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Chair

Mr. Leon Benoit

Standing Committee on International Trade

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● (0905)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good morning once again, gentlemen.

At today's meeting we're continuing the review of Bill C-24, Softwood Lumber Products Export Charge Act , with the officials from the department.

We have with us again today, from the Department of Foreign Affairs and International Trade, Paul Robertson, director general, North America trade policy; Brice MacGregor, senior trade policy analyst, softwood lumber; Dennis Seebach, director, administration and technology services; and John Clifford, counsel, trade law bureau.

From the Canada Revenue Agency, we have two people today: Ron Hagmann, manager, softwood lumber; and Cindy Negus, manager, legislative policy directorate.

I thank you all very much for coming here once again.

We will start directly with questions. Of course, as usual, at least one or some of you will be here when we actually go through clause-by-clause next Thursday, and we're looking forward to having you here again.

I do appreciate your taking the time. I know you have a lot to do with your time. Some members of the committee did feel that we wanted you back, so we appreciate your coming.

We'll go directly to questioning.

Mr. Temelkovski. Go ahead, Lui.

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

Gentlemen, thank you once again. It's nice to see you again.

I was a little unclear about the 32 companies that were mentioned that are not part of the agreement. Is there a deadline by which they have to sign on to the agreement?

Mr. Paul Robertson (Director General, North America Trade Policy, Department of Foreign Affairs and International Trade): Thank you very much for the question.

There are a number of companies that are excluded from many of the terms of the agreement because they were excluded from the trade remedy cases themselves under softwood. These are predominantly mills that either use logs imported from the United States and therefore do not come under the ambit of the dispute, or use logs from private lands. There are a number of mills that were excluded from the scope of the softwood lumber cases because of their usage of logs either from private land or from America, particularly from Maine. So you'll find they're predominantly border mills.

The agreement just reflects the decisions that were taken during the case itself to exclude these companies because they're outside of the scope.

Mr. Lui Temelkovski: So these companies are not companies that are still pursuing their own lawsuits with the Americans?

Mr. Paul Robertson: No.

And they're not completely excluded. They have, of course, some parameters to their actions so that their status cannot be used to go around the regulations that have been put in place. There are requirements to show production levels and these types of things in the agreement, but they do not fall under the specific measures, because they've been excluded from the case.

There's no relationship between that exclusion and—as I noted on Tuesday—the continuing legal proceedings that have been precipitated by the mooting of the cases when the softwood lumber agreement was put into force.

● (0910)

Mr. Lui Temelkovski: It seems to me that when we look at the overall shipping of softwood lumber to the Americans, it appears to be in a similar fashion to the way we are treating our doctors, having so much money for health care. There's so much footage that can go down there. We have our companies that already exist signing on to the agreement, and they will ship to the States.

Is there a mechanism for other companies coming into the agreement? Can any company come into the agreement at any time? How do they work with the agreement?

Mr. Paul Robertson: Thank you very much.

I'm not aware of our policies towards doctors, so I can't make a comparison of that. However, any company that is exporting softwood lumber products to the United States would fall under the terms of the agreement unless they are within a specific exclusion. There are, as you know, a number of exclusions—you've mentioned the 32 companies. You have other exclusions for the territories; you have Maritimes exclusions as well. If the company does not fall under any of those exclusions, then they fall under the terms of the SLA.

So there's no question of a company opting in or out of the agreement. It's automatic—if you're exporting softwood lumber products to the United States, you are required to meet the conditions established for those exports.

Mr. Lui Temelkovski: The final question on this scenario would be this. Will those companies that have continued with their litigation be in any way hindered in their business with the Americans in the future?

Mr. Paul Robertson: Not at all. The Softwood Lumber Agreement has terms and conditions that are neutral for any residual litigation elements that are continuing beyond the effective date.

Mr. Lui Temelkovski: Thank you very much.

The Chair: Is there a member from the Bloc who would like...?

Monsieur André, do you have questions now, or do you want to come in later?

Mr. Guy André (Berthier—Maskinongé, BQ): We'll come in later.

The Chair: Mr. Harris.

Mr. Richard Harris (Cariboo—Prince George, CPC): Mr. Chairman, I want to clarify what Mr. Temelkovski was asking. I think he was asking about the opportunity for new companies to get into the market.

Mr. Lui Temelkovski: Yes.

Mr. Richard Harris: As I understand, this agreement is based on historical export of softwood lumber into the U.S. Historical amounts have been calculated into this 43% market share, and the regional shares are based on historical shipments, as are the penalties or extra charges for overshipping the set quotas during times of quota. New companies that are starting up—and there are very few of them these days starting up in the softwood lumber business—are not yet a part of this agreement, because they haven't established any historical shipping amounts into America. Is that what...?

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

Mr. Temelkovski, I apologize if I misunderstood your question in my response.

I would ask my colleague, Dennis Seebach, to speak a bit about what is referred to as "new entrants" coming into the market and what their conditions are under the Softwood Lumber Agreement.

I misunderstood your question.

The Chair: Mr. Seebach, go ahead.

Mr. Dennis Seebach (Director, Administration and Technology Services, Department of Foreign Affairs and International Trade): Thank you, Paul.

Under the terms of the agreement, there are a number of opportunities for new entrants to ship to the U.S. The historical exports determined the regional shares, as outlined in the agreement. Then provinces were allowed to select under two options: option A which, was a straight tax and a no-volume restraint; or option B, which is a lower export tax and a quota-volume restraint.

B.C. coast, B.C. interior, and Alberta selected option A, which meant that any company in those regions or any company outside of those regions shipping that lumber is allowed to ship the lumber and pay the tax. That would allow new entrants to come into the program.

For our option B companies, we are in a transition period up until January 1, and the option A rules still apply for option B regions: for Saskatchewan, Manitoba, Ontario, and Quebec. We are in consultations with the provinces right now on quota allocation methodologies. We haven't made any recommendations to the minister at this point; we're still in consultations.

There's one other opportunity for new entrants—for anyone in Canada—to ship to the U.S., and that is when prices are high. The agreement allows, when prices exceed $355, for total free trade between Canada and the U.S. of softwood lumber, with no volume restraints and no taxes paid.

● (0915)

Mr. Paul Robertson: Does that answer your question, Mr. Harris?

Mr. Richard Harris: I certainly am aware of that, yes. That pobably clarified it.

I want to ask whether we can clear up the confusion that exists among remanufacturers. There are in Canada a number of remanufacturers, particularly in my province, I know. Some—or most of them—have signed on in support of the Softwood Lumber Agreement, and some haven't. There's a distinction of category in how they're viewed: those that are viewed on a first-mill status, and those that aren't. There's a different rate for them to pay, if we're into the trigger mechanism.

Could someone clarify that for the panel, please?

The Chair: Mr. Seebach, go ahead.

Mr. Dennis Seebach: Thank you, Chair.

The agreement does provide for a price advantage for independent remanufacturers, and the key to that definition is the independence. There are two determining factors of this independence, which are the certification by the province that you do not hold tenure, which makes you separate from a primary mill—

Mr. Richard Harris: Just for clarification, "tenure" means that you have the right to a timber licence and to cut your own timber, as opposed to a remanufacturer who simply bought processed lumber from another mill and is going to turn it into a value-added, right?

Mr. Dennis Seebach: That's correct. We talk about tenure all the time, and I apologize for not explaining it.

The second component of independence is that you are independent of tenure-holders—i.e., you have no affiliation or relation to a tenure-holder in a financial or a control way.

Mr. Richard Harris: Right, okay.

Mr. Chairman, I'll pass to my colleagues. I don't have any further questions at this time.

The Chair: Mr. Menzies, go ahead for a couple of minutes.

Mr. Ted Menzies (Macleod, CPC): Just one question, and I apologize that this may not be specific to a clause. I realize we're trying to do that.

Further to Mr. Harris's questions, we're certainly hearing lots about pine beetles, pine beetle damage, and the need to knock some of that lumber down and process it quickly. Probably Mr. Harris understands this better than me, living in the midst of it, but will this new entrance, the surge mechanism, cover how our lumber companies may have to react to speeded-up processing, if we will, in reaction to the pine beetle damage? Where would that fit in?

Mr. Paul Robertson: Perhaps I can give a general answer, and then to Dennis if there's a need for any further technical information.

Of course the surge mechanism is applicable only to the regions that have opted for option A, as Dennis has just explained. The surge option allows for exports to be in excess of 10% of the allocation before it kicks in, and then you have a 50% additional charge on whatever is being paid at the time.

The mechanism was designed primarily with respect to the beetle situation you refer to, and that was a focus of a good deal of discussion between industry and the provinces, particularly British Columbia. So that was designed with this situation in mind, and therefore I don't have the figures about what is projected, the types of cuts, and so on. But so you know, this was designed for that exact circumstance, among others, but it was a prominent one.

● (0920)

Mr. Ted Menzies: I don't think anyone can extrapolate what the—

Mr. Paul Robertson: No.

Mr. Ted Menzies: —impact of that is going to be, but I'm glad to see that we've recognized the potential for this.

The Chair: Okay, we'll go back now to Mr. André. We just skipped over you, so we'll go back, and then to Mr. Julian.

Yes?

Mr. Ron Cannan (Kelowna—Lake Country, CPC): Could I just clarify that? If it's over $355, does the 10% over last year's quota still take effect?

Mr. Paul Robertson: No, it doesn't, because the surge mechanism kicks in at 50% of the charge. So if there's no charge, then there's no additional—

Mr. Ron Cannan: I just wanted to make sure it was clarified. Thank you.

Mr. Paul Robertson: Yes, thank you very much.

The Chair: Now I don't know whether it was a point of order or what.

Anyway, go ahead, Monsieur André.

[*Translation*]

Mr. Guy André: Good morning.

My question relates to proposed section 6.3. Paragraph 6.3(3) which reads as follows:

> 6.3(3) If the minister has determined a quantity of products under subsection (2), the minister may:
>
> (a) by order, establish a method for allocating the quantity to persons registered under section 23 of the Softwood Lumber Products Export Charge Act, 2006 who apply for an allocation;

So, the minister has that authority. In that section, there is a reference to paragraph 6.3(2), that says:

> 6.3(2) If any softwood lumber products have been included on the export control list for the purpose of implementing the softwood lumber agreement, the minister may determine the quantity of those products that may be exported from a region during a month, or the basis for calculating such quantities, for the purposes of subsection (3) and section 8.4.

There is no reference in that section to consultations with provinces. First of all, I would like to know if it is a voluntary or an involuntary omission, or if there are internal elements that we are not seeing presently.

My next question is about remanufacturers. Mr. Temelkovski and Mr. Harris have asked you some questions on that subject. It was very interesting, but no specific definition is given for remanufacturers. Is it intentional?

[*English*]

The Chair: Just for clarity, Monsieur André, are you referring to clause 111?

[*Translation*]

Mr. Guy André: I am talking about section 111 of the bill.

[*English*]

The Chair: Okay.

Mr. Clifford.

Mr. John Clifford (Counsel, Trade Law Bureau, Department of Foreign Affairs and International Trade): Thank you for that question, Mr. André.

The new provision in the Export and Import Permits Act, proposed section 6.3, is actually based on existing legislation that provides for establishing quantities for import access pursuant to WTO commitments. So the cascade or the arrangement is very similar.

Proposed subsection 6.3(3), as you pointed out, provides authority for the minister to make an allocation method order. That would establish the eligibility criteria for export allocations, or quota as people have been referring to it. The section is not explicit about the consultations that would be done with the provinces. However, that consultation is ongoing, as my colleague Mr. Seebach has mentioned. I'll ask him in a minute to talk to you about those consultations.

The authority to make these allocations comes from the minister. There is no delegation to the provinces for this function. Delegating it to the provinces would have involved a structure much different from what we have here, perhaps with counterpart legislation in the provinces to establish whatever entity at the provincial end would do this. There would have been delegation from the federal government to the provinces with machinery perhaps similar to what the marketing agencies use. It was felt that that kind of arrangement was not appropriate. The provinces were amenable to the arrangement of consulting and providing recommendations on the allocation method that will be used in a region.

It is the government's position that the advice of the province in question will be taken into consideration. In fact, I would not be surprised if the elements that the provinces want were fairly well replicated in the allocation method order. However, the discretion to make that order is the minister's. It's for the minister to decide what the eligibility criteria will be, based on the consultations with the provinces.

● (0925)

Mr. Paul Robertson: Perhaps I could just add, Mr. Chair, with respect to the consultation, it was initiated some time ago. It's extensive at the technical level and moving up, as there is an understanding of various provincial views with respect to that. As my colleague Dennis Seebach has mentioned, there have been no decisions taken, but consultations are ongoing, recognizing the importance of the role of the provinces in that.

Dennis, I don't know if you want to elaborate any more on that.

Mr. Dennis Seebach: In the four provinces, Saskatchewan, Manitoba, Ontario, and Quebec, we've had extensive consultations and discussions with our provincial counterparts and also with industry associations, companies, and interested parties within each of those provinces.

[*Translation*]

Mr. Guy André: Could we add an element to stipulate that provinces should be consulted? In fact, it might be worrisome because the minister has many powers. He might make a decision against the interests of a province. As you know, provinces have made a choice and quotas have been allotted. This section doesn't make any reference to these consultations that are essential to the harmonious implementation of the softwood lumber agreement in Quebec and Canada as a whole.

My second question was on remanufacturers. Is it a voluntary or involuntary omission?

[*English*]

Mr. Paul Robertson: Perhaps, Chair, before we go to the remanufacturers, I can just first of all take note of the advice received that there should be explicit reference to consultation to the provinces. I think this committee is better placed than I am to understand. Mr. Seebach mentioned that we want these regulations in place by January 1, and I don't know when this legislation will be passed, but it may be at the same time that the regulations will have to be put in place, so there is extensive consultation with the provinces now.

I think all provinces recognize their role in this and they're working very cooperatively with the federal government on this. So I haven't heard any disquiet from any of the provinces that the process that's been initiated to incorporate their views and to have consultations is not full, transparent, and in the way they want to proceed to meet the January 1 date.

I will, of course, take your advice under advisement.

With respect to the second question, relating to the definition in the legislation, I'm waiting for my legislative drafter to address that.

● (0930)

Mr. John Clifford: Thanks for characterizing me as a drafter, but in fact we have experts who have prepared this bill and we've been advising the government with respect to instructions for drafting the legislation.

With respect to the question of independent remanufacturers, as you know, the bill has provided for authority for certification of independent remanufacturers, and CRA will be doing that. There is a possibility, an ability, an authority in this bill to make regulations in that regard. There are considerations in favour of making those regulations or pursuing another option to do it by way of policy.

CRA, as I understand it, are looking at those two options now and have had discussions with entities interested in this question. As I understand it, there may be reasons that would favour approaching this by way of policy because to do so would give the remanufacturers an opportunity to consult in a way that may not be possible with a draft regulation moving through the system.

I'm not sure if my CRA colleagues want to speak to that, to clarify. Is there something that should be added to that?

Mr. Ron Hagmann (Manager, Softwood Lumber, Canada Revenue Agency): I'll just note that we are currently administering the requirements outlined in annex 7C of the agreement.

Mr. John Clifford: The intention would be to be faithful to those requirements established under the agreement.

[*Translation*]

Mr. Guy André: Over 1,000 jobs has been mentionned for Quebec. Those are often family businesses. It would be advisable to have a definition in the bill.

[*English*]

The Chair: Mr. Robertson, do you have something to add?

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

I will just to add to what has been said by my colleagues, who are much more knowledgeable. Of course, there is a definition of independent remanufacturers in the agreement itself, under annex 7C. There is a certification process under way for obtaining that status; it is voluntary, but it is under way. Those are the steps currently being taken. Of course, I defer to my CRA colleagues with respect to the actual implementation.

Thanks very much.

The Chair: Mr. Julian is next, for seven minutes.

I just want to mention, now that everyone is here, that we will have a short meeting, either at the end of this meeting at 10:45 or when the questions end, to deal with the steering committee report from yesterday. This is just a notification so that everybody can be ready for that.

Go ahead, Mr. Julian.

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

Thank you for coming back. We appreciate having you back for a second round. Of course, the advantage of having you back a second time is that we can ask the questions you may not have been able to answer on Tuesday. We know you can answer them today, because I'm sure you've had a chance to look into them.

My first question was around the double payment that was made by companies after October 11. They had to pay the ADD and CVD payments at the same time as they had to pay these charges. What is the actual amount of those double payments?

The second question was around what percentage of the duty deposits has now been formally assigned—in other words, has all of the legal work been completed? Those are questions I asked on Tuesday, as you'll recall, and you didn't have specific answers, so I'm hoping you'll have them now.

The Chair: Go ahead, Mr. Robertson.

Mr. Paul Robertson: Thank you very much.

With respect to the question about duties collected on October 12, when the agreement and hence the charges came into force, I don't have a specific amount, because it's a question of what was collected on the U.S. side of the border, not on the Canadian side, but I've been told anecdotally that it's a sporadic type of thing; it wasn't all border crossings.

The second point is that upon hearing of the first incidents of duty being levied by U.S. customs on a shipment going to the United States, we immediately contacted U.S. customs. They assured us that this money would be refunded expeditiously at 100%, whereas duties collected up until October 11, of course, as you know, will be refunded to importers of record, either through the EDC program or through the special charge; for the special charge, there will be a levy put on to pay for the $1 billion. That represents about 18% of the duty.

However, October 12 was only one day this happened, and it was sporadic. We're talking more about individual customs agents who might have been confused as to the regulation; it was not a systemic question.

● (0935)

Mr. Peter Julian: Are you saying that absolutely no collection took place after October 12?

Mr. Paul Robertson: There was none that we're aware of. It was the one day in terms of the transition. I'm not sure if we've had any companies....

I'll ask Mr. Seebach.

Mr. Dennis Seebach: We've had no companies come to us about any incidents after October 12. When I spoke with U.S. Customs and Border Protection people, they said it was limited to a very few border crossings on the morning of October 12.

Mr. Peter Julian: Do we know the amount?

Mr. Dennis Seebach: We don't know the amount because it's a U.S.—

Mr. Peter Julian: Yes, but although we're expecting 100% repayment, we don't know the amount.

Mr. Dennis Seebach: Correct.

Mr. Paul Robertson: That's right. The companies that paid know the amount, and they're aware they are getting the money back. They contacted us to seek clarification, and we advised them. For those companies that had to pay—and they all know that they should be paid on October 12—this is a point of record, with respect to the refund, that will be open to us in the coming weeks. The Canadian government made its views clear and we got immediate satisfaction from the U.S.—assurance that an error had been made and that a refund would be given.

Mr. Peter Julian: Coming to the second question....

Mr. Paul Robertson: Yes, the EDC is confident that their timeframes for payments can be maintained. The refund will take place four to eight weeks after the completion of documentation. They are now in the process of finalization for a number of companies. The amount and the number is a question we're trying to get some precision on. They have to do with lien searches. But there are also questions of confidentiality, of mentioning companies and the like.

Mr. Peter Julian: I'm not asking you for specific companies. I'm asking you what percentage has actually been assigned and had the formal legal procedures completed.

Mr. Paul Robertson: The first tranche of companies that are close to completing the documentation should be done in the next few days.

Mr. Peter Julian: So you're saying that no company has actually completed the formal documentation process.

Mr. Paul Robertson: Yes. But can I clarify just one point? EDC is telling me that within the next couple of days there will be completion of documentation by some companies. This will allow the refund process to begin. So it may be that as of yesterday afternoon they have the final documentation from a number of the companies. But at this point, I can't give you any specificity—

Mr. Peter Julian: That is helpful. It's been over two months since Minister Emerson said that companies absolutely had to have irrevocable letters of approval in to the government. Two months later, no company has actually completed the legal process. It's important for our committee to know that after more than two months none of the loose ends have been tied up. That helps us to plan our work and to make sure we're doing the due diligence on this bill. I appreciate your mentioning that.

I'd now like to come back to clause 18. We established on Tuesday that clause 18 imposes a charge on companies that they would quite possibly have to pay before getting any money back. I would like to refer specifically to subclause 18(6):

> (6) If, at any time after September 18, 2006, a specified person sells or otherwise disposes of the rights to a duty deposit refund to a person other than Her Majesty in right of Canada, the specified person and the other person are jointly and severally, or solidarily, liable to pay the charge under subsection (3) and any penalties and interest payable under this Act in relation to that charge.

What we have here in clause 18, then, is not only the imposition of a special charge but also potential penalties and interest payable under the act.

It's possible that this charge could be miscalculated. What is the appeal process for companies? If the government botches the calculation of the charge in relation to a company—and there are strong punitive measures—what appeal process does the company use to dispute the charge?

Mr. Paul Robertson: Could I ask my colleagues in the CRA section to respond to the first question?

● (0940)

Ms. Cindy Negus (Manager, Legislative Policy Directorate, Canada Revenue Agency): Basically any time the minister raises an assessment for any amount of money under all of the other statutes the Minister of National Revenue will consider any objection that is filed by a taxpayer. Of course, in due course they will come to a conclusion. They will evaluate the facts of the case and then respond. If someone has in fact erroneously paid an amount of money they shouldn't have and they were assessed incorrectly, that would of course be corrected.

Mr. Peter Julian: Thank you for that.

How long does the appeal process take? Under clause 18 there are very strict deadlines about companies having to pay that charge. Let's say the charge is levied, they're forced to pay it, even though under protest, of course, because they believe the charge has been miscalculated. What would be the appeal process for those companies that are already cash-strapped and are being forced to pay this charge?

Ms. Cindy Negus: Assuming they didn't know they had to pay the charge and an assessment was raised on them, they would have 90 days from the date of the notice of assessment to file an objection with the minister. Subsequent to that, the minister of course will consider whether the assessment will be confirmed or not.

Mr. Peter Julian: How long does the minister have to reply to that?

Ms. Cindy Negus: I believe within 90 days the minister is supposed to reply.

Mr. Peter Julian: The minister makes that decision arbitrarily?

Ms. Cindy Negus: Arbitrarily, but the appeals branch of the Canada Revenue Agency is really an independent branch and they will consider the facts independently of what any auditor did to assess the amount in the first place.

Mr. Peter Julian: If the company still disagrees?

Ms. Cindy Negus: If the minister confirms the assessment then after that time period the company can then proceed to the Tax Court of Canada, and then of course the court system will take over at that point.

Mr. Peter Julian: What is the average period of time for decisions to be rendered in the Tax Court?

Ms. Cindy Negus: I would say it's quite some time. To be honest, before a hearing gets made I would suggest it's several months, if not more than that. Unfortunately, that's not within CRA's control. The agenda is set by the Tax Court.

Mr. Peter Julian: Would six months be a reasonable approximation of what the average is?

Ms. Cindy Negus: I would expect it may actually even take longer.

A voice: About a year.

Mr. Peter Julian: A year, okay.

In the case where we have this charge imposed and the company is forced to pay it but they disagree, their first recourse is the minister. But beyond that, they're looking at over a year before they can even have the assessment—

● (0945)

The Chair: Ms. Negus, just for clarity, this is standard procedure and it isn't anything special for this act, is it?

Ms. Cindy Negus: Absolutely not. This is the way CRA does business.

The Chair: Mr. Julian, just so know.

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

However, the special charge of course is not ordinary in any sense of the word; it's quite extraordinary. My point is, and I think it's well taken, you have this special charge that is imposed, and essentially a company that sees that special charge imposed is forced to pay it before they can see any money coming back through the taxpayers on EDC, and then it has an appeal process that conceivably would take over a year. That's the important point, I think, for this committee to know as we deliberate and do our due diligence on Bill C-24.

Ms. Cindy Negus: I'll just add one point, and that is if the taxpayer has gone to the Tax Court then certainly we have collection restrictions in place so that the taxpayer will not be required to pay the amount while the amount is under appeal.

Mr. Peter Julian: We will come back, unless the chair would like to give me extended time.

The Chair: You can come back later, Mr. Julian.

Mr. Peter Julian: I'll come back to that issue, because there are also extraordinary powers given to the minister.

The Chair: Don't stray too much into examining the normal procedure of the Revenue Agency. We can't go there for an extended period of time.

From the LIberals we now have Mr. LeBlanc. Mr. Maloney, sorry.

Hon. Dominic LeBlanc (Beauséjour, Lib.): I'll start off if there's time after, Mr. Chairman.

Mr. John Maloney (Welland, Lib.): Thank you, Mr. Chair.

In the last meeting I was concerned about section 75 of the act dealing with officers of corporations. I see that we have Ms. Negus here, who is manager of the Legislative Policy Directorate. My concern is due process for an officer or a director of a corporation so that they'd be able to respond. I'm a little confused by the last part of that section where it says “whether or not the person has been prosecuted or convicted”.

Could someone explain section 75 to me, as well as how an officer or director could respond to an accusation made?

Ms. Cindy Negus: Could you say that last part again?

Mr. John Maloney: Would the officer or director have an ability to respond to the charges against the corporation of which he is an officer or director because he's facing libel for that action if there is a conviction by the corporation?

Ms. Cindy Negus: Absolutely. As I said in my earlier comments, when an amount is assessed against anyone, this would include an officer or director. They have a process whereby they can go through to object or respond accordingly. Everybody always has an opportunity to express that they haven't committed what is alleged to have happened: it would be the same in this case.

Mr. John Maloney: Is that stated in this act anywhere?

Ms. Cindy Negus: Under the normal general appeal provisions it would be there as well. That covers everything any time the assessment is made.

Mr. John Maloney: Could you also explain the last part of the last sentence, whether or not the person has been prosecuted or convicted?

Ms. Cindy Negus: I know you asked the question the other day, and I know my colleagues are consulting with members of the agency to give you a more comprehensive response. So I apologize if my comments are brief today, but that's certainly what we intend to do.

Mr. John Maloney: When can we anticipate having this response?

Ms. Cindy Negus: We'll have this for you prior to next Thursday's meeting.

The Chair: Could we get that by Tuesday, so the members of the committee have time to look at it before we go through clause-by-clause?

Any other questions that have been asked, we really need them by Tuesday, so the members have enough time to look at them before clause-by-clause, which will be Thursday—and the clerk reminded me, in both official languages.

Thank you.

Hon. Dominic LeBlanc: Mr. Chairman, if there's a little bit of time, Mr. Maloney—

The Chair: There is time, Mr. LeBlanc. Go ahead.

Hon. Dominic LeBlanc: Thank you.

Mr. Robertson, I wanted to come back to the question we talked about earlier in the week with respect to some wording that needs to be improved relating to the exclusion of Atlantic Canada, as opposed to the exemption or zero rating. You indicated you were having discussions with the Maritime Lumber Bureau. As a precaution, if you're not able to arrive at an agreed-upon language, I've filed with the clerk some very small amendments the Maritime Lumber Bureau would seek to have, which would simply track the language of your agreement with the United States, which refers to “exclusions”. I'm wondering if you have any updates on the progress of those discussions and if you think you can come to a conclusion that's satisfactory to the maritime provinces.

In your earlier comments to a question from *mes collègues du Bloc québécois*, you said the provinces are generally satisfied with the consultations and so on. I know the four Atlantic provinces are very worried about that wording, and I think they've advised in writing they are unhappy with the particular wording. So you risk losing four out of ten provinces if you can't come to some understanding. I'm wondering if you've had any progress in the last 48 hours.

● (0950)

Mr. Paul Robertson: We've narrowed down the possible amendment considerably. All I can say at this point is the discussions are still ongoing. Thank you very much for informing us that you have an amendment as well, in case those negotiations don't produce the desired result.

We'll continue to work with the.... Our interlocutor is not the provinces in this instance, it's the MLB, the Maritime Lumber Bureau. All I can say is we'll continue to discuss these issues. If we continue to discuss, we haven't gotten a conclusion, but we're all working in good faith to try to replicate the language as much as possible, taking into account the overall legislative structure in which it has to be embedded.

The discussions are certainly continuing. We're not abandoning them at all. The differences are narrowing to specific elements, which I'm sure your amendment has looked after too. One way or the other, we'll get this issue resolved over the coming days.

Hon. Dominic LeBlanc: Thank you very much.

That's all, Mr. Chairman. Thank you, Mr. Robertson.

The Chair: Thank you, Mr. LeBlanc.

Now we go to Monsieur André.

[*Translation*]

Mr. Guy André: I would like to follow on Mr. Julian's questions. I understand that all companies have not registered yet, have not completed the documentation to get a refund for the countervailing duties that they have paid. There are delays in the process.

What delay are you expecting in the timeframe that was agreed to? Would it be possible for businesses to have to pay export charges before they get their refund? If it was the case, would it be because of a mistake or a lack of due diligence?

[*English*]

The Chair: Gentlemen, I'm not sure who is going to answer that one.

Mr. Robertson.

Mr. Paul Robertson: Thank you very much.

Let me first clarify that what we're speaking about is that companies have registered for the program, but after registration there is a lot of documentation that has to be submitted by the companies. Therefore, one of the elements, for example, is a search that has to be done on the company as to whether there are liens or securities on the company.

There hasn't been a delay with respect to the registration and participation of companies. There isn't a delay in working through the documentation that companies have to provide to EDC in order to receive the refund, and that has always been anticipated, that it would be an uneven time among companies to get that documentation in. It's a function of how each company wants to organize itself to submit the documentation.

That's why EDC has always said they can pay the refund four to eight weeks after all the documentation has been completed by the company, because they do not have control over how long it takes the company to submit the necessary documentation for EDC to pay the refund. So that's what we're talking about.

● (0955)

[*Translation*]

Mr. Guy André: Considering that most businesses have financial difficulties, I suppose that they are speeding up the process in order to get their refund.

[*English*]

Mr. Paul Robertson: That's right, and that's an illogical assumption. Even though not asked, I'll undertake to provide more information to the committee with respect to where the process is, and to Mr. Julian's question as well, about which companies have finished. I just don't have that information from EDC.

[*Translation*]

Mr. Guy André: Could it be possible that companies have to pays export charges before they get their refund? Is it a possibility?

[*English*]

Mr. Paul Robertson: No, because under the EDC process, the government is putting forward the money to these companies before the government receives the money from the U.S. side. Therefore, when the government is doing this, when EDC is doing this as an agent of the government, they're receiving permission from the companies that are in their program to pay back approximately 82% of all refunds owing to them directly to the company and the approximately 18% that's retained for the U.S. interest side.

What the 18% calculation is based on is that you basically have a $5.5-billion total and we have to pay $1 billion to the United States' side from that total. So it's a pro-rated calculation for all companies receiving refunds, approximately 18% that has to be levied on those refunds in order to pay the U.S. interest. So those companies participating in the EDC program do not have to wait for refunds from the United States. The government is providing the money directly to them in an expeditious manner, immediately to them, and they're also paying to the U.S. interest that portion.

[*Translation*]

Mr. Guy André: That money will be refunded immediately as soon as the documentation will have been completed.

[*English*]

Mr. Paul Robertson: That's right, because there are liability questions about paying money into a company that may have liens on its assets and receivables. There are questions like that.

What I've said in our discussion to date is that there are some companies now that are very close to completion, and there may in fact be some that have completed. I just don't have the specifics. But I've undertaken to get back to the committee some more information on this, given the interest of the committee with respect to that question.

[*Translation*]

Mr. Guy André: Let us come back to the bill. From what you are saying, we could not add a clause to prevent that kind of situation. I didn't find any reference to this in the bill. You are saying that there is no risks, that it would be impossible.

[*English*]

Mr. Paul Robertson: With respect to the EDC program, the government is paying its own money to the Canadian companies in advance of the money from the United States, to expedite those companies receiving that money so that it can be used by them for whatever they want to use it for.

[*Translation*]

Mr. Guy André: What is the deadline for refunding companies? I would like to know the deadline. When will companies get a refund from EDC?

● (1000)

[*English*]

Mr. Paul Robertson: The companies will receive the money from EDC anywhere between four and six weeks after they've completed the documentation EDC requires.

[*Translation*]

Mr. Guy André: When do you think that companies will have completed the paper work?

[*English*]

Mr. Paul Robertson: I think we're going to see completion of paperwork starting any time now, and into the next month or two. So there'll be not just one payment by EDC to everybody; there will be tranches done. As companies complete the paperwork, they will be refunded their moneys.

[*Translation*]

Mr. Guy André: November 30th is the deadline and it might be six weeks later. Then, companies might get their refund in the beginning of January 2007 at the latest? Is that right?

[*English*]

Mr. Paul Robertson: Some companies might see their money conceivably any time soon with respect to.... As soon as they've registered for EDC, and that's even before the implementation of the agreement, then the work is already started with their documentation.

Moneys could therefore be flowing any time, theoretically, from today until whenever the documentation is finished by the last company that allows EDC to pay. But I would expect the bulk to be paid in the next four to six weeks.

The Chair: Thank you.

Merci, Monsieur André.

Mr. Harris.

Mr. Richard Harris: I would like to clarify something. Is it correct, however, that any refunding of penalties that have been paid cannot start until this piece of legislation is complete?

Mr. Paul Robertson: That's right.

Mr. Richard Harris: So it would probably be in the best interest of the mills that are anticipating a refund, a return of penalties, that this piece of the enabling legislation be expedited as quickly as possible, because it holds up the refund process.

Mr. Paul Robertson: I wouldn't want to anticipate each company's consideration of which way to go—whether they go the EDC or the special charge route.

Mr. Richard Harris: I'm speaking of the work we're doing now. I mean, this enabling legislation has to be in place to make all of this work.

Mr. Paul Robertson: With respect to the special charge, there is reference, as I think we discussed at the last meeting, that it has to be in place before a special charge can be collected.

Mr. Richard Harris: Right. And just to get back to Mr. André's point, and I understand what he's trying to think about, there was a date when EDC started receiving the paperwork, and companies—correct me if I'm wrong—that practise due diligence in how they run their business would be the ones that would be scrambling to get their papers in on time, so that they'll get their money back in a reasonable time. Companies that didn't practise due diligence, that maybe were a little slow or a little sloppy in getting it done, are going to be the ones that get it later.

But EDC has said, then, that within a time period of four to six weeks after completion of the papers, they would expect the funds would start rolling to those who had completed paperwork?

Mr. Paul Robertson: Yes. I might add that I think it's EDC's intention not to wait for that timeframe to begin refunding money. When they have completed documentation to allow the refund of money, the process will begin as there are companies to refund to.

As we've spoken about, the theoretical time for that is any time from now up to when the last company finishes the documentation. But I would realistically expect interest from companies, given as it has been identified, to get the documentation in so as to get the refund.

We will probably see a lot of money being refunded over the next four to six weeks. But that's speculation, because it's dependent on the companies' actions concerning the finalization of documentation.

● (1005)

Mr. Richard Harris: Thank you, Mr. Chairman.

The Chair: Okay. Are there any other questions from the government side?

Mr. Julian.

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

I'd like to clarify that it's not the government's own money. It's taxpayers' money that would be used for this little shell game of reimbursing companies with taxpayers' money, because we won't be getting money from the United States for many months.

The other thing we established on Tuesday that's important to clarify is there is no provision in Bill C-24 for what you've mentioned, Mr. Robertson. It may be a promise to the government, but we're dealing with the hard facts of Bill C-24.

In Bill C-24, the situation that Monsieur André speaks of is very possible. We've established that it's very possible. There are no provisions in this legislation to ensure that won't happen. In fact, the legislation is very clear.

Mr. Richard Harris: I have a point of order, Mr. Chair.

The Chair: On a point of order, Mr. Harris, go ahead.

Mr. Richard Harris: It's my understanding that under the whole process, there is under the EDC repayment plan—

The Chair: That's debate, Mr. Harris.

Go ahead, Mr. Julian.

Mr. Peter Julian: You'll have your opportunity, Mr. Harris, to speak when it's your turn. But don't interrupt me when it's my turn.

Thank you.

Mr. Richard Harris: Thank you, Mr. Julian. I appreciate that reminder.

The Chair: Mr. Harris, you will have another opportunity, if you would like one.

Go ahead, Mr. Julian.

Mr. Peter Julian: So in part we established the issue that this special charge is levied. There are very specific deadlines as to when that is due, but there are penalties that can be applied to that special charge.

I'd like to go to clause 39, because there it mentions:

> Except as specifically provided under this Act or the Financial Administration Act, no person has a right to recover any money paid to Her Majesty in right of Canada as or on account of, or that has been taken into account by Her Majesty in right of Canada as, an amount payable under this Act.

Under the Financial Administration Act there is no provision for these kinds of special charges. But in the provisions provided for under this particular act in subclause 89(1)—this is one of the very many punitive clauses that are there, including imprisonment of up to 18 months for folks who violate this act—it says:

> If the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to pay an amount under this Act (in this section referred to as a "debtor"), the Minister may, by notice in writing, require the person to pay without delay, if the money is immediately payable, and in any other case, as and when the money becomes payable, the money otherwise payable to the debtor in whole or in part to the Receiver General on account of the debtor's liability under this Act.

I am working my way through this. I'll be asking you a question on all of this argument in a moment.

In other words, we basically have the special charge levy. We have no provision for any refunds under this, except as specifically referred to under the act. Under the act the minister has unlimited ability, even if the minister just suspects that a company is liable for moneys that should be paid to a company that owes money under this act—which means the customers. So we have the issue that the minister could very well follow up on customers and demand money that the companies may owe under this act.

Then under subclause 95(1) we have directors' liability:

> If a corporation fails to pay any amount as and when required under this Act, the directors of the corporation at the time it was required to pay the amount are jointly and severally or solidarily liable, together with the corporation, to pay it and any interest that is payable on it under this Act.

Then we go to subclause 96(1), where it says:

> Where at any time a person has transferred property, either directly or indirectly, by means of a trust or by any other means

That would mean that in the case of a director of a small company in British Columbia who transferred trust money for an education fund for his or her children, we have given power to the minister to establish the amount to basically, except by provision of this act, not provide any recovery moneys that might be paid, even if the charge were miscalculated. Then the directors would become personally liable and any moneys that were transferred out in trust could be subject to punitive action by the minister. These are all very punitive measures.

So I want you respond as to what actually protects the individual. We've talked about the period through the tax court, but that's many months away, if not more than a year away. With all these punitive clauses—I could go into many more of them but I don't want to take all my time—what protects the companies from the punitive charges established in this legislation that are payable even before any refunds come back? What protects the small companies from the kind of minister fiat in this regard? What are the protective clauses?

● (1010)

Mr. Paul Robertson: Thank you.

The Chair: I'm not sure who's going to answer that. If you need clarification from Mr. Julian, because he put a lot of pieces together there, just ask him for it.

Mr. Peter Julian: It's a paper trail, Mr. Chair.

The Chair: Mr. Robertson, go ahead and start.

Mr. Paul Robertson: Perhaps I'll just start on some general points, and then I'll turn to my colleagues from CRA, where this is.

First of all, I apologize if I said “government money”. I don't disagree with that; it's taxpayers' money.

With respect to the discussion and the reference to our last meeting, it's true that, with respect to the special charge, in the legislation there is not specific reference to the remission that will be provided to those companies that are participating in the EDC program. Of course, any legislation has accompanying regulatory elements. The remission element of that procedure will come under the Financial Administration Act. So that's with respect to your second point in your introductory remarks.

Third, I think what we've identified, and I'll stand to be corrected by the experts in CRA, are what I understand to be basically activities that result if payments are not made under the law. And therefore these types of elements, I would have thought, are pretty well standard types of recourse by the government.

At this point, I think, with respect to specific clause references and the path you drew, I will refer to my colleagues in CRA.

Ms. Cindy Negus: Thank you.

To begin, I believe that under clause 39, when you reference the Financial Administration Act, the element in the FAA that we would be referring to here is a remission order. A remission order is being considered. We certainly don't have it in place, yet. That will take some time, but it is being considered. A remission order, essentially, on the recommendation of the appropriate minister, can, I guess, provide relief to people where the amount is not just or is not in the public interest. So that clearly seems to be a case in which we could use a remission order.

With respect to your questions on penalties that are imposed by the CRA, to begin, my colleague is correct in that the penalties that are contained in this particular bill are in all the other statutes that CRA administers. That includes the Excise Tax Act for GST, and the other, biggest one that people are familiar with, the Income Tax Act, which has many more penalties than are contained in here.

Certainly CRA has a practice of being fair and applying penalties consistently. I can assure you that before any criminal penalties are considered—and some you're referring to are criminal penalties—it's a very last resort. Certainly they are not standard, and CRA makes every effort to resolve any disputes or questions that are raised by taxpayers.

The Chair: Ms. Negus, once again, for clarification, are most or all of the issues that Mr. Julian pointed to standard? Are they clauses that are in other acts?

Ms. Cindy Negus: They are.

The Chair: So, Mr. Julian, let's not stray too much into examining other acts. We don't have time to go through the CRA—

Mr. Peter Julian: I'm talking about Bill C-24, Mr. Chair.

The Chair: And I understand that sometimes, to examine a piece of legislation, you do refer to others, but let's not get too far into that. I just don't think we can do that. But go ahead, please, Mr. Julian.

Mr. Peter Julian: Thank you.

I'll come back in the final round to more questions. But in clause 89 it says that if the minister suspects that a person—this is basically a commercial relationship—may owe money to a debtor company, a company that can't afford to pay the special charge, that is not usual practice, that a minister suspects that the person can pay, and then, by notice in writing, can require the person to pay without delay. That's not normal practice.

● (1015)

Ms. Cindy Negus: Well, we call it a garnishment provision, and certainly this is a provision that is contained in our other statutes, as well. It is not commonly used, but the ability is there, yes.

Mr. Peter Julian: Where is the burden of proof here? If the minister suspects, in a commercial arrangement, that a company owes money to another company, where is the due process, then? Essentially, this gives a blank cheque to the minister to intervene in the commercial affairs of a company.

Ms. Cindy Negus: I don't think the minister ever has a blank cheque. I think the minister has to take all appropriate collection actions prior to this ever being considered. Certainly the minister wouldn't see that a liability was there and just go after a third party for an amount of money.

Mr. Peter Julian: For the committee, could you reference what other statutory legislation pertains to the suspecting of an individual? This is suspecting, right? There is no burden of proof.

Ms. Cindy Negus: Okay. The same provision exists in the Air Travellers Security Charge Act, which is section 75; in the Excise Act, 2001, it's section 289; in the Excise Tax Act, it's section 317; and in the Income Tax Act, it's section 224.

The Chair: Thank you, Ms. Negus.

Mr. Julian, could you please ask your questions through the chair? You're in close proximity to the witness there, and I think you're kind of being aggressive. So if you ask through the chair, it helps.

Some hon. members: Oh, oh!

The Chair: Actually your time is up for questions, Mr. Julian.

Are there others who have questions?

Mr. André.

[*Translation*]

Mr. Guy André: My question deals with the export charge and the refund of countervailing duties.

I read section 10 which states when export charges will start to apply. It reads:

> 10(1) Every person who exports a softwood lumber product to the United States after September 30, 2006, shall pay to Her Majesty in right of Canada a charge as determined under this act in respect to the export.

Should we amend that section? There has been a delay. I would like some more explanations. If I am not mistaken, if that section is implemented, companies will have to pay export charges before they get their refund. I would like some clarification about this.

[*English*]

The Chair: I believe we've been there before, but go ahead, Mr. Robertson.

Mr. Paul Robertson: Might I ask the chair for some instruction? I don't think it is my role to speak of amendments to the committee right now.

What I would flag is you will recall that the original coming-into-force date for the SLA was October 1. That of course was delayed until October 12. So I think it would be reasonable to assume that the draft legislation would have to have a corresponding reflection of the fact that it came into effect not on October 1, but on October 12.

Consequently, in my view the specific time references will have to be updated to reflect the realities of the entry-into-force date.

The Chair: It can be done in different ways—for example, a government amendment that covers all the time changes necessary.

Mr. André, carry on.

[*Translation*]

Mr. Guy André: If the bill is passed soon, let us say November 15 at the earliest, and is studied in the Senate for two or three weeks, it might become law before the end of the year, which might raise some problems. There might be a problem related to what I said earlier.

● (1020)

[*English*]

Mr. Paul Robertson: I will defer to my colleagues, but I think there would have been a problem if the export charge had been applied on October 1. But as we discussed this morning, the export charge was only applied on October 12, so in effect there is not a—

[*Translation*]

Mr. Guy André: As concerns companies, when will the first payment be made?

[*English*]

Mr. Paul Robertson: We are not talking about the export charge now. Are we back to the refund question?

Mr. Guy André: The export charge, right.

[*Translation*]

As concerns export charges, when will companies have to start paying?

[*English*]

Mr. Paul Robertson: Yes, companies have started to pay the export charge as of October 12. Therefore it is not the October 1 timeframe that this draft legislation envisages. So in one respect, the actual application has been based on the coming into force of the agreement. Because this is a bonus for the exporter, that is the rationale behind it.

So I don't think we can speak any more about possible amendments. I do not think it is my provenance to speak about that—

[*Translation*]

Mr. Guy André: It is okay.

[*English*]

Mr. Paul Robertson: It is a legitimate question on giving dates and when things are coming into force.

The Chair: Monsieur André, it's up to the committee members to present amendments, of course, and that includes government members and the opposition as well.

Carry on.

[*Translation*]

Mr. Guy André: It is okay. Mr. Cardin may continue.

[*English*]

The Chair: Monsieur Cardin, go ahead.

[*Translation*]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chairman. Gentlemen, Madam, good morning.

The official date of the export is important for the payment of the charge and the control of export quotas. Paragraph 5.(1) reads as follows:

> 5.(1) For the purposes of this act, the time at which an export of softwood lumber product is considered to be exported is the time at which the product was last loaded aboard a conveyance for export.

Normally, if it is put in a truck, the truck leaves and that's it. However, if the softwood lumber product is exported by rail, it is considered to be exported when the railcar in which it has been loaded is assembled to the train that will transport it.

This is problematic for quotas management. Let us suppose that we will export today by rail a quantity equivalent to the monthly quota. The export is made from the time when the railcar is assembled to the train, but if the car stays in the yard several days and is only assembled to the train the following month, the export date will be the date when the car is assembled to the train when in fact the wood will have been exported the previous month. The official date of the export raises an important issue.

Could we treat exports by rail the same as exports by truck in taking into account the date when the product is loaded in the railcar? If it stays in the yard without being assembled to the train, what can you do? The export date should be when the railcar is in the yard ready to leave, even if it stays there.

[*English*]

Mr. Paul Robertson: Thank you very much for that question. It's clearly a very important question as it relates to the timing of the charge.

I'll ask my colleague Mr. Seebach to reply.

Mr. Dennis Seebach: Thank you, Paul.

The concept of the railcar was to recognize a standard industry practice and an industry recommendation that cars are assembled at their plants or at certain places and are then moved to another location to be assembled into a total train to be shipped to the United States. The concept was to allow the companies that timeframe, and when the train is assembled, that will be the date of export. That's as opposed to a truck shipment. The industry has advised that when a truck is loaded and shipped, it is generally shipped at that point in time. It's to equalize those concepts of when the trains leave.

Companies have informed us that they have a fairly good knowledge of when trains are assembled by their carriers and when those dates are when they're leaving the province. That is the concept behind those two sections in the bill.

● (1025)

[*Translation*]

Mr. Serge Cardin: You can see the consequences it might have for an exporter. He wants to send his product to his client, but he has no control over the time when his railcar will be assembled to the train. It might result in costs over which he has no control.

Some adjustment should be made so that the exporter might declare as his export date the day when the product is loaded in the railcar. It should be possible to find a way to reflect the real date of the export.

[*English*]

Mr. Dennis Seebach: Thank you.

This was a negotiated part of the agreement, as these two terms were agreed to by Canada and the United States as ways of measuring the date of shipment. The option for some of this flexibility to the exporters taking it into option B provinces is that those exporters, when they have a quota allocation, will have a flexibility of about 12% of their export allocation, carried forward and carried back. If a train were delayed, they would be able to qualify to have a credit for that allocation bringing forward.

Under option A provinces, there is the surge provision that allows a 10% overage before surcharges hit. This would allow that kind of flexibility for the province itself under option A.

[*Translation*]

Mr. Serge Cardin: Yes, but all...

[*English*]

The Chair: Monsieur Cardin, your time is up.

Is there anyone else who has questions? Mr. Julian.

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

The Chair: I'm surprised, Mr. Julian.

Mr. Peter Julian: You seemed to be looking to your right. I wanted to make sure I had your attention.

I'd like to thank Ms. Negus for referring to those four pieces of legislation that have the same kinds of draconian clauses that we're discussing today in Bill C-24. I would appreciate it if you could send to the committee those exact references for each of those clauses, because in each of those four pieces of legislation that you cite, there's a system of checks and balances.

I think what we're struggling with today is the fact that there do not seem to be the same checks and balances within Bill C-24 that may exist in other legislation. It would be helpful to have those pieces of legislation, in order to see how we can make this legislation much more balanced.

Ms. Cindy Negus: Are you looking for the specific references?

Mr. Peter Julian: I'm looking for the specific legislation.

Ms. Cindy Negus: The whole act is quite long, as you can see.

The Chair: I know you're close together there, but could I encourage both of you to actually go through the chair?

The information will be provided to the committee, not to Mr. Julian. If you go through the chair, it makes it a little easier to handle that.

Mr. Peter Julian: The reference would be helpful in a case where the act isn't the size of a telephone book. The exact wording would be helpful.

Ms. Cindy Negus: We can certainly provide you with the actual provisions that concur with section 89 of this act.

Mr. Peter Julian: Thank you very much.

Ms. Cindy Negus: You're welcome.

[*Translation*]

M. Peter Julian: For the time being, I would like to deal with section 999 and section 111 that Mr. André has referred to.

In both cases, those provisions will allow the minister to make decisions without consulting the provinces. It is then clear to me that this aspect of the bill should be improved, because there is no obligation to consult Quebec, British Columbia and other provinces.

Please tell me if I am mistaken.

[*English*]

I'd like to come back to the lumber remanufacturers.

● (1030)

Mr. Richard Harris: On a point of order, Mr. Chair, what clause in the agreement is Mr. Julian referring to?

The Chair: Mr. Julian, what clause are you referring to?

Mr. Peter Julian: I'm referring to subclause 99(1), on the actual payments and administrative charges that the minister can decide upon on his own.

The Chair: Thank you. Go ahead, Mr. Julian.

Mr. Peter Julian: I referenced the same clause that Mr. André referenced. It will be in the blues.

Coming back to lumber remanufacturers, there is no definition of "lumber remanufacturer" in the act. In fact, when we talk about the issue of related parties that is in clause 6, we've had a custom—and Canada has actually fought for this under the WTO and NAFTA—that related persons are deemed as unrelated when they treat each other as if they are unrelated. In this clause, for the purpose of this act, we have a specific definition that is certainly not in Canada's interests: that "related persons are deemed not to deal with each other at arm's length" regardless of whether or not they have traditionally treated each other as if they were unrelated. So I'd like you to comment on that.

Also, under clause 25, there's no appeal process for lumber remanufacturers. What would be the appeal process if the minister decided to punish many of the lumber remanufacturers that have opposed this deal? What is their process of appeal if the minister does not accept their application?

I would like to go as well—

The Chair: Could you allow the witnesses to respond to one at a time? It makes it a lot easier for everybody involved.

Mr. Peter Julian: Certainly, Mr. Chair. I'll leave those questions and come back.

The Chair: Mr. Clifford, go ahead, please.

Mr. John Clifford: If I may, Mr. Chairman, with respect to clause 99 and the absence of a requirement to consult, my colleagues have indicated that consultations are ongoing with the provinces with respect to several matters, including allocation eligibility criteria and eventual payments. Those consultations with the provinces will continue for some time. The regulations to establish the basis for those payments have not been drafted, and they won't be drafted until the federal government has had an opportunity to complete its consultations with the provinces.

The payments would not be made, in any event, until the conclusion of at least the first year under the agreement. There may be other arrangements. I haven't been part of discussions as to whether there might be payments made more frequently than annually. If one were to take the example of arrangements that were made under the 1996 softwood lumber agreement and the 1986 MOU between Canada and the United States, Canada made obligations to make payments to the provinces in a similar way.

In 1996 there was no legislation establishing that requirement. However, it was done in an orderly fashion in consultation with the provinces. In respect of the 1996 agreement, this was accomplished. Since there wasn't legislation, it was done by way of contribution agreements between the federal government and the four covered provinces.

Under the legislation that implemented the 1986 MOU between Canada and the United States, there was a requirement that was very similar to the arrangement under clause 99. That arrangement was actually implemented in consultation with the provinces. The provinces expect that. Officials in the departments that will be implementing the legislation are fully prepared and on track to do that consultation, regardless of the fact that the clause is silent on any such requirement.

So all that to say that despite the silence with respect to requiring consultation, it is a part of the practice. It has been under two previous agreements, and it will be under the proposed legislation.

● (1035)

The Chair: Okay. Thank you, Mr. Clifford.

Mr. Robertson.

Mr. Paul Robertson: I don't really have anything more to add. We've had an extensive discussion.

I guess the only point I would reiterate is that we have not received any concerns from provinces regarding the lack of that reference. I think that's primarily because we're already consulting. We're very much into the process that people want to ensure is going on with an amendment. I don't think I can add anything more to that one.

If I may move then to the lumber remanufacturer question and definition, I will ask my colleagues to address that question.

The Chair: Mr. Hagmann, go ahead, please.

Mr. Ron Hagmann: Thank you very much.

First of all, you were discussing the definition for "related persons" as it pertains to remanufacturers. That definition is not applicable.

As I mentioned earlier, we administer the provisions of annex 7C of the agreement. To be deemed a certified independent remanufacturer, those criteria reference an "associated person", not a "related person". The associated person is defined in the agreement; it's not in the legislation.

The Chair: Mr. Julian, do you have more questions?

Mr. Peter Julian: I do, Mr. Chair. I don't want to monopolize the time, but if the rest of the committee is willing to allow me to ask a few more questions, I will.

The Chair: Yes, just a minute.

Point of order, Mr. Harris?

Mr. Richard Harris: I'm a brief visitor to this committee, but on other committees I've been on.... Let me put it this way: Is it the practice of this committee that if there are no questions from other parties in the allotted time that the unused time would go to whichever party wanted to continue asking? Is that the practice of the committee?

The Chair: Absolutely, and it has been on every committee I've been on, where if you continue to go around and if parties choose not to be involved, then the parties that want to can continue until the time is up or something else stops the process.

Mr. Richard Harris: It's interesting.

The Chair: Mr. Cardin.

[*Translation*]

Mr. Serge Cardin: Thank you, Mr. Chairman.

I have a short question dealing mostly with section 12. To establish dumping, the Americans took the price of wood and deducted various costs. Therefore, this was probably a method advantageous to them.

Why, when calculating the FOB value, couldn't we deduct all the costs, whether it be for transportation or insurance, brokage, commission and so on? With that method, the export charge paid by exporters would be calculated on a lesser value that would better reflect the value of the wood.

[*English*]

The Chair: Mr. Hagmann, go ahead, yes.

Mr. Ron Hagmann: Thank you.

The definition of FOB does exclude shipping costs. We have heard from industry that other costs related to these shipments were deducted for purposes of the duties in the United States. We're reviewing that right now in consultation with international trade and we are developing a policy, because it was the intention that certain costs could be deducted from the export price.

At this point I believe it was amounts incidental to the shipment, such as permits or brokerage fees. This concern from the industry was brought to our attention and we are looking at it.

● (1040)

Mr. Paul Robertson: Mr. Chair, if I can add, the question of what is included and excluded for the purposes of calculating the export price is an important element. We have been receiving a lot of very specific questions relating to that and we are jointly undertaking a general notice of these types of questions, plus a specific notice with respect to the calculation of the export price, for greater clarification for the exporters.

And we're getting now into the very, very minute elements, which we recognize are important, and the way to best address them is through a notice to exporters where we've taken their questions, worked through all of them, and got them in a form that's both understandable to exporters as well as consistent with Canadian policy as it relates to these elements.

I hope that's answered the question. Greater detail will be forthcoming.

[*Translation*]

Mr. Serge Cardin: Yes, but you should not forget that when the U.S. were establishing a case of dumping, they subtracted from the price many cost elements that it would be reasonable to include in the act to lessen the price. I think that it would be fair to make that calculation on the same basis than before.

[*English*]

The Chair: We're not talking about renegotiating the deal here, are we? We're dealing with the implementation act.

Mr. Robertson.

Mr. Paul Robertson: Thank you, Chair.

We're certainly keeping as a yardstick U.S. practice in these areas to further our understanding and our approach with respect to the calculation of the export price.

The Chair: We have only about three minutes before we go to dealing with our subcommittee report. I do have something first, and then, Mr. Julian, if you have a question or two we'll get to you.

This act includes a lot of clauses that are included in other acts. It would be really helpful if we could get a cross-reference to the standard clauses that are used in Bill C-24 and also used in, for example, the Air Travellers Security Charge Act, the Excise Act, the Excise Tax Act, which is the GST act, and the Income Tax Act. So if we could get those cross-references it will certainly help us in clause-by-clause.

When members see that these are standard clauses used, there's likely to be a lot less question and a lot less debate needed on those.

Ms. Cindy Negus: Just to verify, you're looking for the actual text of those clauses, right?

The Chair: No, just the reference.

Ms. Cindy Negus: Just the reference.

The Chair: So your starting point would be in Bill C-24, a certain clause. That clause is used in these other acts as well.

Ms. Cindy Negus: Yes.

The Chair: So it's kind of standard. If you could do that it would be very helpful.

Ms. Cindy Negus: Okay.

The Chair: Thank you.

Now, Mr. Julian, you have about two minutes if you want the report to be dealt with. We are going to stop at a quarter to.

Mr. Peter Julian: Yes, and for the rest of my questions I'll have to wait for next Tuesday's witnesses.

I did want to ask specifically about two issues: subclause 68(1) and subclause 81(6). Subclause 68(1) talks about how every person who fails to file or make a return as and when required under this act is guilty of an offence and is guilty to penalties.

I want to ask whether or not that covers U.S. importers of record, in which case, what would be the enforcement mechanism?

Second, 81(6):

> For the purposes of subsection (5), a requirement to provide information or a record shall not be considered to be unreasonable because the information or record is under the control of or available to a non-resident person that is not controlled by the person on whom the notice of the requirement is served or to whom the notice of requirement is sent under subsection (2) if that person is related to the non-resident person.

Both of those clauses seem to deal with extraterritoriality, the United States importers of record. So I want to know what the enforcement mechanisms are for that, and what are the penalties to a small Canadian company that has records that they are unable to access in the United States?

● (1045)

Ms. Cindy Negus: Essentially, if we have a non-resident exporter then certainly all the provisions contained within will apply to them as well. Keep in mind that this clause 68 is really a criminal offence. We're talking about summary conviction, so we are talking about a case actually being looked at by the court. So it's not really something that is first imposed by the Minister of National Revenue.

Your second question, 81—

Mr. Peter Julian: Yes, 81(6). For information that's available in the United States that a small company in B.C., say in Prince George, is unable to access, they are subject to penalties. What's the enforcement mechanism? What would the penalties be for that company that's unable to access those records that are required from the United States, from their U.S. importer?

Ms. Cindy Negus: Just bear with me for one moment while I review the provision.

Mr. Peter Julian: Sure.

The Chair: Mr. Julian, that will be your final question.

Mr. Peter Julian: I understand that, Mr. Chair. I'm very sorry about that, as I'm sure the rest of the committee is as well.

Ms. Cindy Negus: Essentially, this provision really, as it is contained in other statutes as well, refers to records that are outside of the country, and really this is to ensure that people do not place their records outside of the country so that they are inaccessible for basically verification and enforcement purposes.

So that's why it's here.

The Chair: Okay. Was there something to be added to that?

Ms. Cindy Negus: It's a standard provision. Again, we will provide you with that table, but that is the purpose of it.

The Chair: That will be very helpful. It needs to be in both official languages.

All right, thank you all very much for coming again. We do appreciate it very much.

I'll just have you leave the table; we have a subcommittee report to deal with here, so we'll start, but thank you again, very much, to all the witnesses from the Department of Foreign Affairs and International Trade and from the Canada Revenue Agency.

Now we will deal with the subcommittee report.

You will all have received copies of the report from the Subcommittee on Agenda and Procedure of the Standing Committee on International Trade, I believe? Most people have. Mr. Julian, we'll get one to you right away.

The subcommittee met yesterday and discussed the issues that you see in the report. The first item is on the amendments to Bill C-24. The subcommittee agreed that this Friday—tomorrow—was the deadline for submitting amendments. As there are witnesses coming on Tuesday, the committee agreed to extend the deadline for amendments, especially amendments that might arise from Tuesday's meeting. In fact, we expect that most of the amendments will be in by Friday so that the clerks can deal with them, but there may be a few allowed. That was the intent of that part of the report, so let's deal with that first.

There are two things to understand: first, this committee is of course a public meeting; second, the full committee has to approve the subcommittee report, so that's why we have it here and that's why we're dealing with it.

Go ahead, Ms. Guergis.

● (1050)

Ms. Helena Guergis (Simcoe—Grey, CPC): The majority of the committee has to approve; that's how it always seems to work here, but it's not always everyone agreeing, right?

The Chair: That's right. It's for a majority to approve.

Ms. Helena Guergis: Letters have been sent out, though, telling everyone that Friday was the deadline. So I'm a little concerned about why we're extending it. I realize that I'll probably lose that around the table, but I do want to point out, too, that we made a decision, that we had set a deadline, letters were sent out, and now, all of a sudden, we've decided to extend it. I have some great concern about that and I'm not exactly sure as to why we're doing it. I don't agree with the reasons that were provided.

Perhaps Mr. Julian would like to give me some more insight as to why we have that on the table.

The Chair: Mr. Julian, would you like to explain why that's been extended, the reasoning behind it?

Mr. Peter Julian: We have witnesses on Tuesday, Mr. Chair, and for us to say we set a deadline for amendments and then have witnesses who I think will be adding a lot of content to Bill C-24, it just doesn't make sense. It's not logical. It doesn't make sense to say "Well, we appreciate your testimony, but we've already closed off the possibility for amendments".

I can understand Ms. Guergis's concern that we set a date. We're talking about a couple of days more and witnesses appearing on Tuesday. It's through nobody's fault that today's session was with the trade officials rather than with the witnesses who we brought forward. That was unfortunate, but that's what happened.

So, given that we had to change that date, it makes sense to keep the possibility for amendments open until the end of the business day on Tuesday so there would be time, from the testimony, for any direct amendments that any member around this committee chooses to be put forward—and it respects the witnesses, as well.

The Chair: Ms. Guergis, go ahead, please.

Ms. Helena Guergis: I just want to remind you that we were of course very flexible in agreeing to change that date to provide for the witnesses. As long as you acknowledge that—

Mr. Peter Julian: I do.

Ms. Helena Guergis: —and as long as I have a firm commitment of everyone around the table that we're not going to be asking for other extensions, I would really appreciate that, since we had sent a letter out. We've been firm, and now we've set another date.

Can we agree to stick to this date? Can we?

Mr. Peter Julian: Yes.

Mr. Ted Menzies: I have a comment on it. We heard again today that this money is not going to flow until we get this agreement passed. And we're dealing with the enabling legislation. The agreement is in place, and I'm certainly not suggesting anyone's trying to hold up this legislation, but let's get this done as fast as we can.

I also have a problem. We set Friday as the day, and now we're going to extend it. I fundamentally have a problem with extending it because we've set the dates and we need to move on, Mr. Chair.

● (1055)

The Chair: We have agreed, Mr. Menzies. The committee did agree previously that we will extend the time, if needed, for clause-by-clause on Thursday.

I think we should try to accommodate. Well, it's not up to me, of course. The subcommittee agreed to bring this to the committee. It's up to this committee to decide, and that's why we're discussing it here.

Monsieur Cardin.

[*Translation*]

Mr. Serge Cardin: Mr. Chairman, even if the deadline for tabling amendments is differed, it will not change the date when we will start our clause-by-clause study.

Technically, it will not delay our work. It is not a problem. Of course, some people will have less time to study these amendments, see if they are admissible and put them in the notice paper. Technically, it doesn't delay the study of the bill.

[*English*]

The Chair: Sorry?

Ms. Helena Guergis: May we have confirmation that we're not going to be asking for any...so I'm cool with that?

The Chair: Yes. So is there agreement of the committee or...?

Monsieur LeBlanc.

[*Translation*]

Hon. Dominic LeBlanc: Mr. Chairman, I entirely agree with Mr. Cardin on what he just said.

Mr. Temelkovski, who was at the meeting, told us about your discussions. On our side, we shall table two amendments that are not highly controversial. You will get them today or tomorrow at the latest.

We are sensitive to what the government representatives, Mr. Harris and Mr. Menzies, have just said as to the importance of deliberating in a responsible manner.

We would like to start Thursday as agreed, and we hope to finish rapidly the clause-by-clause study. On our side, we shall try not to delay anything, in view of the realities you just described.

Like many other people, we have identified some weaknesses in the agreement, but that is another matter. I believe that we are at a stage when we must go forward.

[*English*]

The Chair: We've agreed to extend the time on Thursday, and we'll have ample time to go through clause-by-clause. On the notice, we'll have added extra time in terms of nine to one. We may even add another time later on, but we're not likely to need it.

Something that will really help is the cross-reference for standard clauses, which is about 90% of this bill, a standard used in other legislation. Every member will be able to cross-reference ahead of time the clauses in Bill C-24 to the clauses in the Excise Tax Act, the Income Tax Act, and the other acts these clauses are used in. It should be helpful in dealing with the standard clauses more quickly.

Yes, Mr. LeBlanc.

Hon. Dominic LeBlanc: I have a very quick question, Mr. Chair.

We electronically filed with the clerk amendments that we seek to have before the committee, but they were in English. Do the people at the Library of Parliament and others do the translation? I have them in one language and I wanted to make sure.

[*Translation*]

I have something to ask. May I ask the clerk if he would be kind enough, when it will have been translated, to send me the French version? I would like to share it with my colleagues. There are no secrets. I only wish to distribute the two versions when they will be available.

Thank you.

[*English*]

The Chair: It happens, of course.

Is there any more discussion on this? Can we agree to this now?

Ms. Guergis.

Ms. Helena Guergis: Can I talk about another section?

The Chair: I was going to deal with one section at a time. If we can agree to this, we can then go on to the next one.

Ms. Helena Guergis: Okay.

The Chair: Is that agreed?

● (1100)

Ms. Helena Guergis: Yes.

The Chair: All right. The next one is that the committee meet for one hour with the parliamentary delegation from the National Assembly of Pakistan.

Ms. Guergis, I know you had something on that.

Ms. Helena Guergis: I do, yes. I was thinking. I'm hoping this is out of committee, we don't have to deal with softwood lumber, and it's not still in front of us at that time. But in case it isn't done, perhaps we could check with the foreign affairs committee to see if they would be willing to host Pakistan in case we have a timeline that we have to meet. Foreign affairs would probably be a better fit for this anyway.

I open that up to others, if they agree with my suggestion.

The Chair: I would point out that the reason the time isn't on here is that of course the delegation is still trying to plan their schedule.

Ms. Helena Guergis: I didn't ask about time.

The Chair: Okay.

Ms. Helena Guergis: I suggested it should go to the foreign affairs committee, just in case.

The Chair: They've asked foreign affairs as well. They want to look at the trade aspect and foreign affairs.

Ms. Helena Guergis: Okay. Then next, I was going to touch on the timing.

The Chair: On that, we are actually inviting members of the foreign affairs committee to sit in. Of course, they can sit in on our committee anyway. They can sit in if they'd like to and have lunch afterwards.

We're going to have a one-hour meeting and a lunch afterwards. Members of the foreign affairs committee and defence committee will also be invited to the lunch.

Ms. Helena Guergis: We will have a meeting from nine to eleven o'clock to deal with whatever business we have here, in case softwood lumber is still at this committee, and then at eleven o'clock we would have Pakistan come in.

The Chair: No, it would be one hour, from eleven to twelve.

Ms. Helena Guergis: The time from nine to eleven would still be open for softwood lumber, if required.

The Chair: That's right. This committee agreed we will be distracted by nothing until the softwood lumber deal is through. We agreed to that, and I don't believe it's flexible. It will be outside.

Ms. Helena Guergis: It's not worded as outside in this report.

The Chair: The clerk thought the steering committee agreed that provided Bill C-24 is finished, we would then do this.

We'll make the amendment and add that. It's what was intended.

Is that agreed?

Mr. Lui Temelkovski: The intent was that we would meet around the table at eleven o'clock until twelve. We would introduce ourselves, and they would have an opportunity to introduce themselves and exchange a few words. Then from twelve o'clock until one, we will have lunch.

[*Translation*]

Mr. Serge Cardin: We will have finished by then.

[*English*]

The Chair: That's agreed. All right.

Now the final one is the committee inviting trade officials from other countries. This has to do with the long-term study.

I've had discussion with some members of the committee, and the steering committee discussed this. We thought that in focusing our study, it would be helpful to look at countries that have been successful in dealing with trade and to have some officials from the embassy or their trade people come to explain what they did that worked. It would help focus us in our study. It's what the steering committee agreed to, in brief.

These countries may not be the countries that would be the ones we'll look at, but Australia certainly seems to be one.

Mr. Menzies.

Mr. Ted Menzies: I have a point of clarification. Is this an on-site visit?

The Chair: Yes—one of the rooms here on the Hill.

Mr. Ted Menzies: I just wanted to clarify that.

The Chair: Of course it depends where our study goes and what the committee decides.

Is that agreed to? Okay.

Mr. Lui Temelkovski: Are there any other suggestions? We're asking those who were not present at the meeting yesterday to give us some more input.

The Chair: On the countries we choose to have witnesses from, we seem to agree on Australia. We're not certain about the others. We'd certainly welcome suggestions from all of you.

Mr. Menzies.

Mr. Ted Menzies: I would like to see New Zealand added to that list. It has a very unique history, especially in its agricultural sector, of going from huge exorbitant subsides to flipping a hundred and eighty degrees. I think it's more than just agriculture now, because that whole thing has spun off into a culture of competitiveness. I'd like to hear that story too.

● (1105)

The Chair: Okay. Thank you, Mr. Menzies.

I think that's agreed.

Mr. André.

[*Translation*]

Mr. Guy André: I would like to add the agreement with the four Central American countries. I would have liked us to invite officials from these countries to meet with us. I am talking about the agreement between Canada and the four Central American countries. Anyway, this is a suggestion.

[*English*]

The Chair: Mr. André, would you give that to the clerk as an item for the next subcommittee meeting? We'll discuss it there. If we stick to that process we'll end up with a lot more focused meetings here.

The meeting is adjourned.

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