

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

228726

Ex Parte No. 704

*REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS*

---

NOTICE OF INTENT TO PARTICIPATE

and

WRITTEN TESTIMONY

of

THE AMERICAN FOREST & PAPER ASSOCIATION

and

THE PAPER AND FOREST INDUSTRY TRANSPORTATION COMMITTEE

---

ENTERED  
Office of Proceedings

FEB 01 2011

Part of  
Public Record

By their attorneys:

Karyn A. Booth  
Thompson Hine LLP  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 263-4108

Dated: January 31, 2011

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Ex Parte No. 704

*REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS*

---

NOTICE OF INTENT TO PARTICIPATE

and

WRITTEN TESTIMONY

of

THE AMERICAN FOREST & PAPER ASSOCIATION

and

THE PAPER AND FOREST INDUSTRY TRANSPORTATION COMMITTEE

---

The American Forest & Paper Association ("AF&PA") and the Paper and Forest Industry Transportation Committee ("PFITC") (collectively "Organizations") submit this Notice of Intent to Participate in the public hearing to be held on February 24, 2011 and its Written Testimony to the Surface Transportation Board ("Board" or "STB") in the above referenced proceeding. The Organizations request five minutes of hearing time. The Organizations are still in the process of identifying who will appear at the hearing on their behalf and will update the Board as soon as this information is available. The Organizations expect to have this information within 2-3 days.

The Board has scheduled a public hearing to determine if it should review existing commodity exemptions under 49 C.F.R. §§ 1039.10 and 1039.11, the boxcar exemption under 49 C.F.R. § 1039.14, and the trailer-on flatcar/container-on-flatcar ("TOFC/COFC") exemptions under 49 C.F.R. pt. 1090. Specifically, the Board intends to evaluate the continuing utility of the exemptions and seeks comments as to: (a) the effectiveness of these exemptions in the

marketplace; (b) whether the rationale behind any of these exemptions should be revisited; and (c) whether the exemptions should be subject to periodic review. Most of the paper and forest product rail traffic is currently exempt from STB regulation, based on a series of decisions adopted by the Board's predecessor between 1983-1993.

Since the paper and forest products exemptions were granted, major changes have occurred to both the statute governing interstate rail transportation and the competitive market for rail services. Based on these changes, the Organizations strongly believe that it is appropriate for the STB to initiate a proceeding to evaluate whether the rationales for granting the paper and forest products exemptions continue to exist and whether continuation of such exemptions is proper under the statute. In addition, the Organizations believe that the Board should commit to periodic future reviews, at least every five years. The Organizations commend the STB for opening this proceeding as a first step toward such possible future reviews.

#### **I. STATEMENT OF INTEREST**

AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners. The forest products industry relies on the railroads for the transportation of raw materials to its mills and for bringing finished products to the marketplace. Most of this traffic is currently exempt from STB regulation.

PFITC is an association of paper, pulp and forest products logistics professionals whose purpose is to work with our transportation providers, local, State and Federal governments and other associations to ensure that our industry has access to a transportation network that can provide the service required to ensure our industry remains competitive domestically and globally. Most of PFITC's rail traffic is also currently exempt from STB regulation.

## II. OVERVIEW OF THE PAPER AND FOREST PRODUCTS EXEMPTIONS

In response to statutory changes contained in the Staggers Rail Act, the Interstate Commerce Commission ("ICC") began exempting certain rail traffic from regulatory oversight in the early 1980s. Section 213 of the Staggers Rail Act gave the Commission the power to deregulate a person, a transaction, or a service upon finding (1) that regulation was unnecessary to carry out the Congressional rail transportation policy, and (2) either that the transaction or service was limited in scope or that regulation was not needed to protect shippers from abuse of market power. See 49 U.S.C. § 10505(a) (Supp. V. 1981) now codified at 49 U.S.C. § 10502(a). The legislative history of the Staggers Act also encouraged the agency to use its authority to liberate the industry from unnecessary and cumbersome regulation. See H.R. Rep. No. 96-1430, at 105 (1980), reprinted in 1980 U.S.C.C.A.N. 4110, 4137.<sup>1</sup>

There are at least five exemptions that are applicable to rail transportation of paper and related products: (1) the selected commodity groups exemption; (2) the lumber or wood products exemption; (3) the miscellaneous manufactured commodities exemption; (4) the scrap paper exemption; and (5) the boxcar exemption.

1. The Selected Commodity Groups Exemption  
Including STCC Nos. 24-1 (Primary Forest or Wood Raw Materials),  
24-4 (Wooden Containers), and 26-613 (Wallboard)

The ICC exempted rail transportation of certain commodity groups from most federal regulation in a proceeding initiated by the Association of American Railroads ("AAR"), in which AAR originally sought to exempt transportation of 31 Standard Commodity Code commodity

---

<sup>1</sup> Congress also provided the ICC with authority to revoke an exemption. 49 U.S.C. § 10505(d) (Supp. V 1981), now codified at 49 U.S.C. § 10502(d). The legislative history indicated that "the conferees expect that as many as possible of the Commission's restrictions on changes in prices and services by rail carriers will be removed and that the Commission will adopt a policy of reviewing carrier actions after the fact to correct abuses of market power." See H.R. Rep. No. 96-1430, at 105 (1980), reprinted in 1980 U.S.C.C.A.N. 4110, 4137.

groups. The proceeding was subsequently narrowed to include only 17 groups, including STCC Nos. 24-1 (Primary Forest or Wood Raw Materials), 24-4 (Wooden Containers), and 26-613 (Wallboard). Rail Exemption—Transportation of Selected Commodity Groups, 9 I.C.C.2d 969, 969-971 (1993) (“Selected Commodity Groups”).

The ICC specifically determined that the requested exemption advanced the rail transportation policy, the first element of the standard:

An exemption would: ‘minimize the need for federal regulatory control’ [§ 10101a(2)]; promote ‘adequate revenues’ by allowing the carriers to use spot rate reductions to attract low-cost, backhaul traffic [§ 10101a(3)]; increase competition between rail carriers and trucks by allowing quick, selective rate changes in response to competition [§ 10101a(5)]; allow more efficient by (i) allowing pricing changes in response to changing business conditions, and (ii) allowing carriers to reduce costs associated with contract rate establishment and management [§ 10101a(10)]; and encourage energy conservation by attracting traffic from trucks [§ 10101a(15)]. Id. at 973-974.

In considering the abuse of market power element, the ICC relied substantially on the fact that no shipper raised concerns about the potential for such abuses to occur: “In determining whether regulation is necessary to protect shippers from an abuse of market power, a significant consideration is whether the participating shippers actually seeking transportation are concerned about an abuse of market power. No shipper has expressed concern that any railroad carrying any of these 17 commodities would abuse market power or has even alleged that any carrier hauling any of this freight has any market power to abuse.” Id. at 973. The ICC also issued the exemption based on its finding of ample intermodal competition. Id. at 976-77.

The exemption is currently codified in the STB’s regulations at 49 C.F.R. § 1039.11.

There are certain limits on the scope of the exemption. It does not affect or alter:

- Any movements for which a finding of market dominance has been made.

- Existing regulations, agreements, prescriptions, conditions, allowances or levels of compensation regarding the use of equipment, whether shipper or railroad owned or leased, including car hire, per diem and mileage allowances, and also including exemption from the anti-trust laws necessary to negotiate car service regulations or mandatory interchange of equipment or to maintain and execute such agreements.
- Existing Class III railroad “protections” in the case of boxcars.

See 49 C.F.R. § 1039.11.

2. The Lumber or Wood Products Exemption (STCC No. 24)

The exemption for rail transportation of lumber or wood products also arose out of an AAR petition. See Rail Exemption – Lumber or Wood Products, 7 I.C.C.2d 673, 678 (1991) (“Lumber or Wood Products”). The ICC’s decision was another in a series of decisions that removed broad segments of the rail industry from most federal regulation. Considering the merits of the request, the ICC first found that the exemption would improve intermodal competition by removing regulatory obstacles that prevent railroads from matching motor carrier rates. Additionally, the Commission noted:

Exemption from regulation on these rail movements of lumber products will improve efficiency in several ways. The exemption will obviate the need to continue the dual system of rates on products that can move both in exempt boxcars and on flatcars, which several shippers find particularly burdensome. . . .

This exemption will result in reductions in overhead expenses, in administrative and paperwork burdens, and in the delays and costs associated with tariff filing. Moreover, railroads and shippers alike believe that the exemption will result in more efficient use of equipment based on real economic and technical considerations, rather than regulatory expediency. . . Finally, these improvements in competition and efficiency will enhance the railroads’ opportunity to earn adequate returns.

7 I.C.C.2d at 675.

Considering the second element, the ICC stated that rail shippers of the issue products strongly supported the exemption and had not sought protection from the agency in recent years because

of rail carrier abuse. Id. at 676. Despite finding that railroads maintained measurable market share, the agency determined that strong competition existed for lumber traffic: “Here, the railroads continue to hold onto significant market shares in many markets, particularly for western lumber over longer distances. Nevertheless, the overall level of competition for this traffic is no less vigorous than in those other markets where railroads have already lost virtually all of the traffic.” Id. at 677. Of particular importance, the ICC credited overwhelming shipper support, which almost uniformly asserted that the exemption would promote competition: See Comment of Georgia Pacific noting that regulated contracts result in delays and unnecessary administrative burdens and public tariffs compromised rate confidentiality (Id.); See Comment of Potlatch Corporation noting that deregulated motor carrier rates are more responsive than ICC regulated contracts or tariffs. Id.

Thus, the agency found that the petition met both prongs of the statutory standard and granted the exemption. The exemption for lumber or wood products is also currently codified in the Board’s regulations at 49 C.F.R. § 1039.11. It contains no exclusions for commodities falling under STCC No. 24. However, the previously identified exceptions apply.

3. The Miscellaneous Manufactured Commodities Exemption Including STCC Nos. 24-9 (Miscellaneous Wood Products, except 24-91); 26 (Pulp, Paper or Allied Products — except listed commodities)

In Rail General Exemption Authority—Miscellaneous Manufactured Commodities, 6 I.C.C.2d 186 (1989), the ICC exempted the rail transportation of numerous manufactured commodities from regulation. The Commission initiated the proceeding on its own motion through a notice of proposed rulemaking and received fairly broad support from shippers and railroads, with the exception of a few major shipper associations. The Commission supported its decision based on findings similar to those made in Selected Commodity Groups and Lumber or

Wood Products, including that the exemption would “allow the railroads to compete more effectively for this traffic, possibly slowing or reversing the trend of declining rail market share.” 6 I.C.C.2d at 191. The exemption is currently codified at 49 C.F.R. § 1039.11. However, it excludes the following commodities: 26-1 (Pulp or Pulp Mill Products), 26-211 (Newsprint), 26-213 (Printing Paper), 26-214 (Wrapping Paper), 26-218 (Sanitary Tissue Stock), 26-471 (Sanitary Tissues), and 26-6 (Building Paper) (except 26-613 [Wallboard]).

4. The Scrap Paper Exemption  
STCC No. 40-241

In Petition to Exempt from Regulation the Rail Transportation of Scrap Paper, 9 I.C.C.2d 957 (1993), the ICC exempted the rail transportation of scrap paper from regulation, except to the extent that § 10731 of the former Interstate Commerce Act established a rate ceiling. In reaching its decision, the ICC found that deregulation would further the rail transportation policy, by encouraging competition and efficiency in the transportation industry, and would not subject shippers to abuse of market power. Id. at 959. With regard to the latter finding, the ICC determined that motor carriers transport a substantial majority of the traffic and that railroads’ revenue-to-variable cost ratios for scrap paper range from 0.95 to 1.084. Id. at 960. Additionally, the ICC noted that most of the traffic already moved in intermodal or boxcar service, both of which were subject to pervasive competition. Id. Accordingly, the ICC partially exempted rail transportation of scrap paper from regulation.<sup>2</sup>

---

<sup>2</sup> Responding to ICCTA’s elimination of 49 U.S.C. § 10731, the STB initiated a proceeding in May of 1997 that resulted in a complete regulatory exemption for 29 nonferrous recyclables, including STCC No. 40214 (paper waste or scrap). STB Ex Parte No. 561, Rail General Exemption Authority—Nonferrous Recyclables (Served April 21, 1998). The exemption is contained in the Board’s regulations at 49 C.F.R. § 1039.11 and the same limitations apply to the scope of the exemption.

## 5. The Boxcar Exemption

The ICC exempted commodities transported in boxcars from regulation through a highly contentious proceeding that occurred in the mid-1980s. Exemption from Regulation—Boxcar Traffic, 367 I.C.C. 422 (1983), aff'd in part Brae Corporation v. United States, 740 F.2d 1023 (D.C. Cir. 1984), on remand Exemption from Regulation—Boxcar Traffic, 3 I.C.C.2d 23 (1986). The exemption is presently codified at 49 C.F.R. § 1039.14(a), which provides, in part, “[t]he rail transportation of all commodities in boxcars is exempt from the provisions of 49 U.S.C. subtitle IV” except as otherwise provided in the regulation. Subsection (b) of the same regulation provides that the Board retains jurisdiction in the following areas: car hire and car service; mandatory interchange of equipment; reciprocal switching or joint use of terminal facilities; car supply, freight car pooling agreements; and certain regulations dealing with discrimination against Class III carriers and certain powers of the agency over joint rates, applicable to freight rates on boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier. 49 C.F.R. § 1039.14(b).

### **III. THE STB SHOULD REVIEW THE BASES UPON WHICH THE PAPER AND FOREST PRODUCTS EXEMPTIONS WERE GRANTED BASED ON MAJOR CHANGES THAT HAVE OCCURRED IN THE RAIL TRANSPORTATION INDUSTRY SINCE THE ORIGINAL EXEMPTIONS WERE GRANTED**

#### **A. Statutory Changes Adopted in ICCTA Eliminated the Exemption Benefits For Paper and Forest Products Shippers**

As shown above, the ICC determined that eliminating administrative rate and contract regulation retained by the Staggers Rail Act would enable the railroads to be more responsive, efficient and competitive when servicing paper and forest products companies. Relief from such regulatory burdens were specifically found by the agency to promote the National Rail Transportation policy in accordance with the first part of the statutory exemption standard.

However, in 1995, Congress further deregulated the rail industry by passing the ICC Termination Act of 1995 ("ICCTA")<sup>3</sup> and removed burdensome rate and contract requirements for shippers of *all* commodities. Among other changes, ICCTA eliminated the requirements for rail carriers to file with the government tariffs, contracts, and contract summaries except for agricultural contracts. 49 U.S.C. § 10709 and § 10709(d)(1) (1996). Carriers could also implement rate decreases immediately. 49 U.S.C. § 11101 (1996).

Thus, ICCTA's passage voided the benefits of the regulatory exemptions as applied to paper and forest products, since all shippers after ICCTA could avoid the burdens and inefficiencies of tariff and contract filings, and obtain timely rate responses to market changes. The simple fact is that today an exemption is *not* necessary to effectuate the national rail transportation policies which formed the basis of the ICC's grant of the exemptions. Accordingly, in the post-ICCTA environment, the Organizations' members' exempt status provides no regulatory benefits but, even worse, results in the detriment of the loss of access to existing regulatory protections, which have become more important to shippers based on the current rail market. This circumstance raises the question as to whether, today, regulation of rail transportation of paper and forest products is necessary to carry out the statutory policies set forth at 49 U.S.C. § 10101. And, if it is, then exempting such traffic from regulation would be improper.

B. The Strong Financial Status of the Rail Industry Justifies a Review of the Exemptions

The decisions to exempt paper and forest products from regulation were also based on the need to promote adequate revenues for the rail industry, which was in a financially-fragile condition at that time. However, that underlying purpose also is no longer necessary since,

---

<sup>3</sup> P.L. No. 104-88, 109 Stat. 803 (Dec. 29, 1995).

today, the railroad industry is financially strong. This is shown both by the Board's own findings, as well as analyses published by other parties.

In 1981, the first year that the agency decided to measure revenue adequacy by a return on investment standard, the ICC found that only three of thirty-five Class I railroads were revenue adequate. *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981). By 1994, the last year before the passage of ICCTA, the Board found that only one of the twelve Class I rail carriers in existence at that time was "revenue adequate."<sup>4</sup> However, in the past several years, before the Great Recession of 2008-2009, a number of railroads have achieved revenue adequacy under the Board's standards, and more importantly, the rates of return as calculated by the agency for all railroads have been above or close to the Board's standard.<sup>5</sup>

Independent analyses confirm the financial health of the industry. A study published just four months ago by the Office of Oversight and Investigations of the Senate Committee on Commerce Science and Transportation entitled "The Current Financial State of the Class I Railroad Industry," September 15, 2010 ("Senate Financial Report"), concluded that "[a] review of the Class I railroads' recent financial result shows that the Staggers Act's goal of restoring financial stability to the U.S. rail system has been achieved." Senate Financial Report, p. 1. The Senate Report noted that the four largest U.S. rail carriers have nearly doubled their collective profit margin in the last ten years. *Id.*, p. 5. In 2008, the railroad companies' profit margin placed the industry fifth out of 53 industries on *Fortune's* list of "most profitable industries." *Id.*

---

<sup>4</sup> See, Ex Parte No. 524, *Railroad Revenue Adequacy – 1994 Determination*, decision served August 18, 1995.

<sup>5</sup> In 2006, for example, three out of the seven Class I carriers were revenue adequate, and the simple average of the rate of returns for all seven Class Is was 10.4%, or above the cost of capital for the rail industry for that year (9.94%). In 2007, two out of the seven Class Is were revenue adequate, and the simple average of the rate of returns for all seven Class Is was 10.7%, or ninety-four percent of the ROI standard calculated by the Board (11.33%). Even in 2008, after the beginning of the recession, one carrier was still revenue adequate, and more importantly, the simple average rate of return for all seven Class Is was 10.1%, or still over 86% of the ROI standard calculated by the Board (11.75%). See also, S. Rep. No. 111-380, 111th Cong. 2d Sess., p. 2 ("The average Class I railroad's return on investment increased from 1978 when it was 1.52 percent to 10.7 percent in 2008.").

Between 2001 and 2008, the railroad industry was ranked in the top ten on *Fortune's* profitability list seven out of eight times, and its growth in profitability had outpaced almost all other large industries. *Id.* All of this is a far, far cry from the Congress' finding in 1980 that the railroad industry's profitability was the lowest of any transportation mode. The Senate Financial Report concluded that freight railroads are "now some of the most highly profitable businesses in the U.S. economy." *Id.* at 14.<sup>6</sup> These findings have been confirmed by Wall Street's judgments. The Senate Financial Report noted the strong investor interest in the freight railroad industry. *Id.* at pp. 5-8.<sup>7</sup>

Accordingly, the Board should re-examine the paper and forest product exemption decisions to determine if the risks in withdrawing virtually all regulatory protections for such exempt traffic continues to make sense given the very strong financial condition of the rail industry.

C. Major Reductions In Rail Competition And Other Changes Impacting Competitive Transportation Alternatives Justify A Review Of The Exemptions

The ICC's exemption decisions were also based on a conclusion that there was strong intermodal, intramodal, and product and geographic competition. But there is strong evidence and reasons to believe that this too has changed.

It is without doubt that rail-to-rail competition has been reduced substantially since the Staggers Act was adopted and is far less robust today than when the paper and forest product exemptions were granted. There were over forty Class I railroads at the time of the Staggers Act.

---

<sup>6</sup> A recent update of a study by Christensen Associates concludes that in recent years the revenue of the freight railroad industry has exceeded industry costs, and thus the industry has thus achieved "revenue sufficiency." See, "An Update to the Study of Competition in the U.S. Freight Railroad Industry – Final Report," Laurits R. Christensen Associates, Inc., Madison, Wisconsin, January 2010 ("Updated Christensen Report"), p. 4-13. See also, an Presentation to the Association of Transportation Law Professionals, by Kelly Eakin of Christensen Associates, November 2010, p. 9.

<sup>7</sup> Indeed, in November 2009, investor Warren Buffett purchased, in a deal valued at approximately \$34 billion, the remaining three-quarters of the BNSF railroad that his company did not already own.

By 1993, when the wave of exemptions essentially ended, there were still a dozen large rail carriers competing against one another. *Railroad Facts, 1994 Edition*, p. 4. Today, there are only seven Class I rail carriers, and of these seven, just four dominate the industry. BNSF, UP, CSXT, and NS account for over 90% of Class I freight shipments and over 92% of Class I railroads \$61 billion in revenues. Senate Financial Report, p. 3, citing the Association of American Railroads *Railroad Ten-Year Trends, 1999-2008* (Feb. 2010). The dominance of these four carriers is increased by the fact that only two of them serve the eastern and two serve the western portions of the U.S.

This increasing consolidation of the industry has taken its toll on geographic competition, as today many paper mills across the country are captive to a single railroad. Indeed, in 1998, the Board itself found that these forms of competition are less relevant in light of the rapid consolidation of the rail industry, and decided to ignore them in determining market dominance. Ex Parte No. 627, *Market Dominance Determinations – Product and Geographic Competition*, decision served December 10, 1998. The reduced rail competition and captive status of many paper and forest product companies has enabled the railroads to impose substantial double digit rate increases upon some companies during the past decade, and “take it or leave it” contract terms, both evidencing the exercise of substantial market power. At a minimum, the substantial reduction in rail competition has increased the likelihood of market abuses which should be evaluated by the Board.

Although truck transportation is an option for shipping these exempt products, rail transportation is more efficient and cost-effective particularly for long-haul movements. Many paper mills were built to receive inbound logs and ship outbound products via rail and, thus, were not designed to handle substantial volumes of trucks. Weight and size limitations of trucks

are also a restricting factor for these commodities and, in some regional markets, there are truck capacity shortages. Other factors adversely affecting motor carrier costs and competitiveness include a long-term driver shortage<sup>8</sup> and increased costs due to higher fuel prices, as well as new regulatory changes involving driver hours of service<sup>9</sup> and increased safety enforcement flowing from DOT's new CSA 2010 safety program.<sup>10</sup>

Accordingly, the substantially changed competitive, market, and regulatory conditions involving the rail and trucking industries, which has developed over the more than two decades since adoption of the exemptions, strongly supports a review of the paper and forest products exemptions by the Board to determine if such exemptions are consistent with the current statute and transportation markets.

---

<sup>8</sup> See, "The U.S. Truck Driver Shortage: Analysis and Forecasts," report prepared by Global Insight, May 2005.

<sup>9</sup> On December 23, 2010, the United States Department of Transportation released a notice of proposed rulemaking in RIN 2126-AB26, "Hours of Service of Drivers." This proposed rule would make significant amendments to the regulations for hours of service (HOS) for drivers of property-carrying motor vehicles. The American Trucking Associations have indicated that the proposed new rules is likely to "substantially reduce trucking's productivity." See, <http://www.truckline.com/pages/article.aspx?id=828%2F{8E1C7279-ED27-4C03-B189-CEEE26BBB12}>

<sup>10</sup> For an analysis of the new CSA 2010 program on the industry, see Annette Sandberg, "CSA 2010 and What It Means For Commercial Motor Carriers," *Journal of Transportation Law, Logistics and Policy*, Vol. 77 No. 4 (2010), p. 257. Industry analysts have indicated that CSA 2010 may reduce the available number of drivers, thus exacerbating the driver shortage. See, e.g., Wolfe/Trahan, "Comprehensive Safety Analysis (CSA 2010) – A Deeper Look," May 24, 2010; *Transport Topics*, "Special Report: CSA 2010," April 2010, p. A-16-18. One industry analyst indicated that the new HOS regulations, along with the CSA 2010 program and other government regulations, could cause about 300,000 drivers to be eliminated in the industry. Dahlman Rose & Co., "2011 Road and Rail Outlook," January 18, 2011, pp. 4-5.

**IV: CONCLUSION**

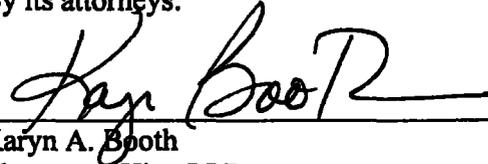
For all of the foregoing reasons, the Board should initiate a proceeding to review the current paper and forest products exemptions, in order to determine if the conditions supporting such exemptions still exist.

Respectfully submitted,

THE AMERICAN FOREST & PAPER ASSOCIATION

THE PAPER AND FOREST INDUSTRY  
TRANSPORTATION COUNCIL

By its attorneys:

A handwritten signature in black ink, appearing to read "Karyn Booth", written over a horizontal line.

Karyn A. Booth  
Thompson Hine LLP  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 263-4108

Dated: January 31, 2011