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Legislative Assembly of Manitoba

Standing Committee on Law Amendments

Chairperson
Mr. Doug Martindale
Constituency of Burrows

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Monday, May 29, 2000

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Doug Martindale (Burrows)

VICE-CHAIRPERSON – Mr. Jim Rondeau (Assiniboia)

ATTENDANCE - 10 – QUORUM - 6

Members of the Committee present:

Hon. Ms. Wowchuk

Ms. Asper, Messrs. Loewen, Martindale, Penner (Emerson), Penner (Steinbach), Praznik, Rondeau, Schellenberg, Smith

Substitutions:

Mrs. Smith for Mr. Praznik

APPEARING:

Hon. Jon Gerrard, MLA for River Heights

Mr. Denis Rocan, MLA for Carman

WITNESSES:

Bill 20–The Farm Machinery and Equipment Amendment Act

Mr. Brian Martin, New Holland and Case IH

Mr. John Schmeiser, Canada West Equipment Dealers Association

Mr. Brent Hamre, Canadian Farm and Industrial Equipment Institute

Mr. Tom McCrea, PIMA Agricultural Manufacturers of Canada

Mr. Scott MacDonald, President, Manitoba Wholesale Implement Asso-ciation; Vice-President , MacDon Industries Limited

Mr. Don Dewar, Keystone Agricultural Producers

Mr. John Buhler, Buhler Versatile Inc.; Buhler Industries Inc.

Mr. Jim Gladstone, Velmar Airflow Inc.

WRITTEN SUBMISSION:

Ms. Jennifer J. Fisk, Canadian Bankers Association

MATTERS UNDER DISCUSSION:

Bill 20–The Farm Machinery and Equipment Amendment Act

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Mr. Chairperson: Good morning. Will the Standing Committee on Law Amendments please come to order. This morning the Committee will be considering the following bills: Bill 11, The Winnipeg Stock Exchange Restructuring and Consequential Amendments Act; and Bill 20, The Farm Machinery and Equipment Amendment Act.

Bill 20–The Farm Machinery and Equipment Amendment Agreement

Mr. Chairperson: We have presenters who have registered to make public presentations on Bill 20, The Farm Machinery and Equipment Amendment Act. It is the custom to hear public presentations before consideration of the Bill. Is it the will of the Committee to hear public presentations on Bill 20 first? *[Agreed]*

I will then read the names of the persons who have registered.

Mr. Jack Penner (Emerson): I wonder, Mr. Chairman, whether with your indulgence we could propose a change to the Committee.

Mr. Chairperson: Is there leave to make a committee change? *[Agreed]*

Committee Substitution

Mr. Jack Penner: I would then move, with the leave of the Committee, that the Honourable Member for Fort Garry (Mrs. Smith) replace the Honourable Member for Lac du Bonnet (Mr. Praznik) as a member of the Standing Committee on Law Amendments effective immediately with the understanding that the same substitution will also be moved in the House to be properly recorded in the official records of the House. I so move.

Mr. Chairperson: Is that agreed? *[Agreed]*

* * *

Mr. Chairperson: I would like to read the list of people who are going to make presentations this morning. We have Mr. Scott MacDonald, private citizen; Mr. Brian Martin, New Holland; Mr. John Schmeiser, Canada West Equipment Dealers Association; Mr. Brent Hamre, Canadian Farm and Industrial Equipment Institute; Mr. Don Dewar, Keystone Agricultural Producers; Mr. Tom McCrea, PIMA Agricultural Manufacturers of Canada; Mr. John Buhler, Buhler Versatile Inc. and Buhler Industries Inc.

Those are the persons and organizations that have registered so far. If there is anybody else in the audience who would like to register or who has not yet registered and would like to make a presentation, would you please register at the back of the room. Just a reminder that 20 copies of your presentation are required. If you require assistance with photocopying, please see the Clerk of this committee.

I understand that we have some out-of-town presenters who are registered to speak. Is it the will of the Committee to hear those presenters first? *[Agreed]*

Before we proceed with the presentations, is it the will of the Committee to set time limits on presentations?

Some Honourable Members: No.

Mr. Chairperson: No. Thank you. How does the Committee propose to deal with presenters who are not in attendance today but have their names called? Shall these persons be dropped to the bottom of the list? *[Agreed]* Shall the names be dropped from the list after they have been called twice? *[Agreed]* As a courtesy to persons wanting to give a presentation, did the Committee wish to indicate how late it is wishing to sit this morning? I have heard a suggestion of 12:30. Is that agreed? *[Agreed]*

I would also like to inform the Committee that a written submission from the Canadian Bankers Association, No. 5 on the list of presenters, has been received. Copies of this brief have been made for Committee members and were distributed at the start of the meeting. Does the Committee grant its consent to have this written submission appear in the Committee transcript for this meeting? *[Agreed]*

I am going to read the names of the out-of-town presenters first. The first out-of-town presenter is Mr. Brian Martin from New Holland.

Mr. Martin, would you like to come forward and present your brief.

Mr. Brian Martin (New Holland and Case IH): Good morning.

Mr. Chairperson: Maybe if you just wait a second until the written copies are distributed. Mr. Martin, please proceed.

Mr. Martin: On behalf of New Holland, and Case IH, I might add, I appreciate the opportunity to speak with you, ladies and gentlemen of the Committee, and Mr. Chairman. I have handed out the information from New Holland. I also have a one-page from Case IH that I wish to present after I am done with the New Holland one.

So I will just–

* (10:10)

Mr. Chairperson: Excuse me, Mr. Martin, would you like to present on behalf of Case as well?

Mr. Martin: Yes, Case IH.

Mr. Chairperson: Case IH. Is there leave by the Committee to have Mr. Martin present on behalf of Case IH? *[Agreed]*

Mr. Martin: For the handout that I have given you here, I will just kind of read through this.

We wish to provide you with a manufacturer's perspective of the changes to The Farm Machinery Act that have been proposed in the Manitoba Legislature.

At the outset, I would like to say it is New Holland's position that open dialogue and negotiations with its dealers is a more successful and appropriate way to address dealers' business concerns than legislation. New Holland provides several forums to give its dealers the opportunity to express their concerns and actively communicates with its dealers with mutual issues.

Thus we do not feel that Bill 20 is necessary or helpful. However, if the bill is going to be passed forward, we would like to submit the following suggested changes and/or amendments to Bill 20.

Under section 16.2, where Bill 20 refers to "terminate, in relation to a dealership agreement," it goes on to say "substantially change the competitive circumstances of the dealership agreement."

New Holland feels that this statement is very ambiguous and potentially confusing, and we suggest that this phrase either be defined more clearly or deleted entirely.

Under section 16.3(b), where it says "No vendor shall terminate a dealership agreement . . . (b) without an order of the court," New Holland believes that it has acted responsibly in the past with regard to dealer terminations, and we wish to say that a decision to terminate a dealer is taken seriously and only after a thorough review of the situation and the approval of senior management within New Holland Canada Ltd.

The requirement of a court order to terminate a dealer will be burdensome and costly. In addition, there are occasions when time is of the essence, and we must move quickly, in cases of fraud for example, as any delay would cause undue losses.

As such, we think subsection 16.3(b) is unnecessary and potentially harmful to the manufacturer, vendors and equipment customers. If you are not in agreement with this assessment, we would advocate in the alternative that vendors be permitted to terminate immediately and without a court order for the circumstances set forth in section 16.6 and for the following circumstances: (a) the dealer sells product out-of-trust; (b) the dealer makes a material misrepresentation to the vendor; or (c) the dealer defrauds the vendor.

Under section 16.4(c) and section 16.7(d), Bill 20 refers to "No vendor shall . . . (c) discriminate against or penalize a dealer for carrying on business as a dealer or agent for another vendor, or selling or servicing the produce of another vendor;" and, "none of the following circumstances constitutes cause to terminate a dealership agreement; (d) the dealer is carrying on business as a dealer or agent for another vendor, or selling or servicing the product of another vendor."

We understand that dealer exclusivity is an issue in this proposed legislation. In order to

clarify our position, New Holland does not forbid its dealers from marketing competitive lines but does require dealers with products directly competitive with its New Holland products to market those products from a separate facility. This is not a new obligation, as New Holland has had the requirement in its dealer agreement for over 10 years. During this time, we have found that our dealers do a better job of marketing New Holland equipment and servicing the retail customer when the facility does not market directly competitive equipment. The customer receives better parts support, service support, and sales support.

However, as I mentioned, New Holland does permit its dealer organization to market and sell in the New Holland facility equipment from shortline manufacturers that do not compete with New Holland's products.

The following is a partial list of the shortlines represented in New Holland's Canadian dealerships and the approximate number of our dealers representing those lines. You can see them listed there: Bourgault 20, Morris 30, Allied 50, Degeleman 30, Great Plains 30, Kvernland 50, Ezee On 20, Alo 50, Macdon 15.

In addition, we assist MacDon in marketing its swathers by soliciting orders for the Prairie Star swather from our dealers on Macdon's behalf.

As such, we would request that sections 16.4(c) and 16.7(d) be removed from this proposed legislation.

Under section 16.7(a), Bill 20 says "none of the following circumstances constitutes cause to terminate a dealership agreement: . . . (a) the executive management or ownership of the dealer has changed."

We entrust our dealers with millions of dollars of equipment and the responsibility of representing our company to the retail customers, and thus we feel it is very important that we maintain the right to choose those individuals who will represent us and with whom we will partner. It is critical that we retain the right to operate in a business environment where we can choose with whom we do business based upon the prospective owner or management's financial strength, experience, business acumen and honesty.

Under 16.7(b), Bill 20, "none of the following circumstances constitutes cause to terminate a dealership agreement: . . . (b) the dealer has refused to purchase or accept delivery of farm machinery or farm equipment or service."

We, as a manufacturer, should have the right to expect our dealers, who are often our only representative in a given market area, to sell our complete product line and not cherry pick the line. In fact, we submit that the loss of this right will limit the choices of the farmer customer. The farming community will not have access to the full range of products that are presently available in the marketplace.

In closing, I would like to say that perhaps much of the anxiety that has arisen recently is as a result of the tighter market conditions and the changing agricultural environment. In this environment, open dialogue with our dealers is critical. New Holland's goal is to maintain a strong dealer organization, which in turn benefits all parties in the equation–New Holland, its dealers, and the Canadian farmer.

We believe that this can be achieved more effectively through communication with our dealers than through legislation. We, as a company, are prepared to go to great measures to be sure that we continue to communicate, listen and respond to our dealer's concerns.

Should I proceed with the Case IH, Mr. Chairman?

Mr. Chairperson: Yes, Mr. Martin.

Mr. Martin: All right, I have a second handout for that.

Mr. Chairperson: Please proceed.

Mr. Martin: This letter was written by Mr. Mike Foster, who is the Dealer Development Manager for Case IH, and I will read it:

We wish to thank the Committee for this opportunity to share with you the concerns of Case IH in regard to the planned legislation changes to The Farm Implement Act. The Case IH brand of farm equipment products is sold through the world, and we have approximately 1200 dealers in North America. Our company has a history of over 150 years in the business. Many of our dealers are second- and third-generation businesses, which would indicate that we have treated our dealer organization fairly and responsibly throughout that time.

First, we would like to say we are proud of the dealers that represent Case IH products in the province of Manitoba. We have worked with them through programs such as our Dealer Standards program, to improve the quality of service to the customers and protect the investment that Manitoba farmers have made in our products. Our company, along with our dealers, have made significant investments to improve the quality of the products and services that we provide to the farm sector. However, we believe that the proposed changes that you are about to enact put all of our investments in jeopardy for the following reasons.

* (10:20)

1) This legislation ignores the reality of a shrinking market, and therefore the need to maintain a dealer organization that is sized in keeping with the industry potential that exists. Certain locations, once the current owners choose to retire or leave the business, should not be replaced as there is not sufficient potential in the market area to support a dealer longer term. The legislation you are proposing does not allow us to designate these locations as non-replaceable markets. Thus, the only way we can prevent these dealerships from moving to the next generation is to prove that the new ownership will be detrimental to the representation or the reputation of the vendor's products. The fact is these dealerships will be detrimental to maintaining a strong dealer organization.

If running a profitable dealership is not possible, then why would anyone want to make further investment in their dealership or expand into a multiple location complex? If you limit our ability to plan our business and size it properly, then you will weaken the dealer organization and therefore their ability to service the farm customers in Manitoba.

2) As we mentioned before we have managed our dealer relationship in a responsible manner for over 150 years and now we find that our contract terms are being changed unilaterally. We find ourselves having to apply to the court to terminate relationships, especially in cases of dealers in sold out of trust or fraud problems. We believe this is unreasonable and that it puts our assets at risk. We believe that these specific situations need to be addressed as occurrences that do not require a court order before we react.

3) We operate dealerships, not franchises, and therefore our income comes from the sales of our products and parts in specific markets. Market share is a key ingredient to both the manufacturers' and the dealerships' long-term success. Failing to meet reasonable guidelines such as not achieving either provincial or regional market share goals for a specific product must be criteria for termination. Case IH believes that the maintenance of a strong dealer organization to support the farmers of Manitoba is a common goal for both of us. We do not believe that more restrictive legislation is the answer to achieving our goal. Yours truly, Mike Foster.

Mr. Chairperson: Thank you for your presentation. Do the members of the Committee have questions to address to the presenter? There are questions. I need to let you know, Mr. Martin, that I am going to acknowledge the MLA and then I will have to acknowledge you by name since Hansard is recording this.

Mr. Jack Penner: Mr. Martin, thank you very much for your presentation. As you probably know, I and my sons run a family farm in the southernmost part of this province, directly south of the city of Winnipeg. We are serviced by a dealer network that I think adequately serves our needs on our farm. However, the sands underneath the farm tractor wheels change constantly, as you know. The loss of the sugar beet industry in this province, which was a multimillion-dollar industry, caused many of the

farmers in southern Manitoba to make some massive changes in their agrarian practices. This caused us to change to other row crop areas. Our farm, for instance, this year will be roughly about one-third in rows, and this caused us again to make a massive investment in agriculture which hopefully we will have the ability to pay back over the next decade. Now, if we are not allowed, as farmers, to access a marketplace close to the proximity of our operation, it adds additional costs.

I concur with what you say that there are certain limitations within a competitive market force that direct whether a dealership should or should not survive, and that is simply done, very often, by performance more than anything else. However, we have seen a significant shift in dealership elimination over the last 15 to 20 years. We used to have seven dealerships in the town of Altona. I think there is one mainline left and some smaller lines left. However, I think what we are seeing is, because of the shift that we are required to make and the Crow Benefit has a major impact on this, that we are going to change how we do business on our farms. I think that is going to be prevalent through much of at least southern Manitoba because we have the ability.

Then there is a small manufacturer that took an opportunity, saw an opportunity, made the investment, such as Elmer's Manufacturing Ltd. in Altona, just outside of Altona, which is now, I believe, one of the only row crop manufacturers in Canada. How do you see that manufacturing surviving and growing? By the way, 90 percent of his product, as of last week, was being exported down south. How do you see that manufacturing maintaining a dealer network if they are not able to access the display yards of the major manufacturers such as Case IH, New Holland and John Deere? How do these small manufacturers survive?

Mr. Martin: Thank you, Mr. Penner. Clearly, as I have stated in my presentation from New Holland, we are not competing directly. We certainly welcome them to visit our dealerships and do business with them if it will enhance the shortline as well as the dealership. We do not take issue with that as we have shown with the kind of representation that we have with several shortliners. In the case of New Holland where it competes directly, I guess we would assume they would take alternate means with other manufacturers or on their own in some other fashion. I am not that familiar with the company that you refer to, but if they are not competing directly, we would welcome them.

Mr. Jack Penner: Mr. Chairman, the only reason I raised that one is because I think it is somewhat typical of other small manufacturers, especially in start-up phase. We have a number of manufacturers throughout western Canada that have done, I think, an exemplary job of allowing us to change how we do business on the farm, in other words, what tools we use to put our crop in the ground, and in harvesting and what-not-all. I can refer to MacDon, and I can refer to many of the air seeder operators and builders. So I think we have seen some very significant change in the industry. Quite frankly, I think most of the design work has very often been done by farmers themselves on their own farm to make a machine that currently exists–to change it to make it work. So I mean there has been significant work done.

How would you see a better relationship without this kind of legislation, a better relationship being built by all those small, shortline manufacturers and the larger manufacturers and distributors to be able to accommodate the marketplace and to accommodate the farm community to a better degree than what we see sometimes?

Mr. Martin: Obviously, there are several means outside of legislation. I have referred in previous letters that were sent to the Minister and some other members of the Legislative Assembly of the process that we have with the dealer-council process within New Holland. In that process, they elect their representatives who bring forth their issues. They put them on the table, and then they elect members to go to the national, which is held in the USA. Those proposals that they bring forth, we take very seriously. In fact, they have caused such things as a monthly conference call with the vice-president for marketing that we are doing today, just to hear the kinds of concerns that they have and keep each other posted on what we are doing on the issues that they raise. I only bring that up as an example of

the kind of process that we feel works and is outside of legislation. In these times, when things have become more sensitive and there is more anxiety, I think the kind of process that I described where we have a monthly conference call now for an hour with 20 dealers across North America and 4 from Canada is the kind of thing that you have to enhance in these tighter environments, in these environments where there seem to be more variables than there were before. That is just one example. There are ways. Obviously, communication is the key and so on.

Mr. Jack Penner: Well, Mr. Chairman, I think, Mr. Martin, you make some excellent recommendations here. I would like to discuss some of them with you. You indicate that, in your first recommendation, I believe, on page 2, top of the page, that New Holland believes that it has acted responsibly in the past with regard to the dealer termination. Can you define for me what you mean by dealer "sells product out of trust"? What does that mean?

* (10:30)

Mr. Martin: When we refer to "sells product out of trust," it is a situation where a farmer or customer has paid the dealer, and he, in turn, did not submit the proceeds to us in the timely fashion that is part of our agreement. In that situation it puts all of us at risk because the funds are used somewhere else. So that is what that statement means. He did not submit it to us after receiving it from the customer.

Mr. Jack Penner: So you are suggesting then that under 16(3) you would delete the three principles that you have enunciated here–(a), (b), and (c)–and deal with that without an order of the courts. Is that what you are proposing here under Bill 20?

If you go to section 16(3) of your presentation, first page, are you suggesting that no vendor shall terminate a dealership agreement without an order of the court? Or the legislation says that. You are suggesting that could be eliminated.

Mr. Martin: Obviously, the first choice we would have would be to eliminate the need for a court order under any circumstances because we feel like it does encumber our ability to do business in a business-like fashion. It is hard for us to communicate all the business issues to third party and have them understand what we are facing.

If that is not the decision of the Committee, what we are really saying is the clause should be amended to say, under these three circumstances no court order is required if a dealer sells out of trust, if he makes material misrepresentation to us, or the dealer defrauds us in some fashion. So there would be an addendum to the clause, if you chose not to remove it altogether.

Mr. Jack Penner: Do these cases in eventuality sometimes end up in court regardless?

Mr. Martin: In some cases they would if we were not able to obtain the goods and the value that we had to get in order to make ourselves even. It could happen, yes.

Mr. Jack Penner: So, Mr. Chairman, even though the clause here would now indicate that it should or must, it would give the dealer the right to; you are really saying sometimes that happens regardless. This legislation would simply give all parties the right to access to the courts. That is my understanding. Is that correct?

Mr. Chairperson: Is this question directed at the Minister? Normally we would direct questions to the Minister before we go through clause by clause. Is it the will of the Committee to give leave to have the Minister answer a question or are you asking the presenter?

Mr. Jack Penner: No, I am asking the presenter.

Mr. Chairperson: I am sorry.

Mr. Martin: My understanding of the conversation that we are having here is this certainly would not preclude the ability to go to court after all was said and done just like you do today. However, the ability to act quickly under these three circumstances without a court order being required is what we are requesting. I hope that answers your question.

Mr. Jack Penner: Is there some way then that you could see the proposed law to be amended to give you a greater degree of flexibility to both parties?

Mr. Martin: Yes, that is really the request, to be able to act quickly on this without jeopardizing anything that exists today.

Mr. Jack Penner: Would the dealers or the manufacturers or the retailers welcome maybe a third party with final authority without going through the courts?

Mr. Martin: If your suggestion is, would we welcome a third party in advance of termination, no, we would not, because again it encumbers the system, it takes additional time, it requires an explanation to someone who is not involved in the business on a day-to-day basis. In these three circumstances again we feel time is really of the essence. So that is why we have singled them out and said we need to at least protect those three circumstances and allow us to operate as we do today to protect our interests.

Mr. Jack Penner: One more question. In one of your presentations, whether it was Case IH or whether it was New Holland, I am not sure now, there was some indication that if this legislation passed it might well cause a lesser degree of service to the farm community. In what respect, simply because of this legislation, would you say that it would cause a smaller degree of service, a lesser degree of service to the farm community?

Mr. Martin: I believe you are referring to on page 2 towards the bottom of the New Holland presentation. The point we were trying to make there is the exclusive dealer organization that we currently have are extremely well trained on our product. Their ability to send people to our training schools for sales or service or parts is very focussed on the product that they are selling and, therefore, we have found them, in comparison to locations where multiple lines are sold by the same dealer organization, to be a better service to the farmer customer. They are more knowledgeable, they are more prepared.

In addition to that we just find that the ability for our dealers that represent us exclusively can use their capital to stock the additional parts that are required to give the service for what they are selling rather than, especially in the case of limited capital, to spread it across several lines and be somewhat watered down.

So those are the kinds of things that we are referring to. We have found our Canadian dealer body to be very well-prepared for and at risk when they spread it over too many lines that are competing for the same product.

Mr. Chairperson: I have a speakers' list that includes Ms. Wowchuk, Mr. Penner (Steinbach), Mrs. Smith and Mr. Scott.

Hon. Rosann Wowchuk (Minister of Agriculture and Food): Mr. Chairman, thank you for your presentations, Mr. Martin. I appreciate your comments.

I want to say that I recognize as well, as we all do, that the farming industry and the rural economy is changing. You talked about shrinking numbers of dealerships and the less service and the tight markets that are out there. Certainly we want to ensure that producers have as much service as they can get and that people who are providing that service for them can take the necessary steps to carry other products in order to enhance the service for the producers. Certainly we do not want to see a lesser degree of service, we want to see that service protected for the farming community.

* (10:40)

In your comments, when you are referring to section 16.3(b) and the changes you are suggesting there, that the vendor be permitted to terminate immediately and without court order for circumstances set out, and you have listed three of them there, I wanted to ask whether these would be a default under the dealers and vendors security agreement. When you set up an agreement with a dealer you have a vendor's security agreement that you sign. Are any of these issues covered in those agreements that you have signed? Do you have the ability to terminate agreements spelled out in your agreements covering off these circumstances?

Mr. Martin: Thank you, Ms. Wowchuk. Specifically as it stated in the proposed legislation, it would not protect us because our security agreement is not specific enough to protect us all by itself, so the answer to your question is: not the way it is currently worded. Our dealer agreement has some wording in it with regard to these specific areas, but the way we interpret the current proposed legislation, we would not be protected by our security agreement.

Ms. Wowchuk: Supposing you have a dealer right now that goes bankrupt and, under the agreement you signed with them, can you terminate their contract immediately if there is bankruptcy or if there has been product that has been sold out of trust? Do you have the ability to terminate that contract now, and if you have that, you are then saying that this legislation would change your ability to terminate the contract?

Mr. Martin: Currently today we certainly have the ability to terminate immediately, by virtue of our dealer agreement, that the dealer has signed with us today, not the security agreement specifically but the dealer agreement, and the way your proposed legislation is worded, we would now, if this were passed as it is, we have to get a court order first, and that is what we are against because of the time that is required to go through the process. That is why we have singled these three things out. Yes today but no tomorrow, based on the way we read this.

Ms. Wowchuk: I guess, on that particular one then, that is something that we have to consider and think about, but there are a few other issues that were raised, and I guess I want to make it clear that, not in all cases, if there is mutual agreement between the dealer and the manufacturer, there are still ways to terminate the agreement if you come to a mutual agreement, that you do not have to go to court, that you have the ability to come to an understanding between you without going to court.

Mr. Martin: Yes, I agree. The way I read the proposed legislation, if it is mutual agreement, we do not have to go to court.

Ms. Wowchuk: I do not have any further questions now, but I would like to take this opportunity, Mr. Martin, to thank you for making the presentation on behalf of New Holland as well as Case. We will look at your suggestions as we work our way through the bill.

Mr. Jim Penner (Steinbach): My question is to Mr. Martin. In view of the way things are changing so quickly, we have talked about changes in crops and changes in consolidation of dealers and changes in consolidation of manufacturers. Some of the dealers want to be larger to accommodate these changes, and to do that, they need to borrow money. They need to obtain financing, and I do not know to what extent the manufacturer can provide that.

Having been in business myself, I know that a business that appears insecure to a bank will not receive financing. One of the changes that happens in the manufacturer is that you also change people. Sometimes people have a very good understanding of business and can supply assistance to the dealers. Some of them might be quite harsh. So there is some insecurity there as to who the people are that are running the manufacturing firm and managing the contracts.

My question is: Could some middle ground be found where dealers could be considered more secure in the eyes of the bankers instead of being able to be kicked out on a moment's notice and that dealers would then be able to invest more in their dealerships and this would be a mutual advantage? Giving the dealer some security and allowing him to invest more in his facility would be a benefit to both parties, the manufacturer and the dealer. When I questioned the Saskatchewan precedent to this bill, this is the concern that came out, and when I talked with dealers in the Steinbach area, this is the concern that came out.

So I do not think it takes very long to get a court order. I found that out, but we need to find some common ground that gives the dealer some security if he is going to be able to finance his operations. If a person in business has his operations totally financed by himself, probably it will not get very far. I am concerned that we get some security in the agreement for the dealer, and I think that has a mutual benefit for

the manufacturer and the dealer. Can you speak to that?

Mr. Martin: My assumption is that your suggestion is somewhat outside the proposed legislation but in a way, I guess, would give some dealers that are seeking capital alternate means of getting capital other than their local banking and so on. To that effect, we have New Holland Credit, or CNH Capital, has certainly started to work with dealers with regard to supplying capital for things other than just floor-planning equipment. So, actually, we are doing some of that as we speak.

Certainly the individual dealer has to weigh that against the cost of capital from alternate sources, but we certainly are, I guess, gradually getting into that business today as well.

Mr. Jim Penner: Mr. Chairman, again to Mr. Martin, does it seem logical to you, though, that dealers could have a little more protection in the agreement and that that might not be beneficial to both parties regardless of who they are financing with?

Mr. Martin: I am not really sure how to answer your question, Mr. Penner. I think it is kind of a general statement that suggests that the legislation would give more protection to a dealer. It is such a broad statement, I am not sure how to respond to it.

Mr. Jim Penner: I am suggesting, Mr. Chairman, that maybe some accommodation to the dealer might be beneficial to both the manufacturer and the dealer in giving the dealer a little bit more security as to the treatment he might receive. You may be a very generous person in managing the dealerships through the agreement, but you may not be there next year and the person being there may not be that generous or understanding.

* (10:50)

So they are calling for some kind of alterations to The Farm Machinery Act that would give them heads-up and an opportunity, maybe, to avoid just personality conflicts and give them the security that they need to be able to go to a bank and say I want to build my facility larger; I want to carry a bigger inventory; I want to promote really hard; my sons want to take the business over and I want to set it up for them.

But if there is only an advantage in the agreement to the manufacturer, that might not be an advantage to the manufacturer. I am suspecting that we could find an accommodation where some of your suggestions in fact might be very valid. When you talked about "the dealer sells product out of trust," I agree that that is a misdemeanour of a very serious nature and has to be addressed. Probably we missed that, but I would like to think that the protection of a dealership would encourage the dealer and improve the relationship from one that might be considered one-sided at this time.

Mr. Martin: Again, I am not sure I have any additional comments other than, I guess, our point. It was specifically written to on the Case IH letter very well, I believe, in that the shrinking market has with it a requirement by a company to make sure that the opportunity to run a profitable business exists for the dealers that are in the business. We feel the proposed legislation is really tying our hands in our ability to address that need as we go forward. That was really our point.

In specific instances, where dealers are looking for additional capital to represent us properly in an area, we certainly will work with them and offer different sources of financing. I do not have any other answers for that, Mr. Penner.

Mrs. Joy Smith (Fort Garry): Mr. Martin, I am curious about something perhaps you can help clarify. You stated section 16.3(b), you felt New Holland would want this clause eliminated for a number of very valid reasons: No. 1, the cost; No. 2, the timely need to deal with an unsavoury situation. But I was wondering, you said that New Holland believes that it has acted responsibly in regard to dealer terminations and that indeed the termination of a dealer is taken seriously after a thorough review of the situation.

My question to you, Mr. Martin, is: Do you have set criteria or a process for terminating a

dealer, or how does this work? Do you have set criteria or process of terminating dealerships?

Mr. Martin: Yes, we do have a set process that starts with a review of various people within the organization when we are planning to do a termination with a dealership. Believe me, it is a very thorough process that is trying to be fair on both sides. It is not taken lightly. It is a process that is reviewed with the dealer development manager and myself and usually other people at the home office in New Holland, Pennsylvania. So it is not the kind of thing that is done by one person operating by himself in a vacuum. It is a very thorough process. Believe me, it is not one that is a surprise, except in the case of where someone has defrauded us and we had to act quickly. We certainly will have several reviews with the dealer when we are going through the process.

Mrs. Smith: Mr. Martin, could you outline that process a little bit more specifically? What you are saying is, yes, it is a long process and, yes, we take it seriously, but very specifically, what is the process laid out for the dealerships that you feel might be in danger of being terminated?

Mr. Martin: I am really not in a position to lay it out in a long, drawn-out fashion here today. Except in the cases that are listed here, it is the kind of process that involves a review with the dealer, covering the issues we have with him and a discussion of things that we need to see improved and then future discussions on the same subjects.

Mrs. Smith: Mr. Martin, in section 16.4 part (c) no vendor shall discriminate or penalize a dealer for carrying on business as a dealer or agent for another vendor, et cetera. I will not read the whole thing. You have stated in your paper for New Holland that New Holland does not forbid its dealers from marketing competitive lines but does require dealers with products directly competitive with its New Holland products to market those products from a separate facility.

You said this has been in place for 10 years. Is there a process in place to ensure that the dealer has been heard and can put a good case and point for how he or she puts these products on the line so they can sell them, or does New Holland tell them whether or not in the final end they can do this? Is it a partnership kind of decision that is made or does New Holland ultimately make the decision in this area?

Mr. Martin: If I understand the question correctly, it is pretty clear which products we sell. If they compete directly, the answer is quite clear up front that we are not going to allow it to happen through the same facility. In the situation where a dealer feels strongly that he wants to represent another brand like that and comes forward and says: I will set a separate facility and staff it properly to have it operating dependently, we will virtually always approve it assuming it does not reduce his ability to finance both operations, et cetera. So there will be some guidelines in that situation. But if it is competing directly, we would expect it to be in a separate facility. If it is not competing directly with our product line that is laid out in the price book, we generally do not have an issue with it, and if he comes forward with it we would almost always approve it.

Mrs. Smith: Mr. Martin, if a separate facility for competing products was not available to the dealer, would that pose a problem? Would they be immediately turned down, or is there some flexibility there?

Mr. Martin: If I understand the question correctly again, if there was not one immediately available, a separate facility, we would not approve it until such time as he were able to either build one or find a suitable one.

Mrs. Smith: Mr. Martin, here again my final question is: In the event that the dealer has financial constraints and cannot financially support getting a new facility, is there some avenue by which New Holland can assist the dealer to enable him to increase his marketing potential in the product?

* (11:00)

Mr. Martin: Our credit organization is not restricted to New Holland brand, so they would be interested in talking with him about whatever the venture may be and not just specific to buildings but to other things, his other financial needs. So they are not restricted to the New

Holland brand. To whatever degree that might be an advantage to him. It is certainly open to him.

Mr. Chairperson: Before we continue with a speakers' list, which now includes Mr. Smith, Brandon West, Mr. Gerrard, Mr. Loewen, Ms. Wowchuk, I would like to inform members of the Committee that some of the presenters today have flown in from out of province. So, without trying to limit questions, because we have no time limits today, I hope we would be considerate of our presenters who may have flights to catch. So I hope we will be succinct and brief in our questions.

Mr. Scott Smith (Brandon West): My question is to Mr. Martin. Thank you for your presentation here today, lots of food for consideration, certainly. The presentation you made on behalf of New Holland, I am particularly interested in your page 2 top section where you identify subsection 16(3) and go on in your second part of that paragraph to refer to section 16.6. You have made some suggestions there. You have listed them (a), (b) and (c). I know Mr. Penner had previously asked a question regarding clarification or interpretation of what that actually meant.

Just for my clarification, it is not honouring their financial obligation to the supplier, basically is what (a) was. I am interested because you have suggested that to be added to 16.6. I interpret actually 16.6(c) as we have it now as being your (a). Can you tell me the difference there between what is presently listed as (c) and what you have suggested for (a) that is not covered where you have made your suggestion of (a)?

Mr. Martin: I do not have the Act in front of me. I think you are saying 16.6–

Mr. Smith: Actually it reads presently that 16.6(c) states: "the dealer has defaulted under a security agreement between the dealer and vendor, or a guarantee of the dealer's financial obligations to the vendor has been revoked or discontinued;" and that to me already appears to be in 16.6 listed as (c) of what I just read and you have suggested (a).

Can you tell me the difference that you see in your suggestion?

Mr. Martin: Yes, 16.6(c) is very specific, referring to a security agreement, which is different than the dealer agreement, for one thing. With us it is, as a manufacturer at least. There is a dealer agreement, and there is a security agreement with their own wording. They are two different documents. The way it is worded here, it refers to the security agreement only, whereas our protection is under the dealer agreement today, and you are basically excluding that from consideration by the way this is worded. In other words, we no longer have the ability to act on it without going to court, under our dealer agreement. This does not give us that ability.

Mr. Smith: I realize the first sentence identifies what you have just suggested. However, it is "or a guarantee of the dealer's financial obligations . . . ." So that suggests to me that that would be not honouring the financial obligation to the supplier. It would cover it in that second part of that paragraph.

Mr. Martin: Okay, that is not how we interpreted it. When the word "guarantee" was used, we interpreted that to mean the dealer revoking his personal guarantee, which is a different situation than receiving funds from a customer and not passing them on to us. So we again interpreted that differently than the way you have it written here, or the way you have interpreted it just now. You have kind of used that as synonymous with selling out of trust.

Mr. Smith: I guess, not to belabour it, I know the Chairman has mentioned there are other people to present, but, as well, in that same clause, you are suggesting, (b), the dealer makes a material misrepresentation to the vendor, it appears to me that that is also covered, as suggested in (e). Can you tell me what is the difference that you see? You have listed the dealer makes a material misrepresentation to the vendor, and it appears in (e) it says that. Maybe I am not interpreting the same as you have, but: "the dealer has pleaded or been found guilty of an offence affecting the contractual relationship between the dealer and vendor." Is that now what you are saying in (b)?

Mr. Martin: Once again, the way we interpret clause (e), it is after the fact. Down the road, the dealer has pleaded guilty in a court case of some kind that has occurred after all is said and done. We are saying in the case of misrepresentation to us that is fraudulent. We need to act immediately without a court order. He still has the ability to come back later if he feels he has been wrong and plead his case in court. The way (e) is written, it is kind of like the court case has occurred and now we have found the answer, and it is a long time after the fact the way this is written here. That is my interpretation.

Mr. Smith: Mr. Chair, I guess just as a comment. It seems to be an interpretation there that it seems to me what Mr. Martin is saying would be covered under (g), but I guess I will not ask that as a question.

Hon. Jon Gerrard (River Heights): Thank you, by the way, for your presentation. I just refer to this comment about dealers needing to sell the full product line and not cherry picking. My question would relate to the circumstances in the United States where a competitive marketplace allows dealers to, in fact, be vendors for a variety of different manufacturers without some of the problems that have arisen from time to time in Canada.

Can you sort of elaborate a little bit on whether any cherry picking occurs in the United States and whether, in fact, you require each of the dealers to have on their lot all your product line or just to market through a catalogue some of those products, if that is appropriate?

Mr. Martin: Clearly, it does happen in the U.S. where parts of the line have been cherry-picked, so there are living examples of that in the U.S. That is the kind of thing that we feel we have an advantage here in Canada, that we feel is of value to the customer, and that is what we are trying to protect here.

Mr. Chairperson: Excuse me, committee members. I am going to interrupt the questioning to put a question to you. We have three people who have flights to catch, and they are going to have problems if they do not–well, they will not be able to present if we do not assist them. So we have a choice here. We could sit till 1:29 p.m. and then go to Question Period, or we could accommodate these people by allowing them to go first and go back to Mr. Martin later. What is the will of the Committee?

Ms. Linda Asper (Riel): I suggest we hear the people, your second alternative.

Mr. Chairperson: It has been suggested by one person that we hear the three presenters who have flights to catch. Are there other views on the Committee? Mr. Martin do you have a flight to catch?

Mr. Martin: Yes, I do. My flight is at three.

Mr. Jack Penner: Mr. Chairman, I concur with your suggestion. I think we should get on with it and hear the presenters who are out-of-town presenters, if we can accommodate that within the time frame. If we all constrain ourselves a bit, then I think we could probably hear them. I think Mr. Martin has given us an excellent overview as to what the legislation will do and what their needs are as an industry, so we thank him for that.

Mr. Martin: Thank you for the opportunity to speak.

* (11:10)

Mr. Chairperson: Thank you, Mr. Martin.

The next presenter is Mr. Schmeiser. Would you come forward, please. Mr. Schmeiser, I think you can get started while we are distributing the briefs.

Mr. John Schmeiser (Canada West Equipment Dealers Association): Thank you very much, Mr. Chairman. Firstly, I would like to thank the Committee for the opportunity to make a presentation regarding Bill 20, which deals with important amendments to The Farm Machinery and Equipment Act. Secondly, I would like to thank the Minister and the Manitoba Government as well as the Official Opposition for unanimously supporting these amendments as they have worked their way through the legislative process. Our dealers in Manitoba want to commend the Government for this legislative initiative and commend the

Opposition for their support and co-operation. Thirdly, I would like to commend the Manitoba Farm Machinery Board and the department officials for addressing issues that are important to our Manitoba dealers. I would like to compliment the Board for their recommendations that form the basis for these amendments that we are discussing here today.

The Canada West Equipment Dealers Association representation of Manitoba farm equipment dealers goes back to the early 1930s when the Manitoba Lakehead Farm Equipment Dealers Association was established. We have over 80 members in Manitoba and 450 in western Canada. In October of 1999, the Canada West Equipment Dealers Association surveyed our membership on a number of important dealer contract issues.

These contract issues included dealer purity, contract protection, succession, and market share requirements. Our dealers have become increasingly frustrated with the environment that has been dictated to them by the major manufacturers, and there is a growing belief that major manufacturers are not willing to negotiate any substantive changes to the dealer contracts. Dealer contracts from the mainline manufacturer have been written with little or no input on the dealers' part. The contracts are drafted to protect the manufacturers' interests, not the dealers'. The contract spells out the dealers' obligations to the company but has few, if any, obligations that the manufacturer has to the dealer. Most troubling, the manufacturers, the major manufacturers, have the ability to amend the contract as they see fit, with or without the dealers' input.

Because of the investment our dealers have made in their businesses, people and in their communities, they have no choice but to sign the contract. The environment has changed. Twenty years ago, dealers viewed their relationship with the major manufacturers as a partnership between the two parties. Our survey indicates that dealers feel this partnership no longer exists and that dealer concerns are at times ignored by the major manufacturer.

Our survey results indicated that over 90 percent of our dealer members believe that legislation is the only way to solve contract issues with the major manufacturers. Our dealers feel this way because major manufacturers are now placing increasing demands on dealers, demands that our dealers feel would only benefit the manufacturers. Manitoba dealers have also noticed that their legislative protection is far behind what exists for dealers in the United States. As we review the amendments to The Farm Machinery and Equipment Act from our perspective, the important changes to us are eliminating the practice of dealer purity while adding contract protection and dealership succession rights. I would like to briefly speak to each of these three issues.

Dealer Purity. The decisions affecting Canadian dealers are, by and large, for the most part made by the major manufacturers from the U.S. headquarters or office. Major manufacturers have demanded Canadian dealers exclusively sell their product, meaning that a dealer is not allowed to sell competitive products in the same facility. In our opinion, it is ironic and unfair that what the major manufacturers are demanding the Canadian dealers do is illegal in the United States.

It is our belief that dealer purity only benefits the major manufacturer, not the dealer or the farmer customer. It is our belief that dealers should be able to operate as independent businesses and be able to carry any equipment that is suited to the dealer's market or that the customer demands.

We believe that the practice of dealer purity hurts all of Manitoba. It lessens the ability of a smaller shortline manufacturer to access a dealer network that can help them compete. It hurts the ability of a dealer to service a customer's needs and reduces choices for farmers. Fewer choices generally mean higher costs for our farmers. Beyond that, many of the western Canadian manufacturers have been successful because they have developed products which were tailored to western Canadian farming conditions. We find it difficult to believe that any jobs would be at risk at a major manufacturer because of these amendments that have been introduced. However, we firmly believe that this legislation will preserve jobs in communities where dealers and shortline manufacturers exist.

Contract Protection. We support the amendments which clearly outline what is and what is not cause for contract termination. Dealers in Manitoba applaud this effort in addition to the provision that a dealer cannot be cancelled without cause. Some dealer contracts contain the provision that a dealership can be cancelled by a major manufacturer without cause on 60 days notice.

This provision has been used in western Canada to cancel dealers. Dealers oppose this clause and find it offensive. We are appreciative to see that the Manitoba Government has taken the steps to outlaw that clause. In the past number of years, dealers' standards, including facility standards, have been imposed on dealers to satisfy the corporate image demands by the major manufacturer. Dealers in general are supportive of efforts to increase the professionalism and image of the industry. However, for some dealers this has added enormous costs, costs that have to be passed on to the customer. Perfectly adequate facilities were deemed not acceptable because the colour of the paint or the dealer's signage was not acceptable to the major manufacturer's signage. So what has happened is dealers have made these improvements at their own cost but have no commitment from the mainline manufacturer that they are part of the company's long term plans.

I receive many complaints from dealers who state that their mainline manufacturer continually requests a dealer's long-term plan, but the company representatives will refuse to tell the dealer what the manufacturer's long-term plan is. The dealer does not know what his future is with that company, despite their history, previous relationship or financial commitment that has been made in the past. But through the amendments in Bill 20, the situation is resolved and it allows dealers to do business.

Section 16.7 specifically states reasons that cannot be used for cancelling a contract. These provisions are necessary because they have been used to force dealers out of business in the past. I should point out that in a lot of situations the farm equipment dealer is the largest employer in a rural community. We have seen a trend from the major manufacturers to discontinue their relationship with dealers in these smaller communities, putting these dealers out of business and people out of work. This practice is hurting rural Manitoba and does not serve the interest of the farmers, communities, dealers and the province, but it does suit the interests of the major manufacturers. We believe that section 16.7 will let the market decide. With these amendments, the market and the customers in the trading area will ultimately decide whether or not a dealer can survive as opposed to the major manufacturer deciding what is in the best interests of the province.

Bill 20 also allows for fairness within the industry from dealer to dealer. It requires the manufacturer to treat similarly situated dealers equally and uniformly in terms of pricing and contractual arrangements. We support that initiative.

Dealership succession. This issue has become one of the most important issues to dealers in Manitoba, and we are pleased to see it addressed in Bill 20. We have seen many instances where the major manufacturers interfered in the sale of a dealership, prevented the dealer from passing the dealership on to his children or imposing unreasonable conditions on the seller or the buyer, allowing the contract to continue. Manufacturers have repeatedly told dealers that they are independent businessmen but refuse to let dealers operate that way. Sometimes dealers have asked the question: whose business is this? The dealer is required to meet numerous conditions. The dealer is required to put their money at risk. But because of the contract, the dealer has no control in this situation, and his destiny is controlled by the major manufacturer. With these initiatives in Bill 20, finally a dealer has control of his business like an independent businessman should. I would also like to speak to a few other issues that the amendments in Bill 20 address.

The mediation provisions are an acceptable way to resolve disputes between dealer and manufacturer. We view it as a forum where disputes can be facilitated easily and quickly. We have a concern that the mediation period does not drag on for a considerable length of time nor does it burden a dealer financially. We hope that the mediation process can be a

constructive process to resolve dealer-manufacturer issues. Dealers request an independent body be given the authority to hear a dispute and resolve issues on contract disputes, and it appears this is accomplished with the establishment of the mediation process. We view this as a fair and equitable way to resolve disputes. It is also our understanding that, under section 2, the financial lease of farm machinery or equipment is being added to ensure that statutory warranty provisions of the act are applicable to equipment that is leased by a financial institution to the customer. We believe that good dealers have always provided adequate equipment warranty support and will continue to do so in future. If the intention of the provision is only to close a loophole in the existing legislation, we support the inclusion of these amendments.

In conclusion, the Canada West Equipment Dealers Association supports these amendments that are proposed in Bill 20. We are pleased that these amendments are supported by both sides of the House as these changes will ensure that the Manitoba farm equipment dealers will have protection that already exists in many other jurisdictions. Similar protections were recently passed in Saskatchewan, and currently Alberta and Ontario are looking at introducing parallel legislation.

It is important to note that many of these dealer protections have existed in jurisdictions in the United States for years. The impact on major manufacturers should be minimal as they are presently dealing with these laws with their dealer network in the United States.

* (11:20)

Today we are in a world market. Major manufacturer decisions impacting dealerships are not made in Canada anymore as they used to be. Many dealers in western Canada have had success in selling equipment to foreign markets through the Internet. This legislation will put Manitoba dealers on a level playing field with dealers in Saskatchewan and in the United States. Ideally, the Canada West Equipment Dealers Association would like to see amendments to the existing legislation that are consistent to other jurisdictions, specifically to that of what Saskatchewan introduced in December.

We feel it is to the benefit of the industry for dealers, manufacturers and farmers to have legislation as consistent as possible. In closing, we would like to thank the Minister and the Government for addressing these issues and for supporting farm equipment dealers in Manitoba through the introduction of Bill 20.

We would like to thank the Opposition for allowing their unanimous support, and I also congratulate the Farm Machinery Board and department officials for their hard work and efforts. We request that the Government move for a quick passage of this legislation and for proclamation at the earliest opportunity. Thank you very much.

Mr. Chairperson: Thank you, Mr. Schmeiser. We have two more out-of-province presenters to accommodate before we rise. I would ask members of the Committee to ask your questions accordingly. Ms. Wowchuk and then Mr. Penner (Emerson).

Ms. Wowchuk: I am not going to take very much time other than to thank you for your presentation. You have certainly given a good overview of the legislation, and we hope that it will meet the needs of the dealers across the province. Thank you.

Mr. Jack Penner: Mr. Schmeiser, I thank you for your presentation. You heard Mr. Martin's presentation this morning, and I am wondering, instead of the current bill as it is drafted in 16.3 that Mr. Martin made reference to, whether you have given consideration to sections 51.1 to 51.4 of the Saskatchewan legislation and whether that in fact might better, even certain, the ability for mainline dealers to access other lines of equipment in their dealership. Have you given any consideration to that?

Mr. Schmeiser: Yes, the most important thing for a farm equipment dealer is to service the needs of his customers. Our dealers have taken a great pride in selling the products that have been manufactured by the major manufacturers as well as by the manufacturers of the shortline manufacturers. Continually, dealers have been

told and have operated their businesses like they are independent businessmen. If a dealer is an independent businessman, he should be able to carry whatever products his market demands. We feel that giving the dealer the access to do that benefits the customer first and foremost. The Saskatchewan legislation was groundbreaking for Canadian dealers; however, it is very similar to what is in place in the United States and that is all that our dealers have asked. We are in a world market now, and we should have those same protections that are in place elsewhere.

Mr. Jack Penner: Just one more question. It appears to me, when I compare the two pieces of legislation, that the proposed Manitoba legislation is a lot more involved with legalities and court actions than the Saskatchewan legislation. As a matter of fact, the Saskatchewan legislation really does not refer to the courts. It refers more to a board of arbitration being established similar to our Farm Machinery Board, that they would have arbitrary powers given to them under section 51.4. I am wondering, as I said before, section 51 or sections 51.1 to 51.4 might be a better fit for Manitobans as well as what is currently being proposed by the Minister. I wonder whether you have done a good analogy of the two pieces of legislation.

Mr. Schmeiser: You are referring to the Saskatchewan ag implement act. What Saskatchewan did was they introduced a separate piece of legislation called the Agricultural Equipment Dealerships Act, and in that Agricultural Equipment Dealerships Act it does state that a major manufacturer has to get a court order before they can cancel a dealer's contract. So that legality that is in Bill 20 is in the Saskatchewan legislation as well, but it is in a different piece of legislation. The Government here has chosen to amend The Farm Machinery and Equipment Act, where in Saskatchewan they took a different approach and introduced a separate piece of legislation. But it is in that separate piece of legislation.

Mr. Jim Penner: Mr. Chairman, I would like to ask Mr. Schmeiser: What percentage of the dealers do you represent in Manitoba? Is 80 most of them?

Mr. Schmeiser: Yes. The percentage of dealers that we have that are members of the association, if they carry a mainline, is 99 percent. There is one dealer who is not a member of the association who carries a mainline.

The biggest growth area for our membership is in shortline. We are seeing a number of dealers who were very small operations that were maybe carrying one contract of a shortline manufacturer but also carried a number of other agriculture-related products that in reality were not what we would call your typical dealer. But what we have seen over the past five years is an increase in that style of dealership which was now a becoming a member, just as an example.

Our membership base is growing and we know that there is consolidation in the industry. We have a smaller number of dealers now than we did a few years ago. However, in 1996, Canada West across western Canada had 390 dealer members, and now we have over 450.

So our organization is growing in terms of dealer members, despite at the same time a consolidation in the industry taking place. That would be a small amount of dealers.

Mr. Jim Penner: Just one more little question. How many dealers were there 10 years ago?

Mr. Schmeiser: Going back to our dealer numbers, in 1990 we had 680 dealer members. Now we are at 450.

Mr. Chairperson: Thank you, Mr. Schmeiser.

Hearing no more questions, I will call the next presenter, Mr. Hamre. Please proceed.

Mr. Brent Hamre (Canadian Farm and Industrial Equipment Institute): Thank you, Mr. Chairman. Good morning, everyone. I just also want to add my thanks for this opportunity to meet before the Committee and to provide the views and concerns expressed by the member companies of the Canadian Farm and Equipment Institute respecting the proposed bill amending the Manitoba Farm Machinery and Equipment Act.

The CFIEI is an industry association representing the interests of manufacturers and distributors of field type farm machinery and equipment doing business through retail dealers across Canada. The Institute's mandate and its operational policies are perhaps more fully described in the document I have attached to copies of my presentation paper, currently being distributed to the members.

In addition, I have provided some industry sales statistics on just two key machines that starkly define the significant reduction in the market, those two machines being the combine harvester and four-wheel-drive tractors in western Canada during a period from 1995 through the first quarter of this year. As you will note in the graph that is attached, there was a very welcome increase in unit sales volumes for these products in 1996-97, but this was brought about for the most part due to the payments received by western Canadian producers when the Crow rate was terminated, and really not because of any real improvement in farm equipment markets in general.

The severe downturn continues into 2000 in the market for both these products and really for agribusiness in general. But, because the combine and the large four-wheel drive machines are sold for the most part in western grain producing regions, I thought it appropriate that we outline and indicate the significant challenges to both manufacturers and dealers here in Manitoba and across the Prairie provinces. Both the manufacturer and dealer struggle to manage their businesses in an efficient and profitable manner, but those challenges have been very difficult to meet, given the severe economic downturn that has plagued our industry for so long across North America.

* (11:30)

Therefore, I am appearing today to communicate a number of concerns expressed to me by CFIEI member manufacturers and distributors about the contents of the Bill. You have already heard and will hear from actual members of our Institute indicating more clearly and more concisely perhaps the concerns that each of them face. We are puzzled, as well, that our industry sector has apparently been singled out for such a significant level of government intervention in day-to-day operations of its businesses, when other commercial sectors, such as the automobile manufacturing and distribution industry, also marketing products through retail dealers, are apparently not being subjected to similar legislative action.

The proposed Bill 20 will, in our opinion, adversely affect the relationships between farm equipment retailers and their supplier organizations, particularly in matters pertaining to the change of ownership of a retail outlet or when it becomes necessary to terminate a contractual agreement with a dealer.

CFIEI member companies rely on their respective dealers to adequately represent and vigorously market their products to customers in every jurisdiction where such retailers operate. When the dealer fails to perform adequately for any number of reasons and a decision must be reached to terminate a contract with the dealer principal, such actions must take place quickly, particularly if there is evidence of fraud, for any undue delay can be very costly to a supplier. As a result, having to apply for, then await a decision by the courts before a contract can be terminated, will present an enormous burden on equipment suppliers that would not, in any event, attempt to cancel a contract with a dealer unless there was a clear legitimate reason to do so.

Retail dealers who perform in a satisfactory manner need not fear such action, unless there is agreement reached by both parties to terminate a relationship for reasons other than those brought about because of inadequate performance by the retailer. The sections of the Bill relating to dealer termination are particularly troubling and very restrictive, in our opinion. Clearly a manufacturer or distributor must retain the right to determine who its retailer should be and where such dealerships should be located. Bill 20, if passed, will negate any control in this very important part of a manufacturer-distributor's overall marketing strategy.

There have been more and more occasions in recent years when a retail farm equipment dealer is required to expand his dealership

infrastructure in order to accommodate the larger and more technologically advanced farm equipment marketed today and to ensure that its service department and service technicians can efficiently address the needs of the farmer customer in that dealer's operating territory. At such times, a dealer could refuse to invest in the expansion of his or her dealership. The supplier would then be faced with having to reach a decision to terminate that dealer's contract with the inevitable hardships associated with complying with an act like Bill 20, thus causing undue delay in providing the necessary services and the ongoing services required to the producers in the region.

We believe that much of the content of the proposed act will serve only to make it extremely difficult, if not impossible, to efficiently serve the needs of Manitoba's farmers in communities across the province where our Institute member companies' products are retailed. Frankly, we cannot imagine that the majority of farm equipment dealers in the province of Manitoba or, for that matter, in any other jurisdiction, who manage their businesses in a highly efficient manner in serving their customers' needs with the very best products, service, and parts supplied, would wish to see such draconian legislative support provided to the very small number of retailers who clearly should not be allowed to continue in business to the detriment of their supplier's reputation and the reputation of the entire farm equipment industry.

I do wish to, on behalf of the member companies of CFIEI, urge the Committee members to carefully consider the Bill with due regard to the negative impact we believe will surely result, serving neither the best interests of the manufacturer nor the retail sector of our industry, should the bill be passed into law in its present form. I do thank you for your attention.

Mr. Chairperson: Thank you, Mr. Hamre. Are there questions?

Ms. Wowchuk: Thank you, Mr. Hamre, for your presentation. I just want to ask a question on the dealer circumstances that could be cause for termination. You talk about that being very draconian and very restrictive, as did the previous presenter. In fact, there is leeway. Would you not agree? It says that the executive membership or ownership of a dealer has changed. Circumstances that there cannot be termination are when executive management has changed "unless the change is detrimental to the representation or reputation of the vendor's product." So it does not say that you cannot terminate a contract when there is a change of ownership, unless there are some other things. So I would ask if you would, in fact, agree that there is some leeway and that it is not that you cannot terminate a contract–that there is leeway within the legislation to terminate contracts if it is detrimental to the reputation of the company.

Mr. Hamre: Thank you. I guess the concern there will still tie in with our concerns about the length of time it will take to those conclusions being reached, if we have to go to court to arrange that termination. Secondly, it is really quite silent on the issue that I think is very important to a supplier. That is, if that dealer does decide to sell his dealership, change ownership, give it to someone else in his family, it does appear to restrict the ability of the supplier to vet, if you will, the ability of that appointee or person who is about to purchase that facility, as to whether he would be an acceptable dealer for the organization that supplies him the mainline products.

Ms. Wowchuk: Going on that, can you give us some indication about how often you see that happening, when a family has invested in a business and they want to pass it on to another member of the family, and to continue a service in a community that is very important for the people of the area? How often do you see these dealerships terminated, that is, used as an opportunity to terminate the service when it is being transferred to another member of the family or another purchaser?

Mr. Hamre: Well, I cannot give you direct instances. Of course, you must appreciate that I depend on hearing from our member companies, as would any other association manager. It does happen as far as I can gather. Some of the concerns that I have heard about over the years is that perhaps, not necessarily a family member, but someone in the community or, for that matter, from outside the community comes in.

He has cash money up front that he is prepared to pay out, if he could take this dealership over. Clearly, the manufacturer may or may not, initially at least, have any idea whatsoever about this man's or this person's ability to operate the business satisfactorily, and to market vigorously and efficiently the products that this mainline company is very keenly concerned with. So it does happen. I cannot give you specific instances.

Ms. Wowchuk: I just wanted to point that in the "Circumstances that are not cause for termination" there are some 'unlesses' with carrying the lines of machinery and with transferring of ownership. The companies do have leeway. It is not just cut-and-dried in the legislation.

Mr. Hamre: Mr. Chairman, once again I would reiterate our concern about the length of time it could take for that determination to be made without the opportunity for that manufacturer to quickly and clearly define whether that individual is an appropriate replacement for that dealership.

* (11:40)

Mr. Jack Penner: Mr. Chairman, it appears that government communications work well in your industry to inform you of what they do or do not do. I am a bit surprised at your opening statements, that the chart that you show of increase sales in 1996 and '97 were as a result of the Crow benefit payment to farmers. Obviously, sir, you did not keep track of markets at the time. If you had, you would have noted that canola prices went from $4.86 a bushel to virtually just better than $9 during that period of time. You would have noted that wheat prices went from $3 a bushel to better than $6 a bushel. So I would suggest to you that on our farm the forty-somewhat thousand dollars over two years that was paid in compensation to the elimination of the Crow that cost us a dollar a bushel. The compensation was a mere 30 percent of what our losses were, and it was the actual increase in commodity prices that drove the incomes of farmers to a point where they can start renewing some of their equipment.

I am a bit surprised that you, sir, would stand here and say it was as a result of the Crow benefit payment. I would suspect that the Crow benefit had not been changed and the farm commodity prices would have taken off as they did, which, I think, they would have regardless, there would have been even a much greater degree of farm income than we saw now, and your sales might have even soared higher than they did during that period of time.

Now, secondly, I am also interested in some of the comments you made in regard to the ability of your dealerships to be maintained under the proposed legislation. I would suspect that, if you look at Saskatchewan's legislation and you look at the American legislation that currently exists, what is being proposed here is not much different than what exists in those jurisdictions. I find it interesting that you are suggesting that your dealers here would then not–or you as an industry would find it more difficult to do business. I happen to know that, with one of the dealers in my home town, when they decided to transfer a father-son operation to the son operation, the dealership came to an end. It was simply because there was not an agreement between the manufacturer-distributor and the ability for the new owner. The son was to come up with enough capital to build what the company was in fact demanding. So I think there needs to be some consideration that the economies of scale also need to be able to be allowed to operate within smaller communities.

Very often farmers find themselves in a position where currently the access to some dealerships is better than 100 miles away. Even though our trucks or pickups drive a bit faster and are more comfortable than they used to be, and our cars are a bit faster, it is still quite time consuming for the farmers to be able to access parts and equipment as they used to. We used to live within eight miles of seven main dealerships. They are all gone except one, as I said in my opening statement. So I would ask that you give a bit of consideration to the people that you actually serve and the people that actually present you with a livelihood, and that is the customer. I think there would not need to be legislation such as this if the mainline companies, and I speak largely of the farmer now. Maybe I am transposing myself outside of

my legislative role, but I think it needs to be said around these tables, once in a while, that we respect the huge investment that the manufacturers make, but we would also like you to respect the huge investment that the farm community has to make.

When government comes along and recognizes a mistake they made, and I am not suggesting that the elimination of the Crow benefit was a mistake, but the mistake they made was not instituting that amount of money that they paid annually into some other form of support of the transportation system. That is what was wrong there. So it caused us to have to bear the brunt of the cost, not only as a province, of upgrading our roadways and our railways and all those kinds of things, but it caused us to make investments at a much greater degree on our farms that we had ever hoped or intended to make. But that is the reality we face.

Now we are only asking that you as manufacturers and investors recognize our dilemma as farmers and help us bring into being an allowable, workable concept whereby larger machinery dealers are able to sell and market shortline equipment that very often is manufactured locally, very often just off the farm and in co-operation with the farm operation. So that is really all we are asking to do.

We had hoped, and I think the Minister concurs, that we would not have to be here and pass this kind of legislation. I think we could have done it by debating. That would have certainly been my way to try to come to some amenable agreement. Debating with your industry to a much greater degree, we as legislators I think fall down there once in a while. If you want to respond to that, I would appreciate that, but it was not a question. It was simply a statement that I wanted to make.

Mr. Hamre: Just a very brief response, Mr. Chairman and Mr. Penner, I clearly understand your position and your understanding of the marketplace, being a farmer. When I pointed out the differences in the marketplace in the '96-97 time frame, there was no question that pent-up demand had also kicked in after many, many years of farmers hanging on to and attempting to maintain their aging equipment. So I think there was a combination of things that took place. Clearly commodity prices did play a definite role.

However, if we look at the graph in terms of its time frame, then we still see that that sort of short appearance of uptick or upturn was very short term and very limited.

So we have some major concerns. We are looking at another significant downturn in the industry's marketplaces. Clearly it is the farmer customers that we are concerned about. They are definitely suffering. We do not think that there is any necessity or should be a necessity for significantly increasing the involvement with government in our day-to-day business if we are unable to maintain that service as well as we can.

Mr. John Loewen (Fort Whyte): Thank you for your presentation, Mr. Hamre. I guess in light of the dealer purity issue, I am wondering, and in fact the legislation proposed here as well as Saskatchewan and other jurisdictions, are you aware of any discussion among your membership to in fact deal with the issue of dealer purity and perhaps amend the contracts to allow for dealers to sell shortline product that does compete directly with the dealer?

Mr. Hamre: The make-up of the membership of our institute quite happily is that, yes, we do represent the mainline manufacturers, the multinationals, but we also have a number of very active and very successful medium- to shortline manufacturer and distributor members as well. Clearly there are some disagreements between those two factions, if you will, among our members. I have been somewhat silent on the issue of dealer purity, not because I did not want to face it here today. But I can tell you that in the overall arrangements and discussions around our board table there is unanimity in the concern about additional government intervention. There is no question that there is some difference of opinion among the shortline versus the long-line companies about the dealer purity issue.

However, companies like New Holland, as has been described to you today, it seems to me

and I would guess that many of our shortliners would agree that there is really nothing wrong with a mainline dealer having a separate satellite or next-door outlet for those specialty products. I think they can agree on that.

Mr. Chairperson: Thank you, Mr. Hamre. I see no further questions, so I will call up the next out-of-province presenter who is Mr. McCrea. Oh, I am sorry, Mr. Penner (Emerson).

Mr. Jack Penner: Mr. Chairman, again, I just want to make one further comment after what Mr. Hamre said. When I go to my American neighbours–and you should know that I live six miles from the U.S. border–I see a completely different set of operating circumstances there than I do here.

I can go to a Ford dealer, a Chevy dealer, and a Chrysler dealer, and even some of the Japanese cars rolled into one showroom. I find it interesting that our implement manufacturers are going to suggest that their dealers need to build a separate little place of display to allow them to display shortline implements or sell shortline implements. I am not sure whether we are living in the same world. I, as a farmer, walk into the Fargo dealership, the automobile dealership, and I can pick and choose anything. From my perspective, the service I require is much better served there than having to run across the street to a different building, and a different sales staff, adding double the cost to my bottom line. They are going to charge me for those additional costs. Quite frankly, I think the manufacturers' association or the manufacturers should take a good hard look at themselves, if they really, truly mean that they want to serve the farm community.

Mr. Chairperson: Mr. Hamre.

Mr. Hamre: No comment. Thank you, Mr. Chairman.

Mr. Chairperson: Thank you. Seeing no further questions, we will call up Mr. McCrea.

* (11:50)

Mr. Tom McCrea (PIMA Agricultural Manufacturers of Canada): Thank you, Mr. Chairman, Madam Minister, ladies and gentlemen. PIMA, the Agricultural Manufacturers of Canada, are in receipt of proposed legislation, Bill 20, Amendments to the Farm Machinery and Equipment Act. We thank you for the opportunity to pass on to the Committee our concerns.

Our basic problem with the proposal is that it lacks the appropriate definition that differentiates between "mainliner" and "shortliner." This difference is necessary for purely practical reasons.

The Saskatchewan legislation deals with this definition as follows: Mainline agricultural equipment means the following types of agricultural equipment. (i) tractors with an engine capacity of 100 horsepower and more; and (ii) new combines.

"Mainline manufacturer" means a manufacturer or distributor of both types of equipment.

"Shortline manufacturer" means a manufacturer or distributor of agricultural equipment who may manufacture or distribute one type of mainline ag equipment but not both.

If a dealer should lose a contractual relationship with a mainline manufacturer, the dealer would be dramatically exposed. The average dealer likely has revenues from the sales of shortline equipment in the area of one-tenth of gross sales. And these sales would quite likely consist of products from many shortline manufacturers. Many dealerships are businesses with larger dollar turnover than most PIMA shortliners.

The requirement of Bill 20 to place the onus on a shortline manufacturer to solicit from the courts the right to discontinue a contractual relationship with a dealer is extremely burdensome, given the size of our manufacturers and the sales involved. This requirement may be deemed trivial by the courts. For a shortline manufacturer, this requirement is onerous, expensive and cumbersome. This requirement had to have its roots buried in simplicity while lost to the impact of reality.

There is no uneven bargaining position between dealers and shortline manufacturers, and shortline manufacturers do not have one-sided agreements with dealers.

Manitoba PIMA members are 45 manufacturers strong. They employ approximately 3000 to 3500 people. The spinoff to the service sector is estimated to involve, using a multiplier of 7 to 1, an additional 20 000 to 25 000 jobs. We feel that requiring the courts to decide on cancellation of a shortline contract with a Manitoba dealer could place doing business in Manitoba in some jeopardy. The Committee should be concerned with the potential for job loss as well.

PIMA membership consists of approximately 165 manufacturers from across Canada who manufacture products ranging from floating pumps to swath conditioners. Sales collectively represent the production of those manufacturers. While the sales numbers are significant, approximately $2 billion on a good year, they do represent a significant number of smaller and niche market products, hence the name shortline.

To encapsulate, the mainliner's contract with the dealers across the Prairies with essentially the same product mix as standard stock items represents 80 to 90 percent of sales. Shortliners will contract with the same dealers. However, the products contracted for will vary in amount and kind depending upon local conditions. For example, swath conditioners will not likely sell in semi-arid areas, whereas a combine would. Similarly, floating pumps may have been a hot item in southwest Manitoba last spring. This year it is a much different story. Yet the same dealer would stock combines and tillage equipment and other mainline farming equipment.

It is PIMA's position that the provincial government should be working towards uniform legislation. Bill 20 is a venture towards that goal. It is just short of making it. Respectfully submitted.

Ms. Wowchuk: Thank you, Mr. McCrea, for coming to make a presentation. I know that you are a manufacturer, a shortline operator in my part of the province, and I know the product that you produce.

The goal of the legislation is to ensure that there is a service for the farming community across the province. You heard over and over again that we have a shrinking number of dealers and farmers having to go greater distances for their products. Certainly we want to be able through legislation to ensure that those services that are there, that those dealers can continue to provide the service.

You talk about the strength of the manufacturing industry in Manitoba, and certainly it is an important industry with a lot of jobs, but looking at your second page, you are saying: we feel that requiring a court to decide on the cancellation of a shortline contract with a Manitoba dealer could place doing business in Manitoba in some jeopardy. Are you saying that this legislation that is in place in Saskatchewan, legislation that is in place in many states in the U.S., is going to put our shortline business in jeopardy? How do you feel that it would put these businesses in jeopardy when there is similar legislation in other provinces? Alberta is looking at it. The United States has it.

Mr. McCrea: What probably most of the shortline people have is pretty limited office people, staffs that are out looking after dealing with the legal opportunities and opinions. I think we are saying that anything that is additional, that is not really required is perhaps not necessary. Let us not worry about it. The probability of shortliners materially affecting a dealer's bottom line and having a termination is small compared to the mainline folks. I think that is the differentiation we want to bring forth here.

Ms. Wowchuk: Would you agree that even with this legislation, shortliners and dealers are still able to have contracts and agreements that can be terminated by mutual agreement, and not have to go to the courts? They still have the ability to do that. Would you agree that a dealer who is not seeing the equipment move would be able to come to an understanding with the manufacturer on his own, as to whether or not to carry those particular products?

Mr. McCrea: I agree that the Act allows for that. It would be a real life situation, that the dealer close to this city took on our products at a

point in time when the mainline manufacturer did not supply that class of equipment to his customers. At this point in time, if I could not terminate that dealer so that I could set up another dealer somewhere close by, relatively simply, I would find that unnecessary, I guess. I think the local dealer took advantage of a spot market and we took advantage of a spot market, and now that he is back to his mainline supply, I think that we need to just be able to say that someone else could logically now be the dealer without a lot of expense.

Ms. Wowchuk: I want to thank you, Mr. McCrea. I think that this legislation will not be cumbersome. It gives protection, and there is the ability to move through it quickly, but when it cannot be worked out, then there is the ability to work through it through a mediator or through the court system. I believe that dealers are also sensible people and there is the ability to work through it with them.

Mr. Chairperson: If there are no more questions, I would like to thank the presenter. Now we will go back to the top of the list, and we will call forward Mr. MacDonald. Please proceed, Mr. MacDonald.

Mr. Scott MacDonald (President, Manitoba Wholesale Implement Association; Vice-President, MacDon Industries Limited): Good morning, ladies and gentlemen. I would like to begin by thanking the Committee for allowing me an opportunity to present the position of the Manitoba Wholesale Implement Association and MacDon Industries Limited on the proposed amendments to The Farm Machinery and Equipment Amendment Act. I am not sure if that requires a change here today because originally I had proposed to speak as a private person.

I am currently President of the Manitoba Wholesale Implement Association, an organization that has existed in this province since 1886. I am also the Vice-President of MacDon Industries Limited, a Manitoba owned and operated company, in its 51st year of business, which directly employs in excess of 500 people in this province, producing farm equipment that is sold worldwide, including Manitoba.

Fundamentally, we do not understand how one industry, namely the agricultural equipment industry, can or should be singled out and required to submit to court and potentially protracted mediation, in order to carry on business, when no other industry is expected, and/or required to abide by such restrictive legislation. If this legislation is appropriate and fair for our industry, then why would such legislation not be appropriate for the automobile, heavy equipment or computer industries, for example. We would contend that it is not appropriate for any industry, and will only serve to harm those that it is intended to protect.

* (12:00)

Manufacturers will incur greater costs, and be exposed to more restrictive regulations and risks, which will discourage them from starting up in Manitoba, entering Manitoba, and/or expanding in Manitoba. Furthermore, manufacturers will be discouraged from adding dealers, and/or replacing dealers, following passage of this legislation. Shortline manufacturers, or niche players, both individually and collectively, tend to account for a small percentage of most dealers' total sales. Furthermore, there are numerous examples where the dealer, or dealer group, is larger and more powerful than the shortline vendor supplying the products. Why then is it appropriate and/or fair that legislation be passed that is so much biased in the interest of one party to the detriment of the other?

As a local shortline manufacturer that supplies farm equipment to the farming community through mainline companies, distributors, and directly through more than 700 dealers across North America, we are in a somewhat unique situation. We very much appreciate the positions of the local farming community, our ultimate customer, the local agricultural equipment dealer community, the shortline and mainline manufacturing and distribution companies.

MacDon has companies in Canada, the United States and Australia and does business in a number of other countries around the world. Nowhere that we do business are we subjected to such onerous and damaging legislation and

requirements. We do not believe that the farming community, the dealer community or the manufacturer-distributor community in any large part has requested that such restrictive and damaging legislation be put into place. We can assure you that this legislation as written is most definitely not in the best interest of the farming community as a whole.

Our understanding is that the original impetus for the legislation in Saskatchewan was a desire to have an objective third party, namely the Farm Machinery Board, make an arm's-length determination as to the justification for termination of a dealer contract by a mainline manufacturer. As we understand it, there was a concern that dealers may be terminated for handling competitive lines of product and/or for unacceptable dealership succession plans.

Bill 20 is analogous to killing a fly on a window with a sledgehammer. More damage is done than benefit achieved.

In numeric sequence, here are our eight most significant concerns with the proposed bill:

Number 1: "Definition of 'terminate' in sections 16.3 to 16.11" in section 16.2: "means to terminate, cancel, fail to renew, fail to extend or substantially change the competitive circumstances of the dealership agreement." This clause concerns us in that it is nebulous and vague, a statement with no quantifiable basis point. Virtually any changes to a vendor that a vendor makes will have either a positive or negative effect on every dealer. The effect may vary for dealers in similar situations, depending of course on your definition of similar situation. Would this clause contemplate the introduction of another dealer anywhere near to the existing dealer, perhaps a new dealer anywhere in Manitoba, change in allocation of product due to lack of availability or lack of available market, changes in credit terms? Where do you draw the line?

Number 2: "Prohibition on termination of dealership agreement," section 16.3: "No vendor shall terminate a dealership agreement . . . (b) without an order of the court under subsection 16.5(3)." This clause seriously concerns us in that we would be the only industry in Manitoba subjected to such restrictive requirements. Furthermore, we object to this clause on the fundamental and logistical basis that we may have to protect our position immediately and without delay in those rare situations when our financial position with the dealer is placed into peril. Court and subsequent mediation, if requested by the dealer, would only delay us from protecting our position in a timely manner. Why is our industry expected to forfeit what in any other industry is a given, the right to protect one's interests without obstacle or delay? Why is court involvement being legislated as the rule in our industry while it remains the exception to the rule in other industries, and rightfully so? In addition, the costs associated with court and potential mediation are more than can be expected from many companies, particularly small shortline manufacturers and distributors, to bear.

Number 3: "Prohibition on discrimination," section 16.4: "No vendor shall (a) discriminate in the prices charged for its product to similarly situated dealers." This again is a vague and nebulous statement when attempting to define similarly situated dealers. Do you mean geographically, financially, or otherwise? The fact that this could be interpreted to mean that vendors cannot reward successful, hardworking dealers that sell large volumes of our products with additional volume discounts and/or incentive bonuses is very concerning to us and should concern those successful dealers as well. What about differing security or credit terms based on differing financial strengths of dealers. Again, where does it end?

Number 4: "Application to court for order," section 16.5(1): "A vendor who wishes to terminate a dealership agreement shall apply to the Court of Queen's Bench for a determination of whether the vendor has cause to terminate the agreement." Albeit the vast majority of the relationships that we have enjoyed over the years with dealers have been very good ones, the fact remains that there are those exceptional situations where a dealer may inappropriately misallocate funds generated from the sale of equipment supplied on credit from a vendor. In those rare situations, it is imperative that the vendor be allowed the opportunity to mitigate their situation instantaneously. In extreme

situations, this would include immediate termination. Court and protracted mediation requirements would unfairly restrict vendors from protecting their financial interests.

Number 5: Order by the court: 16.5(3) "If the court determines that the vendor has cause to terminate the agreement, the court (b) may impose conditions on termination, including allowing the dealer an opportunity to correct the default."

Mr. Chairperson in the Chair

* (12:10)

For all of the reasons stated above, a quantified time frame for default correction would be appropriate in this clause, such that a vendor might be afforded an opportunity to protect their financial position. Could these conditions include a requirement that the vendor continue to ship additional product to the dealer in spite of the fact that funds for current products sold and delivered by the dealer might not be forthcoming? This does not seem fair.

Number 6: Circumstances that are not cause for termination: 16.7(a) "the executive management or ownership of the dealership has changed, unless the change is detrimental to the representation or reputation of the vendor's products;"

Why should a manufacturer be forced to wait until the sale of a dealership has been financially costly and damaging to the vendor's reputation before terminating the relationship? What if, for example, a person purchases a dealership and is left with no funds to effectively operate that same dealership, an extreme case but I use it as an example. Why should a vendor continue to supply equipment on extended credit to a dealership in which they have no financial confidence? This does not seem to be appropriate or fair. Why should the onus be on the vendor to prove misrepresentation for someone that we likely know little about in lieu of the onus being on the seller and buyer to prove the wherewithal of the dealership purchaser?

Number 7: Circumstances that are not cause for termination: 16.7(c) "the vendor desires further market penetration while recognizing that the vendor may require the dealer to achieve, in comparison with other similarly situated dealers, a reasonable sales performance level of the vendor's product."

This clause concerns us in that, again, it is vague and may allow a dealer to tie up a vendor's line while making no effort to promote the vendor's products to the detriment of that same vendor. We have no desire to get into an argument over what we consider to be "similarly situated dealers." Again, is that geographically, financially or otherwise? Market share is a critical measure of a dealer's performance. Why is it appropriate to remove the most fundamental measurement of whether the dealer is or is not getting the job done for a vendor?

Number 8: Mediation: 16.8(1) "At the request of the dealer or the vendor, the court shall by order appoint a mediator who shall endeavor to facilitate a settlement of the dispute."

This clause concerns us in that it ties the court's hands, which can be very damaging to the vendor. If, for example, a vendor felt that they needed to protect their financial position from further deterioration and took precious time to prove cause in court, that same court could be forced by law to establish a mediation process that could be protracted and lead to more significant economic loss for the vendor, and that is only if requested by the dealer.

Over the years, we have worked hard to harmonize the farm machinery acts across the western provinces and create a level playing field, so to speak. This bill does nothing to foster that harmonization process, which is a detriment to dealers, manufacturers, vendors and, ultimately, to farmers as well. We do not believe that any of the stakeholders in our industry, farmers, dealers or manufacturers, want this legislation passed as it has been proposed. We would recommend that this legislation be revisited and amended prior to passage.

The North American agricultural industry as a whole has experienced phenomenal change in rationalization over the past twenty years. These changes which continue today have trickled

down from the farming community to the dealer community and finally to the manufacturing and distribution communities. As each of these communities continues to shrink in size, it is increasingly difficult for the members of each of these communities to run their businesses at a profit.

We are at a loss to understand or appreciate how hurting those of us that provide the equipment that farmers need to get their crops in and out of the ground will somehow assist those same farmers and dealers. What have companies like Buhler, Ag Shield, Valmar, Westfield, MacDon and many others, owned and operated in Manitoba, done to warrant the imposition of such damaging legislation, legislation which will restrict us from running those same companies which have successfully supplied Manitoba dealers and farmers and employed large numbers of Manitobans for over half a century.

Please give serious consideration to these questions and concerns prior to the passing of Bill 20. Thank you, again, for allowing me an opportunity to present our position.

Mr. Chairperson: Thank you, Mr. MacDonald. Are there questions?

Ms. Wowchuk: Thank you for your presentation. Again, obviously you are not pleased with the legislation, but many others here have indicated their support for it. You talk about your desire to provide services for farmers of rural Manitoba, and every manufacturer is if you are manufacturing your product. You say that manufacturers will be discouraged from adding additional dealers or replacing dealers following the passage of this legislation.

If your goal is to provide services and sell your equipment, depending on what is required out there, why do you find this legislation so restrictive that you are not going to go out and continue to seek those markets for the products that you manufacture?

Mr. MacDonald: Basically, our position on that is that we are going to be virtually dictated as to who we have to remain in business with. If all that is left to manufacturers is to decide whether to do business with somebody new then that would be the only choice that they have to make. So very few of them, in our estimation, will take the risk of establishing relationships which, due to legislation imposed on them, which would not be our first choice, they have no way of getting out of unless of course the dealer happens to agree. That is the restriction of the legislation.

Ms. Wowchuk: You also indicate that nowhere that we do business are we subject to such legislation. My understanding is that there is similar legislation in the United States and, as you are aware, Saskatchewan has passed legislation. Alberta is looking at the legislation. Would you agree that in fact there is similar legislation and you are operating under it in the United States and in other parts of Canada?

Mr. MacDonald: No, I would not. The situation as it exists today is that Saskatchewan, as an example, has put legislation in place which has zero effect on MacDon directly. We are not contemplated by that legislation, and it does not directly impact us as a company.

The state of South Dakota has legislation in place but no requirement for court, which I take very much exception to, when you read my brief. I do not know of any state that has the contemplation of a court-required process in order for one party not agreeing with the other to terminate the relationship. I can go further into that and state that subsequent to the South Dakota legislation having been brought into place, there has been watched a very significant and vigilant case against that legislation. That is currently walking its way through the court process on the basis of its unconstitutionality.

We are knowledgeable of a number of other states including Minnesota who had attempted to pass similar legislation to South Dakota. It was voted down. Oklahoma, similar legislation was voted down. Kentucky, similar legislation, as we understand it, was voted down because they are concerned about what the outcome will be of the South Dakota situation.

We are aware that there are many other situations where court proceedings are taking place. That concerns us as a company very greatly, because we do not agree in going through judicial processes to handle business

relationships. We are hoping that that will get turned around. But it is not a one-way street. Those legislations are not necessarily, in each case, being put in place.

Ms. Wowchuk: You indicated that Saskatchewan's legislation does not impact on you. I guess when you talk about your description of a shortline versus a mainline manufacturer, somebody could be manufacturing tractors and still be considered a shortline. You are still providing services for farmers, and you are still dealing with dealers. So you are really the same as a mainline manufacturer, but you might just be manufacturing one or the other, not both pieces of large equipment. I wonder why it would be okay for the mainline manufacturers to be under this legislation but not the shortline manufacturers.

Mr. MacDonald: Again, if you read my brief, I am not a huge one in favour of legislation as a rule, which is why I may be a bit at odds with myself as you listen to me speak there. On the one hand, I am basically saying let us find another way to do this. Personally, I think if the Farm Machinery Board could explain to us the frequency with which they have handled dealer terminations in the last five years, I do not think that they have spent as much time on that topic as we have here today.

I could be wrong, but the point is I do not see legislative processes, judicial processes, being required. Yes, we do have dealers, and, yes, we do take care of our customers. That is why we are still in business after 51 years, but we are not directly affected by the Saskatchewan legislation only because we are not named by it.

Mr. Jack Penner: Mr. MacDonald, I appreciate the thoroughness in which you have made your case in your presentation. I think you bring forward a number of issues, as some others have here today, in areas that we should seriously be looking at before we pass legislation. I will certainly take these issues to my caucus for consideration after the presentations are finalized here today.

I am interested in the comments you make that you are not affected by the Saskatchewan legislation, and if there is some way that we can find to write legislation that is more minimal and still serve the purposes, then I would certainly recommend to my colleagues that we should take a look at that.

Secondly, I concur entirely with you, I would rather not be here considering this kind of legislation, because I agree with some of the wording that was used before by one previous gentleman. I think it borders on the draconian side of legislation because it is very restrictive in many ways, and we realize that. However, we also believe it becomes very protective of some of the smaller operators and the right of individuals to be able to market their products. Therefore if you as an industry can find a way to allow this to happen without legislation, we would be the first ones to applaud as legislators because many of us around this table believe that the less legislation we have, the better off we are all going to be able to function.

So I appreciate the thoroughness with which you have made your case here, and I will make the commitment to you that our caucus will review what we have heard here today, and if you as an industry can do the same thing over the next day or so or over the next few days–if you need some more time before this legislation actually goes in its final stage to the House, then if you would make that consideration for us in this province, I think that we would want to take a second look at this kind of legislation because I am very interested in what I am hearing you say.

* (12:20)

Mr. MacDonald: My quick comment would be, well, No. 1, there has been a huge amount of water under the bridge. There is a whole bunch of things that have gone on between dealers and mainline manufacturers over the years, and we as shortline manufacturers do not wield a lot of power with either group, so to speak. This process has been going on for a number of years, and that is how we have ended up where we are in South Dakota and Kentucky and Manitoba and Ontario and everywhere across North America.

I unfortunately have to admit that I will not be able to reverse that in a day or two, but I would ask that an industry which has been active

and very effective for 150 years in this province, that you not, in a very short period of time, put legislation in place which will affect us for the next 150 years. We need to take some time out to think about this before we put something in place that we cannot live with.

Mr. Jack Penner: Yes, 16.3 has been mentioned by virtually all presenters here today, and I think we will want to take another good hard look at 16.3 to see if we can find some way to strengthen the position of the shortliners and service to the customers. Quite frankly, that is what I look at more than anything. Service to customers, without requiring some court action, I mean, if we can accomplish that, I would suspect if I canvass the audience here today, then I think we would have come a long way in drafting a piece of legislation that would be more amenable.

Mr. MacDonald: That is an important section, I agree, that needs some further review.

Mr. Chairperson: Any other questions? Thank you, Mr. MacDonald. The next presenter is Mr. Dewar.

Mr. Don Dewar (Keystone Agricultural Producers): Thank you very much, Mr. Chairman and members of the Committee. We thank you for the opportunity to be here today.

Keystone Agricultural Producers would like to commend the Government for introducing this bill and in fact commend the Opposition for the unanimous support that it has received. As has been mentioned in the discussion, as president of Keystone Agricultural Producers, I am representing the consumers, the ultimate benefactors of this legislation, I think, and as a consumer myself we recognize the need to have the issue of dealer purity addressed in Manitoba.

This is a piece of legislation that we have in fact written letters requesting of the government to deal with as we see our access to some types of equipment being restricted. The equipment manufactured by our shortline companies is very often an alternative to the mainline equipment that offers competition, and as we know what competition does to a system, it helps control prices, and hopefully keep them affordable. We also look for the parts and service to be supplied by those dealers. If the dealer is to lose a shortline by being ordered out of it, then the producers would have no access, or a lot less access, to the parts and service that they had become used to receiving. As a system which we are rationalizing in the countryside, we see the dealerships getting farther and farther apart, so it mean all of a sudden your parts are more than 100 miles away. Many of the shortline implements that were manufactured on the Prairies were designed for our prairie conditions, and I think we need access to that equipment. The concern of our membership is that we continue to have reasonable access to a choice of equipment that we wish to use.

Without giving in to the details of the Act, I think we need our shortline equipment. These are the innovators. They are the people that have brought us the new technologies to the marketplace. They have brought us seeding technology. They have brought us harvesting technology, spraying technology, you name it, the mainline companies just pick up on it. It seems from using my tractor-seat logic, they pick up on it, manufacture it, kick out the other ones, and they will just proceed with marketing their line of it.

The contribution to the economy, maintaining jobs in rural Manitoba, whether it is through the dealerships, the shortlines, it is important to the economy, it is retroactive, it can revisit recent agreements that have been terminated. We realize the mediation process is going to reduce costs. If the system has less cost, it can in fact–we are the ultimate payers of the costs in the industry, and so we like to see that lessened.

We are happy to see the banks being able to get into the equipment leasing arrangements. It just allows one more financing option for producers who wish to use it, and so in a nutshell and knowing that time is short, I will stop there. I want to encourage the government and all parties to pass this legislation and enact this legislation for the benefit of Manitobans and for Manitoba's producers.

Ms. Wowchuk: Just simply thank you for taking the time to make a presentation to this committee today.

Mr. Jack Penner: Thank you, Mr. Dewar, for your presentation. I appreciate what you have said today and what your brief says. You are, of course, the organization that represents the customer. I think that in a relationship within an industry it is very important that that relationship be mutual, that there be a good understanding of the process and a good understanding of the services required and of the needs of both.

There is one section, 16.3, that has been continually mentioned in presentations here today. Would it be your organization's view that if that section dealing with the court's action could be accomplished some other way than through the courts, would your organization be amenable to that?

Mr. Chairperson: Excuse me, just before I recognize you, Mr. Dewar, for a response, the time being close to 12:30, we had previously agreed to adjourn at 12:30. What is the will of the Committee?

Ms. Asper: I would like to put forth if we could hear the last speaker between now and a quarter to one as a suggestion.

Mr. Denis Rocan (Carman): Yes, I concur, Mr. Chairperson. I believe that Mr. Buhler would be the last individual who is prepared to make a presentation to this committee. So in all fairness to Mr. Buhler, I think that we should take a few moments out of our busy schedules, as he has done for his.

Mr. Chairperson: I take it that it is the will of the Committee to continue and hear the last presenter after Mr. Dewar. Agreed? *[Agreed]*

* (12:30)

Mr. Dewar: I believe our organization would be supportive if there are changes necessary. We did not dwell on that section of the Act because it really does not affect us. We like the intent of the Act. That is what we have asked for. We were pleased with what Saskatchewan developed. This goes little bit further. It applies I think equity across the system to where do you draw the line between a mainline and a shortline, and I guess Saskatchewan does deal with that definition, but is that the one that we would want to use here? I think we need to have equity in the system, and if that can be achieved in some way to get the same result in a different manner, I think that is the main thing.

Mr. Chairperson: Thank you, Mr. Dewar.

We would like to call the final presenter, Mr. Buhler, forward. Please proceed.

Mr. John Buhler (Buhler Versatile Inc.; Buhler Industries Inc.): Seventy-five percent of all the farm equipment sold in Canada is imported either from the U.S. or somewhere else, mostly from the U.S. We are here today because I have received many calls and MacDon has received many calls from dealers saying: Why do I have to lose my Ford franchise or my Case franchise because I am selling your product? This legislation is being presented to stop exactly that.

Now, I like to think that there is just a little overkill here, because I do not think as a manufacturer–I am a short shortline manufacturer and I want to become big, but I have a problem with the stature. Now, we want to sell tractors in Canada, and I think you all know that. I think the way this bill is structured, it is really going to hurt the person that it is designed to protect. All we are asking is that the legislation here be changed to more closely reflect what has happened in Saskatchewan. I think it maybe seems like we are picking on just a few major manufacturers, but we are not. We are picking on the people that supply 75 percent to 90 percent of the industry and literally control and have a monopoly on the industry here.

I have just gone through a long bout of what "monopoly" means, and I think we should address this here. We can address it by making sure that the majors are not allowed to say to a dealer of mine, you can no longer sell an Allied loader because we have a Ford loader that you have to sell. Forget about the farmer paying a thousand dollars more for that loader. It does not make any sense. The shortline manufacturers in Canada are doing everything in their power to provide a low-cost, better quality product to the producers, and I think we are doing that. If we have legislation that is going to make it more expensive for us to operate in Manitoba, I do not

think that is a benefit to the farmer. So, really, all I am asking is that you make this bill a little closer to the Saskatchewan legislation. Thank you.

Mr. Chairperson: Thank you, Mr. Buhler. Questions? Mr. Rondeau.

Mr. Jim Rondeau (Assiniboia): What specific changes would you like to see made to this legislation?

Mr. Buhler: I would like to see a difference in how you describe the dealers, the difference between a shortline manufacturer and a major manufacturer. There are all kinds of things I do not like about the Bill, but if we could get that one item changed, I could live with it.

Mr. Chairperson: I see no further questions. Thank you, Mr. Buhler. Is there anyone in the audience who did not register who would like to make a presentation? Would you come forward to the microphone, sir? Do you have copies of your brief?

Mr. Jim Gladstone (Velmar Airflow Inc.): No, I do not.

Mr. Chairperson: Could you give us your name, please?

Mr. Gladstone: Jim Gladstone, representing Velmar Airflow Inc. of Elie, Manitoba, shortline manufacturers of grain and herbicide equipment. I was not necessarily prepared to speak today, but I could use my letter that I forwarded to the PIMA association as my presentation, with a few things I have thought about since I wrote it somewhat under pressure last weekend.

Mr. Chairperson: Go ahead.

Mr. Gladstone: We are aware of the pressures some mainline manufacturers have been placing on their dealers to remove competing lines. Legislation should be considered to protect both the dealers' livelihood and their ability to provide appropriate equivalent services that suit their specific market area. Any legislation passed should be fair to both vendors and dealers with the ultimate goal of providing the best equipment possible for the customer's individual needs. Considering the broad spectrum of vendors conducting business under The Farm Machinery and Equipment Act, we find flaws with some of the vagueness in Bill 20. Although we all supply equipment to dealers under this Act, we find the blanket legislation cannot be fair to all parties involved in this procedure.

I have special concerns with the following sections: 16.1, if the legislation applies to every dealership agreement, does this include verbal agreements? As a shortline supplier, I cannot recall one written agreement we have had with any dealer in the 17 years I have been with Velmar. So we are concerned. Does this apply to the verbal agreements as well?

The sweeping nature of the statement to cover all agreements signed previously and to future agreements, would this apply to an agreement that had just recently been terminated?

We have trouble with the broad definition of terminate: substantially change competitive circumstances. This could preclude a manufacturer from taking advantage of a developing market opportunity or a changing market situation. A case in point may be the recent advent of popularity in the heavy harrows, which precipitated us to start selling equipment to all the manufacturers of these heavy harrows or miss a portion of the market. Would that be considered as changing the competitive situation to our existing dealer network?

16.3. The majority of agriculture equipment manufactured my shortline manufacturers is for seasonal use. It could be conceivable that the delay of obtaining a court order to terminate the dealer agreement could conceivably mean a lost season of sales, which in some areas could be quite important to a company such as ours.

16.4. Many of us use bonuses, rebates, or volume discounts for larger accounts. Could this be construed as a vendor? We did discriminate on prices charged to some dealers.

16.4 (a) and (b). Could the term "similarly situated" be extended to mean the entire province, a region, a town, municipality?

As a shortline manufacturer, we often have entire regions with little or no sales. It is not uncommon for us to have three dealers in one town and then a hundred miles to the next dealer. Would they all be considered similarly situated? Also, could this include interprovincial or international sales? We have more so had trouble with Canadian dealers selling into the U.S. We are putting them at a disadvantage with the dollar difference. So just a little more clarification on that would be nice.

16.5 through 16.12. The dealers and vendors operating under The Farm Machinery and Equipment Act are retailing and both selling everything from complete tractor lines to items as small as individual bearings. In this broad and diverse range of businesses, sales volumes can range from a few thousand dollars to a few million dollars, depending on the companies and the relationships. This brings up volume concerns. For many small-sized vendors and manufacturers, their gross sales can be far less than those of a dealer. This is especially true in the light of dealership mergers and the formation of buying groups in some regions between dealers. To put the onus of obtaining an order of court to terminate a dealership agreement is an unfair burden on us as shortline manufacturers when you compare our gross sales figures with those of a dealer.

Furthermore, the involvement of a mediator may add cost and time to the resolution of a dispute. This could further the financial burden on a vendor in lost sales and a missed season. We have lost whole goods and parts invoices and in the worst case missing inventory all together.

* (12:40)

The legislation is being put forth with good intent to protect dealerships and their agreements with mainline vendors. If directed specifically to those parties involved, it could go a long way in alleviating the so-called dealer purity problems that we are facing.

As a shortline or small-sized vendor we feel it places unfair restrictions and possible obstacles to our company and others to successfully compete in today's market. We hope that with PIMA's involvement in this legislation that it will be given further consideration, specifically regarding the differences between mainline and shortline vendors and their relationship with dealers.

Mr. Chairperson: Thank you, Mr. Gladstone. Are you willing to leave your letter with us? The Clerk will get a copy from you. Are there questions?

Mr. Jim Penner: Thank you for your presentation. Mr. Chairman, the issue of discrimination is something I have some experience with. To the best of my knowledge it is not discriminatory to offer a volume discount for a large customer. If a person who exceeds a million dollars in sales gets an extra 1% rebate, as long as that is available to everyone, it is not discriminatory. So I do not think it applies. The discrimination clause here does not really apply to what you are doing, as long as it is available to everyone. The plan is available, the discount plan, the rebate plan is available to everyone, and it is not discriminatory.

Mr. Gladstone: I will speak about our program. It is available to everyone, but realistically I will go out of province. There are few independent dealers that could match the buying power of Saskatchewan Wheat Pool in terms of number of outlets, et cetera.

Mr. Smith: I think Mr. Penner hit exactly the point that I was curious about, the vendor incentives. In fact, if that is true, I was just wondering more or less on a legal opinion, I can certainly see the point that Mr. Gladstone is presenting. It is a key point and I would like to get some clarification on that, but we can get that at a later date.

Mr. Chairperson: Thank you very much, Mr. Gladstone. Are there any other presenters?

Seeing none, Committee rise.

COMMITTEE ROSE AT: 12:43 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Dear Committee Members:

Thank you for the opportunity to provide our comments on Bill 20, The Farm Machinery and Equipment Amendment Act.

In the time we have had to study the Bill, it appears to address the issues that were of concern to us in past discussions and consultations. We appreciate your willingness and openness to listen to our concerns.

Yours Truly,

Jennifer J. Fisk
Canadian Bankers Association