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• (1630)

[*English*]

The Vice-Chair (Mr. Kyle Seeback (Dufferin—Caledon, CPC)): I call this meeting to order.

Welcome to meeting number 64 of the Standing Committee on International Trade. Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Therefore, members will be attending in person and remotely using the Zoom application.

I would like to make a few comments for the benefit of the witnesses and members.

Please wait until I recognize you by name before speaking. When speaking, please speak slowly and clearly. For those participating by video conference, click on the microphone icon to activate your mike, and please mute yourself when you are not speaking. With regard to interpretation, for those on Zoom, you have the choice at the bottom of your screen of floor, English or French. For those in the room, you can use the earpiece and select the desired channel. I will remind you that all comments should be addressed through the chair. Please note that, during the meeting, it is not permitted to take pictures in the room or screenshots on Zoom.

Should any technical challenges arise, please notify me. Please note that we may need to suspend for a few minutes as we need to ensure all members can participate fully.

Pursuant to Standing Order 108(2) and the motion adopted by the committee on Tuesday, January 30, 2023, the committee is beginning its study of U.S. duties on Canadian exports of certain lumber products.

We have with us today, from the Department of Foreign Affairs, Trade and Development, Aaron Fowler, associate assistant deputy minister, trade policy and negotiations; Michael Cannon, director, softwood lumber division; and Michael Owen, general counsel and executive director, trade law bureau.

Welcome, everyone. We're going to start with opening remarks and then we will proceed to rounds of questions.

Mr. Fowler, I believe you're going to make the opening statement for up to five minutes. Then we'll open up the floor to questions.

Please go ahead.

Mr. Aaron Fowler (Associate Assistant Deputy Minister, Trade Policy and Negotiations, Department of Foreign Affairs, Trade and Development): Thank you very much, Chair.

Good afternoon to you and to all of the other committee members. Thank you very much for inviting me here today to speak to you about the important work Government of Canada officials are doing to advance Canada's interests in the ongoing softwood lumber dispute with the United States.

Canada's partnership with the United States is fundamental to our foreign and economic policy. Our softwood lumber industry provides well-paying jobs and is a key economic anchor for communities across the country. Canadian softwood lumber helps build American homes and workplaces, exemplifying the deep integration between our two economies.

President Biden's recent visit to Ottawa confirmed the significance of the relationship between our two countries. While here, the Prime Minister and President Biden discussed a variety of shared priorities. Significantly, both the Prime Minister and Minister Ng raised the issue of the softwood lumber dispute directly with the President, emphasizing the harm that U.S. duties cause to Canadian producers and workers, as well as the communities they support, and to U.S. consumers as well.

• (1635)

[*Translation*]

Now more than ever, a resolution of the dispute is needed given the challenges facing the forestry sector, including wood fibre constraints and labour shortages. U.S. tariffs on softwood lumber exports are exacerbating the situation and creating unpredictable operating conditions for many Canadian companies.

The U.S. has imposed tariffs on most Canadian softwood lumber products since 2017. Currently, most Canadian companies are subject to a combined tariff rate of 8.59%. However, the U.S. continually adjusts tariff rates as part of its annual reviews, known as administrative reviews. This results in an unpredictable trading environment for the Canadian industry and in billions of dollars in unfairly collected duties.

[English]

These unfair U.S. duties also impact U.S. consumers, retailers and builders, who rely upon quality Canadian lumber to build American homes. These additional costs are particularly concerning now, at a time when inflationary pressures and high interest rates have already exacerbated housing affordability issues. Canadian softwood lumber products are critical to addressing U.S. production shortfalls and housing affordability. To put this into perspective, in 2021 U.S. producers supplied only about 70% of the U.S. demand for lumber—roughly 35 billion board feet—leaving a 30% shortfall, a gap that was largely filled with Canadian lumber products.

This sentiment has been conveyed frequently by the Prime Minister, by Minister Ng and by Ambassador Hillman when speaking with President Biden and his administration regarding the softwood lumber dispute.

Canada has repeatedly conveyed to the United States that we are ready to enter into meaningful conversations about realistic solutions that would be acceptable to both sides. A negotiated resolution to this dispute is in both parties' best interests. Unfortunately, we have yet to see a willingness on the part of the United States to engage in meaningful discussions.

The Government of Canada will continue to raise softwood lumber at every possible opportunity until this is resolved. We also will continue to work closely with partners across the industry and all provinces and territories to coordinate and maintain a team Canada approach to resolving the dispute.

[Translation]

To that end, Minister Ng continues to communicate regularly with partners and stakeholders across the country who are concerned about accessing the U.S. market. For example, on March 9, Minister Ng hosted a round-table discussion with stakeholders to hear their perspectives on industry trends and the impact of the softwood lumber dispute on their businesses and workforces.

[English]

In addition to our engagement with U.S. and Canadian partners, we are vigorously defending our interests through litigation under chapter 19 of NAFTA and chapter 10 of CUSMA and at the WTO. In total, Canada is currently pursuing 10 legal challenges along with other Canadian parties, including the softwood industry itself. Most recently, we established two different panels under NAFTA's chapter 19 to hear Canada's challenges regarding U.S. countervailing duty and anti-dumping duty orders, and we expect initial decisions in late 2023 or early 2024.

However, our legal challenges have not proceeded as quickly as we would hope. The timely adjudication of Canada's legal challenges before fair and impartial panels is a priority for the Government of Canada, and we are working closely with U.S. officials to ensure that our cases proceed swiftly. As in the past, we are confident that impartial panels will side with Canada and tangibly demonstrate that U.S. duties are unfair and unwarranted.

As I mentioned earlier, a negotiated solution continues to be in the best interests of both countries.

[Translation]

The Government of Canada continues to support the forestry sector, including by encouraging market diversification, supporting sustainable forest management, and promoting the role of the forestry sector in the fight against climate change.

At the same time, we will continue our ambitious agenda of legal challenges to defend Canada's interests. Successful legal challenge outcomes will strengthen Canada's negotiating position.

In the past, U.S. allegations have been judged to be unfounded, and we believe that this will again be the case.

Thank you for this opportunity to talk about the important work we are doing to advance the interests of the Canadian softwood lumber industry. I would be pleased to answer any questions you may have.

Thank you.

● (1640)

[English]

The Vice-Chair (Mr. Kyle Seeback): Thank you, Mr. Fowler.

We'll proceed to our first round of questions.

Mr. Hoback, you have six minutes.

Mr. Randy Hoback (Prince Albert, CPC): Thank you, Mr. Chair.

Thank you, gentlemen, for being here this afternoon.

Mr. Fowler, I feel for you today. You're defending something that is tough to defend, and you're put in a bad spot. There's no question about it.

You mentioned, in your comments that the minister's been meeting commonly with the industry stakeholders, yet when we talk to the industry stakeholders, they say the total opposite. They say she met with them on March 9, which is correct, but they actually met a year earlier, when she requested the industry get together and put forward a name for them to work with, and with the ministry and minister down in the U.S. The name was David MacNaughton.

What happened in that year? Why did that not happen? Industry put the name forward. They did everything the minister wanted them to do, and then it just went silent. Can you explain what happened and why she decided not to conclude? Was there advice given from the department not to move forward?

Mr. Aaron Fowler: Thank you very much, Mr. Chair, for the question.

Minister Ng held a round table, as I mentioned, on March 9 of this year—

Mr. Randy Hoback: Actually, it was just in time for the Biden visit.

Mr. Aaron Fowler: —and she also held round tables with a similar group of companies in 2021 and again in 2022. As you can appreciate, ministerial engagement is only one avenue by which the department and the Government of Canada engage with this sector on this important file.

Mr. Randy Hoback: Would it have then been the department's fault for not taking the association members' person, Mr. MacNaughton, and forwarding it through, or is it the minister's fault this didn't happen?

Mr. Aaron Fowler: The decision of whether or not to appoint a representative or an envoy on softwood lumber involves various considerations. There have been times in the past—this is a dispute that goes back to 1982—when we named an envoy to work with a counterpart in the United States. We've had mixed success with those approaches in the past.

Mr. Randy Hoback: Again, with a name like Mr. MacNaughton.... He was so close the last time, when he was the ambassador down there. At the last minute, it didn't happen, but he was very close. Here is somebody who knew the industry and the U.S. He checked all the boxes, as far as they were concerned. They were happy with him, yet somehow, for some reason, either between the minister's or your office, it didn't happen.

I guess they want to know why.

Mr. Aaron Fowler: Thank you again, Mr. Chair, for the question.

As I said, there are various considerations that go into whether or when to appoint an envoy and who that envoy should be. I don't think anybody questions the expertise of the former ambassador—

Mr. Randy Hoback: Can you table the considerations that would be in the matrix used to make that decision so we can look at those?

Mr. Aaron Fowler: In the past when we have used an envoy, there has typically been either the prospect for imminent or ongoing negotiations with the United States—

Mr. Randy Hoback: Then, at the time, there were no negotiations with the U.S. and no hope of having a negotiation, so you felt it just wasn't worth putting the effort in. Is that what you're saying?

Mr. Aaron Fowler: I appreciate that you would like an answer to the questions you are asking, but if you would like me to answer the questions you're asking, then I'll need a couple of seconds to do that.

There are no ongoing negotiations with the United States on softwood lumber. There are regular engagements and discussions but no formal negotiations. The United States has made public statements to suggest they're open to these negotiations, but, in reality, we've seen nothing to suggest that the United States is open to negotiating a settlement on softwood lumber at this time.

Mr. Randy Hoback: Thank you, Mr. Fowler. I'll keep going here.

We got roughly \$7.5 billion to \$8 billion in tariffs collected by the U.S.

Is the government willing to backstop that money for the producers who are out that money? Is the government willing to say, "We'll make you whole"? Last time we settled at 75%. Are we willing to take 75% of that \$8 billion and give it to our producers now? They're really hurting and they could use the cash. Lumber prices used to be around \$1,200 to \$1,600 or \$1,000 a board foot. Now they're sitting around \$300 a board foot.

Have there been talks in the industry about how the government could actually come in and prepay in lieu of collecting that tariff once you do negotiate a settlement?

• (1645)

Mr. Aaron Fowler: Thank you very much, Mr. Chair, for the question.

The government has provided and continues to provide support to the softwood lumber industry in a variety of ways and through a variety of programs.

Mr. Randy Hoback: In the budget, there is nothing there. There used to be \$51 million.

I remembered when this happened that we had roughly \$750 million committed to the industry. Has all that money been spent, or is there still money to be doled out, for lack of a better word, to support the sector?

Mr. Aaron Fowler: On the specific amount you mentioned, I just want to confirm that you were referring to the softwood lumber action plan that was announced in 2017.

Mr. Randy Hoback: That's correct. That was the first one.

Mr. Aaron Fowler: That's a program administered by the Department of Natural Resources, so in terms of the funds that have been dispensed and what may remain, I would have to check with the officials from NRCan. That's not something that I know.

Mr. Randy Hoback: Can I ask you to do that and file it with the committee afterwards?

Mr. Aaron Fowler: Absolutely.

Mr. Randy Hoback: In terms of this budget then, did the department...or would that be Natural Resources that would have set aside the \$50 million going forward? The minister is taking credit for it. The minister's talking about it. It's about diversification. It's about greening the industry. She's the one talking about it, not the Minister of Natural Resources, so I'm kind of curious.

Do you have control of those funds or does Natural Resources?

Mr. Aaron Fowler: There are programs administered by NRCan that support the forest sector. There are programs administered by Global Affairs Canada that benefit, in part, the forest sector. We have to be careful in the design and delivery of programs, because if we were, for example, simply to pay those duties on behalf of the industry, that payment would be captured in the next administrative review by the United States, and it would result simply in higher duty rates going forward.

Mr. Randy Hoback: It might; it might not. It's actually their money. You're actually just giving it back to them and collecting it from the U.S. government. It's not adding more—

The Vice-Chair (Mr. Kyle Seeback): Mr. Hoback, I'm sorry but you're out of time.

Mr. Randy Hoback: Thank you, Mr. Fowler.

The Vice-Chair (Mr. Kyle Seeback): We now turn to Mr. Virani for six minutes.

Mr. Arif Virani (Parkdale—High Park, Lib.): Thank you very much, Mr. Chair.

I believe Mr. Hoback was referred to as “Mr. Chair” a couple of times erroneously. There were some retrospective points, but the chair is on Zoom.

Thank you to the officials for being here. It's important to have you here, and we appreciate it.

I want to take you back to some of the chronology you outlined. The President of the United States was here about two months ago, and you indicated that the issue of softwood lumber was raised by both the Prime Minister and Minister Ng.

Is that correct, Mr. Fowler?

Mr. Aaron Fowler: It is.

Mr. Arif Virani: Without breaching any confidences, but as well as you can, can you tell us a bit about the President's response to the fact that it was raised? Did he provide any sort of justification for the imposition of duties or explain the American position in any way that could shed light on what's transpiring?

Mr. Aaron Fowler: Thank you very much.

I am aware of who's chairing. I was instructed to direct my answers through the chair, so I will do that again this time.

I thank the member for the question. Obviously that was a private conversation. I'm not privy to the nature of the discussion.

When we raise these issues, including at very senior levels with the United States, typically they acknowledge that this is an important issue for Canada. It's one they're prepared to work on with us, but they require a level of support for any direction that the U.S. government may want to take that would be supported by their softwood lumber industry, represented by the U.S. Lumber Coalition or the Coalition for Fair Lumber Imports.

At this point in time, there does not appear to be support within the U.S. industry to negotiate a long-lasting settlement, and I would presume that was the nature of the discussion that leaders held.

Mr. Arif Virani: Okay.

You mentioned Minister Ng convening a round table on March 9 of this year. In response to Mr. Hoback, you also mentioned that similar round tables were held in 2022 and 2021.

Can you tell me the composition of those round tables? We hear sometimes from a regional perspective, with respect to Quebec, sometimes with B.C.... Is it an amalgamation of entities from around the country that have a stake in issues that relate to softwood lumber and exporting to the United States?

Mr. Aaron Fowler: It is a representative cross-section of entities.

I would ask my colleague Mr. Cannon to reply in more detail.

Mr. Arif Virani: Okay.

Go ahead, Mr. Cannon.

Mr. Michael Cannon (Director, Softwood Lumber Division, Department of Foreign Affairs, Trade and Development): Thank you for the question.

As Mr. Fowler mentioned, Minister Ng has held a number of round table discussions with representatives of the Canadian softwood lumber sector over the past few years, most recently in March.

I would say that the composition of those meetings is always intended to ensure that the broad range of interests from the Canadian forestry sector are represented as much as possible—without having an unwieldy number of people around the table—from companies, industry associations, indigenous partners and all of the major lumber-producing provinces in Canada.

• (1650)

Mr. Arif Virani: Okay.

Mr. Fowler, you also raised a series of litigations, which got my interest as a former litigator. I was particularly concerned that you said—and I understand this from previous information I've seen—we've been successful repeatedly when things have been litigated. I think you mentioned that there are as many as 10 different pieces of litigation right now. There are specific instances where we're raising this under chapter 19 of NAFTA, chapter 10 of CUSMA and at the WTO.

Can you give us a sense of what you think is impeding the progress of that litigation? I think you said that you anticipate some decisions by the end of this year or early next year.

What is making you more pessimistic about having those results within that time? Is there any way you would suggest that we, as parliamentarians, can work to address or alleviate some of those impediments and push toward a more speedy resolution?

Mr. Aaron Fowler: Again, thank you very much for the question.

There are different things that are impacting the pace of litigation, depending on the form in which that litigation is taking place.

At the WTO, we successfully carried both of our cases, challenging the initial U.S. countervailing duty and anti-dumping orders, through the panel stage. We had a very strong result at the panel stage with respect to the countervailing duty order and a somewhat more mixed result with respect to anti-dumping. However, both of those decisions have been appealed to the appellate body.

There is a lack of quorum at the appellate body in Geneva right now, owing to an ongoing policy by the U.S. administration to block the appointment of new appellate body members. Consequently, it's not possible for Canada to continue to prosecute its cases through the appellate stage at the WTO. That accounts for the delay in moving forward with respect to the multilateral challenges under the WTO.

With respect to the panels that are being established either under NAFTA or CUSMA, that is a question of ensuring that the panelists who are named to these panels are qualified, impartial and in a position to render an objective judgment. We realize that it can be frustrating, but we want to take great care in ensuring that we name and accept panellists who meet these criteria.

As you can imagine, with a dispute that's been going on for 30 years, there are a lot of people in both countries who are familiar with the industry and familiar with the issues, but have already played a role in this that can colour our perception of their impartiality.

With your permission, I might invite my counsel to add to my response.

The Vice-Chair (Mr. Kyle Seeback): We are five seconds over the six minutes, so perhaps they can get to that in a different question.

We'll now turn to Mr. Savard-Tremblay for six minutes.

[*Translation*]

Mr. Simon-Pierre Savard-Tremblay (Saint-Hyacinthe—Bagot, BQ): Thank you, Mr. Chair.

Thank you, gentlemen, for your input and for being here today.

In March 2021, the Minister of International Trade appeared before the committee. We discussed the expanding market opportunities program, which is designed to develop international markets for forestry products. We highlighted the fact that it had served western producers, in British Columbia in particular, much better than eastern producers, in Ontario and Quebec. In 2020, according to figures reported in 2021, three-quarters of the program's funding had been allocated to organizations in British Columbia.

Do you have an update on those numbers to share with us today?

Mr. Aaron Fowler: Thank you very much for your question.

There are various programs that the softwood lumber industry can benefit from. Did you have a specific program in mind when you asked that question?

Mr. Simon-Pierre Savard-Tremblay: Yes. As I mentioned, I was referring to the expanding market opportunities program.

Here's a quick recap. In 2021, it was reported that, in 2020, three-quarters of the funding went to organizations in B.C., at the expense of companies in eastern Canada.

Do you have up-to-date numbers?

Mr. Aaron Fowler: I do not have the details on where the funds were spent by province. However, I can provide you with information for British Columbia.

• (1655)

Mr. Simon-Pierre Savard-Tremblay: Yes, I would like you to provide the committee with the most up-to-date information on that.

I have another question for you.

In 2022, we did a study on Canada's relationship with the United States. There was a component on softwood lumber. I believe you appeared before the committee, but I'm not sure.

The report recommended that the government give priority to the objective of returning the amounts of anti-dumping and countervailing duties that had been collected by the United States to the producers who had paid them.

Have the amounts of duties collected by the United States been returned to the producers, or are they in the process of being returned?

Could you also inform the committee of the status of this matter?

[*English*]

Mr. Aaron Fowler: Thank you very much for the question.

Duty amounts that have been collected by the United States to date continue to be held by the U.S. government. Our litigation strategy is focused on achieving litigation victories that will ultimately result in the full refund of those unjustified and unwarranted duties to the Canadian industry, but as I mentioned, our litigation strategy continues to move forward not as quickly as we would hope.

[*Translation*]

Mr. Simon-Pierre Savard-Tremblay: Are the amounts of duties collected by the United States in the process of being reimbursed? Have they already been reimbursed? What is the status?

Can you summarize the situation?

[*English*]

Mr. Aaron Fowler: If I've understood the question, there has been no money refunded by the United States government to date.

[*Translation*]

Mr. Simon-Pierre Savard-Tremblay: That's fine. Thank you.

The Canada-U.S. Softwood Lumber Agreement, which came into being in 2016, after the previous agreement expired, has now expired.

The Standing Committee on International Trade, in its report following its study, made the following recommendation:

That, on a priority basis and as soon as possible, the Government of Canada establish the parameters of a new softwood lumber agreement with its American counterpart.

What has prevented the negotiation of a new agreement?

For example, there were the trade negotiations leading to the Canada-U.S.-Mexico Agreement, or CUSMA.

Why didn't the government use that opportunity to tackle this issue head-on, since we knew all the irritants?

Mr. Aaron Fowler: Thank you for your question.

The short answer is that it takes two to tango. Right now, we don't have a dance partner on the U.S. side. The United States is not willing to engage with us to find a long-term solution. That's why, so far, there is no agreement in place.

Mr. Simon-Pierre Savard-Tremblay: I understand that there's no agreement in place now. However, in 2016, an agreement had just expired. That means it was possible, at one point, to reach an agreement. We could debate the agreement, because we don't all agree here, across the political parties, on how good it was. Nevertheless, there was an agreement. There was an openness and a dialogue in that regard.

Why didn't you move right away in 2016 to open the dialogue back up, to prevent another crisis?

[English]

Mr. Aaron Fowler: Thank you for the question.

I was in the chair that Michael occupies when the last agreement was coming to an end in 2016. I can tell you, because I was involved in those discussions, that we tried very hard to renew and to extend that agreement, and when the agreement could not be extended, to renew it, and when that could not be done, to put in place a new agreement that would result in a continued managed trade situation with the United States with no gap and no reimposition of U.S. trade remedy duties.

We engaged with officials of the Obama administration, and then, following the entry into the White House of the Trump administration, we engaged with Trump administration officials. Under both governments in the United States, there was no appetite to extend, renew or negotiate a new softwood lumber agreement in 2016 or 2017, and that has continued to be the case until today.

[Translation]

Mr. Simon-Pierre Savard-Tremblay: Mr. Chair, before I continue, could you tell me how much time I have left?

[English]

The Vice-Chair (Mr. Kyle Seeback): You have 10 seconds.

[Translation]

Mr. Simon-Pierre Savard-Tremblay: Ten seconds isn't enough time to ask you another question. It will have to wait until the next round.

Thank you for your answers.

[English]

The Vice-Chair (Mr. Kyle Seeback): Thank you very much, Mr. Savard-Tremblay.

We'll now go to Mr. Cannings for six minutes.

Mr. Richard Cannings (South Okanagan—West Kootenay, NDP): Thank you.

Thanks to the witnesses for being here today.

I want to get some clarification on some of the answers.

From what I understand, a victory in litigation would be the return of the fees, fines and tariffs that have already been collected, whereas a victory in negotiations would be a long-term settlement of this dispute. Is that how it's best framed?

• (1700)

Mr. Aaron Fowler: Thank you for the question.

I think that's a fair characterization, but I would also say these two elements of the Canadian strategy are linked. We know from past practice that, as Canada enjoys success on the litigation front, the appetite in the United States—including among U.S. industries—to come to the table to negotiate a long-term solution increases.

The litigation strategy is itself a fundamental part of Canada's long-term negotiation strategy.

Mr. Richard Cannings: You said there are two panels under chapter 19 of NAFTA that are in place now. You haven't named the members of those panels, I understand.

What aspects of the dispute are they looking into?

Mr. Aaron Fowler: Thank you for the question. I'm sorry if I wasn't clear.

The NAFTA panels have been established and the panellists have been named. We anticipate that those panels will issue their judgments either late this year or early next year. The panels will look at the initial U.S. countervailing duty order and anti-dumping order, both of which occurred when the NAFTA was still in.

Mr. Richard Cannings: The chapter 10 CUSMA...those are later, because CUSMA came into force in the midst of all this. What will they be looking at later? Decisions by the United States...?

Mr. Aaron Fowler: Yes, that's it exactly. Chapter 10 of CUSMA is effectively the same as chapter 19 of NAFTA.

Every year, the United States will do an administrative review of both the anti-dumping and countervailing duty orders. When those reviews are complete, that becomes, itself, a new element of U.S. action that can be challenged. Those orders that came into force after CUSMA took effect would be challenged under CUSMA chapter 10, rather than NAFTA chapter 19.

I will invite my colleague, Mr. Owen, to correct me if there's anything that I've said wrong.

Mr. Michael Owen (General Counsel and Executive Director, Trade Law Bureau, Department of Foreign Affairs, Trade and Development): I think you said it very well.

Mr. Richard Cannings: Mr. Hoback mentioned that prices are low now. Certainly, mills and companies in my riding and throughout British Columbia are suffering because of those low prices. A lot of them are producing lumber and trying to sell it below cost. When they sell it at those low prices, from what I understand.... The vicious circle of it all is that the anti-dumping fees go up. When the companies aren't getting enough pay for their products in the States, because of low prices, they are also forced to pay more tariffs.

Is that a fair statement? I know there might be a time lag, but I'm just wondering how that works.

Mr. Aaron Fowler: I'll defer this one to my colleague, if that's okay.

Mr. Michael Owen: The anti-dumping duties in force in the current administrative reviews are a weighted average of the two largest softwood lumber producers' anti-dumping duty rates: Canfor and West Fraser. A weight average of their company-specific rates is taken, and that is applied as what's called an "all others" rate. The dumping duties that are paid currently would be an average of those two companies' dumping rates.

What you're getting at, though—to answer the question a bit more directly—is true. Generally, when market conditions are a bit poorer, dumping duties can go up, but they're ultimately determined by the commercial decisions and pricing of those two companies I mentioned just a few minutes ago.

Mr. Richard Cannings: I think I will finish with a question. In a couple of weeks, this committee is going to be travelling to Washington D.C. to talk about a number of issues, but softwood lumber will certainly be on our minds.

Do you have any advice as to how we might try to make some progress, or understand better what is causing this incredible delay in solving this issue that's so important to all of the country?

• (1705)

Mr. Aaron Fowler: I appreciate that question very much.

I think if you continue to reiterate Canada's interest in finding a solution, continue to reiterate the economic importance of this sector to Canada and continue to highlight the unfortunate costs and consequences to U.S. consumers at a time of high and increasing housing prices already, it would go some way to reinforcing the messaging.

We also have allies in the United States, such as the National Association of Home Builders, housing affordability groups and others, who I'm sure would be very happy to hear your perspectives and those of the committee.

Mr. Richard Cannings: Yes. We'll be talking to them.

The Vice-Chair (Mr. Kyle Seebach): Thank you very much, Mr. Cannings.

We will now start the second round and go to Mr. Carrie for five minutes.

Mr. Colin Carrie (Oshawa, CPC): Thank you, Mr. Chair.

It's important. Mr. Virani brought up the chronology. I remember in 2006, I was the parliamentary secretary for industry in the Harper government. We got an agreement. I'm glad you were there near the end.

We then had the original TPP, which people forget was the original NAFTA renegotiation. It was Mr. Obama's deal. It was an all-in deal. Our Prime Minister walked away from it and aggravated a lot of our trading partners. I worried about that at the time.

However, there was some news that seemed to be positive on March 10, 2016. I would like to read with you an article from Reuters:

The ongoing U.S.-Canadian trade "irritant" over softwood lumber is expected to be resolved soon, both countries leaders said on Thursday regarding the years-long fight over pine and other such soft wood.

U.S. President Barack Obama and Canadian Prime Minister Justin Trudeau, speaking at a joint press conference, said the issue came up at their meeting at the White House but that negotiations were ongoing.

I want to come back to that. The article continues:

"I'm confident that we are on a track towards resolving this irritant in the coming weeks and month," Trudeau said of the trade dispute, which stems from an expired 2006 softwood lumber export agreement.

Obama added: "This issue of softwood lumber will get resolved in some fashion.... It's been a longstanding, bipartisan irritant...."

That was in 2016. Negotiations were ongoing. Mr. Obama and Trudeau instructed Michael Froman, whom you may remember, and Chrystia Freeland to avoid another protracted dispute over softwood lumber and report back within 100 days.

Are you aware of what the results were of those meetings with Mr. Froman and Madam Freeland? Did they meet?

Mr. Aaron Fowler: Yes. They met on a number of occasions.

Mr. Colin Carrie: What were the results of those meetings? Were there negotiations, or were there just talks?

Mr. Aaron Fowler: There were negotiations. In March 2016, the 2006 SLA was still in place and still operating.

The nature of the discussions at that time was related to either a renewal or an extension of the agreement that was already in place.

Those negotiations continued and incorporated elements related to the possible negotiation and structure of a new agreement that would have different aspects to it, up until the point the United States reimposed duties on Canadian softwood lumber exports in 2017. At that point, negotiations concluded and the litigation phase of Canada's strategy to manage this file began, although we have always been very clear that we remained poised and ready to negotiate with the United States at any time.

Mr. Colin Carrie: Basically, they fell apart, unfortunately, at that time.

In June 2016, there was a suggestion from industry, way back when, that the two countries could appoint a mediator. Do you know if there was any discussion back then, or if there were any names brought forward? We know Mr. MacNaughton was.... That name was brought out in March this year.

Were there any other names brought forward? What were the results, and why was a decision made not to appoint somebody who could help in the mediation, or at least get the issue resolved, because it has been since 2016?

Mr. Aaron Fowler: On that particular one, I would have to go back and check the records as to who may or may not have been suggested as a possible mediator in 2016. It has been some time, as you can appreciate.

As a general rule, I think we would be hesitant to accept a binding mediation type of approach. We want to ensure that any deal we sign is a good deal that has the support of the softwood lumber industry, not just the major producers. It should be a deal that reflects and protects the interests of producers all across the country, because it is a very different industry in different regions of Canada.

There are risks, I think, to a mediator-led approach, although as I recall, it was discussed at that time.

Mr. Colin Carrie: It seems right now that there's a housing shortage, and it appears on both sides of the border. Both governments want to get homes built, and as you mentioned, there are associations in the United States that actually are on our side. They want to get Canadian lumber there. It seems like everybody's at the table, except the government isn't even able to open a negotiation.

What associations has the minister engaged with in the United States? What meetings has she had in order to engage American stakeholders to help Canada in resolving this issue that's outstanding?

• (1710)

Mr. Aaron Fowler: I would have to come back to you with an exhaustive list of the groups with whom the Minister of International Trade has met in the United States. We do meet regularly at the ministerial and officials level with the NAHB and with other groups. We've also held meetings directly with representatives of the U.S. softwood lumber coalition in the past.

I think it is really important to understand, if you want to appreciate the dynamics around the negotiation of the deal, the role that the U.S. Lumber Coalition plays in all of this, because a long-term deal requires them to suspend the constitutional rights that they have to petition the U.S. government for a redress of unfair trade practices. If they are not prepared to suspend their constitutional right to petition the government, then there would not be much value in a long-term deal because it could be undone through a petition on behalf of the U.S. industry at any point in time. Their buy-in really is critical to putting anything in place for any lengthy period of time.

Mr. Colin Carrie: I do know that it is possible. We've had agreements in the past, and it's just very frustrating for industry to see how long it is.

The Vice-Chair (Mr. Kyle Seeback): Mr. Carrie, you're unfortunately over time.

Mr. Colin Carrie: If you could table those meetings, that would be great.

The Vice-Chair (Mr. Kyle Seeback): Great. I think that got on the record.

We have Mr. Arya for five minutes.

Mr. Chandra Arya (Nepean, Lib.): Thank you, Mr. Chair.

I would like to give the opportunity to Mr. Michael Owen to respond to my colleague Arif Virani's question on what is impeding the litigation from proceeding.

Mr. Michael Owen: Thank you.

As Mr. Fowler was explaining before, we have litigation in two different fora: the WTO, and before NAFTA and CUSMA panels.

With respect to the WTO, the appellate body impasse, which we've all been working to try to resolve, has essentially meant that any case that is pending appeal cannot be considered anymore. It's not moving forward in the WTO dispute settlement system.

With respect to NAFTA and CUSMA panels, under chapter 19 and chapter 10, that's essentially a system that is set up where the NAFTA or CUSMA panel steps into the role of the Court of International Trade, which is a court of first instance in the United States, that considers whether or not the imposition of duties is in accordance with U.S. law.

In that context, we've had delays and problems with the nomination of panellists, and we are committed to working with the United States to ensure the panellists are impartial. As Mr. Fowler touched on before, there are very many practitioners in trade in Washington, D.C., but a lot of them have touched softwood lumber. I think one of the issues that we've had is that, when panellists have been put forward, sometimes we've had concerns over their previous involvement in the case.

I hope that helps.

Mr. Chandra Arya: Mr. Chair, I have a question for Mr. Fowler.

Mr. Fowler, you mentioned that discussions are going on, but there's no indication when the negotiations can begin. Hopefully sooner or later the negotiations should start. When the negotiations start, do you expect that Bill C-282, if the bill passes and it becomes legislation, will affect the negotiations?

Mr. Aaron Fowler: Thank you.

No previous round of this dispute and no previous softwood lumber agreement has contained provisions that would in any way implicate the supply-managed sectors, so I can't imagine a scenario where our inability to take commitments with respect to those sectors would have any bearing on the prospects for successful negotiation of a long-term softwood lumber agreement.

Mr. Chandra Arya: Are you suggesting that the U.S. negotiators will not raise the legislation on supply management?

• (1715)

Mr. Aaron Fowler: Thank you for the question.

If the United States has concerns with respect to Bill C-282 or its impact on Canada's ability to engage on issues affecting supply management, it will not wait for the occasion of negotiations on softwood lumber to bring those concerns to our attention.

Mr. Chandra Arya: Okay. Got it.

The softwood lumber exports to the United States, if I'm not wrong, are in the range of \$8 billion to \$10 billion. The exports to other countries, like Japan and China, I think were just around \$300 million last year. We have been signing so many free trade agreements across the world, and not many sectors are taking advantage of all the free trade agreements that we have been signing, except probably the agriculture sector.

Even with this dispute we have with the U.S., why is it that the softwood lumber industry is not exporting to other countries in a much bigger way?

Mr. Aaron Fowler: Thank you for the question. I'll give you a preliminary answer and then ask my colleagues to elaborate.

I think there are a variety of reasons. Other markets are far away. Other markets do not have the history of wood frame construction that is common in North America. Teaching and informing consumers in these countries how to build wood frame construction and how to use softwood lumber in the construction industry takes time. A lot of money and effort over successive governments has been put into market development overseas, outside of North America, to create the conditions where Canadian softwood lumber exports would be more successful in those markets.

I think we've seen benefits from those efforts, but it is a heavy lift. This is not something they are accustomed to using in the same way we do. It requires building codes, educating builders and so on.

Mr. Chandra Arya: I have only a few more seconds, and I want to ask one question on the dispute settlement process—

The Vice-Chair (Mr. Kyle Seeback): Unfortunately, Mr. Arya, you're over time. We're at five minutes and 20 seconds.

Mr. Chandra Arya: Okay.

The Vice-Chair (Mr. Kyle Seeback): We'll go to Mr. Savard-Tremblay now for two and a half minutes.

[*Translation*]

Mr. Simon-Pierre Savard-Tremblay: Thank you.

Earlier, you were talking about the lack of appetite on the American side. We know that there is a housing crisis in the United States, where costs are skyrocketing. However, the Association for Neighborhood & Housing Development, or ANHD, is opposed to

punitive tariffs, because obviously it would like to be able to get its hands on these products and our wood.

Is there any possible leverage there? Do you have any contact with the association? Is it able to lobby the politicians at all?

[*English*]

Mr. Aaron Fowler: Thank you for the question.

Yes, we have excellent contacts with the NAHB. We've worked with them over successive rounds of this dispute going back many years. They do strongly support the Canadian view. They understand the importance of access to Canadian softwood lumber to support the efforts of their members and to ensure affordability for housing in the United States.

Unfortunately, it is not the construction industry that is bringing these trade actions to the Department of Commerce. It is the softwood lumber industry in the United States that is petitioning for trade action. We can have allies, but we need to have more than just allies on the construction side in order to move the needle on this file.

[*Translation*]

Mr. Simon-Pierre Savard-Tremblay: That is the other question I wanted to ask you.

You've probably done some research on groups, in other sectors than construction, that could help lobby U.S. policy-makers.

What sectors could you turn to, in that case?

[*English*]

Mr. Aaron Fowler: Again, thank you for the question.

You can imagine that anybody who uses softwood lumber in the United States has an interest in ensuring the affordability of the softwood lumber they use. In addition to the home builders, we have worked in the past with big-box retailers, such as Home Depot, to ensure that they have an adequacy of supply of softwood lumber. We've worked with advocacy groups in the United States who advocate for affordable housing. We've worked at the state level with allies in some cases. It's a mixed bag, but the NAHB has been there for a long time and works very closely with us.

[*Translation*]

Mr. Simon-Pierre Savard-Tremblay: You talk to them—but they, in turn, have to talk to the U.S. policy-makers. What do they tell you after meeting with those policy-makers?

Mr. Aaron Fowler: They have allies in Washington, but so does the American softwood lumber industry.

• (1720)

[English]

The Vice-Chair (Mr. Kyle Seeback): We'll go now to Mr. Cannings for two and a half minutes.

Mr. Richard Cannings: I'd like to get back to the WTO question and the lack of quorum at the appellate body. I'm just wondering if you could provide some information on where that is right now.

What are the prospects of the Biden administration stepping in and actually fixing this? What's the general view in Washington about the WTO?

Mr. Aaron Fowler: I think I'll defer to Mr. Owen on this, in the first instance.

Mr. Michael Owen: With respect to WTO dispute settlement reform, there are active negotiations ongoing in Geneva to try to reform the system. The genesis of this was the 12th WTO ministerial conference, where members agreed, including the United States, that they would work towards the restoration of a fully functioning WTO dispute settlement system by 2024. I think many of the members would like to see that happen at the next WTO ministerial conference, which is in February 2024, although I think the U.S. views it as perhaps longer than that.

Currently, we're in the third phase of negotiations. The U.S. set up a framework for these discussions. They're led at the legal adviser level in Geneva. I work with my counterpart in Geneva on these negotiations. They've come to a point where there are 12 core interests that are being discussed. One of them is the U.S.'s concerns over the WTO appellate body, which the U.S. has criticized quite extensively in the past. We're now at the solutions phase, which is being led by a facilitator in Geneva. We're actively putting forward proposals with other like-minded countries, including the European Union, Brazil, Japan and others. We work very closely with them to try to put forward a position that will restore effective, impartial adjudication at the WTO.

I hope that helps.

Mr. Richard Cannings: Just to clarify, is the the lack of quorum directly related to these reform issues that are ongoing?

Mr. Michael Owen: Yes, that's right. If a dispute is appealed to the appellate body, it essentially, we are calling it, is appealing into the void. The dispute effectively goes nowhere because there is no appellate body.

There is a group of countries, including Canada, that are party to the multi-party interim appeal arrangement, which is a workaround, but not all countries are party to that and, not surprisingly, the United States is not party to that.

While you can proceed with dispute settlement—and there have been a couple of cases now—through the MPIA, and you can proceed through the WTO dispute settlement system, we unfortunately can't in this case.

The Vice-Chair (Mr. Kyle Seeback): We'll now go to Mr. Baldinelli for five minutes.

Mr. Tony Baldinelli (Niagara Falls, CPC): Thank you, Chair.

Thank you to the witnesses for being with us this afternoon.

I just want to follow up on some of the comments and documents that resulted from budget 2023. It was identified there that Global Affairs Canada was to be provided with up to \$51 million over two years to continue supporting Canadian responses to U.S. softwood lumber duties in efforts towards a lumber agreement and reaching one.

As part of that, the government identified five key pillars. The first one was ongoing legal proceedings and defence. In their documents, they talk about how there are currently 10 active legal cases contesting unfair U.S. duties on Canadian softwood lumber. I know that it would take too long here, but would you be able to table for this committee a status update of those 10 cases—the dates that they started and where we stand now?

One of those pillars talks about pursuing a negotiated resolution. It talks about how the department leads efforts to unify region-specific priorities into pan-Canadian positions. Can you provide a status update on that in terms of unifying the region-specific priorities into pan-Canadian positions and how that is working?

They talk about advocacy and how targeted advocacy strategies are deployed. What is the current status of the targeted advocacy strategies being deployed in support of a successful resolution of this dispute? Who are you working with, both in the United States and here, to support that? Can this be costed? How much of the \$51 million is going towards advocacy and programs?

They also talk about Canadian stakeholder engagement and consultations. Is engagement with the interlocutors in developing and negotiating a legal defence position that reflects the views from across the country currently happening?

Finally, there is the administration of export permits. Global Affairs has a legislative mandate to issue permits for exports of softwood lumber and logs. Are you able to share with us how active the verification process is right now, given the mill closures, ongoing duty disputes and forestry sector stakeholders moving operations south of the border?

Hopefully, in terms of some updates on those five key pillars—they were identified in the budget—you could table with this committee that type of information, because it would take more than five minutes to provide these answers. I just wanted to get that into the record. Would you be able to provide some of that?

• (1725)

Mr. Aaron Fowler: I certainly can.

If I may, I'll just take about 30 seconds to say that, for all of this money, none of it is going to programming. For example, none of it is going to, say, an advocacy campaign in the United States. It supports the engagement of officials at Global Affairs Canada to do the things that you described, including to engage in advocacy to support our litigation approach.

There's no particular reason that Global Affairs Canada should have a softwood lumber division. We would hope to eventually reach such a solution that we don't need to have one. The work we do on softwood lumber is not funded through the normal budget allocation of the department, Global Affairs. It's provided periodically through specific budget line items. That is what the \$51 million over two years is. It's intended to support our internal efforts, but we can certainly provide an update along the lines that you've requested on the specific elements.

Mr. Tony Baldinelli: Thank you, Mr. Fowler.

Quickly, going back to the March meeting with the stakeholders and the minister, the name that was brought forward to be an envoy was that of former ambassador David MacNaughton. On that whole notion of appointing joint emissaries, was that topic ever broached with the Americans on their side in asking if they would be willing to do that as well and appoint an envoy? We're talking about appointing someone on our side. Have the Americans rejected it outright?

Mr. Aaron Fowler: The Americans have communicated to us that they're not interested in negotiating at this time, so an envoy whose job would be to focus on advancing the negotiations I would assume falls very much into that category.

Mr. Tony Baldinelli: They just rejected it outright.

Mr. Aaron Fowler: At this point in time....

Mr. Tony Baldinelli: Chair, how much time would I have left?

The Vice-Chair (Mr. Kyle Seeback): You have 10 seconds.

Mr. Tony Baldinelli: I'll cede my 10 seconds.

The Vice-Chair (Mr. Kyle Seeback): We'll go Mr. Sheehan for five minutes.

Mr. Sheehan, you're on mute.

Mr. Arif Virani: I think he was going to cede some of his time to me.

Mr. Sheehan...?

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Yes.

Mr. Arif Virani: Mr. Chair, how much time do I have? I'm conscious that we're coming up to 5:30 p.m.

Are we doing one full round for all of the parties?

The Vice-Chair (Mr. Kyle Seeback): Yes, we'll finish this round. You have about four minutes and 40 seconds.

Mr. Arif Virani: Mr. Fowler, you raised something earlier and I need some clarity on this. I'll also ask Mr. Owen to pipe in.

You started talking about constitutional impediments. I believe you were talking about entities like the National Association of Home Builders, etc. You talked about their having to waive their

right to petition. I was looking up this right to petition under the U.S. Constitution. It's protected under the First Amendment.

Can you flesh out what exactly you're talking about? What is required, or what is impeding entities like the National Association of Home Builders from participating in some of this work we need from them as allies, in order to assist in sorting out this softwood lumber dispute?

Mr. Aaron Fowler: I'll invite Mr. Owen to speak to this.

Mr. Michael Owen: I believe my colleague misspoke slightly. It's a U.S. statutory right that exists under the Tariff Act of 1930. Any U.S. industry has the right to petition the U.S. government—the U.S. Department of Commerce, in particular, and the U.S. International Trade Commission—to investigate unfair trade practices that include alleged subsidization and dumping. They have that legal right under U.S. law. That's something of a foundation stone, if you will, or a touchstone of U.S. trade policy. In order for us to conclude the 2006 softwood lumber agreement, one thing the U.S. Lumber Coalition had to do was have a substantial majority of its members essentially waive that statutory right to start a new petition.

We could reach an agreement, but if they have a right to start a new series of investigations the next day, that wouldn't do anyone any good. They have to waive that right as part of the agreement, which is what gives them such influence over the potential start of negotiations.

• (1730)

Mr. Arif Virani: Okay. The entity we're talking about is actually on the lumber side, not the home builders side. That's one. When the agreement was reached in 2006, which endured for approximately 10 years.... Did they waive that right successfully in 2006 to allow that agreement to take place?

Mr. Michael Owen: Yes, that's right. The U.S. industry, at that time.... After a series of litigation losses, we essentially reached an agreement with them. It endured up to about 2013, and then it was extended for two years after that as well.

Mr. Arif Virani: Okay. This is starting to become clearer to me.

You're hoping the litigation strategy again informs the same sort of movement in the same direction: Win some litigation and hopefully compel them to waive their rights yet again, so we can reach another agreement. However, we're now in this chicken-and-egg situation because these appellate bodies—specifically, the WTO one—have not been constituted, and the United States is stonewalling on reconstituting it.

Is that fair?

Mr. Aaron Fowler: I think that's a fairly good encapsulation of the general approach we're taking, but I would say it's our litigation across all the fora—not just the WTO—we'd like to see move forward to support that approach.

Mr. Arif Virani: At one point, you said there's a problem with the WTO body. Does the issue about not finding decision-makers apply equally to NAFTA and CUSMA, or are there decision-makers in place for NAFTA and not for CUSMA?

Could you clarify that?

Mr. Michael Owen: On a point of clarification, when they moved NAFTA chapter 19 into the new CUSMA agreement, it became CUSMA chapter 10. When you're talking about one.... It's the exact same thing.

Yes, we have constituted NAFTA panels right now. The first panel is going to hold its first hearing in early June. That's the anti-dumping panel. The countervailing duty panel will hold a hearing at the end of September. We have started constituting the CUSMA panels for the first administrative review. We have a partially constituted panel, and we're currently in discussions with the U.S. on that.

Mr. Arif Virani: Mr. Cannings took you through a bit of WTO reform. Obviously, we have the Ottawa Group administering and actually leading on WTO reform.

Has this issue about the appellate bodies been raised in that venue, in particular? If it has been, has there been any traction on the issue of constituting appellate bodies?

Mr. Aaron Fowler: Thank you for the question.

Yes, the Ottawa Group is focused on different aspects of WTO reform and modernization to improve the operation of that institution and ensure it continues to be relevant and at the centre of global trade policy.

The appellate body impasse is obviously a very big issue. Underpinning it is U.S. interest in reform of that particular aspect of the institution. The Ottawa Group has discussed modernization and reform specifically related to the DSB in at least some of its meetings.

Mr. Arif Virani: Thank you.

The Vice-Chair (Mr. Kyle Seeback): That's your time.

I'm going to ask my colleagues to indulge me. With the chair's prerogative, I want to ask two quick questions.

Mr. Fowler, have softwood lumber disputes with the United States ever been resolved through litigation, whether it's at the WTO or under NAFTA, or has it always been a political solution?

Mr. Aaron Fowler: Thank you for the question.

With the first lumber dispute in 1982, Canada prevailed, but it prevailed at the stage of the investigation, so no duties were ultimately put in place by the United States. Subsequent rounds of the dispute have always been a combination of litigation and a negotiated agreement that managed trade between Canada and the U.S. in the softwood lumber sector for a period of time.

The Vice-Chair (Mr. Kyle Seeback): Ultimately, it was an agreement between the countries. It wasn't that the litigation resulted in the United States just giving up and then there was a negotiated solution that took place.

• (1735)

Mr. Aaron Fowler: We won Softwood Lumber I, but it wasn't international trade litigation. We were appearing before the U.S. Department of Commerce and the U.S. International Trade Commission.

The Vice-Chair (Mr. Kyle Seeback): Softwood Lumber IV and all the other ones resulted with a direct agreement between Canada and the United States. Is that correct?

Mr. Aaron Fowler: Yes.

The Vice-Chair (Mr. Kyle Seeback): There was a negotiated settlement.

Mr. Aaron Fowler: That is correct.

The Vice-Chair (Mr. Kyle Seeback): I think Softwood Lumber IV was from 2002 to 2006. That's how long the dispute lasted. Is that correct?

Mr. Aaron Fowler: My colleague is telling me it was 2001. Yes, at that point, we put the agreement in place that remained in force until 2016.

The Vice-Chair (Mr. Kyle Seeback): Softwood Lumber V is 2016 to 2023-plus.

Mr. Aaron Fowler: That's TBD.

The Vice-Chair (Mr. Kyle Seeback): That's great. Thanks very much.

Thanks to all the witnesses for coming today. We appreciate your testimony.

I will adjourn the meeting with the consent of the committee.

Some hon. members: Agreed.

The Chair: The meeting is adjourned.

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