



House of Commons
CANADA

Standing Committee on International Trade

CIIT • NUMBER 022 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Monday, August 21, 2006

—
Chair

Mr. Leon Benoit

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on International Trade

Monday, August 21, 2006

•(1055)

[English]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): We're about to start the twenty-second meeting of the Standing Committee on International Trade. We're dealing today with the softwood lumber agreement of July 1. We have as the witness to this meeting Pierre Marc Johnson, senior counsel, Heenan Blaikie.

I really appreciate your being here today, Mr. Johnson. We'll have you go straight into your presentation, and then we'll go to questions right after that. You can go ahead and start your presentation.

[Translation]

Mr. Pierre-Marc Johnson (Senior Counsel, Heenan - Blaikie, As an Individual): Thank you, Mr. Chairman.

Thank you for your invitation to appear. I am very pleased to take this opportunity to answer questions from your colleagues, either in French or English. I will be making a brief presentation in French only. A copy of my brief is available and I believe it will eventually be translated. However, this morning I intend to simply summarize it.

I have been dealing with this issue since May of 2001. In that capacity, I have dealt with a number of ministers, deputy ministers, ambassadors representing both countries, negotiators, and employees with the Office of the U.S. Trade Representative, and I have been part of a team of officials representing the Government of Quebec, from the Ministry of Economic Development, Innovation and Exports and the Ministry of Natural Resources and Wildlife.

The April 27 agreement was reached after hundreds—literally—of meetings, discussions and conferences involving the governments of Canada and the United States, the provinces, and the provincial governments and their industry, as well as the federal government and the provinces. So, we're talking about hundreds of discussions over the last five years. All of that finally resulted in the April 27 draft agreement, thanks to the impetus and leadership of Ambassador Wilson and an exceptional team of people at the Department of Foreign Affairs and International Trade here in Ottawa.

I believe that after five and a half years of uncertainty, it is important for the industry to now resolve this dispute. In Quebec, the softwood lumber industry generates some 18,800 jobs, includes 277 plants and is the economic engine of more than 200 single-industry communities. This industry contributes \$1.5 billion to the Quebec economy annually. Quebec exports a little less than 20 per cent of Canadian output, placing it second among exporting provinces, behind British Columbia. There is an unsettled dispute between the

United States and Canada that goes back a very long time—indeed, to the 19th century.

As regards this issue, there have been four major litigation cases involving the United States and Canada in the last 25 years, in a context which is complex. It's important to understand that forests in Canada are 80 per cent owned by the government, whereas in the United States, they are 80 per cent privately owned. The role of government and government actions therefore differ greatly from one country to the other, which often results in ambiguity or a lack of understanding, or gives the American industry a very good excuse to initiate a trade action. That is what occurred in 2001 when the Canadian industry decided not to renew the 1996 agreement.

I would just point out as well that there has never been true free trade between the two countries in softwood lumber.

So, what we have now is an out-of-court settlement based neither on economic theories nor the reasons that led to the initial trade actions. This is a settlement which, like all settlements of an economic nature, is based on externalities affecting businesses operating in that sector. It may depend on their debt level, how they see the future unfolding in the medium to long term, or the extent to which they're able to live with some uncertainty. All of that means that groups with different economic interests are able to reach out-of-court settlements even though, paradoxically, in this particular case, the agreement was negotiated by governments, but with industry consultation.

The Quebec and Canadian industries will make gains as a result of this agreement. I don't intend to provide the details now, but I would be very pleased to elaborate further if members have questions regarding specific aspects of the agreement, which Ambassador Wilson already referred to. In my opinion, we have to look at the agreement as a whole.

Let's use the example of the eastern region. This agreement recognizes that we hold 34 per cent of the U.S. market, whereas previously, the coalition believed the only acceptable level of exports from Canada was 31 or 32 per cent. So that is an important gain.

This agreement includes a further significant gain having to do with third-party intervention for the purposes of interpretation. That third party will be the London Court of International Arbitration, which is also extremely important.

• (1100)

In addition, economists are saying that over a seven-to-nine year period, we can assume that for 40 per cent of that period, we will be experiencing true free trade because prices will be about \$355 per 1,000 board feet. There will be neither volume constraints nor restrictions related to export taxes. As regards the Quebec industry, we're talking about the return of 80 per cent of cash deposits before Christmas or even before Halloween. Some people are saying that that means \$1 billion will be going back into the economy and into lumber company coffers.

The alternative is to continue the litigation. Ambassador Wilson has talked about that. He is certain that would work if we won every single case. We would then recover 100 per cent of the countervailing duties that have been collected. This afternoon, lawyers representing the industry, who have been living comfortably off the industry for years now, will certainly tell you that there is a chance we'll win. I have never met a litigation lawyer who said anything different. Lawyers always tell you they're going to win. That said, I have no desire to try and ascertain what our chances are of winning the lawsuits. It's true that we have won the vast majority of our lawsuits thus far. There have been seven major trade actions and 40 or more interim or final decisions have been handed down by domestic, NAFTA or WTO tribunals. However, it is possible to lose a case for reasons relating to procedure, the court's jurisdiction, or other matters that have nothing whatsoever to do with the substance of the case. That is a real danger.

It's also important to consider not only the risk, but the certainty that time will be wasted. Continuing the litigation will take about two years. That would mean that some businesses in Quebec will have to close, and in some cases, companies could even fail. However, if they receive 80 per cent of their cash deposits between now and Christmas, as will occur if the agreement is ratified and implemented, they will survive and will probably manage to equip themselves appropriately in order to be ready for what is coming.

Finally, there is also the certainty that the American coalition will initiate new trade actions against the Canadian industry. Under the circumstances, I believe the issues are clear for the industry, for the tens of thousands of jobs associated with it, and for the single-industry communities that are experiencing that uncertainty. In my opinion, it would be wise to implement this agreement. That means that a large proportion of companies will have to agree to ratify the accord and terminate their litigation. The Quebec government, which I have been representing on this issue for the last five and a half years, made it clear yesterday that it is prepared to accept this agreement.

Thank you, Mr. Chairman.

• (1105)

[English]

The Chair: Thank you very much, Mr. Johnson, for your presentation today.

We'll just get directly into questioning. We have very limited time. We have, from the official opposition, Mr. Proulx, to start.

[Translation]

Mr. Marcel Proulx (Hull—Aylmer, Lib.): Thank you, Mr. Chairman.

Good morning, Mr. Johnson, and thank you for being with us this morning. We all realize just what a full agenda you must have. We are very pleased that you have taken the time to meet with us today.

Before going any further, I would just like to get one clarification. Are you appearing as an individual, as a representative of the Quebec government, or as a partner in the firm of Heenan Blaikie? If I understood you correctly, you said a few moments ago that you are representing or acting as an adviser to the Government of Quebec.

Mr. Pierre-Marc Johnson: Since May 2001, I have been acting as advisor and chief negotiator for the Government of Quebec on this issue. I initially worked with Minister Gendron, then Minister Audet, and now with Minister Bachand.

Mr. Marcel Proulx: Thank you; that does clarify matters somewhat.

Mr. Johnson, you are surely aware of the methods used by... I won't describe them; I will let you do that. But could you briefly tell us what you think of the methods used by the Government of Canada since late January or early February 2006—methods that are intended to help its partners come to a decision?

I found it easier to follow your brother, Daniel, than I do you, but I assume that at the time you were Premier of Quebec, you would never have used such radical methods. What do you think of the way the Government of Canada acted in this case?

Mr. Pierre-Marc Johnson: In recent months, I noted that the new government had given its ambassador in Washington a clear mandate and had provided him with the support of an exceptionally qualified team of people, with a view to holding consultations with stakeholders—in other words, the largest companies and representatives of the governments of the most affected provinces, including Quebec. I noted that the timeline was followed in a rigorous and exacting manner. Where trade matters are concerned, it is impossible to make everyone happy. However, I do know that some Quebec companies followed the negotiations very, very closely, supported the agreement in principle reached on April 27, and later expressed concerns about certain aspects of the legal texts that were provided subsequently, on June 29 and July 1. Following that, although the federal government had said the negotiations were over, it was nonetheless successful in securing a number of commitments from the U.S. government. While that was going on, the Association de la recherche industrielle du Québec was in discussions with the U.S. coalition regarding forestry policies, as opposed to softwood lumber policies, in relation to the anti-circumvention measures.

Under the circumstances and given that this was a difficult, complex and politically charged issue, particularly in the United States, I believe they did an extremely good job. Personally, I'm delighted with the results, and the Government of Quebec is satisfied.

Mr. Marcel Proulx: Mr. Johnson, time is moving along. Were you present at the consultation that Mr. Emerson, Mr. Wilson and other government officials organized a few weeks ago in Toronto? Did you attend that meeting?

•(1110)

Mr. Pierre-Marc Johnson: No, I did not. In fact, I took the liberty of telling Mr. Emerson—whom I had occasion to meet with a number of times as minister responsible for the softwood lumber industry—that in my opinion, provincial governments should not attend that meeting.

Mr. Marcel Proulx: In your presentation earlier, you said that Quebec will make certain gains as a result of this agreement. I would like you to tell us what your thoughts are on this. I'm not asking you whether this will allow us to avoid complete stagnation. I would like to hear from you what you see as the real gains Quebec and the Quebec industry are making through this agreement.

Mr. Pierre-Marc Johnson: Thank you for giving me an opportunity to do that. I believe this agreement does secure real gains.

The first one is that it will no longer be necessary to pay 10 per cent at the border.

The second gain is the possibility of working in a predictable environment, in principle, over a period of seven to nine years. Just as an aside, I would say that I don't believe the Quebec industry has to worry about the U.S. terminating this agreement before it expires on its own, seven or nine years from now.

The third gain is unlimited access to the U.S. market when prices are high. It should be noted, however, that there is a limit to what Quebec can export because, for environmental reasons, access to the resource is now much more restricted, which is not the case in British Columbia. So, this is a very significant gain. Ontario and Quebec will receive different treatment from British Columbia. The reason for that is that in British Columbia, a wall of wood is going to start to come down because of the mountain pine beetle. Over the next ten years, almost 70 per cent of the forests in Alberta and British Columbia will be threatened. They will try to take that wood out as quickly as possible. And other than putting it aside for the next 100 years to make violins, I imagine they're going to try to sell it. And by trying to sell it, they will clearly have a significant impact on the market.

In Quebec and Ontario, the situation is quite different. Our wood is not of the same quality. It is smaller in size and, as a result, poses less of a threat to the U.S. market. It is very hard to work with because it is smaller. It's also much harder and more complicated for companies to increase their productivity. The agreement makes a clear distinction between the situation in the East as opposed to the West, which is extremely important. The agreement provides for the fact that Eastern Canada will in any case limit its exports because access to the resource is restricted for reasons related to the environment, survival of the forest, and maintaining its capacity at appropriate levels. This is a solution tailor-made for Eastern Canada.

The amount of lumber that can be exported to the U.S. will be between 3.5 and 3.9 billion linear feet yearly, which is more than we ever hoped to get in these negotiations.

In conclusion, the agreement isn't perfect, obviously. As regards the running rules, it is our hope that the Canada-U.S. committee set up to discuss certain issues will come up with solutions. There is no doubt that administering this on a monthly basis will not be easy, but

nor will it be impossible. Our industries, which have seen others like this, will want to cooperate, in our opinion.

[English]

The Chair: Thank you, Mr. Johnson.

Your time is up, Mr. Proulx.

We'll now go to the Bloc Québécois. Mr. Vincent, seven minutes.

[Translation]

Mr. Robert Vincent (Shefford, BQ): Thank you, Mr. Chairman.

Mr. Johnson, let's talk about the agreement. You have already been part of a government. I personally believe that a government's role is to protect its industry, rather than to let it negotiate or battle it out in court on its own. At the same time, it's important to save the jobs of people working in the industry.

What do you think of a government that completely abandons its industry and decides, despite NAFTA and WTO rulings in favour of Canada, to meddle in the negotiations rather than supporting the industry?

•(1115)

Mr. Pierre-Marc Johnson: Well, I prefer to talk about the Quebec government, which supported its industry...

Mr. Robert Vincent: I understand what you said about supporting this agreement and the fact that, in your opinion, Mr. Emerson and Mr. Wilson did an exceptional job. I don't fully agree with that. I realize that Quebec may not have had any choice, since it had a knife at its throat. In your capacity as a lawyer, you talked about the worst possible agreement or the best possible ruling, or vice versa.

So I'd be interested in hearing your comments on that.

Mr. Pierre-Marc Johnson: Not only is this agreement the only one we could get, but it's much better than that. This agreement not only brings the benefit of predictability and stability, but it also allows our companies to operate under conditions of maximum productivity. That means Quebec companies in particular will be able to export their products under conditions which are not absolutely perfect, but almost.

So, we can assume that Canada will have 30 per cent of the market when prices are very low, rather than 34 per cent. Our industries will pay duties of 5 per cent, rather than 10 per cent. They will pay those duties in Canada, and for the most part, the money will be remitted to the provinces. In practice, when prices are very low, lumber companies tend to export less. They try to hold on to their timber for periods when prices are more attractive. As a result, when prices are higher, they will pay less taxes and will have access to a larger portion of the U.S. market.

In my opinion, this is an excellent agreement that covers quite a number of years. In fact, it is certainly better than the previous one, as far as I'm concerned.

Mr. Robert Vincent: You say the agreement talks about 5 or 10 per cent. But when all of this began, there was in fact no dumping going on! Should we really be that delighted at the prospect of paying 5 per cent in duties when, in reality, there is no dumping going on? These duties are completely unwarranted.

Mr. Pierre-Marc Johnson: In fact, major economic interests are at stake. In my experience, when those kinds of interests are at stake, there is no mercy. People rarely do each other favours. The Canadian industry is not doing the U.S. industry any favours, and the U.S. industry, as it has so amply demonstrated, is not doing the Canadian industry any favours. However, there is reason to hope that this can go ahead with as little disruption as possible for the people involved and for our single-industry towns and regions. In that sense, the government has secured an agreement that guarantees some stability and is consistent with its goals and responsibilities.

When companies with the necessary wherewithal that get involved in a trade war, it costs hundreds of millions of dollars a year, the lion's share of which goes to lawyers in Washington, with all due respect for the legal profession. That is pretty much what a goods and services trade war costs.

In my view, litigation should not be a permanent method of maintaining a trading relationship with a neighbour. This litigation has had considerable repercussions in terms of relations between Canada and the United States. I believe that from a political standpoint, we should feel satisfaction at finally being able to turn the page. Because there are limits in terms of policies in Quebec and Canada being completely focused on a single industry sector, a single portion of the overall population and the economic interests of that group alone. In my opinion, they have received a significant amount of attention from all governments and have been well defended by them. In fact, I believe everyone recognizes that we've gone as far as we can with this, including the Americans.

Mr. Robert Vincent: I understand your point about trading relations with our neighbours, but getting down on bended knee is quite another matter, and that's exactly what we're doing now.

• (1120)

Mr. Pierre-Marc Johnson: I don't think we're on bended knee at all. I had a chance...

Mr. Robert Vincent: Earlier you said that if we continue to litigate, it will cost \$100 million, and yet we're leaving \$1 billion on the table. I think we've been a little too nice.

Mr. Pierre-Marc Johnson: You make it sound as though the United States is an actual person...

Mr. Robert Vincent: No. No.

[English]

The Chair: Excuse me. Mr. Johnson, just make sure Mr. Vincent has asked his question completely, and then we'll go for an answer.

Mr. Vincent, have you finished your question?

Okay. Go ahead, Mr. Johnson.

[Translation]

Mr. Pierre-Marc Johnson: Thank you.

Americans don't negotiate the way we do. You sit in a Parliament where the government responds. The Executive responds to Parliament, particularly when it is in a minority position.

In the United States, that is not at all the way things work. Some industries wield considerable power because there is no legislation in place regarding the funding of political parties, which would have

the same impact as it does here. As a result, these industries have a direct connection to the legislative branch, which has considerably more influence over an issue such as this than does the executive branch. A number of U.S. senators have been in the service of the U.S. lumber industry for years now. As a result, every time the American government asks senators to change their mind, it's caught up in a system of IOUs.

For us as a neighbouring country with access to the U.S. market, this is a highly complex environment in which to have to operate. From time to time, we are required to make compromises demanded by the American political system, as opposed to the desire of an economic partner to agree or refuse to play according to the rules. The reality of the American political system is such that we must accept a certain amount of vulnerability. Paradoxically, that is also true for U.S. domestic industries which are forever having to deal with complex lobbies with connections to legislative and executive branches.

Under the circumstances, I think Canada played its cards brilliantly. It took years to come this far and it required a tremendous amount of determination over the last few months to secure this agreement. This is not an agreement that flows from a sense of resentment. It contains some real gains for Canada, for the Quebec industry and for the Canadian industry.

[English]

The Chair: Thank you, Mr. Johnson.

We'll go now to the Parliamentary Secretary to the Minister for International Trade, Ms. Guergis, and if there's time, to Mr. Paradis.

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

Welcome, and thank you very much for your excellent testimony. We do appreciate your being here. I'd also like to congratulate you for the great work you have done.

I don't think I really need to remind anyone around the table that thousands of jobs, of course, have been lost because of this dispute. Communities and small businesses have been devastated because of this dispute, and the industry have told us that they must have stability in order to survive. Of course, that has been the focus of this Conservative government, to find that stability, not only for the communities and small families and small businesses, but also for industry as whole and Canada as a whole.

Just to comment a little bit on some of my colleague Peter Julian's comments with the previous witness, he clearly does not like this deal, I think it's safe to say. He might even hate it—except he really wants to see a longer termination clause for something he doesn't want to be in. He wants a longer termination clause; he doesn't want to get out—

Mr. Marcel Proulx: On a point of order, Mr. Chair, we have a renowned witness in front of us and we're losing time.

The Chair: Mr. Proulx, you know that's not a point of order. Allow the questioners to ask the questions—

Ms. Helena Guergis: Thanks very much. I hope that's not taken off my time, Mr. Chair.

The Chair: No, we will add time, Ms. Guergis.

We allow each member to ask questions as they want to—

Mr. Marcel Proulx: Give her double time, following your trend.

The Chair: Monsieur Proulx, order, please. Let's allow this to go ahead in an orderly fashion.

Ms. Helena Guergis: A very soft spot there. Thank you.

He's also said, and others around this table have said, that the U.S. has gotten everything here, that in fact we've sold out to the U.S. But in the same breath or next sentence, they're insisting that the United States is going to terminate at the first opportunity. So again, that's another contradiction that doesn't make any sense.

Also, we have them advocating for loan guarantees, which are taxpayer supported, of course. But then they do not support the unique mechanism the government has set up to return the duties to the industry as fast as we possibly can, a mechanism that is, of course, taxpayer supported as well. So the criticism for doing that is that it's taxpayer supported, but they'll support loan guarantees although they're taxpayer supported. So they're not making any sense, in contradicting....

I'm just wondering if you would care to comment on that for us.

We'll let Christian ask his question before you respond, Mr. Johnson, please.

Thank you.

• (1125)

The Chair: Mr. Paradis, go ahead.

[Translation]

Mr. Christian Paradis (Mégantic—L'Érable, CPC): Mr. Johnson...

[English]

Mr. Marcel Proulx: On a point of order, Mr. Chair, we have a question from Ms. Guergis to a renowned witness. She is trying to piggyback Mr. Paradis' intervention.

Ms. Helena Guergis: I asked if I could have that from the beginning, Mr. Proulx.

The Chair: Order.

Mr. Proulx, go ahead.

Mr. Marcel Proulx: She can split her time, but not the question time.

Ms. Helena Guergis: Yes, I can.

The Chair: Monsieur Proulx, Ms. Guergis had just asked if the other member of her own party could ask a question before the answer comes. Certainly, on this committee we allow that to happen.

Please go ahead, Mr. Paradis.

[Translation]

Mr. Christian Paradis: Thank you, Mr. Chairman.

Mr. Johnson, it's an honour for me to have this opportunity to speak to you today. You have tremendous credibility in Quebec, and your record speaks for itself. It was reassuring to know you were acting as chief negotiator for the Government of Quebec. Since

2001, I have heard good things about you from industry representatives.

Mr. Johnson, I have gone into the field quite a bit. I'm from the riding of Mégantic—L'Érable, where the border mills are located. You referred to a recurring problem. On the one hand, people were concerned about the very survival of the industry and, on the other, they were saying that if it did survive, mills would have to retool on an urgent basis because of their unproductive equipment.

Mr. Johnson, I heard you say that continuing the litigation is probably not an option. It's easy for the opposition to say that this is not a good agreement, but there is the uncertainty. And this resolves that part of the problem.

You also talked about money being returned by Halloween, Christmas or after that. So, criticizing the current government for not providing loan guarantees is just forcing us to talk about a non-issue. This goes back to the question my colleague put to you earlier. I would also like to hear your comments in that regard, with respect to Quebec. Thank you.

Mr. Pierre-Marc Johnson: Thank you both for your questions.

I will briefly touch on the situation as regards the border mills. The agreement specifically considers the circumstances of these companies, of which there are 30. I won't address the mechanics of the agreement, but basically they will be able to continue to operate as before, except that there will now be free trade, or almost. The reason for that is that these border mills use mainly American timber. Because they get their supply of timber from the United States, one can hardly conceive of their being accused of obtaining their timber under conditions different from those that prevail in the market.

Sometimes the provinces are accused of creating an environment that does not reflect market conditions. However, it is very clear that border mills get their supply of timber from private American wood lots and, therefore, based on conditions which are undeniably market conditions. In fact, I believe access to timber on Crown lands in Quebec also occurs based on market conditions, since we copy those conditions when developing our formula for accessing timber.

Consequently, border mills have every reason to be satisfied with this agreement, as I know they are, since I have talked to a number of their representatives. As for the rest, I'd say that without reinventing the wheel, the Canadian government has nevertheless developed quite an attractive formula for returning the money. Indeed, I believe this was the subject of some debate in the House of Commons at one time. Mr. Paquette referred to it a little earlier. Basically, we have institutions that can act as banks and provide bridge financing as a means of ensuring that the monies are repaid before a certain date. The Canadian government will thus be reimbursed gradually, because of the imperatives of the U.S. administration and legislation, which are extremely complex. We are talking literally about hundreds of thousands of cheques. Every time a cheque crosses the border, it has to be recorded in a log book. Theoretically, there will have to be as many refunds as there were cheques. So, one can easily understand what a nightmare this could be for our companies.

The Canadian government decided to subrogate them in their rights and wait for the U.S. administration to refund the money. I believe the agreement provides for a six-month time frame. I see this as the perfect arrangement, and one which will allow many Quebec companies to get through the winter with fewer problems.

• (1130)

[English]

The Chair: Thank you very much, Mr. Johnson.

Your time is up, so we'll now go to the New Democratic Party.

Mr. Julian, for seven minutes.

[Translation]

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you, Mr. Chairman. Mr. Johnson, thank you for being with us today.

I would like to begin by talking about stability. I agree with you: the April 27 draft talked about a seven year agreement. However, on July 1, we went from a firm seven-year agreement to a firm 23 month agreement. This morning, we found out—and I believe you were present—from Mr. Wilson that we are now talking about a firm 18-month agreement. We've gone from seven years...

[English]

Mr. Ron Cannan (Kelowna—Lake Country, CPC): On a point of order, Mr. Chairman, could you just clarify that?

The Chair: A point of order.

Mr. Ron Cannan: It is not 18; it's a 24-month agreement. I understand Ambassador Wilson—

The Chair: That is not a point of order; that is debate. We will allow Mr. Julian to continue. We'll allow the witnesses to answer those questions, Mr. Cannan.

Mr. Julian, go ahead, please.

[Translation]

Mr. Peter Julian: My question is about loan guarantees. You have made much of the fact that the industry needs money and liquidity. The motion the Committee will be debating asks the government to immediately introduce loan guarantees that the Canadian lumber industry has been demanding for a long time. Are you not prepared to acknowledge that for years now, the industry has been asking for loan guarantees that could provide some stability?

Mr. Pierre-Marc Johnson: If this agreement is ratified and implemented, it won't need them.

Mr. Peter Julian: That was not my question. For quite some time now, the industry has been asking for loan guarantees. We see that the Conservative Government here in Canada has tried to sidestep the issue by telling the industry it will be on life support if it doesn't sign this agreement, as bad as it may be. That's the major problem that we see. We know full well that the industry is asking for loan guarantees.

I know you have extensive legal training with respect to the dispute settlement mechanism. This agreement completely rules out the possibility of using the dispute settlement mechanism. We are giving the Americans \$1 billion and telling them that even if they break the law and show no respect for the dispute settlement mechanism, they can still keep the money.

Are you not concerned about the fact that other trading sectors in Quebec could be targeted by the U.S. government in future trade wars, and that Canada and the industry could no longer rely on the dispute settlement mechanism in such cases? We had it but we didn't use it.

Mr. Pierre-Marc Johnson: To my knowledge, even though one might consider the Americans' actions to be almost an abuse of process, they have never sought a remedy outside the existing framework of the WTO and NAFTA. They have used every single mechanism available to the fullest—some would say, *ad nauseam*—and it's not over yet. It could go even further in the case of at least two actions, not to mention those under way domestically.

American society is a society that thrives on litigation. It's a society where people try to use the courts to resolve a lot of issues. In Quebec and Canada, we tend to be more consensual; we try to find accommodations. American society prefers to see the matter settled and relies on the law and the legal profession to do that. That's why there are so many lawyers there. For example, Japan has a population of 100 million but only a few hundred lawyers, whereas the United States has tens of thousands of them in every State. They are very different societies, with a different approach to problem-solving.

I tend to want to focus on empirical evidence in that regard. I look at what happened after we reached other agreements on softwood lumber with the Americans; they always abided by the terms of those agreements. The U.S. government will commit to that. It's going to do so in a letter, according to what Mr. Emerson told us last week, and it intends to implement the agreement for seven to nine years. We can therefore assume that it has no intention of terminating it. Why would it? I wondered why it was focussing so much on this. The other agreements did not include a termination clause, meaning that it could have terminated the agreement at any time with one year's notice, whereas now, it can only terminate it after 18 months. It will also have to give six months' notice. So this is a 24 month agreement, with one year of free trade, or standstill, which means three years for our companies, in actual practice. So, either the agreement is in force or there is free trade, in the worst case scenario.

And how would that worst case scenario come about? Well, in my opinion, the only thing that could prompt the Americans to terminate the agreement would be if British Columbia decides to sell its timber in such a way as to considerably disrupt the market. They would surely be of the opinion, were that to occur, that B.C. companies were in the process of taking back a huge share of the U.S. market, given that the Government of British Columbia would have to get rid of the pine beetle-infested lumber. That timber is available at very low prices, which means that companies could, theoretically, sell it at a very low price. Sometimes I tell friends in Quebec that their next cottage will be built with pine beetle wood from British Columbia, because it will be much cheaper. British Columbia wanted to defend its pricing system, but what was it offering in exchange? The Canadian government probably had to agree to allow the U.S. to terminate the agreement if it considered certain practices to constitute an abuse.

•(1135)

Mr. Peter Julian: Mr. Johnson, the Committee would in fact like to travel to British Columbia to find out what the people of that province think of this agreement.

I want to come back to the matter of litigation, which you have already talked about. You said that the alternative would have resulted in even more litigation. In fact, two are currently under way: the case involving Tembec, which is before the United States Court of Appeals for the Federal Circuit, and one which is currently before the NAFTA Extraordinary Challenge Committee. I put this question to Mr. Emerson and Mr. Wilson this morning. They answered that there would be no appeal of the ruling handed down in these cases. In fact, they would eliminate illegal tariffs. They would force the U. S. government to pay back the full amount, rather than retaining \$1 billion. If the federal government is able to provide loan guarantees, why should we go ahead with such a bad agreement when we're so close to victory?

Mr. Pierre-Marc Johnson: I have no doubt that a number of individuals seated directly behind me will be able to explain all of that to you this afternoon. However, I think there are one or two questions you should put to them. First of all, if you lose on appeal, what happens next? For example, we could lose in front of the U.S. Court of International Trade on the matter of that court's jurisdiction, rather than on the substance of the case. What would the consequences be if we lose?

On the other hand, even if we win, when could we expect to receive the cash deposits back? In my opinion, it would take at least two and a half to three years.

Mr. Peter Julian: What are you basing yourself on to make that assertion?

Mr. Pierre-Marc Johnson: I'm relying on what happened with two similar cases in the early 1990s. Between the time when a ruling was handed down by the final level of appeal and the cash deposits were refunded, more than two years elapsed.

Also, it is pretty well certain that if Canadian companies and the Government of Canada win both of these cases, the coalition—an observer of which is here today—will launch new countervailing or dumping suits. They'll take a few months...

[*English*]

The Chair: Mr. Johnson, I'm sorry to interrupt, but the time is more than up. I think the committee wanted your answer, so I allowed it to go ahead. And thank you very much, sir, for coming today. I know your time is extremely valuable, and I do appreciate so much your presentation and your answers to the committee members.

We want to get into the next committee meeting, but before we break, I do want to say that members of the opposition have asked that we deal with the motions at one o'clock, at the end of the next session, because some have to catch airplanes, so we certainly will accommodate that.

Let's start this next session right away. We'll take 30 seconds here. If the next witnesses come to the table, we'll start the next meeting in 30 seconds.

Thank you. This 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

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.