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Chair

Mr. Garry Breitkreuz

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• (0910)

[English]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to bring this meeting to order.

This is the Standing Committee on Public Safety and National Security, meeting number 23. Today we are considering Bill S-2, an act to amend the Customs Act. It was referred to us on Tuesday, May 5, 2009.

We have with us at the meeting this morning, from the Canada Border Services Agency, Ms. Kristine Allen, acting senior general counsel; Kimber Johnston, vice-president of the enforcement branch; and Glenda Lavergne, director general.

Thank you very much. Our plan is to have you make some opening comments on Bill S-2, and then, as is our usual practice here, we'll open it for questions and comments. When we have no more questions and comments, we will go to the consideration of the bill. So that's what we have.

Thursday's meeting was to be a continuation of this one. We'll see how far we get today. If by chance we were to finish today—this is for the committee—we would not have a meeting on Thursday.

Without any further ado, I will give you an opportunity to make opening comments. Welcome.

Mrs. Kimber Johnston (Vice-President, Enforcement Branch, Canada Border Services Agency): Thank you, Mr. Chair.

I wish to thank the committee for giving me the opportunity to address Bill S-2, an act to amend the Customs Act.

This legislation has made good progress through the Senate and House, and I'm pleased to emphasize the value of the tools it will provide to the Canada Border Services Agency, also known as CBSA.

Canada has embraced the free flow of legitimate trade as a driver of economic prosperity and has maintained a reputation as a welcoming country for those seeking a better life. The management of the border has changed over the years to reflect this position.

[Translation]

We are responsible for providing integrated border services that support national security and public safety priorities as well as facilitate the free flow of legitimate persons and goods.

[English]

The key purpose of this bill is to give the CBSA greater scope and flexibility in its management of risk. Risk management is a core function of the agency. Our ability to carry out a dual mandate of national security and cross-border facilitation depends on our ability to efficiently manage risk. The more information we have concerning potential threats, the better positioned we are to deal with them before they reach our borders.

Bill S-2 contains two key amendments that will fully implement two programs, both of which have been previously approved and funded by the Government of Canada: the advance commercial information initiative, known as eManifest, and customs-controlled areas.

I'll begin with a look at the eManifest initiative. As its name suggests, this initiative is about the CBSA receiving advanced electronic information on cargo destined for Canada. eManifest marks the third phase of the advance commercial information initiative. Amendments are being made to the act to require that advanced information be provided electronically and in advance by participants in the trade chains.

Mr. Chair, this is a wide-ranging transformative commercial information project. It is recognized there will be a period of adjustment for some time for some of our stakeholders, but the end result will make border clearance more efficient for all persons in the importation process, while significantly strengthening the risk management foundation necessary for border security. It is vital that the agency remain engaged with importers, shippers, brokers, and carriers, as eManifest makes its way through implementation. Compliance is the objective, and building mutual trust with stakeholders is the surest way to achieve that objective.

[Translation]

We collaborated with numerous stakeholders during the initial phases of the Advance Commercial Information project and these established networks now allow the agency to solicit input and guidance from the private sector, as well as to communicate the progress of the initiative.

[English]

Bill S-2 will also allow for improved implementation of new enforcement authorities within customs-controlled areas.

Customs-controlled areas are designated areas close to the border where domestic travellers or workers mingle with international travellers or goods. Border services officers are authorized to examine persons in these areas so as to better combat internal conspiracies and organized crime at ports of entry.

Under the current legislation, customs-controlled areas already exist, but their design is unworkable from an operational perspective. Currently, all persons within a customs-controlled area must present themselves to a border services officer for examination upon exiting the designated area. This is unworkable, as it requires many resources to cover all exit points, and often the same people enter and exit the area many times a day.

The amendments contained in Bill S-2 will give our officers authority to question and search persons suspected of an offence within or when exiting the customs-controlled area and will require persons to report to officers only upon request. These changes will give the agency more flexibility to examine persons and goods within customs-controlled areas, allowing CBSA officers to focus on areas of risk and persons of interest.

I should emphasize that the existing authority of CBSA officers to question and search persons does not change through these amendments. What would change, should the amendments pass, is where and when the CBSA officer can exercise this authority. All persons entering a CCA continue to be protected under the provisions of the charter. All border services officers will receive training prior to the implementation of a customs-controlled area at their work site. We will also continue to work closely with stakeholders to ensure that changes are communicated leading up to implementation.

Before closing, Mr. Chair, I would like to reference for the committee members the remaining amendments contained in this bill. The amendment respecting advance passenger information and passenger name record, APIPNR, concerns the timeframes within which the CBSA receives this information. Given that passenger data is obtained for risk assessment purposes, it is required in sufficient time to carry out the assessment prior to the arrival of the traveller. The current wording of the act does not meet this requirement. Accordingly, the amendment would permit the timing of the APIPNR data to be prescribed in the regulations. Prescribing the timeframes through the regulations would allow for flexibility to adjust to technological advances and would facilitate the planned expansion of APIPNR to rail and marine mode.

The remaining amendments are technical in nature. They correct wording in the act relating to the valuation of goods to reflect wording used in the World Trade Organization customs valuation agreement, to which Canada is a signatory. The remaining amendments would ensure greater consistency between French and English versions of the text.

● (0915)

[Translation]

By way of concluding my remarks today, let me underline the essential motivation behind Bill S-2. This legislation is very much an acknowledgment of the challenges faced by the Canada Border Services Agency and it makes a commitment to giving the agency what it needs to do its job.

[English]

Each year, roughly 95 million people cross the border into Canada, and over \$400 billion worth of imported goods enter the country. The agency is the sole body charged with managing our ports of entry. Bill S-2 recognizes that the needs of the agency change over time. Accordingly, we look to Parliament for innovative and supportive legislation. This bill proposes changes that will assist our officers in their work and will improve our ability to secure Canada's safety and prosperity.

Thank you. We would be happy to take your questions.

The Chair: Thank you very much for that opening statement.

We'll now go over to the official opposition. Do you have any comments or questions that you would like to make at this point?

Mr. Andrew Kania (Brampton West, Lib.): I have a question in terms of this regime and specifically legal documents. What would be your position on a lawyer going back and forth into, for example, the United States, and carrying legal documents? How would this apply, and should there be some clarification that officials actually cannot and should not be inspecting legal documents that go back and forth, considering the solicitor-client privilege?

Mrs. Kristine Allen (Acting Senior General Counsel, Canada Border Services Agency): The bill wasn't intended to address that question, so I don't think it would change anything from the current status.

Mrs. Kimber Johnston: I can say that when officers seize documents, immediately the holder of those documents could claim solicitor-client privilege. Then we would go into another route as to how those documents would be protected.

Mr. Andrew Kania: Because under these changes, if somebody's in one of these controlled areas, they're subject to inspection if there are reasons of probable grounds.

Mrs. Kimber Johnston: That's right.

Mr. Andrew Kania: So what I'm wondering is if there should be something specifically acknowledging that there's no right to inspect legal documents.

Mrs. Kimber Johnston: From my perspective, as we said before, the search powers here that are provided to officers don't change from the authorities that they already have. And as I previously mentioned, given that we already have training on how to exercise the search authority, and that this would include the necessary steps that need to be taken to protect any documentation that would be subject to solicitor-client privilege, I don't know that we would necessarily need any further amendments to the legislation, because that's already taken care of under the existing authorities.

The Chair: Okay.

Monsieur Ménard, do you have any comments or questions?

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chair.

We understand that these changes were necessary to keep you abreast of new technology and of the international situation, especially with regard to terrorism. So we do not have many objections, but still, some concerns have been raised by the Québec Bar.

How is a customs controlled area going to be defined, and how will the public be informed about it? Who is going to define the area?

• (0920)

[English]

Mrs. Kimber Johnston: Thank you, Mr. Ménard.

That's a very good question. It is the minister who will designate at the end of the day where the boundaries of the customs-controlled area will be. That will be based on advice from CBSA officials based on our risk assessment. We would look at, for example, a port of entry, and based on our risk assessment of what we consider to be criminal activity going on in there, we would make a recommendation to the minister as to where we feel the designated area should be.

In terms of informing the public, clearly the designated area will have to be clearly demarcated by signage—obviously, in Canada, in both official languages. It must be clearly marked so people will be aware that they are entering a customs-controlled area. In addition, we're going to be doing a public communications campaign that would inform people who would be regularly in these areas—for example, people who work at those ports of entry, say, at an airport. The domestic workers who work there on a daily basis would be receiving briefings and training as to what the customs-controlled areas are, how they work, etc.

[Translation]

Mr. Serge Ménard: In legal terms, how will the minister communicate the decision? Of course, he will not be the one marking the zone in each airport. Will it be done by a minister's decision? If so, will the decision be published? Will lawyers be able to identify the area without having to go to the airport if there is a dispute about when the area was designated or its exact location?

[English]

Mrs. Kimber Johnston: The designation takes place through regulations. So it will go through the regulatory process.

[Translation]

Mr. Serge Ménard: The Québec Bar had another concern, but I think that you have answered it satisfactorily.

Thank you.

[English]

The Chair: Okay. Thank you.

Mr. Davies, do you have some comments or questions?

Mr. Don Davies (Vancouver Kingsway, NDP): Yes, Mr. Chairman. Thank you.

Proposed paragraph 11.3(a) talks about giving the minister discretionary power to authorize access to customs-controlled areas. I'm just wondering if you could tell us a bit more about why that provision is there and what's anticipated by it. What kinds of people would he or she be authorizing, and why?

Mrs. Kimber Johnston: We have this provision in here in case there are people or persons who fall outside of the prescribed persons who would be already provided for in the regulations, such as—as I mentioned before—the domestic workers, etc. And it envisages situations where, for example, we may have visiting dignitaries who are taking a tour of the airport, the port, or the main port. This often happens.

In fact, even members of Parliament often take tours then. So that's the type of situation where the minister would provide the designation, provide that authority to enter there lawfully in an expedient way.

Mr. Don Davies: Sometimes ministers even go undercover, I think, in airports.

I was just wondering, if that's the case, doesn't the way the act is currently written provide for a CBSA officer to stop someone at their discretion? It's not that everybody has to be stopped. Is there really a need to have that ministerial discretion when the officers themselves have that discretion to stop or not as they see fit?

Mrs. Kimber Johnston: First of all, the people in there have to have the lawful authority to be in there. This is what this provision refers to. Once the people are in there—and they could be international travellers, domestic travellers, or domestic workers—then it is the discretion of the CBSA officer to approach them and question them and examine them.

You have to start with the premise that the people in that designated area have to be there lawfully.

• (0925)

Mr. Don Davies: Thank you, Mr. Chairman.

The Chair: Okay, very good.

We'll now go over to the government side.

Mr. Dave MacKenzie (Oxford, CPC): We will pass.

The Chair: You will pass, no questions or comments.

Does anybody else have any remarks before we go into dealing with the bill clause by clause?

Seeing none, I will then go to the clause-by-clause consideration of this bill. I will call clause 1.

(Clause 1 agreed to)

Mr. Mark Holland (Ajax—Pickering, Lib.): I don't know how the other members feel, but I feel fairly well versed on this. I don't think there's a necessity to hold the witnesses through our clause-by-clause, but I defer to other committee members.

The Chair: Does anybody see—

Mr. Dave MacKenzie: I don't need it, but if there is no issue, I'm wondering whether we couldn't do it all. Can we do it all at once?

The Chair: We could, with unanimous consent.

Mr. Dave MacKenzie: Just in the event that there was a question, I'd rather have the—

Mr. Mark Holland: Yes.

The Chair: That's why I think something may come up here.

Monsieur Menard?

[*Translation*]

Mr. Serge Ménard: Most lawyers I know carry all their documents with them. You cannot search a computer, can you?

[*English*]

Mrs. Kimber Johnston: Actually, Mr. Menard, we do have ways to do that. We actually have a technological program called the computer evidence search recovery. We can obviously open up the laptop or the computer. If there's something in particular that we suspect could be contraband or in violation of any of the laws of Canada, we do have technology to allow us to search for that on the computer.

[*Translation*]

Mr. Serge Ménard: Does that apply to BlackBerrys too?

[*English*]

Mrs. Kimber Johnston: I'm sorry, Mr. Chair, I don't have that much technological expertise.

The Chair: I'm sure that technology is advancing and the border agencies are probably challenged to keep up with all the changes in the technology.

Mr. Dave MacKenzie: There's a television show called *Busted*. He just got busted.

The Chair: Right.

Okay, I'll just continue going through these.

(Clause 2 agreed to)

The Chair: I've been advised that if we wish, to save time, we don't have to go through each one.

(Clauses 3 to 18 inclusive agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill to the House?

Some hon. members: Agreed.

The Chair: We are done. I think that has to be some kind of a record.

This committee really works well. I would like to commend everybody for their work on this.

If there's no further business at this meeting, we shall adjourn. I'd like to thank the witnesses for their time and for being here.

There will now be no meeting on Thursday.

My regrets, Mr. Davies. You had consented to chair the meeting. I guess you're out of a job. Sorry about that.

This meeting stands adjourned.

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