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Chair

Mr. Leon Benoit

Standing Committee on International Trade

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● (1605)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Welcome again, everyone.

We're now on meeting number 20 of the international trade committee of the House of Commons, dealing, of course, with the softwood lumber agreement, signed July 1, between Canada and the United States.

On the last meeting of today, we have three witnesses coming, all as individuals. We have John Duncanson, analyst, forest products; Stephen Atkinson, managing director, paper and forest products research, BMO Capital Markets; and Simon B. Potter, partner, McCarthy Tétrault LLP.

We'll just go to your presentations, gentlemen. Mr. Duncanson first.

Mr. John Duncanson (Analyst, Forest Products, Jennings Capital Inc., As an Individual): I'm actually a forest products analyst with Jennings Capital Inc.

Thank you for the invitation to address the committee. On behalf of Jennings Capital, I specialize in the analysis of the paper and forest products sector from a Canadian as well as a global perspective. I have a total of 34 years of experience as a former lumber industry executive in Canada and a forest products analyst. I make judgments about the near- and medium-term prospects of companies in the sector in the context of the overall economy of a country or a region.

I believe in the market, full stop. In my opinion, the three most important forces shaping the market in forest products today are supply, demand, and the strength of the Canadian dollar. From the point of view of the economic future of Canadian forest companies, in particular the lumber companies, I think these three factors are much more important than the dispute with the United States over softwood lumber and the proposed settlement.

I realize that my views in this regard are quite different from those of most of the financial analysts in this sector, who have been attaching more importance to the dispute and the deal. I don't believe trade restraints are ever good, but I think it is probably better to have an agreement than to have the uncertainty of changing duty rates and regulatory interventions that distort the market. The long-running lumber dispute with the United States has produced years of upheaval, hardship, and poor stock performance for the Canadian forest industry. It has interfered with capital investment in the industry and, as such, has threatened the livelihood of thousands of Canadians. To the extent a deal can change that situation, I support it.

I have seen the statements from both sides, from the U.S. industry, from the U.S. government, and from the government here, that the negotiations are over, the deal is final and nothing can be changed. I hope this is not in fact the last word.

I realize the key elements of the deal are not to be changed. I don't like the idea of an export tax, but I don't like quotas either. The last time both systems were tried, they were not satisfactory for the Canadian lumber industry. However, maybe the combination of an export tax and quotas based on a selling price trigger will work better to satisfy both the U.S. and Canadian lumber interests than either the export tax or quota system did on its own.

I don't really know if this new combination will be successful, but I do think it is time to move forward. Having offered this qualified endorsement, I do think there are aspects of the deal, as currently written, that need to be changed. I hope that between now and September the text will be massaged and the deal will become more commercially viable.

Thank you.

The Chair: Thank you, Mr. Duncanson.

We will change the notice of meeting so that you are seen as representing Jennings Capital.

Stephen Atkinson, perhaps you could go ahead with your presentation, please.

Mr. Stephen Atkinson (Managing Director, Paper and Forest Products Research, BMO Capital Markets, As an Individual): Thank you very much. It's a privilege to be here today. I do feel a little out of place because I don't have any political affiliation.

I look at North American stocks. The weighting of my U.S. stocks that I follow is eight times that of the Canadian. A good reason for that is that the Canadian sector has been shrinking, as we all know.

My job is to find companies that can earn their cost to capital; it's not a responsibility I take lightly. The business has to be viable. We are in a global economy or global environment, and what it says is that you've got to be low cost; if you're high cost, you go bankrupt, and that's what we've been watching.

For instance, in eastern Canada the wood costs are more than double what they are in the U.S. south. At the same time, the margins on pulp, for instance, while they are resilient, are over 40% higher, so it's only a matter of time before they continue to get squeezed out.

I figure the best thing I can do today is make a few recommendations on what would be required to change my view of the Canadian sector. Right now my recommendations are essentially to invest in Canadian companies that have U.S. assets or companies that are not in Canada at all when it comes to pulp and paper.

If you look at the U.S. coalition for a minute, and the lumber or timberland owners, or whatever you want to call them, GP dropped out as being too expensive, and of course IP want out; they've been citing costs. The fact that they, International Paper, sold their timberlands and are in the process of selling their lumber—and I think it's noteworthy that IP did not support the challenge to the constitutionality of NAFTA—to my mind, means the major funder, the funder that's reportedly been putting up over 50% of the moneys, may be leaving. The coalition is now looking for new members. Certainly Canada, with its $500 million donation, should request a seat.

The point is that when you're looking at investing, are you going to invest in an industry that is taking $500 million and giving it to its competition? You are going to look at the competition first, and the beneficiaries. It's just natural.

The other point is that while we look on this as eternal—meaning eternal litigation—the coalition may not be able to attract enough members to continue it. That's why, from a conceptual point of view, I do question it.

To go back to what's been happening, I wrote a report in April 2002 that said the U.S. timberland owners—because it is the timberland owners, not the lumber guys—don't want an agreement; they just want litigation. Certainly everybody else has seen that. We know that. They really were creative, because they had two duties—the anti-dumping and the countervailing—and basically the lumber industry was being charged with having wood costs too high and too low at the same time. But, you know, it worked.

Right now we're asking how we can get out of it. The U.S. is saying they are going to make their best effort over the next 18 months to tell you what a market-based system is, or what one is that works for you. I look at that and say that maybe I should wait 18 months if I'm going to recommend that anybody invest, because you do have this uncertainty. At the same time, for me, more critical than anything else is how you get out.

The other thing that disturbs me, as I mentioned, is that the timberland owners are the guys funding the lobbying. The tax rate on timber in the U.S. for the smaller producers is as low as 14%, and for the lumber producers it's in the low 30% range. Clearly, what you want to do is make as much money as possible off the logs and make as little off the lumber, meaning if you can force a higher lumber price or higher cost, then you can sell your logs for more. It's logical; it works.

When we talk about what I read in the document, of 60% of the lumber producers signing, I'm saying, hey, the guys who are funding account for 15% of lumber production, so I don't know whether they have to sign. That disturbs me as well.

● (1610)

So what do I expect to happen? Well, we have what appears to be the export charge, where B.C. is going to run flat out, and you have the volume restraint, which will be the rest of Canada. When I say B. C., I just mean the B.C. interior, which is about half of our production.

So it's the worst of all worlds. You can't be half pregnant. It's either that you have a quota or you don't. If you have one running flat out and the other part of the world doing, shall we say, volume restraint, it's not going to work. You're just going to have low prices; that's all it is.

The way I look at it is that, yes, Canfor and the companies with the pine beetle will run flat out. Canfor will shut down the lumber mills in the non-beetle region. Northern Ontario and Quebec will get beaten up, especially in pulp.

You see, the insidious thing about all of this is that when you knock out the lumber mills, you reduce the chip supply. When you reduce the chip supply, the wood cost goes up. When the wood cost goes up, down go the newsprint mills and bankrupt go the pulp mills. So the way I look at it right now is that something has to give on the wood costs. Canada has to have the flexibility to be able to lower the wood costs, because as you just think about it, if you knock out the lumber mills and the wood costs keep going up, then that's it: northern Ontario, and certainly the pulp mills in the region, won't be around.

To summarize where I am, then, it is that looking at the agreement doesn't make me feel very good about recommending stocks to investors, so basically I'm going to have to wait for another day.

Thank you.

● (1615)

The Chair: Thank you, Mr. Atkinson.

Mr. Potter, may we have your presentation?

[*Translation*]

Mr. Simon Potter (Partner, McCarthy Tétrault LLP, As an Individual): Thank you very much, Mr. Chairman.

I shall address you in English as my presentation was written in English. Of course, I shall answer your questions in both languages.

[*English*]

I'd like to thank you, Mr. Chair, and all the members, for receiving me today and allowing me to give you some thoughts on this complicated matter. I'd like to speak with encouragement to you all. It is a very complex agreement, a complex problem. There are large pros and large cons on both sides of it, and I think it's a challenging task to come to grips with this thing. My purpose here today is to help you to do just that.

I have prepared a paper for you today, which I do not propose to read but which, I believe, has been circulated to you. It is lengthy and detailed. I hope that if you need anything else you will feel free to call upon me, and I will get whatever information you need in order to look into the context and background of this agreement.

First of all, we should remember that this is an enormous dispute. It has been called by some—and I think it probably is—the largest and longest-lasting trade dispute in the history of the world. We here in Canada speak of our $5 billion that is held as deposits in Washington. That, of course, is a huge sum of money. We should remember that those deposits were collected by the United States in an effort to raise prices, and that the prices did not rise on only the one-third of the softwood lumber sold in the United States coming from Canada; there was nearly certainly a collateral effect on the other two-thirds. That is to say, the coalition nearly certainly profited to the tune of several tens of billions of dollars through the collection of those deposits by extracting from the American consumer prices that otherwise would not have been paid. That happened even though the International Trade Commission decided several times that there never was actually any injury caused by Canadian exports to the United States; there was only a threat of injury, and that finding was found to be unsubstantiated.

That consideration is important because it proves that the minister who spoke earlier was completely correct in predicting that there will be a Lumber V. It is impossible to think that the members of the coalition will see, through simple arithmetic, the prospect of increasing their profits by $10 billion and decide that they probably don't want to have a Lumber V. There is going to be a Lumber V if there is no settlement to prevent it. So he was right on that point.

In the interest of fairness, I found a point on which he's wrong, and I'll come to that too.

You heard from various people on both sides of the question, who have said there's great cost and great uncertainty if we take the agreement, and great cost if we don't take it. Both sides are right, frankly. This is a very difficult choice. There are very great costs and problems associated with this deal. I propose to give you my personal view of what some of those problems are and to finish with a suggestion of how they might be approached by those who really want to have the deal.

First of all, there are some problems. These are outlined beginning on page 5 of my paper. In brief, what we have first of all is, as the minister told you this morning, a term sheet of April 27, 2006. A good part of the industry went along with this term sheet and said that, yes, that looked fine, and they would support an agreement that followed that term sheet. Later we had a July 1 proposed agreement, and a good part of the industry said, sorry, they were not in favour of that; they could be in favour of that only if there were changes.

It is important to know that what changed was not the mind of the industry associations; what changed was the deal. The deal that is before us now is in several ways not the deal that was announced by the term sheet of April 27.

First of all, the April 27 term sheet spoke of a seven-year arrangement, and even the Prime Minister announced to the House of Commons that he had brought home a seven-year arrangement, a guarantee of peace for seven years. The fact is that the agreement has article XX, which gives to the United States the power to terminate the agreement after 23 months, on one month's notice.

● (1620)

With great respect, I disagree with the minister when he says, well, that's nothing different; in fact, it's better than what you would have under normal international law principles, because any treaty can simply be terminated on, as a rule of thumb, a year's notice. There is a great distinction, in my view, to be made between denouncing a treaty and tearing it up when there is no clause of termination in the treaty and simply using a power of termination that is explicitly provided in the treaty.

I submit to you that members of the industry might very well feel less at lease when an explicit provision allows the United States, without cause, without explanation, or without arbitral support of any kind, simply to pull the plug after 23 months. The industry, after all, agreed to pay $1 billion to buy seven years—maybe nine—of peace, and now it wakes up and finds that maybe it's not all that seven years, that maybe it's only 23 months of security. I think that's a major problem.

Secondly, option B, the quota scheme, is not what was announced on April 27. We now see that option B, the quota scheme, will be administered on a strict monthly basis, with a limited carry-forward or carry-backward provision from month to month—limited at 12%.

I'll come back to that in greater detail in a few minutes. But that is a problem for an industry that does not have volumes that are constant month to month, and that has demands presented by clients that change very rapidly.

You've already heard about standstill and anti-circumvention. I propose not to deal with those except to speak about the solutions I propose to you.

My conclusion is that this deal is not a good deal. It's very difficult, but it can be made acceptable to those who find it important to leave the uncertainty and the costs of the past several years and to go to a land where there will be greater certainty and greater ways to plan. There are things that can be done.

First of all, it ought to be clarified exactly how the option B quota regime will work, and it ought to be clarified in a such a way that everyone is reassured that quota will not be left uselessly on the table from month to month—orphan quota withering away, unused and never recuperated.

Secondly, it ought to be made clear that the power of early termination in Article XX will not be used except as a last resort and only if it is absolutely clear that the agreement is not working.

Thirdly, the standstill provision should be made—by promises, clarifications, or reassurances—to apply to more than just early termination by the United States under Article XX.

Fourthly, the anti-circumvention provisions should be made a bit more appealing by some kind of reassurance—a clarification that forestry management changes on a provincial level that bring the province closer to a free market will in no event be considered circumvention. That would go a long way toward reassuring people.

Let me speak to you very quickly about the option B quota. Quota that is administered on a strict monthly basis gives you 12 times as much chance of losing quota through non-use as does quota administered on a yearly basis. The April 27 document did not say how it would be administered; here we see the deal, and it's monthly, strictly monthly, with a 12% carry-forward. What Canada had asked for was quarterly, with 10% at the end of the quarter. It's obvious that a total flexibility between January and February, and a total flexibility between February and March, and a 12% of a quarter between March and April is a much easier thing to manage than a 12% carry-forward month to month.

● (1625)

Secondly, annex 5 is drafted in a vague enough fashion that some people might interpret it to mean that if you do not use quota in, let's say, June and you can only carry forward half of it into July, the other half is lost. We must find a way to make sure that this interpretation does not apply, and it seems to me that ought to be easy if both countries are in a world in which everyone wants to live within the limits that were imposed and that were limits decided by the ITC to be non-injurious to the American industry.

So my conclusions are that there should be no impediments to the clarifications I propose, that they are important clarifications, and that with them a great many members of the industry will see the point of taking the view the minister has expressed this morning.

Without these clarifications, however, many will prefer simply to go on winning in the litigation.

Those are my remarks.

The Chair: Thank you, Mr. Potter, and thank you all for your presentations.

We'll now go to questioning, starting with Mr. Temelkovski for seven minutes.

Mr. Lui Temelkovski (Oak Ridges—Markham, Lib.): Thank you very much, Mr. Chairman.

Thank you for coming out today.

Mr. Duncanson, you mentioned supply and demand and a dollar figure. With the price of the dollar fluctuating so much, do you think this becomes a better deal for Canada as the dollar has risen so much, or is it better for the Americans?

Mr. John Duncanson: It makes the Canadian industry less competitive.

Mr. Lui Temelkovski: Less competitive. And the billion dollars left on the table...?

Mr. John Duncanson: Are you asking my views on that?

Mr. Lui Temelkovski: Yes.

Mr. John Duncanson: I don't like it any more than anybody else in this room does, but it is the cost that has to be expended to guarantee the softwood market in the United States.

Mr. Lui Temelkovski: Maybe Mr. Atkinson can tell us, how do you expend the billion dollars when you're buying and selling stocks?

Mr. Stephen Atkinson: How do you recommend it? Well, one of the things I was speaking to Simon about is what one of my U.S. clients said to me: that if, let's say, you invest in a company and then that company gives $500 million to its competition and you suffer because of that—i.e., through litigation or through, shall we say, predatory pricing—are you acting in the best interests of your shareholders and are you liable? That puts a certain amount of pressure, possibly, on the Canadian industry.

The other point he made was that with the latest ruling of the U.S. Court of International Trade, which he takes very seriously, what he's saying is that the Canadian government should be very prudent as to where the $1 billion goes, because there could be some liability.

Actually, his final conclusion—I may as well share it with you—was this: why not give the money to the victims of Hurricane Katrina? That way, the industry would not incur any liability.

Mr. Lui Temelkovski: I was in the financial business for 20 years and I understand you follow trends in your business. When one country receives a judgment in their favour and the other country does not follow through, and it happens again and again, would you call that a trend?

Mr. Stephen Atkinson: Yes.

Mr. Lui Temelkovski: Would you anticipate that it will repeat itself again?

Mr. Stephen Atkinson: Oh, absolutely.

● (1630)

Mr. Lui Temelkovski: So do you think the Americans are finished with us?

Mr. Stephen Atkinson: Absolutely not. I was reading the comments from the senators from Oregon and Idaho right after the announcement of the agreement on April 27 and 28. To paraphrase, basically they're saying—well, Oregon was, and I'm trying to get the words right—something to the effect that tens of thousands of jobs were lost in Oregon because of the practices of the Canadian government. So obviously it's starting up again.

As you know, 69% or 69 senators voted for the duties in the first place. Clearly it's coming back.

Mr. Lui Temelkovski: Okay. How would you view company C, which has stood up to the judgments they've received and has lost half a million dollars? Would you view it a little differently?

Mr. Stephen Atkinson: If a company lost half a million dollars by standing up...?

Mr. Lui Temelkovski: By standing up for the judgment they've received through the courts of law, as opposed to not standing up.

Mr. Stephen Atkinson: I see what you're saying. If we take the presumption that no money will be returned, are you better off to take what you can? Yes. It depends where you set your yardstick. Good point.

Mr. Lui Temelkovski: Thank you.

Mr. Potter, you mentioned that the quota system needs to be clarified further. You made your point that fluctuations in a monthly quota would not only be difficult to track, they would be more volatile. Also, if I could go a little bit further, our deliveries might be returned at the border because of a quota that had not been tracked very closely.

Mr. Simon Potter: There's no doubt that even though a seasonality is built into annex 5's calculation of what the monthly quota will be, the volatility of the market, clients' changing demands at the border, and returns of stock will make the tracking and management of quota extremely difficult and burdensome for both the government and every individual exporting company.

Mr. Lui Temelkovski: Maybe Mr. Atkinson can comment further.

Mr. Stephen Atkinson: Thank you for the opportunity.

As an analyst, you're looking at trying to forecast how much companies make. Let's say a company ends its quota and they're not sure whether there's a 10%, 15%, or 22% duty coming, because they haven't received the numbers. They're all going to have to put in some sort of allocation or contingency for that. So you're going to have companies reporting, okay, this is what I think I'm making. But depending on when the final numbers come out—let's say there's a snowstorm or whatever in the U.S. and demand goes down—I may be wrong, so I'm going to have to lower my estimates. Of course, that does create a lot of instability when you're trying to forecast for a company. Needless to say, you have to take the most conservative forecast.

Mr. Lui Temelkovski: Mr. Duncanson, you mentioned that you're hoping the text will be massaged so it will be more palatable for our Canadian companies.

Mr. John Duncanson: That's my wish. I did learn something today as well. There was a lot of conversation that the minister enlightened me on, just small details. I'm now sort of being convinced more and more that with the deal as is, if we can get this working group to work properly between the two countries, after the deal is signed there will be a chance to do some further massaging. It may be with annex 5, if it's not too late.

I tend to disagree with my colleague here, but we are in a competitive business. You have to remember that quarterly earnings are unaudited. I think the minister himself said—and he was a fairly senior executive at one time in the industry—you can pretty well guess to about 98% what your past earnings were.

Mr. Lui Temelkovski: A billion dollars up in the air...?

Mr. John Duncanson: I didn't quantify the amount. I was vice-president of lumber sales, and I knew exactly what our shipments were on a day-to-day basis. That was before we had a lot of the sophisticated computer systems we have now. So I don't think it's as big a problem, but it's a good point.

The Chair: Mr. Atkinson.

● (1635)

Mr. Stephen Atkinson: From the perspective of the companies I spoke to, they say it's going to be a big problem.

The Chair: Thank you, Mr. Temelkovski.

Mr. Crête is next for seven minutes.

[*Translation*]

Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ): Thank you, Mr. Chairman .

Mr. Potter, you talked about option B. You explained its complexity. You have also explained quite clearly the impact of a monthly administration of quotas.

However, I would like you to tell us what it means for businesses. What will be their situation if that change is implemented as provided in the agreement that has been signed at the end of June? It will have major consequences for companies in Quebec because this might be the option that will be chosen.

Mr. Simon Potter: Thank you very much, Mr. Crête, because you give me the opportunity to add some more details.

There are essentially three problems. The proposal I am making today deals only with two of them.

I shall not deal with the fact that quotas will probably be administrated on a monthly basis rather than a quarterly basis. This will largely increase the risk that part of a quota won't be used, that there will be orphan quotas, if I may say so, month after month. This is an issue.

However, the two other problems...

Mr. Paul Crête: Does it mean that this quota will be hidden, artificial or supplementary?

Mr. Simon Potter: Canada's market share is 34%. Quebec, for instance, would have its share of that 34%. However, this is rather tenuous. In practice, as the quota will be administrated on a monthly rather than a yearly basis, this 34% share will diminish month after month. It is a problem but let us put it aside for now.

To a certain extent, I am trying to solve this issue with the flexibility provided in Annex 5 which offers a carry-forward and a carry-back up to 12%. It means that a carry-forward or a carry-back could change the quota for a month up to 112% of its normal value. However, the real volatility would be much higher than 12%.

For example, if I do not use entirely a quota of 80 million board-feet in June and if I can only carry forward 60 million board-feet in July what will happen with the 20 million board-feet left over? If we interpret Schedule 5 so that the 60 million bf quota can be carried forward to July and the 20 million can be carried forward to August, those 20 million board-feet will not be lost. Otherwise, the quota would shrink to a large extent.

Mr. Paul Crête: To your knowledge, is it possible to do it without changing the agreement as such, simply through letters of understanding or by adding some clarifications to the annexes?

The government seems to be very reluctant to reopen the agreement even if it is bad. Do we have any leeway on this?

Mr. Simon Potter: As I said in the document I gave you, Mr. Crête, I think that we do. We could obtain from the United States the assurance that the Government of Canada could allow a carry-back or carry-forward over three months instead of one month without it being considered a circumvention. It should be possible to get that assurance without reopening the whole debate.

Mr. Paul Crête: Then, this could be done in the next few months, before the Bill is tabled in the House of Commons and before it becomes official.

Mr. Simon Potter: I am convinced that people of good faith should be able to do so in the next coming days. With all the respect I have for the Government of Canada, one of the problems is that the US industry and US government are not talking to anyone because Ottawa is sending them the message that everything is completed.

This could be easily corrected. It should be encouraged and we should find an easy way to correct the situation.

● (1640)

Mr. Paul Crête: You have identified other aspects that could be modified very simply through technical means. However, it is obvious that the Government of Canada must have the political will to tell its American counterpart that, without reopening the agreement, it wants to study the interpretation of certain provisions.

Mr. Simon Potter: It is the case, for instance, of anti-circumvention provisions. The definition of "circumvention" is so vague that it is almost impossible to change in any way the forestry policy of a province. It even requires the province to ask the permission of the Americans to adopt a change.

It would be very easy for the Americans to give the assurance that a change towards free markets will never be considered as circumvention. It would be reassuring for everyone.

Mr. Paul Crête: Mr. Atkinson, you referred to the insecurity concerning capital investments. The forest industry is in a rather peculiar situation. For a number of years, we have not know exactly where this will lead us. Even if an agreement is not really good, at least we know where we stand.

Would there be another option? For instance, instead of guaranteeing the repayment of $4 billion in the weeks following the ratification of the agreement, if the government was giving large loan guarantees—not loans but loan guarantees—to the Canadian industry would not the result be the same as concerns markets security?

[*English*]

Mr. Stephen Atkinson: I'm not in favour of loans, for what it's worth. I mean, we do have a structural problem—

[*Translation*]

Mr. Paul Crête: Loan guarantees and not loans. It is not the same thing.

[*English*]

Mr. Stephen Atkinson: Sorry, my apologies.

So what you're suggesting is loan guarantees instead of...?

[*Translation*]

Mr. Paul Crête: According to the agreement as it is currently written, the Government of Canada will get back $4 billion from the U.S. government and will give them to Canadian producers. However, if it decided that this agreement is not acceptable, it could offer loan guarantees to producers. Those guarantees would reassure bankers and possibly investors. However, investments are more based on medium- and long-term considerations than the financial security of a bank.

[*English*]

Mr. Stephen Atkinson: I think I understand now. Sorry.

I believe a lot of this depends on whether the U.S. really does want a solution. We have seen changes, and at the same time, we're told, that's it, the case is closed; if you don't sign, watch out; this is the best we can do, etc. That's basically what I've seen. When you talk about the change, like 23 months, you do ask yourself.... Yet they can't wait to get at us, which certainly for eastern Canadians could be very damaging in terms of these different duties or penalties.

The question is, do we have any room at all? If we do make these loan guarantees to the industry, will we be able to go back and do something better? I don't know the answer to that. Clearly it's something that I think is worthwhile.

The Chair: Thank you, Mr. Atkinson.

Monsieur Crête, your time is up.

Now to the Conservative Party, Ms. Guergis.

Ms. Helena Guergis (Simcoe—Grey, CPC): Thanks very much, Mr. Chair.

I'll start with Mr. Atkinson. I may be splitting my time, depending on whether my colleagues have a question.

Some of the comments you made in the recent weeks indicate that you weren't aware that Canada actually did force the United States to concede on a number of points.

I just want to take you through a few of those points, the first one of course being the termination clause. Your termination period is the standard for international agreements and it was implicit in the April 27 framework. I'm happy to actually list off a number of them. I have a list of 17 agreements where there are six-month termination clauses, and it doesn't mean those deals were only for six months. So the termination clause that we were successful in having secured at 23 months is far better than what we had before.

I think a one-year moratorium on trade action is substantial as well. Again, this is something the United States did not want and we were able to convince them to go forward with it.

The other concession is the anti-circumvention clause. The U.S. did not want this, but Canada persisted. Because of the anti-circumvention clause, the provincial sovereignty over forestry practices is protected. This includes B.C.'s market pricing system.

Another concession the U.S. made is the dispute settlement mechanism. They did not want this in the agreement, but we insisted. Disputes will be addressed using commercial trade law and not American trial law, as we have in the past. I think that what is just as important here is that they are enforceable and effective remedies and that if Canada wins a dispute it can reduce the border measures accordingly.

If you want to comment on those, please feel free to do so.

I see that you don't address any of these concessions in what I have read in your report, nor do you actually tell us what you think the alternative to this deal would be. I'd really like you to tell us what you think the alternative is if this deal does not go forward. Tell me your opinion, and be very detailed if you can.

I'll leave it at that.

● (1645)

Mr. Stephen Atkinson: Thanks.

My apologies, to begin with, if I have misrepresented you—meaning the Conservative Party, of course.

In terms of looking at the agreement, as I say, the big thing is, can we do something about our costs? We are looking at a lot of bankruptcies. Sadly, or maybe positively—it depends how you look at it—I do see the Canadian dollar going up, that it is a proxy for oil prices. China and India are not going to slow down in their consumption. So I do look at the industry getting weaker.

So where I write about the agreement, basically pointing out how much money we're going to lose and looking at it from that perspective, of course a lot of it relates to currency as well. Overall, clearly those are positives that I missed, but at the same time, I am looking at it in the way that, under the agreement, especially if we don't have a quota, if the B.C. interior runs flat out, is it going to knock out the pulp mills in northern Ontario? Sure it will. So I am looking at it more from that perspective.

Can we do a better deal? I don't know, but the big thing is policy exits. How do we get out? And at the same time, can the provinces put in a market-based system?

Ms. Helena Guergis: Would anyone else care to comment?

Mr. Simon Potter: I'd like to make a comment on the termination clause. I think we have three aspects here that really make this a separate case from these other agreements that you're mentioning. I think it's only fair to say that in those other ones, those deals weren't bought with my billion dollars. That's a big difference here.

The second difference is that those other agreements you mentioned weren't done in settlement of an extremely litigious dispute, a very long-standing, hugely litigious dispute in which one party appears to have been willing to do almost anything in that litigation.

Thirdly, those other agreements don't have the situation we have here, where we've lived through five years during which the American government seems to want to do just whatever the coalition asks.

So I really don't think in those three circumstances it is enough of a reassurance to the Canadian industry, faced with a termination clause of 23 months when they were told they were going to get seven years, to just say, well, that's normal. In those three very specific circumstances I gave, it's very reasonable that we should ask at least for the assurance that the power of termination in article XX will only ever be used as a last resort and only if consultations show that the agreement cannot be made to work properly.

● (1650)

Ms. Helena Guergis: May I suggest to you that this is and has already been talked about and agreed and discussed?

Mr. Simon Potter: Talked about—that's fine. I'd like to see a letter, and so would members of the industry.

Ms. Helena Guergis: Consider that just to be the whole basis of the agreement, in my opinion, here looking at it.

Mr. Simon Potter: With great respect, that may be so, but presidents who have to make decisions with large numbers of employees at stake, great investments at stake, would like to know more than that that seems to be behind the agreement anyway. They would like to have some clear assurance of what I've just said.

Ms. Helena Guergis: And what do you think is the alternative, then, without a deal?

Mr. Simon Potter: As I've said, I think it's a reasonable choice by a company that can weather the storm for another couple of years—

Ms. Helena Guergis: There are a lot of them that can't weather a storm any longer.

Mr. Simon Potter: I agree, and it's a reasonable choice for them not to want to, but in the absence of the assurances that I am talking about in my paper, there will not be the 95% approval that the Government of Canada has said it wants before going forward.

In order to get that approval and in order to save the agreement, which your government wants, I believe it's necessary to find some way of giving the assurances I've identified. That would allow people to say, I'd rather settle than continue to try to win in litigation.

Ms. Helena Guergis: And you do recognize that the binational committee and the other committees and such will be available afterwards to continue to work.

Mr. Simon Potter: Just as they've been available to us now, so far in the litigation, and they've worked very well. We've won near unanimous good judgments from them.

People can argue this on both sides, and I am not arguing for the one or the other. I am actually advancing proposals designed to ensure that you can get your agreement.

Ms. Helena Guergis: Mr. Potter, I'm going to go back to some comments you made in February 2006. To quote, you said that “any system, no matter how well thought out at the beginning, can be made to fail by a determined litigant who does not care whether his tactics imperil that system”.

We all know how determined the coalition is, and we all know that in the case of softwood, litigation has failed. The option to not having this deal is continued litigation over and over again. I think it's been proven time and again.

Mr. Simon Potter: I did say that, but I didn't know it was in February 2006. I thought it was a bit earlier, but never mind. Whenever I said it, I think I was right. But with respect, I did not say that the litigation had failed. I said that any system, no matter how well designed, could be made to fail by a determined litigant. The system has indeed failed in softwood lumber. The litigation is starting to succeed; it has not failed.

Ms. Helena Guergis: Regarding the dispute mechanism in the agreement, do you acknowledge that as being a positive step?

Mr. Simon Potter: I'm proud of myself enough to say that I could have made it better, but yes, I have always said there ought to be a dispute resolution mechanism in the settlement. There is one there; I'm very glad. In some ways, it looks unwieldy to me, but I'm very glad it's there and I'm sure it will prove useful.

But we have dispute settlement, have used it, and have many victories in the current dispute. We're heading in the right direction. Some people could say, let's stick with that, rather than pay a billion dollars for 23 months. I'm hoping they don't. I'm hoping we can find a way to get them to agree not to say that.

The Chair: Thank you, Ms. Guergis.

Mr. Julian, you have seven minutes.

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

And thanks to each of you for coming forward today to give your comments on this important issue.

All day, we've been hearing from many industry and provincial representatives. With one exception, everybody has either been opposed or raised serious concerns about this proposed deal.

I'd like to pose specific questions for each of you.

First, Mr. Duncanson, you raised the issue of the deal being final. You said you hoped it wasn't true that there needed to be changes to make the deal more commercially viable. I'd like you to specify what makes this proposed deal not commercially viable right now. It could be the running rules, the complexity of quota and export tax, or the huge volume of paperwork. I'd like to ask you that.

Then, Mr. Atkinson, you raised a number of issues. The lack of policy exits, I believe, was what you were referring to when you talked about waiting 18 months, and you also talked about the incentive to sell raw logs, which is a huge issue in British Columbia. The softwood communities are justifiably concerned about seeing logs leave their communities and go elsewhere, which means jobs literally going down south. So perhaps you could expand on those two points.

You also made two specific references that Canfor will shut down lumber mills and that mills in northern Ontario won't be around. I'm wondering what your sense is on the number of mills that will be shut down as a result of this botched deal if it is implemented as is, and how many jobs will potentially be lost?

Finally, Mr. Potter, you raised the issue of Lumber V, which I think everyone agrees we're going to be into at some point. The question is whether or not we give away half a billion dollars to the American industry to fight Lumber V, and whether we give away four years of litigation that we've continuously won?

I agree with you that we're now at the point where litigation is becoming successful, because we're at the point where we have the two last hurdles to get over. So do you have concerns about fighting a Lumber V, having given away the benefits of the litigation—which according to Mr. Grenier cost over $100 million, so essentially we're starting from scratch—and having given half a billion dollars to the American industry as well?

Those are my questions to start. Thank you.

● (1655)

Mr. John Duncanson: If I can remember your question to the point on the commercial viability, we've heard that term mentioned several times here from Mr. Potter as well as from a number of the industry reps in the associations. I'm in agreement with him.

I think, for example, that on article XX, the termination article, I did learn something today. I had not realized—and not being privy to the behind-the-scenes negotiations that all of you have and the members of the associations have—that had been requested by B.C. But I do feel that the 23 months is not commercially viable as far as having the companies sign on is concerned. I think it's fairly evident that they want either a letter or just an acknowledgement that we tried to get a little bit longer. I think the standstill definitely helps going forward.

The biggest commercial viability of the deal as it is right now is the return of the $4 billion. Maybe you didn't get my gist when I was saying that probably the one biggest problem we've had in the past five years in previous softwood lumber cases has really been the damage it's done to the capital investment in the Canadian sawmill industry. It really has been very much interfered with. I personally, as I said, think that to the extent a deal can change that situation I support it. Four billion dollars is a lot of money. With the current anti-dumping and countervailing duty, and with the prospects of a softwood five around the corner, the investment in this industry will dry up to virtually nothing.

Mr. Peter Julian: I'll stop you there. Thank you. I have to divide the time with Mr. Atkinson and Mr. Potter.

Mr. Stephen Atkinson: To start off, just to put things in perspective, basically, as I said, the lumber mills in the Prince George region of course will run flat out to clear out the beetle wood. When you look at a situation like a Canfor that is going to run it's lowest-cost wood, then clearly you're going to shut down those lumber mills in the southeast quadrant. What happens then is that it'll put some of the pulp mills in danger, whether it be the Kamloops mill, whether it be the Celgar mill, and then that supply comes into question. That would be the first thing. Another point is to ask whether those mills, even though they are relatively low cost versus the east, can pay a 15% export tax during, shall we say, a price war environment. The answer is no, they can't. That would be one area.

In terms of northern Ontario, in terms of lumber mills and so on, I haven't looked at a number, meaning how many mills or how much gets knocked down. I look at it from the point of view of housing starts, and we've gone over two million, but as we all know, interest rates have run up, and obviously we're on the downside of the cycle and we see that in the pricing, which has been brought out today. To my mind, if you're reduced to a 30% market share, and let's say you were running at 34%, okay, you're going to lose a chunk there. If the U.S. housing starts themselves go down to 25%, then you can see that it's a multiplicative impact. That's what I would see happening. Certainly the same thing would apply to Quebec.

Very quickly, on raw logs, really what happens there is this. Let's say you're paying a duty—pick a number again, 15% or 5% or whatever it is. If you can bring in the log without any duty to the United States, then of course it makes sense to put the lumber mill there and create jobs south of the border.

● (1700)

Mr. Peter Julian: Mr. Potter.

Mr. Simon Potter: Mr. Julian, your question to me is whether I have concerns about a deal that would have us one day face Lumber V, start from scratch, and have to go through all this litigation, which we've paid $100 million for, again.

The answer is yes, that does pose problems, and I can add to the problems. The fact is, the CIT rendered a wonderful judgment on July 23. It's in appeal, and the settlement, if we have it, doesn't look as though it's altogether final. We also have the constitutional case of the coalition, which is not yet even pleaded, so we might have to live through that again one day.

We also have the fact that Canadian industry is giving away a billion dollars, $500 million of which will go to the people who will use it to finance Lumber V. Does that cause concerns? Yes, but it's not the real question. The real question for a CEO, who has to ask whether he wants to be in the 95% or the 5%—and I submit that's the real question also for the government and for this Parliament—is whether he is prepared to swallow those problems.

I submit that the answer is very likely yes, if there is an assurance of peace for seven years, and if some of these other problems can be fixed. But the answer is very likely no, if you're going to be starting from a bit less than scratch. Nevertheless, if you have to go through litigation all over again, starting in two years or three years, then the answer becomes no. So I think that clarification on the termination clause is an essential component of the answer to your question. Some people will say, I will swallow those problems if I get my seven years of peace.

From a governmental perspective, an aspect of that peace that has to be remembered is the unbelievable friction we have had in the lumber dispute over the past many years. That friction has infected commercial relations between the two countries and has risked leaking into other cases. It did leak partially into wheat. One of the benefits of getting the peace, if it lasts long enough, is to let that friction die down. So the real answer is, do we have a termination clause of two months or seven years?

The Chair: Thank you very much.

Thank you, Mr. Julian.

Thank you, gentlemen, very much for coming today. Your testimony is much appreciated.

I think we've all seen today how complex this issue is, and that we're all learning as things move along. On August 21, I'm sure we'll hear from witnesses who have had a little more time to look at this. I'm looking forward to that. So thank you all again.

Until August 21, the meeting is adjourned.

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