HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Finance

FINA • NUMBER 129 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Monday, June 17, 2013

Chair

Mr. James Rajotte

Standing Committee on Finance

Monday, June 17, 2013

● (1100)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call to order meeting number 129 of the Standing Committee on Finance.

Our orders of the day, pursuant to the order of reference of Monday, June 10, 2013, are for the study of Bill S-17, An Act to implement conventions, protocols, agreements and a supplementary convention, concluded between Canada and Namibia, Serbia, Poland, Hong Kong, Luxembourg and Switzerland, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes.

Colleagues, I want to thank all of you for being here on very short notice. I sincerely appreciate it.

I also want to thank our guests, both here in Ottawa and by video conference, for appearing on very short notice. It is very much appreciated by our committee.

We have a three-hour meeting scheduled, from 11 till 2, and we are going to hear from officials from the Department of Finance first. Then we will have questions from committee members. I expect this will take 30 minutes minimum, or maybe a little longer. Then we will ask our witnesses to come forward and present their opening statements, and then we'll have questions from members.

At the time when members want to go to clause-by-clause consideration of the bill, they will indicate that to me, and we will do that.

For the other witnesses who are here with us and by video conference, you'll be able to hear the officials from the Department of Finance present their rationale for this bill as well.

First of all, from the Department of Finance, we have Mr. Ted Cook, who has been before our committee many times recently.

Welcome back to the committee, Mr. Cook.

We also have Monsieur Alain Castonguay.

[*Translation*]

Welcome to the committee.

[*English*]

Mr. Castonguay, I believe you have the opening statement for the officials. Then we'll have questions from members.

Please begin.

[*Translation*]

Mr. Alain Castonguay (Senior Chief, Tax Treaties, Department of Finance): Thank you, Mr. Chair.

I would like to thank the committee for inviting us to appear this morning to talk about Bill S-17, Tax Conventions Implementation Act, 2013.

Canada has one of the most extensive networks of income tax treaties in the world, with 90 tax treaties currently in force. Bill S-17, once into force, will increase this number to 93, by implementing new treaties with Hong Kong, Namibia and Serbia. Bill S-17 will also implement a revised treaty with Poland, which will replace the existing treaty which dates back to 1987.

Further, Bill S-17 contains a protocol with Luxembourg and an agreement with Switzerland. In both cases, the agreements modify the provisions of the existing treaties with these countries relating to the exchange of tax information to ensure that they are consistent with the Organization for Economic Cooperation and Development standard for tax information.

[*English*]

Canada's tax treaties are generally patterned on the OECD model tax convention, modified to reflect the particularities of the Canadian tax system. Internationally, most tax treaties are generally patterned on the OECD model as well. Tax treaties are used for two main purposes: first, to eliminate tax barriers between two jurisdictions in order to promote bilateral trade and investment; and second, to prevent tax avoidance and evasion by encouraging the exchange of information for tax purposes between taxation authorities.

Allow me to expand slightly on each of these objectives and explain how the agreements in Bill S-17 support these objectives.

International double taxation can impose a barrier to cross-border trade and investment. Tax treaties prevent double taxation by providing greater certainty to taxpayers regarding their potential liability to tax in a foreign jurisdiction, by allocating taxing rights between two jurisdictions so that the taxpayers are not subjected to double taxation; by reducing the risk of "burdensome" taxation, which I will explain in a moment and which may arise because of high withholding taxes paid on certain payments; and, finally, by ensuring that taxpayers will not be subject to discriminatory taxation in the foreign jurisdiction.

Under our own domestic laws, payments of dividends, interest, and royalties made to non-residents are subject to rates of withholding equal to 25 per cent of the gross amount paid. Many of Canada's trading partners also have similar rates of withholding. Because the withholding tax does not take into account expenses incurred in generating the income, a taxpayer frequently will be subject to an effective rate of tax that is significantly higher than the rate that would be applicable if the income were taxed on a net basis. That's what I referred to earlier as “burdensome” taxation, which is clearly an impediment to cross-border trade and investment.

Tax treaties alleviate this burden by setting maximum levels of withholding tax that a treaty partner may impose on these types of payments or by providing, in some cases, for taxation exclusively in the state of residence. For example, the tax treaty with Hong Kong would impose limitations on the rates of withholding to 5% on direct dividends, 15% on other dividends, and 10% on non-arm's-length interest and on royalties.

Hong Kong is one of the largest financial markets in Asia in terms of trade and an important destination of Canadian foreign direct investment. Once the treaty is in force, it is expected that it will further encourage trade and investment and solidify our bilateral links.

The second objective that I mentioned at the outset was the prevention of tax avoidance and evasion. A key element our tax treaties is the provision authorizing the exchange of information between the respective tax authorities. Better transparency and access to information are important tools for tax authorities to enforce their own domestic tax law and to prevent international tax evasion.

In order to enhance Canada's network of information sharing, budget 2007 required that all of Canada's new tax treaties and revisions to its existing treaties would include the standard developed by the OECD for the exchange of information. The six agreements in Bill S-17 contain exchange-of-information provisions that are consistent with the OECD standard. In fact, two of the agreements in the bill with Luxembourg and Switzerland deal exclusively with the exchange of information. These provisions mandate the tax authorities of the treaty partners to exchange information relevant to the administration of each country's respective tax laws in conformity with the standard. The provisions also ensure that the effective exchange of information is not impeded by bank secrecy laws that may exist in the other country.

● (1105)

[*Translation*]

I mentioned at the beginning of my remarks that Bill S-17 would contribute to increasing the extent of our tax treaties network, but it is as important to revise our tax treaties and to update them, where necessary.

The treaty with Poland is a good example. The need to negotiate and sign a new treaty with Poland was the fact that the existing treaty between Canada and Poland was signed in 1987, in a much different economic context than today. The new treaty with Poland reflects Canada's new policies regarding maximum withholding tax rates on payments of dividends, interest, and pensions. Of course, the agreement includes the most recent standards when it comes to the exchange of information.

Mr. Chair, this concludes my remarks. I am available to the committee to answer any questions.

Thank you.

The Chair: Thank you for your presentation.

[*English*]

We will begin members' questions with five-minute rounds.

Mr. Rankin, please.

Mr. Murray Rankin (Victoria, NDP): Thank you to the officials for being here. It's much appreciated.

Mr. Castonguay, you said that generally the treaties that are before us are patterned after the OECD model tax convention.

On May 29 in the *Guardian*, the current Secretary-General of the OECD, Mr. Ángel Gurría, said that rewriting these international tax rules has become one of the greatest challenges for finance ministers of our time. He was specifically quoted as having said the following, which I'd like your comments on:

> The [international tax] rules which we have built since the 1920s were meant to avoid double taxation...the problem is we've moved from double taxation to double non-taxation.
>
> Now we don't tax anybody because we've built a set of codes and regulations and law…and culture…where we facilitate the fact that co-operations, through transfer pricing practises, put their profits in low-tax jurisdictions and therefore do not pay what would be considered to be their fair share.

So countries are moving from double taxation treaties like this to double non-taxation treaties, according to the secretary-general.

What would your reaction be to that comment?

● (1110)

Mr. Alain Castonguay: While it is the case that double taxation agreements are about eliminating double taxation and that the problem you are referring to is obviously of a different kind, I think the secretary-general is referring to the project that was launched by the OECD earlier this year on base erosion and profit shifting.

First of all, the problem he's referring to is not simply a matter of defective double taxation agreements. I think he's also referring to the fact that the international coordination of domestic laws can create situations where income is taxed nowhere—and that's true.

The OECD launched a project on that, and Canada, being part of the OECD, is extremely interested in participating in this project. We share the concerns expressed by the secretary-general about income that may end up not being taxed, in contravention of the spirit, at least, of our tax rules.

We are participating in this project. It just got started. I believe the OECD intends to make a report to G-20 finance ministers in July, which will provide more details on the direction of this project.

Mr. Murray Rankin: Thank you.

You mentioned in your remarks just now that one of the ways in which tax evasion and the use of tax havens perhaps can be addressed is through the exchange of information provisions. Article 25 and the conventions before us deal with the exchange of information.

I was reading commentary on the OECD model tax convention to the effect that the language in this type of provision cannot just cover on-demand tax information exchange agreements, TIEAs and the like, but can also deal with automatic tax exchange information.

Is that your view as well, that this could accommodate automatic information exchange, if that's where Canada were to go?

Mr. Alain Castonguay: That's correct. The article on exchange of information in our treaties accommodates on-demand, automatic, and spontaneous exchanges of information. Then it's up to the bilateral relationship to decide whether we're going to go to automatic. In our case, we have about 30 conventions where we have in place automatic exchanges of information.

There are two treaties in this bill where it's not the case, because the treaty itself explicitly limits it to on-demand. Treaty partners can decide to limit it if one treaty partner is not prepared to go beyond on-demand.

Mr. Murray Rankin: For the countries we're talking about today, Luxembourg and Hong Kong, for example, could our exchange agreements be automatic with those countries under the current rules?

Mr. Alain Castonguay: The terms of the treaty are such that it entertains explicitly only on-demand....

Mr. Murray Rankin: So you couldn't use this language to go automatic, then.

Mr. Alain Castonguay: That's right. We would have to amend the treaty.

Mr. Murray Rankin: And you don't consider that a deficiency, based on what we're hearing at the G-8, and other countries saying that Canada is showing no leadership on going to automatic exchange? You don't think that's a deficiency in this treaty?

Mr. Alain Castonguay: I think you have to put it in context. Up until 2009, Hong Kong was not prepared to exchange information in a way that would override its bank secrecy laws. As of 2009 they announced that they were prepared to do exchanges of information, but on request only. All of the treaties that Hong Kong has today are on request only. Hong Kong is not prepared to go beyond that.

Mr. Murray Rankin: Thank you, Mr. Castonguay.

The Chair: Thank you, Mr. Rankin.

Mr. Jean, please, for your round.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair.

Thank you for attending today.

Further to that, Hong Kong has other issues besides money issues. On the basis of the voluntary versus the on-demand exchange of information, my understanding is that Hong Kong is more worried about the privacy of its citizens and is worried that the information could be exchanged with China, for instance, or other bodies that may be seeking the information for other purposes. Is that a possibility? I've heard that discussed.

Mr. Alain Castonguay: Well, one of the criteria you look at in determining whether the automatic exchange of information is suitable in a given relationship is the ability of the other side to protect the confidentiality of the information you provide to the other country and the use they will make of that information.

Mr. Brian Jean: Exactly, and not just to protect it from Canada or the United States, but possibly from other foreign powers like China or Iran, that may affect their citizens in ways we would never even think of.

● (1115)

Mr. Alain Castonguay: That's correct, so obviously this is a case-by-case determination.

Mr. Brian Jean: Yes, exactly.

If there were automatic exchange, has anybody looked at the amount of paperwork or the amount of information that would be driven from one jurisdiction to another? Have people looked at that? I can imagine that if there were an automatic exchange, they'd want to encompass everything, and it would take mega computers to go through the data, etc. Has anybody looked at that? Just very briefly....

Mr. Alain Castonguay: The experience we have on the relationship where we do have automatic exchange of information is that, yes, a lot of paperwork and a lot of data are involved. In the case of Hong Kong, it was not contemplated—

Mr. Brian Jean: No, of course—

Mr. Alain Castonguay: —because Hong Kong made it clear they were not prepared to go—

Mr. Brian Jean: I'm just suggesting that it would be a tremendous amount of data to go through.

I am interested in these tax information exchange agreements, especially with what's happened over the last five to 10 years internationally and domestically, because it seems to me that a lot has been done to combat tax evasion. We've looked at some other tools that are possible.

But I wanted to clear up a couple of things. Specifically, CTV's *W5* seemed to suggest that those who hide money in Lichtenstein prior to the Canada-Lichtenstein tax agreement entering into force will still be able to be beyond the reach of that agreement. Is that fair to say? Or would we immediately start to receive that information just on demand? Just be very brief, if you could.

Mr. Alain Castonguay: That's not quite accurate. The TIEA with Lichtenstein applies in respect to future taxation years, so if you were to have investments in Lichtenstein and you left them there after the TIEA came into force, we could ask for your information.

Mr. Brian Jean: Yes, exactly. In fact, anybody who is left there after the agreement comes into force is going to have to find another jurisdiction.

This is sort of like a nuclear proliferation agreement. If you don't have agreement from every country that's involved, you could have a rogue state that causes difficulties for everybody. Is that fair to say?

Mr. Alain Castonguay: Well, that's why we've been busy negotiating with the TIEA countries so far, and we intend to continue to do so. The exchange of information as a principle is a good thing. We should have that with everyone—

Mr. Brian Jean: How many agreements have you negotiated?

Mr. Alain Castonguay: We've negotiated 30 TIEAs. Sixteen are in force. Six are signed. The rest are under negotiation.

Mr. Brian Jean: Since when?

Mr. Alain Castonguay: That is since 2007.

Mr. Brian Jean: Wow. Are these successful?

Mr. Alain Castonguay: I believe they are.

Mr. Brian Jean: Just from the few that you—

Mr. Alain Castonguay: I believe they are. Certainly, we've been establishing a relationship with these jurisdictions, and yes, I think they are successful.

Mr. Brian Jean: Would you consider $2.5 billion in extra revenues in 2013-14 a good start in data collection? That's what I understand: that the 75 new measures we've brought in over the last five or six years have brought in extra moneys to that degree.

Mr. Alain Castonguay: I'm not sure that I could put a dollar figure on it.

Mr. Brian Jean: But it would be fair to say that it's in that—

Mr. Alain Castonguay: But obviously—

Mr. Brian Jean: It's that range, though, of billions of dollars?

Mr. Alain Castonguay: It's obviously more revenue than we've been collecting so far. Yes, absolutely.

Mr. Brian Jean: How successful have the other tools been in combatting this? It sounds like the end result is very successful, but how has it been utilized successfully to combat tax evasion?

Mr. Alain Castonguay: Do you want to comment on that, Ted?

Mr. Ted Cook (Senior Legislative Chief, Tax Legislation Division, Tax Policy Branch, Department of Finance): Yes.

Perhaps I'll provide some comments.

Mr. Brian Jean: Please, Mr. Cook.

Mr. Ted Cook: You talked about the 75 measures. That's kind of a listing of the number of integrity measures—

Mr. Brian Jean: Those aren't all in economic action plan 2013.

Mr. Ted Cook: No, that's going back several years.

Going to a larger point, exchange of information is just one component in dealing with the tax system and ensuring that it operates in the correct fashion. Certainly, when I've been in front of the committee before, we've talked about tax planning such as foreign tax credit generators, which have been responded to in budget 2010.

Budget 2013 has a number of specific measures. For example, there will be reporting of electronic fund transfers of more than $10,000. Currently this reporting is just going to FINTRAC, but will now be going directly to the CRA, streamlining the ability to get unnamed requirements with respect to information regarding taxpayers.

There's a whole host of measures. It's a puzzle that you put together using a number of different pieces.

Mr. Brian Jean: It sounds like we almost have a good, effective picture of that puzzle, though, don't we?

Thank you, Mr. Cook.

The Chair: Thank you.

Mr. Hsu, please.

Mr. Ted Hsu (Kingston and the Islands, Lib.): Thank you.

I want to start out by saying that I understand that this meeting was only set and planned on Friday. A lot of people have had to do a lot of work quickly, and witnesses have had to agree to come on short notice, so thank you very much.

I just want to clarify this issue of the lack of automatic information exchange. For Hong Kong, information exchange is going to be on request only.

For these other new or revised treaties, which of them include provisions, or do any of them include provisions, for automatic information exchange? If not, what are the provisions? Is it on-demand, or spontaneous, or...?

● (1120)

Mr. Alain Castonguay: Of the six, two explicitly provide that it will be on-demand only.

For the others, in the case of Poland it doesn't say anything. If the Canada Revenue Agency thought it were worthwhile to entertain automatic information exchange with Poland, based on the criteria I identified earlier, and the possibility of having reciprocity—that is, getting good information for us too, because this is a two-way street, obviously—then nothing prevents the CRA from concluding an agreement with Poland to enter into an automatic exchange of information.

Mr. Ted Hsu: The three other new ones are all on-demand?

Mr. Alain Castonguay: I think Serbia is also open to....

Mr. Ted Hsu: In the future.

Mr. Alain Castonguay: Yes.

Mr. Ted Hsu: And Namibia, is it open?

Mr. Alain Castonguay: Namibia is open, yes. There's no restriction.

Mr. Ted Hsu: All right.

I want to talk about the treaty with Luxembourg. Luxembourg sets a pretty high hurdle for an applicant country to meet before it can request tax information. You have to provide the name of the person, a description of the information, and so on.

I'm wondering, during the negotiations were there efforts to receive more lenient provisions to make it a little bit easier to ask for information if we needed to investigate something?

Mr. Alain Castonguay: In the case of Luxembourg, just like Hong Kong until 2009, Luxembourg was not prepared to override its domestic secrecy law. As of 2009, they decided they were prepared to incorporate in their treaty exchange agreements information that would override their bank secrecy law, but only to the extent that it was information on request.

That's their treaty policy. The choice for us is, well, do we go as far as they're prepared to go, and let's see what the future holds?

Mr. Ted Hsu: If you contrast Luxembourg and Hong Kong, say, with the tax treaties we have other western European countries, is it fair to say that for most of the western European countries we have some sort of automatic information exchange, but for these countries, where they have bank secrecy laws, we're not going to get any further than what we have?

Mr. Alain Castonguay: Only a minority of countries have bank secrecy laws. The vast majority of our treaty partners don't. The treaties we have with them do not contain any restriction on that, on whether it's on-demand or automatic. It's a case-by-case determination of whether it is worthwhile for us. We do have, obviously, automatic exchange with our major treaty partners.

Mr. Ted Hsu: Okay.

I understand that the idea of multilateral automatic information exchange came up during this committee's study on tax havens. I'm wondering if Canada's taking any steps towards moving in that direction.

Mr. Alain Castonguay: I can tell you that the OECD has started to do work on this. As an OECD member, we're very interested in that. They're examining the design issues around multilateral automatic exchanges of information. That work is just getting started, and we'll participate in it.

Mr. Ted Hsu: Okay.

Mr. Alain Castonguay: You have one minute left, Mr. Hsu.

Mr. Ted Hsu: Thank you.

There are different rates of withholding tax. In table 2 of this briefing note, it shows 0% with Namibia, 15% for Serbia and Poland, and 25% for Hong Kong.

Can you explain a little bit why it's different for different countries?

Mr. Alain Castonguay: You're referring to which kind of payment?

Mr. Ted Hsu: It's the maximum rate of withholding tax on pension payments. Sorry; I should have been more precise.

Mr. Alain Castonguay: Our treaty policy is to achieve shared taxation of pensions. We like to tax pensions from all sources. We also like to withhold on pensions paid to non-residents in Canada to the extent that they contributed to the pension system here in Canada, with tax-assisted RSPs and the like. We like to achieve 15%.

In the case of Hong Kong, we could not agree. The agreement reflects the fact that we will apply our domestic law, which in our case calls for withholding tax at 25%.

In the case of Namibia, tax at source is suppressed to the extent that the amount is taxable in a residence country. That's the treaty with Namibia.

Mr. Ted Hsu: Okay.

The Chair: You're right out of time, but we may have time for another round.

I will come back to Mr. Hoback, please.

Mr. Randy Hoback (Prince Albert, CPC): Thank you, Chair.

I have just a couple of brief questions. I'm going to pick up what Mr. Rankin was saying about the automatic portion of treaties, because I think he hit on some interesting things.

When you're working with a country that you don't have an automatic agreement with, is that because that country doesn't have the information that would automatically transfer over? Is that fair to say?

● (1125)

Mr. Alain Castonguay: In the cases where we do have explicit limitation in our treaties, it's because the other side wasn't prepared to go beyond on demand, and they wouldn't explain whether it was because they couldn't access the information. For them, they were prepared to go to the TIEA standard, which is on demand, but they were not prepared to go beyond that.

Mr. Randy Hoback: So they might have some internal reasons on why that information...either they are not collecting it or they're not—

Mr. Alain Castonguay: That's correct. Although it's not because you don't have a need for the information that you cannot provide it, but the automatic exchange of information is about the systematic collection of information in order to share it.

Mr. Randy Hoback: That's right. You need systems to align. You need apples to speak to apples, not apples to oranges. Is that fair to say?

Mr. Alain Castonguay: Obviously, it is different.

Mr. Randy Hoback: That's all I wanted to clarify.

The Chair: Thank you.

[*Translation*]

Mr. Caron, you have the floor.

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): My first question is for Mr. Castonguay.

You are in large part responsible for the negotiations and process for the tax agreements. In the case of these six countries, how long did the negotiations take? How long did each one take?

Mr. Alain Castonguay: In the case of Namibia, we began in 2005 and finished in 2006, when I arrived.

In the case of Serbia, negotiations began in 2003 and also concluded when I took up my position.

The negotiations with Poland began in 2008 and lasted two years.

In the case of Hong Kong, we began in June 2011 and concluded that same year.

Mr. Guy Caron: Okay.

I ask the question because I assume it takes a lot of energy to get to the point of signing these bilateral agreements. And, we may wonder about the outcome.

As we said when we did our study on tax havens, there is a lot of doubt about whether bilateral treaties are really the best way of handling this issue. It's better to have them than not, but the progress made is still minimal.

You are probably aware of the article that appeared recently in *The Economist*. I would like to quote something from it. Unfortunately, it's only in English.

[*English*]

> Now accountants can shuffle intangible assets such as intellectual property, and the profits they generate, from one jurisdiction to another with ease. A confusing thicket of bilateral tax treaties lets them play off national rules against each other.

They give an example of the "double Irish with a Dutch sandwich", which you might be aware of.

Some hon. members: Oh, oh!

[*Translation*]

In terms of treaties, we are spending a lot of time signing bilateral agreements but, in the end, don't you think the time should be spent on something else? Shouldn't we be taking on bigger problems, like the lack of transparency and double taxation or, as my colleague said, double non-taxation?

Mr. Alain Castonguay: The problem you are referring to has to do with tax avoidance, meaning planning to ensure that some income is sent to places with low or no taxation. That refers to what I was talking about earlier. In English we call it base erosion and profit shifting.

Is a multilateral agreement the only response to that? I don't think so. I think this problem has many facets and must have many solutions. We can think about national laws and tax treaties. One thing can certainly be done when it comes to tax treaties, which is to protect the integrity to ensure that third country residents do not have access to the treaty benefits. For example, the treaty with Hong Kong reflects this reality because it includes provisions that ensure that the benefits are available only to residents of the territories that signed the agreement.

That is part of the solution. The solution is not limited to tax treaties, be they multilateral or bilateral. There are also issues relating to national legislation that come into play here.

Mr. Guy Caron: The problem raised by *The Economist* is a recurrent one. Most experts are raising it. With respect to the agreements and treaties we are discussing, among the six countries, some of them have an automatic transfer of information and others do not. It will probably be the same for all of our agreements. Yet that gives rise to some inconsistency and inefficiency. The rules differ depending on the agreements and countries involved.

Besides, these countries, be it Hong Kong, Switzerland, Namibia, Serbia or Poland, may even be signing agreements with other countries that are different from the ones they sign with Canada. Ultimately, we end up with a tax treaty system that is impossible to navigate and that eventually goes against the objective.

My main concern about these treaties is that the government could very well say that it has done its part, that a bilateral agreement has been signed and that that's where it ends, when there are other blatant problems, including the issue of dummy corporations or shell companies. My colleague will likely address that issue later.

● (1130)

The Chair: You have 30 seconds left.

Mr. Guy Caron: Some organizations that want to engage in tax avoidance or tax evasion use it as a front.

Do you understand my concern?

Mr. Alain Castonguay: Yes, absolutely.

Mr. Guy Caron: Do you think the government could simply use that to say that it has done its job and won't take it any further, when in reality the problem is much larger?

Mr. Alain Castonguay: The issue you are raising has been discussed in *The Economist* and in other publications. I think that some governments, including our own, have voiced concerns about this. The OECD has undertaken some very serious and very ambitious work to determine what could be done in this regard.

As I mentioned, if we take on this kind of problem, we should not just consider one or two solutions, but rather a set of solutions. This will take a little time because it is fairly complicated. Lastly, since this is being done by the OECD, an agreement between the countries is required. It may or may not lead to a multilateral instrument. It is much too early to say.

The Chair: Okay. Thank you.

Mr. Côté.

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you very much, Mr. Chair. It is much appreciated.

I would like to thank the two witnesses for being here.

Before addressing the issue of shell companies, I would like to ask you what kind of follow-up you do after such a tax treaty has been signed.

Do you analyze the impact? Are there any figures you can report?

Mr. Alain Castonguay: Not really. First of all, Canada Revenue Agency is responsible for applying tax treaties. Obviously, if there are problems with one treaty in particular, the agency brings it to our attention. That is why treaties can be renegotiated if some facets aren't clear or a new problem arises and needs to be addressed.

Mr. Raymond Côté: If the Department of Finance doesn't do this analysis, does CRA?

Mr. Alain Castonguay: I think the people at CRA are able to tell us if the treaty is working as expected or if there are some interpretation issues at the start. We can be made aware of it at that point.

Mr. Raymond Côté: Following on what my colleague, Guy Caron, said, when we sign this kind of treaty, we often focus on the countries we are signing the treaties with, but we also need to look in our own backyard. Are we good students?

Professor Jason Sharmon, who wrote a very good article that appeared in *National* magazine, the official journal of the Canadian Bar Association, did a very good study on that. It is very interesting because it shows that Canada, like the United States, has its own system of secrets when it comes to front companies. It's a huge problem because we can't preach the adoption of good behaviour if we act just as appallingly.

This goes through companies that can set up front companies. Professor Sharmon mentioned Canada in particular. He quoted an example. In almost half the cases that were studied, very little if not no information was requested. In this specific case, he indicated that the company that offered its services to set up a front company clearly explained the risks. Despite everything, personal information was requested only if a credit card was going to be used to make a payment.

Canada has been a part of the financial action task force on money laundering since 1990. The group's criteria are very clear: Canada, like other member countries, must ensure that information is collected on owners who benefit from this type of front company.

What can you tell us about that? How do you explain all the gaps in Canada?

● (1135)

Mr. Alain Castonguay: I'm not an expert in this area. However, I would say that in its 2013 budget, the government showed that it intends to hold consultations on the issue of beneficial owners of companies so that we can one day revise our statutes and meet international standards.

In the case of companies suspected of illicit activities, the Income Tax Act contains provisions that enable the Canada Revenue Agency to ask questions and obtain underlying information when necessary.

Mr. Raymond Côté: Yes, but beyond that, this basic information must really be collected and even that isn't being done. It's far from systematic. There are huge gaps and we have known about it for a long time.

Thank you, Mr. Chair. I will touch on this again with other witnesses.

[*English*]

The Chair: Mr. Rankin, it's your round again.

Mr. Murray Rankin: Thank you.

Mr. Castonguay, in response to my colleague, Mr. Caron, you talked about tax evasion being a multi-faceted problem, of which these bilateral tax conventions are but one element.

Presumably, you talked about Canada doing its work at the OECD. There's also the G-8, which is meeting right now in northern Ireland. Mr. Cameron, the Prime Minister of England, seems to have a preoccupation with dealing with tax evasion and tax havens, but Friday's *Globe and Mail* had a headline that read, “Has Canada become the bad guy of the G8 by fighting tax transparency?” A headline in the *Financial Post* reads, “Canada slammed for lagging behind in fighting tax evasion as G8 summit looms”.

I don't get the impression that Canada is really doing the heavy lifting on this with Mr. Cameron and other colleagues. Is that your impression, or is it just the media in Canada?

Mr. Alain Castonguay: The G-8 summit is on as we speak, and today and tomorrow, and I think we should await the conclusion of the leaders on that.

Mr. Murray Rankin: Right. Maybe we'll come back to that with other witnesses.

I want to talk to you about the TIEAs, the tax information exchange agreements. You talked about 60 having been negotiated, and six are in negotiation stage. Several experts, some of whom we'll be hearing from later today, have said that these on-demand agreements really accomplish very little because you have to know what to ask for in order to get any information back.

I'd like to ask you, and perhaps Mr. Cook may have some information on this as well, how often have we used TIEAs, and how much information have we received as a consequence?

Mr. Alain Castonguay: I don't have information on that. I think the Canada Revenue Agency would have an answer to that question, but I can't—

Mr. Murray Rankin: Mr. Cook, how often have TIEAs been utilized and how much information have we obtained over the years in using them?

Mr. Ted Cook: I'm sorry. I don't have any comments other than Mr. Castonguay's.

Mr. Murray Rankin: I ask because some experts have said that they're really quite ineffective—and when we hear from them, I'm going to ask them this same question. “You don't know what to ask for, so how are you going to get anything back?” That's their simple position.

But you have no information. I'll ask the experts later.

I want to go back to the specifics of Bill S-17. You referred, for example, to Serbia and Poland, Mr. Castonguay, as being two countries with which we may be able to have automatic information exchange with. I just don't know how it works, if you will, bureaucratically or administratively.

We've negotiated this open agreement contemplating tax information exchange, as in article 25. We say that we'd like to now move to automatic exchange. They say they don't want to. What happens then?

Mr. Alain Castonguay: On automatic exchange, first of all, the revenue agencies under the treaties are tasked with the administration of the treaties, and they can enter into agreements among themselves—MOUs—on any aspect relevant to the administration of the treaty. In most cases, automatic exchange information is achieved by way of concluding a memorandum of understanding between taxation authorities.

Of course, both taxation authorities must be willing to do that. If they decide they're not interested, there's not much we can do.

Mr. Murray Rankin: So just to be clear—I'm sorry for not understanding—if we ask for that and they say no, that's it? Would we have to enter a subsequent protocol?

For example, in all of the work we're doing at the OECD and at the G-8, let's say we end up concluding, as many of our critics have said, that we need to move to automatic information exchange to have meaningful information. We ask Serbia. We ask Poland. We say, "Hey, you just signed this convention with us." They say, "Sorry, but we don't want to do that." Again, what is the answer? What do we do?

● (1140)

Mr. Alain Castonguay: Well—

A voice: [*Inaudible—Editor*]

Mr. Alain Castonguay: The provisional exchange of information in the treaties accommodates three types of exchange. It doesn't make the automatic exchange mandatory, right? It is something that both sides need to be willing to do in order for it to happen.

Mr. Murray Rankin: Wait a minute. So if they say no, that's the end of the story, right?

Mr. Alain Castonguay: Well, yes.

Mr. Murray Rankin: Okay.

The other thing we've talked about, aside from automatic information exchange, is the beneficial ownership rules. You're familiar with the notion of trying to find out who really is behind these shell companies that do business abroad and hide their money in tax havens.

Under the general provisions of Bill S-17, of article 25 and the like, which deal with information exchange, and the general broad rules, would it be possible without renegotiation to acquire beneficial ownership information?

Mr. Alain Castonguay: I think my answer to that is that the convention allows the taxation authority to ask for any information that is relevant to the administration of taxes—any information.

Mr. Murray Rankin: So the same problem would occur if they said no, as you described already with the automatic information.

Mr. Alain Castonguay: Well, they have an obligation to apply the treaty in good faith, so if they have the information, they have to get it to us. If they don't have the information, they have to make their own efforts to get it and give it to us.

Mr. Murray Rankin: All right. Thank you.

The Chair: Ms. McLeod, please.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you, Mr. Chair.

Thank you to our witnesses today.

Through the chair, I want to assure Mr. Rankin that the media is not always accurate, and the suggestion that we are resisting efforts to combat tax evasion is completely false. We certainly do support Prime Minister Cameron's efforts to achieve a consensus in the G-8 on tax havens and tax evasion.

It would be absolutely absurd to think that there would be any approach that we would take as a country other than to work very hard on this issue. Certainly, our history and our work globally speak to our commitment to move forward and deal with this issue.

I just wanted to make that as a general comment, because it is a very important issue.

I think the bottom line is that today we recognize that this tool is not the be-all and end-all to tax evasion use of offshore tax havens. Would you describe it—just a quick yes or no—as a tool in the tool box?

Mr. Alain Castonguay: It sure is one tool in the tool box, yes.

Mrs. Cathy McLeod: Also, is having a signed agreement with places like Hong Kong, even though it perhaps doesn't allow for automatic exchange, better than not signing?

Mr. Alain Castonguay: Absolutely.

Mrs. Cathy McLeod: Again, just to confirm, this is following the general structure that is recommended and that the OECD advises. We're really heading down a path that of course is complicated, but what we're talking about today is a piece of legislation that the finance department has negotiated, that the CRA will administrate, and that is an important tool in the tool box. Is that a good summary?

Mr. Alain Castonguay: Absolutely.

Mrs. Cathy McLeod: But one tax convention cannot be all things for this very difficult battle.

Mr. Alain Castonguay: Obviously, we will be able to request information, and that will certainly improve our ability to apply our tax laws and deter those who think they might avoid the fisc by putting money in Hong Kong.

Mrs. Cathy McLeod: I think our conversation today is focused a little on the tax-evasion component of this. I think we haven't focused so much on supporting the confidence of people as they do business in other countries. We live in a global world and, that's another important element in terms of this particular treaty. Is that accurate?

Mr. Alain Castonguay: Absolutely. In the case of Hong Kong, we have a vibrant bilateral economic relationship and this will absolutely help make it easier in terms of cross-border trade and investment.

Mrs. Cathy McLeod: Thank you.

The Chair: Colleagues, I know there are further questions for the officials, but as I described at the beginning, the officials will move away from the table; they will listen to the witnesses; and then they will come back for clause-by-clause consideration, at which time members will have a further opportunity to clarify issues with the officials.

Right now I am going to suspend for a couple of minutes. We will bring our other witnesses forward. We will have their opening statements, and then there will be questions from members. Thank you.

● (1145)

(Pause)

● (1145)

The Chair: I call this meeting back to order. I want to thank our witnesses for appearing on very short notice. The committee appreciates that very much. With respect to our study of Bill S-17, we have five witnesses before us.

[*Translation*]

We have Brigitte Alepin. Welcome again.

[*English*]

We have Professor Arthur Cockfield from Queens University.

From the organization Canadians for Tax Fairness, we have Mr. Dennis Howlett. Welcome back.

By video conference from Washington, D.C., we have Mr. David Rosenbloom.

Mr. Rosenbloom can you hear me okay?

Mr. H. David Rosenbloom (Caplin and Drysdale, New York University, School of Law, As an Individual): I can. Thank you very much.

The Chair: Thank you for being with us here today.

And from Paris, France, we have Mr. Alain Deneault.

[*Translation*]

Mr. Deneault represents the Réseau justice fiscale Québec.

Welcome, Mr. Deneault.

Mr. Alain Deneault (Researcher, Réseau justice fiscale Québec): Good morning, and thank you.

[*English*]

The Chair: We will start with Madame Alepin.

[*Translation*]

Ms. Alepin, you have five minutes for your presentation.

Ms. Brigitte Alepin (Chartered Accountant, Tax Expert, Tax Policy Specialist, Author, As an Individual): Good morning. Thank you for the invitation. It's a privilege to be here today to talk about the merits of Bill S-17.

I do not support Bill S-17 because it represents an additional step toward the implementation of a global tax system where wealthy corporations or individuals can legally benefit from tax havens and avoid paying their fair share of taxes.

With the support of tax-optimization strategies, the Canada-Hong Kong tax treaty, for example, which Bill S-17 refers to, enables the legalization of a partially or totally tax-free corridor between Canada and a number of Asian countries.

This tax privilege does not come under the specific sections of the treaty, but relates to the simple fact that the Canadian tax system doesn't tax income from subsidiaries of Canadian multinationals in countries with which Canada has signed a tax treaty or an agreement to exchange tax information.

Given that the corporate tax rate is 16.5% in Hong Kong and about 25% in Canada, the Canada-Hong Kong treaty does more than avoid double taxation. It provides a 40% savings to Canadian multinationals that will export revenue to Hong Kong.

In addition, tax plans are already being developed to legally increase this 40% tax savings to a total tax exemption.

In a recent special report presented by Tax Analysts, an international think tank intended mainly for tax practitioners, the renowned Montreal tax specialist, Nathan Boidman, explains that revenue made in Hong Kong could be 100% exempt from Canadian and foreign taxation when subsidiaries set up in Hong Kong collect interest income, earnings gained from licensing or when corporate structures set up in Asia include a number of jurisdictions and where the revenue only passes through Hong Kong.

Thousands of tax agreements similar to the Canada-Hong Kong treaty currently exist between countries, so much so that they are being manipulated strategically. It is now legal for the world's wealthy corporations to pay 2% tax, if not no tax.

To compensate for the erosion of the tax base caused by this tax exemption for revenue exported legally to tax havens or jurisdictions that are taxed less, other taxpayers, the workers, the SMEs, major corporations here, all these immobile taxpayers are the ones who have to pay. And if they try to partially or totally avoid paying Canadian tax by using tax havens, like the wealthy corporations or individuals do, it is considered illegal for them. Moreover, as indicated in the various provisions of Bill S-17 relating to the exchange of information, the Canadian government is serious about its mission to corner those offenders.

I do not support Bill S-17. However, I wonder if the effort made to implement these bills or even to contest them is the optimal way of stopping the implementation of this preferential tax treatment reserved for the wealthy. I might invest as much of our limited resources as possible in trying to replace international tax competition, which is the very essence of our current global problem, with some tax co-operation.

Thank you for your attention. I would be happy to answer any questions you may have.

● (1150)

The Chair: Thank you very much for your presentation.

[*English*]

Professor Cockfield, go ahead, please, with your presentation.

Professor Arthur Cockfield (Professor, Faculty of Law, Queen's University, As an Individual): Sirs *et mesdames*, thank you very much for this opportunity to come here to speak before your committee again.

I'll have some initial comments about the treaties with Namibia, Serbia, and Poland, but really I'll confine my comments to some of the areas of controversy that have arisen this morning with respect to automatic versus information-on-request exchanges.

I did review those three treaties that I just mentioned. They seem not controversial to me. They generally track the OECD model tax treaty. As Monsieur Castonguay mentioned, Canada has been a member of the OECD since its inception. We follow the OECD model tax treaty for the most part. While I did not conduct a detailed examination of the treaties, they seem to me to follow most of the other Canadian treaties in this area.

I would like to make a few comments about the other three treaties, though, with respect at least to the exchange-of-information provision. This is a very fast-moving area. In defence of the Department of Finance, very few countries historically ever agree to automatic information exchange, but really we've seen in the last six months an explosion of activity in this area.

In particular, in April it was revealed through the ICIJ, the International Consortium of Investigative Journalists, that they had received the largest data leak in history, involving over 2.5 million documents and a suspected 450 Canadian taxpayers, according to the CBC.

Incidentally, in my last appearance I couldn't speak about this, but since the CBC has publicly disclosed their investigation—and I have been retained by them since the fall to review aspects of the data leak—I can now share with the committee some of the findings, at least those that have been publicly reported. The ICIJ leak created a controversy, particularly in Europe. The EU commission is now pushing for automatic information exchange.

With respect to countries like Luxembourg and Switzerland, recently they've agreed to engage in automatic information exchange with countries like the United Kingdom. They call it a "Rubik agreement". It's slightly different from historical agreements; it's complicated, but you either exchange information on an automatic basis or the non-resident taxpayer pays a gross withholding tax at a rate of 30% or 40%, depending on the agreement.

Similarly, the U.K. has managed, just in the last few months, to reach automatic information exchanges with some of the tax haven affiliates or former colonies of the U.K., like the British Virgin Islands—again, identified as one of the major tax havens in the ICIJ data leak—and other countries like the Isle of Man. So there's been this recent push in favour of automatic exchanges.

The three treaties that I'll now touch on very briefly are interesting. Hong Kong I think is still consistent with the OECD model treaty. It inserts wording that says they are not required to engage in automatic exchanges or spontaneous exchanges. It's a somewhat redundant statement in this new agreement in that, again, historically Canadian treaties, based on the OECD model, envisioned three types of information exchanges: automatic, requests on demand, and spontaneous. The Hong Kong treaty doesn't carve out the potential, at least, for automatic or spontaneous exchanges. Anyhow, it's just an interesting treaty amendment that I haven't seen in the past.

Luxembourg and Switzerland seem to have taken more care to ensure that Canada will not be able to exchange on an automatic or spontaneous basis. The problem with this is that the OECD model commentary, as it currently stands, indicates that article 26 follows those three routes. If we agree to at least the latter two tax treaties with Luxembourg and the U.K., we're no longer following the OECD model treaty.

But again, things are moving so quickly it's understandable that Finance may have felt pressure in the last year to conclude these treaties on the basis that it did.

Thank you, sir.

● (1155)

The Chair: Thank you very much for your presentation.

Mr. Howlett, please.

Mr. Dennis Howlett (Executive Director, Canadians for Tax Fairness): Thank you for the opportunity to share my views on Bill S-17.

The tax conventions and agreements included in Bill S-17 will be of very limited use in improving the recovery of taxes from those hiding their money in tax havens unless some key elements of the tax havens action plan proposed by British Prime Minister David Cameron at the G-8 summit are implemented. If Canada is serious about going after tax cheats who are using tax havens, then it should demonstrate this by fully supporting Prime Minister Cameron's action plan without trying to water down some of its key components.

In particular, the British proposals on beneficial ownership in multilateral automatic tax information exchanges are key to whether Bill S-17 will be a useful piece of legislation or a waste of time and effort.

Let me explain what I mean.

One of the problems with the tax conventions and agreements covered by Bill S-17 is that Canada needs to have quite a bit of information to begin with before it can request information under the current OECD bilateral agreement model that these agreements are based on, and we can clearly see this. If you look at the details in schedule 5 of Bill S-17, for example, you see all the steps that have to be taken in the case of Luxembourg to get the information Canada wants. It spells out quite clearly all the complicated steps involved.

It's similar to what the police have to go through to get a search warrant. As I'm sure Ms. Glover would be able to confirm from her experience, police have to have identified a suspect, and they need a fair bit of evidence in order to convince a judge to grant a search warrant.The challenge facing Canada Revenue Agency at the moment is that they have a very difficult time figuring out who their suspects might be and who they should be asking tax haven governments for more information on because of the banking secrecy that prevails in tax haven countries. How can Canada ask for information on a suspected tax evader if strict beneficial ownership rules are not applied? A tax evader can open trust accounts or set up shell companies in many tax havens without having to establish the ultimate beneficial owner. Without strong beneficial ownership rules in force, it's easy to hide your wealth offshore, and this facilitates not only tax evasion but also organized crime's money laundering, arms dealing, and financing of terrorism.

I am sure this government would not want to be accused of supporting such things.

The British G-8 tax haven action plan proposal on beneficial ownership calls for a public registry as well as much stronger rules to ensure the ultimate beneficial owner of any account. It's essential that beneficial ownership information be available in the public domain as opposed to being accessible only to police or tax authorities, because if it is available publicly it will be much easier for all countries to get access to this information. Multilateral automatic tax information exchange is the other key measure needed to make bilateral tax information exchange agreements useful. Proposals now under consideration at the G-8, G-20, and OECD would facilitate the exchange of basic information on account holders so that Canadian tax authorities would know when a taxpayer has not indicated on his or her tax return an offshore account in country X or Y, and then they would know who to go after, in terms of further investigation.

I know that the Canada Revenue Agency has come under a lot of criticism recently, including from our groups, but I actually have some sympathy for them given what they are up against. It's extremely difficult to undertake investigations on those who might be cheating on taxes using tax havens when they have very little to work with.

My final point is that there's a need to augment the capacity of the Canada Revenue Agency, especially given the recent leak of data that's now available to the Canadian government. The six or 10 additional people reported to have been assigned to a special unit will not be adequate to go through all the tax-leak data.

● (1200)

The CBC and the International Consortium of Investigative Journalists need to be commended for doing a major public service by exposing those who are using tax havens. It's imperative that Canada has the capacity to effectively follow up on that information.

Thank you.

The Chair: Thank you, Mr. Howlett, for your presentation.

We'll now go to Mr. Rosenbloom for his opening remarks.

Mr. H. David Rosenbloom: Thank you.

My name is H. David Rosenbloom. I am a tax attorney and a professor of tax law. My area of specialization is international, or cross-border, taxation. I am a member of Caplin and Drysdale, a U.S. law firm. I am also director of the international tax program at New York University School of Law. In the late 1970s, I was the international tax counsel in the United States treasury department. In that capacity, I was the chief U.S. negotiator of the 1980 income tax convention between Canada and the United States.

I thank the committee for this opportunity to offer observations on Bill S-17, an act to implement conventions, protocols, and agreements between Canada and various countries. All of these agreements are for the avoidance of double taxation and the prevention of fiscal evasion with respect to income taxes.

My comments are necessarily constrained by both my relative unfamiliarity with Canada's tax treaty policies and the extremely brief amount of time I have had to devote to a study of the bill. I am not a Canadian tax expert, and I was unaware of the bill prior to the afternoon of June 14. Furthermore, I have not been informed regarding the specific aspects of the bill on which I have been asked to comment.

My working assumption is that the committee may be most interested, not in the new conventions with Namibia and Serbia, parts 1 and 2 of Bill S-17, but rather in the convention with Poland and the agreement with Hong Kong, parts 3 and 4; with the protocol to the existing convention with Luxembourg, part 5; and the supplementary convention with Switzerland, part 6.

These last two parts deal with the subject of information exchange. Parts 3 and 4, on the other hand, are a convention and an agreement with jurisdictions, Poland and Hong Kong, that have been used by investors from other countries to invest outside those jurisdictions.

I thus confine these initial comments to the newly proposed exchange-of-information provisions with Luxembourg and Switzerland, and the agreements with the intermediary jurisdictions, Poland and Hong Kong.

I begin with information exchange. The protocol to the convention with Luxembourg appears consistent with the current practices of the Organisation for Economic Co-operation and Development and with the pending protocol to the income tax convention between the United States and Luxembourg.

There are some differences among these texts, but they are of a technical nature, and I assume of relatively little interest to the committee. I have some reservations about the efficacy of such provisions for achieving useful information exchange, but I cannot see them doing any harm.

The supplemental convention with Switzerland, on the other hand, relieves a requesting country from the need to provide a specific name to the requested country in order to obtain information about a person and in order to identify the person in possession of that information.

Since the requesting country is often in need of the name—that is the reason for the request in the first place—a requirement that the name be given in order to obtain the requested information might often render the information exchange provision nugatory. Thus, this supplementary convention responds to a real problem, and despite my abiding skepticism about information exchange via tax convention, I can see no substantial objection to it.

The agreement with Hong Kong and the new convention with Poland are a different and much larger and more complicated matter. A major concern with jurisdictions that lend themselves, and their treaty networks, to investors from elsewhere is the possibility that their conventions become in effect agreements with the entire world.

In the United States, we think that most tax conventions are bilateral in nature and that the benefits they confer should be confined to persons with a genuine connection with one of the treaty partners.

One means of implementing this policy is to simply not enter into conventions with jurisdictions that serve as intermediaries, especially if there is no demonstration of a genuine risk of double taxation. Regrettably, the United States has not always followed this route. We have, for example, conventions with Bermuda, Cyprus, and Barbados, to name but three examples of jurisdictions where the need for a U.S. tax convention would not appear compelling.

Apart from the strategy of not negotiating conventions with certain jurisdictions, the United States relies on certain measures both within the text of its conventions and drawn from its general jurisprudence to combat treaty shopping. A limitation on benefits article requiring a genuine nexus between the party claiming benefits and the treaty partner is now standard in all modern U.S. tax conventions. And the economic substance doctrine, recently enacted into statutory law but of lengthy vintage in our courts, has served as a potent weapon against at least some types of treaty shopping.

● (1205)

I note that paragraph 3 of article 26 of both the convention with Poland and the agreement with Hong Kong represent an abbreviated version of what has become, in the United States, the "limitation on benefits" article. The article 26 provision, which also appears in the conventions with Namibia and Serbia, effectively precludes foreign-owned entities from enjoying a more beneficial regime in the treaty partner than do domestically owned entities. This is where early versions of the U.S. limitation on benefits provision began, but the provision has since gone much further. Whether it has always been effective is an open question.

I conclude by citing a provision of this type that actually seems to work. It appears in the U.S. convention with Cyprus, and it contains two substantive rules of general relevance: first, that U.S. benefits are available only to Cypriot entities that are owned to a large extent, both legally and economically, by genuine individual residents of Cyprus or, in some limited circumstances, by citizens of the United States; and second, that such benefits are allowed when it is determined on a discretionary basis that the establishment, acquisition, and maintenance of the entity and the conduct of its operations did not have as a principal purpose obtaining benefits under the convention. The provision is general and, some might say, unacceptably vague. Yet for that very reason it seems to have succeeded in thwarting attempts by third-country investors to use the Cyprus convention to obtain inappropriate treaty benefits in the United States.

I would add two thoughts on the basis of what I have heard thus far in this hearing. I throw them out for further elaboration. One, I do suggest to the committee that you carefully distinguish between concern about corporate-level tax avoidance, the use of tax havens by multinational companies, and transfer pricing, things that concern the multinational company on the one hand, and things that concern individuals taxpayers on the other. For the most part there we're talking about offshore accounts, the use of offshore trusts, etc. I think we're talking about two related but distinct problems, and I think there ought to be different responses.

● (1210)

The Chair: Mr. Rosenbloom, if I could just get you to conclude very briefly, we'll go to our final panellist and then we'll go to questions.

Mr. H. David Rosenbloom: Very well. I'm very happy to respond to any questions the committee may have.

Thank you.

The Chair: Thank you very much for your opening presentation.

[*Translation*]

Mr. Deneault, you have the floor. You may start your presentation.

Mr. Alain Deneault: Thank you, Mr. Chair.

Before I start, I would like to say something to the technicians. I am getting the simultaneous interpretation in English whenever people speak French. I do not need it and, moreover, I hear it when I am speaking. Please do not provide me with the simultaneous interpretation in either English or French.

Ladies and gentlemen, thank you for your invitation.

I would like to remind you that, internationally, mainly in the West but not exclusively, we are seeing an increased awareness of the importance of fighting not only against tax fraud, but also against the effects of tax havens, those states that make legal access possible. The people, some researchers and civic organizations are well aware of it. The OECD has established standards for action for its member countries, including Canada. Those measures are timid of course and often very unsatisfactory, but they still encourage public awareness and political awareness. We can congratulate ourselves for these advances and highlight the contributions of all the people of good will who participated.

That said, the measures proposed in the bill being studied today as part of the tax information exchange agreement with Canada are clearly ineffective. The OECD model, which Canada uses, is very often inoperative. The Swiss ambassador to Canada explains in his statement, which is included in the bill, that the request for information submitted by a Canadian officer to Switzerland under this agreement would be subject to a very heavy interpretative protocol. And I quote the ambassador: "...these are important procedural requirements that are intended to ensure that fishing expeditions do not occur,...".

This is as much as saying that a tax haven like Switzerland will lift bank secrecy only if you have the information you want to begin with. In other words, it has to be a case like that of the former French budget minister Jérôme Cahuzac, where the Swiss authorities confirmed that he had an account in Switzerland only when everyone already knew about it. In other words, bank secrecy is lifted only when people already have the information, the way it was with Jérôme Cahuzac. So we are in the same place we were in 2004, a situation criticized by the French parliamentarian Vincent Peillon. He said the: "This type of logic does not allow us to provide assistance until the evidence is already in the hands of investigators". We are therefore a long way from the automatic exchange of information required to really put an end to bank secrecy.

Furthermore, the tax agreement between Canada and Hong Kong seems problematic. It does not deal just with personal income but also corporate income. Article 5 of the agreement specifies that only Canadian companies that have real economic activity in Hong Kong are included in this category. This ensures that there is no tax on income that has already been taxed in Hong Kong, such as when a Canadian subsidiary transfers its revenue to Canada.

However, considering that many companies in the West are in Hong Kong to take advantage of the low taxes and low salaries there, the convention will enable Canadian companies that have industrial operations in Hong Kong, paying only the minimum taxes, to transfer the revenue from their activities to Canada without paying taxes on it. Politically speaking, it comes down to Canada recognizing Hong Kong as a tariff-free zone, allowing the relocation of companies and hurting workers around the world. Rather than a strictly administrative measure, we are seeing a symbolic display of strong political support.

In terms of the tax information exchange with Hong Kong, Canada does not have the tools to do what it wants. According to the law, in very specific cases, it can only obtain information that the Hong Kong government already has. Let me quickly cite the convention:

> 3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
>
> (b) to supply information which is not obtainable under the laws...

In other words, the law states that Hong Kong will give information only if it has that information and is able to obtain it. But Hong Kong's trust law is laid out in such a way that the government does not have any information on the activities of the trusts or the real beneficiaries.

● (1215)

Let me read you a reference that explains the way trusts work in Hong Kong:

[*English*]

> Documents do not have to be registered and there are no statutory requirements in Hong Kong for a trust to make annual returns, submit audited financial statements, etc., unless it is carrying on business in Hong Kong.

[*Translation*]

In other words, the position of the Hong Kong administration does not recognize who the beneficiaries of the trusts created there are. As a result, it never provides any information we may request.

Today, it is recognized that there are extensive consultations in favour of the automatic exchange of information. We can hope that a mechanism like that will lead to international standards that will encourage the principle of neutrality among international tax authorities.

Thank you. I look forward to your questions.

The Chair: Thank you for your presentation.

[*English*]

Mr. Rosenbloom, can you hear the English translation of the French?

Mr. H. David Rosenbloom: I did not hear the English translation, but that's okay; I understand French.

The Chair: Oh, okay. Thank you very much. I appreciate that.

We'll begin questions with Mr. Rankin, please, for five minutes.

Colleagues, please direct your questions as best you can. We have five panellists, so if you could direct the questions, it would be very helpful.

Mr. Murray Rankin: Thank you.

Thank you to all of our witnesses for coming on such short notice. It's greatly appreciated.

I want to do a quick summary of what I thought I heard on a couple of key points. Then my questions will be for Ms. Alepin and Mr. Deneault.

I think I understood Mr. Deneault to say that Bill S-17 and the OECD model conventions were essentially inoperative.

Ms. Alepin, you said that you simply do not support Bill S-17, for the reasons you gave.

Mr. Rosenbloom said, talking about the information provisions, that he doesn't see them doing any harm. I would call that the "damning with faint praise" approach.

Essentially there's an opposition to this, as Mr. Cockfield's remark would seem to suggest, because in light of the "explosion", to use his word, of automatic information exchange and things going on laterally, these seem to be very old-fashioned.

Ms. McLeod used the expression of it being a tool in the tool kit. It would appear to these witnesses to be a pretty dull tool, at best, in going after the problem of tax evasion.

My question is for Ms. Alepin and Monsieur Deneault, and it's about Hong Kong, just so that's clear.

You said, Ms. Alepin, that profits in Hong Kong could be 100% tax-free if subsidiaries set up in Hong Kong or elsewhere were involved. Monsieur Deneault said that non-resident trusts don't have to declare, don't have any information to exchange, because in Hong Kong that information doesn't have to be registered. So essentially, how could one ever obtain information and make this work on tax evasion issues with respect to Hong Kong?

Mr. Cockfield had similar things to say, noting that there's no requirement, that indeed there's no automatic exchange of information possible. I'm just not sure how it would ever work with Hong Kong.

I'd like Ms. Alepin and Monsieur Deneault to talk about how it might be possible to use this agreement, if at all, with respect to Hong Kong, for example, to curb tax evasion.

● (1220)

[*Translation*]

Ms. Brigitte Alepin: In terms of the automatic exchange of information, I think my colleagues are in a better position than I am to criticize the terms and conditions of the current convention. Clearly, all the remarks made so far that seek to determine whether it is reasonable to think that the automatic exchange of information would bring tangible results are valid views. That is the case today before this committee and that was also the case before the Senate. It was said that this was a first step, and it probably is a first step.

In my view, what really worries me about Bill S-17 is that companies and very wealthy individuals can now legally avoid paying their fair share of taxes by taking advantage of tax havens. In fact, as with other bills dealing with tax conventions, with Panama in particular and other countries that have lower tax rates than Canada, we are heading towards a global tax system where it is legal for some taxpayers, especially corporations and very wealthy individuals, to avoid paying their fair share of taxes in their countries of origin. They take advantage of tax conventions because of globalization or international tax competition. Over the past 10 years, it has become possible to transfer money electronically.

However, under Bill S-17, if ordinary citizens find that they are already paying a lot of taxes and hope to be able to take advantage of tax havens as well, it is illegal for them. In their case, the government takes all the necessary measures to prevent them from doing so. During these meetings, we are wondering whether this is necessary or sufficient and whether it will really work, but those are just subquestions.

Actually, the first question to ask ourselves is whether we want a global tax system that encourages companies and very wealthy individuals and that enables them to have legal access to tax havens or to do business with countries where the tax rates are much lower than in Canada. Second, we must ask ourselves whether we want to prevent ordinary citizens from doing it.

[*English*]

The Chair: *Merci, Madame*.

Thank you.

Unfortunately, Mr. Rankin, your round is up. You'll have to return to your questions next time.

I would just reiterate, colleagues, that we have five minutes, so please direct your question to one witness. If you have time you can follow up with a second.

We'll go to Mr. Adler.

Mr. Mark Adler (York Centre, CPC): Thank you, Chair.

Thank you to all the witnesses for being here today.

I want to begin with Mr. Rosenbloom if I may.

Mr. Rosenbloom, the last time you were here before the committee during our study on tax evasion you spoke about the importance of rules and taking action to prevent tax evasion and create tax fairness. Specifically you said, “This is a rule-based system. This isn't just a lot of concepts and research: we have to have rules”.

With the legislation before us today, we are taking action. Do you think these tax treaties are a step in the right direction, in the fight against tax evasion?

Mr. H. David Rosenbloom: I don't think you can look to treaties as a primary tool in the fight against tax evasion, because the function of a tax treaty is basically to relieve taxation. In the United States it's a constitutional matter that you can't use a treaty to increase taxation. To look to a treaty to solve the problem, at least at the corporate level, I think is just looking in the wrong place.

As I indicated in my statement, I am also really skeptical about whether the exchange of information provisions in the treaties—which I don't object to in principle—are capable of addressing the problem of mass evasion at the individual level, and certainly not at the corporate level. I don't think that problem at the corporate level is an absence of information; I think it's a failure throughout the world to adopt coordinated rules to address the problem. Frankly I have real doubts as to whether there's political will anywhere to take the measures that are necessary.

So my general feeling is that looking to the treaties to solve this problem is just not looking in the right place.

Mr. Mark Adler: Oh, okay.

Mr. H. David Rosenbloom: Treaties are there to address double-taxation. That's their principal function. For me, the main reason that a treaty exists is that it establishes an international dispute-resolution mechanism to resolve cross-border disputes. Because we don't have a world tax court, we need to have some method of resolving cross-border disputes. Treaties create that mechanism; nobody has mentioned that yet today. That's the value of a treaty to a taxpayer.

Mr. Mark Adler: Okay.

Mr. H. David Rosenbloom: You need treaties because you don't want double taxation, but they're not going to solve the tax-haven problem.

● (1225)

Mr. Mark Adler: In your last appearance you also stated:

> ...I have always admired, insofar as I understand it, the Canadian system. It does seem to be a lot better from a policy standpoint, and I've participated in various policy discussions in Canada about the Canadian system.

I was wondering if you could elaborate somewhat on those comments, and more specifically if you think the measures contained within the bill we're examining today are in line with the positive policy standpoint you see coming out of Canada.

Mr. H. David Rosenbloom: From my vantage point, which is of course from the United States and not Canada, I don't have much objection to any of these six agreements, frankly. The two information exchange agreements are broadly consistent with what's in the OECD. The ones with Namibia and Serbia are pretty routine, I think.

From a U.S. perspective I would probably have some difficulties with the ones with Poland and Hong Kong, particularly Hong Kong, but I think Canada's policies are different from those of the United States. The way you would approach treaties is more defensive than we do, so you probably don't have the same problems we have with inbound investment into Canada.

I am an admirer of the Canadian system. I think the Canadian tax system, frankly, is as intelligent a system as I've seen throughout the world in terms of putting together domestic law. But this is not a subject of domestic law today; what you have before you are international agreements. That's the frosting on the cake. Where the action is in the world today is in the domestic laws of the various countries. That's where action needs to be taken, if it's going to be taken, not through the treaties. You cannot look to the treaties to resolve the problems that exist.

Mr. Mark Adler: Would you agree that the treaties we're examining today do protect our tax base?

Mr. H. David Rosenbloom: The treaties you're examining today basically relieve both excess taxation and, to some extent, double taxation, while protecting the Canadian tax base on inbound investment from abroad. I don't think these treaties have much to do with outbound investment from Canada.

Treaties are focused on inbound investment, basically. In the United States it's extremely clear that's what they are focused on. Even without the U.S. addition to that, treaties are focused on whether Canada will tax the foreigners investing in Canada. You relieve the taxation, but unlike us, you don't completely relieve it. All of the treaties here have positive rates of withholding on interest, dividends, and royalties, which we do not have. It seems to me that these are defensive documents. From my perspective I don't see any substantial problem with any of them, frankly.

The Chair: Thank you, Mr. Adler.

Mr. Hsu, for your round.

Mr. Ted Hsu: I have a question for Professor Cockfield on information exchange.

When you came before the committee before, you explained that you were in favour of automatic information exchange, but with some care in implementing it. I was wondering if you could talk about best practices you see in this area in the world. In particular, you mentioned something about an agreement between the United Kingdom and Luxembourg involving automatic information exchange.

I was wondering if you could contrast that agreement with the agreement we're talking about today between Canada and Luxembourg.

● (1230)

Prof. Arthur Cockfield: Thank you.

By way of background, Canada only engages in ongoing automatic information exchange with one other country, the United States. As for how it works, let's say that I'm a Canadian citizen. If I move to New York City and open up a bank account with the Bank of America and that generates interest income, under U.S. law and regulations promulgated pursuant to the Internal Revenue Code—it's called the "qualified intermediary regime"—the bank must collect that information about the income earned. They send it to the IRS, and the IRS subsequently sends it over to the CRA.

My understanding, through informal talks with folks at the CRA in the past, is that this system works for the most part. The trickiness is in matching the source of income with the taxpayer's identification, so the ideal system that people have proposed would involve not only automatic information exchange, but some way to identify me when I registered that bank account with the Bank of America.

Maybe I'd have to give my Canadian taxpayer ID, which is typically our social insurance number, and which is quite controversial. But in any event, then they would have the payment and the taxpayer ID, and a software program, either in the United States or in Canada, could quickly be run to see if I had disclosed that information—the interest income—on my Canadian tax return. That's the system that has been ongoing, and I think it's the most effective system in Canada.

We do engage in automatic information exchanges pursuant to our bilateral tax treaties with other countries on a more limited basis. What has been recently entered into between the U.K. and Luxembourg—I briefly described it—is not without controversy. As I understand it—again, sometimes the colloquial term is "Rubik agreement"—the Luxembourgers have agreed to automatically share, like the U.S. with Canada, but the taxpayer can make a decision and say, "Well, I don't want my information shared with the U.K." If that's the case, they impose a withholding tax.

Let's say there's $100 of interest income generated by a U.K. resident in Luxembourg. Either that information goes directly to the U.K. government, or the English person investing in Luxembourg would have to retain, say, $40 or €40 of that transfer if they didn't want their information divulged. If they pay the withholding tax—and this is the controversial part—my understanding is that they're completely off the hook. England, the U.K., has agreed not to prosecute that individual. That's quite controversial, because essentially they think that a lot of international drug laundering will shift to Luxembourg as a result.

The Canadian provision with Luxembourg as proposed in this bill does not ever contemplate automatic information exchanges or spontaneous information exchanges. The Luxembourgers presumably insisted on these new procedures, whereby we'd have to give them the name of an individual, a Canadian, say, who we believe is engaged in offshore tax evasion.

That's problematic on a number of levels. Often we just suspect that there's bad activity. We don't know that there's a name. The CBC investigation revealed that there's a new kind of international asset, sometimes referred to as an "ownerless asset", so you won't actually have that person's name.

The Chair: You have one minute.

Prof. Arthur Cockfield: In any event, to summarize, the best system between Canada and the U.S. is that it's probably not politically feasible, though, to negotiate that with too many other countries, including Luxembourg.

Mr. Ted Hsu: Okay.

The Chair: A brief question, please.

Mr. Ted Hsu: Maybe I could just quickly go around to all of the witnesses and ask if they agree—

An hon. member: That's brief?

Voices: Oh, oh!

Mr. Ted Hsu: Well.... Does anybody object to saying that multilateral automatic information exchange and beneficial ownership disclosure should be priorities?

The Chair: Okay. That's a better way to do it. Does anyone object to that?

Mr. H. David Rosenbloom: I do.

The Chair: Mr. Rosenbloom, do you want to briefly explain why?

Mr. H. David Rosenbloom: Yes. The United States has automatic information exchange with many countries. In fact, that's the rule in the United States. I don't know that it is.... Automatic information exchange, as far as I understand, basically involves your turning over the information you collect to the other country on an automatic basis. It's fairly easy for a taxpayer who wants to avoid being identified to invest through some blocker entity between the taxpayer and the account. It's relative child's play to get around automatic information exchange.

I don't believe, in our experience, that it has done anything. Look at what we're going through right now. We're trying to identify offshore accounts. We've passed this Foreign Account Tax Compliance Act, which is a subject that nobody has mentioned here but is very important to this discussion. That's going to do a lot more than automatic information exchange ever did, and we've had automatic information exchange for 40 years. It's not an answer, as far as I'm concerned.

● (1235)

The Chair: Thank you, Mr. Hsu.

Ms. Glover, you have the next round, please.

Mrs. Shelly Glover (Saint Boniface, CPC): Thank you, Mr. Chair.

I want to thank the witnesses for coming.

If you would indulge me, Mr. Chair, I know that Mr. Cockfield made some comments about the Department of Finance, potentially having rushed through certain aspects of the Hong Kong and Luxembourg situations.

I see that the general director from the tax policy branch of the Department of Finance is in the room, and I would ask if I could invite him forward. I would like the Department of Finance to have an opportunity to answer that statement made by Mr. Cockfield.

The Chair: I was told that the Finance officials wanted to appear separately, but if they want to appear together, that's fine with me.

Mrs. Shelly Glover: Perhaps Mr. Brian Ernewein could step forward.

While he's stepping forward, perhaps I'll direct a question to Mr. Rosenbloom.

Ms. Alepin discussed how these conventions actually legalize some kind of preferential tax treatment for corporations. I don't see that at all. Do you see anywhere in these suggestions for moving forward with these separate countries how it is specifically saying that we are legalizing preferential tax treatment for corporations, sir?

Mr. H. David Rosenbloom: I do not see that. The treaties are designed to avoid double taxation. They're basically focused on foreigners investing in Canada as opposed to Canadian companies investing abroad.

I do know enough about Canadian taxation to know that you have a greater degree of connection between your treaty program and your domestic law. I believe, if you have treaties in place, you allow subsidiaries of Canadian corporations to repatriate funds free of tax.

That's lacking in our system. In our system, the treaties are completely separate. From a U.S. perspective, a treaty basically does not help a U.S. multinational avoid anything. What's helping them is our domestic law.

Mrs. Shelly Glover: And ours is better, as you indicated before.

Mr. Ernewein, I want to ask you to perhaps comment. Mr. Cockfield talked about automatic and spontaneous requirements, and how it appears as though Finance maybe rushed through these agreements and left those out.

I want to give you an opportunity to respond on whether or not Finance was rushing through anything, or whether this was in fact as a result of some restrictions placed upon us in the negotiation process. I understand that Hong Kong has said they will absolutely not engage in that kind of behaviour.

I do want to give you that opportunity, sir.

Mr. Brian Ernewein (General Director, Tax Policy Branch, Department of Finance): Thanks, first of all, to the committee for indulging me in appearing here.

The answer to the question is, no, I don't believe we were rushed on these matters. As Alain Castonguay explained, the operative standard for exchange of information is on request. Most of our tax treaties do provide the ability for automatic exchange of information if the two countries decide to do that. But as a matter of international treaty policy for us and other countries, for the most part what's insisted upon is the bottom line—in Canada's case, since 2007, that information exchange on request be the minimum provided.

It can go beyond that. Indeed, we heard earlier today that there's discussion of this issue internationally. There's discussion of this issue at the G-8 as well as to whether or not to move more rapidly or comprehensively to automatic exchange of information.

If that should happen, then Canada would join that policy. We would seek to get that in our treaties, and perhaps with some changes in our domestic law as well.

Mrs. Shelly Glover: We already do move in that direction, because we have dozens of agreements that are automatic agreements. As Mr. Rosenbloom aptly pointed out, with the United States they have automatic exchange as well.

There are some challenges. We heard in our tax study previously that there are some countries, in fact, who do not collect some of the information we're looking to exchange with them, which presents a very difficult position when you're looking for automatic.

Is that not a challenge we face?

Mr. Brian Ernewein: I think it is. I believe when I was here last time I made the point that automatic exchange of information is something that Canada supports in principle, but in practice it's quite difficult to do—for example, with a jurisdiction that does not have a tax system and thus does not collect any information to exchange with us.

There are ways around it, as David Rosenbloom has mentioned. The U.S. FATCA essentially takes away the tax authority by imposing the obligation to collect and provide information, imposing that on the financial intermediary itself. That's a big deal, and quite a big change to the system, but that would be a possible way of trying to deal with that. It's a question of whether or not that's the system we want to have.

● (1240)

Mrs. Shelly Glover: Very good.

Thank you.

The Chair: Thank you, Ms. Glover.

[*Translation*]

Mr. Caron, you have the floor.

Mr. Guy Caron: I am going to take advantage of the fact that you are here with us to ask you a question.

My colleague asked Mr. Castonguay how often tax information exchange agreements have been used to obtain information. Does that happen often?

Since it seems that we had a technical problem, I can repeat the question if you wish.

How often have tax information exchange agreements been used to obtain information? Mr. Castonguay and Mr. Cook did not really know.

Does that happen often? Do you know?

Mr. Brian Ernewein: No, I don't know the answer to this question. The Canada Revenue Agency has that information. We could forward the information to you.

Mr. Guy Caron: I will ask the Canada Revenue Agency to provide it to us then.

Mr. Cockfield, are you able to answer the question?

[*English*]

Prof. Arthur Cockfield: My understanding is that it's too soon to say. The whole notion of TIEAs was only introduced in the 2007 federal budget. They've only been ratified in the last two years. Informal discussions suggest there have not yet been effective information flows. I'm not privy to the real answer, so I don't know.

[*Translation*]

Mr. Guy Caron: Thank you.

My next question is for Mr. Rosenbloom.

You mentioned that the purpose of the information agreement was to prevent double taxation. My concern is that the government could say that it did its part in fighting against tax evasion and tax avoidance. But that is not the case at all. That is a whole separate issue. In addition, the current bill and the ratification of tax conventions do nothing to address the issue of tax havens.

Could you confirm that?

[*English*]

Mr. H. David Rosenbloom: I don't think I would endorse nothing at all. The exchange-of-information provision is useful. It has a limited utility. It's basically designed to produce information in specific cases. If a tax administration has a particular taxpayer and the information is in the treaty partner's jurisdiction, a request can be made and you can get the information. It's useful. It's not useless. But it is neither an answer to mass evasion at the individual level nor in any way an answer to the use of tax havens. They're just different subjects, as far as I'm concerned.

[*Translation*]

Mr. Guy Caron: Thank you.

I will turn to Mr. Cockfield again.

You heard me quoting *The Economist*, which said the following about companies:

[*English*]

"A confusing thicket of bilateral tax treaties lets them play off national rules against each other."

[*Translation*]

I think all the comments we have heard, particularly in the study on tax havens, have clearly shown that efforts should really be directed towards multilateral treaties to ensure that all the countries can work on having the same rules, perhaps even with the assistance of an international organization. To do so, we could perhaps follow the WTO model to some extent.

Do you think we should spend less time negotiating all the bilateral agreements and more time reaching an international consensus that would allow those countries to start with a level playing field?

I will also let Ms. Alepin answer quickly.

[*English*]

Prof. Arthur Cockfield: I agree that multilateral action and greater cooperation at the international level would certainly be helpful.

In the research community there have been ongoing discussions for the last two decades about how to pull this off. Currently, Canada has signed the OECD Convention on Mutual Administrative Assistance. The last time I checked, six months ago, we had yet to ratify it. Strangely it's been almost a decade or at least eight years since we signed that. That also might be a step in the right direction.

I'm a little cynical as to whether we'll see this international cooperation. I believe the OECD is moving in the correct direction. It's not truly a world tax organization. It represents the interests of the OECD member states, but it has ongoing efforts of outreach to non-OECD member states. Again, from a theoretical research perspective, we can absolutely fix this problem. But—boy—it's a complicated one and I'm not sure there's the political desire to do so. There are a lot of wealthy people, for instance, who wouldn't want total transparency within the global system.

● (1245)

[*Translation*]

Mr. Guy Caron: Ms. Alepin, do you have something to add to that?

Ms. Brigitte Alepin: In 2005, I had a research contract for Harvard University. The objective was to determine how to adapt our tax regimes to globalization. All those issues, which are current problems, were not very well known at the time. This research contract led me to conclude that we must slowly work towards global tax co-operation. That will probably be the only way to replace this tax competition between countries, which is at the very root of the problem.

[*English*]

The Chair: Okay. Merci.

Merci, Monsieur Caron.

Ms. McLeod, go ahead, please.

Mrs. Cathy McLeod: Thank you, Mr. Chair.

Again, I appreciate the conversation. I like the way Mr. Rosenbloom keeps bringing us back to what this legislation is and what it's not. Predominantly, the double-taxation issues and the issues around international trade are some of the key parts of it, and of course there are some tools in terms of the tax-evasion issue.

I have to say, just because the issue of tax evasion keeps coming out so often—and we talked about the tools in the tool box and this being one of them—that with the recent budget, we have the new mandatory reporting of international electronic funds transfers of over $10,000; we have reporting requirements for Canadian taxpayers with foreign income or properties; we have the streamlining of a judicial process that provides the CRA authorization to obtain information from third parties such as banks. As well, we now have a whistle-blower program, with awards of up to 15% of the federal tax collected for information leading to tax assessments exceeding $100,000; and, again, we have what we like to call our new SWAT team, as well as the additional dollars that are really focused in on targeting that evasion. The tool box still has room for more tools, but certainly, our government is very committed.

I really want to go back to what this specific piece of legislation is designed to accomplish. As we develop relationships and treaties with countries, that is often the start of a relationship that then progresses. Mr. Cockfield or Mr. Ernewein, do either of you have any comments about how we see things evolving with time and how to really have some of those key elements in the first place? We're talking about the government-to-government or official-to-official level perhaps helping us move towards more robust opportunities.

Prof. Arthur Cockfield: I can address that question.

As I mentioned in my opening comments, I agree that the treaties are largely non-controversial. They do a lot of good stuff, as Professor Rosenbloom also mentioned. I didn't mean to suggest that the Department of Finance had rushed these particular negotiations. They're certainly consistent with the Department of Finance's traditional treaty policy, and so there are no real radical changes.

I was just going to highlight this very recent trend towards automatic information exchange and how we're seeing some large financial centres—Hong Kong, Switzerland, and Luxembourg—pushing back. They don't like this regime through which we're moving toward greater global transparency. Perhaps they wouldn't have signed the treaty, as I think Mr. Castonguay suggested, without these particular amendments, so they're mainly a good thing.

But, as other witnesses have mentioned, they probably don't go far enough.

Mr. Brian Ernewein: Thank you.

If I may just take one second to make the comment about the reference to the OECD Convention on Mutual Administrative Assistance in Tax Matters, Canada has not ratified that. Canada has not ratified that, because it requires a technical amendment found in Bill C-48, which, fingers crossed, will be passed very soon, after which we will be able to ratify that. We have signed it and indeed we have signed the protocol to it as well.

Very quickly, in response to your question, treaties are important for their own sake to regularize the tax rules that apply between two countries and the investors between those countries, and that's our primary objective. But they certainly have broader effects economically in terms of increasing investment, hopefully, between the two jurisdictions and in having a stronger relationship economically as well as politically between the two countries involved.

● (1250)

Mrs. Cathy McLeod: Taking this back to my health background, I look at it the same way I did when we realized that smoking was a problem. Then we looked at how things changed over time in terms of public health policy. I think to some degree we're seeing here the same evolution of identifying a problem that, I think, is becoming more acute. As time goes on, we're developing more skills and more tools.

I think no one would disagree with the comment that it's absolutely critical to work internationally. I know it's nice to say we want to get all the way in one stop, but I think sometimes you have to accept the evolution as we move to deal with this very important issue. Looking at our voluntary disclosure program, I know a lot of Canadians are starting to get very nervous with the work we're doing, and I think we're seeing a lot of uptake in terms of people coming to the table now rather than later.

The Chair: Thank you, Ms. McLeod.

[*Translation*]

Mr. Côté, you have the floor.

Mr. Raymond Côté: Thank you, Mr. Chair.

I want to thank the witnesses for their willingness to answer our questions.

While I was listening to your presentations, I could not help but think back to a joke made by a security expert several years ago. He was showing me a Frost fence around a company, and said that this was the best way to prevent honest people from illegally entering the premises. I thought that was an excellent commentary, as the fence was also a measure that applied to people who did not have the means to circumvent it. That is the case of my mother, who has only her basic retirement income. It is another story for much wealthier people.

My question is for you, Mr. Howlett. I will come back to shell companies and the situation I started talking about.

The Australian authors of the study asked 3,700 intermediaries, in 182 countries, to create a shell company to facilitate the process. I am proud of being Canadian, but certain situations may have a negative effect on our pride. In Canada, the average number of attempts needed to establish a shell company, which is practically impossible to trace, was under 5—it is apparently 4—while the number of attempts necessary for access to tax havens was 25 on average.

Clearly, international pressure—and more specifically the pressure exerted by developed countries—has resulted in tax havens being more accountable than Canada.

Would you like to comment on that data as it relates to our study?

[*English*]

Mr. Dennis Howlett: When I had information from reliable sources in the U.K. about Canada's objection to the proposed beneficial ownership rules under the G-8, I was scratching my head in trying to figure out why this could be.

One of the possible reasons is that some of the practices in some jurisdictions in Canada may not come up to the proposed new international standard of really ensuring that the ultimate beneficial owner is clear when registering companies. Also, in our system you can register a company federally, but also provincially. The federal government may not want to undertake what it can't deliver in terms of provincial jurisdictions.

However, as I understand it, some of the pressure on the federal government, which was actually credited in budget 2013, comes from provincial governments that want the federal government to do more in terms of going after tax havens. I would think that if there is need for some reform in this regard in Canada, provincial governments would be willing to do this because they stand to benefit as well from additional tax revenue that may be generated from stronger international rules around beneficial ownership.

So I'm hoping, and the latest information I'm getting from the U.S. is that Canada maybe has moved somewhat on this issue. If that is the case, and we'll find out tomorrow, I would be very pleased to hear that, if the Canadian government in fact is going to support the proposed G-8 action plan.

● (1255)

[*Translation*]

The Chair: You have one minute left.

Mr. Raymond Côté: Would any other witnesses like to comment on this?

Yes, Mr. Deneault?

Mr. Alain Deneault: What surprises me in what I am hearing is how much this bill's problems are reduced to technical issues, while today, tax avoidance is largely related to those double taxation agreements. If we recognize that the double taxation agreements are actually double non-taxation agreements—as those agreements help individuals invest capital in subsidiaries located in tax havens and repatriate them to Canada without paying taxes—we see that those agreements play a part in the phenomenon of tax leakage.

Why are Canadians now “investing” some $53 billion in Barbados annually? It is because we have a double taxation agreement that allows Canadians, under the guise of investment, to play a game of circumvention and repatriate the capital. We are well aware that, if someone invests capital in Barbados, they do so strictly to take advantage of the legislation in terms of tax-related regulatory benefits. That is exactly what will happen with countries like Hong Kong. Under the pretext of investing in Hong Kong, people will act like they are paying taxes there, when, if any taxes are paid, they will be minimal. People who invest in Hong Kong often do so to benefit from the low tax rate and the pressure put on wages in those countries. That's outsourcing, which costs us a great deal politically, socially and economically. Since company outsourcing can be explained by this phenomenon....

[*English*]

The Chair: *Merci, Monsieur Deneault.*

Merci, Monsieur Côté.

I just wanted to follow up with Professor Cockfield. I realize that your invitation here was given on very short notice, but you talked about automatic information exchange, request on demand, and spontaneous exchanges. Have you had an opportunity to review article 25 in Bill S-17?

Prof. Arthur Cockfield: Article 25 of which treaty?

The Chair: It's dealing with exchange of information. It's article 25 in Bill S-17. It's in schedule 1.

Prof. Arthur Cockfield: I looked at the individual article on the exchange of information provisions. There are different ones in each treaty, and they were all consistent with article 26 of the OECD model tax convention.

The Chair: Okay. So you're satisfied with the language generally with respect to exchange of information?

Prof. Arthur Cockfield: I am.

I raised concerns about these additional amendments, or protocols, or whatever you call them. They'll become part of Canadian law once Parliament adopts Bill S-17. Traditionally, you negotiate a treaty, and then you might have a protocol to amend the treaty, but these are notes that in any event are going to be part of the law, and they cut back on article 26 of the OECD model tax treaty.

As I mentioned, the commentary pursuant to this article says that it should envision three types of information exchange, whereas we have new language in these amendments, with the three treaties at least, that suggests we will only use information upon request. Again, that's understandable, given the bargaining power of each side and what Canada is trying to achieve. But for these amendments, presumably the parties would not have entered into an agreement with Canada.

Nevertheless, I do have concerns about the amendments.

The Chair: Okay. I appreciate you putting those concerns forward.

Mr. Ernewein, could I get you to respond to those concerns?

● (1300)

Mr. Brian Ernewein: Well, it's as I said before. The Canadian position, where the circumstances warrant—where we think the other country is in a position to both collect the information to provide to us and to receive the information and respect its confidentiality—is to consider automatic exchange of information with that country.

But it's not a bottom line at this point. Most of our treaties provide authorization for that to happen but don't make it a requirement. That's the discussion point now at the G-8 and elsewhere: whether or not we should, as an international standard, move towards that.

The Chair: Is it fair for me to say, though, with respect to all of these bilateral negotiations and with respect to the treaties, that Canada is going as far as the other country will go and that we are in fact pushing as far as we can? Basically, if we're not getting as much as we would want, it's that the other country would not agree to it.

Mr. Brian Ernewein: I think that is fair. To explain the point, the general exchange of information provision in our tax treaties authorizes automatic exchange of information but does not require it. So for any country that seeks to do it with us—and if we're prepared to do it with them—the authority is already there.

As Mr. Castonguay has already explained, our tax information exchange agreements are a different animal, contemplating only exchange of information on request. If those were to be updated to allow for, or require, automatic exchange of information, changes would be needed.

The Chair: Thank you.

Mr. Rosenbloom, I wanted to return to a point. You finished your remarks by talking about a U.S. convention with Cyprus. I only have a couple of minutes of my round left, but my understanding is that the convention was from the mid-1980s.

I don't know if it has been updated since then, but this seems to be a unique case with respect to U.S. conventions. If so, why is it unique?

Mr. H. David Rosenbloom: It's unique in protecting the U.S. tax base from foreigners using Cyprus to invest in the United States. As I indicated later, that may not be as big a problem in Canada as it is for us, because we will generally reduce our tax down to zero, certainly on interest on royalties down to zero, and increasingly we're doing that on dividends. Canada maintains a substantial tax on the foreigners investing in Canada, so your concern is less important than ours.

I just mentioned it because, remember, my statement was prepared before I knew what you were going to focus on here. I would have thought that for us, in doing a treaty with Hong Kong, we would be very concerned about people investing in the United States, not about U.S. multinationals using Hong Kong abroad.

You might have more of a concern about the foreign investment, as was mentioned earlier—in other words, people putting money in Barbados and Hong Kong to invest outside Canada—but that's not because of the treaty. That's because your domestic statutory law allows people to repatriate tax from treaty countries free of further Canadian tax. We do not do that, so we have very little concern on the outbound side of treaties. We have much more concern on the inbound side of treaties; I think our situation may be different.

The answer to your question, however, is that the Cyprus treaty was deemed by the multinational community to be too general and too vague to be used in subsequent amendments. Since then, we've had all different manner of limitations on benefits provisions. Cyprus is unique, and it has not been changed.

The Chair: I appreciate that clarification.

Mr. Ernewein, could you just briefly add your thoughts there?

Mr. Brian Ernewein: Thank you very much.

I appreciate that I'm sort of an add-on here, so I will try to be brief, but I'm glad that you did return to this point, Chair, because the fact of the matter is that we do have some concerns. Perhaps they're not as grave, but we think they're still material for Canada in terms of treaty shopping. Indeed, a couple of the treaties that are in this package do contain, in the treaty proper, a rule trying to limit treaty shopping.

It's also the case that the 2013 federal budget proposed a consultation on treaty shopping, that is, the development and implementation following consultations, if that's where it ends up, on a domestic rule to try to curb the use of treaty shopping. It is all of a piece, I think. The U.S. has been engaged in this for quite some time, as we have more recently, but we do have some of those same concerns.

The Chair: Thank you. I appreciate that.

We'll now go to Mr. Rankin, please.

It's your round.

Mr. Murray Rankin: Thank you, Mr. Chair.

I think I'd like to ask Mr. Howlett a question first, and perhaps invite Mr. Deneault to respond, if he would.

I'd like to explore the relationship, as you did, between Bill S-17 and these double-taxation treaties and shell companies, and therefore beneficial ownership. You spoke a little bit about that, about the use of setting up shell companies and tax havens without knowing who the beneficial owners are of the shares of those companies. In a sense, my question is this: is there anything in these double-taxation treaties to address the problem of shell companies that you identified?

● (1305)

Mr. Dennis Howlett: No, not in my examination, but my point is that unless you have better rules globally on beneficial ownership, then none of this will be of any use at all, because if you can't establish clearly where the ultimate owner of a shell company or a trust account or any other instrument resides, then whom do you share that information with in another jurisdiction? If you can't establish clear rules on beneficial ownership, then everything else won't work.

The fact is that in many countries there is secrecy. With banking secrecy, it's possible to register companies without the local authorities really doing to any due diligence to establish who the ultimate owner is. As long as that kind of situation is allowed to prevail, then we're never going to be able to have.... Even automatic information exchange won't work, let alone these bilateral treaties, if you don't have that clearly fixed.

We have a problem, and it has to be fixed. The G-8 offers one of the best opportunities yet to get some momentum going forward to fix that problem. I'm hoping that Canada is going to support those efforts.

Mr. Murray Rankin: Monsieur Deneault, do you have any comments on the use of shell corporations in this context?

[*Translation*]

Mr. Alain Deneault: Exactly.

My answer is in the same vein. Tax information exchange agreements stipulate that information is disclosed only if it is collected. If you read the legislation on trust creation in Hong Kong, you will realize that we will not be getting any information under that agreement because Hong Kong does not collect it. In terms of politics, the message Canada is sending is very bad because the international community is currently trying to establish a balance of power with tax havens to force them to make some basic progress in the area of access to information and tax leaks.

This bill gives us the impression that we have some tools, when the tool box is actually empty. So we have entered the realm of illusion and hoaxes. It would really be better to have nothing at all, instead of having an illusion of a tool box, as is currently the case with Bill S-17 when it comes to Hong Kong.

[*English*]

Mr. Murray Rankin: I note that in the current issue of *National*, the journal of the Canadian Bar Association, there is an article on shell companies by Marc-André Séguin. He says that Canada is one of the "two most lax jurisdictions in the world when it comes to the rules for preventing the incorporation of anonymous shell companies".

As a consequence, Mr. Howlett, if that is accurate, how does that factor into your analysis?

Mr. Dennis Howlett: This is fairly recent research that has been done, and I think it does point out what should be of concern to all of us.

This is of concern, as I pointed out before, not only for tax evasion but also for money laundering, organized crime, financing terrorism, and so on. Even if the Canadian government has tightened up, in the recent budget, the reporting requirements of financial institutions—which is a step forward, and I support that—this new research points out that there are other glaring areas that need to be addressed if we're going to get a handle on this situation.

It's difficult, though, for one country to just set up its own system. What is preferable is a multilateral agreement about a new international global standard on beneficial ownership to tighten up on the rules of corporate registration and prevent shell companies, or trusts where it's not clear who the ultimate owner is.

I think what is being proposed at the G-8, which obviously is going to need to be followed up, is the route forward on addressing this problem.

● (1310)

The Chair: Thank you, Mr. Rankin.

I'll go to Ms. Glover, please.

Mrs. Shelly Glover: Thank you, Mr. Chair.

We've talked an awful lot outside the scope of Bill S-17. Mr. Howlett has in particular.

You continue to talk about G-8, Mr. Howlett, and you speculate as to what may or may not occur. I always enjoy listening to you. I particularly enjoy when you make reference to my policing background, as you did with regard to search warrants. But one thing I might say is that when we receive information that leads to a search warrant, it's not obviously public, but it is recorded information, as far as informants go.

So as you sit here today and refer to, you know, "I've heard people in the U.S. say", or "I've heard other countries say this about what Canada's proposing to do at G-8", I take issue with it, because you haven't divulged who said this.

To be very frank with you, it's somewhat selective listening, so I'd like you to hear once again what the Prime Minister himself said about the G-8, which you haven't referenced. You have referenced people you haven't identified, but here in fact is what the Prime Minister of Canada said just yesterday.

The question by the reporter was about the fact that combatting international tax evasion would be one of the main themes discussed at the G-8 summit, with two key issues: the public registry on beneficial ownership and the automatic tax information-sharing agreements. The reporter asked the Prime Minister to give his thoughts or reservations, if any, on either of these two particular issues.

Here's what the Right Hon. Stephen Harper had to say about those two things, which you've talked about at great length here today, sir, without ever referencing this.

Here's what he said, and of course I'm reading from the transcript:

> We're very supportive of all three Ts of Prime Minister Cameron's agenda.

The three Ts, of course, as everyone knows, are tax, trade, and transparency.

He goes on to say:

> You know, tax evasion, there's no upside to tax evasion. It's bad policy, it's bad politics, and governments lose revenue that governments should be getting.

He continued that we obviously believe in low tax rates in Canada, but that people need to pay the tax rates that we actually have. He added:

> The only reservation we will obviously express is that in terms of implementation in Canada, we're going to have to consult with our provinces because we are a federal state and they have taxation powers.
>
> ....It is important that we do it and that we do it together because when we're dealing with tax evasion, we're dealing with problems that cross borders. Even the most powerful governments of the world can't deal with these things by themselves so I look forward to being part of the declaration and to making progress on this as we leave the summit.

I hear Mr. Rankin asking whether or not I have a question for him.

My intervention is basically to correct the record, sir, because you have mentioned absolutely nothing about what the Prime Minister of Canada has said. He has clearly said he intends to address the things that you question whether or not he intends to address.

So I think it's beneficial for Canadians to hear exactly what the Prime Minister of Canada has said, and to ask you, sir, to please divulge who these informants are that you continue to say have said he will not address it.

Mr. Dennis Howlett: I did earlier acknowledge that I heard that there seems to be some movement forward from Canadians' position —

Mrs. Shelly Glover: From who? Who said this?

Mr. Dennis Howlett: Well, from hearing the Prime Minister speak. I did look at that video last night—

Mrs. Shelly Glover: You're saying the Prime Minister said what you said earlier? You told me it was from the U.S.

Mr. Dennis Howlett: No, the transcript that you just read I viewed online. I am encouraged by that. I think that does indicate some movement forward.

That was not, though, the position I was hearing a week ago—

Mrs. Shelly Glover: From who?

Mr. Dennis Howlett: —when I talked to not only British NGO sources and U.S. NGO sources, including Global Witness, which is one of the British NGOs, but I also confirmed that by talking to certain Canadian finance department officials in the G-8 team, which —

Mrs. Shelly Glover: I'm simply asking who, sir? Please name names, if we're really going to get to the crux of it, because otherwise it appears as if you really are evading.

Mr. Dennis Howlett: Well, the information I was able to gain from talking not only to British NGO staff, who were in direct touch with the British treasury—

● (1315)

Mrs. Shelly Glover: Name them.

Mr. Dennis Howlett: That's a second.... I don't know who their sources are in the British government—

Mrs. Shelly Glover: Ah.

Mr. Dennis Howlett: —but I put that together with what I was hearing from Canadian journalists as well.

The bottom line is that I do recognize that there seems to be some forward movement in Canada's position. I am pleased to see that, and I'm hoping that tomorrow we will learn if that is the case.

Now, there are two areas where we're still concerned. If Canada is supporting automatic information exchange, will they also support that being available for developing countries as well?

One of the concerns is that the G-8 or the OECD may limit access to that information only to the members of the G-8. That won't help the poorest countries, which are also hurting because of so much money fleeing from their countries due to tax havens.

So I'm hoping that it will be the full proposal put forward by the British Prime Minister that Canada is supporting.

The Chair: There are two Conservative rounds. You're now into the second one. You have about four minutes.

Mrs. Shelly Glover: Very good. I would like to go back to the questions.

As I say, Mr. Howlett, I'm not asking you these questions to be malicious in any way, but when you make statements to members of Parliament, when you make statements that are going to be on the national news, and when you make statements contradicting what the Prime Minister of Canada himself has said, I would expect that you would provide evidence for that.

I certainly wouldn't be able to get a search warrant without providing evidence that these things were said, so I would ask you once again, sir—although it appears that you don't have the names with you—to divulge these informants' names. You can submit that to the committee at your leisure, in a timely fashion, but I want to make it very clear that when it comes to this committee, we really do want to base our decisions on fact.

I have had conversations with all members of this committee about this tax convention, which is what we're supposed to be discussing today, and we all seem to be in agreement that it is a move forward. But to use the tax convention discussion to bring up the G-8 and to speculate based on absolutely no evidence, I think is unfortunate.

I think Canadians needed to hear that you're really basing your information on journalists who, quite frankly, sometimes get it wrong. You would agree with that, would you not?

Mr. Murray Rankin: The same as politicians.

Voices: Oh, oh!

Mrs. Shelly Glover: I agree with Mr. Rankin, as he chimes in, that certain politicians get it wrong as well, but in this case, I don't believe I'm wrong, sir. You're basing it on information and you're not prepared to say where it came from, and based on sometimes—

Mr. Dennis Howlett: The journalist analogy is a good one. Normally, any responsible journalist will not base a statement or a story only on one source. They check their sources. I know, from having submitted to journalists for publication, that they don't accept publication of an opinion article without multiple sources being checked.

Mrs. Shelly Glover: Well, sir, I have—

Mr. Dennis Howlett: In this case, that was done.

Mrs. Shelly Glover: May I interrupt for just a moment?

Mr. Dennis Howlett: I have multiple sources that corroborate the information I was getting initially from one. I did not make any accusation without a pretty thorough cross-referencing—

Mrs. Shelly Glover: I look forward to seeing those names, sir, when you submit that information.

Mr. Dennis Howlett: Okay.

Mrs. Shelly Glover: Do I have time left, Mr. Chair?

The Chair: You have about one minute.

Mrs. Shelly Glover: As far as the tax convention goes, though—and that is why we're here—I have listened to all of the testimony today, and I must say that I didn't hear anyone, except perhaps Ms. Alepin, who thinks we ought not to proceed with it.

If I made a mistake in interpreting that, Madam Alepin, please correct me, but in your opening statement you did say that you do not support these tax conventions. Am I correct in my interpretation?

Ms. Brigitte Alepin: I said in the opening statement, as you said, that I do not support Bill S-17. But at the close of my statement, I said that although I do not support it, I do realize that all the energy we are investing in trying to implement this system and the energy we are investing in trying to oppose it, as we presently do, may be a waste of time, considering the fact that maybe we should proceed in another way if we really want to stop this unfair system, whereby only a small group of taxpayers can take legal advantage of tax havens.

Mrs. Shelly Glover: Sure, and I appreciate that.

So to sum up, it sounds as though everyone except Ms. Alepin says this might be only one or two steps forward, and we'd like to take a hundred steps forward, but it is in the interests of Canada at this point to take at least those two steps forward.

Thank you.

● (1320)

The Chair: Thank you.

Colleagues, the meeting is over at 2. We have to do clause by clause, but other members have indicated that they wish to ask questions. Can I get an indication as to how long clause by clause will take?

It will take no time at all?

Mr. Murray Rankin: For the reasons we indicated, we're not going to oppose this bill on a clause-by-clause basis. So we don't need much time. I don't know how long your procedure takes, but we're not going to be registering—

The Chair: My procedure takes very little time.

Mr. Murray Rankin: So we have no clause-by-clause response to make.

The Chair: Mr. Hsu, do you have a comment on clause by clause? Okay.

Ms. Glover's time is up.

I don't have a certain time for clause by clause, so it depends.... We just have to finish the meeting by 2 p.m.

Monsieur Caron, is it a final round here then? I'm being very generous as chair, but we're really straying way beyond Bill S-17 in a lot of our questions and answers.

So if it's something germane to S-17....

Mr. Guy Caron: I will have a question for the officials when they come.

The Chair: It will be for the officials. Okay.

At this point, let me thank all of our witnesses for being here. I want to thank those of you who were here in Ottawa, and I want to thank Mr. Rosenbloom from New York and Monsieur Deneault from Paris,. Thank you very much for being here on very short notice. We very sincerely appreciate that.

We will call the officials back to the table.

Colleagues, I understand that you have the budget for this study before you. The amount requested is $3,800. Can I get someone to move this?

So moved by Mr. Hoback. All in favour?

(Motion agreed to)

The Chair: That budget is carried. Thank you, colleagues.

Mr. Ernewein, if you wish to stay at the table, you're certainly welcome to. It's your choice.

We welcome our two officials back to the table.

Colleagues, in terms of procedure, if you look at the clause-by-clause consideration part of the agenda, that is exactly how I will be proceeding.

So pursuant to Standing Order 75(1), consideration of clause 1, the short title, is postponed. Therefore, the chair calls clause 2.

You have a question at this point, Monsieur Caron?

Mr. Guy Caron: At what point can I actually ask my question?

The Chair: We'll do it on clause 2.

[*Translation*]

Mr. Caron, you can ask your question.

Mr. Guy Caron: Let's talk about negotiations.

Mr. Castonguay, I asked you how long the process took. You said that the treaty with Namibia was concluded first, in 2005-2006. The negotiations for a few treaties were completed fairly early—in 2006, 2007 and 2008. Why did you have to wait six years to introduce a bill to ratify them?

Mr. Alain Castonguay: The treaty with Namibia was signed in 2006. The negotiations began in 2005. I do not have the signature date on hand. The negotiations were completed before my arrival in 2006, but the treaty was signed a few years later. Obviously, once we, the negotiators, conclude an agreement, we have to begin a process to obtain the government's approval. That can take some time.

Mr. Guy Caron: If I have understood correctly, the negotiations were completed before 2006, but no other negotiations were held between then and the signature of the treaty prior to the passing of the bill.

● (1325)

Mr. Alain Castonguay: We signed it soon thereafter. I do not have the exact date with me. We knew that the treaty with Hong Kong was close at hand. So we wanted to be efficient, in terms of legislation, so that we would have a certain number of treaties to present to parliamentarians.

Mr. Guy Caron: I saw on the list that 11 agreements were signed, but are not yet in force. This bill covers six agreements.

If those 11 agreements have already been completed and signed, why are the 5 remaining ones not included?

Mr. Alain Castonguay: In Austria's case, the approval will be granted through an order in council, since the legislation makes this possible under the original agreement with that country. In Barbados's case, the ratification is close at hand. When it comes to France, we are waiting for the ratification, which will also be granted through an order in council. In Lebanon's case, the agreement was accepted under a Canadian piece of legislation in 1999, but Lebanon has not yet ratified it. As for Luxembourg, the agreement is part of the bill. In New Zealand's case, we have had to undertake additional negotiations to resolve a minor issue in the agreement we signed last year. That should be presented next year.

Mr. Guy Caron: I have one last question, which is also of a technical nature.

What determines whether an agreement will be adopted by order in council or through a bill presented to Parliament?

Mr. Alain Castonguay: The enabling legislation Canada passed in the 1970s and 1980s included a provision whereby amendments to treaties could be made by order in council. If my memory serves me right, that stopped being our policy in the mid-1980s or the early 1990s. Today, any amendment or new treaty must be presented to Parliament in the form of a bill.

Mr. Guy Caron: Thank you.

[*English*]

The Chair: Colleagues, we have clauses 2 to 15. Are there any clauses that members wish to speak to further on? Can I group these clauses together?

Some hon. members: Agreed.

The Chair: Shall clauses 2 to 15 carry?

(Clauses 2 to 15 inclusive agreed to)

The Chair: We have schedules 1 to 6. Can I group these schedules together?

Some hon. members: Agreed.

The Chair: Shall schedules 1 to 6 carry?

(Schedules 1 to 6 inclusive agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

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: Thank you so much.

I want to thank our officials for being here. I appreciate that very much.

I mean it this time when I say, have a very good summer.

Some hon. members: Oh, oh!

The Chair: Thank you so much, colleagues. Merci beaucoup.

[*Translation*]

The meeting is adjourned.