House of Commons
CANADA

Standing Committee on International Trade

CIIT • NUMBER 016 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Monday, July 31, 2006

Chair

Mr. Leon Benoit

Standing Committee on International Trade

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● (1010)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good morning, everyone. It's a delight to see you here in July, the middle of the summer. We are here to do very important business, and I'm certainly looking forward to what we hear at this committee today.

The Standing Committee on International Trade is meeting, of course, to discuss the softwood lumber agreement, which was signed between the Government of Canada and the Government of the United States. It was initialled by the Minister of International Trade, David Emerson, and the United States Trade Representative, Susan Schwab, in Geneva on July 1, 2006.

Committees of the House of Commons, as you know, are empowered by Standing Order 108 to review and report to the House of Commons on "matters, relating to the mandate, management, organization or operation of the department, as the committee deems fit". It is in this context that the committee wishes to look at the softwood lumber agreement today and in the days that have been allocated. The authority of this committee is circumscribed by the mandate given to it by the House of Commons. Should the committee wish, it can report its opinions and observations on the agreement to the House of Commons. Today and again on August 21, we will hear from witnesses and ask questions. Should it wish, after hearing evidence or representations, the committee may report its view to the House of Commons.

The initial agreement between the two governments is not directly before this committee for amendment, approval, or rejection. We are here to examine the actions of government and to report any opinions to the House of Commons.

The Minister of International Trade is here this morning, but before we get to the minister, we do have two items of business to deal with. One is a motion by Mr. Temelkovski to have Ambassador Michael Wilson come to committee.

I just want to say to Mr. Temelkovski and tell the committee that as soon as we received the information that there was a desire to have the Canadian ambassador to the United States, Michael Wilson, come to the committee, we started the process to get him here. So we will commit to get him here as soon as we can, hopefully for the twenty-first. Mr. Wilson, I know, will be a very willing witness. So we certainly look forward to that.

The other motion is by Helena Guergis, and that is dealing with getting to the committee.... Now, isn't this really embarrassing for me; I know who it is.

Ms. Guergis, I'll let you introduce the motion, but of course it's the former Canadian ambassador to the United States, Frank McKenna. Perhaps you could just present your motion and speak to it, and we'll deal with that motion right now.

I would remind the committee that the minister is here for two hours, and we would like to take as little as possible of the minister's time. I know we have a lot of questions for him.

Ms. Guergis, would you go ahead with your motion on having former Canadian ambassador Frank McKenna come to the committee.

Ms. Helena Guergis (Simcoe—Grey, CPC): Thank you very much, Mr. Chair.

I can say that it is certainly nice to see all of my colleagues again here in the middle of summer. Thanks very much.

I do want to speak to my motion briefly. Do you need me to read it out for you first? No.

I just thought it was important, because Mr. McKenna had been invited and declined, that perhaps the committee might want to pass a motion to ensure that he does come to the table. That's all I really have to say and I'll leave it at that.

The Chair: Is there any discussion on this?

An hon. member: Go ahead with the vote, please.

An hon. member: We're ready to vote, Mr. Benoit.

The Chair: No discussion? Okay.

The motion says that we ask Mr. McKenna to come to the committee. That's a loose translation.

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

The Chair: It's unanimous, then, that Mr. McKenna be asked to come to the committee. We look forward to having him, hopefully on the twenty-first. That would be wonderful. So we'll see if we can make that happen.

Let's then go directly to the minister.

Mr. Minister, I thank you for being here today. It's much appreciated that you could come on such short notice. I know you have a busy schedule, but I know you take the work of this committee as being important work. You've told us that on different occasions. So you go ahead with your presentation, and then we'll go directly to the questions. I'm looking forward very much to the next two hours.

Hon. David Emerson (Minister of International Trade): Thank you very much, Mr. Chairman, and to my honourable colleagues, I hope you're all having a good summer. I haven't had a great one yet, but I hope it gets better as it goes forward. Maybe today will be the beginning of a positive new era.

I think it is important today to recognize that we are at a very important fork in the road in terms of the never-ending saga of softwood lumber. I think we all recognize that the strategy of the Government of Canada on softwood lumber has essentially always been, in the previous government and in the new government, to pursue parallel paths of litigation and negotiation as the opportunity arose.

Earlier this year the President and the Prime Minister, at a meeting in Cancun, agreed to make softwood lumber and a negotiated solution of the softwood lumber problem a key priority for both Canada and the United States. Coming out of that meeting, we embarked on a negotiating process, largely involving negotiations through Ambassador Wilson in Washington and his staff, and my staff in the Department of International Trade.

On April 27 of this year, as you know, we announced that we had reached a framework agreement, or a term sheet agreement, on softwood lumber. That agreement involved a number of key features that were attractive to Canada and it was reasonably well received by most in the industry and most provinces.

It included, as you all know, seven to nine years of dispute-free trade; it offered essentially free trade, unrestricted, when lumber markets are in good shape; it offered a choice of a supply restraint mechanism for the different producing provinces in weaker or down markets; it offered a dispute mechanism that would be relatively clean, and timely, and efficient to deal with issues involving the agreement; and it offered what I think was critically important and really beyond what I had expected we would achieve, and that was the potential recovery of something in the order of 80% of the cash deposits that had been paid, which at this time is in the order of about $5.3 billion.

In the period between April 27 and July 1 we embarked on discussions on the detail of the proposed framework agreement and the drafting of a legal text. We had extensive discussions with industry, with provincial governments, again primarily through the U.S. ambassador and his staff, and in that process we identified a number of issues that were of significant concern to industry and/or provincial governments.

One issue of paramount concern was referred to as the anti-circumvention issue. There was great concern in Canada over this clause, which prevents both the U.S. and Canada from taking actions over the life of this agreement that might in fact circumvent the basic thrust of the agreement, because it was thought that it would in fact prevent provinces from putting in place or keeping in place provincial forest management policies.

● (1015)

There was a particularly profound issue in northern British Columbia and in the province's interior, where the B.C. government was in the process of introducing a new stumpage system called market-based timber pricing. We were asked to try to negotiate some provision in the agreement ensuring that provincial forest policies, such as the market pricing system, would be protected over the life of the agreement.

We heard concerns about termination. In the framework agreement, we were silent on termination. When this occurs in an international agreement, by international law the default position is a 12-month termination provision.

We were asked to look at the possibility of strengthening the termination provision. Interestingly, there were different views on why we needed a termination provision. Some thought that Canada should have a termination provision in case we wanted to terminate and there would be no mechanism for us to do so.

As discussions unfolded, the focus shifted to the risk of American termination. In other words, the industry in Canada was very concerned that at any point in this agreement the U.S. industry could terminate in a tough market situation, or if the economy got bad and their industry was having problems, we might be faced with a relatively rapid termination of the agreement by the U.S. industry. So we were asked to see if we could negotiate a stronger termination provision than what silence implies, which is a 12-month notice.

There were also some technical issues of a significantly commercial nature, related to the running rules of the agreement. And as has transpired for a couple of years now, there was concern over the timely recovery and return of deposits to our producers.

On July 1, when I was in Geneva at the failing WTO talks, I initialled an agreement that essentially improved on the April 27 agreement in virtually all areas in which we were asked to try to achieve significant agreement. That initialling signalled the termination of negotiations, and we are now faced with a fundamental choice: we can choose the negotiated settlement, recognizing that as with any negotiated out-of-court settlement, there are puts and takes —there are some aspects we like and others we would probably like to improve upon, and I can certainly name several—or we can continue with litigation.

We need to ensure that in making decisions about softwood lumber and about whether we choose to embrace this negotiated agreement, we recognize that the choice is not between the negotiated agreement and some utopian model of clear, unfettered free trade. We need to spend as much time assessing the litigation option—regarding the risks, the consequences, and the timing of how the litigation option will unfold—as we do picking holes in the negotiated compromise. It's clear that all of us can pick holes in the negotiated compromise—there's no problem doing that—but what we have to compare it with is the alternative.

When I look at the negotiated agreement, I see an agreement that provides for a quick return of 82% of the cash deposits. That's a very large percentage of the deposits coming back extremely quickly. It's roughly $4.3 billion, and it comes back with certainty. There is no magic here. If we enter into this agreement, that money comes back, and we will control to a large degree an accelerated flow of that money.

● (1020)

The agreement provides protection from trade actions for seven to nine years. I know there has been speculation or commentary in the media that because there are termination provisions in international agreements like this one, somehow it isn't a seven- to nine-year agreement.

It is a seven- to nine-year agreement. NAFTA has a six-month termination clause; we don't call NAFTA a six-month agreement. All American trade agreements save one—the free trade agreement they have with Israel—have a six-month termination provision in them. We don't call those six-month agreements. Those are trade agreements between states that are terminated only under the most exceptional circumstances, and having a termination provision is standard. We have one in all of our agreements, and the one that is now included in our softwood lumber agreement is a very strong termination provision.

We have very strong protection in this agreement for provincial forest policy regimes. The anti-circumvention clause in this agreement is far stronger than we've ever seen before; for example, in the softwood lumber agreement in the 1990s. This anti-circumvention clause allows market-based pricing. It allows timber prices to rise or fall. Back in the 1990s in the softwood lumber agreement, there was no way you could have any reduction, market-driven or otherwise, in stumpage.

In fact, British Columbia was forced to have a system called stumpage waterbedding at the demand of the United States, so that any reduction that might be contemplated in B.C. stumpage would have to be compensated by a dollar-for-dollar increase in stumpage somewhere else in the system, to hold the overall burden on the industry at the same place. There is no such provision in this agreement.

There is provision to ensure that provinces can take action to mitigate wildfires, to deal with pests such as the pine beetle, to deal with watershed protection, to take environmental measures, to deal with first nations land claims.

So the anti-circumvention provision in this agreement is very strong. And we should never forget that anti-circumvention cuts both ways: it also prevents the American industry and the Americans from pursuing trade actions against Canada for the life of the agreement. They are giving up sovereignty to attack us with trade actions; we are basically agreeing that we will not subvert the spirit and intent of this agreement with our policy changes. But we nevertheless have the flexibility to ensure that provinces can mange their forest management policies in a relatively free manner.

Again, this agreement provides for free trade in strong markets. Markets today are not strong. Markets in the next little while may not be strong. In fact, there is a serious risk of a down market in front of us, which is a further complication that members of the committee, members of the industry, and other governments are going to have to contemplate, because it has implications for the continued litigation scenario, which I'll come back to.

The agreement provides the choice for provinces of a supply restraint mechanism for down markets. It gives some flexibility, depending on the circumstances in different provinces, to deal with down markets in alternative ways.

There is an opportunity written into the agreement and a committee to explore further exemptions to the agreement. We know there are some areas we would like to have seen included to broaden the exemptions of the agreement. There is now a committee that would be struck government to government to deal with and review possible changes and exemptions to this agreement, and to do so in a timely manner.

I mentioned the termination provisions. There is complete assurance of at least three years of dispute-free operation of this agreement.

We have also negotiated into it what's called a standstill of 12 months over the life of the agreement, so that if the United States were to terminate the agreement, they could not bring a trade action within 12 months. That was a big request of the industry in Canada, and it was a big concession by the United States that provides significant comfort to Canadian industry.

● (1025)

We don't hear much about the third-country mechanism in this agreement and we hope we never have to use it, but there is a mechanism in the agreement that would protect Canada in some circumstances against third countries coming in and taking market share at the expense of Canada.

Let's look at the second alternative, continued litigation. There is no doubt that we've been successful in litigation to date, so you would have to say there is a high probability that we will win the critical remaining cases in this dispute. Let's be generous and give it a 90% probability. I don't think it's as high as 90%, but let's say it is 90% probable that we will win the remaining cases of this agreement. Let's assume further that we get the cash deposits back after winning our cases in two to three years. Again, depending on the appeals, the length of the legal processes, and the time it takes to unwind thousands of duty entries to get the cash flowing back to Canadian companies, it could be another three years or more. We may never see the money, but let's say we do.

In that scenario, the expected present value of a successful litigation strategy of that sort is under $4.3 billion, right off the top. There's time value of the money that is tied up with the U.S. Treasury. That money could be invested in treasuries or in capital and equipment in the industry, and nobody in the industry makes capital investments these days for a return on capital employed of less than 15% to 30%. So there is a huge forgone opportunity cost on having the money tied up for a significant period of time. So add that into the mix, and add the fact that duties would continue for a certain period of time—we don't know how long. We know there's been another administrative review conducted, so duty rates would rise from approximately 10.8% today to 14% as of December 1. So there's another cost. There are litigation costs and the cost of lawyers. There are costs in terms of the management resources in companies that are unproductively dedicated to dealing with the intense administration of dumping and countervailing duty investigations.

But let's look at the bigger cost, the bigger risk, and that is the risk of Lumber V. Anybody who says that we're one win away from free trade has simply not followed the softwood lumber industry and the trade issues around it in Canada for the past several decades. There is no doubt that if we walk away from this agreement, the industry in the United States would launch another action against Canada. Think of launching an action now where we have won the case of threat of injury, we've largely won the allegations of subsidy, and we've been doing okay on the dumping cases, but that's a mug's game. Think of a world where the markets are going into the ditch, which is what we're experiencing today. There's tremendous fear out there in the industry. In every company that's dependent on the housing market and the lumber business, their stocks are falling, prices are falling, and confidence is plummeting.

If you think that the U.S. industry is not going to take this opportunity to come at Canada again with another trade action, think again. They will. There is no doubt about that. We will see dumping again as a primary method of attack. Remember that dumping is not that hard a game to play, because it simply requires that you establish one of two things: that you're selling into the U.S. market at lower than you're selling into Canada—not likely; and that you're losing money on products you're selling into the U.S. market.

● (1030)

Anybody who knows the dumping file and who has seen how the Department of Commerce in the United States calculates dumping margins will know that they will have no problem establishing a substantial dumping margin. It will be spurious and fictional, but it will be sufficient to allow them, once again, to bring interim duties. And once again, we will be into the litigation cycle that has characterized this industry for a couple of decades.

The litigation cycle is this: you have a flimsy case of injury or threat of injury, as we had with Lumber IV, where we proved in all the appeals and the legal processes that there was no injury or threat of injury. We won those cases, but we've been through five years of duties that started at a combined rate of 27% and have now dropped to 10%. If anybody in this room, or in the Canadian industry, thinks we're going to avoid another litigation cycle, then I say, all right, make your decision, be accountable for it, but I'm here to tell you that I think a litigation cycle will be coming our way and it will be ugly. There will be job losses, there will be company failures, and communities will be in very difficult situations.

And that's not all. Don't think for a second that we can walk away from this agreement and, when we feel like it, negotiate another one. That is not going to happen, I can assure you. If anyone thinks the President is going to come back and negotiate softwood lumber after the Prime Minister and the President have put so much capital on the table to deal with this issue, I suggest that you give your head a shake. It is not going to happen. We're going to have a Congress that will be as protectionist or more protectionist than ever. I assure you that negotiations, as an option, will be gone for a minimum of three years.

In wrapping up, I would like to say, let's make a decision. I will respect the decision that everybody involved in this file has to make, but let's make a decision that's based on objective fact, analysis, and what we think the consequences are. Recognize the uncertainties, recognize the two choices we have, and stop playing games about there being some utopian free trade option that we will all benefit from in a few short months if we just have one more legal victory. That is not on the table.

What is on the table is continued litigation and a negotiated agreement that I think is the best softwood lumber settlement we've ever seen in this country. Let's make a decision. Let's take responsibility for our decisions. Let's make sure the companies take responsibility for their decisions with their shareholders, with their employees. Let's ensure that governments make a decision. Stand up, be counted, and let's accept the consequences. I will clearly respect those who are prepared to do that.

Thank you, Mr. Chairman.

● (1035)

The Chair: Thank you very much, Mr. Minister, for your very informative, concise, and candid presentation before the committee. It's very much appreciated.

We will now go directly to questions, and I'm sure there'll be more than a few. We'll start with the official opposition.

Mr. LeBlanc, go ahead, with seven minutes of questions.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you, Mr. Chairman.

Welcome, Minister. In the middle of Parliament's summer recess, thank you for coming back to Ottawa. Thank you, colleagues. As Helena mentioned, thank you for taking time to study this important issue.

Minister, in my questions I wanted to touch on three issues. My colleagues in subsequent rounds are going to talk about some of the concerns we have—for example, money ending up in the hands of the U.S. industry and the treatment of the Canadian industry—but my colleagues will come to that.

Minister, I wanted to touch on three issues. The first one is that as an Atlantic Canadian—and I see my colleagues Mr. Casey and Mr. Eyking are here as well—I think we need to recognize that the Atlantic industry, the Maritime Lumber Bureau, and the provincial governments in my region of Canada have endorsed the agreement because the historic exemption of Atlantic Canada has in fact been preserved. I say that candidly and without reservation; for Atlantic Canada, this was an important moment. There have never been allegations of subsidy made against the Atlantic industry, for reasons that you understand very well, in terms of stumpage rates and private land holdings, so as an Atlantic Canadian, I'm certainly pleased that this agreement protects the rights we have fought hard to ensure are protected.

As an official opposition, we're concerned that other regions of the country—like yours, Minister—don't seem to have the same level of confidence in this agreement. I'm sure that as a member of Parliament from British Columbia, you're concerned with the reaction of your region.

Specifically with respect to the Atlantic exemption, I think that in previous comments you have resisted a separate agreement for the Maritimes similar to the 1996 exchange of letters that became known as the maritime accord. Now that the Maritimes are included in the main agreement, if, as you said in your closing comments, decisions are made by industry or by Parliament and this agreement does not go ahead, would you be prepared to look at a mechanism separate and apart from this issue that would preserve and protect the Maritimes exemption? That is certainly a question people in the industry in my part of Canada are asking.

Another issue, Minister, is with respect to the termination clause. You touched on it in your comments. Many industry spokespersons, and you've seen them as well as we have....

[*Translation*]

As regards Quebec, I heard the comments made by Mr. Chevrette and the industry in that province with respect to the need for more than a 23-month agreement. In Quebec and other regions of the country, the termination clause is causing a great deal of concern.

● (1040)

[*English*]

You have said that other free trade agreements have six-month cancellation provisions, for example, but there has never been such a litigious set of circumstances as those that apply to softwood lumber. Surely in all the different trade and sector agreements, for reasons you've identified, softwood lumber has been a very contentious and litigious moment.

Don't you worry, as do other representatives of the industry, that this termination clause in fact guts the argument of the Prime Minister and your own argument that it brings seven to nine years of stability? From our perspective, the termination clause renders moot the idea that there is a sustained and long period of stability and predictability, so that remains something we hope to improve.

A final point, Minister, is that you have said negotiations effectively ended with the initialling of your agreement in Geneva. We're very much hoping that's not the case. We, the official opposition, think you can still make improvements. We're not opposed to any agreement; we're opposed to an agreement that we believe is bad for the industry and bad for Canadian workers. We're hoping you can confirm for us today that some discussions are taking place, either among industry groups with the U.S. coalition or perhaps among provincial governments and the American government; that we may see mechanisms that could improve this agreement; and that perhaps that might be why the Prime Minister and the President didn't sign the agreement earlier in July—because you too are hopeful that we can bring some improvements to this agreement.

The Chair: Minister, you may reply.

Hon. David Emerson: Thank you very much, honourable colleague.

I am really pleased with the exemption for Atlantic Canada. I think it's a very important part of this agreement and it does uphold a traditional exemption for Atlantic Canada.

As far as I am concerned and the government is concerned, the way to deal with the Atlantic Canada exemption is to get on with concluding this agreement. In the event that the agreement is not concluded, we're all going to have to contemplate how to pick up the pieces, and provincial governments and industry are going to have to get together. Certainly the federal government is here. We'll continue to pursue our trade litigation, as we would normally do, as a national government, but it would require some recontemplation that right now is hypothetical, and I'm not prepared to speculate on what we would or would not do in the event that this agreement is not concluded.

You did mention some issues with respect to concerns from B.C. In the last few months, B.C. had indicated several concerns that were vital. When it came right down to what the really critical hill-to-die-on concerns were, the anti-circumvention clause was absolutely their number one issue. There were a few other issues, and we have worked with them to deal with those.

There is another outstanding issue in B.C., and to be candid with you, it's a very controversial one. It's the request that lumber produced from logs from private lands in B.C. be exempt from the agreement. We can talk about that part of it, but it also includes a liberalization of whole log exports.

My honourable colleague on my right will know that liberalizing log exports is a very controversial issue in British Columbia. There has been a very substantial increase, even without liberalization, of raw log exports. It is causing serious concern in coastal communities that see these logs going to the U.S. for processing. So while we have been responsive to the province's wishes on that issue, that is not something we have succeeded in getting into the agreement.

What I think is critically important for B.C. and other provinces is the provision for a binational softwood lumber committee of the parties, of the governments, to look at these issues in a very timely way and see if we can create the basis for more exemptions and the basis for more improvements. So I think this agreement does, in a very constructive way, deal with some of the areas where we would have liked to make more progress but didn't.

With respect to negotiations being over, negotiations are over. Ambassador Wilson has had some discussions with provinces and industry in the last few weeks. The purpose of those discussions was around identifying further administrative issues that were still of concern to governments and industry, but the negotiation is over.

● (1045)

The Chair: Thank you, Minister.

I'd like to remind members that if they take most of their time to ask questions, I'll have to cut the minister off in the answer. We have to respect the time allocation amongst parties. So for the other members asking questions, please keep that in mind while you ask your questions. I'd like you to control your time as much as you possibly can, but I will have to cut the minister's answers off if the questions are too long, at the seven-minute mark or a little after.

We'll go now to Monsieur André, from the Bloc Québécois.

[*Translation*]

Mr. Guy André (Berthier—Maskinongé, BQ): Good morning, Minister. We are very pleased to have you here today to discuss this important matter for both the Quebec and Canadian softwood lumber industry.

With respect to the termination clause, the April 21 draft provided for a seven-to-nine year agreement. At the time, there was no question of terminating the agreement after 23 months, which would result in a loss of $1 billion for the Quebec and Canadian industries.

Much to our and the softwood industry's surprise, we now see that it will be possible to terminate the agreement after 23 months, which is a far cry from the initial seven to nine years. You say this is perfectly normal, but that is not what was originally planned.

How and why did we end up with a 23 month termination clause, when there had been no discussion of this previously?

You also say that this agreement is fragile because of the interpretation of “dumping” you referred to earlier. That is another indication that this agreement could be terminated after 23 months.

[*English*]

Hon. David Emerson: Thank you, honourable colleague.

The agreement theoretically can be terminated in 23 months, but no trade action can be taken until three years are up. One of the reasons was that obviously we wanted to protect our industry against an immediate termination at some point by the United States that could lead to a further trade action immediately by the coalition in the United States. We wanted to buy some security from that provision.

The 12-month standstill that is part of this is important, because in the world of dumping there is an administrative risk that any export taxes that may be in place on termination would then be part of the calculation of the dumping margin for companies. In other words, they could become part of the cost base and therefore drive up the dumping margins. The standstill ensures that risk is in fact minimized.

I want to say one more thing about termination. That is that this is an agreement between two governments, and it is not an agreement that would be entered into lightly or terminated lightly. I can assure you that the United States has no interest in going back into a lumber litigation trade war, having gone through what they've gone through and we've gone through on this. The only time a softwood lumber agreement has been terminated is when Canada, not the United States, terminated the softwood lumber agreement.

I think the whole discussion around termination is a complete red herring. Virtually all international agreements—certainly all international agreements entered into by Canada and the United States—have much shorter, easier termination provisions than this agreement. That does not make them six-month agreements; it simply means there is that proviso.

As I say, in the original April 27 agreement silence does imply, by international law, a 12-month termination provision. There was enormous debate as to whether, even in the April 27 agreement, there should or should not be a termination provision. There were different points of view, and as we went through that period from April 27 to July 1, it became more broadly accepted and argued by the industry and provinces that they wanted a further termination protection, and we negotiated it, in terms that we felt were satisfactory to them.

● (1050)

[*Translation*]

Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ): Minister, you say that negotiations have ended, but are you prepared to acknowledge that negotiations are currently under way between representatives of the Canadian and American industries, negotiations which federal officials are attending as observers? Does that not prove that negotiations are continuing? Are you prepared to acknowledge that government officials are at the table?

[*English*]

Hon. David Emerson: I am certainly prepared to acknowledge that we have had discussions with our industry, and I know Canadian industry has had discussions with U.S. industry. I have been quite clear, as I think Ambassador Wilson has, that there are some peripheral administrative issues around the agreement that have been subject to further discussion and clarification, but negotiations government to government ceased on July 1.

[*Translation*]

Mr. Paul Crête: Discussions are currently under way between the two industries, and observers for both governments are there, partly to avoid contravening anti-trust legislation in the United States.

Are you prepared to acknowledge that Canadian government officials are at the table as observers?

[*English*]

Hon. David Emerson: As far as I know, any discussions that are going on do not include government.

[*Translation*]

Mr. Paul Crête: Do you acknowledge that they are there as observers? They don't necessarily have the right to speak, but they are there as observers.

[*English*]

Hon. David Emerson: My advice is that any discussions between the Canadian industry and the U.S. industry do not involve the Canadian government, and I am not aware of there being Canadian government observers.

[*Translation*]

Mr. Paul Crête: The agreement states that all litigation must be terminated and 95% of companies must accept the agreement. In your opinion, will these two conditions be met before legislation is tabled in the House?

[*English*]

Hon. David Emerson: There is no doubt that this agreement calls for 95% of those who have deposit receivables to agree to the agreement and to the mechanism for accelerating those deposits. It also calls for termination of litigation by both sides. Those are issues the industry and governments have to look at in assessing this agreement.

The Chair: Thank you.

I'm sorry, Mr. Crête, the time is up. We've gone over time a bit.

Now we'll go to the government, to Ms. Guergis.

Ms. Helena Guergis: Good morning, Minister. Thanks very much for being here with us. We appreciate your willingness. You're always there in accommodating the committee's requests when we ask you to be here. I want to acknowledge that it was your request, in the letter you gave the committee, to be before us here today. We appreciate your always being here for us.

I also want to thank you for providing a very clear picture as to why this is the best possible solution, and I want to recognize your commitment to the industry, to the communities that have been devastated by this dispute, to the families, and to the thousands who have lost their livelihoods because of the dispute. I recognize that your main focus is to see a resolution that is in the best interest of Canadians. I appreciate your commitment.

Minister, some individuals have claimed that if we had only waited just a little bit longer, the softwood dispute would have ended in Canada's favour. Your comments today, of course, have made it very clear to the committee that you disagree with this—I, of course, agree with you—and you have provided some compelling reasons why there's little hope for the industry to rely on continued legal action. As someone who has an intimate knowledge of this issue, including knowledge on the political side and the legal side of the economic realities and of course the human side of this dispute, you are in my opinion well positioned to speculate on what the future holds without this agreement.

I think what is, of course, most important now is that the two choices are a deal or no deal. Would you please explain to us again what you think the industry will look like without this deal? What will happen to the industry if we do not have this agreement?

● (1055)

Hon. David Emerson: Let me provide a little bit of context.

As I think everybody in this room will certainly know, we've just come out of a WTO negotiation that hit the rocks a few weeks ago and doesn't appear to be going anywhere very quickly. As you know, when you look at trade agreements, the only truly international legal framework governing trade is the WTO. The WTO is international law and it's negotiated by 149 members. It creates a legal framework for dealing with trade and investment that belongs to no country, but belongs to all participating countries. The WTO was critical even to issues like softwood lumber, because through the WTO you can begin to get at issues like the definition of dumping margins or the definition of subsidy. So you can start to influence an agreement like NAFTA with a well-negotiated improvement in the various aspects of the World Trade Organization trading framework. That's now been put aside.

Let's look at NAFTA. People believe wrongly that NAFTA is an international set of laws or a trading framework in and of itself. NAFTA is not. NAFTA is a trading framework that is based on respect for the laws of the individual countries that are partners to NAFTA. So when you have a dispute under NAFTA, as we have with softwood lumber, you must have that dispute adjudicated on the basis of American law. It's not under international law, it's American law, and that is the requirement of the panels that adjudicate these disputes.

So when you believe that you're one legal victory away from ultimate free trade, what you are basically saying is that you're one legal victory away from American law giving you free trade. American law is made by Americans. It's made by the Congress, and they set the regulations; they set the definitions. They have a law that's already made it difficult for us to adjudicate disputes. Witness the fact that we've had spurious cases for the last five years, and many years before that, with allegations against softwood lumber. NAFTA, chapter 19, is there and it's in place, and we go through the litigation cycle. They're able, under American law and under the terms of NAFTA, to bring about these interim duties that destroy companies, destroy families, destroy communities, and it can take us years to get through it.

If you think that by winning all of the current cases that are before us somehow this little problem is going to go away, think again. There is absolutely nothing stopping American industry and the American government from launching new trade actions. There's nothing stopping the Government of the United States from tweaking its own laws to make it even more difficult for us to win chapter 19 cases going forward.

So you've got to be practical and realistic and realize that outside of the World Trade Organization, trade bilaterals and free trade areas that countries enter into are not the same thing. They do not provide for that international legal framework against which you can have disputes adjudicated. You're basically at the mercy of your trading partners.

● (1100)

The Chair: You have two minutes, Ms. Guergis.

Ms. Helena Guergis: Good. I'll try to be as brief as I can here.

I'm just going to read for you Gordon Ritchie's testimony when he came before the committee, Minister, because I know you weren't here. He said:

> From the outset of the free trade negotiations, the Americans insisted on carving lumber out and managing this trade under the infamous memorandum of understanding of 1986. When that was terminated and the Americans lost their case before the free trade panels in the 1990s, they refused to pay back the duties until the softwood lumber agreement was concluded. This time around, the administration's refusal to stop collecting duties, let alone pay back the duties already collected, is a flagrant violation of their NAFTA obligations and the provisions of their domestic law.

I read that to you leading into my next point. With regard to the dispute mechanism that is in this agreement, there are some people who have said to me that this dispute mechanism alone would be reason enough to sign the agreement. Could you please explain for us a little bit more about the benefits of this agreement?

Hon. David Emerson: There is no doubt in my mind but that the dispute mechanism outlined in this agreement will provide, compared with chapter 19 of NAFTA, for a very timely, very definite, very predictable and objective mechanism for adjudicating disputes in this agreement or emanating from this agreement. I think that provision alone is going to be worth a tremendous amount, as will the establishment of binational mechanisms at both the government and industry levels.

The experience in Canada, and I think most members will know this, is that where we have binational sector arrangements, as we've had, for example, in the automotive sector since the 1960s—we had the Auto Pact, and that morphed into free trade in autos and an integrated North American auto industry—we don't have trade disputes.

You have trade disputes in the sectors where there hasn't been that cross-border dialogue and cross-border integration of the industry. The more we work together and the more mechanisms for cooperation, future planning, and decision-making we have, the less likely it is that we will have disputes, and the more readily will we be able to evolve the trading framework toward what we all hope for, which is the utopia of unmitigated, fair, predictable, and rigorous free trade.

The Chair: Thank you, Minister Emerson.

Now for the last in the seven-minute round, we go to Mr. Julian, from the New Democratic Party.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you, Mr. Chair.

Mr. Emerson, in your opening statements you talked about the risk of Lumber V. You said you thought the American industry would launch other actions against the Canadian industry, which is exactly the point, and why so many in the industry oppose this proposed agreement: essentially, it gives $500 million to the coalition to launch further actions against the Canadian industry, and it starts us back from square one, because it erases four years of legal victories.

We have heard from the industry in the past that 20% of Canadian mills might close as a result of this agreement. What we have is a very badly flawed agreement and botched negotiations. As one industry representative told me, Canada has capitulated on everything. Essentially, over the course of negotiations from April 27 to July 1, we saw continued concessions to the United States. It's no surprise that the industry feels betrayed. Earlier that week, prior to July 1, the industry was very clear that they saw this as fundamentally flawed. They raised very serious objections, and yet on July 1 you initialled the agreement just the same.

I have three questions.

The first is, why did you initial an agreement when you knew the vast majority of the industry was opposed?

Secondly, the Conservative Party in opposition, when you were with the Liberal Party, supported loan guarantees to the industry. Why is the government not moving to provide loan guarantees to the industry, and why the strong-arm tactics trying to force the industry to accept an agreement that is unacceptable?

Thirdly, you raised these issues around litigation and about there being potentially two or three years before funds come back. The Prime Minister spoke, I thought, very irresponsibly. He talked about seven years of litigation. We know that currently—on July 21, with the Tembec case—we won and won quite easily, and that the industry is now looking into providing remedies to the court. The court will address the issue of remedies. They will most assuredly be applying for a preliminary injunction, which would mean the tariffs would be taken off in that case. That case and the ECC judgment on subsidy, which Canada has suspended, are the two cases that are in their last throes.

My question is very simple. We're hearing seven years and three years. We know the Tembec case can only be appealed to the Court of Appeals for the Federal Circuit and that the ECC judgment is non-appealable. So very specifically, how do you come up with these figures—three years or, in the Prime Minister's case, seven years of litigation—when we know they're not the case?

● (1105)

Hon. David Emerson: To begin with, the agreement on April 27 was shared with industry and with provincial governments. We took the issues and concerns that were conveyed to us over that period of time and we successfully negotiated further concessions by the United States on the issues that were important to them. Anti-circumvention was important. You spoke of loan guarantees. We have an element in this agreement that is far better than any loan guarantee program. You don't have to go to your bank or financial institution. All you have to do is assign your deposit. Export Development Canada will flow the cash to you very quickly. That is far superior, from a company point of view, to any loan guarantee program.

In terms of the legal victories, you cited Tembec. Tembec will have to make its own decisions on what the interests of Tembec are going forward. On critical matters relating to this agreement and some of the fundamental issues like the recovery of deposits, we have other cases we can use to pursue those legal points, but I should say, the advice I receive is that decisions relating to NAFTA disputes of this type are not precedential. In other words, they exist, they're part of the file, but they're not precedential in the same sense that common law court cases are legally precedential.

So I come back again and say to you, if the U.S. government and the U.S. coalition wanted to pursue a protectionist action against Canada, they can do that whether or not we win chapter 19 legal victories. They can modify the laws, they can come after us in various ways, but the reality is that if we have an agreement, it cannot be terminated by industry in the United States. It is an agreement with the Government of the United States. The Government of the United States is not going to terminate this agreement lightly, and I believe they will not terminate it, period.

I will state again that this is a seven- to nine-year agreement, with termination provisions because there were concerns and anxieties from industry. We have provided termination provisions that will be helpful in easing some of their anxieties.

The Chair: Mr. Julian, you have about two minutes.

Mr. Peter Julian: You didn't answer my question about where litigation could go. Essentially the decision on Tembec, which comes through the Court of International Trade, is appealable once. It's a 12-month appeal, and that appeal goes to the Court of Appeals for the Federal Circuit. That is the case with Tembec. In the case of the ECC judgment, we have suspended that judgment.

So I ask you again, specifically where do you come up with this two- to three-year figure, and where does the Prime Minister come up with the seven-year figure, when everybody in the industry certainly knows we're in the final stages of litigation and we're in the final stages of actually winning both on the issue of subsidy and on the issue of injury?

● (1110)

Hon. David Emerson: I'm not quite sure what you're referring to. In my analysis of this agreement and the alternative to this agreement, which is litigation, I said let's accept 90% probability of success on key litigation cases. I believe, and the best legal advice I get and my experience in the industry tells me, that process will be drawn out for months, possibly years, and then you have to begin the whole process of unwinding the duty entries, which we know could take from two to three years under normal circumstances, because there are literally thousands of entries. Basically, under the litigation scenario, even if you're successful, you're looking at something like two, three, or four years, or maybe never, to actually get cash back. That's what I'm saying.

I'm saying the seven- to nine-year agreement is a seven- to nine-agreement. Yes, it has termination provisions, just as virtually all international agreements have. That doesn't mean those agreement are six-month or twelve-month agreements. They are permanent agreements, and in this case, permanent is seven to nine years.

Mr. Peter Julian: Well, Mr. Emerson, I think you're undermining your own arguments.

The Chair: Mr. Julian, I'm sorry; your time is up for this round. You will get another chance.

We'll go now to the five-minute round, starting with the official opposition and Mr. Eyking.

Hon. Mark Eyking (Sydney—Victoria, Lib.): Thank you, Mr. Chairman.

Mr. Emerson, I'd also like to thank you for coming before our committee today. From my role last year as Parliamentary Secretary to the Minister of Trade, I know the complexities and the challenges of trying to reach a long-term agreement that could give our industry some stability.

Now, as mentioned before, rulings have been made and are still being made that the tariffs were illegally collected. In our negotiations a year ago, we were adamant that any final agreement should not have any money going into the hands of the U.S. lumber industry and its lawyers. One of the main reasons is that not only does it belong to our producers, but we've also been falling into that trap of the Byrd Amendment. You're very familiar with the Byrd Amendment. If we allow this money to go into the producers' hands, it legitimizes the Byrd Amendment, which could have far-reaching consequences on future trade disputes with the U.S. over any of our exports.

Another thing is that a year ago we had a bit of a draft agreement with the U.S. In that, all collected tariffs would be coming back to Canada. After we received those tariffs, we were going to then allocate a portion of that, probably similar to the billion dollars. Part of it was going to go to the Katrina disaster; the other part was going to be for promotions of softwood lumber products.

I have two questions. The first one, Mr. Minister, is why are we playing into the hands of that Byrd Amendment and giving the U.S. competition down there ammunition that will come back at us in two years' time, or whenever they come back at us again? That's my first question.

My second question is this. With all those international rulings in our favour, why aren't we now playing our cards a little harder and insisting that we receive the money, and of course allocating it in a way that the U.S. can accept, like helping with the Katrina disaster or promoting softwood lumber products?

Hon. David Emerson: Thank you, Mr. Eyking.

The Byrd Amendment dies on, I think, November 1, 2007. If we enter into this agreement, it takes us right into the period in which the Byrd Amendment no longer applies. We've also won a court case, which I believe will be appealed by the Americans, on whether the Byrd Amendment should have applied to Canada in the first place. So we're winning there; the Byrd Amendment is history.

In terms of the 18% of the deposits that will not come back to Canadian producers, you have half of that being spent for good initiatives such as Katrina, low-income housing, and initiatives to help and support the industry. You have $50 million for a fund for a Canada-U.S. industry committee to develop the competitiveness of Canadian lumber and to promote lumber as an eco-friendly, vital building material against concrete and steel and plastics. You have opportunities to strengthen the competitiveness of the industry in both Canada and the United States—and I stress both Canada and the United States. Those determinations will be jointly made; they will not be unilaterally made. So we are basically out of the woods on the Byrd Amendment, and we are going to be party to making decisions on the other half of that money.

Remember, it's a negotiated settlement; you're asking the American industry and the Americans to give up something that they have. We have a greater return of deposits than we ever contemplated in the past; you will know that from your time with Minister Peterson. There was a time in Canada—I was there—when we were considering accepting a 15% export tax and giving up 50% of the duties.

Litigation has brought us to the point in the cycle where we are now. The risk we have—and I want to restate this once more—is that if we blow this opportunity for a very positive negotiated solution, I believe we're back into a litigation cycle, at the front end of the cycle, and that's where all hell breaks loose. To have that in a period of weakening markets would be devastating for the forest industry in Canada, and it's not something I could possibly accept, personally. The responsibility for that is not something I can accept.

● (1115)

The Chair: Mr. Eyking, your time is up.

We go now to the Bloc Québécois.

Mr. Crête.

[*Translation*]

Mr. Paul Crête: Thank you, Mr. Chairman.

Minister, if negotiations currently under way between representatives of the Canadian and U.S. industries result in a settlement that both deem to be acceptable and, for example, there is a move to extend the agreement by two years in order for it to make it a seven-year agreement—that seems to be of interest to both—would you be prepared to include such a proposal from the two industries in this agreement?

[*English*]

Hon. David Emerson: Thank you for your persistence, honourable colleague.

I do not believe there are negotiations taking place between industries. Industries can talk to each other. The Government of Canada and the Government of the United States are not party to any such negotiation, and as far as we're concerned, negotiations are complete.

[*Translation*]

Mr. Paul Crête: I'm asking whether you would be prepared to include a proposal from the two industries in this agreement, if they were able to reach agreement on one or more issues?

[*English*]

Hon. David Emerson: This agreement is not a negotiation between the Canada and U.S. industries, it's a negotiation between the Government of Canada and the Government of the United States. I can assure you that negotiations have been concluded.

The Chair: Go ahead, Mr. André.

[*Translation*]

Mr. Guy André: Minister, since your answers to two questions you were asked did not satisfy me, I want to come back to them.

First of all, who proposed the 23-month termination clause? And why did you go along with that proposal, which was not part of the April 27 agreement?

Second, do you intend to table legislation on the softwood lumber agreement in the fall if the two pre-conditions for the agreement going forward are met—namely that 95% of the industry goes along with it and agrees to terminate all litigation currently under way?

[*English*]

Hon. David Emerson: On the termination clause, that was an ask of the Canadian industry. We had a couple of iterations in terms of the Government of Canada to the Government of the United States. I don't want to reveal all the intricacies of where we started and where we ended, but the idea of the 23 months was really driven by the desire to have a 12-month standstill. In fact, my understanding was that the industry would rather have a standstill than the longer termination period. So the idea was to get a termination sufficiently long at the front of the agreement that we would have immunity from any trade actions guaranteed for three years. The way to do that was the 23-month, 30-day quick termination provision, and then the 12 months in the event that the Americans terminated.

● (1120)

[*Translation*]

Mr. Guy André: On April 27, we had a seven-to-nine year agreement, and the current Canadian government asked for a 23-month termination clause.

[*English*]

Hon. David Emerson: On April 27, we had an agreement that was silent on termination, which implies a 12-month termination provision under international law. What we asked for was what the industry in Canada asked for. We would have been quite content to leave it as it was in the original agreement. We were responding to a request from industry.

The answer to your question about a bill in the House in the fall would be yes.

[*Translation*]

Mr. Guy André: Is the answer yes even if the two pre-conditions are not met?

[*English*]

Hon. David Emerson: Assuming this agreement comes together, the answer to your question is *oui*.

[*Translation*]

Mr. Guy André: Yes, but those two conditions will have to be met.

[*English*]

The Chair: Thank you.

We'll now go to the governing Conservative Party.

Mr. Hill, you have five minutes.

Hon. Jay Hill (Prince George—Peace River, CPC): Thank you, Mr. Chair.

Thank you, Mr. Minister, for appearing today. I think all the parties are in agreement at least on that much, that we appreciate your appearance here today and your trying to clarify this agreement.

I have a number of things I want to get through and a few questions, and perhaps you could just jot them down. On the first one, perhaps you'd just want to comment. I find it more than a little bit puzzling and contradictory for the opposition to be so focused on the termination clause and so upset about the agreement. You'd think they'd be asking for an even shorter termination clause, given their opposition to the agreement and the fact that if it's that bad, wouldn't the Government of Canada perhaps somewhere down the road want to try to get out of it—if we were to buy into their arguments, which of course I don't and we don't?

I want to express, on behalf of the lumber companies in northern and central British Columbia, specifically in the riding of Prince George—Peace River, which I represent, that certainly they're very pleased with that part of the agreement that would see an accelerated repayment of the deposit. Some of these companies of course are hurting, and if the projected problems arise in the future with the market, that money is going to be incredibly important not only to those companies but to the workers they employ and the communities they reside in.

I want to ask a question specifically about the mountain pine beetle, which has devastated the pine forests of central and northern British Columbia and is now encroaching into northern Alberta. Is the anti-circumvention clause sufficient to allow for the increased harvesting of the mountain pine beetle-killed wood? That's a big concern to the companies and the people in central and northern British Columbia.

My last question, Mr. Minister—and I apologize for trying to cram so much into my five-minute slot here—is in particular for one of my colleagues, Randy Kamp, the MP for Pitt Meadows—Maple Ridge—Mission, who has a large number of lumber remanufacturers, or remanners, as they're sometimes called, in his riding. My understanding is that this agreement is certainly superior to what is in place currently for those remanufacturers. Could you comment, perhaps, on that issue? That, in addition to the other issues you have mentioned, was of concern to British Columbia in particular.

Also, could you potentially clarify the future litigation, as much as possible at least? We seem to get the concerns that the opposition are raising, that somehow this might go on for another three years; the Prime Minister said potentially seven years. I would actually submit, Mr. Minister, that we have no idea how long litigation could go on. It's a best guess type of scenario, because we have no control over what the Americans may or may not do. We have no crystal ball—you don't and I don't—as to what laws the Americans might pass if this agreement doesn't go ahead and tie their hands to some extent. Could you comment on that as well?

Thank you.

Hon. David Emerson: Thank you, colleague.

The accelerated deposit mechanism was not part of our framework agreement on April 27; it was a later add-on. It was the result of the government recognizing the need for companies to quickly receive as much cash as they could. A lot of companies are facing serious problems with their creditors. Some of them are at risk of shutting down in a negative market. Cash is king, they need cash, and that mechanism is a very efficient way to get cash to them. It will be a godsend to an awful lot of companies that are facing the prospect of going into a negative market and need cash in order to invest and secure their future.

The anti-circumvention clause on the pine beetle was a very important part of the negotiation over the last couple of months, in combination with the proposed market pricing system in northern B. C. With the pine beetle trees, as you know, the longer they are on the stump the less valuable they become. If you do not have a market pricing mechanism that takes into account that wood quality is deteriorating, that exchange rates may be moving, and the whole constellation of factors that affect the value of timber in the eyes of the people who process it, then you are creating untold problems.

I believe that this anti-circumvention mechanism for the first time will allow Canada to have a market-based pricing system that will truly reflect market reality. If the timber is more valuable, stumpage will go up. If the timber is less valuable, under competitive market conditions stumpage will go down. That will be a very critical aspect for anybody who is trying to manage and deal with beetle-infected timber and all manner of other economic perturbations that can affect the value of timber.

In the old softwood lumber agreement you were basically required to keep stumpage up. The coalition has been constantly attempting to get what's called an "effects test" put into the anti-circumvention clause. It is a provision whereby you would always test a stumpage or policy change against the effect it would have on stumpage and timber prices. If the effect were to reduce it, you'd be punished and essentially in violation of the agreement. We don't have that; it's history. I've got to tell you, the market-based pricing system is going to be a critically important shock absorber for the industry.

I commend the Province of British Columbia. I was one of the few CEOs five years ago calling for market-based timber pricing in British Columbia. It's very reassuring to me that we now have that system in place. I think the industry and communities are going to be better for it.

● (1125)

The Chair: Thank you, Mr. Minister.

Next is the final questioner in this five-minute round, Mr. Julian.

Mr. Peter Julian: Thank you, Mr. Chair.

I want to be very clear, Mr. Emerson, that I'm asking you why you initialled a deal that the vast majority of the industry opposed. I would still like an answer to that question.

I also want to mention that you are undermining your own argument. You talk about Lumber V, and we know the consequences of accepting a deal that erases four years of legal victories and gives half a billion dollars to the coalition for their war fund to attack our softwood industry again. Yet you have not specifically mentioned anything to contradict what we all know to be true: that with the suspension of the ECC judgment, which is non-appealable, and with the recent Tembec judgment, we're basically 90 days away from a suspension of the illegal tariffs, through a preliminary injunction, and 12 months away from repayment.

So you have said nothing specific to contradict this. There is no crystal ball that somehow indicates that there are any other mechanisms the United States can use. I want to be very clear about this.

I have two specific questions. The first concerns the clause within this deal that essentially revokes the duties retroactively. In a very real sense, this allows for the elimination of four years of legal victories. Why would you initial a deal that eliminates four years of legal victories?

Secondly, when we talk about termination, in article XX, paragraph 34, it says very clearly that the United States reserves the right to terminate the agreement, if Canada is not applying the export measures under article VII and article VIII, without resort to dispute settlement or any other precondition for termination. Essentially this is a loophole that allows the United States to terminate the agreement on a simple allegation of circumvention. So why would you give that loophole to the United States?

● (1130)

Hon. David Emerson: Let me go back. Why did I initial this agreement? I initialled the agreement because I felt it was in the best interests of the industry and the country. It was a substantial improvement on the framework agreement, which received relatively broad-based support after April 27. I believe, and continue to believe, that this agreement is in Canada's best interests, and it's in the industry's best interests—and I would do the same again.

In terms of eliminating four years of legal victories, I would submit to you that the legal processes that we—whether under the Liberal or the new Conservative government—have been engaged in for the last four or five years have always been fundamentally focused on strengthening our position so that we could achieve a negotiated settlement. At some point, you cash in the legal victories and what you buy is security.

When you talk about leaving loopholes for industry to come back and attack us, this agreement is the best assurance that on a whim the U.S. industry cannot launch any more legal or trade actions against Canada. That is what this agreement is all about. I will stand on that to the bitter end; there is no loophole. There is a provision in the agreement whereby, if Canada did not complete the provisions in the agreement for an export tax/quota framework, then in effect we didn't implement the agreement, and therefore they could terminate because we didn't do it. That's what that is all about; it is not a loophole.

Mr. Peter Julian: Mr. Emerson, I'd like to move on to the running rules. I would submit that as a CEO, you would have opposed the running rules in this draft agreement. It's retroactive, and these are monthly penalties. Essentially, companies that write to us as members of the international trade committee won't know whether they're earning or losing money on a given product in a given month. So my question is, do you understand why companies are so upset by running rules that make this draft agreement non-commercially viable?

My final question is, if this deal is rejected, which certainly seems to be the case, by the industry and almost certainly by Parliament, will you reverse the suspension of the ECC action and move within cabinet to provide loan guarantees to the industry?

Hon. David Emerson: Let me start at the back end of your questions.

This agreement provides a mechanism far superior to loan guarantees, and I challenge you on that, if you don't believe it to be the case. It is far superior. It gets cash much more quickly and efficiently into the hands of companies. If you want loan guarantees, this is the framework that gets them.

On the running rules, we would have preferred to have prospective versus retrospective calculation of some of these duties. We worked with the industry. We recognize, and have committed to, the need for a framework of measurement, of tracking of flows, so that we can ensure companies are always relatively well informed as to what their position is and what potential liability they will face in terms of a potential export tax measure.

Frankly, if I were a CEO, I would recognize that you can estimate with great clarity exactly what your position is, within 1% or 2%. Generally speaking, there is no reason why this arrangement should not work very well from a commercial point of view. To the degree that there are any administrative hiccups in ensuring it, we will be working with them. We have a committee; both Canada and the United States have an industry committee that will be focusing on how we can ensure that this agreement works in a commercially viable way.

● (1135)

The Chair: Thank you, Minister.

We will go to the final round of five minutes each. We have the official opposition and Mr. Maloney.

Mr. John Maloney (Welland, Lib.): Thank you, Mr. Chair.

Mr. Minister, I'd like to talk about the steps the Canadian industry must take in order for this agreement to come into force.

Article II states that before this agreement can enter into force, Canada must submit a letter to the Americans that, among other things, must confirm that "importers of record that collectively account for not less than 95% of total refunds of cash deposits with accrued interest have complied with all of the requirements in paragraph 1 of Annex 2A". If companies accounting for 95% of the outstanding duties paid to the U.S. don't take these steps, as I read it—and it's clear—the agreement cannot come into force. Effectively, the industry then has a veto.

I was advised that on July 13 you made a statement in discussions with the press: "The 95% does not represent a hard and fast deal. We do not intend to hand out a veto of that kind. This agreement will have to be decided on by Parliament."

To me it's rather obvious that these positions are contradictory. I appreciate your expertise in the field and your understanding of the agreement, but I can only draw two conclusions: either your statement was inaccurate—perhaps it was a misleading statement—or you believe that the final text in fact can be amended.

Hon. David Emerson: Well, I think if you read the final text you'll note that it can be amended by the agreement of both parties. That's a clause in the text. I believe that when companies examine this agreement and reflect on its consequences for them, their employees, their shareholders, and the communities in which they operate, they will be there; they will want to be part of this.

The accelerated deposit mechanism is very favourable for companies. I cannot, in my wildest dreams, imagine companies just holding up the agreement as a spiteful act to somehow bring the agreement down.

Mr. John Maloney: You're suggesting that with the agreement of two parties—the Canadian government and the American government—this agreement can be amended.

Hon. David Emerson: Yes. It says so in the agreement.

Mr. John Maloney: Well, if it can be amended here, can it not be amended in other areas as well—areas that are certainly of concern, that are under discussion?

Hon. David Emerson: What I said was that negotiations have ended. There is a provision for further work to be done on a number of issues. It's noted in the agreement. We have an 18-month timeframe particularly for some issues relating to the coastal industry in British Columbia. In the event that work was coming out of it that both parties to the agreement agreed should be done, then it is legally possible to make such amendments.

Mr. John Maloney: So in one step we're saying the agreement is final, and in another step we're saying we can perhaps renegotiate.

Hon. David Emerson: I said it's final at this time.

The agreement itself contemplates that there will be further work. That was an important part of the agreement—that it would provide for further analysis and further potential opportunities to improve on the agreement. That was a fundamental piece of the agreement.

Mr. John Maloney: It's recognized that further negotiations can in fact take place.

Hon. David Emerson: The amendments I am referring to would come out of a technical process that involves the parties to the agreement examining some of the issues that remain unresolved.

Mr. John Maloney: I'll just move on to another part that involves the industry.

Another part of the agreement is a requirement that industry give an effective veto when there is a lot of private litigation going on—not necessarily between Canada and the U.S. under NAFTA; there is private litigation between Canadian companies, Canadian forest associations, and the U.S. government. As I understand it, unless these cases are withdrawn, the agreement cannot go forward. How is the Canadian government going to force private industry, private associations, to withdraw their litigation actions?

● (1140)

Hon. David Emerson: The agreement calls for the ending of litigation. That's what a negotiated settlement is: instead of litigating, we negotiate, and we live with a negotiated settlement. Obviously, litigation has to be brought to an end.

Mr. John Maloney: How is the Canadian government going to force private companies to end their litigation?

Hon. David Emerson: The Government of Canada is not in the business of forcing companies to do anything. What we have done is create a very attractive alternative to litigation for the Canadian lumber industry. The Canadian lumber industry will have to make a decision as to whether they want to pursue more litigation or to take advantage of a negotiated settlement.

Mr. John Maloney: In effect, they have a veto on this agreement then.

The Chair: Thank you, Mr. Maloney. Your time is up.

To the Bloc Québécois, Monsieur André.

[*Translation*]

Mr. Guy André: Mr. Chairman, thank you again for giving us this very valuable time.

Under Article XX of the agreement, either party can terminate the agreement with one month's written notice. Also, in order for there to be an agreement, both countries, Canada and the United States, must give their consent.

Why did you not provide for both parties to have to agree before the agreement can be terminated? At the present time, either one of the two can terminate the agreement after 23 months if it is unsatisfied with an anti-dumping provision, for example.

In these negotiations, did you ask for both parties to have to agree to termination before it can happen?

[*English*]

Hon. David Emerson: Clearly, either country could agree to terminate, or both countries could agree to terminate. I don't see the point that's being made.

[*Translation*]

Mr. Guy André: Well, it would have been possible to include a provision stating that the agreement could be terminated after 23 months only if both parties agreed. As it now stands, however, if only one party wants to terminate the agreement, then it can be terminated.

[*English*]

Hon. David Emerson: We have tried, as much as we could, to stay within the conventions of international treaties. This is the convention: that the termination provision can be exercised by either party to the agreement. It would be very unusual, and odd, to put in a clause that both parties had to agree to terminate—very odd.

[*Translation*]

Mr. Paul Crête: Wasn't that what the Canadian industry proposed? You said earlier that the industry had asked for a termination clause.

Did the industry not suggest that the agreement should be terminated only if both countries agree? It would have made the agreement much stronger.

[*English*]

Hon. David Emerson: The answer is no. When you say “the industry”, I think you understand there are different views in the industry; there is no unanimous view. There was no consensus from the industry that we should have a double-triggered termination provision.

[*Translation*]

Mr. Paul Crête: You said *"at this time"*, when referring to negotiations. If the Canadian industry, which is currently involved in exploratory discussions, arrives at an attractive consensus and puts forward that proposal along with the U.S. industry, would it not be appropriate for both countries to incorporate it into the agreement, thereby correcting a problem that is the industry's main source of frustration?

[*English*]

Hon. David Emerson: There is nothing preventing the Canadian and U.S. industries from getting together and making proposals that could be considered within the context of the mechanism that's built into the agreement to contemplate further changes. Nothing prevents that.

● (1145)

[*Translation*]

Mr. Paul Crête: Would it be possible to do that before the agreement is voted on in the House? If you require the support of the majority of members in the House, you will have to present them with an agreement that they deem to be acceptable. To do otherwise would be irresponsible.

[*English*]

Hon. David Emerson: Well, we're certainly doing our best to make it acceptable to everybody who's affected by the agreement.

The Chair: Now we go to the governing Conservative Party and Monsieur Paradis, for five minutes.

[*Translation*]

Mr. Christian Paradis (Mégantic—L'Érable, CPC): Thank you, Mr. Chairman.

Minister, I have followed developments as regards this agreement from the standpoint of Quebec's interests and I see that the various Canadian realities have been taken into account. You also took into account the various court rulings in our favour in recent years, with a view to strengthening the Canadian position as part of interest-based negotiations. And with this agreement, you will also be able to avoid further litigation or, as you say, *"Lumber V"*. As well, Quebec will be entitled to its fair share of exports.

When you worked with Mr. Peterson, the expectation was that we would recover half of the money paid to the United States, whereas under this agreement, $4.3 billion will be repaid.

The fact is that the agreement has been improved. It includes an accelerated refund mechanism, which makes loan guarantees of little use, cumbersome in fact, since they would force people to go more into debt. Under this agreement, they will be getting back their own money. As a Member of Parliament, I represent a riding where there are a lot of border mills. And you did in fact take into account the historic exemption enjoyed not only by mills in the Maritimes, but our border mills as well.

For all these reasons, Minister, I want to commend you on an excellent job. This is a comprehensive agreement. However, I do have one question with respect to the termination clause. You said yourself that the clause is nothing more than a red herring; that it is a non-issue. And if you had kept the April 28 agreement as is, with no termination clause, under international law, there would have been a unilateral one-year termination clause under the Vienna Convention.

However, at the request of Canadian industry, you made improvements to that 23-month clause and also negotiated a one-year standstill provision. That is unusual and provides extraordinary protection for our Canadian industry. Indeed, the Chief Negotiator for Quebec, Pierre-Marc Johnson, who is an expert on international law, made that very point.

So, I would be interested in hearing your comments with a view to clarifying that point because, unfortunately, we hear far too often that Canada gave in to the U.S., when in actual fact, it made very significant gains.

Thank you.

[*English*]

Hon. David Emerson: Thank you very much, Mr. Paradis.

There is no doubt that this agreement is shaped in a way that adapts to the realities of the industry in different parts of the country in a unique way. Clearly we have the Quebec border mills and have succeeded in achieving something very significant for them. The overall industry in Quebec has been closely involved in this through Pierre Marc Johnson, as you know, and he has been clear that he thinks this is basically a good agreement. The cash acceleration mechanism that we are putting in place is far superior to loan guarantees, so that will be extremely beneficial. The issue of termination really is a red herring. I believe this agreement will live on at least seven years. I believe that very strongly.

People have high anxieties. It has been a very difficult industry to work in because of the trade actions that have been taken with such intransigence by the U.S. side over the years, so you can understand people wanting some protection against premature termination. We've been very happy that the United States has responded to our request to make modifications to ease some of those concerns.

I do not believe termination provisions will be used. I don't believe the United States will use them; I don't believe Canada will use them. I think this agreement provides a framework in which the industry can develop, can work cooperatively to become more competitive internationally against the competition, which is increasingly non-North American competition. I think this agreement will herald a period of stability, improvement, growth, and renewal in the Canadian forest industry that is unprecedented. That's what I believe.

● (1150)

The Chair: Go ahead, Mr. Hill.

Hon. Jay Hill: Thank you, Mr. Chair.

Mr. Minister, you didn't have time to get to all my questions earlier. In whatever time is left, could you touch on the issue of our colleague Randy Kamp in relation to the remanufacturers from British Columbia in particular, but from all Canadian remanufacturers?

Hon. David Emerson: Some remanners like the deal; some remanners would like more. But fundamentally the agreement here is a significant improvement for remanners, because it does provide for independent remanners to pay only such duty as may apply on the low-grade product they acquire from other producers. In other words, there is a first-mill provision in this agreement that ensures the duty is levied on the cost of the raw material that they subsequently upgrade in their business. That's a very substantial improvement for remanners. There is also a provision in the agreement that caps at $500 any export tax payable, so if you're selling a $1,000 product, you will pay an export tax as though it were a $500 product. Those are significant improvements.

Again, we know there are areas in which remanners would like to see further improvements. There is a mechanism in this agreement for us to start examining those issues and see how we can morph this agreement into something that is better for the industry throughout North America.

The Chair: Thank you, Minister Emerson.

We have about eight minutes left in the meeting. I know the minister has an appointment right after this meeting. We have one person left in this round and we'll go to him, after which time we'll go to lunch.

Mr. MInister, I'll give you a couple of minutes if you have any closing statements you'd like to make after Mr. Julian has his five-minute round.

Mr. Julian, go ahead with questions, please.

Mr. Peter Julian: Thank you, Mr. Chair.

Minister Emerson, under the current benchmark price, the price last Friday, what would the export charge be under this proposed deal?

Hon. David Emerson: I think I said in my opening statement that the market is, as we say in the business, heading south. It's not a good market right now, so you could be at a 15% export tax at current market prices. But I again come back and say to you, do not pretend that a litigation scenario would not impose serious problems for the industry going into a down market. We already know the administrative review has resulted in an increase in the cash duties that would apply later this year. We may win enough cases quickly enough to preclude that, but I can assure you that in a down market the risk of high interim duties that could last for four or five years again is very high.

Mr. Peter Julian: My point is this, Mr. Emerson. Essentially, under the current benchmark price, we'll be paying more than we are under the illegal tariffs.

As we've discussed, and as has become clear through this committee hearing today, we're talking about two hurdles left, one of which was suspended by your government, which was the non-appealable ECC challenge. So we basically have two hurdles to go before we cross the finish line—not the three years, not the seven years of some of the more extravagant statements; we have two hurdles to go. What I think is surprising to the industry is why we don't go over those two hurdles, cross the finish line, and ensure that it is very clear that Canadian lumber is not subsidized.

This is the problem with the agreement: it erases the four years of legal victories; it has running rules that are not viable; it gives away $1 billion; it in a sense fuels Lumber V, because the American softwood industry actually has the cash to come back at us; and it eliminates jobs. So I'm not satisfied with any of the answers we've received today.

What I would like to do is put three more questions. My final question I'll put first, which is this. What is the alternative plan? This deal has received substantial opposition from the industry and from many others, and very clearly, members of this committee, which represents all four political parties, are concerned about the agreement, so what is the alternative plan?

The two other specific questions I'd like to ask concern your earlier comments that the EDC would be flowing money to companies—essentially, Canadians picking up the tab—prior to any moneys coming back to Canada. We know that in the agreement Canadians are guaranteeing $1 billion to the United States. My question is this. In the process with American Customs, what is the appeal for Canadian companies? And who is auditing the amount that will be coming back to these Canadian companies? In other words, if the Canadian companies are in disagreement with what Customs might be providing, who is auditing the amount and what's the appeal process?

And I would like you to answer the question, what is the alternative plan?

● (1155)

Hon. David Emerson: Thank you very much, colleague.

I want to again come back, because while, under what is called option A, in a weak market we could be in a 15% export tax category right now, that is a choice that is to be made by the provincial government. They could choose option B, which is a combination of a supply restriction and a maximum tax of 5%. So don't create a scare story by automatically assuming we're into that kind of tax range. It's not so.

And I want to repeat one more time that all of the legal victories we have won have given us a position of strength to be able to negotiate what I think is a very good agreement. What the legal victories have not done is guarantee we will not have Lumber V, and I would personally say the probability of a Lumber V, if we do not conclude an agreement, is very high, very close to 100%. I can't imagine there not being aggressive trade actions launched immediately.

Concerning the alternative plan, our primary focus is on getting this agreement agreed to by provinces and by industry. In the unlikely event that it does not happen, we will have to talk with provinces and the industry about where they would like to go next. It's not something we intend as a federal government to unilaterally put in place at this time. The forest industry and forest resources are largely a provincial resource, and the industry is largely in collaboration with their provincial governments. There is not a place for the federal government to simply tell the industry and provinces what should be done with the industry in that unlikely scenario.

On the EDC and the mechanism for appealing, that's a technical question. I do not have the answer to that. It may be that Andrea Lyon could help you with it. I would presume the EDC would be very rigorous and disciplined in ensuring that the entries that have to be unwound to get at the money would be done correctly.

Andrea, do you want to add to that?

The Chair: Ms. Lyon.

Mrs. Andrea Lyon (Director General, North America Trade Policy Bureau, Department of Foreign Affairs and International Trade (International Trade)): I would just add that, yes, that is correct. There would be a process between the U.S. Treasury and the individual companies to ensure that the appropriate amounts were in fact being discharged.

The Chair: Mr. Emerson, do you have any short comments? The time is almost up. I know you have a deadline.

Hon. David Emerson: I guess, in one minute, I would just say I hope this committee assesses this negotiated agreement objectively. I would hope that as witnesses come before the committee the discussion is focused on the realistic options or alternatives we face as a country that confront the softwood lumber industry. I would hope that people give consideration to the fact that this agreement is good for Canada, it is good for the industry, and it will also help to herald a period of much greater collaboration and better trade relations with our American neighbour.

Thank you very much.

● (1200)

The Chair: Thank you very much, Mr. Minister, for coming today, for giving your presentation, and for answering questions that have been asked by all members of the committee. Thank you also to your officials, Ms. Lyon and Mr. Panday, for coming today.

Thank you all very much. We will convene the next meeting at 12:30 sharp.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

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