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Chair

Mr. Paul Steckle

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Tuesday, June 14, 2005

• (1530)

[English]

The Chair (Mr. Paul Steckle (Huron—Bruce, Lib.)): We will return to the order of business for this afternoon, until 5:30.

We will be considering clause 56 and looking at an amendment that was put forward in your package this morning. It will be the second one, but it hasn't got a number. It hasn't been moved yet.

Mr. Easter, on clause 56.

Hon. Wayne Easter (Parliamentary Secretary to the Minister of Agriculture and Agri-Food (Rural Development)): Clause 56, lines 16 to 18, is it that one?

The Chair: Yes, lines 16 to 18, that's right.

Hon. Wayne Easter: Yes, Mr. Chair, I move this amendment.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): We had a whole number of amendments to paragraph 56(q) before moving down to lines 16 to 18. We talked about paragraph 56(q) and then there were a number of amendments to it after that.

The Chair: Are you talking about those earlier ones under clause 56?

Mr. David Anderson: Page 66 of our package.

The Chair: We actually did all of those.

Mr. David Anderson: No, we didn't. We were just doing one when we shut down.

Hon. Wayne Easter: We had completed that one, hadn't we?

Mr. David Anderson: There are another six following on that same—

Mr. James Bezan (Selkirk—Interlake, CPC): We had finished page 65 and then we still had pages 66, 67, 68 to go.

Mr. David Anderson: I'm suggesting that we stay there, because that's line eight.

The Chair: We've done previous work, ladies and gentlemen, and we've stood certain items. We're dealing with those today.

Mr. David Anderson: But, Mr. Chair, when you weren't here, we did page 65.

The Chair: I'm familiar with where you're at.

Hon. Wayne Easter: Are you talking about page 65 in the green book?

Mr. David Anderson: Yes, we just did page 65.

The Chair: We have all of them listed in the order they were dealt with previously. Some have been dealt with and were found not to be

operable and were defeated, which impacted upon another one, which couldn't be acted upon because the other one was acted on. It was negated.

Mr. David Anderson: So what are you saying about pages 66, 67, and 67.1?

The Chair: Pages 66, 67, 67.1, 68, and 68.1 are fine—but we're not there yet.

Mr. David Anderson: What are we doing with pages 66, 67, 67.1? Are we just going past them?

The Chair: Yes, we're going past those.

Mr. David Anderson: Are we coming back to them, or are they done? We've already dealt with page 65.

The Chair: We dealt with the ones we could deal with, because they hadn't been dealt with before. If they had simply been stood, we could deal with them today, but if portions of a similar amendment, or something that impacted another amendment, were negated, then we couldn't come back and deal with that amendment, because it negated the first part.

We're going to be dealing with clause 56 and looking at lines 16 to 18.

Do you have any comments on this, Wayne?

Hon. Wayne Easter: To a certain extent, it's housekeeping as a result of the changes we had made. It really relates to the licensing of people who may import certain products or toxic substances that you need to put conditions on. We need the authority to go to the regulations to put in conditions on the importation of toxic substances and protections around that, etc. That's what the amendment is there for.

The Chair: Any questions?

Mr. James Bezan: I'm looking for it.

The Chair: It's just a couple of lines—two lines actually.

• (1535)

Hon. Wayne Easter: It supports clause 22, which is already carried. It's just putting the conditions around.... Unless the witnesses want to say anything further...

(Amendment agreed to on division) [See *Minutes of Proceedings*]

The Chair: The next one is NDP-17.2 on page 68.1.

[Translation]

Mr. Roger Gaudet (Montcalm, BQ): Mr. Chairman, have we dealt with the issue regarding clause 56, on page 27 of the bill?

[English]

Hon. Wayne Easter: There are some we haven't dealt with, Mr. Chair.

Mr. Chair, Roger was asking if we have dealt with clause 56, and we haven't dealt with all of clause 56 yet.

The Chair: No, there's still more on clause 56.

Are you going to move that one, Mr. Angus?

Mr. Charlie Angus (Timmins—James Bay, NDP): I believe these two were in relation to the original clause 43.1, bringing forward the review tribunal for compensation. Since we are no longer going that route, I don't think NDP-17 or NDP-17.2 are needed now.

The Chair: Okay. So they're withdrawn then, at your request.

Mr. Gerry Ritz (Battlefords—Lloydminster, CPC): NDP-17 and NDP-17.2 are withdrawn?

The Chair: No, NDP-17.2.

Mr. Gerry Ritz: Well, he said NDP-17 as well.

The Chair: NDP-17 as well?

Mr. Charlie Angus: Yes.

The Chair: Okay. That's right.

Mr. Charlie Angus: Our objection is that the review tribunal would be looking at the issue of compensation, and we're dealing with this in other areas.

The Chair: Okay.

Mr. Gerry Ritz: A point of clarification, Mr. Chair. Is he withdrawing NDP-17 and NDP-17.2?

The Chair: That's right.

Now we go to the government, which is another one on the pages given to you this morning. It is a third page, for line 41, page 27—Larry, that's on the document you got this morning—where you'll find the language.

You will move that?

Hon. Wayne Easter: I would so move. Yes, I would move that, Mr. Chair. The amendment really complements the ombudsman with the terms of the system.

Mr. Charlie Angus: Sorry, what page are we on?

The Chair: Page 27 in the bill. Clause 56, line 41 on page 27.

Hon. Wayne Easter: It sets out the procedure for issuing complaints, as a timeframe.

(Amendment agreed to on division) [See *Minutes of Proceedings*]

The Chair: Okay. If we go back to page 63, which would be NDP-15.1, that would allow us to finish up that clause.

Yes, Mr. Angus.

Mr. Charlie Angus: Mr. Chair, we had stayed that one until we had actually dealt with the advisory board. We haven't dealt with it. I

feel this one's still hanging out there until we deal with the advisory board. Then we'll know whether this is applicable or not.

The Chair: Okay, we'll continue to stand it then. We have to stand the clause until we have this one dealt with.

(Clause 56 allowed to stand)

The Chair: We stand the clause and we move now to NDP-18. It is on page 69.

Yes.

Mr. Charlie Angus: Mr. Chair, I withdraw it.

• (1540)

The Chair: Okay, it's been withdrawn.

The next one we will deal with is NDP-19, on page 70.

Mr. Charlie Angus: I'm moving that forward.

The Chair: You're moving that one forward?

Mr. Charlie Angus: Yes.

The Chair: Okay, do you want to speak to it?

Mr. Charlie Angus: I think it's fairly self-explanatory.

The Chair: Table officers, do you have any problem with that area?

Hon. Wayne Easter: We do.

The Chair: Mr. Easter.

Hon. Wayne Easter: The reason we don't support it, Mr. Chairman, is that this is currently a requirement when you're developing regulations. All regulations must be within the scope of the regulating authorities, so the motion is really redoing what is already considered when developing regulations.

The Standing Joint Committee on Scrutiny of Regulations is a parliamentary oversight committee that reviews regulations developed by all the federal government departments and agencies to ensure that the regulatory process is consistent with the Government of Canada's regulatory policy and the parameters of the applicable acts and regulation-making authorities. I think we had a little debate in the House just last week about the joint committee for scrutiny of regulations.

We oppose it on that basis.

I don't know if any of the witnesses want to add further to that.

Ms. Kristine Stolarik (Executive Director, Liaison, Preparedness and Policy Coordination, Canadian Food Inspection Agency): I just want to add, if I may, as regulators, we're also subject to following the federal regulatory policy, which scopes out clear procedures within the federal arena. The Statutory Instruments Act, as well, has the authorities for regulations, consolidation, revisions, publication, and gazette.

The Chair: Ms. Dudley.

Ms. Jane Dudley (Counsel, Legal Services, Canadian Food Inspection Agency): I'd just like to add that under the Statutory Instruments Act, all proposed regulations have to be examined by the Department of Justice to make sure they are in conformity with the regulation-making authority—with the statute under which they're being made.

The Chair: Mr. Angus.

Mr. Charlie Angus: Again, we put this forward.... Paragraph (y), the first two lines on page 28, was one of those catch-all phrases to prescribe anything that is to be prescribed under this act. Could we have prescribed anything that's to be prescribed under the terms of the Statutory Instruments Act? We wanted just a little more clarity as to what actually is being prescribed—when and how and under what circumstances.

The Chair: Do you agree with the table officers that what is there is adequate to do what you want them to do?

Mr. Charlie Angus: No, what I'm saying is that I felt there needed to be a bit more clarity in terms of what those powers are. Paragraph (y) is what I was concerned about. So if paragraph (y) were to say—that's on page 28, the first two lines, because this would be coming after that—"under the terms of the Statutory Instruments Act", that would cover....

Mr. Mark McCombs (Head and General Counsel, Legal Services, Canadian Food Inspection Agency): Mr. Chair, perhaps I can clarify (y).

Paragraph (y) is there because.... You will recall, all through the statute of the bill there is the word "prescribed". "Prescribed", where it falls outside of the section, is to be prescribed by regulation—that's the normal legal interpretation. Paragraph (y) is there to capture all the "prescribed" that are throughout the bill. The alternative to doing (y) was to go back and take each of the sections where things are to be prescribed, including the amendments that are now being proposed by the committee, and instead of (y), we would probably be up to (yy). The amendment you're proposing would make the prescription of Bill C-27 under the Statutory Instruments Act, meaning the Statutory Instruments Act would be making regulations for this bill...in the wording of (y).

Mr. Charlie Angus: I guess my concern is defining on what grounds we'd be prescribing, if there's any kind of wording. I suggested the Statutory Instruments Act, and you say that's what you're under, but now you're saying if we mention it then you're strictly under them, and nothing else.

Mr. Mark McCombs: No. Let me be a little clearer. When you create a regulation, you need enabling authority, which for us is clause 56. If you said "amended as prescribed by the Statutory Instruments Act", your new enabling authority to make regulations for the Canadian Food Inspection Agency would be the Statutory Instruments Act, so you'd be making regulations under the wrong act.

The alternative to doing what we've tried to do in (y), as I said, would be to go back and find each of the "prescribed" throughout the bill and list them.

• (1545)

Mr. Charlie Angus: So explain to me again why new clause 56.1 states, "No regulations may be made under section 56 unless they clearly fall within the ambit of the regulation-making power conferred by that section."

Mr. Mark McCombs: Let me read you subsection 3(2) of the Statutory Instruments Act. It says:

On receipt by the Clerk of the Privy Council of copies of a proposed regulation pursuant to subsection (1), the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice, shall examine the proposed regulation to ensure that

(a) it is authorized by the statute pursuant to which it is to be made—

which is effectively what you're saying in 56.1—

b) it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;

(c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights; and

(d) the form and draftsmanship of the proposed regulation are in accordance with established standards.

So the effective process is that a regulation gets submitted to the regulation section of the justice department, where regulatory drafting officers, who are counsel, go through the regulations. The first thing they have to do is go back to the enabling authority, which would be clause 56, and ask, is this regulation clearly in accordance with the regulatory authority? If it is they can move to the next stage, which asks if it is unexpected use of the power, and does it violate the charter?

Then they go through it and they redraft it to make sure that it respects all the regular drafting authorities, that it meets the bilingual society requirements, and that it's accordingly done in French and English and done appropriately for the two systems.

Mr. Charlie Angus: But new clause 56.1 doesn't impede that ability; it just clarifies that if you're having to prescribe something, a new issue that has come forward, you're doing it under the powers granted under the sections that have been described.

I guess I don't see that I'm proposing something that's going to interfere with—

The Chair: I'm not the legal person, but if we already have covered that....

Mr. Mark McCombs: Legally, it's not necessary, given this. I can't comment on what it does to the authority of the Standing Joint Committee on Scrutiny of Regulations, because they have an oversight mechanism that comes out of the Statutory Instruments Act.

I'm not sure whether that impacts on them and they wouldn't be able to agree with it. I can't tell you. But I know that it creates a different type of system.

The Chair: I think we have a bit of a problem here, and I don't think we should move into that area. If it's already covered and we're creating some difficulty, with your concurrence, would you be willing to withdraw it?

Mr. Charlie Angus: I'll withdraw it.

The Chair: Thanks very much, Charlie.

Madame Rivard, yes.

[Translation]

Ms. Denise Poirier-Rivard (Châteauguay—Saint-Constant, BQ): I would like to add something to paragraph 56(p). For consistency with amendment BQ-2, which has already been carried, I move that the following words be added at the end of the paragraph: "and the conditions attached thereto."

[English]

Hon. Wayne Easter: That's at page 27.

The Chair: Are you speaking to an amendment?

[Translation]

Ms. Denise Poirier-Rivard: Paragraph 56(p) is on page 27. We are moving that these words be added at the end in order to make this paragraph consistent with amendment BQ-2, which has already been carried.

[English]

The Chair: Do you want to repeat the amendment?

[Translation]

Ms. Denise Poirier-Rivard: For consistency with amendment BQ-2, which has already been carried, we move that the following words be added at the end of paragraph 56(p), which is on page 27: "and the conditions attached thereto."

[English]

The Chair: At the end of "for a licence"?

[Translation]

Ms. Denise Poirier-Rivard: Yes, we would add the words "and the conditions attached thereto."

•(1550)

[English]

Hon. Wayne Easter: We have no problem with that, Mr. Chair.

The Chair: You have no problem with that, okay.

[Translation]

Ms. Kristine Stolarik: Can word "attached" modify the word "licences"?

Ms. Denise Poirier-Rivard: Yes.

Ms. Kristine Stolarik: Okay. No problem.

[English]

The Chair: Okay. We need that. Do you want to have the language brought to the table here so we have that, just so it's clearly recorded?

I guess we have to call that an amendment. You would duly move that amendment.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Can you just read it again?

The Chair: Okay, do you want to read that for us, Madame Rivard?

[Translation]

Ms. Denise Poirier-Rivard: Yes. The idea is simply to make this paragraph consistent with amendment BQ-2. I am reading paragraph 56(p) on page 27 of the bill as it would read if this amendment were carried:

(p) prescribing the classes of licences that the Minister may issue, the duration of licences [...]

It is just a small change to the wording. The rest of the paragraph does not change.

[English]

Mr. Larry Miller: Could we have the English version of the amendment?

The Chair: You already have it.

Mr. Gerry Ritz: She's only correcting the French.

Mr. Larry Miller: Oh, so the interpreters messed up.

The Chair: That was my fault. It was not in the English version. The words kept coming through the same for me, and I wasn't picking up that the problem was on the French side.

Mr. David Anderson: Mr. Chair, I noticed some people shaking their heads at the back when you said it was just the French being changed.

The Chair: It was in the French interpretation.

[Translation]

Ms. Denise Poirier-Rivard: This is an addition, not a correction.

[English]

Hon. Wayne Easter: It has to be for both.

The Chair: The language that was read just a moment ago is already in paragraph 56(p).

Hon. Wayne Easter: It says:

...the duration of licences, the conditions to be attached to any class of licence and the information to be submitted by an applicant for a licence, as well as any attached conditions

•(1555)

The Chair: Is that what you want?

[Translation]

Ms. Denise Poirier-Rivard: This does not appear in French.

[English]

The Chair: I see. So it affects both languages because you've added a piece on the end of that sentence.

Do we understand that? It's not clear yet. I apologize for this confusion, but I hear it in only one language. What I hear now is that there's been a slight modification to the ending by adding "by an applicant for a licence". There is more wording that you have just given us, Mr. Easter. That would make it consistent with both languages, because the BQ had another amendment. Is that correct? You want it to be consistent.

[Translation]

Ms. Denise Poirier-Rivard: Yes.

[English]

Hon. Wayne Easter: I think we're all right.

(Amendment agreed to on division)

The Chair: If there are any little problems, we'll tweak that.

Next is government amendment L-1.01 on page 73.01. Ms. Ur, do you want to move that?

Mrs. Rose-Marie Ur (Lambton—Kent—Middlesex, Lib.): I so move.

It's basically a result of the dairy amendment I brought forth last week, and it's just a housekeeping chore.

The Chair: I'm told that's inadmissible because headings are not part of the bill and cannot be amended. I find it a rather trivial thing. I don't think we need royal prerogative here to either pass or....

Ms. Kristine Stolarik: I'm not the lawyer, but I think it's kind of silly if we can't just make a housekeeping amendment on a title.

The Chair: It's in the rules. I'm just reading it here now.

Mr. Gerry Ritz: When we get to the dairy terms, can we just title it as "other amendments"? If we can't change titles, can we put other titles in?

The Chair: There's a way we're going to deal with that.

Mr. Gerry Ritz: Okay, we'll leave it in your hands.

The Chair: I'm going to have to rule that inadmissible. Sorry about that, colleague. I hate to rule admissibility on amendments. So much work goes into them.

Let's go to clause 67.

Hon. Wayne Easter: What is the amendment?

The Chair: We're just talking about the clause. There's no amendment. We have a number of clauses now with no amendments, but we haven't dealt with them before.

Mr. Ritz.

Mr. Gerry Ritz: If I remember correctly, we stood this clause because we were looking for a synopsis on what change or expansion of powers was being implemented here.

•(1600)

The Chair: I don't think it was ever stood, was it?

Mr. Gerry Ritz: I understood we stood this because we were waiting to see a synopsis of the changes or expansions of powers that would be created under clause 67. I've got that jotted down in the border here.

Hon. Wayne Easter: It really relates to clauses 67, 68, 69, 70, and 71.

The Chair: It goes right through to clause 71.

Mr. Gerry Ritz: They're actually repealing a whole bunch of—

Mr. James Bezan: We want to know what's being thrown out.

Mr. Gerry Ritz: We talked about a synopsis of what's out and what's in.

The Chair: Can someone help us? I guess we really want to know what we are repealing and what impact it has on the bill.

Ms. Kristine Stolarik: The information I got was that in the inspection charts we provided, you had all the acts with all the inspection authorities. You had X's on them. The CAPA ones were highlighted in there on the ones that were basically carried over and the ones that were being repealed. So it should be in those inspection charts that were handed out a couple of times here.

The Chair: Could there be anything in any one of those down to clause 71 that would stand out as unusual? It's almost impossible unless something really stands out that you would be able to point out to the committee. We don't want to spend a lot of time talking about something that's redundant.

Mr. Gerry Ritz: I couldn't make sense out of it. I understand what's crossed out, but it just doesn't mean anything.

The Chair: Most of us are interested in how that would affect the thrust of this committee's direction. Would any of this, up till clause 71, affect us in any significant way?

Mr. Mark McCombs: The reason they're being repealed is that they're being replaced by new powers in the bill. So it's a consolidation, a stabilization. I can go through each of the sections.

The Chair: I don't think we want to do that.

Mr. Mark McCombs: They were repealing existing authorities and replacing them with new ones. That was the reason we did the chart, for convenience, because there are so many.

The Chair: If we haven't had time to go through them up till now, we're not going to take the time this afternoon, I can tell you that.

Can we look at these clauses one after the other and deal with them?

(Clauses 67 to 71 agreed to on division)

The Chair: Now we move to paragraph 71.1(1), another new one. We have an amendment, NDP-20, on page 75.

Mr. Angus, would you move this?

Mr. Charlie Angus: Yes. I thought in our previous discussions on this that I had made a change to it, but I guess it didn't render itself.

In subclause 10.(1)—“The Minister shall appoint an advisory board of not more than twelve members representing all major regions of Canada.”—I would strike the rest of that paragraph.

I indicated my desire to do this the last time, but it's still on there.

The Chair: Okay, so it's three lines rather than whatever it was.

Mr. Charlie Angus: For Mr. Miller, I don't think the regulations should be defining the organizations by name. It would be too limiting and would create more problems than it could solve. It should be enough just to say “The Minister shall appoint an advisory board of not more than twelve members representing all major regions of Canada.”

The Chair: Since you've asked for that, I need to seek concurrence for us to consider the amendment in its new form, as you've proposed it.

Everyone agrees that this is a more favourable amendment?

•(1605)

Hon. Wayne Easter: I have no problem with the amendment, but I have serious problems with NDP-20 as a whole. I think we need to replace it with the government amendment, which is on an advisory committee. It does the same thing without complicating matters.

The Chair: We have this one before us. Can we stand this till we have a look at the other one? Then we'll allow Mr. Angus to make a determination.

Some hon. members: Agreed.

Mr. James Bezan: What's that?

The Chair: We'll stand this particular amendment until we look at G-13.2. Where is that one?

Hon. Wayne Easter: It will be on this sheet, Mr. Chair.

The Chair: Government 13.2—are you putting it aside for now and looking at the one you brought in today?

Hon. Wayne Easter: Yes.

The Chair: So we're not dealing with—

Hon. Wayne Easter: On what page in the book is G-13.2?

The Chair: Page 78, I'm told. We're stroking that one?

Hon. Wayne Easter: We're stroking it. We wanted to try to tidy it up, based on the discussion we had at committee the other day.

Amendment G-13.2 was withdrawn and replaced with—

The Chair: New clause 71.1.

Yes, Mr. Miller.

Mr. Larry Miller: Mr. Chairman, I have a big problem, for starters, with the minister being able to appoint this board. In his amendment, Mr. Angus provides that proposed new subsection 10(2) would at least allow this committee to review the appointments to that board. I could find that a little bit palatable, but I sure can't with Mr. Easter's amendment, with no mention of that at all. It leaves total control with the minister, and I will not support that.

Hon. Wayne Easter: Mr. Chair, with the system of government we live in, the minister is always accountable and responsible to Parliament, to this committee, and through Parliament to the Canadian people. We're not operating in the American system; we're operating in the Canadian system.

Mr. Larry Miller: Who's talking about the American system?

Hon. Wayne Easter: You were.

Mr. Larry Miller: Baloney. We're talking about having some say. This committee is accountable too.

The Chair: Mr. Miller, please.

Mr. Larry Miller: I got interrupted by him, Mr. Chairman.

The Chair: I want us to respect one another. We're here to get the job done, and I won't tolerate any more back and forth without properly going through the chair, please.

We have the government amendment. We formerly had Mr. Angus's amendment. I want Mr. Angus to speak to the new amendment as it relates to his cause, which he felt he had put forward in a particular way and which he may still want to put forward in that way.

Mr. Charlie Angus: My problem with Mr. Easter's amendment is that it doesn't really give any clarity as to what this advisory board will do. I think one of the concerns we heard from people in the industry was that an advisory board was set up and then it didn't sit. A new minister came along and it was just put on the shelf.

What we were trying to do was actually lay out a bit of a framework people could look to and say, I see that advisory board, as in proposed new paragraph 10(2.2)(e), "provide a forum for the food industry and government to discuss food safety, quality...traceability"; 10(2.2)(d), "provide policy direction...taking into account the challenges facing the food industry". We talk about being able to review third-party audit reports to make sure we're moving in the right direction.

What we have from Mr. Easter is basically just laying out the terms under which they sit, with nothing else. They might never have to actually meet the minister. They might sit for three years and never convene a single meeting.

We actually talk about what some of their responsibilities are. We're not trying to micromanage how that advisory committee is going to be, but we want to put a little bit of meat on the bones so in future, if Mr. Mitchell isn't our minister and someone else takes his place, that advisory board isn't shelved.

The Chair: Mr. Anderson.

Mr. David Anderson: I'm very surprised, actually, that the government has come back with something as flimsy and basically empty as this.

We've heard tons of things about accountability, that the board needs to be accountable. We came with a suggestion earlier that would have given the committee power over the agency. Mr. Easter went berserk on that one, and Charlie's is about halfway to where that one was.

There's no role defined in the government amendment here, there are no responsibilities defined, and there are no obligations defined.

This committee has a history of failure in terms of the fact that it hasn't even been in place for the last couple of years. There's no way that's good enough in light of what we've heard from the industry. I think Charlie has found a reasonable middle ground here, if we're going to support anything.

●(1610)

The Chair: Mr. Easter, you have one more time at the cat here.

Hon. Wayne Easter: Could I outline my concerns with the proposed amendment of the NDP?

The Chair: Yes, you can.

Hon. Wayne Easter: In section 10 of the CFIA Act it does allow the minister to name the mandate, the scope, and the responsibilities of the advisory board, and there are no limitations in terms of that mandate as set out in the legislation. What we're really getting into, I think, under the NDP proposal is an advisory board that could circumvent the minister's ability to establish a broad mandate for the advisory board. We could get into conflicts in terms of policy direction. After all, as I said earlier in my exchange with Larry, the minister is responsible for, and has the overall direction of, the agency. What this motion will do is allow the advisory board to supplant the authority of the minister and override decisions that he or she may make with respect to the operations of the agency. I really don't think that's what we want to do, but that's what the amendment will in fact do.

This is a regulatory body; you can't be second-guessing it. We have the point David just made, and I'll go through the list again in terms of oversight in this agency. We've added in re-inspection. There's the ministerial oversight itself. In terms of appointments, we as a committee have the right to call those individuals before us. It may be after the fact, but we have that responsibility. There's the overall accountability to the Minister of Health. There's the oversight through ourselves, through the Auditor General. And there are some of the other processes we talked about earlier today. There are all kinds of checks and balances here.

What we really require, I think, is an advisory board that can look at ongoing operations, that can advise the minister, and through the minister to the president of the agency. What we're trying to do, through the government amendment, is to ensure that there is a report annually.

I'll not disagree with the committee members who said the record in the last advisory committee has not been good through about three ministers. However, with the measures in the government amendment that should not happen—because we clearly state in here that each year you have to submit to the minister a report on the advisory board's activities for the preceding calendar year—if we as a committee see that the advisory board is not meeting and not doing its job, we can call the minister to task on that.

So I think the bottom line is we leave the responsibilities where they should be, which is with the minister, and yet we provide the advice necessary.

The Chair: Mr. Ritz, you're first, and then we'll go to Mr. Miller and Mr. Angus.

Mr. Gerry Ritz: Thank you, Mr. Chairman.

Since Mr. Easter spoke I'm actually more in favour of the NDP motion. We don't know that the advisory committee is not doing its job. As the Standing Committee on Agriculture and Agri-Food, we don't know that, unless the minister reports that they aren't, and that just doesn't happen.

On the oversight that he outlined, as good as it may sound, it's the effectiveness that we're challenged with, and from the list that he talked about, it's always reactive. What this advisory committee does is going to be proactive, and I think it's more incumbent on us to get ahead of the curve on some of these things. With the crisis that we have faced in this country, a bit of a proactive look by an advisory committee could be quite helpful.

The only thing that I don't see in Mr. Angus's amendment that I would like to see is a reporting mechanism.

I don't see that there, Charlie, and if you want to work that in as to how often and to whom they report, then I'm fully in favour of the NDP amendment.

• (1615)

The Chair: I'll take you in a minute, Mr. Miller.

I'm just wondering how many jurisdictions in Canada would have a mechanism such as we're proposing here today. I'm sure that every provincial government minister appoints his or her people—I'm sure in every jurisdiction you can imagine, basically. If you went through a parliamentary committee procedure to do this, you would have a political system that simply would get bogged down. I simply can't see it working. I quite understand the reasoning behind Mr. Angus's amendment and what he's asking for, but I think we're running into something here that's going to run amok before we ever get it out of the ditch.

Mr. Miller.

Mr. Larry Miller: Thanks, Mr. Chairman.

I still support Mr. Angus's amendment. I think Mr. Easter's fear is that it's going to get rid of the patronage process that's in there now.

Have no fear, if there's a majority government in place, it will still go flying through the committee, and he'll get his way anyway. That fear isn't there.

Mr. Chairman, I support the amendment put forward by Mr. Angus.

The Chair: Okay.

Mr. Angus is next, then Mr. Bezan, and Mr. Gaudet.

Mr. Charlie Angus: Thank you, Mr. Chair.

I think part of the problem on what we're dealing with is that the government is dealing with the burden of history. There was a committee and it didn't meet. Ministers came and went, and nobody seemed to want to meet. We had some good people on that committee.

I don't have a problem with the appointments, because I think there is less patronage in agriculture than we see in some of the other areas we're looking at. I imagine that we would have qualified people. My concern is that there is no mandate, and there's no clarity for them to actually do anything. We are still basically giving the government a free card to shelve that if they want to.

First of all, I would suggest that we vote on either one amendment or the other. Whoever's side comes up on top, comes up on top.

If it can be shown in my amendment where this committee is usurping the powers of the minister, I'm willing to discuss that. But I believe there has to be a little more meat on the advisory body's bones in order for us to move ahead on this. Right now, with the government amendment, there is none.

Maybe there's too much flesh on mine. I don't think there is, but if you can show me where we're usurping powers and it has to be changed, I'd be willing to entertain that. Otherwise, as I say, let's vote on it.

The Chair: Mr. Bezan, and then Mr. Gaudet.

Mr. James Bezan: I only want to say that I support the amendment brought forward by Charlie. We aren't reinventing the wheel. The advisory board has been in place, but it has been ineffective. We're now going to make sure that the mandate is there, they're going to be appointed, they're going to do the job, and there's a job description.

Again, going back to what the industry has told us, there hasn't been oversight and there hasn't been the ability to have input. We're developing a mechanism to provide advice to the minister and the agency to go ahead with what the industry is bringing forward.

I think it's a great opportunity. It would be very short-sighted of us to not support the NDP amendment.

The Chair: Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: Thank you, Mr. Chairman.

In my former life, not such a long time ago, I was the head of a regional municipality with 14 mayors. We had an advisory committee whose only task was to make recommendations. For example, the committee made recommendations on a policy about agricultural zoning or lifting an agricultural zoning designation. However, it was up to the regional municipality to make the decisions.

In this case, they cannot oversee and review all the decisions made by the agency. This would be more of an advisory board, but an oversight body. It would be worse than the Auditor General of Canada. I don't want this group to run things. They want to provide advice, to recommend certain things to the minister. If we committee members are not pleased with what the minister is doing, we will have the advisory board come in and we will ask questions about what it did. We could have the minister come and answer questions. In any case, it is as though we were sending in the Auditor General. I will not be able to support that.

[English]

The Chair: Ms. Stolarik.

Ms. Kristine Stolarik: I thought that perhaps I could give members a little clarity on the minister's advisory board.

There were eight meetings that were held from February 1998 to February 2000, and then there was never one that was reactivated.

The types of files they looked at were actually very much horizontal files. The national cattle ID was one of the files they provided advice on, as well as HACCP, aquaculture, RBST, fresh produce disputes, animal health, consultation practices of the agency, and biotech.

I only wanted to leave that on the table to remind people that it's larger than the food industry. We do forests, fish, and a lot of other things beyond the food industry as well.

I wanted to remind people of that and to also put on the record that there has been one. There was one from 1998 to 2000, but it hasn't been reactivated.

•(1620)

The Chair: Mr. Easter.

Hon. Wayne Easter: To come back to something, Charlie said if we could show him some area, and the area that I'm by far most concerned about is (2.2)(a), where you provide oversight and review all the decisions made by the agency under the Canadian Food Inspection Agency Enforcement Act.

Let's keep in mind, Mr. Chair, that the CFIA is an enforcement agency to protect food health and safety, basically, and to assure the public and assure the countries we're exporting to that we are in fact providing a safe product, under safe rules, etc. This clause, to me, basically indicates that the advisory board would give policy direction to the agency.

What do we need the minister for? That's what our parliamentary system is all about. That's why we can stand up in the Parliament of Canada and question the minister, because he is ultimately responsible for the policy direction. If we get into situations where you override the minister, I think we really are creating a problem here. When the intention of the advisory committee is good.... I think

the examples that Christine made are good, and we now have that cattle identification system. The committee should have continued to meet. I think we do that here and I think you'll find that the mandate of the committee will be in accordance with what members' wishes are.

It has nothing to do with patronage, Larry.

The Chair: I think we're going into an area here where I think we all know what we want, but the failure and the reason there's doubt about this agency is due to the fact that there was a period of time when this advisory board was not functioning or was not there. Given the fact that we didn't know—perhaps there are reasons for that, not good ones, I'm sure, but there were probably reasons—perhaps as a committee we should have picked that up, and perhaps as an agency they should have been reporting to us, or the minister should have been. Somebody should have been reporting.

But given that, even in your amendment, Mr. Easter, there's nothing to say there is a requirement. The minister must appoint, but we don't specify. We know that they're there for three years. Normally with three-year terms there are people who are there for one, two, and three-year appointments, and you can appoint so that they're offsetting each other so that they don't all expire at the same time. That allows some continuity. I'm wondering if there are ways in which we can enforce this not happening again. This is what's causing us our biggest concern here.

Hon. Wayne Easter: If you read the amendment, Mr. Chair, it's not the minister "may appoint", it's the minister "shall appoint an advisory board of not more than twelve members". So as I would understand it, if and when this act gets through Parliament, one of the first mandates is the minister—as we clearly state in here—"shall appoint an advisory board", and it is spelled out in other areas of the act as well, so it would have to happen.

The way we believe you don't run into the situation that has happened previously is "The Chairperson shall, no later than March 31 of each year, submit to the Minister a report on the advisory board's activities for the preceding calendar year." Then that report will be available to the committee. If they are inactive, then the committee's going to know, and the committee can call the minister on the mat and ask, "Why in the devil aren't you utilizing that advisory board?"

•(1625)

The Chair: I have one more question I want to ask someone.

Did the previous minister have the same obligations on the onus "shall appoint" or "may appoint", or was it simply that he neglected to do what he was authorized by authority to do?

Mr. Mark McCombs: It was "shall".

The Chair: It was "shall".

Mr. Angus.

Mr. Charlie Angus: Again, I'm willing to horse-trade here, but I feel we have to get some movement back; otherwise we should just vote.

To me, the three areas that we really want to have in there.... The ability to review third-party audit reports and provide recommendations, maybe not to the agency but the minister—I think that's fair.

Provide now maybe not “policy direction”, if you don't want to say there's going to be political interference, but provide advice to the minister, taking in challenges facing the food industry.

And paragraph (e):

provide a forum for the food industry and government to discuss food safety, quality and traceability and new industry initiatives in respect of animal and plant health in a fair and equitable manner.

That gives a mandate. It gives a clear example of who they would be dealing with, in terms of this bill.

I'm willing to accept those three. I can lose some of the other ones, but right now there's nothing there, other than the fact that the minister shall appoint them, and good luck—Bob's your uncle.

The Chair: Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: I have a recommendation, with which you will perhaps agree. I would combine two motions. In amendment NDP-20, I would remove paragraphs 10(2.2)(a) (b), and (c). Paragraph 10(2.2)(d) would read as follows:

(d) Provide recommendations to the Agency taking into account the challenges facing the food industry;

I would leave paragraph (e) intact, and subclauses 7 and 8 as well:
(7) The advisory board shall meet at least once every three months [...]

That would be a very good idea. In any case, I would have no problem with that. The board would be there in a role similar to that of the Auditor General. We would remove paragraphs (a), (b) and (c). The words in paragraph (d): “provide policy direction”, would be replaced by: “provide recommendations to the Agency, taking into account the challenges facing the food industry”. Perhaps the minister could use this to get recommendations from the advisory board. I do not know how to add that, but the minister could ask the advisory board to make recommendations.

[*English*]

The Chair: Yes. I just want to make sure we get this thing right.

Mr. Anderson, you wanted in, did you not? Mr. Ritz now. Okay, carry on.

Mr. Gerry Ritz: There are a number of points to go through. I think there's a lot to work with in this particular recommendation. Let's take it point by point.

In proposed subsection 10(1) it says “not more than twelve members representing all major regions of Canada”. I think we would be better served if they are a cross-section of the major industries that are involved under CFIA, as opposed to regions.

Second, I have no problem with taking out paragraph (2.2)(b). That's not a concern. Down in paragraph (2.2)(d), I think saying “provide recommendations”, as Roger just said, is good. We also have to expand it. As Kristine said, it isn't just the food industry. We have to talk about industry as a whole. So take out “food”.

When you get down to paragraph (2.2)(e), then, “provide a forum for industry and government to discuss” issues and so on, you don't necessarily want to limit it to certain ones. I think we have to broaden the scope of this to get past it being just for food. So those are just a couple of things that have been in the mix. I don't know

how we would word it, but I think there's enough here to work with—

The Chair: In my view, we've had a subamendment presented. You have another subamendment. If we can incorporate these into one subamendment, I would rather deal with one than deal with three or four.

Mr. Angus.

Mr. Charlie Angus: I think we're all actually moving towards the real—

The Chair: Oh, I'm sorry. Mr. Miller, you're next. I apologize.

Mr. Larry Miller: Mine is a question to Mr. Gaudet on his amendment. Personally, I don't have a big problem taking out paragraph (2.2)(a), but I'd like to ask him why he wants to pull out paragraphs (2.2)(b) and (2.2)(c) about the audits. Roger, what's your...?

[*Translation*]

Mr. Roger Gaudet: I think the audits will be done by the Auditor General. In fact, I think this must already be the case. That is her job.

[*English*]

The Chair: Let's deal with the subamendment here and decide what that really is.

• (1630)

Mr. Larry Miller: That's what he's talking about, hauling them out. I was trying to get a feel for why he feels they should come out of there, that's all.

The Chair: Because we can't have two or three subamendments here at once. We have to deal with one at a time. I'd sooner incorporate some of the ideas into one subamendment if you want to do that.

Basically, we really have, in fact, two amendments. We have an amendment by the government and we have an amendment by Mr. Angus on the table. Now we have a subamendment to Mr. Angus's amendment. We have to make some sense of it. I'm trying to give as much latitude at the table here as possible so we can accommodate, but it's simply not working. I know Mr. Boshcoff wants to speak. Mr. Angus wants to speak, and Mr. Anderson, who is the last one, wants to speak.

Mr. Easter, because you have one of the amendments on the table, I'm going to ask you to speak first, and then Mr. Boshcoff, because he hasn't been on yet.

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): I think it's horribly out of order, Mr. Chair, to give preference to another member. Do you have a speaking list?

The Chair: I have a speaking list, but—

Mr. Ken Boshcoff: Then I suggest you follow it as a fair and equitable chairman.

The Chair: I'm trying to bring clarity to this matter.

Mr. Ken Boshcoff: Aren't we all?

The Chair: Okay, Mr. Angus. Mr. Angus, you're first.

Mr. Charlie Angus: Well, I was totally waylaid by that. I thought I was about fifth on the list.

I think we're moving towards that. I would like to make a recommendation that maybe Wayne and I should rewrite our amendments and then bring them back. We're getting down to wording now. We've had so many variations of it that it's going to get more and more difficult. If we came back with at least two clean new amendments that we could look at and see if we can piece them together, we might actually work our way through this.

The Chair: Mr. Boshcoff.

Mr. Ken Boshcoff: *Boshcoff*, but close enough—Mr. *Steckley*.

Some hon. members: Oh, oh!

The Chair: I'm in the bush most of the time.

Mr. Ken Boshcoff: I don't think we're very far apart with the suggestions that have been made. I see that people on both sides are kind of nodding when some of these suggestions are coming forward. I think it can actually be put together quite well. I don't know if we actually have to write out two separate adversarial points here, but I think we're getting somewhere with both the subamendment and the amendment; it's very livable and acceptable.

I would just offer that I see that the question has been raised by Mr. Ritz about representing all major industries. I was very pleased just to see in there “regions”, representing areas that feel that way. If it's going to be redrafted, then perhaps, in the spirit of accommodation, both industry and regions could be somehow included.

The Chair: Mr. Anderson, and then I'm going to, I think, determine that we'll stand this for today and allow some...unless Mr. Easter...

Mr. Anderson, you first.

Mr. David Anderson: No, I was going to request that you stand it, so I'll leave it at that.

The Chair: Mr. Easter, the last word.

Hon. Wayne Easter: On Roger's point, I think what's coming through here is Roger's experience in terms of advisory bodies within municipalities. You had to have some way of having somebody responsible, and advisory bodies can't supplant that.

I think proposed subsection 10(2.2) of the NDP amendment covers it all anyway, without stating it. It says:

The advisory board shall advise the Minister on any matter within the responsibilities of the Agency

If you end it there, you really don't need to get into the proposed paragraphs 10(2.2)(a), (b), and (c) that Roger said to take out anyway.

I think we can work with it and come to an accommodation.

The Chair: Let's stand that, with your permission, and come back to it. In the meantime, you can get together, Mr. Angus and Mr. Easter, and try to put something together that makes some sense.

So new clause 71.1 has been stood.

(Amendment allowed to stand)

Mr. Charlie Angus: I'd just like to say into the record that a camel was a horse that was made by a committee. Our horse has many lumps on it right now, but it's still moving.

The Chair: I've been told that clause 72 is related to new clause 71.1. Therefore, we're going to ask that it be stood today.

(Clause 72 allowed to stand)

(On clause 91)

The Chair: Clause 91 has no amendments.

Ms. Kristine Stolarik: You had asked for examples.

Mr. Gerry Ritz: Yes, right, thank you. It's a good thing you wrote it down.

• (1635)

Ms. Kristine Stolarik: I just have my own little crib note, “examples”, so if the committee will allow me, I will give you some examples.

We went back and consulted with our fish program experts and asked why this was required. It's to capture the freshwater animals. We now have an increased market, in the ethnic market, for freshwater turtles, eels, frogs, and also freshwater marine plants, such as lotus plants.

As we have it now, it's more marine plants, not the freshwater market. So this was to capture that. We're doing some things now—and we will in future—to take into consideration freshwater products.

The Chair: Is this understood?

I think that probably added some clarity to it.

(Clause 91 agreed to on division)

(On clause 118)

The Chair: I don't recall the reasoning behind standing clause 118. And there are no amendments.

Mr. Gerry Ritz: I think there was a question as to how big a change this was from what was existing.

The Chair: The word “thing” comes up again here, so perhaps it was related to the fact that we didn't have a definition of that.

Mr. Gerry Ritz: That could have been part of it. In the sidebar, I have a note asking what the changes were from the existing to this.

Ms. Kristine Stolarik: I think we're just dropping some words.

The Chair: Yes, Ms. Dudley.

Ms. Jane Dudley: In the original paragraph 44(1)(a), we had the word “inspection”, which was taken out of the Plant Protection Act and kept in this bill. And in paragraph 44(1)(b), we've taken out the words “seizure” and “detention” from the Plant Protection Act and covered them in this bill.

So it's just a wording change.

The Chair: Okay, we've had some clarification.

(Clause 44 agreed to on division)

(On clause 128—*Bill C-26*)

The Chair: There is a new government amendment in the package that came today.

Hon. Wayne Easter: May I so move, Mr. Chair.

We had put the words “qualified persons” in previously, and this would deal with qualified persons in the Canada Border Services Agency.

(Amendment agreed to on division) [See *Minutes of Proceedings*]

The Chair: And is G-15 simply another amendment?

Hon. Wayne Easter: It's withdrawn.

The Chair: Okay.

(Clause 128 as amended agreed to on division)

The Chair: What's the problem?

Mr. Gerry Ritz: Where are we?

The Chair: We're on clause 128, dealing with the new government amendment, which Mr. Easter just spoke to.

Hon. Wayne Easter: Amendment G-15 was withdrawn, Mr. Chairman, and replaced with the one that's now before you.

The Chair: That's right, so I'm simply running into some of the material that was there before, but which is no longer on the table.

Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: In the text distributed by Mr. Easter this morning, we read: “the qualified persons designated”. Are we going to add that to Bill C-27? This is an amendment to line 26, page 41, of the French version of the bill. I do not know the reference in the English version.

[*English*]

The Chair: We've actually dealt with that, and I think Mr. Easter spoke to that. We've already approved it.

Hon. Wayne Easter: Absolutely, that was done.

[*Translation*]

Mr. Roger Gaudet: I just wanted to be sure you knew that.

Hon. Claude Drouin (Beauce, Lib.): That happened during the 35 seconds you dozed off.

• (1640)

Mr. Roger Gaudet: I was just testing to make sure everyone was listening.

[*English*]

The Chair: Clause 129 was stood. Is there anything there?

Mr. David Anderson: The question earlier was whether or not we could pass this when we still had clauses that were stood—and we still do. So can we pass it?

The Chair: We chose to do that on that day, but we can pass it today. If it's the will of this committee, we can pass it today and then come back. We still have to come back to some clauses anyway.

So are we ready to pass this clause?

Mr. Larry Miller: Mr. Chairman, I'm not going to vote until we have everything before us. That's all.

The Chair: Are you prepared to be here for a long time?

Mr. Larry Miller: No, but it doesn't have to be today. We've got some things that were stood and that will come back before us, correct?

The Chair: We can go back, unless it's your wish to stand that.

Mr. Larry Miller: Mr. Chairman, as far as I'm concerned, it will take two seconds to do that, after we've done the others. I don't think it's right to put the cart in front of the horse.

The Chair: We understand where you're coming from.

Mr. Gerry Ritz: Mr. Chair, I have a point of clarification. In this book that we have, amendment L-2 is standing in your name. Is that off the table now that we've done the other dairy terms?

The Chair: Yes.

Mr. Gerry Ritz: Okay. I only wondered why it showed up in this book again. You're withdrawing it. You have to get it on the record that it's withdrawn.

The Chair: I can review what we had to stand earlier today. Three strikes and you're out.

With a little help from the table, I can get you back on track in a moment.

A voice: Let's go.

(On clause 44—*Costs for inspections, etc.*)

The Chair: Clause 44 comes up on page 21. The amendment there would be NDP-13, which is found on page 54 in your book of amendments. It was moved.

Are there any comments on the NDP amendment?

Mr. Easter.

Hon. Wayne Easter: We strongly oppose this, Mr. Chair. Although we're only dealing with clause 44 here, this relates to two areas, clauses 44 and 45. One clause deals with the recovery of costs and the other one deals with limited liability.

This authority is currently in the Health of Animals Act, the Plant Protection Act, and the Seeds Act. The authority in clause 44 is really needed to be able to recover the costs that have been incurred by the agency under the rightful responsibility of regulating a party. They do that in a way to protect the taxpayers of Canada.

We've tried to put checks and balances in this bill to protect industry and primary producers, and we need checks and balances to protect taxpayers as well.

For example, a company imports a product that's found to have a disease in it, and the company is asked to hold it. CFIA orders the product destroyed. The company walks away and leaves the product at the border. CFIA has to have some way of recovering those costs. That's why this is in the bill.

There will be cases when you haven't had people convicted of an offence. You stop the product at the border in order to protect, for example, our Canadian cattle herd. You stop it at the border for whatever reason.

I'll ask Kristine if she can come forward with some examples, but there are all kinds of them out there. They're doing their job of protecting the Canadian public. They didn't really charge or convict anyone. They need to have a way to recover the costs to protect the Canadian taxpayer, and they need to do that for the good of the industry.

I think this amendment needs to be defeated, Mr. Chair.

• (1645)

The Chair: Mr. Bezan.

Mr. James Bezan: I only can find one fault in what you're saying.

If an importer bought a load of fruit offshore or FOB at the port, he has ownership. If it hits the border and is infested with a disease, there are problems with it. He didn't bring it in maliciously. It was brought in completely by accident, but he's the one liable for the cleanup of that product and paying the cost of CFIA.

I don't think that's right. He wasn't the one who made the error in importation. It was done by the foreign countries, whoever gave the certification for it to be exported. I don't think we should load those types of costs on an importer, as an example.

Hon. Wayne Easter: Why would you load those costs on the agency? We run into that, and there were examples this morning where we have Canadian exporters who have exported products to other countries that ended up sitting on the wharf. Through Mr. Seguin's exercise, we've had to compensate those Canadian producers who run into a problem in another country with their product.

The individual who brings that product in has to be responsible for meeting the guidelines under which Canada operates. In terms of business, this is part of the cost of doing business. We can't expect the taxpayers of Canada to pick up those costs. We can't expect CFIA to pick up the costs of them doing their jobs.

Mr. James Bezan: If he'd done something that was legitimately wrong, fine him and bring it through, and then he has the liability to deal with. But if it was done and was completely unintentional—it was an error made by a foreign country—you can't saddle all those costs on him. Then it becomes a battle between CFIA and the country that certified the export.

The Chair: Mr. Angus.

Mr. Charlie Angus: Mr. Chair, I agree that what we put forward might not cover as much of the ground as needed, because we're dealing only with court-defined guilt or innocence, but I think one of the difficulties we're having with this amendment and the issue that I find extremely problematic is that we have the recovery cost for inspection. So it could be argued that you could go to the ombudsman, or you could go to disputes resolution, but clause 45 really, basically, absolves the government of any responsibility to pay for anything under any circumstance. The language is very clear:

Neither Her Majesty in right of Canada nor the Agency is liable for any loss, damage or costs, including rent or fees, resulting from a person being required to do anything to comply with this Act or the regulations.

That is such a wide, sweeping, liability-free clause that it undermines everything else that we've got in the bill in terms of allowing people some protections if they have been found innocent

and have incurred extensive costs. So either clause 45 is struck, or we have to find amendments on clauses 44 and 45.

• (1650)

The Chair: Mr. Drouin is next.

[*Translation*]

Hon. Claude Drouin: Thank you, Mr. Chairman.

I'm completely against this idea. The message this sends out is that an unscrupulous producer, distributor or buyer could, among other things, claim that they did not know the product was falsified. In such a case, taxpayers, through the Canadian Food Inspection Agency, should not have to pay the cost involved.

People who bring products into the country must ensure that they comply with our requirements. If they do not, that person does so at his own peril. This individual, not Canadian taxpayers, should pay the costs involved. The problem here is that most of these people are reasonable, but others take advantage of the system to try to slip things in that are unacceptable. I fail to see why we would protect such people. We should not do so, and we should state that very strongly and clearly in the bill before us at the moment.

[*English*]

The Chair: Let us remember one thing: we're incorporating eight different bills into one here. We have to get it into our heads that somehow we're incorporating what is already in law today.

I guess the question that I ask is whether this is new law or law that we're extracting from one of the other bills. If it is, in fact, law that we've used previously, what is our history in terms of those who have run afoul of the law, and how have they been dealt with under those terms? That is really where we're at on this issue.

Mr. Mark McCombs: Mr. Chair, I'll ask Maître Couture to join us, because she's more familiar with clause 45.

Let me just touch on clause 44 for a second. Generally, what happens under a clause 44 claim is that we issue the person involved an invoice, and that person then can decide whether he wishes to pay or not. If he decides not to pay, then we have to take a court action against the individual to make him pay, and then the individual decides whether he wants to pay or not. I don't believe we have any current court actions, because most of the time the individual who is issued an invoice realizes he has to pay. Clause 44 provides the authority for us to execute the invoice and allow us to invoice the person. That's effectively what clause 44 does.

I'll speak to an example with respect to a clause 44 situation. A few years ago we had a situation where individuals—and it was a fish product—had contaminated fish that had been rejected by the U. S. government and they were looking for a place to put it. Unfortunately, because the information flow at that time wasn't as good as it is now between the two governments, the destination became Canada. We discovered the product, and before it got on the market it was seized. Everyone walked away from the product, and we were stuck with a pile of rotten fish that had to be disposed of. Because we couldn't locate the individual, the taxpayers of Canada had to cover it.

That's not a unique situation. There are a number of products around the world that get rejected by a country. Then they try to find a place it can be deposited, and the taxpayers end up picking that up.

In clause 45 it isn't quite the exclusive protection for the agency it seems to be, and I'll let Maître Couture explain. Clause 45 is the section Mr. Angus raised, and I'll get her to explain how the courts have interpreted clause 45.

[*Translation*]

Ms. Marie-Claude Couture (Legal Services, Canadian Food Inspection Agency): Good afternoon.

Clause 45 gives the government an opportunity to present a defence in the case of prosecution. Some conditions must be met in order to use this clause. For example, the first criterion is that an enforcement order in keeping with the act is absolutely required. The court will then have to determine whether the inspector in fact acted in accordance with the power given to him or her under the legislation.

That said, the courts interpret disclaimer clauses in a restrictive way, to ensure that the things done by the inspectors were in accordance with the act. In this way, it will be impossible to completely absolve the government in the case of things done that were not in accordance with the powers set out in the act.

This is a fairly specific, limited context, and one that is interpreted restrictively by the courts. At the moment, the Health of Animals Act, the Plant Protection Act and the Plant Protection Act specify this power which has also been interpreted restrictively by the courts. The wording of clause 45 is identical to the one that appears in the Health of Animals Act, among others. This is nothing new.

• (1655)

[*English*]

The Chair: Mr. Ritz.

Mr. Gerry Ritz: Well, I have a kind of reverse case of the examples you folks were bandying about. Certainly we want to be up to speed on things that are being imported to make sure the quality is right and so on, but there's also a reverse concern for product that's being exported. In a case that came out of my own riding—actually, 17 containers of lentils—the CFIA forced the processor to fumigate them with a certain product the country, India, did not want anything to do with. They had to be then held, re-cleaned, re-fumigated, and finally sent in the way India wanted them.

In the meantime, the processor took a tremendous hit in trying to keep up to speed and maintain that sale, not lose the sale. A lot of

cost was incurred in container demurrage and everything else, and that's not addressed.

There's a reversal of trying to keep out bad stuff, no doubt about it, but there's also then a reverse onus on CFIA. When they've done an inspection or forced someone to do an inspection to a certain code that's not acceptable by the purchaser at the other end, how do we address that in clause 45?

Mr. Mark McCombs: If this is a situation where the agency acted improperly, a claim would have been made through Mr. Séguin's section, and we're not familiar with any lentil claims.

Mr. Gerry Ritz: They didn't bother, because it was ridiculous.

Mr. Mark McCombs: The normal process, though, is that when you're exporting a product to another country, you determine what the requirements are.

Mr. Gerry Ritz: They did.

Mr. Mark McCombs: But CFIA must have ordered the fumigation because the plant had a pest in it, to protect the domestic market.

Mr. Gerry Ritz: But the problem is the product that CFIA stipulated. There were other products that would do the job, too, that India stipulated. CFIA would only let them use the one they stipulated, and then India said, "No, as far as we're concerned, it's contaminated; we're not letting it in." So then we had a major problem.

Mr. Mark McCombs: Normally the process is that the exporter contacts the country involved. In conjunction with the CFIA, there's an agreement as to what product should be used appropriately. That's the process.

If the CFIA acted improperly in the case you're raising, then it should have come to dispute resolution services.

Mr. Gerry Ritz: No, they acted properly under the Canadian situation, but the problem is that it was at cross-purposes to what India was requiring. So there's a reverse concern. I'm wondering how we address something like that in the regulations we're setting out in clauses 44 and 45.

Hon. Wayne Easter: In clauses 44 and 45, we've done it by other means, earlier this morning, through the approach with the ombudsman and Mr. Séguin's approach through alternative dispute resolution.

Mr. Gerry Ritz: There is a bit of an overlap, in that the company was forced to pay for the CFIA fumigation and everything else and cannot recoup those costs even though they didn't want it. They tried to argue it out.

Mr. Mark McCombs: It is possible—and I'm speculating now—that the fumigation product that would be required by India might not be approved by the PMRA for use in Canada.

Mr. Gerry Ritz: Then there has to be a way to fumigate it at the other end, rather than here, or some such thing.

The customer is right.

Hon. Wayne Easter: I've seen cases where we've run into that in potatoes. You try that approach, and it gets down there and they say they're not taking it. Then the exporter has it on dock down there. It spoils down there, and he's responsible for all costs.

But in terms of clauses 44 and 45, Mr. Chair, I think the witnesses have explained it. I think you can see the reasons we're opposed.

The Chair: We have Mr. Miller, Mr. Anderson, Mr. Boshcoff, and Mr. Angus.

Mr. Larry Miller: Mr. Chairman, in all this, I don't think anybody here is opposed—at least I'm not—to a guilty Canadian importer being charged if he has really tried to screw the system, for lack of better words, but we're not protecting the innocent guy here.

In this instance, with the fish that came in here, I'd like to know what kind of severance package the inspector got who allowed that to even come off the boat. You don't unload something onto the dock, say goodbye to the boat, and then open it to see if it's—

Mr. Mark McCombs: It didn't come by boat.

Mr. Larry Miller: Well, however the heck it came—

Mr. Mark McCombs: It came with appropriate documentation.

Mr. Larry Miller: So we waited until it—

Mr. Mark McCombs: It was declared to be something other than what it was.

The Chair: It was canned product, as I recall.

Mr. Larry Miller: There was no way of going back on the—

Mr. Mark McCombs: Not until the documentation met up with the product.

Remember also, on food products, the Food and Drugs Act doesn't apply at the border. It doesn't apply until destination.

• (1700)

Mr. Larry Miller: We need to correct situations like that, then.

Mr. Mark McCombs: That's what the licensing provision in the bill does.

Mr. Larry Miller: But at the same time, I see that we're not protecting the innocent Canadian importer as well, and I think that's where the problem is coming up here.

The Chair: Mr. Anderson.

Mr. David Anderson: I guess I'm even a little uncomfortable with the fact that we're using extreme examples where you got nothing anyway. This isn't going to be so perfect that you're going to be able to stop those extreme things from happening.

If you can't find them to fine them now, you probably can't find them to convict them if we get our amendment, but for the most part, we're trying to protect people who are innocent from paying costs that they shouldn't have to pay.

I think it's a reasonable amendment. We can go to all kinds of extremes and lay out those things, but generally, this amendment is going to protect Canadians and protect Canadian producers. If they've been convicted, they're not protected, and that's how it should be. So I just express my support for it.

The Chair: Mr. Séguin, I apologize. I'll put you in if you have some comment you want to make on some of these issues.

Mr. Mark McCombs: With regard to the amendment, effectively what it's going to mean is that in order to use clause 44, or in order to use the provisions, we're going to end up with more charges being laid. We're amending clauses 44 and 45, are we not, or are we amending just clause 45?

The Chair: Clause 44.

Mr. Mark McCombs: The agency has experienced costs. To do recovery, the first step will be to lay charges in order to have them convicted of an offence, in order for an invoice to be issued, which right now is normally paid by the individuals to whom they're sent, because they realize that they incurred costs. So that's one of the consequences of that amendment.

The Chair: Do you have something further to that, Mr. Seguin?

Mr. Peter Séguin (Director, Dispute Resolution Services, Legal Services, Canadian Food Inspection Agency): It's just on the characterization. This happens on such a rare occasion and normally it's not due to anyone's intent, but sometimes the documentation or what's being provided by the country producing the product isn't in conformity with what we understand here in Canada.

As a case in point, there was a company in the Netherlands marketing a product that was being imported into Canada by the boat-loads, and it was being marketed as an insulating material for pipelines in Alberta. Now, it turns out that the farmers in the lowland countries in Europe have to account for every tiny bit of manure that their animals produce because their land mass is below sea level. They're not allowed to put that animal manure into the soil in any way and bury it. So they came up with a system of superheating that manure, and they were marketing it in the world as an insulating material. The oil companies in Alberta were going to import that, and they imported a couple of boat-loads of it to use as an insulating material. Well, what we were going to do was effectively put chicken manure from Europe into the soil in Alberta and cover it over in the pipelines.

There are a lot of problems with putting manure from another country into Canadian soil, because there are a lot of things that we don't want to import, like the problems we had with avian influenza and other things. It wasn't until that product arrived here—there were two boat-loads sent out by train to Alberta and the product was parked there—that the documentation caught up with the fact that this was actually animal manure.

Now, what do you do in that case? It was quite simple. When we worked all this out with the person who brought the product into the country, they agreed that they had these massive piles and they needed to destroy them in a way that didn't bury them in the soil, and they were responsible for the cost.

These provisions simply allow us the opportunity to invoice them. As Mr. McCombs just explained, it's a provision that says this makes good sense for everybody, and it's a way to invoice without having to prosecute, without having to make statements that they did something knowingly wrong—but after the fact, when things catch up....

It's the same with the fish. These things are not done when someone's intentionally trying to do something, although there are cases where we have to prosecute, and then when we do that the provisions are covered.

We had an importer in British Columbia who was surreptitiously importing legs of pork that were cured in the earth in China into Canada and hiding them in other products. Again, when they were prosecuted, it was no problem in getting those costs recovered.

It's when it's done innocently that we're talking about, and these provisions just simply allow the normal course of doing business, without having to lay charges against somebody in order to recover costs that make sense to everybody. They're not designed to let people off the hook. They're designed to ease the process of assigning these costs.

The Chair: Okay, Mr. Boshcoff.

Mr. Ken Boshcoff: Thank you.

I think you answered at least some of those questions, so mine is basically on the extent of this problem. How unique are these...the degree of frequency? Of concern, I guess, to the earlier questioner was this. If we adopt these amendments and take away the protections, do we become a dumping ground, or is it going to be easier for people to come here? They may as well bring it to Canada if they can't drop it off somewhere else, and that's my concern. Perhaps you could address that.

• (1705)

Mr. Peter Séguin: My experience in the last seven years is that these cases are very unusual. There are unusual cases where Canadian buyers are buying a product that is being sold to them and they're not quite sure what they're getting. It's not until it arrives here and they get the backup documentation that they discover and we discover that the product isn't quite what everybody thought it was, and it's going to do more harm to the country than good. And no one wants to do that knowingly, so we agree on a way to dispose of the product.

Again, these cases are very unusual. They happen so rarely, I can't count on one hand the number of times I've had to deal with them in the last seven years. And I think our experiences under the act are the same. It allows a much more expeditious, simple way to deal with them.

Mr. Ken Boshcoff: Is there a possibility of using a lack of legislation to become a wedge, and thus a dumping ground? This is the question.

Mr. Peter Séguin: Yes, entirely.

Mr. Ken Boshcoff: Thank you.

The Chair: Mr. Angus.

Mr. Charlie Angus: Thank you, Mr. Chair.

I feel we've been going around in circles on this one. My memory might have failed me with all the clauses we've dealt with, but my understanding was that I had offered to stay it if we had some new language. We have no new language to look at, so we're stuck here. The issue is that when this bill came to us, there wasn't a single provision anywhere that allowed for a right of appeal or provided protection for people who wrongly suffered from a CFIA seizure or

inspection. We were told that it was implied, that we should trust the system and not worry.

So now clauses 44 and 45 are outstanding, particularly clause 45. Clause 44 I'm not so worried about. It outlines the costs you could go after. But clause 45, I still don't buy it that it's just a standard protection. It would be a standard protection for anyone writing their own contract. Of course, you would write that you were free from any liability whatsoever. But I would like to see clause 45 refer somewhere to the ombudsman, for the people who have been innocently targeted, or the disputes resolution. To me, clause 45 is something you would write if you were writing your own bill. It goes without saying that the government wants to be free of any liability.

If there's language we can put in to address that, I'd be willing to move forward. But as it is, we're stuck here.

The Chair: We have Mr. Bezan, and then Mr. Easter. Then we're going to deal with your amendment, unless you're prepared to do something with it. But we'll vote on it.

Mr. Bezan.

Mr. James Bezan: I think we are spinning around in circles here. I want to make sure we provide for situations in which the individual shouldn't be held responsible. What happens if somebody walks through your grocery store and sprinkles anthrax all over the food products? Who's responsible for the cleanup? The way this is written, the grocery store is, and I don't think that's right.

I want to make sure we have this covered off. If something was done on purpose, whether there's a conviction or a charge against an individual, they're the ones responsible. But the person who unintentionally ends up bringing in a product or having a product end up on their farm or grocery store shouldn't be liable. If meat becomes tainted because they didn't have a proper cooling system or they mishandled the product, then they're responsible. But let's make sure that the innocent are not wrongfully charged. Essentially, the cost of cleanup could be a fine for something they didn't intend to do.

Hon. Wayne Easter: The reason we didn't come back with wording is that we can't find wording. It's that simple. We do not believe clauses 44 and 45 can be changed. The experience is that the current process simplifies the system. With respect to individuals affected, it actually reduces the cost. If you end up getting into the court system, having to go to court before you could do any of this, you're increasing costs in the system.

Look, like it or not, it can't be just the Government of Canada that accepts responsibility for anything. If you're going to do business, you've got to do it in a responsible fashion, and sometimes you run into costs. We've all run into this in doing business.

Let's have the question and see where it goes. I don't think we can do any more on it.

• (1710)

The Chair: We've come to the point where we have to ask the question.

The amendment put forward is NDP-13, on clause 44.

(Amendment negated) [See *Minutes of Proceedings*]

Mr. Charlie Angus: I'd like to state, since I abstained on this, that I still feel we have a problem with this issue. If all we can do is get somebody convicted, then we're not any further ahead. I was hoping we were going to move on this.

The Chair: We've dealt with the amendment, now we need to deal with clause 44. We'll have a recorded vote.

(Clause 44 negatived: nays 6; yeas 4)

(On clause 45—*Her Majesty and Agency not liable*)

The Chair: We have an amendment to clause 45, NDP-13.2 on page....

Yes.

Mr. Gerry Ritz: I just have a question on clause 45 for the experts.

The Chair: We're going to do the amendment to the clause.

Mr. Gerry Ritz: The answer would have a bearing on whether I support the amendment or not.

The Chair: All right.

Mr. Gerry Ritz: The question I have for the experts at the end of the table is on the disclaimer that's in clause 45—and that's basically what it is. Does that take precedence over the dispute mechanism and the ombudsman? Is an appeal to the ombudsman or the dispute mechanism going to actually have any kind of status?

When you have a disclaimer such as that, it basically kills any appeals process or any action with an ombudsman or a dispute—

Mr. Mark McCombs: It's currently in the Health of Animals Act and Plant Protection Act, and we have paid out claims for compensation under both statutes. We have not used that provision in any of our dispute resolution systems. It's a provision that's generally used in a court action. It's a defence in a court action. We have never used it in—

Mr. Gerry Ritz: Okay, that's basically what it is, a defence.

Mr. Mark McCombs: It's a court defence used for litigation—

Mr. Gerry Ritz: It's there to point to and say we were nice—we didn't implement it, but we could have.

Okay, that's good to know. Thank you.

The Chair: We have an amendment, NDP-13.2, which is on page 56.

Have you moved it?

Mr. Charlie Angus: No, for the same reasons I will withdraw it. I prefer just to vote on the clause itself.

The Chair: There's a government amendment, G-10.1, which is on page 56.1.

Mr. Easter, would you put that on the table?

Hon. Wayne Easter: Yes, I would, Mr. Chair.

•(1715)

The Chair: Are there any comments on the amendment?

Hon. Wayne Easter: I don't have it before me. That's on the sheet?

Yes, go ahead, Marie-Claude.

[*Translation*]

Ms. Marie-Claude Couture: The purpose of the proposed amendment is simply to make the French and English versions identical. For its part, the French version talks about all the acts that come under the agency, while the English version limits itself to Bill C-27. The intention is to make the English match the French version. That is why the amendment is necessary.

[*English*]

The Chair: Is the amendment agreed to? I'm talking about the amendment. We understand what the amendment does. It just cleans up the language.

(Amendment agreed to on division) [See *Minutes of Proceedings*]

Mr. Charlie Angus: Are we voting on clause 45?

The Chair: Not yet, we're just coming to that.

Mr. Charlie Angus: I'm just trying to keep up, Mr. Chair.

The Chair: We just did the amendment and had it approved on division. Now we're moving to the main clause.

(Clause 45 negatived: nays 7; yeas 4)

(On clause 56—*Regulations*)

The Chair: Next is amendment NDP-15.1 on page 63.

Mr. Angus, do you want to speak to it?

Mr. Charlie Angus: I'm going to withdraw that one. I think it's unnecessary at this point. I'm going to try to come back with some language on the advisory board.

The Chair: Okay, that's withdrawn.

Shall clause 56 carry as amended?

Mr. James Bezan: But are there still other amendments to clause 56?

The Chair: There was one outstanding—

Mr. James Bezan: What about those on pages 65 and 66? Were they carried already?

The Chair: They are the ones we couldn't proceed with because of previous ones having been either withdrawn or defeated.

Basically we're now asking you to approve clause 56 as amended.

Mr. James Bezan: The amendments were...?

The Chair: The amendments were G-13 and NDP-16.2. Two of the government ones were adopted this morning. So we've had at least five or six amendments approved. Bloc amendment BQ-6.1 was accepted this morning.

(Clause 56 as amended agreed to on division)

(On clause 71)

•(1720)

The Chair: Next, on page 75 in your book of amendments, is Mr. Angus's amendment NDP-20.

Hon. Wayne Easter: Mr. Chairman, we are redrafting that one. I don't think we'll be coming back to it.

The Chair: That really brings us to the end of what we can deal with today. There are a couple outstanding—clause 129—which we won't do until the others are done, to please Mr. Miller. We have clause 2. Then we have the ones you're working on together.

Mr. Easter.

Hon. Wayne Easter: I just want to find out where the committee is at with the removal of clauses 44 and 45. If we were to continue with the bill, all costs for irresponsible businesses, in terms of how they do business in this country, would fall on the taxpayers of Canada. I will be talking to the minister about this, but I really don't believe there's much sense in talking further on the advisory committee.

With the loss of clauses 44 and 45 we will have to withdraw the bill, because we can't impose the liability for irresponsible businesses on the taxpayers of Canada. We just can't do it. I'll be talking to the minister tonight, and we'll be talking to you, Mr. Chair.

The Chair: The chair will be directing you in the next 24 hours as to where we will go on this bill.

Mr. Gerry Ritz: Just to Mr. Easter's point, there were some very simple amendments in here so that someone who was wrongfully convicted or charged would not pay an onerous bill. It just throws the onus back on the department to make sure they've got their ducks in a row. The taxpayers of Canada are covering the costs of everything, as we speak. So all we're looking for is a bit of movement from the government side, so anyone who was wrongfully charged or convicted would not have to pay those costs once they were exonerated. We're just looking for some movement on that.

The Chair: I'm going to shut down any debate. We've had more than adequate debate. We will make a decision in the next 24 hours as to where we'll go on this bill.

Thank you very much to the table officers for their indulgence, time, patience, and goodwill.

The meeting stands adjourned.

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