting for their product.

The Chair: Mr. Watson.

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

Earlier I think one of our colleagues brought up the testimony from Richard Phillips. If the government, through funding a project, is already assisting the industry itself in the development of important metrics and measurements, then this particular clause is asking essentially to do the same thing, only now we're asking the Grain Commission to take on a role that I don't believe the Grain Commission currently plays. I think our officials could probably either confirm or deny that for us. I wouldn't mind an opinion from the officials.

But if that's the case, I don't recall a single witness at this committee who asked that the Grain Commission undertake that particular function. Maybe our officials could comment on whether this is a new regulatory authority being established.

The Chair: Mr. Meredith.

Mr. Greg Meredith (Assistant Deputy Minister, Strategic Policy Branch, Department of Agriculture and Agri-Food): The Grain Commission doesn't have this power at this time, so this would be a new regulatory authority. We don't know what the scale of that challenge would be.

• (1600)

Mr. Jeff Watson: Okay.

Chair, I don't recall any witness asking for that.

The Chair: Is there anything else? I'm going to call the question then. Those who support the amendment, shall it carry?

Opposed?

As I mentioned, you either act or we move on. When I said "those who support it", I saw two hands go up. When I said no, I saw five go up.

Hon. Mark Eyking: I thought you were recording the votes, but apparently not.

The Chair: You have to ask each time if you want a recorded vote. That's usually the rule, but if you want to have each amendment recorded...?

Hon. Mark Eyking: Sure.

The Chair: Okay. I'm sorry. I didn't take it as that. Any other time I've been in, it just goes...

Hon. Mark Eyking: Chair, there are not a lot of amendments here, so I don't think it's a big deal that we record them.

The Chair: No, it isn't. I just need to be asked. That's all.

Hon. Mark Eyking: Okay.

The Chair: Mr. Clerk, a recorded vote, please.

(Amendment negated: nays 5; yeas 4)

The Chair: I will move to a motion on clause 5.

Do you also want that recorded?

Hon. Mark Eyking: I would just like to see the amendments recorded—that's my request—but not the rest.

The Chair: Okay. That's what we're going to do.

Shall clause 5 carry?

(Clause 5 agreed to)

The Chair: Actually, folks, when I ask for that, I would appreciate it if you would put your hands up. It takes the judgment away from me.

Thank you.

Amendment G-1 proposes a new clause 5.1. A decision on amendment G-1 applies to amendment G-2 and amendment G-3. Those are the government ones, and they are consequential amendments.

Mr. Lemieux.

Mr. Pierre Lemieux: Thank you, Mr. Chair.

I would like to propose an amendment.

That Bill C-30 be amended by adding before line 4 on page 3 the following:

5.1 (1) Subsection 116(4) of the Canada Transportation Act is amended by adding the following after paragraph (c):

(c.1) order the company to compensate any person adversely affected for any expenses that they incurred as a result of the company's failure to fulfill its service obligations or, if the company is a party to a confidential contract with a shipper that requires the company to pay an amount of compensation for expenses incurred by the shipper as a result of the company's failure to fulfill its service obligations, order the company to pay that amount to the shipper;

(2) Paragraph 116(4)(c.1) of the Act is repealed.

Mr. Chair, I would also move a subamendment. I read the English text. On the French side it will be noted that in the first paragraph 5.1 (1) it says "*de la*" twice. I would like to delete the second set of words where it repeats "*de la*". With that the subamendment would therefore read on the French side 5.1(1)

[Translation]

"Le paragraphe 116(4) de la Loi . . ."

[English]

So we just have "*de la*" once.

• (1605)

The Chair: I need someone to move that subamendment in terms of the two.

Mr. Watson.

Mr. Jeff Watson: So moved, Mr. Chair.

The Chair: We agree with the subamendment on the amendment. For the French section, can we have a show of hands regarding the subamendment please?

(Subamendment agreed to)

The Chair: Now we're on the amendment.

Mr. Pierre Lemieux: You're saying that the subamendment was passed and now we are on to the amendment? Okay.

Mr. Chair, I've moved this forward, because this amendment would provide tools for producers when railway companies breach their service obligations. This tool would continue to improve the efficiency, reliability, and predictability of the supply chain.

It's important, because it allows for direct compensation for shippers who enter service-level agreements. This is something that many shippers from all commodities have asked for. In fact, Mr. Chair, this goes beyond reciprocal penalties that some have called for. For instance, if a shipper is out of pocket, the Canada Transportation Agency can, as I just read:

order the company to compensate any person adversely affected for any expenses that they incurred as a result of the company's failure to fulfill its service obligations.

Basically this would include something like demurrage.

The second part of the clause is just as important, because it allows compensation to be paid within a commercial contract. Therefore, this will encourage the shippers and the railways to come to the table and set their own reciprocal penalties if that is their desire.

Subclause 2 is the repeal mechanism that works with the sunset clause at the end of the bill.

Mr. Chair, this is a market-based solution for getting service-level agreements with teeth. I think this is something that the committee certainly heard much about from witnesses.

The Chair: Thank you, Mr. Lemieux.

Mr. Eyking, please.

Hon. Mark Eyking: Thanks, Mr. Chair.

On the outside, this looks good, but maybe the parliamentary secretary.... Let's talk about an example. Let's talk about a farmer whose grain was supposed to be moved last December. Now it's the middle of January and he's lost \$100,000.

First of all, what expenses would be included in this? There's another thing. Let's go through it. Now, how would a producer... What process would be taking place? How would they have access to this? Also, what about timelines? Would they get paid in 30 days? If it was noted that they had lost \$100,000, would they get paid in 30 days? Would they have to go through some sort of regulatory process that could take six years?

I'd like the parliamentary secretary to give an example of a farmer. We know many of them across this country who have lost hundreds of thousands of dollars. Let's say one stepped up to the plate now and said that he still has grain and he could have got way more for it last November. He wouldn't have had to store it, and now he's sitting with it and he's losing its value, so what does he do?

Let's go. Am I going to be assured that I'm going to have money in 30 days if I can show my receipts that I've lost money and I have expenses? Give us an example of the expenses that will be eligible and the process for what the farmer does. Do they just pick up the phone and ask somebody to come to their office?

The other thing is timelines. We know that the government has crop insurance and various programs out there, and there are timelines for when you get paid. We just hope that we don't have some bureaucratic system here that the farmer can't have access to and where he has to wait forever for the money while the banks are waiting for that farmer to pay his bills. Maybe can you give us an

example of the farmer who lost \$100,000 over the last couple of months?

The Chair: The next on the list I have is Mr. Allen. I'm sure somebody will get back to you.

Mr. Malcolm Allen: Thank you, Mr. Chair.

I think fundamentally I don't disagree with the proposed amendment from the parliamentary secretary. The only piece—and I don't know whether the parliamentary secretary would entertain a subamendment or not, but I'll look to see how he feels about it—is the second bracket, where it says, “(2) Paragraph 116(4)(c.1) of the Act is repealed.” That actually talks about the sunset provisions. Clearly what it would do is sunset this piece.

I think what we're trying to suggest to the government is that we understand overall there's a sunset provision for sure, not that we necessarily agree with that either, but if this is left in place without a sunset provision, the message it sends is that there will be something in place. I'm sure the government will tell me that they intend to put something new in place, but if it doesn't get there in time, we at least have this. That's why I would suggest to them that if they were willing to perhaps negate that, not suggesting that....

We like the spirit and the intent of what the suggestion of the amendment is, so I don't know whether the other side is willing to do that or not, but I'll see how they feel about it, Mr. Chair.

•(1610)

The Chair: I think maybe you'll hear.

I'm going first of all to Mr. Dreeshen.

Mr. Earl Dreeshen: Thank you, Mr. Chair.

I just have to go back to this. I will try to state it as clearly as I can. When someone suggests that you've lost \$100,000, if you have made a contract for a \$10 canola that you should have delivered in November but isn't delivered until March, you still get your \$10 for your contract. You haven't lost a cent. It's the storage and everything else. That is the point. As for what might have happened to the market in the meantime, it might have gone down and there might have been spreads as far as the basis is concerned if you were selling other grain, but not that which you have marketed.

When we continually say that on the contract side it was lost, that isn't accurate. If you want to say that for the grain you have left in your bin, the grain that you could have contracted, there's been a change as far as the market is concerned, and you're being squeezed by the basis, I agree. But until you sell it, that hasn't taken place, so when we say that the contracts are going to be an issue in this case, it isn't accurate.

Thank you, Mr. Chair.

The Chair: Our next speaker is Mr. Watson, please.

Mr. Jeff Watson: Thanks, Mr. Chair.

I think the member opposite is confusing a couple of things here. The amendment, as I understand it, isn't about a retroactive situation. This is about putting in place a regulatory framework or mechanism of compensation, the intention of which is to compel shippers into a service-level agreement, or to strengthen their...because they get, by Bill C-52, the ability to request a service-level agreement. This will provide the additional backstop behind it, or the teeth behind it, that will hopefully get the rail companies to agree on mutual penalties within a service-level agreement. If not, then shippers can go to the Canadian Transportation Agency for that particular remedy.

So this is to enhance the process, I think, that was established in Bill C-52. It's not dealing with whether producers lost anything with respect to the situation at the moment. This is about whether or not service-level agreements going forward have some strength to them, or the means of compelling or persuading the rail companies to sort of see the light with respect to how they structure the service-level agreements. If they don't, then they will compensate.

The Chair: Mr. Eyking.

Hon. Mark Eyking: I'm still looking for the answer to my question, because it's all about expenses. Whether it's demurrages or whether you've had to keep the grain dry, what are your costs? What are the costs to the farmer? What are the expenses that will be covered? That mechanism is very important. It's very important for a farmer to know, if he or she has done wrong, that they will be....

If some system is going to come in very quickly and assess their situation within so many days, and if it's assessed that they have acquired these expenses, then when will they get paid? Has somebody gone through the system? I think we need to know right now. On the outside I think it's good, but let's get into the details a bit about the expenses. What are the expenses that a farmer will incur, and what are the losses that will be eligible?

The Chair: Mr. Lemieux.

Mr. Pierre Lemieux: Thanks, Mr. Chair.

I think what I want to highlight is that this amendment deals with service-level agreements. SLAs generally exist between, for example, elevators and rail companies based on service. That's what we're talking about.

The other thing I would point out is that service-level agreements are dealt with already in the Canada Transportation Act. This particular act here, Bill C-30, is not trying to reinvent SLAs and the way in which they're handled or arbitrated. That's already within the Canada Transportation Act. What this is doing, though, is it's responding to the witnesses, who we all heard from, who said that when it came to service-level agreements, they wanted teeth in those SLAs. That is what this is delivering.

You were asking for an example, so let's take demurrage. A grain shipper contracts with the rail company, has a service-level agreement with the rail company, the SLA is not respected by the rail company, and there are demurrage fees. That would normally be paid by the grain shipper, but now the rail company actually has a role to play in compensating the grain shipper for that, through the SLA. If there's a breakdown, then there's an arbitration process that's already in place for SLAs.

The thing I would point out is that this amendment is strongly supported by shippers from all commodities. It's also my understanding that the Coalition of Rail Shippers supports this.

So this type of an amendment has very strong support.

● (1615)

The Chair: Mr. Eyking, and then we'll wrap up.

Hon. Mark Eyking: Just to follow up, I can see where you're going with this. In terms of the demurrage rate, for example, let's say the farmer takes the hit on that and it's assessed quickly, we hope. Somebody's got to take the money from the railroads or whoever has done the farmer wrong. The money has to come from somewhere to be given to somebody within 30 days.

Is that what you're saying, that they will take it and say, okay, the railroads have done wrong, or the grain company or whoever has done wrong, and that will be determined? What's the mechanism for taking the money from one hand and giving it to somebody? Or will the government end up paying for the farmer's losses?

Mr. Pierre Lemieux: Chair, let me ask our witnesses. I've tried to explain it as best I can. It doesn't seem to have been understood.

Hon. Mark Eyking: Well—

Mr. Pierre Lemieux: I'll ask our witnesses to come at it from their perspective. Perhaps the way they explain it might shed some light on it for you, Mr. Eyking.

Mr. Alain Langlois (Senior Legal Counsel, Transport, Legal Services, Department of Justice): Sure. I'd be happy to.

Under the current legislation, there is a remedy in legislation that's called "level of service". Every shipper that ships any products, any commodities, and who feels that the railway has not complied with its level-of-service obligation as stated in the act can complain to the agency. The agency currently has broad powers for the remedy in the act.

The power that it doesn't currently have is to order the railway to pay compensation to the shipper, so that is what this amendment does. It covers not only shippers that are party to an SLA but any shippers that don't have a contract. It uses the existing remedy to resolve level-of-service complaints to allow the agency to order compensation in favour of the shippers.

A question was asked about timelines. The legislation forces the agency to make a ruling within 120 days, and the agency would set out in the order the timelines for the railway to actually pay the shippers.

The Chair: Mr. Eyking, do you have a quick question for the witness?

Hon. Mark Eyking: In the bill it states that they "may" pay, but it doesn't say that they're obligated to or that it's mandatory. Are you saying that...?

Mr. Alain Langlois: It's just that you have to show that there has been a loss.

Hon. Mark Eyking: Oh sure. Yes.

Mr. Alain Langlois: If the shipper can show the agency... First of all, you need a breach, so you need the agency need to come to the conclusion that the railway has breached its obligations. If it has, and if the agency is satisfied that there's been a loss, then the agency has the ability to award compensation.

Hon. Ralph Goodale (Wascana, Lib.): So it's not required.

Mr. Alain Langlois: Well, it's not required, but if you require it, then at every time they have to order it. But you may not be in a circumstance where you need to order compensation every time if there hasn't been a loss. It's a power given to the agency. If there has been a loss, then you assume that the agency will order it.

Hon. Mark Eyking: Mr. Chair, I have a comment. I've sold enough product to know that you never want to be in court all the time collecting your money. I think that's what concerns me about this whole thing: that all of a sudden the railroads say they think they did their job and they have their lawyers and it goes back and forth and back and forth. At the end of the day, if a farmer feels and shows that he has been done wrong or has lost money and goes to this agency, then that's it, right? If the agency says yes, you've lost \$100,000, that's it. The farmer assumes he's getting \$100,000, I'm guessing. Or does it end up in court with the railroad and the farmer having to wait until all of that comes out?

That's the last part. I understand. This, on the outside, is good, and the parliamentary secretary explained it all to us, but it's that final part of getting the money into the farmer's account that concerns me. You've explained it, but I don't have the official on that.... Can the railroads can go to court to fight it, maybe for months? So the farmer might.... Is that possible?

Mr. Alain Langlois: Yes. The answer is yes. I mean, if the agency issues a decision under the act, there is an appeal process to the Federal Court of Appeal, but it's true in every instance, whether you have a contract or whether you have an arbitration process. There is always an ability to challenge a decision of an arbitrator or any body of law and to appeal it if you believe the decision is wrong.

Hon. Mark Eyking: So I'm right in saying that—

Mr. Alain Langlois: There's an appeal process in legislation for the railway to—

Hon. Mark Eyking: —there's an appeal process for the transportation company to go back to, and the farmer has to wait until that's all settled.

Mr. Alain Langlois: Yes.

• (1620)

The Chair: Are there any other points?

If not, we do have an amendment that was amended and accepted, so I would ask, shall amendment G-1, reference number 6515935, carry as amended? That was with the French component to it. Will it be carried until we have—

Ms. Ruth Ellen Brosseau: Malcolm had a subamendment, though.

The Chair: Oh, I'm sorry. Did I miss that?

Mr. Malcolm Allen: Thank you.

I indicated this to the parliamentary secretary earlier, and I didn't quite get a response.

Mr. Pierre Lemieux: You did?

Address it to the chair.

Mr. Malcolm Allen: Yes, through the chair, what I suggested in my comments....

You may have been consumed with advice that was coming back and forth from the back wall. I know the brilliance that is back there and they perhaps were helping out, which is always a good thing, because we have brilliant folks back here as well. What I suggested was on your last piece, "Paragraph 116(4)(c.1) of the Act is repealed", which is the sunset provision.

What I suggested was that if there were a willingness across the way, we'd present a subamendment that says to remove it, but rather than going through an additional vote—which is what I'm trying to suggest to you—if the willingness isn't there, then I guess I'm not going to propose a subamendment that says we want to repeal that piece, and then we won't have an additional vote. That's what I was trying to suggest to you.

Mr. Pierre Lemieux: I can comment on that, Chair.

The Chair: Okay.

Mr. Pierre Lemieux: I think it's really important to put this legislation in context. This is legislation that has a start and a finish. It's meant to address a situation that exists right now and that is going to exist for the foreseeable future. But there will be an end to it, so there are many clauses in here that are going to be repealed in time. I think that is appropriate.

I would also say that there is going to be a review of the Transportation Act. We heard many witnesses say they actually liked the legislation the way it was. They had a couple of suggestions, such as this particular one that I'm proposing right now, but they also fully recognized that under the upcoming review, which I'll call an accelerated review because we're starting the review of the Transportation Act earlier, they are going to make more meaningful long-term types of suggestions as to how to amend the Transportation Act.

I really want to put into context that this bill actually has a start and a finish. It can be extended at the time. When things should be sunset, there will be a possibility to extend, but this legislation is not meant to go on into eternity.

The Chair: Okay.

Mr. Eyking.

Hon. Mark Eyking: I'd just like a little clarification on terminology.

Alain, you mentioned that the shipper gets compensated, but how does the farmer get compensated? You keep talking about how the shipper's going to be compensated. You mean the shipper from the grain company? You're not talking about the farmer?

Mr. Alain Langlois: The legislation deals with the relationship between the shipper and the railway. If the farmer's not the shipper... The legislation only deals with the relationship between the shipper and the railway. The relationship that exists between the shipper and the farmer will be dealt with under the instrument that deals with that, but this act doesn't cover that.

•(1625)

Hon. Mark Eyking: I'm just using the hypothetical situation. That boatload of grain was supposed to go to Japan, but that didn't happen, and it keeps coming back, and eventually the farmer doesn't get paid or gets paid less or whatever and has to go for another shipment. Let's follow the money here. When that boat leaves without taking their grain, the grain goes to rail and to the shipper, which is the grain company, but it doesn't necessarily come back to the farm in this process. This is only for the grain company and the transportation company. The farmer's not involved with this process. Is that right?

Mr. Greg Meredith: That's correct. The farmer's interests are in the CGA. The amendments to Bill C-30, which we talked about earlier, deal with provisions that can be inserted into contracts and the penalties for breach of those provisions. That's the relationship between the shipper and the farmer, and that's how the farmer gets compensated.

The Chair: Mr. Allen.

Mr. Malcolm Allen: The response from the parliamentary secretary I'll take as a "no" to the subamendment, so I'm not going to propose it. We'll let it go.

Mr. Pierre Lemieux: That's fair.

Actually, I was going to point out, Chair, just to follow up on Mr. Eyking's question, that as I said in my earlier remarks, this deals with service-level agreements, which are between shippers and the rail companies. What's been happening is that the grain companies, or the shippers, have been losing money and that loss has been passed on to the farmer. The point is that if the shipper is not losing money because of something that had to do with a service-level breakdown by the rail companies, he's not passing that on to the farmer because there was no money lost there. The rail company is paying for the loss to the shipper. The shipper doesn't have to pass it on. He didn't incur a loss. In the end, it was paid for by the rail company.

Then as I think Mr. Meredith said, under the Grain Act, there are sections, which we just went through, that are about the producer—the farmer—and the grain company. So, actually, it's on both sides of the equation. This is dealing with both sides of that equation.

The Chair: Thank you.

Mr. Dreeshen.

Mr. Earl Dreeshen: Thank you, Mr. Chair.

I have just a couple of comments.

First of all, there are farmers who can't enter into service-level agreements. I think that's one thing to recognize.

It's difficult sometimes when you listen to people talk about the cost of demurrage and how that's always passed down to the farmer. That's the rhetoric we hear. Then in this case we're suggesting that, no, that isn't the situation. It's just going to be to the shipper. Of course, this is part of the argument. This is, again, why the spread is in the basis, because they know those are potential charges that might come about or actual charges that are coming about.

I think it's important that we kind of recognize the significance of what we have here and how this is going to be able to help throughout the system.

The Chair: Mr. Eyking.

Hon. Mark Eyking: Just for clarification, when you say it doesn't come back to the farmer....You guys came out with the \$8-billion number, right? You would have to agree that a good chunk of that \$8-billion loss came from the farmer over the last six months. You would have to agree with that. Or, where is this \$8-billion loss out there, if it's not mostly with the farmers?

You're telling me that none of this loss goes back to the farmer, that the farmer could sell his stuff later, and that he can get in these contracts. But you guys came out with the \$8-billion loss. I'm assuming that at least three-quarters of it is coming out of the farmers' pockets.

That's why I sometimes can't understand when you say the farmer is not losing here, that it's the shipper that's losing or the grain company that's losing. The farmer is going to lose at the end of the day.

Are you saying that all the grain companies are going to lose that \$8 billion and the farmers aren't?

Mr. Earl Dreeshen: Just as a very quick response to that, my question was based on demurrage. In terms of the comment you made as to where that was going to be lost, if you look at the length of time it takes for contracts to work their way through the system, when a person is buying and losing, and you're saying, "Hey, I could have sold all of this back in the fall when the prices were high and now world prices have changed, and so on", that's a regular marketplace.

What you have to realize is that for those people who were forced to sell, those are lost dollars, they're lost opportunities, which is the reason we had advance programs, and so on, that people could take a look at.

But just to get to the actual point of what we're talking about and what had been presented, as far as who's losing, as far as demurrage payments are concerned, and whether this particular amendment is going to deal with this, I believe it will.

The Chair: I'm going to go to Mr. Watson to wrap up.

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

I think what the member opposite is trying to achieve is somehow a retroactive compensation mechanism for farmers.

What the bill is designed to do—and this amendment, in terms of improving it—is to address the issue of the carry-over and shipping going forward, and who gets compensated.

If I understood witnesses correctly, in terms of moving grain forward, we had two approaches. We could get into regulating far deeper down into every aspect of the logistics chain. I didn't hear a single witness suggest that was the route we should go.

What I heard from witnesses is that in order to move grain, they wanted the ability to move it by commercial terms through service-level agreements. Their hesitancy in approaching Bill C-52 in order to have service-level agreements was that they didn't think there were sufficient teeth. This is to do that in order to move the grain on a go-forward basis.

You have an additional problem you're trying to raise. I think you're hoping to make this mechanism the means of going back and addressing that. The mechanism has to be taken for what it is, which is to strengthen service-level agreements. Every witness I heard wanted that. They didn't want a deeper regulation on how to move the logistics here.

That being said, I think the amendment, G-1, should be supported, as strengthening Bill C-30.

• (1630)

The Chair: Mr. Eyking.

Hon. Mark Eyking: I don't think I have to repeat myself to the parliamentary secretary; it's his amendment. But I asked twice already. When you say, "the company to compensate any person adversely affected for any expenses", what does that mean? What is the definition of that?

Mr. Pierre Lemieux: I'll just answer it quickly, Mr. Chair.

A person is a person as defined in law. In terms of expenses, there is a regulatory process as well that's defined here, right? True, you want to consult with and have input from the shippers in terms of what they're specifically thinking of, right? You would want that. That's what this process lays out.

Mr. Chair, I want to make sure this section goes underneath the Canada Transportation Act title, not above it when you're inserting it into the act.

The Chair: Okay.

Mr. Pierre Lemieux: Yes. It's going to go below the Canada Transportation Act title.

The Chair: He's nodding yes. That's a good sign.

Mr. Pierre Lemieux: Good.

The Chair: I will ask the clerk now, shall G-1 carry as amended?

(Amendment agreed to: yeas 9; nays 0)

The Chair: When G-1 is carried, and when we get to G-2 and G-3, it will also apply to them. So when you have your list, we will be able to move beyond G-2 and G-3.

(On clause 6)

The Chair: We now go to G-2, which we've just talked about.

And now we'll go to LIB-2, 6510405.

Mr. Eyking.

Hon. Mark Eyking: Thank you, Mr. Chair.

This amendment was talked about many times. We're talking about corridor capacity. We're talking about supply requirements for short-line rail operators, producer car shippers, and domestic grain farmers.

This amendment makes it pretty clear that they also need to provide some sort of equity in their behaviour. I think we saw all the witnesses who came forward talking about some sort of assurance for the short lines, producer cars. We saw it especially when the case was brought forward from British Columbia where you see the billion-dollar industry in the Fraser Valley that's only got a week or two weeks of grain on hand. I think that's one of the big examples we have out there that when this all comes down and the rail lines are saying, yes, we can move the product that we're told to move, and they're just going to move big volumes.... But is that going to help some of these corridors? Is it going to help some of our domestic users? I think my amendment's pretty self-explanatory. Also, the Federation of Agriculture wanted some more added to that.

That's what it has in there, Mr. Chair. It's pretty self-explanatory. I would hope that the government is going to go with this one, especially because one of their parliamentary secretaries also put it forward. Mr. Anderson, the member from Cypress Hills—Grasslands, wanted this in there. I think he represents a big grain-growing area in southern Saskatchewan. I'm sure he sees lots of short lines and he sees the importance of this.

Mr. Chair, it's very self-explanatory and I think we already have some support from the Conservatives across the way. I think we should go forward with this. I don't think there's much explanation. It was explained very well, especially from the turkey farmer from the Fraser Valley on how we're not moving the grain with short lines and for domestic use. This legislation that's put forward is only dealing with big volumes so the railroads can keep out of trouble. But I think we have to put more into this to make sure the rest are taken care of too.

• (1635)

The Chair: Are there any other comments?

Mr. Lemieux.

Mr. Pierre Lemieux: Mr. Chair, I would just say that, first of all, I don't think Mr. Eyking has actually spoken to Mr. Anderson, whereas I have. Mr. Anderson supports—

Hon. Mark Eyking: I see him on the bus every day.

Mr. Pierre Lemieux: You didn't speak to him. I checked with him today. I did speak with him today about this amendment, and he supports the government legislation the way it is, because he feels that....

I can speak about the way I feel. We support the government legislation, but the problem that we have here is also what we heard from witnesses about getting too specific over volumes related to corridors.

This simply says, "Subject to volume demand and corridor capacity", which is sufficient. We don't need to get overly prescriptive. So we had, for example, Robert Ballantyne—he's the president of the Freight Management Association of Canada—say, an "intervention such as in Bill C-30 needs to be applied very carefully and only under the most extraordinary circumstances". In saying that, he is supporting more the clause the way it's worded now, which simply says "Subject to volume demand and corridor capacity", without drilling down below that.

The Chair: Mr. Allen.

Mr. Malcolm Allen: Thank you, Mr. Chair.

I agree with my friend across the way in a sense. Yes, I did talk to the parliamentary secretary last week—

Mr. Pierre Lemieux: You did?

Mr. Malcolm Allen: Yes, I did, sir.

I would probably concur with the parliamentary secretary's take on what the other parliamentary secretary actually said to me last week, which is fair enough.

The government, in its initial bill, had specificity at 500,000 tonnes per railroad. My concern with this amendment is that it would actually take the specificity out. Quite frankly, after watching the two CEOs of the two railroads here with us last week, I would have great reluctance to take any number away from them, because I think, quite frankly, they would then give us a rationale and reasoning as to why they couldn't meet "this amount", which would be whatever that number was. Heaven knows their service has been bad enough as it is, in my view. Albeit that's a layman's view, shall I say.

I would have to suggest at this point that I don't think we can actually support that. But we do have, coming up, a suggestion the government may want to think about that is specific, and then the other piece is non-specific. As Mr. Lemieux pointed out, they don't want to drill down too deeply. The other piece that we were suggesting I think actually fits the bill a little more succinctly.

I recognize, Mr. Chair, that I should speak to that when it comes before us and not now, so I'll leave my comments and end it there.

Thank you.

The Chair: Thank you, Mr. Allen.

Go ahead, Mr. Payne.

Mr. LaVar Payne: Thank you, Mr. Chair.

I agree with my colleague across the way. We certainly don't want to change any limits that we've already set on the railways.

The other thing is, we did hear from witnesses that there are great concerns already because of the million tonnes that other organizations, other products, will not be moving. So I think that after we start getting far more prescriptive, we're going to see a much bigger hornet's nest than is already there with the grain.

Thank you, Mr. Chair.

The Chair: Mr. Eyking, quickly.

Hon. Mark Eyking: Well, I'm shocked. I've known Mr. Anderson a long time. I'm shocked that he's changed his tone on this. Maybe he likes his job as P.S. so much that I don't know what it is—

• (1640)

Mr. Jeff Watson: Mr. Chair, seriously. He's not even here to defend himself.

Hon. Mark Eyking: —but I'm surprised that a P.S. from Ontario could whip a Prairie P.S. into going along with toeing the line.

But that being said, the vice-president at the Federation of Agriculture stated right here that:

...Bill C-30 does not carry sufficient teeth to keep producer cars available and make the railways accountable for spotting of producer cars, they will be forgotten.

Also, Mr. Etsell said that he recommends:

...that Bill C-30 contain provisions that ensure that priority is given to Canadian feed grain and other value-added Canadian markets...

It was stated over and over again that we're not taking care of our own here to make sure that the grain is moved properly.

This is one I really thought would get through with no problem, but I guess things have changed over on the other side.

The Chair: Well, I would just caution people about taking personal shots at anyone who isn't at the table.

Mr. Zimmer.

Mr. Jeff Watson: Cheap, Mark, really cheap.

Hon. Mark Eyking: I wasn't taking shots.

Mr. Jeff Watson: You did.

Hon. Mark Eyking: I was commending Mr. Anderson.

Mr. Jeff Watson: How about an apology?

Hon. Mark Eyking: I was commending Mr. Anderson's side.

The Chair: Mr. Zimmer.

Mr. Bob Zimmer (Prince George—Peace River, CPC): I think Mr. Eyking is a little bit sensitive over there. Sorry, Mr. Chair, the member across the way is a little bit sensitive so that what he stated wasn't necessarily the case.

I think one thing we did hear from grain shippers and grain groups is that they didn't want to necessarily receive undue attention. They wanted better service and access for all commodities across the spectrum in Canada. I think that was made very clear by all groups and I think this amendment would be a negative to that.

The Chair: We have Liberal-2, reference 6510405. Shall it carry?

(Amendment negated: nays 8; yeas 1)

Mr. Chair: We will go to NDP-2, reference 6494466.

Madam Brosseau, please.

Ms. Ruth Ellen Brosseau: Thank you, Mr. Chair.

This amendment is in clause 6, to be amended by replacing line 22 on page 3 with the following, "way Company must each move at least 590,000".

We have this amendment based on some suggestions by the Saskatchewan government. In a letter that was sent to us on April 4, they've said, on page 4:

...the minimum number of grain cars railways are required to deliver to 13,000 per week. The industry believes the target is attainable and realistic as long as the railways spot and deliver the rail cars at a rate which ensures proper coordination of sales and deliveries.

That is how we came up with this number for our amendment.

The Chair: Thank you, very much.

I'll move first of all to Mr. Payne, please.

Mr. LaVar Payne: Thank you, Mr. Chair.

I'm not sure this is a good amendment. The ministers have had discussions with the railways, the shippers, and so on, and they said that they could deliver about a million tonnes, which is about 500,000 each.

Then we heard from witnesses, and I just made a comment regarding the shippers. The difficulty is, they're already looking at facing that the railways are suggesting that they're going to cut back on the transportation of their products. So these other shippers, whether it's mining, or potash, or forestry.... So, trying to put more pressure on the railway to move additional grain would mean that other products are going to suffer, so I have a really difficult time even suggesting that we move that number up.

Thank you.

The Chair: Thank you very much.

Mr. Allen.

Mr. Malcolm Allen: Thank you, Chair.

I recognize that the railroad is suggesting to the government that maybe they can't do it, but I would suggest that their track record on telling us what they can and can't do isn't necessarily a good one.

The whole sense of this is that all of us have heard that somewhere between 20 million and 25 million tonnes—

• (1645)

The Chair: Mr. Watson.

Mr. Jeff Watson: On a point of order, Chair, they've quoted a document that I don't have in my possession.

First, was that sent to the committee? Second, can I get a copy of that now for the purposes of debating the motion at hand?

Ms. Ruth Ellen Brosseau: It was emailed to us.

Mr. Jeff Watson: I'm not a regular member of the committee, so I don't know if that made it to me.

The Chair: We can get that to you.

Mr. Jeff Watson: For the purposes of debating that, I'd appreciate having it at the table here. I'm raising that as a point of order, Chair.

The Chair: If was emailed to the committee, then I would suggest it's up to the committee to get it to you.

It's not a point of order, and we will continue on.

Mr. Malcolm Allen: Thank you, Chair.

The sense is that as we've heard from witnesses—

Ms. Ruth Ellen Brosseau: I can get it to him.

Mr. Malcolm Allen: —don't worry about it—there are 20 million to 25 million tonnes of carry-over. That being the case, this is a sense of trying to actually reduce that amount. It's not going to reduce it to zero or to a normal level; it's simply going to try to reduce it. The whole intent of all of this is to try to have as small a carry-over as possible at the end of this year, which is July 31. It still might be, even with an accelerated amount, 17 million tonnes.

That's really all this is intended to do; that's why the specificity in it, because we agree with specificity, as I said earlier. We simply want to see this number bump up a bit. There were some folks who actually had said that the numbers should bump up a bit. The issue is whether the committee believes we can ask that of the railroaders by regulation, or whether the committee thinks the railroaders are saying “We can't do it” and they accept that.

On our side, we don't accept the railroaders' excuses anymore, quite frankly. We think they should rise to the challenge and do it, not simply tell us that, sorry, we'll just have to steal from someone else. I think that's a bit of a hedge game, quite frankly, on behalf of the railroaders. Why wouldn't they do it? They are the ones who took all the capacity out of the system in the first place, starting with CN five years ago, and then of course last year with CP. They are doing well. All of us know that. They are doing well and the other parts of the system aren't doing well. It's now time to challenge them to do well by the other parts in the system, not just by themselves.

I would hope my friends across the way might want to actually say let's bump it up a bit, let's put a challenge in front of them that says let's get this, and let's see if they can help fix a situation that we all agree is not a good one.

The Chair: Mr. Lemieux.

Mr. Pierre Lemieux: Thank you, Chair.

I think I would respond to that by saying that this legislation requires the rail companies to move 1 million metric tons of grain a week. It is an ambitious but achievable target. It is ambitious.

We had many witnesses come in front of committee. We had the Freight Management Association. We had the Mining Association of Canada. We had the Canadian Federation of Agriculture. We had the Western Barley Growers Association. They came here and they said things like this: “My concern is that the difference in cars will come at the expense of other commodities.”

Our government is focused on the economy. The grain sector is a vital part of the economy, hence this legislation, but it cannot be at the jeopardy of all other products that move by rail. I think I listed at least four witnesses who were in front of committee just last week saying that they were even worried at 1 million metric tons, and you're increasing that by almost 20%.

I don't think it's a good amendment at all. I think there is already pressure on the rail companies. We see it, Chair, in terms of the goals that have been set for them, at \$100,000 a day if they are unable to meet those targets. We have the amendment we just passed regarding service-level agreements and what the impact would be on them if they were to breach service-level agreements.

I think this would actually jeopardize other...and I'm sure it's not appreciated by other sectors of the economy that move product by rail.

The Chair: Mr. Eyking.

Hon. Mark Eyking: Thank you, Chair.

I know the Minister of Agriculture of Saskatchewan wanted to come before the committee, but for some reason it didn't happen. I think the Minister of Agriculture, Lyle Stewart, also came forward with that number—590,000. I'm sure he would have been talking to his cabinet colleagues because grain is important to Saskatchewan, but also potash, oil. I think the Province of Saskatchewan would have done their due diligence here to come up with that figure, and looked at that figure, that it wasn't going to be to the detriment of the other commodities that are important to the province. Looking at that 590,000, I think coming from that source, the Minister of Agriculture of Saskatchewan, it's a pretty good source for a figure.

Thank you, Chair.

•(1650)

The Chair: Mr. Watson.

Mr. Jeff Watson: First of all, let me thank Ms. Brosseau for providing the letter so I could read it.

In reading the letter from the Government of Saskatchewan, they attribute the number of 13,000 cars cryptically, if you will, under the statement that industry says they can support that. Were that true, Chair, we would have heard industry say that, they were at this committee. They're already suggesting that 11,000 cars won't be met. Fair enough, I don't know the veracity of that statement, but having said that, their testimony directly contradicts what the letter alludes: they said they would support the Government of Saskatchewan. We have testimony here that suggests that 11,000 cars, which is the standard right now, is already a lot; they're not sure they're going to make it. Bumping it up certainly wouldn't be based on any testimony we've received at this committee. I'm inclined to accept the testimony as it's been presented to the committee, rather than another government's representation of what they thought industry said.

The Chair: Mr. Zimmer.

Mr. Bob Zimmer: Thank you, Mr. Chair.

I just visited my constituency last weekend and talked to some mill folks back there. I think they already have much more pulp in the lot than they would like to have there. This would further

exacerbate their particular problem. The forest industry is already hurting. Coal, oil, and gas are also fighting for capacity, and this would make it even worse. What has been said so many times, I don't think grain producers have been asking for that anyway. They want to have access, but they don't want to put undue pressure on the other commodities in Canada. I don't think it's warranted. I think 500,000 per carrier is adequate at this time.

The Chair: (Amendment negated: nays 5; yeas 4)

The Chair: We'll move on to NDP-3 amendment 6495074.

Ms. Brosseau, please.

Ms. Ruth Ellen Brosseau: Thank you, Mr. Chair.

This next amendment that we have put together goes as follows: "...in Clause 6, be amended by adding after line 35 on page 3 the following: (2.1) For greater certainty, the Governor in Council shall, in making an order under subsection (2), specify a distribution of the volume of grain that ensures that affected regions receive equitable service."

We think this is an important amendment to have based on witness testimony here at committee. Many witnesses have raised these concerns to make sure that it would benefit farmers, and that it would not leave out certain people—people who are further away from the port. This amendment is just to make sure there's an equitable service to all farmers.

The Chair: Thank you, Madam Brosseau.

Mr. Allen.

Mr. Malcolm Allen: I think really what we're saying is this. You'll notice that there's no specificity in this. Unlike our previous amendment where there was specificity around a number, there isn't in this. In other words, it's for the order in council of the government to make a decision. What we did here was...folks were concerned about the corridors. Perhaps one corridor will exclusively be the one used and others may be forgotten somewhat. The idea of doing it this way is to say to the government, if you see it happening, then on you go. You can then have the ability to say—do you know what?—you've forgotten about that quarter so you should actually have been sending some down that way.

I know in my riding, for instance, both the mills in my riding were short. The millers' association and others were telling us that stuff moving east wasn't moving as well as it should. And we certainly know about oats. Lots of folks were telling us about oats going south, but they weren't going south at all in some cases. This is really about trying to ensure that there is some sort of movement in the corridors but without a specificity to it. It doesn't say, thou shalt do this. We'll leave that to the decision-makers to do rather than simply saying...through the legislation. We're hearing what the parliamentary secretaries are suggesting, which is this idea of rather than drilling down into...we'll have a number for this or a number for that. The whole idea is to look and make sure that it actually gets moved around.

So we'll see how the government feels about it.

Thank you, Mr. Chair.

•(1655)

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

Comments?

Mr. Watson, please.

Mr. Jeff Watson: Just listening to the explanation you're talking about corridors but the measure in front of us talks about regions. What regions? The Prairies as a region? B.C. as a region? Eastern Canada as a region? I'm not sure that the two are interchangeable in your discussion in terms of the table here. Having said that, it may not be a small technical point, it could be a large technical point. We've had some discussion already, but we did hear from witnesses who suggested that the further down we begin to regulate in terms of the specificity of movements, the more difficult it gets for us. You mandate by volume but not necessarily within a given time on the calendar. Now you're committing to an equitable distribution regardless of where flows actually begin to move.

I think it was Kevin Hursh, if I recall correctly, who warned us against the idea of trying to bore down and start regulating every detail in every corridor, and that this would be a problematic approach, Mr. Chair. I think we should back away from that. If we look at what producers were saying, they would prefer that commercial agreements, with teeth, are what regulate the movement of the carry-over and any additional future harvest that's coming. Our G-1 amendment to Bill C-30, I think, achieves that now, the mechanism by which the commercial regulatory framework can take over instead of getting us trapped on the government's side of regulating deeper in a problematic fashion.

The Chair: Thank you very much.

Not seeing anything else, Mr. Clerk, shall NDP-3 carry?

(Amendment negated: nays 5; yeas 4)

The Chair: I'll move on now to NDP-4, amendment 6494471.

Madam Brosseau.

Ms. Ruth Ellen Brosseau: Thank you, Mr. Chair.

Another amendment is that clause 6 be amended by replacing line 11 on page 4 with the following:

companies referred to in subsection (1), the producers in all affected regions and the

We wanted to clarify and make sure that stakeholders from all affected areas were to be consulted and they were ensured to have a fair representation.

The Chair: Any comments?

Mr. Lemieux.

Mr. Pierre Lemieux: Thanks, Chair.

I would just say that it's really not practical. This is putting into law that companies must contact all producers.

Mr. Jeff Watson: Every producer?

Mr. Pierre Lemieux: By law. How would one go about doing that in a timely manner or making sure that you actually contacted all producers?

It's important and appropriate that players or people be contacted. That's what the section says. The section actually says, "The Agency may also consult with any other person that it considers appropriate".

I think that is within the parameters of realism, but the way this is worded right now, this would obligate contacting the producers in all affected regions, like every producer. I just don't think it's practical and for that reason I don't think it should be part of the legislation.

•(1700)

The Chair: Shall this amendment carry?

(Amendment negated: nays 5; yeas 4)

The Chair: We'll move on to amendment LIB-3.

Mr. Eyking.

Hon. Mark Eyking: Thank you, Chair.

This amendment is very similar to the one we had before from the testimonies that we had. It's in the part there that states, "the Agency must provide the Minister with advice on the minimum amount of grain that each company", etc.

This amendments states:

"year, and on the provisions that need to be made to provide a reasonable and consistent supply of grain cars to short-line rail operators, producer car shippers and domestic grain users. The Agency may also consult with any"

I can repeat the ones that came forward with this before. The federation put on a strong case when they stated:

...the bill should be amended to ensure that producer car users are also consulted by the CTA before it makes its recommendations to the minister.

It was also stated that the government must ensure that all shipping corridors, with priority given to Canadian mills and livestock industries, are adequately serviced.

I've got to stress, Mr. Chair, that when the farmers from British Columbia were pleading for us to do something to make sure that they had the grain in the billion-dollar industry that they had there, and that they only had days of having grain for their livestock, it was also stated, and I heard, that they could always ship it in by truck.

I know the honourable member here is from Peace River and what it would cost to ship a tonne of grain by truck down to the Fraser Valley would be in the hundreds of dollars. That's not feasible and you cannot stay in business very long with that.

I think this fits well here. It's making sure that the agency keeps an eye on those corridors and those producer cars, especially the Canadian mills and livestock industry that we have here in our country.

The Chair: Thank you, Mr. Eyking.

I think it has been talked about before in a general context. Anyone else?

I'll bring the amendment forward.

(Amendment negated: nays 5; yeas 4)

The Chair: Shall clause 6 carry?

Mr. Allen.

Mr. Malcolm Allen: I request that this particular clause, since there were a number of amendments, be carried on division.

The Chair: Is there any objection that clause 6 carry on division?

Some hon. members: No.

The Chair: Recorded vote?

Mr. Jeff Watson: Yes, recorded vote.

The Chair: Again, on clause 6.

(Clause 6 agreed to: yeas 9; nays 0)

The Chair: We'll now go to amendment NDP-5.

(On clause 7)

The Chair: Madame Brosseau.

• (1705)

Ms. Ruth Ellen Brosseau: Thank you, Chair.

Once again, this is in clause 7, it's to be amended by replacing line 39 on page 4 with the following:

(1.1) Despite subsection (1), the Agency shall, no later than one month after the coming into force of this subsection, make any regulations under paragraph (1)(c) that may be necessary in order to achieve the traffic of grain referred to in section 116.2 within the time period set out in that section. A regulation made under paragraph

So, basically, this is an amendment to make sure that regulations are made within a certain time. We heard some testimony and definitely when I was speaking with some stakeholders the timeline was a concern because it is not legislated. We wanted to make sure to have a better idea of timelines for this.

The Chair: Thank you, Madam Brosseau.

Are there any comments on the amendment?

(Amendment negatived: nays 5; yeas 4)

The Chair: Shall clause 7 carry?

Mr. LaVar Payne: A recorded vote.

(Clause 7 agreed to: yeas 9; nays 0)

The Chair: Thank you very much.

We'll go now to amendment NDP-6.

Madam Brosseau, please.

Ms. Ruth Ellen Brosseau: That Bill C-30 be amended by adding after line 43 on page 4 the following new clause.

7.1 The Act is amended by adding the following after section 128:

128.1 The Agency must, in consultation with the provincial governments, develop and implement a plan respecting open access running rights for the traffic of grain that would allow any railway company to run its trains on any other railway company's lines in exchange for reasonable compensation and that would ensure that competitive service options are available to shippers.

So we are just asking that the government work with the provinces to develop and implement a plan for open running access rights.

Basically, that's it.

The Chair: Thank you.

Are there any comments?

Mr. Payne.

Mr. LaVar Payne: Thank you, Chair.

I just see a bunch of trains running into each other with open access—a train wreck, thank you, Ruth Ellen.

I have some major concerns in that. We have to have all of the railways working together on this thing and I think there need to be some compensation processes to make sure what is done is right. But I'm not sure that you'll be able to have CP running on all CN lines and vice versa, and BNSF and whoever else in the U.S. having all the same running rights. I just see a huge mess happening if that would take place. So from the safety aspect it's, as Ms. Brosseau said, a train wreck.

Ms. Ruth Ellen Brosseau: I wasn't summarizing, I was helping you to find your words.

The Chair: Mr. Allen.

Mr. Malcolm Allen: Thank you, Chair.

Isn't it quite ironic that the New Democrats are suggesting we should have an open market and the other side are suggesting we shouldn't? That's quite unusual, but I leave that for folks to make those value decisions obviously.

Mr. Jeff Watson: We've just seen chaos.

Mr. Malcolm Allen: This is not a new proposal. This comes from 2001, from Justice Willard Estey, who made the suggestion to the transport ministry in 2001-02 to look at open running rights. At the time, CN and CP said they weren't interested in open running rights. They wanted to keep it closed here in our country, in Canada, while they lobbied the U.S. Congress for open running rights in the U.S.

Of course, CN and CP were successful in the U.S. for open running rights, contrary to my good friend Mr. Payne's suggestion that somehow trains run into each other on open running rights. You just need to coordinate things, just like open highways. If we put more trucks on the road, we just have to coordinate things.

The bottom line is that open access is a doable and achievable thing. Yes, it takes work, and yes, it will take some regulation, and yes, it will take some thought processes. That's why it's a consultative process, not a "do it by this particular moment in time" process, because what it does is enhance competition. It allows other players to come in if they choose to; it doesn't say that they must. The hope is that the competitive market will take care of that and folks will come into the market.

Yes, there are things that need to be looked at. It's not simple. It is about railroading. Railroading is, by nature, because of the way it's done, a bit complex. It's not just as easy as pointing the car in a general direction and off you go.

Clearly, one of the complaints we've heard from many of the shippers right across the entire spectrum, not just the grain sector but right across the entire sector for those who ship, whether it be coal or potash, or whether they're from the shipper's coalition, is this idea is that they don't get the service they think they deserve. With my understanding of an open market, one of the ways to do that is to introduce competition. I know that my friends across the way in the government have been trying to do that in the telecom sector by making more competition.

Now, I don't want to suggest doing a railroad is as easy, because it's a physical piece versus what happened with Bell Telephone many years ago where they had to open-access their lines. It's not. That's an electronic transmission, and in digital transmissions there aren't real physical things that can run into each other, but the idea of it is somewhat similar. This is physical infrastructure, with a steel railroad and with railroad engines, locomotives, and cars that could do damage to themselves and other people's property if they collide, so yes, an element of coordination has to happen, as it happens now in the U.S.

It actually does work. I mean, there aren't huge numbers of railroads, so it isn't as if it's going to be like Highway 401 going through Toronto, for those who know that bottleneck. It won't be like that at all, because there just aren't enough of them, but there are more than what we have presently. It may encourage a short-liner, for all we know, to decide that they want to get into the game in a different way than they are now. It won't necessarily be BNSF coming up, but it might be.

This is an attempt to bring competition into the system. That is what this is structured to do. I would hope that my friends would want to introduce additional competition in that very closed market that we have now, that market called CN and CP, because it is very much a closed shop when it comes to who you want to ship with. In certain parts of this country, you have choice. For those of us who live in Ontario, there are some choices, but for those of us who live in the Prairies, the choices are less so. Primarily in certain parts of the country, whether you live in the north or the south, you are a captive market. I would hope that one would look at this perhaps as a positive aim and work towards that.

Thanks, Chair.

• (1710)

The Chair: Thank you.

Mr. Eyking, please.

Hon. Mark Eyking: Thank you, Chair.

I think that at the end of the day we're all hoping that this legislation is going to help farmers and help them make more money. I think it's important to give them as many tools as possible to get their crop to their customer. I think this is another tool.

We know about the Japanese boat that had to go to Seattle. But for various reasons, with global warming, we could be in a very good position in Canada for producing more grain, and the United States could have a problem. They have a lot of grain cars down there, so why not have that accessibility?

We've talked about Burlington Northern coming up here. Maybe sometimes our grain could go south and then west. The lines are there and the capacity is down there, so I think we have to make that available as much as we can. I think it's another tool that farmers can use so they're not stuck.

Sure, we'd like all our grain to be exported through our own ports. I think that's the idea. But when it's not happening, for various reasons, maybe with these other rail lines we can get our grain out through other ports in the United States. I think we can keep our farmers' options open when they're shipping grain, or the shippers'

options, and I think it also gives some competition to the railroads. They might have to pull up their socks a bit.

• (1715)

The Chair: Thank you, Mr. Eyking.

Mr. Watson.

Mr. Jeff Watson: Thank you, Chair.

First of all, that was an interesting intervention from the member who made a career of promoting the closed shop and not arguing for openness.

I don't even know where to begin on all the problems with this particular amendment. First of all, I'm not sure that the Canadian Transportation Agency implements any plans, if you will. I don't think that's a function of the CTA. We may want to check. I don't know if the officials have an opinion on whether the CTA would implement a plan, but my understanding is that's not within the agency's scope.

Second, if you're talking about running rights for the traffic of grain but for no other commodity, what do you do with a mixed train as opposed to a train entirely full of grain? I think there are problems with this.

Third, I don't recall a single witness asking for this, so this is introducing an idea maybe from somewhere in the political bag of things on the other side to try to put everything into a bill. We didn't even get a chance to question witnesses on an idea like that. It wasn't even introduced at the table, but it's being introduced as an amendment.

I think in fairness, Chair, there is a CTA review coming up. I think if the member wants to talk about running rights, that might be an appropriate place to do that rather than trying to amend a bill here with an amendment that is very problematic and that has a number of flaws in it. So I am against the amendment.

The Chair: Mr. Payne.

Mr. LaVar Payne: Thank you. My colleague Mr. Watson here just talked about the grain-only aspect of this thing, and that was another element I was concerned about. I guess there are a couple of other questions out there. What about the railways, would they agree to this?

I think when we're looking at it, we're looking at it on a commodities and commercial basis, so certainly I don't support this.

Thank you.

The Chair: Mr. Lemieux.

Mr. Pierre Lemieux: Thank you, Chair.

I appreciate the comments that have been made by my colleagues.

I'd just like to ask the officials if they'd like to add anything to the discussion.

The Chair: We've had some pretty good clarifications, I believe.

We'll end up with Mr. Dreeshen, please.

Mr. Earl Dreeshen: Thank you.

I think most of the things I wanted to address have already been addressed. Of course, what we were talking about was interswitching, and the discussion was based entirely on that. Had we sat down and asked our witnesses about specifics of running rights, I think we could look at those. But even from our discussion today, I would say when we have this accelerated review, that would be the time to look at those.

The Chair: Shall amendment NDP-6 carry?

(Amendment negatived: nays 5; yeas 4)

The Chair: We will now move to amendment NDP-7, reference 6501372.

Please go ahead, Madam Brosseau.

(On clause 8)

Ms. Ruth Ellen Brosseau: Thank you, Chair.

This is regarding clause 8 to be amended by replacing line 6 on page 5 with the following:

for the purposes of paragraphs (1)(a) to (c), and requiring that the railway company or the shipper, as the case may be, implement those operational terms within 90 days after the day on which they are established by decision of the arbitrator.

Basically this requires that the regulators implement what constitutes operational terms within 90 days. So again, it's just more clarification.

• (1720)

The Chair: Thank you, Madam Brosseau.

Are there any comments on amendment NDP-7?

Mr. Watson.

Mr. Jeff Watson: Briefly, I think it is fairly well established that the definition of "operational" would occur in a regulatory framework in which there is some flexibility to do that rather than by making the legislation a little more prescriptive. I'm against the amendment.

The Chair: Any other comments?

(Amendment negatived: nays 5; yeas 4)

The Chair: We will now move to amendment number 4 by the Liberals. It's reference number 6512505.

Mr. Eyking, please.

Hon. Mark Eyking: Thank you, Mr. Chair.

There's quite a bit in this amendment; I think there are six clauses in there. I think everybody has a copy of it, it's pretty self-explanatory. Chair, I don't need to read the whole thing do I? I can just give my—

The Chair: That's totally up to you.

Hon. Mark Eyking: Okay. So I'll let it stand as it is and I'm going to read the explanation for why we have it here.

Now, of course we know about Bill C-52 last year and the problems we had with that. So now we have Bill C-30 here, and as many witnesses have come forward and told us, Bill C-30 as it sits is quite vague.

What they've always said is that service levels are very important, and they say they're not meaningful the way they are. Virtually every witness told us this: they want a clear, mandatory service-level contract with enforcement remedies that are reciprocal both ways. They don't want to be tied up in courts for 10 years. As we mentioned before, some of this stuff can be tied up quite a long time.

This amendment helps fix that problem. In the first part of proposed subsection 169.31(1)(1.2) we provide a definition of service obligations that all the shippers agreed upon last year. It's precise, it's practical, and it's to the point. These are the things that an arbitrator will need to cover in any of these contracts. When this thing starts rolling out, somebody has to be an arbitrator here, and they're going to have to have more defined rules and regulations.

In the second part, in proposed subsection 169.31(1)(1.3), we shine a clear statement of principle of how you can tell when an adequate performance has been provided, which is key.

And then in the final part, we make the point about reciprocal consequences. This needs to be clearly spelled out in any contract imposed by CTA arbitration. That's what proposed subsection 169.31(1)(1.4) does.

So, Mr. Chair and colleagues, this amendment was also.... The Minister of Agriculture from Saskatchewan recommended many of these here. We even have the Mining Association, the canola growers, The Fertilizer Institute, the western grain growers, I mean the list goes on of everybody who wants more defined rules.

They're not just rules everybody has to follow, it's how we enforce them, how we process people when they're wrong done by, and how people get paid at the end of the day.

So I think they're all here, and we went through this process last year. I think this is a great opportunity to have these amendments in here, and it would give everybody in the system a better idea and something to work with.

The Chair: Thank you, Mr. Eyking. He didn't read through them, but everyone has the amendments in front of them.

Mr. Watson.

Mr. Jeff Watson: First of all, Mr. Chair, I know you mentioned the Western Grain Elevator Association. For clarity, if I recall the testimony, I believe Mr. Sobkowich suggested that if it could be done in regulation, that would be fine by them. So to be clear on the representation by the Western Grain Elevator Association, I think that point has to be reiterated. You could check the Hansard on that, but I'm pretty certain he said that.

There are a lot of problems with this particular approach. I'm just trying to recall, Mr. Chair, from being part of the Bill C-52 debate....

Let me just start with one of the aspects, shipper paramountcy as opposed to the rail network. That is a problematic approach. For one, if I recall, the Supreme Court has been very clear that railway common carrier obligation is not an absolute, but it is circumstantial. So to be court compliant, there has to be some degree of flexibility with respect to the network as a consideration.

I don't know. I could probably go into a few more of the arguments that were raised back then, but stepping back from that, the approach that the government is taking with Bill C-30 is that issues around operational terms would be a regulatory approach. I appreciate that Mr. Eyking would prefer a prescriptive, legislated approach to that. The witnesses were mixed on the preference for that. We think we can achieve it with respect to the regulatory environment.

We've now, in terms of the earlier amendment, G-1, provided the teeth that they were looking for with respect to entering into service-level agreements. So I think between what will be achieved in the regulation and what is achieved in the legislation itself will be sufficient, and it's what the witnesses were requesting.

I think this reopens the debate that was made at the table with Bill C-52 at the transport committee, and it was rejected for a lot of very good reasons. But we think we can do adequately within the regulatory framework, rather than this.

•(1725)

The Chair: Mr. Eyking.

Hon. Mark Eyking: Thank you, Mr. Chair.

Just to follow up on that, I do have the statements here from the Western Grain Elevator Association. They state here, "While volume thresholds can work in addressing capacity issues from a macro perspective, they do not provide clarity in the relationship between an individual shipper and an individual rail carrier."

They go on to say, "We presume this issue will be addressed by the new regulatory authority charged with establishing more specificity with respect to operational terms in a service-level agreement."

I think this is what it's all about. It's all about service, service for the farmers, and the only way they're going to be properly served is if everybody within the chain is going to have to adhere to it. When you look at these amendments, they spell out pretty clearly those service-level agreements and what's expected from everybody else in the supply chain besides the farmer.

That's what it's all about, Mr. Chair. It's about service.

The Chair: Are there comments?

Mr. Jeff Watson: Mr. Chair, just to back up what I said earlier, I have the quote in front of me now.

Mr. Sobkowich said, "I want to make the point that we're talking about providing a more specific definition in the regulatory process to the word 'operational.'" He went on to say, "If the committee believes that you can define 'operational' in a way that includes penalties and potentially liquidated damages, then great. We can address it through the regulatory process."

So they were comfortable with the regulatory approach for the word "operational".

Thank you, Mr. Chair.

The Chair: Shall the amendment carry?

(Amendment negated: 5 nays; 4 yeas)

The Chair: We'll take a five- or ten-minute break.

Thank you.

•(1725)

_____ (Pause) _____

•(1745)

The Chair: We'll start.

I will now turn our attention back to Madam Brousseau on NDP-8, 6513665.

Madam Brousseau.

Ms. Ruth Ellen Brousseau: Thank you, Mr. Chair.

So this is clause 8 to be amended by adding after line 6 on page 5, the following:

"(1.2) The Agency may, for the purposes of paragraph (1)(a), prescribe terms and conditions governing the interswitching of traffic that include prohibiting the delisting of specified producer car loading sites for specified periods of time."

This requires a moratorium on the closure or delisting of producer cars as requested by the CFA.

The Chair: Thank you, Ms. Brousseau.

Are there comments on the amendment, anyone?

Mr. Eyking, first.

Hon. Mark Eyking: Mr. Chair, maybe the P.S. can answer this. I don't see anything in this bill that mentions interswitching. Maybe it's good that Madam Brousseau put it in here, because I don't.... I read it twice on the weekend, Mr. Chair, and I didn't see anything on interswitching.

Maybe it's in there somewhere and I don't know where it is. If it's not there I think this is a good spot to put it.

•(1750)

The Chair: Mr. Allen.

Mr. Malcolm Allen: I want to thank Madam Brousseau for bringing it forward. One of the things we heard from a couple of different groups—CFA raised it, and I think some others did as well—was this idea that they liked the interswitching. We agree with the extension from 30 kilometres to 160 kilometres. We think that's a good provision, and I think a lot of folks said it was a good provision.

One of the things that was missing in it was this idea about the delisting of the short lines. Some are there now. They said they wanted to make sure those stay protected until the rail review happens and with a sunset provision in this bill, obviously that would do that. The intention is to make sure none of those sites gets delisted. Perhaps other folks will want to use them in the future, perhaps they're not using them at the moment but they want to keep them available. And so what we heard from those groups was to not lose any in the meantime until we get to the rail review. The government has been clear about its intention to accelerate that review.

And so this would simply make sure we didn't lose any of the short lines along the way by delisting. That's what we're trying to drive here. It wouldn't be forever obviously because there is a sunset provision. Two years hence, this thing would go away and that would be the end of that. And I'm sure the new CTA would take into account those concerns; I wouldn't prejudge obviously. That piece will get done in due course, and the folks will make those decisions based on the information here. So I would hope my friends across the way would want to ensure we don't lose any opportunities by having CN or CP perhaps delist some short lines.

Thank you, Mr. Chair.

The Chair: Thank you.

Are there any other comments?

Mr. Lemieux.

Mr. Pierre Lemieux: First of all, I would point out that the legislation does talk about interswitching. It doesn't use the word interswitching, but clause 7(1) talks about section 128 of the Transportation Act.

Mr. Chair, I would also like to ask the officials to comment on delisting and what types of processes are followed for delisting to occur.

Mr. Alain Langlois: There is currently a provision in the act, section 151.1, that talks about listing for CN and CP—those are the only two companies subject to this provision—to list provisions where producer cars can be loaded.

There is an obligation to list them, there is an obligation not to delist them until they follow a certain process. There is obviously no restriction on the railways to remove them from the list. It's a warning to the industry that they're going to remove them from the list. That's what the legislation currently does.

The Chair: Any other comments on the amendment?

Mr. Allen.

Mr. Malcolm Allen: I appreciate the comments from departmental officials around how the system works, that they could list them and delist them, that they put them on a list, then there's a process.

The whole idea of this piece of legislation is to do something imminent and in a timely fashion, that then expires. That's why we see the need that they don't start; they actually start listing some; they actually don't do that. It's a temporary measure because there's a sunset provision. This legislation ends as a sunset piece.

Our belief is that the CTA will address the issue. I'm sure they will. Perhaps they won't, but I'm pretty confident that they'll look at all of the pieces because lots of players are talking about lots of different pieces along the way.

I feel comfortable that they'll probably do that. We'd like to give some assurance, we think, to the short-liners out there. Their sense that things may evaporate from them, I'm trying to give them that sense that, okay, we'll hang onto it for now. The big review will happen and then we'll see what actually transpires.

•(1755)

The Chair: Mr. Watson.

Mr. Jeff Watson: Maybe this is one that our lawyers can answer, but my reading of the way Bill C-30 is constructed is that if you were to accept this amendment, but not amend subclause 8.(2) to include subsection 169.31(1.2) that, in fact, the measure you're proposing wouldn't sunset.

Is that a fair reading, Mr. Langlois?

Mr. Alain Langlois: Yes.

Mr. Jeff Watson: Exactly. So you actually haven't proposed a sunsetted measure, so I'm against it.

The Chair: Mr. Lemieux.

Mr. Pierre Lemieux: Just to clarify, Chair, at the end of the act it talks about certain clauses coming into force. Those clauses repeal clauses within the act. You're adding something that's not contained elsewhere in the act, so it would not sunset.

The Chair: Shall NDP-8 carry?

(Amendment negated: yeas 5; yeas 4)

The Chair: Shall clause 8 carry on division?

Mr. Pierre Lemieux: No, recorded vote.

Hon. Mark Eyking: We want a recorded vote.

The Chair: Recorded vote, Mr. Clerk.

(Clause 8 agreed to: yeas 9; yeas 0)

(On clause 9)

The Chair: We'll move on to amendment NDP-9, 6494473.

Madame Brosseau.

Ms. Ruth Ellen Brosseau: The amendment states:

That Bill C-30, in Clause 9, be amended by replacing line 15 on page 5 with the following:

"is \$250,000."

Basically, we want to increase fines to \$250,000 for any failure by the railways to deliver on minimum targets.

I would like to also note that in the document that was sent April 4 by the Saskatchewan government, that they also ask for the same thing, and I quote:

Our government also believes penalties to railways for failing to deliver minimum car requirements should be increased to \$250,000 a day. Fines collected from railways for failing to meet this target should directly benefit the producers who ultimately bear the costs of the system.

It's pretty self-explanatory. I think some witnesses also commented along the lines that \$100,000 is not a big fine. I know we cannot depend on fines to deter this type of behaviour, but I think increasing the fines is something that a lot of people have been calling for.

The Chair: Thank you, Madam Brosseau.

Mr. Zimmer.

Mr. Bob Zimmer: We put \$100,000 in the original piece of legislation, so we think \$400,000 is sufficient.

Thanks.

The Chair: Mr. Eyking.

Hon. Mark Eyking: As was stated, the Saskatchewan Minister of Agriculture wanted the penalty to be increased.

But I have another question. As of today, are any of the railroad rates in violation right now? Do any of our witnesses know that?

The Chair: I don't know if the departments can help with that or not.

Ms. Duff.

Mrs. Lenore Duff (Director General, Surface Transportation Policy, Department of Transport): The minister stated last week that the railways were both complying with the volume requirements.

The Chair: Mr. Watson, did you have...or was that the answer you were looking for?

Mr. Jeff Watson: No, I wanted to speak to the amendment briefly, if I could.

Just from the perspective of having worked with the Canada Transportation Act for a number of years now, my understanding is that with regard to the \$100,000, first of all, it's daily, if necessary, with respect to an infraction. But if my memory serves me correctly, it's also significantly higher already than other penalties within the act itself.

So what they're asking for is already, for example, quadruple what most fine maximums, I understand, would be under the Canada Transportation Act. They want to move from four times that to ten times that in the case of the railways. Am I recalling that correctly?

I'm not sure which of our witnesses want to respond to that.

•(1800)

Mr. Alain Langlois: Under the AMPs regime under the act, the maximum penalty for 99% of the violations is \$25,000. The only exception is the violation of an SLA, which is \$100,000. So this would become the second exception to the \$25,000 rule.

Mr. Jeff Watson: Okay, so it's \$250,000, if this were accepted, on a daily basis, many times over.

Chair, my concern is whether as a committee we want to take a position that would be disproportionately punitive, shall we say, to any other violation in an act. I mean, moving from \$100,000 to \$250,000 as a daily amount would take it to ten times the maximum within the act itself. It might draw into question whether this particular infraction is that much worse relative to any of the other infractions that are contained in the CTA.

I'm not sure that's the route we want to go down. I appreciate the politics behind that, or the optics around that, with respect to individual constituencies, but we have to be concerned about whether it becomes increasingly disproportionate to other very important infractions in the act itself.

The Chair: Are there any other comments?

Mr. Eyking

Hon. Mark Eyking: Just for clarity, I know that the witness said there are no violations so far, but if a violation does occur and we assume that \$100,000 is collected—let's say it was over five days, so

it's \$500,000—does that go into general revenue or does it go to the farmers who are losing money?

Where does that money go that comes from the penalties?

Mr. Alain Langlois: Currently any violation would have to be prosecuted, because the obligation is set forth in an OIC that was issued under the legislation. The only remedy is prosecution, so it would have to be a criminal prosecution. If this legislation were to pass, the AMPs would establish an administrative penalty scheme against the railway for violation of an obligation that is set forth in an order in council.

In both cases, the amount of penalty either to the process of prosecution or to the AMPs would go to the consolidated revenue fund.

The Chair: Mr. Eyking.

Hon. Mark Eyking: Just to follow up on that, it's like somebody getting caught for speeding: here's your fine, and you have so many days to pay it, but you can of course still go to court over it.

Mr. Alain Langlois: Yes.

Hon. Mark Eyking: So there could be quite a procedure here. For one day at \$100,000, this could be tied up for months or years, with a lot of lawyers from the government. I mean, that's possible. And where it costs the government, it could cost our government more, with lawyers and whatever, if they want to play hardball.

Mr. Alain Langlois: Criminal prosecution obviously follows criminal court processes. AMPs are more administrative in nature.

The department would issue an AMP. There's an appeal mechanism to the Transportation Appeal Tribunal, which is administrative. It should be faster. But, of course, there's right of appeal. It is what it is.

Hon. Mark Eyking: Am I allowed to ask one more question?

The Chair: Go ahead. I don't see any others on the list right now.

Mr. Malcolm Allen: He can go.

The Chair: Oh, sorry, he's going to follow you.

Hon. Mark Eyking: I'm trying to look at this procedure. We hope it doesn't happen, but if it does happen, do the board directors or the CEOs of these companies have to come forward? Or could this be lawyers coming forward? I guess what I'm asking is, have you gone through this process before? Do the CEOs have to come forward in court?

Mr. Alain Langlois: Criminal prosecution on something like that doesn't happen a lot. AMPs are issued, I won't say daily, but quite often in transportation legislation. We issue AMPs throughout legislation.

We have AMPs in the air sector and in the marine sector. We issue AMPs quite routinely when there's non-compliance.

There's a process, obviously, to follow. A notice of violation has to be issued. There's an appeal process in front of the Transportation Appeal Tribunal. It's administrative in nature.

That's essentially what I can say.

• (1805)

The Chair: Mr. Allen.

Mr. Malcolm Allen: Thank you, Chair.

I thank Mr. Langlois for his clarifications on how the AMPs versus criminal procedures might work. I suppose one might say that if the fine is low enough, the likelihood of their challenging and going through a court process, because it will cost them, is low. And I recognize that's a value statement or judgment by me. I'm not looking necessarily for a response, but probably that's....

Well, maybe I can ask this. Is that the record, primarily, of the department? When you send out an AMP for \$25,000, do you get fought on that very often?

Mr. Alain Langlois: It's not automatic. It does happen from time to time, but it's not automatic. Yes, it does happen, but it's not in every case, I'll say that much.

Mr. Malcolm Allen: I hear what the department and the parliamentary secretary are saying about the magnitude of the difference between the others. I appreciate that relative magnitude between what others may feel, "Why am I less important than someone else when it comes to a fine? My industry is suffering." I can understand they might say that and then ask why they get to have that fine that large. And the fine, if it happens to me, is only this small. I recognize that may pose some difficulties for the government side.

But, unfortunately, we're dealing only with this piece of legislation that talks about this specific opportunity. I guess when you do the other pieces, you can decide, when you do the review, if you want to review the fines up or down, or sideways, whatever you decide to do.

Clearly, we didn't pull the number out of the air. It's been supported, as has been previously stated, by the Province of Saskatchewan. It's been their suggestion that this be the level.

I'm sensitive to what the parliamentary secretary said, for the Minister of Transport, around the difference in the magnitude. I agree that poses some difficulties, for sure. But I think in this particular case, what was trying to be driven by many of us—and I think the reason for actually doing the whole legislation—is that there's a problem in this one particular instance, driven by a grain crisis. That's the reason we're all here tonight, quite frankly. It's not to review the entire system; it's to do something specific to try to alleviate a specific problem.

I think in this particular case, notwithstanding the magnitude is greater... I truly am sensitive to that. I'm not making a political statement. I agree the magnitude is quite substantive, 10 times as... It's quite significant. But in this particular case, I think the big stick is actually what we're looking for. Perhaps this is a way of doing it, perhaps not. But that's what we put on offer. Whether that's something the government doesn't want to go to, I understand, but we'd like to see the big stick come out.

Thanks, Mr. Chair.

The Chair: Mr. Lemieux.

Mr. Pierre Lemieux: Thanks, Chair.

I would just echo that it is \$100,000 per day.

Mr. Jeff Watson: Per infraction.

Mr. Pierre Lemieux: The other thing I would mention, too, is that with the earlier amendment that we passed, the railways also now, with respect to service-level agreements, have some obligations as well with potential costs, should they fail in delivering on their service levels, and there's the impact that would have on shippers. I would say that the stakes are higher now, given the amendment that we passed.

The Chair: Mr. Dreeshen.

Mr. Earl Dreeshen: Thank you.

That was kind of where I was going to go as well with the service-level agreements of the prior amendment. But, I think, just going to the testimony we heard, that they were focused on having contractual relationships between the shipper and the railroad. That seemed to be the major focus, whether it's 100,000 or 250,000. I think a lot of people looked at that and said that really wasn't the point. The point was to make sure there were some teeth here and that there were going to be these relationships to keep those volumes up.

• (1810)

The Chair: Mr. Watson, I don't know if you have a comment.

Mr. Jeff Watson: No.

The Chair: Then, I think we're at the end of that.

Shall amendment NDP-9 carry?

(Amendment negated: nays 5; yeas 4)

The Chair: We will now move to NDP amendment number 10, reference 6502727.

Madam Brosseau.

Ms. Ruth Ellen Brosseau: Thank you, Mr. Chair.

The Chair: There is a ruling, an inadmissible ruling on it. But you do get your day in court here, so please go ahead.

Ms. Ruth Ellen Brosseau: Thank you, Mr. Chair.

This is clause 9 to be amended by adding after line 15, on page 5, the following: "(4) The total amount of the penalties provided for in subsection (3) is to be paid into a compensation plan for producers administered by the Canadian Grain Commission."

I know it's been ruled inadmissible, but we just wanted to push the fact that we want to see compensation for farmers. That's basically it.

The Chair: Just so everyone knows, I want to make sure we have as much debate and discussion on the amendments as we've been able to. There have been a couple of other ones. I may have been able to have done something in terms of stopping that, but I wanted to make sure that we didn't.

The ruling is that Bill C-30...and clause 9 seeks to amend the Canada Transportation Act by imposing a penalty for any contravention to the threshold of grain transportation. That amendment attempts to create, based on the penalties imposed by clause 9, a compensation plan for producers, which would be administered by the Canadian Grain Commission.

As the *House of Commons Procedure and Practice*, Second Edition, states on page 767, it really is at the initiative of the crown: “Since an amendment may not infringe upon the financial initiative of the crown, it is inadmissible if it imposes a charge on the public treasury...”

Okay?

Ms. Ruth Ellen Brosseau: Got it.

The Chair: I wanted to make sure that you had a chance to bring it forward, but also that we understood that there's a reason in terms of the royal recommendation.

Ms. Ruth Ellen Brosseau: We know.

The Chair: Thank you very much.

We will then move to clause 9.

Mr. Pierre Lemieux: Recorded vote.

The Chair: Shall clause 9 carry?

(Clause 9 agreed to: yeas 9; nays 0)

The Chair: We'll move on now to clause 10.

Shall clause 10 carry?

(Clause 10 agreed to: yeas 9; nays 0)

The Chair: Shall clause 11 carry?

(Clause 11 agreed to: yeas 9; nays 0)

The Chair: Shall clause 12 carry?

(Clause 12 agreed to: yeas 9; nays 0)

The Chair: Shall clause 13 carry?

(Clause 13 agreed to: yeas 9; nays 0)

The Chair: Shall clause 14 carry?

(Clause 14 agreed to: yeas 9; nays 0)

(On clause 15)

The Chair: In clause 15, G-3, as I mentioned prior, is adopted based on G-1.

Shall clause 15 carry as amended? The amendment would be consequential to G-1.

• (1815)

Mr. Malcolm Allen: Mr. Chair, if I could ask for clarification, are you suggesting that you don't wish comments on the amendment to clause 15? Are we just simply going to go through the formality of voting on it?

The Chair: There's no vote on it because of G-1. As I mentioned, when we did G-1, when it was approved it was consequential to G-3 also. It would be adopted.

As for anyone who wanted to speak, I didn't see anyone who wanted to bring it forward since it had already been adopted.

But if you want to debate it...

Mr. Malcolm Allen: Can somebody explain—

The Chair: Well, we've already started the votes—

Mr. Malcolm Allen: I know, and I appreciate the clarification, Chair. There was perhaps a misunderstanding at the beginning when you suggested that there was a consequential amendment. Perhaps we could take a second so I can go back and take a look at it.

I'm not disagreeing with you, Chair. I would not dare to do that. I understand the circumstances of what you're saying. I just want to go back to my friend across the way and his first amendment. I recognize that the initial motion by the parliamentary secretary also included a sunset provision.

It may well have been me not quite understanding what the direction was. I certainly am prepared to accept your ruling, as long as we're all clear around the issue of us actually now voting on the entire clause as amended. Or is it the amendment to the clause?

• (1820)

The Chair: It's the entire clause with the amendment—

Mr. Malcolm Allen: With the amendment inside it? All right. I'm not going to belabour it, Chair. I'll accept the fact that it's my duty to have said something earlier. Your duty is to help us, and you did. It's incumbent upon me as a member if I have something I want to say about that.

I do remember you saying it was consequential. I should have been more attentive. The long travel on Monday and getting up at four o'clock in the morning is perhaps part of that process.

Voices: Oh, oh!

Mr. Malcolm Allen: But then again, that's a personal choice, and one lives with one's personal choices.

The Chair: Well, maybe, Mr. Allen. Next time, remind me. I can be a little more clear. I guess I took for granted that when I did G-1 and then it followed G-2 that it was adopted, so I took it that the same would follow with this.

Mr. Malcolm Allen: I appreciate that.

The Chair: I'm not being critical. Maybe I should try to help out a little more. I apologize.

Mr. Malcolm Allen: No, no, there's no need to apologize, Chair. It's the duty of members to be attentive.

In hindsight, I had this little ringing in the back of my head that said “G-1 is consequential to G-3”. Somehow it didn't get to the front, so as they would say in Welland, “you snooze, you lose” some days.

The Chair: That actually might be kind of universal.

Mr. Malcolm Allen: Let me just say that I wasn't snoozing. I will say that for the record to make sure it's in our Hansard. I didn't nod off. I just didn't quite hear what you said clearly enough. We're voting on that clause as amended by amendment G-3.

The Chair: Correct, and we're partway through.

(Clause 15 agreed to: yeas 5; nays 4)

The Chair: Shall clause 1 carry?

(Clause 1 agreed to: yeas 9; nays 0)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry as amended?

Some hon. members: Agreed.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

The Chair: I want to thank our department folks for coming and sticking with us. We appreciate your input very much.

To my colleagues, this was my first bill as chair and I appreciate your help as we went through this. I want to say to on all of the amendments that came forward that I think there was great discussion and clarification on both sides of why they were put forward, why maybe they went forward and didn't go forward. I think that's what democracy is about. I thank the committee for the amount of work that we did. We tried to balance as much as we could in those three or four days to get as many witnesses in as we did.

I say thank you to the committee for your indulgence on this bill.

The meeting is adjourned.

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