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Bunge North America Testimony

STB Hearing – May 22, 2019

Good Morning. My name is Terry McDermott, and I serve as the Director of Supply Chain / Rail at Bunge North America. Bunge is a global agribusiness and food company and a leader in grain trading and food processing. Our operations across North America extend from Southern Mexico to Northern Canada consisting of five canola processing facilities; nine soybean processing facilities; eight wheat mills; eight corn mills; and 47 grain handling facilities.

Bunge (excluding our joint ventures) moves roughly 150,000 railcars annually paying approximately \$425 million to the railroads. Our railcar leases are an additional \$60 million per year. We also own and/or lease over 9,000 railcars consisting of tank cars and hopper cars to move vegetable oil and meal protein products for animal feed. Our facilities touch all seven North American Class 1 railroads and dozens of short line railroads. The railroads are paramount to our company's success given the immeasurable value they provide.

Before I start, I would like to take a moment to recognize the Union Pacific Railroad and the Burlington Northern Santa Fe Railway for their recovery efforts during the flooding in the Midwest which occurred primarily in March. Bunge has facilities throughout the Midwest, including several around Omaha and Kansas City. As a result, our facilities and employees were impacted by the flooding. We commend the railroads for their prompt and safe service. The response of these railroads helped minimize lost production and disruption to our supply chains. Thank you.

I appreciate the opportunity to participate in this hearing. This forum allows us to engage in discussions in the presence of our railroad partners. Very little of what I say today should surprise the railroads. Like many of the other participants, Bunge has discussed these topics with the railroads.

The railroads are a fundamental partner to our industry. Much of our business could not thrive without them. We are fortunate in North America to be able to benefit from the most robust freight rail transportation system in the world – a transportation network that has evolved and literally been reborn since Staggers. We also are fortunate to have a network system whose players have continually reinvested capital in growth capacity and technologies. Bunge has long-term relationships within these organizations extending far beyond transactional business exchanges. This is one reason why we are here today as we believe the relationship between shippers and railroads is shifting in a way that could be detrimental to the industry. Today, we are here to talk about demurrage and accessorial charges.

My comments on these issues are geared towards the lack of reciprocity in today's demurrage and accessorial tariffs, with a certain element of unreasonableness in some very specific examples. The reality is that demurrage and accessorial terms and conditions in general are changing frequently yet we're not convinced they are changing correctly.

This is especially disconcerting with the current demurrage rules. While this may be oversimplified, demurrage rules were originally put into place to protect the investment that railroads made in their rolling stock by incentivizing shippers to efficiently move cars so the railroads could maximize the utilization of railroad-owned rolling stock assets. I think we all, railroads and shippers, as well as the rest of the players in the supply chain, want to maximize our asset utilization. And we have, in fact, seen demurrage rules change over the years, including recently. But the rules fail to reflect the changing portfolio of fleet ownership. In the 1980's, railroads owned the majority of the North American rail fleet. Today, non-railroads now own roughly 70% of the fleet that moves freight in North America. The governing rules for the protection of the investment made in these cars have not evolved accordingly,

and as a result they no longer serve their initial purpose of encouraging the effective use and distribution of the nation's railcar fleet to protect the investment made by the car owner or lessee. The rules that exist today are not reciprocal in nature as they protect railroad investments, not shipper investments.

As it pertains to accessorial charges, or fees charged independent of the actual freight invoices we pay as shippers, we believe that these are unbalanced as well. I hope to illustrate this with some clear-cut examples of which the non-railroad shipper may not be aware.

The railroads and shippers have common objectives since, for the most part, we are largely publicly traded companies. We all want to create value for our shareholders, but the railroads may have lost sight of the affected stakeholders within the value chain. Our goal as companies is to efficiently and successfully make a profit within our value chain. Some semblance of balance, however, must be present when one driving player wields an unbalanced proportion of market control than those represented collectively by those being served.

To better illustrate my point, I would like to touch on several examples.

- In 2018, we had an individual rail car "lost" on a Class 1 railroad for 121 days. A normal transit time of seven days turned into 121 days, and our claim for car hire relief was denied. We received no compensation with a comment from the railroad that "service is not guaranteed."
- Upon negotiating a rate contract for a lane that has two Class 1 options, one of the Class 1 railroads submitted a clause in the proposed contract giving them the ability to unilaterally cancel the rate contract on 30 days' notice. When asked why this was the case, the railroad responded with "this comes from our legal team and we basically do it to limit risk, and because we can."
- Upon negotiating a similar contract with another Class 1 railroad, it insisted on an indemnification clause that forced us to fully indemnify them in the case of railroad negligence. When we pushed back on this, the railroad responded by saying "it was the price of admission to be able to be on our railroad."
- In a specific lane that consists of a single origin, a single destination and consistent demand of one single 25-car shipment every two weeks, a particular Class 1 railroad failed to place empty cars for several days and ended up placing two empty units within days of one another. This caused congestion (and demurrage) at the destination yard and we were informed that we would not be guaranteed any credit days as a result of this move.
- In 2017, after a derailment that involved several of our private cars, the railroad in question reimbursed us for the cost of the actual railcars but denied the reimbursement for the lost content of the railcars. They stated that the claim was not valid and that the mechanical group and the product claims group had nothing to do with one another. This matter had to be escalated several managerial levels up before it was finally resolved 18 months later.
- Zero credit (free) days on loaded and unloaded cars on railroad infrastructure will invariably cause shippers to incur demurrage/storage costs even when the shipper, receiver, and railroad are not negligent.
- The burden of proof for demurrage and accessorial charges is on the shipper, and we are regularly assessed finance charges if disputes are erroneously denied. As an example, in the case of rail car diversions when the request is actually accepted (which is not always the case), we are invoiced automatically whether the car is physically diverted or not.

- The railroads charge us “reconsignment” fees for any errors that need to be corrected on waybills or bills of lading (including when the railroad has no operational impact). However, when the railroads send us duplicate or erroneous invoices (which happens on hundreds of occasions per year), as shippers we cannot apply the same fees to railroads for their errors.

These are just a few examples of some of the challenges that shippers encounter when working with the railroads. Quite frankly, the railroads may need a “nudge” to remind them that they have customers to serve, and in many scenarios, their customers do not have another rail option to effectively ship commerce.

As I mentioned at the outset, we have long-term relationships with our partner railroads and we frankly cannot exist without them. We just feel that the relationship has changed a bit as of late and we think it is critical they incorporate more balanced terms to the demurrage and accessorial tariff items.

Over the next few days, we respectfully request the Board to consider the testimony from all parties, railroads, shippers, and others to ensure that the rules governing rail transportation represent and protect the interests of all parties in the supply chain and their respective investments, which have changed dramatically. Specifically, we feel that the current demurrage rules that exist for railroad owned equipment should be applied, in some way, reciprocally, to account for the shift in ownership of the North American railcar fleet from railroads to non-railroad ownership. The rules that exist today do not protect the investments made in the North American fleet. They only protect the *railroad* investments made in the North American fleet.