A G R E E D C H A R G E S

by

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ABSTRACT

The proposition presented in this thesis is that the use of the "Agreed Charges" by the Canadian railroads was designed merely as an instrument to improve their place in the growing intermodal competition in Canadian transport. However, the thesis has revealed potential effects for the Canadian economy extending beyond this purpose. These effects grow out of the influence that Agreed Charges have had on the marketing "reach" of Canadian manufacturers and the consequential location of industry.

The competitive purpose of Agreed Charges is reviewed by a study of their origin and effects in transportation in England preceding any experience with them in Canada. This is followed by reference to Canadian legislation of 1938 which presented the detailed legislation authority for Agreed Charges as they developed in Canada.

The basic competitive purpose of the new rate device is evaluated by a study of its effects on

the railroads and their competitors.

The effects of Agreed Charges on the Canadian economy going beyond this competitive purpose is then studied through describing and appraising the influence which they had on the inter-regional marketing of a number of products. Through this study the influence shows itself in permitting enlarged production in certain regions in Canada by extending the marketing areas beyond those that could be reached without Agreed Charges; and it shows itself in the preferences it gave to Canadian manufactured products over competitive products from abroad.

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HISTORY OF AGREED CHARGES

A. THE ENGLISH SITUATION

1. Environment of the transportation industry in England in the late twenties. This period of time, when the world suffered the Great Depression, brought tremendous strains on the economic life of the British industry and the pressure of this crisis was felt particularly by the transportation industry.

Up to the mid-twenties the railways enjoyed the advantages of a monopoly industry. They had become indispensable and represented the backbone of inland transport. The railway system as a whole occupied a position of splendid and, apparently, unassailable security.[1]

With the exception of a few which still carried on a useful business, canals had been relegated to a position of relative obscurity. They had collapsed under the fierce competition of the railroad.[2] Great strides had been made in the way of improvement of roads and in their construction, but their maintenance was in the sole charge of the

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[1] Great Britain; Royal Commission on Transport, Final Report, (Chairman, Arthur Griffith-Boscawen), H.M. Stationery, 1930, p. 11.

[2] Ibid.

local authorities and it took a long time before the network of roads could be regarded as a national system. With the outbreak of the War the activities for the construction and improvements of roads ceased and it was not until 1919 that the Ministry of Transport made serious attempts to develop the highway system on national lines.[3]

The coastal liner services were handicapped by the lack of facilities for distribution and collection of their merchandise and did not offer a keen competition to the railways.[4] With the development of better roads and the rapid progress in technology for motor vehicles a new form of competition for the railroads arose. The road transport from the point of view of the shippers had definite advantages for local deliveries and collection and for transit up to a certain distance which varied with the nature of the traffic; speed, convenience, low rates...[5] This new industry enjoyed other advantages because it was not bound by legislation as to classification rates and could charge at will while having the advantages of free highways.[6] Also the "unfairness" lay in the fact that

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[3] Ibid., p. 12.

[4] H.M. Hallworth, "The Future of Rail Transport", The Economic Journal, XLIV (Dec. 1934), p. 546.

[5] Ibid., p. 550.

[6] C.S. Lock, "British Railways show fight", Railway Age, (July 4, 1932), p. 955. (As mentioned in the Royal Commission on Transport, the railway companies complained that

all the railway companies were treated as one organization and "must accept any traffic offered to them and carry it to any station or siding in Great Britain"[7] while the road hauler, even if he was a common carrier, need only accept traffic going his way and such traffic as he could carry conveniently. The trucking industry operated regularly only between the big towns and busy areas where it was lucrative and where their equipment could return with full loads.[8]

The effects of road transport gave a new impulse to the coastal services which used this mode for their collections and deliveries and in this way were able to give direct door-to-door services for which through rates were charged. The railways had lost some of their traffic to the coastal trade.

After the war, the railway industry was in a bad situation for different reasons. First, the war, which gave an advantage to railways over canals and coastal shipping, was responsible for a setback to railway efficiency and gave road transport an opportunity

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the economic cost of rail transport is borne entirely by rail users, only a part of the corresponding cost of road transport is borne by road users. The railways claimed that the maintaining, policing and signaling of the roads and the whole capital expenditure incurred in building or improving roads to meet the requirements of motor traffic should fall upon the users in proportion to their use instead of two-thirds being paid by the taxpayers of Great Britain.

[7] G. Walker, "The Economies of Road and Rail Competition", The Economic Journal, (June 1933), p. 255.

[8] Ibid.

to develop in its initial stages. As mentioned in the Royal Commission on Transport, the railways, during the days of their monopoly, insufficiently studied the needs of the public and their policy had become too conservative. "The truth of the doctrine that facilities create traffic appears to have been forgotten"[9] and "It is remarkable that there has been practically no improvement in locomotive speed in this country during the last 80 years."[10] Railway strikes in 1919 and 1926 resulted in the loss of much traffic to the roads and it is certain that much of this was never regained.[11] The railways did not realize the extent to which road transport was likely to develop or, at least, were slow to take steps to meet the competition.

Second, the decline in railway traffic which had taken place during the post-war years had been due to a great extent to the economic depression, the shrinkage in world trade. The introduction of customs tariffs at the end of 1931 had the effect of restricting imports and also exports as a result of restrictions imposed on British coal and goods by foreign countries. Foreign

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[9] Royal Commission on Transport, loc. cit., p. 151

[10] Ibid., p. 152

[11] Hallworth, loc. cit.

travel was also considerably curtailed and a number of cross channel passenger boat and train services withdrawn.[12]

In summary, the decline in railway traffic which occurred during this period of time was due to a variety of causes, the principal ones being the economic depression with the decrease in world trade and the competition from other modes of transport, mostly the road competition, also the inefficiency of the railways to satisfy the customers' needs with better service and equipment.

2. Financial difficulties of the railways.

This decline in traffic mentioned above had critical consequences on the total revenues of the railways. Under the provisions of the Railway Act 1929, a new classification of merchandise was made containing twenty-one classes instead of eight classes contained in the old classification. New charges known as "standard charges" were approved by the Railway Rates Tribunal[13] and railways were placed under an obligation to charge these rates without variation "unless by way of an exceptional rate or an exceptional fare

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[12] C.S. Lock, "British Railways Forge Ahead", Railway Age, (Sept. 16, 1933), p. 408.

[13] Under the provisions of this Act, a court known as the Railways Rates Tribunal had been established which had wide powers in all the matters relating to railways charges.

continued, granted or fixed under the provision of this part of the Act, or in respect of competitive traffic in accordance therewith".[14] A company could quote exceptional rates for carriage of merchandise providing those rated were not less than five per cent, nor more than forty per cent below the standard rate, without receiving the consent of the Railway Rates Tribunal. Outside these margins, the consent of the Tribunal had first to be obtained.

The law of "undue preference" required that the railways had to charge all traders the same rate for the same or similar merchandise. This put the railways in a dilemma; either they had to let the trader's traffic go by road and make no effort to gain it or in order to meet the road competition they could grant exceptional rates to a trader and all other traders' traffic had to be carried at equally favorable rates. If the companies accepted the first alternative, they had to lose the profit of carrying the trader's traffic, while by accepting the second they lost the profit of the higher rates where a competitive road service was not available.[15]

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[14] Royal Commission on Transport, loc. cit., p. 25.

[15] Walker, loc. cit., p. 223.

The road hauler was carrying the regular traffic in large consignments passing along the main routes, leaving to the railways the comparatively expensive business of carrying the irregular traffic, the small consignments and the traffic of the relatively out-of-the-way places.[16] Table I shows the declining traffic and revenues of the railways during the period from 1923 to 1932.

TABLE I

TRAFFIC AND REVENUE (RAILWAYS)
(Figures to the nearest million)

Year	Gross	Net Revenue	Freight Tonnage (Long tons)
1923	£224	£42	343
1930	£208	£38	304
1931	£189	£34	268
1932	£156	£27	250

Source: Lock, "British Railways show fight", loc. cit., p. 953.

For the year 1930 it was estimated that the railways, after allowance for bad trade, had lost £16,000,000 in net revenue to road competition, a large proportion of which was attributable to freight traffic.[17] As a result of this downward trend in revenues the stocks

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[16] Ibid., p. 226.

[17] Lock, "British Railways show fight", op. cit., p. 955.

were badly affected. Many companies were not able to pay any dividend. In 1932 only one company, with the aid of reserves, paid the required 3% on its ordinary stock.[18] The companies enforced compulsory retirement at 60 and men of 55 and upwards were being allowed to go whenever possible. No new entrants to the service were taken. A wage agreement was reached in 1931 affecting all employees for a reduction of five per cent[19] and at the end of the year 1932 falling revenues forced the companies to approach the union with proposals for an all round 10% cut in wages and salaries.

3. Royal Commission on Transport 1929. This Royal Commission on Transport had as its purpose, as mentioned by the Commissioners themselves, "to take into consideration the problems arising out of the growth of road traffic and, with a view to securing the employment of the available means of transport in Great Britain to greatest public advantage, to consider and report what measures, if any, should be adopted in the public interest, to promote their co-ordinated working and development...."

In 1928 the railways obtained the right to engage

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[18] "British Railways forge ahead", p. 409.

[19] "British Railways show fight", p. 953.

in highway transport. The Commission agreed with this policy in so far as this would make for the better co-ordination of rail and road services with the road services feeding and supplementing the rail services with through bookings and other facilities, but not in an "attempt on the part of the railway companies to starve road services for the purpose of putting an end to reasonable competition."[20]

The Commission noted that the difficulties of the railways were mainly due to the long-continued depression and that a return to prosperity would greatly increase traffic[21] and the road competition; for the latter it was mainly the fault of the railways if they could not meet it, when they wrote "the question arises whether the railway companies have done or are doing everything possible to meet it".[22] They suggested however that it would not be in the national interest to encourage a further diversion of heavy-goods traffic from the railways to the roads as "such further diversion would add greatly to the expenditure on highways without conferring any commensurate advantage."[23] They then added:

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[20] Royal Commission on Transport, op. cit. p. 41.

[21] Ibid., p. 36.

[22] Ibid.

[23] Ibid., p. 75.

"Road competition must, of course, continue to affect the railways adversely. The advantages of cheap and comfortable road transport are so great that the public ...is not likely to give them up--nor is there any reason why it should."[24]

For the railways the Commission recommended that, where there are two companies serving the same points, the traffic--goods and passengers--should be pooled.[25] They also recommended the closing of unremunerative branch lines,[26] but they did not recommend anything in regard to rates: "On the whole the present system appears to us to be working satisfactorily and in these circumstances, we are not prepared to make any recommendation...and the railways in their submission to the Commission did not at present propose any improved procedure in this respect."[27]

For the road transport the Commission recommended that one-third of the costs of highways should fall on the ratepayers and two-thirds should be borne by the

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[24] Ibid., p. 36.

[25] Ibid., p. 28.

[26] Ibid., p. 41.

[27] Ibid., p. 45.

motorist[28] (formerly the proportions were reversed), that the use of motor vehicles of 4 tons or less be encouraged while the use of those in excess of 4 tons be discouraged, and that the duty payable by the latter be increased,[29] that the maximum limit of motor car be 10 tons unladen, this last recommendation being to avoid further diversion from the railways to the road. The Commission wrote that because of the high level of organization of the railways, waterways and shipping on one hand and the unorganized road transport industry on the other hand it would be to the advantage of the latter to be placed on an organized basis, i.e. "the road haulers be placed under a system of licensing to be administered by the Area Traffic Commissioners"[30] to operate lawfully, exception to be made for a hauler contracting for one employer only or when a company is operating its own transport.

Recommendations were made in regard to the fitness of the vehicles and wages and conditions of service of persons employed in this industry.

There was, in the report, no suggestion made in regard to agreed rates between trader and railway.

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[28] Ibid., p.70.

[29] Ibid., p. 74.

[30] Ibid., p. 92.

4. Road and Rail Traffic Act 1933. As mentioned above the railways were in a dilemma as to the rates to be charged to traders because of the "law of undue preference" applicable when exceptional rates were granted.

During the year 1931, to obviate this situation, the railways developed cartage arrangements with shops, manufacturers and industrial concerns to carry the whole of their traffic.[31] These new experimental schemes of charging the whole of their traffic upon the basis of a flat rate or unit per ton over a given area were an attempt to regain traffic from competing forms of transport as well as to retain that portion of the firm's business already handled by rail as the same kind of quotations were offered by road haulers. These flat rates were given in preference to the application of numerous individual rates, according to the several destinations. The first Agreed Charge appears to date prior to 1931. At that time J. Roberson & Co. was shipping animal feed and corn cake by rail at a flat rate per ton to some two hundred stations in Great Britain. This was held to be illegal. In the same year F.W. Woolworth Co. in Britain made a contract with the Railways in Great Britain whereby their traffic would be handled at a

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[31] "British Railways show fight", p. 956.

specific percentage of its value, regardless of length of haul.[32] Being more than 40% below the standard rates, these rates had to be reported to the Rates Tribunal which at first sanctioned them, but later refused consent.

This was the start of the agreed charges included in the provision of the Road and Rail Traffic Act 1933, which made these charges legal. The Railway Rates Tribunal, in 1932, had given an adverse judgment in the celebrated "Robinson Case", when an agreed charge in the form of special exceptional rates proposed by the Great Western Railway was refused on the grounds that such quotations were not within the companies' statutory powers of charging a flat rate within the meaning of the Railways Act 1921.

Part II of the Act gave the railways the right to charge agreed "flat" rates with the shipper, provided such rates had the approval of the Railway Rates Tribunal and that the shipper on his part agreed to employ the railway for all his transport work on the basis of an agreed rate. The Tribunal required a showing that accommodation sought by the shipper could not be provided by exceptional rates, and considered among other things "whether the making of the agreed charges was necessary to enable the company to secure or retain

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[32] Great Britain, Statute at Large, 23 and 24 Geo. V, c. 53 (1933), "Road and Rail Traffic Act."

the traffic to which the agreement related."[33]

If another shipper proved prejudice to his business, he had a right to an agreed charge if the Tribunal so ordered.[34] The Act also relieved the railways of the law of undue preference in the particular cases of agreed charges, and enabled railway companies at last to compete on equal terms with road operators, because they were allowed to charge the same rates for the same traffic. This Act was certainly a milestone for the railways, as put by C.E.R. Sherrington in 1934. "There is little question but that this section of the act will be of considerable importance in assisting the railways to regain some of their lost traffic."[35]

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33 Great Britain, Statute at Large, 23 and 24 Geo.V c. 53 (1933), "Road and Rail Traffic Act."

34 C.S. Lock, "Railways of Great Britain reaping rewards of enterprise", Railway Age (Sept. 15, 1934) p.314.

35 C.E.R. Sherrington, "1933, a Year of Innovations for the British Railways", Railway Age, (April 21, 1934), p. 580.

B. THE CANADIAN SITUATION

1. Environment of the transportation industry in Canada in the thirties. Similar to England, the railways in Canada were badly affected by the depression of 1929 and even at the end of the next decade they never came close to moving the amount of traffic they used to. Up to this time they enjoyed the advantages of a monopoly in land transportation.

The following table gives their gross earnings and net revenues for the period 1923-37.

TABLE II

Gross Earnings and Net Revenues of Steam Railways, 1923-1937

Year	Gross Earnings ($ Millions)	Net Revenues ($ Millions)
1923	478	65
1928	564	121
1929	534	101
1930	454	74
1931	358	37
1932	293	37
1933	270	37

1934	301	49
1935	310	47
1936	335	51
1937	355	53

Source: The Canada Year Book 1942, p.585.

During this time two other modes of transportation experienced a rapid growth. First, the most important of the two, the inland-water navigation, which during eight months of the year duplicated approximately one-third of the length of the railway system, was a major competition to the railways by providing shippers of long haul bulk commodities with a service at rates with which the railways were unable to compete.[1] It was estimated that by 1937 these boats were four times the tonnage needed for the business between the Foot of the Lakes and Montreal and they cut rates to obtain the business formerly done exclusively by the railways.[2]

The second mode was the trucking industry, which was experiencing the fastest growth in freight transportation although the percentage of traffic moved represented a small proportion of the total ton-mile traffic, as shown in the table below.

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[1] Canada:: Royal Commission of Railways and Transportation, Report, p. 57, (Chairman, L.P. Duff), Ottawa; King's Printer 1932.

[2] Railway Age, (Feb. 27, 1937), p. 375.

TABLE III

Year	Rail	Water	Highway	Total
1928	83.8%	16.1%	0.1%	100%
1936	77.5%	21.4%	1.1%	100%

Source: Transportation Study for the Royal Commission of Canada's Economic Prospects by J.C. Lessard 1956.

The trucking industry had major advantages over railways as mentioned before in regard to speed, convenience and lower rates. The latter were possible because the commercial motor vehicle was "bonused" by the pleasure automobile with the existing tax levels and both of them were bonused by the future taxpayers as regards to the highway costs.[3] Also no form of regulation of motor truck transport was existing so that the trucking industry was relieved of the responsibility of maintaining unproductive services.[4] The low initial cost of new or second-hand vehicles, the lack of suitable alternative employment for many operators and the absence of legislative restrictions in admission brought a great many people to this industry.[5]

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[3] S.W. Fairweather, "Is Truck Regulation a Failure?", Railway Age, (Jan. 9, 1937), p. 123.

[4] Ibid., p. 124.

[5] A.W. Currie, Economics of Canadian Transportation, (University of Toronto Press 1959), p. 11.

Another important advantage enjoyed by the motor transport was the right of separate contract which was denied to the railways. These separate contracts meant that the motor transport carrier could enter into an agreement with any shipper to carry his goods for a price fixed between them with no obligation, such as for the railways, to publish this rate and to give it to anyone who applied for it.[6]

When the railways had a monopolistic control over transportation, their labor force was in a strong bargaining position, especially since the railroads' earnings were high, and they could afford to share the unusual gains of that position with their employees. At the time, in many instances, they paid more than twice the wages given to the truck drivers who were not unionized.[7]

The Panama Canal offered an alternative route between the two extremities of Canada. Export and import traffic originating from the East or West Coast going West or East respectively could move either by rail or through the canal.

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[6] John Buchanan Rollit, "Aspects of the railway problem", Canadian Journal of Economics and Political Sciences, (1939), p. 48.

[7] J.L. McDougall, "Aspect of the Railway Problem", Motor Competition and Railways Labor Costs, Canadian Journal of Economics and Political Sciences, (1939), p. 52.

A great many industries shipped one hundred per cent by truck in the summer months, or by boat, and came back to the railway only for the winter haul. This left the railway as a "standby", as put by C.D. Howe, the then Minister of Transport.[8] The railways for years had been fighting a losing battle against these new modes of transportation; either they maintained rates but lost business or cut the rates to obtain or retain business, which meant less revenues in both cases.[9] It was estimated that the railways' gross revenues have been reduced by 38 million dollars per annum either through traffic lost to the trucks or through rate reductions necessary to hold traffic to the rails.[10]

2. Royal Commission on Railways and Transportation 1932. The Royal Commission on Railways and Transportation (1932) acknowledged the diversion of traffic from the railways to the highways "due to the fact that conveyance by road was intrinsically a more suitable form of transport, either because the convenience afforded by the road

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[8] Railway Age, (Feb. 20, 1937), p. 344.

[9] "Agreed Charges on Railways", A.C. Wakeman, Railway Age, (June 18, 1938), p. 25.

[10] Fairweather, op. cit., p. 123.

vehicle outweighs other considerations or because it is definitely cheaper".[11] The commissioners recognized the need for regulating road motor services and equalizing the conditions under which the road and rail services were provided. Otherwise, as they said, "If the railways lose a large part of their profitable short distance traffic to the roads a readjustment of the whole freight structure may be necessary with a possible increase in the rates charged for the long-distance and heavy freight traffic."[12] In their recommendations they felt it was their duty "to express the view that even under more favorable circumstances, the financial position of the railway may be such as to demand that the whole question of tariffs and tolls in its widest sense should be the subject of a special investigation."[13]

The big problem was that an exclusive transportation system in the "Dominion field established by expenditures almost astronomical was effectively challenged by a newer method of transportation falling exclusively--or almost so-- within the jurisdiction of the provinces with consequent possibility of great and increasing damage to

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[11] Canada: Royal Commission on Railways and Transportation, Report, (L.P. Duff, Chairman), Ottawa: King's Printer 1932, p. 55.

[12] Ibid.

[13] Ibid., p. 60.

the earlier system."[14] There was then in the report of the Commission no recommendations for agreed rates specifically but a need for truck industry regulation and a special investigation for rates and tariffs.

3. Influence of the British Road and Rail Traffic Act. In the spring of 1937, a Transport Bill was presented by the Minister of Transport C.D. Howe to the Commons for adoption. It had as its purpose the Dominion Regulation of all forms of transport. Part VI of the Bill introduced a new feature, one that had been adopted in England and had met with a great deal of sucess there, as mentioned by C.D. Howe to the Dominion Senate Committee on Railways, Telegraphs and Harbours.[15] It gave permission for a carrier to contract with a customer for the exclusive carriage of its goods at a rate which was a departure from the tariff rate and the contract could only be made with the approval of the Board of Transport Commissioners. When the Bill reached the Senate it was killed, chiefly because it sought to regulate interprovincial highway traffic and regulate as well freight traffic on the Great Lakes.

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[14] Canada: Royal Commission on Dominion-Provincial Relations, Report, Book II, Recommendations, (J.S. Sirois, Chairman), 1940, p. 200.

[15] Canada: Royal Commission on Agreed Charges, Report, (W.F.A. Turgeon, Chairman), Ottawa; Queen's Printer, 1955,

4. Enacting of agreed charges in the Transport Act. The next year the Minister of Transport came back with a modified Transport Bill which met considerable opposition, particularly from the highway transport operators and certain shippers and shipping organizations, to the "somewhat similar proposal included in the Bill" of the previous year.[16]

Primarily to enable the Canadian railway companies to meet their (unregulated) highway competition, "Agreed Charges" became law as Part V of the Transport Act 1938, 2 George VI, Chapter 53, assented to 1st July, 1938.

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p. 22. Excerpt from the Minister's speech: "Great Britain had this trouble perhaps to a greater extent than Canada, because their distances are shorter and a larger proportion of railway business there is vulnerable to truck competition than would be the case in Canada. In the old country the principle of agreed charges has been adopted and applied and I am told that after a thorough trial the British people are well satisfied with agreed charges as a means of straightening out their transportation difficulties. My deputy minister spent seven months in England within the last year studying the question,...and I am convinced that agreed charges are working out to the benefit of the public as well as of the transportation industry itself.

[16] Traffic Studies, Published by the Canadian Manufacturers' Association, Toronto, p. 103 (no date).

CHAPTER II

TRANSPORT ACT 1938: PART V; AGREED CHARGES

A. DESCRIPTION OF THE AGREED CHARGES BY THE ACT

1. Purpose of agreed charges. We have seen previously that prior to 1938 when railways reduced rates, in order to meet competition from other carriers, they found that lower tolls added to their traffic and revenue but often it did not last long because shippers used steamships or trucks during the summer, and in bad weather or when the rates of steamships or trucks were high they sent their freight by rail. As put by the Minister of Transport, C.D. Howe, "Railways were used as a standby." Railways felt they could give lower tolls if they were assured of all or most of the business of certain shippers throughout the year instead of being left, because of competition, with the unprofitable portion not handled by trucks.

As mentioned by A.W. Currie, basically an agreed charge is a quantity discount which railways can afford to give because they get most of the transportation business of shippers who come under the agreement.[1]

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[1] A.W. Currie, Economics of Canadian Transportation, Toronto University Press (Toronto 1959) p. 226.

The purpose of agreed charge was to create an exception to the general rule that a railway had to charge equal tolls for like services by enabling the railways to meet the unregulated competition of trucks. According to the Commissioners in 1951 "It appears obvious that Parliament did not intend the agreed charges to be a weapon to destroy or eliminate competition but rather to enable the railways to meet competition.[2]

2. Parties who can enter into agreement. The Transport Act 1938 defined an agreed charge as a "charge agreed upon between a carrier and a shipper as in this Act provided and includes the conditions attached thereto;"[3] and carrier is defined as "any person engaged in the transport of goods or passengers and shall include any company which is subject to the Railway Act."[4] The Railway Act does not cover provincially owned railways but does cover any railway which forms part of continuous system of railways operated

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[2] Royal Commission on Transportation, Report, (W.F.A. Turgeon, Chairman), Ottawa; King's Printer 1951, p. 95.

[3] Statutes of Canada, 2 George VI, Chapt. 53 (1938) "Transport Act", S. 2. (1) (a).

[4] Ibid., 2. (1) (d).

together and connecting one province with another. This includes all Canadian Railways subject to the jurisdiction of Parliament, and also water carriers to the extent that they may be subject to the Transport Act. Highway transport is not covered.[5]

The shipper "means a person sending or receiving or desiring to send or service goods by means of any carrier to whom this Act applies."[6]

Section 35 (1) of the Act reads as follows:

> Notwithstanding anything in the Railway Act or in this Act, a carrier may make such charge or charges for the transport of the goods of any shipper or for the transport of any part of his goods as may be agreed between the carrier and the shipper: Provided that any such agreed charge require the approval of the Board, and the Board shall not approve such charge if, in its opinion, the object to be secured by the making of the agreement can, having regard to all the circumstances, adequately be secured by means of a special or competitive tariff of tolls under the Railway Act or this Act; and provided further that when the transport is by rail from or to a competitive point or between competitive points on the lines of two or more carriers by rail the Board shall not approve an agreed charge unless the competing carriers by rail join in making the agreed charge."

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[5] Revised Statutes of Canada 1927, Vol. III, Chapt. 170, S. 5. 6. (c).

[6] Ibid., S. 2. (1).

A special tariff was one that could "be charged by the company for any particular commodity or commodities, or for each or any class or classes of the freight classification, or to or from a certain point or points on the railways"[7] and a competitive tariff was one "to be charged by the company for any class or classes of the freight classification, or for any commodity or commodities, to or from any specified point or points which the Board may deem or have declared to be competitive points..."[8]

3. Sanctions by the Board of Transport Commissioners for Canada. The Board of Railway Commissioners for Canada as defined in the Railway Act, Chapt. 170 (Revised Statutes of Canada, 1927) was substituted in the Transport Act for "the Board of Transport Commissioners for Canada" which had a duty "to perform the functions vested in the Board by this Act and by the Railway Act with the object of coordinating and harmonizing the operations of all carriers engaged in

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[7] Ibid., S. 329 (3).

[8] Ibid., S. 329 (4).

transport by railways, ships and aircraft..."[9]

In considering the application for the approval of an agreed charge the Board has to take into consideration any shipper, any representative body of shippers and/or any carrier who considers "that his business will be unjustly discriminated against if the agreed charge is approved and is made by the carrier, or that his business has been unjustly discriminated against as a result of the making of the charge by virtue of a previous agreement."[10] Also on any application (agreed charge or fixed charge) the Board must have regard to all considerations relevant to the effect on "the net revenue of the carrier" and "on the business of any shipper by whom, or in whose interests, objection is made to approval being given to an agreed charge, or application is made for approval to be withdrawn."[11]

4. Fixed charges. Any shipper who considers that his business has been or will be discriminated against as a result of an agreed charge "may at any time apply to the Board for a charge to be fixed for

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[9] Transport Act (1938), op. cit., S. 3 (1), (2).

[10] Ibid., Section 35, (5).

[11] Ibid., Section 35, (13).

the transport of his goods (being the same goods as or similar goods to and being offered for carriage under substantially similar circumstances and conditions as the goods to which the agreed charge relates) by the same carrier..." and if the Board is satisfied that there has been or will be unjust discrimination, it will fix a charge. In fixing a charge the Board may put a restriction of time but no charge shall be fixed for a period beyond the period of the agreed charge.[12] When the Board has fixed a charge for a shipper complaining of an agreed charge, such a shipper is not entitled to make an application for an agreed charge for the same goods.[13] Any charge fixed in favour of a shipper complaining of an agreed charge is subject to corresponding modifications when the latter has been modified.[14]

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[12] Ibid., Section 35 (6), (7).
[13] Ibid., Section 35 (9) (c).
[14] Ibid., Section 35 (11), 36 (2).

B. AMENDMENTS WITH RESPECT TO AGREED CHARGES

1. Recommendations of the Royal Commission on Transportation 1951.[1] Complaints were made against the principle and administration of agreed charges to the Commission. The Provinces of Alberta and Manitoba asked for the repeal of Part V of the Transport Act i.e. the section on agreed charges for similar reasons. Manitoba claimed that "the Agreed Charge method of rate making might eliminate truck competition rather than meet it", that it "favours the large shipper" and that the railways have sufficient power with the competitive tariffs. Alberta complained that "all shippers should be treated alike, regardless of size", and that the agreed charges favour the larger ones.[2]

The Canadian Manufacturers Association mentioned that the agreed charge system enables the large shippers to "make a deal with the railways which the smaller shippers may not be able to make because of his inability to agree on the same terms."[3]

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[1] Royal Commission on Transportation, Report, (W.F.A. Turgeon, Chairman), Ottawa: King's Printer, (1951).

[2] Ibid., p. 88.

[3] Ibid., p. 89.

The Canada Steamship Lines Limited expressed the view that it was an exceptional method of rate making and that this private contract gave terms more favorable to the individual shipper than those offered by the carrier to the general public, that during the time the agreed charge remains in force it denies the other carriers the opportunity to compete for this business and that the safeguards contained in the Act were "a very minimum" and that the unrestricted use of the agreed charge by railways "would force motor carriers to the wall."[4]

The positions taken by the railways were, on one hand, for the Canadian Pacific Railway Company, that the agreed charges were satisfactory and that they would not object to "greater flexibility" without suggesting any amendment. On theother hand the approach of the Canadian National Railway Company was quite different. The company maintained "that Part V of the Act was unsatisfactory in its present form", the Act having failed to enable the railways to meet competition, particularly of motor trucks, that there were too many delays by the Board in securing approval and that the water carrier could object to the approval even though only a portion of its rates were regulated

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[4] Ibid.

by the Act. The Canadian National then proposed amendments that would have the effects of doing away with the necessity of prior approval by the Board; eliminating the condition of the agreement to include the rival rail carrier; establishing the agreed charge on the basis of rate making; eliminating the condition of a different rate depending on the number of cars and eliminating the disapproval by the Board of the agreed charge if the object could have been secured by a special or competitive tariff; preventing objection to agreed charges by water carriers and finally permitting the shippers who would be unjustly discriminated against to apply for a fixed charge but not to object to the agreed charge itself.[5]

The two railway companies were asked to consult together in order to agree on amendments to be proposed as a result of their divergence of views, but were unable to do so even though the Canadian National agreed that its proposed amendments may have gone too far.

In its conclusions, the commission argued that the agreed charge provisions of the Act had "not yet had a fair trial" and that it would be unwise to

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[5] Ibid., pp. 89-90.

accept the proposed amendment by the Canadian National and that "none of the amendments to the Act proposed by the Provinces or by the railways can be recommended."[6]

2. Royal Commission on Agreed Charges 1955[7] and Legislation. The Royal Commission on Transportation 1951 had recommended to the Government that rates to (or from) intermediate points should not exceed the "transcontinental" rate by more than one-third. This proposal was accepted and the Railway Act amended accordingly (Section 337), but this one and one-third rule applied to traffic moving under the Railway Act i.e. not under the Transport Act.

Faced with a reduction in their earnings on traffic moving to intermediate points the railways were forced to examine their basic transcontinental "competitive" rates (published under the Railway Act) for an "Agreed Charge" (under the Transport Act). It was done for cast iron pipe and fittings moving from Toronto and Trois-Rivières to points in B.C. The approval of this Agreed Charge by the Board was protested. The protest failed and the Province of

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[6] Ibid., pp. 95-6.

[7] This refers to the Royal Commission on Agreed Charges, Report, (W.F.A. Turgeon, Chairman) Ottawa: Queen's Printer, 1955.

Alberta requested the Federal Government to amend the legislation so that the one and one-third rule would apply on traffic moving under the Transport Act. Hence the appointment of this Royal Commission on Agreed Charges in May 1954.

In reviewing the application of Agreed Charges of the Transport Act the commissioner mentioned that he was satisfied that no injustice could be asserted and was impressed with the belief that the motor industry had become a factor of permanent value in Canada's economic life and that no legislation should be contemplated to cause it vital damage. On the other hand the great deterioration of the financial position of the railways in the recent years despite the improvement of their property and services was according to the commissioner opposed to the national interest.[8]

Many submissions were made to the commission asking for the repeal of this part of the Transport Act on the grounds of destruction of highway transport, discrimination for one form of transportation and for shippers engaged in the same industry. Other submissions proposed practically an almost perfect degree of freedom for the railways in regard to agreed

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[8] Ibid., p. 26.

charges.[9]

With respect to the special case presented by Alberta and later joined by Saskachewan, the Royal Commission outlined the arguments pro and con as presented to it by interested parties and decided that it would not recommend the application of the one and one-third rule to agreed charges, due to the difficulties involved in its practical application. And even if it were found possible to apply it to certain cases "it would on the whole be unproductive of substantial benefit to intermediate territory". Further, the financial position of the railways being unfavorable, it would be unwise to raise new complications which might hamper them considerably. Finally, the position of intermediate territory was altered beneficially and substantially with the new competitive conditions of transport, i.e. highway transport.[10]

The commission took "the view that the object to be attained, as nearly as possible, was to set the railways free, but with the safeguard of certain precautions intended to preserve the rights of other interested parties,"[11] and with this in mind it outlined the substance of the legislation that should

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[9] See pp. 27-36 for submissions.

[10] Ibid., p. 45.

[11] Ibid., p. 36.

govern the practice of agreed charges.[12]

1. That the procedure for bringing an agreed charge into effect should be simplified and shortened i.e. no prior approval by the Board. It would allow the agreed charge to become effective 20 days after its filing.

2. That the existing provisions of the Statute, with regard to the shipper who feels that he is injured in his business interests by an "unjust discrimination", and that the Board being an "impartial tribunal which has unrestricted power to give him the remedy which his case warrants," not be changed.

3. That provision be made to allow water carriers to become parties to any agreed charges upon certain conditions, i.e. "any carrier by water which has established through routes and interchange arrangements with a carrier by rail."

4. That U.S. railways having lines in Canada be allowed not to initiate agreed charges but to become a party if they so desire.

5. "That an agreed charge may be terminated in respect to any party by withdrawal by that party upon 90 days' notice in cases where the agreement has been in effect for at least one year."

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[12] Ibid., pp. 36-38.

6. That "once the agreement has become effective and the remedy of a fixed charge has been made readily available to every shipper unjustly affected by it, the charge should be allowed to stand for a reasonable time (3 months) before being made subject to attack by others (others being any carrier, or association of carriers, by water or rail or any association or other body representative of the shippers of any locality) not so immediately concerned with its operation." These complaints should at least to some extent be based upon the "interests of the public" in order to be allowed to come before the Board. It is to be noted that these complaints should be made to the Minister of Transport.

Legislation (1955) regarding agreed charges, (3-4 Elizabeth II, Chapter 59).

(a) Section 32 of the Revised Act (28th July, 1955).

1. Subsection (1) provides that "Notwithstanding anything in the Railway Act or in this (Transport) Act, a carrier may make any such charges for the transport from one point in Canada to another point in Canada of goods of a shipper as are agreed between the carrier and the shipper". The movements from a point to another point in Canada were not specifically stated previously, and it excluded previous reference as to whether the

object of an Agreed Charge could be achieved by means of a "competitive" tariff.

2. Sub-section (2) provides that an Agreed Charge cannot be made unless rail carriers (1) join therein, or (2) give notice of consent in writing. Previously all competitive rail carriers had to be a party to the Agreed Charge before it could be effective.

3. Sub-section (3) provides that the foregoing shall not apply on a United States carrier's Canadian lines except as between points on its lines in Canada which it serves exclusively.

4. However, Sub-section (4) allows a U.S. carrier to be party to an Agreed Charge --

(a) When it operates as a point of origin or a point of destination, or between such points, and --

(b) Where it forms part of a continuous route by rail, either entirely in Canada, or partly in the U.S., provided all railways over whose lines the continuous route is established concur. The U.S. line must file with the Board a notice of intention to become a party to the agreement. No specific mention was made of U.S. carriers previously, as it is in the last two Sub-sections and they could enter into an Agreed Charge on through traffic between Canadian points.

5. Sub-section (5) provides that where an Agreed

Charge is made by a carrier by rail a water carrier is entitled to become a party thereto, at agreed differentials, provided that the water carrier has established through routes andinterchange arrangements with the rail carrier and publishes tariffs.

There was no reference to water carriers in the original Transport Act of 1938 and any water line subject to this Act of 1938 could enter into Agreed Charges on its local traffic. The alteration merely provided that it could participate in any Agreed Charge made by the Railways in through traffic.

6. Sub-section (6) for the unit of weight and the carload rate was not changed.

7. Sub-section (7) provides that --

(a) Agreement for an agreed charge shall be executed in tariff form,

(b) A duplicate original shall be filed with the Board within seven days, and

(c) The agreed charge shall be effective twenty days after such filing with the Board.

The previous method was that the Board approved an Agreed Charge and its effective date. The thirty day period was changed to twenty days, which was a compromise between the fifteen day period requested by the Railways and the thirty days requested by other

parties.[13] The Board had to give consideration to whether the result could be obtained by a normal "competitive" tariff, to the effect on the net revenue of the carrier and to other conditions which appear to it to be relevant. The present system obviates any delay that might otherwise occur.

8. Sub-section (8), with regard to the publication of an Agreed Charge as other tariffs as provided by Sub-section (1) of Section 333 of the Railway Act, was not changed.

9. By filing "notice of intent with the Board any other shipper may, with the consent of carrier, become a party to an Agreed Charge, to be effective on an agreed date.

This was not specifically covered in the previous Act.

10. Sub-section (10) provides that the Board may "fix" a charge upon application of any shipper who considers that his business is or will be unjustly discriminated against by an Agreed Charge. The circumstances and conditions must be the same.

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[13] Ibid., p. 36, Item 1, and also p. 13.

The effect is the same as under the previous act and the "fixed" charge arrangement might be used if the carriers were not in agreement with the applicant shipper. The latter then would apply to the Board for a "fixed" charge.

11. Sub-section (11) provides that once the agreement for an Agreed Charge has been filed properly with the Board and notice as outlined is given, the rate specified shall be the lawful charge with respect to such goods after the date the agreement takes effect until the agreement expires or is terminated. Previously the effective date could have been determined by the Board.

12. Sub-section (12) provides that any party to an Agreed Charge may withdraw therefrom by giving ninety days' notice provided the Agreed Charge has been in effect for at least one year.[14]

(b) Section 33, Revised Act (28th July, 1955).

This section deals with complaints. It should be noted that any agreed charge covered by Section 32 must have been in effect for three months in so far as appeals to the Minister are concerned.[15]

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[14] Ibid., p. 48, Sub-section 10, and also Item 5, p. 36.

[15] Ibid., p. 48, Section 33 (1) and p. 38, second paragraph.

1. Sub-section (1) of Section 33 provides that, where an Agreed Charge has been in effect at least three months,

(a) any carrier, or association of carriers, by water or by rail, or

(b) any association or other body representative of any shippers of any locality,

may complain to the Minister as to unjust discrimination or unfair advantage. The Minister may, if he is satisfied that it is in the public interest that the complaint should be investigated, refer the complaint to the Board.

2. The Governor-in-Council may refer the Agreed Charge to the Board for investigation if he has reason to believe that an Agreed Charge may be undesirable to the public interest.

Previously complaints could be made to the Board before approval of an Agreed Charge by

(a) any shipper pleading unjust discrimination

(b) any representative body of shippers, and

(c) any carrier.

In this Sub-section (2) the truckers may appeal to the Governor-in-Council because of: "Any association or other body representative of the shippers of any locality."

The term "public" interest is used instead of "national" interest in order to cover a situation which might only affect a locality: "A city, a town, and possibly an adjacent area or any other undefined territory."[16]

3. Sub-section (3) outlines the points to be considered by the Board on matters referred to it by the Minister or Governor-in-Council.

a) The effect on the net revenue of the carriers.

b) Whether the Agreed Charge is undesirable in the public interest.

c) Whether it places any other form of transportation service at an unfair disadvantage.

4. Sub-section (4) provides that the Board, after a hearing, may make an order varying or cancelling the Agreed Charge or any other such order as in the circumstances it considers proper.

5. Sub-section (5) provides that any charge "fixed" in favor of a complaining shipper ceases to operate or is subject to corresponding modifications as may be determined by the Board when the latter varies or cancels the original Agreed Charge.

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[16] Ibid., p. 38, first paragraph.

3. Royal Commission on Transportation 1959.[17]

This Royal Commission came only a few years after the one on Agreed Charges and did not treat specifically the case of Agreed Charges even though there were submissions to this effect. The Canadian Trucking Associations Inc. mentioned that in the last years the ease of entry and exit in this industry was more difficult and that the industry was moving at an accelerating pace towards heavy capitalization and large firms. In order to perform its economic functions efficiently the trucking industry needed a certain degree of stability and a certain level of profitability to attract new capital and to provide sources of "internal capital for further reinvestment". They made the following point: "The trucking industry is no longer one large group of one-man operators who can enter and leave the industry at will."[18]

They mentioned that the adverse effects of agreed charges have been obscured by the fast economic development of the country but that it might not be always

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[17] Canada: Royal Commission on Transportation, Report, (M.A. MacPherson, Sr., Chairman). Ottawa: Queen's Printer, 3 vols., 1961-62.

[18] Submission of the Canadian Trucking Associations Inc. to the MacPherson Commission on Transportation in May 1960, p. 65.

so and then this industry will suffer. They submitted that the present safeguard against the abuse of the Agreed Charges should satisfy two conditions:

a) The appeal procedure should be made more effective.

b) The potentially monopolistic element of agreed charges should be circumscribed so that no contract should require that more than 50 per cent of the shipper's traffic be moved by the railway.

In a study made to the Commission D.W. Carr and Associates [19] mentioned that the railways are required to fill the major transport role in Canadian economy and that it seemed "necessary to permit them to use extreme measures to hold traffic rather than allow them to decline as rapidly as they otherwise would have." And the study added: "It seems evident, however, that the growth of trucking relative to rail transport will continue in spite of agreed charges."

As mentioned before, the Commission did not treat agreed charges specifically but stated that the broad aim of public transportation policy was to ensure that all the various modes of transport be given a fair chance to find their proper place within a competitive system.

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[19] Royal Commission...1959, op. cit., Vo. III, p. 74.

The Commission maintained that the principle resulting in obligations imposed upon the railways by "tradition, law and public policy, be lifted" in order to meet their competition with price and service. When these national obligations could be removed, remuneration should be found for the services performed to prevent distortions in resource allocations and distortions in pricing of rail services.[20] But by lifting these obligations the railways would no more have any advantages over the other modes of competition and would be allowed to shed unremunerative plants and services and by freer ratemaking to enter markets and price services in accordance with the economic realities of railway operation.

With this National Transportation Policy of essential neutrality, wherever competition prevails, "there is no apparent reason why each mode of transport cannot compete on the basis of technological adaptability and managerial skill. So long as policy neutrality is preserved, new methods and modes of transport will be encouraged on the basis of their competitive ability and old modes will pass from the scene on the basis of competitive disability."[21]

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[20] Ibid., p. 53.

[21] Ibid., p. 276.

CHAPTER III

EFFECTS ON THE TRANSPORTATION INDUSTRY

A. RELATIVE IMPORTANCE OF GOODS TRANSPORTED UNDER AGREED CHARGES BY RAILWAYS

1. General. As mentioned before the principle of agreed charges came about in 1938 because the railways were in a bad situation financially as their revenue had been declining, and because they had exhausted the possibilities of bettering their position by general freight rate increases. They were left with the necessity to find practical ways to secure a larger share of traffic offered for transportation. The agreed charge legislation had the express purpose of helping the railways to cope more effectively with transport competition specially truck competition which was making serious inroads upon their business by methods which they themselves were prevented from using because of the restrictions of the Railway Act.

The record shows that in practice the railways did not attain the object sought by the Transport Act in the first decade of agreed charges. The Board of Transport Commissioners reported to the Royal Commis-

sion on Transportation of 1951 that at the end of the year 1950 only 45 agreed charges had been approved, 38 of which were to meet highway competition and 7 to meet water competition. Of this number 23 were in force at the end of 1950 involving 73 shippers. The gross revenue produced by agreed charges for the two major railways in 1950 was estimated at approximately $10 million which represented a small percentage (2.4%) of their total revenue for the same year.[1] During this period the trucking industry was expanding rapidly even though it was retarded by wartime restrictions and postwar shortages.[2] The following table shows the intercity freight ton miles moved by type of carrier, 1938 to 1959.

TABLE I

INTERCITY FREIGHT TON-MILES PERFORMED BY TYPE OF CARRIER, 1938 TO 1959
(Billions of ton-miles)

Year	Total	Rail	Road	Water	Oil pipeline
1959	133.6	67.9	14.4	33.7	17.4
1958	126.9	66.4	14.1	29.4	16.9
1957	132.2	71.4	10.7	31.2	19.2
1956	141.2	78.8	10.6	33.6	18.1
1955	118.7	66.2	10.2	29.3	13.0
1954	102.1	57.4	10.0	25.2	9.2
1953	110.1	65.3	9.8	28.0	7.0
1952	108.4	68.4	8.9	26.3	4.8

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[1] Royal Commission 1951, op. cit., p. 88.

[2] A.W. Currie, Canadian Transportation Economics, University of Toronto Press, 1967, p. 479.

1951	100.7	64.3	8.2	24.6	3.5
1950	87.7	55.5	7.6	23.0	1.5
1949	82.7	56.3	5.9	20.4	-
1948	84.1	59.1	5.2	19.8	-
1947	82.5	60.1	4.3	18.1	-
1946	74.5	55.3	3.5	15.7	-
1945	85.1	63.3	3.0	18.8	-
1944	85.9	65.9	2.7	17.3	-
1943	84.4	63.9	2.4	18.0	-
1942	76.1	56.1	2.4	17.5	-
1941	71.9	50.0	2.2	19.7	-
1940	58.9	37.9	1.8	19.2	-
1939	52.8	31.4	1.7	19.6	-
1938	49.0	26.8	1.5	20.7	-

Source: Historical Statistics of Canada, Toronto: The MacMillan Company of Canada Ltd., p. 554.

As can be seen from the table between 1938 and 1950 the intercity traffic increased by a little more than a factor 2 for the railways while the road transport increased by a factor 5. Because of these disappointing results the Canadian National, with some support from the Canadian Pacific, asked the Royal Commission of 1951 to recommend greater flexibility in publishing agreed charges as they were essentially a special form of competitive rate and that the current practice of approval by the Board was cumbersome and slow. It was not until 1955 that the question was re-examined by Mr. W.F.A. Turgeon. He recommended the changes explained previously in Chapter II. These statutory changes left the railways relatively free to introduce agreed charges whenever they decided it was necessary and profitable to do so.

TABLE II

Agreed Charges between 1950 and 1966

	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
New Agreements	2	1	3	7	24	17	79	150	204	320	248	254	210	210	200	196	n.a.
Amendments to Agreements	5	2	16	20	21	44	244	397	544	684	779	1010	1038	1055	1397	1406	n.a.
Agreed Charges in Effect at the end of the year	23	22	25	31	52	95	157	547	748	1004	1027	1165	1290	1447	1546	1610	1504
Number of Different Shippers Parties to such agreed Charges	73	71	77	105	219	352	612	n.a.	n.a.	n.a.	n.a.	1845	2011	2145	2384	2595	2457

Source: Canada; Railway Commissioners' Reports 1950-1966.

n.a./- not available

Since then the uses of agreed charges have been increasing tremendously to cover a major share of the railway freight traffic and to provide an even greater part of their total revenue. At the same time the share of the railways, with respect to the total intercity freight, has been decreasing regularly with the years, as will be shown later. Table II shows the importance in agreed charges that the amendments of the Transport Act had on their uses since 1950 and the numbers of shippers involved in these agreements.

2. Inter-regional movement of merchandise. The Board of Transport Commissioners' annual waybill analyses indicate the general pattern of railway freight movements and the changing trends of traffic under the different categories of freight rates. Table III gives the rail traffic charges by Rate Class for selected years by regions of origin and destination.

The three regions used in the waybill analyses are defined as follows:: The Maritime region consists of the provinces of Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and that portion of Quebec lying east of Levis and Diamond, Quebec. The Eastern region extends westward from Levis, Diamond and Boundary, Quebec, to Port Arthur and Armstrong, Ontario.

TABLE III

Rail Traffic Charges by Rate Class, 1951, 1958, 1965

(excluding statutory rates)

Region	1951			1958			1965		
Canada	Total (000,000)	%	Cents/ ton-mile	Total (000,000)	%	Cents/ ton-mile	Total (000,000)	%	Cents/ ton-mile
ton-miles	294,030	100	1.71	227,320	100	1.55	349,000	100	1.91
class rates		12.8	3.16		5.1	4.05		2.5	3.95
commodity, non-competitive		73.3	1.56		52.8	1.78		43.4	1.44
commodity, competitive		12.6	2.03		28.1	2.07		24.8	2.61
agreed charges.		1.3	4.10		14.0	2.47		29.3	1.84
Maritime to Maritime									
ton-miles	10,590	100	1.71	9,840	100	2.05	13,210	100	2.09
class rates		4.9	3.16		2.8	4.76		5.3	3.84
commodity, non-competitive		85.1	1.56		63.4	1.87		36.7	2.00
commodity, competitive		9.6	2.03		33.0	2.07		35.8	1.93
agreed charges		0.4	4.10		0.8	3.60		22.2	2.07
Maritme to Eastern									
tone-miles	25,080	100	0.99	13,180	100	1.28	24,920	100	1.03
class rates		9.1	1.99		4.9	3.43		2.7	1.95
commodity, non-competitive		81.9	0.86		80.0	1.06		50.8	0.85
commodity, competitive		8.9	0.95		13.6	1.57		7.6	2.04
agreed charges		0.1	4.24		1.5	3.60		38.9	1.00

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Region	1951			1958			1965		
Eastern to Maritimes	Total (000,000)	%	Cents/ ton-mile	Total (000,000)	%	Cents/ ton-mile	Total (000,000)	%	Cents/ ton-mile
ton-miles	25,460	100	1.35	18,380	100	1.69	41.430	100	1.51
class rates		21.6	3.40		17.5	2.92		8.7	3.00
commodity, non-competitive		77.5	0.88		70.0	1.22		64.5	0.99
commodity, competitive		0.5	1.94		10.3	2.83		10.0	2.48
agreed charges		0.4	3.98		2.2	1.90		16.8	2.21
Eastern to Eastern									
ton-miles	84,000	100	1.87	61,270	100	2.51	85,990	100	2.26
class rates		6.7	3.77		2.6	5.63		1.0	7.00
commodity, non-competitive		75.8	1.58		44.4	2.15		27.8	1.89
commodity, competitive		13.6	1.85		38.3	2.73		32.9	2.83
agreed charges		3.9	3.38		14.7	2.49		38.3	1.91
Eastern to Western									
ton-miles	34,140	100	2.31	28,930	100	2.75	44,080	100	2.76
class rates		45.8	3.49		16.5	4.06		4.6	4.47
commodity, non-competitive		13.0	1.88		25.9	2.42		28.0	2.79
commodity, competitive		41.2	1.24		19.1	2.54		21.2	3.13
agreed charges		N.R.	N.R.		38.5	2.51		46.2	2.41

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Region	1951			1958			1965		
Western to Eastern	Total (000,000)	%	Cents/ ton-mile	Total (000,000)	%	Cents/ ton-mile	Total (000,000)	%	Cents/ ton-mile
ton-miles	35,700	100	1.08	35,170	100	1.51	47,450	100	1.57
class rates		2.9	2.98		1.4	3.44		0.5	4.27
commodity, non-competitive		87.9	1.02		42.3	1.63		42.3	1.34
commodity, competitive		9.2	1.10		55.5	1.37		32.0	2.11
agreed charges		N.R.	N.R.		0.8	1.86		25.2	1.23
Western to Western									
ton-miles	64,940	100	1.70		100	2.52		100	1.75
class rates		7.1	3.79		1.4	4.54		0.6	6.34
commodity, non-competitive		88.8	1.49		42.2	1.87		56.2	1.24
commodity, competitive		3.2	2.06		55.5	2.96		25.4	2.74
agreed charges		0.9	4.25		0.9	2.93		17.8	1.78

Source: Taken from the Waybill Analysis by Dr. H. Purdy.

The Western region consists of all lines west of Port Arthur and Armstrong (except the Yukon).

In 1958, the agreed charges were not used extensively except for the movement of goods from Eastern region to Western region where they represented 38.5% of the volume transported westbound between these two regions. Within the Eastern region they accounted for 14.7% of the traffic moved. A few years later, in 1965, they had increased tremendously and were the second rate class most utilized after "commodity, non-competitive" for Canada and they became the most used for the movement of merchandise westbound between Eastern and Western regions and within the Eastern region.

3. Kinds of goods shipped under agreed charges.

In the beginning agreed charges were made for the transcontinental movement of the following commodities: Cast iron pipe and fittings, Canned Fish, Canned Goods or Preserves, Wrought Iron or Steel Pipe and Tubing, Hardboard, Iron or Steel Wire Rods, and Iron or Steel Articles. There is no agreed rate for the movement of grains which come under the low statutory grain rates but agreements were concluded for transformed products like flour...etc.

The Transport Act does not contain restrictions as to the kinds of commodities that can be hauled under these agreements. In practice there must be a sufficient volume to be moved as restrictions exist in the agreement as for example minimum weight per carload. Because of a specified minimum percentage of the volume to be hauled by railways, the commodities involved must be such as to not create great inconvenience in service to customers like rapidity of delivery or storage facilities...etc.

B. EFFECTS ON THE FINANCIAL SITUATION OF THE RAILWAYS

In the 1930's the trucking industry emerged as a new mode of competition for the railways. They forced the railways to cut many of their tolls. The expansion of this new industry had been retarded by the war restrictions and postwar shortages and it was not until 1950 that the highway carriers began to stiffen competition. The competition was not only coming from the trucking industry but also from the increase of passenger cars, buses and airplanes. The growing use of electricity, fuel oil and natural gas ruined much of the carriage of coal by rail. The St. Lawrence Seaway and the use of trucks for pickup and delivery extended the services of inland waterways. Pipelines at this time were starting to make big inroads. There was also the fact that the total bill for transport by various modes did not rise as fast as the total spending on goods and services of all kinds, such as entertainment, restaurants, dry cleaning...etc. This was due to a reduction of waste in production with a cut in transportation of raw materials by locating the factories and

assembly plants so as to minimize the total transportation costs on incoming raw materials and outgoing finished products. "In short, the railway problem is a complex of competition from other media of transport, the discovery of new resources, in techniques of production in all industries and in methods of operating railways, new spending habits and so on."[3] The intercity freight carried by various modes is shown in Table IV for specific years between 1938 and 1965. It is to be noted that a major competitor of the railways is the oil pipeline which in a few years took a good share of the total freight moved.

TABLE IV

INTER-CITY TON-MILES PERFORMED IN CANADA BY TYPE OF CARRIER

Year	Total (billions)	Rail %	Road %	Water %	Air %	Oil Pipeline %	Gas Pipeline %
1938	53	51	3	46	*	+	+
1946	77	72	5	24	*	+	+
1951	105	61	8	30	*	1	+
1956	145	54	7	27	*	11	+
1961	152	43	11	26	*	14	6
1965	201	42	9	27	*	14	8

Source: A.W. Currie, Canadian...op. cit., p. 478.
* Less than one-tenth of one per cent.
\+ Negligeable or non-existent.

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[3] A.W. Currie, Canadian...op. cit., p. 477.

The above data do not include rural, intra-urban, or suburban carriage such as local delivery of farm produce, fuel oil, bread and merchandise of all sorts. Also the data take no account of the occurence of strikes which may have affected the percentages slightly. Even though pipelines for natural gas never compete with the railways, they have, however, reduced the carriage of coal by this mode of transport.

Tables V, VI and VII are derived from the Waybill Analysis published every year since 1949, with the exception of 1950, by the Board of Transport Commissioners for Canada, and show the importance of the agreed charges in regard to the types of traffic carried by the railways and also the revenues derived from the transportation of freight under these agreements. The samples consist of so many carloads (20,134 in 1961, 19,822 in 1958) of all-rail traffic between Canadian stations. Under this arrangement the railways participating in the waybill analysis forwarded photostated copies of all line-haul carload waybills of local and inter-line Canadian shipments terminating at their stations in Canada bearing serial number "1" and serial numbers ending in "01". Waybills involving

TABLE V

PERCENT OF SAMPLE TON MILES

Type of Traffic	1951	1952	1953	1954	1955	1956	1957	1958	1959
	%	%	%	%	%	%	%	%	%
Class Rated	8.4	6.7	5.4	4.3	4.3	3.4	3.6	3.1	3.1
Commodity Non-Competitive	49.1	41.8	34.6	43.4	43.5	35.8	35.8	32.4	31.8
Statutory	27.1	40.6	47.0	30.1	25.6	33.8	31.7	32.7	30.9
Competitive	8.7	5.8	7.0	12.5	15.8	17.2	16.7	17.3	17.4
Agreed Charge	1.0	1.3	1.8	3.2	4.9	5.1	7.2	8.7	12.2
Multiple Rates	4.4	3.2	2.4	3.9	3.1	2.1	2.7	3.3	2.2
Mixed Shipments	1.3	.6	1.8	2.6	2.8	2.6	2.3	2.5	2.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Category of Rate	1960	1961	1962	1963	1964	1965	1966
	%	%	%	%	%	%	%
NORMAL RATED TRAFFIC							
Class Rates	2.8	2.4	2.1	1.8	1.6	1.7	1.6
Commodity Rates	30.7	30.2	29.2	30.1	27.6	30.2	27.5
COMPETITIVE RATED TRAFFIC							
Competitive Rates	16.3	15.7	17.1	15.1	15.3	17.2	17.2
Agreed Charges	13.5	13.7	16.8	18.7	18.8	20.4	20.2
STATUTORY GRAIN RATES	36.7	38.0	34.8	34.3	36.7	30.5	33.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Waybill Analysis
Board of Transport Commissioners for Canada.

TABLE VI

PERCENT OF SAMPLE REVENUE

Type of Traffic	1951	1952	1953	1954	1955	1956	1957	1958	1959
	%	%	%	%	%	%	%	%	%
Class Rated	21.0	19.0	14.5	10.8	10.2	9.3	9.4	8.2	7.9
Commodity Non-Competitive	50.8	49.4	45.1	49.4	45.0	41.3	41.4	37.3	34.7
Statutory	11.1	15.4	17.1	10.4	8.9	11.5	9.9	10.5	8.6
Competive	9.7	9.1	12.8	15.8	19.3	21.0	20.5	23.1	27.0
Agreed Charge	2.5	2.5	4.4	5.9	9.4	10.0	12.3	13.8	16.1
Multiple Rates	2.8	2.8	1.7	2.0	1.7	1.2	1.5	1.9	1.2
Mixed Shipments	2.1	2.1	4.4	5.7	5.5	5.7	5.0	5.2	4.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Category of Rate	1960	1961	1962	1963	1964	1965	1966
	%	%	%	%	%	%	%
NORMAL RATED TRAFFIC							
Class Rates	7.6	6.7	6.0	4.9	4.7	4.6	4.6
Commodity Rates	34.6	34.6	32.9	32.3	29.6	29.3	28.7
COMPETITIVE RATED TRAFFIC							
Competitive Rates	27.8	26.3	27.3	26.3	27.3	30.4	30.1
Agreed Rates	19.1	20.1	22.9	24.7	25.2	25.3	24.8
STATUTORY GRAIN RATES	10.9	12.3	10.9	11.8	13.2	10.4	11.8
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Same as Table V

TABLE VII

AVERAGE REVENUE PER FREIGHT TON MILE

Type of Traffic	1951	1952	1953	1954	1955	1956	1957	1958	1959
	cts.	cts.	cts.	cts.	cts.	cts.	cts.	cts.	cts.
Class Rated	3.25	3.64	3.77	3.89	3.65	3.89	4.05	4.05	4.59
Commodity Non-Competitive	1.34	1.51	1.81	1.75	1.58	1.66	1.81	1.78	1.95
Statutory	0.53	0.49	0.51	0.53	0.53	0.49	0.49	0.50	0.50
Competitive	1.45	2.01	2.52	1.94	1.87	1.77	1.94	2.07	2.77
Agreed Charge	3.38	3.51	3.40	2.87	2.93	2.85	2.65	2.47	2.37
Multiple Rates	0.81	0.86	0.97	0.78	0.80	0.84	0.87	0.86	0.99
Mixed Shipments	2.05	3.23	3.25	3.34	2.98	3.22	3.40	3.22	3.37
Total	1.29	1.28	1.39	1.54	1.52	1.45	1.57	1.55	1.79

Category of Rate	1960	1961	1962	1963	1964	1965	1966
	cts.	cts.	cts.	cts.	cts.	cts.	cts.
NORMAL RATED TRAFFIC							
Class Rates	4.44	4.28	4.34	3.95	4.03	3.95	4.05
Commodity Rates	1.86	1.73	1.75	1.57	1.50	1.44	1.49
COMPETITIVE RATED TRAFFIC							
Competitive Rates	2.82	2.51	2.48	2.55	2.50	2.61	2.50
Agreed Charges	2.34	2.21	2.12	1.93	1.87	1.84	1.75
STATUTORY GRAIN RATES	0.49	0.49	0.49	0.50	0.50	0.50	0.50
Total	1.65	1.51	1.55	1.46	1.40	1.48	1.43

Source: Same as Table V

L.T.C., switching traffic, traffic originating at rail points outside Canada, rail-lake-rail, water-rail and ocean-rail waybills were excluded.[4]

Table V shows the constantly increasing volume of the use of agreed charges by the railways, especially starting from the mid-fifties, and there is no doubt that the legislative changes brought in the Transport Act in 1955 were a major factor in this greater utilization, as the approval by the Board was faster, the requirement that the object of an agreed charge could be achieved by a competitive tariff was excluded from the Act, and the competing rail carriers did not have to join in the agreement.

Table VI shows the percentage of sample revenue derived by each type of rate. The railways claim "that average revenue per ton-mile from agreed charges exceeds average ton-mile revenue on all traffic, excluding the abnormally low statutory rates on grain."[5] Even though the railways did not provide a breakdown of expenses for the handling of freight covered by agreed charges compared with the handling of freight not under these agreements, it seems that agreed charges made a better than average contribution

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[4] Waybill Analysis.

[5] A.W. Currie, Canadian Transportation Economics, op. cit., p. 508.

to their revenues up to 1963, but after this it was the reverse, as the average revenue per ton-mile was lower for agreed charges than for the total freight traffic, excluding the statutory grain rates (see Table VIII).

TABLE VIII

AVERAGE REVENUE FROM AGREED CHARGE PER FREIGHT TON-MILE COMPARED TO AVERAGE REVENUE PER TON-MILE FOR TOTAL FREIGHT (EXCLUDING STATUTORY RATES)

	1955 cts	1957 cts	1959 cts	1961 cts	1962 cts	1963 cts	1965 cts	1966 cts
Agreed charges	2.93	2.65	2.37	2.21	2.12	1.93	1.84	1.75
Total freight	1.95*	2.06*	2.37*	2.08*	2.11*	1.96	1.91	1.89

Source: Waybill Analysis (Reports).
* Excludes multiple rates, mixed shipments, U.S. traffic and statutory grain rates.

As shown in Table VII there has been a constant decrease in the average ton-mile freight revenue for the agreed charge traffic while other rates have been much more stable, even though they increase or decrease slightly.

The shipper is bound by a contract, and this avoided the seasonal utilization of personnel and equipment i.e. when the steamships or trucks could not operate during the winter season or in bad weather conditions. In this way agreed charges affected the

financial situation of the railways favorably.[6] Even though the primary object of agreed charges was to enable rail carriers to meet competition from motor trucks there were some cases where agreed charges permitted the railways to build up a paying volume of domestic traffic without taking it away from competing carriers by reducing the relative importance of imported commodities. On imports from overseas or from the United States the railways have only a relatively short haul from the seaports or the plants to the consumers. When the same goods are produced in Canada the railways might have a longer haul at better rates on finished goods, plus the revenue on movements of raw material.[7] A.W. Currie wrote that this production of goods in Canada had the effect of reducing unemployment and permitting these working people to buy more goods, therefore increasing the traffic for the railways.[8] The next chapter will show evidence of agreed rates which reduced imports from overseas.

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[6] Ibid., p. 502.

[7] Import rates are normally lower than domestic rates over the same haul. This is done in order to keep Canadian ports on a parity with the American ports with which they compete.

[8] Ibid., p. 503.

Even though these rates are lower than the average freight ton-mile revenue, the revenue derived from the agreed charges covers more than their variable costs and therefore is making a contribution to the fixed costs as the Board looked upon the effect on the net revenue of the carrier when the applications were submitted.

Finally many shippers do not find it worthwhile to have their own truck fleet on the road if they can obtain satisfactory rates and services from railways and commercial trucks and agreed charges surely decreased the rates enough to give more traffic to the railways.

C. EFFECTS OF AGREED CHARGES ON THE TRUCKING INDUSTRY

As mentioned earlier the intent of the section on agreed charges in the Transport Act was specially designed to meet motor truck competition. The trucking industry has many advantages on the railways and this contributed to their fast growth. The primary cause of their growth is technological. The railways have been handicapped because all their cars must be interchangeable with other railways in regard to coupling, clearances...etc., and each railway has its own minor peculiarities. Because of the short working life of highway equipment it is relatively easy to scrap obsolete models and replace them with the newest and the best.[9] The door-to-door service, a more personal and faster service, a shorter time to claim breakages are among the numerous advantages that the highway transport has over the railways.

Starting from the mid-fifties agreed charges had the effect of retarding the growth of the trucking industry, even though it was expanding steadily. It

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[9] A.W. Currie, Canadian...op. cit., p. 479.

is only speculation to imagine a different course, had there been no agreed charges, but it is fair to say that these agreements were detrimental to the highway transport as for instance the petroleum agreement in 1952, for the movement of oil products from the Lakehead to the four Western Provinces, had the effect, according to the truckers, of driving a thousand of them out of business.[10] Another case was the automobile case in 1952, where the agreed charge reduced the transportation costs of moving automobiles from Ontario plants to Western cities by the following amounts:: Vancouver $50, Edmonton $45, Saskatoon $34, Regina $32 and Winnipeg $20. As mentioned in the Financial Post, "Likely to be hardest hit are transcontinental truck firms that have mushroomed from nothing into big business concerns over the past two years."[11] In the same article, it is mentioned that during the month of July of that year between 30% and 35% of all western shipments from General Motors' Oshawa plant moved by trucks and the remaining was either moved by rail or driven away.

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[10] "Major rail truck battle opens in the West", Financial Post, May 10, 1954, p. 1.

[11] "Railways open new phase in war against trucks", Financial Post, A.F. Hailey, Sept. 6, 1954, p. 1, 3.

In 1954, shippers between Montreal and Toronto were offered by C.N.R. and C.P.R. rate cuts that ranged from 11% to 55 1/3%, which resulted in many trucking firms being driven out of business and slowing down the activity of the remaining ones.[12]

Even though these kinds of rates had negative consequences for the trucking industry, it was not fatal, as this mode of transportation has been growing at a rapid pace. Agreed charges were not effective in keeping traffic from truckers when the shipper considered that the quality of services rendered by truckers was worth the difference in rates between rail and road. In many agreements there was a percentage of movement left out of the agreement and the truckers could compete to move this remainder. Moreover, agreed charges tied all or most of a shipper's traffic to the rails for one year and it enabled the truckers to compete for the following year if they could give a better rate or if the shipper was not satisfied with the service of the past year. As stated by A.W. Currie:

> "There is no question that agreed charges have proved to be a potent competitive weapon in the hands of the railways. Yet the trucking industry's arguments against them

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12 "Truck cut rates to meet rail's bid for business", Financial Post, Sept. 25, 1954, p. 1, 3.

are often exaggerated. This is evidenced by the rapid growth in highway transport notwithstanding agreed charges by rail. Moreover, contract carriers do business under what amounts to an agreed charge..."[13]

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[13] A.W. Currie, Canadian...op. cit., p. 508.

D. WATER TRANSPORTATION AND AGREED CHARGES

Water carriers subject to the jurisdiction of the Board have a right to enter into an agreement with shippers for a specified amount of their tonnage at reduced rates. However, due to the inability to provide a 12 month service such agreements are impracticable. Under the same legislation, such water carriers have the right to participate in any agreed charges made by the railways at recognized differentials.[14] The movement of goods can then be either by all-rail, water-rail and vice-versa or by rail-water-rail between two areas. There is no data available from the water carriers which gives a breakdown, as for the railways, of the uses of agreed charges as a percentage of their traffic or revenues, but it seems that these agreements do not represent a big share of the traffic of Canada Steamship Lines.[15] A.W. Currie states that without the transcontinental rates and the agreed rates it is most probable that there would have been competition from water carriers between the West Coast and Eastern Canada through the Panama Canal, and that these rates kept the railways from a potential competition.

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[14] Canadian Institute of Traffic and Transportation (1964), Chapt. 20, p. 8.

[15] Conversation with an official of Canada Steamship Lines.

CHAPTER IV

ANALYSIS OF SOME CASES OF AGREED CHARGES

A. THE SKELP, PIPE, TUBE, IRON AND STEEL CASES

1. The Pipe and Tube Case. Canadian manufacturers located at Trois-Rivieres and Toronto had in the past shipped large quantities of cast iron pipe and fittings by rail to Western Canada. They were in competition at the Pacific Coast with pipe imported from abroad by sea, but the railways had been able to meet this competition by establishing low transcontinental competitive rates. In 1952 the "one-third rule" was introduced by S. 337 of the Railway Act, under which rates to or from interior points were not permitted to exceed transcontinental competitive rates by more than one-third. The railways were obliged to cancel their low transcontinental competitive rates in order to avoid losses of revenue by forcing a reduction in rates upon a heavy volume of pipe moving to the prairies. The Canadian manufacturers lost the entire West Coast market to overseas producers.[1] In

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[1] 71 C.R.T.C. 28, p. 28.

order to regain this business the Canadian Freight Association made an application for the approval, by the Board under Part IV of the Transport Act, R.S.C. 1952, c. 271, of an agreed charge between Canadian Iron Foundries Ltd. and the National Iron Corporation Ltd. and C.N.R., C.P.R., et al., for the carriage of pipe, cast iron and fittings, except valves, from Toronto and Trois-Rivières to Prince Rupert, Vancouver and Watson Island in the Province of British Columbia. The terms of the agreement were that the shippers ship all of their traffic prescribed therein by rail and not ship by any other means of transportation whatsoever. There was also an application by Warden King Ltd., Montreal, that a charge be fixed for the transport of the same goods to the same destinations at the rates contained in the agreed charges and with the same terms and conditions attached to the agreed charges.[2]

There was at the time a competitive rate in effect from Toronto to the Coast of $2.39 per 100 lbs., but this rate did not move any traffic because the shippers could not meet the competition at the Coast from iron

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[2] Ibid., p. 30.

pipe imported from overseas directly by ship. Up to May 1952 the competitive rates from Toronto and Trois-Rivières to the West Coast were $1.17 and $1.25 respectively. The rates proposed in the agreed charge were $1.10 from Toronto and $1.18 from Trois-Rivières.

The application was opposed by counsel on behalf of the Province of Alberta, the City of Edmonton and the Edmonton Chamber of Commerce. The counsel of the Province of British Columbia supported the application.

The points made were that the competitive rate ($2.39 per lb.) would not move the traffic to the Coast and a lower competitive rate such as an agreed charge would and it was "immaterial" for the shippers if this rate was an agreed charge or a competitive tariff. The carriers were "unwilling to publish this lower competitive rate because of the immediate impact of the one-third rule" of the Railway Act with the effect of offsetting in their over-all revenues the gain made by the competitive rate to the Coast. According to the Board the agreed charges were not subjected to the "one-third rule" as was indicated in clear language in Part IV of the Transport Act. It was argued also that without the agreed charge the carriers would not move the traffic and that in no

way the Province of Alberta would be better off and the effect would be beneficial only to the foreign producer who would have practically a monopoly on the consuming market. The Board approved then, for the above reasons, the agreed charge and also fixed the same charge for the traffic of Warden King Ltd.

In June 1954, Associated Foundry Ltd. of Vancouver, a competitor of Warden King Ltd. of Montreal, applied for cancellation of the fixed charge of the latter on cast iron pipe from Montreal, Québec, to Prince Rupert, Vancouver, and Watson Island, British Columbia. This application did not concern the agreed charge mentioned earlier but only the fixed charge on the contention that the type of pipe contemplated by the agreed charge was for water-main purposes. Such pipe was made of cast iron, and even though the description of the commodity in the agreed charge was sufficiently broad to include all types of cast iron pipe and fittings for same and the application of Warden King Ltd. was made under the presumption of unjust discrimination, it was demonstrated to the Board that the commodity manufactured and shipped by Warden King Ltd. was cast iron soil pipe which was manufactured by a different process and was shipped in different sizes and lengths. So the product was made of substantially the same materials,

although it differed in its purpose.

The applicant, Associated Foundry Ltd., claimed that he was unjustly discriminated against because Warden King Ltd. had principally the same market in British Columbia. It was stated also that the imports of the year 1953 did not exceed 10% of the production of Associated Foundry Ltd. and that it could not be claimed as reason for granting the fixed charge as in the case of agreed charge to which it was related.

These considerations were relevant to S.-s. (15) of S. (32) affecting the net revenue of the carrier and the business of any shipper objecting. The Board, considering that the product of Warden King Ltd. was different from the one of Canada Iron Foundries Ltd. and National Iron Corp. Ltd., that foreign imports of cast iron pipe into the British Columbia market were relatively small, that there was no unjust discrimination to Warden King Ltd. from the two manufacturers concerned by the agreed charge, revoked the fixed charge for Warden King Ltd. in June 15, 1954.[3]

2. The Iron and Steel Case. This case is similar to the previous one. It involved the Board's approval of four agreements for agreed charges on iron and steel plates, sheets, bars and other products from points in Eastern Canada to the Pacific Coast.

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[3] 71 C.R.T.C., pp. 221 - 5.

During the sittings, the Board "was compelled to rule upon the status of the Province of Alberta" which appeared at the hearing and to which certain shippers objected on the grounds that the Province did not fall within any of the three categories contained in Section 32 (7) defining those who were entitled to be heard in opposition to an application of an agreed charge. The Board ruled that the said Province was entitled under the provision 32 (7) (a) of the Act as a shipper who considered his business unjustly discriminated against if the Agreed Charge was approved.[4]

The counsel for these objecting shippers did not make representation for unjust discrimination because of the proposed agreements but for the non-application of the "one-third rule" to these agreed charges. As no change had been made in the legislation the outcome was the same as in the previous case (71 C.R.T.C. 28).

Other shippers objected to the proposed agreed charges for steel moving to the Pacific Coast "being converted or fabricated into storage tanks and other articles and shipped into Alberta in competition

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[4] 71 C.R.T.C., p. 327.

with fabricators in Alberta."[5] This would create unjust discrimination.

Each shipper member of the proposed agreements stated that the proposed rates would give them only "partial assistance" in meeting foreign competition and that Eastern industries would have to make further price reductions to meet such competition in the Alberta market; also that if the agreed charge was not granted they would be forced to withdraw from the Coast market.

It appeared "quite clear" to the Board that the Alberta industry would not be placed at a disadvantage or discriminated against, but that the agreed charge would merely place in "a more favourable competitive position" the Eastern manufacturers.[6] The advice received by the Board from their staff was that the object of these agreements could not be obtained by a competitive tariff because of the incidence of the one-third rule which would cause severe drain upon the carriers' revenue. The agreed charges were approved by the Board.

3. Alberta Phoenix Tube and Pipe Case. This case shows a different aspect of the application of

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[5] Ibid.

[6] Ibid., p. 328.

agreed charges. In December 1957 the counsel on behalf of Alberta Phoenix Tube and Pipe Ltd. presented an application "seeking the elimination of the unjust discrimination and undue preference that now exists in certain of the rates on steel and pipe for several eastern destinations to Edmonton and Vancouver."[7] The applicant had steel skelp brought from Hamilton or Sault Ste. Marie, Ont., to manufacture steel pipe at Edmonton, Alta., and the pipe was generally shipped to the Prairie Provinces and some to British Columbia.

Agreed Charges C.T.C. (AC) No. 63 was at the time covering the moving of pipe from Welland to Vancouver at a rate of $1.20 per 100 lbs. and Agreed Charges C.T.C. (AC) No. 89 was for the shipping of skelp from Eastern Canada to Port Moody at a rate of $1.20 per 100 lbs.

In the case of Alberta Phoenix Tube and Pipe the rate for moving the skelp to the plant was a commodity rate while the pipe shipped from Edmonton to Vancouver was at a normal rate.

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[7] 77 C.R.T.C. 40, p. 41 and J.O.R. & R. pp. 83-89.

The following exhibit helps to clarify the situation.

EXHIBIT I

Welland, Ontario, plant:

Average inbound rate on skelp	$0.11
Loss factor -- 10%	0.01
Pipe rate Welland to Vancouver (AC No. 63)	1.20
Total transportation cost steel mill via Welland to Vancouver	$1.32 per 100 lbs.

Port Moody, British Columbia, plant:

Average inbound rate on skelp (AC No. 89)	$0.95
Loss factor -- 10%	0.09½
Pipe rate Port Moody to Vancouver	0.25
Total transportation cost steel mill via Port Moody to Vanc	$1.29½ per 100 lbs.

Edmonton, Alberta, plant:

Average inbound rate on skelp	$1.70½
Loss factor -- 10%	0.17
Pipe rate Edmonton to Vancouver	1.29
Total transportation cost steel mill via Edmonton to Vancouver	$3.16½ per 100 lbs.

Source: 71 C.R.T.C., p. 43.

The applicant asked for an order that a specified toll or tolls be charged not exceeding in the aggregate $1.32 per 100 lbs., for the transport of steel skelp from Hamilton, Ontario, to Edmonton, Alberta, and steel pipe from Edmonton to Vancouver, B.C., or alternatively for a charge fixed for the transport by the railways concerned[8] of the goods of the shipper Alberta Phoenix Tube & Pipe Ltd. as set out in Agreed Charges (AC) No. 63 and (AC) No. 89.

The Board stated the question of unjust discrimination was a matter of fact, under the provisions of S.-s. (10) of S. 32 of the Transport Act, as skelp is a product made by steel mills and is used only for the manufacture of pipe and as the applicant's method of conversion was similar to the process used by its competitors. There was evidence given that because of discrimination, the

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[8] B.C. Electric Railway Company, Ltd., C.N.R., C.P.R. Co., The Esquimalt & Nanaimo Railway Co., The New York Central Railroad Co., Ontario Northland Railway, The Toronto, Hamilton Co. (C.P.R. Co. Lessee), Wabash Railroad Co.

applicant was unable to sell in the Vancouver market because of the competition of finished pipe from Welland, and the competition of skelp from Hamilton or Sault Ste. Marie converted into finished pipe at Port Moody, B.C., although the inbound skelp and the outbound pipe of the applicant and its competitors were shipped in the same kind of cars, over generally the same routes and under substantially similar transportation circumstances and conditions. The applicant requested the Board for a rate or fixed charge, for the skelp from Hamilton to Edmonton, of 78¢ per 100 lbs., and a rate or fixed charge on finished pipe from Edmonton to Vancouver of 48¢ per 100 lbs., totalling $1.26 per 100 lbs.[9]

The position of the railways, although they were sympathetic with the case of the applicant, was that they were "unable to comply with the remedy suggested" by the applicant for several reasons: That they refused repeatedly to consider fabricating in-transit or manufacturing in-transit arrangements for iron and steel products and many other commodities; that it would cause great loss in revenue to the railways; that such arrangements would be difficult to police

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[9] 77 C.R.T.C. 40, p. 46.

as to whether the pipe, after being billed to Vancouver, could be diverted in-transit to other destinations.

In conclusion to this case, the Board, after being satisfied that unjust discrimination existed against the applicant, fixed a charge for the moving of skelp, iron or steel, to be made by the same carriers party to Agreed Charge C.T.C. (AC) No. 89, of 90¢ per 100 lbs. in minimum carload weight of 120,000 lbs. from Hamilton and Sault Ste. Marie to Edmonton, with the further condition that the said skelp be converted into pipe and shipped from Edmonton to the stations and places applicable to the Agreed Charge C.T.C. (AC) No. 63, the latter movement being a fixed charge of 44¢ per 100 lbs. on pipe, wrought iron or steel of the same description and under the conditions attached to Agreed Charge No. 63.[10] These charges were to be effective on May 17, 1958.

Before the date that the fixed charges were required to be effective, Counsel for Canadian National and for the Canadian Pacific applied to the Board for a suspension of the Board's Order No. 94129

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[10] Ibid., pp. 47-9.

dealing with the previous fixed charges and for a review of the Judgment and Order. The respondents (C.N.R. and C.P.R.) submitted 21 statements to the Board for review. As it would be too long in the scope of this study to analyse them point by point I will give only a brief summary. Many of these points deal with the application to the Board by Alberta Phoenix for the elimination of unjust discrimination and undue preference in December 1957 and are of minor interest for the purpose of this study. They deal with the time the application was made; the parties concerned which did not receive notice; the powers of the Board in this case; the routes included in Agreed Charge (AC) No. 63 and (AC) No. 89; some false data used by the Board in order to determine the fixed charges for Alberta Phoenix; the adverse effects on the revenues of the carriers under Agreed Charges in future, as well as adverse effects on the shippers in Canada.[11] All these points were refuted by the Board.

An important point in this case is the final

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[11] Transport Commissioners' J.O.R.& R. Vol. 48, pp. 359-62.

argument of the railways saying the complainant's plant at Edmonton had been "built in the wrong place" if it expected to do business in Vancouver. The Board found it impossible to reconcile this argument with the fact that several other plants, located about 3,000 miles from Vancouver, were able to obtain this market because of low freight rates. The Board maintained that it "was not a case of" carrier competition "between two or more points in Canada which would compel the railways to meet that competition,"[12] but a matter of the railways enabling one set of manufacturers in Ontario to get into a common market in the Vancouver area to meet "market competition" while denying another manufacturer, located 2,000 miles nearer, to enter the same market. This would result in helping a manufacturer who is 3,000 miles away from this market or who is in the vicinity of that common market to enter it with low agreed charges while denying any manufacturer, anywhere in between, this opportunity because of ordinary tariff rates. This would be an unjust discrimination based on location of an industry.

The second point contended by the railways was

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[12] Ibid., p. 368.

that the provision of the Order to fix two charges "in combination as an arrangement for fabrication in-transit" was an attempt by the Board to permit indirectly what it was not empowered to do directly either by the Railway Act or the Transport Act. The Board refuted this argument by saying that the purpose of these fixed charges was not an arrangement for fabrication in-transit but merely a device to protect the railways' revenues and to ensure that the applicant "cannot obtain a refund of part of the local rate which he has paid on skelp from Hamilton or Sault Ste. Marie to Edmonton i.e. by applying the 90 cents fixed charge, unless and until he produces a paid freight receipt showing that the particular skelp has been shipped as pipe to the Vancouver area."[13] The railways also introduced the argument that the Board had never defined stop-off in transit and had no power to "prescribe a transit arrangement of its own motion." The reply by the Board was that it has defined milling-in-transit in the case of Winnipeg & Montreal Boards of Trade et al. v. C.P.R., G.T.R. & C.N.R. (Milling-in-Transit Toll Case No. 2 (1921), 27 C.R.C. 138 at p. 141) as follows:

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[13] Ibid.

> "This naturally brings us to the question of what is a reasonable rate for the services to be performed by the railway company, always considering that the railway company receives the legal rate for transporting the grain from the starting point to destination, and that the stop-over privilege simply means that, if the same amount in weight is returned to the company for transportation to destination within six months, the completion of the contract of carriage will be made by the railway company at the legal through rate, whatever it may happen to be." [14]

The Board maintained that in the case of movement of skelp to Edmonton and pipe out of Edmonton it was not a milling-in-transit because the fixed charges constituted a rate into Edmonton for raw material similar to the Agreed Charge to Port Moody and another rate on finished product of pipe out of Edmonton similar to Agreed Charge from Welland to B.C. points.

4. The Stewarts & Lloyds of Canada Ltd. Case.

In March 1960 an application was made by Stewarts and Lloyds of Canada, Ltd., known as the applicant, to the Board for a charge to be fixed for the movement by rail of its oil well casing and tubing from Vancouver, B.C., to destinations in the Provinces of Alberta, B.C., Manitoba and Saskatchewan the same as Agreed Charge C.T.C. (AC) No. 204, then in effect for the movement of similar goods shipped from Port

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[14] 77 C.R.T.C. 160, p. 177.

Moody, B.C., by Canadian Western Pipe Mills, Ltd.

The applicant was incorporated as a private company under the Companies Act of Canada and was authorized "to sell, buy, install, manufacture and deal in steel piping and tubing and metals of all kinds and to render technical services in connection with the said business. The operations of the company may be carried on throughout Canada and elsewhere."[15] The president stated that the company was a wholly-owned subsidiary of Stewarts & Lloyds Ltd. of England with head office in the City of Toronto. The company imported oil-well tubing and casing from the United Kingdom. These goods were purchased from the parent company f.o.b. the United Kingdom port and were taken from the ship to a storage yard, at Vancouver, leased by the applicant from Evans, Coleman and Evans, Ltd. The parent company sold such goods in Canada exclusively to the applicant, since 1958.

The applicant was charged freight rates for the movement of casing and tubing by rail from Vancouver to the oilfields of the Prairie Provinces and B.C. which were considerably higher than freight rates

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[15] 83 C.R.T.C. 153, p. 155.

charged as "agreed charges".

Agreed Charge No. 204 was effective since December 1956 and was made between Canadian Western Pipe Mills Ltd. and C.P.R. to destinations reached only by that line or the Northern Alberta Railways. In February 1957, C.N.R. for points situated on its line and in November 1959 Pacific Great Eastern Railway became parties of the agreement. Effective October 16, 1957, the description of the goods to be carried read as follows: "Steel Oil Well Tubing and/or Casing, Welded, Manufactured in Canada." The words "welded" and "manufactured in Canada" were added in February and October 1957 respectively.[16]

Although the applicant's product was seamless it was argued that both products were accepted in the industry on an equal basis. In a letter dated October 9, 1959 the Canadian Freight Association declined a previous application by the applicant to become party to the said agreed charge on the grounds that it applied only to pipe manufactured in Canada. In summary the evidence of the applicant maintained that it shipped its similar goods via the same railways to the same destinations as the parties of the Agreed Charge.

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[16] Ibid., p. 158

Opposition to the application came from three manufacturers, the Algoma Steel Corporation, the Steel Company of Canada and the railways. One of the manufacturers, Canadian Western Pipe Mills Ltd., joined Alberta Phoenix Tube & Pipe Ltd. of Edmonton in opposing the application on the grounds that the applicant's product was not manufactured in Canada, that Western could buy its skelp from Europe but did not do so and that imports from the U.K. and Japan had increased during 1958 and 1959 causing more pressure on Canadian Manufacturers. Another manufacturer, Canadian Mannex Corporation, which is the sales organization for Mannesmann Tube Co. Ltd., mentioned that it was indirectly controlled by a German company, that it purchased its requirements of steel from Algoma Steel Corporation at Sault Ste. Marie, which it is located close to, that it would be economically advantageous to buy its steel from Germany but does not do so in order to ship its products to Western Canada under Agreed Charge No. 244, which superseded AC No. 107. Mannesmann stated that it "had required the initial AC No. 107 in order to establish this mill and would not have built it without the Agreed Charge; that an investment of some $30,000,000 had been made therein; that foreign producers could manufacture the same product

at a lower cost than Canadian; and that granting the application....could put theCanadian manufacturer out of business."[17] The other manufacturer, Page-Hersey Tubes, Ltd., stated that it entered the manufacture of this type of product during the U.S. steel strike in 1952 but discontinued until AC No. 122 was made by the railways in 1955 because of the impossibility of meeting competition.

C.P.R. corroborated the statement of Mannesmann Tube Co. Ltd. and stated that the railways attempted to foster manufacturing in Canada in order to obtain hauls for raw materials and the finished products and when the AC No. 107 was in effect the estimated increasedrevenue of the railways was more than $3, 000,000 per annum. The same reasoning occured for AC No. 122. C.N.R. expressed the opinion that the words "manufactured in Canada" were added to AC No. 204 to remove any doubts and that the granting of the application would decrease its revenue between $40,000 and $160,000 and that it would consider withdrawing from this agreed charge.

Algoma Steel Corporation submitted that it could supply a substantial percentage of the steel

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[17] Ibid., pp. 165-7.

for pipe requirements; that more importation would reduce employment and tax revenue; that the railways obtained more revenue with raw material and finished pipe than with imported products; that it had recently authorized a $30,000,000 expenditure to establish a mill with capacity to produce "several hundred thousand tons" of product per year, including skelp. Steel Company of Canada Limited pointed out that there was more at stake than merely casing and tubing and that if the application was granted it would apply to all domestic goods.[18]

The Board, in its findings, stated that within the meaning of S.-s. (10) of S. 32 of the Transport Act, (a) the applicant is a shipper; (b) the carriers were the same; (c) the goods for carriage were the same as or similar to the goods of AC No. 204 but the applicant's goods did not satisfy the meaning of the S. 32 (10) of the Transport Act.[19] The Board mentioned the decision of the United States Supreme Court in the case of Texas & Pacific Ry. Co. v. I.C.C., 162 U.S. 197, where the court held that:

> Foreign traffic when carried from the port of entry to final destination and domestic traffic carried from the same port to the same destination are not traffic of 'like kinds' and that the service in the one case

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[18] Ibid., p. 169.

[19] "Goods offered for carriage under substantially similar circumstances and conditions as the goods to which the agreed charge relates."

> is not performed under circumstances and conditions substantially similar to those under which the service rendered in the other case is performed, and that therefore the rates on the two kinds of traffic need not be the same."[20]

The Board mentioned that the making of these agreed charges was intended to cover only domestic products and the common objective was designed to meet market competition of import traffic. Also that the applicant, before and after being incorporated, intended that the real destinations of the goods sold would be the oil country and that the stop-in-transit was only temporary and that constituted the "traffic to be import traffic." The chief commissioner Kerr dismissed the application and the commissioner Knowles concurred. The assistant chief commissioner Griffin dissented and would have granted a fixed charge for the applicant for the following reasons: 1) The goods of the applicant were similar to those of Agreed Charge No. 204; 2) The Board had to give weight to traffic conditions i.e. the question whether the goods were offered for carriage under substantially similar conditions "from a transportation point of view,"[21] and that the Board's function was not to

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[20] Ibid., p. 187.

[21] Ibid., p. 207.

act as an arbiter of industrial policy; 3) that there was unjust discrimination to the applicant.[22]

5. Effects on marketing of these products. In these previous cases we saw that the uses of the concept of agreef charges had considerable effects on the marketing of these products. In the first case studied, eastern manufacturers (Canadian Iron Foundries Ltd. and National Iron Corp. Ltd.) of cast iron pipe and fittings were denied the western market when the railways cancelled the low transcontinental competitive rates because of the introduction of the one and one-third rule in the Railway Act in 1952. Agreed charges then re-established low rates enough to allow these manufacturers to meet the competition.

The case of Iron and Steel shipped from Eastern Canada to the West Coast is similar as it allowed this material to be transported under agreed rates and then be converted on the Pacific Coast to be sold on the Alberta market in competition with local manufacturers.

In the case of Alberta Phoenix Tube & Pipe, the approval by the Board to have two fixed charges, one

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[22] Ibid., pp. 211 and 216.

for the movement of raw material from Ontario to Edmonton and the other one for the shipping of finished products from the plant to the British Columbia market, allowed this manufacturer to extend its market and created greater market competition in B.C. areas.

Stewarts & Lloyds of Canada Ltd., because of its purchases of materials from the parent company in the United Kingdom, was denied by the Board the right to use agreed charges to sell its products in the prairie market. This decision of the Board had the opposite effect to the previous cases where the agreed charge concept participated in increased market competition.

Finally it was stated clearly by Page-Hersey Tubes Ltd. that it manufactured oil well casing and tubing during the U.S. steel strike in 1952 but discontinued until an agreed charge was made by the railways in 1955 to enable this company to meet the competition in Western Canada.

The conclusion from these few cases is that the agreed charge concept had the general effect of increasing competition in the Western market by enabling more manufacturers either from Eastern or

Western Canada to sell their products because of reduced transportation costs.

6. Effects for foreign competitors. It has been seen that the Canadian company, Stewarts & Lloyds, wholly owned by a British parent company, was denied the right to use agreed charges by the Board, because it imported its oil-well tubing and casing from the parent company. It is hard to justify the conclusion arrived at by the Board in differentiating the services rendered by those two similar products (Canadian and English) due to the fact that one was imported from abroad and the other one fabricated in Canada. Nevertheless, the resulting effect was to place the foreign competitors in a competitively disadvantageous market situation in Canada, where this market was located far from the port of entry.

In the cancellation of the fixed charge for Warden King Ltd. in June 1954, it appears that the Board, among other things, gave a good amount of consideration to the argument of Associated Foundry Ltd. that the imports did not exceed 10% of its production and this could not be claimed by Warden King Ltd. as an argument to meet competition from foreign producers. From the case it seems that, had there

been an appreciable quantity of imports by this company the Board would have been inclined to not revoke the fixed charge in order to allow Canadian manufacturers to meet this competition from foreign producers.

Mannesmann Tube Co. Ltd. explained in one hearing that although it was indirectly owned by a German company and that it could purchase its requirements from Germany more economically, it bought its steel from Algoma Steel Corporation at Sault Ste. Marie in order to ship its products to Western Canada under the agreed charge.

Finally the fact that agreed charges permitted Eastern manufacturers to sell competitively in the Western market created certainly a tougher situation for the foreign competitor who enjoyed a greater monopoly market before these rates were introduced.

7. Effects on location of manufacturing plants. There is at least one case where it was clear that the agreed charge concept had the effect of influencing the location of a manufacturing plant in Eastern Canada by Mannesmann, as they mentioned that they "had required the initial Agreed Charge No. 107 in order to establish the mill and would not have built

it without the Agreed Charge; that an investment of some $30,000,000 had been made therein."

The granting of two fixed charges to Alberta Phoenix Tube & Pipe Ltd. for the movement of its raw material and finished products corrected the disadvantages of plants located in between the two geographical situations of other competitors. Plant location was certainly influenced after this granting of fixed charges by the Board as there are no market disadvantages for a prairie manufacturer to compete in the B.C. market while being in the proximity of its local prairie market.

B. THE CANADA STEAMSHIP LINES LTD. CASES

1. Canada Steamship Lines vs. Railways. In April 1940, an application was made for approval of an agreed charge between rail carriers and Johnson & Johnson Ltd., Chicopee Mfg. Corp. and Personal Products Ltd. of Montreal and another agreed charge between rail carriers and Canadian Cellucotton Products Co. of Niagara Falls, Ontario, covering shipping of surgical supplies from Montreal, and from Niagara Falls, to specified points in Ontario and Quebec. The purpose of the agreement was to enable rail carriers to meet competition of highway transport. Both Agreed Charges covered at least 85% of the aggregate volume transported. The railways asserted that without these agreed charges they were to lose practically the entire business involved. The remaining 15% was to move by boat according to the shippers.

Canada Steamship Lines Ltd. gave notice of objection, to the Board, to the approval of these agreed charges on the grounds that the agreement would be discriminatory to divert or limit such a substantial volume of traffic from one regulated carrier to another type of regulated carrier as the purpose of Part V of the Transport Act 1938 was to enable carriers

subject to the Act to compete with unregulated forms of transport;[1] that Canada Steamship Lines (C.S.L.) was a regulated competing carrier and was not party to the agreement.[2] The applicants mentioned that under the existing competition it was essential that quick delivery be made and that by rail it took one day to ship merchandise from Montreal to Toronto while it took three days by C.S.L. The Board contended that C.S.L. would not be affected adversely as there was no traffic carried by them in 1939 and only 340 pounds in 1938; that according to the Act "unrestricted competition is permitted to any carrier against any or all the other parties, with the sole exception that when transport is by rail, competing rail carriers must join in making the agreed charge."[3] The Board approved both Agreed Charges No. 5 and No. 6 for a one year period as in its opinion "the object to be secured by the making of the agreement in question could not, having regard to all the circumstances, adequately be secured by means of a special or competitive tariff of tolls under the Railway Act or under the Transport Act."[4]

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[1] 51 C.R.T.C. 185, pp. 187-8.

[2] Ibid., p. 189.

[3] Ibid., p. 196.

[4] Ibid., p. 190.

Other applications were made in January 1942 for approval of agreements (1) between C.N.R. and C.P.R. and Johnson & Johnson Ltd., Chicopee Mfg. Corp. and Personal Products Ltd. for agreed charges for transportation of goods from Montreal, to specified points in Alberta, Saskatchewan, and Manitoba; and (2) between C.N.R., C.P.R., N.Y. Central Ry. Co., T.H. & B.R. Co., and Wabash Ry. Co.--and Canadian Cellucotton Products Co. Ltd., for agreed charges for carriage of goods from Niagara Falls, Ont., to specified points in the same provinces mentioned above. Both applications were opposed by C.S.L. and by Northwest Steamships Ltd. The grounds of objection were similar in both cases.[5] No shipper or representative body of shippers had objected or had applied for a fixed charge.

The object of these agreed charges was to allow the railways to carry 100% of the traffic of the shippers and by doing so to increase the car loadings, reduce the number of cars necessary to carry the traffic, and the overall effect being to increase the revenue of the carriers by having all-rail traffic and to eliminate the water haul.[6] C.S.L. and Northern Navigation Co. Ltd., objected to the approval for the following reasons:

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[5] 54 C.R.T.C. 1, p. 3.

[6] Ibid., p. 7.

1) The purpose of the Transport Act was to permit regulated carriers to meet competition of unregulated carriers.

2) The approval of these agreed charges would have adverse effects on the water carriers' revenue.

3) Withdrawal of traffic from regulated carriers' competitive field "would not be in the national interest."

4) The object of the agreed charges could be secured by published tariffs.

The Board refuted the first objection by saying that the fact that there was no unregulated carrier did not prevent a carrier from making agreed charges although "the presence or absence of unregulated competition may, nevertheless, be a relevant consideration...;" the Board agreed that the approval of the agreements would likely be prejudicial to the objecting water carriers and place their business at an "undue and unfair disadvantage", as they would lose as much as 100% of the traffic they formerly enjoyed.

The Board reminded C.S.L. that "a representative body of carriers" and not any carrier had the right to complain to the Minister and satisfy him that it was against the national interest and that it could not deal with this question at the present moment.

It also mentioned that the purpose of these agreed charges could be obtained by a competitive tariff of tolls. The Board then dismissed both applications.

Deputy Chief Commissioner Garceau was dissident on the grounds that it was the duty of the Board to give the railways every opportunity to enter into such agreements as stated in the Transport Act (1938) in Part V; that the Board was contradictory by stating that: "There would be, undoubtedly, advantages to the rail carriers in the economies resulting from increased carloadings, longer average haul and reduced station handling expense."[7] Also he mentioned that the Board, in its cost study, did not take into consideration all the facts relevant to the total costs involved, and concluded that he would approve the said Agreed Charges.

Because of this judgment by the Board, without unanimity, dismissing the applications on the grounds that the object of the agreements in question could be secured by competitive tariff and that there would be prejudice against the water carriers, the railway companies applied to the Board for a review of the

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[7] Ibid., pp. 27 and 31.

the orders dismissing the applications and for a rehearing contending theBoard's judgment was wrong in taking account of the objecting water carriers. As the question involved a point of law and there was dissension among its members, the Board submitted the question to the Supreme Court of Canada in these terms:

> "On an application to theBoard under S. 35 of the Transport Act, 1938, for the approval of an agreed charge between a shipper and competing carriers by rail, is the Board precluded from regarding as relevant considerations the effects which the making of the agreed charge is likely to have on the business and revenues of other carriers."

The Supreme Court in a three to two split answered the question in the negative and held that the Board was not precluded from regarding as relevant the effect which the making of the agreed charges was likely to have on the business and revenues of the other carriers.[8]

In April 1945, the railways appealed to His Majesty in Council to consider the same question. The judgment of the Judicial Committee of the Privy Council delivered by Lord MacMillan stated that it would be difficult to conceive a wider discretion

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[8] 55 C.R.T.C. 162, 3 D.L.R. 336, S.C.R. 333.

than is conferred to the Board in order to dispose of an application made to him for the approval of an agreed charge as it is mentioned in the Act that "all considerations which appear to it (the Board) to be relevant." Further, the judgment mentioned that it would be strange that in attempting to co-ordinate and harmonize the operations of all carriers by rail, water and air, the Board was precluded, when performing its duty, from considering the effect on the business of all carriers concerned. The judgment of the Supreme Court of Canada was reaffirmed.[9] It is to be noted that, in the amendments of the Transport Act, Section 32 of the Revised Act (28th July, 1955), provision was made to entitle the water carriers to become a party of the agreements, as it was mentioned earlier in this thesis in Chapter II.

2. Canada Steamship Lines v. Canadian Freight Association et al. in Agreed Charge No. 153. An agreement was reached, in June 1956, between the following shippers --The Canada Starch Company, Limited, and St. Lawrence Starch Company, Limited--and the railways for the transport of various goods--Corn Oil, Corn Starch, etc. --from Cardinal and Port Credit, Ontario, to specified points in British Columbia. C.S.L. applied to

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[9] 58 C.R.T.C. 113, AC 204.

the Board for an Order to make them party to the agreed charge on the grounds that they satisfied the provisions of S. 32 (5) of the Transport Act (re-enacted 1955, C 59, S. 1) as:

1) It was a carrier by water having through routes and interchange arrangements with a carrier by rail.

2) They serve the competitive points Cardinal and Port Credit.

3) They file tariff of tolls applicable to the carriage of goods as a carrier by water as required by the Board.

In the existing carriage, the traffic under this tariff moved from Cardinal to the port of Cornwall by highway transport, hence by C.S.L.'s ships to the Lakehead and by rail beyond this point. The same took place from Port Credit to Toronto. In the Cardinal case the applicant (C.S.L.) had established a joint rate from this point to destination and it defrayed the cost of transport by highway from Cardinal to Cornwall. For Port Credit the tariff authorized the same rate as from Toronto and the applicant defrayed also the cost of highway movement. In both cases the highway carrier was not a party to the tariff but performed the service at the

expense of the applicant.

The railways argued that this constituted an interchange of traffic with an unregulated carrier and that the applicant did not serve these points.

The Board stated that the Applicant fulfilled all the requirments of the Act and that the highway transport service was performed at the expense of the applicant as an alternative to serving the points by direct water transport, which points the applicant was authorized to serve because of its licence, but that it found more convenient to use Cornwall and Toronto as ports and utilize the highway transport for the remaining distances. The applicant became a party to the agreement for the Agreed Charge C.T.C. (AC) No. 153.[10]

3. Effects on water and highway transportation. From the cases reviewed above, it was in no way demonstrated that the battle between the railways and the Canadian Freight Association on one hand and Canada Steamship Lines resulted in any change in the marketing of the goods involved for transportation. It

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[10] 74 C.R.T.C. 69.

seems that this merchandise had to be hauled anyway and that it was only a matter of which mode of transport the shipper would use. In the first case the fight between C.S.L. and the railways, for the moving of the merchandise of the shippers involved, ended by the approval of the agreed charges, and as it was mentioned by the Board in one of the reasons for approval, C.S.L. did ship a negligeable quantity of products in the two previous years. The real loser in this case was the highway industry which eventually, because of their rates and service, was to obtain the entire business of the shippers as the railways mentioned in their argument. The railways obtained the business of the shippers.

The C.S.L. v. C.F.A. dealt with, in this section, established the precedent that water carriers could not be ignored by the Board in the matter of agreed rates where they were in competition with the railways. The judgment of the Board left the transportation industry unchanged.

The principal issue, in the C.S.L. v. C.F.A. case in 1956, concerned the right of the water carriers to use highway transport to move goods part of the journey when it was more economical or

convenient than water movement when their (water carriers') tariffs were filed from the point of origin to the point of destination. The answer by the Board was positive and this represented a drawback for the railways as the water carriers could use highway transport when more convenient in order to give faster service to the shippers and greater competition to the railways.

In summary the highway industry suffered a loss in long haul to the railways when agreed charges were approved, while the share of business done by the water carrier would remain about the same or would increase as it could benefit from the agreed charge made by the railways, by becoming party to the agreement when it has established through routes and interchange arrangements with the carrier by rail and because of the differentials between all-rail and rail-lake-rail or lake-rail rates they would have certain economic advantages over rail.

C. THE PETROLEUM CASES

1. C.N.R. et al. v. Good Rich Refining Co. Ltd. et al. In August 1939, there was an application made to the Board for the approval of an agreed charge between oil companies and railways companies,[1] covering transportation of petroleum products in tank cars from refineries and marine terminals in Ontario to points in the Province of Ontario. The terms of the agreements included that the oil companies would be at liberty to ship from marine tanks, tank stations on railways and refineries in trucks of a tank capacity not exceeding 1200 gallons for any distance and/or from marine tanks and refineries in trucks exceeding a tank capacity of 1200 gallons, for distances not exceeding 25 miles by highway. Good Rich Oil Co., Ltd., whose principal place of business was at Port Credit, Ontario, opposed the application on the grounds that the proposed agreed charge would be

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[1] The applicants were C.N.R., C.P.R., the Essex Terminal Railway Co., the Grand River Railway Co., the Hull Electric Co., the Lake Erie & Northern Railway Co., the London & Port Stanley Railway Co., the Michigan Central Railroad Co., the N.Y. Central Railroad Co., the Pere Marquette Railway Co., the Thousand Island Railway Co., the Toronto, Hamilton & Buffalo Railway Co. and the Wabash Railway Co. for the railways, and the oil companies were B.A. Oil Ltd., Canadian Oil Co., Ltd., the Cities Service

discriminatory to Good Rich Oil; that the agreed charge would not accomplish "its expressed purpose"; that the objects of the applicants could be secured by special and competitive tariffs; and finally that it was against the public interest.

The applicants contended that the object sought in this agreement could not be secured by a special or competitive tariff as this would permit other persons to enjoy the benefits without any obligations to ship their products by rail.

The opponent mentioned that he had as yet established few tank stations at the various railway points in Ontario and that he was prepared to establish such tanks when "financial and other conditions appear to warrant it" but that in the meantime he would be discriminated against by older oil companies who already established many terminals.

The Board (without giving reasons in the case) stated that the object sought by this agreed charge could not be secured by a special or competitive tariff and that the said agreement would not be unjustly discriminatory to the opponent, and approved the application.[2]

Oil Co., Ltd., Imperial Oil Co., the McColl-Frontenac Oil Co., Ltd., and the Shell Oil Co. of Canada, Ltd.

[2] 50 C.R.T.C. 161, pp. 161-6.

Good Rich Refining Co. Ltd. (hereinafter called the applicant) came back to the charge alleging, in December 1941, that his business was unjustly discriminated against by the previous agreed charge on the grounds that every refiner in Ontario was enjoying cheaper freight rates than the applicant; that at the time of agreement he did not have sufficient number of rail and marine terminals and that the Oil Controller[3] prevented him from establishing any; that he serviced plants for manufacture of munitions and war materials which had no rail line facilities and by signing the agreed charge the applicant would lose this business; that if he were granted the same rate "or even 5% higher", the revenue to the carriers would be ten times that paid in 1940 by the applicant.[4]

The railways opposed the application of Good Rich by saying it "must be prepared to accept the conditions of the agreed charge before it can complain of unjust discrimination" and that the applicant had settled its own policy of truck distribution and could not enjoy "the advantage of each system of

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[3] Because of World War, the Canadian Parliament prohibited, through its Oil Controller, the erection of any new marine or rail terminals.

[4] 54 C.R.T.C. 140, pp. 140-3.

distribution without the burden of either."[5]

The Board maintained that the applicant's business had not been discriminated against as its production of petroleum products increased from 12 million gallons in 1938 to over 39 million gallons in 1941; that the fixing of a charge, as wanted by the applicant not applying to certain locations, would result in shipment by railway tank cars of about 60% of its products; and that the fixing of a charge under the conditions of the agreed charge would result in higher cost deliveries by trucks, because of the limits imposed on distance for truck capacity exceeding 1200 gallons and restrictions on truck capacity on distances over 25 miles although these two restrictions would apply to only 10% of the applicant's business, as was shown in evidence. The Board dismissed the application.

In October 1939, a similar case to Good Rich Refining occurred when Lions Oils Ltd. opposed the application for approval of an agreed charge between C.N.R. & C.P.R. and Imperial Oil Ltd. and McColl-Frontenac Oil Co., Ltd. The grounds of opposition were the same i.e. that Lions Oils Ltd. did not have tank stations at the various points of the railways and could not become a party to the agreement. The

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[5] Ibid., p. 144.

object of the agreed charge for railways was to regain carriage of products to points within a radius of 270 miles from Calgary lost to trucking operations and meet this competition. The Board granted the application as it did in the previous case.[6]

2. C.N.R., C.P.R. & McColl-Frontenac Oil Co. Ltd. vs. Imperial Oil Ltd. et al. An agreed charge was submitted for approval by the Board in March 1947 between C.N.R., C.P.R., and McColl-Frontenac Oil Co. Ltd. for the movement of Petroleum Products from the Lakehead[7] to twenty-eight railway stations in the Province of Saskatchewan. The shipper agreed to move its total requirements of refined oil products for Saskatchewan by rail and not use any highway transport whatsoever. McColl had served for many years in the past Western Canada by obtaining its products from three different points; oil products processed in Regina or Moose Jaw, purchases in the United States, or their own refineries in Montreal and Toronto. The object of the agreement was to

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[6] 50 C.R.T.C. 166, pp. 166-8.

[7] The Lakehead refers to Fort William, Port Arthur and West Fort William, Ontario, in this case.

increase the net revenue of the applicants i.e. railways and McColl. Objections were filed to the Board by Imperial Oil Ltd. and North Star Oil Co. In its judgment the Board divided the case as follows:

a) Consequence of the agreement.

The agreement, as already stated, secured McColl for the transport of all its requirements from the Lakehead and prevented him from being supplied over any other routes. The consequence was that during the life of the agreement the shipper could not construct or operate a refinery to supply its Saskatchewan market or buy any refined products from the United States or from distributors in Western Canada, and it also prevented the carriage of its oil products by highway transport. The Board answered the criticism of prevention of operation of a refinery in Western Canada by saying that the agreement could be cancelled by either party on three months' notice if the shipper desired to erect a refinery. The Board mentioned also that the object of the agreement could not be secured by a special or competitive tariff as it would not oblige the shipper to use the railways for its shipments.

b) Effect upon the net revenue of the carrier.

As was demonstrated during the hearing by various

exhibits it appeared clear to the Board that the agreement would result in a substantial improvement in the net revenue of the railways compared to the former methods of distribution which included the haulage of crude oil and refined products by both rail and truck.

c) Effect upon business of objecting shippers.

The main argument of Imperial Oil Ltd. was that it would be subject to unjust discrimination as it operated a refinery in Regina and could not be party to the agreement as it did not secure its total requirements from the Lakehead, and further, becoming party to the agreement would force it to close down its Regina refinery.

The Board came to the conclusion that the agreement was not detrimental to the business of Imperial Oil Ltd. as the shipper would continue to do its marketing in Saskatchewan and since the increased demand for this market was greater than the Regina refinery. The majority of the Board then approved the agreement upon consideration of all the evidence with Commissioner MacPherson dissenting. His reasons were that under the "strict legal interpretation" of the act the carrier was entitled to make such an agreement but that the purpose of the act was to

allow the railways to meet truck and water competition and that in this particular case there was no competition in this movement of traffic from the Lakehead to Saskatchewan. The railways could then secure all the traffic under a special or competitive tariff. He mentioned that the Board is required to have regard for all considerations which appear relevant. One of them was the effect that the agreement could have on the establishing of industry in the West as it was stated that one of the purposes of the agreement was to prevent the erection of a refinery by McColl-Frontenac. MacPherson did not dispute the possible direct benefit to the railways but thought it was short-sighted to discourage the growth of an industry for the benefit of growth to the railways.[8]

3. Effects on petroleum competition and on transportation. In the first two cases studied the major effect was on transportation when the railways by means of agreed charges could move a high percentage of the merchandise of the shippers party to the agreement, leaving for the motor truck industry short deliveries with restrictions with respect to

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[8] 63 C.R.T.C. 300, pp. 300-310.

distance and tank capacity. It is hard to understand the reasoning of the Board in its judgment for the Good Rich Oil Co. case when it mentioned that there was no discrimination by the agreed charge as its production had more than tripled for the period involved.

For the agreement between the railways and McColl-Frontenac the effects were much broader than a change in the transportation mode used by the petroleum company. The clauses of the agreement increased the traffic of the railways by forcing the shipper to obtain its requirements entirely from the Lakehead instead of the former points of supply which included the U.S. and Western refineries. The agreement was clearly detrimental to the foreign supplier as in 1947 almost half of the shipper's requirements were purchased from the United States. The Western refineries could no more supply products to McColl-Frontenac within the duration of the agreement. These clauses caused an increase in the volume of petroleum products moved by the railways and favored Eastern refineries at the expense of Western ones, as the shipper was not permitted to construct or operate a refinery to supply its Saskatchewan market.

Although the agreement could be cancelled upon three months' notice, it had detrimental repercussions

on highway transport, Western and American suppliers and on the establishing of industry in the West. The truckers claimed that the petroleum agreements caused a thousand of them to be driven out of business.

D. OTHER CASES

1. Canned goods case. An application was made to the Board in September 1953 by the Canadian Freight Association on behalf of the carriers (which included both railway companies and Great Lakes steamship carriers) for the approval of an agreed charge on canned goods, pickles and table sauces from shipping points in the four Maritime Provinces, Quebec and Ontario moving to destinations in the Provinces of Alberta and British Columbia. The agreed charge was to apply to all-rail routes entirely within Canada, and also to rail-lake-rail and water-rail routes. A rate of $2.07 per 100 lbs. was agreed upon between the carriers and shippers for movement originating in Ontario and Quebec to Vancouver (and $2.20 to Nanaimo) and relatively higher rates from other provinces i.e. the Maritimes.

To specific destinations in Alberta and British Columbia intermediate to the Pacific Coast points, rates were to equal the one and one-third rate of the agreed charge, and the agreement provided that at least 85% of the aggregate shipment had to be made

by the carriers party to it with carload minimum of 60,000 lbs. This agreement cancelled the existing competitive tariff rate of $2.21. The Province of Alberta, Canada Packers Ltd., and Canadian Canners objected to the approval of the agreement. The object of this agreement was to guarantee that a substantial volume of the shippers would move by the carriers involved and that it could not be secured by means of a competitive tariff and also to regain traffic shipped via the Panama Canal route to the Pacific Coast. A witness for one of the applicants (Campbell Soup Co. Ltd.) stated that his company had shipped its entire distribution for Vancouver and vicinity by the Panama route between July 1, 1952, and June 30, 1953, which meant that the railways had lost $250,000 in revenue in 1952 and had the negotiations not taken place this loss of revenue to the carriers would have been $500,000.[1]

The objecting shippers opposed the technique of agreed charges on the grounds that the highly competitive nature of the commodities made it impossible for them to become party to a "contractual obligation" and that they had to "remain in position to meet

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[1] 71 C.R.T.C. 39, p. 43.

competition on importations from foreign producers." Additionally they stressed that some of the signatories to the agreements could obtain supplies from their plants in the United States without violating the terms of the agreed charges. Canadian Canners Ltd. mentioned that the majority of its sales were f.o.b. factory and consequently did not have control over this traffic. This argument was defeated by Campbell Soup Co. which sold its products on an f.o.b. factory basis also. Alberta Counsel condemned the agreed charge as providing rates that would jeopardize the distribution of canned goods from Alberta producers (although no such producers or receivers in Alberta made any representations).

The Board, in its judgment, said that the objective of the agreement could not be achieved by competitive tariff rates as these rates would still be higher than those charged via the Panama Canal route; that the agreed charge did not apply to goods shipped from U.S. plants but that it would be operative for shipments from Canadian territory; that as shown, by exhibits in the case, the net revenue of the carriers would improve. By withdrawing the existing tariff rate of $2.21, there was left for non-parties to the agreement the non-competitive rate of $3.56. The Board said that this did not constitute unjust discrimination as the object-

ing carriers choosing not to enter the agreement had available competitive means of transport in highway and water. The agreed charge was sanctioned by the Board.[2]

2. The automobile case.[3] In May 1954 an application was filed to the Board by the Canadian Freight Association on behalf of certain railways for an agreed charge with General Motors of Canada Ltd. for the movement of automobiles and chassis. This agreed charge was to be applicable from the following locations in Ontario, Oshawa, Walkerville and Windsor to numerous destinations in the Provinces of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan. Studebaker Corp. of Canada Ltd. applied to be party to the agreement.

The rates proposed under these agreements were thirty cents per hundred pounds lower than the existing tariff rates which applied for similar traffic. The application contained examples of ton-mile revenue to show that the rates were compensatory. Not less than 75 % of the volume forwarded by the shipper were to be by rail.

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[2] Ibid., pp. 43-9.

[3] 72 C.R.T.C. 99, pp. 99-112.

Objections to the approval were filed by the Province of Alberta, Chrysler Corporation of Canada, the Canadian Trucking Association, and the Saskatchewan Motor Dealers Association. The objections of Alberta (on behalf of Freeman Wilson Ltd., an authorized Dodge and DeSoto dealer, and Maclin Motors Ltd. of Calgary, a Ford and Monarch dealer) and Chrysler Corporation were that the object of the agreement could be secured by a special or competitive tariff, that all the railways had not joined in the agreement and that it was not compensatory and consequently it would have adverse effects on the net revenue of the railways and finally that Chrysler and some other manufacturers of automobiles and chassis could not join in the agreement because of their marketing practices which allowed the dealers to choose their method of transportation from the factory. Alberta added that this agreement would destroy completely the highway transport between Ontario and Alberta.

The Canadian Trucking Association objected on the grounds that the highway freight carriers would be placed at an undue and unfair disadvantage because of their participation in the movement of the traffic in the past and that this would prevent the growth of this industry as this agreement would eliminate many trucking companies from participation and also that a special or competitive tariff could attain the same

object.

The applicants for the agreed charge maintained that competitive tariffs had failed to retain the traffic as these reductions of railway rates had been met by competitors. This was demonstrated by statistics from the D.B.S. for the years 1951, 1952 and 1953 where rail movement of automobiles had been declining steadily while the sales increased each year. The rail movement in 1951 was estimated to be 74.3% of the sales where it was 54.4% in 1953. Maclin Motor's information showed "no marked variation" over the past two and one-half years period for transport by rail and highway, while Freeman Wilson Ltd. showed that in 1951 73% of passenger vehicles and 99% of trucks moved by rail while for the first six months of 1954 the movement of passenger vehicles was entirely by highway transport and 57% of the trucks still moved by railways. The railways refused to detail the cost studies to the opposing parties as it was against their competitive position but these exhibits were available to the Board.

Chrysler's main objection was that it had sold its products f.o.b. factory for the past 25 years and that it was "impossible to comply with the terms of the agreement" and therefore it would be put at a disadvantage. Saskatchewan Motor Dealers Association claimed that the dealers were asked to change their methods of doing businessto suit the railways and that

the association would rather see competitive transport.

The Board approved the agreed charge on the grounds that the share of the railways has been decreasing steadily for transportation of motor vehicles and that it was the only way for the railways to maintain the traffic of General Motors. The reluctance of Chrysler Corporation to change its marketing method was understandable but not a reason that could justify the Board to refuse its approval.

3. Effects on competitive transport modes. As mentioned in the canned goods case by Campbell Soup Co. Ltd. the agreed charge enabled the railways to meet water carriers' competition through the Panama Canal for the movement of goods between eastern provinces and British Columbia. The traffic of railways was undoubtedly increased by this agreement while no conclusions can be drawn for highway transport. The automobile case represented a severe loss for highway transport, as it was shown in the case by the percentage of traffic constantly increasing for this mode of haulage during the years previous to the agreement.

4. Effects on marketing for these products. In the canned goods agreement it is most probable that

the merchandise moved to B.C. by railway instead of water transport did not affect much the marketing of these products. There is nothing in the case which can give us information about the prairie market, although Alberta claimed that the agreement would jeopardize the distribution of canned goods for the producers of this province.

The agreement between General Motors and the railways certainly put some pressure on the distribution method of competitors which sold f.o.b. factory, leaving to the dealers to choose their methods of haulage. I suppose that Chrysler changed its way of delivering its products as it joined later in the agreement.

CHAPTER V

FINDINGS AND CONCLUSIONS

A. RESULTING EFFECTS ON THE TRANSPORTATION INDUSTRY

1. Railways. Agreed charges were legislated specially to help re-establish the financial situation of the railways which were steadily losing ground in the transportation industry. Apart from a greater efficiency in their operation and administration there were at least two alternatives offered to them to meet this problem. The first alternative, which required a modification in the concept of public responsibility for the rail carriers, was to allow them to operate only financially viable rail lines and drop the non-economic ones. The other alternative was to grant the railways the freedom enjoyed by the highway transport to make private contract with a shipper without the obligation to give the same rates to other shippers.

The Canadian legislator emphasized the last alternative which resulted in agreed charges. There is no doubt that this concept of agreed rates helped the railways to retain at least a certain amount of their

business which most probably would have transferred very rapidly to highway competitors. These agreements, in many cases, enabled the railways to regain business already lost to competitors by offering to the shipper advantages comparable to road haulers.

As we saw in the few cases analysed, there were instances where the railways created transport business by allowing Canadian manufacturers to enlarge their marketing territories because of decreased transportation costs and because of the tariff effects agreed charges had on the foreign competitors and the restrictive clauses for the purchases of materials outside Canada. This business was not taken away from other modes of transport but was created.

Agreed charges, because of their nature, participated in having the railways operate with more evenness by avoiding seasonal peaks due to shippers' business moving back and forth from road and water to rail because of the weather conditions, provincial highway restrictions during certain periods of the year and the fluctuations in the transport market.

Transportation being dependent on economic conjectures and modifications of marketing and manufacturing methods by industries to fit the permanent

variations in consumers' tastes and desires, it is not an easy task to identify the effects of one rate-making form on rail transport, starting from the aggregate statistics of volume carried under this rate and the revenue derived from this traffic. Often what was gained by this rate classification was lost by another rate. It was the case when many agreed charges replaced a good amount of transcontinental competitive rates which were subjected to the one-third rule.

For a long period, agreed charges brought up the average ton-mile revenue assuming that handling costs were not higher than the average costs of handling other traffic. And even after 1963, they made a contribution to the fixed costs even though they were lower than the average ton-mile revenue.

2. Trucking industry. The growth of this industry was part of the reason for the legislation of agreed charges as it represented a permanently increasing threat on inland transport. The inherent advantages of highway transport forced the railways to increase their efficiency and their methods of doing business in order to compete with this new

competition.

Where rates were the critical criteria compared to the rapidity, flexibility, service...etc., the motor truck industry lost business to the rail with agreed charges. And, even with comparable rates between road and rail, agreed charges forced the shipper to deliver all or most of his traffic through railways. If a shipper did not become party in an agreed charge because he used highway transport normally, he then had to pay higher rates on railways when using them, (because of bad weather conditions for highway, provincial weight restrictions for trucks...). This forced the shipper to enter the agreed charge to enjoy low rates all year around.

When rate differentials between road and rail did not represent a major factor, agreed charges were not effective in keeping traffic from truckers when shippers considered that the quality of the service rendered by truckers was worth the difference in rates.

Truckers complained of the unfairness of these agreements as they were possible only providing that the shipper sent a high percentage of his traffic by rail and that these rates were retarding the sound economic growth of highway transport. But the "alleged monopoly" was only for a year and could be broken on relatively short notice.

Agreed charges certainly did have negative effects on highway transport, as was demonstrated on many occasions, but it was not catastrophic as its growth has progressed rapidly and steadily. Also, since the legislation of 1967, truckers can take action before the Canadian Transport Commission when they consider that any competitive rate is below the variable costs of the railway of handling the traffic in question i.e. when railway rate is below the compensatory level.[1]

3. Water transport. The effects of agreed charges on inland transport were much different. The water carrier has the status of carrier within the meaning of the Transport Act, and can object to the agreement. Canada Steamship Lines objected to agreed charges when its traffic was adversely affected even to a small extent and the Board turned down approvals. This prevented the railways from making agreements on a huge quantity of freight moving in the most populated parts of Canada.

Even though inland carriers published several agreed charges, it seems that it never represented a share of their traffic comparable to the railways'

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[1]Currie, Canadian Transportation...op. cit., p. 509.

agreed charges revenues. The disadvantage for them in making agreed charges is the lack of year-round services available to the shipper.

However, they have a great advantage over road transport as they can become parties to the rail agreements when they have interchangeable arrangements with the railways and rail-lake-rail or lake-rail rates are lower than all-rail rates, giving them economic transport advantages over railways.

Although no data are available, it appears that ocean transport, between Eastern Canada and the west coast through the Panama Canal, suffered losses because of agreed charges, as was shown in the few cases analysed in Chapter IV.

B. RESULTING EFFECTS OF AGREED CHARGES ON THE SHIPPERS

1. Inter-regional marketing effects. The intent of the legislator, when he introduced the agreed charge concept, was primarily to enable the railways to be competitive with other modes of transport. In the majority of cases merchandise had to be moved between various points in Canada and it did not matter very much which mode of transport was used to do so, but there were instances where it was critical because of the importance of transportation costs for certain products to meet competition. Agreed charges then played a major role in changing the marketing environment.

It seems that this was especially true for the movement of low-value products for a long distance, as the costs of transportation represented an important percentage of their market value. It is to be noted that in these cases the haulage was not taken away from competing transport modes but was created by the possibility of the shipper to extend his market in meeting competition because of better rates provided by the railways.

Agreed rates acted as import tariffs in some cases when

the Board denied foreign competitors the use of this rate system for the movement of their traffic in Canada. This increased the manufacturing and marketing activities for these products at home. The same applied for restrictive clauses for agreements which specified the buying locations of materials. These clauses influenced the pattern of economic activities by favoring specific buying points, placing at a disadvantage locations where the shipper was prevented from acquiring his requirements.

The Skelp, Pipe, Tube, Iron and Steel cases studied in Chapter IV are evidence of the expansion of the shippers' market.[2] When there was only a transfer of business from one mode of transport to another at approximately the same rates, the marketing conditions were certainly not affected appreciably.[3]

In the petroleum agreement between the railways and McColl-Frontenac the clauses limiting the sources of supply and the routes to be used created certainly a different pattern of growth for this peculiar indus-

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[2] 71 C.R.T.C. 28, 71 C.R.T.C. 21, 71 C.R.T.C. 326, 77 C.R.T.C. 40, 77 C.R.T.C. 160, 83 C.R.T.C. 153, 85 C.R.T.C. 167.

[3] 51 C.R.T.C. 185, 54 C.R.T.C. 1, 55 C.R.T.C. 162, 58 C.R.T.C. 113, 74 C.R.T.C. 69.

try. In the automobile case, Chrysler Corporation was forced in a way to change its shipping method to be eligible for the agreed charge covering the transport of automobiles.

Mannesman Tube Co. Ltd. located its plant in Eastern Canada partly because of an agreed charge for the movement of its products to Western Canada. The granting of two fixed charges for Alberta Phoenix Tube & Pipe Ltd. allowed this manufacturer to be located between the raw material source and its selling markets and still enjoy the agreed rates of its competitors in B.C., while being located in the proximity of its prairie market.

In summary, agreed charges in most of the cases did not alter the shipper's market as they respresented only the use of another mode of transport and often the use of the same mode i.e. the railways, while in a few cases they changed the intensity of competition by allowing or preventing competitors from reaching a market. Occasionally they influenced the location of manufacturing plants.

2. Implications for foreign competitors. On occasion railways have also published agreed charges

to meet competition from foreign manufacturers and this was an argument used by the Board, whether or not the imports were a big proportion of a competitor's sales in Canada. Mannesman mentioned that it could obtain better prices on imports but did not purchase foreign products in order to use the agreed charge concept.

Stewarts & Lloyds[4] was denied an agreed charge on imported products and was placed at a disadvantage with respect to its Canadian competitors. McColl-Frontenac,[5] in its agreement with the railways, was not allowed to buy its petroleum requirements from the United States as it did previously. Not only was this foreign seller, in this case, at a disadvantage in marketing his products in Canada, but also he was prevented from selling to this Canadian company.

The sample of cases studied is far too small to arrive at a clear conclusion as to whether the agreed charges always placed foreign competitors at a disadvantage. These precedents being established by the Board to not permit foreign competitors to use these kinds of rates, one can suppose that many of them did not venture to ask the Board for agreed or fixed rates on the movement of their products.

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[4] 83 C.R.T.C. 153.

[5] 63 C.R.T.C. 300.

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