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Chair

Mr. Lee Richardson

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• (0910)

[English]

The Chair (Mr. Lee Richardson (Calgary Centre, CPC)):
Ladies and gentlemen, I'm sorry that we're getting started a little late this morning.

Welcome to the 19th meeting this session of the Standing Committee on International Trade. This morning we'll be speaking on Canada-United States trade relations. We have witnesses here from the United Steel Workers; the Communications, Energy and Paperworkers Union of Canada; the Canadian Manufacturers & Exporters Association; and from Washington, trade lawyer Elliot J. Feldman.

I'm going to introduce the panel and then ask each of them to give a brief opening statement, at which point we'll go to questions.

First I want to welcome Mr. Feldman. Thank you for coming again. Mr. Feldman is a trade lawyer from Washington. I also welcome, from the United Steel Workers, Erin Weir; from the Communications, Energy and Paperworkers Union of Canada, Guy Caron; and from the Canadian Manufacturers & Exporters Association, Jayson Myers. Thank you all for coming.

I'm going to ask you to start. Each of you will give a brief statement.

Perhaps we'll start with Mr. Caron.

[Translation]

Mr. Guy Caron (National Representative, Special Projects, Communications, Energy and Paperworkers Union of Canada):
Mr. Chairman, and members of the Standing Committee on International Trade, thank you for inviting me to appear before you.

Our secretary-treasurer, Mr. Gaétan Ménard, was originally supposed to make a presentation to you, but he has unfortunately been detained in Montreal on matters pertaining to the AbitibiBowater situation.

The Communications, Energy and Paperworkers Union represents 150,000 members and over 60,000 forest workers across Canada, 7,500 of whom are employees of AbitibiBowater. Issues related to the situation of the forest industry are a very great concern to us.

I'm going to talk to you briefly about two specific issues that affect trade relations between Canada and the United States in the forest industry, that is to say softwood lumber, but more particularly black liquor. With respect to softwood lumber, the Communications, Energy and Paperworkers Union of Canada supported the agreement, but somewhat reluctantly because we could already see the

perverse effects of the agreement. Time unfortunately has proven us right. The industry has now lost its ability to compete with the U.S. industry.

For example, in the following charts, you can see that the prevailing monthly price of lumber since the agreement was signed has never exceeded the minimum amount that would permit a lower tax or higher quotas to apply. Consequently, since we signed the agreement, export taxes for options A and B have been at their maximum level, that is to say 15% and 5% respectively, and the quota to which those who selected option B have been subjected has always been at its lowest level, 30% of the U.S. market.

In that sense, the softwood lumber agreement has been satisfactory for the U.S. industry. The impact on exports has been major. Chart 3 on page 3 shows that, since the signing of the agreement, Canadian exports have fallen by half. This shows once again that the agreement has had an impact. However, it is not the only cause. The impact is also attributable to the major real estate crisis in the United States. The combination of these two factors has resulted in the very tough situation the Canadian industry is currently experiencing.

Rather than talk to you about softwood lumber, I'm now going to address an issue of great concern to us right now, but which you probably have not heard much about, and that is black liquor. Black liquor is a residue from the processing of wood chips into kraft pulp. This residue, which comes from forest production is considered to be renewable fuel. The mills themselves use it to meet their own energy needs and reduce their power consumption and consumption of other forms of energy from the outside.

In 2005, the United States adopted a tax credit on renewable fuels in order to support ethanol, among other fuels. The credit is the equivalent of a 50¢ per gallon subsidy for a renewable fuel mixed with a fossil fuel. However, last year, four years after the tax credit went into effect, the American forest industry realized that by adding 0.5% diesel fuel to the black liquor it already produced, it became eligible for this tax credit.

Ultimately, by adding a pollutant to a renewable fuel, the forest industry is taking major advantage of what could be characterized as a loophole. We estimate that, for 2009, this tax credit will result in subsidies for the U.S. pulp and paper industry that, based on estimates, will amount to between \$5 billion and \$10 billion. The impact is major as well because a number of American mills that were closed have reopened in order to enjoy the tax credit. The American industry is thus flooding the North American market with subsidized pulp and paper.

To give you an idea of the extent of the tax credit, I note that, at 50¢ a gallon, the advantage is approximately \$200 or \$250 per tonne of pulp produced. The current production cost is approximately \$500 per tonne. In other words, the American tax credit currently subsidizes nearly half of pulp production costs in the United States.

● (0915)

International Paper, which is the biggest producer of corrugated cardboard in the United States, alone received approximately \$1 billion for 2009. It has received \$330 million to date. The impact in Canada is massive. There are already lost orders in Espanola, in northern Ontario. The Domtar mill there transferred its orders to American mills in order to take advantage of the tax credit. You probably heard about the Fraser mill in Thurso, which has unfortunately shut down for an indeterminate period. That closing is directly related to black liquor. The Edmundston mill, in New Brunswick, is in danger, and we can anticipate that other Canadian mills will be closing for the same reason.

What can we do in these situations? First, you have to understand that the forest industry has a future. It's often said that this industry is in decline, but that is not true. In Canada, the forest industry has a future. We have the resource and the expertise to develop it. This industry has made mistakes in the past—we won't conceal that fact—but it now has to react and start adjusting to new situations. It has to explore new niches, move away from basic products like newsprint and market pulp and start developing new products. That could be, in particular, biofuels derived from waste, that is secondary products that can be developed.

The forest industry is not a minor industry in Canada. It carries the same economic weight as the automotive industry. It also employs twice as many people as the automotive industry. And yet the automotive industry has received considerable support from the federal government. That is why we are asking that, in order to adjust to new market realities, the forest industry be granted the same type of support as has been enjoyed by the automotive industry to date.

We applaud the loan guarantees that Quebec has offered to AbitibiBowater. On the other hand, Mr. Blackburn and Mr. Lebel said it was impossible to grant those loan guarantees. What we hear from the government is that it may violate the Canada-U.S. softwood lumber agreement. However, we have two legal opinions. One was sent to us and the other was sent to the Conseil de l'industrie forestière du Québec. They demonstrate that loan guarantees do not contravene the softwood lumber agreement. It is therefore impossible to use that excuse to deny the industry the assistance it needs. It must also be understood that the softwood lumber agreement is used to facilitate management of the softwood lumber trade between Canada and the United States. It was never meant to be a suicide pact for the Canadian industry.

As for the black liquor issue, neither Congress nor the White House appears to want to move. Closing this loophole would have been the ideal solution, but the American lobby is currently very powerful. They're now saying that the tax credit should expire in December 2009, but, according to some rumours, it might be extended for a few more years, which would definitely sound the death knell for the Canadian industry. If we cannot convince the

White House or Congress to close this loophole, the only recommendation we can make is that the Canadian government offer the same tax credit to the forest industry to guarantee it a level playing field.

You'll no doubt have a lot of questions to ask me on this subject, and I invite you to do so.

● (0920)

[English]

The Chair: Thank you, Mr. Caron.

Mr. Feldman, please.

Dr. Elliot Feldman (Trade Lawyer, Baker & Hostetler LLP, As an Individual): Thank you, Mr. Chairman.

I'm again honoured to appear before this committee, and I thank you for the invitation. I have provided the clerk with a more complete text, and in the interest of the very short time permitted me, I'm going to be very summary in my spoken remarks.

I do need, perhaps, to identify myself a little more. I've laboured over relations between Canada and the United States for 35 years, since I taught at the University of British Columbia in the faculty of commerce and business administration. I later directed the university consortium for research on North America at Harvard University.

For 20 years I've represented Canadian interests as a practising attorney in the United States, mostly in trade disputes. I was among the first to represent Canadian interests within the framework of the free trade agreement between Canada and the United States. I believe I've appeared before more FTA and NAFTA chapter 19 panels than any other lawyer. For a time, I was on the chapter 20 roster of the United States. I've also litigated under chapter 11.

I'm the first outside counsel retained in a century by the International Boundary Commission, defending the commission in the first lawsuit ever brought against it in the United States. The International Boundary Commission was created by treaties of 1908 and 1925 between the United States and the United Kingdom on behalf of Canada. It's generally understood to be counterpart to the International Joint Commission, the former for the land border, and the latter for water.

My theme is independence, not as to sovereignty but as to neutrality and impartiality, the essential ingredient of the rule of law and the surest guarantee of justice. I'm going to suggest that this concept is in difficulty in Canadian-United States relations, leached out of NAFTA and under attack in the International Boundary Commission. Both federal governments are responsible. This loss of independence means the two countries may be destined to fight an increasing number of conflicts with growing difficulty in resolving them fairly. Alternatively, they will have to search and find new common ground. While I favour fixing what can be fixed, I think that, particularly as to NAFTA, Canada must look elsewhere, to a new agenda, and for nothing less than a new treaty for North America, adapted to a 21st century agenda.

The heart of NAFTA is in innovative dispute resolution. There are three relevant chapters: 11, 19, and 20. NAFTA is not required for a state-investor dispute mechanism. Chapter 11 has been treated in a manner that has accorded fewer rights to Canadians than nationals of other countries enjoyed through bilateral investment treaties. Canadians probably would be better off with new bids with the United States and Mexico rather than trying to fix the shortcomings of chapter 11 within NAFTA.

Neither Canada nor the United States has utilized chapter 20 in more than a decade. If you want to address buy American disputes, chapter 20 is the designated route in NAFTA. Plenty of disagreements over NAFTA have festered, but the governments have not seen fit to use the mechanism NAFTA created to resolve them.

Chapter 19 is unique. It was created, according to its own rules, for the “just, speedy, and inexpensive review” of trade disputes. The Government of Canada has been unsparing in its criticism that NAFTA panels are slow and expensive. The charts I’ve distributed, which I hope you now have, prove that they have become notoriously slow, although there is no evidence that they are more expensive than legal alternatives. Canada has found much justice in them.

Rather than commit, however, to fixing chapter 19’s problems, the Canadian government, while claiming the contrary, has written it off. The federal government collaborated with the United States to prevent a binational panel from finalizing the decision finding that Canadian softwood lumber was not subsidized. The government took \$50 million from Canadian industry to fund an alternative to chapter 19 that repudiated all of chapter 19’s principles, and it has exposed Canadian industry to monetary damages for the first time in international trade, with the first award of another \$68 million and much, much more likely to follow.

The government’s treatment of chapter 19 has cost Canadian industry far more money than chapter 19 proceedings ever cost, and with decidedly worse results. Unfortunately, there is no going back. The United States would not agree to fix chapter 19 even if Canada wanted to try. The effective independence of chapter 19 is over, and with it, the innovation and effective utility of NAFTA.

NAFTA was designed to reduce tariffs, to expand trade, and to improve trade dispute resolution. The tariffs have been lowered. Canadian-U.S. trade, however, has flatlined for nearly a decade. I’ve given you charts showing you that.

By contrast, trade has grown substantially within the European Union. The dispute resolution system in NAFTA has been discarded. The consequences are a decline in North American competitiveness and an absence of institutions to address a 21st century agenda.

• (0925)

This loss of independence, of reliable, neutral adjudication of disputes, has occurred not only in NAFTA. When President Bush asserted that the international organization that marks and maintains the border between Canada and the United States, the International Boundary Commission, or the IBC, is in fact an agency of the United States, so the administration claimed, and that the commissioner appointed to participate in consensual joint decision-making with

Canada in fact must follow presidential instruction, the Government of Canada said nothing.

However, the Bush administration begged for Canadian support for its battle in U.S. courts over presidential power and eventually got it, first through a diplomatic note from its embassy in Washington, and subsequently through an acquiescent letter from the commissioner from Canada. Thus, the Government of Canada has been cooperating in order to curry favour with the Bush administration in the conversion of an international organization into an arm of the White House.

The Bush administration, despite Canada’s help, has not had its way. U.S. ports have not accepted the newest positions advanced with Canada’s help. Nonetheless, the future of the IBC, its independence in marking and maintaining the border, is in serious jeopardy, in significant part because of the self-destructive way in which Canada has played its part.

Treaties that make Canada a co-equal and that assure continuity in essential bilateral tasks such as the 1908 and 1925 treaties creating the IBC need to be protected and preserved. Agreements that cripple Canada’s freedom to manage its own affairs and that retard North American prosperity and competitiveness do not. The late 20th century agenda that justified and promoted NAFTA—reducing tariffs, facilitating trade, and resolving trade disputes—is not the agenda today. Today’s bilateral agenda is about green technology and competition from Asia. It’s about energy independence and continental security on the ground, with threats more likely from individuals with dangerous luggage than from intercontinental ballistic missiles.

The swine flu pandemic has been a warning and, conspicuously, has been called by some the NAFTA-flu, because it seems to have originated on a pig farm in Mexico owned and run by Smithfield Farms of Virginia. It could become the poster child for President Obama’s desire to change North American environmental agreements.

NAFTA’s architecture is ill suited for the new agenda. It says little about the threats at the border, preoccupied as it is with efficiently moving goods, not people, and with getting across the border, not protecting it. Nothing about NAFTA helps with the flu pandemic. NAFTA helps not all to resolve the presidential grab for control of the border through effective seizure of the IBC. It is preoccupied with producing more energy, not with diversifying and not with cleaning up the environment.

NAFTA has become an obstacle to an institutional, economic integration that is critical for North American prosperity and security. The economy, which has spiralled downward since last September, has proved the reality, if not always the attraction, of globalization. Canadian-U.S. interdependence is inescapable but largely unmanaged. There should have been a coordinated, coherent North American response to the global financial crisis, especially in light of Canada's superior and more stable financial institutions. But NAFTA has done nothing to enable one, and as long as it is the dominant institutional feature on the continent's landscape, there will not be one.

The alternative to deeper North American integration for Canadians is not a splendid and prosperous isolation, but more a marginalization in the world economy and in world affairs. Canada now has an opportunity for leadership, but only a brief moment to seize it.

I'm not the first to note what must be on the 21st century agenda, but perhaps I'm the first to call for a new treaty for North America to get there: environmental cleanup linked to trade and public health, green technologies at the heart of commerce, border security that is continental, trustworthy enough at the peripheries to relax the internal borders, financial institutions that at least coordinate in response to pressures from the rest of the world, genuinely shared security burdens, and the invigoration of international institutions governing shared borders. The agenda should not be compartmentalized, listed assignments to different line agencies and ministries. Instead, the agenda should be seen as a single responsibility that might be addressed in one treaty, in one set of institutions, coordinated and managed jointly.

• (0930)

Canadians have long imagined themselves greener, more environmentally conscious and socially responsible than Americans. Often they claim a superiority even as they confess reluctantly a dependence. Canadians trumpet the rule of law but routinely retreat to diplomacy. Now they can use diplomacy to restore the rule of law, and with it their influence in North America and around the world.

Thank you very much.

The Chair: Thank you, Mr. Feldman.

We'll go now to Erin Weir of the United Steelworkers.

Mr. Erin Weir (Economist, United Steelworkers): Thank you very much, Mr. Chair.

In the past when I've appeared before the finance committee, I've been held very strictly to five minutes, so I'm delighted that the timeframe is a little bit looser here at the international trade committee.

I'm here on behalf of the United Steelworkers Union, which represents 250,000 members in all of the different sectors of Canada's economy, many of whom produce products that are exported or that compete with imports within the Canadian market. I'd like to provide a bit of an overview of the state of Canada's international trade and then move into some specific policy proposals.

In January 2009, Canada ran its first merchandise trade deficit since 1976. We did return to a surplus in February and March, but it's very likely that Canada's overall trade balance is still in deficit if one includes services. We'll find out for sure on May 29, when Statistics Canada releases the current account information. This deterioration in Canada's trade balance has really been caused by falling commodity prices, which have reduced the value of Canada's resource exports. This has revealed a severe underlying imbalance in our trade in manufactured goods. In essence, other countries sell far more manufactured products into the Canadian market than they buy from Canada.

It's important to make a geographic distinction. Despite this deterioration, Canada continues to run a modest trade surplus with the United States. Our trade problems really lie offshore. Another set of problems relates to provisions of free trade agreements that do not have much bearing on actual trade flows but restrict the ability of the Government of Canada to make policy in the public interest.

I believe solutions can be found to both of these kinds of problems in collaboration with the Obama administration.

The first specific area of policy I'd like to address is trade remedy loss. One contribution to Canada's trade imbalance in manufactured goods is the fact that some offshore producers dump products into the Canadian markets or use government subsidies to export products to Canada for less than the cost of production. Canada's Special Import Measures Act provides for countervailing duties against such unfairly priced goods. However, the enforcement and scope of this act need to be improved. One of the reasons the Special Import Measures Act has been weakly enforced in Canada is that unions do not have any standing either to make complaints or to participate in ongoing trade complaints under the act. In this area, I believe the United States provides a much better model. South of the border, unions do have standing to file trade complaints, which results in much more robust enforcement of trade remedy laws in the United States.

I'll move on to the scope of the legislation. The act deals with explicit government subsidies to exports. It does not address the subsidies that are sometimes provided when governments turn a blind eye to violations of labour rights or violations of environmental standards. I believe Canada should, in cooperation with the United States if possible, develop a regime that applies import duties that are equal to any cost advantage that foreign producers derive from violating labour and/or environmental rights. Essentially, if a producer in another country is gaining a cost advantage relative to Canadian producers by infringing on internationally recognized labour standards or by not enforcing basic environmental provisions, Canada should be able to have a countervailing duty to remove that cost advantage. This would safeguard Canadian producers against unfair competition, and it would also tend to militate against the international race to the bottom, whereby countries continually weaken their labour and environmental standards in an effort to gain competitive advantages.

● (0935)

An area where this nexus between the environment and international trade is of particular importance is climate change. Of course Canada should put a price on carbon emissions in order to reduce our greenhouse gas emissions. The policy challenge, however, is to prevent corporations from responding to a price on carbon by simply relocating carbon-intensive activity to other countries that choose not to put a price on carbon.

A major part of the solution to this problem for Canada is to have the same carbon price as the United States. I would recommend finding a way for Canada to participate in the Obama administration's cap and trade plan, because if that were the case, Canadian producers would face the same carbon cost as their American competitors, and there would be no incentive to relocate production south of the border to avoid Canada's carbon pricing.

However, even with a North American approach to climate change, North America would still face the challenge of corporations potentially relocating their carbon-intensive activities offshore to avoid carbon pricing. Such a relocation would not only eliminate jobs but would also tend to increase carbon emissions, because it would concentrate more of the world's production in the countries that have dirtier technology and weaker environmental standards.

The solution to this challenge is to apply the same carbon price to all goods sold in North America regardless of where they are produced. The mechanism to achieve this could be a carbon tariff on imports from countries that choose not to price their carbon emissions, or it could involve requiring importers to buy permits under the cap and trade arrangement if they are bringing goods from such countries into the Canadian market.

The final area of policy I'd like to speak about is the North American Free Trade Agreement. As I'm sure members of this committee are well aware, President Obama recently backed away from proposals to renegotiate this deal. But I would submit that part of the reason he backed away is that Canada rejected the prospect of renegotiation. However, there are real problems with NAFTA.

I think a very useful role for this committee would be to develop a set of Canadian proposals to change NAFTA to address these problems. A top priority, in my judgment, should be removing

NAFTA's chapter 11, which empowers corporations to directly challenge public policies that allegedly interfere with their potential future products.

There have been some outrageous challenges launched against Canada under chapter 11. For example, in July 2008, approximately 200 American businessmen filed a \$155 million chapter 11 challenge to Canadian medicare, on the grounds that it would interfere with the potential business opportunity of setting up private medical clinics in Canada. The last comprehensive summary of chapter 11 challenges that I've seen goes up to January 1, 2008. At that time, Canada had borne the brunt of chapter 11: more challenges had been filed against Canada by foreign investors than against either the United States or Mexico. A majority of all the chapter 11 challenges filed were against environmental or resource management measures.

In contrast to this excessive enforcement of investor rights, there has been essentially no enforcement of labour rights under NAFTA's labour side agreement. In effect, NAFTA provides no material penalties for member states violating labour rights.

In a nutshell, the United Steelworkers Union believes that reforms to the North American Free Trade Agreement should rein in investor rights while at the same time strengthening labour rights, with the objective of ultimately putting them on an equivalent plane.

Thank you very much for your time. It has been a real pleasure to appear.

Now I will turn things over to Mr. Myers.

● (0940)

The Chair: Thank you. Let me do that for you.

From the Canadian Manufacturers and Exporters Association, president Jayson Myers.

Mr. Myers.

Dr. Jayson Myers (President, Canadian Manufacturers & Exporters): Thank you very much, Mr. Chair, and *bonjour, mesdames et messieurs*. Thank you for the invitation to come to speak to you on a number of issues with respect to Canada-U.S. relations.

We certainly have a number of concerns right now, extending from the growing complexity of costs and time delays at the border, Canada's lack of enforcement of rules that would prevent counterfeit product going into the United States from Canada, the imposition of export controls, as well as a number of opportunities, I think, as previous speakers have said, for Canadian and American businesses to work together.

I'd like to focus my remarks on one particular issue, which is the challenge we see right now with the imposition of buy American provisions in U.S. legislation. I have circulated a brief to committee members on this issue. I won't go through it point by point but look at the highlights. This is the same brief that has been circulated to the Prime Minister's Office, the international trade minister's office, and the industry minister's office. It has been circulated throughout the Canadian government. It has been circulated to congressional representatives in the United States and to a number of business associations in the United States. We have the latest version of the brief.

In short, the concern has to do with the provisions that were first contained in the American Recovery and Reinvestment Act signed into law by the President in February. The restriction is that all iron and steel manufactured goods that are used in public works projects funded under this act are to be made in the United States. There's a question mark about what that actually means, but we think it means substantial transformation of goods taking place in the United States. Now, that act also contains three waivers. The rule would not apply if a waiver were granted because the impact of the provision would substantially increase the cost of the project or if particular products were not available in the United States or if it were against the public interest.

The recovery act also requires these provisions to be implemented consistent with U.S. trade obligations here. What we're also seeing is not only the appearance of these provisions in the recovery act itself, but in other pieces of legislation that are emerging from Congress. In fact, we know of seven other pieces of legislation right now, the Water Quality Investment Act being the one that is causing the most headaches. It is an act that would provide \$13.5 billion over the next five years for clean drinking water and municipal waste water improvement projects, but we're also seeing this appear in other pieces of legislation, most recently on Tuesday in an act presented before the House of Representatives, the Green Schools Act, covering construction materials for schools in the United States.

Canada's concern here is that under the provisions of NAFTA, state and local procurement is not covered. There's no safeguard for Canadian exporters to the United States under NAFTA provisions. NAFTA, the WTO procurement agreement, covers only federal procurement as far as Canadian exporters go, although I would argue that what has changed here is that these provisions are contained in federal law. They are provisions that affect how federal funds are being spent at state and local levels, and I would say there is an argument that at least in terms of the spirit of NAFTA this should be covered under NAFTA. I think that's a good negotiating argument for the Canadian government to make, but in essence, right now there is no clear safeguard for Canadian exporters here. Buy American content provisions have existed for a long time at state and local levels. Usually those are threshold content provisions. What is contained in the federal legislation that is now coming out are out-and-out restrictions that will apply to exporters of certain products, particularly in the water and waste water sector, which is the area right now, although structural steel producers, foundry producers, are also being affected.

● (0945)

These markets were fairly open to Canadian exporters. As a result of the introduction of the Water Quality Investment Act, we are now seeing contractors in the United States requiring Canadian suppliers to sign affidavits saying that the product was made in the United States. If they're unable to sign those, they're losing contracts. A number of companies have been affected. They've lost business in the United States. One company in particular, IPEX, which is based in Don Mills, has had its pipes ripped out of the ground by a contractor. That's simply because the contractors themselves don't want to be put in the position of having to remove the equipment if these provisions are actually employed. This is a growing issue of great concern. It directly affects Canadian exporters and a number of Canadian communities.

As a result of this, we're also seeing quite a wide array of sentiment on the part of Canadian companies that are finding themselves restricted from the U.S. market even as provincial or local procurement markets remain wide open for American suppliers in Canada. A number of municipalities are passing resolutions that provide some form of reciprocal access. This began in Halton Hills, and it's going to be debated by the Federation of Canadian Municipalities. Under these resolutions, municipalities would provide open access to their markets for suppliers from other countries as long as those countries provide open market access for Canadian exporters. So there is some form of reciprocal market access resolution.

I can tell you that there is growing pressure for some form of retaliatory action here in Canada. I think it could be used as a negotiating lever. It's one of the most important levers that we have. One thing that American businesses and American officials take very seriously is the threat of retaliatory action on the part of their trading partners. If other countries also undertake retaliatory action, what we're left with is a world that goes back to the 1930s and the imposition of trade restrictions. In the midst of a global downturn, I don't think that you come into recovery by restricting business opportunities. It's much better to keep markets open so we can grow business opportunities together. But in other sectors, the of retaliation is very real.

Since the commitment of the G20 leaders in November not to restrict markets, the WTO has counted 137 cases around the world of increased tariffs, new non-tariff barriers, or new procurement restrictions. In spite of President Obama's commitment not to restrict market access, these buy American provisions provide quite substantive restrictions, particularly towards Canadian companies exporting into municipal and state procurement markets.

CME is trying to identify affected companies. We want to make sure the government knows what the impact is. We are the only business association in Canada with an office and representative in Washington. Our representative has been very active on this file and has found business allies in the United States. At the end of the day, it's important for U.S. businesses to make the case to legislators that these buy American policies are bad for the United States because they slow down infrastructure projects, complicate them, and increase costs. If Canadian businesses are losing opportunities in the United States, then U.S. suppliers to those businesses will also be losing jobs. I think it's very important that we bring U.S. allies on side.

• (0950)

As for our recommendations for what the Canadian government can do, there are four things.

First of all, the Prime Minister and the President need to discuss this issue and come to an agreement that conditions should not be imposed on how federal funding is spent at state and local levels, in the spirit of NAFTA.

Second, we have to make very clear presentations before the U.S. Congress. I know that the Minister of International Trade will be doing that, but I think it's even more important that we continue to build allies in the United States so that U.S. business interests express their concerns to their congressmen and senators.

Third, there is an opportunity here on the part of the United States to open negotiations to develop a new agreement on procurement. I think the U.S. authorities are waiting for a proposal from the Canadian government to do that, and I think they would treat that proposal very well.

And fourth, very frankly, the message that there may be some reciprocal restriction imposed on the part of Canadian municipalities is a very strong negotiating message that the Canadian government has to deliver to U.S. counterparts. The current motion that is going to go forward to the Federation of Canadian Municipalities may cut both ways. It is a motion that would provide for reciprocal restriction. But you could also see it as a motion that provides reciprocal market access: Canadian municipal markets will remain open to suppliers from countries whose markets remain open to Canadians.

Thank you.

The Chair: We will now move to questions.

We probably have time for about an hour. We do have some business at the conclusion of the meeting, but we'll get through a round if we stick to seven minutes on the first round for questions and answers.

Clerk, I'll ask you to keep pretty close tabs on the time today so that everybody can get in. It has been a fascinating presentation, and I think everybody wants to have time to ask questions.

So the first round will be seven minutes, and if we can get to a second one, we'll do a five-minute round.

For the first seven minutes of questions and answers I'll go to Mr. Brison. I understand that you want to share some of that time with Mr. Silva.

Hon. Scott Brison (Kings—Hants, Lib.): He's going to do the second round.

The Chair: Fine, we'll go that way.

You have seven minutes, then, Mr. Brison.

Hon. Scott Brison: Thanks very much to each of you for your presentations.

Mr. Feldman, you have challenged some conventional wisdom, and that's always good at committee. But I feel that we ought to have a longer conversation, and I look forward to that.

On the issue of NAFTA and some of the issues you've raised, there's a risk in the emerging trilateral approach in the U.S. to borders and potentially to trade issues as well. Mexico and Canada are being seen as identical or very similar and ought to have a similar approach from the U.S. That's bad for us in terms of security-related issues and the thickening of the border. It is also potentially very bad for us, if we enter a new trade negotiation, to be treated identically, because there is a significant difference in labour and environmental standards.

In the past, it was largely viewed as a two-speed approach. The U.S. would work with Canada at one speed, given the similarity of conditions, and with Mexico at a slower speed, recognizing the divergence of conditions. Is it not a significant risk to us to open up NAFTA at this time, during a period of very high protectionist sentiment in the U.S., which often masks security initiatives?

• (0955)

Dr. Elliot Feldman: Thank you for the question. It's a complicated and multi-layered question.

If I can unpack it a little bit—

Hon. Scott Brison: It requires a fairly short answer, because I have some other ones.

Thank you, sir.

Dr. Elliot Feldman: Let me try to unpack it a little bit.

I was present when Secretary Napolitano delivered the speech to which I think you're referring. There is a danger for Canada. The remarks I've made about the International Boundary Commission, I think, go to the heart of that problem.

Canada has an opportunity to protect a separate treaty, a distinct treaty, with respect to its border with the United States, and it's not doing so. To the contrary, it's capitulating on the terms of that treaty with reference to the previous administration. That's dangerous. That's precisely what I was addressing.

In your larger terms as to reopening NAFTA, I counsel against reopening NAFTA, but not for the reasons that are conventional in Canada. I don't see a sigh of relief as being appropriate when the President says that he is not interested in moving on this right away. To the contrary, it should be interpreted as an opportunity to do something else.

The concerns expressed by everybody on this panel were concerns that are reflected, it seems to me, in the failure of NAFTA to provide any institutional support for a response to any of the problems of the last 12 months. In particular, for example, is the procurement question. If you recall, when NAFTA was negotiated, there was to have been a further negotiation for reciprocity between provinces and states and for opening up state and local governments. That negotiation began and failed. It was never resumed.

The Australians, with an agreement only four years old, have agreements with 33 states. Canada has agreements with none.

Hon. Scott Brison: To Mr. Myers' focus on the buy American side, the Americans have been pressuring Canada to get our provinces to sign on to the agreement on subnational government procurement. Isn't that one of our biggest vulnerabilities, the fact that we have not successfully engaged our provincial governments to sign on to those provisions on subnational procurement?

A significant part of the stimulus package in the U.S. will be delivered by state and local governments. So Obama can say, "We're going to respect our trade treaties," and he's correct. They can still screw us through subnational procurement because that's not covered.

What should we be doing? Should that be added to your policy prescriptions, Mr. Myers?

Dr. Jayson Myers: It's certainly an issue of concern here. You're right that it's not clear that Canadian exporters are safeguarded here under the NAFTA at state and local levels. Of course, it took longer for Canada to negotiate an internal procurement agreement than it did for us to sign the NAFTA. So there are certainly some issues. I think, too, we're lagging behind on this particular issue because we have the provinces lined up on a procurement agreement if we're going to be proceeding with negotiations on a Canada-EU treaty. Let's build on that relationship, but even at the provincial levels and even with the WTO general procurement agreement, that still does not cover municipal and local spending. Even the signatories to the GPA are not covered—

• (1000)

Hon. Scott Brison: You said something interesting, that your chapter, your representative in Washington, is working on U.S. stakeholders to apply pressure to U.S. legislators. A congressman running for office is looking for money one year and looking for votes the next year. If you're a Canadian legislator, you represent neither votes nor money, so it's a polite meeting but not particularly effective.

Are you suggesting that we get more mercenary in our approach in the U.S. and that we hire the kinds of lobbyists people hire to get things done in Washington, to build those stakeholders and, frankly, take a more practical approach? Do you think there's merit to our at least expanding on that? It's not like any other country in the world to do trade negotiations with. Should we have a different approach?

Dr. Jayson Myers: I think that's right, but as you'll find yourself among your own constituents, the people you pay attention to most are people within your district, your constituency. Of course, it's the same thing with U.S. legislators. What will make a difference is if U.S. business groups or U.S. labour groups come to their congressman or their senator and say, "This is bad policy because it's killing jobs

in your district." That's what will get the attention at the end of the day.

Hon. Scott Brison: I have a quick question for Mr. Caron.

On the "black liquor" issue—not Lamb's Navy Rum like we think in Nova Scotia—we've been counselled by the Forest Products Association that the government shouldn't do the same policy here, that it's bad environmental policy and bad economic policy, and the Americans, including people like Max Baucus, are coming out against it and are going to get rid of it anyway.

So we don't want to retaliate with the same measure, but we have to do something. However, you're saying we should match it, and I just want to square that.

Mr. Guy Caron: Matching it is actually the second option. The first option is to convince the White House or Congress to change their mind. That's the first option, definitely.

I'd like to be confident that Mr. Baucus and Congress will actually reverse that loophole. I'm not that optimistic. Right now what I hear, especially from the White House, is that the credit is there to stay until December 2009, at which point it's supposed to expire, but the lobby pressure is actually very strong for it to be continued past 2009.

Hon. Scott Brison: I have a question as well for Mr. Weir. But thank you all.

The Chair: We'll have to catch you on the second round. We're trying to stick close to our time today.

Monsieur Cardin.

[*Translation*]

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

Good morning, gentlemen, and thank you for being here. You've flooded us with information that we share at a number of levels.

Mr. Feldman, you've noted the failure of NAFTA. Mr. Obama does not want to reopen the agreement to talk about Canada's concerns. We can see that this is a failure. However, how should we proceed? Would it be through letters of understanding, but without reopening NAFTA? Should we operate through letters of understanding in an attempt to correct all the irritants?

[*English*]

Dr. Elliot Feldman: Thank you for that question.

My proposal is to initiate, with some imagination, negotiations on a different agenda and to set NAFTA aside. What NAFTA is, it is. Much of what's at the heart of NAFTA can't be fixed. Chapter 19 could have been fixed years ago, and we developed a full analysis of that. I've discussed that in front of this committee. But no one showed enough interest in doing so. There was a brief moment when Prime Minister Martin did indicate he wanted to fix chapter 19, but there were no takers.

So I'm now saying there is an agenda and you're hearing it at this table. You're hearing it about procurement, you're hearing it about black liquor, you're hearing it about climate change. That agenda needs to be the subject of a different agreement. If Canada were to take the initiative in structuring that negotiation and say we want a different understanding in North America, we want to do things jointly, we want to bring imagination to the agenda that we hear in the White House from President Obama, I think it changes the relationship in ways that can only benefit Canada. But I think if you keep scratching on all the scabs of NAFTA, it will not be beneficial to Canada and it won't be beneficial to the continent.

•(1005)

[Translation]

Mr. Serge Cardin: Mr. Caron, the industry has refused to file complaints about black liquor subsidies. It certainly isn't a green policy; these are really subsidies. You've refused to do so. The subsidies are to expire in late 2009. Some of you have said it is unlikely that will occur.

We know that American industries are quick. If something doesn't work, they react quickly. For example, Dow Chemical reacted quickly under chapter 11 of the agreement. As soon as we talked about loan guarantees in the softwood lumber sector, a lot of people stood up and threatened to file complaints. Give me the industry's position.

I would also ask Mr. Feldman, based on the measures currently available under NAFTA, how would the complaint be filed under the various chapters so that we could win our case?

Mr. Guy Caron: Thank you for your question. You've given a good summary of the industry's position. I would point out that we have done a lot of work with the industry on this issue. We attended various internal meetings in an attempt to develop a common position. We've agreed on a lot of issues, on the fact that this is a major problem that must be discussed immediately.

We also took part in the industry call to Minister Stockwell Day to urge him to take action with U.S. representatives to close this loophole. We differ from the industry in that we would like stronger solutions. We and the industry would prefer that the White House change its position, that Congress eventually vote to close the loophole.

Based on what I've heard, some supporters of closing the loophole, such as Senator Baucus, are making quite a noise. From what we can see thus far, it will be extremely difficult. Time is now of the essence. The industry itself acknowledges that, within two months, if nothing is done on the black liquor issue, the Canadian industry could well disappear. We're already seeing the initial symptoms: we've seen it in Thurso, we're seeing it in Espanola and in Edmundston. One by one, we can see these mills closing. We

therefore have to have an immediate reaction within two months. If, by then, we can't convince Congress or the White House to change their position on this loophole, we'll have to consider alternatives. That's why we can't wait two months to prepare options. We have to prepare them now. The best one that comes to mind at the present is that we ensure we are on a level playing field at least until late 2009, to assist the industry in staying afloat in stormy waters. Then, after December 2009, we'll see.

Mr. Serge Cardin: I'm going to take advantage of the fact that there is a lawyer here. Time is of the essence. What do we do?

[English]

Dr. Elliot Feldman: May I interpret your question as going back to Mr. Brison's, whether one should be going about these things in a different way in Washington? And I think the answer is yes. But it's not automatically.... Also, what I interpreted Mr. Brison perhaps to mean is this. Your solution is not in lobbying in the conventional way in Washington; it's not throwing your money away on former ambassadors. It really requires the building of allies, as Mr. Myers has addressed.

There was an opportunity to do this in softwood lumber. There was a group, and there were significant American allies involved, like Home Depot. But it wasn't cultivated. The government didn't want to put any money into it. It was done principally by the industry on a very small budget. It was an opportunity lost. Initially it was missed; now it has been lost.

That kind of lobbying builds friends and allies. The importers of raw goods that come from Canada, the people who need your products—those are the people with whom you need to be in touch. And there are people in Washington who can help you to do that. You have to change that form of the business.

I'm not as pessimistic as Monsieur Caron is about the black liquor issue, but I do think nothing will be done about it until it expires at the end of 2009. I'm not as pessimistic about its renewal or extension, because I think the White House sees too much revenue lost in it, and the White House doesn't welcome all that lost revenue. So I think it would be very hard to stop now, but I don't think it will then resume. It's a very good example of where, if you had allies.... And you have allies. There are lots of Americans who don't like this tax break. But you're not cultivating them or working with them.

•(1010)

The Chair: Monsieur Cardin. Next round? Thank you.

Mr. Julian. We're doing fairly well today—or your colleagues are—in terms of time. You have seven minutes.

Welcome back, incidentally.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you, Mr. Chair. I enjoyed election night in B.C., but not as much as I had hoped.

I appreciate this panel. This is, by far, the strongest panel we've had on Canada-U.S. relations. I'm disappointed that the parliamentary press gallery is not here. They could do a much better job of covering economic issues. But we'll make sure we get this information out so they understand the strength of the witnesses we have today.

I'll start with Mr. Myers and Mr. Weir. Both of you have spoken about putting forth a buy Canada strategy. I know for the Canadian manufacturers and exporters, you've been saying for a long time that we need a domestic buy Canada program, particularly to negotiate the reciprocal access agreements we need to have, given what's happened in the United States with buy America.

Mr. Weir, you've also spoken to this, and I know Ken Lewenza has as well. We need to put in place buy Canada provisions. That's the NDP position. We've been pushing it in Parliament as well. So the government is not ignorant of the importance of putting this into place.

Mr. Weir, I'd like to ask you why you think the Conservatives have refused to implement something that is common sense and that has a broad degree of consensus on both the industry side and the labour side.

Mr. Erin Weir: The Government of Canada position, up to this point, has been to really lecture the Americans about the virtues of global free trade and to assume that Canada's interests are best served by getting rid of buy America policies.

I guess the way I'd frame it is that Canadian producers certainly do need access to the American market, but the best case scenario for Canada is not actually a removal of buy America provisions but rather a specific Canadian exemption from those provisions, because then our producers could sell into the U.S. market with less competition from offshore producers.

I don't think this is a totally unrealistic goal. When the United States put tariffs on steel imports in 2002, it actually did exempt Canada from those tariffs. That's the position my union has put before Congress in the United States: we support buy America, but we'd like to see Canada exempted.

And certainly, you're right that a buy Canada policy would provide a very valuable negotiating tool, in the sense that we could say to the Americans we'll exempt you from a buy Canada policy as long as you exempt us from a buy America policy. I think that's the way to go.

[Translation]

Mr. Peter Julian: Thank you.

We could definitely ask you questions for two hours. Mr. Caron, you mentioned Edmundston, but how big are the job losses caused by the black liquor subsidies, in the current operating market? Do you know how many jobs are in fact threatened if nothing is done?

Mr. Guy Caron: I don't have the exact figures here. Perhaps I should have brought them, but I don't have them.

With regard to Edmundston, you have to understand that the situation is particularly difficult. In Maine, on the other side of the border, Senator Olympia Snowe is in favour of maintaining the tax credit. Maine and New Brunswick sometimes complement each

other, in that wood from Maine may be milled in New Brunswick, but they also compete with each other.

For example, at the Fraser Papers mill in Edmundston, I believe there are 400 or 500 employees, 50 to 75 of whom have already been laid off. In addition, Peter Gordon, President of Fraser, has said that the Edmundston mill could be the next one to close down. We're not talking about a few jobs. It's the entire industry that is currently at risk if nothing is done within two months.

[English]

Mr. Peter Julian: *Merci beaucoup.*

Mr. Feldman, welcome back to the committee. You've been very prescient in your comments around the softwood lumber agreement. I wish the committee had actually listened to you when you came forward, because tens of thousands of jobs have been lost by the stupidity of that agreement.

I'd like you to answer two questions.

What happened on October 13, 2006? That happened after your appearances before the committee on softwood lumber and the day after the implementation of the softwood lumber agreement in the Court of International Trade. I think it would be helpful, particularly for new members of the committee, to understand what transpired with that decision on that day.

You mentioned in your comments that we have a \$68 million arbitral fine that Canadian taxpayers are going to have to pick up because of the incredible irresponsibility of the government, and you said that others were likely to follow. What are the other fines that Canadian taxpayers will have to pick up in addition to the massive loss of jobs that have come out of this egregiously bad softwood lumber agreement?

●(1015)

Dr. Elliot Feldman: Thank you for those questions. I was not saying too much about the softwood lumber agreement today, but I was pleased that Monsieur Caron did.

The agreement was rushed into force on October 12 because both governments anticipated a decision coming from the Court of International Trade. They were concerned that the decision would torpedo the agreement, which perhaps it would have and should have done. So in the dead of night that week, the agreement was amended—18 pages of amendments done secretly—in order to enable the agreement to be brought into force. Under its original negotiated and public terms it couldn't be, because it didn't have industry support, notwithstanding that, including when I appeared before this committee, there were members of this committee who insisted there was support for the agreement from the industry, which, it turned out, there wasn't.

The agreement was rushed in on October 12, and the very next day the Court of International Trade ruled that the Canadian industry was entitled to all of its money back—every penny, and not just the money that had been determined in July. The Court of International Trade had bifurcated its decision process. It ruled that there was no injury or threat of injury found and that therefore there was no underlying premise for orders to collect deposits, but it left open the question whether money should be returned only from the date forward from that decision or going back *ab initio*.

It was already known that at least \$3 billion was coming back, and probably at least \$4 billion—it's hard to measure exactly because of the interest analysis—but the rest of the money was to be determined in a subsequent decision. That was decided on October 13: every penny was to be returned with interest. Instead, the day before, \$1 billion was left on the table. That's what happened on October 13.

As to the other risks, this first arbitration on the \$68 million was the consequence of an error made by the federal government in managing the quota. There had been reports by various politicians, I'm afraid, saying that this was a punishment for Quebec and Ontario programs trying to offset the impact of the softwood lumber agreement. That's not the case. The \$68 million was the product of a mismanagement of the quota.

But the next round is an arbitration already under way that is about Ontario and Quebec programs that are alleged to offset the agreement. The estimates I hear are that the fines associated with an adverse finding on that subject could be in excess of \$400 million. That consequence is multiplied because the new arbitral system that was invented for the softwood lumber agreement, setting aside chapter 19, is a system that's based on commercial law and not on trade law. One of the consequences of that difference, it would appear, is that the first tribunal, which decided on the \$68 million, applied essentially a tort theory. In applying a tort theory, it applied a theory of monetary damages, which is completely outside the trade law. Should the second tribunal do the same thing—and now there's some precedent in effect for it to do so—then these become monetary damages that are owed even if the agreement were then to be terminated. The damages finding would survive the agreement.

Then there's a third arbitration that we're all waiting for. We don't know when it's going to be filed, but everyone anticipates that any time now an arbitration will be filed about stumpage fees in British Columbia. The argument runs that they've been grandfathered because the beetle infestation was known before the agreement was entered, and the auction system was expressly grandfathered in the agreement. But it's not so clear that the price for the beetle infestation wood has been grandfathered. If not, then the estimates I hear as the potential penalty for that are between \$500 million and \$1 billion.

• (1020)

The Chair: Thank you.

Thank you, Mr. Julian. That's nine and a half minutes.

We'll now go to Mr. Keddy.

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): Thank you, Mr. Chairman.

Welcome to our witnesses.

It's an interesting discussion here this morning—quite enlightening. I don't know where to start.

I think I'll start with black liquor. We on the government side and the industry side and most Canadians believe that it's an unfair subsidy. We just returned from three days in Washington with the entire committee. We spoke to probably most of the congressmen we could approach who were on the ways and means committee, both Republicans and Democrats. None of them, not even the newly elected members, was thinking that the black liquor subsidy would continue. I think the main reason for that is that they simply see it as beyond bad policy, but also detrimental to the entire intent of their biofuels bill and good environmental policy. It's terrible environmental policy.

But it leads to a greater issue. The Americans can be difficult trading partners—we're all aware of that—but the greater issue is how, in that type of legislation, those loopholes are found to begin with, and how we have to deal with them. That, I think, is what Mr. Feldman has been talking about.

I'd like from Mr. Caron a statement or a comment on the Canadian industry, because black liquor will be finished, I certainly believe, by December 31. I realize that Canadian industry is under pressure now, but a number of the comments we've been getting from the Canadian industry are that if they see the tariff gone as of December 31, 2009, then we're back on a level playing field. We don't have much time to put anything in place to counter it or do anything about it, so I think we have to live with it for the next nine months or eight months.

Mr. Guy Caron: Perhaps I will reduce the intensity of what I've been saying. I rather agree that there is a strong chance it will be allowed to die, because it was actually on Mr. Obama's list of eventual tax cuts released a week ago, I think. That makes it a stronger possibility. But we shouldn't be discounting the strength of the lobbying of the U.S. industry. That strength is being deployed in full force right now.

I certainly hope you're right, and I certainly hope it will be the will of Congress not to prolong this loophole. It really is a loophole; it was never conceived to pay for or give subsidies to a fuel that has been used for decades in the industry.

But I have Canadian industry documents in which the Canadian industry is agreeing that if nothing is done in the next two or three months, damages to the pulp and paper industry might be irreversible. That doesn't mean that every single mill in Canada will actually close, but it means that the ability of Canadian industry to compete, even after December 2009, will be impaired. If nothing is done, this is the risk we're running right now, for something that the U.S. administration should never have done in the first place.

Mr. Gerald Keddy: I appreciate that.

This is more hypothetical, Mr. Feldman.

I'm not trying to say that NAFTA is perfect. I don't think any of us believe that. I don't know if there are any trading agreements that are perfect. But the difficulty is that without it we don't have rules-based trading. If you look at the black liquor issue, what do you see under the existing agreement? Whether it's a chapter 11 challenge or a countervailing tariff because we claim damage against the Americans, it still doesn't do anything in the short term. These are notoriously long-term, and your graph shows that the terms are getting longer.

Do you see a legitimate Canadian challenge there or a countervailing duty?

• (1025)

Dr. Elliot Feldman: I see a legitimate challenge, but not a lawful one.

Mr. Gerald Keddy: That's the question.

Dr. Elliot Feldman: That distinction is made because the trade remedy law is not designed for this purpose. You can use your countervailing duty laws—which are all organically derived from the WTO—but they have to be in reference to imports from the United States of subsidized product. You don't have enough of that to be worried about. What you're worried about is that you can't penetrate the American market and compete there, and it's because of the subsidies. So the countervailing duty law doesn't help you. I don't think chapter 11 is much help either, certainly not as designed.

I'm not calling for the abolition of NAFTA.

Mr. Gerald Keddy: No, I'm not suggesting that you are.

Dr. Elliot Feldman: Nor do I favour the abandonment of NAFTA. I'm simply saying that if you keep looking for solutions in NAFTA, you're not going to find them. I'm saying that you need to be looking at something with more imagination and doing something new.

Your industry is hurting not just because you can't penetrate the U. S. market or because of the limitations that have been imposed by the softwood lumber agreement, but also because of this excuse that anything you might do to help your industry violates the softwood lumber agreement. You've let that act as both shield and sword, and that shield and sword, it seems to me, is destroying your industry—not just the lumber industry but your whole forest industry. So using this as shield and sword is a madness.

Mr. Gerald Keddy: I read your brief with quite a bit of interest, and I think it's an important discussion. I don't think we're going to finish it here today, but I was quite interested in Mr. Julian's repudiating his party's buy Canadian policy and the whole idea that we can carry on a trade war. You have buy American; we have buy Canadian. We can buy Canadian with 33 million people all we want, but that's not going to take us far in the world economy.

This relates to the whole issue of reciprocity. We have tried to find a mechanism within the NAFTA agreement. One of the challenges is that with the advent of NAFTA and the tripartite agreement between Mexico, the United States, and Canada, we seem to have been left

out of the agreement more. We are continually pushed to find bilateral answers to trilateral trading agreements.

I'd like some comments from any of you on this.

Dr. Jayson Myers: I think the buy American issue is a good one to discuss.

Mr. Gerald Keddy: It's one that we need to do a lot more work on.

Dr. Jayson Myers: It cannot be handled within the institutional context of NAFTA, although I would argue that there are grounds for doing so, because this is federal legislation imposing federal conditions on how federal money is being spent. You could argue that this should be tied to the federal procurement arrangements under NAFTA. We're seeing that the American government is open to a proposal coming from Canada to negotiate some form of a procurement agreement that goes beyond the existing agreement under NAFTA. I think we should be grabbing that opportunity.

I would like to clarify our position on buy Canadian. We've never advocated a total buy Canadian restriction. I think it makes sense for us to look at local preferences and local content provisions, as most other countries do. State and local governments in the United States have done this for many years. What I think is important about the Halton Hills resolution is that it brings reciprocity into the market access agreement. You can read this both ways. In its fundamental form, if Americans restrict access for Canadian suppliers in the United States, we are prepared to restrict here. However, you could also see it as an open market resolution. If you allow free market access into state local procurement markets in the United States, we're going to do that here too. I think there's widespread agreement among municipalities that the Canadian government should be using this as a tool for negotiating some form of new procurement arrangement with the United States, at least federal to federal, where both federal governments would agree not to impose restrictions on how federal money is being spent at state and local levels.

• (1030)

The Chair: Thank you.

We're going to move quickly to five-minute rounds. I'm going to ask the witnesses again to try to keep their answers tight and the questions as well.

Mr. Silva, five minutes.

Mr. Mario Silva (Davenport, Lib.): Thank you, Mr. Chair.

I want to thank the witnesses. I think they have been very informative and I appreciate the frankness to which they are having this discussion—and quite intelligent discussion at that.

Mr. Myers, I had asked that you appear before this committee because of the fact that I had also been in contact with companies from IPEX. It's one company that I've known from my days on city council very well. They are extremely concerned about what this buy American provision is doing to their business. They're closing plants, they're laying off workers, so it's a serious, serious threat to that company and, I'm sure, to other companies as well that are members of your association.

In one of your recommendations, you specifically asked that the Prime Minister raise the buy American issue, but you also talked about threats of retaliation. I just want to know how far we should go with that threat. How much more active do you feel the government has to be on this issue because it is threatening jobs in Canada?

Dr. Jayson Myers: Well, it certainly is threatening jobs in Canada. We have identified around 250 of our members who are affected just by the Water Quality Investment Act alone here, who are selling into municipal and state water technology and clean water and waste water sectors. Many of these companies had no idea that they would be affected until the contractor came to them and told them they had to sign an affidavit saying that their product is produced in Canada. As I say, we're very concerned that we may be seeing that appear in other pieces of legislation coming out of Congress.

In terms of the threat of retaliation, I think that is very much on the minds of U.S. business groups and U.S. businesses that are our allies in Washington and in the United States who are opposed to the buy America policy. This is not good policy in the United States. It's not good policy to have these restrictions in Canada either, particularly if you want to get the money out the door quickly to infrastructure projects, to keep jobs here in the time of a recession. This is not the way to do it. But I think the threat of retaliation has some resonance. I think it's a strong negotiating tool. I think the Halton Hills resolution that is going to the Federation of Canadian Municipalities is a good form of that threat.

This is not a threat of locking American suppliers out of the Canadian market. It's simply a reciprocal market access resolution, with waivers in it and everything else. There has to be some credible threat, I think, to back up a strong negotiating position here, and the government does not have to threaten. That's our job. That's the job, and I can tell you very strongly that among our membership we're dealing with this all the time. Our business is failing. What are you doing about it? If we're going to be locked out of the American market, why don't we have similar provisions here? That's a widespread sentiment among our members, and I think that has to be communicated by our government to the U.S. officials very strongly. As I say, that's what we can bring to the table here, but clearly it's something that should be used as a negotiating tool by the government itself.

Mr. Mario Silva: Thank you.

I have a brief question to Mr. Feldman and Mr. Weir.

On the whole issue of renegotiating NAFTA, part of the problem I find with the U.S., from my study of U.S. politics over many years, is that you're not just dealing with one player. You're not dealing just with the Obama administration; you're really dealing with however many members of Congress there are in the U.S. There is a tendency

among those members now to be very protectionist, to protect their interests. They also have a lot of business interests because they get elected with millions of dollars.

If there's any negotiation, I think every single one of them would be fighting for their turf and for their particular business interests, and nothing for Canada. So when Canada is dealing government to government, that's one thing, but when we're dealing with a government with so many members of Congress and they have incredible power....

I just finished a book, *Paris 1919* by Margaret MacMillan. The founder of the League of Nations was Woodrow Wilson. When it went back to the U.S. Congress, it was rejected, even though he signed it and he was the founder. So the U.S. Congress has incredible power, and we don't have the same type of negotiating power here in Canada in terms of our legislative body.

• (1035)

Mr. Erin Weir: I guess we in the United Steelworkers feel a bit more comfortable with the many players in American politics because we also represent workers in the United States and have relationships with American congressmen and all that sort of thing.

Mr. Mario Silva: It's not like the Republicans or Democrats. That's not the same type of system. There are no party lines there.

Mr. Erin Weir: Can I keep answering? Are we out of time?

The Chair: Yes, you're out of time. I'm sorry, Mr. Silva.

Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you, Mr. Chair.

I thank you all for being here today.

Dr. Feldman, you talked about negotiating a new agreement with the United States. Does that include Mexico as well, or is it just an agreement with the United States?

Dr. Elliot Feldman: Thank you for that question, because I did want to remark on the irony of the demise of Pearsonian multilateralism, that a theme emerging in the discussion about NAFTA is the failure of a multilateral agreement and the preference for a bilateral arrangement.

I have been asked this question a number of times. I don't have a confident answer. I think I mean an agreement at this point between Canada and the United States. I don't think I mean an agreement that includes Mexico in the negotiation, but I'm not sure of that. I need to think it through.

As I formulated it in terms of what defines the agenda that can be addressed mutually, I think that's initially a Canadian-U.S. agenda.

Mr. Russ Hiebert: In your comments, you remarked about a dispute with a couple in Blaine, Washington. I represent a community just across the border from Blaine, South Surrey—White Rock—Cloverdale. We have the largest border crossing in western Canada. I see Blaine as I drive to work.

What is the nature of that dispute? Just briefly, what's at stake? You've talked about the commission being at stake. What's the real issue driving this suit?

Dr. Elliot Feldman: That's the real issue.

The superficial issue is that a couple built a wall three feet into the boundary vista, which was defined by the treaties and by agreement between Canada and the United States in 1908 that it should be kept clear of all obstruction 10 feet to either side of the border. It is a simple proposition: you can't enforce and secure a border if you can't see it. They built a four-foot-high, 85-foot-long reinforced concrete wall three feet into the boundary vista. It was spotted by the RCMP. It was inspected by a border agent from Vancouver, who concluded the wall needed to come down. The material issue is whether the wall stays up.

The bigger issue is that the U.S. Department of Justice under Attorney General Gonzales, concluded that it preferred private property rights to the public domain and said to let the wall stay up, and he ordered the commissioner from the U.S. side to agree to that. He refused. The President fired him.

What's disputed now in court is whether the President had any power to fire him, because he was appointed under the terms of a self-executing treaty. In Canada this is hard to understand, because you don't have self-executing treaties. You have implementing legislation for this treaty that specifies that the commissioner on the Canadian side is a civil servant of Canada. On the U.S. side, it's a self-executing treaty. He's not confirmed by the Senate. He's not an employee of the United States or an employee of the agency.

The President has asserted that this commission is an arm of the White House, that it's an agency of the United States. That's the big issue.

Mr. Russ Hiebert: Dr. Myers, you've talked at length about the possibility of provincial or municipal retaliation. What would be the cost to the United States? I know that Canada is the largest trading partner with 36 U.S. states. What would be the cost to these states or to the U.S. economy if these municipalities and provinces basically put an effective block on American imports?

• (1040)

Dr. Jayson Myers: It would depend on what the range of procurement projects actually is, but if you look at the municipal waste water and clean water industry, you're looking at \$1.9 billion coming from the United States into Canada. You're looking at about \$600 million of exports going from Canada into the United States.

That does not, though, take into consideration the value of U.S. supply—the component materials that are being sold to Canadian exporters that are losing business in the American market. So probably even more business than that would be at stake here. But then again, I hope we don't have to do that. I think a restrictive access in Canada raises exactly the same problems as it would in the

United States. It would slow down infrastructure or complicate projects. Nobody needs that.

Mr. Russ Hiebert: Just to wrap up, then, the U.S. would lose about \$2 billion in Canadian imports if they were to proceed.

Dr. Jayson Myers: That's right.

Mr. Russ Hiebert: Last, are the municipalities and provinces prepared to work together to retaliate, or at least to make the threat of retaliation?

Dr. Jayson Myers: We have three municipalities in Ontario that have signed on to the Halton Hills resolution. That resolution is going to the Federation of Canadian Municipalities at its conference on June 6 and is driven by local municipalities. So we'll see June on 6 if there's a resolution coming out of the Federation of Canadian Municipalities.

The Chair: Thank you.

I'm sorry, but we have to move on to Monsieur Cardin, for five minutes.

[*Translation*]

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

First I'll make a few brief comments. Yes, we went to the United States to meet with elected representatives, and they had just been made aware of the black liquor situation not long before that. We hadn't either, but the fact remains that they had not been aware of it for long. Those who seem to be the most aware of it were those who had businesses of this kind in their regions. That tells you everything about the direction that will be taken at the end of the year.

There's something here that I find quite surprising and even abnormal, at times disarming, and it's when there are two different treatments for businesses that do business with the United States. In the case of loan guarantees, we have a lot of trouble accepting that. Based on the standards, it's acceptable; it's legal. When it was done for other industries—I'll only name the automotive industry—there was no problem.

The barely veiled criticisms of the Canadian government I can accept. I'm convinced that we could make a number of others.

I would like to go back to the remarks by Mr. Weir, who, to all intents and purposes, referred to social and environmental dumping. Among the solutions, you mentioned implementing a mechanism to avoid a race to the bottom. You're definitely not just talking about the United States, but about a number of other countries. In the United States, do you think we can say that, in social and wage terms, there is a significant race to the bottom?

[*English*]

Mr. Erin Weir: I would say that labour and environmental standards in the United States are similar enough to those in Canada that these kinds of social dumping tariffs probably wouldn't be applied against the United States. I would envision their being used more with regard to countries such as China, which flagrantly violate internationally recognized labour standards and really don't have any environmental safeguards at all.

However, there are some instances in the United States that I think might be subject to such a challenge. For example, in the southern United States there's the whole concept of a right to work, which certainly goes against International Labour Organization standards. And I'm pleased to mention that the Canadian government recently signed on to a challenge of that through the NAFTA labour side agreement. As I say, there's very little enforcement under the NAFTA labour side agreement, but I think there is at least that one example in the United States that could potentially be challenged as social dumping.

•(1045)

[Translation]

Mr. Serge Cardin: You also mentioned carbon pricing. What model do you think we need exactly? The Liberals talked about a carbon tax, and let's say that this isn't necessarily the right way to present the idea in marketing terms. We know that the Conservatives bashed all that.

To prevent this environmental dumping, we clearly have to do something. When you mention pricing, does that mean that we should develop a mechanism and show some imagination, as Mr. Feldman often reminds us? Should we show some imagination in finding an effective way of pricing the carbon of foreign countries, and do it as well by product? Do you have an idea of the form that might take?

[English]

Mr. Erin Weir: Sure. If you think, for example, that North America is likely to have a cap and trade system, which is certainly what the Obama administration is proposing, then I think one relatively straightforward way of making sure carbon costs are applied in a comprehensive way would be to say that if an importer is bringing into North America products that were produced somewhere where they don't price carbon, that importer would have to buy permits under the cap and trade system. That's one way of having a border adjustment seamlessly built into the cap and trade model.

More generally, for other kinds of environmental or even labour measures.... I know it sounds potentially complicated to come up with a countervailing duty equivalent to the cost advantage a foreign producer derives from substandard labour conditions or substandard environmental practices, but essentially we already have the formula for existing trade remedy laws. It's very complicated to determine what kind of price advantage is being obtained by dumping or what kind of price advantage is being obtained from government subsidies. But we do the calculation, and we apply the countervailing duty. I think it would be possible to do the same thing with respect to social dumping, as I think you quite appropriately term it.

[Translation]

Mr. Serge Cardin: Thank you.

Do I have any time left, Mr. Chairman?

[English]

The Chair: That's it.

We're going to try to get two more in.

Mr. Gerald Keddy: Do we have business?

The Chair: That's been taken care of. Thanks, Mr. Keddy. You can appear as a witness next week.

Mr. Holder.

Mr. Ed Holder (London West, CPC): Thank you very much, Mr. Chair.

I'd like to thank our guests for attending today. I really appreciate the value of your comments. I wish I could ask you all a series of questions.

I have a comment first. Mr. Weir, your comment about looking to see Canada exempted from the buy America policy resonates with me. I just want to offer that as a comment. Unfortunately, I can't get into much more with you right now, because there are a couple of other things I want to ask.

First, Mr. Myers, you provided a four-step plan. Your fourth step struck me as a bit interesting, and I won't lie, I'm nervous about it. That had to do with the Canadian municipalities' position specifically in terms of Halton Hills and your comment that you felt that it provides a strong leveraging position for Canada in the United States. One of your comments, in response to a question, was that the threat of retaliation has some resonance. I'm just wondering if there is not a risk in taking that approach. Do you really believe we could win a protectionist war with the United States?

Dr. Jayson Myers: No, I don't think we could. I don't think we want to go there. But I can tell you that it's the only issue, in building allies in the United States in the business community and among business associations, that can say that these buy America provisions should not be in legislation. It's the only issue that draws attention and puts those allies together there.

I don't want to see a protectionist war going on. I think that's the very last thing we want to see. I think the government, though, can legitimately say that these protectionist sentiments are growing in Canada and that buy America provisions do not help this; now, how can we work to avoid it?

•(1050)

Mr. Ed Holder: I would say that when our delegation went down to Washington, we certainly indicated, as well, that it was not helpful and that from our standpoint it challenges the tenor of the dialogue we're trying to have.

That's a great segue into a question I have for Mr. Feldman. As all of you know, we have more than three dozen states within the United States for which Canada is the largest export market, and as their biggest trading partner....

Mr. Feldman, I would like you to build on something. You said in your comments that we need to build allies. You weren't sure about hiring former ambassadors, which was an interesting comment, but you said that we need to establish business connections. I'd like you to elaborate on that as specifically as you can within the limited time. At one point, I was a little confused. At one point, you said that NAFTA has been a failure but that on the other hand, you're not trying to get rid of NAFTA; you're trying to find, I'll say, a new way to do things.

In specific terms, what would your suggestions be for us in terms of creating those relationships so Canada's voice can be heard clearly, not just in the states but obviously right in Washington itself? Do you mind responding?

Dr. Elliot Feldman: I'd be delighted to respond, although it's a very big menu you gave me. But I thank you for the question.

I don't think Canada has a longer-standing better friend in the United States than I have been for the last 35 years, but I'm also very critical. One of the things I'm critical about is the difficulty Canadians have, in my view, of understanding the United States in a visceral way.

It's a very different political system. It is not a parliamentary system, as someone over here remarked. There are 585 members of Congress, and they all have their own agendas and their own need for money and their own way of running. Our political system is a completely different system. It means needing to see things for advantage from an American perspective.

For example, on this question of the cost of procurement, why not do an analysis that shows what it's costing the United States? You're all inclined, very understandably, to say, "Look at all the mills we're closing, look at all the jobs we're losing." There are no Canadian votes in Congress. None of those 585 members care that you're closing mills and losing jobs. What they do care about is that the President is now cutting programs, knows he had an overstuffed budget, and has to find some savings.

The buy American provisions are costing money. They're expensive. This 25% provision instead of 6% in the traditional buy American provision is a very, very expensive provision that made its way through the Senate version of the bill and into law. So when you do your analysis, instead of examining what it's costing you, analyze what it's costing us, what it's costing Americans, what it's costing the United States. Put that kind of research forward.

Begin to tell the story as a story of a partner who's trying to help—because you're always going to be the junior partner, you're never going to be senior partner, and no, you're never going to win a trade war. But if you partner, if you use your imagination, you have better financial institutions than the United States has. Where have you been for the last eight years in initiating some imagination so that the United States didn't find itself in the difficulty it was in, and then when this crisis happened there was no North American response?

That is part of my indictment of NAFTA: there are no NAFTA institutions to have facilitated any North American response. We don't have the institutions to take advantage of Canada's strengths; we don't have the institutions to take advantage of strengths together between Canada and the United States. That's why we need new

institutions. Those new institutions can come about through a new treaty that focuses on the agenda of the 21st century. I've mentioned what those items are, but in a specific and concrete way, do the research a different way; answer a different set of questions. Answer the questions that Americans are going to care about, not the questions you naturally have to care about but aren't going to have any traction with in the United States.

Mr. Ed Holder: Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Julian, you have three minutes.

Mr. Gerald Keddy: Mr. Chairman, on a point of order, we have a speaking system here. In the second round, we go to the Liberals, the official opposition, for five minutes; to the Conservatives for five minutes—

The Chair: We're quite aware of that, Mr. Keddy.

Mr. Gerald Keddy: —to the Bloc for five minutes; and then back to us for five minutes. There has been no change in the speaking order. I didn't hear anyone ask for a change in the speaking order. We have a motion that we're supposed to have settled by 11 o'clock, so I'm not quite understanding what's going on here.

• (1055)

The Chair: I'd be happy to explain it to you at some other point.

Mr. Gerald Keddy: There already is a system decided by the committee.

The Chair: Right now, you're wasting the time of the committee, Mr. Keddy, and I'd like to get through this.

We'll take three minutes and then go to your motion.

Mr. Julian.

Mr. Peter Julian: Thank you, Mr. Chair. I won't take the three minutes. I appreciate that Mr. Keddy wants to get through his motion.

Very briefly, Mr. Feldman, you talked about the costs of continuing with the softwood lumber agreement. It could be in the order of \$900 million to \$1.4 billion in upcoming litigation that the Canadian taxpayer would have to cough up.

What would be the legal costs of our ending the agreement and going back to secure the kind of access to the American market that we had on October 13, 2006, with the decision of the Court of International Trade? I'm trying to compare that \$1.4 billion to what the potential legal costs are to actually get back to the decision that we threw away.

Dr. Elliot Feldman: And to punctuate that, there's already a significant legal cost. Your leader in British Columbia remarked the other day that she didn't want to be paying lawyers on softwood lumber. Well, the country has been paying a lot of lawyers a lot of money. They represent the provincial governments and the federal government in this arbitration. It's a lot of money. You ought to look up some of those numbers. You haven't escaped legal costs.

As to the consequence of a termination, first you should know that the coalition in the United States asked, almost a year ago—last August—to terminate the agreement. The Bush administration refused. It's expected that sometime in the near future they will ask again and that the Obama administration will not refuse. So this agreement is going to be terminated, sooner or later, by somebody.

The issue has been the peace clause in the agreement. Would it mean that trade restrictions would be imposed right away? If the United States terminates the agreement according to the agreement, then there's a peace clause for a year. If the Canadians were to terminate, there would be no peace clause. But if the United States were to terminate on the basis of a breach, then the peace clause no longer would apply. That's what we expect the coalition will ask the government to do, so you would see an action right away anyway.

Your biggest problem is that to get into the U.S. market, paying 15% tax, you're all dumping—probably at significant margins. So you face a new hurdle, because on October 12, when this agreement was entered into force, you were paying less than 11%, not 15%—even before the court ruled. Now you have a problem of high dumping margins, but there's a bigger problem, which is that your market share is now only 29%. The International Trade Commission had found no injury caused by Canadian imports into the United States at 34%. Therefore, even if you're dumping at high margins, it will be very hard for the coalition to make a case that you're causing injury. Without injury, there are no tariffs to be applied.

So the answer can't be complete. You'd have to test it. But it's possible that you would return to free trade.

The Chair: Thank you to all our witnesses. I'm going to have to ask that we wrap up quickly here, because we have to go.

Thank you again for your appearance today, and thanks to all of our committee for their questions as well. Thank you very much.

I'm not going to take time to go in camera, because we have a quick motion to be dealt with here.

Mr. Keddy moves that the clause-by-clause study of Bill C-24 be completed on Tuesday, May 26, 2009, and that the bill be reported to the House at the first opportunity.

It's seconded by Mr. Cannis.

Is there any discussion? Mr. Cardin.

[*Translation*]

Mr. Serge Cardin: First of all, Mr. Chairman, I don't think that's necessary.

I would like to know what the deadline is for tabling this kind of motion. I'm asking the clerk. The deadline is indeed 48 hours, isn't it? It seems to me that's not 48 hours. I wasn't here on Tuesday, when it should have been introduced.

The Clerk of the Committee (Mr. Jean-Marie David): If I understand correctly, you're asking the question about the 48-hour period.

Mr. Serge Cardin: Yes. That's not 48 hours.

The Clerk: According to the notes, the 48-hour period actually means two nights, not exactly 48 hours. Consequently, as the notice of motion was tabled on Tuesday, the 48-hour time frame is met.

Mr. Serge Cardin: Who took note of that?

• (1100)

[*English*]

The Chair: It's in the rules. It's also at the ruling of the chair, and the chair has ruled that adequate notice was given. If there's no further comment, I'd like to call the question.

(Motion agreed to)

The Chair: I think we had some other business on the visits to Peru and Brazil, but we're going to have to do that another day.

Thank you. We are adjourned.

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