House of Commons
CANADA

Subcommittee on International Trade, Trade Disputes and Investment of the Standing Committee on Foreign Affairs and International Trade

SINT • NUMBER 013 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Tuesday, February 22, 2005

Chair

Mr. John Cannis

Subcommittee on International Trade, Trade Disputes and Investment of the Standing Committee on Foreign Affairs and International Trade

Tuesday, February 22, 2005

● (1535)

[*English*]

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

I would like to welcome our guests to our Subcommittee on International Trade, Trade Disputes and Investment of the Standing Committee on Foreign Affairs and International Trade. Before us today are Canada-U.S. trade issues related to softwood lumber.

I'd like to welcome and introduce our guests and witnesses. We welcome, from the Department of International Trade, Elaine Feldman, associate assistant deputy minister, trade policy and negotiations. As an individual, Mr. Carl Grenier is with us; welcome. We welcome also, from the Quebec Forest Industry Council, Mr. Marc P. Boutin, director, international trade.

Ladies and gentlemen, I don't know if there's a specific order. I know I have an order here, with Ms. Feldman first, then Mr. Grenier, and then M. Boutin.

Ms. Feldman, please.

Mrs. Elaine Feldman (Associate Assistant Deputy Minister, Trade Policy and Negotiations, Department of International Trade): Thank you very much, Mr. Chairman, and thank you, members of the committee, for giving me the opportunity to speak to you today.

Softwood lumber, as you all know, is one of the most important sectors of the Canadian economy, accounting for nearly 285,000 jobs in 300 communities across Canada. In 2004 Canada's softwood lumber exports to the United Statestotalled nearly 21 billion board feet and were valued at more than $9 billion Canadian. This volume represents approximately 60% of total Canadiansoftwood lumber production.

Since May 2002 most Canadian softwood lumber exports to the United States have faced countervailing and anti-dumping duties of over 27%. These duties were reduced in December 2004 to just over 20%. Maritime exporters are excluded from the countervailing duties and pay only the anti-dumping duties.

Resolving the softwood lumber dispute is a top priority of the government. During President Bush's visit to Ottawa in November, the Prime Minister and the President agreed on the need to resolve the softwood lumber dispute. On February 14 the Minister of International Trade, Jim Peterson, met with Carlos Gutierrez, the new Secretary of Commerce in the United States. Secretary Gutierrez also expressed a desire to seek a settlement to this dispute.

The government remains committed to its two-track strategy for resolving this long-standing trade irritant: litigation and negotiations to achieve a durable, policy-based solution. Throughout this dispute the government has expressed its desire to find an enduring solution. Canada has been largely successful in its litigation of the U.S. duties, and NAFTA and WTO panels have repeatedly ruled that the United States' duties are unjustified.

However, litigation is a lengthy process and could easily continue well into 2007 or longer. Furthermore, without a durable solution, nothing would prevent the United States from launching future cases after existing cases have concluded. As a result, Canada has consistently sought a negotiated resolution to the dispute in order to put the litigation behind us and allow the Canadian industry to operate in a stable and predictable North American market.

Extensive negotiations took place with the United States throughout 2002 and 2003. Together with industry and provinces, we sought a settlement that would provide a clear path for provinces to reach free trade in lumber with the United States.As part of a negotiated settlement, provinces were committed to reforming their forest management policies in order to ensure a market-based system. As part of the negotiations, Canada indicated its willingness to put in place a border measure—both an export tax and a quota have been discussed—that would be in effect until a province implemented its policy reforms.

We were not able to conclude an agreement that would have provided enough certainty that producers would achieve free trade with the United States even after provinces had implemented reforms to their forest policies.

Canada has always remained open to opportunities for renewed discussions. American and Canadian officials have remained in regular contact. On February 16 federal and provincial officials met in Toronto with Grant Aldonas, under secretary for international trade at the Department of Commerce. We had a constructive discussion, focused on determining whether a basis exists for re-engaging in negotiations to resolve the dispute. Further discussions between federal and provincial officials and Mr. Aldonas and officials of the United States government are expected to take place in the coming weeks.

Minister Peterson has worked closely with provinces and industry to lay the groundwork for a unified Canadian position in preparation for possible renewed negotiations. The federal government will continue to work in close consultation with both provinces and industry as we move forward.

● (1540)

Let me turn now to the status of Canada's litigation. As I said earlier, we have continued to enjoy key victories in our NAFTA and WTO challenges of the United States duties. Starting with the NAFTA, I can say all three NAFTA panels reviewing the U.S. investigative determinations, that is, the panels dealing with subsidy, dumping, and threat of injury, have found the U.S. duty measures to be inconsistent with U.S. law.

The NAFTA threat of injury case remains the most critical element of our litigation. If there is no injury or threat of injury, there is no basis for either the anti-dumping or the countervailing duties. We had an important victory in this case on September 10, when the U.S. International Trade Commission complied with NAFTA panel instructions and determined that imports of softwood lumber from Canada do not threaten to injure the U.S. industry. This case is now the subject of a review by an extraordinary challenge committee at the request of the United States.

Canada believes the United States' claims will be dismissed in this case. We consider that in that event the Department of Commerce will be required to revoke the duty orders and refund the duty deposits paid to date, with interest. However, the Department of Commerce has taken a different position, and further litigation may be required to force the United States to refund the duty deposits.

We've also won on key issues in our WTO litigation, in particular in the injury case. In March 2004 a WTO panel ruled that the United States had failed to demonstrate that the American industry was threatened with injury by imports of Canadian softwood lumber.

In November 2004 the U.S. International Trade Commission issued a new threat of injury determination that relied on the same faulty analysis that was criticized by the original panel. Canada is challenging the United States' implementation of the WTO panel ruling before a WTO compliance panel and before a NAFTA panel. Canada is also challenging the Department of Commerce's publication of the amended duty order before the United States Court of International Trade.

At the same time as we requested a panel to judge whether the United States had complied with the original decision that it was in violation of its WTO obligations, Canada also requested WTO authority to retaliate against the United States in an amount of over $4.25 billion. Authorization to retaliate would only be granted after a number of steps have occurred, including the results of the compliance panel.

Canada has also challenged United States' compliance in the WTO case regarding the U.S. subsidy determination. In that case we've also requested WTO authority to retaliate, this time in the amount of $200 million. Again, such authority would only be granted after the compliance proceedings are complete.

We are pursuing these challenges to ensure the United States lives up to its WTO obligations. Retaliation is certainly not our preferred course of action and will only be considered in the event that the United States does not bring itself into conformity with its international trade obligations.

In keeping with the United States' retrospective trade remedy system, the Department of Commerce is conducting annual administrative reviews of anti-dumping and countervailing duty orders. These reviews determine the actual subsidy and dumping levels for the period under review and establish cash deposit rates for future shipments. In December 2004 the Department of Commerce made its final determinations for the first annual administrative reviews of the duties for the 2002-03 period. The review determined a new combined duty rate of 20.15%.

● (1545)

On February 17, Canada filed a complaint under NAFTA concerning the final results of the first countervailing duty administrative review. Industry is pursuing judicial review of the anti-dumping duty administrative review before the United States Court of International Trade. We are also involved in the second annual administrative reviews of the duty orders covering the 2003-04 period. This second round of reviews was initiated by the Department of Commerce in June 2004, with preliminary results expected in June of this year, and a final decision next December.

Canada will continue to pursue its litigation against the United States trade actions until there is a resolution of the dispute. In the meantime, we will continue to work with the provinces and industry stakeholders to determine what a resolution might look like. We will also continue to advocate the benefits of a durable resolution to the dispute directly to Americans and communicate Canada's concerns over this dispute directly to the highest levels of the United States administration.

Minister Peterson continues to treat this file as his top priority. He will be travelling to Washington on March 1 to once again raise these issues with key U.S. interlocutors. He will be joined by MPs, senators, provincial ministers, and representatives of the Canadian industry.

In Washington, Minister Peterson will be emphasizing the impact the duties are having on American interests. For example, the U.S. duties of over 20% have created market distortions that have affected not only Canadian industry and communities but U.S. consumers, workers, and industries as well. Jobs in America's lumber-consuming industries outnumber jobs in the U.S. lumber-producing industry by 25 to 1. Restrictions on Canadian lumber imports put American value-added jobs at risk. He will also make the point that the U.S. industry cannot meet American demand for quality structural lumber. The U.S. duties on Canadian lumber disrupt a stable supply of high-quality lumber.

In conclusion, let me say that we believe we need to find a long-term solution to this dispute so that Canadian and American industries can work together to grow the market in North America and abroad for our lumber products.

Thank you very much.

The Vice-Chair (Mr. Ted Menzies (Macleod, CPC)): Thank you, Ms. Feldman.

Mr. Grenier, please.

[*Translation*]

Mr. Carl Grenier (As an Individual): Thank you very much, Mr. Chairman.

Mr. Chairman, members of the committee, I understand that you wanted me to appear today as a private citizen rather than as vice-president of the Free Trade Lumber Council, in which capacity I appeared before this committee on December 7, 2004 with a few of my colleagues. That suits me very well, because at the previous meeting I had beautifully drafted and typed notes that I was able to share with you as well as a research paper on chapter 19. Obviously, that is not the case now. I am speaking as an individual. However, I can assure you that had I had time to tell my board of directors what I intended to say today, they would have supported it. However, I am speaking as an individual today.

I will not reiterate all the arguments I presented on December 7th. My testimony before the committee at that time dealt essentially with chapter 19, which has just been dealt with at length by Ms. Feldman, particularly as regards the manner in which the American authorities systematically tried to diminish the importance of the dispute resolution mechanism for Canada, using manoeuvres from which we are seeing certain repercussions for the first time. In particular, there is the way in which they have used the decisions of an international organization like the World Trade Organization to literally deny us the benefits of the decision by another authority, that being NAFTA. I believe this is something new, and therefore it is very important to emphasize it. I will come back to this later.

In my opinion, the softwood lumber issue, and particularly the difficulty of finding a sustainable solution, cannot be understood if we treat it simply as a commercial conflict that affects a portion of our exports to the United States. We must put this issue into a broader context, that is of the bilateral relationships between Canada and the United States, while taking into account the American political/administrative system which is very different from our own, as you know, and taking into account the foreign policies of both countries.

As a citizen, I would have preferred to address the softwood lumber issue again within the new framework of Canadian foreign policy, which is still being drafted. I believe we will have to do without it. In any case, as you know, any statement of Canadian foreign policy must include a very significant chapter on trade policy. Trade policy is clearly a vital part of any Canadian foreign policy. We are cognizant of the fact that there are unchanging elements within this policy that will have an impact on the statement.

There is nothing new about Canada's great dependency on a single market. I was looking at the historical data. One century ago, in 1906, we depended almost entirely on a single market and it was not the United States. It was Great Britain at that time. If at that time we added together the United States and Great Britain, the result would be approximately what we have today, that is to say that more than 80 per cent of our international exports were directed towards these two markets alone. Today, it is towards a single market. It is even more concentrated, and exports are even more important to the Canadian economy, in that they amount to approximately 40 per cent of everything we produce in terms of goods and services. Therefore, 80 per cent of this is directed towards a single market. That means that we are putting a lot of our eggs into the same basket.

There is also something that is unavoidable. Many people wonder, within the industry, why we do not try to find new markets, as we are having a major problem with the United States. The point is that this would be a very difficult thing to do. There have been very focused efforts made over a very long time, and it is extremely difficult to send a significant portion of our exports elsewhere. The reason for this, obviously, is that there is wood everywhere, as well as the fact that our resource is in close proximity to the American market.

The third significant point is that, in order to understand the difficulty of the softwood lumber issue and of Canadian-American trade relationships, we must always bear in mind the asymmetrical nature of that relationship. We depend greatly on their market. They do not see things the same way.

● (1550)

This 40 per cent of our economy, of which we export 80 per cent to the United States, only represents approximately 2 per cent of their consumption. You of course know why: it is because of the huge disparity between our populations.

The Free Trade Agreement of the 1980s, followed by NAFTA during the 1990s, were responses to those challenges. In fact, I feel these are responses that are still valid. In particular, the hart of NAFTA, and the heart of the FTA, were indeed this very chapter 19 that we still refer to today when we deal with a trade dispute.

I feel it would probably be impossible to negotiate something like chapter 19 today. It is quite clear that the compromise that was reached at that point does not suit the American authorities. This chapter 19, this means of resolving trade disputes was a way to avoid finding ourselves alone and empty-handed in the face of the American giant.

I mentioned earlier, at the outset, a few recent examples of the American approach vis-à-vis this dispute resolution mechanism within the context of softwood lumber. Ms. Feldman evoked certain aspects as well. I maybe repeating myself, but I wish to refer to them as well.

As Ms. Feldman explained, there is an annual administrative review, but unfortunately, it takes 18 months to complete it. Therefore the reviews overlap. In this way, the first administrative review that we became aware of in December was quite different from what we expected. In fact, the preliminary decision which appeared in June led us to believe that the duties, both countervailing and antidumping, would be halved. This was the case for antidumping duties, but not for countervailing duties which were maintained at the same level, at one or two per cent. This was quite shocking, because the reason why we maintained a very high tariff level in the month of December was that we used new transborder comparisons to set the level for countervailing duties.

I have already mentioned the use of section 129, that is to say a method by which the United States can implement WTO decisions, which are now used against us to negate the advantages of the NAFTA decision, although the WTO decision itself was favourable to Canada.

There are also the statements made by Mr. Aldonas himself, the U. S. Undersecretary of Commerce. He did not hesitate to say at the beginning of the year, that even if Canada won its case, they would not refund our money, which is a huge sum. We were clearly aware of the fact that he was referring to the extraordinary challenge procedure which is the last step—it shouldn't be but it would be in this case—of the dispute settlement process. This enormous sum has become a central point in the effort to negotiate a settlement in the softwood lumber issue. Moreover, Mr. Peterson reacted very strongly at that time.

In short, even though it was the United States that requested the extraordinary challenge committee—and we were already aware of this since at least the middle of last year—they took six weeks to appoint their judges, their members of this committee. Once again, it was a way of drawing out the proceedings and making us pay even more.

In the face of all this, I would like to mention, as I did at the end of my presentation before the committee in December, some tactics and responses that Canada might use to challenge this kind of process.

First of all, we believe that given the repeated attacks by the United States, and even by members of the panels, on chapter 19 and all of its provisions, we would be within our rights to ask the United States for consultations under chapter 20. This chapter deals with dispute resolution methods other than those concerning countervailing duties and antidumping duties. It is therefore a very broad chapter. We believe that there are several grounds that should encourage Canada to use chapter 20 to discuss the American application of chapter 19 with the United States.

Secondly, we believe that Canada should also turn to the United States Court of International Trade in order to obtain an injunction preventing them from distributing any moneys whatsoever coming from Canadian exports under the influence of the Byrd amendment.

● (1555)

We believe there is a way to do this through the American court, based on sound legal arguments, insofar as the United States has not fulfilled the three conditions they should have fulfilled in order to change their legislation. These were dealt with when we were negotiating NAFTA. The United States must advise us of any legislative changes that could affect their commercial law. These changes must be in harmony with the WTO, if they decide to make them. This is clearly not the case as the WTO declared the Byrd amendment illegal. Moreover, the other NAFTA member countries, that is Mexico and Canada, in the case of a legislative amendment like Byrd, must be named in the new legislation. This was not done.

Therefore, we believe that there is a means by which we can block any distribution of this money to U.S. industry interests, and we believe that the minister is quite favourable to this approach.

Finally, there are two other points to emphasize. On the one hand, we are expecting a final decision from the extraordinary challenge committee. Ms. Feldman has already mentioned that it is possible—in fact, because of official American statements and statements by the American coalition, we expected this—that we are not at the final stage and that another legal initiative will be necessary in order to force the United States to lift the countervailing and antidumping duties and to pay back our money. But, in the meantime, the companies are spending astronomical amounts. Already, $4.25 billion CDN are in the coffers of the U.S. Treasury. The Canadian government could use a relatively simple and inexpensive procedure in order to avoid these companies being threatened by the withholding of this money that is owed them, but is not currently in their possession. The idea would be to declare these sums, that is the so-called duty deposits, to be accounts receivable which, should a company ever need one, would be eligible for a loan guarantee application on the part of organizations like Export Development Canada.

There is however another aspect that is even more important and more urgent than this one to allow the industry to continue to defend itself in what is clearly a case that goes well beyond softwood lumber: I refer to the relatively modest but very important financial assistance of which we have received the first instalment last year. We were promised two more instalments. We have not yet seen those funds, and it is very important that they be paid out.

I would be happy to answer your questions.

● (1600)

[*English*]

The Vice-Chair (Mr. Ted Menzies): Thank you very much, Monsieur Grenier.

Next we'll hear from our representative for the Quebec Forest Industry Council, Monsieur Boutin.

[*Translation*]

Mr. Marc P. Boutin (Director, International Trade, Quebec Forest Industry Council): Mr. Chairman, members of the committee and honourable colleagues, it is a pleasure for me to present the Quebec Forest Industry Council's position to you today.

You will find that much of my presentation dovetails with what Ms. Feldman has said concerning the legal aspect and the disputes, as well as the issue of a solution, that is the search for a long-term sustainable solution, a fair solution, etc. You will also find a great many similarities with Mr. Grenier's presentation.

I will spend a little less time on the dispute, as we have already discussed the technical aspects. You are aware of the scope of the issue. It is the biggest dispute in the history of international trade. I therefore do not need to emphasize that. We are talking about astronomical sums, as Mr. Grenier mentioned.

First of all, let me give you a brief overview of the Quebec Forest Industry Council.

We represent the vast majority of lumber producers, forestry workers, and pulp and paper producers in Quebec. That represents approximately 274 saw mills and 64 pulp and paper mills.

In Quebec, the forestry industry is very wide spread throughout the regions. There is an industry presence in almost every one of the regions of the province. There are 250 municipalities that depend entirely or in large measure on the forestry sector. It is therefore vital to the regions of Quebec. I am talking about a total of approximately 143,000 direct or related jobs. We are talking about significant contributions to the economies of Quebec and of Canada. You are aware that the balance of payments is a contribution that is very important to Canada's trade balance.

As far as the dispute is concerned, I will speak about the cooperative effort that is underway with the Canadian government; the work, generally speaking, is running smoothly, and also solicits other associations and organizations such as the one Mr. Grenier represents. It is rather collegial. There are disagreements at times, but that is not necessarily a bad thing. It means that we have to be very well prepared and have very sound arguments. In general, I would say that the council is satisfied with the dispute resolution process, even though it sometimes seems that we are bogged down in never-ending appeals.

As far as countervailing duties are concerned, we are once again seeing very low levels of subsidies for Quebec. The results of the administrative reviews which, as Mr. Grenier explained, happen annually, have given Quebec a rate of 4.3 per cent. For all of Canada, still using methods that the WTO have deemed to be illegal, they have managed to inflate the average Canadian rate to 16.37 per cent. We know that under the appeal processes under NAFTA, which are being conducted at the same time as the administrative reviews, we are now at a rate of 1.8 per cent for subsidies. Therefore, we are getting closer and closer to a *de minimis* rate, that is to say zero. There is therefore a complete disconnect between the allegations and the reality.

As far as antidumping is concerned, the council is extremely disappointed with the trade actions. We talked about compliance and the WTO decisions in order to oppose decisions that were taken under NAFTA. We've seen this done flagrantly with the implementation of the WTO decision. They reproduce the practice of what is known as zeroing, that is to say that sales that are seen as dumping are calculated and those that are not are simply rejected.

● (1605)

In this way, a de facto negative average is created. It is almost impossible to not end up with a finding of dumping. We therefore find ourselves in a rather precarious situation as far as dumping is concerned, and some Canadian businesses and some Quebec businesses find themselves in a situation where, following the administrative reviews, we see a dumping rate that not only stays the same, but that swelled to 11.38 per cent. There are a fairly significant number of Canadian businesses that have to pay this extra premium.

Once again, the Quebec Forest Industry Council encourages the Canadian government to use all legal avenues to ensure there is proper compliance, and that it not be distorted in order to impose punitive rates on an entire Canadian industry.

As concerns the injury, as Ms. Feldman said, this is the area in which we have had our clearest successes. We know that as far as NAFTA decisions are concerned, there is no injury. We are well aware—I want to use more pragmatic language—that once again, the American authorities have not only used a WTO decision compliance procedure in order to reintroduce new facts that prove there is a threat of injury, but they have gone even further in amending the antidumping and countervailing duty orders, to do what, we are not quite sure yet. It is easy to imagine that these amendment orders could be used by the American party to revive these two challenges. There is a lot of bad faith in this situation. The decisions of one organization are being used perversely in order to oppose those of another organization.

As far as a solution is concerned, the council does not feel that Canada is obliged to have a settlement of claim. Canada has won most of the legal battles that mainly concerned, as I have said, the threat of injury. We won them both under the WTO and under NAFTA. As a result, both logically and legally, the proceedings should be voided and the duty deposits that Canadians have paid out —and we are now talking about something over $4 billion Canadian dollars—should be refunded.

The Quebec Forest Industry Council firmly believes that the ultimate goal is free trade. However, it recognizes that in the short term, it will be very difficult to achieve free trade, at least with the current political context in the United States. The dispute is very expensive. It creates a great deal of friction with our main trading partner, that is the United States. As a result, the council feels that we should give consideration to an agreement proposal or to agreement proposals, but they must be fair and reasonable. Moreover, the Quebec Forest Industry Council wants to participate, with the Canadian government and the other industrial associations, in the signing of an agreement if this is possible.

There are four principles that must be part of an agreement. It must have the support of the members of the council. It is our understanding that the federal government is already committed to including most of the industry in any agreement.

Any potential agreement must put an end to the current situation, because we see that even if we come to the logical conclusion of the appeals process, we can foresee that there will be a plethora of further appeals simply to seek the reimbursement of the moneys belonging to us, in order to oppose other proceedings that we cannot yet anticipate. We can imagine that the orders that have been amended will be used to draw out the dispute for as long as possible.

Moreover, the Quebec Forest Industry Council demands full payment of the deposits that have already been paid out to the Americans. It is our money. If these deposits are left on the table for any reason whatsoever, this will surely set off another series of disputes, because we will have rewarded the bad behaviour by having left the money behind.

● (1610)

In short, any agreement must be sustainable and must offer long-term stability for the forest industry in Canada, the softwood lumber industry.

The council is open to a form of export tax, if that is indeed the solution, but it sees that we must recognize the differences between the provincial forest management practices in Canada, the differences between the products of the various regions, and finally, the economic realities of each province. The tax should vary from one province to another.

In terms of forestry reform, if we really must explore this aspect in order to arrive at some understanding, we feel that we must remind the American authorities that in Quebec, at the beginning of the 1990s, we had already undertaken a fundamental reform of our forestry management practices in order to comply with their requirements. I remind you that at that time, the American authorities had even conducted an inquiry on the management practices in Quebec. Following the inquiry, they decided on a subsidy rate of 0.01 per cent. Today, we see that with the new appeals processes, the reforms that had already been undertaken have been completely set aside. They are no longer recognized by the American authorities. It is therefore critical to achieve a sustainable and stable agreement. We spoke a bit about an appeal under chapter 20, which is potentially another way to achieve this.

There are two other factors. Mr. Grenier already spoke very conclusively about the Byrd amendment. This has already been recognized as being illegal under WTO proceedings. We believe that Canada must take the strongest possible action to fight against the Byrd amendment. We are still talking about the enormous amounts of money at stake, that is to say the $4 billion, and this is increasing at a rate of $150 million per month. This amount continues to increase as we speak, this amount which is the principal stake of the proceedings. We therefore must reach a conclusion.

We support the Government of Canada's position on retaliatory measures at the WTO level as far as the Byrd amendment is concerned. However, we feel that this battle must be fought at every level, that is to say at the WTO, NAFTA, or even in the American courts. We have no choice.

As far as American proceedings are concerned, we are referring to the CIT, the Court of International Trade. We encourage the Government of Canada to launch proceedings with this body in order to potentially challenge the illegal distribution of Canadian payments made under the Byrd amendment. Furthermore, the industry is prepared to work in collaboration with the government if it really needs the industry's support.

Mr. Grenier spoke about assistance for the associations. Our resources are currently stretched to the maximum, and we will need resources to see this battle through.

Finally, let us discuss the federal government support that we will need for the legal process. We are talking about associations that represent the entire Canadian industry. This support is critical, and we need it quickly, that is to say now. If we cannot solve the softwood lumber dispute through NAFTA, the problem becomes a national one for the entire Canadian export sector. You heard Mr. Grenier talk about the importance of the export sector to the Canadian economy. It is vital.

We are encouraged by the comments made by Minister Peterson who stated that he supports the concept of financially supporting the associations. On the other hand, we are still waiting. An initial payment was made in 2003 and it was used advisedly. The results speak for themselves. You have seen the results in the injury file. It is the legal case where we have had the most success up to now.

● (1615)

We strongly and urgently need this support. I thank the members of the committee.

[*English*]

The Vice-Chair (Mr. Ted Menzies): Thank you to all three of our witnesses for providing, once again, more insight into this ongoing issue.

We would like to offer an opportunity to the members of this committee to ask questions. To be fair to everyone, we'll try to keep it to 10 minutes on the first round.

We'll start with Mr. Duncan, please.

Mr. John Duncan (Vancouver Island North, CPC): Thank you very much. I'll echo the chair's remarks in terms of the witnesses.

My first question would be to Elaine Feldman. Since December, we've had industry consensus—industry pushing the minister—on challenging the Byrd Amendment in the Court of International Trade. We've had the minister latterly say he agrees with the argument. Can you explain to the committee what arguments have pre-empted us from actually doing that?

Mrs. Elaine Feldman: Thank you very much.

The minister recently wrote, I believe, to Monsieur Grenier, saying that the Government of Canada is prepared to bring an action, in conjunction with the industry, before the Court of International Trade. We indicated in that letter we would also consult with other industries affected by the Byrd Amendment. As you may know, the amount on which Canada might retaliate this year is in the order of $11 million. More than half of it comes from industries other than the softwood lumber industry—in particular, the steel industry.

So we have gone out to the other industries affected by the Byrd Amendment to determine whether they too would be interested in joining with the Government of Canada in bringing such an action. We have heard, from one of those key players, that they're not interested. We have given the other industry representatives until Friday to give us an answer; if they are interested, we would then like to proceed, in conjunction with all interested Canadians. If the other industries decide they do not want to bring the case, then we will proceed in conjunction with the softwood lumber industry associations.

I should also tell you we have been in touch with the Government of Mexico, because Mexico would be in the same position as Canada, to determine if Mexico is interested in joining with us in this sort of action.

So I would assure you, Mr. Duncan, that action is imminent in this case.

Mr. John Duncan: It may be imminent, but the American strategy is to foot-drag, to extend these negotiations as long as possible, and the actions of the Canadian government have actually partnered with that activity. Even if all the other Canadian industries said they can't afford to say yes to your request, the Canadian government should still be launching.... My understanding is it's up to the Canadian government to launch the suit; it's not up to industry to launch the suit. Maybe you can clarify that.

● (1620)

Mrs. Elaine Feldman: Thank you.

The advice we've received from our legal counsel is that industry is better positioned than the Government of Canada to bring such a case, which is why we want to do it with the industry, because if it turns out that the Government of Canada doesn't have standing to do so, then the industry would. That is why we have been consulting all affected Canadians, and why, as I say, we're looking for a final decision by Friday.

We know the softwood industry would like us to proceed, and we will proceed with them if they are the only industry that wants to do so.

Mr. John Duncan: You can appreciate the industry is caught here in a catch-22. They have consensus, but they also have been requesting assistance from government to pay legal costs. They were promised further legal costs from the previous minister; that has not been forthcoming. This is a long-standing request. Without the legal assistance, it's very difficult for industry to say yes when they know that'll expose them to further costs.

Is there a departmental response to why this is so tardy, clarifying whether legal aid is coming and fulfilling the request?

Mrs. Elaine Feldman: Thank you. I believe that issue will be coming to ministers for consideration.

Mr. John Duncan: Okay.

Now, another issue that has extended this dispute well beyond the timeframe one would think it would normally take to get from one step to the next is the U.S. foot-dragging on almost every single issue every time there's another step in the NAFTA process—and latterly on the threat of injury case. The U.S. is taking forever to appoint their representatives, and so on, and we never hear our department or minister, or anyone of ours, complaining about this. We only hear it from industry; and of course industry is reluctant to pop up and become a target for the Canadian government to say, "Why are you individually popping off about our actions?"

But why are we so quiet every time the U.S. drags this process out beyond what's reasonable, beyond the timeframes contemplated when we negotiated NAFTA and the dispute resolution process?

Mrs. Elaine Feldman: I think, Mr. Duncan, you only have to look at some of Minister Peterson's recent statements to know that he hasn't been quiet, that he's been quite vocal in speaking out against the United States' actions.

With respect to the specific case you mentioned of the extraordinary challenge, we were in constant communication with the United States to ensure that they would appoint their judge to the ECC. As I think Mr. Grenier said, the ECC is now up and running. We're waiting to hear from the panel of judges as to when they want to hold a hearing; it's in their hands now, frankly. The parties have made their submissions; we have all met the timetable set out in the NAFTA for putting in our submissions, both Canadians and Americans, and it's now up to the panel of judges to decide on the next steps in the procedure.

Mr. John Duncan: But we were expecting that decision in March, and now I understand that it might not be until June—and the Americans took six weeks to name their representative. I mean, you can't portray it all as being on the preconceived timelines, because it certainly has been well extended.

I think this has a huge implication for entering into negotiations. The leverage that was anticipated is that we would not negotiate until such time as the extraordinary challenge decision was in—which we fully expect to win. Now, it looks like we're entering into....

Can I assume, from what was said today, that the minister has put steps in place to open negotiations prior to the extraordinary challenge decision?

● (1625)

Mrs. Elaine Feldman: We have begun discussions with the United States to determine whether there would be a basis for re-engaging in discussions. The federal government, along with all of the provinces, met with the United States' representatives in Toronto last week and agreed to proceed on that basis. So, as I said, all provinces were present and agreed to proceed. Further discussions to see whether there could be a basis are expected to take place perhaps later this week, and then on into March.

The Vice-Chair (Mr. Ted Menzies): You've got 30 seconds.

Mr. John Duncan: But in addition to the provinces, there was discussion about industry as well. I mean, it's easier to get industry consensus now than it's ever been in Canada, so is it going to require industry agreement as well as provincial agreement?

Mrs. Elaine Feldman: We've been in constant communication with the industry, as well as with the provinces. We did a debrief with the industry following our meeting in Toronto and we have asked them for their views on all the elements that have been under discussion with the United States.

The Vice-Chair (Mr. Ted Menzies): Thank you.

Mr. Paquette.

[*Translation*]

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

Thank you very much for your presentation. As you know, this is a file we've been following with a great deal of interest. We're all looking forward to a resolution.

I would like to have your assessment of the situation. I had the opportunity to attend a reception organized by the American consulate in Montreal for outgoing ambassador Cellucci. However, I heard various things about the meeting that took place on February 16 in Toronto, where it would seem, the possibility of an export tax was mentioned as a transitional solution. It's being mentioned at the same time as the minister announces legal action before the WTO on retaliatory measures under the Byrd amendment. There is also the fact that the $4 billion amount is constantly increasing. Isn't it a contradictory message to be sending to the Americans? On the one hand, we tell them that we're ready to negotiate transitional solutions, and on the other hand, we raise our voices and say that we're going to go before the WTO to get the go-ahead to launch retaliatory measures. That's the first thing I wanted your opinion on.

In my opinion, we're sending a bizarre signal to the Americans regarding the extraordinary challenge and extended deadlines.

Second, I was told that Mr. Aldonas, the under-secretary, had had his term extended by one month. Some people interpret that as a sign that the Americans have the will to settle this issue in the short term. Do you share this view? Why, according to you, was his term extended? Does it have more to do with internal administrative considerations within the American Department of Commerce or rather, should this be interpreted as a sign that they wish to arrive at a settlement?

In fact, we have now come to a point where we really have to assess the situation. I would like to have your comments on the subject, Mr. Boutin, as well as Ms. Feldman. Can you tell me what you think at this point?

Mr. Marc P. Boutin: Indeed, there seems to be a contradiction between the taking of extraordinary measures, in other word, retaliation in the form of requesting astronomical amounts, and the will to reach an agreement.

Mr. Pierre Paquette: That is to say, a very specific proposal which seems to be an export tax.

Mr. Marc P. Boutin: That's correct.

From the start, Canada, supported by the industry, has been proceeding on two tracks, the legal track and that of seeking a resolution. Up until now, we have been unable to come to a resolution which satisfies the Americans.

Mr. Grenier mentioned the inflammatory statements made by the under-secretary, who is now willing to negotiate. Nonetheless, you will remember his statement to the Canadian press to the effect that Canadians would never be reimbursed unless an agreement intervened. That statement was unequivocal.

In the industry, this is what is referred to as blackmail. Canada doesn't have a choice. We have to take extraordinary measures, extreme measures, I admit. There is a great deal of skepticism on all sides as to the possibility of reaching a negotiated agreement, following Mr. Aldonas' approach and the threats he has made. However, Canada has never demonstrated any ill will. As an example, there have been some practices such as appealing to an authority, notably the WTO, to overrule or reverse NAFTA decisions, something we had never seen before because it is an illegal practice. It is quite simply bad faith on their part. Unfortunately, this is the current situation.

This is the reason why we support the minister when it comes to retaliation. At some point, we will probably have to take a step back and perhaps be more level-headed on this issue. However, we're not there yet.

● (1630)

Mr. Carl Grenier: I've noticed that there are two parts to your question. On the one hand you're referring to our assessing the chances of finally reaching a settlement. There's also the issue of Mr. Aldonas and his statements.

With respect to the chances of reaching a settlement, Mr. Feldman earlier touched on what had been discussed in Toronto, on February 16th. It was a discussion on the possibility of resuming negotiations. From what we've heard of these discussions, they resemble the approach taken in 1986, in what is referred to as the MOU, the Memorandum of Understanding, which ended the second softwood lumber dispute. It related to an export tax that could vary from one province to the next, as each province amended its forestry policies. The recent discussions were very similar to this.

We know that didn't amount to a sustainable solution. There was Lumber III, and we now have Lumber IV. If you're looking for a sustainable and permanent solution, in my opinion, this isn't it. One of the major problems with this approach is that the United States cannot guarantee that after three, four or five years, they won't allow their industry to start up the dispute again, as they have done in the past. As a general rule, I'm rather skeptical when it comes to the possibility of finding a sustainable and permanent solution for the problem in this way.

With respect to Mr. Aldonas' role, he is certainly the highest-ranking official to have addressed this issue for the last few years. However, we have to ask some very serious questions with respect to the merits of his most recent approach. This is a person who spent practically two and a half years trying to settle the softwood lumber issue, without managing to do so. Now, his term has been extended for four weeks. So he now has six weeks to come up with a solution. I'll admit of course, that some work has been done in the past, but it hasn't led to much, and for very good reasons. He now has six weeks ahead of him, and he'll be taking a week off during this period.

Mr. Pierre Paquette: He's taking a step back in order to better move ahead, I gather.

I don't know if Ms. Feldman had anything to add. Afterwards, if I have any time left, I'd like to get back to the issue of legal fees.

Mrs. Elaine Feldman: I'd like to get back to what Mr. Boutin said. He mentioned two tracks and the fact that we are looking at legal action as well as retaliation, and the possibility of resuming negotiations. The Canadian government's position, with the support of provinces and the industry, has always been to proceed on both tracks.

When it comes to retaliation, it is sometimes imposed upon us because of the WTO's agenda. Once the Americans state that they have taken the necessary means to comply with WTO rules, we have 30 days to bring a challenge before WTO. AT the same time, a motion must be filed, allowing us to take retaliatory measures. Sometimes we act in this way because otherwise, we would lose our rights.

This is why, in January, we filed a motion for the $200 million, and in February, one for $4 billion. Sometimes, WTO deadlines compel us to act in this way.

● (1635)

Mr. Pierre Paquette: I'm not annoyed by the issue of the two tracks, because I've always supported that. What upsets me, is that out of this meeting came the idea of an export tax, which is a very specific solution often raised by the Americans. I get the feeling that it weakens us, at least in the short term, because so long as the extraordinary challenge isn't finalized, the Americans won't really have the will to sit down with us. At least, that's my feeling.

With respect to legal fees, I'd like to know how much the industry and the government have respectively spent up until now. You can give me an approximate number, I don't need the exact dollars and cents. After all, this is Ottawa.

Mrs. Elaine Feldman: I'll ask my colleagues to answer the question on industry.

With respect to the federal government, we spend between 9 and $10 million in legal fees each year for all proceedings before NAFTA and the WTO. Provincial governments also have expenses, but I wouldn't be able to give you those figures.

[*English*]

The Vice-Chair (Mr. Ted Menzies): We'll have to cut it off there.

Sorry, did you have a comment?

[*Translation*]

Mr. Marc P. Boutin: On the industry side, the figures are similar at least for Quebec, if you include what the association spends. We spend the lion's share. However, some large companies which, for instance, are the subject of audits and dumping investigations have to retain legal counsel, accountants and IT support. Those are major cases, and they require a great deal of resources.

[*English*]

The Vice-Chair (Mr. Ted Menzies): Thank you.

Mr. Grenier.

[*Translation*]

Mr. Carl Grenier: We've tried to calculate all of these expenses. It's rather difficult. First, there are the costs incurred by associations and companies which are the subject of dumping investigations. There are eight large companies which are now in that situation. In every case you're looking at millions of dollars per company. In the industry it would easily add up to approximately $100 million per year, and this would be a conservative estimate.

[*English*]

The Vice-Chair (Mr. Ted Menzies): Thank you.

Madame Jennings.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you very much for your presentations. I have a few questions. I will start with you, Ms. Feldman.

You mentioned the reason why the Canadian government did not launch proceedings before the Court of International Trade. You wanted to ensure there were consultations with all sectors of the different industries in Canada which were affected by the Byrd amendment to see whether they wanted to take part. We know that the forestry industry is there. You said that the Canadian Steel Producers Association had declined and that you were waiting for a response from the other sectors. They have until Friday, February 25th to state their intent. What other industries are we looking at?

Why did the Canadian Steel Producers Association refuse to take part in the suit? We understand why the logging industry is interested in taking part. I would like to know why another industry is not interested.

You mentioned the Canadian government and I want to quote your exact words. According to you,

● (1640)

[*English*]

the Canadian government wants a “unified Canadian position” for resumption of a “negotiated resolution”.

[*Translation*]

You're talking about a unified Canadian position for a negotiated resolution to this entire affair.

[*English*]

Exactly what is this unified Canadian position that you're looking at? We heard from Mr. Grenier and Mr. Boutin very clear principles upon which any settlement or resolution that is in fact a real resolution has to be based. We have not heard from the Canadian government exactly what it considers has to be the base, the fundamental tenets that a so-called durable resolution has to repose upon in order for it to in fact be a resolution and for it to be a durable one. So I'd like to hear from you on that.

I'll wait for answers, and if I have time, I'll go back to other questions, but my last question is for you, Ms. Feldman.

We've had both Monsieur Boutin and Monsieur Grenier talk about the Canadian government's commitment of financial assistance to the forestry industry. A first payment was made in 2003, and since that time no further moneys have been forthcoming. You mentioned in response to a question from one of my colleagues that you believe it's going before cabinet. Well, it's either going before cabinet or it isn't. If it is, why has it taken this length of time for it to go before cabinet, so that more moneys can flow to the industry to meet our commitment?

Mrs. Elaine Feldman: Thank you very much. Let me try to answer your questions in order.

As for the other industries and why the steel industry declined, I personally don't deal with that aspect of the Byrd Amendment, so I can't answer your questions. A colleague is dealing with the steel industry and with the other affected industries. I believe one of them is magnesium, but I don't know which other industries have been consulted, nor do I know why the steel industry declined.

Hon. Marlene Jennings: In that case, I would ask, through the chair, that your colleague be asked to provide that information to this committee in writing. It takes a letter, and that's it.

Mrs. Elaine Feldman: Okay, I'll go back and get the answers.

Hon. Marlene Jennings: Thank you.

The Chair: Give that to the clerk, and the clerk will make sure everybody gets a copy in both official languages.

Hon. Marlene Jennings: You're not using up my time now, are you?

The Chair: No, not at all. You have six and a half minutes to go.

Hon. Marlene Jennings: Good.

And you're not going to take it all up with your answers, are you?

Mrs. Elaine Feldman: No.

In terms of a unified Canadian position, the Government of Canada is working closely, as I said earlier, both with provinces and with industry. Provinces have been interested in seeing whether there is a possibility of achieving free trade through provincial policy reforms that would lead to market-based systems in each province. That's the line we have been pursuing in terms of an eventual agreement that would allow for the possibility of free trade in softwood lumber.

Hon. Marlene Jennings: I'm going to stop you right there, Ms. Feldman.

We just heard—and you were sitting here—that in the early 1990s the Quebec government proceeded to exactly the reform you're talking about, and that American representatives or officials came in and did an entire evaluation. The results and conclusions of that evaluation were that in fact there was “less than 0.01% market distortion because of the practices”.

If you're saying there are provinces that are saying “Well, maybe we can reform our forest management policies”, then I have to assume it's not Quebec. So which provinces are you talking about? That then tells me there are provinces that admit that their forestry market practices are not competitive, and therefore, at least in terms of them, the Americans may—and that's a big “may”—have some substance.

I don't think they do at all, because we wouldn't have received the decisions we did from WTO and from NAFTA panels on the entire industry. But why would a province even talk about that when we have these two decisions that are clearly stating that everything is fine, that there is no injury?

● (1645)

Mrs. Elaine Feldman: I can't speak for the provinces. All I can tell you is that all provinces, including the Province of Quebec, have participated in these discussions and are interested in pursuing them with the Department of Commerce.

The Chair: Ms. Jennings, you have approximately three minutes to go.

Hon. Marlene Jennings: Could I have comments, possibly from our Quebec representatives of the industry?

Monsieur Grenier.

Mr. Carl Grenier: Speaking personally—

Hon. Marlene Jennings: Speaking personally, always.

Mr. Carl Grenier: —during the 1990s I was the most senior official with the Quebec government dealing with this issue. I think Marc Boutin recounted it very well. It came as a shock when this new investigation gave Quebec a 24% initial subsidization rate when it had found no subsidies just a few years before.

I think this throws into stark relief a very important aspect of our Canadian approach to a settlement. The Canadian approach to a settlement has not varied in many years; that is, a policy-based reform by the provinces that would eliminate the reason for these U. S. actions against us. The problem with this, as you pointed out yourself and as I think Marc Boutin has pointed out, is that it hasn't worked in the past, not only with Quebec but with other provinces as well.

We know for a fact, from our conversations with the U.S. coalition, that they couldn't care less about provincial forest policy reform. This is just a pretext for them to come after us another time. I don't think they're doing so well this time around, but they've done very well in the past monetarily speaking. They've reaped billions of dollars just by the act of complaining, even if they don't win in the end. Also, it should be borne in mind that the Government of Canada, the provinces, and the industry have successfully defended current policies. Policies have changed over time. I don't want to suggest for a minute that all provincial forest policies are absolutely perfect and don't need to be changed. Obviously that's not the case. But we've successfully defended these policies.

Right now the Department of Commerce itself, forced through the NAFTA panel process, is saying that the level of subsidization by the provinces is 1.88%. If they had followed every recommendation of the panel, it would be zero. If it were zero, then the order would fall. Obviously they're going to do everything to get there. We're down to the fourth remand now.

We have to question our own approach to a negotiated settlement. Saying that it has to be policy based is not enough, and it may be that it's not the right way to go.

Hon. Marlene Jennings: Perhaps the right way to go is simply through litigation. Kick their butts in court and make it clear that we're prepared to do that every single time they come back to the trough. The kitchen is closed, the cook has resigned, and there's no more food on the table for them.

We're a rules-based society, and we always try to approach things from the rules, from policy, from science, etc. It's clear that there is not the same attitude on the part of the Americans, at least in this particular industry. I can't talk for the other industries, whether it's the steel or magnesium industry, which you mentioned, or other ones. We already know that on the BSE they're not necessarily there either. So use the courts.

The Chair: You're right on time, Madam Jennings, with your closing statement.

Hon. Marlene Jennings: Thank you.

The Chair: We'll go to Monsieur Julian.

● (1650)

[*Translation*]

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

[*English*]

The Chair: If I may, we want to spend five minutes at the end discussing the budget before we go.

The floors is yours.

Mr. Peter Julian: With that additional pressure, thank you very much.

[*Translation*]

I'd like to get back to the point Mr. Paquette had started to make, regarding legal fees. You both mentioned 9 to $10 million a year. What is the cumulative total for the industry since the beginning of the dispute? What is the total amount the government has spent up until now? And what would be your estimate for expenditures between now 2007 if we have to go through the American courts?

[*English*]

Mr. Marc P. Boutin: We can foresee at least the same level of expenditure legal-wise, but as the cases advance—I stress the plural—we will get more and more into a plethora of further appeals and counter-appeals procedures. At origin, if you recall...we essentially have 12 cases ongoing, none of which are concluded yet.

If we are talking about appeals at the CIT—industry has already filed a notice of intent at the CIT on the dumping case—we're also talking about NAFTA appeals. We might end up, conceivably, at some point going to further, higher instances in U.S. law—so circuit court appeals, counter-appeals. I'm not using the right legal terminology, but that's essentially what they are. We might even foresee the Supreme Court.

So we're looking at an exponential growth of legal procedures in this case if we continue on track one, which is why we cannot, I think, in all fairness dismiss settlement as an option. As I've often told my colleagues here, the cure cannot be worse than the disease.

But we are definitely looking at an accelerated rhythm of legal recourses and activities.

The Chair: Mr. Grenier, would you like to add to that?

Mr. Carl Grenier: Just to give you a very recent example, the Canadian Lumber Trade Alliance was formed four years ago to deal with the injury case, and we've had, as has been said here many times today, remarkable success. That may be the one part of these cases that brings us total victory. Recently we've had to quadruple the individual associations' contributions to the budget to do that, because this is the instance that is preparing for the extraordinary challenge, helping the federal government, preparing also for a constitutional challenge that the coalition has threatened, and all the legal appeals for the Court of Appeal, for the federal circuit, the automatic appeal to the Supreme Court.

Indeed, our legal expenses are increasing very rapidly. This is the main reason we say, listen, if we have to...and I think we do. I agree with the member who just said that maybe the only way to really settle this matter in the near term is to go to the end of the litigation process. We're very close now. I think we are at the point where we're having to say, well, we can't afford this appeal or that part of the procedure. It would be a real shame if we did that, because that's exactly what the U.S. coalition and U.S. authority's strategy is—to drive us into submission, to really starve us into submission.

Mr. Peter Julian: We'd be looking at three levels—the extraordinary challenge level, the Court of International Trade level, and then presumably, a constitutional challenge in American courts.

But the question was on the amounts we're talking about.

Mr. Marc P. Boutin: As Mr. Grenier just pointed out, as associations we've had to quadruple our contributions toward this mechanism, which for the last four years has dealt with injury. We're now dealing with injury, with compliance section 129 in the injury case as a separate entity, and we're probably going to appeal it. We're dealing with reimbursement of deposits. In all likelihood we'll have to take some actions. We're dealing with a constitutional challenge at the end of the day if we win categorically at the ECC. And we also have to manage the extraordinary challenge in the injury case.

So all of a sudden...essentially the focus was on one activity, which was the injury case, albeit at the WTO and NAFTA, so it may be a dual role. We're now dealing with four elements that have been added to the injury file, and we're also looking at appeals in the administrative reviews that would, again, come under the joint heading of the Canadian government and Canadian industry. We're looking at exponential growth of appeals and legal manoeuvring here.

● (1655)

Mr. Carl Grenier: If I may, let's not forget that if this dispute settlement process does not work for softwood lumber, which is the biggest trade dispute we have with the U.S., it will not work for anything else. We will have lost what was the main gain of the free trade negotiations.

Mr. Peter Julian: Absolutely.

I'll come back to the question, though. For the record, what amounts are we talking about, presuming we're going through to 2007? I think it's important to know. Are we talking $100 million, a quarter billion dollars, or half a billion dollars? What are we talking about? And that's cumulative, seeing the process through. Because you've talked about the complications; you've talked about the various levels. Surely we have rough cost estimates.

Mr. Marc P. Boutin: Let's take January 1, 2005, as a start-off point, and let's assume that roughly—and I think Carl's calculations are pretty accurate—on the whole, including government, provincial governments, industry associations, and individual companies, Canada is spending about $100 million a year. I can easily envisage at least a 50% increase in that, and I'm probably underestimating the amount.

Mr. Peter Julian: So we could be talking about a cumulative amount of about half a billion dollars?

Mr. Marc P. Boutin: We're almost already there, because Lumber IV started in 2001; the petition was filed on April 2, 2001. Whilst there wasn't the intensity of legal activity in the beginning of the case, it's been accelerating, it's been accumulating, and I'm guessing we can easily talk today of $400 million spent by Canada as a whole.

Mr. Peter Julian: To date?

Mr. Marc P. Boutin: To date.

Mr. Peter Julian: And looking at potentially another two years, with a 40% increase on the annual amount, we're looking at potentially a 50% increase on $100 million. So we'd be looking at potentially three-quarters of a billion dollars, or just shy of that?

Mr. Marc P. Boutin: There are probably a hundred scenarios we could look at. A constitutional challenge isn't necessarily a slam dunk. It could well go in front of a judge and be turned down, so it may become moot at that point. On the other hand, if a constitutional challenge goes ahead, if we challenge chapter 19, if we essentially take NAFTA and rip it up and it goes to its ultimate conclusion, we could end up in the Supreme Court, and that's at least a two-year process.

Mr. Peter Julian: So at this point, assuming there's no settlement, assuming we have to go through the courts, what kind of support would the industry need to survive?

Mr. Marc P. Boutin: The original commitment to industry was $20 million per year for the associations alone. Would that allow us to survive? We'd be kicking in some extra money, there's no doubt about that, but it would certainly make our life easier.

The Chair: Your last minute, Peter

Mr. Peter Julian: I'd like to come back to your presentation, Mr. Grenier, and chapter 20. I'd like you to just briefly talk about how that might work, using the chapter 20 provisions.

Mr. Carl Grenier: Thank you.

Chapter 20 is the general dispute settlement process between Canada and the U.S. in NAFTA. Chapter 19, as we know, is a specific dispute settlement process that deals with countervailing duty, subsidization allegations, and anti-dumping.

But chapter 20 is very general. You can ask your partner, the U.S., to sit down and discuss how the whole agreement is operating, including of course chapter 19, which is a very important part of the agreement. In such consultations with the U.S. we would not be discussing the merits of the countervailing duty allegations, or the appeals, and so on, but really how the U.S. government itself is reacting to this—how it is funding its share of the secretariat; how it is constantly foot-dragging, as somebody said here today; how it is allowing its own officials to literally slander panellists, including U. S. panellists, on these chapter 19 panels. The list is getting rather long. I think it really is a decision for the federal government to take.

We are urging you to use that mechanism. This is provided for under the free trade agreement to discuss these matters with the U.S. government. Literally, we're seeing the whole system being threatened here by the way in which the U.S. interprets its obligations. I think at the very least we should call them on it.

● (1700)

The Chair: Thank you.

A quick response, Ms. Feldman.

Mrs. Elaine Feldman: If I could just make a quick point in relation to what Mr. Grenier said, of course we raise these issues with the United States all the time. We don't need a chapter 20 formal consultation to raise with the United States issues related to their payment of the NAFTA Secretariat or issues related to what they're doing with respect to chapter 19. These discussions have been ongoing and they continue. My understanding has been that Mr. Grenier and others were proposing the institution of formal dispute settlement mechanisms under chapter 20 with respect to chapter 19, and here I believe our lawyers do not share the views of Mr. Grenier's lawyers.

The Chair: We have that for the record.

We're going to the second round of quick responses of no more than five minutes, if you will, so we can save some time for our budget discussion.

Mr. Duncan.

Mr. John Duncan: Thank you again, Mr. Chair.

I just want to offer a comment to start.

Carl and Marc will know I've been working on this dispute since it was the old Softwood Lumber Agreement in 2000. I've talked to a large number of people in the industry in western Canada, and never before have the people in the industry thought more similarly about what's going on.

I have a message for the government, that industry feels they have been abandoned. They've been carrying the ball for the government and they feel abandoned. When they make these appeals to government to do certain things and there's foot-dragging by our own government in doing them—on the legal assistance, on the filing of this court action in the U.S. court on the Byrd Amendment—it is very hard to take when Canada does not respond quickly. We've seen by some of the numbers today that industry has put up a huge cost here, much more so than the government, yet NAFTA is what's at stake here.

As for my next question, the minister was threatening WTO retaliation. We're in no position to be able to retaliate at this point. The government has now short-listed the products we would retaliate on, as an internal exercise. Is there concurrence within the department that this is a satisfactory list to proceed with?

This is for Ms. Feldman.

Mrs. Elaine Feldman: We have received a large number of submissions from interested Canadians with respect to the list we've put out for consultation. I think we received over 500 individual responses. We're now in the process of assessing those submissions. We're also working very closely with our partners. As you may know, not only did Canada receive authorization to retaliate, but so did a number of other WTO countries, including Japan, Mexico, the European Union, and others. So we will be assessing the submissions and working with our partners to determine what our next step will be.

● (1705)

Mr. John Duncan: Consultations are occurring with the steel industry and the magnesium industry on whether to proceed with the court action. I assume that's on the Byrd Amendment we were talking about. It's actually not difficult for me to predict their response, knowing the history of how they've dealt with trade disputes in the past with those two industries, and our trading relationship with the U.S. in those two things.

How can this possibly be taking so long? Can you let us know when the consultation was initiated?

Mrs. Elaine Feldman: As I said earlier, I personally don't handle that aspect of it. I believe the decision was taken by the minister relatively recently. Perhaps Mr. Grenier has the exact date of the letter the minister sent him, because I'm afraid I don't.

Mr. Carl Grenier: I wrote the minister on December 16 suggesting the course of action would be the Court of International Trade. I got the first answer, but it was not the right answer. We got an answer by mid-January, and I believe that must have been when these other consultations were initiated. So we're talking about three to five weeks.

Mrs. Elaine Feldman: It's mid-February now, and as I said, we're expecting an answer by Friday. We have already indicated that we will proceed with the interested industries. Clearly, the softwood industry is interested, so we will be proceeding at least with the softwood lumber industry. I don't think there's anything more I can say.

Mr. John Duncan: I have a last question. The consultation with the provinces and with industry on this framework for negotiations on the softwood requires a sign-off by the minister prior to taking it to consultation; that's my understanding of the process that is now being implemented. Assuming that industry and the provinces have some problems with that framework, is there an expectation that negotiating framework would be changed prior to entering into discussions with Aldonas?

Mrs. Elaine Feldman: I suppose I'm more optimistic, Mr. Duncan, perhaps, than you are. We've been listening closely to the provinces and to the industry, and if we do proceed with a framework, I believe it would have the support of provinces and industry.

Mr. John Duncan: I wasn't saying yes or no. I just wanted clarification.

Thank you.

The Chair: Thank you.

And we'll close with Madam Jennings.

Hon. Marlene Jennings: I want to come back to the extraordinary costs to the industry and to the individual companies to continue the litigation. I'm wondering if there's anything under WTO provisions or NAFTA provisions that would prohibit a national government, a state government like the federal government, from advancing or underwriting the legal costs, say some kind of an agreement, whereafter the moneys that have already been paid out, the countervailing duties, the anti-dumping duties that have been paid out...? The United States government is holding billions of Canadian companies' money. We're happy, and I think fairly optimistic, that if we stand our ground and litigate, we will ultimately get it back. But in the meantime, the cost to our industry is phenomenal. So is there anything that would prohibit an agreement, where the government says, for instance, we will underwrite the cost, we will advance you a loan, whatever it is, and when you get paid back your duties, you pay it back?

● (1710)

Mrs. Elaine Feldman: I should point out that in terms of the $14,925,000 that the government provided industry associations in 2003, the United States has found that to be a countervailable export subsidy and has increased the amount of duties that Canadian producers are paying accordingly. This is one point to consider: that this amount of money provided by the government—

Hon. Marlene Jennings: The assistance provided.

Mrs. Elaine Feldman: —the assistance, was found to be a countervailable export subsidy, increasing the amount of the duties.

Hon. Marlene Jennings: Monsieur Boutin.

Mr. Marc P. Boutin: Yes, I would like to comment on that. We fully expected that to happen, but the percentage subsidy is minuscule compared to the other, for example, cross-border tariffs that were derived, which shot up the B.C. rate into the 23% range—it's now 22% or 21%. So in an order of magnitude, yes, even if it is subsidy, it's insignificant, given the scale of the case.

Hon. Marlene Jennings: If we're talking about right now, as of January 1, 2005, all Canadian parties—the different levels of government, the individual companies, and the associations—you've estimated approximately $100 million Canadian in litigating on the softwood lumber.

Mr. Marc P. Boutin: Yes.

Hon. Marlene Jennings: If that's the amount we're talking about, and let's say it takes another seven years—let's be pessimistic, seven years—it has to go all the way to the Supreme Court of the United States. Let's say it goes all that way, and the Supreme Court says you have to pay that money back. That's one-quarter of what's been paid out already and is being held by the Americans right now.

Mr. Marc P. Boutin: The $4 billion that already went to the U.S. treasury—remember, we've already taken a loss on it, because the Canadian dollar has appreciated significantly. So we've already lost *x* per cent of that money.

Hon. Marlene Jennings: So in terms of whether the scenario I'm asking about is a realistic one, what you're telling me is that in fact, at least from the industry point of view, it's a very realistic one.

The Chair: In order to stay on time, we'll ask Mr. Grenier also to comment on that.

Mr. Carl Grenier: On that same point, I fully agree with my colleague Monsieur Boutin.

The fact that a little less than the $15 million that we were given as a first tranche of three that were promised has affected the fourth decimal. So we should not be worried about this,and we fully expected it. And they will do that, there's no problem.

I don't think we've ever asked the government to underwrite the actual countervailing duties or anti-dumping duties—

Hon. Marlene Jennings: No, not the duties, the legal costs.

Mr. Carl Grenier: Yes, the legal costs I think are at issue. And we're not asking even for a fifty-fifty split, we're asking for some contribution. We believe that what was discussed at the time with Minister Pettigrew was fair and we're ready to live with that, even though I think now, obviously, the costs are mounting. We're no longer talking about the same amounts of total expenses. So the money is needed, there's no doubt about it, and it's a national issue. That's why we're asking it, basically.

The Chair: Could we have a closing question from Madame Deschamps, please.

[*Translation*]

Ms. Johanne Deschamps (Laurentides—Labelle): Thank you very much.

A great deal of money has already been swallowed up by this suit, on the government side as well as on the industry side. I have two brief questions. The first is for Ms. Feldman. Why didn't the industry receive the remaining two thirds of the financial relief funds?

My second question is for Mr. Boutin. How long can the Canadian logging industry survive?

● (1715)

Mrs. Elaine Feldman: With respect to your first question, you have to ask the minister. It is not up to us, as officials, to grant money before the government decides to do so. I can't give you any other answer.

Mr. Marc P. Boutin: It's a political decision and a question for the minister.

With respect to the industry's survival, and for how long, obviously, there is one major factor, market conditions. They were favourable to softwood lumber in 2004 and remain relatively so. Obviously, the burden is lighter in a bear market, when it comes to taxes, legal fees and the cost of resources like ourselves having us work on this issue basically full-time.

However, I'd like to remind you that the softwood lumber market is a cyclical one, like that of forestry products in general. If ever the market conditions are bad, the industry will be decimated. The small and medium enterprises are those that will suffer the most, but the large companies won't be immune either.

In Quebec specifically, because I'm speaking on behalf of Quebec, there is a negative investment rate for wood processing and sawmill production stock. In other words, the depreciation rate has increased and not enough is being invested to maintain what we have. Obviously, we are losing ground technologically. This is an industry that requires constant investments. Because of a lack of competitiveness, the market is in a downward trend.

[*English*]

The Chair: Could you summarize for us, if you can? I think you're on the point, but we have a vote coming, and I know it's very important for us to discuss our budget as well. I don't know if you're finished, but could you narrow down your response?

Mr. Marc P. Boutin: I'll just use one sentence.

[*Translation*]

I would say that the next cycle, according to our estimates for 2005, will be very detrimental to the sawmill industry.

[*English*]

The Chair: Mr. Grenier, did you want to add to that? No?

Thank you very much for being here today.

I apologize for having to step out; it was a personal matter that I had to address. But from what I gather, there's been an excellent discussion and exchange. Thank you very much.

We'll say goodbye to you. We have to stay here and discuss our personal business.

This meeting is adjourned for now.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
http://www.parl.gc.ca
