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Tuesday, March 22, 2011

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Chair

Mr. Lee Richardson

Standing Committee on International Trade

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•(0925)

[English]

The Chair (Mr. Lee Richardson (Calgary Centre, CPC)): We are no longer in camera, and we are proceeding with the motion by Mr. Julian on the AbitibiBowater settlement.

Mr. Julian, would you like to move your motion?

Mr. Peter Julian (Burnaby—New Westminster, NDP): Certainly, Mr. Chair, and thank you for your explanation on motion 1. Of course, given your wisdom and the spirit of collaboration and camaraderie you have developed in the committee, I'm pleased to withdraw motion 1 rather than enter into debate.

Mr. Holder suggested I withdraw both motions, but that's taking collaboration just a little too far, Mr. Holder.

I will be moving motion 2.

The Chair: Okay, read it into the record and we'll proceed.

Mr. Peter Julian: I move:

That the Standing Committee on International Trade recommend that Canada declare a reservation from Chapter 11 of the North American Free Trade Agreement (NAFTA) for all measures concerning water, including water in its natural state and as a public trust and that this be reported to the House.

[Translation]

Mr. Chair, that's my motion, and I would like to take a few minutes to talk about it.

First of all, the committee has already recognized the importance of declaring a reservation in terms of water. That was done in 2007, when the Bloc Québécois introduced a motion before the committee. The committee then passed the motion and the committee's report was sent to the House of Commons. And, Mr. Chair, as you well know, the House of Commons unanimously passed the Bloc Québécois motion. So, this committee has already said in the past that it was important to declare a reservation from chapter 11, for all measures concerning water.

[English]

Given the committee's history and the fact that on June 4, 2007, we had a clear vote from the House of Commons, with Liberals, Bloc, and NDP voting in favour of the motion that came out of the committee report from the international trade committee in this regard, I am hoping we can get unanimous support for the motion today.

I'm not going to take too much time, but I think it's important to bring forward some of the arguments. All committee members have heard some of the comments from the AbitibiBowater hearings a few

weeks ago. The witnesses were very clear in raising the importance of this issue.

I want to take the time to read a speech by Navdeep Bains, who is the member for Mississauga—Brampton South. He was the Liberal trade critic at the time. He spoke in the House of Commons on Thursday, May 31, 2007. This is what he said about the very same motion that was adopted by the committee in 2007. He said that he was supporting it. The Liberal Party, as you know, did support the motion. He said the following:

“Whereas Canada's water resources must be protected;

“Whereas a simple agreement by exchange of letters among the governments of Canada, the United States and Mexico specifying that water is not covered by NAFTA must be respected by international tribunals as if it were an integral part of NAFTA;”

That is very straightforward. It is not complicated. This report really emerged out of a discussion that we had with respect to the security-prosperity partnership.

We had multiple meetings on that subject matter where we discussed this initiative, and the initiative Mr. Bains raised was brought forth in 2005 by the former prime minister, the former member for LaSalle—Émard.

Mr. Bains then went on to talk about a particular committee witness who had spoken to this issue—

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): That's debate, not an explanation.

The Chair: That's all right. We're in debate.

Mr. Peter Julian: We're in debate, Mr. Keddy.

Mr. Gerald Keddy: I thought you were explaining your motion, and then somebody else would get to talk.

•(0930)

The Chair: Excuse me, Mr. Keddy, but if Mr. Julian wants to filibuster his own motion, he is welcome to do so.

Mr. Peter Julian: Through you, Mr. Chair, I'll assure Mr. Keddy that I have no intention of filibustering. But I do think it's important to put on the record Mr. Bains' comments in regard to a very similar motion that was brought forward and passed by this trade committee.

I'm going to read a few more paragraphs, and then I know that Mr. Laforest has what I believe will be considered a friendly amendment. Hopefully, other members of the committee will want to wade in.

Mr. Bains continued:

During that particular meeting, an individual from Alberta was speaking to the very important subject matter of bulk water. Although he was completely on topic, because the security-prosperity partnership is such a wide ranging initiative, as I...described earlier, the chair—

—not you, Mr. Chair, but the former chair—

—abruptly stopped the meeting and walked out. It was unfortunate that the parliamentary secretary did the same thing—

—not this parliamentary secretary, but a former parliamentary secretary—

—and accompanied him out. I would have expected better of him. It was very disappointing to see that.

Again, speaking of Mr. Bains' comments in the House of Commons, he said:

As I have indicated before, the Liberal Party does not support the bulk water export diversion and commoditization of Canada's water resources. That is our clear-cut position.

That's the Liberal Party position. He said:

I will tell the House why we supported this motion in committee. As I alluded to before, I was very disappointed with the government's behaviour with respect to how it conducted itself in committee by not allowing witnesses to express their thoughts. The idea of committee hearings is to get a wide range of viewpoints on various subject matters, [and this] is one of those key issues that need...to be discussed in committee.

Mr. Bains continued:

I have articulated before the position of the Liberal Party on bulk water, which is very clear. The Liberal Party does not support the bulk water export diversion and commoditization of Canada's water resources, plain and simple.

Mr. Chair, I raised those points from Mr. Bains' comments of May 31, 2007 because the motion before the committee is a replica of the committee's motion that was adopted back in 2007, that was brought to the House and which received support. Of course, it was a Bloc motion, but it received support from the Liberal Party and the NDP.

I'm suggesting that, given that it's World Water Day, it would be very appropriate for this committee to adopt this motion and forward it to the House for discussion, in light of our hearings on AbitibiBowater, and in light of very clear indications from a number of witnesses that the AbitibiBowater compensation does open up in a very wide range the possibility of chapter 11 provisions being used by companies that are seeking compensation for water rights that belong in the public domain.

That is why I brought forward this motion. I certainly hope it receives support from all members of this committee.

The Chair: Thank you, Mr. Julian.

So we have moved what members will have seen as motion 2:

That the Standing Committee on International Trade recommend that Canada declare a reservation from Chapter 11 of the North American Free Trade Agreement (NAFTA) for all measures concerning water, including water in its natural state and as a public trust and that this be reported to the House.

The motion has been moved, and we are now in debate.

We'll begin with Ms. Hall Findlay.

Ms. Martha Hall Findlay (Willowdale, Lib.): Mr. Chair, I appreciate the efforts of our colleague, but particularly right now when in the House of Commons we're facing some significant challenges about respect or lack thereof for parliamentary process, I don't support this. It's not the fact that I have an issue with the wording or the intent of the motion. It has everything to do with the fact that this committee just did a review of the AbitibiBowater deal. Just this morning we heard an outline of what the report should include. I think out of respect for the process, we should see what the

report says and let the committee do its work before we put forward a recommendation based on the results of that report. That's the first one.

As Liberals, we do not support bulk water exports. We do not support the commoditization of bulk water. Personally, as a long-time Georgian Bayer who has been very involved in water issues, I will stand up proudly and say that. That has not changed. I would say that the fact that nothing has changed is almost to the point.

There was a motion in the House in 2007. If at this point this committee decides it needs to do another motion and needs to revisit the same topic, then it is taking away from the responsibility of the government to do its job based on the 2007 motion. I would suggest that going down this path almost takes away the responsibility of the government to do its job the first time around, and takes away from the value of the 2007 report.

As much as I appreciate the value of this, and as much as we are very concerned about water exports, our position is that we are not supporting this motion for those reasons.

●(0935)

The Chair: Thank you.

Monsieur Laforest.

[*Translation*]

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): Mr. Chair, the Bloc Québécois is going to support this motion.

But, if Mr. Julian agrees, I would like to make a friendly amendment to the French version. Rather than saying “que le Canada fasse valoir une réserve à l'égard du chapitre 11”, I suggest that we say “que le Canada se réserve un droit à l'égard du chapitre 11”. Do you agree with making this amendment, Mr. Julian?

I see that you agree. So the Bloc is in favour of the motion.

Contrary to what Ms. Hall Findlay has just said and although it would be interesting to look at the report we are going to prepare on AbitibiBowater, the fact remains that the public at large wants to preserve natural resources more and more. The public wants the government to take measures to defend and fully protect all natural resources, especially water. Rather than doing the same thing as the government did with the motion passed in 2007, I think we have an opportunity to provide the government with more guidance and point out that things are really going in that direction.

So we are going to fully support this motion and hope that it will receive unanimous support.

Thank you.

[*English*]

The Chair: Thank you, Monsieur Laforest. I think the intent of the friendly amendment was clear.

This is something that's been floating for some time. There really isn't a structure for friendly amendments; at least it doesn't appear in Beauchesne's anywhere. But it has come to be a precedent in committees.

I suggest a couple of alternatives. One is that Monsieur Laforest formally move the amendment and then have the amendment passed, rather than this informal way we've had of people accepting amendments. I don't have any objection to that. It's just that there really isn't a procedure for these so-called friendly amendments, although I know there have been precedents in committees. It allows Mr. Julian to amend his own motion, which would require notice again. We don't want to go through that.

[*Translation*]

Mr. Jean-Yves Laforest: Mr. Chair, I would say we're making a correction to the French version rather than an amendment.

Mr. Peter Julian: It does not change the motion.

[*English*]

The Chair: Okay, that's easier. I was prepared to accept it anyway with the unanimous consent of the committee. I'm looking around, and I think we have the unanimous consent of the committee to proceed in that regard.

We now are dealing with a motion that has been corrected in French to deal with the ability to reserve as opposed to the direct wording as it appeared in the original French version.

We're going to continue debate. I have Mr. Julian, Mr. Keddy, and Mr. Silva.

Mr. Julian.

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

I listened intently to Madam Hall Findlay, as I always do. I appreciate her contribution to the committee. I always hang on her every word to understand fully as she describes the Liberal Party position. Unfortunately, in this case I simply cannot agree with her.

We had a motion which was adopted by this committee. It was taken to the House of Commons and was adopted by the House of Commons. Then we had the decision on compensation for AbitibiBowater that rips up the intent and direction that was given to the government by the House of Commons. Clearly, we need to reinforce and reiterate what was adopted back in 2007. A number of witnesses spoke to that.

To not vote for the motion now would give a blank cheque to the government to continue to undermine what was decided democratically by elected representatives back in 2007. I simply can't agree with her that the government has been keeping the intent of the direction that was given in 2007. That's not the case. We see this with the compensation that was paid to AbitibiBowater, and we see the risk that's involved.

Despite my highest of respect for her, I think the Liberal Party would be making a fundamental error if it were to backtrack on its position of 2007, given the impacts of the decision that was made last summer on AbitibiBowater.

• (0940)

The Chair: Thank you, Mr. Julian.

I think perhaps the committee wouldn't mind if we allowed Ms. Hall Findlay to respond.

Ms. Martha Hall Findlay: Thank you, Mr. Chair.

I appreciate the kind words of my colleague, Mr. Julian, and it's a mutual respect.

I also said that one of the reasons I don't support this is not because the Liberal Party has changed its position at all, but because I'm not sure the AbitibiBowater decision has the consequences...we heard from only a couple of witnesses in our relatively limited review of the decision here at the committee.

My colleague knows that I have expressed concerns about the legal opinion of what happened in the AbitibiBowater decision. I have raised those concerns.

I will reiterate that this motion is premature when the committee in fact is tasked with providing a report on the AbitibiBowater decision. My colleague would be perfectly free to bring forward another motion after that report is done, but I think it's a lack of respect for the committee process to pre-empt the committee report.

The Chair: We'll get back to this, I'm sure, but thank you for that clarification. We'll give you another minute.

Mr. Keddy.

Mr. Gerald Keddy: Mr. Chairman, certainly we won't be supporting the motion for a multitude of reasons. The first reason, of course, is that this is a variation of the motion that was already passed at committee in 2007, as a number of members have already said.

We should go back into what happened. Although I wasn't at committee in 2007, my understanding of what happened is certainly quite different from Mr. Julian's understanding, which doesn't particularly surprise me.

Because the debate at the time was around the security and prosperity partnership and it somehow got away from that and into a discussion about bulk water, the government didn't support the motion. That has nothing to do with our position on bulk water. Our position on bulk water has been very clear, going back to May 1, 2007 and former Minister David Emerson's statement, "It is already Canadian law and it is built into the NAFTA that water in its natural state is not covered by the NAFTA, full stop.... It is not covered."

You can only say it so many ways and so many times. Repetition doesn't make it any different, quite frankly.

You know the committee is dealing with the report. I agree totally with Ms. Hall Findlay. Let's deal with the report. If, after the report is dealt with, Mr. Julian still wants to put forward his motion, then it could be dealt with at that time.

Further to that, let's separate fact from fiction here. Let's separate the proverbial apples and oranges. This is one interpretation, Mr. Julian's interpretation, of what NAFTA does. I don't think anyone else agrees with the interpretation that water is somehow a commodity, that it's tradeable in its natural state, that it's not covered under NAFTA. As a matter of fact, I'd go further and say that it is already protected. It's interpretation.

It's redundant because it has already been dealt with. Quite frankly, we did not hear—at least I didn't hear—the same explanation from the witnesses that Mr. Julian seems to have heard. There were a number of witnesses who stated that NAFTA creates no rights to the natural water resources of any party to the agreement. Nothing in NAFTA would oblige any NAFTA party either to exploit its water for commercial use, or to begin exporting its water in any form. You can't take that and change it into something else. This is not alchemy. You can't take someone's spoken words and say, “No, that's what that person meant”.

I know there were people who appeared as witnesses who have a different opinion, the Council of Canadians and others, or I should say representatives of the Council of Canadians, because I lump them all into the same group, which is not fair, Mr. Chair. But the reality is that it has already been dealt with. It's already covered.

I don't think there's any disagreement among parties that we expect that water resources in Canada are Canadian, that we expect boundary waters and bulk water are not tradeable items. However, we all recognize that there is water going back and forth every day at the border between Canada and the United States. It flows in both directions. There are also towns on the Canadian side of the border that supply sister towns or brother towns on the American side of the border with water, and there is nothing wrong with that.

It's not as simple as saying that we just disagree with this motion. I disagree with this motion because the motion is fundamentally wrong.

● (0945)

The Chair: Thank you.

Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): I'll be very brief, Mr. Chair.

What I've been hearing from members is that this motion has been covered. The other sentiment I heard is to wait until the report. Does one require an additional motion to defer this until that report, or can that be moved as part of the debate?

The Chair: I'm sorry, I'm not quite clear on your question.

Mr. Mario Silva: Given that others stated we should wait until the report comes out, why not defer the motion, and does that require a motion?

The Chair: Why not defer this motion?

Mr. Mario Silva: Is that possible?

A voice: You could adjourn the debate.

A Voice: You could bring it back later.

Mr. Peter Julian: We won't be here. We'll be gone. We've got one more committee meeting.

The Chair: I think it's a valid point, and it certainly is something the committee can—

Mr. John Cannis (Scarborough Centre, Lib.): That's like stealing water from eavestroughs.

The Chair: Sorry, there was a slight distraction with water from the eavestroughs. This is not the water we're debating at this point. This is an older building.

It's a valid point, Mr. Silva. Certainly, that's something the committee can consider, whether or not they would want to defer this motion until after we have considered the report.

I'll go first to Mr. Julian on that point, if that's of interest, before putting it to the committee. Mr. Julian, you've heard the notion, if not the motion, that we may adjourn this debate and reconsider it after we deal with the motion.

Mr. Julian first, and then we'll hear from Mr. Holder.

Mr. Peter Julian: Mr. Chair, it's World Water Day. As you know, we've been getting e-mails from Canadians across the country, and I think Canadians expect us to deal with the motion today. I would certainly agree with Mr. Keddy in that regard, that it's more important for the parties to make very clear to the public where they stand on the issue of reserve for water in NAFTA.

I do want to mention as well, Mr. Chair, there's nothing in motion 2 that even refers to AbitibiBowater. Certainly, we heard substantive input from witnesses, but this is a reiteration of the 2007 motion.

I did want to take a few moments to read into the record a few more of the witnesses' comments. I think that's important.

● (0950)

The Chair: Mr. Julian, I would happy to allow you to do that, but as a courtesy to you, I was just taking a moment out of the debate to consider Mr. Silva's proposal. We would be happy to return to debate, should the committee decide we are going to continue debate and not adjourn, if you follow me.

Mr. Peter Julian: Was I not on the speakers list, Mr. Chair?

The Chair: Coincidentally, you were.

Mr. Peter Julian: Then I'll continue speaking, Mr. Chair, with your guidance.

The Chair: Let me ask Mr. Silva if he had finished his remarks. All right. In that case, Mr. Julian, please carry on.

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

Given that I think we need to have a vote today, Mr. Keddy mentioned that he hadn't heard concerns raised about this by witnesses, so I wanted to read into the record concerns raised by two witnesses.

As you know, Mr. Chair, Mr. Steven Shrybman is an international trade lawyer and is very well known across the country for his knowledge on trade issues. He said the following:

The settlement by the Government of Canada of an investor-state claim by Abitibi effectively allows foreign investors to assert a proprietary claim to Canadian water, including water in its natural state, where those investors have acquired a right to use water resources by permit or otherwise. By doing so, the Government of Canada has essentially transformed Canadian freshwater resources, most of which are owned by the provinces as a public trust, into a private property right, to the benefit of foreign investors that have acquired a right to use water by provincial permit.

It would be difficult, in my submission, to overstate the consequences of such a profound transformation of the right that Canadian governments have always had to own and control public natural resources. Moreover, by recognizing water as private property, the government has gone much further than any international arbitral tribunal has dared to go in recognizing a commercial claim to natural water resources.

Then, Mr. Chair, at our meeting on Thursday, March 10, we had as a witness Mr. Scott Sinclair, who is the senior research fellow in the Canadian Centre for Policy Alternatives. I'll just read into the record four of his comments. He said:

First, AbitibiBowater was compensated in part for the loss of water and timber rights on public lands...[which] are not normally considered compensable rights under Canadian law. The provincial legislation provided for the government to compensate the company for its expropriated assets—land, buildings, equipment, etc. The company did not pursue this option, turning instead to NAFTA arbitration.

The legislation, however, appropriately denied AbitibiBowater compensation for the loss of its timber and water rights, which were returned to the crown. Such natural resources are the property of the provincial crown and the public of Newfoundland and Labrador. The province retains title to the land and the right to revoke licences and permits, with or without compensation, as it sees fit.

Access to publicly owned natural resources—water, timber, minerals, oil, and gas—is not a proprietary right; it's not an ownership right. It's a contingent or a conditional right. It's based on the understanding that the resource rights holder will develop the resources productively in a manner that benefits the public. Unfortunately—and it is a tragic situation whenever a company goes bankrupt and closes its last remaining mill in a province—the company was no longer willing or able to fulfill its part of that social contract.

He said that his other point “concerns the fact that at \$130 million, this is the largest NAFTA chapter 11 award to date” and that now the “high payout will undoubtedly encourage future investor-state claims involving regulation of natural resources”.

Just to conclude my comments here, what we have is a very clear indication from a number of witnesses that this is a critical stage: that the House of Commons motion that was adopted in 2007 has been repudiated by the government. Certainly the Bloc and the NDP have indicated that we're willing to reiterate that important direction to the government. I'm just surprised again that the Liberal Party is reversing its historical position on this issue.

Ms. Martha Hall Findlay: Just for the record, Mr. Chair, I will say for the third time that the Liberal Party is not reversing its position. I take some offence at the continued suggestion that we are. I will say it clearly: we have not reversed our position.

We've expressed our concern about this motion at this particular time, for two reasons. One, it pre-empts the work of the committee. Given all of the discussions we're having in the House of Commons right now about the need to respect parliamentary process, I would hope that this committee would do so. Two, there is a motion from 2007, and if we do not hold the government to account on that one, if we go forward with another one, we will be denying the responsibility of the government to respond based on the 2007 motion.

The Liberal Party has not changed its position at all.

● (0955)

The Chair: Thank you.

We have Mr. Cannan, Mr. Holder, and Monsieur Laforest.

Monsieur Cannan.

Mr. Ron Cannan (Kelowna—Lake Country, CPC): Mr. Chair, I totally support my honourable colleague, Ms. Findlay, and her comments. I sit here and listen, and it is frustrating because we've talked about this. I was in that meeting in 2007 and recollect the discussion that took place. It's not exactly the same as Mr. Julian alluded to.

We've talked about this issue of water numerous times. There is a joint statement by the Government of Canada, Mexico, and the United States in 1993 which says:

The NAFTA creates no rights to the natural water resources of any Party to the Agreement.

And nothing in the NAFTA would oblige any NAFTA Party to either exploit its water for commercial use, or to begin exporting water in any form. Water in its natural state in lakes, rivers, reservoirs, aquifers, waterbasins and the like is not a good or product, is not traded, and therefore is not and has never been subject to the terms of any trade agreement.

I am not sure why Mr. Julian indicates, as everybody in the room agrees that we don't support bulk water exports or commodification. It's a moot point. Water is no different from any other resource. The fact is we have to ensure that it's a Canadian resource. It's for Canadians, and we'll protect it for Canadians, and that's what we believe.

Mr. John Cannis: So do the United States and Mexico.

Mr. Ron Cannan: With the partnership that we have, it's agreed to, and I don't know why we continue to go down this path and waste everybody's time. I recommend that we call the question and move on to something more productive for Canadians.

The Chair: I take it you didn't call the question so much as you suggested you did. Thank you.

Mr. Holder.

Mr. Ed Holder (London West, CPC): Mr. Chair, in the words of my Cape Breton mother, an election if necessary but not necessarily an election. On that note, I would suggest that we bring this to a vote.

The Chair: We have other speakers wishing to carry on.

Monsieur Laforest.

[*Translation*]

Mr. Jean-Yves Laforest: Mr. Chair, from listening to everyone's arguments, I think we have to clarify some of the things that have been said. I feel that this motion is still important. Some think it is useless and are making arguments that are not necessarily true or well-founded, in my opinion. Mr. Keddy said earlier that there can be no negotiations on trading water under NAFTA. I think it is crystal clear that NAFTA is a general free trade agreement and that means that it applies to all goods and services that are not excluded. For example, hydroelectric production, military purchases, banks, telecommunications companies and products under supply management are all sectors that are specifically excluded from NAFTA. But nowhere in NAFTA is it written that water is excluded. So we have to be careful.

I think this really confirms what a number of stakeholders came here to tell us about AbitibiBowater. As I said earlier, it is not just them, but also the public at large who are telling us to be cautious because water has to be fully protected. And NAFTA is not protecting it.

But Mr. Julian's motion is definitely aimed at preserving natural resources, in particular water, in Canada and Quebec.

•(1000)

[*English*]

The Chair: Thank you, Monsieur Laforest.

Mr. Cannis.

Mr. John Cannis: Mr. Chair, I'll just be brief, as my Sicilian great-great-grandfather used to say.

In all seriousness, as Mr. Julian said, on such an important day, World Water Day, I think it's not wise for us to exploit this for whatever reason—and I'll refrain from adding any other word to it—on budget day especially.

Mr. Julian is well aware that he and I have served on this trade committee probably longer than anybody else, and the water issue has always been there. Our position has not been ambiguous in any way. It's been very clear. I think the government side gave various examples. Our former Liberal colleague and then their colleague, former Minister Emerson, and my colleague the critic, Martha Hall Findlay, were very clear.

Somebody said that we should not waste taxpayers' money and let's be more productive. Our position is clear. We've stated it over and over again. Let's move beyond this. I don't know how else to put it, but I think the argument that my colleague put forward makes a lot of sense. Let's stop it here. I would suggest, Mr. Chair, that you take no more speakers and move on to the next phase.

The Chair: I have a suggestion that we call the question.

I'll call the question if there's no further debate.

(Motion negated)

The Chair: That, ladies and gentlemen, concludes our business for today. I thank you for your cooperation. Mr. Julian, particularly, thank you for your cooperation today. We dealt with these matters.

We will meet again on Thursday and deal with the Canada-United States trade relations report.

Thank you.

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