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Chair

Mr. Lee Richardson

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● (0915)

[*English*]

The Chair (Mr. Lee Richardson (Calgary Centre, CPC)): I'm sorry for the late start.

We have a lot of conversations going on this morning, but I do want to get to our witnesses today and continue our study of Bill C-24, An Act to implement the Free Trade Agreement between Canada and the Republic of Peru.

With us today from the Canadian Environmental Law Association we have Theresa McClenaghan; from the United Steelworkers, Mark Rowlinson; and as an individual, Maxwell Cameron, who is a professor at the University of British Columbia's Department of Political Science and has some familiarity, I understand, with Peru.

With that, if everyone's ready to go, I think we can go for an hour from the time we start here and then we're going to have to go to clause-by-clause. When we get that done, we have some pretty important business today, including consideration of additional witnesses, Thursday's agenda, and also the upcoming visit. That will have to be done following our witness presentations today.

With that, I would like to begin. I will ask Theresa McClenaghan, from the Canadian Environmental Law Association, to begin. We will go with five- to ten-minute opening statements from each of our witnesses and then go to questions.

Ms. McClenaghan.

Ms. Theresa McClenaghan (Executive Director and Counsel, Canadian Environmental Law Association): Good morning.

Mr. Chairman and honourable members, thank you for inviting me to appear before you this morning to speak to Bill C-24 regarding the recently signed free trade agreement between Canada and Peru.

[*Translation*]

Good day, ladies and gentlemen. I apologize for the fact that my presentation will be in English only.

[*English*]

My organization, the Canadian Environmental Law Association, is a federally incorporated not-for-profit NGO and an Ontario specialty legal aid clinic. We provide direct legal services to clients, including environmental precedent-setting and test cases to those who would be unable to afford a lawyer. Our mandate does include law reform, public legal education, and community outreach.

For this morning's commentary, I have drawn on the extensive background that CELA has in trade and the environment, including the work of the late Michelle Swenarchuk, formerly our director of the trade and environment program. There are three points that I want to make before you today. I would note that these comments are not necessarily unique to this particular bilateral agreement.

The first point is that the provision of the direct investor access to investor-state claims under the investment chapter is itself problematic in that it invites repeated challenges, in my opinion, of environmental health and safety regulatory action by Canada and the provinces. I'll speak to that.

The second point I want to make today is that if direct investor access is to continue to be provided, then the bilateral free trade agreements must be explicitly clarified to apply to situations of true expropriation and made explicitly inapplicable to regulatory action by Canada and the provinces in the matters of environment, health, safety, and worker protection—at least.

The third point I'd like to speak to is that the proliferation of the bilateral free trade agreements, both in Canada and by other nations, is establishing a patchwork of rules pertaining to the protection or lack thereof of the sovereign rights of Canada, the provinces, and other nations to establish environmental health, safety, and labour rights legislation and regulation as the governments see fit. The very existence of that patchwork makes the assessment of the risk of trade challenges problematic and becomes in itself a greater chill on regulatory action.

First, with respect to direct investor access to investor-state claims under the investment chapter, I would submit that it's not necessary to provide direct access to states by investors in the bilateral free trade agreements, even if one wishes to provide protection against expropriation. The trade agreements normally provide that investors are entitled to the same treatment as nationals. Accordingly, the domestic law—both common law and statutory—regarding expropriation would be available for recourse. That is what happened in the U.S.-Australia Free Trade Agreement, the second bilateral free trade agreement that the U.S. negotiated with “a developed country”, as they put it in their environmental review in 2004.

The U.S.-Australia Free Trade Agreement gives no direct investor-state remedy, even though it does contain provisions regarding expropriation. In the final environmental review, the reviewing committee said:

> In recognition of the unique circumstances of this Agreement—including...the long-standing economic ties between the U.S. and Australia, their shared legal traditions, and the confidence of their investors in operating in each others' markets—the two countries agreed not to implement procedures in this FTA that would allow investors to arbitrate disputes with governments. Government-to-government dispute settlement procedures remain available....

That agreement included provisions—which are normal—regarding expropriation, including that it be for a public purpose, that it be not discriminatory, and that prompt, reasonable compensation be provided and in accordance with due process of law. I would comment on that. I'm speculating, but by 2004, NAFTA had been the subject of some investor-state challenges and claims for compensation for regulatory action; I would speculate that the negotiators wanted to avoid those types of claims.

So rather than providing that kind of direct investor-state remedy, the U.S.-Australia Free Trade Agreement provided a proviso for consultations, such that if they decided down the road that they wanted to provide a remedy to a particular investor, they would have consultations about how to do that. But what they settled on in the agreement was the normal expropriation rules of each country. In a case of complaint with those, they could make it the subject of the agreement's dispute resolution procedures.

● (0920)

Before I leave this point, I would submit that the absence of a direct investor-state procedural remedy under the U.S.-Australia agreement is itself a protection for the state parties in terms of their ability to regulate with respect to the environmental health, safety, and worker protection matters, among other things. If an investor had a true expropriation claim, then it could proceed under the normal domestic law. On the other hand, in order to garner attention for an alleged indirect expropriation based on regulatory action by the state, the investor would first have to persuade its own government that it had a legitimate complaint and that the regulatory action in question was one of those rare circumstances of indirect expropriation.

Since the U.S.-Australia parties were clearly anxious to protect their own right to carry on with high standards of environmental regulation—I point to chapter 19 of the Australia agreement—I would suggest that they would be very reluctant to pursue a complaint, and I would suggest the likelihood of that would be quite small. Democratic governments have to consider a range of competing factors, including many matters of public interest such as environmental protection, human health, safety, worker rights, as well as the social and economic impacts of their regulatory actions, and that's their prerogative.

It would be my recommendation under the first point that the right of direct access by investors to a claim against the parties be removed and that instead an approach be taken akin to the U.S.-Australia Free Trade Agreement—in other words, provide access to the Canadian domestic procedures courts of law for cases of true expropriation and do not provide for claims of indirect expropriation. At least these would be regulatory action by Canada or the provinces for environmental health, safety, and worker protection matters.

The second point is that if there is to be direct investor-state access, contrary to the submission I've just made, it be explicitly applicable to true expropriation only. Granted, I understand that the free trade agreement has been negotiated and your decision is whether to approve the legislation putting it into effect. I would submit that the points I've been making about the regulatory impact of the direct investor access are important enough to pause at this point, especially before we continue with this agreement or any future agreements, and go back and review what has been happening vis-à-vis these indirect expropriation claims. Furthermore, certainly for any future agreements, the Australia approach is the one that should be followed.

In terms of the type of language that would restrict matters to true expropriation only, I first want to clarify that my organization has never argued against expropriation in domestic or international law in terms of appropriate compensation provisions. There are important protections of long standing, for example, including highways, transmission lines and so on, but on the other hand, we've long argued against arguments that public interest regulation amounts to expropriation or that compensation is due when activities are curtailed because of public interest regulation. Examples like that include land use decisions, facility approvals, and pollution emission controls. These are all valid regulatory actions in the public interest, even though they may impose costs on owners or preclude certain activities.

In terms of limiting claims to direct expropriation, we would suggest that language in the agreement should specifically limit the direct investor access to those claims of true expropriation. I would suggest that approach be taken instead of the case-by-case approach provided in the Canada-Peru Free Trade Agreement. Even though there is an attempt in that agreement to clarify that these cases do not generally amount to indirect expropriation, the very fact that the claim may be brought means there is uncertainty as to the arbitral panel's rulings and a regulatory chill may still prevail.

You've already heard testimony another day about the recent claim being brought by Dow Chemical against Canada for actions in Quebec under the pesticide code. At the time that claim was filed, as you may know, the Province of Ontario had enacted amendments to its pesticide act dealing with cosmetic use and sale of lawn and garden pesticides and was in the process of consulting with respect to the regulations under that statute. The Ontario Minister of the Environment at the time felt compelled to make public statements in the media late last year that the fact of the Dow challenge against Quebec would not cause Ontario to reconsider its approach. So in my opinion, the very fact that these claims can be brought is a problem in its potential to interfere with valid regulatory action. The potential for those claims gives greater weight or consideration to the commercial interests represented, even though the contemplated regulatory action by the government is not an expropriation in customary or domestic law. The problem extends not just to the federal government but also to the provincial and territorial governments as well.

● (0925)

To finish on that point, does the Canada-Peru Free Trade Agreement provide that explicit limitation? No, I don't think it does. The language could be perceived to be an improvement over NAFTA. However, the agreement in annex 812.1, in determining whether a measure is an indirect expropriation, states that it will be determined case-by-case. It provides several factors, including economic impact, the extent it interferes with investment-backed decisions, and the character of the measure, and then includes the provision, which I know you've reviewed before, that except in rare circumstances—when a measure or a series of measures is so severe in light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith—non-discriminatory measures that are designed and applied to protect legitimate public welfare objectives, such as health, safety, and the environment, do not constitute indirect expropriation.

My concern is that, first of all, those types of provisions—this isn't the only bilateral agreement that includes that language—have only been included in bilateral trade agreements recently. I would note that the very same paragraph is found in the Australia-U.S. agreement I was referencing earlier, but they didn't find it necessary to give a direct investor claim there.

In any event, the fact that the claims may be brought case-by-case means that the tribunal would evaluate it. For instance, is this one of those rare circumstances? Is the measure severe? Was it reasonable? Was it adopted in good faith? Was it perhaps discriminatory? Was it designed to protect legitimate public welfare objectives?

Interestingly, Howard Mann, a lawyer for the International Institute for Sustainable Development, said on the Methanex NAFTA decision in 2005 that there the tribunal had drawn a bright line between what's true expropriation and what isn't. This clause in the Peru agreement actually opens that up to question.

The final point, which I've already mentioned, is that the very existence of the proliferation of bilateral free trade agreements across a range of countries, with slightly different ways of attempting to protect the right to regulate, is itself becoming a problem. Now the analysis of where the regulation is subject to challenge is becoming much more complex, and there are slight differences between them.

Thank you.

The Chair: Thank you, Ms. McClenaghan.

To the witnesses, I'm sorry, I should mention that we want to try to keep it to between five and ten minutes, if we can. That was just a little over 13 minutes.

I'll go now to Mr. Rowlinson.

Mr. Mark Rowlinson (Labour Lawyer, United Steelworkers): Good morning.

My name is Mark Rowlinson. I'm counsel to the United Steelworkers union and I am also on the international affairs committee of the Canadian Association of Labour Lawyers.

The United Steelworkers is an international trade union with roughly 250,000 members in Canada. Through our international work, we have built strategic alliances and close working relationships with trade unions throughout South America, in particular in Peru. Our union is also the leading union in the mining sector in Canada, and as such, we have a particular interest in the relationship between Canada and Peru and in the labour movement in Peru.

I'm also appearing here this morning on behalf of the Canadian Association of Labour Lawyers, which is an association of 350 progressive lawyers who represent workers in trade unions in Canada. CALL has been very active in trying to promote the benefits of labour rights throughout the Americas, and we have been active in the pursuit and litigation of a variety of cases under the labour side agreement to the North American Free Trade Agreement.

I'm appearing before you this morning to provide some specific comments and analysis regarding the labour rights provisions in the Canada-Peru Free Trade Agreement. That's the only area of the trade agreement I'm going to address this morning.

By way of background, the labour provisions found in the proposed Canada-Peru FTA generally, of course, follow the pattern found in existing hemispheric trade agreements, notably NAFTA, Canada-Costa Rica, and Canada-Chile. And of course, the provisions in the Canada-Peru FTA are very similar to the provisions in the proposed Canada-Colombia FTA.

There is general consensus among the trade union movements, certainly in this country and others, that the labour protections found in existing trade agreements thus far negotiated by the Canadian government have left a great deal to be desired. They all contain certain common problems. I'll just list those for you quickly.

First, existing trade agreements focus on the enforcement of domestic labour standards rather than on raising labour standards.

Second, the enforcement mechanisms in the agreements in respect of labour rights are uniformly unsatisfactory. They are typically slow and cumbersome. The complaint process is not independent and transparent. Instead, complaints are investigated and evaluated by the bureaucracies established for that purpose by the signatory governments. They are not presently investigated and evaluated by independent judicial or even quasi-judicial bodies. This, of course, stands in stark contrast to the investment chapters of trade agreements we have assigned so far in which, as we've heard, the complaints of parties, investors in particular, are entitled to substantial effective remedies imposed by independent quasi-judicial bodies.

It should be noted that under the NAFTA labour side agreement, which has been in effect now for 14 years, not one single case has actually proceeded to an arbitration panel. That is, of course, again in stark contrast to the investment provisions of NAFTA, which have seen repeated litigation by investors in both the United States and Canada.

Turning then to the specific provisions of the Canada-Peru FTA, the labour provisions in Canada-Peru represent an evolution from the existing provisions in the NAFTA labour side agreement. Chapter 16 of the proposed agreement, which is the labour chapter, itself contains very general provisions setting out the parties' objectives and obligations with respect to labour issues. In particular, the parties—that is to say, Canada and Peru—reaffirm their obligations as members of the ILO and their commitment to the ILO Declaration on Fundamental Principles and Rights at Work. However, chapter 16 of the agreement only sets out general affirmations and objectives. These general statements do not provide parties with enforceable rights. Rather, as with all previous Canadian hemispheric trade agreements, the substance of labour rights and obligations are set out in a so-called labour cooperation agreement, often referred to as a labour side agreement. So if one wants to understand the labour rights in these trade agreements, one has to, of course, look in-depth at the labour side agreement itself.

Part 1 of the labour cooperation agreement generally contains the substantive rights of the agreement. Both parties, Canada and Peru, must ensure that their laws provide protection for the internationally recognized labour principles contained in the 1998 ILO declaration and in the ILO's decent-work agenda. As such, this article contains greater substantive labour rights than those found in any trade agreement to which Canada is currently a party. Unlike NAFTA, this agreement requires the signatories to ensure that its statutes comply with ILO standards. This, I will tell the committee, represents a significant improvement over the existing labour side agreement to NAFTA.

● (0930)

However, article 2 of the Canada-Peru LCA—the so-called non-derogation clause—only prohibits the violation of ILO standards where it can be demonstrated that the violation was done “to encourage trade or investment”. This would appear to suggest that one can violate labour rights provided it isn't done to encourage trade or investment. That's a significant limitation on the substantive obligations provided in part 1.

The remaining obligations in the Peru labour side agreement are very similar to the provisions found in existing Canadian trade agreements, which focus on the enforcement of existing laws and the protection of procedural rights.

I now want to turn to the enforcement provisions in the labour side agreement.

Because labour rights are again relegated to a side agreement, the enforcement of those labour rights is not subject to the same enforcement mechanisms applied to other rights in the agreement. This is a major shortcoming of the agreement and distinguishes this agreement, for example, from the agreement negotiated between the United States and Peru. The U.S.-Peru free trade agreement provides that labour rights are not only in the body of the agreement, but essentially have access to the same enforcement mechanisms as other rights under the U.S.-Peru agreement.

Under the labour side agreement of Canada-Peru, article 10 provides for the submission, acceptance, and review of so-called public communications. This is the primary complaint mechanism under the labour side agreement. As with the current NAFTA complaint process, a complaint, if accepted, may lead to consultations between the ministers of labour of the two countries. That's article 12.

Following ministerial consultations, article 13 provides that a national signatory—i.e., not the party that filed the complaint—may request that a review panel be convened if it considers that the matter is trade-related and the other party has failed to comply with other obligations under the agreement. In other words, the party that filed the original complaint under the agreement has no right to push the matter to a review panel if it's not satisfied with the ministerial consultation process.

Again, this is, in my view at least, a major deficiency in the Canada-Peru agreement. Unlike the investor provisions, where an investor can of course pursue a matter all the way to arbitration, workers and trade unions and their advocates may not do the same under the labour side agreement.

Articles 14 through 20 of the labour side agreement provide for the review panel process. At the conclusion of that process, the review panel provides a report, and it may then impose a monetary assessment of up to $15 million U.S., which is paid into a fund. That fund is then expended on appropriate labour initiatives in the territory of the party that was the subject of the review.

It should be noted that the enforcement mechanism does contain certain advances over the existing enforcement mechanisms found under the NAFTA labour side agreement. First, the process is less cumbersome. Second, the scope of the review process is substantially broader.

However, many of the flaws that have characterized the enforcement mechanism in the NAFTA process persist with the Canada-Peru labour cooperation agreement.

First, again, the Canada-Peru labour cooperation agreement is dependent upon the willingness of the state signatories themselves to pursue the complaints. The complainants themselves cannot advance matters to a review panel. Given our experience under the NAFTA labour side agreement, it seems highly unlikely that any complaint will ever get beyond the level of ministerial consultations.

Second, the agreement provides every opportunity for the offending nation to negotiate a resolution to the complaint.

Finally, the penalties are limited to fines. There is no possibility for trade sanctions, trade tariffs, or the revocation of the trade agreement itself as a penalty for the repeated and systematic violation of the labour rights set out in the agreement.

Again, the failure of this enforcement mechanism stands in stark contrast to chapter 8 of the Canada-Peru agreement, which is the investor rights provision that provides investors with an arbitration mechanism that is effective, independent, and relatively quick. The decision of the investment tribunal is final and binding. The tribunal has the authority to award monetary damages, the restitution of property and costs to the investor. No comparable rights are given to those who suffer labour rights violations. In short, the enforcement mechanism given to investors is far superior to the one found in the labour side agreement.

A similar inequity exists, of course, under NAFTA, and therefore it's no surprise, again, after 15 years of NAFTA, that you can see an enormous disparity in the number of claims that have been pursued under the investor provisions compared to the number of claims that have been pursued under the labour rights provision.

● (0935)

In conclusion, the labour rights protections found in hemispheric trade agreements negotiated thus far by the Canadian government have not provided real enforceable rights for workers. Our view of the labour provisions found in the Canada-Peru agreement is that while improvements have been made, the essential structure of the labour clauses found in previous trade agreements remains largely unchanged. Substantive labour rights protections remain in a side agreement rather than in the body of the agreement; enforcement of these rights remains entirely at the discretion of the signatory governments; there are no provisions that provide for independent legal actions by trade unions or workers' organizations that could lead to real remedies for affected parties; and finally, the agreement contains no provisions for real trade sanctions in the event that a party systematically violates labour rights.

In general, experience suggests that the labour provisions in trade agreements, whether they are inside the agreements or not, are unlikely to lead to concrete improvements for workers. Trade agreements continue to be written not to improve labour standards; and there is little evidence that such agreements can become vehicles for the improvement of labour rights—at least at the moment. It should therefore come as no surprise to this committee that the labour movements in both Canada and Peru have overwhelmingly rejected this proposed trade agreement.

Thanks very much.

The Chair: Thank you, Mr. Rowlinson.

Now we're going to hear from our next witness, Mr. Maxwell Cameron.

Professor Maxwell A. Cameron (Professor, University of British Columbia, Department of Political Science, As an Individual): Thank you very much for the opportunity to be here and to share with you some reflections on the Canada-Peru Free Trade Agreement.

I've been doing research on Latin America, and Peru specifically, for 25 years. When I first started to teach Latin American politics, it was in the early 1990s at the time of the NAFTA debate, and I recall being deeply unsettled by some of the claims that were made by advocates of NAFTA who argued that Mexico was poised to become a first world country, that it was going to become a prosperous, capitalist democracy under NAFTA and that it represented a model both for developing countries and potentially even for post-Soviet states. This kind of simplistic, ahistorical, and one-dimensional view of Mexico just didn't fit with my training and my understanding of Mexico, and I found myself wondering whether my training was irrelevant or whether the debate on NAFTA was that disconnected from reality.

Then I recall vividly early in January 1994 opening the newspapers and reading about the Zapatista insurrection in Chiapas, and here was another Mexico, a Mexico that had been ignored, rearing its head and reminding us that Mexico is a big, complex, and very unequal society. There are two Mexicos, one with a foot in part in Central America and another with a foot in Texas. By the same token, there are two Perus. There's a Peru that wants to compete with Chile, and there's a Peru that has a greater affinity with Bolivia.

So when we hear government officials saying that countries are becoming prosperous democracies due to free trade agreements, sometimes even before these agreements have been implemented, one has to ask the question, what countries are we talking about?

Peru is a country deeply divided, divided between the coast and extractive enclaves on the one hand and the south and central highlands and the jungle regions on the other. Over the past five or six years, really from about 2003 onward, we've seen very substantial economic growth occurring in the coastal areas and in the mining sector, and the benefits of this growth have to some extent trickled down at least to people in the coastal areas, so that the rate of poverty has declined from 49% to 39%. However, the benefits of this export-led growth have not trickled down to the south and central highlands and to the Amazonian jungle region, where 63% of the indigenous population live in very severe poverty.

One thing that's striking about Peru is the inability of recent governments to undertake measures that would distribute wealth in such a way that all Peruvians could benefit from the growth we've seen, which is led by exports. I think there's a very real risk, particularly in the current context of economic turmoil in international markets, that some of the benefits in terms of poverty alleviation will be lost. I would argue that the principal challenge that Peru faces today is to find ways of articulating the growth that is occurring, that's driven by exports in the coastal areas and around extractive enclaves, with the populations in the south and central highlands and in the jungle areas that have not received those sorts of benefits. But that requires major public investments. It requires a commitment to human development and to overcoming long-standing barriers of social exclusion that recent democratic governments have really not been successful in undertaking.

Let's look at the mining sector in particular. It's responsible for some 60% of Peru's exports and it's obviously an area in which Canada has major interests. One of the things that are striking is that many of the mines, indeed most of the mines, are located in exactly the areas that are poorest in Peru. So naturally you have a very important potential conflict between mining industries and local communities.

There is a system, called “the canon”, by which royalties that come from the extractive sector are to be plowed back into local communities. But this system has itself generated considerable conflict, in part because of the curse of the centralism in Peru, which means that local governments, whether municipal governments or regional governments, which have very little capacity even to formulate effective proposals to make requests to the central government to get access to those resources, are often unable to put together compelling proposals. When they do, they're held up in the central government for long periods of time. The kinds of proposals that these governments are capable of implementing tend to be building monuments, or at best, building infrastructure. They're often sort of white elephant projects that do very little for development. They're not investing in health care, education, training, and the sorts of things that would enable people to be more effective agents of their own development.

● (0940)

This is really a problem of state capacity, both at the local level and at the national level. So not surprisingly, we have seen a real growth of conflicts. Just in the last year, between April 2008, at which point there were 104 registered conflicts in various parts of Peru, and April 2009, when the number grew to 250 conflicts, we have seen a massive increase in the number of conflicts, seventy per cent of which are in fact focused on mining activities. The conflicts involve water, contamination of underground and surface water and land, displacement of populations, failure of companies to live up to their agreements, and the issue of access to royalties.

The Peruvian government, instead of resolving these disputes in ways that would help local communities, has in fact criminalized protesters, has called their leaders terrorists, and has refused to consult with indigenous communities, as it is obliged to do under its treaty obligation. Peru is a signatory to ILO Convention 169. In fact, and perhaps most alarmingly, as part of the package of implementation of the Peru-U.S. free trade agreement, the government has submitted a series of proposed laws that Amazonian tribes regard as a fundamental threat to their ability to defend their land and their culture. As a result, there has been a veritable uprising in the Amazonian region in protest against these laws.

I would rather see Canadian mining companies operating in Peru than Chinese companies, which have an appalling record when it comes to labour standards or the environment. But make no mistake about it, whatever companies operate in Peru will be embroiled in these kinds of conflicts.

Let me give you just one example from recent years of a Canadian mining company that was given a contract to explore the possibility of mining in an area called Tambogrande in the north of Peru, in Piura. They discovered a massive deposit of gold, but it happened to be in a community in which there is a vibrant agricultural economy that produces mangoes and limes and so forth. The community got together and, under their own laws of participation, voted against proceeding with this development on the grounds that it would displace much of the population and contaminate both subterranean and surface water. The Government of Peru sided in this case with the community, and the company, after first seeking arbitration, left Peru. But I wonder, in the context of the sorts of things that Theresa was talking about with respect to investment provisions of the free trade agreement, had there been an FTA in place, if it would have considered suing the government for damages. It's not clear to me what the outcome of that would have been, but simply giving companies that weapon potentially gives them a very important source of leverage over local governments that I would argue could very well exacerbate the kinds of conflicts that we are seeing in Peru today.

I would sum up and conclude with three fundamental points. First of all, I think there are very solid grounds for being skeptical about the ability of FTA negotiations to lead to multilateral trade liberalization or even to hemispheric liberalization. The record does not support the idea that free trade negotiations are moving us in the direction of a single hemispheric agreement. We're instead getting this sort of complex spaghetti ball of FTAs.

On the question of whether FTAs will result in shared and sustainable prosperity, I would argue that they will result in winners—who will be the people living in the coastal areas, the extractive industries, and foreign investors—but that highland peasants, workers, and local communities will often be left behind.

Finally, with regard to the political effects, which I would argue are almost unpredictable, I would nonetheless dispute the claim that Peru's democratically elected government ran on a platform of free trade. In fact, the 2006 election was a closely fought election in which Ollanta Humala, who is clearly critical of the FTA, won in the first round, lost in the second round, as a consequence of the voters of Lima shifting their support to the APRA party, which was agnostic on free trade throughout the campaign. The APRA party has proceeded with the negotiations that were negotiated under the previous government. It is deeply resented and very unpopular in the highland areas in the south and central parts of Peru.

● (0945)

If we proceed with the free trade agreement, in the absence of the kinds of investments that are required to ensure shared and balanced prosperity in Peru, I would predict that the likely outcome of this kind of model of development will be that we will see more anti-system political outsiders of the same ilk as Hugo Chavez and Evo Morales arising in Peru.

● (0950)

The Chair: Thank you, Mr. Cameron.

We'll now go to questions, beginning with Mr. Cannis.

Mr. John Cannis (Scarborough Centre, Lib.): Thank you, Mr. Chairman. I'll be sharing my time with Mr. Brison.

I was interested throughout the presentation, but near the end you talked about a specific company that ended up leaving because the government stepped in, if I understood correctly, and took them to court or made them adhere to certain rules they weren't prepared to abide by. Could you elaborate on that for me?

Also earlier, you mentioned the failure of companies to live up to their commitments, but it would seem, given what you said afterwards, that the legislation is there to protect or move toward protecting.

You mentioned you prefer Canadian companies to be mining, for example, in Peru. I hope I didn't misquote you. I'm asking that question because, as we deal with these FTAs wherever and mining is an aspect of the entire agreement, we are obviously speaking to all stakeholders or all parties. We're often told we can't do this or we shouldn't do that; we shouldn't go here, we shouldn't go there. I'm pleased to hear you'd prefer Canadian companies. Tell us why you'd prefer Canadian companies. Is it because we are more respectful of the law? Or is it because we have environmental standards we adhere to?

Just give us an idea of why you made that comment.

Prof. Maxwell A. Cameron: Thank you.

I think Canadian companies do have a good reputation as corporate citizens in the region, for the most part. That's not always the case. I recall being in a campaign rally in 2006 and somebody came up to me and asked where I was from. I replied that I was from Canada. This person burst into shrieks, saying my country is destroying the world. This was the first time, as a Canadian, I'd ever been exposed to that kind of reaction when telling people I was from Canada. It turned out that this person came from a mining community where there was a mining company that, in his view, was doing terrible environmental damage.

We have both big and small companies. I think often the juniors don't have the kind of corporate social responsibility codes that some of the larger companies do.

Mr. John Cannis: Would the law not step in, given the example you provided to us?

Prof. Maxwell A. Cameron: It could well. In the case I gave you, the government did indeed decide that in light of the non-binding decision of the community, they would not proceed with this development. Then they had to defend that legally. That could, of course, happen again.

Mr. John Cannis: When we talk about corporate social responsibility, I think what you're really telling us is that it's a two-way street.

Prof. Maxwell A. Cameron: Absolutely.

Mr. John Cannis: It's incumbent upon the local government.

Mr. Brison, the floor is yours.

Hon. Scott Brison (Kings—Hants, Lib.): Thank you, Mr. Cannis, and thanks to each of you for your interventions this morning.

I'd like to start with Mr. Cameron on the issue of the gap between rich and poor, and the effect of economic change or development on that, potentially. Industrial revolution also led to an increase in the gap between rich and poor, but it also improved quantifiably the standard of living for the poor. I think any time a country is industrialized or develops its economy, there will be some level of risk of gap between rich and poor, but the standard of living for the poorest also is strengthened. That has been demonstrated throughout periods of economic change.

I don't think Peru is unique in terms of gaps between rich and poor. We have issues in Canada on gaps between rich and poor. If you compare the conditions on aboriginal reserves to Rosedale, you're going to see a significant gap. If you consider the difference between Canadian provinces and the variance in our economies in terms of the resource sectors in some economies and the financial sectors in other economies, I don't think this situation is unique to Peru, that there are gaps between rich and poor or geographic disparities.

● (0955)

Prof. Maxwell A. Cameron: Latin America is the most unequal region in the world, largely because the rich are very rich. There are historical reasons for this that date back to colonial times. The disturbing and troubling thing about inequality in Latin America is that it's so persistent. Even a country like Chile, which is surely the most successful example of a market-oriented economy and has seen poverty alleviated, has nonetheless seen inequality persist and even get worse in recent years.

We have to ask ourselves if we are in the world of the Kuznets' curve, where inequality increases at the outset of industrialization and then improves over time. I would argue there isn't a lot of basis for suggesting that's the case in Latin America today, partly because we have not made the kinds of public investments required to ensure that those at the bottom benefit. I think you drive incomes up across the board and attenuate inequality by ensuring that productivity gains are passed on to workers and investments are made in their ability to be gainfully employed.

Hon. Scott Brison: I agree with you, but those are largely domestic political decisions that will be made by sovereign governments as to how they implement public policy. I agree with you about what is required. Those governments will make those decisions and will be under political pressure to do so, and I hope they make those decisions.

I have a question for Mr. Rowlinson on the Canada-Peru FTA. You were saying that the labour provisions are the most robust of any Canadian FTA so far, but they don't go as far as the U.S.-Peru FTA.

Mr. Mark Rowlinson: That's correct, particularly as they relate to enforcement.

Hon. Scott Brison: Does the United Steelworkers' U.S. chapter endorse the U.S.-Peru FTA?

Mr. Mark Rowlinson: It's an interesting question. The AFL-CIO has been in fairly detailed discussions with the Democratic Party about what labour provisions would be acceptable to the AFL-CIO. For a variety of political reasons, the AFL-CIO was ultimately not able to endorse the U.S.-Peru agreement, but it did agree on model language, I believe. Certainly when the Democrats were in opposition they agreed on a model language, which the AFL-CIO endorsed, on the labour protections that should be found in trade agreements. That model language is substantially better than what's in the Canada-Peru FTA, and it's obviously much better than what's in the existing NAFTA.

My point is that in the United States at least, for whatever reason, the Democratic Party has historically been engaged with the labour movement on these issues in a manner that, without getting into the minutiae of Canadian politics, has simply not happened in Canada. I think that's important to note. I don't know if that's of assistance to you.

The Chair: Thank you, Mr. Rowlinson, Mr. Brison, and Mr. Cannis.

We'll go now to Monsieur Cardin for seven minutes.

[*Translation*]

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

Good day, Madam, gentlemen.

Clearly, parallel or side agreements have a relative importance. I often say that the unique thing about two parallel lines is that they never meet. You all seem to agree that parallel or side agreements respecting labour or environmental rights should be an integral part of the main agreement, that this agreement should have teeth and contain obligations for the parties that are more than just pretty words.

Let us consider the following example, even though comparisons are not always a good thing. Let us say that I am an investor and I decide to open a pesticides production facility in Peru. Such an operation would entail certain risks for workers. Let us say that the country subsequently decided to raise its environmental standards and to ban the production of certain products because that could pose a health risk. Strict conditions would be put in place to ensure a safe working environment and consequently additional costs would come into play. Because of the high level of risk, higher salaries for workers would be demanded.

If such a situation arose, what would become of the labour and environmental rights side agreements? What would happen if the country decided, after signing the agreement, to raise its standards or requirements in the area of labour and environmental rights?

● (1000)

Mr. Mark Rowlinson: Thank you for your question. If you don't mind, I will answer in English, because I am more comfortable doing so.

[*English*]

If you look at the agreement itself, the investor about whom you speak has access to chapter 8 of the agreement. It's right here, section B, "Settlement of Disputes between an Investor and the Host Party". That is to say, this dispute resolution mechanism has teeth, it has real remedies. It makes the investor whole, and it frankly challenges—and perhaps my friend from CELA will say this—the autonomy of the state in respect of these kinds of regulations. That is to say, investors are given procedures and real enforceable rights.

In respect of labour rights, those things simply don't exist under this agreement. Yes, a complaint can be filed, but relatively early on in the process the complaint itself is removed, is taken away from the party that files the complaint, whether it's the worker or the trade union, and put entirely in the hands of the state parties to resolve.

Under the NAFTA labour side agreement, our experience has been that the states themselves thus far have had no political will to actually follow through with these complaints. And for whatever reason, it continues to be the case that states in North America and throughout the Americas simply refuse to hand over any national sovereignty in respect of labour issues, while at the same time giving unprecedented rights to investors to assert their rights.

I am here largely just to point out that disparity, that we cannot promote these trade agreements as protecting labour rights if in fact the way labour rights are treated is fundamentally substandard when compared to the way the other rights under the agreement are treated.

Ms. Theresa McClenaghan: I'll speak in English as well, if that's okay.

With respect to my concern, it does work both ways. I'm concerned that the Canadian federal and provincial governments may find their ability to regulate freely, as they see fit, being impacted vis-à-vis issues of risk to workers and to the environment and to health and safety. That's true as well for our partner nations in any of these bilateral trade agreements. They could similarly be impacted by a Canadian investor making a claim that they don't have the right to regulate for the sake of their workers, that it's interfering with their economic integrity.

As to the agreement itself, there's rhetoric, as you say, about a high standard of environmental protection and improving environmental protection. But as was said with the labour agreements, that's not quantified in any way. So in terms of another nation and its level of protection for workers or for the environment, it may be a long distance from Canada's level of protection, and yet, as it moves to improve and bring those into a more protective and appropriate level of protection, it is open for our private investors investing in those countries—Peru, Colombia, and other countries—to argue against that with those local subnational or national governments. And it's not to say that this couldn't or wouldn't happen. We have that happening right within our own country by some of our national private investors.

My fundamental point is that governments have to be able to make decisions balancing everything they do in the normal rule-making process. They do already take into account the fact that something needs to be safer, healthier. They also already look at social and economic factors. Once they do that, they shouldn't have that undermined by this indirect expropriation claim.

● (1005)

[*Translation*]

Mr. Serge Cardin: You talked about the loss of sovereignty by States, their regions or their provinces. When a government truly wants to enact legislation in the public interest... You mentioned Dow Chemical and its product 2,4-D. Quebec passed legislation to ban this product which was used solely for cosmetic or esthetic purposes. I think this is an important consideration for countries with which Canada intends to sign free trade agreements. Countries must have the means to safeguard their sovereignty and to continue improving their laws with a view to protecting the public interest. I'm sure you will agree that all bilateral agreements concluded from this day forward should include side agreements so that labour and environmental rights can truly be promoted. Mere recommendations do not suffice. Therefore, we could talk about the progressive aspect of the new agreements to be signed with other countries.

The word “progressive” is no longer associated with the Conservative Party. I think the Liberals should jump at the opportunity and appropriate it for themselves, reject these agreements and send the government back to the drawing board to ensure that parallel or side agreements are included in the main agreement. Promotion of human rights, and labour and environmental rights is important. That's my little speech for today. If I have any time left, I invite people to comment.

It seems that my time is up, so I would simply like to thank you.

[*English*]

The Chair: Mr. Julian.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thanks to our witnesses. These are very strong presentations.

I'd like to start with you, Mr. Rowlinson. You referenced the U.S.-Peru FTA and spoke about the stronger provisions that are in that agreement. Could you take a moment to outline the provisions in the U.S.-Peru agreement that are not in Canada-Peru? And is it true, then, that Canada has essentially signed an inferior agreement?

Mr. Mark Rowlinson: I know we're running short on time. Let me be—

Mr. Peter Julian: Oh, I have my seven minutes, so he can't cut me off. The chair's very good about that.

Mr. Mark Rowlinson: Obviously these are enormous trade agreements. They're long documents. They provide for different rights in different areas.

I think the central difference between the two agreements, from a labour perspective, is that the labour provisions in the Peru-U.S. agreement are subject to the same dispute settlement enforcement mechanisms and all other criteria as are the commercial provisions of the agreement. That's the essential distinction between the Canadian model and now the U.S. model.

Monsieur Cardin spoke about the side agreement versus incorporation into the main agreement, and that's a really important issue, but it's not just that. I know that the Canadian government takes the position that labour and environmental rights have to be in a side agreement for reasons connected to the division of powers under the Canadian Constitution. We won't get into that argument in its minutiae, but the question is whether or not the enforcement mechanisms, whether in a side agreement or not, are equivalent. The reality is that under the Canada-Peru agreement, they are not; under the U.S.-Peru agreement, they largely are.

● (1010)

Mr. Peter Julian: So would you say that the Canadian government has negotiated an inferior agreement from that standpoint?

Mr. Mark Rowlinson: In respect of the enforcement of labour rights, there's no question that I believe the Canadian government has negotiated an agreement that is inferior to the one negotiated by the U.S. government.

Mr. Peter Julian: Now, in the case of the U.S.-Peru agreement, Congress, as well, took the initial agreement and basically said, “Full stop. This isn't proceeding any further until improvements are made to the agreement.”

Mr. Mark Rowlinson: That's correct, and again, the labour movement was brought into that discussion. I think that's important to note.

Mr. Peter Julian: That's very important, because every other legislature on the planet provides, essentially, a very good system of checks and balances on agreements that are negotiated. There are some in the Canadian Parliament who would say that Canadian parliamentarians have no right to touch agreements. Very clearly, the precedent around the world is that parliamentarians, elected members of legislatures and parliaments, take agreements, and if the agreements are inferior or not adequate, they can make changes to improve them.

Mr. Mark Rowlinson: In fact, the whole history of hemispheric free trade reflects the fact that the U.S. legislature has been, with respect to those present, far more engaged and active on this issue than the Canadian legislature has been. Recall that the only reason we have any environmental or labour side agreements at all in any of these provisions is because the Democrats in the early 1990s insisted that they be part of what was then the contemplated agreement in NAFTA.

Mr. Peter Julian: Thank you.

I'll move on to Mr. Cameron. You said a couple of things that I think are very important for the committee to note. The first is that Peru has essentially refused to keep its obligations under the ILO, so Peru is already breaking treaties that have been signed. Second, you mentioned the Manhattan Minerals case, in which essentially there was local grassroots democracy that pushed back on a mining company and forced it not to devastate a particular area.

In both of those cases, I guess referencing this bill, my question is this. Does the bill in any way improve the situation? Does the bill make it possible, as well, for grassroots democracy to continue to play a role, for people to say, “We don't want that project in our municipality”, or does it actually make it more difficult for citizens to stop those kinds of developments? Is there anything in the agreement that actually allows for a substantive hammer to ensure that when Peru breaks its obligations under the International Labour Organization, Canada can actually intervene forcefully?

Prof. Maxwell A. Cameron: I think it's important to note that Peru has adopted a whole host of rules that enable participation, whether they're referenda, recalls, citizen initiatives, or others; yet most of the consultations are non-binding, so they don't require governments to comply with those sorts of initiatives, whereas these agreements are binding, and they give powerful, muscular provisions that support investor rights.

I think the critical thing is—and I think this has been picked up in this discussion—that it's not simply the provisions themselves but how they are actually enforced. What we're seeing in the case of the Garcia government is that they are using the implementation of legislation process as a way of trying to achieve changes that in fact restrict the ability of people to participate in these kinds of decisions in ways that are probably not even required by the agreement itself.

Mr. Peter Julian: So what we're doing is undermining Peruvian democracy.

Prof. Maxwell A. Cameron: Yes.

Mr. Peter Julian: It's a perverse impact of this agreement. So if Parliament adopts this agreement, we're actually undermining the ability of citizens in Peru to control their quality of life and control their area, their environment.

● (1015)

Prof. Maxwell A. Cameron: I think that's potentially true.

Mr. Peter Julian: Thank you.

I'd like to move on to you, Ms. McClenaghan.

You spoke very eloquently about investor-state. Immediately after NAFTA was signed, the U.S. moved away from these rigid handcuffs that are the investor-state provisions of NAFTA. Other countries don't implement the kind of handcuffs that exist on investor-state where a corporate CEO basically can write his or her own cheque on any direct or indirect expropriation. Why do you think Canada is presumably the only country in the world that has this rigid, ideological adherence to strict NAFTA investor-state provisions in all its bilateral agreements?

Ms. Theresa McClenaghan: It's an interesting question. CELA, my organization, is doing an analysis of the bilateral agreements, not just Canada's but those of a number of countries, to figure out what are the differences in terms of protecting the right of countries to do their own environmental regulation, free from investor-state challenges. We haven't completed that, so I don't know if I want to say it's clear that Canada does and the others don't.

Mr. Peter Julian: When will that be available?

Ms. Theresa McClenaghan: Probably over the summer we'll be finishing that. I don't know what the timeframe of this committee is. It's complex, because it turns out there are a lot of bilateral agreements.

Nevertheless, I think the reason we're doing that is that it has become evident for Canada that it's a real restraint on provincial and federal government action to have to worry about this kind of investor challenge. It's the fact that even though there's great rhetoric, even though it says we want a high standard of regulation, we want to improve environmental regulation, and we want to comply with the environmental treaties, as I said, the fact that it can be case-to-case challenged by investors is the problem. Even if we don't think those challenges are going to be won, which I hope they won't given the Methanex precedent, the arbitral panels don't have to follow each other's rulings. That's the other problem here. As soon as we're taking these questions and saying, “Fine, Canada, you decided to protect the environment; investor, you can challenge that,” that's a problem.

Mr. Peter Julian: Okay. Hopefully you'll make that study available to the committee.

Ms. Theresa McClenaghan: Yes.

The Chair: You did pretty well. You had nine minutes.

Mr. Holder.

Mr. Ed Holder (London West, CPC): Thank you very much, Mr. Chair.

I'd like to thank our guests for being here this morning to make representations to us.

I had the opportunity to be in Peru in March, and while I was there on behalf of the FIPA group, which is the parliamentary organization associated with parliamentary democracies throughout hemispheric America, I would say that at every turn, when we met with *congresistas*, companies, chamber of commerce, labour groups, what we talked about was the free trade agreement. As you know, while we've talked about some very specific things, we've talked very much about some of the labour issues—and I appreciate those representations—and some of the issues relating to expropriation.

Mr. Cameron, regarding your comments, I think you said a few things I'd like to point out. First, it's not my place to challenge other members' comments—that's not typically what I do—but I'm distressed when I hear a comment that somehow this free trade agreement is undermining Peruvian democracy. I'm troubled by that. There are some colleagues who have never found a free trade agreement they would ever support in any fashion, but I'm not trying to pick on them.

I do want to say that at the heart of what we are trying to do in Canada is as much to our benefit, because we've had a U.S. free trade agreement signed with Peru since February 1, and to the extent that while we're on to some very specific areas that our guests are extolling this morning, there are so many aspects of this agreement that in its entirety, while there may never be the perfect deal, I would suggest to you it is significant from the standpoint of what it means to both Canada and Peru. I would say that even more, probably, Peru is the beneficiary. They've had significant economic growth—which, if you've been there, you would note—of some 9% per year for the last couple of years. I think that's very, very positive.

Mr. Cameron, I want to ask you a question in a moment about the two worlds of Peru, because I found that very compelling. To the extent that we're helping provide economic stimulus throughout the country, my Cape Breton mom had an expression, “A high tide raises all ships”. In a sense, what you have is broader growth.

I thought Mr. Brison made an interesting comment earlier when he mentioned that when there are opportunities for investment economically, what you do—and I won't put words in Mr. Brison's mouth—is provide employment and you provide hope for people. My sense is that this is part of our commitment and obligation to them.

First, very quickly, Mr. Rowlinson, I have a question for you. In the labour cooperation agreement that Canada and Peru have, there are a number of things in terms of protecting workers' rights, from the freedom of association to the right to collective bargaining, abolition of child labour, elimination of forced compulsory labour, elimination of discrimination, and a variety of enforcement of labour standards respecting the LCA and a complaints procedure.

Is your concern primarily that the labour cooperation agreement is not fundamentally in the free trade agreement or that it's a side agreement that was signed? What would be your comment on that, please?

● (1020)

Mr. Mark Rowlinson: My concerns can be summarized as follows. I think the labour rights should be subjected to the same enforcement mechanism that is given to investor rights. Again, whether that's in a side agreement or not, to some extent, may be beside the point. Clearly, if you have the labour rights provisions in the body of the agreement, as with U.S.-Peru, it follows that you'll likely have the same enforcement mechanism applying to all rights, at least in theory.

My concern is the following. We have this enforcement mechanism that in its broad strokes is similar to the enforcement mechanism that we have had under the labour side agreement to NAFTA. Our empirical experience has clearly been that the enforcement mechanism to labour rights under NAFTA does not work. It's that simple. It doesn't protect workers' rights.

There's no basis to conclude, therefore, in my view, that while there are improvements in these labour rights provisions, and you cited some of them yourself, the fact that it has incorporated what are commonly called ILO core labour standards into the substantive provisions of the agreement is an improvement. However, rights are only as good as what you can enforce. You can have all the terrific statements and all of the substantive rights you want, but if you can't enforce them, they won't actually do much to improve workers' rights.

Mr. Ed Holder: Thank you for that.

Mr. Cameron, I'll conclude very briefly, being mindful of the clock, but I do want to ask this question.

You made several comments that struck me, where you talked about local and regional governments having little capacity relative to the central government. I had some sense of that when I was there. Although my sense is that it's a developmental thing, my hope is that over time, just like that small community that fought back and won, as it were, against a mining company...I would deem that to be a positive response.

But I have a question for you. You said the record does not support a single hemispheric free trade agreement. I thought we were negotiating a bilateral free trade agreement. So my practical question to you is, could you ever imagine a time when you would see a hemispheric trade agreement not unlike what the EU does with its 29 member countries? Do you have any thought on that yourself?

I'll leave that as my final question.

Prof. Maxwell A. Cameron: I think that's actually a great model and one we should look at, because the underlying assumption of the FTA approach has been that we offer access to our markets and to our investment. The countries will line up and try to create the conditions that make them most attractive to our investors. There will be a competition, a competitive liberalization process by which countries attempt to make themselves as attractive as possible to our investors and seek to negotiate agreements with us. That was supposed to result, ultimately, in a free trade agreement of the Americas.

I think the fact that it hasn't happened is a consequence of a couple of things. One element is that the record of market liberalization has not been sufficiently robust. People have not seen the benefits of free trade and market liberalization to the point that they're willing to support these agreements as a way of getting toward a hemispheric agreement.

For example, we're negotiating bilaterally because we can't negotiate with the Andean region, as a region, because the Andean bloc is now divided. You have Chavez, on the one hand, who has pulled out of the Andean Community of Nations; and you have other countries that have different views, between Peru and Ecuador, and so forth. Really, the whole process of integrating the hemisphere around free trade seems to have fizzled, and the most visible evidence of that is that the FTAA itself is dead.

I want to say, very quickly, on the question of democracy, that Peru has made great strides towards democracy. Canada played a big role with our high-level mission and supporting, through the OAS, the transition to democracy in 2000 and 2001. Since that time we've seen a number of elections that have been free and fair, and really, this is to be celebrated and encouraged. I think it's great that the Canadian government wants to promote and assist democracy.

At the electoral level, democracy is pretty robust, although one has to recognize that there are a million people who don't have IDs, so can't vote, and a quarter of a million people don't even have birth certificates. People sometimes have to walk for days to get to polling stations to vote. But I think the real problem is that with that level of social exclusion, with the degree of marginalization in some communities, the electoral mechanisms of democracy are not enough. That's where we're seeing this experimentation with more participatory instruments, and that's where there exists a profound tension between the initiatives for participation, on the one hand, and instruments such as the free trade agreement.

● (1025)

Mr. Ed Holder: Thank you.

I thought Mr. Cannan might have one brief question.

The Chair: I'm sorry, we're way over time.

Mr. Ed Holder: All right, sir. Thank you.

The Chair: Thank you very much to our witnesses. We appreciate your coming. You've done a good job. It has been a good discussion today.

We do have other business, so I'm going to ask you to wrap up. We're going to begin clause-by-clause of the bill, so we'll have some departmental officials come to the table. Thank you again for your participation today.

We'll take a few minutes to change witnesses.

● _____ (Pause) _____

●

● (1030)

The Chair: Thank you for getting back to the table. We're going to the order of reference here, which is 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.

To help us through clause-by-clause if there are any further questions on specific details of the bill, we have with us, from the Department of Finance, Carol Nelder-Corvari, who has been with us before, and also Dean Beyea, the senior chief, the international trade policy division. From the Department of Foreign Affairs and International Trade, we again have with us Matthew Kronby and Vernon MacKay.

Thank you again for coming here today.

I'm going to proceed right away with the bill. I think everybody would like to get through this by 11 o'clock. We do have some other business the committee could discuss if we can get this through. I don't think there's anything particularly contentious. We have a couple of amendments that we will deal with in due course.

I'm going to begin now. We'll just skip the short title for the moment and proceed to clause 2 of the bill. If people have the bill in front of them, we'll proceed to clause-by-clause, beginning with clause 2, the interpretation.

(On clause 2—*Definitions*)

The Chair: Is there any discussion?

Mr. Julien.

Mr. Peter Julian: I'm not going to speak on that or most of the clauses, Mr. Chair, but for the form normally, I think a quick vote would be warranted.

The Chair: Okay. Do you mean you want a vote on each clause? All right. That's fine.

Mr. Ed Holder: [*Inaudible—Editor*]...get us through that. Can you just refresh my memory?

The Chair: Do you want a voice vote each time, or yeas and nays each time, or just on division?

Mr. Peter Julian: Well, I'll just lay it out on the table, Mr. Chair.

I'm not as concerned with the discussions today as I am about future bills that may be coming before the committee. I'm just ensuring that there is.... I'm certainly not going to speak, except to the amendments. I don't know about my colleagues.

But just for the practice of ensuring that there is a vote on the clause, I think it is something that can be done fairly rapidly. I think that precedent is important for future bills.

● (1035)

The Chair: Thank you. I think there are other precedents to group clauses together as well.

I think people are pretty familiar with the bill. Is there any particular objection to grouping some of these? If I have the unanimous consent of the committee, I think I would like to proceed that way. Just by way of example, I would suggest that we might do clauses 2 to 7 and ask for approval. Then we'll stop. I think there will be some discussion of clause 8. Then we'll proceed further with clause 9, with the committee's agreement.

Is there any comment? Did you have a comment, Monsieur Cardin?

[*Translation*]

Mr. Serge Cardin: Yes. You can assume that I will always dissent. When the time comes to vote on the bill, my vote will be no, obviously, and I will be asking for a recorded vote as well. If you want to proceed with this quickly, I am fine with that.

[*English*]

The Chair: Okay. I appreciate that.

I'm going to ask, then, if we will group clauses 2 through 7. Shall clauses 2 through 7 carry?

Mr. Julian.

Mr. Peter Julian: I'd like a vote on that.

The Chair: All right.

(Clauses 2 to 7 inclusive agreed to)

(On clause 8—*Causes of action under Part 1*)

The Chair: We have an amendment to clause 8. I will ask Mr. Julian to move that amendment.

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

We've heard testimony that there are concerns that come out of this bill. The amendment that the NDP is proposing for clause 8 is very simply to ensure that there is a written process around proceedings that may take place or an override to some of the clauses that are contained within the bill.

It's a fairly minor amendment, but it's one that I think provides for a system of checks and balances given that concerns have been raised around this bill. That, as well as the other amendment the NDP has put forward, is designed to try to improve the bill so that there is a better system of checks and balances and a much clearer paper trail around the bill and the bill's provisions.

The Chair: Mr. Julian has therefore moved that clause 8 be amended by replacing lines 20 and 21 on page 3 with the following:

> without the consent in writing of the Attorney General of Canada, including the reasons why consent was given, to enforce or determine any right or

That would fit into the existing clause. Is there any further debate?

Mr. Brison, do you have a comment?

Hon. Scott Brison: Have the officials given us their view? I'd be interested in the officials' view of what impact this would have on the agreement.

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

As I understand it, line 20 and 21 are in subclause 8(1). This wouldn't substantively change the agreement. It's not clear what precisely the purpose of the amendment would be, only that it would put an additional obligation on the Attorney General of Canada, if he or she were to consent to the cause of action of the sort described in subclause (1), to explain in writing why he or she was consenting. That's what it would do.

● (1040)

The Chair: Would that not influence the hearing?

Mr. Matthew Kronby: Do you want to take one question at a time? I'm not sure how you want to do this.

The Chair: We're all on the same question.

But I'll go to Mr. Cannis, then.

Mr. John Cannis: But there is an obligation, if I understood correctly. There is an obligation there—

Mr. Matthew Kronby: There is an obligation on the Attorney General of Canada to consent to any cause of action of the sort described in subclause (1). That's already in the bill. That's in other FTA implementing legislation as well. What isn't there is an obligation, or at least an express obligation, for the Attorney General to explain in writing why he or she is giving such consent, if he or she were to give that consent.

Hon. Scott Brison: Does it have the capacity to politicize these decisions? It does put the decision and the public accountability for the decision in the hands of the Attorney General, politician. I'm not saying that's wrong, but is there a risk of politicization of these decisions?

Mr. Matthew Kronby: I don't really know. I can't really comment on whether it would risk politicization. It may well be that the Attorney General would, in any event, want to explain any consent. I don't know. This is not something that has generally arisen under the equivalent subclause in the existing FTAs. So it's hard to really say what the concrete effects of this amendment might be.

I can say only that it's really a procedural amendment. It doesn't affect the substance of the underlying FTA.

Hon. Scott Brison: I would just like to ask Mr. Julian—

The Chair: I wonder if we might just stay with the speakers list.

We have Mr. Cannis and then Mr. Julian.

Mr. John Cannis: The only thing that differs here, if I understood correctly, Mr. Kronby, with this response is that it obligates that it be done in writing. That's all I'm picking up here. If the Attorney General makes a statement, I mean, he's on record. What this does, if I now get it and I think I do, is request it in writing. That's what I sense. That's what I'm hearing.

Is that right?

Mr. Matthew Kronby: You might put that question to Mr. Julian.

From what I read, yes, it's that the Attorney General would have to be on record as to why the consent was being given. That's all I see there.

The Chair: Mr. Julian, can you enlighten us about the change?

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

It democratizes that provision of the bill and allows for an extra measure of public accountability in the implementation act. It is not a substantive change; I completely agree with Mr. Kronby on that.

The Chair: I think that's clear.

Monsieur Cardin, do you want to comment before we go to the question?

[*Translation*]

Mr. Serge Cardin: I could ask Mr. Kronby if this provision is found in other free trade agreements. If that is the case, has the Attorney General ever consented to this kind of cause of action? If so, what action was in fact taken? I'm curious as to whether this would be a precedent or not.

[*English*]

Mr. Matthew Kronby: I wasn't clear on the question. Could you repeat it, please?

[*Translation*]

Mr. Serge Cardin: Do other free trade agreements contain a similar provision? If so, has the Attorney General ever consented to this kind of cause of action, and if so, what action was taken?

● (1045)

[*English*]

Mr. Matthew Kronby: I'm not aware that the Attorney General has ever consented to this kind of cause of action. There's already a provision in the FTA precluding one party giving cause of action to its nationals from bringing a claim against the other party for its failure to do something related to the agreement. I believe that's in article 2117 in this agreement. There are equivalent provisions in all our FTAs.

It would be a case of a Canadian suing in a Canadian court to enforce an alleged right or obligation arising under part 1. If you look at part 1, there's not a whole lot in it that would likely give rise to a cause of action. As far as I know, this hasn't arisen before, hence my hesitation in describing what it would do.

[*Translation*]

Mr. Serge Cardin: So then, it would be a good idea to include the words “with reason“.

[*English*]

The Chair: I think we have had sufficient debate.

(Amendment agreed to)

The Chair: Thank you, and thank you to our witnesses. That was useful.

We shall have a recorded vote on clause 8.

(Clause 8 as amended agreed to)

The Chair: Having gone through the bill previously, I would like to suggest to the committee that we group clauses 9 through 56 as proposed. We don't have any other amendments. It is the bill as discussed. That would leave clause 56.1 to be dealt with following that.

Mr. Peter Julian: I move that we group clauses 9 through 56 together.

The Chair: There you go. It is proposed by Mr. Julian that we group clauses 9 through 56. It can only be done with unanimous consent.

Do I have unanimous consent of the committee to do that? I think so. Okay, then we will proceed on that basis.

(Clauses 9 to 56 inclusive agreed to)

The Chair: That brings us to new clause 56.1, which is amendment NDP-2.

Mr. Ed Holder: Didn't we just pass clause 56?

The Chair: We did, but we have a new clause, clause 56.1.

Mr. Ed Holder: I'm not a lawyer—

The Chair: Good.

Mr. Ed Holder: Nor will I be.

The Chair: That's clear.

Mr. Julian, do you want to move your amendment?

Mr. Peter Julian: Thank you, Mr. Chair. I think Mr. Holder is right. On our clause-by-clause sheet, it was actually in the reverse order. So that's a very good point.

New clause 56.1, again, for a better measure of public accountability, would simply require that the Minister of International Trade report, within five years of this act's passing, on the provisions and the operations of the implementation act—in other words, of the bill itself, including any recommendations for amendments.

I think we've had compelling testimony that there are concerns around this bill, around the provisions of the labour side agreement, the environmental side agreement, and how that would work. I think it is a wise course of action to ensure that in this bill there is a reporting back mechanism so we can see the difference between what has been purported around the bill and what the actual operations and results are after a five-year period. For that measure of public accountability, I propose this amendment to add clause 56.1.

● (1050)

The Chair: First, are there any comments specifically from the officials on how this might affect the bill?

Ms. Carol Nelder-Corvari (Director, International Trade Policy Division, Department of Finance): I'd just make an observation that of course it's the right of this committee to request such reviews at any time. In terms of what's happening in the trade relationship, there may be an opportune time that is apparent to the committee.

With respect to any amendments, this bill of course reflects a bilateral negotiation. So as regards proposing unilateral amendments in the context of the report, unless there was something carried out bilaterally, I wouldn't expect that to take place. As I read this, it says "report on the provisions and operation of this Act, including any recommendations for amendments to this Act". My only point is that this act reflects a bilateral negotiation. So amendments to it, unless there were errors, would likely have to reflect further bilateral negotiations.

The Chair: Mr. Cannis.

Mr. John Cannis: I just heard what I wanted to ask. Thank you very much for that.

But, Mr. Chairman, to ensure a reporting structure, Parliament doesn't stop; it's an ongoing process. To my understanding, there's always a reporting structure. We can always request reviews and changes, whether they occur or not, depending on the circumstances.

For something like the request that has been put here in new clause 56.1, I don't know. I'm a bit concerned about it, if I can put it that way. I'd like to ask the panel again if they could just calm me down, or put me at ease, or flag something for me, as I think you did a minute ago, Carol. I'm just not at ease with it.

Ms. Carol Nelder-Corvari: There's one other point I would like to make. One of the key benefits of a free trade agreement is predictability in market access. This may suggest to our bilateral trade partner that we're going to put this under constant assessment and perhaps propose amendments to it, which may create some uncertainty for both domestic exporters in Canada and in Peru.

The Chair: Thank you.

Mr. Julian, do you want to wrap this up?

Mr. Peter Julian: I'll let Mr. Brison go first.

Hon. Scott Brison: The point that we can request a review at any time as a committee is an important one, but a future trade committee may not see it as important to do a review. As a member of the current trade committee, I'd like to impose on whoever happens to be on this committee five years from now that they report back to Parliament on this. It is not a substantive change to the agreement that imposes a requirement for bilateral discussions; it's simply a progress report back to Parliament on the effects of this.

I think it's a reasonable amendment.

The Chair: We have Mr. Julian and Mr. Cardin.

Mr. Peter Julian: I agree with Mr. Brison. In the last six months we've had a 50% change in this committee. So in five years maybe I'll still be on this committee, I don't know. Maybe some of you won't be. The reality is that committees change, so having a committee intent is different from having it included in the act.

The government has said it is concerned about labour standards and environmental standards in Peru, and it has included the side agreements for that reason. This is a way of monitoring to ensure it is part of public policy and that the government is accountable for what has been put forward on this agreement.

● (1055)

The Chair: Thank you.

We're running out of time, but I'm going to ask Mr. Cardin for a final comment or question.

[*Translation*]

Mr. Serge Cardin: Each time we're presented with a free trade agreement, we ask for an impact assessment and we're told that this is not possible, that there is no crystal ball with which to predict the future. We know that because of the agreement, our business people and our exporters will sell more products and will probably make more money, but we really don't know what impact it will have. We are merely asking that after five years, an impact assessment be conducted. Then we could gauge the impact on various industries. I think such an exercise is important. If there is no legal requirement to do an assessment, I think people will opt not to do one. There will be the occasional complaint, but the assessment will not get done. So then, this is relevant point. It doesn't mean that changes will be made, simply that possible, desirable changes will be identified. As part of any free trade agreement, it is possible to negotiate changes with the parties. However, this would mean that a report would be produced for internal management purposes. We would consider which changes would be desirable and then, we would go and negotiate with the other country. I don't really see any problem here.

[*English*]

The Chair: Thank you, Monsieur Cardin.

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 57 agreed to)

The Chair: Shall the short title carry?

Mr. Peter Julian: I propose that the short title and schedules 1 to 7 be grouped.

The Chair: Thank you for that. We should have done the schedules first. Courtesy of Mr. Julian and the lack of time, I'm going to agree with you.

Do we have unanimous consent of the committee to do the short title and the schedules in one?

Some hon. members: Agreed.

The Chair: Thank you.

(Clause 1 and schedules 1 to 7 inclusive agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill to the House as amended?

Some hon. members: Agreed.

The Chair: Shall the bill be reprinted as amended?

Some hon. members: Agreed.

● (1100)

The Chair: Thank you, ladies and gentlemen. The bill carries. We will report the bill to the House. I again want to thank our departmental officials for helping us through this.

We very much appreciate your assistance throughout. Thank you.

With that, we're not going to have time for any more business, so we'll meet again on Thursday.

The meeting is adjourned.

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