

Before the Surface Transportation Board

STB Ex Parte No. 680  
Study of Competition in the Freight Rail Industry

COMMENTS OF THE AMERICAN CHEMISTRY COUNCIL

December 22, 2008

The American Chemistry Council appreciates the opportunity to comment on the independent study by Laurits R. Christensen Associates, Inc.: *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals That Might Enhance Competition* (November 2008).

ACC represents the companies that make the products that make modern life possible, while working to protect the environment, public health, and security of our nation. The business of chemistry is a \$664 billion enterprise, employs over 860,000 people, and accounts for 10% of all US merchandise exports. ACC members operate more than 85% of the US productive capacity for basic industrial chemicals – the raw materials for thousands of other products including plastics, water treatment chemicals, detergents, pharmaceuticals, and agricultural chemicals. More than 96% of all manufactured goods are directly touched by chemistry. Products supplied by American chemistry are essential in manufacturing, agriculture, energy, transportation, technology, communications, health, education, defense, and virtually every aspect of modern society.

The business of chemistry depends on the railroads to deliver 176 million tons of chemical products each year. Those shipments account for \$6.8 billion in annual rail freight revenues.

ACC commends the Surface Transportation Board for engaging Christensen Associates to conduct the Study and to present it at the November 6 public meeting. However, the Study does not fully address the issues raised by the Government Accountability Office in its Report entitled *Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed* (Report No. GAO-07-94, October 2006). GAO recommended that the Board “conduct a rigorous analysis of the state of competition nationwide and, where appropriate, consider the range of actions available to address problems associated with the potential abuse of market power.” (GAO, pages 3-4). Although the Study covers a wide range of economic issues, it found on page ES-6 that “To address the question of whether there has been an ‘abuse of market power’ would require judgments ... [that] are policy questions and not resolvable through economic analysis alone.” ACC agrees that matters of public policy arising under the Staggers Rail Act of 1980 and the Interstate Commerce Commission Termination Act of 1995 must be resolved by Congress.

In addition, the Study summarizes shipper views on the deterioration of service quality, and the variability of rail service. (See Volume 1, pages 5-12 to 5-13.) In recent years, ACC members have consistently reported experiencing such problems.

Freight rates have also been a serious concern for chemical shippers. One obvious difficulty with the Study is that its examination of rate levels ends with 2006. Freight rates, as well as ancillary charges and fuel surcharges, have continued to impose increasing costs rail customers. It would have been most useful to have extended the Study’s analysis to address rate levels on a more up-to-date basis.

In conclusion, while the Study adds a good deal of information, we are left to wonder about the extent to which there may be abuse of railroad market power. ACC believes that such abuse exists, and that a legislative solution is required.

Respectfully submitted,

A handwritten signature in black ink that reads "Tom E. Schick". The signature is written in a cursive style with a large, stylized 'T' and 'S'.

Thomas E. Schick  
Senior Director  
American Chemistry Council  
1300 Wilson Boulevard  
Arlington, VA 22209  
703-741-5172  
tom\_schick@americanchemistry.com