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Chair

Mr. Leon Benoit

Standing Committee on International Trade

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● (0910)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): I call the meeting to order.

Good morning, everyone. We're here today pursuant to the order of reference of Wednesday, October 18, 2006, to deal with Bill C-24, An Act to impose a charge on the export of certain softwood lumber products to the United States and a charge on refunds of certain duty deposits paid to the United States, to authorize certain payments, to amend the Export and Import Permits Act and to amend other Acts as a consequence.

We have this morning, from the Department of Foreign Affairs and International Trade, Paul Robertson, director general, North America trade policy; Dennis Seebach, director, administration and technology services—he's not here yet, but he will be here; Brice MacGregor, senior trade policy analyst, softwood lumber; and John Clifford, counsel, trade law bureau. Thank you. And then from the Canada Revenue Agency, we have Ron Hagmann, assistant manager, softwood lumber.

Thank you all very much for being here today. I understand that you're prepared to go through the bill in a general way and to refer to certain clauses as you go along. Just go ahead and do that, and then we'll open up to questions after that.

Please proceed, Mr. Robertson.

Mr. Paul Robertson (Director General, North America Trade Policy, Department of Foreign Affairs and International Trade): Thank you, Mr. Chair.

I'm very pleased to be before you today to explain the legislation. I think everyone has in front of them a deck that's been prepared identifying the major sections of the bill, which I'll go through. What I'll do is identify the page I'm on, and then when I move to the next page I'll notify the committee, so we can work in sync in that direction.

With respect to the summary of Bill C-24, the bill provides the necessary legislative authority to meet Canada's obligations under the softwood lumber agreement by imposing a charge on exports of softwood lumber to the United States, and on refunds of duty deposits paid to the United States, and by amending certain acts including the Export and Import Permits Act, the EIPA.

The charge on exports took effect on October 12, 2006. Bill C-24 allows for the implementation of the other obligations under the agreement relating to the border measures administration such as registering with the Canadian Revenue Agency, CRA, obtaining export permits issued under the authority of the EIPA—you'll recall that's the Export and Import Permits Act—and filing returns and paying certain charges.

Bill C-24 authorizes payments to the provinces, as well as payments to meet Canada's obligations under the agreement. This is directed to the payments to U.S. interest. The Minister of National Revenue is the minister responsible for the Softwood Lumber Products Export Charge Act, which we refer to as the “act”.

If we could go to page 3, it looks at the charge on softwood lumber exporters. Bill C-24 mirrors the agreement's obligations with respect to charges applicable on softwood lumber exports, options A and B. Section 11 provides for the imposition of the option A and option B charges when the reference price of lumber drops to or below the United States dollars $355 per MBF. Exports from Ontario, Quebec, Manitoba, Saskatchewan, Alberta, the B.C. coast and the B.C. interior are subject to the border measures.

Export price and remanufacturers. Section 12 establishes the export price on which the charges will be applied and provides for a favourable first mill treatment for independent remanufacturers. That is to say no charge is payable on the value-added component of the remanufactured products. In order to benefit from the first mill treatment independent remanufacturers will be required to obtain a certification from the Canadian Revenue Agency pursuant to section 25.

Surge mechanism. Section 13 gives effect to the surge mechanism, which increases the amount of the charge payable by 50% when regions operating under option A increase exports in excess of 110% of its allocated share for a month. That is to say the trigger volume. The allocation share is based on the region's share of the United States market during 2004-05. The surge mechanism will operate retroactively, meaning that exporters will be charged the extra amount following the month in which their region surged. This surge mechanism will only apply when lumber prices fall below $355.

We will continue on with the charges on softwood lumber exports, page 4 of your presentation. With respect to the Maritimes, the Atlantic provinces are excluded from the obligation to pay the export charges. Lumber producers in this region rely fairly heavily on timber from private lands and were excluded from the U.S. countervailing duty order. The exclusion applies to softwood lumber products first produced in the Atlantic provinces from logs harvested in those provinces, or in the state of Maine, that are either exported directly to the United States or shipped to non-Atlantic Canada provinces and reloaded or reprocessed and then exported to the United States.

Section 14 provides for the application of an anti-circumvention provision to ensure that only lumber from the Atlantic provinces is excluded from the export charge. Exports from the Atlantic provinces that exceed 100% of the region's quarterly softwood lumber production and inventory will be subject to a charge of Canadian dollars $200 per thousand board feet.

● (0915)

There are excluded companies: subject to certain conditions, 32 companies that were found by the U.S. Department of Commerce not to be subsidized are excluded from the obligation to pay the export charge. Clause 16 gives effect to these exclusions.

Next are regional and production exemptions. Consistent with the agreement, Canada and the United States are to establish within three months of the effective date a working group on regional exemptions. The working group is required to develop substantive criteria and procedures for establishing if and when a region uses market-determined timber pricing and forest management systems. Canada and the United States are also required to make best efforts to incorporate the findings of the working group into an addendum to the agreement within 18 months after the effective date of the agreement.

Clause 17 provides the authority for the Governor in Council to exempt regions from the export charges should a region satisfy the criteria developed by the regional exemptions working group. Clause 17 also provides for the exclusion of products from the application of the charge.

The agreement provides for the future consideration of exclusions for lumber produced from private land logs and U.S.-origin logs.

Next is third-country refund. The third-country adjustment mechanism included in the agreement and clause 40 of the act provides for the retroactive refund of export charges, up to the equivalent of a 5% charge, collected in any two consecutive quarters in which three conditions apply when compared with the same two quarters from the preceding year.

These conditions are that the third-country share of U.S. lumber consumption has increased by at least 20%, that the Canadian market share of U.S. lumber consumption has decreased, and that U.S. domestic producers' market share of U.S. lumber consumption has increased. This provision will not apply to any region operating under option A that has triggered the surge mechanism.

We go to page 5 of the deck, which deals with the charge applied to refunds of duty deposits.

In order to fulfill Canada's obligations to provide $1 billion U.S. to the United States and to ensure that all companies benefit equally from the agreement, clause 18 imposes a special charge on all softwood duty deposits refunded by U.S. Customs. The rate of the special charge will be calculated as a fraction, the numerator of which will be $1 billion U.S., and the denominator of which will be the total of softwood duty deposits and interest held by the U.S. as of entry into force of the agreement. The rate is approximately 18%.

The special charge will be applicable to all companies receiving the softwood lumber duty refund. However, the government intends to remit the charge to all companies who participate in the Export Development Canada deposit refund mechanism. Under that mechanism, participating companies will direct EDC to pay their portion, approximately 18% of the purchase price of their deposits, to the U.S. interests.

I will go to page 6 of the deck, which is on administration and enforcement.

Exporters, even those that are excluded from the requirement to pay the export charge, are required to register and file monthly returns with the Canada Revenue Agency. The return must be filed within 30 days following the month in which the lumber was exported.

Bill C-24 also includes provisions that are standard in modern tax legislation. They provide authority to provide refunds, collect interest on amounts not paid when required, waive or cancel interest of penalty, and keep records, and they include requirements to provide documents or information. The bill establishes offences and penalties for failure to file a return or to comply with a demand or order, for making a false or deceptive statement, for failing to pay charges, and for disclosing confidential information.

● (0920)

Inspections may be conducted by persons authorized by the Minister of National Revenue, and prior authorization will be required for inspection of a dwelling house. Investigations are subject to search warrant requirements. Additional clauses address information respecting non-residents.

These are standard provisions that are required to enforce any tax measure. Confidentiality of information is addressed in provisions that prohibit unauthorized disclosure and that authorize disclosure necessary for Canada to implement its obligations under the agreement.

I turn now to page 7, which are the EIPA amendments. You will recall the Export and Import Permits Act. The act is amended as follows: the export control list is amended in a manner to require export permits on the products covered by the scope of the agreement; authority is provided for the Minister of International Trade to establish a quantity that may be exported from an option B region in a month, to establish the basis for calculating export quantities, to establish by order a method for allocating export quantities, to issue export allocations and consent to transfers of allocations, to establish that an EIPA permit may have a retroactive effect, to require applicants to keep records and authorize inspections, to authorize the Governor in Council to make regulations respecting softwood saw log origin and respecting export allocations, and finally, to amend offence provisions to capture offences related to export allocations.

On page 8, you will find payments to provinces. Bill C-24 provides for payments to provinces, out of the consolidated revenue fund, of revenue collected from the export charges paid, less costs incurred by the government for administrative and legal matters related to the act and the agreement. These payments will not affect equalization payments to the provinces.

With respect to payments to accounts, clause 103 of the bill provides authority, on requisition of the Minister of International Trade, to make payments out of the consolidated revenue fund in order to meet Canada's financial obligations under the agreement.

Page 9, the second last page in your deck, is about other key provisions. With respect to regulations, the Governor in Council has authority to make regulations on issues such as the payments to provinces, allocation of quota, and other matters to carry out the purposes of the act. Clauses 107 and 108 state that certain regulations made under the act will have retroactive effect, for example, the export permit regulations.

On the issue of expiry, further authority is established for the Governor in Council to make regulations to declare that the charging provisions, clauses 10 to 15, would cease to be in force in the event that the agreement is terminated. The remaining provisions of the act would remain in effect to reserve the necessary authority, for example, to collect overdue payments, interest, penalties, and to make payments to provinces.

With respect to transition provisions, the option B border measure will not come into force until January 1, 2007, given the time required to put in place the information technology necessary to administer the quota regime and the need to consult with provinces and industry stakeholders on the rules governing the regime. During the transition period, lumber exports from all regions will be subject to the export charge under the option A border measure. Exporters of lumber from regions that choose option B but are subject to the option A export charge will receive a refund of the difference between the export charge levels for the transition period. A refund will occur if exports from these regions during the transition period do not exceed the region's volume restraint had option B been in effect.

To ensure that Canada can retroactively enforce the export charges, the majority of the provisions of the act will be deemed to have come into force on the day on which the agreement comes into force, and that is October 12, 2006.

● (0925)

One exception to the general coming into force rule is the provision that provides that the operation option of option B will come into force on a day fixed by the Governor in Council—that is to say, January 1, 2007. Also, because offence provisions cannot be applied retroactively, the sections of the legislation dealing with offences and punishment will only come into force upon royal assent. Even though the offence provision cannot be enforced retroactively, the obligation for exporters to pay the charge remains.

The last slide in the deck deals with what is not in Bill C-24. What is not in Bill C-24 are certain provisions of the agreement, because they do not require enactment under Canadian law. For example, the obligation to create the binational industry council, which we spoke of the last time I was here, does not require legislation. The softwood lumber committee and the technical working groups in article XIII of the agreement are purely institutional and administrative and do not require statutory authority.

Similarly, the dispute settlement provisions in article XIV can be administered without being enacted in legislation. The obligation for all litigation to be terminated, via the termination of litigation, is a precondition of entry into force and therefore does not require any legislative action.

With respect to the duty refund mechanism provided for in annex 2C of the agreement, EDC already has the statutory authority to operate such a mechanism.

Some treaty obligations and commitments, such as the information exchange requirements and anti-circumvention provisions, do not require implementation in Canadian law.

There are also certain provisions in the agreement that are U.S. obligations and logically cannot be included in the Canadian legislation. These include the revocation of the U.S. anti-dumping and countervailing duty orders, the refund of duty deposits, the obligation to collect no-injury letters from the U.S. industry stakeholders, and the U.S. commitment not to initiate a new trade action.

Chair, I apologize for the rapidity with which I've gone through the major elements of the legislation, but in the time remaining, it's our intention to be answering the questions on various sections and to elaborate where members would like elaboration to be done.

Thank you very much.

The Chair: Thank you very much, Mr. Robertson.

You've summarized what is in the bill and what isn't. It's clear that we're not here today to renegotiate the softwood lumber deal. That's been done. We're here to deal with some legislation and to pass certain parts of the legislation, so let's start with questioning on that.

Mr. LeBlanc, for seven minutes.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you, Mr. Chairman, gentlemen.

Thank you for your presentation, Mr. Robertson. I had some rather specific questions, and perhaps because one can tend to run out of time, I'll read you the questions. I'm hoping you can answer some probably quite quickly, but if we run out of time in this round, perhaps you could get back to the committee with answers to these questions in the next few days, before we would ever get to a clause-by-clause study of the bill.

The questions focus on two areas. One is obviously Atlantic Canada's exclusion, and the other one is something I have been concerned about for some time. It's the question of independent remanufacturers.

With respect to Atlantic Canada, on page 4 of your presentation you correctly talk about the exclusion of Atlantic Canada, for reasons you've properly described. However, some parts of the proposed legislation refer to an exemption or to Atlantic Canada being zero-rated. I don't have a great deal of experience at trade law, but in my view, there is a big difference between being excluded, meaning you are never in the play, or being exempted or zero-rated, which means you're in the pot, but for whatever moment at this particular time, the export tax, for example, is not being applied.

I'm concerned that the language of the proposed legislation may not in fact track the language of the softwood lumber agreement, which itself is much tighter with respect to the exclusion, in my view. So that's one issue.

With respect to independent remanufacturers, again the proposed legislation itself doesn't provide a definition for what independent remanufacturers are. Clause 2, the definitions clause, doesn't address what independent remanufacturers are. This was a significant win for Canada in the agreement. I think many people will concede that. But I think the legislation would be improved if there were a definition of what an independent remanufacturer actually is.

Clause 12 of the bill stipulates that "'independent remanufacturer' means a person who is certified under section 25." Clause 25 then says that the minister may certify an operation as an independent remanufacturer, but again there is no definition. This key concept is not circumscribed in any way in either of these two clauses. Is that something that could be tightened up, in your view?

Again, clause 100 says that the Governor in Council may make regulations regarding independent remanufacturers, and it says: "The Governor in Council may make regulations...respecting any requirements or conditions that must be met...".

The word "any" is a very broad word. It is not circumscribed in any way. I wonder if the Governor in Council is limited to the requirements and conditions, for example, of the softwood lumber agreement itself. Is it a common practice that this is circumscribed by the agreement itself, or is it in fact much broader than that?

Then, on the power of the minister in subclause 25(2) to "amend, suspend, renew, cancel or reinstate a certification", the power again seems to be very broad. There's not even a requirement for notice to a party in question. I was struck by how broad that may be.

Finally, with respect to quota allocation, you gentlemen know better than anybody how contentious the whole issue of quota allocation can be. You properly referred to the amendments to the Export and Import Permits Act. Would the legislation be improved by prescribing limits on the minister's power with respect to quota allocation, for example, so that it must be fair, reasonable, and transparent? It seems to me that to have such a broad power to allocate quota is open to some question.

For those who will face hardship as a result of quota allocation, there seems to be no transparency. Independent remanufacturers have for a long time requested a separate carve-out, and you know the reasons why, although we don't have time to go into them. I'm worried that they could end up inadvertently getting a bit of a squeeze with respect to quota allocation.

Thank you, Mr. Chairman.

● (0930)

The Chair: Thank you, Mr. LeBlanc.

Mr. Robertson.

Mr. Paul Robertson: Thank you very much, Chair.

And thank you very much for the questions, which are thoughtful and detailed.

We'll take the Atlantic Canada exclusion first. We are aware particularly of the views of the Maritime Lumber Bureau with respect to the specific wording to reflect the agreement. We are working with the Maritime Lumber Bureau, and we are moving closer to resolution of questions that you've raised—exemption versus exclusion and what that means for interpretation of the bill as it relates to the agreement, as well as the 0% duty, these types of issues.

We are in discussion with many provinces, with associations, with remanufacturers, for example the Maritime Lumber Bureau, etc., so we're aware of that. We're working with Atlantic Canada to ensure their concerns are accurately reflected in the legislation, to the extent, of course, of following Canadian domestic law and the obligations we have in that respect.

So yes, I think we can agree that for this purpose perhaps exclusion might be a better term than exemption, that the 0% duty can be referred to in a different way to provide the same effect, and that those actions and consultations are under way with the relevant association.

● (0935)

Hon. Dominic LeBlanc: But in time so that an amendment could be made at this committee if we go through clause-by-clause study, right? You are conscious of the horizon with respect to amendments?

Mr. Paul Robertson: We're conscious of the timeframes that the committee has to work with.

Hon. Dominic LeBlanc: Thank you.

Mr. Paul Robertson: We're working with the MLB to agree on language that would meet their concerns.

With respect to the independent remanufacturers, the notion here is whether they have tenure rights, which is the main division between independent and not independent. I think that is clearly identified in the agreement, and we hope we've captured that as well in the legislation.

I will be asking my colleagues about the prescribed process for the determination. I don't know, Ron, if you might want to talk about that.

Perhaps I'll continue with the subject of independent remanufacturers, because you moved on to quota allocation for your basic third set of questions. We have regulation in place in the draft legislation to identify that division between independent and non-independent, to allow us to act in a manner that is consistent with the obligations of the agreement. You've raised the special interlinkages between clauses 12, 25, and 100 in terms of the relationship between each other.

I think I would start with clause 25 and what you say are rather broad powers to amend, cancel, or suspend. I think those are just to provide the necessary tools—the remedies open to the government to deal with that—in the event that you have requirements to meet and they're not met. That is why there is that broad requirement.

I would ask my colleagues Dennis or Ron to respond with respect to the remanufactured process and the requirement—being conscious of the time, because I am sure there are a lot of questions.

Mr. Ron Hagmann (Manager, Softwood Lumber, Canada Revenue Agency): We administer the provisions of annex 7C of the agreement.

We have a form for independent remanufacturers to apply. Basically, we ask the independent remanufacturers for proof that they are independent by providing certification from the province that they do not hold crown tenure rights in the province in which they have operations. As well, they have to certify that they're not associated with a person who has crown tenure rights. These forms are available on the Internet.

We've done outreach visits to industry to explain the requirements of the agreement. And we have people registered already.

Mr. Paul Robertson: Perhaps I could go to the next element, which is quota allocation.

With respect to what you refer to as the broad discretion of the minister, it has to be broad, given that we're working with provinces, each of which has a different approach that it may want to impose with respect to quota allocations. However, there are general principles governing this process, some of which you've identified already, in terms of fair, reasonable, and equitable types of approaches, and those are guiding the federal government in its discussions with the provinces on allocation.

Hon. Dominic LeBlanc: Is that particular aspect legislated, though, or is it simply something the courts have imposed as an administrative requirement?

● (0940)

Mr. Paul Robertson: Do you mean in terms of fair and reasonable? I think it's a guiding principle to establish criteria for the discussion, the consultation, between the federal and the provincial governments, as it relates to quota allocations for the specific province.

But I don't know if there's anything more, John, on that.

Mr. John Clifford (Counsel, Trade Law Bureau, Department of Foreign Affairs and International Trade): I have a point of clarification.

The bill would establish authority to make export allocation regulations, and those would be regulations of general application. If there were to be quota allocated in, let's say, three regions in the country, the export allocation regulations would apply to allocation decisions with respect to all of those regions. The export allocation regulations will establish the elements of an application, and the minister must take those into account in considering the decision whether to allocate or whether to consent to a transfer. Those are the generic regulations applicable to all.

As well, the minister would have authority to make orders called allocation method orders, following the model of the allocation method orders that are used to implement supply-managed agriculture import controls. Section 6.2 of the Export and Import Permits Act is actually modelled on legislation that has been in place since 1994.

Those allocation method orders will be made for individual regions. If a particular allocation method is to be established for the region, the eligibility criteria to obtain quota in that region will be established in the allocation method order.

So you have two sets of regulations governing allocations: one is generally to apply to procedure, and the other, the allocation method order, would be a substantive eligibility criterion order.

The Chair: Thank you, Mr. LeBlanc.

I hope the committee doesn't mind if I'm a little bit flexible on time today. There were certainly good questions.

Monsieur Cardin is next.

[*Translation*]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chairman.

Good day, gentlemen.

As the Chairman noted at the outset, there will be no change of heart as far as this agreement is concerned. Even if the majority of committee members do not necessarily view it at the best thing to happen this century, it must nevertheless be implemented in accordance with Canadian laws and regulations.

As I already mentioned, something is bothering me about the taxation provisions.

Is there a Canada Revenue Agency representative here? I thought I heard someone say that a CRA official was in attendance.

[*English*]

The Chair: That would be Mr. Hagmann.

[*Translation*]

Mr. Serge Cardin: In terms of the implementation of the agreement and Bill C-24, no mention was ever made of how, in the case of companies...Since 2002, in keeping with a generally accepted accounting and taxation principle, charges paid have presumably been tax deductible in the current fiscal year. Now, I would imagine that companies will be receiving a refund in one lump sum, or almost, paid over the course of the same fiscal year.

Has Revenue Canada, working with the other departments concerned, ever considered paying the refund in separate instalments or applying it to the fiscal years in which expenses were incurred, so that companies, even if they can and do defer losses, are not necessarily taxed in the same fiscal year?

[*English*]

The Chair: Mr. Hagmann, please go ahead.

Mr. Ron Hagmann: Our income tax rulings section examined the provisions. Essentially we have issued technical questions and answers related to the income tax implications. Right now we're saying that the refunds would be taxable in the year received. I don't believe at this point there is any consideration of amending prior years' returns. I believe that was the question.

The refunds will be taxable in the year received, directly.

● (0945)

[*Translation*]

Mr. Serge Cardin: Therefore, there could be significant implications. Why is it that when they negotiated the agreement, our representatives did not think about the costs, particularly as the agreement automatically rewards the US for imposing antidumping and countervailing duty. We reward the US by conceding $1 billion to them and indirectly, we're penalizing our industries, allowing them little flexibility and no tax breaks so that they can report this refund at some point other than in the current fiscal year.

Given that Bill C-24 amends various acts with a view to implementing the agreement, should provision be made for this kind of arrangement, or should we make allowances for a different kind of tax treatment than the one proposed by CRA?

[*English*]

Mr. Paul Robertson: I'm not a tax expert, but I know that during the negotiations, when there was close consultation with industry, provinces, and the government in terms of what the objectives were and what we were trying to do in the negotiations, the emphasis was on resolving the issue and bringing refunds back into Canada.

During the negotiations there was no discussion that I'm aware of about how the money would be taxed once you brought it back into Canada. That was not a focus of discussion, as far as I'm aware, during the negotiation of the SLA and bringing it into force.

I think how the Canadian tax system deals with that money coming back in is a question of a taxing approach, because all companies' fiscal positions would not be the same. Some companies would have a lot of elements against which they could debit the money coming back; the extent to which each country sees its own position with respect to the tax regime is also a condition of its own tax situation, so I think it would be difficult to determine whether it benefits companies or not. Clearly your perspective is valid, I would think, for some companies that would prefer to be able to go back in a number of years to identify that as a debit.

I think that type of issue and that ruling are in the context of Canadian tax law, not in the context of the softwood lumber agreement, and we've heard from CRA how the opinion has been given with respect to the taxing of that money.

[*Translation*]

Mr. Serge Cardin: I'm sorry if you find that I'm belabouring this point, but the fact remains that when the agreement was negotiated, I firmly believe some thought should have been given to this aspect of the issue. Indeed, as you said, the current framework in which the Income Tax Act is applied does not lend itself to this. However, you did raise one point. Since different companies operate in different fiscal environments — and I always come back to the Canadian government's generous gift of $1 billion to the Americans — the normal thing to do would have been to make some interesting arrangements for companies from a taxation standpoint. After all, the legislator is the one who decided whether or not to give an advantage to an industry in order to help it out. Potentially then, a plan could have been formulated to give companies the choice of opting, or not, for a different tax treatment.

The committee is examining Bill C-24 and all of its potential, or unlikely, repercussions. If the government opted to give an advantage to the forest industry, who should be issuing directives regarding specific tax treatments?

● (0950)

[*English*]

The Chair: Monsieur Cardin, this is an important issue, no doubt, but I don't think it falls within the purview of this legislation. It is an important point that you're certainly free to bring up in other venues, but I don't think this legislation is the place to do it. However, your point has been made. Thank you.

Do you have any other questions?

[*Translation*]

Mr. Serge Cardin: Perhaps we can't discuss the finer points of the tax system, but since we have with us public service experts familiar with the ins and outs of legislation, I was merely asking them what we, as principal stakeholders, can do to resolve the taxation issues.

It's legitimate, Mr. Chairman, for us to ask how we can intervene within the framework of Bill C-24 or some other legislation. I'd like someone to clarify the issue for me.

[*English*]

The Chair: Would anyone like to respond to that?

Mr. Paul Robertson: Mr. Chair, at this point we understand the issue as raised by Monsieur Cardin, and CRA has taken note of the concern. I don't think we can go much beyond that at this meeting.

The Chair: Thank you.

Monsieur Cardin, your time is up.

We'll go now to Ms. Guergis.

Ms. Helena Guergis (Simcoe—Grey, CPC): Good morning.

I have a few questions for you. To start with, what is the difference between a penalty and a charge for the purposes of this legislation?

Mr. John Clifford: Thank you for that question.

The charge is established by clauses 10 through 18 of the bill. As such, there is a single charge, and as one reads through the provisions, one can discern the rate of tax that would apply to a particular lumber export.

Penalties are addressed later in the bill, and have to do with various offences under the Softwood Lumber Products Export Charge Act and the Export and Import Permits Act.

I'm not sure if your question is directed to distinguishing the kinds of charges, or whether you mean to make the distinction between the charge and prosecutable offences.

Ms. Helena Guergis: Maybe this can clarify a little bit what is defined as a charge in clause 10 to clause 18—which you already mentioned—but why don't you use the plural, "charges", rather than just "charge"?

Mr. John Clifford: The structure of the bill is to impose a charge, singular. That element was basic to the architecture of the bill, and to speak in the plural, of "charges", could introduce ambiguities in the administrative provisions. So by speaking of one charge, the administration can be clear and unambiguous.

In the provisions that follow clause 18, in that regard clause 19 to clause 99 of the bill are those that belong to CRA, the department that administers most taxes in this country. The idea of a single charge was essential to that structure.

● (0955)

Ms. Helena Guergis: So why is there a penalty potentially charged to the Maritimes if they are exempt from the tax?

Mr. John Clifford: The charge that applies to exports from Atlantic Canada is payable only in circumstances that have been established in the softwood lumber agreement, which are faithfully reproduced in the implemented legislation. So it's necessary for Canada to be able to meet its obligations to begin collecting possible charges on exports from Atlantic Canada before the legislation receives royal assent.

Thus, the possible charge applicable to Atlantic exports must be structured as a charge so that Canada can meet its obligations.

If the charge on Atlantic exports were structured as a penalty, Canada would not be able to meet its obligations in that regard.

Ms. Helena Guergis: Clause 48, clause 77, and clause 89 make reference to keeping records for six years. Is this typical, or does this legislation set a new precedent?

Mr. Ron Hagmann: That's a standard provision in most tax legislation.

Ms. Helena Guergis: Clause 77 also refers to the use of warrants to enter a dwelling. Can you elaborate on this? Why is this clause included in the legislation?

Mr. Ron Hagmann: These are standard audit provisions, and should the books and records not be made available by the taxpayers, there are authorities who provide them.

Ms. Helena Guergis: You said it's standard?

Mr. Ron Hagmann: Yes.

Ms. Helena Guergis: Also, clause 89 refers to garnishment. Can you elaborate on why this clause is included in the legislation?

Mr. Ron Hagmann: Could you repeat the clause number?

Ms. Helena Guergis: It's clause 89. It refers to garnishment. I have the same question, as to why it's here.

Mr. Ron Hagmann: Again, that would be a standard provision; however, it would be related to collections.

Ms. Helena Guergis: Clause 104 deals with the transition period. How does this apply to those regions that have already indicated that they wish to use option B? That's clause 104.

Mr. Ron Hagmann: This would allow a taxpayer operating under option B to obtain a refund of the tax paid through the transition period, because they'll have to pay at the rate provided by option A.

Ms. Helena Guergis: Okay, thank you.

I'll turn it over to my colleague.

Mr. Ron Cannan (Kelowna—Lake Country, CPC): Thank you. I have a couple of quick supplementals.

I agree with Mr. Cardin's comments about the taxation issue. It can be a serious burden. I'm glad we're going to address that.

Clause 37 talks about a minister having the ability, within 10 years, of waiving taxation. But Mr. Hagmann indicated that records have to be kept for only six years. Would there be a problem if somebody shredded their documents after six years and wasn't able to defend their position? Or is that statement in there—clause 37—strictly for the minister's benefit?

● (1000)

Mr. Ron Hagmann: That's a standard provision in the legislation now that provides for the minister to waive interest or penalty to provide fairness to the clients. It's a fairness policy, more or less.

Mr. Ron Cannan: So even though there are two different timeframes—ten years and six years—it's for the benefit of the minister rather than for the business?

Mr. Ron Hagmann: I'm not certain why there is a 10-year provision. However, as I say, it is a standard provision that we are using to administer our fairness policy.

Mr. Ron Cannan: Okay.

Clause 95 deals with corporations and directors of corporations. Is that standard language in there? It says if a corporation divides and becomes a new entity with more than 50% the same directors, a director shall not be assessed "more than two years after the person ceased to be a director of the corporation". Is that somehow protecting the director's liability?

Mr. Ron Hagmann: Yes, it is the standard provision.

Mr. Ron Cannan: In clause 99, we're talking about how the federal government will distribute to the provinces the export charge, net of the cost to the consolidated revenue fund. What is the cost to the consolidated revenue fund of that fee? Is there a calculation of how that fund will be calculated?

Mr. Paul Robertson: It would have to be net of administration and legal costs.

Mr. Ron Cannan: Is there a formula for administration?

Mr. John Clifford: That is yet to be worked out with the provinces in terms of an agreement of the overall cost sharing and what's to be netted out by the government to cover their administrative and legal costs to administer this agreement.

Mr. Ron Cannan: So will each province have a separate administration fee, or would it be...?

Mr. Paul Robertson: I think it will have to be an acceptance by all provinces of costs that will be netted out prior to the payment to provinces that are eligible for payment—the balance owing. Those types of questions are still to be resolved with provinces. That will be done in the coming months.

Mr. Ron Cannan: Thank you.

The Chair: Mr. Julian.

[*Translation*]

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

As Mr. Cardin pointed out, we're not exactly thrilled by this agreement. In light of all the job losses over the past few weeks since the implementation of the agreement, and given that the WTO clearly said that we were entitled to all of the money and that there was no need for us to tax our own companies, I find it somewhat ridiculous that we're looking into this.

Having said that, on our agenda for today is the clause-by-clause study of the bill and we thank you for joining us.

[*English*]

I want to start with subclause 18(3) of Bill C-24. It says:

> Every specified person in respect of whom a covered entry is to be liquidated as a result of a revocation shall pay to Her Majesty in right of Canada a charge at the specified rate on the amount of any duty deposit refund that relates to the covered entry.

Further down, in subclause 18(5), it says:

> The charge under subsection (3) becomes payable by the specified person on the later of
>
> (a) the day on which this Act is assented to, and
>
> (b) the day that is the earlier of
>
> (i) the day on which the duty deposit refund is issued to the specified person or a designate of the specified person, and
>
> (ii) the day on which the specified person sells the rights to the duty deposit refund to Her Majesty in right of Canada.

I'd like you to lead us through the practical implications of that particular clause.

● (1005)

The Chair: Mr. Clifford, go ahead.

Mr. John Clifford: Thank you for the question.

The practical implications of a reading of subclauses 18(3) and 18(5) essentially provide for options for the taxpayer so that the charge becomes payable either on the date when this act receives royal assent, or on the date when the duty deposit refund is issued to the specified person or their designate, or on the date that the person has sold his rights to that refund to Her Majesty.

Perhaps you could direct me to your particular concern.

Mr. Peter Julian: The actual charge is payable, and at this point we don't know when moneys would be coming back. I guess my concern is, and I'd like you to lead us through this, that the implications are that a company would be liable for the amount before any EDC funds came back.

Mr. John Clifford: As I understand the refund stream from the United States entities, those refunds are linked to entries. They aren't rolled up by entity. They aren't rolled up in any way other than presented through an individual refund. As we understand it, the refunds can commence, and the United States will establish its own schedule for making those refunds, and it's arguable that....

Mr. Robertson.

Mr. Paul Robertson: It might be useful if I take the committee over the two processes with respect to this.

As you know, Export Development Canada, EDC, is buying the rights to the refunds from those importers of record that choose to participate in the program. The program was designed on the basis of the U.S. information that refunds could take up to two years, and hence, expedition is required.

EDC, having bought the rights to the refunds from those companies, will pay to the importers of record participating in that program approximately 82% of those refunds within four to eight weeks of those companies fulfilling the necessary documentation. This includes things like liens, to check that there are no liens on companies, and those types of elements. Those payments, both to the importers of record and the balance remaining—12%—to the U.S. interests, will be made within that time period I identified. EDC will be paid by the eventual liquidation of the refunds, and they'll be receiving the cheques for those importers of record as they come in.

You should note, however, that as payments are made throughout the duration, they receive interest from the U.S. side, because they can't keep money without paying interest on it. So the EDC process is that the EDC gives importers of record the money directly up front. They are paid later as the U.S. liquidation process unfolds, and that process unfolding also includes interest, as it's delayed.

With respect to the special charge—

Mr. Peter Julian: Yes. And that's because we're already aware of the fact that the Canadian taxpayers are picking up the tab for the moneys coming back, as we wait, possibly, as you mentioned, up to two years for the Americans to actually give us back the money that we have an entire right to. But the issue here is the kind of difficult situation the companies may find themselves in, because we know—and we've seen the job losses even after the first week of this agreement—that it's been catastrophic.

So that's my specific question.

● (1010)

Mr. Paul Robertson: With respect to the second process—and that's the special charge—as you are aware, companies had a choice to make, and every importer of record received from the Government of Canada documentation saying they have a choice either to get an expedited refund through the EDC process, or to receive money directly from U.S. Customs as that process unfolds, which could take up to two years.

In addition, when they were asked to make the choice, they were also informed of the presence of the special charge, which has been implemented by the government. This special charge will be imposed one month after the company receives the money directly from Customs. Therefore, the legislation anticipates that some money may be received before royal assent, because the process begins even now.

So I think—if somebody can show me the specific section—what you're talking about is that the earliest the charge can be collected is after the royal assent, and if the money is given after the royal assent, then it's one month after that money is received.

Mr. Peter Julian: But my specific question was that it says “the day that is the earlier of”. We talked about the royal assent, but what the legislation calls for is “the day on which the specified person sells the rights”. So it is conceivable that a company will have a payable charge without having received any of the refunds back. Is that not true?

Mr. Paul Robertson: I'm told that this clause is dealing with the EDC process, and therefore, with respect to the EDC process....

I'll let you continue on to interpret that.

Mr. John Clifford: Ron, I think you had an observation about those who would be paying the special charge.

Mr. Ron Hagmann: The people who are referred to here are the people who have sold their right and will be receiving the refund through the EDC. They won't in fact be paying this charge.

Mr. Peter Julian: What's written clearly indicates that they would have to pay the charge even if they haven't received a refund. So a company that's cash strapped and laying off employees could conceivably, the way this legislation is currently crafted, pay that charge or be forced to pay that charge, have that charge as a payable, without having received a refund.

Mr. Paul Robertson: If I may—and I'll ask the legislative drafters to look—it's also provided for that, for those who participate in the EDC mechanism, the 18% that they authorize the EDC to pay to U. S. interests is the remit for the special charge that is being imposed on the importers of record. Therefore, the participation in the program and the portion that's taken from the refunds to pay the U.S. side is deemed to have met the conditions of the special charge.

Mr. Peter Julian: Could you reference which clause in the legislation refers to that, please?

Mr. John Clifford: The remissions in particular, or...?

Mr. Peter Julian: No, what Mr. Robertson has just described.

Okay, so in the legislation right now, the situation I've just spoken about is a potential reality. Thank you.

Mr. Paul Robertson: Well, if I can just finish—

The Chair: Mr. Julian, Mr. Robertson wants to respond to that.

Mr. Paul Robertson: I'll just flag to the committee that a remission order will be issued to those companies that participate in the EDC program, concerning the special charge obligation.

John.

Mr. John Clifford: There's authority under the Financial Administration Act to make a remission order of that kind, and it was not necessary to repeat that authority here. So there's no intention to double the burden on the payer.

● (1015)

Mr. Peter Julian: I'm talking about what's here, and you confirmed what I asked, so thank you for that.

Mr. Paul Robertson: The last point on that is this. For the importers of record, when making that decision whether to participate in the EDC program or to wait for Customs to refund their money directly, the special charge is identified, as was the remittance of the 18% under the special charge, if they participated in the EDC program. That was made clear to importers of record up front, so as to allow them to make their decisions.

The Chair: Thank you.

Thank you, Mr. Julian.

Mr. Bagnell, for five minutes.

Hon. Larry Bagnell (Yukon, Lib.): Thank you very much.

This isn't really a question, it's more a request for a simple briefing. Part of it's a little off topic.

When this whole issue started years ago, when the Americans put the tax on...and my question is related to the territory. I wonder if you could give me a bit a briefing of the history. The first time round, the territories were exempt, as you have in this act, and then on the second round of tariffs and everything, the territories were included for some reason. Now they're exempt again. I wonder if you can give me a history as to why the Americans included the territories on one particular occasion and now they're exempt again.

Mr. Paul Robertson: Unless my colleagues have the whole history, I think we'll have to confine ourselves to why they were exempted under this agreement, though we can certainly undertake to look at past negotiation.

Brice, would you like to talk a little bit about the exemption of the territory?

Mr. Brice MacGregor (Senior Trade Policy Analyst, Sofwood Lumber, Department of Foreign Affairs and International Trade): I can't really speak for the motivations of the United States, but I'll simply note that the amount of lumber that is traded between the territories and the United States is not large, so I could only speculate as to what sort of motivation the United States would have had for either wanting them in or wanting them out. I can't really go any further than that.

I hope that addresses your question.

Hon. Larry Bagnell: But I guess the important point...oh, I'm sorry, Chair.

The Chair: You can have one more question, if you'd like. But I'd remind Mr. Bagnell that we're not here to discuss the softwood lumber deal and what—

Hon. Larry Bagnell: Yes, but I only wanted some background.

The Chair: Well, I'll allow Mr. Robertson to answer. But then perhaps you'd get on to questions about this bill.

Go ahead.

Mr. Paul Robertson: Only to reinforce that the amounts of exports are minimal. The territories requested a specific exclusion—even though a charge would not really affect them, given the small amounts—and the negotiators were able to secure that exclusion for the territories.

Hon. Larry Bagnell: Maybe later, if there's any other background, you would get back to me.

My next question is related to page 8 of the deck, in the first bullet, where you're talking about "...less the costs incurred by government for administration in legal matters related to the Act and the Agreement". Could you give some more details on how much that might be, how it would be calculated and what would be taken away from the refund for those purposes?

Mr. Paul Robertson: We don't have a formula yet. There's to be consultation with the provinces on that. But as you are aware, the softwood lumber agreement envisages a lot of work, in terms of other exit developments out of the agreement, work on administrative and customs elements, so there's a lot of ongoing work that will require administrative costs to conduct. So what you're basically speaking about in administrative costs are those costs incurred by the federal government in the administration and negotiations within the softwood lumber agreement, i.e., the costs that are imposed on the federal government because of the presence of the agreement. I don't have a figure for you. However, when there is agreement with the provinces, that will be all set out.

With respect to the legal matters, there are both legal opinions, and given that the agreement also has within it the dispute settlement mechanism, if that mechanism is used we have to provide for the costs to the federal government in representing Canadian interests in those proceedings. Those are the types of cost. We haven't quantified them, and clearly, that is a subject of federal-provincial negotiation in terms of agreement on those costs. As you know, the rest will be given to the provinces in proportion to their companies paying the charges in the first place.

● (1020)

Hon. Larry Bagnell: I assume the most recent court cases Canada won in the States came after these agreements, have no effect, and were expected.

Mr. Paul Robertson: A range of legal proceedings followed the bringing into force of the agreement. A precondition for bringing the agreement into force was the liquidation of duties and the return of the $4.5 billion to Canada. This was accomplished. However, the authority of the softwood lumber agreement is not the determining factor for the courts. It was done through a mooting process, and a lot of the legal proceedings we're seeing now are following up on the mooting. A lot of housecleaning or procedural elements will require work in the coming months. You'll see a lot of this unfolding. You cannot cite the authority of the agreement to the various legal proceedings as the rationale. You have to cite that the United States has issued the revocation order and liquidated the duties, so that the issues that gave rise to those cases are no longer in play and are therefore mooted.

You're talking about the subsequent residual legal proceedings. That's the bulk of them and the reasons for their existence.

The Chair: Thank you.

Thank you, Mr. Bagnell.

Mr. André.

[*Translation*]

Mr. Guy André (Berthier—Maskinongé, BQ): Good day, Messrs Robertson, MacGregor, Seebach, Hagmann and Clifford.

As you know, the Bloc Québécois supported this agreement, albeit unenthusiastically. You're somewhat familiar with the crisis in Quebec in the softwood lumber sector since the signing of this agreement.

I have some questions concerning one article in the agreement. Export charges collected are, I believe, remitted to the provinces. I read that pursuant to one provision, the federal government will distribute among the provinces the export charges collected, minus the implementation costs paid out of the Consolidated Revenue Fund and other costs incurred to defend Canada's interests in any legal challenges arising from the agreement.

The article in question stipulates that operating requirements associated with the sound administration of the agreement, including the collection, ongoing administration of export charges, the issuing of export permits, the assignment and management of volumes and quotas...

On reading through the provision, I realize — and you can correct me if I'm wrong — that the export tax refund paid to the provinces will not correspond to the costs incurred, as there are many expenses associated with administering the agreement. If I understand correctly, if a portion of the export taxes is refunded to Quebec companies, it's not clear that they will get back the full amount charged, because of administration costs.

What percentage of the refund covers administration costs? Will the situation be such that the provinces and Quebec pay from 50% to 60% of the export taxes? How much will be left after the export taxes have been paid, along with all of the costs associated with the bureaucracy overseeing the agreement?

Secondly, pursuant to the SLA, a portion of the money goes to the US lumber associations. Quebec is currently in the throes of a crisis. The Quebec government has set up a program to support the softwood lumber industry because a number of major companies are in crisis at this time. Will there be any export revenues remaining, I ask you? If so, we know very well that they will go the Quebec government. The money will not go to support the industry, because that would be a form of subsidy.

Does the bill make provision in some way for this money to go to the provinces? And how will they use this money? What directives have been issued regarding the use of the refunds? What percentage is to be used to cover the federal government's costs of administering the agreement? That's the key question.

● (1025)

[*English*]

Mr. Paul Robertson: Thank you very much, Mr. André.

With respect to the first question about how much money will be designated for the administrative and legal costs, I think the administrative costs will be a relatively constant amount and that will be subject to the consultations with the provinces. Costs incurred for A, B, C, and D will be retained by the federal government.

With respect to legal costs, that's a function of the extent to which (a) there is arbitration, and (b) that we're working with the provinces to ensure that specific programs do not run afoul of the agreement. Those are the two basic legal activities that would precipitate costs by the federal government.

Those are the general dynamics with which we will be engaging provinces who recognize that the federal government will be keeping some money back because of those legitimate costs with respect to the agreement.

You've also raised questions that are best looked at in the anti-circumvention elements of the softwood lumber agreement and that provide for exceptions to prohibitions on programs, including forestry practices. I direct your attention to paragraph 17(c) of the softwood lumber agreement. I'll just read a portion of it for ease of reference: “actions or programs undertaken by a Party, including any public authority of a Party, for the purpose of forest or environmental management, protection, or conservation, including, without limitation, actions or programs to reduce wildfire risk; protect watersheds...”. A whole list of elements are excluded from the prohibitions of the anti-circumvention, and those are the ones that would be working strongly with respect to the ability of provinces to maintain forestry management practices for those purposes.

With respect to the question of how the money that had been transferred back to each province would be used, that is a function of each province's own decisions about how money would be used. All provinces are knowledgeable and understand the exceptions to the prohibitions in the agreement as they relate to forestry management. We would expect, and we are quite sure, they would be working with those parameters they had a share in negotiating during the bringing into agreement of the softwood lumber agreement.

That's the basic dynamic, both for the return of money to provinces as well as the exceptions under the softwood lumber agreement for elements you've identified in terms of forestry management, environment, things of that nature, as well as, I would expect, the parameters for provincial use of the refunds or the charge we transfer back to them, if they choose to put it in areas identified under the agreement. Any province is free to use the moneys it receives for any program within its scope.

I can't speculate any further about how money will be used by provinces.

[*Translation*]

Mr. Guy André: The bill does not spell this out clearly. I understand the provinces will not be able to use these refunds to assist their industry. I believe that's stated in the agreement. If they were to do that, the money would be viewed as a form of subsidy.

Does the federal government plan to establish a fund to lend support to companies involved in commercial litigation over softwood lumber issues?

Will the administration of this export tax be subject to monitoring? WIll the provinces and Quebec have some control over these amounts?

I don't want to mention the $50 billion in the EI fund. I really don't want to get into a political debate. That's not what we're here for. However, how will the provinces be able to get what is rightfully theirs? That's what worries me.

● (1030)

[*English*]

Mr. Paul Robertson: Thank you very much.

With respect to your question about protection for individual companies, I think the protection is in following the option A or option B elements in terms of the companies' exports and the allocations. Those replace the trade remedy option that would be open to the United States were there not an agreement. So the protection for individual companies is in following either option A or option B, and all the necessary preconditions for those. That is the first point with respect to individual companies. They will not have the legal costs we have had until now, because if they work within the programs of the two, then there's no requirement for that.

I think the dispute settlement mechanism anticipates differences in terms of specific measures taken on the part of governments. Therefore, it's for the federal government to lead on any of those arbitration elements that require costs on its part; those are types of costs we will incur in those types of situations. Of course, provinces will want their own litigation teams, and they will pay for those themselves. In addition, to ensure that everyone understands and is onside with respect to what we have all agreed to, the federal government will of course be working with provinces when asked about the conformity of any new measures with the agreements. So those are other costs the federal government will be incurring in support of provincial measures in the future to abide by the parameters of the agreement, which we've all agreed is sufficient for us to implement.

The Chair: *Merci, monsieur André.*

Mr. Cannan, and Mr. Harris. Go ahead, Mr. Cannan, to start.

Mr. Ron Cannan: Thank you Mr. Chairman.

I'm going to pass this over to my colleagues in a minute, but I wanted to go on record to clarify the comments made around the table, specifically by Mr. Julian. I don't want to mislead Canadians. He was stating that the softwood lumber agreement has caused all kinds of disasters and layoffs.

When I heard in my riding that there were some layoffs shortly after the announcement on October 12 that the agreement had come into effect, I phoned the CEO and owner of the mill in my riding. He was adamant about the fact that this softwood lumber agreement was the best thing, in the sense that it was going to provide...not only for seven years, but he's hoping it will be extended for two years. He stated that the layoffs were a result of collateral damage from the pine beetle and had nothing whatsoever to do with the softwood lumber agreement.

So I think we have to make sure—especially in B.C., where my colleague Dick Harris is right in the thick of the pine beetle problem—we realize this agreement is something that has been negotiated, and we need to make sure it comes into effect as soon as possible for the certainty and stability of the industry.

Thank you.

The Chair: Thank you, Mr. Cannan. We're not here to debate the softwood lumber agreement.

Mr. Ron Cannan: I know, but I'd just like to clarify for my colleague, so he doesn't misinform Canadians.

The Chair: I'm sure you would, and you did. Thank you.

Mr. Harris, go ahead.

Mr. Richard Harris (Cariboo—Prince George, CPC): Thank you, Mr. Chairman.

I want to go back to a question that Mr. Julian had earlier and see if we can't provide some clarification to it.

As I read subclauses 18(3), 18(4), and 18(5), am I right to understand that this applies either to companies that are going through the EDC to get their deposits back, or to those companies that have chosen not to use the EDC route and are going to go in whatever other manner they can to receive the deposits back?

Am I to assume that for those companies that chose to go with the EDC—and for round numbers let's use $100—when the government calculates the total amount of refund coming back to those companies, the government would pay them the net, which would be $82, and the $18 charge would be calculated up front?

At the same time, those companies choosing to go their own route, perhaps because of their cashflow or because they could afford to and they wanted to save some money on interest or administration fees, those companies that were going to collect the $18 themselves, notwithstanding when they actually got that money, would have to pay the $18 that was assessed in the beginning if that was the leave-behind money, if we can call it that. They would collect the balance of that, or they would then collect their total amount through their own means and they would end up basically with about the same thing as the EDC folks, except that they would be able to continue to collect some interest and they also may be able to avoid some administration charges.

Am I reading this right? If there was any up front money to be paid before they actually had the bulk of their money back, it would be by the companies that have chosen to go their own route to collect their deposits rather than by those going through the EDC program. Is that what this is referring to?

● (1035)

Mr. Paul Robertson: With respect to the EDC program, as you've identified it, the 18% does not include administrative costs. The 18% is the money used to redirect it to the U.S. interests. You'll recall that of that $1 billion we're obligated to pay to various U.S. interests, that 18% has nothing to do with administration.

With respect to the special charge, the recipient of money from Customs, other than EDC, will only pay that special charge after the receipt of the money from Customs. Therefore, it's not up front money they have to put into play. They will only pay the special charge once they received the money from the U.S. Customs, which we've been told by the United States might take up to two years.

The other point is with respect to the special charge. While everybody is eligible for the special charge, if you have participated in the EDC program and already have paid what is the equivalent of the special charge, then you'll be remitted that amount in terms of that payment, not in the legislation element but in a specific order that was identified earlier by my colleague Mr. Clifford. That is the process.

With respect to the specific clauses, John, is there anything you'd like to add to that?

Mr. John Clifford: No, I think you've covered it, Paul.

I'm not sure if that answers your question, sir.

Mr. Richard Harris: I guess then at the end of the day the fear that a mill would be obligated to come up with a bunch of advance money for special charges, or whatever, is really not a scare reality the way the agreement is put and the way this is put together. The companies that didn't go the EDC route would not have to pay any special charges until they received their money. For the ones that did go the EDC route, at the time it was all calculated, whatever charge applied on their 18% would be simply deducted from the total amount they had coming to them.

● (1040)

Mr. Paul Robertson: That's correct. I would just flag that in the EDC process, when EDC buys the rights from the individual importer of record, the importer of record also authorizes EDC to pay a specific amount.

Mr. Richard Harris: I guess what I'm saying is that the fears Mr. Julian expressed earlier are frankly not founded, because the way these clauses are written does not suggest that a company is going to suffer any undue cashflow hardship.

Mr. Paul Robertson: You've explained the processes under the two principal elements. Correct.

Mr. Richard Harris: All right. Thank you.

The Chair: Thank you, Mr. Harris.

I have no one else on the list. I'm sorry, we have Mr. Maloney and then Monsieur Cardin.

Mr. Peter Julian: Mr. Chair.

The Chair: Mr. Julian, do you want to go?

Mr. Peter Julian: Yes.

The Chair: Okay. Then you are next on the list, Mr. Julian.

My apologies, Mr. Maloney.

Go ahead, Mr. Julian.

Mr. Peter Julian: Thank you very much, Mr. Chair.

The Chair: Should I assume you're always on the list, Mr. Julian?

Mr. Peter Julian: Yes, particularly when it relates to softwood.

I appreciate following my two colleagues from British Columbia in their desperate attempts to spin this legislation. I'm sure that can be explained by the fact that their party is falling like a stone in the polls in British Columbia, in part because of the issue of softwood lumber.

Mr. Richard Harris: On a point of order, Mr. Chairman, is it possible that you can ask Mr. Julian to stick to the business we have rather than annoying and even boring us with his rhetorical statements?

The Chair: I don't think that is a point of order, Mr. Harris.

Mr. Julian, go ahead, please.

Mr. Peter Julian: Thank you, Mr. Chair.

The reality is that we are discussing the legislation that is before us, and while it may not be the government's intention, the legislation that is before us very clearly indicates that the scenario I outlined could well occur.

What you have done is clarify the government's intention. We appreciate that, but it does not relate to how this legislation is drafted. I want to make sure that's on the record.

I have a series of questions relating to payments and duty deposits.

The first question is what percentage of companies' duty deposits have now actually been formally, legally, and completely assigned to EDC. I'm not talking about the approval letters, because many of those are no longer valid. I'm talking about the actual percentage of duty deposits for which the legal paperwork has been completely finalized. I'd like to know that.

Secondly, I'd like to come back to clause 10. We had the export charge that was levied. This in a sense has been amended, and surely the issue of the export charge that was levied as of October 12 is something that we will be treating in committee. I would like to know in terms of the illegal AD and CVD orders in the United States, when was the last AD or CVD payment collected at the border? I'm not talking about October 12; I'm talking about the actual physical collection of those duties. Then from this ministry, how much was double-taxed? We had the imposition of the export tax at the same time as we had the continuing of the AD and CVD. I'd like to know the actual amount that was double-taxed through the process.

Mr. Paul Robertson: Thank you very much, Mr. Julian. There are a couple of points.

With respect to the EDC process, the latest information from the EDC is that they are close to finalizing a first tranche of companies. But until the documentation is, as you say, finalized, you can't say whether or not they're participating in the program. So we don't have any figures for you at this time to share, because under the process, as you'll recall, they have from four to eight weeks to refund after documentation is finalized.

I'm pleased to report that the EDC is close to finalizing documentation with a number of companies, but I can't at this point say that they've all been finalized. Hopefully in the coming days we'll be able to start talking about those types of elements. So I don't have the information as you've requested, because the documentation checks have not been finalized by the EDC process. But we're—

● (1045)

Mr. Peter Julian: Some of them have.

Mr. Paul Robertson: What you have identified quite correctly is that not until the EDC has completed such things as the credit checks with respect to whether there are liens on the company, which would affect their participation in the process, not until those elements are completed can you say that all the documentation has been finalized. What I'm saying is that we have been told by EDC that they're close to finalizing, under those criteria, the first tranche of companies. So we'll be able to know quite soon with respect to a refund type of schedule, the types of money and companies that will receive money in the first tranche. Because it's anticipated that this will be over a course of time, as you are aware, because it's dependent upon whether companies complete their documentation, and that documentation completion then triggers the refund money.

You've also asked questions with respect to a possible double taxing, both of the charge and of the trade remedy orders that are in place. There was on October 12, when this came into force, some confusion at some border entries with respect to the imposition of the U.S. duty. What U.S. Customs has advised us is that, for October 12, they have identified the money that was collected, and 100% will be returned to the companies who had to pay the charge because of the confusion on the first day. Since then, there has been no further collection of the U.S. duties, if I am correct. I can ask my colleague.

Mr. Peter Julian: That's an important point. So you're saying that the last day that an AD or CVD order was imposed on softwood going across the border was October 13?

Mr. Paul Robertson: No, October 11.

Mr. Peter Julian: October 11.

Mr. Paul Robertson: That's right. If a CVD or an AD duty was imposed on October 12, that was an error and we account that to the confusion at some of the border points.

Mr. Peter Julian: That's my question: when was the last time that you actually...? You have been monitoring this situation, of course.

Mr. Paul Robertson: That's right. So what I'm saying, in response to your first question about what is the last day that the U.S. can legally collect the duties, the AD and CVD duties, is that it's October 11.

Mr. Peter Julian: That's not my question.

Mr. Paul Robertson: I know, but I just wanted to give you the sequence. And then on October 12, when any collection by the U.S. side of those duties should have ceased, I'm just informing the committee that there were some border checkpoints where there was confusion on the part of U.S. Customs officials where they collected that money. What Customs has done to rectify that is put that money collected in a special account. The company that had paid the duty gets 100% of that back. There's no hiving off of the 18% for U.S. interest. One hundred per cent of that money for October 12 will be returned to those companies.

We have not heard of any situations on October 13 where the U.S. was collecting the anti-dumping or countervailing duties. So I hope that's given you the sequence. Up until October 11, anti-dumping and countervailing duties were collected. On October 12, at that point, the Canadian charges came into effect. There was some confusion; however, that's been rectified with full refund back to the companies who felt that confusion.

The Chair: Thank you, Mr. Julian.

We need five minutes at the end of the meeting to quickly go through a couple of things, and we'll have to cut it off then.

Go ahead, Mr. Maloney, and then Monsieur Cardin.

Mr. John Maloney (Welland, Lib.): I basically have one question dealing with the penalty section as it relates to clause 75 on liability of officers and corporations.

The offences basically relate to the day-to-day operations of a firm, such as failure to file a return, failure to answer a demand to file a return, failure to provide information, and making false statements or omissions.

Section 75 would appear to pierce the corporate veil, making officers or directors liable. If they say “directed” or “authorized” or “participated in”, that's pretty heavy involvement; “assented to” or “acquiesced in” is a little fuzzier. They're guilty of the offence and liable on conviction, and the key words are, “whether or not the person has been prosecuted or convicted”. A director or officer who may be in a Vancouver, Montreal, or Toronto head office doesn't appear to have any due process to be allowed to respond.

Is this a normal type of clause in statutes of this nature that deal with Revenue Canada or is this something new? It's a little draconian. I'd hate to be liable. The penalties are up to $25,000 or 18 months in jail, without having the ability to respond as to what my participation was, if any.

● (1050)

The Chair: Mr. Hagmann.

Mr. Ron Hagmann: Again, this is a standard provision. It is also in the Income Tax Act and the Excise Tax Act for purposes of the goods and services tax. It basically provides for the liability of the directors of the corporation.

Mr. John Maloney: Do they have an opportunity to respond to their involvement? Are they served, put on notice, and allowed to defend themselves?

Mr. Ron Hagmann: At this time, I couldn't really comment on the application of that clause and on how it would work. I can get back to the committee.

Mr. John Maloney: If it's a standard clause, what is the standard procedure for officers and directors? Do they have an opportunity to respond to the charges or offences that they may or may not have been involved in?

Mr. Ron Hagmann: I'm saying I'm not aware of any standard procedure on how the clause would apply. I can get back to the committee.

Mr. John Maloney: Would you do so, please?

Mr. Ron Hagmann: Sure.

Mr. John Maloney: Thank you.

Thank you, Mr. Chair.

The Chair: Mr. Hagmann, do you agree to give some written follow-up to the committee on that question? Would you do so, please?

Mr. Ron Hagmann: Okay.

The Chair: Thank you.

Monsieur Cardin.

We'll then go to some other business afterwards.

[*Translation*]

Mr. Serge Cardin: Thank you, Mr. Chairman. I have a short question for you.

Clause 17(1) states the following:

> 17(1)The Governor in Council may, on the recommendation of the Minister for International Trade [...] exempt [...] the export of softwood lumber products [...]

Subclause 22(2) further stipulates:

> (2) [...] exempt persons or classes of persons [...]

Supposedly products, regions or persons can be exempted, but doesn't the agreement — and I'm going by memory here —clearly stipulate somewhere that ultimately the United States are the ones who decide who gives out subsidies or engages in a kind of dumping? Isn't there a contradiction here, a pretense on the part of the government of allowing certain exemptions when ultimately, the United States will have the final word?

[*English*]

Mr. Paul Robertson: I've checked with my colleague. As you recall, Mr. Cardin, you're quite correct in that the agreement envisages further negotiations to create further exemptions.

First of all, the work has to establish the criteria to review possible exemptions. The working group that's been envisaged to work on it is tasked with reporting back within 18 months of its formulation as to possible further exemptions. It does not mean the work will not continue past 18 months, but the work is a priority that will have to be addressed at the outset of the coming into force, which of course is what will be done.

I've checked with my colleague. I think the clause you refer to is such that at the end of that time or any time during the life of the agreement, if other exemptions are included as a result of negotiations between parties, it then provides the authority to bring those into effect.

John, is there anything more on that?

● (1055)

Mr. John Clifford: No, that's quite right. By having clause 17, Canada would be able to provide exemptions without having to come back to Parliament. The softwood lumber agreement is a living instrument that contemplates future arrangements. It provides an ability, in subclause 17(1), for example, to exempt exports from a region if Canada and the United States agree that it's appropriate.

The Chair: Thank you all, gentlemen, for coming. I think you've gotten us off to a good start in dealing with Bill C-24. Your input and help today is much appreciated.

We have some other business to deal with, and we have to be out of the room by 11 o'clock. On Thursday's meeting, it will be just a 9 to 11 o'clock meeting, because the witness for whom we were going to extend the meeting, Mr. Feldman, can't come. So it'll be a 9 to 11 meeting, as scheduled.

I remind you that any amendments members of the committee would like to bring on Bill C-24 should be to the clerk by Friday.

For next Tuesday, Mr. Julian, you've asked to have Mr. Feldman fit into the program. Would 30 minutes at the start of the meeting be appropriate?

Mr. Peter Julian: Since Mr. Feldman can't make it to Ottawa on Thursday, I'd like to suggest that the three witnesses I've put forward should be heard next Tuesday, and that the trade officials should come back. There are a lot of questions we still have to ask on this briefing on Bill C-24, and I've not exhausted my questions by any means. I'm sure it's the same with other members.

The Chair: So you're suggesting that we cancel the meeting on Thursday ?

Mr. Peter Julian: I'm suggesting that we have the trade officials back on Thursday. There are still questions to be asked there. I'm also suggesting that Mr. Feldman, who can't come on Thursday, appear next Tuesday.

The Chair: Okay, Mr. Julian.

Ms. Guergis.

Ms. Helena Guergis: From the sound of it, I don't think that's something I would be opposed to. I mean, we're prepared to allow Mr. Feldman to come in for 30 extra minutes at the Tuesday meeting. Can you remind me what was originally scheduled for the Tuesday meeting?

The Chair: At the Tuesday meeting, we were supposed to be starting clause-by-clause. Mr. Julian is suggesting that the witnesses scheduled to come on Thursday be rescheduled for Tuesday, assuming this could be arranged. The clause-by-clause would be Thursday. We'd have to be prepared to extend the Thursday meeting in case we can't get done in the normal two hours.

Ms. Helena Guergis: I'm comfortable with that.

The Chair: Mr. Julian.

Mr. Peter Julian: I'm not sure I follow you, Mr. Chair. So Thursday we would have the trade officials back?

The Chair: It sounds like there's a willingness on the part of the government—I can't speak for the other parties—to accommodate you. This would mean moving the witnesses scheduled to come this Thursday to next Tuesday's meeting, having three witnesses for the full two hours. We'd go to clause-by-clause on Thursday, with the understanding that we might need to extend the Thursday meeting. We're talking about Thursday of next week.

Mr. Julian is suggesting that we have the trade officials back again this Thursday. He said there were more questions to ask. If there are, I'd like the thoughts of the committee on this very quickly, because the next meeting is about to start.

Mr. Harris.

Mr. Richard Harris: Mr. Chairman, am I to understand that the committee had originally scheduled next week, both Tuesday and Thursday, for the clause-by-clause? Now we're going to substitute witnesses on Tuesday, which means that we may need to extend the Thursday sitting to try to make up the time we would have lost on Tuesday.

The Chair: If need be.

Mr. Richard Harris: Okay. Great.

The Chair: Is that agreed?

Some hon. members: Agreed.

The Chair: Agreed.

There is one other thing. We have a steering committee meeting tomorrow to deal with the trade policy study issue and with Mr. Julian's motions. There are some things we will discuss on this topic at tomorrow's steering committee.

Mr. Cannan.

● (1100)

Mr. Ron Cannan: Is that a subcommittee meeting tomorrow?

The Chair: That's the steering committee. It's tomorrow at 3:30. Location? I'm sorry, I don't have it in front of me. We will get the notice on the room to members of the steering committee.

Thank you, everybody. This meeting is adjourned.

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