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Chair

Mr. Larry Miller

Standing Committee on Transport, Infrastructure and Communities

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• (1535)

[English]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): I call the meeting to order.

I want to thank all of our witnesses. I know some of you have joined us at short notice, and we thank you for obliging us. Four are joining us via video conference.

First of all, we have Mr. Andrew Mayer from the Prince Rupert Port Authority.

You may have 10 minutes or less. Go ahead, please.

Mr. Andrew Mayer (Vice-President, Commercial and Regulatory Affairs, Prince Rupert Port Authority): Thank you, Mr. Chair, and thank you, members of the committee, for allowing me to present on behalf of the Prince Rupert Port Authority.

This is an important piece of legislation and is of great significance to what we are trying to accomplish in Prince Rupert in terms of facilitating continuing growth of the Prince Rupert gateway.

I'll be brief on background with respect to the port authority. I think it's important, though, to make a few comments just to provide context for other matters that I'll be raising later.

The Prince Rupert Port Authority is of course a Canadian port authority established pursuant to the Canada Marine Act statute. The port authority's powers are established through the Canada Marine Act and the port's letters patent. Prince Rupert is fortunate that we are experiencing a period of dramatic growth, and we see that growth continuing for the foreseeable future in all lines of our business.

Currently in Prince Rupert the three major terminals we have operating all rely on rail service to deliver cargo from the place of manufacture or loading onto railcar, ultimately for delivery by sea to the points of destination. Those three facilities are: the Fairview Container Terminal, for which lands are owned by the port authority and the terminal itself is operated by a private sector operator, Maher Terminals; Ridley Terminals Inc., or RTI, as we call it, which is a federal crown corporation in the business of handling and loading into vessels coal delivered by railcar from various mining locations within British Columbia and also farther away, including the Powder River Basin in the United States; and finally, Prince Rupert Grain, which is a grain and ag products facility that receives cargo from the prairie provinces and again ships that agricultural product by sea to international destinations.

One of the core objects of the Prince Rupert Port Authority is to develop marine transportation infrastructure on lands the port administers. The port lands are federal lands. The goal really is to increase the capacity of the Port of Prince Rupert to handle goods to and from Canada.

As I mentioned, we are in a period of rapid growth, so continued efficiency of the rail system—which is operated by CN in the case of Prince Rupert as the only operator—is critical to the continued efficiency of the existing terminals operating within Prince Rupert.

With respect to the continued growth that I mentioned, we are experiencing a marked increase in interest in delivering cargo through the Prince Rupert gateway to international markets and receiving cargo from international markets and delivering it, by rail principally, through Prince Rupert.

Just by way of example with respect to the expansion activities that we're contemplating and that are in the works at this time, we have an expansion of our container terminal from a 500,000-TEU—twenty-foot equivalent—container unit facility to a two million-TEU facility. The additional 1.5 million TEUs of cargo will be transported by rail as intermodal cargo.

As well, Ridley Terminals is in the process of expanding their facility to increase their capacity to upwards of 25 or 30 million metric tonnes per annum. They have an option to increase even further to 50 or 60 MTPA, or metric tonnes per annum. That's dramatic growth for Ridley Terminals.

As well, we have a Canpotex potash terminal project that has received authorization from the Minister of the Environment. Its environmental assessment has concluded, and we hope they will make a final investment decision in April of this year. That cargo will be delivered from Saskatchewan to Prince Rupert for export.

We are in the process and have actually commenced work on a major expansion of our rail infrastructure within the Port of Prince Rupert. That is the Ridley Island road, rail, and utility corridor project. This is a joint project that is benefiting from funding from the federal government, the provincial government, a substantial contribution from CN Rail, and the Prince Rupert Port Authority as well. The project is a landmark project, in that it will be constructed by first nations entities that have joint-ventured with contractors to build it out.

In addition, we have a wood pellet project, which is a new greenfield project, and another rail-based facility that will be constructed in Prince Rupert.

Additionally, CN Rail is in the process of building a second siding, which we're told will be the most expensive siding they have ever constructed in Canada, to facilitate increased rail traffic to and from the Fairview Container Terminal.

With respect to Bill C-52 and its objects, as I mentioned the Prince Rupert Port Authority supports what we believe is the principal object of this piece of legislation, which is to ensure that there are agreements in place that provide clarity, transparency, and certainty both to shippers and to rail lines regarding the obligations of both parties in their roles in the supply chain. But we also think there is another important participant or group of participants who really can't be ignored, because they are essential participants in the supply chain. Those are ports and the terminal operators who act within the ports. We rely upon efficient rail service to continue to generate more traffic through our ports, to continue to expand the capacity of our ports to handle traffic, and to facilitate growth in Canadian trade.

We've had some success with service-level agreements. In 2010, Prince Rupert Port Authority entered into a service-level agreement with our container terminal operator, Maher Terminals, and with CN Rail. It included a variety of things, but most importantly it included commitments from CN Rail and Maher Terminals with respect to rail and terminal handling service levels. As well, and I think equally importantly, it included a commitment for an exchange of data—a really key performance indicator to allow us and the rail line and the terminal to track performance and to take steps to improve service levels wherever there was a deficiency in performance.

I don't want to overemphasize it, but intermodal container traffic gets a lot of press, and Prince Rupert and Vancouver have received a lot of press recently, principally from the U.S., which has recognized the competitive advantages of west coast Canadian ports—and of eastern Canadian ports as well—as compared with American ports, which are struggling because of capacity constraints, urban congestion, and other factors.

I mention this because the “better mouse trap”, as it has been described by some commentators, that has been created in Prince Rupert and as well in Vancouver is one that we want to maintain. We don't want to see it or the integrity of the entire supply chain constrained, because that will affect us dramatically.

The Fairview Container Terminal is the fastest-growing container terminal in North America at this time. Some would argue that it's easy to be the fastest-growing when you're starting from zero; nonetheless, we've continued to expand year over year. It's the efficiency of the rail system, the efficiency of the terminal operator, and the efficiency of the vessel owners who are delivering the containers to and from the quayside that is facilitating that excellent record.

That's the background.

Our comments with respect to Bill C-52 are relatively limited. We had some concerns and expressed them during the rail freight services review process with respect to mandatory arbitration provisions, which were suggested at that time.

The concerns were that requiring arbitration as a way to conclude a service-level agreement could have an unwanted negative effect, which is to create a chilling effect on negotiations between

commercial parties—the railways and the shippers. It's been our experience, when we've been involved in similar types of disputes with arbitration as a device, that sometimes parties become positional early on in the negotiation because they expect or realize that arbitration is available to them at the end, so they are cautious about taking a position that can prejudice them in an arbitration proceeding.

● (1540)

That said, we recognize that situations may arise in which parties acting in good faith are not able to conclude an agreement and that some way to deal with such impasses is required. Our suggestion is to take interim steps, to encourage the parties, in particular the railways and shippers—because that's where the disputes are most likely to occur in the first instance—to take active steps to negotiate in advance of arbitrating a dispute. As the legislation is drafted, with all due respect, we believe those interim steps are not adequately set out in the legislation.

During our response to the rail freight services review process, PRPA supported the suggestion that railways and shippers be assisted by a facilitator appointed either by Transport Canada or the CTA to engage in early negotiations to seek to resolve their disputes on a commercial basis, rather than by recourse to, essentially, a judge, an arbitrator.

A little bit more detail on that—

The Chair: If you can, just wrap up as best you can, Andrew. Thank you.

Mr. Andrew Mayer: I can.

I'll mention our recommendations.

The Chair: Yes, that would be good.

Mr. Andrew Mayer: We recommend that the CTA first act as a gatekeeper and only refer a matter to arbitration if the railway and shipper have both demonstrated that they have made efforts in good faith to negotiate a service-level agreement by participating in a mediation facilitated by Transport Canada or the CTA.

Second, if that doesn't happen, we think the criteria to evaluate the steps the shipper has taken to enter into an agreement with the railways should be more fully fleshed out. As drafted, we don't believe that proposed paragraph 169.33(1)(b) establishes those types of criteria. The shipper simply just has to indicate that they made an effort, but it doesn't establish to what level that effort would be, which could be problematic if they really don't try hard enough.

Finally, with respect to the arbitration itself, we know that there are situations where an arbitration will occur. In that case, we think it is critical that the arbitral panel include expertise relating to the integrity of the supply chain, supply chain management, and also have expertise with respect to terminal and port operations to ensure that the entire supply chain, and the integrity of the entire supply chain, is taken into consideration when making a decision to impose a service-level agreement on the railway.

Finally, if there isn't sufficient expertise within the arbitral roster, the suggestion is that the panel have the ability to seek external advice and to consider that advice before making its decision. That advice could come from industry, from ports, from terminal operators.

Mr. Chair, those are my suggestions.

• (1545)

The Chair: Thank you very much.

Now joining us by video conference, we have...can all of you hear me?

Witnesses: Yes.

The Chair: Okay. We'll now go to Port Metro Vancouver, Mr. Peter Xotta, for 10 minutes, please.

Mr. Peter Xotta (Vice-President, Planning and Operations, Port Metro Vancouver): Thank you very much, Mr. Chair. We will do our best to comment within that timeframe.

Good afternoon, and thank you for the opportunity to present Port Metro Vancouver's position as regards Bill C-52, the fair rail service act. As committee members may already be aware, Port Metro Vancouver is Canada's largest and busiest port, serving as a vital strategic gateway for domestic and international trade and a significant economic force strengthening the Canadian economy. We're the most diversified port in North America, facilitating trade with 160 economies, handling about 124 million tonnes of cargo each year.

As the fourth-largest tonnage port in North America, we offer 28 major marine terminals and three class 1 railways, providing a full range of facilities and services to the international shipping community. In British Columbia's lower mainland, one in 12 people earn a living as a direct result of port-related economic activity, estimated to be about 80,000 jobs. Consistent, reliable, and cost-effective rail service is fundamental for optimal supply chain performance, and ultimately to the success of the port and its role in serving our mandate on behalf of Canada. As such, the likely passage and implementation of Bill C-52 has the potential to hold consequences, either intended or unintended, for the core of our operation. Put simply, Bill C-52 is extremely important to Port Metro Vancouver.

With that in mind, let me address Port Metro Vancouver's views regarding incorporation of right-of-service agreements into the Canada Transportation Act and our views with respect to the process that is intended to establish service-level agreements should normal commercial negotiations fail.

First, with regard to service-level agreements, Port Metro Vancouver would like to highlight that significant progress has been made since 2010, when the rail freight service review and its related activities drove forms of service-level agreements between the railways and certain stakeholders, notably, the commercial terminal operators in Port Metro Vancouver, and the establishment of collaborative agreements directly between CN, CP, and the port authority. As a result of these collaborative, industry-led efforts, the average dwell time of containers at the terminal in Vancouver has been reduced significantly, by our estimates approximately 30%

since 2010. While it's much more difficult to assess the improvement and performance around bulk commodities, anecdotal information that we receive and our efforts to measure this indicate that there's been a significant improvement in those sectors as well. Average transit times for containers between Vancouver and key eastern and midwestern rail hubs such as Toronto, Montreal, and, increasingly, Chicago have also substantially improved.

Overall, Port Metro Vancouver has witnessed an increased willingness on the part of the railways to work in collaboration with their supply chain partners, including at the senior executive level. We're hopeful that the implementation of Bill C-52 will not undermine the market-driven cooperative gains that have been achieved over the last several years.

Secondly, in regard to the process or mechanisms that should exist within the Canada Transportation Act for the establishment or imposition of service-level agreements, once commercial negotiations fail between railways and shippers, shippers have failed.

One of our key recommendations is that Port Metro Vancouver does not believe that a singular template for the development for such agreements can be appropriate, given the diversity and wide range of commercial and service relationships that exist within our gateway in particular. Rather, Port Metro Vancouver would submit that service-level agreements between railways and their customers should, one, describe the specific measurable and reciprocal service obligations of both parties with respect to transit times, car supply commitments, hours of operation, loading and unloading time, as well as volume, targets, and switching service frequencies; two, include issues management and clearly defined escalation in dispute resolution processes; and three, potentially include appropriate reciprocal financial incentives or penalties.

Port Metro Vancouver believes that a fundamental accountability should exist between supply chain partners for the optimization of output, while at the same time maintaining the respect for the need of all participants to earn a fair commercial return that encourages continuing investment. Clearly, the establishment of service agreements through normal commercial process should be encouraged, with arbitration as a last resort.

With this in mind, we would submit that at a high level, the process to establish arbitrated service agreements, once commercial negotiations have failed, must not be allowed to usurp meaningful commercial negotiations and agreements. Even with the most carefully crafted regulation, there is always a risk of unintended consequence, which could adversely affect shippers, railway companies, and other stakeholders, including Port Metro Vancouver. Port Metro Vancouver would suggest this risk is particularly acute in relation to an arbitrated process where much of the material impact of the operations of the supply chain partners will be determined through individual adjudications.

• (1550)

This brings me to my second key point. In this regard, we believe strongly that it is essential that arbitrators appointed to the CTA have specific and extensive background in and knowledge of supply chain management. The inherent complexities in the examination, drafting, and implementation of service-level agreements demand a detailed knowledge of the subject at hand, and Port Metro Vancouver believes that the risk of unintended harmful consequence grows exponentially should the individual charged with managing this process have insufficient applicable subject-matter expertise.

In closing, let me reiterate Bill C-52's importance to Port Metro Vancouver's interest. While we're always supportive of initiatives that increase supply chain efficiency and promote transparency and cooperation between supply chain partners, we're also cognizant that the concrete gains that we have observed in the industry since the initiation of the 2010 rail freight service review need to be preserved and fostered as much as possible.

Commercial, market-driven solutions respectful of the interest of all parties should always be given preference over arbitrated agreements, and an unintended consequence of a legislative approach should avoid, at all costs, undermining negotiations or imposing long-term, negative commercial obligations on one or more parties.

While Port Metro Vancouver is supportive of Bill C-52's intent, we also offer our caution to committee members as they deliberate on this important bill regarding the potential for harmful impacts we and other witnesses, including our friends in the Port of Prince Rupert, have identified.

Thank you again to the honourable members and chair for the opportunity to present to you today.

Thank you.

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

We now move to Global Container Terminals.

Yes, Mr. Coderre.

Hon. Denis Coderre (Bourassa, Lib.): I'd like to make sure that the witnesses take some deep breaths before talking, because somebody will collapse. I'm trying to take notes. Perhaps they can reduce the speed. It's not a sprint; it's a marathon.

The Chair: I believe everyone could hear you, Mr. Coderre.

Having said that, sometimes if we do go too fast, it's hard for the interpreters. I'm sure they'll give me a signal.

With that, we'll go to Global Container Terminals. We have Mr. Stephen Edwards and Ms. Lori Janson.

Mr. Stephen Edwards (President and Chief Executive Officer, Global Container Terminals): Good afternoon, Mr. Chairman and members of the committee. I will try to speak a little slower.

Thank you for the opportunity to present Global Container Terminals today. As you said, my name is Stephen Edwards. I am the president and chief executive officer of Global Container Terminals.

First, to provide some background on our company and our role in the intermodal supply chain in Canada, Global Container Terminals operates four container terminals in North America: Vanterm and Deltaport in Canada, under our subsidiary TSI Terminal Systems Inc.; and two in the United States, New York Container Terminal and Global Terminal.

TSI is Canada's largest container terminal operator, moving containerized cargo through Port Metro Vancouver at its facilities Vanterm, in the inner harbour, and Deltaport, at Roberts Bank.

Established in 1907, TSI is synonymous with the development of Vancouver as Canada's Pacific gateway. TSI supports annually 1,500 person-years of employment and \$215 million in payroll. Our two container terminals handle annually more than two million TEUs—20-foot equivalent units—of which 60% move by rail.

There's been significant investment by governments and the private sector to ensure the ongoing success of the Asia-Pacific gateway. I believe west coast Canadian ports are positioned to grow and gain market share through competitive, efficient, and reliable service. I also believe a commercial approach is the most effective and appropriate means to establish customer-centric rail service standards with accountability by all parties. The primary objective is end-to-end supply chain service, reliability, and consistency that will sustain cargo growth and commercial success for all participants in the intermodal supply chain.

A container terminal is just one component of a...[*Technical difficulty—Editor*]...and involves all activities that occur between the vessel berth and the port gate. Simply put, these include vessel berthing capacity, loading and unloading full and empty containers to and from vessels, moving containers to staging areas within the terminal for pickup and delivery by rail or truck, and checking containers in and out of terminal gates.

This may sound quite simple; however, to illustrate the complexity of a container terminal, Deltaport on any given day will have between 300 and 350 different cargo container sorts in the yard. Container yard space is always at a premium. Receiving export cargo into the terminal is totally dependent on vessels loading to create yard space. Discharging import cargo from vessels is dependent on rail and truck deliveries to create yard space. Container terminal capacity is a factor of dwell times, and container space can be used three separate times in one week.

Disruptions to the container terminal operation occur each and every day. Vessels are delayed, truck arrivals peak, cargo seasons differ, weather such as fog and wind will cause cargo operations to stop, and rail service will be disrupted. These are real factors that increase costs and, perhaps most importantly, increase consequential costs for different parts of the international supply chain, depending on the day and the issue.

Our approach to managing the supply chains of the railways has been through the service-level agreements. In 2010 TSI and Canadian National Railway entered into a three-year service-level agreement. In 2011 we signed a three-year agreement with Canadian Pacific Railway. The results to date have been significant and mutually beneficial.

In February this year, we entered into a new service-level agreement with CN, which has further improved our criteria and refined our respective performance standards. The joint service-level agreements and daily performance scorecards with both class 1 railroads have increased operational and commercial stability, and have added a level of cost predictability that was previously absent.

The cargo shipping industry measures key performance indicators by the number of railcars supplied by the railway to meet shipping demand and by the length of time containers are idle on the dock, waiting for a train to move the cargo. The average exit dwell time prior to the implementation of our service-level agreements was 3.78 days. Today the average exit dwell time has been reduced to 2.8 days—or, if I state this differently, a 25% increase in our import container yard capacity—with no capital investment required.

In terms of pre- and post-service-level agreements, railcar supply has risen from 19,500 feet per day to approximately 27,000 feet per day. There's been an increase in cargo volumes and a decrease in dwell time, which is the ideal scenario for our companies and our customers.

• (1555)

There has not been a need to initiate a third-party commercial dispute resolution mechanism because the agreed-upon service-level agreement escalation process involving senior corporate officers has effectively addressed any and all disputes to date. The relationship and collaboration between TSI and the two railways has improved dramatically, which in turn has benefited our industry, our customers, and Canada's competitiveness in the global marketplace.

I'm sure you've heard from others that the supply chain is a complex network and is only as strong as its weakest link. It is vital that all components of the supply chain work together for the benefit of our customers and the Canadian economy.

By and large, our experience to date demonstrates that commercial service-level agreements work for all parties. Therefore, I advocate the position that organizations in the supply chain continue to work together using the commercial approach rather than legislation and arbitration. We believe we are on the right track with the service-level agreements, and it is in the best interest of all concerned to continue this effective model.

Thank you.

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

Now joining us, from Sinclar Group Forest Products Ltd., is Mr. Greg Stewart and Mr. Gregg Koehler.

• (1600)

Mr. Greg Stewart (President, Sinclar Group Forest Products Ltd.): Thank you for the opportunity to present to you this afternoon.

I would like to introduce Gregg Koehler, Sinclar Group's sales manager. He is responsible for our company's logistics, and he will be available to answer any questions you may have following the presentations.

Before jumping into the presentation, I feel it is beneficial that I provide a little background on Sinclar Group Forest Products. The company is a third-generation family business that was started by Ivan Andersen and Bob Stewart 51 years ago. Today that company has varying equity interests in three stud lumber operations: a finger-joint plant, a panelized home manufacturing facility, and a wholesale lumber operation.

All of the operations are located in British Columbia's central interior, from Fort St. James to Prince George. Sinclar Group is a leading distributor of high-quality stud lumber throughout North American and Asian markets.

For the past three years, CN has been our largest non-governmental supplier, averaging just less than \$20 million in cost to our company. Approximately 70% of all our products are shipped by rail.

As one last introductory point, I just want to point out that the comments I make pertain to Sinclar Group. I am not intending my comments to represent other organizations or companies impacted by Bill C-52.

Sinclar Group, over its history, has achieved its success through partnerships. The company started as an equity partnership and has since grown to incorporate other partners. From Tl'oh Forest Products, which is a joint venture between Nak'azdli First Nation and us, to the relationship we have with the City of Prince George to supply heat to the city's downtown, our business opportunities have been rooted in openness, collaboration, and innovation from both parties.

The relationship we have established with CN over the past few years has been focused on understanding the needs and looking for opportunities to improve performance of both parties. We have observed a steady improvement in rail service over those years. While we have experienced a few disruptions along the way, we have been able to engage CN to work through the issues. Through these challenges, both parties have been committed to understanding each other's perspectives, and the communication between the companies has significantly improved.

Most recently, we reached an agreement with CN to provide more centre-beam capacity by removing a ramp at the Nechako operation in return for a volume commitment. Currently the two companies are working on building more flexibility into the supply chain by exploring alternative shipping methods, such as intermodal shipments.

In all cases, it starts with communication about the issues and a commitment from both parties to collaboratively work together to find new solutions for the dynamic marketplace.

Over the past four years, Sinclar Group has grown its stud lumber shipments, capturing a greater share of the North American and Asian markets. We were able to achieve record shipments, in part due to the commercial....[*Technical difficulty—Editor*]

The Chair: Mr. Stewart, can you hear me?

No. Okay.

Mr. Malec, can you hear me?

Mr. George Malec (Vice-President, Business Development and Operations, Halifax Port Authority): Yes, very clearly.

The Chair: Until we regroup with Mr. Stewart, I think we'll let you do your presentation. Hopefully he'll come back on and we can go back to him.

So perhaps you could....

Oh, hold it.

Mr. George Malec: They're back now?

The Chair: Yes.

We lost you, Mr. Stewart.

Mr. Greg Stewart: Now we're found.

The Chair: Continue on.

Mr. Greg Stewart: Sinclar Group, I think, would be considered a medium-sized business. We pride ourselves in finding creative, effective ways of serving our customers. Given our size and our need to leverage the strengths of our stakeholders to meet our customers' expectations, we are susceptible to sudden changes in partners' strategic direction.

While it would be nice to think we will maintain harmonious commercial arrangements with all of our partners, reality dictates that there will be changes. A serious risk to any manufacturer is a significant disruption to its ability to get its products to market.

The amendment that gives shippers the right to enter into service agreements with the railway companies and establish an arbitration process in the event of a dispute, I believe, is a significant improvement and will reduce the risk I mentioned before. Further, I believe past performance of the railways has made it necessary to mandate that service agreements be established when requested by the shipper.

As a manufacturer, Sinclar Group is looking for greater certainty with rail supply. We want to know that the railcars will be spotted within the agreed-upon time range. We want to know that the cars will be switched out within the agreed-upon switch window. We want to know that our products will be delivered to our customers on

time. Further to this, we want to make sure we are getting competitive rates to ship our products.

Establishing service obligations, communication obligations, performance standards, performance measurements, consequences, and dispute resolution processes are key to any commercial agreement. This provides the opportunity for companies to engage with the railways on important issues. That said, the conversation cannot be one-sided. It is reasonable to expect each shipper to be held to the same standard as the railway. After all, the issue at hand seems to be the equating of the commercial relationship. This will not be achieved by mandating a one-sided conversation.

I'm not an expert at logistics, let alone managing a railway; to me, the railway has a lot of moving parts—no pun intended. The railways have all the internal challenges that every other company has. In addition to those challenges, from weather, connections, turnaround times, and variable shipping distances, the railways must contend with each of these external factors to ensure Sinclar Group gets what we want.

When listening to all the challenges the railways face and industry's call for more prescriptive measures around the commercial agreements, I get concerned about the sacrifices shippers will have to make to establish functioning relationships. To me, it means the costs for shippers will go up, or the certainty associated with delivery will decrease. I believe the latter will manifest itself in longer time windows for delivery, making it increasingly more difficult to manage Sinclar Group's workforce and production.

Past performance of the railways has made Bill C-52 necessary. I think the bill has appropriately walked the fine line of mandating action but allowing for the flexibility to tailor agreements to the needs of each shipper. The past performance failures cannot be undone. We need to learn from them, establish new protections, and move forward in restoring the constructive relationships necessary for the robust national economic performance.

I would recommend proceeding with the approval of Bill C-52, recognizing that there are areas of concern that will be watched by all stakeholders. I recommend tasking those responsible for the 2015 review of the Canada Transportation Act with developing a monitoring program for the unresolved issues. This should be a transparent process and involve input from all stakeholders.

It is Sinclar Group's belief that businesses must be encouraged to work together to solve their business challenges. In our experience, CN has been responsive to the recommendations tabled to date. We feel their actions should be met with further collaboration to address the challenges faced by shippers today. Stakeholders working together as partners will strengthen their relationships through a greater understanding of each other's business. Through this understanding, I believe we will realize further innovation and service improvements.

Thank you again for this opportunity to present to the committee.

●(1605)

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

Last, but not least, from the Halifax Port Authority, Mr. George Malec.

Ten minutes, please.

Mr. George Malec: Good afternoon, Mr. Chairman and members of the panel. Thank you for the opportunity to make a commentary and presentation before the panel this afternoon.

Halifax represents something more for Canada in terms of the strategic outreach in global trade that we're engaged in today. The Port of Halifax is Canada's only deepwater, east coast, and fully Panamax/post-Panamax vessel-capable marine outlet that facilitates and supports Canada's overall trade objectives, particularly in using the Suez Canal through Southeast Asia.

To that end, what we talk about, and what we bring to the table, is bigger than just the parochial concerns of a port: we understand our relationship as a part of an overall supply chain that is important to Canada's economic development. Going forward on that concept, Mr. Chairman, right now 65% of our intramodal traffic is actually carried by rail, by CN, into the key inland markets that some of my good colleagues like Peter Xotta have already described, which benefit all Canadians.

We have of course seen a very similar evolution over the last two years. Subsequent to the evolution of the federal panel rail review process, which was a very constructive undertaking by the government, we have witnessed a very significant outreach and a very significant commitment on behalf of CN in working with our stakeholders and ourselves towards transparency and greater service levels of accountability and aggressive pricing structures to facilitate the use of the infrastructure provided in the Port of Halifax.

We were in fact the model and the first port to enter into a port authority terminal operator and rail combined key performance indicator metric, which, similar to the experiences you've heard about from Global, from Mr. Xotta, and from the Port of Prince Rupert, etc., has produced demonstrable and tangible benefits. It is our hope and intention to work with CN and our other stakeholders, because, as you have heard in commentary before, it is a complex, integrated supply chain. The efficiency of the railroad has to be equally and fairly balanced by the expectations and the commitments of shippers and, most importantly, of the terminal operators that are the main partners in the rail transfer.

We see it as a very balanced, very complicated supply chain. We favour the commercial solutions that have been proven to be very

successful so far. We do reinforce and echo the comments made by some of the panellists from Prince Rupert and the Metro Vancouver Port Authority: that due to the complexity and the supply chain, it has to be treated in a very cautious manner before any regulatory process is in place. We appreciate the complexity around the supply chain. That's why we encourage a good deal of caution with respect to forced, compulsory measures under Bill C-52.

In summary, Mr. Chairman, Halifax recognizes and agrees with the comments made by our competitive and in fact complementary port partners in Prince Rupert and Vancouver. We do concur with the submissions and recommendations they've brought forward. Rather than restating all of that, we'll submit to you that it is the correct way to go forward from the perspective of the Halifax Port Authority as well.

Thank you.

●(1610)

The Chair: Thank you, Mr. Malec, for keeping your comments brief, as all of you did.

With that, we're going to go right to questioning.

Ms. Chow, you have seven minutes.

Ms. Olivia Chow (Trinity—Spadina, NDP): I have a question for the Port Metro Vancouver team. In one of your recommendations—recommendation 2 in your previous recommendations—you talked about performance monitoring.

Are there guidelines right now from the port authority that say x percentage of trains arrived on time, therefore y number of containers were able to depart the port with their shipments, and/or if they didn't arrive on time, this is the dollar amount lost as a result, and some of the shippers end up booking three or four containers just in case their grains, for example, don't arrive on time? Are there performance measurements that are standard amounts for all port authorities that receive quite a lot of shipments from rail?

I'll start with Vancouver.

Mr. Peter Xotta: As I mentioned in my comments, Ms. Chow, bulk supply chains are very diverse throughout the country at each port that handles bulk commodities. It's inherently more difficult to standardize performance metrics within those supply chains.

Having said that, you may be aware of the work that certain parties undertake on behalf of the Government of Canada to monitor the grain supply chain, for example. There are methodologies in place to do that.

A lot of our comments, both ours and those of our competitor and partner ports, will be on the intermodal supply chain that handles containers. The ability for the port to monitor that activity, which is very competitive, is much higher, so we have had tremendous success working with the railways and other service partners to establish performance targets and then to measure against those.

For example, in Vancouver, going back to 2010, we established a target among the various supply chain partners to measure our performance against a three-day dwell target. In other words, containers that were received in Vancouver and moving inland by rail should exit the terminals in three days or less. I'm pleased to say that in the two years since we initiated that activity, our performance generally is down around two days, which is very competitive with other ports up and down the west coast.

We have a very strong commitment to transparency and visibility of the performance of the supply chain among those partners. In fact, just prior to this session I was with Transport Canada and with the railways and the terminals discussing this very issue.

So the standard, as we've defined it, is less than three days. As I said, our performance is much better than that consistently, over the last 24 months particularly.

• (1615)

Ms. Olivia Chow: Thank you.

In terms of CN and CP delivering grains, let's say, on time to the port, have you noticed increased efficiency, or have there been more problems? Have you noticed a trend?

I would imagine that because of all this discussion concerning this bill...and prior to that there was the Dinning report, and before that the stakeholder review. During all this discussion I would imagine the performance would have improved. Or is that not the case? Have you observed any trend?

Mr. Peter Xotta: I would observe that, generally speaking, the performance of both primary rail providers in our gateway has improved considerably. The agricultural supply chain on the west coast is undergoing significant change by virtue of changes to grain transportation and the change in the Canadian Wheat Board's role in that.

We have also focused on one of the other unique challenges on the west coast, and that is dealing with agricultural loading in the rain. The weather in the fall here creates some other operating challenges that back up into the supply chain.

So there are activities under way to address or to work on those things collaboratively, but I would say our observation is that, generally speaking, the improved supply chain performance that we have been able to measure in the container side of things is mirrored, to greater or lesser degrees, in other supply chains as well.

Ms. Olivia Chow: Do you think the penalties coming out of the arbitration should go to the government or to the parties—perhaps the shippers, for example? If the shippers didn't get the service they wanted, or the service agreements weren't put in place, etc., do you think the penalties should come to the government or should go to the shippers?

Mr. Peter Xotta: That's a question that I'm not sure the port has taken a strong view on. I think our recommendations around the first priority being commercial agreements between parties would suggest that if there are reciprocal incentives or penalties, it would be amongst those commercial partners.

We could certainly comment on that more fully if the panel and the committee so desired us to put more thought into that, but that would be my initial observation and response.

Ms. Olivia Chow: Right now, the bill is only for parties that don't have a service agreement. Do you think the bill should be expanded, that the arbitration should be available to everyone, whether they are going to get a service agreement or they already have one, or do you think it should only cover the new service agreements?

Mr. Peter Xotta: I think from the port's perspective, I'd reiterate our caution that developing one template may be a challenge. So appreciating that this places an inordinate challenge before the committee, we're concerned that there could be unintended consequences in our desire to make this as simple and effective as possible.

Our view, though, is that the legislation should encourage those private partners to come together. Absent that, those parties that desire a service-level agreement and can't reach one without the support of the provisions for the legislation in process should be able to avail themselves of that process.

• (1620)

The Chair: Okay, thank you.

Now I'll move to Mr. Coderre for seven minutes.

Hon. Denis Coderre: Thank you, Mr. Chair.

Thank you, gentlemen.

My question will be for Mr. Stewart and Mr. Edwards. Because that's the reason we have Bill C-52, do you believe the law would give shippers more leverage to negotiate service agreements? You could have the railways saying they don't need that and some of the ports saying, well, they already have the commercial agreements, so why bother? From a shipper's point of view, what would you think?

I'll ask Mr. Edwards first.

Mr. Stephen Edwards: I'll comment on the intermodal side, which is where I'm qualified to comment. Typically, the customer of the railroad on the container intermodal business, similar to us as a terminal operator, is largely the shipping line offering a through service from Asia to Toronto and Montreal, for example. The consolidation of shipping lines in recent times has led to significant buying power from our customer base. So their contracting capability between railroads is quite significant.

What I fear from this approach is that when arbitration is an available option, it would cause a more hard-line negotiating position to be taken earlier in the process rather than reaching a commercial agreement. This is an industry that is used to long-term contracting. It is an industry that is used to multi-year, multi-port contracting and very significant multi-million dollar contracts as a whole. What I fear, with the ability to have arbitration as a backstop, is that it would create a harder line—

Hon. Denis Coderre: All right.

Go ahead, Mr. Stewart.

Mr. Greg Stewart: In terms of whether we think it will give some more leverage to the shippers, in short, the answer is yes. In our case, for example, we already have a commercial agreement established with CN, and in there we do have dispute resolution processes that we follow, and we follow them to great success. It's a joint effort of both parties to pursue those dispute resolutions, but I think we approach the situation as equals, and the service-level agreement will allow people to do that.

What I would argue, though, is that I think arbitration is a little heavy-handed. I would really be in favour of pursuing mediation. When we've run into situations in the past, we've sought third parties that can provide some perspective. That would be my comment on that.

Hon. Denis Coderre: Okay.

Mr. Mayer, Mr. Malec, and Mr. Xotta, my understanding is that we shouldn't have the bill at all, because if you want to replace mediation instead of arbitration, you put in a new rule and that's it. Since the Dinning report, railways have got scared and they've improved their agreements, so why bother? Is that a fair comment?

I'll ask Mr. Mayer first.

Mr. Andrew Mayer: I think we need to accept the fact that in some circumstances it won't be possible for a party to actually, in good faith, negotiate an agreement. In that sense, Bill C-52 does suggest a mechanism for resolving that impasse.

I think what's missing is an interim step to facilitate a mediated resolution of a dispute without recourse to arbitration. Arbitration really should be a last resort. If there is going to be arbitration, it should be as I suggested, something that contemplates the interests of all users of the supply chain.

Hon. Denis Coderre: Thank you.

Mr. Malec.

Mr. George Malec: I would have to say that's a very concise response from my colleague.

We are conscious of the fact that this bill has been driven, obviously, by a need generated, let's say, eight to ten years ago, from shipper dissatisfaction. At this point we've seen great forward thinking and progress in terms of the commercial arrangements between shippers, port authorities, terminal operators, and the railways.

Having said that, this is an ongoing process, and we do think there is a rationale underlying Bill C-52. We do agree with the fact that we have to be very careful before we move to prescriptive solutions because of the complexity of the supply chain and the fact that these have to be very balanced. It's not just about the railway; there are all sorts of obligations on each party in the supply chain.

• (1625)

Hon. Denis Coderre: Mr. Xotta.

Mr. Peter Xotta: I would echo the comments of Prince Rupert and Halifax.

We're conscious that the feedback received by government over the last number of years as a result of shipper concerns has led us to this place. Shippers are also concerned that the improvement in

performance that we believe they've seen is something that could be reversed over time, and they're anxious to ensure that doesn't occur.

The point in our submission today is to say we think the committee needs to be aware of and conscious of the improvements that have been made and that we don't inadvertently undermine that progress.

Hon. Denis Coderre: Basically, if we don't have that mediation, it would create another imbalance, and therefore this is what we should do.

But who will decide the criteria if everybody is in good faith?

Mr. Mayer?

Mr. Andrew Mayer: I think that's a role for—

Hon. Denis Coderre: Another group? Another study?

Mr. Andrew Mayer: No, not another study. Honourable member, I believe the CTA, for example, could take on that responsibility, which is to determine what steps have been followed by both parties to seek to negotiate an agreement and evaluate that.

What I think should be avoided is a situation where one of the parties, and it may well be a shipper, is using the system as a way to exert commercial pressure on the railway to enter into a service-level agreement that creates an inefficiency.

Arbitration is a big hammer. If there's an automatic right to arbitrate, there's a potential that the shippers will be able to create an artificial commercial pressure that will result in an inefficiency in the system.

The Chair: Thank you, Mr. Coderre.

Now I'll move to Mr. Toet for seven minutes.

Mr. Lawrence Toet (Elmwood—Transcona, CPC): Thank you, Mr. Chair.

Thank you to all of our guests here today. It has been very enlightening to hear a perspective that is maybe somewhat different from what we've heard before. I want to touch on that a bit.

One of the things we heard from shippers, and I heard very contrary today, is that they shouldn't be talking about the complex network. It should be focused on their needs and their needs only and what they need to get their goods to the market.

I've heard all five witnesses today speaking very much about the need to talk about the complex network. It was very interesting to also see that all the ports see themselves as part of that complex network. You're not saying you're standing outside of it but that you are part of it; you actually expand even further the railways' complexity that they're already dealing with within the confines of their own network.

Mr. Xotta, because you mentioned in your comments that it's essential for a full understanding of the supply chain network, maybe you can start with expanding on why it's so important, and what you'd respond to these shippers as to why it is so important, to be looking at the whole complex network of the shipping system.

Mr. Xotta.

Mr. Peter Xotta: I appreciate the question.

By way of a bit of context, our experience and focus would be on improving first- and last-mile performance, particularly the things we can do in and around the port complex to ensure that's not a constraint to the free and efficient movement of goods. I believe most of the other ports and their terminals, over the course of the last couple of years, would have that as well. As we undertake that analysis, whether it's improving a road or rail access or adding a marine terminal, as our friend from Global talked about, we're doing that in the context of global demand, the opportunity for Canada, and how the supply chain works across the country. We believe it's important to understand and bring that contextual detail to an analysis on that level, that shippers and railways might be having their negotiations if the CTA, for example, were wading into that.

So as I said in my recommendations, I believe the window of context needs to be fairly broad to avoid unintended consequences, and those who are tasked with that very difficult assignment need to be able to bring that expertise to the table.

• (1630)

Mr. Lawrence Toet: Of all the witnesses we have here today, would anybody disagree with having to look at the full network? As we've heard from some of the shippers, that to remove that aspect of it.... Would anybody say that really doesn't need to be in there?

I'm getting silence, so I take it that all of you would agree it is vital, as we go forward on this, to have that as part of it.

I want to touch a little on the commercial negotiations being the preferred method. I also heard that coming out here very clearly, and I think we've been quite clear: this legislation is meant to be a backstop. The desired outcome of this is that commercial negotiations become the standard and the status quo, and that we don't have a lot of arbitration happening out of this.

One of the things you spoke about, Mr. Mayer, was this interim step of negotiating. One of the other things we heard from some of the shippers was that they feel the timeframe from when they can enter into this arbitration and have a settlement to move their goods is already too long. What would you say to that? I'm intrigued by your idea of this widening of the negotiated process, but how do we respond to them?

Mr. Andrew Mayer: Of course, any additional step is going to lengthen the process, but by not doing that you're really risking creating inefficiency in the system, which will represent a greater loss to the entire supply chain.

With respect to shippers' concerns, one thing that puzzles me a little is that they are also impacted by inefficiencies in the supply chain that result in an inequitable or inefficient distribution of rail resources to particular areas, because there's a system-wide effect: it's harder for railways to get their cars to the terminals; it's harder for the terminals to discharge those cars, unload the car to the vessel. But with respect to the interim step, I think we need to have some prescribed timelines to ensure that neither of the parties—the railways or the shippers—have the ability to unfairly extend the mediation period. It needs to be a little more prescriptive in that respect to avoid an overly long process.

Mr. Lawrence Toet: Mr. Stewart, I have a question for you. You talked quite extensively about relationship building and the need to build relationships in business, and I would agree with you

wholeheartedly on that. You talked quite a bit about your relationship with CN, and that both parties are committed to understanding and communication in that relationship. Yet you also said that we really need to have legislation that backstops that. In some ways, you also have the sense that we need to have a legislative process, and yet we really want to see a situation where relationships are growing.

Do you see any setbacks in having those two things working against each other, that these relationships may not develop the way they should if there's this situation where the shipper can go to an arbitrator in a fairly quick fashion?

Mr. Greg Stewart: I think that the....

[*Technical difficulty—Editor*]

Mr. Lawrence Toet: Mr. Chair, how much time do I have?

The Chair: Basically, when he's done answering, you'll be done.

Mr. Lawrence Toet: But he's done.

The Chair: Well, we're hoping it's just temporary. You had a little more than half a minute left, so when he comes back on, or if he comes back on, we'll allow him to answer that question.

In the meantime, we'll go to Mr. Daniel for seven minutes.

• (1635)

Mr. Joe Daniel (Don Valley East, CPC): Thank you, Chair.

Thank you, folks, for being here.

My comment is very much along the lines that my colleague has been talking about. The network is a big network, and we've heard from both the rail companies that they have certain things that they don't control. One of the things they mentioned was the weather, which we don't control either, so we can leave that part out.

The other part was the connection with the port authorities, the loading and unloading process, etc. I was actually quite interested to see that you have SLAs, or service-level agreements, with these things.

Can you tell me a little bit more about what's included in terms of performance measures? Maybe you can expand on any penalties that are included for non-performance or any consequential damages that you have in these agreements. Which are the concerns of some of these shippers?

The Chair: Before we go on, we have Mr. Stewart back.

Mr. Stewart, we will come back to you and give you a chance to answer Mr. Toet's question when Mr. Daniel's seven minutes are done.

Go ahead, Mr. Mayer.

Mr. Andrew Mayer: Mr. Daniel, with respect to the service-level agreements that we have in place at this time, the agreement that I would point to is between the port, CN Rail, and Maher Terminals, our container terminal operator.

Now, the port doesn't have a contract with the railway. We don't receive rail service, per se, and neither does the terminal operator. The contract is between the shippers and the rail lines, but we have an interest in ensuring efficiency of the system. The railways I think have done the right thing by entering into service-level agreements with us.

If there is a breach of a service-level covenant in the agreement, then the remedy is as between the terminal operator and the railway in terms of damages. I'm a bit reluctant to get into specifics of what those are. I think that's something that—

Mr. Joe Daniel: But you do have performance measures in—

Mr. Andrew Mayer: There are performance.... I'm sorry to interrupt you; yes, there are. There have been established thresholds for railcar cycle time and dwell time and such other things that really affect the efficiency of the system.

I think our principal goal, from a port authority standpoint, has been to determine exactly where the pinch points are and what the inefficiencies are in discharging cars and loading vessels quickly, so that in our capacity as a port authority we can do what we can do to try to reduce or eliminate those pinch points. It could be infrastructure investments or it could be regulatory changes to provide for more efficiency in the system.

That's one of our principal objects—being able to measure how efficiently the system is operating as opposed to penalizing the railways.

Mr. Joe Daniel: Okay.

Can I get some of the other authorities to also speak to that?

Mr. Peter Xotta: In terms of Port Metro Vancouver, our structure is slightly different, although it has the same principles as were described by our friends up north.

Our arrangement is that we've entered into memorandums of agreement with both railways that seek from them a commitment to enter into service-level agreement with individual terminals. We aren't directly party to those service-level agreements.

The memorandum of agreement also outlines responsibilities in terms of collaboration around performance monitoring. That's the primary role the port undertakes to assure ourselves that the intent behind the language is followed through. There's an escalation provision in there that suggests that if we do not see performance in response to critical issues, the various representatives of the firms—terminal, railway, and port—at the most senior level will meet and discuss those issues.

That's the basic structure in Vancouver.

Mr. George Malec: Sir, in terms of the Halifax connection, we are a party to the agreement that was made between our two container terminal operators and CN Rail. That is a balanced agreement that recognizes there has to be reciprocal obligations on the parties involved. For example, when railcars are provided to the terminal, in order to strip off the export boxes and make those available for import, there has to be a reasonable and prescribed cycle to return those cars back to CN. There are all sorts of nuances and ways this can be slowed down or delayed, which then affects the

railways' performance in terms of being able to supply that car inventory for its customers.

The other aspect we're very deeply involved in is the correct monitoring of the metrics. One of the biggest problems leading up to the federal rail review is different parties pointing their fingers at each other because they weren't necessarily using an agreed-upon set of metrics; they weren't arguing apples to apples.

One of the most important things we can do, and have done, is to make sure we agree exactly what we're measuring and that all the parties to the agreement concur with that. Then we have to set up an IT process where that data is collected, verified, and distributed to the parties that are signatories to the agreement to verify that these are in fact the correct metrics. There's no blame game or finger pointing: "Well, you're not measuring the correct thing", or "You're not measuring the way we measure it." That's as simple as agreeing, for example, on questions such as when the ship actually stops working, when you start the clock on the terminal time, when you start the clock on spotting the cars on the terminal, when the terminal releases the cars back to the railway, and when that clock starts for your metric.

That's a small example of the complexity and sophistication and agreements required, just on that rail terminal interface alone.

Thank you.

• (1640)

The Chair: Does anyone else care to comment?

Mr. Joe Daniel: Before I ask my next question, have I got more time?

The Chair: Yes. You have almost two minutes.

Mr. Joe Daniel: You've obviously successfully been able to negotiate all these criteria for quality and performance. Is there any reason some of these other port authorities couldn't do the same?

Mr. Mayer.

Mr. Andrew Mayer: Mr. Daniel, I think there are performance metrics that are built into the service-level agreement that's in place between the port and Maher and CN. I would mirror Mr. Malec's comments that the key is to ensure that you have a consistent and fair way of evaluating performance. I think we have accomplished that in this agreement.

This is something we need to expand, and there would be merit in expanding into other sectors of our business.

Mr. Joe Daniel: Let me just clarify that. Initially you said you have no agreement with the railways and you're not responsible for some of these things.

Did I get it right?

Mr. Andrew Mayer: No. What I meant was we're not buying a product from the railway. The railway is not providing rail service to us.

Mr. Joe Daniel: Right, but you are providing a service.

Mr. Andrew Mayer: We're a participant and we're a stakeholder in that service, so the railways have voluntarily entered into a level-of-service agreement with the terminal operator and the port.

To be frank, I think the rail service review process was probably a motivator and encouraged railways to enter into those types of agreements with our stakeholders, with the terminal operator and with the port.

Mr. Joe Daniel: But clearly they're claiming that any performance effects you have at the port level affect the entire network. For example, if you don't unload their grain at the rate you have agreed to in your agreement and the carriages cannot be shipped to wherever they're supposed to be, they have no consequence to that, which directly affects the shippers.

Mr. Andrew Mayer: That's true. I suppose, to use a crass phrase, the meat in the sandwich is the railway, and the remedy for the shipper in that case is the railway. The railway, in turn, would then exert commercial pressure on the terminal operators to make their system more efficient so that they are not having to deal with a penalty at the other end of the supply chain.

Mr. Joe Daniel: So this bill makes sense?

Mr. Andrew Mayer: In that sense it makes sense because it involves other parties, so long as the terminals, and the ports as well, have similar pressure that they can exert upon the railways.

Mr. Joe Daniel: Are there any comments from any of the others?

The Chair: You're way over time. Maybe we'll get back to it, Joe.

Mr. Stewart, could you respond now to Mr. Toet's question?

Mr. Greg Stewart: I just want to confirm that I heard correctly. The question that's on the table for me is, how do I reconcile the legislation with the preferred arrangement of commercial agreements, and do I see any challenges with that arrangement? Is that correct?

Mr. Lawrence Toet: That's fairly accurate, yes.

• (1645)

Mr. Greg Stewart: In terms of the reconciliation of the legislation versus the commercial agreements, obviously my preference is that we would stick with the commercial agreements. I do recognize, though, that the past history of some of the railways' performance would dictate that we need another backstop, which is a word that seems to be tossed around this committee, but at least a minimum expectation set from the Canadian businesses around how that relationship will be conducted. I think that's what the legislation does.

I think beyond that it provides the flexibility for companies to then sit down and really work through what the issues are for each of the operations they are providing rail service to.

Where I think the challenge comes is that today, our experience with CN under the current leadership of Mr. Mongeau, the CEO of CN, is that he and his management staff have done a fantastic job of trying to understand our business, what our needs are, and developing programs or solutions that can help address what our needs are. The challenge is that with every company strategic directions change, leadership changes. I think the legislation works and is effective for making sure that we don't suddenly lose the progress we've made, and that we can continue to have commercial discussions in a forum that allows both companies to partner together and to show what we need to achieve for success.

The challenge will come if one or both parties don't actually want to make that commitment, and it's going to come back to the individuals to make that commitment. Arbitration to me, again, is a little bit heavy-handed. I think mediation would work, and the idea of mediation to me would be to make sure that everyone understands the complexities of the system and how each party plays a role within that system.

The Chair: Thank you, Mr. Stewart.

We'll now move to Mr. Aubin for five minutes.

[Translation]

Mr. Robert Aubin (Trois-Rivières, NDP): Thank you, Mr. Chair.

My thanks to all the guests who are here with us this afternoon.

Since I only have five short minutes, I will direct my questions to the port authority representatives.

When I read the Dinning report, among others, I felt that you had used some rather harsh words. Here's a quote from the report to give us a little background:

Port authorities reported that poor cooperation between railways and other stakeholders limits system efficiencies. All groups indicate there are no effective means to hold the railways to account...

What I have been hearing from the beginning of the hearings is that, since the bill was introduced, a number of improvements have apparently been made. I am not sure if they happened miraculously, but there have apparently been some.

My first question for you is a preamble to my second question. Do you think those improvements are temporary or do you really feel that there has been a lasting change in your relationships, even though Bill C-52 has not become law yet? If possible, could you give me a specific example?

You can answer in the same order as you gave your presentations, starting with Mr. Mayer.

[English]

Mr. Andrew Mayer: Honourable member, I think we have to expect that the problems are not going to go away. Our goal is to increase the flow of Canadian goods and to expand Canadian trade. As a result, I think everyone will be pressed—port authorities, shippers, and rail operators—to continue to provide appropriate levels of service. It's going to require investments in infrastructure at the head end, along the rail lines, and at the ports. That's happening; the railways are doing that. Certainly CN has made significant investments in the Prince Rupert corridor and the port authority, with significant contributions from the federal and provincial governments, and industry has done the same at our end. I think shippers are going to have to make efforts to improve the efficiency of their loading operations as well, so as not to affect the whole system.

The long answer to your question is that I don't think the problem is going to go away in the near future, because trade volumes are going to increase.

[Translation]

Mr. Robert Aubin: Thank you.

What about you, Mr. Xotta? Do you have a specific example of a situation that may have been addressed even before the bill became law?

[English]

Mr. Peter Xotta: At the risk of restating our previous comments, the result of the initiation of the rail service review and then subsequently the introduction of the legislation is that over that period of time we've seen a number of things occur. Most notable is a very keen desire on the part of both class 1 railways to work more collaboratively with the port authority. That has resulted, as I said previously, in a 30% reduction in the dwell time, which is a key competitive factor for us in our container business. So there's a very direct outcome.

What precipitated that is a good question, I think, and how we can sustain that level of focus is, of course, what we're trying to construct through our discussions today.

• (1650)

[Translation]

Mr. Robert Aubin: Thank you.

Mr. Malec, do you have something to add along the same lines...

[English]

Mr. George Malec: Yes, thank you.

[Translation]

Mr. Robert Aubin: ... as your two colleagues?

[English]

Mr. George Malec: Yes, in addition to the fact that the service-level agreement between the terminals, CN, and us has resulted in demonstrable improvements, particularly in factors like calculating the import dwell time on the terminal, as Mr. Xotta referred to in Vancouver. The same holds true in Halifax—a significant demonstrable increase in productivity.

We've also seen CN engage much more directly with us over the last two years, moving off what were likely predetermined positions taken before with respect to the ability to gain more traffic share back, particularly Canadian traffic that was transiting through U.S. ports to find world market access.

We've had a recent example here last year, in which the impetus started with CN about an opportunity with a particular shipper based in eastern Canada that was using an American outlet port. CN brought its game to the table to use its inventory and aggressive pricing, along with one stevedoring company and the port authority. The three entities together made a combined pitch on a supply chain solution to that shipper. I'm very pleased to see that that has resulted in measurable traffic increase over Halifax, particularly in the break bulk sector, which is responsible for employing so much labour on a local basis.

The Chair: Thank you very much.

I just want to note this. I understand that Port Metro has to sign off at 5 o'clock, Mr. Xotta.

Mr. Peter Xotta: Yes. My apologies to the committee.

The Chair: We understand. You're busy, as all of you are.

We now go to Mr. Watson for five minutes.

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

Thank you to our witnesses for appearing before the committee, dealing, of course, with Bill C-52. Five minutes won't be a lot of time to ask questions and obtain answers. I'll try to be brief, and I hope you can be brief in your responses.

Everyone has noted that there's success in service-level agreements since the rail freight service review was initiated. Can you very succinctly characterize what the relationship was like before? Was there any difficulty in negotiating or fulfilling service-level agreements prior to the rail freight service review?

We'll start with you, Mr. Mayer, and then maybe go to Mr. Xotta after that, and we'll kind of work our way through.

Mr. Andrew Mayer: I would say that there wasn't the same motivation.

Mr. Jeff Watson: By whom?

Mr. Andrew Mayer: I mean on the part of the railway. It's not that they weren't interested in service. I would say, in short, that certainly there was an encouragement to demonstrate that they were willing to listen to the concerns of port authorities and terminal operators, and they recognized we had something to add.

Mr. Jeff Watson: Mr. Xotta.

Mr. Peter Xotta: Certainly it's a matter of fact: there were no service-level agreements or memorandums as they relate to service between the port authority and the railways prior to 2010. I'd say for that period, that was most acute in terms of shipper concern. We would also characterize our relationship with the class 1 railways as one that did not enjoy a high level of engagement or focus on the impacts of rail operations at the local level. We've seen a significant change, as we've said previously.

Mr. Jeff Watson: Mr. Edwards.

• (1655)

Mr. Stephen Edwards: My history won't allow me to comment too much from Canada. My experience is more in the whole of North America.

What I will say unequivocally, having arrived recently in Canada, is that the cooperation between terminal operators, the Canadian railroads, and the port authorities is by far the best I've seen in any North American port, and I've seen them all.

Mr. Jeff Watson: Mr. Stewart.

Mr. Greg Stewart: I think the relationship prior to this was characterized more on the operational requirements of the railway, and probably adversarial from our side of things as well.

I think the service-level agreements have certainly promoted more dialogue, and certainly far more cooperation and significant improvements overall in terms of the expectations.

Mr. Jeff Watson: Mr. Malec, any comment?

Mr. George Malec: Yes. I would have to say that the relationship we have enjoyed has improved considerably with two factors that coincided. One was the federal rail review and one was a new management team at CN that opted to broaden and deepen and engage us more comprehensively, not only in daily operations, but in the critical aspect of business development as a whole.

Mr. Jeff Watson: Okay.

Mr. Mayer, earlier you made a comment that your concern about arbitration is that it might create an inefficiency in the system. Can you be more specific about what you mean by efficiency, or who you mean by efficiency, or what scenario you envision would create inefficiency?

Mr. Andrew Mayer: It's hard to come up with a specific example, but the concern is that because the arbitrator will have the obligation or the mandate to impose a service-level agreement on the railways, that agreement itself may impose requirements on them in terms of service levels that prevent them from rationalizing their resources in a way that makes the most sense from an efficiency standpoint. So really it's about allocation of equipment.

Mr. Jeff Watson: You are aware, however, that Bill C-52 does explicitly require that the arbitrator consider the effect on network operations for other rail carriers in the determination of their agreement. I think shippers didn't want to see that articulated. Although it's sometimes considered in arbitration, Bill C-52 specifically includes that requirement.

So I'm not sure I agree that I foresee an inefficiency being created with respect to arbitration.

Mr. Andrew Mayer: May I respond?

Mr. Jeff Watson: Please.

Mr. Andrew Mayer: I agree, and I recognize that the provision is within the proposed legislation. I think it's critical in that case, though, that the arbitrator, the decision-maker, is as informed as possible as to the implications for the whole supply chain, which was the second aspect of our recommendations.

Mr. Jeff Watson: Fair enough.

Mr. Stewart, with you being a shipper, your perspective with respect to Bill C-52.... I just want to be clear about this, because you mentioned a preference I think that you would have service-level agreements or the current system. Are you suggesting that Bill C-52 is not something you'd like to see? I just want to be clear about that. Your position is a little fuzzy to me.

Mr. Greg Stewart: No. I think Bill C-52 adequately addresses the concerns that shippers had due to the past performance of the railways. Regardless, though, I think service-level agreements need to be the priority. Commercial arrangements that encourage further understanding of each other's businesses, collaboration, and working together on innovation will only benefit both parties.

Mr. Jeff Watson: The Coalition of Rail Shippers was asking us to amend section 115 by suggesting that a railway company shall fulfill its service obligations in a manner that meets the rail transportation needs of the shipper, and then defines the specific types of service obligations that would be done.

Is that prescriptive model something you, as a shipper, would support, or not?

Mr. Greg Stewart: Speaking from Sinclair Group's perspective, I would not support that.

Where we sit, at the end of the line with our Apollo Forest Products, for example, if CN is required to meet those obligations of all the other mills on the line, it's going to result in a lot less certainty for our mill at the end of the line to get the service we require. I think that is the point around making sure that we understand the complexities of the network and how those decisions would impact all of the customers on the line.

● (1700)

The Chair: Thank you.

Mr. Toone, for five minutes.

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): Thank you.

I'll start with a question for Mr. Edwards, if you don't mind.

We're seeing greater and greater integration of the North American rail network. There seems to be a consensus, which was mentioned by at least some of you, that exports will increase over time. Seeing as exports will increase, presumably some of that will be coming from the United States.

What is the impact on Bill C-52 as far as the...or what kind of impact will it have on Canadian shippers that more traffic will be coming from the United States on our rail network? What kind of impact do you think that might have?

Mr. Stephen Edwards: There was an earlier question on what's included in the service-level agreements. I would say that our service-level agreements between TSI here and the two railroads are neutral on the origin or destination of the cargo. It's the operational performance that we're required to deliver to the railroads and they're required to deliver to us for the supply chain. Those examples will be who is responsible for certain actions when parts of the supply chain may fail due to lack of car supply or an unforecast demand for supply.

From purely the port or the port-terminal railroad interface, I would say that the origin or destination of the freight is neutral as far as we're concerned for the performance we need to do on the dwell time and the transfer of containers between ship to rail.

Mr. Philip Toone: Thank you.

Mr. Stewart, seeing as you're a shipper, do you have that same sentiment?

Mr. Greg Stewart: I'm sorry, could you repeat the question?

Mr. Philip Toone: Would you agree with Mr. Edwards, or would you have that same feeling, that it won't have an impact on shippers—seeing as you are a shipper?

Mr. Greg Stewart: I'm sorry, I was having a side conversation. I apologize. I'm wondering if you could restate the question.

Mr. Philip Toone: I hesitate to repeat Mr. Edwards' answer, so I'll just skip on to another question.

Mr. Malec, I think this question impacts the east coast a lot more than the west coast. The Canadian government is currently negotiating a trade agreement with Europe, and there has been a lot of concern regarding the impact of arbitration. It is a very powerful tool, and often they come in conflict with international trade agreements.

Do you have any sense as to where the Canadian trade agreement might have an impact on this current legislation with regard to mediation and arbitration?

Mr. George Malec: Sir, that's an excellent question, but I really don't have a good feel for an answer on that one. I'm sorry. I would be speculating, and that's a disservice to your question, sir.

Mr. Philip Toone: Fair enough.

I've noticed from certain media reports that you have been following the negotiations fairly closely. From the Halifax port perspective, I think the international trade agreement would have... especially opening markets regarding marine products, seafood in particular.

That's pretty likely to be the greatest impact for the port, yes?

Mr. George Malec: That's a fair assessment, sir, at this point, because a lot of that seafood requires special handling in the high-value refrigerated container units, which command a premium for the shippers and are very, very attractive cargo for both the railway and the shipper to handle as a consignment. Traditionally, that is one of the very important niche market mainstays of Halifax.

Mr. Philip Toone: Thank you.

The port at Sydney is also a shipper for that market, yes?

Mr. George Malec: The port facilities in Sydney do not currently accommodate the complexity of global connections that we have in terms of the deepwater container vessels on a regularly scheduled service. It's feasible to use the port of Sydney, but I couldn't really comment on their business model and where they stand on this.

Mr. Philip Toone: Fair enough.

Regarding the rail companies' position regarding that particular trade, do you think the provisions that are presented here—we'll skip Sydney—in the proposed legislation are...? I noticed there was a serious hesitation when it came to the arbitration. I'm just trying to get a better understanding, especially from the port authorities that most of you represent, of where that line is.

When would you stop wanting to seek mediation versus arbitration? I don't have a clear understanding of how you see that. All of you seem to be saying at this point that arbitration is too heavy a tool, but at the same time you're saying if it weren't for that tool the rail companies wouldn't necessarily be as motivated to come up with agreements.

Do we need arbitration or not?

● (1705)

Mr. George Malec: That would be a very complicated answer, sir. I can only tell you from the port's perspective. When you're looking at the balance in that, if you look back to your original question

about the refrigerated traffic supply chain, for example, that's extremely complicated and delicate to handle. A shipper in that supply chain also has all sorts of other agreements, in terms of equipment aspects, inventories, etc.

One agreement they may have with the railroad is going to be heavily impacted with several others—the terminal operator, for the way the containers are handled, the shipping line carrier to have those refrigerated boxes available at a specific time and place. Then, there has to be an agreement with the railway about how those are going to be plugged in on mobile generator sets. That's why we're a little hesitant to say very quickly that there's an easy template and that arbitration is the end logical step. We tend to agree that, because of the complexity of it, it has to be treated as a tool of last resort.

Mr. Philip Toone: I've run out of time, so I thank you.

The Chair: Thank you very much.

We'll now move to Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I'll let whoever takes the question first have the answer. The question is this. Do you favour more prescriptive regulations or performance-based regulations?

Don't speak all at once, please.

The Chair: Go ahead, Mr. Mayer.

Mr. Andrew Mayer: Because of the different requirements for various commodity types, I think it would be difficult to establish a prescriptive set of performance requirements for the individual areas. It would vary with the shipper. It would vary with the location. It would vary with the commodity type. The most likely scenario, and perhaps the best scenario, is really just a higher-level set of performance standards or criteria.

Mr. Pierre Poilievre: Right.

My time goes now to Mr. Holder.

Mr. Ed Holder (London West, CPC): Thank you very much.

I'd like to thank our guests as well.

It's rather interesting. When we had the minister appear before us, he talked about the issue of arbitration. He said the best arbitration tool is the one that is never used, and he felt very strongly about that.

As we all know in business relations—and I come from 30 years in business—unless you've got some form of what I might call a hammer, some ability to be able to enforce, the potential for things just to not get resolved becomes a concern.

It's unfortunate that our friend from Port Metro Vancouver has left, because he made a statement, or actually it came from his predecessor—I'm not sure—the president and CEO, Robin Silvester, on July 31, 2012. This letter, by the way, was sent to Transport Canada. In the part where it talked about progress since 2010, the letter said:

Despite this progress, shippers groups representing a broad spectrum of port users and customers continue to maintain the position that service issues have not been fully addressed—

—but then it goes on to say—

—or that they are concerned that the service issues will resurface without effective remedy.

Then I'm going to go back to February 28, when we heard François Tougas, from the Mining Association, say:

...now we have a situation where I think many shippers feel that their relations with the railways are much improved over what they were during the service failure period that lasted so long, which Monsieur Mongeau talked about. We don't want to go back to those days.

What I'm trying to understand—I asked this of them and I would like to get your sense of this, gentlemen—is your sense, as it relates between not just your work but also with shippers and the railways. Is the issue that it's now in good shape, and the bigger concern is that they just don't want to go back to the bad old days, as it were?

Mr. Mayer, do you have a thought on that?

● (1710)

Mr. Andrew Mayer: Yes. I think the rail freight service review process, the level-of-service agreements, and the structure that's been established as a result of that process have improved the situation. Certainly we would like to see railways continue to enter into those agreements with our other terminal operators that don't have them and with new developments as they come into existence. I think that would be beneficial.

Mr. Ed Holder: Would any of the others have any other opinion, different from Mr. Mayer's? Mr. Edwards, Mr. Stewart, Mr. Malec, do you have a different view from what was just expressed?

The Chair: Go ahead, Mr. Edwards.

Mr. Stephen Edwards: I think there is a much clearer understanding that for us to be competitive as gateway ports, whether it's the port, the terminal operator, or the railroad, we have to hit a competitive standard.

I was asked earlier about the impact of U.S. cargoes moving through Canadian gateways and I said it was neutral. You could also argue it's been to the benefit of all because it puts Canadian ports into a much more competitive environment of competing against those south of the border. As cargo is cargo, we can only move it at one

speed, per se. You can't accelerate one versus the other without impacting your cost structure.

As the railroads have begun to compete for U.S. freight, it's probably been to the benefit of Canadian shippers as well in the intermodal phases.

The Chair: You're out of time, Mr. Holder.

Did Mr. Malec or anybody else want to comment on that point?

If not, we're going to thank our witnesses for showing up here today. We lost one of you three times, but you're persistent; you kept coming back.

Thank you very much for that.

Mr. Mayer, thank you to you as well.

Mr. George Malec: Thank you, Mr. Chair.

The Chair: Okay.

I wish all the committee members a good break week. I know it's never really a break week, but have a good one.

There is some housekeeping.

I'd like to propose that our official start time for these meetings be 3:45. I would appreciate that support. I know today I was a few minutes past the 3:30 time, with question period and what have you. If we have enough people in the room to start before that, we will. This is so nobody is caught—if that's good with everybody.

We had a couple of requests to have some cookies and fruit here. It goes against my fiscal conservative attitude, but we will have that starting at the next meeting.

Have a good break week.

The meeting is adjourned.

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