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Chair

Mr. Paul Steckle

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Tuesday, May 3, 2005

• (1535)

[English]

The Chair (Mr. Paul Steckle (Huron—Bruce, Lib.)): Ladies, gentlemen, we want to bring this meeting to order and begin what I trust will be a productive afternoon of effort in trying to find common ground on Bill C-27.

We want to begin the clause-by-clause consideration of Bill C-27. This is a fairly comprehensive bill. It's a consolidation bill, as we know, those of us who have been part of the process up until this time. We want to go through this not too quickly but as quickly as possible.

We have today 43 amendments that are before us. Some of them were very late coming in, so I can quite understand that you may not have had the opportunity to read them. As we get to the various clauses, we will give opportunity for explanation, if such is required.

I want to take us through this on a clause-by-clause basis.

Yes, Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): The Canadian Federation of Agriculture had submitted some recommendations, I was under the impression, almost ten days ago. Have you received them yet? Have they gone through translation?

The Clerk of the Committee (Ms. Bibiane Ouellette) : Everything I've received has been translated and sent to all the members.

Mr. Charlie Angus: Okay.

The Chair: Am I clear on this? As they have come in, the amendments—the ones that we have—have all been translated and at this point are before the committee.

As we move to the first clause, the short title, we're going to stand that for now, as we will look at it at the end of the work that we have begun here.

(Clause 1 allowed to stand)

(On clause 2—*Definitions*)

The Chair: On clause 2 and the recommendations put forward by the NDP, I have spoken to the member and we're going to stand those for the time being because there's a further amendment that had been put forward by myself under someone else's name, which is coming forward, and all of the amendments that Mr. Angus requested are included in that particular clause. So we will stand that for the moment with the exception of the amendment G-1, page

5, which amends the French text only. This is simply, I believe, a clarification to make it become identical to the English version.

Would Mr. Easter or someone on the government side like to move that?

Hon. Wayne Easter (Parliamentary Secretary to the Minister of Agriculture and Agri-Food (Rural Development)): So moved, Mr. Chair.

The Chair: Is there any comment or question on that? It's very straightforward. It's just a matter of a translation clarification. If not, then we will ask that you approve that particular part of clause 2.

(Amendment agreed to) [See *Minutes of Proceedings*]

(Clause 2 as amended allowed to stand)

The Chair: Now we go to the new clause, 2.1, which is amendment BQ-1. I'm going to ask Madam Rivard to speak to that amendment, if she wishes to do so, as I believe she has brought it forward.

[Translation]

Ms. Denise Poirier-Rivard (Châteauguay—Saint-Constant, BQ): Certainly. I'll read it to you and then explain why we are seeking this amendment or interpretation.

I move that Bill C-27 be amended by adding after line 6 on page 4 the following new clause:

2.1 Nothing in this Act shall be construed as derogating from the terms of the Framework Agreement concerning Food, Agricultural Input and Animal and Plant Health Inspection Activities in Quebec, entered into by the Government of Canada and the Government of Quebec in 1998.

An agreement with Quebec takes nothing away from the other provinces. That's why we are seeking this interpretation in the Act.

[English]

The Chair: Debate? Mr. Easter.

Hon. Wayne Easter: Mr. Chair, I'm speaking in opposition because what we're talking about in the government amendment is that it would be “binding on Her Majesty in right of Canada or a province”. That would, I think, cover off the argument Madame Rivard is indicating. I think it's better language, “Her Majesty in right of Canada or a province”.

The Chair: Is there further debate on that amendment?

Mr. Gaudet.

[Translation]

Mr. Roger Gaudet (Montcalm, BQ): Where exactly is this passage in Bill C-27? I'd like to compare this version with the previous one. I just want to be certain about the wording.

Where is this found in Bill C-27?

Ms. Denise Poirier-Rivard: You want to know what precedes this amendment?

Mr. Roger Gaudet: Yes.

[English]

The Chair: This now becomes clause 2.1, and you'll find the language given in amendment BQ-1.

Mr. Gaudet.

• (1540)

[Translation]

Mr. Roger Gaudet: Given that the agreement between Canada and Quebec was signed in 1998, how would this give the Quebec Department of Agriculture more authority to enter into agreements with Canada? I think this would be a good provision to add and in no way does it detract from the current bill.

[English]

The Chair: Mr. Easter.

Hon. Wayne Easter: Maybe Madame Rivard could explain the intent here.

As I understand your amendment, Madame Rivard, the framework agreement is actually made between the Government of Quebec and the CFIA for the Government of Canada, not the Government of Canada as such. It is made under the CFIA Act; that's what we're dealing with here. I don't even think we have the authority to put this in. It's a contract between the CFIA and the Government of Quebec, spelled out as you have here, but to have it in the legislation doesn't make sense.

The Chair: Madam Rivard, do you want to speak to that again?

[Translation]

Ms. Denise Poirier-Rivard: We really want to ensure compliance with the agreement between MAPAQ and the government.

Mr. Roger Gaudet: She's referring to the agreement signed in 1998.

Ms. Denise Poirier-Rivard: That's right, I'm referring to the agreement concluded in 1998 between the federal government and the Quebec government which takes nothing away from the other provinces. We want assurances that this agreement will remain in effect.

[English]

The Chair: Mr. Ritz.

Mr. Gerry Ritz (Battlefords—Lloydminster, CPC): Well, I think Madame Rivard's concern is that the government might be doing something by stealth through this legislation that would contravene this particular bilateral agreement. Do our experts from CFIA and Agriculture Canada have anything to say on that? Is there anything that would raise a red flag?

Mr. Mark McCombs (Head and General Counsel, Legal Services, Canadian Food Inspection Agency): There should be nothing in the legislation that would contravene the agreement. They're designed to be complementary.

Mr. Gerry Ritz: So this is not required, then, in order to safeguard any bilateral agreement Quebec has?

Mr. Mark McCombs: The agreement between the Government of Canada and the Government of Quebec is governed by the terms of the agreement, and it's under the contracting authorities.

The Chair: So it's not required, then?

Mr. Mark McCombs: Not in our view.

The Chair: We want to move on.

(Amendment negated)

The Chair: We have G-2, which is another one that's been put forward by the government, and we need someone on the government side to move that one.

Hon. Wayne Easter: I'll move, Mr. Chair, that a new clause be added after line 6 on page 4, clause 2.1, and that Bill C-27 be amended by adding the following, entitled "Her Majesty": "This Act is binding on Her Majesty in right of Canada or a province".

The Chair: Mr. Miller.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Mr. Chair, I presume anything like this has been run by a lawyer for the proper terminology and that type of thing.

Hon. Wayne Easter: Yes, it has.

The Chair: I should point out to the people who are here as our experts today that if you want to get in at any point in time, simply indicate that you want to speak to it and I'll recognize you.

Mr. Angus.

• (1545)

Mr. Charlie Angus: On clause 4, I had asked if the CFA recommendations had come in, and I don't see any of their amendments brought forward. One of the issues they had asked about was the need for putting in an appeal mechanism here under clause 4, regarding the fairness and conditions—

The Chair: We're not at that one yet. Let's finish the clauses as we go here.

Are there any questions on clause 2.1? If not, those in favour?

[Translation]

Mr. Roger Gaudet: Just a second.

[English]

Hon. Wayne Easter: Did you want me to explain it further, Mr. Chair?

[Translation]

Mr. Roger Gaudet: What is the purpose of including the words "Her Majesty in right of Canada or a province" in a provision of the bill? I put the question to the experts. What's the meaning of this? What's this all about?

[English]

The Chair: Mr. Easter.

[*Translation*]

Mr. Roger Gaudet: I wasn't asking the Honourable Wayne Easter. I was asking the experts.

[*English*]

The Chair: Ms. Stolarik or Mr. McCombs.

Hon. Wayne Easter: I'll just provide a short explanation first, Mr. Chair.

What it really does is establish that the federal government, its departments, the provinces, and crown corporations must abide by the requirements set out in the act. That's the short of it. Maybe the experts can go from there.

Ms. Kristine Stolarik (Executive Director, Liaison, Preparedness and Policy Coordination, Canadian Food Inspection Agency): I'll start, and then I'll get Mr. McCombs to supplement if required.

What this allows us to do is to harmonize it with other legislation we already have this requirement or provision in. We have it in our Health of Animals Act, we have it in our Plant Protection Act, we have it in our Meat Inspection Act, and we also have it in our Canada Agricultural Products Act.

Also, it would ensure that departments and agencies respect some of the provisions in here, like the safe water, for example. We have the Department of National Defence that does prepare food for its troops abroad, so that would be applicable to them. We have the Correctional Service of Canada, which has meat facilities that perhaps use water or prepare meats in accordance with the legislation, and also a crown corporation like VIA Rail, perhaps, which also prepares food to serve to its customers. It would bind them to some of the provisions of this act as well.

The Chair: Mr. McCombs, do you have anything more to add to that?

Mr. Mark McCombs: No, that was excellent, I think.

The Chair: Are there any other questions? Mr. Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Are they exempted from it if this does not pass? What exemption do they have? They have to follow the law the same as everyone else.

Mr. Mark McCombs: They have to follow the law, but there's a possibility it may not be binding on the governments of the provinces. There is an argument the other way. This is a new, modern drafting tool that is now being used with respect to ensuring they are bound.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: If this is a new, modern drafting tool, how is it in all these old acts? Were they updated?

Mr. Mark McCombs: Those are not the oldest acts. They're 1990 vintage. They're not the 1953 Food and Drugs Act.

Mr. Gerry Ritz: I understand that. So this has been put into every act since 1990, or whatever?

Mr. Mark McCombs: In the agricultural field, yes.

Mr. Gerry Ritz: But only the agricultural field.

Mr. Mark McCombs: Remember, the agency was created out of four separate departments, so—

Mr. Gerry Ritz: I understand that.

Mr. Mark McCombs: This Fish Inspection Act goes back—

Mr. Gerry Ritz: I would think it would be more mandatory to have it in health than in agriculture. If you're going to uphold the Canada Health Act, I would think this would be more binding through Health Canada.

Mr. Mark McCombs: The Food and Drugs Act is 1953.

Mr. Gerry Ritz: I rest my case.

The Chair: Do you have any more on that, Mr. Anderson?

Mr. David Anderson: Actually, I do, because the provinces have some jurisdiction in agriculture as well. I was just wondering if this impinges on their authority and their right. You're insisting this act will apply to them. Does it infringe on their jurisdictions?

Mr. Mark McCombs: The provision binds the crown in right of Canada as well as in the provinces—yes, it does.

Mr. James Bezan (Selkirk—Interlake, CPC): Does this provide the backdoor mechanism to allow provincial inspection?

The Chair: I wouldn't expect so.

Mr. Mark McCombs: No, it doesn't. The provision it's aimed at in particular is the safe water provision.

The Chair: Mr. Ritz, there is one more from you. Mr. Gaudet gets the last one.

Mr. Gerry Ritz: We'll take whatever time it takes.

Has this been okayed by the provinces? Are they all right with this?

Ms. Kristine Stolarik: We did have consultations with the provinces on Bill C-27, and it was raised—

• (1550)

Mr. Gerry Ritz: Yes, but this is an amendment, so it wasn't in there to begin with.

Ms. Kristine Stolarik: No, we didn't share the amendment with the provinces.

Mr. Gerry Ritz: That's the point. I mean, if you shared A with them, and then you add B, it's no longer A.

Ms. Kristine Stolarik: No, but we were talking to them prior to this bill being tabled. It was basically about different types of provisions that could come into play. This was one, as well as Bill C-80, when we had that. This provision was also in there, and they were fully aware of it then.

The Chair: Mr. Gaudet, this is the last question.

[*Translation*]

Mr. Roger Gaudet: Are you certain Quebec agreed to this amendment?

Ms. Kristine Stolarik: When we consulted with the provinces on the drafting of Bill C-80, they did not raise any objections.

Mr. Roger Gaudet: And how many years ago was that? I think you're going back a little too far. When Bill C-80 was first introduced in Parliament, I wasn't even an MP. I think that's true of a number of us. Bill C-80 was on the *Order Paper* in 1998.

Personally, I can't agree to this unless you go back and consult the provinces again.

Ms. Denise Poirier-Rivard: Nor can I.

[*English*]

The Chair: I am going to call the question.

Shall this clause 2.1, as amended as in G-2 under your list of amendments, carry?

(Amendment negated) [See *Minutes of Proceedings*]

The Chair: Now we move to clause 3. We have the government amendment G-3. This is on pages 9 and 10, I believe. We need someone to put that forward from the government side.

Mr. Easter.

Hon. Wayne Easter: I move that Bill C-27, in clause 3, be amended by adding after line 24 on page 4 the following, which is an exception clause, Mr. Chairman:

(2) Subsection (1) does not apply to farming activities that are not mentioned in paragraphs (1)(a) to (e), or to the operation of an establishment to engage in such farming activities.

I think that amendment really relates to a lot of concerns raised by producer groups that the CFIA would use licensing provisions to license farms. That's not the intent of the legislation.

What it would clarify.... It explicitly states that the licensing and authority does not extend to persons involved in farming activities or persons operating an establishment involving a farming activity, beyond those identified in the paragraphs I named. It addresses the concern we heard from quite a number of organizations on the licensing aspect—the concern that we might get into licensing farms themselves.

The Chair: Are there any other questions? Does the amendment carry?

Mr. Gerry Ritz: Mr. Chair, hang on a minute. We just got these this morning. A lot of us are tied up in a lot of other work today. If it takes an extra day or two to put this through, let's just slow down a little bit and let us digest this. I'm in as much of a hurry as anybody to see this off our plate, but we're not going to rush it through.

The Chair: Do you have any questions on this?

Mr. David Anderson: Mr. Chair, I have a question. On (b) there, it basically ties the preparation, which can include the planning and growing and harvesting, I would assume, of anything that goes across provincial boundaries. I don't think this amendment deals with some of the concerns we have, but virtually everything goes interprovincially. There's very little that's done entirely within the province where it's been created and grown and prepared.

I suppose I don't have the same assurance. I have the same concerns about this applying to farms, but I don't have the same assurances Mr. Easter seems to, that this is going to do it.

The Chair: Mr. Easter.

Hon. Wayne Easter: I read what it says, which is the “preparation of an agricultural or aquatic commodity for export or interprovincial trade”. What you're dealing with there is going through an establishment that is preparing it for trade. That really takes it out of raw, primary production as such and moves it into the area where you are preparing goods to be traded, either interprovincially or internationally.

Maybe the experts want to.... Kristine.

● (1555)

The Chair: Let's allow Ms. Stolarik to respond.

Ms. Kristine Stolarik: Yes. I would just refer you to actually the definition that we're using with it; it's “agricultural or aquatic commodity”. If you go to that definition in clause 2, it means:

(a) an agricultural product in respect of which the Canada Agricultural Products Act applies;

(b) fish or a marine plant in respect of which the Fish Inspection Act applies;

(c) food; and

(d) an animal or meat product in respect of which the Meat Inspection Act applies.

This licensing clause is for our actual registered establishments in which food is prepared.

Mr. Gerry Ritz: But (d), under—

The Chair: Mr. Ritz, finishing off, then Mr. Angus.

Mr. Gerry Ritz: In response to Mr. Easter's point, paragraph 3(b) does talk about processed materials, but paragraph 3(d) actually speaks to raw materials, “the sale of an agricultural or aquatic commodity”. It doesn't say it's prepared. It could be raw. It could be bulk. It could be anything. That runs the whole gamut of anything that's produced that is classed as agricultural or aquatic. So it's almost omnibus.

The Chair: Mr. Angus, and then I'm going to ask Ms. Stolarik to respond to that.

Mr. Charlie Angus: When we go to the definitions in clause 2, it doesn't say “food for sale”, it just says “food”, period. As far as I see, it says “food; and (d) an animal or meat product in respect of which the Meat Inspection Act applies”. It just says “food”; it doesn't say it's food for sale.

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik: Yes. We are using the definition of “food” as defined in the Food and Drugs Act. I'm looking to see if one of my officials here can get me that definition. We'll read it out.

Mr. Charlie Angus: Is that a definition for trade or for just preparation of food to be sold?

Ms. Kristine Stolarik: Sorry. Thank you. It just says ““food” has the same meaning as in section 2 of the Food and Drugs Act”. I think if we go back to that definition, it is for preparation and sale.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: I would argue that point, Mr. Chair. On page 3, under “prepare”, you have “treat”; that means spray it, or fertilize it, or treat it with a seed chemical. “Grow” means, of course, that. You plant and you grow it. You harvest it, handle it, grade it, label it. That has absolutely nothing to do with food yet, at that process. This is still handling and working with the raw material that we produce as grains, or corn, or whatever. So it's almost omnibus in all that it would cover. You could argue that in court forever.

The Chair: Mr. Easter.

Hon. Wayne Easter: Mr. Chair, we can see a shadow under every rock, that's for sure, if we want to, but I think we very clearly stated.... Why we're coming in with a government amendment on an exemption here is to try to take away that concern about licensing. There is no attempt....

This legislation is about the safety of food and the regulatory authority that the CFIA has to do. The CFIA is not interested in licensing firms, nor is the government interested in licensing firms. Certainly the agency needs the authority if it's going to do its job, the authorities that are outlined in clause 3. What we're trying to lay out here is specifically what the intent is by putting in the exemption amendment. It's not the intent to license firms.

The Chair: Is there anything more Mr. McCombs wants to bring up?

Mr. Mark McCombs: Just for the members' interest, remember that section 95 of the Constitution is a shared jurisdiction with the provinces, and farming would be shared with the provinces. In terms of licensing a particular farm, it would generally be under provincial jurisdiction, because it deals with property rights. For the government to be able to do this, we would have had to do a lot more work with the provinces, and the provinces would have had to bring in similar legislation to match them up.

There was never any intention to license farms under this provision. Frankly, we would have some difficulty in trying to argue it, if it were the intention.

The Chair: Mr. Anderson.

Mr. David Anderson: First of all, licensing facilities has nothing to do with property rights; it doesn't.

Secondly, whether the government claims the intention of this legislation right now is to license farms or not, clearly it gives them the ability to do that.

Thirdly, there is a move towards licensing farms. Environmental farm plans are being pushed, and that will be the beginning of putting some licensing restrictions and requirements on farms.

To say this bill does not touch on that is to mislead people. If the government is going to try to do it, let them do it.

It says: “‘registered establishment’ means an establishment or a station registered under an Agency-related Act.” The government has the authority to force farmers to register, with this the way it sits. Mr. Ritz's points were well made. It talks about growing, harvesting, treating—all the things that farmers do on their farms. This amendment does not address the problem the agricultural organizations have brought to us and said is a concern for them.

• (1600)

The Chair: I think we've had considerable debate.

Mr. Angus, have you anything to add that might—

Mr. Charlie Angus: Would there be wording that would get us through this impasse?

The Chair: I think if we expect this legislation to be perfect, then we're going into this thing wrong, but we want to make it as right as possible.

Mr. David Anderson: Absolutely.

The concern has been that this bill goes too far in its requirements on both producers and other agriculture-related activities. The concerns about the oversight and those kinds of things are what we've heard continually from people.

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik: I want to add too, though, that as you go through this provision of clause 3, once we start getting into establishing classes of licences and also the conditions on the licence I think you'll bring some clarity to this. The intent is to take the existing things we register and license and collapse the dual system into one comprehensive licensing scheme, whether it's for a permit, a registration of an establishment, or a licence to allow someone to operate an establishment. As we go through the rest of the provisions, perhaps clarity will come to this first provision on where we draw the line.

I guess I'll just leave it at that for now.

The Chair: I'm going to ask Ms. Ur, and then I think I'm going to propose something.

Mrs. Rose-Marie Ur (Lambton—Kent—Middlesex, Lib.): That being said, if this will help move the procedures on here, can we put a hold on this clause and look at what Kristine has indicated? Then we might better understand whether we support or deny this.

The Chair: That's my point. I think at this point I'm going to take the chair's liberty to stay this clause until we have time to go through other aspects of this bill.

(Clause 3 allowed to stand)

(On clause 4—*Minister may attach conditions*)

The Chair: Now we move to amendment BQ-2. That's on page 11.

Madame Rivard, do you want to move that one forward, or Mr. Gaudet?

[Translation]

Ms. Denise Poirier-Rivard: Yes. I move that Bill C-27, in clause 4, be amended by replacing lines 25 to 34 on page 4 with the following:

4. (1) The Minister may attach conditions to a licence in accordance with the regulations.

We wish to amend the wording of this provision because we're concerned that this clause, as originally worded, grants too much authority to the CFIA.

[English]

The Chair: Okay, we have Madame Rivard's commentary. Does anyone else want to speak to it?

Is there anything from the department—our experts?

Hon. Wayne Easter: Could the Bloc explain why they see this as necessary?

I'm just trying to find it here, Mr. Chair.

The Chair: It's on subclause 4(1), taking out that whole subclause and putting in what Madame Rivard has proposed: "The Minister may attach conditions to a licence in accordance with the regulations".

That is all you would want in there—is that correct?

[Translation]

Ms. Denise Poirier-Rivard: Yes.

[English]

Mr. David Anderson: It takes it away from his opinion and just ties it to the regulations.

The Chair: Is that any problem to the experts?

Mr. Mark McCombs: Let me just add that if the committee decides to pass this one, they'll have to be cognizant that they'll have to match regulatory conditions to each one. We may have to expand the regulation-making enabling provisions to ensure we haven't lost anything, because effectively that matches the two. We may need, in clause 56, an amendment to add to the list to make sure we haven't lost anything. Otherwise, I'd just give notice to the committee that we may have to look at some matching when we hit clause 56.

The Chair: That being said, I think we've had some clarity on that.

(Amendment agreed to)

(Clause 4 as amended agreed to)

(On clause 5—*Licence suspension or revocation*)

The Chair: We now move to Bloc amendment number BQ-3, on page 12. It's in clause 5, which is on page 5 of your bill. It's a fairly lengthy amendment.

Madame Rivard, do you move it? Do you want to speak to it?

• (1605)

[Translation]

Ms. Denise Poirier-Rivard: Yes. I would like to add two provisions to the bill. The first would allow producers to receive an advance notice and to make changes before their licence is revoked.

The second would allow producers who feel their rights have been violated to challenge or appeal the decision to revoke their licence.

[English]

The Chair: We've heard her comments on it. Does anyone want to comment on it? It's a fairly lengthy amendment.

Yes, Mr. Angus.

Mr. Charlie Angus: I think the overall issue here is that we don't have any appeal mechanisms anywhere in this bill, and it's a reasonable request. My concern would be advance warning. If you were in an emergency situation and you had to shut somebody down, you should have the power. But whoever is receiving this should have a guaranteed right of appeal.

That's my concern with this amendment: that there be a way to ensure that we maintain the powers in an emergency situation but also give that guaranteed right of appeal.

The Chair: Mr. Easter.

Hon. Wayne Easter: I think in the government amendments—that is G-4, Charlie—we do try to establish a review of the decision.

I guess my question really would be to the witnesses, especially as it relates to her paragraph 5(2)(a). I agree there should be a review mechanism of some sort, and I think we established it through the government amendments, but if you're going to be notifying...

Are there any implications in the Bloc amendment for the ability of the agency to do its job? The bottom line here is that the agency has to have the authority to do its job.

The Chair: Do the experts here today have any comments on how this might impact, either negatively or positively?

Mr. Mark McCombs: The use of the term "immediate risk" will create a problem, for example, if you may as a result of eating a product not become ill immediately, but there could be a long-term exposure. If a particular activity gives you cancer in five years, but not as a result of this, it's not an immediate risk, because the risk—

[Translation]

Mr. Roger Gaudet: [Editor's note: Inaudible]

[English]

Mr. Mark McCombs: I'm not sure what the intention of the "immediate risk" piece is, in terms of the amendment, but that would be one thing.

In terms of the notification in order for the minister to take action, in administrative law principles notification would have to happen in any event; otherwise, the decision could be reviewed by the courts and struck down immediately.

The Chair: Okay.

Mr. Mark McCombs: As the parliamentary secretary has mentioned, the government amendments have attempted to address that in clause 5 with the review mechanism.

The Chair: Yes, Mr. Drouin.

[Translation]

Mr. Claude Drouin (Beauce, Lib.): Thank you, Mr. Chairman.

I'd like to clarify something, because I'm a little concerned about this amendment. Does this mean that an unscrupulous producer could, since he would receive a notice, continue to violate the regulations and wait until he receives a notice before taking remedial action? That kind of behaviour could adversely affect the industry as a whole. When any kind of doubt prevails, it could be damaging to farmers.

Personally, I have a number of reservations about this amendment because I'm worried that some producers will take advantage of the situation. I'm certainly not implying that the majority of producers would, but there could always be exceptions. Someone could always choose not to comply, knowing full well that he could receive a notice and then subsequently take steps immediately to remedy the situation. I'm very worried about that possibility, Mr. Chairman.

• (1610)

[English]

The Chair: Does anyone else want to get in on this one?

Mrs. Ur.

Mrs. Rose-Marie Ur: I understand where the member is coming from, but I'm wondering if "has been notified in writing" and "adequate opportunity to remedy" will prove to be the opposite of what we're trying to create here—to enhance quick action by taking those measures—and will instead delay quick action. I'm relating it to the avian flu epidemic. They wanted everything to happen ASAP. I don't know whether it will take too much time if someone is notified in writing. We want it to work more quickly, and I don't know whether that will happen or whether this will delay any action by going this way. It's a question.

The Chair: There was mention that in G-4, which is the amendment that is also dealing with clause 5... I haven't looked at that. I'm like most around this table; I haven't seen those yet.

Does that deal with this matter, as well, in a positive way, Mr. Easter?

Hon. Wayne Easter: Sorry, what?

The Chair: Does G-4, which is all part of clause 5 and the amendments the government had, deal with this issue, speak to this issue?

Hon. Wayne Easter: It deals with the review, but I don't believe it goes as far as Charlie would prefer. It sets up a review process, and there's always the option of the courts as well. That's what it clarifies to do.

Sorry, Gerry.

The Chair: Mr. Ritz.

Mr. Gerry Ritz: I'm looking at G-4, and I think it could be made to cover off both entities. The concern I have is that we have the tail wagging the dog. The president is giving the minister direction. I think that if we reversed the way that's worded, if we reworded the last recommendation to read, "After receiving the minister's recommendation, the president will confirm, reverse or modify the original decision"—the minister's decision as the appellate, or if we have a tribunal, whatever—that will do it. If we reverse the onus from the president to the minister, then I think we'd get somewhere. The way it's written here it has the president directing the minister,

and I think that's wrong. There is no recourse at all in that regard. I think that if we flip those two—

Hon. Wayne Easter: I think you're seeing it the direct opposite, Gerry. What the president does is review the decision and provide recommendation to the minister within a certain period of time. Then the minister makes the ultimate decision. "The Minister may confirm, reverse or modify the original decision, and the Minister's decision under this subsection is final." So the minister is the final authority here, but the president is making a recommendation too.

Mr. Gerry Ritz: I understand that, but the way I read it, the minister suspends or revokes a licence. Actually in reality it would be the president who would do that, not the minister, and then he does it under the auspices, or on behalf of, in the chain of command. The way it's written just doesn't work for me. I think we have to reverse those roles.

I'm not surprised you see it opposite, Wayne.

Hon. Wayne Easter: When I see sunshine, I know you see darkness.

Mr. James Bezan: I guess I don't have a major problem with what the government's recommendation is here, except that it's missing the one thing that the Bloc is trying to bring forward, and that is the whole appeal decision process. That has to be added in to clause 5 as a subclause (6) to give a licence holder who has had his licence revoked the chance to appeal that suspension. That has to be done through an independent body, and we need to define what that body is. It was requested time and time again from almost everybody who presented to us that there had to be an appeal process. This is where it comes into play and this is where we have to get that recommendation in there.

The Chair: Mr. Eyking.

Hon. Mark Eyking (Sydney—Victoria, Lib.): On the intent of this whole amendment, what I'm concerned with, and I think Rose-Marie brought it up, is that if you have an industry and you have the situation that a certain part of the industry across Canada has a problem and the minister has to isolate that problem—being a farmer, I wouldn't want anybody telling me to stop my operation or change it—for the betterment of the industry sometimes, if there's an appeal process, it could shed light on how the industry is confining a problem or a risk to society. It could hurt the whole industry for a farmer to have the right to continue his operations if it was a detriment to the industry or the food. It's very serious. If by an amendment you're going to let the farmer continue his operation and he's harming the industry or the health of people, it could be disastrous. Maybe I'm reading it wrong, but if I read it that way, one has to be careful about putting that in there.

• (1615)

The Chair: Mrs. Ur, and then I go to Mr. Angus.

Mrs. Rose-Marie Ur: Subclause (2) under clause 5 reads:

If the Minister suspends or revokes a licence under subsection (1), the licence holder may make a request to the President in writing for a review of the Minister's decision.

So would that not be an appeal process?

Mr. James Bezan: That's only one person.

Mr. Gerry Ritz: But that speaks to my point. The president works for the minister. How does he go to the minister and have any clout to say “You’re wrong here, Jack, fix that”? If you reverse the roles, then you actually have a chain of command.

Mr. James Bezan: You need to have a little bit of that independence removed out of the CFIA, have that independent body, because we’re not just talking about farmers here either. We’re also talking about—

Mr. Gerry Ritz: Processors.

Mr. James Bezan: —processors coming downstream. The one thing we talked about is this super-inspector coming in. You might have this guy who’s been inspecting hogs the whole time walk into a fish plant and shut it down without really having the proper education.

Hon. Wayne Easter: This story has been going around for quite a while about the super-inspectors. Look, they may inspect two or three things, but they’re not going to cross all over the place. That’s a little bit of misinformation that’s out there.

I would ask Mark maybe to respond on this issue, which is really delegation of decision-making authority and, as you call it, chain of command.

Mark, can you speak on that?

Mr. Mark McCombs: What we’re talking about is the clause 3 authority of the minister to license, which generally will be delegated to officials, because we all know that ministers do not make the individual decisions for thousands and thousands of licences. So that section would be delegated, and the decision of the minister that has been delegated would be then reviewable by the president, and the president would be actually a higher authority than the person who made the decision, and then it reverts back to the minister, who would then make the decision. If you understand—

Hon. Wayne Easter: The buck stops here.

Mr. Mark McCombs: The minister’s desk is the final level for the decision-making, because generally decisions with respect to licensing—as to who gets a licence, who gets a registration—are done by officials because they’re generally routine.

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik: I just want to give you some stats on the number of licences that we do suspend, revoke, or cancel a year. Last year we made it up to five. Three of them were because the companies went bankrupt, and we just had to cancel the licences because they were no longer operating. So there aren’t hundreds and hundreds of these suspensions and cancellations that happen.

Also, on this clause, this G-4, the intent would be as well for the minister and the president to discuss an independent review mechanism for the administration of such requests.

The Chair: As your chair, I went to the government amendments, hoping that we might be able to shed some light on whether one might be able to help the other, complement the other, and maybe eliminate one with the other one, or whatever. I’m not sure we’ve been able to do that with what we’ve done, but I think what we need to do, in fairness, is to go back to the BQ amendments and determine whether or not we want to continue with that line of thinking or whether we.... We’ve had some thought on the other. Can we

accommodate both? Can we accommodate only one, or a combination of both?

Yes, Mr. Angus.

Mr. Charlie Angus: I think these two amendments taken together get to the crux of what we’re trying to balance here, which is public safety and giving the authority to CFIA to move in when they have to but also giving our producers some security. Unfortunately, I don’t think the Bloc amendment allows the CFIA the authority they would need in an emergency, so I couldn’t support that. But in terms of this other possible amendment, I don’t think it responds to what the producers have been saying. I think it would be fairly straightforward to say that if someone loses their licence, they should be able to appeal to.... I think we need an independent panel. To say that they “may make a request” to the minister, well, they may get a letter in response saying sorry, tough luck, and that’s the end of their appeal.

Producers are very concerned about this, so we need to give them the assurance that they’re not going to be unfairly targeted. It has to be rewritten. There has to be an independent appeal process.

● (1620)

The Chair: Mr. Gaudet, then Mr. Ritz.

[*Translation*]

Mr. Roger Gaudet: Mr. Chairman, if I understand the amendment correctly, the proposed new subclause 5(2) states the following:

(2) Except where a situation exists that poses an immediate risk to human or animal health, [...]

The word “except” implies that if a problem is detected, the Minister is entitled to revoke the licence. If the situation poses an immediate risk to human or animal health, the Minister can move immediately to revoke the licence. However, as far as risk goes, we can’t be thinking about cancer, whether five years ago, or five years from now, because we’re all going to die some day. Everything we eat can cause cancer. So we have to stop thinking along those lines. In the past, cancer wasn’t a consideration, and everyone eventually died anyway. That’s true today, even though cancer is a concern.

[*English*]

The Chair: Mr. Ritz, and then Mr. Easter.

Mr. Gerry Ritz: The example that Ms. Stolarik used that they only had to change five licences last year—decommission them, I guess, would be the proper word—is fine, but this also talks about revoking a licence. How many times did you do that? I know of a number of those.

So clause 5 is a smoke screen, because this goes a lot further than just decommissioning a licence. It's also a revocation. And I've seen that happen in my riding with Christmas trees that were imported in from Nova Scotia. They were fumigated there, shipped out to my riding, and two months later the CFIA came around and started scooping everything that wasn't already sold and said the licence was revoked. This guy was in the middle of his harvest, and it turned out there was no problem at all. He lost the whole year's sales and he has nobody to complain to. This is near and dear to my heart, and I know that gentleman would be very upset with me if we did not have a timely, comprehensive review process.

This is a real stumbling block in the whole bill, so we really have to come to grips with this, guys.

The Chair: Mr. Easter.

Hon. Wayne Easter: I just have a point on Charlie's point when he mentioned producers. We're not talking about licensing producers here. We're licensing operations. I think in Gerry's point that's correct, but this is not licensing producers per se. Go back to the licensing definitions. I think we're talking about two different things.

There is always the appeal to the court system, and there are other agencies, Mr. Chair, although we don't have it in here. We have a review process by the president and by the minister in the government recommendations, but there certainly are other agencies that have other appeal authorities that you can go to that we can look at. It's going to cost money, and we would need to make that recommendation as well.

The Chair: Mr. Miller.

Mr. Larry Miller: I would suggest, Mr. Chairman, due to all the discussion on it—I think there are some good points on all sides—this should go back and come back with the proper wording. We're going to waste half the meeting on this. We're already going to have some that are going to come back to the next meeting, so why not this one?

The Chair: You're taking my thoughts away.

Mr. Easter, yes.

Hon. Wayne Easter: Just so we're clear, what is the request? Is it to go beyond in the review process what we have recommended as the government in clause 5? Is that what you're saying?

Mr. Larry Miller: No. What I'm suggesting, Mr. Chairman, if I may, is that we need comments from all parties here to get a different wording. I think an amendment is needed.

The Chair: There are people here today who are trained drafters. I believe we do have some clear understanding of where we want to go. Regarding what Madam Rivard has put forward in her amendments, we understand what she wants to do. Perhaps we could find accommodation in one.

Shall we just stand this today? Shall we stand both the government and the Bloc amendments for today and come back with what might be an accommodation of both your amendment and the government's amendment so that we can perhaps abbreviate the amount of language in the bill and still accomplish what we want to do? Are we agreed to doing that?

Mr. Gerry Ritz: Then there would be an amendment that speaks to that same issue as well on page 16.

The Chair: Okay, we'll get to that.

Just be very quick. We want to move on.

Mr. James Bezan: I know. I'm just saying that this is probably one of the key, critical points of this bill. If you want buy-in from members around this table and to represent the issues that were raised by the industry, we have to make sure there's a proper appeal mechanism clearly defined.

• (1625)

The Chair: We understand that, and I think that's fair.

Okay, are we agreed to stand that one?

(Amendment allowed to stand)

The Chair: We will move on to clause 5.1. The NDP amendment number 5, which is on page 16, deals with clause 5.1. Does everyone have that one? It is dealing with the same area that we've been dealing with.

Mr. Gerry Ritz: Yes, it's the same thing, different amendment. I think you have to lump it in with the other two, Mr. Chair, and try to compile all three.

The Chair: Okay, shall we stand that one as well. Is it agreed?

(Amendment allowed to stand)

(Clause 5 allowed to stand)

(Clause 6 agreed to)

(On clause 7—*Presentation of imports*)

The Chair: Clause 7 is an NDP amendment, which is number 6, page 17, in your list of amendments.

Are you going to move that amendment?

Mr. Charlie Angus: Yes, I am.

The Chair: So moved.

Is there any debate? Mr. Easter.

Hon. Wayne Easter: I haven't read it yet, Mr. Chairman. What page are you on?

The Chair: The amendment is on page 17, NDP-6.

Hon. Wayne Easter: I was just making some notes on the last one.

The Chair: Don't feel badly. We're all struggling to keep up with things here.

Hon. Wayne Easter: It says "deleting lines 24 to 29".

The Chair: I think we have to attribute that to the lateness of the material coming to the clerk. I don't think we want to have the clerk held responsible for this.

Mr. Gerry Ritz: Down here it only talks about being for export or interprovincial trade. Right away, you can't do provincial inspections, under today's laws.

Hon. Wayne Easter: Mr. Chair, could Mr. Angus explain that?

Why would you want to basically take out subclause 7(2)? That's your intent, I think, Charlie.

Mr. Charlie Angus: We want to make sure that we have in there that this agency has the powers and duties similar to the agency, our agency. We just want to know it's guaranteed in there who we're dealing with here.

Mrs. Rose-Marie Ur: It's just deleting it. It doesn't say anything else.

Ms. Kristine Stolarik: Just for clarity on that, the reason this clause is in here is the agency actually has some entities called the import service centres, which are located in our airports, that deal with pre-clearance of imports coming in. We just wanted to give ourselves greater clarity that since we don't have the actual inspection of imports at points of entry—that has been transferred to CBSA—our import service centres still have a mechanism to do imports and to pre-clear the imports coming in through those centres.

Mr. Mark McCombs: Almost all the materials coming through borders use the import service centres. This amendment in effect would eliminate import service centres, and everything would have to be physically presented to an inspector at the border.

The Chair: Okay, we can do one of two things: you can withdraw it, or we can vote on it.

Mr. Charlie Angus: I'll withdraw it.

Mr. Gerry Ritz: This actually expedites....

The Chair: The amendment is withdrawn.

(Clause 7 agreed to)

(On clause 8—*Arrangement*)

The Chair: On clause 8, we'll move to amendment BQ-4 on page 18.

Mr. Gerry Ritz: Hold on just a second.

The Chair: BQ-4 on page 18 of your list of amendments.

[*Translation*]

Ms. Denise Poirier-Rivard: We want to add a confidentiality clause with a view to protecting personal and commercial information pertaining to producers...

• (1630)

[*English*]

The Chair: It's clause 8, on page 6 of the bill.

Mr. Gerry Ritz: Oh, you're just taking clause 7 as one. You're not doing the points.

The Chair: Do you move that amendment?

[*Translation*]

Ms. Denise Poirier-Rivard: Yes.

[*English*]

The Chair: Okay. Now we're ready for you to comment.

[*Translation*]

Ms. Denise Poirier-Rivard: I'll start again. We want to include a confidentiality clause with a view to protecting personal and commercial information pertaining to Canadian and Quebec producers.

[*English*]

The Chair: Debate.

Anyone? Anything from the experts? Is there any concern on your part in terms of moving with this amendment?

Ms. Kristine Stolarik: We're not sure what "commercial information" means.

Mr. Gerry Ritz: I would think—

[*Translation*]

Ms. Kristine Stolarik: Could you define "commercial information" for us?

[*English*]

The Chair: Perhaps we shall allow Madam Rivard to give her definition. Then we'll ask Mr. Ritz to give his—what he interprets as the definition of that.

Madam Rivard, do you have a definition on what you mean by...?

[*Translation*]

Ms. Denise Poirier-Rivard: That would be information such as specific recipes that should not be disclosed, such as the recipe for making cheese.

[*English*]

Mr. Mark McCombs: It's akin to what the definition of trade and commercial information is in the Access to Information Act.

[*Translation*]

That particular legislation contains a definition for commercial information.

Ms. Denise Poirier-Rivard: The aim is to protect...

[*English*]

The Chair: Does that give you any concern? It does give you concerns.

Ms. Kristine Stolarik: I think if we could put in a suggestion that it be perhaps something in line with the Access to Information and Privacy Acts for greater clarity, that the arrangements or the information had to be collected, used, or disclosed in accordance with those acts, perhaps that may alleviate the concerns.

The Chair: Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair.

To the witnesses, is this not already protected? I have not heard of instances—and CFIA has been operating for quite a while—where commercial information, in terms of making a cheese or whatever it may be, was divulged to other authorities. So I'm operating under the assumption it's already protected. If people who work for the CFIA provided secrets of a company to somebody else, I'm sure they'd be charged under some law, would they not?

Mr. Mark McCombs: Yes. The agency employees are required to keep information like this confidential.

I also should indicate that this will have an impact on the proposed agreement with MAPAQ, in terms of the information-sharing that is being proposed by MAPAQ in the agreement. If this provision comes in, we wouldn't be able to enter into the agreements with MAPAQ.

Hon. Wayne Easter: Explain MAPAQ.

[Translation]

Mr. Mark McCombs: MAPAQ is the acronym for the Quebec Department of Agriculture, Fisheries and Food.

Ms. Denise Poirier-Rivard: I don't understand how the addition of this confidentiality clause will create problems with MAPAQ.

Mr. Mark McCombs: A proposal from MAPAQ calling for an exchange of information on the identification of animals moving across the border between Quebec and Ontario or another would effectively preclude the possibility for the Agency to supply information to or accept information from MAPAQ.

Ms. Denise Poirier-Rivard: I don't see what animals have to do with any of this.

Mr. Roger Gaudet: If we bring in a cow from Alberta and eat it here, that will solve the problem.

Mr. Mark McCombs: Commercial information is information about your cows and your hogs.

[English]

That is "commercial information", as defined in that wording.

[Translation]

Ms. Denise Poirier-Rivard: I'm still not clear on this.

Mr. Roger Gaudet: If a person wants to bake a blueberry pie, he follows a recipe. Blueberry pie from the Lac-Saint-Jean region that my friend Claude is acquainted with is a very special pie with which residents of the Beauce are not familiar. Its a unique specialty of the Lac-Saint-Jean region. Beauce residents have their own delicacies, whether it be maple syrup or some other product.

And by the ways, ours is as good as theirs.

[English]

The Chair: Mr. Ritz wants in here on this one.

Mr. Gerry Ritz: Thank you, Mr. Chairman.

The concern I have with this particular paragraph is it doesn't speak to the confidentiality or best interests of somebody other than the agency. Certainly the clarification or access to information and so on is good. I think it would be very helpful. There are a couple of things I need. My concern was the way the CFIA handled the so-called tainted feed samples. The disclosure was by media under access to information. So how protected is this information? That story became a firestorm that really put our feed mills and the whole BSE crisis into a tailspin, which didn't need to happen. So we need to safeguard this disclosure of information you're talking about. Access to information did not help the industry in that case. That loophole has to be fixed.

I'm also very interested in your definition of what a "prescribed organization" is, because in that particular case that organization sits right behind you there. It wasn't those gentlemen, but others in the fifth estate. So what's your definition of a "prescribed organization"?

• (1635)

Mr. Mark McCombs: The use of the term "prescribed" in this clause means there has to be a regulation brought in that would establish what organization that would be.

Mr. Gerry Ritz: Is that done somewhere further in the bill?

Mr. Mark McCombs: It would go through the regulatory—

Ms. Kristine Stolarik: It's a regulation-making authority.

Mr. Mark McCombs: It's a regulation-making authority. The word "prescribed", when it's used in legislation, means it has to be prescribed by regulation. After the legislation would pass, a regulation would have to be made going through the gazette process, giving notification to interested persons that this particular organization, such as the Canadian Cattle Identification Agency, ATQ in Quebec—

Mr. Gerry Ritz: And you would list specific organizations—

Mr. Mark McCombs: That would be receiving the information.

Mr. Gerry Ritz: Subject to but not limited to—you know, that type of legal jargon.

Mr. Mark McCombs: No, we would list the organizations, per se.

Mr. Gerry Ritz: Okay. So if you're not on the list, how do you get on?

Mr. Mark McCombs: You would propose to the government that you be added to the list. That would then go through the gazetting process and the cabinet approval process. Finally, it would become a regulation.

Now, to answer your previous question, the concern you're expressing is with respect to the use of section 20 of the Access to Information Act, which does protect commercial information and trade secrets. Section 20 is the provision that has to be respected when information is released on an access request.

The Chair: I'm not sure where we're going with this.

Mr. Easter.

Hon. Wayne Easter: On Mr. Ritz's point, I know of instances, not feed samples but in other commodities, where, under access to information, information got out on 100 samples. A few of them were bad. They were pilot projects and the information got out. As a result, the individual's particular product was almost blacklisted.

There has to be a way to prevent that from happening.

Mr. Mark McCombs: Under the process in section 20 of the Access to Information Act, when the head of the institution decides that the information doesn't meet the requirements of section 20, and therefore should be released, the access coordinators are required to give a section 44 notice, under the act, to the company or to the individual that they're going to release information. The company or individual at that point has the right to give notice back that they disagree with this. They can make an application to the Federal Court under the Access to Information Act to stop the information from being released. Once that notice is delivered to the Federal Court, that information cannot be released. If the company or the individual decides to ignore the letter from the access coordinator, the information will be released.

The CFIA as well as all government departments have a number of cases before the Federal Court on access to information where a company believes the information shouldn't be released.

So that's the process.

The Chair: Mr. Angus.

Mr. Charlie Angus: In the context of this bill, I can't see that you can write in a special provision to override the Access to Information Act. The act exists, and it's separate from this bill. Any government that came out and said we're going to exempt a certain industry from any requirements of the Access to Information Act would be roasted alive by the public, as well they should.

It's separate from this bill. I don't think it has anything to do with this bill.

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik: I just want to bring members' attention back to clause 8, which outlines the authority to enter into an arrangement concerning collection, use, and disclosure. It's not that the agency may collect, disclose, or use all this information; it's the authority to enter into an arrangement.

I guess the subsequent piece would be that this arrangement would be subject to the terms and conditions of the access and privacy act on the use, disclosure, and dissemination of information.

• (1640)

The Chair: Mr. Ritz.

Mr. Gerry Ritz: If you've got an unwilling partner who doesn't want to enter into that arrangement, this gives you the legal authority to say, "Oh, by the way, we can demand this of you". That's the concern.

Mr. Mark McCombs: But this requires an arrangement that means two parties have to enter into it.

Mr. Gerry Ritz: Well, in this case it isn't necessarily willing buyer, willing seller. It's that, you know, this is for the greater good, and section such-and-such says you have to give us this information, because there might be....

So it's not a willing arrangement. This "may enter into" is a one-sided street.

Mr. Mark McCombs: But this is a permissive section that allows the agency to enter into an agreement and an arrangement with respect to information—

Mr. Gerry Ritz: I know, but if you want to enter into that arrangement with me and I don't want to, how do I say no?

Mr. Mark McCombs: You say no.

Mr. Gerry Ritz: But then you say section so-and-so further in the bill says you have to, because the greater good's at stake here.

Mr. Mark McCombs: We're only talking about with a government agency, department of government, or a prescribed organization. The prescribed organization—

Mr. Gerry Ritz: Could be my feed mill.

Mr. Mark McCombs: Only if you've applied to the government to have it prescribed.

Mr. Gerry Ritz: I understand that.

Mr. Mark McCombs: The process for the feed mills, if the government decided to enter into an arrangement, is that they need a willing partner to sign at the other end.

The Chair: Mr. Bezan, and then Mr. Easter.

Mr. James Bezan: I'm just trying to wrap my mind around this.

Prescribed organizations are the ones that we're concerned about. Specifically, these are organizations that will be providing a service under the act. So it's like the Canadian Livestock Identification Agency, the Canadian Beef Grading Agency, those types of regulatory quasi-government organizations, right? Or are we talking about private entities?

Mr. Mark McCombs: It would be unlikely that we would enter into an agreement with Kraft, or Masterfeeds, or something like that for the purpose of this arrangement, because the purpose of this arrangement is for collecting information to administer or enforce a law or to carry out an investigation. It's a regulatory authority for the agency to be able to enforce its laws and to carry out an investigation into violations of its laws. That's all it really is designed to do. The purpose is to allow information to flow out and to flow back, where you have situations where you see a violation that is a violation that could harm Canadians, and you need the information from the other body in order to be able to enforce it.

The Chair: Mr. Easter.

Hon. Wayne Easter: To the witnesses, is this provision any different from what's already been in existence under the various acts now? It seems to me that we've been doing this, and it hasn't been a problem. So is it new, or is it what has been in existence for quite a number of years?

Mr. Mark McCombs: Section 14 of the CFIA Act does permit this type of arrangement. The purpose of making this was to make it express authority, so there was no question about that authority, and to allow it to be entered into rather than having to rely on subsection 20(6) of the Access to Information Act—to allow public disclosure and those types of things.

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik: As an example, now that we no longer have the actual inspectors who do plant, animal, and food at the borders in the agency, as they're with another regulatory agency, that being the Canada Border Services Agency, one of the main purposes for this clause is for us to be able to exchange information with them for regulatory and enforcement information. That was one of the main purposes, because it was a hiccup for us that we couldn't exchange the information between two federal government departments.

The Chair: Okay, I think we've had a fair round of discussion and debate on this matter. Let's have the question.

(Amendment negatived) [See *Minutes of Proceedings*]

The Chair: All those in favour of clause 8?

Mr. Gerry Ritz: Could we back up for a second?

We talked about putting in some lines about the Access to Information Act and so on. Are we going to do that, to have a look at them before we vote on clause 8?

I know Charlie is concerned, and I am too. We don't want to restrict access, but we certainly want to be able to filter it so we don't have that hit like we saw.

•(1645)

The Chair: We can't do that today, though.

Mr. Mark McCombs: We could propose that.

The Chair: You could propose that today?

Mr. Mark McCombs: Yes, we could.

The Chair: Okay, let's just stand that down for the time being, and while we're going through this work on that, perhaps we'll even get that approved yet today.

Hon. Wayne Easter: I think they're ready to do it now. The witnesses are ready to propose something on the access to information.

The Chair: Okay, if you have it, we'll take it now, and we'll deal with it right now.

Ms. Kristine Stolarik: I'll start.

The Chair: Could we have a copy circulated?

Ms. Kristine Stolarik: It's handwritten scrawl, but we'll make you a copy.

The Chair: They're good workers.

Mr. Gerry Ritz: We're waiting to see if they pass or not.

The Chair: The question was asked, how can you so quickly have this ready? Were you drafting this as we were talking?

Ms. Kristine Stolarik: We were scribbling notes down.

The Chair: I said that you were good, so you've just verified that.

Mr. Mark McCombs: We are impressive, yes.

The Chair: Yes, you're impressive.

Can you read us the language?

Ms. Kristine Stolarik: Yes: "The information under subsection (1) may be collected, used, and disclosed by the agency only in accordance with the Access to Information Act and the Privacy Act."

The Chair: What part of clause 8 are we referring to?

Ms. Kristine Stolarik: This would be a new provision. We would make an 8(2) and we would make the first one 8(1).

The Chair: Okay.

Ms. Kristine Stolarik: Sorry.

Mr. Gerry Ritz: So 8(1) would stand.

The Chair: Right.

Mr. Gerry Ritz: Then you're adding subclause 8(2)?

Ms. Kristine Stolarik: Then we would add subclause 8(2).

The Chair: Can you read that one more time? Can we all listen carefully?

Ms. Kristine Stolarik: "The information under subsection (1) may be collected, used, and disclosed by the Agency only in accordance with the Access to Information Act and the Privacy Act."

The Chair: Okay. I see some nodding.

Hon. Wayne Easter: Let's move it.

The Chair: Yes, we should have someone move that. I'm sorry.

We'll let Mr. Ritz move that one.

Mr. Gerry Ritz: I will move that.

The Chair: We have heard the language. We like it; we're going to approve it. Is that correct?

(Amendment agreed to)

(Clause 8 as amended agreed to)

The Chair: We're told that we need to have that in writing.

Hon. Wayne Easter: Yes.

(On clause 9—*Imports*)

The Chair: What do we have on clause 9?

Hon. Wayne Easter: One by the NDP and one by the government.

The Chair: It has been pointed out to me that the NDP amendment to clause 9, on page 19, which is NDP-7, has a line conflict with the government amendment G-5. If NDP-7 is adopted, then government amendment G-5 cannot be put, okay?

Hon. Wayne Easter: Yes. If I can speak on that, Mr. Chair, the—

The Chair: I'll let you speak first, but we want to go back to the NDP amendment—once we have it moved. At this point nothing has been moved.

I'm just giving this clarification for your edification.

Hon. Wayne Easter: I really think, Mr. Chair, that both amendments say virtually the same thing. I don't know whether Mr. Angus might differ on that point, but I think they virtually say the same thing.

We did hear a lot of concern from organizations that the minister has to be the ultimate authority. No offence, but I believe the government amendment is more clear-cut and accomplishes what the NDP amendment wants, as well.

The Chair: Okay, I'm going to have Mr. Angus move the amendment for his party. I'm going to allow him to speak either to his amendment or to the comment we just heard.

Mr. Easter, this may not be following normal protocol, but I'm going to have your amendment moved as well.

•(1650)

Hon. Wayne Easter: You can't do that, I don't think.

The Chair: We can't do that.

Hon. Wayne Easter: I don't think that's proper procedure, even though we do strange things around here.

The Chair: The reason I did that was so we could make the comparison, but we're really....

Okay, okay, we'll do Mr. Angus' amendment. I'm trying to be accommodating here, but I may not be able to do it.

Mr. Charlie Angus: Definitely the agency has to do it under the powers of the minister. We were getting wild conspiracy theories running around about the growing powers of this agency to set itself up.

There's reference to it in the paragraphs below, but we want to make sure we're dealing with bodies of similar authorities, and that's expressly who those arrangements are with.

Again, that was just for reassurances of people. I think it encapsulizes it and puts it to rest.

Hon. Wayne Easter: Does the government amendment do that, from your point of view, Charlie, or not?

Mr. Charlie Angus: Well, it doesn't specifically address that we're making arrangements with governments that have the powers and duties similar to those of our agencies—that we're going like bodies to like bodies.

The Chair: You don't feel the government amendment would accomplish what you set out to do?

Mr. Charlie Angus: No.

The Chair: Okay. Well, then, we'll deal with your amendment.

Mr. Easter.

Hon. Wayne Easter: I'd just like to make a point, Mr. Chairman. If you'll note on the government amendment, we've inserted in two places—on line 30 and line 9—to make it absolutely clear. In Mr. Angus' amendment, we only deal with it in one section. I'm worried about the consistency of that. Whichever amendment we go with—and I do prefer the government amendment, because I think it accomplishes the same thing—we do need to be consistent that it is covered off in all areas.

The Chair: Okay, that's fair.

Yes, Ms. Ur.

Mrs. Rose-Marie Ur: I think, basically, if you read page 6, what the NDP motion says there is really in the printed text. The clause goes on to say, once we enter “with approval of the minister”,

...enter into arrangements with a foreign government, a foreign government agency or a foreign organization respecting the importation of regulated products into Canada....

So I think that basically encompasses what you're saying in your amended clause as well, Mr. Angus.

Mr. Charlie Angus: Yes, I just liked, in that initial first paragraph, that it was connected, that we were making it very clear who we were speaking with in foreign governments. It mentions it further down as well.

Mrs. Rose-Marie Ur: If we enter the phrasing on line 9 and line 30, I think that's pretty parallel to what you're proposing, Mr. Angus.

The Chair: Okay. Are there any other questions on Mr. Angus' amendment?

Yes, Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: I think both are right. We'll have to choose one of the two.

[*English*]

The Chair: Okay.

Hon. Wayne Easter: Yes, but one is more right than the other.

The Chair: Let's find the most accommodating one.

Mr. Charlie Angus: One's more left than the other.

Hon. Wayne Easter: Hey, we're both left.

The Chair: I will now call the question on Mr. Angus' amendment, NDP-7.

(Amendment negated) [See *Minutes of Proceedings*]

The Chair: Then we move to the government amendment, G-5, which seeks to do what Mr. Angus has wanted to do. We need it moved.

It's moved by Ms. Ur.

(Amendment agreed to) [See *Minutes of Proceedings*]

(Clause 9 as amended agreed to)

The Chair: We move to new clause 9.1. This is another one by the NDP, NDP-8 on page 22.

Mr. Angus, would you move that?

•(1655)

Mr. Charlie Angus: Yes, I so move.

The Chair: Okay. Do you want to speak to that?

Mr. Charlie Angus: Sorry. I can't keep up half the time. Can we go back a minute here? What page are we on now?

The Chair: We're on page 22. That's your amendment, number 8, which deals with clause 9.1, page 6 in the bill.

Hon. Wayne Easter: I really think it becomes redundant as a result of the one we just passed.

The Chair: That's good.

Do you want to withdraw it, Mr. Angus?

Mr. Charlie Angus: Yes.

The Chair: For your reference, we won't go to amendment NDP-9 on page 23 because it was connected with the other one, which was not adopted; therefore, we won't go there.

Mr. Gerry Ritz: It's gone?

The Chair: It's gone.

(On clause 10—*Contents of arrangements*)

The Chair: Yes, Mr. Ritz.

Mr. Gerry Ritz: I have just one quick question for our witnesses. You're talking about inspecting systems in foreign countries and so on, bringing them to our standards for imported goods. Right? Okay, I understand that. In establishing compliance monitoring and inspection requirements and so on, what's it going to cost? How many of these do you see happening? What's the cost going to be and who's going to pay for it?

Ms. Kristine Stolarik: Currently we have about 85 of these agreements in place in one way, shape, or form, such as technical agreements to go to China to verify that the cans they pack their mushrooms in are okay. So we basically have inspectors going over there to verify that. It's part of our import program, so we do have resources already allocated for that within the agency. It's not unusual for us to go to foreign countries and inspect their various systems.

Mr. Gerry Ritz: I understand all of that. But the concern I have is how often you do it. How do you maintain the security of that foodstuff? Are you in the plant on a daily basis like you are in Canadian plants, or is it like feed mills, where you're in there once a year?

Ms. Kristine Stolarik: Yes, that's all described in the actual agreements. I don't have them in front of me, but depending on the commodity, depending on the system, it would vary. I know that we probably go into U.S. plants at least once a year to ensure that they're done. I think that for the higher-risk countries we'd probably be there a little bit more often.

The Chair: Okay.

(Clause 10 agreed to)

The Chair: Do you have another question?

[*Translation*]

Mr. Roger Gaudet: I have a quick question. When these shipments come in - for example, from China, since we're on the subject —, do you occasionally inspect them upon their arrival? Do you inspect shipments daily, or just occasionally?

Ms. Kristine Stolarik: No. We do the inspections here. We conduct on-board inspections as well.

Mr. Roger Gaudet: I'm talking about the inspections that are conducted here. They're waiting for you when you do it at the other end. It's far more important to carry out these inspections when the shipments arrive here. When you get on a plane with the purpose of inspecting goods at their point of origin, you need a licence and then they see you coming.

In my opinion, it's far more important to conduct the inspections here in Canada than it is to do them at the point of origin. I'm not telling you not to do that, but I think the focus should be more on doing the inspection here, when the shipments actually arrive.

Ms. Kristine Stolarik: Yes, it's too late.

We also carry out inspections bearing in mind the risk posed by products imported into Canada. We allocate our resources to inspection operations.

Mr. Roger Gaudet: You inspect shipments...

Ms. Kristine Stolarik: Here.

Mr. Roger Gaudet: It's better to do the inspections here rather than at the point of origin. There, they see you coming with your heavy-handed approach.

• (1700)

[*English*]

The Chair: Okay, we must move on.

Clause 11, NDP amendment 10, on page 24.

Mr. Charlie Angus: We've covered it.

The Chair: We've covered that one?

Mr. Charlie Angus: Yes, it's in now.

The Chair: Okay.

(Clause 11 agreed to)

The Chair: There are no amendments in clauses 12 to 24. Are there any comments? Can we have those carried?

Mr. Gerry Ritz: Whoa, whoa, whoa. There are no restrictions in that section.

The Chair: Okay, let's do one at a time. If we can't sell the whole wagon, we'll sell parts of the wagon.

Yes, Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: I have a comment about clause 21(2) on page 11.

I recall that we discussed this provision earlier, but I don't remember if we heard from any witnesses on the matter. The clause in question reads as follows:

(2) For the purposes of subsection (1), "safe water" means water that does not affect the safety of any food with which it comes into contact.

I had proposed adding the words "knowingly prepared", because I had concerned about how the water was prepared, that is if it was prepared in any special way. That was the reason for proposing this change. The water mustn't be prepared just any way, even if it is water destined to be sold.

[*English*]

The Chair: Let's take them clause by clause here.

(Clauses 12 and 13 agreed to)

The Chair: We'll get to Mr. Gaudet's concern in a moment.

(On clause 14—*Recognition of results*)

Mr. Gerry Ritz: Under clause 14, Mr. Chairman, we're getting back into what could be confidential documents. All of a sudden, we're into a court of law.

The Chair: What's your specific point on clause 14?

Mr. Gerry Ritz: It reads that “The Minister may recognize inspection results...” and that “The inspection results and associated documents, or any copy or extract of them, are admissible in evidence in any court...”.

All of a sudden, we're public again with what could be construed as confidential material.

The Chair: We'll get comments from our experts.

Mrs. Ur.

Mrs. Rose-Marie Ur: If you go into subclause 14(3), it says:

No inspection results or associated documents referred to in this section may be received in evidence unless the party intending to produce them has served on the party against whom they are intended to be produced reasonable notice of that intention....

Mr. Gerry Ritz: You know what's coming, but you can't stop it.

Mrs. Rose-Marie Ur: No, the way I read it is that they can't go forward unless you give them the authority to use it.

Am I wrong?

Mr. Gerry Ritz: It just says “produced reasonable notice of that intention”.

Mrs. Rose-Marie Ur: Am I wrong in my thinking, Kristine?

Mr. Gerry Ritz: You can't stop it.

Ms. Kristine Stolarik: I'm going to turn to legal counsel for that one, Mrs. Ur.

Mr. Mark McCombs: Frankly, if a court order says disclose, it's going to be disclosed.

Mr. Gerry Ritz: Not necessarily.

Mr. Mark McCombs: No, if a court makes it a court order that a particular document be disclosed during the proceedings, it will be disclosed.

Mr. Gerry Ritz: But the minister is doing that. He's saying go ahead and use this.

The Minister may recognize inspection results and associated documents from prescribed inspection bodies.

The inspection results and associated documents...are admissible in evidence in any court.

Can you give me an example of what that intends to cover?

Mr. Mark McCombs: Let's assume that the minister has results from OMAFRA in Ontario. They have inspection results from a particular plant, and the minister has recognized those results as accurate, because he's satisfied with the Ontario government's inspection process. It doesn't have to be Ontario; it could be Saskatchewan or any province.

Mr. Gerry Ritz: I understand that.

Mr. Mark McCombs: When the minister recognizes those results as being equivalent to what he would accept from an accredited lab, or something along those lines, and says yes, I'm satisfied with those results, they can then be admitted into the court as recognized by CFIA's accredited system, or something similar. That allows the results to be admitted into evidence. There's a notice requirement—

Mr. Gerry Ritz: Called disclosure.

Mr. Mark McCombs: Yes, disclosure, but they are equivalent in terms of the results, rather than having to come from an accredited lab.

Does that help or not?

• (1705)

The Chair: Mr. Angus.

Mr. Charlie Angus: My question is on who these prescribed inspection bodies are. Would they possibly be international as well?

Mr. Mark McCombs: Yes.

Mr. Charlie Angus: In looking at this, our concern was to make sure that we're bringing in.... It's different for a provincial organization, but if it's international body, we'd want wording something like: where the sampling, inspection, testing methodologies are equivalent to what we have at the agency. Otherwise, the minister is just accepting it as documentary evidence. It could be from a company in Shanghai that's given us bad mushrooms and we're saying it's perfectly fine according to their standards. We'd have to know that we're bringing forward and accepting equivalent standards.

Mr. Mark McCombs: Before you would prescribe something like that, you wouldn't normally pick an individual company; otherwise, we'd be prescribing lists and lists and lists of companies.

Mr. Charlie Angus: I'm sorry, but I meant an agency that's looking at a situation, say a plant in Shanghai or in Sao Paulo, Brazil.

Mr. Mark McCombs: For example, this could be the USDA.

Mr. Charlie Angus: USDA.

Mr. Mark McCombs: It would be prescribed that we're satisfied with USDA's results, and USDA in return is satisfied with CFIA's results.

Mr. Charlie Angus: They would have similar methodologies.

Mr. Mark McCombs: Exactly.

Mr. Charlie Angus: Their sampling would also be similar, so we would be satisfied. Internationally speaking, though, we wouldn't know. We wouldn't necessarily have the guarantee that they have methodologies, sampling, inspection procedures similar to ours.

Mr. Mark McCombs: Mr. Chair, perhaps what the honourable member is seeking would be better dealt with in clause 56 in order to put a limit on the type of inspection body that could be prescribed. Those are the regulation-making provisions.

Mr. David Anderson: Prescribed inspection bodies—these are organizations like the USDA. Is that what you said?

Mr. Mark McCombs: Yes.

Mr. David Anderson: What are the protections against self-incrimination? The results of inspections can be used to force into the public realm or the minister's office information that wouldn't otherwise be obtainable except through a court order. It could then be used against someone.

Mr. Mark McCombs: Normally, when somebody decides to become a regulated party or a regulated industry, they accept the system that goes with it. If you want to become an established meat plant in Canada, you know there are requirements you have to meet. Once you meet them, you accept the regime.

So the courts have said that with respect to the process this doesn't constitute self-incrimination. Once you've accepted that you're part of a regulated industry, you accept the regulations that go with it.

Mr. David Anderson: I'm concerned that the regime doesn't go far enough, that it is forcing people. You're saying that if you want to participate in this regulatory structure you're going to be expected to incriminate yourself.

Mr. Mark McCombs: If you've decided to become a registered meat establishment, and the inspector asks for information about the cattle you're now slaughtering, that information is part of what you're required to do to ensure the safety of the food being produced.

Mr. David Anderson: That's been part of our concern all along—there need to be some boundaries.

The Chair: We've had pretty good debate on this issue, and some clarity has been introduced. Are we ready for clause 14?

Mr. Charlie Angus: I have to wait for clause 56. If I'm satisfied with clause 56, I'm satisfied with clause 14. But we haven't dealt with it yet.

The Chair: Okay. Does the committee wish to stand this one?

(Clause 14 allowed to stand)

The Chair: Let's move on to clause 15.

(On clause 15—*Unlicensed activities prohibited*)

• (1710)

Mr. Charlie Angus: We have to read it.

The Chair: We're supposed to do this at home.

Mr. Charlie Angus: There's so much in here. You never know—they might have slipped something in overnight.

Mr. Gerry Ritz: The first part of clause 15 talked about “section 3 without a licence of a prescribed class”. Do you have those classes broken down?

Ms. Kristine Stolarik: I'll give you an example of what a prescribed—

Mr. Gerry Ritz: No, I'm asking a straightforward question. How do we know what rights and privileges we're giving the CFIA when we don't know what's in a class?

Ms. Kristine Stolarik: Once again, the word “prescribed” means the class is going to be issued through regulations. So a prescribed class could be meat, meat plants, canneries, seed establishments, cruise ships, or importers. That would be a prescribed class. So we already have some classes established in our regime. We have people who operate establishments that import, or do other things. But there are going to be new activities that we'll be adding to the list.

Mr. Gerry Ritz: So do you recognize this same licence? You said something about cruise ships. We don't own any in Canada. They all come from offshore. Do you recognize their licence from Norway or wherever they're from?

Mr. Mark McCombs: It's not a licence to license a cruise ship; it's a licence to import the product. The cruise ship industry has concerns with respect to bringing product in. They have to have it re-inspected after it's already been inspected, even though it stays on board ship.

Mr. Gerry Ritz: You're on the gangplank to make sure no one is carrying an orange, or whatever, the same as they do at the border going to the States.

Ms. Kristine Stolarik: Yes, we basically have that authority for cruise ships when they dock in Vancouver or Halifax.

The Chair: Okay. We've had some discussion. Are we in favour of clause 15?

(Clause 15 agreed to)

(On clause 16—*Import of regulated product*)

The Chair: Is there anything on clause 16?

Mr. David Anderson: Mr. Chair, I have a concern. We set clause 3 aside because we weren't in agreement on what those licences would cover. Now we're coming back and discussing how those licences would apply when we haven't agreed on what they would cover. I have some concern about passing clauses that deal with clause 3 when we haven't decided what clause 3 is about.

The Chair: At some point we have to start approving something, or we're never going to get through this.

Mr. David Anderson: At the speed you're going today, I think you'll be through it fairly quickly.

The Chair: There's a lot of work to do yet.

What's your concern with clause 16?

Mr. David Anderson: My basic concern is that we're talking about licences, when we haven't made a decision as to what those licences are going to be, and then we're talking about an application to clause 3.

The Chair: Let me refer to our experts, who can perhaps direct us on whether or not we have the cart before the horse.

Yes, Mr. Easter.

Hon. Wayne Easter: At the end of the day, one way or another, we're going to have to deal with clause 3 or we won't have a bill. We're going to have to deal with those things we require licences for, whatever they may be.

In my view, Mr. Anderson's argument holds no merit. If we can't deal with clause 3, at the end of the day we won't have a bill.

We might as well go through it step by step, because you're going to have to license things in order to do what you have to do at the end of the day. This is only referring to that. It doesn't compromise the fact that you haven't dealt with clause 3.

The Chair: Okay. We've heard wisdom from on high. Let's deal with clause 16.

Does clause 16 carry?

Mr. Gerry Ritz: No, hang on. Just because you have a crisis, it doesn't mean I do.

The Chair: No, I don't have a crisis. I have to deal with this matter. You have to help me do this.

Mr. Gerry Ritz: Well, hang on.

On subclause 16(2), under "Possession", "No person shall possess a regulated product that the person knows or should know..."—how do you prove or disprove that?

The Chair: Experts.

Mr. Gerry Ritz: If a person walked off the gangplank of a cruise ship with an orange in his hip pocket and didn't realize that, are you going to arrest him or send him back up the gangplank?

The Chair: I'd take his orange and send him back home.

• (1715)

Mr. Gerry Ritz: Whatever.

Mr. Mark McCombs: Usually, we'd just deal with the orange.

Ms. Kristine Stolarik: Give us the orange. We'll put it in the amnesty bin and go away.

Mr. Gerry Ritz: But you don't want the orange.

How far do you go with that? Is this strictly on a case-by-case basis?

Mr. Mark McCombs: Yes, they're generally dealt with on a case-by-case basis.

The Chair: Let me dispose of the issue, because that's a good question. If someone tries to pass with drugs under his shoe leather, he gets caught, and he didn't know it was there, how do you deal with that? I know how you deal with it, but given the circumstances, how would you deal with it if you took the insole out of his shoes and found that there were drugs inside?

Ms. Kristine Stolarik: On this one, the provision was set up to deal with travellers who go to the States. If they have a chocolate bar in a purse or they inadvertently didn't know that they had a homemade sausage from their grandmother in Italy, basically that clause is for protection as well.

The Chair: Has this been a problem? Have people found this to be a violation of personal rights and freedoms?

Ms. Kristine Stolarik: No, because we have personal exemption clauses as well.

For example, in the Meat Inspection Act, if you bring it back in a Cryovac package and it's basically sealed properly, you can bring back up to 25 kilos of meat. There is a provision for them to bring back the stuff, whereas this is for people who have an apple, an orange, or a turkey that they're not aware they shouldn't have. It basically deals with that.

Mr. Gerry Ritz: But could we have a clarification amendment, Mr. Chairman, if we could put, "No person shall knowingly possess a regulated product that has not been imported...", something like that? Can we do that?

Mr. Mark McCombs: Don't forget we're talking about travellers. We all know that when we come back on a plane, they hand out the cards to us on the plane and they ask us to fill them out. And those cards ask, Do you have any dairy products? Do you have any of this? Do you have any of that? So those people have already been given notice that they have to fill out the card.

They could interpret that a turkey may not be meat—

Mr. Gerry Ritz: Let's go to the other end of the scale. I fill out that card for my five-year-old child, who doesn't want to give up that chocolate bar and doesn't tell me that he's got it—

Mr. Mark McCombs: Yes.

Mr. Gerry Ritz: —so I'm guilty because he's a juvenile.

Mr. Mark McCombs: Well, in those particular cases, the agency would use its discretion and not—

Mr. Gerry Ritz: I would hope so.

Ms. Kristine Stolarik: —charge the five-year-old child.

Mr. Mark McCombs: Well, we couldn't charge the five-year-old child anyway.

Mr. Gerry Ritz: There are days you could have him.

Mr. David Anderson: Mr. Chair, I'd like to support Gerry's amendment here, because if you get into—

The Chair: Well, we'll put in the language—

Mr. Gerry Ritz: Well, "No person shall knowingly possess a regulated product that has not been imported in accordance with..."—that's all I want to say.

Ms. Kristine Stolarik: That's okay.

The Chair: I have no problem with that either.

Can we agree to amend? Are you moving that as an amendment?

Mr. Gerry Ritz: I am, yes.

The Chair: Okay, the amendment has been moved. Any further discussion?

Hon. Wayne Easter: Run that by again, Mr. Chair.

Mr. Gerry Ritz: Okay, all I'm saying, Mr. Easter, is the wording would be: "No person shall knowingly possess a regulated product that has not been imported in accordance with the requirements established by or under this Act."

Hon. Wayne Easter: Okay. I would defer to the witnesses, but I believe if you use the word "knowingly", it can really complicate your ability to do your job, can it not?

Mr. Mark McCombs: The word "knowingly" makes it a *mens rea* provision, so for that purpose it's beyond a reasonable doubt. You're transforming a regulatory offence into a criminal offence, and you haven't—

Mr. Gerry Ritz: I'm giving you more jurisdiction to work on a case-by-case basis.

Mr. Mark McCombs: But you're giving the agency less authority to deal with it.

Mr. Gerry Ritz: Darn.

Mr. David Anderson: Mr. Chair, this change is important, because people do not have the ability to deal with a government that says they should have known. This puts the onus on the government to prove that the person has violated the regulations. "Should know" puts the onus on the person to explain and to prove that they didn't, and most people cannot compete with the government to do that.

• (1720)

The Chair: Okay. Is that an argument that you could buy?

Hon. Wayne Easter: My God, Mr. Chair, you know there is such a thing as personal responsibility. I think you really take away the ability for the agency to do its job. It would be a great addition for lawyers, because you'd be spending more time in court over trivial matters than we do now—

Mr. Gerry Ritz: Not at all.

Hon. Wayne Easter: —as if we don't do enough of that now. I'm surprised that Mr. Anderson would want to create more work for lawyers.

The Chair: Mr. Angus, go ahead, please.

Mr. Charlie Angus: I did have a case in my riding of an American hunter who was charged by U.S. Customs for illegally importing Canadian beef across the border because of the BSE ban because he had a bite-sized piece of a McDonald's quarter-pounder left in his bag. But I don't know if there's anything you can do in law to stop harassment by an official if they wanted to anyway. So I think we're well protected, and these outrageous incidents that do occur, would occur....

The Chair: Okay.

[Translation]

Mr. Roger Gaudet: It's the decline of the American empire.

The fact is, Mr. Chairman, that when someone is caught with a food product or some other good at the border, the offending item is confiscated and that's the end of it. Case closed. If the person wants the item back, he has to pay.

Ms. Denise Poirier-Rivard: Or consume the item in question.

[English]

Mr. Mark McCombs: Subsection 3, Mr. Chair, also provides an exemption for personal consumption.

Mr. Charlie Angus: Yes, for a person's own consumption.

The Chair: Okay, we have the amendment. I'm going to call the question on the amendment. We should have the reading one more time.

Mr. Gerry Ritz: One more time?

The Chair: One more time.

Mr. Gerry Ritz: All right: "No person shall knowingly possess a regulated product that has not been imported in accordance with the requirements established by or under this Act."

That means if somebody slips something in your suitcase and you didn't know about it, you're okay.

Hon. Wayne Easter: Mr. Chair.

The Chair: Yes.

Hon. Wayne Easter: I think this is really an extremely serious matter. I think it can really cramp the court system. It basically brings words that would normally be used in the criminal justice system into the regulatory system. I think the implications of inserting the word "knowingly" in here are really serious. I would ask people to seriously think about inserting the word "knowingly" into this bill, because I just do not believe people realize the implications on the ability for the agency to do its job.

We're not talking about the criminal justice system here; we're talking about a regulatory system and giving a regulatory agency the ability to do its job.

The Chair: Yes, Ms. Ur.

Mrs. Rose-Marie Ur: I think we have to come to an agreement here. We have to understand that we can't legislate common sense. Surely to God, people are bright enough, travelling enough, to understand what they can and can't do. And it does state here that the person knows or should know. I would think, other than maybe this five-year-old.... Perhaps this child may not know, but they do have parents, who I'm sure would know.

So I can't see where we need to put in "knowingly". I think there's sufficient wordage there that people would comply.

The Chair: Okay. Is there—

Mr. David Anderson: Mr. Chair, I want to address this, please. I don't think we can cut debate off here. You let them speak after you said you were going to vote.

It already says "knows" in there. It already talks about "knowingly". We're talking about restricting the agency. Just about everything we've heard from witnesses has talked about the fact this legislation goes too far and gives the agency far too many powers. It's not just people who are coming in on a plane. It talks about "no person", and that includes businesses, it includes people who are bringing in things for their own use.

The government should have the onus to prove that the person knew what they were doing. You can't say you should have known, and that's good enough for us to be able to do whatever.

The Chair: I think we have to hear from Mr. McCombs. I think he has given us the argument why that would be a danger for us.

Mr. Mark McCombs: Let me just add that the Supreme Court of Canada in 1978, in the Sault Ste. Marie case, dealt with the regulatory offences and established a system between true criminal offences and absolute liability at the other end. And what we're dealing with here is a strict liability offence. The court in that case said any of the terms such as "wilfully", "knowingly", "with intent", "intentionally" make them into true criminal offences, which means you have to prove *actus reus* as well as *mens rea*. You're into a full-blown criminal process with that.

That would also mean that once we do that with these provisions, the committee would then have to amend the penalty provisions and make the penalty provisions equivalent to what you do with "knowingly", which makes it into a criminal offence, and you'd have to add jail terms and everything else to those provisions in order to make it consistent.

• (1725)

Mr. David Anderson: No, no, no. First of all, I think you're making it far too—

The Chair: You have to understand, we have legal people here.

Mr. David Anderson: I want to follow this, because it's important, and it's going to be important for people down the road.

The Chair: Well, it is important. So let's move on.

Mr. David Anderson: I'm going to make a suggestion, if I can.

We already have the word "knows" in there. Are you comfortable with, instead of "knowingly", putting "...the person knows has not been imported"? You already have it in your clause.

Instead of "knowingly", does "knows" make a big difference to you?

Mr. Mark McCombs: The clause says that now.

Mr. David Anderson: And we're saying take out "or should have known". That's what the point of the amendment is: to deal with the "should have known". That puts the onus on the person who's being—

Mr. Mark McCombs: As opposed to the amendment saying "knowingly"?

Mr. David Anderson: Make it "knows" instead of "knowingly", if you want.

Mrs. Rose-Marie Ur: But "knows" is there.

Mr. David Anderson: I know "knows" is there. That's what I'm saying; it already says "knows". We're asking that we take out "or should have known" or "should know".

Just take out "or should know". Can we do that? If the word "knowingly" bothers you, does the word "knows" bother you? It's already in there.

Mrs. Rose-Marie Ur: It doesn't bother me, because it's already there.

Mr. James Bezan: The person "should know".

Mr. David Anderson: Okay, we're suggesting take out "should know".

Mrs. Rose-Marie Ur: I think we should have both in there.

Hon. Wayne Easter: Is Mr. Anderson saying "should have known" instead of "should know"?

Mr. David Anderson: I am suggesting this is what it would read: "No person shall possess a regulated product that the person knows has not been imported in accordance...". You take out the words "or should know". The reason is that the person should not have the onus on them. The government should have the onus to demonstrate that the person knew.

Hon. Wayne Easter: Let me give you an example that's in the regular field. I'm driving down a strange highway. The speed limit is 60, and I really, honestly never saw the sign. So I argue, no, I didn't know the speed limit on this road was 60—but I should have known it was.

I mean, I think you're jeopardizing the ability to do the job by taking out "should know", because you really should know.

Mr. Gerry Ritz: Mr. Chairman—

The Chair: These are not new laws.

Mr. Gerry Ritz: Mr. Chairman, in that instance, one is a wilful act and the other is an act of omission.

Vote on it.

The Chair: Okay, we have the first amendment, which says, "No person shall knowingly possess a regulated product that has not been imported in accordance with the requirements established by or under this act."

Mr. David Anderson: On a point of order, if I'm going to make an amendment to that, do I have to make it now, or can I make it once we deal with the amendment?

The Chair: You'll have to make it after we've dealt with this amendment, unless you're doing a—

Mr. David Anderson: Okay.

A voice: No, you can make an amendment to the amendment.

The Chair: You will have to make a different amendment, because it will change the whole thing.

Mr. David Anderson: And I will be allowed to make the amendment after?

The Chair: Absolutely.

Mr. David Anderson: Okay.

The Chair: Or you can withdraw this one.

Mr. Gerry Ritz: Or take a friendly amendment to it.

The Chair: No, we can't.

Mr. Gerry Ritz: We can't?

The Chair: We can't amend it, because it will change the...

We have said "knowingly," which may not be right.

Mr. Gerry Ritz: Well, I think "knowingly" is right, though.

The Chair: That's your opinion.

I'm going to take the amendment. If you're not withdrawing it, I'm going to leave the amendment on the table and we're voting on it.

Mr. Gerry Ritz: Vote on it, and then we'll move on.

(Amendment negatived)

The Chair: Now, if you want to make another amendment...

Mr. David Anderson: I'd like to make an amendment that we remove the words "or should know" from that clause.

The Chair: Does that present a problem, Mr. McCombs?

Mr. Mark McCombs: Yes.

The Chair: It does, okay.

Mr. David Anderson: It presents a problem to the agency, not to the consumers and producers.

The Chair: Okay.

Mr. Easter.

Hon. Wayne Easter: Mr. Chairman, could the witness speak on it, please?

The Chair: Can you do that, Mr. McCombs?

Mr. Mark McCombs: Effectively, without that provision, you're back into the same situation again in terms of knowledge. You have to prove knowledge.

• (1730)

Mr. David Anderson: That's my point.

Mr. Mark McCombs: So the parliamentary secretary's example is back on again.

The Chair: Mr. Angus.

Mr. Charlie Angus: The problem here is that there have been concerns from the beginning that we're expanding powers of the CFIA. However, we cannot use this bill to take away the basic legal powers that they need, and that seems to be the intent of this: "Let's take away every provision that they have to do their job." So we're turning the bill upside down.

I think "knowingly" and "should know" are basically the same thing and would be the same thing in a court of law. So we voted on a first amendment. Let's vote on a second amendment now.

The Chair: I'm calling the question.

(Amendment negatived)

The Chair: It now being 5:30, I'm going to—

Hon. Wayne Easter: And the clause?

(Clause 16 agreed to)

Hon. Wayne Easter: So we get that much done.

The Chair: That's enough for today. I thank you for your indulgence.

The meeting is adjourned, and we will meet tomorrow afternoon on Bill C-40.

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