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Chair

Mr. John Cannis

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● (0940)

[*English*]

The Chair (Mr. John Cannis (Scarborough Centre, Lib.)): Ladies and gentlemen, I call this meeting to order.

By way of introduction, I'd like to welcome Mr. Karl Neubert, secretary-treasurer of the Free Trade Lumber Council; Mr. Georges Courteau, president of the Quebec Forest Industry Council; and Mr. Marc Boutin, member of the Canadian Lumber Trade Alliance.

I will begin with your presentation, Mr. Neubert, for ten minutes.

Mr. Carl Grenier (Executive Vice-President, Free Trade Lumber Council): Mr. Chairman, I'm Carl Grenier. I'm the executive vice-president of the Free Trade Lumber Council, and I will be making the presentation.

I have to apologize for the absence of Frank Dottori, our chairman. Unfortunately, he has to chair another meeting in another Canadian city this morning, but he was very much looking forward to addressing you today.

I have with me Karl Neubert, who is the secretary-treasurer of the Free Trade Lumber Council.

As you know, members of the Canadian softwood lumber industry have become, much to their chagrin, experts in international trade law and the settlement of disputes. Your deliberations come at an opportune moment for two reasons.

First, our council, along with the Ontario Forest Industry Association, commissioned a study earlier this year of chapter 19, the dispute settlement clause of the NAFTA. The substance of most of my remarks will be drawn from that document, which we would wish to also table with you today, if that's all right with you. Unfortunately, I don't have copies in French, but we do have copies of that study in English.

The second reason why your discussions are timely has to do with efforts currently under way to resume negotiations in order to settle the softwood lumber issue while the burden of litigation becomes ever more onerous for the industry. I will come back to this in a moment.

Let us first recall that the first reason why Canada negotiated a free trade agreement with the U.S. was to get more secure access to the U.S. market. That meant a better way to resolve trade disputes, especially disputes arising out of subsidization or dumping allegations. As you know, this key Canadian goal very nearly derailed the FTA negotiations in 1987, and chapter 19 was the compromise that saved the overall deal.

NAFTA's chapter 19 provision of an alternative to domestic courts to resolve countervailing duty and anti-dumping disputes is unique. No other countries but Canada and Mexico share with the United States the right to have their own citizens participate outside U.S. courts in such trade matters. None of the dozen free trade agreements concluded in the last few years by the U.S. with other trading partners contain dispute settlement provisions akin to NAFTA's chapter 19.

In the FTA years of chapter 19, from 1989 to 1994, the provision delivered to Canada a series of critical legal victories. Binational panel reviews were faster, cheaper, and fairer than appeals to the U. S. Court of International Trade. Yet even then, the United States was pursuing a coherent and long-term strategy to limit the impact of these victories and to prevent their repetition and continuation. Since the extension of chapter 19 in NAFTA from 1995 to the present date, the United States has redoubled and varied its efforts to take back what it regrets having given, even in compromise.

The FTA period was marked by a focus on substance. Using agency lawyers instead of Department of Justice lawyers, the United States argued for increased deference to agencies; easier legal tests to find and countervail subsidies; and limited binational panel scope, particularly by restricting decisions to specific panel adjudication, reaching not even an administrative review from an investigation or a subsequent administrative review from an earlier one. Such restrictions were designed to force Canada to litigate the same programs, even dealing with the same merchandise repeatedly, notwithstanding final panel decisions and final determination on remand.

In the NAFTA period, the United States tried to destroy chapter 19 institutionally by starving financially the secretariat; underpaying panellists and delaying those payments; moving away from the appointment of international trade experts to these panels; politicizing panels by making rosters dependent upon congressional approval; changing the rules for extraordinary challenges; attacking directly the standard of review; impugning the integrity of Canadian and American panellists; ignoring rules and deadlines for the formation of panels and the filling of panel vacancies; abusing peremptory challenges; rewriting trade laws; and more.

Canada's response to this two-pronged assault on chapter 19, substantive and institutional, has been less than aggressive, frequently acquiescing. Most notably, perhaps, Canada has never invoked NAFTA's article 1903 protections against changes in U.S. trade law, even as the United States changed its laws several times with the explicit objective of overturning NAFTA panel decisions, and threatens to do so again—and I'm referring, of course, to the Baucus bill recently tabled in the U.S. Senate—this time to stampede Canadian softwood lumber interests into a potentially debilitating, destructive settlement. Nor has Canada invoked article 1903 against U.S. trade laws that impact Canada and, moreover, violate international obligations, such as the Byrd amendment of 2000.

● (0945)

The U.S. strategy has succeeded in eroding the value of chapter 19 to Canada. Binational panel reviews are no longer expeditious. At 696 days on average, chapter 19 proceedings involving Canadian imports are no longer than cases settled before the Court of International Trade, which average 641 days.

The current softwood lumber dispute is a case in point. Instead of the 315 days from start to finish provided for in the chapter 19 rules, we are now well into our 33rd month of litigation. Canadians can no longer expect binational panel reviews to be fairer than CIT reviews, with U.S. panellists who are no longer experts in trade law, who are protected from appeal, and who are carefully selected to defend U.S. government agency prerogatives.

A concerted effort to shore up chapter 19 could be launched through consultations under chapter 20. Canada should commit to maintaining full rosters of panellists and extraordinary challenge committee members, and to selecting panellists and filling panel vacancies within the established deadlines. Canada should demand that the United States better fund and staff its section of the secretariat; reform its roster to eliminate bias and facilitate the selection of panellists; agree to adhere to the deadlines for constituting panels and filling panel vacancies; and agree to raise panellists' pay.

Of course, NAFTA is not the only forum for the settlement of trade disputes. We can also have recourse to the WTO. After winning its case at the WTO along with eight other complainants, Canada was slow to act on the Byrd amendment, which is perhaps the greatest single obstacle to a negotiated settlement in softwood lumber. Canada has also fallen behind the European Union and Japan in retaliating against U.S. failure to comply with the WTO ruling of March 2003.

Here are some other suggested improvements to Canada's approach to trade dispute settlements. Canada should include industry counsel on the selection of NAFTA panellists, as it is already doing in the case of WTO panellists. The United States government has always consulted with its industry. In WTO proceedings, Canada should integrate counsel for industry and the provinces within the Canadian team. Not doing so is obviously detrimental to Canadian interests, most notably in anti-dumping proceedings, where the expertise, of course, lies with industry counsel.

The United States' strategy of scorched earth makes the dispute settlement process so costly that Canadians will give up their legal rights and accept something less than free trade. The U.S. is using the full and coordinated apparatus of the government to achieve this goal. In the first two years of this struggle, the Canadian lumber industry has taken on three investigations—subsidies, dumping, and injury—and three appeals. It is now engaged in four investigations, the same three appeals, an extraordinary challenge, and two WTO implementation proceedings. In mid-December, when the United States Department of Commerce issues its final results in the first two of the four new investigations, the industry will be obliged to file two more judicial appeals while preparing challenges to the illegal U.S. attempts to keep the cash deposits, the $3.5 billion already paid to the U.S. treasury.

Had the original NAFTA appeals proceeded on schedule, even on a delayed schedule similar to the appeals in lumber III, all judicial appeals and procedures would now be reaching conclusions. The Canadian industry and provincial governments would not be answering new rounds of questionnaires. They would not be preparing for still more verifications, briefings, and hearings. Instead, merely to defend their rights, they must engage in still more litigation. The United States and the U.S. industry are counting on this added pressure and expense to break the backs of the Canadian industry and force yet another unfavourable temporary restriction on trade.

Again, Canadian industry has earned Canada's trust and support. Track one—that's the litigation approach—is all of Canada's fight, but the cost and burden of it is being borne principally by the softwood lumber industry. Again, the Government of Canada needs to send a message that Canadians will be given a fair and reasonable chance to be vindicated according to the rule of law and the institution of NAFTA. They should not be denied their rights because they cannot afford to defend them, because their procedural rights were not adequately protected in the continuous delays that have compounded their expenses.

Two years ago, the Government of Canada provided industry associations with modest but welcomed financial help to sustain track one. The needs today are much greater than they were then, but so are the likely rewards. A binational panel has now completed its work, with a final decision that requires both the countervailing duty and anti-dumping orders to be revoked. A second binational panel requiring the Department of Commerce to measure subsidies according to the law may soon conclude that there are no subsidies or that they are minimal. A third binational panel may find that an essential element in the calculation of dumping is contrary to law and must be stopped, which would reduce dramatically the alleged rate of dumping.

● (0950)

None of these developments would be final or have legal value unless seen to completion. As the processes are prolonged, interests can be protected only through appeals of the new investigations. The Government of Canada needs to renew its confidence in NAFTA and in the softwood lumber industry by helping the industry fight Canada's fight. Such renewal can be achieved in but one way, by reimbursement of legal expenses both to enable the industry to sustain track one and to tell the United States and its industry that they will not win this contest by scorching the earth. They will have to win according to the rule of law and the purpose of NAFTA. As everyone in Canada knows, on those terms Canadians ultimately will prevail.

I want to address two more issues in closing. One is this popular notion that Canada should retaliate and curtail its exports of crucial commodities like oil and gas until the U.S. mends its ways and stops harassing us on softwood lumber. Apart from the very real political problem this would instantly create within Canada, this would also run counter to well-defined international trade rules.

The far-sighted group of countries and people, Canada and Canadians among them, who devised the international trading system nearly 60 years ago wisely saw that such an approach would only lead to a downward spiral of trade restrictive measures and countermeasures.

Finally, I don't want to leave the impression with this committee that Canada is forever at the mercy of the U.S. willingness to abide by its own commitments to NAFTA and other trade agreements. As long as the trade dispute pits the U.S. producers against Canadian exporters of similar goods, the outcome will be predictable because Canadians don't vote in U.S. elections.

We must not stay prisoners of these dynamics. There are powerful U.S. groups who, when properly alerted and mobilized, can become very effective allies, with the freedom to use the full range of political action within the U.S. to oppose border restrictions detrimental to their own interests. Working with these groups takes time and effort, but in the long run we believe that such an approach is the best insurance policy against U.S. unilateral disregard of international trade rules.

Thank you very much.

The Chair: Thank you.

We'll go to our next speaker, Mr. Courteau.

[*Translation*]

Mr. Georges Courteau (President, Quebec Forest Industry Council): Thank you, Mr. Chairman.

Ladies and gentlemen, good morning and thank you for giving us this opportunity to be here with you to present our views on the subject under consideration.

The Quebec Forest Industry Council represents the great majority of Quebec forest businesses. We speak for the great majority of sawmills and companies producing pulp, paper, cardboard and panels. Starting January 1, 2005, we will also be the voice of hardwood and veneer companies. The association will then represent the entire industry.

This amounts to 150,000 jobs in Quebec, that is over $3 billion in wages. We account for 3% of Quebec's gross domestic product and in 2002, exports amounted to $12 billion.

In the case of softwood lumber, before the present conflict, exports amounted to $4 billion board foot a year, that is approximately 25% of Canadian exports. Since the Americans raised the threat of injury in May, we have undergone a market loss of 15%, declining from 4 billion board-feet to 3.4 billion, that is a significant drop in volume. Taxes paid by our companies in Quebec since the beginning of the conflict announced to approximately $1 billion Canadian. Because of these taxes, companies have had to significantly reduce their capital expenditures. Capital expenditures, at the level of $2.5 billion, were reduced by the sawmill industry to less than $100 million. The level of capital expenditures is what allows companies to remain competitive.

As for the particular situation of Quebec, more than 50% of the logs for border companies come from the United States or private forests and are therefore entitled to a reduced tax rate.

Moreover, it should be noted that the Quebec forest is smaller than the forest in Western Canada. The basket of products is made up of narrow short wood which constitutes a potential dumping problem when prices are depressed. Our basket of available products can be broken down as follows: 35% timber, 50% woodchips, and 15% sawdust and shavings. The taxation level required the forest industry to export high end products namely to the U.S. This has repercussion on the pulp and paper sector as well as cardboard and panels because higher bidding for woodchips results in higher prices. We are the province with the highest woodchip prices in Canada.

Another feature of the industry is that it is very integrated; in 70% of the companies the sawmill and pulp and paper branches are integrated.

On the American side, it is important to note that third party countries do have a share in the market. Although they only accounted for 2% of the volume at the beginning of the conflict, they have gone up to 3.5% because of their access to the American market by the Atlantic. I am thinking mainly of Brazil, Germany and other countries.

In the softwood lumber sector, the Quebec Forest Industry Council is in favour of free trade. Its position is based on the respect of international laws within the context of NAFTA and the World Trade Organization.

We hope that a long-term agreement will be reached. Our members would like to see a Canada-wide solution but one that will allow for a long-term agreement with our partners.

● (0955)

Among the conditions for an agreement, some are essential.

The reimbursement of deposits. The industry made deposits in anticipation of a ruling that there was no threat of injury. If our requests are taken into consideration, the deposits should be reimbursed.

There is the respect of the ruling on the Byrd amendment, as Mr. Carl Grenier mentioned. We have to ensure that the Byrd amendment is respected. There was a decision in this respect at the World Trade Organization. The consequences could be serious if the Americans, as a result of the Byrd amendment, decided to take the money that belongs to us to give it to American companies, making them more competitive to our detriment. It is also important to maintain retaliatory measures considered by the Government of Canada.

However, one must analyze the situation as a whole and see whether a bi-national panel could promote lumber. Indeed, Canada and the United States have to be seen as a whole able to face future competition from Russia, Brazil and other countries. The new agreement will have to respect all members right to export. All of our members want to have the opportunity to export. This is an important point.

We need the government's support for one of the most important industry. It is therefore essential for the Canadian Government to clearly demonstrate that it supports its industry and that it will support professional associations. It is also important that this file be considered at the highest level as a priority, in order to find a long-term solution for all stakeholders in this dispute, on both sides of the border. The prime minister must also give his support to the North-American Free Trade Agreement between both parties. There is an extraordinary challenge under way. Later on, there could be a constitutional challenge.

If we look at the future, we have to create the basis for a constructive dialogue between the parties to avoid a possible lumber V.

Thank you very much, Mr. Chairman, for your attention.

● (1000)

The Chair: Mr. Boutin.

Mr. Marc Boutin (Member, Canadian Lumber Trade Alliance): Mr. Chairman and honourable members of the sub-committee, it is a pleasure for me today to speak to you on behalf of the Canadian Lumber Trade Alliance.

[*English*]

I will switch to English in the interests of the audience.

First of all, I will define who the Canadian Lumber Trade Alliance is. Secondly, I will talk about the collaborative efforts in which the Government of Canada and Canadian industry are engaged. Thirdly, I will speak about the objectives of the Canadian Lumber Trade Alliance. I will talk about the issue of aid to Canadian associations. And finally, I will talk about the reimbursement of deposits, which is a burning industry for the Canadian lumber industry.

Who is the Canadian Lumber Trade Alliance? It was formed in January 2001. It is a major linkage between all the industry associations across Canada in the major producing provinces. It represents the overwhelming majority of Canadian lumber producers, approximately 95% of Canadian lumber production. I would add to this that our recent meetings have included the Maritimes, which brings us nearly to 100% of Canadian lumber production in terms of representation.

The Canadian Lumber Trade Alliance was formed to manage the injury case but also to offer more common positions on other questions of national industry interest. It also deals, on a national basis, with certain aspects of the anti-dumping case.

Presently the Canadian Lumber Trade Alliance has intensified its activities in light of the extraordinary challenge, and eventually the constitutional challenge, should that occur, failing the success of the U.S. parties in the extraordinary challenge. CLTA is also mandated to deal with the issue of reimbursement of deposits. As my previous colleagues pointed out, we are now approaching $3.8 billion. Let us remember that this is the largest trade dispute in the history of the world.

It is essential that the Government of Canada maintain a firm engagement in the legal process, and by no means are we critical of the Government of Canada. In fact, the Government of Canada has taken actions lately that have the strong endorsement of the Canadian Lumber Trade Alliance.

As my colleagues have pointed out, it is important to maintain our collaboration. As I pointed out, this is the largest trade dispute in the history of the world. It is crucial to the industry. The situation on the legal front is increasingly favourable to Canada. American interests are seeking to deprive Canada of a clear victory and to weaken Canada in our strong negotiating position as it stands today. Our leverage is probably at its peak. There are a few other decisions that are expected within a week or so that could even strengthen our position—it could weaken it marginally. Nevertheless, our position is at its high point.

The extraordinary challenge, as my colleagues have pointed out, has already been launched. If that does not succeed we expect a constitutional challenge. Let me point out that a constitutional challenge essentially challenges the NAFTA itself, certainly chapter 19 of the NAFTA; therefore, it is of critical importance to Canada. Reimbursement of deposits paid by Canadian exporters is also a priority for the Canadian Lumber Trade Alliance. American interests are seeking to avoid this reimbursement and to have the duty deposits, which belong to us, the Canadian producers, distributed to American producers. So it's an unfair competitive advantage.

The U.S. has sought to weaken the NAFTA settlement dispute process, as at the WTO. As an example, it has used decisions in Canada's favour at the WTO as an excuse to escape NAFTA rulings that have also been ruled in Canada's favour. So we're not playing fair when it comes to this particular dispute.

Canada must do everything in its power to avoid the outcome sought by American interests. It is more than a question of protecting the interests of Canada's softwood lumber industry. It is a question of protecting all Canadian exporter interests under the NAFTA generally and holding the United States to its commitments. Government and industry must collaborate very closely in order to coordinate energy and ideas and to find a lasting, durable solution.

This, ladies and gentlemen, as I pointed out, is taking place to the satisfaction of industry and I believe to the satisfaction of the Government of Canada.

● (1005)

The Canadian Lumber Trade Alliance believes that the ultimate goal is free trade, but we recognize the difficulty in securing free trade in the short term. That is a position that was reached unanimously a couple of weeks ago at a meeting of the Canadian Lumber Trade Alliance. Ideally, we do seek free trade; we believe in free trade. To be realistic, pragmatic, we recognize that free trade is probably not achievable in the short term.

Settlement must provide a better solution than litigation and must lead toward a durable agreement. We essentially wish to avoid lumber V. This will be currently living through lumber IV. As one of my colleagues pointed out previously, we've been in 33 months of litigation—intense litigation, I would point out. Lumber V is probably the resulting consequence of the settlement of lumber IV, so we wish to avoid lumber V, if it's possible in a pragmatic way.

The CLTA is currently the preferred vehicle to achieve a pan-Canadian approach. No other organization exists that has been able to speak on behalf of all Canadian producers. On the other hand, forest policies, structure of industry, and commercial context vary significantly from one province to another, and some provinces/regions may require individual treatment. That is again a position unanimously attained by the Canadian Lumber Trade Alliance.

The Canadian Lumber Trade Alliance requests government support to industry associations, as has been given in the past. The past and upcoming challenges have repercussions on other sectors of the Canadian economy. The CLTA has been defending the Canadian case. All precedents obtained are good for Canadian business generally. The CLTA's efforts in this regard have been extremely expensive. The Canadian contribution made so far has been a small fraction of the effort. You will recall in 2002 there was an extension of financial support to industry associations, which has not been repeated since then.

Commitments were given; however, they have not been realized to date. Canadian associations via the Canadian Lumber Trade Alliance count on this support. Contributions promised by unfunded cabinet commitments amount still to only a fraction of the true spending that is done by associations and the various companies within the associations.

This assistance is essential for Canada to preserve the legal successes already obtained and to move forward to the final phase, because that is what we are approaching—the final phase of the legal process. Such support would send a clear message to the U.S. that they will not win the softwood lumber dispute by decimating Canadian industry by attrition, which is really the goal as we see further extensions to all the various legal and administrative cases that are confronting us.

Finally, the Canadian Lumber Trade Alliance believes that Canada must develop a comprehensive strategy to ensure the reimbursement of deposits on Canadian exports of softwood lumber to the U.S. Deposits are now in excess of $3.8 billion and are growing at the rate of about $100 million a month.

If the U.S. parties succeed in obtaining even part of these deposits, the U.S. will have a great incentive to launch new litigation, because even if it loses a case, it will be rewarded twice—once by the investigation itself, which is a costly and time-consuming impediment to Canadian lumber exporters, and then by the illegal distribution of duty deposits, which actually belong to us, the competitors in Canada.

That is my presentation, members of the committee. Thank you.

● (1010)

The Chair: Thank you very much.

Thank you, all three, for your presentations.

We'll go to questions now.

Ms. Stronach.

Ms. Belinda Stronach (Newmarket—Aurora, CPC): First of all, thank you for joining us today. I don't need to tell you how important this issue is, not just for your industry but also for Canada.

As I see it, Canadian producers still hold about a 30% share of the U.S. market despite all of the duties, for three fundamental reasons, basically. First, we have the forests. Second, we've had an advantage due to foreign exchange, although with the dollar rising that's becoming more difficult. And third, lumber is a commodity business where size matters, and most of the big mills with economies of scale are in Canada.

Do you agree with my assessment, or am I missing something?

I'm interested in the question of how integrated your industry is in North America. I'd like to get a better understanding of how integrated the North American lumber industry is.

Monsieur Boutin mentioned that we need a comprehensive strategy to deal with Byrd, and I'd like to get your assessment on our present strategy on consultation with respect to retaliation to make some movement on Byrd.

The third question would be to Monsieur Courteau. You mentioned a binational panel, and I'd like you to explain a little more about the binational panel, how that would maybe strengthen the industry and go toward avoiding a lumber V dispute.

Mr. Georges Courteau: I think the question of the binational panel is something that... After we've seen the current situation before us through and really resolved it, we have to look forward to see where the competition will come from. Russia and other countries such as Brazil are continuing to increase their volumes. Therefore, having the whole industry in North America together through a binational panel would help us, through the promotion of the use of wood in other areas like commercial and industrial units, to see how we can move that forward. The use of wood would actually be one way to help increase the demand. From that standpoint I think that would be very useful.

Are there any additional comments, Marc?

● (1015)

Mr. Marc Boutin: Yes. I would say that dispute resolution would be another objective of a binational panel. Perhaps it would be more than a binational panel. There could be sub-panels, or subcommittees, as we have here today, that would deal with dispute resolution and conflict resolution generally within North America.

Mr. Carl Grenier: I would just like to address one of the member's questions on how integrated the lumber industry is. I'm speaking from memory now, so don't quote me on today's numbers precisely. I believe I recall that the ten largest Canadian lumber producers produce a bit over 60% of the total production. If you compare this with the paper-making industry, it's less. So there is room for consolidation. As we've seen, some of it has been taking place, notably in British Columbia in recent months. There is still scope for integration.

As far as the integration between Canada and the U.S. is concerned, there are a number of major U.S. producers that are of course present in Canada. That's always been the case. There has been investment in recent years, but there has not been the wave of investment I guess that we could have expected given the relative strength of our dollar and other factors. The movement is free. We can invest there. They can invest here. The nature of the industry itself is largely integrated. There is one market. There's no doubt about this. There are no barriers. The prices are broadly the same except for maybe a few dollars due to the usual friction of transportation.

The other question you raised was the strategy on the Byrd amendment. As you know, and as I mentioned in my remarks, the WTO actually found the Byrd amendment to be illegal, inconsistent with the U.S. obligations under the WTO. That was done in March 2003 after the final appeals. The United States was given until December of last year to amend this law. Of course, they didn't do it. I suppose realistically, in a political election year in the U.S., nobody really expected the U.S. Congress to act on something like that this year.

We find that Canada should be moving more aggressively on Byrd. Other countries, for instance, have already been to the WTO with their lists of retaliation measures. We're still consulting industry, as you know, with our own. Yet Canada has by far the largest stakes in this business with the very high cash deposits that are now in escrow with the U.S. treasury. These deposits, by the way, are more than three times the total amount that has been paid yearly under the Byrd amendment since the year 2001. We do have a lot at stake, so we hope we would move with more speed on this matter.

Ms. Belinda Stronach: The President has indicated his willingness to have Byrd repealed. How do we work to build our case within Congress? Could we be doing more?

Mr. Carl Grenier: As you know, the list of possible retaliation measures is quite long now. There is no doubt that it will be whittled down somewhat. It has to be because we have to concentrate our power to make it work. I think other countries have done the same as well.

Furthermore, perhaps there is scope to actually act in concert with other countries so that our respective measures actually reinforce each other. These are things that I believe the government is considering, but we still actually have to finalize that list, have it approved, and acted upon.

Ms. Belinda Stronach: Thank you.

The Chair: We're moving along just fine.

We'll go to Monsieur Paquette.

[*Translation*]

Mr. Pierre Paquette (Joliette, BQ): Thank you, Mr. Chairman.

Thank you for your presentations, it's always very instructive to hear from various associations.

Mr. Grenier, you mentioned in your presentation that changes have been made to extraordinary challenge rules. As far as I know, only the United States have availed themselves of this opportunity. I would like you to give us further information on that, and specifically on the possibility that American authorities could prevail in the end.

● (1020)

Mr. Carl Grenier: The initial objective of the extraordinary challenge process, which was negotiated between Canada and the United States in the 1980s, under NAFTA, was not at all an ordinary appeal mechanism. It was a mechanism, in keeping with its name, created to deal with situations that are out of the ordinary, so called extraordinary. For instance, if one of the members or one of the panels called to rule on trade disputes has an undeclared conflict of interest, one must be able to appeal the decision.

However, from the start, the United States have used it as an appeal mechanism, and all the more so when we went from the Canada-U.S. Free Trade Agreement to NAFTA, in the mid 1990s. The United States then insisted on the tightening up of the review standard. So, if you compare both standards, NAFTA with FTA, you will see that there was a tightening up. The extraordinary challenge process has now become much more of an appeal process than it was before.

You mentioned it yourself in your question: the United States are the only partner to have availed themselves of this opportunity. They have used it six times so far, and were unsuccessful each time.

Mr. Pierre Paquette: Including this one?

Mr. Carl Grenier: They have used it six times, and this is the seventh. They lost six times. Their chances of winning this time don't seem to us to be any better than they were before. For instance, they lost their 1994-95 challenge during the third investigation of softwood lumber. The allegations are more or less similar: they called into question the reputation of one of the members of the panel to rule on the injury case. In this case, it has to do with an American member, but at the time it was a Canadian member. They are alleging in fact that the panel did not follow normal rules under American law, rules that must be complied with. Our lawyers are very confident regarding our chances of success between now and the month of March.

Mr. Pierre Paquette: Assuming that there were to be a decision in our favour in March. There is also the constitutional challenge. I think that four representatives have tabled a bill to that effect. In fact, I would like to discuss this further. Mr. Courteau and Mr. Boutin mentioned it. What would be the consequences of this constitutional challenge later on? If we win the extraordinary challenge, what happens? In theory, the Americans would have to enter into negotiations on the reimbursement of duties, on re-establishing free trade. But no one is being fooled. What effect would the constitutional challenge have? Will there be a standstill until the American courts... And how long could that take?

Mr. Marc Boutin: What Mr. Grenier told you is absolutely correct. The odds are in our favour regarding the extraordinary challenge. As you know, it is a measure aimed at correcting flagrant conflicts of interests. In the six previous cases—softwood lumber in 1994, magnesium recently, swine in previous cases—we noticed that it has practically become a second form of recourse for the Americans. So the very aim of the extraordinary challenge is being somewhat distorted.

We know that the Americans are quite relentless when it comes to softwood lumber. There is a very powerful lobby in Washington, we can expect, without however being able to confirm it, that the extraordinary challenge will be favourable to Canada. As you know, there is always an element of uncertainty in legal proceedings. There is always a risk. Namely, the allegation of a conflict of interests for one of the American panellist—mentioned by Mr. Grenier—does seem to us a considerable challenge. The Canadian side and the Government of Canada have the best possible legal team. We commend the Government of Canada on its approach.

Mr. Pierre Paquette: What about the constitutional challenge?

Mr. Marc Boutin: With respect to the constitutional challenge, the Government of Canada and the industry have collaborated and have a top-notch legal team.

The measures taken by the government are seen very favourably. With respect to the constitutional challenge, it is indeed a threat of last resort. One senses despair in the American approach. Notwithstanding the situation, this remains a very critical issue for Canada, because the constitutional challenge calls into question the very viability of chapter 19, or even that of NAFTA agreement. In other words, the validity of the North American Free Trade Agreement is being questioned.

Is legal recourse of itself guaranteed to the Americans? No. There must be an appearance either before the court of international trade, or the United States Court of appeals for the Federal Circuit in Washington (D.C.), a higher court in the United States.

As a last resort, if we prevail, the case will probably be brought before the U.S. Supreme Court, where the process would last at least two years. As far as the Americans are concerned, they want to stretch the rubber band as much as they can, they want to subject the Canadian industry, through attrition, to a sort of economic struggle. Indeed, there are legal fees and border duties. So there a double penalty.

It's a way of slowly suffocating the Canadian industry. The constitutional challenge, although its chances of success are minimal, does once again stretch the rubber band. It's a legal threat, but it's also a present threat which endangers the Canadian industry.

● (1025)

Mr. Georges Courteau: In this context, let me add that Canadian industries, at least in Quebec, do not necessarily have the capacity to pay taxes and at the same time continue to invest in order to remain competitive. This situation has a negative effect on the very viability of the industry.

When we talk about a constitutional challenge, we must understand its impact on the Canadian industry, not only on the softwood sector but on the industry as a whole, because it would jeopardize one of the most important sectors for our biggest trading partner, the U.S.

It is with this in mind that we reiterate our request for support for the industry. It is a fundamental test for the economy of Canada as a whole.

[*English*]

The Chair: Mr. Grenier, please.

[*Translation*]

Mr. Carl Grenier: Mr. Chairman, with respect to the issue of a constitutional challenge, my two colleagues have already pointed out that the real intention of the Americans is to draw out procedures in order to bring us to our knees and make us accept a negotiated settlement to our disadvantage.

However, it is interesting to note that, in the case of a constitutional challenge—there was already one in the 1990s—the American authorities would have to oppose this constitutional challenge if they do not want to acknowledge having acted against the Constitution for 15 years. With no choice but to deny such an intent, they would be required to go against their own industry and this is something they absolutely want to avoid. That is why they would be willing to have a negotiated settlement.

So we can see that their likelihood of winning such a challenge is very slight. The only risk is the extension of procedures and a parallel initiative to the constitutional challenge, namely requesting the courts to suspend the application of the ruling on the extraordinary challenge which is expected to be handed down around the month of March 2005.

Mr. Pierre Paquette: Do I have a little bit of time left, Mr. Chairman? A minute.

Mr. Courteau, I would like you to come back to this subject of the assistance you expect from the federal government. There was a first phase in April 2003. I have a list of projects that were supported in the region of Laurentides-Lanaudière. I almost fell off my chair.

Let me read two or three of them:

> Start up of an aquaponic ecological farm producing trout and lettuce.
>
> Construction of a positive pressure vertical wind tunnel for people wishing to experience the sensation of free fall.
>
> Start up of a commercial laundry.

There are 26 of the same type and almost none of them deal with softwood lumber. I would like to know what exactly you expect from us. You talked about legal costs. Is there any other way of supporting businesses? On our side, there is the reform of employment insurance to help people who lose their job during the conflict. Could you be more specific about what you expect from the federal government?

● (1030)

Mr. Marc Boutin: My colleagues and I will each be taking the time to explain to you what the lumber industry has been through and what it is going through. First, we believe our annual expenses are in the order of $100 million in legal fees, not to mention administrative and accounting fees for the management of dumping files in the case of individual companies, administrative review files for some companies which were treated individually, administrative review files for some companies and some provinces for whom we have made representations. That is a serious financial burden.

Mr. Courteau mentioned that over the last three years depreciation in the Canadian logging industry is far superior to investment. Our plants are not getting any technological upgrades. Every day we lose a bit more of our competitiveness due to a lack of investment.

Government programs implemented in 2002-03 are commendable and address some aspects of the problem, namely employment. As a general rule, these programs are somewhat random. You mentioned laundromats, projects in other industries. You can't lose sight of the fact that the logging industry in Canada represents approximately 10% of the Canadian labour force. So it is a vital industry for the Canadian economy. Until 2003, the logging industry was the greatest contributor to Canada's balance of payments. You have heard the figures for Quebec. It's a vital element for our region and for Canada.

In general, relief has been granted very indirectly: assistance to the regions, assistance to mitigate effects on employment. In Quebec, we have lost 10,000 jobs. In B.C., approximately 20,000. These are person-year equivalents, so real jobs.

Limited assistance was granted to associations in 2002. It came into 2003, but it was for the year 2002. It was an amount of $15 million which offset the associations' legal fees. In fact, the Americans considered this amount as a subsidy. This, however, is only one of the many overblown assertions made by the Americans. Assistance was useful. It is essential because we are now entering into the final phase in the legal proceedings, which will be the most intense phase in the softwood lumber dispute. As my colleague Mr. Grenier stated, this is the critical phase. Government relief is expected and will be greatly appreciated by associations.

[*English*]

The Chair: Quickly, two points, so we can get on to the next...

[*Translation*]

Mr. Georges Courteau: An important element in all this is the issue of the Canadian dollar which has appreciated 30%. Amounts disbursed since the beginning of the dispute will have decreased in value once we get them back, which would have a significant impact.

There is also the issue of the hiring of experts to support us. The entire team is mobilized to defend a good case, so these are additional costs which form part of the $100 million Mr. Boutin mentioned.

● (1035)

[*English*]

The Chair: Thank you.

Carl.

[*Translation*]

Mr. Carl Grenier: I will be brief, Mr. Chairman.

Regarding support for associations, I completely endorse the comments made by my colleagues. it is very important for us to receive support, it was promised, by the way, after the first payment in 2002.

Respecting assistance which is more general in nature for communities and workers, there should be a third envelope to help businesses. This help was never officially announced by the government, although it is still being mentioned on the department's website.

With the support of other associations, we made a proposal to the federal government regarding loan guarantees, so as to guarantee the amounts disbursed, in other words the 27% levied each time a log crosses the border. We made quite a detailed proposal, and it seems to us that the federal government was risking very little in going ahead with it. We never received a response to this request.

[*English*]

The Chair: Thank you.

We'll go to Madam Jennings.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you very much for your presentations.

I would like to get back to two points. The first has to do with the Byrd amendment and its repeal by Congress.

As you mentioned, Congress was to repeal this amendment no later than December 2003. It is now December 2004, and there has been no repeal.

We are always being told that it's Washington's decision. But companies which bring action against your sector and manage to influence the senator for this amendment to be adopted and implemented by Congress are not in Washington, but in various States, and more specifically in cities within these States. Lobbies are certainly powerful in Washington, but the actual companies are physically located in States, which perhaps depend on Canada for other products.

Is the Canadian Government, in developing a strategy to once and for all settle the softwood lumber dispute, if that's possible, and especially the issue of the Byrd amendment, taking into consideration or is it developing a strategy to go directly where these companies are located and try to influence local stakeholders at the State level, to get them to exert some pressure?

When we, as Canadians, go to Washington, we are seen as foreigners, whereas senators and representatives answer to voters in their State, their district, etc.

As far as you know, has the Government of Canada created a strategy based on this idea?

[*English*]

Take the battle to where these damned companies are located and get their people to put pressure, their mayors, who maybe depend on other Canadian exports; get the state governor who maybe has policies that depend on Canadian exports into that state, not softwood lumber possibly, but other products, other services, and have them do the political pressure on the U.S. representatives or U. S. senators. Have you ever seen such a policy or strategy, and do you think if there was one it might help, if not in the short term, at least in the medium and long term, to turn things around and have a real influence on how American companies use NAFTA as a baseball stick over Canadian companies?

● (1040)

Mr. Marc Boutin: If I can answer the question in two parts, first of all, on Byrd, what does it mean and do we have allies south of the border? My colleague, Mr. Grenier, has been instrumental in creating a group called American Consumers for Affordable Housing, which represents the vast majority of consumers and certainly is in favour of the Canadian position, in favour of free trade for lumber products from Canada.

Having said that, there is no doubt that there is a very powerful lobby in Washington by the American lumber producers.

Having said that, when we look at standing, as it's known, we look at the list of Byrd beneficiaries, disbursees, and our estimations show us that it represents about 51% of U.S. industry. There is no question that there are some question marks on the 49% of the U.S. lumber-producing industry as to whether this disbursement is, first, fair, and second, whether it is something they want to see realized, given that their competitors down the street or in another state would be vastly enriched by this disbursement. There is some serious questioning going on.

Having said all this, there is the need for a concerted effort, on Canada's behalf, not just in Washington but with individual states. As an example, Quebec imports about 10% of its fibre supply from the United States, so we are a critical element in the economies of New England, particularly Maine, New Hampshire, Vermont, and upstate New York, as roundwood buyers, as timber buyers. If we're not there, that timber will not be purchased and landowners in the U. S., in those U.S. states, will suffer.

Clearly, there are interests that we share in common. There has never really been, in my opinion, a concerted Canadian effort. As we approach the new century, it is something we're going to have to put more energy and time into—a concerted effort, Canadian representation in the U.S.—effective representation, to not only exercise our rights but also to advance our position as lumber producers.

[*Translation*]

Hon. Marlene Jennings: Mr. Grenier.

Mr. Carl Grenier: Thank you, Mr. Chairman.

The people who can respond to your question work at the Department of International Trade, have set up a list for consultations which we have in our hands, and which contains several hundreds of products. By the way, I don't think it would be a good idea for them to disclose their policy.

However, as far as I know, the last time Canada adopted a similar measure, it was 20 years ago, in the mid- 1980s over another dispute with the United States regarding cedar shingles representing the small amount of $35 million. At the time, there was enough anger to retaliate. So this is not something Canada does very often. Consequently, we are lacking in experience when it comes to acting in the same way on a file of such importance as that of softwood lumber.

My colleague Mr. Boutin was alluding to our American allies, a group of 17 organizations, which are objecting to restrictions placed on our exports of softwood lumber. These efforts began five years ago, but the coalition, in other words our opponents, have been in existence for 20 years.

It is true that governments have a tendency to prefer producers over consumers. However, it must be said that despite our efforts, and more limited financial means, we have managed with these allies to get 150 Congress members in the United States to object to these restrictions in writing. It's important, and it's the first step. We must carry on, and do more.

When it comes to retaliation, we should in fact seek inspiration from countries which have more of a tradition in this respect. I am thinking of the European Union, which has very successfully used these forms of retaliation over the last few years.

● (1045)

Hon. Marlene Jennings: I'd now like to get to the second aspect of my question, which I haven't yet addressed. The issue of support from the federal government.

First, you mentioned $15 million granted in 2002 to help associations offset part of their legal fees, amount that was received in 2003. As you have received no further assistance of this nature since, you would like to receive new financial help to pay for additional legal fees.

Second, you mentioned a third type of support announced by the government for businesses, which is still being mentioned on the website, but which never came through. You added that softwood lumber associations had made a proposal to the federal government regarding loan guarantees for duties. Nothing happened in that respect.

In its report, would you like the subcommittee to recommend to government the implementation of the third aspect of the relief program for businesses, and for the government to give a favourable response to the associations proposal of loan guarantees?

Mr. Carl Grenier: At the time, this project was proposed by the Free Trade Lumber Council which had received the support of other associations. I should mention, to be clear, that the project was not supported by everyone at the time, but by a large part of the industry.

This proposal was not adopted by government, at least it hasn't been up until now. One can be led to believe that high prices for softwood lumber over last year probably contributed to the industry's ability to keep its head above water, although there haven't been astronomical profits. In some regions, there haven't been any at all.

With respect to what Mr. Couteau was mentioning earlier, an appreciation in the Canadian dollar, in fact it is more of a never-ending depreciation of the American dollar having a direct effect on the competitiveness of companies and their profits. There is no doubt about that.

We expect—and this is already underway—the financial situation for businesses to quickly deteriorate. Without the government's involvement, I believe you will be seeing very distressing situations in several regions of Canada shortly.

To answer on behalf of my organization, I would say yes, absolutely, we would like that to be reflected in your report.

L'hon. Marlene Jennings: Thank you.

Mr. Marc Boutin: I would add that it is important for the 2002 assistance program for businesses to be set aside. It was in 2003, but for expenses incurred in 2002. It was supposed to be renewed in 2003, but that wasn't done, and 2004 is already well underway.

Hon. Marlene Jennings: I've taken note of that, Mr. Boutin.

[*English*]

The Chair: There's another committee coming in at eleven, and we have one more question from Mr. Julian, so it's important that we summarize to give Mr. Julian the opportunity.

[*Translation*]

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

Your presentations have been very interesting, but they're also a bit of a shock, because we are obviously not out of the woods yet.

I would like to get back to the comments made by Mr. Boutin regarding how long it could take if there is a constitutional challenge in the United States. We would probably be looking at an additional two or three years, if I'm not mistaken.

Mr. Marc Boutin: My answer depends on several conditions: if we win the extraordinary challenge, our legal remedies will be improved once again. However, we will have to continue to fight for the reimbursement of deposits. According to the information we have received up until now, and in the press releases issued by the American Department of Commerce, there is nothing to indicate, under the Free Trade Agreement, that these reimbursements must be retroactive, which means that a NAFTA decision on this issue is purely hypothetical.

It's the DOC's new dogma, but it is a threat. We will certainly have to request a reimbursement of the deposits, and most probably before American courts. That won't be until at least 2007, provided that we win the extraordinary challenge.

If we lose—it is a risk, because there's always a degree of uncertainty in legal proceedings—our only recourse would be an administrative review, which would last at least until 2007. So that would be a further review, a sunset review, which could be in our favour, or not. We will have to fight to obtain the deposits as well.

● (1050)

Mr. Peter Julian: Until 2007...

Mr. Marc Boutin: 2007 is the earliest date we can foresee.

There will be new deposit rates as of next week. Will they be the same, higher or lower? That remains uncertain. They will probably be lower.

[*English*]

Nevertheless, they won't be zero. There will be contingent liabilities on Canadian industry with an appreciating dollar, which means our deposits are now worth 30% less than they were worth in 2002. The uncertainty is a big part of what is afflicting us. Not only are we not investing, we're shelling out money.

[*Translation*]

Mr. Peter Julian: Thank you. You mentioned $100 million per year in legal fees.

Mr. Marc Boutin: Approximately $100 million, if you count...

Mr. Peter Julian: For the entire industry.

Mr. Marc Boutin: Companies which have their own legal counsels and those who are the subject of mandatory investigations on dumping don't have a choice. They must have accountants, as well as administrative and legal resources. The same applies to provincial associations and other groups. For instance, the Maritimes, which are not part of the Canadian association, are disbursing considerable amounts. So, everyone *est pendu au crochet*...

Mr. Peter Julian: All right. If you count from the beginning of the crisis 33 months ago up until 2007, what would be the total cost of your legal fees?

● (1055)

Mr. Marc Boutin: At least $300 million, probably more.

[*English*]

Mr. Peter Julian: Merci.

All three presentations were very interesting. You've used very strong language. I come from British Columbia and have seen the impact of the softwood lumber crisis in my province, the 20,000 lost jobs. The folks in my province would certainly understand the wording you used. You spoke about a scorched earth policy, that the attempt is to break the back of the industry, to decimate Canadian industry by attrition. We know they're not playing fair.

Baker & Hostetler, which is an international trade law firm in Washington, D.C., wrote a report on the whole issue of softwood lumber. I'll just quote from it for the record. They stated:

> Canadians must not only contend with the reduced likelihood of success in future binational panel reviews, they also must expect binational panel reviews to be as slow and as expensive as appeals to the U.S. courts, and no fairer, with U.S. panellists who are no longer necessarily expert in trade law, who are protected from appeal, and who are carefully selected to defend U.S. government agency prerogatives. It is now arguable that Canadian private interests ensnared by anti-dumping and subsidies disputes with the United States would be better off in U.S. courts than before binational panels.

Now, we know that the negotiation is around the FTA and NAFTA . We were trying to get a dispute settlement mechanism that made sense. Very clearly, the American administration is not playing by the same rules.

The U.S. interests in those same negotiations were to have access to our energy exports. We know we're the largest supplier to the United States, and we know that energy exports are something that can go to other countries as well. So in a sense what we've done is handed over our cards in any negotiating. And now we're coming back, cap in hand a bit, to try to negotiate what we already negotiated, which was a dispute settlement mechanism that makes sense.

I heard your presentations; they were very effective. What surprised me was that, in a sense, you are asking for support—and that's very important from this Parliament—for those incredible legal costs. But you seem to be indicating more of the same, just going back to continuing to work through the process, the process that we've all acknowledged the U.S. isn't playing by. It's not playing on that level playing field, not respecting the process we negotiated.

I have two questions for all three of you. The first is, what is to prevent the American industry, once we get through this process in 2007, from effectively launching another challenge in a slightly modified form, basically going right back to work, with the resulting incredible cost to industry?

Second, what other country do you know of that would hand over all its cards in negotiating—I'm talking about what the Americans sought, which was access to our energy exports—and then, without having those cards, try to negotiate an end to an important dispute like this?

Mr. Carl Grenier: Well, I can begin to answer your two questions.

What is to prevent the U.S. industry from launching another challenge, what we'd call lumber V in 2007, or whenever the current process is over? I believe it will probably be over a bit sooner than 2007, but I think that's debatable. Basically, nothing. There is no anti-harassment feature to the NAFTA dispute settlement system or to the WTO dispute settlement system. What stops industries from doing it usually is that they've been making money.

For instance, suppose the whole thing will be over by March—it won't be, but suppose it will. Then they probably couldn't launch another attack right then because the previous year is the year of the period of investigation, and they've been doing very well. So they couldn't even convince their own agencies to actually accept their petition.

At some point, with prices fluctuating as they do in our industry, they would probably find the grounds to do so again. In a sense, they can come back—and of course they have in the past. This is lumber IV, as you know; we have already been at this for 22 years.

Unless we are very persistent ourselves, unless we hold them to their commitments, I think eventually the whole system could lose its pertinence and its importance. That's why I spoke as I did in my statement. That's why also I think you find in the Baker & Hostetler study we've tabled today the kinds of arguments that you quoted yourself.

On your second question, what other country would hand over all its cards, I was involved in the negotiating of the FTA in the mid-eighties. I was working then for the Government of Quebec.

Indeed, each country did have its own purpose and goals throughout negotiations. You mentioned access to Canada's energy as one, and that certainly was the case. But most of the questions had been settled well before the negotiation, when the then Government of Canada had decided to basically do away with the Foreign Investment Review Agency.

That was a political decision. It was, I think, a popular one at the time. The kinds of commitments that Canada undertook to make in the FTA, on energy and on other subjects, were quite consistent with the international rules at the time, and they're still the rules.

I don't know if that answers your question, perhaps not completely.

Mr. Georges Courteau: I'll just add one comment.

I agree with Mr. Grenier on the fact that nothing would prevent them from launching another lumber V. However, obviously we must continue to press on with the question of revoking the Byrd amendment, because otherwise, as we've said all along, it would just encourage them to actually get additional money from us to fund their industry. It is costly for them as well to go through this whole process.

But we must make sure the government shows its commitment to its industry, that it will not let go. It needs to continue until the very end on this issue if it wants to show the U.S. that this is important and it will not just let it go.

Mr. Marc Boutin: Very briefly, I would add that under NAFTA Canada by and large has benefited. It continues to benefit—96% of trade between Canada and the U.S. is essentially free of disputes. Lumber is really the outlier out there. We need to resolve lumber because of the repercussions. We cannot have worse treatment under NAFTA than if we weren't part of NAFTA. Regional trade agreements are a fact of life. They occur in Asia, and they're occurring around the world.

Finally, the second point is on other models to follow. Clearly, there is no equivalent example. Our trade is largely linked to the U.S. In fact, 85% of our trade is with the U.S. No other country in the world is in that situation, with perhaps the exception of Japan, but even less so.

We are dealing with a unique situation and with a unique case in lumber. I would point out to this committee that the repercussions for the rest of Canadian exporters are very, very serious indeed. I would leave you with these words.

● (1100)

The Chair: Thank you.

Monsieur Paquette.

[*Translation*]

Mr. Pierre Paquette: No, it isn't a question.

[*English*]

The Chair: Mr. Menzies.

I'll leave it to him. He can have the last question. He's on the list, and I want to be fair.

Ted.

Mr. Ted Menzies (Macleod, CPC): I have one very quick one.

The Chair: But we need a very quick response, because we have the other—

[*Translation*]

Mr. Pierre Paquette: Mr. Chairman, it isn't a question, it's a request, although I do have many questions.

[*English*]

The Chair: It's a request. Let's have the request.

Mr. Ted Menzies: I know the room is required, so go ahead if you have a request.

The Chair: Monsieur Paquette, your request.

[*Translation*]

Mr. Pierre Paquette: I don't know if the others had their presentation. I know we do not circulate documents that are in only one language. However, I would like the clerk to ensure Mr. Grenier's document is translated—and the others as well—so that we can have the information, because what Ms. Jennings is saying seems very important to me. It will be crucial in terms of the dispute, but it seems that the situation for swine is going to be similar. I would like this to be followed up on.

[*English*]

The Chair: I made that request to the clerk when it was first mentioned. Rest assured it will be done.

I want to thank you, gentlemen, not just for being here, first of all, but for some excellent comments you've made. As you can see, we could go on for another hour or so. Certainly I think your constructive comments go a long way to helping us work with our colleagues and all members of the House to come up with some resolution on this most important issue as quickly as possible.

Thank you for coming. We appreciate it.

This meeting is now adjourned.

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