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Chair

Mr. Lee Richardson

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• (0910)

[English]

The Chair (Mr. Lee Richardson (Calgary Centre, CPC)): Ladies and gentlemen, we will begin the 16th meeting of this session of the Standing Committee on International Trade.

Today we're going to begin our review of Bill C-24, an act to implement the Free Trade Agreement between Canada and the Republic of Peru, the Agreement on the Environment between Canada and the Republic of Peru, and the Agreement on Labour Cooperation between Canada and the Republic of Peru.

We're going to start our review of this bill by having a review with department officials who have been particularly involved with this and can give members some background and answer questions. I understand we're going to have just one opening statement. Is that right, Carol?

We're very pleased to have back to the committee a number of people who have been here before. I'll just read them out.

First of all, from the Department of Foreign Affairs and International Trade, we have Matthew Kronby, director general, trade law bureau; Cameron MacKay, director, regional trade policy division, Americas; and Vernon MacKay, director, investment trade policy division. From the Department of Finance, we have Dean Beyea, who has been with us before. And from the Department of the Environment, we have Dean Knudson. And I see Pierre Bouchard as well.

I have saved Carol Nelder-Corvari for last, because I think you were with trade the last time you were here as the chief negotiator of this agreement. Now with the Department of Finance, we have Carol Nelder-Corvari, who will open with some remarks.

Ms. Carol Nelder-Corvari (Director, International Trade Policy Division, Department of Finance): Thank you, Chair.

Actually, I've been with the Department of Finance all along.

The Chair: Was it the trade side?

Ms. Carol Nelder-Corvari: Thank you for introducing our team here. We're here to respond to any questions you may have about Bill C-24.

We're very pleased to have this opportunity to speak to this bill, which is an act to implement the Canada-Peru trade agreement and parallel agreements on labour and environmental cooperation. This bill implements the legal framework and the legislative amendments required to deepen the economic and social relationship between Peru and Canada.

This initiative dates back to 2002, when Canada and the Andean Community countries agreed to begin discussions on a possible free trade agreement. The government carried out extensive consultations with domestic stakeholders in Canada, which revealed broad support for pursuing an FTA. Through the ensuing exploratory process, it became clear that not all of the Andean countries were prepared to move forward with a comprehensive trade agreement. Peru, however, clearly stood out as a country that was actively engaged in economic reform and seeking free trade partners with priority countries such as Canada.

This FTA is part of the government's comprehensive efforts under its global commerce strategy to open new opportunities for Canadian businesses. It also forms part of the government's efforts to strengthen Canada's engagement in the Americas by fostering economic development and strengthening democracy and security.

The current global economic downturn creates an additional urgency to these efforts for both Canada and Peru—not only as an instrument to increase economic activity, but also as a means to fight trade protectionism that could seriously undermine global recovery efforts. The FTA with Peru will give Canadian exporters, investors, and service providers preferential access to a dynamic economy of approximately 28 million people that has experienced GDP growth of over 9.8% in 2008. This is higher than that experienced by China and India.

In its April 2007 report, entitled “Ten Steps to a Better Trade Policy”, this committee instructed the government to give priority to negotiating defensive FTAs to address competitive disadvantage. This FTA with Peru responds to this recommendation. As it stands, Canadian exporters are at immediate risk of losing markets in Peru due to the entry into force of the trade promotion agreement with the United States on February 1 of this year. Peru has also recently completed trade negotiations with China and EFTA and is currently negotiating with the EU, South Korea, Mexico, and Thailand. Each one of these preferential agreements will erode the competitiveness of Canadian businesses. Our firms and Canadian workers deserve FTAs that address this situation and allow them to compete in international markets on a level playing field.

In the area of market access for goods, Peru will eliminate tariffs on virtually all of Canada's current exports, including on key products such as wheat, barley, lentils, peas, as well as wood and forestry products, cotton and other fabrics, and a range of industrial machinery. Canadian tariffs on the vast majority of imports from Peru will be eliminated immediately.

On services, the FTA will provide enhanced market access for a range of services in key sectors of interest to Canada. These include mining, energy, and professional services like engineering, architecture, and information technology. Canada's banking, insurance, and securities sector will also enjoy greater access to the Peruvian marketplace.

The FTA also builds on the existing foreign investment promotion and protection agreements and gains new ground for Canadian investors. Strong obligations ensure the free transfer of capital related to investment, protection against expropriation without adequate and prompt compensation, and non-discriminatory treatment of Canadian investments. The investment chapter of this agreement clarifies that the parties can take non-discriminatory measures to protect legitimate public welfare objectives, such as health, safety, and the environment.

● (0915)

To compete effectively in global markets, Canadian firms must import, export, and increasingly invest abroad to improve efficiencies through global supply chains. Research shows that foreign investment facilitates improved R and D, innovation, and productivity. According to the Export Development Corporation of Canada, every dollar of investment abroad is expected to generate approximately two dollars of additional exports in emerging markets. We are seeing this demonstrated in our relationship with Peru. Our stock of investment stands at \$2.4 billion and our exports have more than doubled over the last five years.

Imports from Peru are also increasing, and they are, in many cases, directly related to our mining investments. Seventy-five per cent of the imports from Peru are in the form of metals that are imported for further processing in Canadian facilities or for use in Canadian production.

Given these facts, it is important that we view these FTAs holistically. They are not just about exports; the success of Canadian firms and jobs in Canada is also linked directly to investment and imports. This is the nature of the globally integrated trade. Canadian direct investment abroad connects Canada to global operating platforms that are critical to our competitiveness. These investments need to be protected or they place our companies and Canadian workers at risk. In this regard, the investment provisions of the Canada-Peru FTA, like our many FIPAs, are intended to provide such protection.

On government procurement, the FTA guarantees Canadian suppliers the right to bid on a broad range of goods, services, and construction contracts carried out by Peru's federal government entities. Opening up government procurement ensures that benefits negotiated in other chapters, such as tariff cuts, are not eroded by barriers behind the border, such as procurement policies that favour domestic suppliers or other trading partners.

Accessing the government market in Peru represents a significant opportunity for Canadian exporters. The total value of government contracts in Peru was approximately \$5.6 billion U.S. in 2006. This is projected to increase to \$9.8 billion U.S. for 2009. In addition, in response to the current economic downturn, approximately \$3 billion U.S. has been set aside for stimulus spending on infrastructure in

Peru. American suppliers already have preferential access to this market; our firms deserve the same.

This FTA also includes new provisions on trade-related cooperation and commitments to support corporate social responsibility and prevent corruption. These commitments complement Canada's broader efforts, which include the following:

First, CIDA has helped to create, and continues to support, the Peru Office of the Ombudsman, which monitors the rule of law and protects human rights.

Second, the government's new CSR strategy will enhance the ability of Canadian mining, oil, and gas companies to meet and exceed their social and environmental risks while operating abroad by creating a new office of the extractive sector CSR counsellor to assist in dispute resolution; developing a new CSR centre of excellence to provide information to companies; offering continuing CIDA assistance for capacity-building in developing countries; and promoting internationally recognized guidelines for CSR performance and reporting.

Third, the development of Peru's mining tool kit for aboriginal communities—adapted from the Canadian version—is an example of cooperation between Canada and Peru on CSR activities that involved over 60 stakeholders. The tool kit attempts to help communities get a better grasp of the risks and opportunities of extractive industries and, in so doing, help mitigate social conflict;

Fourth, Canada is also supporting Peru's implementation of the Extractive Industries Transparency Initiative, or EITI, through the Multi Donor Trust Fund. The EITI is a global initiative that supports improved revenue transparency through the verification and full publication of company payments and government revenues from oil, gas, and mining.

Fifth, the Prime Minister's announcement at the Summit of the Americas to commence a five-year technical assistance program to assist our free trade partners in the Americas is also supportive of our CSR efforts. This is essential to ensure that both Peru and Canada can fully access the benefits of the FTA.

● (0920)

Canadian companies operating in Peru have made CSR a key objective and have been leaders in Peru's foreign investment community. For example, Canadian mining companies provided transport and machinery as emergency assistance immediately following the August 2007 earthquake in Peru.

Moreover, Canadian companies, such as Scotiabank, invest in communities in Peru by supporting poor children and women through housing, nutrition, and health initiatives. Export Development Canada reinforces these efforts through its own commitment to CSR, which includes regular review of its human rights processes and ongoing engagement of stakeholders, including Canadian companies and civil society.

The Labour Cooperation Agreement will also help strengthen labour rights and the protection of workers. Peru has committed to ensuring that its laws respect high standards of labour rights, including the International Labour Organization's 1998 declaration on fundamental principles and rights at work. This declaration covers the right to freedom of association, collective bargaining, the abolition of child labour, the elimination of compulsory labour, and the elimination of discrimination.

The labour agreement opens up new pathways for cooperation. Canada is offering its resources and expertise to help Peru fully implement this agreement, and the government has announced a \$1 million labour-related cooperation program.

With respect to the environment, both countries have committed to pursuing high levels of environmental protection. Special focus is being given to corporate social responsibility and the preservation of biodiversity, which is an important issue for Peru, given that it is home to some of the world's most diverse biological resources. Canada is committed to working with Peru and Canadian companies to help protect and conserve these resources.

Mr. Chair, I'd like to conclude by noting that Peru has achieved remarkable economic progress in recent years. This success has reinforced social progress with a decline in poverty rates, a halving of infant mortality rates, and a significant advancement of the role of women in the workplace and in political office.

Even in the face of the current economic crisis, Peru is still expected to grow by 3.5% this year. We have a growing and mutually beneficial relationship with Peru, and this FTA will deepen and solidify these benefits. This agreement has the support of key exporters and investors across Canada and responds directly to this committee's call for the negotiation of defensive FTAs in a timely manner.

Thank you, Mr. Chairman. We would be pleased to answer any questions you may have.

The Chair: Thank you very much. That was a great briefing.

We're going to start a round of questions. We're going to try to stick to seven-minute rounds so that we can get everybody in today. We've got a full house.

I'm going to start with Mr. Cannis. It's seven minutes for questions and answers. I think everybody's familiar with the procedure.

Go ahead, Mr. Cannis.

Mr. John Cannis (Scarborough Centre, Lib.): Thank you, Mr. Chairman.

Thank you, panel, and welcome.

What is the average income of a Peruvian person? What is the average income per year?

Maybe when you get it, you can send us a note. We'd appreciate it.

Ms. Carol Nelder-Corvari: Okay.

Mr. John Cannis: Send us a note.

First of all, I've got nothing against mining, but I think 80% of your presentation, Ms. Nelder-Corvari, was mining, mining, mining,

and more mining, and then extraction, extraction, extraction. As I said, I just noted that. I want to also note for the record that I have nothing against mining. I think it's a wonderful trade and practice, provided it's done right.

You mentioned something early in your presentation about how it would have hindered global recovery. I think you're applying that statement given today's circumstances, not when the process of negotiating free trade commenced in 2002, as you said.

Would you say you just added that now onto the presentation, that it will hinder—let me quote you—"global recovery efforts", given the circumstances of what's occurring today globally? Would you say that?

• (0925)

Ms. Carol Nelder-Corvari: Thank you for that question.

Having worked in Canadian trade policy for over 25 years, I think I can say that the objective of diversifying export markets has always been key to Canada. It has been a struggle, but it has always been a key objective. The government now has in place a comprehensive global commerce strategy to try to pursue that objective more effectively.

Exploratory talks began in 2002, but the negotiations with Peru did not begin formally until July 2007. At that point there was already an urgency to this work, not only to provide new opportunities for our businesses but to counteract the risks of losing the business we have, because of the U.S.-Peru free trade agreement that came into effect.

Mr. John Cannis: Theirs came in before ours.

Ms. Carol Nelder-Corvari: February 1, only a few months ago. The economic crisis that we're experiencing now certainly adds additional urgency to our overall efforts in this regard.

Mr. John Cannis: Would you say that we've lost a bit of bargaining power, given that the U.S. has ratified its agreement with Peru?

Ms. Carol Nelder-Corvari: Well, we've completed the negotiations at this point. As part of our effort, we had an eye on where the Americans were in their process with Peru, and that certainly had a lot to do with our efforts to pursue this in a timely manner.

Mr. John Cannis: I'm only commenting on that because I know that when we were negotiating with the CAFTA, we kind of missed out and the Americans ratified it. Then, of course, the pendulum swung in somebody else's favour, not ours.

Can you tell me why Peru stood out? You mentioned in your statement that "Peru stood out", if I may quote you. Can you be a bit more specific as to why Peru stood out?

Ms. Carol Nelder-Corvari: Well, in the last few years Peru has been engaged in macro-economic reforms, getting its fiscal house in order, opening up its borders. As you can see, we're not the only free trade partner it has been actively engaged with but clearly the U.S. was a priority, and Peru identified Canada as a priority after the U.S.

This is an extensive exercise. Their dance card is fairly full on the free trade front, and they've been very aggressive. It's part of what we have to consider when we look at our interests there.

I know you're saying mining, mining, mining. I didn't mean to stress only mining. We have lots of interests in Peru. Scotiabank is the second or third largest bank in Peru. If you get to the airport in Lima and take a taxi out, there's a Scotiabank ATM on almost every corner. We have a presence. We're respected there. Our companies are respected there. There has been a concerted effort with our embassies and our investors to promote and work with the Peruvian government in its efforts at economic reform.

Mr. John Cannis: I'm really pleased to hear that. I think that's positive news in light of what you mentioned, that in negotiations with the EU, it seems Peru is very proactive.

I guess Peru is dealing on a bilateral basis with the commission as a whole. Is that how it's moving forward?

Ms. Carol Nelder-Corvari: Yes. Like Canada, the EU started with exploratories with all of the Andean Community and decided that it wasn't able to move forward with the whole community and is now negotiating with Colombia and Peru. That's my understanding.

Mr. John Cannis: Is there a disadvantage for Canadians negotiating with Peru, for example, given that it's also negotiating with this humongous partnership over there in Europe?

Ms. Carol Nelder-Corvari: Well, we're done at this point. We had our eye on those complexities, as I said, and when you're negotiating arrangements like this, yes, you're concerned about larger partners that are already in there or are going in.

● (0930)

Mr. John Cannis: How did we fare with those negotiations?

Ms. Carol Nelder-Corvari: We did very well with Peru. This is a very strong agreement. It's supported by Canadian industry across the board. I don't know of any opposition to this agreement from sectors in the Canadian economy.

Our trade is fairly complementary. As I tried to emphasize in my opening statement, 75% of what we import relates to our investments down there, and the goods are coming back here either for further processing in Canadian facilities or as an input for Canadian production. It was a very complementary relationship. There were sensitivities on both sides on agriculture, and those were dealt with in a very balanced manner. I think overall this is a very good agreement for Canadians.

The Chair: Thank you. I think that pretty much wraps it up. I can't imagine that anybody has any more questions than that.

Do you want to move to clause-by-clause?

Mr. John Cannis: *[Inaudible—Editor]*

The Chair: Mr. Julian may have a question.

We'll go to Mr. Guimond.

[Translation]

Mr. Claude Guimond (Rimouski-Neigette—Témiscouata—Les Basques, BQ): Thank you, Mr. Chair.

I will ask you a few questions about the economic impact.

The trade flows between Quebec and Peru represent 0.14%. In Quebec, we are talking about a \$174 million negative trade balance. I would imagine that before launching such an undertaking, you have made an assessment of what it could represent for Canada on the economic level.

Could you share with us some figures in order to explain to us what could be the impact of a free trade agreement between Canada and Peru, given that Quebec has a negative trade balance with that country?

Ms. Carol Nelder-Corvari: Thank you for this question.

[English]

I tried to deal somewhat with that. And I understand your question.

When you look at a free trade arrangement, and when you look at the integrated trade model we all have to operate within on a global basis, you can't say you're in a negative position because you have more imports than exports. My point was that a lot of those imports are coming in for further processing in Canada, including in Quebec. Some Quebec companies contacted us during this negotiation and have an interest in this agreement.

A mercantilist approach to these agreements won't give you a good cost-benefit. You have to look at the investments, the imports, and the exports. The opportunities are encased in that whole analysis.

There is a strong interest in expanding.... We always talk about emerging markets: Brazil, China, and India. We're a big player in Peru. We're a big player in Colombia. These are small-sized emerging markets. They're emerging at a very fast pace. The opportunities are there for us. And you can't look at it in a static way; you have to look at the future opportunities as well. We have a very strong platform in Peru. If we didn't have this free trade agreement, that platform would be eroded with all these other FTAs.

[Translation]

Mr. Claude Guimond: I will continue with the same line of questions. In Peru, the gap between the rich and the poor is significant and there is massive poverty. Again, I would like you to tell me how a Canada-Peru free trade agreement will improve the quality of life of the people, especially the poor.

[English]

Ms. Carol Nelder-Corvari: The current government in Peru was elected on a certain economic platform that includes opening markets. And that's what they're pursuing. They feel that is the best model to promote economic growth and to increase social equity and prosperity in their country. Evidence is showing that their poverty rates are declining, their infant mortality rates are declining, and their education rates are up. As I said, in terms of participation of women in the workforce and in political life, women now hold 30% of the seats in Congress. There has been a lot of progress.

It's a developing country. It's a very poor country. It is trying to reach out to the rest of the world to help reinforce its economic objectives. And this agreement is seen as important in that regard.

• (0935)

[Translation]

Mr. Claude Guimond: You talked a lot about the mining and financial industries, among others, but what are the benefits for Canada in terms of agriculture?

[English]

Mr. Dean Beyea (Senior Chief, International Trade Policy Division, Department of Finance): Thanks. I had flipped to my trade data for Quebec, so if you would give me a moment, I'll go back to agriculture.

Largely the market openings, particularly the defensive market openings for wheat, lentils, and pulses, are primary markets. We also open up with a duty-free TRQ for pork and beef. Both of those have different elements to them, but it opens up the market significantly for pork and for certain cuts of beef, to a large extent immediately.

Those are the primary defensive interests in agriculture. They have high tariff levels in a number of those products. That's where Canada is shipping a number of goods already and would lose significant market share, as Carol said, vis-à-vis the U.S. free trade agreement, where we compete directly with agriculture producers in the United States for access into those markets.

[Translation]

Mr. Claude Guimond: Do I still have some time?

[English]

Mr. Dean Beyea: If you wanted me to, I could certainly go through your first question specifically with respect to how Quebec is faring in this agreement.

You're quite right that if you look at the trade balance for Quebec it is negative with respect to the fact that we import more than we export. But I think, as Carol noted, it's worth digging down into those numbers and looking at what the trade is. For example, we're exporting industrial machinery focused in the extractive sector, pulp and paper, plastics, construction equipment, and electronics. The primary imports we have are mineral products for further processing and precious metals. Those make up about \$180 million. We're importing some apparel products and some seasonal vegetables.

So I think, as Carol said, that overall the trade pattern with Canada is complementary, and in fact, with Quebec it's extremely complementary.

The Chair: *Merci.*

Thank you, Mr. Guimond.

Mr. Julian.

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

Thanks to all our witnesses who have come forward today.

I would like to start with a request. I don't expect you to have these figures here today, but as a committee, we certainly would find them useful. We've had provisions in the past from DFAIT for increases in exports. In fact, in the case of a number of bilaterals, our exports actually went down after signing an agreement, so it would be helpful to have the provisions that DFAIT put forward for an export rise within two years of the signing of bilaterals, and what the actual export figures were for all of the bilaterals we've signed.

If you could provide that for the committee, I think it would be very helpful and very illustrative of the difference between what sometimes is the spin or hype around a bilateral and what actually transpires subsequently. Thank you for that.

I'd like to go on to the chapter 8 provisions, which are based on the chapter 11 investor-state. Could you confirm that the chapter 8 provisions actually include the concept of indirect expropriation? In other words, the loss of profits for a company could trigger a chapter 8 initiative or lawsuit.

• (0940)

Mr. Vernon MacKay (Director, Investment Trade Policy Division, Department of Foreign Affairs and International Trade): Thank you, Mr. Julian.

Good morning to all committee members.

Yes, chapter 8 of the Canada-Peru FTA includes a provision on expropriation, so in the event of an expropriation, including an indirect expropriation, there must be prompt, adequate compensation. It's clearly set out in the article on expropriation. It's accompanied by an annex that gives guidance to tribunals on how indirect expropriation would be interpreted. It's very clear on that.

Mr. Peter Julian: Thank you. I appreciate that, because as a committee we're now dealing with some of the chapter 11 lawsuits that have been brought forward. The Province of Quebec basically put legislation in place to ban a very toxic product, and as a result, the company is now suing for compensation. So it's important to note that the concept of indirect expropriation is actually in the agreement.

There's the very controversial case of the privatization of social security in Peru. If the Peruvian government moved to follow the will of their population and rendered public the privatization of social security, under the chapter 8 provisions, with the concept of indirect expropriation, a company could choose to sue the government for having taken a decision in the best interest of its population, hypothetically.

Perhaps that's something you could comment on for the committee later on. I only have seven minutes, and the chair is pretty severe and strict in imposing those limits. Thank you.

I'd like to move on to the labour cooperation side agreement. I'm looking at article 20 in the agreement. Mr. Bouchard and I have had a number of exchanges on the issue of Colombia. I'm not suggesting that Peru is as egregiously bad as Colombia, with the absolutely appalling murder of trade unionists there. But within the labour cooperation agreement, can you confirm that there's the same mechanism, where the Peruvian government would pay a fine to itself in the event there were systematic violations of labour standards?

Mr. Pierre Bouchard (Acting Director General, International and Intergovernmental Labour Affairs, Department of Human Resources and Skills Development): That is actually incorrect. The Peruvian government would not pay a fine to itself; it would pay a fine into an account. We've set up this account under the legislation. It can be an account here in Canada, but its location is not as important as how the money is controlled. Both parties must agree before any money is released from that account.

That means Canada would have a veto on how to use the money in a complaint against Peru. Penalties of up to \$15 million a year would go into an account. It would be frozen, and Peru would have to keep paying year after year, unless there was an agreement with Canada. These are large amounts for a country like Peru and surpass the entire budget of the labour ministry. So it's quite a deterrent, the way it is set up.

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

It says "for...labour initiatives in the territory of the Party that was the object of the review." The council members are named by both governments, and in a very real sense politically, you could understand that the incentive for the Canadian government not to be embarrassed about this agreement would make it highly unlikely that they would do anything in opposition to the Peruvian government's direction. So that money is taken out and put in an interest-bearing fund, but in a very real sense, the Peruvian government is paying itself funds that will be expended later.

Thank you for that.

In your presentation the words "social responsibility" were stressed. Article 6 says that "the Parties shall encourage voluntary best practices of corporate social responsibility". So it's completely voluntary. It's the equivalent of the Conservative government telling folks they can pay taxes voluntarily, but if they decide not to, there are no sanctions. I don't think there's a single Conservative who would recommend voluntary compliance on income tax. We have voluntary best practices of corporate social responsibility. So in a sense it's pretty meaningless.

I would like to come back to the environmental agreement. It states that "each Party shall effectively enforce, through government action, its environmental laws". Can you please explain what happens if the Peruvian government doesn't enforce its environmental laws? We've already seen that with chapter 8 there is a disincentive for the government to go any further on environmental laws or labour laws, because they can be sued. I'd like to see what

happens in the event that they don't even enforce their existing environmental laws, as poor as they may be. What is the process?

● (0945)

Mr. Dean Knudson (Director General, Americas, Department of the Environment): Thank you for the question.

What happens under this trade agreement is that if a citizen has a concern over the perceived lack of enforcement of a law within that country, then they can go through a dispute resolution process that is laid out in the agreement. It does go up to the ministerial level. It does require for a discussion between officials, then proceeding to the ministerial level for an attempt to address that concern.

That information is made public once the decision has come out.

Mr. Peter Julian: How long can that process take? Perhaps you could take us through it.

Mr. Dean Knudson: For the process itself, quite frankly, there are no timelines laid out in the agreement. But generally this sort of process is meant to be—and in discussions with the Peruvians, it was well understood to be—a fairly timely responsive process.

One of the things we also pushed for was political accountability. That's why it's at the ministerial level as opposed to a bureaucratic level. There is that visibility and accountability laid in it.

In terms of the specifics, we have a similar, slightly more onerous process, shall we say, under the Canada-Chile Free Trade Agreement. Our first dispute resolution has been tabled against the Chileans. That was put forward in September of last year. Subsequently, the two parties have reviewed the submission. They've determined that the submission is indeed appropriate for consideration. That requires that it go to what is basically legal counsel for both parties, who then review the process to look at it in a more in-depth fashion.

That process is under way currently. We expect that we'll have, within the next couple of months, a recommendation to the ministerial level within the Canada-Chile Free Trade Agreement. At the end of the day, that whole process will be wound up well within one year.

Mr. Peter Julian: And what are the sanctions? In the Canada-Peru agreement, what are the sanctions?

Mr. Dean Knudson: In terms of sanctions, effectively this is a political agreement between two parties, and therefore it's up to those individuals, in terms of that level of accountability, to come forward with an appropriate response. If it's seen as being insufficient, etc., then we have the political mechanisms in both our countries to hold the individual parties to account.

Mr. Peter Julian: Thank you for answering that. So there are no sanctions for violation of existing environmental laws. That's very important.

You've been very generous, Mr. Chair.

The Chair: Mr. Julian, you've exceeded ten minutes, but I wanted to let Mr. MacKay respond as well to your last question.

Mr. Vernon MacKay: Thank you, Mr. Chair.

Mr. Julian referred to the ability of governments to set laws to protect the environment. I want it to be very clear that there is nothing in chapter 8 that prevents a government from doing that. Chapter 8 says that when governments set their laws, they should be non-discriminatory. So when environmental laws are developed, that's the guideline, that's the commitment, that we do it in a non-discriminatory way.

Mr. Chair, perhaps we could have just one quick moment to respond to Mr. Julian's question about loss of profit. I would hand that over to my legal counsel.

• (0950)

The Chair: Mr. Kronby.

Mr. Matthew Kronby (Director General, Trade Law Bureau, Department of Foreign Affairs and International Trade): Thank you, Mr. Chair.

I just want to clarify something on Mr. Julian's first question that sort of equated indirect expropriation with a loss of profit. Frankly, there's not really a basis for that equation. Loss of profit does not amount to indirect expropriation. There is an annex in the agreement that does elaborate on what indirect expropriation is, and that annex is there precisely to ensure that tribunals considering the issue of indirect expropriation look at the full range of circumstances that would constitute indirect expropriation under international law.

I would also like to point out that there is a paragraph in that annex—this is building on what Mr. MacKay just said—that says the following: "...non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriation."

Also, perhaps you would indulge me and repeat the question you had about social security. I'd like to make sure we have it right when we provide a response to the committee.

Mr. Peter Julian: It was on the privatization of social security in Peru.

Mr. Matthew Kronby: Yes.

Mr. Peter Julian: And the issue around indirect expropriation. Of course, you've seen this with Dow Chemical. The companies can use the mechanism when their profits are infringed upon, and we've seen many examples of that under the chapter—

Mr. Matthew Kronby: We've seen a claim.

Mr. Peter Julian: We've seen many claims.

Mr. Matthew Kronby: Anyone can make claims.

Mr. Peter Julian: Ethyl Corporation. We can have a debate on this, but the precedence of jurisprudence is pretty clear.

The Chair: If you'd like to have a debate, you can do it outside committee.

Thank you for that. I think we're going to have to move on to the next one, because we have Mr. Keddy chomping at the bit, unless you want to follow that with a quick response from Ms. Nelder-Corvari.

Just before you start, did you have something to add to that?

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): Yes, I'd like to hear the rest of the answer.

Ms. Carol Nelder-Corvari: I wanted to turn to the other part of Mr. Julian's question about the environment, and that's because I think we need to understand the context here a little better.

I know the question was about a sanctions-based approach as opposed to a cooperation-based approach. We can certainly argue the merits of both. But in the case of Peru—and this is important—when we went down and spoke to our Canadian companies and asked them what their expectations were on environment, the one message we heard, and they all said the same, was this: we want stronger environmental laws in Peru; we want the ability, the capacity, of the government in Peru to increase, because we're operating in the regions where the laws and the presence of government are not as strong as they could be. They're building up that presence. That's why EITI and these transparency initiatives are important. Very often, they say they do the same thing as we do in Canada, they follow the same best practices, but there's nobody there. There's not a very strong capacity to determine they're doing that.

So what they wanted was an effort to help build capacity in Peru. As for the Peruvian government itself, when we were in negotiations, we were expecting there would be.... It's a developing country. They have to build capacity, there's no doubt, and that's why this is important. So we were thinking that after the FTA with the United States, there might be some concerns about more obligations or more emphasis on environment. It was the opposite. Through the United States-Peru Trade Promotion Agreement, they had created a critical mass of civil society that had expectations on the environment, and that meant that, to be politically accountable, they wanted a chapter in the agreement and a side agreement and they wanted this to have good profile.

The efforts here are cooperative to a large extent. That's what CIDA was doing with the ombudsman effort in Peru, and that's what the mining tool kit was about in terms of getting stakeholders and civil society a voice to help make decisions in communities.

So I think it's important to look at the whole context. The Government of Peru announced its first environment minister the day before they signed this agreement with Canada.

• (0955)

Mr. Gerald Keddy: Perhaps I can interject for one second before I hand the questions over to Dean. I don't want to run out of our time.

The Chair: We haven't started your time yet.

Mr. Peter Julian: He wanted the answer to the question. I didn't; I know the answer.

The Chair: You did it in 14 minutes, Mr. Julian. I think I'd save it today.

Go ahead, Mr. Keddy.

Mr. Gerald Keddy: I think we have to look at reality. We've had two sovereign nations, Peru and Canada, negotiate a free trade agreement between the two countries in good faith. We also have to look at the reality that we're not the United States of America, that we're roughly one-tenth the size. We don't have the same clout.

The agreement, certainly as I've read it and I've heard our trade officials talk about it, I think is pretty good agreement. But we also have to look at the Peruvians themselves. The people of Peru had a government that ran on a free trade platform, they were elected on a free trade platform, and they negotiated a free trade agreement in good faith. I'm a bit astounded when I hear some of our members say they don't have the right to do that, that somehow they're not sufficiently advanced in the democratic process to do that. I think it's a bit disingenuous on our part to say that. There are good environmental aspects to this agreement, there's good corporate social responsibility. The whole idea of non-discriminatory law allows people to negotiate in good faith and have a dispute mechanism. To me it makes a lot of sense.

That's more of a statement than anything else, and I know Dean has a real question.

Mr. Dean Allison (Niagara West—Glanbrook, CPC): I want to thank the officials for being here today.

My question involves the investor-state dispute settlement mechanisms, with respect to what you were getting at before when you were talking about it. My understanding is that this doesn't threaten Canada's ability to regulate or legislate labour and environmental issues. Is that the case?

Mr. Vernon MacKay: Yes, that is the case. The investor-state dispute settlement mechanism does not prevent governments from regulating in the interests of labour, environment, or other public policy issues such as health and safety. The investor-state mechanism is there to provide Canadian investors in partner countries with an impartial process in the event of an alleged breach of the treaty. That is the main reason for that mechanism. It provides some stability and predictability for the investor. It is essentially a way for them to manage risk in our partner countries. But it does not prevent our partner countries from regulating in the public interest.

Mr. Dean Allison: Let's talk a bit about imports. What does this do for places, like Quebec, that are adding value to raw goods? Does this not provide more opportunities as we go to the value-added and export those goods?

Ms. Carol Nelder-Corvari: That's right, 75% of the imports are for further processing. They're not final goods; they're creating economic activity in Canada.

The point about the benefits of this agreement also goes directly to the issue of a defensive arrangement here.

Mr. Dean Allison: Thank you.

Ron.

Mr. Ron Cannan (Kelowna—Lake Country, CPC): Thank you to our witnesses.

During your presentation, I think you alluded to something like 75% of Canadian exports coming back to Canada for further processing. Is that correct?

Ms. Carol Nelder-Corvari: No, they're not coming back. What we were saying was that the imports into Canada from Peru are not final goods; they are goods for further processing or inputs for further manufacturing in Canada.

Mr. Ron Cannan: We're creating jobs, then, with this agreement.

Ms. Carol Nelder-Corvari: Yes, the exports, the imports, the investment—all are beneficial. You have to look at the whole relationship.

Mr. Ron Cannan: I have a supplementary question with regard to the timeline.

You said that on February 1 the United States ratified their agreement with Peru. That means that during the last three months our Canadian exporters have not been competing on a level playing field. Would that be fair to say?

• (1000)

Ms. Carol Nelder-Corvari: That is exactly right. I could go through some of the areas where we're placed at a significant competitive disadvantage as a result of this agreement.

Mr. Ron Cannan: Please do.

Ms. Carol Nelder-Corvari: On wheat and barley, the U.S. producers can now export their wheat and barley to Peru duty free. Canadian producers now face tariffs as high as 17%—on top of the higher transportation costs to ship their products to Peru. The passage of the Canada-Peru FTA would correct this situation. Canadian exports of grain to Peru were worth \$135 million last year and are a good percentage of our total exports to Peru.

On pulses—or lentils and peas—the same story holds true. U.S. exporters do not face any duties on these products, whereas Canadian producers face a 25% tariff. Once again, the passage of this agreement would correct the situation by eliminating these tariffs immediately. Canadian exports of pulses to Peru were worth \$16 million last year.

On machinery, Canadian exports of machinery—in particular, mining machinery—are also losing since the entry into force of the U.S.-Peru FTA. While these Canadian manufacturers are still facing tariffs of 20% on some of their exports, the U.S. does not have to experience the same barriers. Canadian exports of machinery and equipment to Peru were worth \$120 million last year, or 30% of Canada's total exports to Peru. These could be lost if we don't act quickly.

Canadian exports of paper to Peru were worth \$27 million last year and are facing tariffs of up to 12%. Since the entry into force of the U.S.-Peru FTA, these tariffs are being phased out for U.S. paper exporters. The passage of this agreement would again level the playing field for our key exports.

Dean mentioned the Canadian pork producers. They've also indicated an interest in developing the Peruvian market. The FTA will help them to do that by eliminating Peru's 25% tariffs over time, and the FTA will also give them immediate duty-free access on a certain quantity of pork exports—which I think is an important issue given the current problems facing our industry.

The disadvantages are not restricted to the exports of goods. The implementation of the U.S.-Peru deal also means that Canada's exports of services and the access of Canadian companies to Peruvian government procurement purchases would be disadvantaged.

The Chair: Thank you.

Mr. Cannan.

Mr. Ron Cannan: I'll go in the next round. I'll wait, thanks.

The Chair: Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): Thank you, Mr. Chair.

I also want to thank the witnesses who came forward.

I must confess that I was in Peru not too long ago; I think it was about a year ago. I had the opportunity to meet with our ambassador there. She was quite gracious and gave us a very good overview of the economic situation in Peru and also our trade relationship with Peru.

A number of business people came forward as well, including people in the mining industry and also the financial sector, specifically Scotiabank. We were very proud to see that our investments are certainly making a big difference both for Canadians and for people in Peru.

I think one of the great things I've seen over the years of monitoring the situation in Latin America, particularly in Peru, is how things have really changed for the people and their lives. Although there's still massive poverty, it's nowhere near where it was 10 or 15 years ago. So that's a really important signal that things are getting better.

I'm proud of the fact that although we are here to protect Canadian jobs or jobs at home, we're making a difference in people's lives and getting them out of poverty. Whatever we can do, certainly we should be there. Aid is important, and providing financial assistance through CIDA is also important, but these trade deals actually have a longer-term positive impact in getting people out of poverty, and that's one of the reasons I'm supportive of this agreement.

I want to understand some things and maybe you can clarify them. That is, in both the agreement Canada has signed... In the one the U.S. has signed, there are some tariff concessions by the U.S. Are they the same as the ones done by Canada? Are they totally different? Has the U.S. received a better deal than we have, or have we negotiated very similar deals in terms of tariff concessions?

• (1005)

Ms. Carol Nelder-Corvari: I'll ask Dean Beyea to respond to that. He led the market access negotiations.

Mr. Dean Beyea: Because there are 8,500 tariff lines in a tariff schedule, the framework's not exact, but I think on what we were exporting to Peru and where we had market access interest by

industry, we've done generally as well as the United States, and in some cases slightly better. There are some elements, where we've had traditional exports, where we have a different tariff phase-out, but always going to free.

I don't know if you had a specific question on a specific area, but certainly that's the case in areas such as wheat, barley, lentils, peas, beans, machinery and equipment. And even with respect to refined sugar, where we had sensitivities coming our way, we had a smaller TRQ over a longer period than they had with the United States.

I think generally that answers your question, unless you have a specific interest on a specific tariff line. Certainly our overarching goal in the market access negotiation was to get the same access as the United States where we could, and based on our export patterns and where we had interest from Canadian industry, including the agriculture sector.

Mr. Mario Silva: And on the issue of intellectual property, it seems that the U.S. didn't get a much more restrictive provision than Canada. Was there a huge difference on the issue of intellectual property?

Ms. Carol Nelder-Corvari: On intellectual property, the discussions with Peru focused largely on the reinforcing of WTO rights and obligations.

Mr. Mario Silva: Thank you.

The Chair: Thank you.

Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chair.

Thank you, witnesses, for coming out.

This is an interesting panel. I'm not here on a regular basis, and I'm interested in just listening, actually, to the success story that has come about in terms of the development of this free trade agreement with Peru. Not only that, but particularly as we've moved ahead as a government to recognize the need for Canadians and industry, regardless of what it is... I can look at different agreements, look at what they do for the Canadian economy, and I see that not all agreements are everything for a country. That's why we have all the bilateral agreements that we have found necessary to take.

I'm always here to give credit where credit is due, and I want to congratulate you as a panel for helping develop a successful free trade agreement.

One thing I've found, when I do have the opportunity to hear from other countries, is that the ambassadors from those countries always say that Canada needs to show up. Countries trust Canada. They trust our safety. Whether it's food or equipment, it's quality, and they like to do business. I think now, in terms of our showing up and wanting to sit down and talk about free trade agreements, that is why we've been able to move ahead. I was glad to hear you say that even though we were kind of late getting in, because previously there was no incentive to move ahead on free trade agreements, in this particular agreement, in fact, portions of it have been strengthened beyond those of the United States. I think that is always a credit to those who are doing the negotiations.

I want to step to the agriculture file. Our Minister of Agriculture has been moving to expand our export markets, particularly in the areas of grains and oilseeds and livestock commodities, beef and pork. In terms of the expansion of that section, how was the agriculture file? I don't know how the discussions happen, quite honestly, but in the fulsome discussion around the free trade agreement, when you got to the agriculture file, how did that file affect how you succeeded in other areas, whether mining or banking? How did that all come together in terms of the agriculture file's impact on those?

• (1010)

Ms. Carol Nelder-Corvari: In any free trade discussions, as you've probably observed in your hearings here on the World Trade Organization and the Doha Round, the agricultural sector is always the most sensitive and controversial in terms of negotiations. Specifically with Peru, though, we did not have a great deal of sensitivities. We're shipping largely grains that they don't produce in large quantities, and pulses. They're shipping seasonal vegetables here, asparagus in off-season largely. So there was a great deal of complementarity.

There are some sensitive issues, and of course, when Canada has traditionally, as a negotiating mandate, to take all supply-managed products off the table at the outset, that impairs us in negotiations. Obviously, we start that way. Peru did have interests in certain dairy-related areas, so our removal of those items from the negotiating table did have an impact on what we were able to achieve, as they took off their relative sensitivities in terms of the negotiations.

Overall, I think for agriculture—and in fact the strongest supporters for this deal are from the agricultural community in Canada, or some of the strongest supporters—they're very concerned right now. I don't know what the situation is since February 1 in terms of whether they have lost shipments because of the U.S. free trade agreement with Peru in pulses, lentils, barley, or wheat, but certainly this is something we're trying to monitor while we're engaged in this effort.

Mr. Bev Shipley: I think what you're saying is that it is important, as we take on agreements, that we actually continue to move ahead and not be behind the pack in terms of the development of strong and equitable free trade agreements for our country.

Actually, I have a couple of extras, but I'll come back at another time.

The Chair: Try to save it until the next round.

I'll go to Mr. Guimond.

[Translation]

Mr. Claude Guimond: Thank you, Mr. Chair.

Unfortunately, I am not convinced of the importance of this agreement. And yet the Bloc Québécois is in favour of trade and supports free trade agreements. We firmly believe that they can contribute to the enrichment of communities. The present economic crisis shows that a market economy can only work properly if it is properly controlled. That has been clearly shown on the political and ethical levels.

Instead of negotiating agreements in a piecemeal fashion, why not focus our efforts by working within the WCO in order to come up with a structure or a framework that could ensure that we have appropriate free trade agreements, with the means to verify what is happening in countries such as Peru? Why not work toward multilateral agreements, rather than focusing on single agreements, on a case by case basis?

[English]

Ms. Carol Nelder-Corvari: I think Canada has continually indicated its support for a successful conclusion of the Doha Round. That is obviously a priority for the government. In the meantime, countries around the world are negotiating bilateral agreements and our market access is being eroded, and our competitiveness in these markets is being eroded as a result. When we enter into a bilateral free trade agreement, we are in effect taking our WTO principles to the table and negotiating strong market access deals for our businesses.

So we don't see it as contradictory; it's complementary.

• (1015)

[Translation]

Mr. Claude Guimond: That's fine, thank you.

[English]

The Chair: I think we can go back to Mr. Shipley's question.

Mr. Bev Shipley: I'd like to follow up again on the agricultural file, because I recognize the significance of agriculture in any of the agreements that we do in terms of our economy and the rebuilding in light of the economic times now. When you talk about the sensitive issues around agriculture, particularly around those in dairy and other industry, would you say that when you have those negotiations based around that, they still come out as a balanced economic benefit, or is it a negative economic benefit because you have to work around the supply management issues?

Mr. Dean Beyea: Thanks very much for the question.

As Carol noted, what you always try to do—I know this as the trading goods market access negotiator—is try to strike a balance in the deal that represents your interests and your sensitivities. It is difficult when you take dairy, poultry, and eggs access off the table—except for the “within access” commitment, where there's a very low tariff already, and a country like Peru would compete with the rest of the world for that closed market. It's then difficult to argue that you need free, immediate access for beef and pork and other things that are somewhat sensitive in those markets.

That said, I think we try our best, given our strong interest in those areas. We look at historical levels of trade and try to get duty-free access greater than that on an immediate basis. Then we look at long-term access for those products. That's generally what we've done. We've done that for pork in this agreement. On the beef side, I must say I'm less happy, but it's the best we could do, given the cards we're dealt in that sector.

But I think overall, and overwhelmingly, you have to look at the benefits here, and they're really for grains and pulses, peas. These haven't been traditionally strong export markets in the meat areas. The access we've got is far and away more than we've shipped historically, and certainly more than in recent years.

Mr. Bev Shipley: I would just say, from listening, that what any agreement looks at is the balance and the benefit to each country, particularly when we look at what we have—the diversity we have in the marketing within Canada, being able to open markets up that we didn't have—and yet we've still had the benefit of protecting Canadians, not only producers but consumers, in terms of having those negotiations exempt from the tariff reductions.

I'm going to turn it over, Mr. Chair. I think my colleague has another question.

Mr. Ron Cannan: Thank you, Mr. Chair.

Thanks again to the witnesses. I appreciate the corporate social responsibility in the aspect of implementing our new strategy.

In your opening comments, you alluded to the fact that we have this labour side agreement. I think it's the first one in the Canadian history of agreements that we've had a special side agreement with a dispute resolution mechanism. Maybe you could expand a little bit more on how that resolution mechanism works and why we even need this agreement. Do you think it's going to be sufficient?

Mr. Pierre Bouchard: Yes, we've had the dispute resolution mechanism in previous agreements, for North America and for Chile. The Costa Rica one did not have financial penalties. This agreement is sort of a third generation agreement. It is much, much stronger than what you had under the North American agreement or the Costa Rica agreement. The dispute resolution mechanism is an important part of this. Essentially, we've tried to strike a balance between having an efficient deterrent for non-compliance and having a problem-solving approach.

You have different approaches in the world right now. For example, Americans will tell other countries that if they don't comply they'll get trade sanctions. Actually, when we looked at the agreement, we thought that it was better to have financial penalties than to have trade sanctions. When countries have to face trade sanctions in the WTO, or they don't comply, they have a choice of either paying a penalty or having trade sanctions. Very often they'll choose the trade sanctions, because the country applying the trade sanctions actually hurts itself a little bit.

In this case, if 70% of our imports from Peru come from Canadian companies and are reprocessed, it would actually hurt us, so we would prefer to have a penalty instead. We have a strong legal mechanism to ensure that the penalty would be paid into a fund controlled by both governments. It would also ensure that the money would be used to solve the problem.

It's important to understand when the penalty would take effect. It would come at the end of a dispute resolution process, where the government probably would have had to expend maybe half a million dollars just for the cost of the dispute review panel. The government would probably be in no mood to compromise after having gone through all of this, and generally the government has been seen as aggressively pursuing these complaints.

Once the money is put into the fund, then you have to have an agreement. You have to have an action plan. You have to have an agreement to resolve the issue. If we believe the other country is not acting in good faith and does not really want to resolve the issue, we'll just refuse to have an agreement. Until we have an agreement,

that country has to keep paying this amount of money into the fund year after year. We find that this approach is superior to asking, as other countries do sometimes, that the money be paid to the treasury. That's the process that we've set up.

• (1020)

Mr. Ron Cannan: With the dispute resolution mechanism, I'm wondering about the labour agreement. This is the first time we've had a side agreement, I believe, on the labour component.

Ms. Carol Nelder-Corvari: Yes, in this agreement with Peru, we have both a chapter on labour, which is part of the FTA, and the labour side agreement. We went as far as we could regarding where we were with provincial understanding. Both labour and environment are under provincial jurisdiction, so the chapters reflect and respect that jurisdiction while identifying key objectives and principles that are elaborated in the side agreement on both labour and environment.

Mr. Ron Cannan: Thank you.

The Chair: Mr. Cannis.

Mr. John Cannis: That was actually what I wanted you to let us know—that there was a mechanism there. It seems to be properly placed.

I want you to add another dimension for me. The same dispute resolution system applies to the European trade agreements that they've put together. Do they have to deal with them as a group or individually? How does it work with their partners?

Ms. Carol Nelder-Corvari: To my knowledge, the discussions with EFTA that Peru has concluded do not include labour and environmental provisions. The U.S.-Peru agreement does. These provisions are not dissimilar to those in our model, with some variations. Negotiations with the European Union are just under way, but my understanding is that labour and environment are not included in the European model.

Mr. John Cannis: Aside from labour, are there any other issues? Let's say we agree to disagree on other products, such as beef, lentils, or whatever; how do we resolve it eventually? How do we get into it? How do we enforce it?

Ms. Carol Nelder-Corvari: The agreement does include a dispute settlement chapter. It's modelled after our NAFTA dispute settlement system, so it allows for parties to come forward. If their issues aren't resolved, there's a process for resolving that, and that process can result in sanctions.

• (1025)

Mr. John Cannis: Wonderful.

Mr. Chairman, thank you kindly.

The Chair: Good. I think that will conclude our briefing today.

Thank you for coming. That was so good off the top that we had most of the questions answered before we could ask them. We appreciate that.

Does anyone have a final point?

Go ahead, Mr. Knudson.

Mr. Dean Knudson: Could I follow up and be a little bit more specific on two elements of the environment provisions that we've had a fair amount of discussion on?

I'd like to specify that the agreement does allow any citizen of either country to provide a written question regarding any obligation under the agreement with respect to the environment. The parties are obliged to provide an answer and to make both the question and the response publicly available. That's in terms of giving a bit more specificity to what is sanctionable. I know the definition is different from what Pierre has been talking about, but the publicly acknowledgeable process is there.

The other thing it allows is that any Canadian or Peruvian can request an investigation of alleged violations of environmental laws. It also, as I mentioned in my earlier comments, provides a dispute resolution process that allows for any question to be addressed under the environmental agreement. That does get resolved eventually at the ministerial level, for that public accountability.

There's also the point Carol was making earlier in terms of the context for the agreement. It's very important to understand that we are dealing with a developing country. What they were, quite frankly, interested in was what we were trying to do with Chile, and we had a bit of a discussion about enforcement matters, etc.

We don't spend a tonne of money working with Chile, but we've had some really effective results over the last few years. They've been along the lines of the enforcement information system Chile is developing, an electronic system based upon Canada's NEMISIS system. They've literally taken ours and applied it there, and we've transferred that.

On top of that, they have developed a pollution release and transfer inventory that is based upon Canada's system as well. It allows the country to actually track the flows of various pollutants in an effective manner, which helps them target their enforcement.

From talking with the Peruvians, we learned their biggest concern was biodiversity. In that case, when it comes to working with the Chileans very tangibly, we've had a specific engagement by our enforcement officers on species that are subject to illegal trade between the two countries so that they can be identified at the border. The results we're looking for are very specific and tangible and focused with respect to enforcement to protect biodiversity and to improve the capacity that Carol was talking about in these countries.

I just wanted to provide that additional context.

The Chair: Thank you.

Go ahead, Mr. Kronby.

Mr. Matthew Kronby: Thank you, Mr. Chairman.

I wanted to come back to the question I had asked Mr. Julian for clarification on. As I understand it, the question is with respect to whether the investment chapter of this agreement would prevent Peru from privatizing its social security system.

He's shaking his head, so perhaps I will let him rephrase the question before I answer the wrong one.

The Chair: Go ahead, Mr. Julian.

Mr. Peter Julian: It has already been privatized—

Mr. Matthew Kronby: Excuse me, I misspoke. I meant to say that the question was on whether the chapter would prevent Peru from taking a privatized social security system and making it public.

The answer is no. The chapter doesn't prevent a government from making anything public, and the parties to the agreement can take reservations against the chapter.

But more specifically, I think the question was with respect to expropriation in the context of making a social security system public. There's nothing a Canadian investor could do to prevent Peru from taking a private social security system and making it public. If a Canadian investor in the sector had an investment that was being expropriated as a result of making the system public, that Canadian investor could insist on fair market value compensation for its investment. That is what the agreement would enable a Canadian company in that sector to insist on, but it would not prevent the Peruvian government from making its social security system public.

• (1030)

The Chair: Mr. Julian, do you have a further comment?

Mr. Peter Julian: Thank you very much, Mr. Chair. You're being very lenient today.

The Chair: Yes.

Mr. Peter Julian: The question is around the potential loss of profit. The indirect expropriation, as defined in article 8 to 12, would allow a Canadian company to sue for potential loss of profit if a public social security system were put in place instead of the privatized one.

Mr. Matthew Kronby: Not exactly. What it would allow a Canadian company to do is make a claim that its investment had been expropriated, and it would have to establish that it had suffered a substantial deprivation to the value of its investment. The simple loss of profit would not establish a substantial deprivation. It might be a factor, but it would not establish substantial deprivation. As I mentioned, there's a whole annex to the free trade agreement, annex 812.1, that sets out the factors for tribunals to look at when considering a claim for indirect expropriation. I could imagine that in a context where a privatized system is made public, we would be looking at not necessarily indirect expropriation but perhaps direct expropriation as well, which might be a simpler matter.

Mr. Peter Julian: I'll have further questions if we have time at the end, Mr. Chair.

The Chair: This is the end.

Mr. Peter Julian: Oh, okay.

The Chair: I'm sorry, you were preoccupied. We decided that we were going to end at 10:30 and go to committee business, so I'll give you another minute, Mr. Julian, if you want to wrap it up.

Mr. Peter Julian: I think essentially what you're saying is that the type of indirect expropriation—loss of profits and loss of investment that we've seen with the Ethyl Corporation, without chemicals—would be permitted through this agreement. I did want to ask why the definitions were included in the annex as opposed to in article 812, because in article 812 it's very specific around indirect expropriation, but there is none of the refining of definitions that was referred to in the presentation.

Why in the annex rather than the article of the treaty itself?

Mr. Matthew Kronby: To clarify, I don't think I said that the loss of profits would be fair game. I think I said the opposite, in fact.

To be clear, the annex is an integral part of the treaty. As a matter of law, it's part of the treaty. The annex was included, as I mentioned earlier, I believe, to elaborate on the considerations that a tribunal would have to take into account and that an investor would have to establish in order to make a claim for indirect expropriation. It was building on experience that Canada and other countries have had under investment arbitration over the past, roughly, 15 years.

The Chair: Go ahead, Mr. Malo, one quick one.

[Translation]

Mr. Luc Malo (Verchères—Les Patriotes, BQ): I need some clarifications following the question asked by Mr. Guimond earlier.

Madam Nelder-Corvari, you told us that without an agreement, there would be a loss of market shares. Could you tell us whether you have indeed witnessed in the last few years a loss of market for Canadian corporations in Peru?

I ask this question because if indeed these are free trade agreements that enable us to avoid losing market shares, I wonder why, when we have NAFTA and the FTA with the United States, we have noticed in the past few years a rather substantial loss of our market share.

I have another question relating to what Mr. Guimond was asking you. Do you reckon that if we negotiate bilateral agreements, when an agreement is finally reached at the WCO, these bilateral agreements will have paramouncy over anything that could be negotiated multilaterally at the WCO?

Thank you, Mr. Chair.

•(1035)

[English]

The Chair: I think we'll try to answer that very briefly, if we can. There's a lot of background that needs to be covered before we can get to where we're going.

If you could summarize that for us very quickly, it would be helpful. Thank you.

Ms. Carol Nelder-Corvari: Just quickly, the U.S. agreement with Peru came into effect in February. We don't have the trade data yet.

[Translation]

Mr. Luc Malo: In terms of what we have presently, did you notice a market loss due to the fact that an agreement had not been signed with Peru?

[English]

Mr. Dean Beyea: On the import trade data, which are very accurate, there's a two-month lag.

On export trade data, which are significantly less accurate—and in fact we have to use the data from the other country—there's a longer lag.

Because the U.S. agreement came into effect February 1, it's difficult to say—

[Translation]

Mr. Luc Malo: I am not talking about the agreement with...

[English]

The Chair: Mr. Malo, let him answer the question.

Mr. Dean Beyea: It's very difficult to say whether or not we've lost market share in Peru, given that the U.S. agreement came into effect so close to where we are now.

The Chair: All right, I think that's all we're going to get to today. Thank you.

Peter, I think we've had—

[Translation]

Mr. Luc Malo: Okay. I won't have an answer.

[English]

Mr. Peter Julian: Mr. Chair, I just want to ask, through you, if we can get those figures.

Mr. Gerald Keddy: On a point of order what about the other parties here, Mr. Chair?

You said at 10:30 the meeting was over. If you're going to open it up for another round, then open it up for every political party, and everybody can take their turn.

The Chair: I think we've had sufficient—

Mr. Gerald Keddy: Come on.

Mr. Peter Julian: I asked for the figures. I'm just repeating that request, thank you.

Mr. Gerald Keddy: No, that's not the point of order.

The Chair: Thanks, Mr. Keddy.

With that, I will adjourn this portion of the meeting and thank our witnesses again for a super job, which I do appreciate, and committee members for their questions, for the most part.

Ms. Carol Nelder-Corvari: Thank you.

The Chair: Thank you again.

We will adjourn for two minutes while the witnesses leave the table, and return in camera in about three minutes.

[Proceedings continue in camera]

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