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Chair

Mr. Leon Benoit

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● (1535)

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette (Joliette, BQ)): Pursuant to Standing Order 108(2), we will continue our study of softwood lumber. Today, as witnesses, we have the representatives of Barker & Hostetler, the Ontario Lumber Manufacturers' Association, the Quebec Forest Industry Council, the B.C. Lumber Trade Council, the Independent Lumber Remanufacturers' Association, Abitibi Consolidated, Tembec, Canfor Corporation and Weyerhaeuser Company.

The witnesses will first have seven or eight minutes to make their presentation. Then we'll move on to a question period. We shall proceed in the order I've given you. Mr. Feldman, you will begin. I will warn you one minute before the end so that you can wrap up your remarks.

Over to you, Mr. Feldman.

Dr. Elliot Feldman (Trade Lawyer, Baker & Hostetler): Thank you. I have prepared a 10-minute speech in accordance with Mr. Dupuis' instructions, but I'll speak quickly.

[*English*]

Good afternoon, honourable members. I'm honoured to appear again before this committee.

The last time I appeared you asked me to talk about the North American Free Trade Agreement, and especially chapter 19, the dispute resolution scheme for trade remedies.

I advised at the time that chapter 19 was on life support because of the concerted efforts of the United States to erode its legitimacy while undermining its supporting institutions. I based my remarks on a paper prepared for the Canadian American Business Council. I deliberately did not talk about softwood lumber.

It is altogether appropriate to return here now on this same subject as a result of the April 27 agreement on softwood lumber, and although I did not receive any specific guidance as to what you might like me to address this time, I have been devoted to the free trade agreement, and then NAFTA and chapter 19, from their beginnings. I was among the very first to litigate chapter 19 cases on behalf of Canadian interests, have litigated many since, and I suspect I have written more extensively on this subject than almost anybody else.

It is distressing to me personally and professionally to witness what is now taking place with respect to chapter 19 as a result of the apparent agreement on softwood lumber, and in my capacity as a trade lawyer I think this topic might be the most useful for me to address.

It has been reported in the press that I authored a paper analyzing the basic terms, 48 hours after they were released, on behalf of the Free Trade Lumber Council, the Ontario Forest Industries Association, and the Ontario Lumber Manufacturers' Association. I understand the paper has been acquired by the Library of Parliament, which means all of you have access to it and some of you may have seen it. I will, therefore, be happy to discuss it with you.

It contains in summary the two key points about chapter 19 that I want to address today. The first regards what is happening to the results of the legal process from the last four years, and the second involves the rule of law being enunciated now for the future.

Had there been any ambiguity in the basic terms—and I do not believe there was any on this subject—there is no ambiguity in the subsequent drafts tendered by both Canada and the United States. The agreement does not recognize any Canadian legal victories from the last four years. They are erased in their entirety. In the current American version of the agreement they are replaced by language restating the U.S. positions that Canadian softwood lumber is subsidized, dumped, and threatening injury to a U.S. industry. The facts are, however, that NAFTA panels that have completed their processes, which according to NAFTA are supposed to be final and beyond the reach of appeals, have decided that Canadian softwood lumber is not subsidized and does not threaten any industry in the United States. Those rulings should mean the end of the orders and the return of all cash deposits, 100% with interest.

The current U.S. version of the deal announces that the United States found to the contrary, makes no mention of the litigation or judicial results, and requires the dismissal of all pending cases with prejudice. The Canadian version actually goes further, securing U.S. legal positions. It is one thing to settle, and to pay $1 billion and to accept permanent managed trade. It is another again to erase legal history, and, with that stroke, to delegitimize the NAFTA panels and procedures.

What is especially frustrating to some of the lawyers who have devoted energy and ingenuity to achieving these results for Canada and Canadian interests is that we are literally within weeks of final decisions from courts, and panels, and committees that would confirm those victories. It is not, in our view, mere coincidence that the United States is also in a hurry to complete this deal before these decisions come out, or that the United States has told the Court of International Trade it would rather not have a final decision in a key case, or that the new American text specifies, first, what products it will regulate, and, second, what legal cases Canada must give up. This development alone would be enough to dissuade any private interest in Canada from relying again on NAFTA to resolve a trade dispute with the United States, but there is a second, perhaps even more serious problem.

The deal could say that the countervailing duty and anti-dumping orders are revoked *ab initio* and that, according to law, all cash deposits are to be returned to importers of record with interest. That's what the deal should say, because as a legal matter that is what is to happen. But the United States is resorting to an alternative theory. According to the United States, when NAFTA panels conclude that original investigations improperly led to the imposition of duties, the money collected between the time the orders were imposed and the time of the final legal decision overturning the orders stays in the United States and is not returned.

This theory is prospective, meaning that NAFTA panels are to have only prospective effects, whereas courts have retrospective effects.

In the case of softwood lumber, this theory means that something in excess of $3 billion could be lost to Canadians simply because they were proceeding under chapter 19 instead of in U.S. court. The longer a case is stalled or delayed, as when the United States does not replace a recused panellist for months—which has happened more than once—or stalls appointing judges to an extraordinary challenge that the United States has requested, which it also did, the total that the United States keeps just keeps going up.

Now, there is no doubt of any kind what happens when trade disputes are resolved in U.S. courts. All the money comes back, with interest from the beginning. But under the U.S. theory, when Canada negotiated for chapter 19, it got something less than what Canadians would get in U.S. courts. In fact, because any party, including American petitioners, can remove an appeal from a U.S. court to a NAFTA panel, Canadians according to this theory have fewer rights than any trading partner on the planet except Mexicans.

It's according to this theory that the money is to be settled in the current dispute. The United States is proposing to use section 1617 of the trade law, whereby the United States gives back only some money to Canadians because, the United States says, it is "compromising its claim" and not taking all of the money to which it is entitled.

Of course, as the legal cases stand now, the United States is entitled to none of the money. It's Canada, not the United States that is compromising a claim. Resort to section 1617, instead of relying on sections 1673 and 1671, is the U.S. way of declaring again that it won and Canada lost, and that Canadians are receiving some money out of U.S. generosity, not because the law specifies that when the ITC issues a negative final determination, which it has done in our case, the Department of Commerce must “refund any cash deposit”.

The United States thus will confirm that chapter 19 means Canadians lose money regardless whether they win their legal case, unlike any other people outside NAFTA.

An alternative in the basic terms, whereby the deal would not take sides with respect to this issue, would solve nothing, because it would leave Canadian private parties uncertain what they would get when litigating under chapter 19. The U.S. theory that NAFTA panels have only prospective authority means the end of chapter 19. No sensible private party would ever turn to it again.

I realize some have said that it is only because of the NAFTA victories that this deal has been made possible. I don't see that reasoning, because I don't see in the deal anything conserved. When the next round comes, and I believe the agreement virtually guarantees it, Canadians will be starting over, only worse off than before. This is because they will have lost chapter 19 and will have to rely on U.S. courts entirely, the avoidance of which was why chapter 19 was written in the first place. And every other industry in Canada will know, as a result of this deal, that they can no longer rely on and would be best advised not to use chapter 19.

Worse, every industry in Canada will now have to know that chapter 19 is a handicap; that they could be forced to litigate there, guaranteed that even if they win they will lose. This House may need then to abolish chapter 19—the absolute dearest wish of the U.S. Coalition for Fair Lumber Imports and other American petitioners—just to save Canadians from its ill effects.

One last word. There is in the drafting also an attack on chapter 11, the state-investor dispute mechanism. It's in the Canadian, not the American draft. It would mean a profound erosion of protection for Canadian investments in the United States.

These institutional consequences of the deal will last longer than the deal itself. They will not make for a long-term durable peace and they will make for a much weaker Canada in the future. They will be a product not merely of the U.S. assault on chapter 19 that I described when I previously appeared before you. They will be the product this time of a collaboration between the two parties, the original custodians of the free trade agreement for North America.

Thank you. I would be pleased to answer questions.

● (1540)

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Thank you, Mr. Feldman.

We'll now go to Mr. Milton from the Ontario Lumber Manufacturers' Association.

Mr. Milton.

[*English*]

Mr. David Milton (President, Ontario Lumber Manufacturers' Association): Good afternoon. Thank you for extending me this invitation.

I am honoured by the opportunity to share with you some of the thoughts of the Ontario Lumber Manufacturers' Association concerning the possible settlement of the long-running softwood lumber dispute with the United States.

I note that there are no similar hearings in the United States Congress, for at least three reasons. First, the United States has no intention of introducing any legislation to execute or implement this or any other agreement, so Congress need not trouble itself. Second, this deal is much more important to us than to the United States. And third, the current configuration of an agreement appears to be uncontroversial in the United States and very controversial here, for several additional reasons.

Let me take each of those three points.

It has always been the position of the United States that Canada is guilty as charged of subsidizing softwood lumber exports to the United States. The United States has always argued that Canada, including the provinces, must change its forest policies, change the way it does things, and change its laws, because there is nothing wrong in the United States and everything is wrong in Canada. Open subsidies to their own lumber industry have never mattered, nor have even been admitted, such as the most recent tax arrangements announced in the last four weeks, which are designed specifically to assist timberland owners in the United States

It has not mattered that subsidies are a legal question and that the United States brought legal cases against Canadian softwood lumber exports in 1982, 1986, 1991, and 2001, yet has never proven its legal case—let me underline that: and has never proven its legal case—but has forced settlement twice, and is now about to force a third settlement.

The United States position has always been that it should change nothing, but that we in Canada must change. We have, but to no avail. Congress, on such understandings, doesn't need do to anything.

In the late 1980s Ontario and Quebec completely overhauled their stumpage systems to make them market-based, but the United States still alleged subsidies in 1991. British Columbia is overhauling its whole system now to make it more market-based, yet so far the United States refuses to accept that any of the changes in any of these provinces solve the alleged problem of subsidies.

In between, the Department of Commerce in 1982 and the free trade agreement and the NAFTA panels have subsequently concluded, according to the law, that there are no subsidies. But the allegations continue, and we continue to be expected to change our ways, never knowing what we can do to satisfy the Americans.

As long as the allegations are against us, we are supposed to change our practices and our laws. The United States is not expected to go to any trouble. So you have hearings and they don't.

The whole thing is more important to us. Our economy is one-tenth the size of the United States economy, and certain economic sectors and activities therefore loom larger for us than they do for the United States.

In our view, this issue ought to be as important for the United States because of its huge impact on homebuilding and housing starts, which historically have been the engine of the U.S. economy. But we also know the way American politics are organized, and consumers aren't heard very much. Our Canadian allies in this struggle are large and important. Among them are the National Association of Home Builders and the Home Depot Corporation, but they simply don't seem to have the same political clout as the timberland owners.

So while this struggle does have grave consequences for the U.S. economy, the American political system somehow cannot recognize or understand the consequences the way we do.

Finally, this deal is controversial here because of the way it is shaping up. All of us have expected that eventually we would have to reach some kind of settlement with the United States.

The industry in the United States is politically connected because of its influence over the Senate finance committee, which is the pivotal committee governing both taxes and trade. There's nothing of comparable influence in Canada. Government here does not do the bidding of the forest industry the way the United States Congress and the administration, under the influence of Congress, do for the U.S. industry.

Those political connections have meant that the U.S. administration has avoided and evaded the law, and forced Canadians time and again to yield their legal rights to political accommodation in the United States. We're here again, one more of these times, and we should recognize it for what it is.

● (1545)

We have experienced that influence over 25 years. Some may remember, as I do, that the free trade agreement between Canada and the United States was nearly blocked at the Senate finance committee because the chairman at the time, Senator Robert Packwood of Oregon, threw a fit over softwood lumber—it was 1987.

We already had caved in to the pressure and abandoned our legal rights when we entered the 1986 memorandum of understanding. When the five years of that agreement were up, British Columbia could no longer live with it and it was abandoned. We then negotiated the softwood lumber agreement in 1996 after we'd won at the 1991 case—it's important to remember that was a legal case won by Canada.

We'd won and there should have been free trade, but the United States refused to give us our money back, even though the law plainly required that we get it back. In order to get it back without another legal fight, we made a deal, and the United States is holding our money again this time, and much more of it. This time we've paid an illegal tax of 27%, whereas last time it was less than 12%.

People may forget, but I don't. We've suffered under the deal we had to make to get our money back. It imposed quotas that were never sorted out fairly in Canada. Some regions got advantages over other regions. Some companies within regions got advantages over other companies in the same regions.

The simple truth is that managed trade again didn't work and we wound up again in a legal fight, and again the United States changed the law. So again we had to prove that governments were not subsidizing lumber in Canada, and this third time around the Americans changed the rules again. Despite the rules change, we won again. We've proven, no matter how the United States changes the law, that we don't subsidize. And yet here we are again, making another deal.

I must tell you that my association is not opposed to making a deal. We recognize that despite the history, the United States may continue to force upon us restricted and managed trade. But we cannot accept a bad deal that will close our mills, put our people out of work, diminish our industries, and encourage other countries to take our place in the North American market.

British Columbia may be able to look to Asia, but we in central Canada cannot, nor can we very much look towards Europe. In fact, it's mostly the Europeans who want to fill the gaps created in the North American market when the Canadian trade is restricted.

So we must get it right here in North America. We must do it remembering what has happened before. Some of us have been in this business a very long time, and we remember. There's an important difference this time, though. In the past the United States has insisted that Canada could determine how provinces manage their forests, and tried to impose through the federal government penalties on the provinces. This time, for the first time, the design of the deal acknowledges that each province may require its own unique solution.

I remember that during the negotiations for the softwood lumber agreement in 1996, Quebec was negotiating policy adjustments, and British Columbia proposed a quota. This time British Columbia has been negotiating policy changes and an export tax, while Quebec has proposed a quota. Those shifts show that if trade is to be managed, different provinces are going to require different terms at different times. But they also—

● (1550)

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Mr. Milton, you have one minute left. Can you wind up your remarks?

[*English*]

Mr. David Milton: I will, thank you.

Assuming Ontario accepts a quota, will its volume of lumber shipped to the United States diminish because British Columbia may increase its shipments, restricted only by an export tax? Can Canada's overall market share in the United States under the deal exceed 34% because of the Atlantic provinces', which under current terms are permitted to export to the United States every piece of softwood lumber manufactured there, or because British Columbia might opt for a graduated export tax and pay it in order not to be limited in the quantity of lumber it can ship? The details and the answers to these fundamental questions will determine whether members of the Ontario Lumber Manufacturers' Association will be in business when the deal expires.

Today I can tell you that I cannot tell from the terms presented so far who will live in Ontario and who will die; I can surely tell you, though, that some will die—a morbid conclusion but a realistic one. So we need to take the time to be careful to protect as many jobs and as many companies as we can, not against the natural rationalization of the market, but against managed trade.

My thanks to the committee.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Thank you, Mr. Milton.

I now turn the floor over to Mr. Chevrette from the Quebec Forest Industry Council.

Mr. Guy Chevrette (President Executive Director, Quebec Forest Industry Council): Thank you, Mr. Chairman. Good afternoon, madam, gentlemen and colleagues in the forest industry.

Mr. Chairman, I begin by thanking you for the opportunity to address your Committee.

As you know, the Quebec Forest Industry Council is the principal spokesman for the forest industry of Quebec. It represents virtually all businesses. I say that because I saw the reporting on Monday. It's as though someone who represented barely 4% of Quebeckers was the representative of all Quebeckers. We represent 96% of the Quebec forest industry. We represent virtually all sawmills, all pulp and paper businesses and rotary cutting, sawing and hardwood businesses. The topic on your agenda today is crucial for our industry. Quebec's forest industry depends heavily on its exports to the United States.

I know that you wish to know what we think of the agreement in principle. For us, it is a simple answer: we have long been in favour of a negotiated settlement as long as it respects the following four principles. First it must be asymmetrical to account for the different realities which apply in different Canadian regions. The agreement in principle seems to achieve this. Second, the agreement must take into account the favourable judgments we have obtained to date. We do not yet know if the final text will meet this requirement but we still hold to it. The agreement must avoid “Lumber V” long enough to allow a return to stability; this seems to have been the common goal but recent drafts raise concerns on this point. Quebec must have a fair share of Canadian softwood lumber exports. That's the fourth principle.

Our members voted in favour of the agreement in principle of April 27, 2006, because these four goals of ours seemed to be met or to be achievable. You certainly must be aware that our industry is going through a serious structural crisis and that it is high time that our members be able to devote themselves to the advancement of their businesses, with stable horizons, rather than all becoming experts in international law.

Some were surprised by the support we so clearly showed on April 28 last, and in the days which followed. Having lived through the process which brought us to that decision by our members, I can tell you that there are several different explanations for that support. Many thought the agreement was a good one, while others felt that they had simply had enough. Some businesses are living through great difficulty; others felt that it would simply have cost too much to go all the way to the end of costly and demanding litigation. Finally, some simply had an urgent need for air, at any cost.

Now, we are at the crucial step of drafting the legal text of the agreement. So far, the Canadian government has allowed us to comment on some drafts, though often with too little time to react properly. Some of the changes we have proposed have been accepted.

On the other hand, there remain amendments which seem to us necessary. I would go so far as to say that they are essential if QFIC is to be able to continue to support the government in its search for a settlement. I comment here mostly on the Canadian drafts we have seen. The American draft is on a great many points thoroughly unacceptable, and we believe that the Canadian government will have to collaborate closely, and directly, with industry to be able to come to an acceptable ground of agreement.

Here are the main issues. First, let's talk about Option B. Those regions which choose Option B, that is a mix of quota and tax lower than in Option A, must have some flexibility to be able to avoid having their commercial relations unduly disturbed. A cap so hard as to disallow in any circumstances whatsoever any over-quota shipment whatsoever is unacceptable.

A dissuasive tax on exports exceeding the quota ceiling would discourage exports beyond Quebec's share, but would allow a company to respond to pressing and time-sensitive customer demands. We should also ensure the possibility of carry-forward and carry-backward of quota from period to period.

● (1555)

Such a provision was in the softwood agreement of the 1990s and worked well. Very few companies saw the need to pay the dissuasive tax. We believe a tax would accomplish the purpose here. In this way, we might accommodate commercial reality without violating the spirit of the April 27, 2006, document, which did not deal with the choice of method of enforcing the ceiling.

Now I'll talk about the subject of policy exit ramps.

For years now, we have been discussing a settlement which would allow provinces to escape the confines of managed trade by way of «policy exit ramps», policy changes which would reassure the American side that we are right to say that our lumber is not subsidized. We are surprised, then, to be shown confidential drafts which remove any hope of even a serious discussion down this path, and which even provide that agreement as to desirable policy changes would not prevent Lumber V allegations that those very changes create a subsidy. This must change.

The anti-circumvention provisions which the American side now seeks would freeze for seven or nine years any modification of Quebec's forestry policies, since any change would expose us to arbitration, with circumvention to be decided by an inflexible test, and then to the rebirth of border duties. This is not the trade peace which the agreement was meant to deliver.

Another essential element for us is the equitable treatment of remanufacturers. The texts we now see provide for differential tax treatment depending whether the remanufacturer is affiliated with a holder of forest rights. Our Quebec government never tires of asking our industry to develop downstream, value-added transformation, but this kind of aberration would take us in the wrong direction. This must be corrected, and all remanufacturers should be taxed on a first-mill basis.

These, then, are some points which illustrate the challenges ahead of us, in ongoing negotiations which must lead us to an acceptable agreement. We are well aware that the task is not an easy one, but we do sometimes have the impression of having to negotiate with our own government before a proposal is even submitted to the Americans.

If the Americans have a problem with our suggestions, why not leave them the pleasure of saying so? We hope very much that Canada will be able to arrive quickly at a commercially viable agreement, acceptable to the entire industry. The government can count on our support, if the essential changes I have mentioned are made. We, for our part, hope to be able to count—and I won't hesitate to say this as an ex-politician—on all Canadian political parties for their non-partisan support of a valid agreement for the Canadian industry as a whole.

● (1600)

The Vice-Chair (Mr. Pierre Paquette): Thank you, Mr. Chevrette.

We'll now hear from Mr. Allan, President of the B.C. Lumber Trade Council.

[*English*]

Mr. John Allan (President, B.C. Lumber Trade Council): Thank you.

Good afternoon, and thank you for the opportunity to address you here.

On April 27, the B.C. Lumber Trade Council gave its conditional support to the draft term sheet we were shown. The conditional support was based on seeing the final details of the term sheet and of course seeing the final details of the final agreement.

Since that day, we've noticed the term sheet changed in the final analysis and we share Mr. Chevrette's concerns about much of the detailed agreement. We are now translating a two-and-a-half page term sheet into probably 50-plus pages of legal and commercial text.

Our first issue is that we must take the time to get this agreement right. This is a huge issue for the Canadian softwood lumber industry and indeed the whole forest industry, given its integrated nature. If we don't have a solid softwood lumber agreement that is commercially viable for the industry, then I fear for the whole forest industry itself in Canada, and the consequences.

In terms of the agreement itself, we have a number of concerns. First, as Mr. Milton pointed out, we have undertaken a massive overhaul of our forest policy framework in British Columbia. We were encouraged to do this by the U.S. government, and indeed different secretaries of commerce, different USTR representatives, different secretaries of commerce, and the Vice President of the United States have all encouraged our Premier to go down the road of forest policy reform, whereby we would be introducing market-based reforms in British Columbia.

We have seen tenure take-back; we have seen massive changes to timber processing clauses, and to tenure arrangements. This is not just a simple change, where we flipped a switch and went from one option to the next. This has been going on for a number of years, and indeed on July 1 we'll be completing the last major plank in this reform, in that we'll be introducing market-based timber pricing in the interior of British Columbia. This is paramount for the future of the industry, particularly with respect to the mountain pine beetle crisis we have in the interior of B.C. whereby the standing value of our mountain pine trees is declining and is expected to decline over time. The resulting impact will be lower lumber recovery factors, higher manufacturing costs, and a net decline in the value of the timber.

The agreement we've seen and the language we've seen in the term sheet around anti-circumvention, as somebody said earlier, basically represents a policy freeze for all of Canada. It will be impossible for any jurisdiction in Canada to amend its stumpage formulas, to introduce programs to rationalize industry—say, worker transition—to attack the mountain pine beetle crisis, for example, unless of course the net result is that your costs will go up. This whole agreement is designed around a framework that says that your costs are frozen in time today, and they can only go one way. They can go up, but they can't go down.

Therefore, our first concern is that the anti-circumvention clause must recognize that in jurisdictions with market-based policy reform underway or implemented or about to be implemented, that clause must recognize those reforms.

The second issue we have with the agreement concerns the cash deposits. The term sheets we saw said the U.S. would get the lesser of 20% or $1 billion. The final term sheet guarantees the U.S. $1 billion U.S. in deposits. I do not believe there is $5 billion on deposit right now, excluding interest; therefore, the Americans are likely to get more than 20%. I find this unacceptable, and we need a reconciliation of the final numbers around cash deposits.

The third issue we have is the running rules—option A or option B. A jurisdiction is going to have to pick which road it's going to go down, obviously: tax or quota. But the actual implementation of option A or option B, the actual rules by which we will be governed over time as to how the tax scheme or the quota scheme will work, need a lot of work.

We have been working diligently, cooperatively, constructively with our provincial government drafting original material on running rules, sharing it with people in Ontario, sharing it with other industry associations in B.C.

● (1605)

But I must say, as Mr. Chevrette said, sometimes I feel as though we're negotiating with our own federal government in terms of their concerns over “administrative simplicity” versus the reality that the industry must have a commercially viable set of rules. We feel that these option A, option B rules must be set on a prospective basis so that companies know what market conditions they're going to be facing going forward. It doesn't make sense to us to be retroactively penalizing behaviour from two or three months ago. So that issue must be resolved, and resolved to the point where the Canadian lumber industry, the shippers of lumber, must have some certainty as to what the business framework will be, going forward.

Last but not least, we are very aggressive and feel strongly that the litigation we are involved in right now must carry on. We've been asked from time to time whether we'd agree to the suspension of certain cases, and for the most part we are saying that the litigation must carry on.

In summary, we are still supportive of the agreement, subject to these details being worked out to our satisfaction. We are working aggressively, as I said earlier, and cooperatively with our government, with the federal government, in trying to get the details worked out, but at the end of the day, this agreement must make commercial sense for the Canadian lumber export industry.

Thank you.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Thank you very much, Mr. Allan.

I'll now ask Mr. Cameron to speak.

[*English*]

Mr. Russ Cameron (President, Independent Lumber Remanufacturers Association): Thank you for inviting me here today.

You're about to hear from a group that wants you to forget this deal and finish the litigation. I represent the Independent Lumber Remanufacturers Association in B.C., called the ILRA, but more accurately, I represent the non-tenured companies in B.C.

It's not well understood that our forest industry consists of two very distinct sectors. The first sector consists of tenured companies that have an assured supply of wood fibre, with stumpage priced administratively in various ways. The second sector consists of the non-tenured companies that buy their wood fibre on the open market, and I represent that second sector.

The ILRA consists of about 100 non-tenured companies, and when not curtailed—which we have been for the last few years—we have over 4,000 employees and $2.5 billion in annual sales on 4 billion board feet. We sawmill, we remanufacture, and we wholesale. Our markets are all over the world, but our primary market is the U. S.A.

Today I am going to put three hats on. I'm first going to speak for Canadians, then for general forest industry people, and then for non-tenured forest industry people.

As a Canadian, or as Canadians, if we do this deal we're going to lose NAFTA chapter 19—and it won't just be lost to us, it will be lost to all Canadian industry. We believe we almost had this dispute wrapped up. We had won on the Byrd amendment at NAFTA; we had won on injury at countervailing duty and anti-dumping; and we were basically in the middle of doing what seems to be necessary these days to force U.S. compliance.

Even the B.C. government can see that in the worst case, it would have taken only 18 to 24 months to finish up, which seems relatively short after the length of time we've been at this. There are many things that could have ended earlier, and we think you should finish it to preserve chapter 19 and make the U.S. live up to its treaty obligations. We think it's unwise to do a new deal with someone who doesn't respect the one we already have, and unless we finish it, we think we're doomed to repeat all of this in seven years without the aid of chapter 19.

We don't believe that the coalition will be successful in another case. We're not too sure that the political will is even there. We think that the United States doesn't like the WTO, because they are just another nameplate there and they want to be the big guy in FTAs, which they're negotiating all over the world, as you know. Those other countries are watching the relationship with us and they're telling the U.S.A., if you do that to them, what are you going to do to us?

We have a growing lobby in the U.S. I think the U.S. press is finally beginning to get it, as we're seeing articles in some substantial magazines and papers down there, such as *The Wall Street Journal*, etc. As someone said, we had the National Association of Home Builders and Home Depot onside, which now feel betrayed and are furious with us. The NAHB has even recommended that their members get their wood from overseas.

As for the coalition, if we do this deal, we're paying their legal costs, we're providing a return on investment, we're ensuring them future membership, we're ensuring that they've got future funds, we're ensuring that we get a future case, and we're ensuring that we fight that case without the aid of chapter 19. If we win the litigation, we don't think the coalition will be able to get another case together, and even if they can, with the precedents established by finishing the litigation and with Canadian forest policy change, we don't think they could get levels of duty that we would even care about, or find punitive.

As Canadians, we think that doing this deal was very short-sighted and that it will affect all Canadian industry.

Now, speaking as members of the forest industry in general, we used to speak of this deal as consisting of the policy changes leading to free trade, and the quotas and border taxes were called the interim measures. I don't know what happened, but now the interim measures are the deal, and there is no exit to free trade. There is a vague clause that we will talk about it, and the U.S. says that any policy exits we find during the deal are going to be moot at the end of the deal.

The coalition wanted a quota, so we gave them a border tax and a quota, and then, as our competitors, we also gave them $1 billion to put in their jeans and pay the costs they've incurred in beating us up. We avoid Canada's legal victories at NAFTA and WTO; we terminate the cases we're winning; we agree that the return of part of our money is not a precedent for the next case; and we suspend the rights of Canadian companies under NAFTA chapter 11.

● (1610)

Why would we want to trade a 10% duty that the U.S. is having trouble maintaining, where we can ship as much as we want, where we can get all our money back in six to 24 months, where we can preserve chapter 19, where we can set legal precedents, and where we can discourage future cases for a 10%-or-higher tax, with a quota, where we give up a billion, have no chance to get back what we pay for the next seven years, lose chapter 19, lose all the legal precedents, and almost guarantee a future case? And what industry comments do you hear about all these problems in the newspapers? To borrow an Enigma title, “silence must be heard”.

Speaking as a non-tenured forest industry representative, what's this dispute about? It isn't about companies that purchase their fibre at arm's length. This isn't about companies that buy fibre on the open market, in competition with American companies. This dispute is about renewable tenures and administratively priced stumpage. It could be solved in a heartbeat if all the tenures were handed in and everyone just bought the wood on the open market, as we do. To quote the coalition from their last proposal:

> The settlement accord should provide that a province's adoption of fully open and competitive timber and log markets would automatically result in lifting of interim measures for that province. Absent fully open and competitive markets, however, the nature of criteria on the basis of which interim measures would be reduced or lifted remains in question.

Given that we're no longer discussing interim measures, it seems the tenured companies have decided to keep their tenures. We have no problem with that. If we had renewable tenures, we would likely make the same decision. If the financial benefit of having renewalable tenure and administratively set stumpage is greater than what you have to pay to keep it, then pay it, and we would do the same.

The ILRA only begins to have a problem when our government forces us to pay part of the cost of keeping what we don't have. The business conditions and costs that you wish to impose on us right now are too much for us to bear. The Government of Canada thinks we'll be fine if it folds over a couple of the nails on our bed of nails. They think that simply reducing the costs we bear will make us healthy. They offer exclusive right to pay tax on a first-mill price, and then the U.S. tries to negotiate it all away. There are just too many problems.

And on that first mill, according to the U.S.A. you don't get first mill if you have a close supplier arrangement. You have to have an existing secondary manufacturing facility, no new entrants, you have to be continuously engaged, and have been, in producing and exporting. First mill is not really the first mill of the lumber, according to them; it's the total input volume divided by output volume. You pay tax on the freight. Remanufacture, the lumber definition, eliminates almost all the products, certainly everything on this side of the Rockies. And tenure would include, in their minds, the sealed cash bids under our new B.C. timber sales, the data from which is used, or is going to be used, to set the prices on the tenured stumpage, and on and on. All this stuff essentially negates our use of our first mill, which is the only thing that we had in this agreement. It wasn't enough anyway.

As of this writing, we're right in the middle of a 10% tax bracket, or 15% for a region that exceeds the quota, assuming we're under A. The tax looks like it will change every month. There's a good possibility that we're going to be paying the 50% retroactively.

In the remanufacturing industry we serve niche markets. Drawing and remanufacturing takes time, and we're not going to be able to price our products. When you look at all the permutations and combinations, there are eight different possible tax rates, ranging from 0% to 22.5%, three different values for calculating an entered value of $500 U.S. in first mill—

● (1615)

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Mr. Cameron, I'll ask you to wind up, please. You've taken more time than was allotted to you.

[*English*]

Mr. Russ Cameron: —and the Government of B.C. wants to exempt private logs, which are under control of the tenured companies with which we compete.

Okay, we'll skip some of this stuff, then.

We basically have three options, and one is to ask you to have the tenured companies hand in all the renewable tenures and bid for the wood fibre. Obviously that's not going to happen. We could ask you to have them bear the entire cost of retaining the renewable tenures by exempting us and making them rely upon the open market to try to pass that cost on—which is what we've been trying to do—and it looks like that isn't going to happen. Or we can ask you to provide the aid package that the federal Conservatives had, we thought, promised prior to the election, and finish this litigation.

So bottom line, when we consider it as Canadians and as members of the industry and as non-tenured companies, we urge you to reject this framework, implement the aid package, and finish the litigation.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): I now ask the representative of Abitibi Consolidated, Mr. Weaver, to speak.

[*English*]

Mr. John Weaver (President and Chief Executive Officer, Abitibi Consolidated): Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, let me begin by expressing our appreciation to the committee for providing this timely opportunity to testify on a matter of importance to Abitibi Consolidated. Let me begin with a short overview of Abitibi Consolidated.

As Canada's largest forest products company, we are North America's leading producer of newsprint and groundwood papers. As well, we are a major producer of wood products—the largest, I might add, east of the Canadian Rockies. Our 13,500 employees in over 40 manufacturing facilities in four Canadian provinces and multiple locations in the United States supply our customers in close to 70 countries. However, the United States is our largest and most critical market, for all of our products. We are also North America's largest recycler of old newspapers and magazines and are committed to sustainable forest management of over 40 million acres.

Over the last five years, we have been impacted by significant increases in stumpage and harvesting costs, a 100% increase in energy costs—I'm sure all of you are aware of this when you fill up at the gas pump—and as manufacturers have had to absorb an unprecedented strengthening of the Canadian dollar, from 63¢ in January of 2002 to approximately 90¢ today.

But let's focus on the reason we're here today. That's the impact of duties levied since 2002 and continuing to this day. For Abitibi Consolidated they amount to $231 million U.S.

As a company we have weathered this “perfect storm” by setting our sights on being a low-cost producer. As a result, we have made some difficult decisions to strengthen our portfolio of assets by closing marginal mills; we've had to sell selective assets, aggressively cut costs, significantly reduce our debt, and develop new products, all in our continuing effort to meet the challenges of our time and restore our company to profitability.

Having said all this, as CEO I remain confident in our future. Our industry in Canada can and will rebound. Paving the path for our future requires pragmatic decision-making. It is in that vein that I appear here today, a voice of support for the softwood lumber framework and with admiration for the steps taken by government. We thank you for moving forward and building on the previous government efforts at both the federal and provincial levels, which contributed to this framework we have before us today.

The framework is a practical solution. Negotiations require give and take. No side gets all it wants; it would be nice, but it is not realistic. The draft is “what the traffic will bear”. It provides orderly trade for seven to nine years and a return of approximately 80% of all Canadian deposits and it establishes clear rules for future trade, which we will never have if the dispute continues. It reduces business risk by eliminating current unpredictability. It provides stability and represents regional differences within Canada, bringing practical solutions and flexibility.

For example, options A and B represent a pragmatic approach to provincial concerns, a creative solution that should bring the provinces together. The framework is designed to provide for the needs of east and west. We can live and hopefully survive under its terms.

Of course, it remains critically important to continue discussions and negotiations to be sure we safeguard our interests. The framework is an important and constructive step, and we need to be sure we see the process through with vigilant focus on details. There is much yet to be done, and we continue to rely on government to give industry a fair and just final agreement, which will allow us to grow and prosper under its terms. Until all the i's are dotted and the t's are crossed, we must maintain maximum leverage and not compromise on our legal bargaining position.

Those who seek to debate abstract principles and legal theories miss the point. This protracted dispute has been far too damaging. The fact is, we must be practical and accept reasonable solutions to the problems we face if we are to ever put them behind us. It is not enough to be wrapped in principle. The framework is not perfect, but we live in a real world, not a perfect world. It is time for the Canadian industry to hold together and secure the details of a final accord.

● (1620)

Details need to be negotiated, such as the caps for option B and true arbitration of the anti-circumvention clause. We cannot afford to be purists, but we can be practical and tough negotiators.

Cut a deal now, because our negotiating leverage is highest. This deal in fact builds on previous proposals and reflects our legal victories. We have won the Byrd amendment. We have won the NAFTA countervailing duty case. We have won cases at WTO that will benefit us beyond the softwood lumber dispute.

This is the right framework at the right time. If we don't move toward settlement now, this occasion may not present itself again for a long time, at a high cost to Canada. Again, the softwood lumber framework positions the Canadian industry on a sound base for years to come, with a much more predictable trading climate. The timing is right.

Thank you very much for your time today. I look forward to joining the panel in addressing your questions.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Thank you very much.

I'll now ask Mr. Lopez, President of Tembec, to speak. Over to you, Mr. Lopez.

● (1625)

[*English*]

Mr. James Lopez (President, Tembec): Thank you, Mr. Chairman.

Honourable members, ladies and gentlemen, it's a pleasure to be able to speak to the committee this afternoon about the subject that's critical to my company as well as to a number of other people who are in this room today.

I am going to keep my comments somewhat brief, and I'll be pleased to answer your questions when I've completed them.

First of all, here's a quick overview of my company, Tembec. We employ approximately 10,000 people globally, and 8,000 of those people are employed in Canada, with about one-third employed in our lumber business. Tembec has significant lumber operations in British Columbia, Ontario, and Quebec, and we have other pulp and paper and engineered wood operations in Alberta, Manitoba, and New Brunswick. So we feel we are in a somewhat unique situation whereby we can talk about a pan-Canadian solution, because we touch so many provinces that this agreement is going to cover.

We're here to talk about the softwood lumber trade dispute. Some of us refer to it as “Lumber 4”, because it's the fourth time around for this thing. We all know that this dispute has gone on for over four years and has caused significant financial damage to a number of people, a number of organizations that are operating in this industry. It has gone on a long time, and a lot of people believe it needs to be settled.

I believe it can be settled, but it has to be settled fairly for the industry, fairly for our employees, and fairly for the communities where we operate.

Right now we have a framework agreement, and there is going to be a lot of discussion—I guess there was on Monday, and again today—about this agreement. Is it perfect? Of course it's not perfect. To me, perfect is unencumbered, unrestricted free access and free trade with the United States. That's what we all want, to the very person, in this room.

The challenge we have is we're not here today to talk about unencumbered, unrestricted access to the U.S. market; we're talking about a framework agreement that's ultimately, potentially, going to end up in a trade agreement that will govern how we trade softwood lumber with the United States for the next seven to nine years. The challenge is we have only two pages to work with; that was the initial framework. We have to take those two pages into dozens and dozens of legal and commercial documents.

I have stated publicly, representing Tembec, that I think an agreement is possible based on that framework, if we get the details and the mechanisms right and embedded with this agreement. We have to get it right the first time, because we won't get a second kick at the can.

How are we going to accomplish this? A loud message to government is that we have to have extensive and ongoing consultation with the industry: with our associations, with our legal counsel, and with the companies. That's the only way we're going to get it right, because we're the people who have to live with this thing for the next seven to nine years.

In doing this, first of all we must avoid any further dilution of our position. I think Mr. Elliot Feldman outlines it correctly. This industry and this country have had numerous victories through NAFTA and WTO, and it is a shame that in a sense we'll be throwing in the towel if we put this final agreement together.

But I think the reality, is if we're going to work within a framework that's going to ultimately get us a deal that will govern us, we have to get mechanisms in there and we have to take this one opportunity, this unique opportunity, to strengthen the mechanisms that are going to be put in this agreement.

Part of this agreement, we all know, indicates that we have to leave $1 billion behind to the United States. I don't know about you, but I find this extremely distasteful: $1 billion of our money, that is rightfully ours, is going to be left there. Some people are calling that the price of the deal, and I guess if you're pragmatic you have to say, yes, it is the price.

There are some good things that the $1 billion will go toward. For example, it is going to go toward building housing for people who need it in North America, and for this industry it's good because there is significant money that will go toward initiatives that will expand the market for lumber and other wood products throughout North America. Who can argue with that? My only argument is that we're paying for it. We think our American counterparts are going to benefit as well. We think they should chip in to pay for this initiative.

We think, given the significant compromise we make in leaving duty deposits behind, we cannot tolerate or accept what happened the last time we settled this trade dispute, which was a protracted period before this money was paid back to the companies. We insist, and we need the government to insist, that if we come up with an agreement that is liveable, the money comes back to the companies that have paid it within 90 days. I think we need to draw a line in the sand, ladies and gentlemen, and make that position very firm with the United States: 90 days.

● (1630)

I have a few other key points about the agreement. I agree with the people who have spoken here today and on Monday that Canada should work towards preserving our legal wins to date. They are significant; they are precedent-setting, and can serve this country well going forward.

This final agreement, if it comes to be, should contain concrete policy exits that will allow provinces to change their policies appropriately to get towards true market pricing mechanisms that we would all agree represent free and fair trade of our timber in the provinces. And we have to have a truly independent arbitration mechanism to judge whether the policy changes that are made can lead towards an exit and, ultimately, to free trade.

We also believe that Canada should continue all its litigation with vigour, as Tembec will do, until this trade deal is worked out. We do not think that we should compromise one bit on where we are with litigation and on the steps going forward, until we're certain we have a deal.

This trade agreement, or lack thereof, has cost my company $100 million a year for the last four years, up until the end of December, when the duties finally dropped. This has been significant to my company, to my shareholders, and ultimately to our employees, and has done financial damage to our organization.

But there is another issue I want to take the opportunity to highlight before this committee, even though it's not directly related to the softwood trade dispute. It reflects on our ability to trade in softwood lumber. We are extremely concerned about what's happened with the Canadian dollar. It's no secret that over the last two-plus years, the foreign exchange rate with the United States has increased over 40%. This change over the last two years has had an $800 million impact on my company alone. The trade dispute's impact has been $100 million, and foreign exchange $800 million. John talked about the perfect storm; that's our perfect storm.

We don't think that governments directly control foreign exchange rates, nor should they, but the Bank of Canada does have an influence on the foreign exchange rate by what they do with their monetary policy. And we think that the Bank of Canada has to understand that there are a lot of threats to the Canadian economy that are much greater than inflation at this point in time. So we urge the government to recognize, and we ourselves want to send a loud signal, that what's happening with the foreign exchange rate—albeit a trend that global markets are going to dictate—can be moderated with responsible monetary policy.

Thank you very much for the opportunity to address this committee. I'll be happy to take questions.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Thank you very much.

I'll now ask one of the two representatives of Canfor Corporation to take the floor. Mr. Séguin or Mr. Higginbotham.

[*English*]

Mr. Ken Higginbotham (Vice-President, Forestry and Environment, Canfor Corporation): Mr. Chairman, thank you for the opportunity to be here. We appreciate the invitation by you and other members of this committee.

Let me begin by introducing my colleague next to me, François Séguin, the general manager of Bois Daaquam, a company that we own and a border mill in Quebec.

As some of the others have done, let me begin with a little bit of background on Canfor. Canfor is a leading integrated forest products company based in Vancouver, British Columbia. The company is the largest producer of softwood lumber and one of the largest producers of northern softwood kraft pulp in Canada. Canfor also produces kraft paper, plywood, remanufactured lumber products, oriented strand board, hardboard paneling, and a range of specialized wood products at facilities located in British Columbia, Alberta, Quebec, Washington State, and North and South Carolina.

We employ approximately 9,300 people directly and indirectly, with operations in 16 communities in B.C., Alberta, and Quebec. We produce about 5 billion board feet of lumber annually in 14 sawmills.

Over the past 10 years, Canfor has invested significantly in our supply-chain management systems to target the home building and retail lumber markets in the U.S. Our business strategy relies on a stable and predictable trading relationship with the U.S. to allow us to serve our customers south of the border.

The results of the strategy have led Canfor to become the largest supplier of lumber to Home Depot, Lowes, and Centex Homes, and other established customers in the U.S. market. This position of preferred supplier is based on long-term relationships with our U.S. customers. Today, approximately 70% of Canfor's lumber production is exported to destinations in the U.S.

There is no question that the absence of a lumber agreement with the U.S. hurts our industry. The uncertainty of litigation and the punishing impacts of the duties have drained resources from our company financially, and have occupied the time of executive members of the company who would otherwise be focusing on our core businesses. This hurts our bottom line and makes it difficult to undertake the long-term business planning that is necessary for our company to grow.

Although litigation results have largely been in Canada's favour, it is obvious that the rule of law is not binding in the instance of softwood lumber. Our neighbours to the south have managed to prolong court proceedings and have become masters of the appeal processes, thereby delaying absolute decisions in this case.

The U.S. Department of Commerce and the U.S. trade representative have made it very clear that they will exercise every avenue of appeal to protect the interests of lumber producers in the U.S. Realistically, this will push the horizon for a solution even further into the distance.

A clear win in litigation also does not prevent the possibility of yet another challenge by U.S. producers or, as you have heard it referred to, Lumber 5. This prospect does nothing to establish certainty for our industry and is therefore unacceptable.

The term sheet signed by both the Canadian and U.S. governments on April 27 is a major step forward. It represents the establishment of positive negotiations between our two governments, which began with the previous administration in Canada and have carried on under the current one.

Is the proposal perfect? No. Does it give us everything that we might want? Of course not. But the question we should be asking is, does it represent a compromise that bridges the gap between two long-standing adversaries and establish long-term certainty for our industry? The answer to that question is yes. In the words of British Columbia's premier, Gordon Campbell, "We should not let the pursuit of a perfect deal prevent us from agreeing to what can be considered a good deal".

● (1635)

Canfor has, for some time, encouraged provincial governments and the federal government to take the lead, to show courage and achieve agreement. Eventually, governments had to realize that no agreement based on negotiation was going to be achieved that would make every company in every region of the country totally happy. We applaud the Government of Canada and the provinces for bringing us to this point.

Canfor has the largest amount on deposit at the U.S. Treasury, approximately $760 million U.S. This is a significant amount of money that is not being invested and that is not creating shareholder value or enhancing the communities in which we operate. Under the agreement, after taxes, Canfor should see approximately $460 million Canadian make its way back to the company. This money will not simply go into general revenue for Canfor; it will be put to work investing in our mills, establishing new strategic markets, creating shareholder value, and enhancing the communities in which we work. The return of these duties will help Canfor provide stable, long-term employment for employees in communities across the country. To not take advantage of this opportunity, to be blunt, would be a disservice to our hard-working employees and to shareholders, who have entrusted our board and our executive with pursuing a deal that provides value.

As I mentioned before, this deal is not perfect. There are policy and timing issues that need to be worked out, but let's not stand in the way of allowing the two governments to negotiate these sticking points, and let's judge the agreement once it is final. The process being followed in fleshing out the agreement is allowing ongoing input from provinces and the industry. At Canfor we believe that the policy issues outstanding have been clearly identified and can be solved.

In conclusion, honourable members, I suggest to you that we embrace the opportunity we have before us. I have been on this file far too long not to know an opportunity when it presents itself. Litigation is a long road, fraught with endless appeals and offers no guarantee of victory. What we have before us, although not perfect, is far better than the alternative.

Thank you very much.

● (1640)

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Thank you very much.

Our last speaker will be Ms. Sarah Goodman. I turn the floor over to you. You have seven or eight minutes.

[*English*]

Ms. Sarah Goodman (Vice-President , Government and Public Affairs, Weyerhaeuser Company): Thank you for having me here today.

I also want to thank both the current government and the previous Liberal government for your respective roles in reaching the April 27 framework. This framework is the result of years of hard work and political and legal positioning; thank you for your leadership.

Before I talk about Weyerhaeuser's position, I thought it would be useful to provide some background on our company. We have a significant footprint in Canada, with more than 6,000 employees. We've operated here for more than 40 years and are one of the largest softwood lumber producers in the country, with eight company-owned and one joint-venture sawmill. These sawmills are located across four provinces: B.C., Alberta, Saskatchewan, and Ontario, so like some of the other companies here today, we represent multiple regions in the country and are therefore looking at this deal from a pan-Canadian perspective.

To be clear, although we are headquartered in the U.S., Weyerhaeuser is not a member of the Coalition for Fair Lumber Imports and does not support the trade action; we oppose it.

With a foot in both countries, we have worked to act as an honest broker, working to bring people together on both sides in support of a long-term negotiated settlement.

When making our decision to support the April framework, we asked ourselves two simple questions: first, is the agreement workable? Second, is there a better alternative?

On the first point, although the agreement is complex, we do believe that with appropriate attention to the details in crafting the final agreement, the agreement is workable. It is an agreement that provides important certainty about the running rules going forward. On the second point, we do not believe there is a better alternative.

For those reasons, and pending review of the final terms, Weyerhaeuser supports the agreement and is working constructively with industry and government to ensure the final terms are commercially viable.

We support the framework, as others have said today, not because it is perfect—it isn't—but because we knew from the outset that the complexity of the issue and the divergence of interests meant a perfect settlement that satisfied everyone was not attainable. At the end of the day this agreement represents a compromise, with neither side walking away feeling victorious.

We have always believed a resolution could only be found with a high degree of political will on the parts of both the Prime Minister and the U.S. President. We believe it is important not to take this political will for granted. There is no certainty that such an opportunity will present itself again in the coming months—or even years.

For whatever reason, the stars recently aligned to create the opportunity to negotiate a settlement.

The other alternative to the settlement is simply to continue with the litigation. While we believe litigation is an important tool, we do not believe this dispute can be fundamentally resolved by litigation. By the time all the appeals are exhausted, we could be several years away from a legal resolution.

There is always litigation risk, no matter how strong Canada's case may seem, and of course in U.S. trade law, there is nothing preventing the coalition from immediately starting up Lumber 5 just as soon as market conditions would permit.

The bottom line is this: we believe the framework is the best option for the Canadian industry and for those who rely on its viability. We don't believe the Canadian government could have extracted significantly more from the U.S.

The longer the dispute drags on, the more harm is inflicted, and with a rapidly rising dollar and other competitive challenges before us, we can't afford to continue to devote the significant resources required to keep this battle going. Our time and efforts are better spent finding ways to enhance competitiveness to the benefit of all Canadians.

As we look to achieving a final settlement, our efforts are now best spent working together to ensure that the final agreement is workable and that important details affecting the commercial viability of the agreement are attended to.

Thank you.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Thank you very much.

I propose to the committee, since we have about 45 minutes left, that our first round be of 10 minutes instead of seven, even though a number of speakers from the various parties will share those 10 minutes. I don't believe we'll be able to do a full second round of five minutes.

Let's proceed in that manner, if you are in agreement, which will enable us to cover all of the concerns that have been raised.

Without any further delay, I'll ask our comrade Mr. LeBlanc to take the floor.

● (1645)

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you, Mr. Chairman. You known I've been called worse names than that.

First, I thank the participants, who have taught us a lot today. This is a group of people who have broad knowledge of the industry and have for a long time, and who have differing points of view. That is the great appeal of this kind of discussion. I myself learned a lot, and I thank you all for your comments.

If any time remains after my two questions, I will turn the floor over to Mr. St. Amand. If you could answer my two questions quite briefly, that would enable us to get somewhat different perspectives. My first question is for Mr. Chevrette.

I got the impression that you had some concerns about the consultations that took place or are taking place with the industry.

[*English*]

Many of you have expressed support for the deal; some of you have reservations; some of you are more opposed. We've heard that from different groups this past week.

I'm worried that many of you have told me privately that you're concerned about the government's consultation with the industry, in terms of how much time you're given to respond to various drafts of potential legal texts. Do you feel that you've been included adequately in terms of your consultation with respect to very complicated details, which remain to be determined? Are you satisfied that you're adequately involved as the details are worked out with our government? I'm speaking about the federal government. Obviously the provincial governments have different responsibilities with respect to their own industries, and that's a separate issue.

The second question, Monsieur le Président, would be, do you believe there is a bit of a rush to finalize a deal? Mr. Emerson, in some comments of his, had said that the final legal text or the more complete legal text might take 60 to 90 days. We read a week or two ago that there may be a draft in the next 30 days, or by mid-June. Now that we have a framework agreement, I worry that the rush to get the details may in fact mean that for seven years or nine years thereafter, perhaps we might find that hadn't tweaked a particular clause or a particular element.

Mr. Lopez, regarding your comments about the dollar, I'm hearing the same thing in Atlantic Canada that I represent. There's a real concern that as the dollar is going up, the price of lumber may go down. At the same time, the export tax could go up, and you're getting U.S. dollars back at a much different rate than you put them in. You know the industry better than I'll ever understand it, but I worry that the rush before we think through these kinds of things might mean that the anti-circumvention clause, for example, will paralyze the government from helping our industry in a difficult position. Have we given an effective veto on changes to forestry practices? I think Mr. Milton and a few others have talked about their concern there. So do you think we would benefit from taking our time? I don't mean another five years, but maybe 60 to 90 days, as Mr. Emerson had originally said.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): The questions have been put to some of you. I simply want to mention that we have seven minutes left for your answers. So I ask you to be brief and precise.

Mr. Guy Chevrette: We'll try to be brief. I'll start with the second question and answer it quickly.

You can do things fast and well, since, as they say, whatever is left lying around just gets dirtier. However, we don't like things done at the last minute. That addresses your first question.

If we have three hours to respond to legal documents, that's obviously not enough. We have our lawyers, we regularly monitor the issue, and we think we should take at least 48 or 72 hours to respond to a serious legal document. Our lawyers can react quickly.

Two-hour ultimatums aren't going to work, particularly on weekends off. I think you have to get serious, and we have to live a long time. If we want to go quickly, let's at least provide for a mechanism that can solve the problems that may arise because we were forced to expedite matters. We can take 60 days to draft an agreement we're going to have to live with for nine years. If we want to take 30, let's at least take the legal precautions so that we don't subsequently wind up in an avalanche of disputes. There are clauses that our lawyers can suggest to us to obviate the need for this rush, which an cause us problems of another kind.

● (1650)

The Vice-Chair (Mr. Pierre Paquette): Do other speakers wish to answer Mr. LeBlanc's questions? Mr. Lopez.

[*English*]

Mr. James Lopez: I wouldn't mind responding to the second one, the issue of a rush to get a deal. I was quoted by a journalist a few weeks ago that I thought it would be a herculean task to get this thing done by June, which I know was a stated target by some.

I believe the government does need to maintain a sense of urgency to get this deal done, now that the framework is done. Momentum is important in getting the deal done, because you get people on both sides agreeing to principles that they're maybe not 100% comfortable with—and there is some compromise on the American side here. That being said, we should not compromise the quality of the deal to get it done quickly. As I said, we need a sense of urgency, but not at the expense of getting a bad deal.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Mr. Feldman.

[*English*]

Dr. Elliot Feldman: I'd like to answer with a couple of quite specific examples.

We get no warning when the next document is going to be in play. Over the weekend we received the U.S. draft. Monday night we received the annexes. We were told to have our analysis in by yesterday at noon We were given an extension until noon today. Since I had to be on a plane to come here, I left the office at 1 o'clock in the morning while writing an analysis of the U.S. terms and redlining the terms and the annexes, with no warning, and with a few other things perhaps on my schedule to do. That's happening to every lawyer in Washington. There's no warning, and there're 24-hour fire drills. Now how good is what I produced? I have no idea, because I never proofread it; I never went back and looked at it. I pushed all the buttons for e-mail at 1 in the morning, and they were gone.

As part of the rush, last week in the U.S. Court of International Trade in New York, the counsel for the Coalition for Fair Lumber Imports told the panel of three judges that he understood that it was an undertaking that this deal would be done by June 15 and be signed. He certainly gave the impression that there was a promise made by the Government of Canada to the Government of the United States. More knowledgeable than all the Canadian counsel in the room, he announced that this House would rise on June 26 and that there must be legislation that goes through the House to complete the deal.

The Vice-Chair (Mr. Pierre Paquette): Monsieur Cameron.

Mr. Russ Cameron: The answer to the first question is that the consultation has been wholly inadequate, and I think that's because of the answer to the second question, which is that it's just way too fast to have consultation.

The Vice-Chair (Mr. Pierre Paquette): Monsieur Allan.

Mr. John Allan: Honourable member, I'd like to answer your question from a different angle. I agree with everything that's been said before, but what we've been missing so far, in my view, is someone on the negotiating team who has the commercial interests of the industry at heart, who has that expertise and can translate the term sheet into commercial terms that would best fit the industry going forward. I think that's maybe the missing ingredient, notwithstanding the rush.

Everybody here is working flat out trying to respect timelines. We have asked for extensions; we have received them. Notwithstanding that, it is a fast process and everybody is trying to do their best within it. But the frustrating part for me is not to see, shall I say, the business aspects of the industry recognized in these technical details that many people here have spoken about, which will govern how we do our business for the next seven to nine years.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Do you have any further questions?

[*English*]

Mr. Lloyd St. Amand (Brant, Lib.): Thank you, Mr. Chair.

I just have a brief comment and then two questions.

I get a flavour, even from Mr. Higginbotham and Ms. Goodman, that the deal is far from being perfect, which has been mentioned time and again. I would suggest it's less perfect for Canada than for the United States. I mention that cued by Mr. Higginbotham's comment, as I understand it, that of the $760 million sitting somewhere, his company will receive back only $460 million. That's my understanding. So it's with very grudging, grudging reluctance that Mr. Higginbotham's company, I presume, will accept this deal that will cost the company $300 million. Ms. Goodman has indicated that her company opposed the trade action. So it rather seems that Canada is relatively blameless here.

But I would ask Mr. Feldman to expand on his comment about $3 billion and how that math is applied.

Mr. Cameron, if I could ask you about the six to 24 four months that you mentioned, I presume you were talking about the hoped-for conclusion of litigation within that time.

So if I could ask you gentlemen to comment on those two points.

● (1655)

Dr. Elliot Feldman: Thank you.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Please be brief.

[*English*]

Dr. Elliot Feldman: Thank you, Mr. Chair.

The first question is complicated and I'll try to give you a very abbreviated answer.

The $3 billion refers roughly to the accumulation of deposits between the time the money started to be collected and the time we got a final decision and notice of final panel action completing a NAFTA process, and concluding that the money had not been collected lawfully. It should never have been collected in the first place.

In the window of that period, under the U.S. interpretation, that money is lost. The United States keeps that money, but it gives you the money subsequently. For example, in the annexes that have been drafted, the United States has drafted two sets of liquidation terms, one that runs through the period up until November 4, 2004, and the other that runs subsequently as a ratification of its interpretation that November 4—the date of filing of a Timken notice—is a date segregating the money that was collected before and after. The money collected before, in the interpretation that NAFTA panels only have prospective authority, means that the NAFTA panel can't give you back the money retrospectively, which a court would.

If I may very briefly answer the question that was really directed to Mr. Cameron about the duration of the litigation, on April 28, the United States should have revoked the countervailing duty order because of the results of the NAFTA panel. It filed on April 27, at five minutes to five, an extraordinary challenge, which the two governments then suspended—although there is no legal way to suspend. Had the process continued to its conclusion, it would necessarily have ended on August 10. Unlike the experience you had with the extraordinary challenge on injury, in which there was an interposed determination under section 129 of the trade law, here there is no interposition. There's nothing in the way. On August 10, if the process had proceeded, the United States would have had to revoke, by law, with no question, no appeals, no other way around, the countervailing duty order. The deposits that are now being collected would have dropped from over 10% to 2%. We think that needs to be compared with what you have in the deal.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): That's all the time we have for the first question.

Now we'll move on to the Bloc québécois.

If you allow me to speak here, that will save us some time, which I'll share with Guy André.

Mr. Chevrette—and I imagine this is also the case of the other industry stakeholders—you've had access to draft documents that we have not received. We don't exactly know the content of the various versions that you received, and to which you have to react quickly.

In your view, do the drafts that have been submitted to you comply with the spirit of the framework agreement of April 27, which most of you accept, and which you simply want to see enshrined in documents that will be to the advantage of all the parties?

Mr. Chevrette spoke about this specifically, but I don't know whether other businesses have had access to those drafts. Mr. Lopez, among others, has set a certain number of conditions, and you have all talked about recognition for Canada's legal victories on this issue.

Do the versions that you've received appear to comply with the spirit of the framework agreement of April 27?

Mr. Guy Chevrette: Yes on some points, and no on others. We have only singled out the points that do not comply with the spirit of the agreement. I'll give you an example.

In the first paragraphs of the American document—the only one I've officially seen—they clearly want us to agree that our industry is subsidized, which is false. We even won our case before the International Trade Tribunal. So that's a sentence that must quite naturally be struck out. That goes without saying.

The four important points that we want are priorities. We didn't want to get into the infinite details of the document, which is some 20 pages long, in addition to all the annexes, as Mr. Feldman said. Obviously, for us, the four points that we very specifically suggested concerned Option B. We absolutely don't want a company penalized when it comes to the end of its contract. I'll give you an example, ACI with Home Depot.

Let's suppose it's short a million board-feet. We wouldn't want it not to be able to serve its customer because the quotas are filled and Option B has been chosen. Levy a punitive tax on it because it's filled the quotas, but at least give it the opportunity to complete the commercial transaction. This agreement shouldn't cause our businesses to lose contracts. This is a very important point regarding Option B that should be clarified. Even an American business would not accept this kind of situation.

I told you about the exit ramps. Amendments are needed in order to enable the various governments to carry out their reform of forestry systems, which has begun in Quebec and elsewhere.

Anti-circumvention provisions are also necessary.

The last point concerns manufacturers. We consider them on a first-mill basis. We wouldn't want an independent remanufacturer to pay less tax than someone who remanufactures his wood himself. The latter would pay $200 for the same quality and type of wood, while the former would pay $100 because he remanufactured it independently. So it's a question of equity and justice for our businesses.

It's very important to clarify these four points with the U.S. government, and we think they can influence any subsequent decision.

● (1700)

The Vice-Chair (Mr. Pierre Paquette): I'm going to ask you to respond briefly.

You're quite categorical in your document. On Option B, you say that a ceiling that permits no additional exports would be unacceptable in any circumstances.

Do you mean that, if this aspect were not in the final agreement together with other elements, the government should refuse to sign and should continue negotiations on this point? I want to know how far you're sticking to this.

Mr. Guy Chevrette: If I wrote it down, it's because this is serious.

The Vice-Chair (Mr. Pierre Paquette): I know it's serious, but I want to hear you say it once again.

Mr. Guy Chevrette: It's stronger when you write it than when you say it. In our opinion, it's written and we think that the government will have to correct this document. That's clear. I won't speak on behalf of my members. I don't have that democratic habit. It will be up to our businesses to state their view.

The Vice-Chair (Mr. Pierre Paquette): Thank you.

Mr. Higginbotham, go ahead. Then it will be over to Mr. Lopez.

[*English*]

Mr. Ken Higginbotham: I have a quick comment, Mr. Chairman, in regard to option B.

Our view would be that it's critically important that any quota be allocated on a company-by-company basis, so that at least we are in control of our own destiny, with respect to exports and to how much we may have available to go to customers.

I also wanted to clarify for Mr. St. Amand regarding his earlier question. The $760 million that we have on deposit is the total amount. The $460 million that I suggested we would end up with is net of our share of how much is going to stay in the U.S., but also net of taxes to the Government of Canada and to the provinces in which we operate.

We'd be more than happy to have those taxes reduced, of course, so that we'd have a larger amount left.

Some hon. members: Oh, oh!

Mr. James Lopez: I believe your original question was about these drafts that have come out since the initial framework. Are there some changes or are there some inconsistencies? I can say that in some cases, the drafts that have followed the two-page framework agreement. Some elements are consistent with the spirit and the intent of the original one, and there are other significant portions where the dilution has already started. We've already put a bit of water in our wine and a little more water. That's what we have to avoid. That's what we've been talking about here this afternoon. We cannot allow what we have in that agreement to be clawed back. As a matter of fact, we need to find ways to strengthen it.

● (1705)

The Vice-Chair (Mr. Pierre Paquette): Mr. Cameron.

Mr. Russ Cameron: Mr. Higginbotham was referring to some of the stuff that I had to skip over. Regarding the company allocation of quota under option B, the remanufacturers were already somewhat curtailed by the old softwood lumber agreement in the late nineties. Then in 2001, we became subject to the *ad valorem* tax on the entered values, so we were paying duty on our propane for the forklift, and leases, and insurance, and heat, and light, and every other thing.

Our shipments are down 15% to 30% for the average company, and there are some companies that just didn't have the money to be able to post bonds and put up cash deposits and stuff, so they haven't been able to ship at all; they've had to go through wholesalers. If you start allocating individual quotas, then some of those companies are going to get none, and the rest of them will be down 15% to 30%. So it's fatal. Plus, under option B, the hard cap, no matter what penalty you were willing to pay, you can't get it in. You know, once you hit your quota, that's it, you're toast.

Under option A, we're competing with Americans who are using American grown fibre, and there's no tax on that; their government isn't taxing them. We're competing with the Chinese; they're not paying tax. We're competing, in some instances, with Americans who are buying Canadian logs and sawing them up; there's no tax.

We're just not able to do it. Commercially, it just doesn't work for us. How long is it going to take us to die?

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Thank you.

Mr. Lopez, I'll ask you to be brief, because I have to turn the floor over to my colleague Guy André.

You mentioned exchange rates. Reference was made in the committee meeting with Minister Emerson to the possibility that we could adjust the taxes under the agreement based on changes in the exchange rate. Do you think this is a promising possibility?

[*English*]

Mr. James Lopez: I think it would be attractive, obviously, if you can offset part of the taxes with the currency rates, but the danger is that it could be flipped around and could be worked against Canada, if it's not structured properly. To me, that's not part of the game right now.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): If you have any ideas on this question, the committee would be interested in knowing them.

I turn the floor over to Mr. André, and inform Mr. Feldman that Mr. Emerson mentioned in the House on May 16 that he wanted to get an agreement before the House rose for the summer. So he stated here, in Ottawa, that he wanted an agreement to be reached by June 22.

Mr. André.

Mr. Guy André (Berthier—Maskinongé, BQ): Thank you, Mr. Chairman.

We're pleased to be meeting with industry officials to comment on this important agreement.

My first question is for Mr. Chevrette. You're in favour of a negotiated agreement meeting four essential conditions. I want to talk to you about the last two conditions. You say the agreement should avoid Lumber V for a sufficiently long period to allow the situation to stabilize. However, you now have doubts after reading certain documents. I'd like to hear what you have to say on that subject.

One of the conditions you mentioned was that Quebec wind up with a fair share of Canadian exports. Is that currently the case?

Does the agreement improve settlement mechanisms for guaranteeing the industry a certain amount of stability, in order to avoid the situation we experienced at the time of the first dispute?

Mr. Guy Chevrette: I don't want to get into the legal details of all the briefings I had, but I will tell you that we clearly don't want Lumber V. We know the costs that represents and I say that with all due respect to those charming legal men.

This is an enormous and prohibitive cost to the industry, and we think we should have mechanisms that solve the original problems through arbitration. Some factors suggest to us that we can find an arbitration mechanism that will no doubt be just as costly—we're not deluding ourselves—but that may allow greater neutrality and speed. We're talking about a neutral arbitration arrangement.

We all agree on the share of the U.S. market held by the Canadian industry, and we also know the market share of each province. This issue has more or less been resolved in our view.

I'll stop here to turn the floor over to the others.

● (1710)

The Vice-Chair (Mr. Pierre Paquette): So we can answer the questions from my Conservative friends.

Ms. Guergis.

[*English*]

Ms. Helena Guergis (Simcoe—Grey, CPC): Thank you, Mr. Chair.

I'd like to thank and welcome all of the witnesses for being here today. We appreciate the time you've taken to give us your testimony. Although we don't have the amount of time we'd like to have to ask you all our questions, we really do appreciate the information you've given us. It's great information and it will be helpful for us.

I have a couple of questions. I actually have a number of questions here. I'll try to make them very short in the interest of time. I'm hoping for some short answers. I will direct the questions towards Mr. Feldman. Of course, any witness who wants to is welcome to respond.

First, if Canada were to win the litigation, and the anti-dumping and the countervailing duty orders were terminated, how long would the U.S. industry have to wait before filing new cases?

Dr. Elliot Feldman: The industry has to be able to show injury. It's now facing the determination that there is no injury and no threat of injury, and it has to be able to look back over a three-year period in order to demonstrate injury, so it is reasonable to anticipate that no petition could conceivably be filed within the next two years because it would be impossible to demonstrate injury under the circumstances of the case having been applied and the orders having been applied over this period, so there's a security that relates instantly to the fact that because of this case, it's next to impossible to make out a new petition.

Ms. Helena Guergis: If we were to continue the litigation, how long would it be before the U.S. Court of International Trade would issue a decision in the case seeking to terminate the orders?

Dr. Elliot Feldman: As I indicated earlier, the first question really must be with respect to the countervailing duty order, because the panel proceeding and the ECC proceeding should conclude in August. There is no appeal from that. There are no other proceedings from that, so the countervailing duty order should be concluded in August under any circumstances.

The anti-dumping order decision, which relates back to the Court of International Trade with respect to what we call in shorthand the section 129 case now pending at the Court of International Trade, may have been delayed by the April 27 announcement. The three-judge panel convened all counsel last week in New York to inquire whether it should proceed in issuing its decision, because of the April 27 developments. The Government of Canada joined all of the Canadian industry in asking that the decision be issued. Judge Restani operates under a 90-day rule. That means the outside date for a decision from the Court of International Trade is July 3.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Mr. Chevrette wanted to speak on this subject.

Mr. Guy Chevrette: I don't want to play the devil's advocate, but it should not be overlooked that a challenge of the constitutionality of the NAFTA treaty was possible, not to mention the disputes that are before the NAFTA bodies and the international trade tribunals. Put all that together.

[*English*]

Dr. Elliot Feldman: I think, if I may, Monsieur Paquette—

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Please answer very briefly.

[*English*]

Dr. Elliot Feldman: The constitutional challenge has nothing whatsoever to do with the countervailing duty order. It arises out of the case on injury and therefore can't impact it.

[*Translation*]

Mr. Guy Chevrette: I understand, but madam was asking how much time it would have taken if we had followed through with the legal processes. I supposed that included all the legal challenge options.

The Vice-Chair (Mr. Pierre Paquette): Madam Parliamentary Secretary, it's your turn.

[*English*]

Ms. Helena Guergis: Let's just go a little bit further down the road here. Let's say that there's a decision and that the U.S. coalition could then appeal to the court of appeals, which they could. What is the average duration of such an appeal?

Dr. Elliot Feldman: There's no appeal with respect to the countervailing duty order. It's not available, not possible. That comes to a conclusion in August if the ECC were proceeding, instead of being suspended by the two governments illegally.

As to the section 129 case—

Ms. Helena Guergis: The questions were focused on our winning the litigation—on continuing with litigation without having the deal in place.

Dr. Elliot Feldman: Yes, that's right, and you asked me about both the countervailing duty order and the anti-dumping order. My answer to you is that the countervailing duty order is subject to the NAFTA proceeding—

Ms. Helena Guergis: But I also asked you, sir, how long would it be before—

Dr. Elliot Feldman: And I'm about to—

Ms. Helena Guergis: —the Court of International Trade would issue a decision in the case seeking to terminate the orders.

Dr. Elliot Feldman: Yes, and my answer to you was that the Court of International Trade will give us a decision no later than July 3 under Judge Restani's 90-day rule.

Then you asked me just now as to the U.S. Court of Appeals for the Federal Circuit appeal. That is typically no more than 12 months.

● (1715)

Ms. Helena Guergis: Well, my goodness; my research has shown it could be up to five years though.

Dr. Elliot Feldman: No. There's nothing here that's going to take five years. You're looking at 12 months from July 3 at the latest.

Ms. Helena Guergis: Can you can guarantee everyone around this table that it will not take any longer than 12 months?

Dr. Elliot Feldman: Can I guarantee you that I'm a sitting judge in the court of appeals for the federal circuit and will write the decision? No, this I can't guarantee you. But I can guarantee you that under the current terms drafted, chapter 19 will not exist seven years from now when you start Lumber 5.

Ms. Helena Guergis: I'd just like to point out that if Canada does prevail in a court of appeal, the U.S. coalition can petition to the Supreme Court for review. They can do that, is that not the case?

Dr. Elliot Feldman: May I point out that no trade case, but one—the Zenith case—has ever gone to the Supreme Court of the United States. We can develop all the scenarios we like; it's possible to conjure anything imaginable, but the realities reside in the history and experience and precedents of the courts. Twelve months from now, the CIT case would be finished in August, and the countervailing duty order would be gone.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Mr. Weaver.

[*English*]

Mr. John Weaver: I want to make one point. For four years now, most of us around this table have listened to lawyers tell us how long it will take and how much it will cost. The only thing for sure is that we continue to get their bills, and we really didn't know how long it would take. Maybe they're right this time, but maybe they're not. Certainly, all I know is that the industry is a lot better off with certainty and I think that's where we need to head: we need certainty.

We have too many other crosses to bear, from countervailing duty to energy—who knows where oil prices will go—to a Canadian dollar that doesn't seem to.... Well, how would you like to have your income cut 10% a year? So I think we need certainty in our industry, and that's why I think we need to move forward on this.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Ms. Goodman.

[*English*]

Ms. Sarah Goodman: I'm making exactly the same point that Mr. Weaver makes, that this has been a long legal road. It can be appealed to the federal court circuit; it can potentially be appealed to the Supreme Court. We've gone a long way and there's been a lot of damage wreaked to companies, communities, our economy—and we believe it's time to get on with it.

Ms. Helena Guergis: With Canadian companies we've seen some bankruptcies; we've seen a lot of families lose their income. None of the bigger companies here will be offended by what I'm about to suggest, but I did ask the minister and the answer back was that the bigger companies can probably hold out in litigation a lot longer than the smaller ones can. If you would care to comment on that, I would appreciate it.

I'd also like to know if any of you have had the opportunity to acquire any of the other smaller companies that have been on their way out? Have you had any situations like that?

You don't have to comment on that, if you don't want to.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Would someone like to make a comment?

Mr. Guy Chevrette: I'm not sure a big business is in a better position than a small one. A small one is subject to fewer standards than a multinational and it no doubt doesn't have any unions, whereas a big business has one that's probably very aggressive. I'm convinced that the financial health of both may be very comparable. I think you have to be careful about the judgment you come to on this question.

I believe that—and here I'm speaking for Quebec—we're currently going through a structural, not an economic crisis. This crisis affects all Quebec companies. In the current circumstances, we think the negotiation route is distinctly preferable to the legal challenge route.

I wouldn't want to insult anyone either. However, it's very easy for observers to judge those who make decisions in which they bet all their marbles. These people are judged by people who haven't anteed up a cent, but who pontificate.

The Vice-Chair (Mr. Pierre Paquette): Mr. Kamp.

[*English*]

Ms. Helena Guergis: I just have one quick comment and then I'm going to pass it over to my colleague here. I find it very interesting, through my experience here, to see that those who stand to lose the most—and it's usually the lawyers and the lobbyists—are the ones I find to be most against this agreement.

I'll end it at that, and pass it over to my colleague.

Dr. Elliot Feldman: Mr. Chairman, if I may, this insult has been rendered in the press a great deal with respect to lawyers, and I would ask for privilege to respond.

The lawyers in this case have done what their clients have asked, and they've done it successfully, and Canada should be grateful for the position it's in because of what the lawyers have done.

● (1720)

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Mr. Feldman, as you know, this committee often invites you here. You're very much appreciated. I don't believe the parliamentary secretary's comment was aimed at you personally.

[*English*]

Mr. Ron Cannan (Kelowna—Lake Country, CPC): Thank you, Mr. Chairman.

Thank you as well, each one of you, for taking time and educating us from your industry perspective. Sitting back and coming from the private sector and always complaining that government moves too slowly, then seeing all of the private sector complaining we're moving too fast, there's hope here.

Some hon. members: Oh, oh!

Mr. Ron Cannan: It's a bit ironic in that respect.

To Ms. Goodman, Mr. Higginbotham, and Mr. Weaver, you indicated that your companies want to move ahead, and you talked about the fact that you don't want to go through litigation—or prefer negotiation to litigation—and want to try to bring some closure. You said we don't have a perfect deal, but that you'll move ahead. You realized that there's the aspect of the billion dollars and what the advantages are of moving ahead now and where those dollars will go. We've heard about those being used for investment, helping the forest industry. If we can work north and south in an agreement as far as the two forest councils are concerned, I think that some of the billion dollars could be fostering further industry improvements as well.

You also spoke about the need for certainty and predictability in this agreement. I would just like to hear from whoever would like to respond, but I know the three I mentioned spoke specifically about the need for predictability in the industry for investments and jobs. What does that mean for your community?

Coming from the Okanagan and Kelowna lakes country, I've spoken with folks in the industry in the valley. Of course, the pine beetle is a very serious problem for the short term and could cause a national crisis, as we learned on Monday in hearing that the pine beetle could cross the B.C.-Alberta border if the food sources.... If they'd like to take up the jack pine, they've already taken the mountain and the western pine in the interior.

But specifically, what does certainty and predictability mean from an industry perspective? I guess certainty is for jobs and further investment in our communities. That's what we're here for, as we're concerned about the future economies of our communities.

Mr. Weaver, you could start.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): I would ask you to give a very brief answer because time is up.

[*English*]

Mr. John Weaver: Simply put, in order to plan and have strategic plans and to budget for capital investment and growth of your industry, you need to understand very basic things, like what is your revenue going to be and what is your cost going to be? The countervailing duties and anti-dumping duties drive both of those. So if we can answer those and have a predictable position going forward, then we're much better off in order to plan for strategies, capital expenditure, and future growth of our businesses. Everyone needs stability.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): We'll go on to the last round. It's the turn of Mr. Peter Julian of the NDP, whom I believe I can call “comrade” without any problem.

[*English*]

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you very much for your testimony today. It's been very valuable.

I am sorry that some of my committee colleagues have chosen to throw insults rather than listen. What you are bringing is of immense value, as it was on Monday as well.

What we are getting, for the most part, is pretty devastating testimony about what the impact would be if we have a botched, rushed job. We appreciate that each one of you has raised that point—that as these successive drafts come out and we see more concessions, there is a real danger to softwood communities and to the industry.

I also appreciated Mr. Feldman's remarks about erasing legal history, because that's a fundamental issue. As close to the finish line as we are, we have a government that seems to be snatching defeat from the jaws of victory. I think it's the first time we have a government that's not only ceding the ground but also trying to pretend that we didn't have that ground occupied in the first place.

I have four specific questions. Unfortunately I can't ask each one of you, because there are so many of you here today, but I'd like to ask Mr. Milton, Mr. Allan, Mr. Cameron, and Monsieur Chevrette the following questions.

The first question is with reference to your provincial governments. We have not heard the provinces weigh in with the concerns about where this agreement may be going. Have you expressed these concerns that you are expressing to us today to the provincial governments—B.C., Ontario, and Quebec—and what has been the response of the governments?

Second, with the current benchmark price, we're actually looking, according to some analysts, at an agreement that with the volume cap and the export tax would actually be worse than the current situation with the illegal tariffs, and would certainly be much worse than what Mr. Feldman described as a 2% tariff, perhaps, when this process ends in a few months. Do you share the opinion that, given the change in the benchmark price, we might actually be looking at a deal now that it is worse than the current status quo?

Third, how disastrous would a botched, rushed process be to the industry if we were to try to run this through, given the various concerns that have been raised—anti-circumvention and others?

The final question is based on the fact that there was, I think, an unspoken threat to the industry that if this agreement wasn't accepted, there would be no litigation support and no loan guarantees; basically, the industry would be left hanging on its own. Even providing you had the conditional support that some of you are still expressing, would you feel differently if the government were to come forward and say unequivocally that it would support the industry with litigation support, it would provide loan guarantees, it would be invoking Chapter 19 for non-compliance—said it would be fully supporting the industry? If you had that as an alternative, would you feel differently?

Thank you.

● (1725)

Mr. David Milton: Thank you, Mr. Chairman.

To the first part of the question, in Ontario we enjoy an astoundingly good relationship with the senior bureaucracy and the politicians in their understanding of the point of view of the industry.

On the question about short timelines, because we as the industry don't have direct access, in the hurry-up we rely on the Government of Ontario, through their officials, to put in our remarks with their own. We're satisfied they have done that. Whether it's been resonant is another question.

As to the pricing levels, I have heard these discussions as well, and as I believe Mr. Cameron was saying, depending on which part of where you are, you can do it 21 different ways. With the price levels as they are this week, I think Ontario would probably be in the range of a 10% export tax with the 30% level of quota. That may change at the end of the week or the start of next week. That's the general rumour as of a couple of days ago.

As for being seven to nine years under a deal—if it's a great deal, that's fine, as Mr. Weaver says. There is certainty and predictability, and we can make some plans. If it's a botched deal, what happens with the aspirations in Ontario under something that may be deemed to be anti-circumvention in dealing with extraordinary prices to industrial consumers of energy? Simply enjoying that globally as a policy of the Government of Ontario for the industrial complex, the centre of Canada, the sawmill industry and the forest products industry got hit sidelong on that one. Is that anti-circumvention?

Concerning unspoken threats, support, and litigation, we're with you all the way. As for loan guarantees, we would probably have to revisit that one. It's a huge and fundamental issue. It has always been the position of the Ontario industry that our victory is the one at the end, with a court of competent jurisdiction saying that we are not injuring, there is no threat of injury, and there is no subsidy. We would have preferred, obviously, a quick and successful victory, not the four and a half years that have drawn out.

Thank you, Mr. Chairman.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Mr. Chevrette.

Mr. Guy Chevrette: The gentleman wanted me to speak. First, I would say that relations with our government are good. The same is true with senior officials, and we'll even be meeting again tomorrow morning. They know our viewpoint, they know our analysis of the U.S. document, they also know the type of amendments we are proposing to replace the points that we find utterly unacceptable, and, unless proven otherwise, our government is representing us very adequately on this issue. We would like it to continue doing so, and we think it will do so, and we especially think that the Canadian government will accept the Quebec government's amendments, which will make the agreement very acceptable for all parties. Then we'll all celebrate together.

The Vice-Chair (Mr. Pierre Paquette): Mr. Allan.

[*English*]

Mr. John Allan: Thank you.

On the first question, on government and their relationship with us, it's very positive. We're joined at the hip with the B.C. government. We're working actively with them every day. The concerns we have raised about the speed of turnaround times, documents, and the process have been echoed by the B.C. government to the federal government, including written correspondence.

As for the rates we are looking at in the term sheet and the subsequent agreement, I must admit that we were fully involved in negotiating those rates. We knew what we were going to get into. We knew the tax rates, we knew the quota amounts, we had done a lot of research on it, and we went into that aspect of the deal with our eyes wide open.

As for a botched agreement, my view continues to be that we should work on making this agreement into the agreement that we need from a business and commercial and certainty basis, as Mr. Weaver discussed. I don't think a botched agreement is acceptable to anybody in this room, frankly. I think everybody's focus right now is to see what we can do to get this agreement to where it should be in terms of providing certainty as we go forward.

As for federal assistance, we received upwards of $20 million towards our legal costs last year from the government, a commitment started by the Liberal government and finished by the Conservative government. We're very grateful for it, but my group has spent $100 million in legal fees and other costs involved with this file since day one. If we end up in litigation again, or if litigation carries on, I believe my group will continue to fight the litigation as aggressively as possible, with or without government assistance.

Thank you.

● (1730)

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Would someone else like to speak on this subject? Mr. Cameron.

[*English*]

Mr. Russ Cameron: This particular lobbyist was asked to take a year off from his job as vice-president of Lindal Cedar Homes because the membership of the ILRA realized that somebody had to look at this thing full time. So I took a pay cut and did that. Unfortunately for me, that was five and a half years ago.

In any case, our communication with the B.C. government, as I said earlier in response to the other questions, hasn't been that great, because of the timelines. We'd really like it to slow down. I think they're trying. They're giving us the documents and allowing us time to comment; sometimes we might have three or four hours.

As for the duty levels, yes, right now we're at 10%, and it's 15% if you go over quota. The price index was supposed to be published today—the mid-week thing—but it wasn't, because of the U.S. holiday, so I guess it comes out tomorrow. The trend has been heading down.

Our preference, as I think I indicated earlier, would have been what we thought was going to happen—that is, the government was going to provide an aid package to see us through. Our guys have been beaten up worse than anybody on this *ad valorem* thing, and yet they are still willing to see it through if they can get a little bit of help and get this legal thing taken care of.

We certainly would like to have seen what Mr. Feldman described occur, and we're very concerned about letting the United States establish the ability to use transaction pricing in their future anti-dumping cases, because we think that the other $2.1 billion could vanish pretty quickly. If we can get at the NAFTA decision and take out that appeal at the WTO—I'm sure Mr. Feldman knows far more about it than I do—that would have been our preference, for sure, and still is.

[*Translation*]

The Vice-Chair (Mr. Pierre Paquette): Mr. Julian, you have one minute left. Would you like to use it?

[*English*]

Mr. Peter Julian: Yes. I have a very simple question to the four individuals. What constitutes a botched deal? What constitutes a deal that we should not sign?

Mr. David Milton: In Ontario's case, there has to be a practical exit through policy reform.

Mr. John Allan: In B.C.'s case, what we need is an anti-circumvention clause that recognizes our timber pricing systems on the coast and in the interior, and specific language in the annexes that have running rules for both option A and option B that make commercial sense. That's what we need. A botched deal would have failure on both of those.

Mr. Russ Cameron: From B.C.'s non-tenured guys, a botched deal would be something that didn't have exit ramps within a period of time, so that you could survive the interim measures, and that didn't recognize the legal precedents that we've established in victories, and those kinds of things.

[*Translation*]

Mr. Guy Chevrette: A botched agreement absolutely would not have been amended with respect to the substantive points we have raised. It's as clear as that. When you do something knowing that the results will be negative, I say it's botched. When you believe in the changes, you fight for those changes.

The Vice-Chair (Mr. Pierre Paquette): I want to thank you. The exercise has nevertheless been quite difficult because there were a lot of us, but it was also very enriching.

On Monday, we'll be hearing from Minister David Emerson.

The meeting is adjourned.

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