



House of Commons
CANADA

Standing Committee on International Trade

CIIT • NUMBER 028 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, October 3, 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

Tuesday, October 3, 2006

•(0905)

[English]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good morning, everyone. We're all delighted to be here today.

This is a meeting with Department of International Trade officials Paul Robertson, director general of the North America Trade Policy Bureau, and Brice MacGregor.

Brice, I don't have your title. Maybe you could just mention it.

Mr. Brice MacGregor (Senior Trade Policy Analyst, Softwood Lumber Division, Department of International Trade): I'm a senior policy analyst with the softwood lumber division at the Department of Foreign Affairs and International Trade.

The Chair: Very good. Thank you.

We're here to talk about the binational industry council, but I'm hoping you will be mentioning the other groups that were established as well.

I'll let you go ahead with that. Your presentation, if it is as printed here, looks quite short. The members will be ready for questions after the presentation.

Go ahead, please.

Mr. Paul Robertson (Director General, North America Trade Policy Bureau, Department of International Trade): Thank you very much, Chair.

I'm pleased to be with you this morning to go over the subject matter you've defined as well as to answer any questions relating to it. I'll start, as you've noted, with a brief statement from notes and then take questions.

As you know, Chair, I've been asked to provide you with information regarding the various institutional arrangements provided for under the softwood lumber agreement. Specifically, the agreement provides for: one, a government-to-government softwood lumber committee to oversee the orderly operation of the agreement; two, a private, non-profit foundation to fund meritorious initiatives promoting public interest goals related to the objectives of the agreement; and three, a binational industry council to promote the shared interests of the North American lumber industry. Finally, Chair, I should also mention the establishment of a dispute settlement mechanism as well.

The binational softwood committee is to be composed of representatives of both nations' governments. It will have the lead responsibility to oversee the implementation and operation of the

agreement. This committee will ensure that the agreement functions as it was intended and elaborate on the agreement should the need arise.

In addition, the committee will establish and oversee working groups that will be established to provide advice in a number of areas. The working groups will include a regional exemptions working group to discuss policies that could eventually result in the elimination of export measures. Specifically, this working group will define the criteria and procedures to be used to determine whether regions have established market-based timber pricing and formed forest management policies.

It will be established within three months of the agreement's entry into force and will seek to provide its recommendations, which could be incorporated into an addendum to the agreement, within 18 months. Working groups on customs procedures and data issues will also be established to discuss technical issues related to the operation of export measures. These two working groups will meet on an "as needed" basis throughout the duration of the agreement.

I should note as well that in a side letter to Minister Emerson, United States Trade Representative Susan Schwab also proposed that other working groups could be formed to look specifically at, one, the treatment of Canadian softwood lumber producers relying on logs from private lands, and two, the rules governing the export measures in the agreement.

The first of these working groups was proposed in response to a request from certain companies in the British Columbia lumber industry that would like to see the elimination of log export restrictions that could currently apply to private lands in the province, in conjunction with an exemption from export measures for lumber produced from those logs.

The second working group was proposed to address concerns by others in the Canadian industry who wished to ensure that the agreement's export measures will offer sufficient flexibility for their operations and function in a commercially viable manner.

On September 6, 2006, the United States announced the incorporation of the United States Timber Endowment, a private, non-profit foundation to manage and oversee a \$450 million U.S. fund for meritorious initiatives. The meritorious initiatives are to be identified by this foundation in consultation with Canada and are to be related to, one, educational and charitable causes in timber-reliant communities; two, low-income housing and disaster relief; and three, promotion of sustainable forest management practices, as set out in the agreement. Canada will nominate two non-voting members to the fund.

The binational industry council, to be funded with the remaining \$40 million U.S. set aside for joint initiatives, will be comprised of industry executives from both Canada and the United States. The agreement sets out the objectives of the initiative, which will include strengthening the North American lumber industry by increasing the market for its products and building stronger cross-border partnerships and trust at all levels of the industry.

Specific activities that are proposed in the agreement include, one, the promotion of expanded use of wood products in new and existing applications; two, educating consumers on the sustainability of wood products to demonstrate their desirability as an environmentally preferable building and finishing material; and three, promoting the use of wood in green building standards.

Finally, Mr. Chair, I refer to the dispute settlement mechanism in my opening comments. The dispute settlement mechanism, which was designed to be neutral, transparent, and expeditious, will apply to any dispute arising under the agreement regarding softwood lumber products. The agreement sets aside \$10 million U.S. to fund the operation of this mechanism. In the event that a dispute arises, parties would first be encouraged to resolve the issue through consultations. Should these fail to resolve the dispute, the matter could then be referred to an independent mediation and/or arbitration process. All arbitrations would be heard by a panel of arbitrators selected through the London Court of International Arbitration. The results of arbitration would be final and binding.

Mr. Chair, that concludes my overview of the mechanisms you've asked me to speak to you on. At this point I'd be pleased to answer any questions the committee may have.

• (0910)

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

We'll get right to the seven-minute round, then, starting with the official opposition Liberals.

Mr. Eyking, you have seven minutes.

Hon. Mark Eyking (Sydney—Victoria, Lib.): Thank you, Mr. Chair, and thank you, Paul, for coming again to speak on the trade issues.

There are a couple of articles out this morning on U.S. lumber. People are very dissatisfied that our agreement is going to be delayed.

In your sense, under the agreement, why from the American side would they be so upset? Would they be getting a better deal? That would be my first question.

The other thing is on the whole mechanism. Can you explain a little more clearly to the committee how the lumber quotas work, when they reach a trigger mechanism to cause us to be penalized on our side?

Also, could you explain a little more how the moneys are going to be transferred back and forth—the \$5 billion—and give a little more clarity?

The Chair: Mr. Eyking, we are here today to deal with the binational industry council and then the other groups established to work with the agreement. Your questions aren't dealing with those issues.

Hon. Mark Eyking: Yes, Mr. Chair, but Mr. Robertson explained the softwood lumber agreement and some of the technicalities of it, so I figured that was pertaining to his statement.

The Chair: Go ahead, Mr. Robertson.

Mr. Paul Robertson: Thank you very much, Chair.

I'm not sure of the articles you're alluding to, but there has been in the press in the last number of days articles referring to the United States coalition's concerns that perhaps there are imports of Canadian lumber into the United States that are "flooding the market", in their words. So I think, without seeing your articles, that's what has been occupying the American press with respect to the agreement recently.

I can say at this point that our statistics for the first eight months of this year show a drop in exports to the United States of approximately 9%. We don't have statistics for September to be able to comment on whether there has been an increase in Canadian exports of lumber to the United States. I haven't seen any statistical sources provided by the U.S. coalition, which is reacting to this apparent surge; therefore, I can only assume that's anecdotal information they're reacting to. With respect to your first question, I think that's what has been causing the press attention in the United States over the last few days.

I think your second question refers to what we refer to as option A and option B in the agreement in terms of the measures to be in place. As set out in the agreement, regions have a choice between following one of two options for the export measures to be imposed. Option A deals with an export charge, depending on the price of lumber, and as the price of lumber decreases, the export charge increases. Option B is a variation of that, which would lessen the export charge that would be paid under option A, but in return, there would be a restraint on the volume of exports to the United States as the compensation. That's basically the two different options that regions are being asked to choose between to give them the flexibility.

You've asked the question about how cash deposits will be refunded—I think that's what you're asking, and please correct me if I'm wrong. I think there are basically two mechanisms now that will bring the refunds that producers are entitled to. The first, as you know, is the process on the Export Development Corporation. A process has been established to expedite the refunds. In exchange, the Export Development Corporation, or EDC, has entered into contractual arrangements with importers of record by which they would take over the authority for the refunds in exchange for providing them with a portion of the refunds. Another portion of the refunds, as you know, is set aside to pay for the \$1 billion obligation we have towards providing money to the United States side, both with respect to \$500 million with respect to the U.S. coalition and then the other \$500 million is divided up between the meritorious initiatives that I referred to in my opening statement, plus the North American lumber council, which is made up of business. That accounts for \$490 million of the other \$500 million. The other \$10 million, as I've identified in the opening statement, is set aside for paying the cost of any arbitration proceedings that may take place under the agreement.

• (0915)

So that's basically the transfer to the United States.

For those who do not participate in the EDC process, the other way for importers of record to receive their money is directly from U.S. Customs. Of course, it's recognized, through past experience and through discussions with the United States, that this procedure could take up to two years. Therefore, that is the other process under which it is open to importers of record to receive their refunds when liquidation has been completed.

Thank you.

The Chair: Thank you, Mr. Robertson.

Mr. Eyking, your time is up for now.

Hon. Mark Eyking: Already?

The Chair: Yes, it's just so fast.

Now to the Bloc, Mr. Cardin for seven minutes.

[*Translation*]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chairman.

Good day, gentlemen. Today's meeting is on the Binational Industry Council. I had the impression that this was one of the most important committees, given the use of the term “binational”. That was my perception. However, when you further examine the issue, you realize that there are four different groups: the Binational Industry Council, the Softwood Lumber Committee, Technical Working Groups and a Working Group Dealing with Regional Exemptions from Export Measures.

I would first like to know who is expected to make up the Binational Industry Council, and whether one of the committees will oversee the others. Could one of the four committees not control the three others, but follow their work and include representatives? I imagine, given that we are talking about a binational council, that the members would come from both countries and would represent not only industry, but also various departments and the political sector.

Is this how the council will be made up and will one of the committees oversee the others?

• (0920)

[*English*]

Mr. Paul Robertson: Thank you very much.

First of all, I'd just like to flag that my interpretation isn't working.

The Chair: Did you understand the question?

Okay. It looks like it's on channel 2.

Mr. Paul Robertson: All right. That's my problem.

The Chair: Did you understand the question okay, Mr. Robertson?

Mr. Paul Robertson: I'm just checking with my colleague to make sure that I have it.

Thank you very much, Chair. I'm just verifying that I have the question. I apologize for the delay and I hope that doesn't take up some of the seven minutes of his time.

First of all, you asked the question relating to the binational softwood lumber committee. That will be composed of six members from each side. While the composition has yet to be decided on, it is I think the working assumption that it will be led by senior officials from both governments.

With respect to the industry council that I referred to as well, there will be six members from each side. I think the Canadian members will soon be announced. They will be from key business leaders in the softwood lumber industry, and that should be announced in the coming days.

With respect to which of all these groups are the umbrella groups or the overall overseeing types of mechanisms, well, of course the binational softwood lumber committee would be the chapeau committee for the work within all the other working parties. That will be the committee to which the other parties will be reporting. Of course, with respect to industry initiatives, the North American industry council that I spoke about would be the overall lead relating to those areas that I identified in my opening statement.

I hope that answers your questions.

[*Translation*]

Mr. Serge Cardin: Correct me if I am wrong; I am afraid I did not quite understand. Did you say that the Binational Industry Council oversees the others?

[*English*]

Mr. Paul Robertson: No. Perhaps I wasn't clear.

[*Translation*]

Mr. Serge Cardin: It seems that we tend to confuse the various committees. The translation might be the cause here. Speaking of translation, we were unable to follow last week.

In short, that is not what you told me.

• (0925)

[*English*]

Mr. Paul Robertson: No.

For the overseeing of the operations of the working groups within the softwood lumber agreement, we have the technical working groups, the discussions on possible exit strategies for regions, etc. All those activities of government interaction will be governed by the binational softwood lumber committee. While the composition has yet to be agreed upon, it is expected that this committee will be led by senior government officials from both the United States and Canada. So when you think of government-to-government discussion in whatever areas as it relates to the softwood lumber agreement, it is the binational softwood lumber committee that will be the overseeing body for those activities. That is the body to which the working groups would report, etc.

With respect to the other binational industry council, that is a council composed only of industry leaders from both countries in the softwood lumber sector. As I noted, basically they have an overall mandate to discuss: the promotion of expanded use of wood products, educating consumers on sustainable wood products, and promoting the use of wood in green building standards. That is the industry-to-industry interaction, and this is done through that foundation.

I think that is the primary difference between the two. I hope I've made myself clear as to the different operations of the two lead bodies that are envisioned to be created through the softwood lumber agreement.

[*Translation*]

Mr. Serge Cardin: I thought that the Binational Industry Council was the main committee, the one with the most importance, but when we take a closer look at what the other committees will be doing, we see that the Softwood Lumber Committee has very important responsibilities, that is the supervision and implementation of the agreement, further elaboration of the agreement, supervision of the work of all working groups established under the agreement, and consideration of any other manner that may affect the operation of the agreement. This committee is responsible for the overall management of the agreement.

All the committees have very specific functions. I do not want to ask questions only about the Binational Council. I also have questions about the regional component. When you talked about regions, you seem to be including the provinces which can adhere to either plan A or plan B. Quebec will choose plan B and in so doing will become the most significant group in that category.

The composition of the committees is not known, and I was wondering whether there would be representatives from Quebec, given that it will account for the majority of people having chosen plan B.

[*English*]

Mr. Paul Robertson: Thank you very much.

First of all, your understanding of the overall coordination, as you explained it, is correct. And I should state that we speak of regions rather than provinces, because, for example, there are areas of coastal B.C. versus B.C. interior. That is why we speak of regions for the agreement. But you're quite right, it breaks down as well provincially, for the most part.

We are in consultations with the provinces as we go forward. We have told provinces that we have to discuss the participation, how they want to participate, how this is all going to roll out. So those discussions are yet to be conducted with provinces.

I know we have a regular heads of delegation call, as we refer to it, which is between the federal government and the provinces. We have told them that in the coming weeks we would like to be discussing with them their ideas on how best they can participate in the mechanism and structures. Certainly there is a role to be envisaged. We have yet, though, to sit down and discuss that role with provinces and make decisions based on those discussions.

● (0930)

[*Translation*]

Mr. Serge Cardin: Mr. Chairman, I would like to ask a final question.

[*English*]

The Chair: Very briefly, please. You're quite a bit over time.

[*Translation*]

Mr. Serge Cardin: You told me that there would be six representatives on each side, according to the terms and conditions of the agreement. With regard to composition, you told us that you could not say anything given that it had not been determined.

So if there are no legal or contractual provisions to decide the composition of the committees, who will do so?

[*English*]

Mr. Paul Robertson: With respect to the industry council, that has already been determined. There are six members.

I think at the end of the day this is a government-to-government agreement; therefore, after consultations with provinces, there will have to be decisions made in terms of representation with respect to provinces in the work of the groups. I think the answer is that we'll be consulting with provinces, but because this is a government-to-government agreement, the ultimate decision would rest with the Government of Canada.

[*Translation*]

Mr. Serge Cardin: Therefore, it will be up to the federal government to choose Canadian—and Quebec, I hope—representatives.

[*English*]

Mr. Paul Robertson: Yes. They are responsible for the overall structure and composition of groups. Of course, it has always been contemplated that this would be done in consultation with provinces, and we've already flagged that as well to the provinces. That work is yet to come, but that's the process that has been envisioned to decide those types of issues after the agreement comes into force.

The Chair: *Merci, Monsieur Cardin.*

Now we'll go to the Conservatives.

Mr. Cannan, you have seven minutes or so.

Mr. Ron Cannan (Kelowna—Lake Country, CPC): Thank you, Mr. Chairman.

Thank you, Mr. Robertson, for enlightening the committee on this very complex and challenging, but exciting initiative. We have a little bump in the road, but we're looking forward to moving forward in good progress for industry stability and certainty, with agreement and a positive resolution.

Supplementary to Mr. Cardin's question with regard to government-to-government agreement, as concerns this committee's role and responsibility, will we be getting an update on a regular basis, or an annual basis? How will we as a committee be kept informed of the industry progress on this binational council?

Mr. Paul Robertson: As I said, the structures and reporting elements have yet to be determined, but I will certainly take note of the desire of this committee to be part of the process in terms of updates on the progress being made in the softwood lumber agreement. I can take that back as input into the consideration of the structure that's being prepared.

Mr. Ron Cannan: For the \$50 million, the accountability will be within themselves, then, for the industry, or who will they be accountable to?

Mr. Paul Robertson: For the industry it's actually \$40 million, with \$10 million set aside for the dispute settlement. But they will be accountable for the usage of this money, which we anticipate will be used to further develop the overall objectives in the softwood lumber agreement for their work.

Mr. Ron Cannan: The effective date was three months within the signing of the agreement. We're a little delayed, so are we looking at the end of December or early January for this binational council to be up and running?

• (0935)

Mr. Paul Robertson: Yes. As you correctly stated, the softwood lumber agreement envisaged that the binational council would be formed within three months of the agreement's coming into force, with recommendations for a number of the issues that I raised earlier—best efforts to be made within 18 months of the composition of the binational council.

Mr. Ron Cannan: And would the term be concurrent with the agreement—seven to nine years—that the binational council would stay in effect?

Mr. Paul Robertson: Yes.

Mr. Ron Cannan: The other exciting portion of this agreement is that there's some cooperation within our partners in industry from both sides of the border working together, this cross-border agreement. Do you find that there is some possibility of positive strengthening of the softwood lumber industry with this agreement, moving forward?

Mr. Paul Robertson: Yes, I think so. What's more important, so does our industry, and therefore that's why that initiative was taken. So those types of topics are all of mutual interest, and therefore I think it provides a good basis for the work to advance.

Secondly, if there are other issues that the industry on both sides of the border want to raise and pursue under this overall objective, I'm sure that will be undertaken too.

Mr. Ron Cannan: My colleagues sitting beside me, and Mr. Julian—we're all from B.C., where over 55% of the softwood lumber

industry is, and it is very important. From your observations, from working within the industry and through the negotiations, would this council have been possible without the signing of the agreement?

Mr. Paul Robertson: I don't think so, because if there were not an agreement, we would still be in litigation. It's difficult to see how industries litigating against each other would come under this sort of approach to common objectives across the border.

Mr. Ron Cannan: That's very encouraging then, as far as the reason industry came aboard is concerned. Instead of something that was forced upon them by the government, was it industry recommending this binational composition, in order to build the bridges that have been deteriorating over the years?

Mr. Paul Robertson: Yes, I think it's fair to say. As we know, the major softwood producing provinces, as well as the industry, have supported the agreement. Therefore, I think what you're saying bears that out.

Mr. Ron Cannan: I have one last question. In B.C. we have a couple of really good industry-represented manufacturing associations that have been promoting the use of wood within B.C. I spent that last nine years in local government encouraging communities to use wood in the construction of arenas and multi-purpose facilities. Will there be an opportunity for these existing organizations to present their positions to this binational party?

Mr. Paul Robertson: With respect to the industry council, which has that objective, I would have thought so, because there have been those activities you mentioned. This is something they can bring to the table to share with their American colleagues, in terms of promoting those types of activities in North America.

Mr. Ron Cannan: Thank you.

I think my colleague from Kamloops would like to make a comment.

Mr. Paul Robertson: Chair, if I may, just before the question is put to me—

The Chair: Yes, go ahead, Mr. Robertson.

Mr. Paul Robertson:—my colleague wants me to make sure it's clear that the 18-month timeframe I discussed earlier for coming up with recommendations is with respect to the export—what we call the exit strategy elements—and not to all the other objectives I've identified. So those relate more to the additional exemptions from the agreement.

Mr. Ron Cannan: Thanks for the clarification.

The Chair: Go ahead, Mrs. Hinton.

Mrs. Betty Hinton (Kamloops—Thompson—Cariboo, CPC): Good morning, Mr. Robertson.

It's a pleasure to listen to your presentation here today. I think you've gone a long way to clearing up a lot of misinformation that has been floating out there regarding the lumber deal.

I would like you to have the opportunity, if you'd like, to elaborate a little bit on something you mentioned that certainly struck a chord with me. You talked about affordable housing. Could you go into any kind of detail about how this lumber agreement is going to make that possible?

● (0940)

Mr. Paul Robertson: When we talk about promoting the use of products and hence affordable housing, those are subjects to be taken up by the binational industry council. They have the expertise in this area, and I think there's a mutual interest in developing those approaches and finding out how best to promote affordable housing. These are the types of elements that are going into the industry council.

As well, the affordable housing element is another focus in the meritorious initiatives. The work to be done by the various bodies that have been created in those areas can only help to promote that objective. How specifically those groups will decide to do that is up to them, given that this is the work they have to do, but I think the focus is worthy of attention; indeed, it was deemed so, because it was included in the softwood lumber agreement in terms of objectives that should be looked at in terms of their activity.

Mrs. Betty Hinton: I have one further comment in conclusion. Aside from clearing up a lot of misconceptions today.... I live, by the way, in a riding that is very dependent on the lumber industry. Many of the jobs in my riding are tied to some sort of stability. Not only does this agreement bring that long-term stability—seven to nine years—but it also sounds as though there have been some considerations given to the social aspect of things as well.

I was very pleased to hear you answer the question on the social housing part, and I think it's wonderful that we're going to actually have a group of people who are outside of government looking at this and other aspects of the softwood lumber agreement. I see nothing but positives here.

Thank you very much for the information today.

Mr. Paul Robertson: Thank you.

The Chair: Thank you, Mrs. Hinton.

Mr. Julian is next, for seven minutes.

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

Like Mr. Eyking, I was under the impression that today we could also ask you questions about Bill C-24, and believe me, we have a lot of them. My understanding is that your preparation has been limited to the issue of the binational panel, so if it's not appropriate on Bill C-24, we'll keep our powder dry today and use those questions at another time.

Thank you for coming and thank you for your presentation.

I wanted to review some of the specific issues you raised around the meritorious initiatives. You did state, Mr. Robertson, that we get two observers. They have no vote, so actually they have no real ability to influence things, but they are observers, nonetheless, around the decisions that are made by the Bush administration on the meritorious initiatives. We know that those decisions are being made now. Have those two observers been appointed, and who do they report to?

Mr. Paul Robertson: There has not been an appointment made yet. As is the case with the six members of the business council, their names will be announced, I think, in the coming days.

The fund is independent of government, so I don't think there will be a formal reporting structure into the government on the initiatives, in terms of a government intervention about uses of that money, because it was meant to be kept independent with the objectives that were outlined in the softwood lumber agreement.

With respect to the reporting function, given the independence from government that the meritorious initiative was meant to achieve, I don't think there'll be a continuing dialogue between government and those two members. I expect there will be annual reports of the work done in the meritorious initiative, and through that means we will all be made aware of what they have been focusing their energy on within each year.

Mr. Peter Julian: Are we aware of the American appointments to the meritorious initiatives foundation?

Mr. Paul Robertson: Not as of yet. I'm not aware. I don't think that has been announced. They are settling on their composition, as are we, but I think that will be announced in the coming days. I'm sorry, I can't give you any more clarity with respect to the timing of the U.S. selection and announcement.

● (0945)

Mr. Peter Julian: Thank you.

The two people who would be appointed from Canada are non-voting, so they are essentially observers.

Mr. Paul Robertson: Yes. They are non-voting, so in terms of exercising the franchise in the decision, they'd be part of the discussions in terms of what might be the approach. But you're quite right.

Mr. Peter Julian: They are participating observers.

Mr. Paul Robertson: That's right.

Mr. Peter Julian: Thank you.

Next I'd like to move to the binational industry council. The funds that are available for that council will be under the control of the American administration. Is that not true? Those are Canadian funds that would basically be left in the United States.

Mr. Paul Robertson: No, I think the binational industry council would be under the control of the 12 industry representatives, six from Canada and six from the United States, in terms of the initiatives that they jointly derive. Government has given them an overall objective focus, and that is in the softwood lumber agreement, as to what their work should be looking at in the first instance, and those are the objectives I mentioned this morning in my opening remarks.

Mr. Peter Julian: I'm talking about the budget.

Mr. Paul Robertson: Yes.

Mr. Peter Julian: It's following the dollar signs—

Mr. Paul Robertson: Yes.

Mr. Peter Julian: —and the money itself is under the control of the administration, and then could be, by the administration, provided to the binational industry council. My point is that the money initially will be under the control of the executive in the United States, the Bush administration, and then they would make the decision in terms of allocation.

Mr. Paul Robertson: I would have to check on that, Mr. Julian, because it might go directly into an escrow account designated for the industry council. I can't confirm with you now whether it goes through the United States government or not. I would, however, flag that the money set aside for the binational industry council is a treaty obligation, so in order for the United States to abide by its obligations under the treaty, it would have to provide that money to the binational industry council. Let me check to see if the money is direct to an escrow account for the council or whether it is to be given to the United States for transfer to the council.

Mr. Peter Julian: My understanding is the latter, but I'd certainly appreciate your checking up on that.

Thirdly, on the dispute settlement mechanism, we had a binding dispute settlement mechanism under NAFTA that was never used under the previous and current governments. Essentially we are giving that up through this agreement. The dispute settlement mechanism that's outlined in the deal refers to the fact that there is no enforcement of awards other than in accordance with the agreement, that the tribunal may not award costs.

The question comes to ultimately what is the recourse under the dispute settlement as described in the agreement itself. Looking through this, going to paragraph 32, if the United States does not uphold their part of the bargain, which they clearly haven't under NAFTA and under the softwood dispute anyhow, it looks to me like the endgame is that either party may terminate the agreement. Essentially the dispute settlement, the only binding mechanism, is that in the end after all the process—which is very convoluted, and there are many pages of the agreement itself—ultimately it just means the end of the agreement if one party or the other does not uphold its end of the bargain.

Are there other components that I am missing in this?

Mr. Paul Robertson: Perhaps we can start with the reason for the creation of the dispute settlement mechanism as identified under the SLA, the softwood lumber agreement.

There were two principal reasons, one of which was to provide expeditious resolution of issues as they arise in order to minimize disruption within the commercial trade in the softwood lumber sector. The other was to provide sufficient scope to deal with all the issues that have been identified—or all the obligations and rights that have been identified—under the softwood lumber agreement. You will find that with respect to the dispute settlement mechanism, there is a much shorter time period in which disputes will be resolved, either through mediation or arbitration. Those are set out quite clearly in the SLA in terms of so many days here and so many days there; everybody understands the timeframes involved in a dispute settlement mechanism.

With respect to arbitration, it is final and binding; both sides have an obligation under the treaty to respect the arbitration findings reached through this expedited process. Therefore, it would be fair to say that if a country has an obligation under the agreement—which it does in this case, since they've acknowledged that arbitration will be final and binding—they will implement the decisions of the arbitrator in this case. I don't think it's as open-ended as I understood your comments to be just before my answer.

● (0950)

Mr. Peter Julian: I will come back to this on the next round of questions.

The Chair: Thank you, Mr. Julian.

We'll go now to the second round. It is a five-minute round. We will start with Mr. Maloney.

Mr. John Maloney (Welland, Lib.): Mr. Robertson, one of the objectives of the binational industry council is to strengthen the North American lumber industry by increasing the market for its products. Other initiatives would include expanding the market for wood products in non-residential construction, developing new methods and markets for the use of wood in raised wood floor systems, defending the use of wood in existing residential markets, promoting the use of wood in green building standards, building the sustainability of wood products or demonstrating their desirability as an environmentally preferable building and finishing material.

All that suggests to me that we're going to be increasing and expanding our export and production of wood products. Would you agree with that objective, or with that comment?

Mr. Paul Robertson: Insofar as the actions and work done by the industry council promote the use of wood, I would have thought the increased use of wood would have a positive impact on both U.S. and Canadian production figures to meet that new demand.

Mr. John Maloney: Correct me if I'm wrong. You also indicated that various regions have to choose between an option A and option B. Option B would put a quota or a cap on exports, and option A would be an export tax if the price fell below a certain amount.

If you have an influx of wood into a market, most likely the price will drop, so I'm having difficulty reconciling the objective of increasing the sale of wood products into the United States with the option A and option B. It seems to be counterproductive. If we increase our markets into the U.S., we're going to trigger either option A or option B, which would be to the detriment of our industry, would it not?

Mr. Paul Robertson: Option A and option B are triggered by the price level for wood, so that if there is greater demand for wood, one would expect the price to increase, consequently lifting the price. At the same time it would decrease the use of the border measure on the export, because as the price rose, there would be less imposition of option A or option B.

I would just like to clarify with respect to your consideration of option A and option B. I'm sure you understand it, but I wasn't sure by your comment.

Option B reduces the export charge that a producer would pay within a certain price zone, but in exchange there's a reduction of the volume of export. That's option B. I'm sure you understand it, but with your shorthand, I just wanted to clarify.

Second, with respect to your earlier point, if the binational industry council expands the use of wood through these initiatives—if the entire market grows—so too does the Canadian quota related to that U.S. market, so there is a reflection of that dynamic within the mechanism established for the imposition of the export charge.

•(0955)

Mr. John Maloney: Thanks for clarifying that.

The \$50 million that's set aside for the binational committee—\$40 million for their operations and \$10 million for arbitration costs—what happens when that is utilized? Is there a mechanism to replenish the operating costs?

Mr. Paul Robertson: There is no mechanism now for replenishment. We're speculating a bit about how quickly this money will be used. But I suppose if that money is used and there is a case to be made for further funds, this would have to be considered by both governments with respect to the initiative. I think the \$40 million U.S. that is targeted for the council's activities is thought sufficient for its work over the longer term.

Mr. John Maloney: The agreement also provides that the objectives of the binational industry council could be strengthened to strengthen the North American lumber industry. What other objectives would you envisage by the terminology "could be"?

Mr. Paul Robertson: Frankly those are the ones that were envisaged, which we've identified. But we certainly don't want to restrict the business leaders, when they get together to consult and talk about this initiative, from any other initiatives, from implementing that type of work and the overall objective of increasing wood use in North America. The ones that I think were thought by both sides in the negotiations were identified in those objectives as more indicative objectives, but would be the bulk of the work.

Mr. John Maloney: You said that possibly the meritorious initiatives would be social housing. Is that correct? Is that social housing in the United States?

Mr. Paul Robertson: Yes, it is.

Mr. John Maloney: Are all the meritorious initiatives in the United States?

Mr. Paul Robertson: That's right.

Mr. John Maloney: We have no control over that at all. Do we know what sectors of the United States this might be going to, or is it countrywide?

Mr. Paul Robertson: That's a function of the decisions made by the independent endowment foundation. I don't think there is any specificity with respect to those overall objectives that were set out in the agreement for the work of the endowment.

Mr. John Maloney: Could you elaborate on what the overall objectives are?

Mr. Paul Robertson: Yes. They're set out in the agreement as well. They're basically what has been identified by this foundation.

As I mentioned in my opening, they are, one, educational and charitable causes in timber-reliant communities; two, low-income housing and disaster relief; and three, promotion of sustainable forest management practices, as set out in the agreement. Those are the three overall guiding principles by which the timber endowment or the meritorious initiative endowment will be directing their work.

The Chair: Thank you, Mr. Maloney.

Now to the Bloc, to Monsieur André, for five minutes please.

[*Translation*]

Mr. Guy André (Berthier—Maskinongé, BQ): Thank you for being here with us today and clarifying these issues, which are of great interest to Quebec.

As you know, the softwood lumber agreement has become tremendously important. We have had quite an economic disaster in the past few years.

My understanding is that the Binational Council and the other committees, whether it would be the Softwood Lumber Committee, The Technical Working Groups or the Working Group Dealing with Regional Exemptions from Export Measures, are each made up of 12 people. Therefore, in principle, there will be six people on either side. Moreover, a government committee made up of U.S. and Canadian elected officials will oversee all the committees. Is that so?

[*English*]

Mr. Paul Robertson: Yes, for a number of these working groups that haven't been established yet, the numbers and composition have not been agreed to. We know, for example, that the business council that we've spoken about will have six and six. I might have left you with the impression that the softwood lumber committee has a set number of representatives, but what I was speaking about there was primarily the industry committee.

The softwood lumber committee, as I noted earlier, will be composed of representatives from both national governments and will have the lead responsibility. How other committees are formed and the representation on those committees is yet to be determined, which is why I was saying earlier about consultations that will be taking place with the provinces concerning emphasis within groups, who is needed at the table for those groups, consultations pre-meeting and post meeting of those groups in order to ensure that we have a full picture and we're carrying forward the Canadian interest in each of the meetings.

That type of structure of organizing ourselves has yet to be determined, but that will be determined after consultation with the provinces in terms of their views respecting that mechanism.

•(1000)

[*Translation*]

Mr. Guy André: Will one of the four committees deal with the renewal of the softwood lumber agreement? When the current agreement ends, there will surely be a second, then a third, a fourth, etc.

[*English*]

Mr. Paul Robertson: I should say right now that type of work is not set out anywhere in the agreement. Focus can be put on any issue that both parties think is important to do, but as it stands now, the softwood lumber agreement does not envisage work of the type you've described in terms of any future agreement relating to the softwood lumber industry.

[*Translation*]

Mr. Guy André: As you know, many people had no other choice but to sign the softwood lumber agreement, given the sizable economic consequences. Everything was decided in an arbitrary fashion, not by the tribunals, but by government agreement. In light of this, I, as a Quebecker, am wondering about the balance of power in these committees and the leverage that our Canadian and Quebec representatives will have.

It seems to me that the Americans are coming to these committees after having scored a significant political victory. We have given them \$ 1 billion of our own money. They are giving us \$ 50 million so that we can meet within the binational council. That is where our representatives are.

What is your view on this dynamic?

[*English*]

Mr. Paul Robertson: I think that goes back to my discussion earlier that these types of discussions will take place first with consultations with provinces, because as you've identified, each region has its own particular interests. There are some common shared interests within that mix, but there are also regional interests within the topics to be addressed by these working groups and by the council.

All of that will be taken into account in the consultations that we'll be having prior to the development of that type of representation, both in terms of work within the agreement and the consultations that give rise to the positions that are carried forward into those working groups. We are looking forward to sitting down with provinces to hear their views as to how that should function, and having heard their views and having heard the universe of options and justifications for that, decisions will have to be made. But in the first instance we want to consult with provinces on those types of issues that you've identified.

•(1005)

The Chair: Just before we go to Ms. Guergis, there's a question that's been broached about three times, but it's never really been directly asked: will this binational industry council be given a chance to have input on improving the agreement? If industry people from both sides of the border see something that could be changed to improve the agreement, would they have any real way of doing that?

Mr. Paul Robertson: The focus of the binational industry council is, of course, as we've identified, which is primarily to promote the usage of wood in North America. However, if there are views as to how there can be a better operation of whatever the issue is that they think could be improved, we would of course be listening to views on the Canadian side to see how they can be addressed—either work carried forward with respect to their own industry council, or maybe in other bodies that have been set up, government to government, in the agreement.

I think we anticipate consultations with provinces, and both the federal and provincial governments will be consulting with their own industries with respect to positions that are taken forward into these groups. Through that process, I think those types of issues will be brought to the attention of provincial and federal governments, with consideration of how best they can be pursued under the framework

of work that will be developed within the softwood lumber agreement.

The Chair: Thank you.

We will go to Ms. Guergis for five minutes.

Ms. Helena Guergis (Simcoe—Grey, CPC): Thanks very much.

I'd like to start with the meritorious initiatives and the \$450 million. I know there's been some suggestion that the money is going to the Bush administration, and I know that's not the case.

I'm hoping you can explain and clarify for us the timber endowment—that it's a non-profit organization, that laws govern non-profit organizations, and that federal governments just can't walk into a non-profit organization and tell them what to do with their money. Could you please clarify that for us? I know it to be true, but I think we need to hear it from you.

My understanding too—it's been explained to me very clearly—is that Canadians will be able to compete for much of the work that the meritorious initiatives and the committee come up with. Of course, it can be our softwood lumber that's used for these projects, so Canadians will benefit in that aspect.

With respect to the two Canadian reps, I've also been told they will be required to report to someone here. Will that be the committee, the binational committee? Will they be reporting to them on a regular basis? I understand that you said there would be an annual report, but I have been told they will have regular contact with us—that we will know what's going on on a regular basis, that they will be reporting to us frequently as to what's going on.

With respect to the binational industry council, I appreciate the question my colleague Mr. Julian had on where the money will be going. I look forward to the answer, but I'm very confident that it will not be going to the Bush administration. Could you get back to us on that as soon as possible, please?

You had explained to the committee—and yes, I will agree with you—that they're not going to be drafting any further agreements. They're not going to be preparing what any other softwood lumber agreement would look like, and I don't think anyone around the table would expect that they would. Many of them will be industry people, of course, and there will be government representatives on the committee. Over the next seven to nine years their role is clearly to look at what's been working and what hasn't been working and make some recommendations as to how they can improve the situation. Can we perhaps tweak the agreement that is in place now to improve it for the future? Should we extend the existing agreement?

Very clearly, it has been explained to me that those activities will be their role. No, they will not be drafting the next agreement, but they certainly will be working alongside industry and governments to ensure that we can continue the relationship that we'll have built over the next seven to nine years.

In taking a look at the dispute mechanism, I will just remind everyone around the table that the problem with NAFTA and chapter 19 in the softwood lumber industry in the United States was that the Americans, from the beginning, were clearly not interested in using NAFTA. In fact, a memorandum of understanding pulled softwood lumber out of NAFTA, and that's why we don't see this dispute mechanism through chapter 19 really working for us in softwood lumber. That's why we should really all be applauding the fact that there is a different dispute mechanism within this agreement to help us through this process if anything were to happen again.

On the technical working groups, do you have any idea of how many working groups there will be, and who will be making up these groups? Would you be able to walk us through the process a little bit? Maybe you could start with that technical working group, with a dispute mechanism going forward, and if it didn't make it past that stage, then going over to the mechanism that's been set up through international trade law rather than through U.S. trial law.

• (1010)

The Chair: Mr. Robertson, before you start, there is very little time for an answer.

Would the members on the opposition side of the committee be willing to give a little more time? A lot of questions have been asked there. It'll require some time to get answers. Are you okay with that?

Some hon. members: Agreed.

The Chair: Thanks very much.

Just go ahead, Mr. Robertson. There are a lot of questions there, but they're important questions.

Mr. Paul Robertson: Absolutely. I've been trying to jot them all down. If I'm missing a couple, I'd be more than happy to go back to them.

Your first question was with respect to the meritorious initiative foundation. It is indeed formed under the body of U.S. laws governing charitable organizations, which has within it elements of non-partisanship, etc., cited in the U.S. laws governing the status of charitable organizations.

With respect to the meritorious committee recommendations on use of funds, yes, Canadian lumber can be used. Given the amount of Canadian wood that is exported to the United States, we expect that some would be used in these initiatives, so there is a positive aspect there.

You also raised the reporting structure for the two non-voting members. I'll have to get back to you. I'm trying not to mislead the committee; I wasn't aware if the two non-voting members have any sort of formal reporting structure, so I'll have to get back to you on that.

With respect to the binational industry committee, the question there was with respect to industry recommendations about how things can be improved, as opposed to another agreement. And you're quite right, I tried to identify that the industry input into this process about improvements is continual through a number of ways.

My colleague Brice MacGregor has also identified, in the side letter that I mentioned earlier from Ambassador Schwab to Minister

Emerson, the possibility of parallel industry discussions on how best to improve. I would add that to the mix, as well as the other types of mechanisms and consultations that would lead to industry input as to how things can be improved going forward with the agreement.

With respect to the dispute mechanism, I think your question there was relating to the effectiveness of this new mechanism that we've established. Would that be a fair assessment?

Ms. Helena Guergis: Yes, that would be part of it, but there is even the question, too, about the technical working groups. How many working groups would there be? Is there one specifically as a lead-in to a dispute mechanism process, and what is the membership of that?

Mr. Paul Robertson: With respect to the dispute mechanism, I think I went over the reasons for a dispute mechanism within the agreement. I think I've answered those, but I'm more than happy to elaborate on any points you may wish.

With respect to the technical working groups flowing from the binational softwood lumber committee, three have already been identified within the softwood lumber agreement. These are the regional exemptions, the customs issues, and the data issues that will arise and need to be looked at with respect to the operation of the agreement.

Other groups that could be created are with respect to those identified in the side letter from Ambassador Schwab to Minister Emerson. They include logs and lumber from private land and how to best treat those in the coming years with respect to the agreement, as well as running rules—this notion of how we ensure that the quota elements are running smoothly and have the discretion needed to work to the best advantage and to the most effective operation in Canada.

In all, right now, five working groups have been identified—three in the agreement itself, which will mean they will be activated, as well as two others that were identified in the side letters. We are sure they will also be formed to deal with those two issues. Right now, in terms of the number of working groups that we see established, there would be those five—in addition, of course, to the main overview steering group of the binational softwood lumber committee, as we've described to Mr. Cardin and Mr. André.

I've been listing your elements. Have I got them all, or have I missed something?

• (1015)

Ms. Helena Guergis: No, you've got them.

The Chair: Thank you very much, Mr. Robertson. It's very much appreciated.

Now, to Mr. Julian for five minutes.

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

I'd like to get back to the dispute settlement mechanism. As we know, upon the expiry of the previous softwood lumber agreement, softwood came under NAFTA, so there was a transition period. We've gone through a series of decisions that have been non-binding. We are now in the court system in the United States, and those decisions are binding. The recent Tembec decision, which I know you're aware of, should give us a remedy in the next few days that would require repayment of all of the illegally taken funds. That is the ultimate result of going through those binding courts.

We were at the stage where we were actually winning. Ambassador Wilson admitted in his testimony this summer that there were no appeals, either to the ECC judgment, which the present government suspended, or to the Tembec decision after the circuit court hears the ultimate appeal. So that's where we were, with binding mechanisms that would force the tariffs to be taken and all of the money to be returned.

Instead, now within the softwood agreement we essentially have a non-binding dispute settlement mechanism. You outlined the arbitration. But in going through the pages of the dispute settlement mechanism, we find that if the arbitration is not accepted—in other words, if the United States chooses, as it did through NAFTA and as it has even in court cases, to continue to appeal until the final stages, which we are now at, and to refuse arbitration—there is a second arbitration appeal. If they refuse the essential mechanism or remedy on that, there is a further arbitration appeal.

The final clause, the ultimate endgame in terms of dispute settlement, is paragraph 32. If the United States imposes compensatory measures pursuant to paragraph 27, or Canada imposes compensatory adjustments pursuant to paragraph 26, the other party may request consultations to discuss the status of the agreement. Such consultation must be held within 10 days from the date the request is received. Following the consultations, either party may terminate the agreement.

So the only binding aspect of dispute settlement contained within this agreement is the fact that ultimately either party could terminate the agreement, which is certainly as much in the Americans interest as it maybe to Canada.

Coming back to the issue of dispute settlement mechanism, given that the ultimate element here is that either party may terminate the agreement, my question really is, what do you consider binding about the dispute settlement clauses that are in this agreement?

Mr. Paul Robertson: Thank you very much, Mr. Julian. I think you have two basic questions there.

First of all, I'd like to introduce Michael Solursh, who has come to take notes but who is acquainted with the dispute settlement mechanism. That's what happens when you come to a committee to take notes; you might get drawn into the discussion.

I guess your first question is why we agreed to the softwood lumber agreement when we were winning in litigation. I think, if I understand, that was your—

•(1020)

Mr. Peter Julian: Well, that wasn't a question; that was a comment.

Mr. Paul Robertson: Oh, that was a preamble. Okay.

Sorry, I'm not being facetious. I thought that you were questioning—

Mr. Peter Julian: But as Ms. Guergis says, you are of course free to respond to that if you choose. You can make your own comment.

Mr. Paul Robertson: No. Okay. I'll move to your question about dispute settlement mechanism.

Perhaps Michael could take us through the dispute settlement mechanism and touch on the major points as they relate to the discussion. We can pick up from there so that everybody has a clear understanding of the process and what is involved with respect to those elements.

Would that be acceptable to the chair?

The Chair: Mr. Solursh, go ahead please.

Mr. Michael Solursh (Counsel, Trade Law Bureau, Department of International Trade): Thank you, Chair.

To start at the end and move to the beginning, to say that the only binding thing is termination is not correct. There are a bunch of steps that were carefully negotiated to make sure the arbitration itself is binding.

The first step is consultations. You initiate a dispute and you have consultations.

If consultations don't settle that dispute, the second step is arbitration. A tribunal will issue a final and binding award. When it issues that award, a party doesn't have the automatic right to terminate. You're given a reasonable period of time in which to cure the breach.

The object here is for a party who's in breach to cure the breach. It's only at the end of that reasonable period of time that if you haven't cured the breach the award of the arbitral tribunal can then be implemented. At that point it is final and binding.

What will happen is that the export measures under the agreement will go up or down. If Canada is in breach, it can increase or decrease the export measure, depending on whether it's under a tax or the export allocation system. However—

Mr. Peter Julian: Let me stop you right there. If the United States refuses the arbitration award, what is the recourse for Canada?

Mr. Michael Solursh: There are potential fundamental breaches of any agreement. In the dispute settlement system, you're anticipating the worst-case scenario. For the most part, it's meant to facilitate the natural commercial relations of the agreement.

If there's a point where something is not cured, at that point it's not automatic termination. Under the agreement, under the provision you read, the first step is consultation. Consultations are designed to facilitate a solution, and only after consultations if they couldn't facilitate a solution—meaning no agreement can be reached at that point—can a party choose to terminate. But termination is not automatic, and you're also missing the step of consultations before termination.

Mr. Peter Julian: You've proved my point. Thank you.

I have no further questions.

The Chair: Thank you.

Do any Liberals have more questions?

Go ahead, Mr. Temelkovski.

Mr. Lui Temelkovski (Oak Ridges—Markham, Lib.): Thank you very much, Mr. Chair, and thank you to the witnesses.

I have a number of questions. I will start with the larger questions.

The Americans collected \$5 billion from Canada, and with this agreement they are looking at returning \$4 billion, therefore keeping \$1 billion. Are those figures correct?

Mr. Paul Robertson: The figures aren't accurate in terms of... We now stand in the neighbourhood of \$5.5 billion in overall deposits, and it's quite right that of that amount \$1 billion will be transferred to various U.S. accounts as I identified earlier today. We're now working with an overall figure in terms of the deposits being collected, and duties are still being collected on the products and interest has to be put to those duties of \$5.5 billion.

• (1025)

Mr. Lui Temelkovski: Okay, that's fine. That's close enough. And those are American dollars?

Mr. Paul Robertson: Yes.

Mr. Lui Temelkovski: Out of the \$1 billion that the U.S. is keeping, or out of the \$4-something billion coming back to Canada, is Canada keeping any amount of that? Is government?

Mr. Paul Robertson: There are two mechanisms for the return of the refunds of that amount you identified once you subtract the \$1 billion from the equation, as you have. One process is the Export Development Corporation process—

Mr. Lui Temelkovski: I'm not interested in the process. I'm interested in whether Canada is keeping any of the money after it comes here, that \$4 billion to \$4.5 billion, whatever the amount is. Is that divvied up again and going to companies or individuals?

Mr. Paul Robertson: I was trying to allude to two processes.

One is an expedited refund process through the Export Development Corporation. The second is the more normal Customs refund process. But the way the EDC process has been designed—and as you know there's a special charge imposed—the money that's being taken by the EDC process, or by that special charge for those who are not participating in the EDC process, is meant to pay for the \$1 billion.

No Canadian government cut is envisioned in those processes other than that some money may be accrued between the time when EDC pays the money and the interest on that money, which can go up to two years before it's refunded. That money is intended to pay for the administrative costs of the program. The programs are designed not to produce a net benefit to the government in those two processes.

I hope I've answered your question.

Mr. Lui Temelkovski: That clears it up for me.

In terms of the members and the panels, the six plus six, and six plus six, and so on, are they and their staff going to be on the

Canadian payroll or are they going to be on the payroll of this international or binational industry council?

Mr. Paul Robertson: The industry-to-industry council is self-funded. How that money is used by the industry council—as you've mentioned, the six from the U.S. side and the six from the Canadian side—is a decision to be made by the council when it sits for the first time and works out its modus operandi and how it wants to proceed. There is no element within the softwood lumber agreement saying they will be paid *x* or per diems or that sort of thing. I think the industry council must determine the extent to which there is any sort of funding for the members who sit, or per diems to cover the cost of travel, or things of that nature. I don't think there's anything within the annex forming that to suggest that we have anticipated any salaries or things of that nature for the participants.

Mr. Lui Temelkovski: I heard earlier that the members of the panel will be announced within the next few days. Will they be accepting something not knowing how they will be compensated?

Mr. Paul Robertson: I think I said it would be in the coming days, which might be a few more than several. I'm not sure when the announcement will be made. I think the candidates are accepting the responsibilities of this council in order to further develop wood use rather than to gain monetary rewards for their services, because these are senior lumber executives in Canada. It would be better to ask those nominees that question when they're named. I don't have the sense that they're looking for that type of monetary reward. They're participating, I think, on the basis of service to Canada and to the sector.

• (1030)

Mr. Lui Temelkovski: I have one more question. Usually when appointments to any committee, department, or council are made, the nominees come before the House of Commons committee. Will these appointees be coming in front of us so we can ask them questions, or will they not?

Mr. Paul Robertson: At this point all I can do is take note of the interest of the committee to speak to these members once they're named. I can't say whether or not what you want to see happen will happen. All I can do at this point is take note of the desire of the committee to speak to these individuals, and I will take it back.

The Chair: Thank you, Mr. Temelkovski.

Could we have a member of the Bloc? Monsieur Cardin, go ahead.

[Translation]

Mr. Serge Cardin: Thank you, Mr. Chair.

We could have covered the issue of the Binational Industry Council fairly quickly. Fortunately, we have questions that can round out the issue.

I have been wondering: without an agreement, there will be no binational industry council, is that not so? Last week, we were informed that the start of the agreement was pushed back from October 1 to November 1. We were told that this was due to consultations with the industry. Furthermore, it seems that the United States and Canada have to await the decision by the US International Trade Tribunal before the agreement can be implemented.

Given the situation, we have to ask ourselves questions. In fact, we are told that the delay would be attributable rather to the sizable number of softwood exporters who decided last week not to drop their lawsuits against the United States following the imposition of punitive duties.

I am wondering whether or not we are currently caught in a quandary. The Americans told us that if the lawsuits were not dropped, there would be no agreement. However, we are now told that a significant number of people will not drop their lawsuits.

Is this not the real reason for the extension?

[English]

Mr. Paul Robertson: There are a number of elements to your question. First, I would just flag that the extension is no later than November 1; it's not that November 1 is the new implementation date. I'd like to make that clear at the outset.

Second, due to complexities on both sides of the border—and as you mention, particularly relating to termination of litigation—the two governments decided to make this extension. From the Canadian side, it's also in reaction to stakeholders' requests for an extension because of the complexities of filling in the legal documentation. However, I should say at the outset that the legal documentation being requested of the Canadian side is progressing well; that progress continues.

You have noted in your intervention that there are issues, one of which relates to the United States court's requirement to lift an injunction on liquidation. That is required before the agreement can come into force, because if you liquidate without the lifting of the injunction, the United States would be in contempt of court. Of course, courts are independent of government, and the timing of their decisions is not under government control; we are, however, working with the United States to do all we can to expedite that process.

We feel that the extension timeframe we're speaking about is sufficient to resolve the issues you have identified with the U.S. court. I think that Canadian companies.... As I say, many stakeholders have requested that extension because they still have to contend with the legal documentation required. I'm not sure if it's exacerbating the problem in Canada; I think what we're seeing is time being used to bring a fuller expression of the support for the agreement, which requires the termination of litigation and liquidation. That will happen simultaneously with the coming into effect of the softwood lumber agreement. I think it's perhaps better to put it in those terms rather than as an exacerbation of the problem; I think it's taking the time needed by both government and industry to deal with the complexities of the litigation and the legal elements surrounding that.

I hope I've addressed your major points.

● (1035)

[Translation]

Mr. Serge Cardin: According to what you have said, the delay would also be caused by the governments, who want to implement the agreement according to the rules that they set.

From October 1 to November 1, those companies that filled out all the required paperwork to terminate litigation will continue to pay countervailing duties on their softwood lumber exports.

My understanding is that the United States will continue to collect 19% of the countervailing duties paid between October 1 and November 1. These amounts do not account for a great deal when compared with the \$5.3 billion in cash deposits, but I would like to know whether these duties should apply in principle.

[English]

Mr. Paul Robertson: I see a number of points to respond to.

First, it's not just individual companies that are having difficulties meeting the legal obligations, the technical obligations, in termination. There are a number of associations that require time to deal with questions of bylaws and how they have to proceed with their members, before they can express the views of the association on termination. So there are companies and associations—all of this is in play, but it's moving in the right direction, and good progress is being made.

You're quite correct when you say that the companies will continue to pay duties to the United States for October. However, all of those duties will be returned to Canada because the \$1 billion is a fixed amount; it's not a percentage of the deposits that have been collected over time. So there is no increased benefit to the United States in revenue generation by an extension to no later than November 1, as it relates to duty collection and to whom those duties will ultimately be refunded. As I say, that is because the \$1 billion is a fixed amount.

● (1040)

The Chair: Thank you, Mr. Robertson.

Mr. Menzies.

Mr. Ted Menzies (Macleod, CPC): Thank you, Mr. Chair.

My apologies for not being here earlier to hear all of your presentation, Mr. Robertson.

I want to make sure you don't leave here with the impression that this committee wants to vet every appointment on these panels. Historically that hasn't been our job, and we've never decided that should be our job at this level. We certainly assume that there will be some very knowledgeable people on the panels, and I don't think it's our position at this point, unless this committee decides otherwise, to interfere at that level.

I would like to go back to a couple of misconceptions. On the dispute settlement mechanism, I understood your response to Mr. Julian's question to be quite firm that the dispute settlement mechanism in place in this agreement is binding. Could you explain that one to me again? Perhaps I didn't understand your explanation properly, but I think it's quite binding.

During all these debates in the House and committee we keep talking about how close we were—we were inches away, we were moments away from a court settlement in the U.S. in our favour. We've watched more court settlements be appealed and lost—not in our favour. Why would we assume that those that are still inches away would be any different from all the ones in the past?

Mr. Paul Robertson: Thank you very much, Mr. Menzies.

On your question relating to litigation, I think you alluded to the response when you talked about the potential for appeal for all this litigation. It's by no means certain when that litigation would end. I think it would be fair to say that the major lumber exporting provinces and the industry itself have taken the decision that they would prefer the certainty of the agreement to the extended process of litigation, which could carry forward into 2007 and beyond. So I think that is the answer to your first question.

I would also flag that the softwood lumber agreement stipulates that the agreement is without prejudice to the legal decisions taken so far within these processes. So all these decisions are not lost, in terms of precedent and how they do that. Nonetheless they are not final litigation decisions, and no one is claiming that they are.

On the point Michael was making about binding arbitration, both sides have committed themselves to binding and final arbitration under the SLA. There are questions relating to a reasonable period of time to bring your measures, or whatever the issue is, into conformity with the decision—consultations on what might happen if those timeframes are not met, etc.

I think you have to understand the whole process, with the emphasis squarely on the dispute settlement process from both sides, in respect to the decision of the arbitrator and the award decision of the arbitrator relating to issues brought before them. I think we would underscore that point.

Michael, is there anything else you would like to raise in that regard?

Mr. Michael Solursh: I think what Mr. Robertson said is correct. It is final and binding, and every international agreement is an agreement between two sovereign nations. You cannot force a country to listen if it doesn't want to. This dispute settlement is so good because it is almost like a commercial arbitration setting. An arbitrator gives an award that is final and binding, but at the end of the day, between two sovereign nations, you still need to have the opportunity to consult if there are problems with any aspect of the agreement.

• (1045)

The Chair: The London Court of International Arbitration is handling the arbitration services. Can you explain how they fit in?

Mr. Michael Solursh: The London Court of International Arbitration is an independent forum, so that's one benefit. It is a well-established and highly respected arbitration court. Its rules are highly established and well-respected, so we thought it was best to go under those rules. There are arbitration rules that govern the process, and countries can modify those rules if they want to. So any dispute goes through that arbitration process—panel selection, any of those rules are governed under this dispute settlement system. We have adopted their rules with some modifications.

The Chair: I don't know if you've finished answering Mr. Menzies' questions, Mr. Robertson.

Mr. Paul Robertson: I think I hit on the major elements of your question, Mr. Menzies. Was there anything else?

Mr. Ted Menzies: I just want to be clear that this committee, from my understanding, has never asked to be part of the selection process.

Mrs. Betty Hinton: The House never approves appointments.

Mr. Paul Robertson: In my response I didn't presume to rule on the role of this committee. I just said I would take note of the comments made on this issue by both sides.

Would that be a fair assessment, Mr. Chair?

The Chair: Sure.

Mrs. Hinton, did you have a question?

Mrs. Betty Hinton: No, I don't have one. I listened very carefully, and the answers were very good. I like the short format.

The answer on the arbitration is yes, it's final; yes, it's binding. Correct?

Mr. Paul Robertson: That's what it says in the softwood lumber agreement.

Mrs. Betty Hinton: Thank you.

The Chair: Mr. Julian, go ahead, for five minutes, please.

Mr. Peter Julian: Thank you very much, Mr. Chair. I have finished my questions, but a couple of points come up that bear correction.

The first is on dispute settlement. If the United States does not accept the arbitral award, the only recourse is termination of the agreement. That is very clear from your testimony, and I want to make sure the record reflects that.

Second—and this is an important element—we had much testimony this summer that dealt with this issue of what happens when we terminate litigation. The reality is that by terminating litigation, we cannot go back into court. We don't have the precedents or the jurisprudence. So there is a cost of eliminating that litigation.

And I think—I'll make my comment before I ask my specific question—that is why dozens of companies have refused to terminate litigation, which is why the agreement is, quite frankly, in so much trouble. It wasn't implemented October 1, and it's unlikely to be implemented for November 1. The companies are refusing to terminate their litigation because they know that ultimately if the deal falls through, if there are other attacks on Canadian softwood, they'll have to start from scratch. It would be unfair, I think, to intimate that somehow the litigation could be picked up and taken later.

The termination of litigation means we start from scratch, and that is my question. Can you confirm that? The companies terminating litigation have, in a sense, ceded their rights, and if this agreement does not go through or if the United States or the coalition chooses to target Canadian softwood in the future, those companies will have to start over.

Can you confirm that?

Mr. Paul Robertson: First of all, I didn't want to imply that we could pick up and terminate litigation where we left off. That was certainly not my intention.

What I was alluding to when I said “without prejudice to the legal decisions taken to date” is that in the course of this litigation, there were decisions taken in the WTO, NAFTA, and U.S. court that are on the books and relate to specific aspects of the softwood lumber litigation process and that whole myriad of litigation that has been undertaken in that regard. Those decisions reside in terms of governing elements on how you proceed with pass-through elements of this and zeroing in on that, all in relation to the two positions relating to how we litigate it through this process. That's all I meant with respect to “without prejudice to”.

I certainly did not want to imply, and I apologize if I did leave the impression, that somehow we could pick up litigation where it ceased under the softwood lumber agreement, because that litigation

is terminated upon its coming into force. So if I misled anybody, it was unintentional.

• (1050)

The Chair: Does anybody else have a pressing question?

Thank you very much, gentlemen, for your information and for your answers today. It was a very helpful meeting. I think there was a greater understanding at the end of the meeting than there was at the beginning about all of these bodies.

Thank you very much for coming. I look forward to seeing you again.

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

**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.