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The Honourable Mark Eyking

Standing Committee on International Trade

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● (1100)

[*English*]

The Chair (Hon. Mark Eyking (Sydney—Victoria, Lib.)): I call the meeting to order.

We're going to start. We're in this special room today because we have everybody coming via teleconference, so the techies are getting that all straightened up for us.

I have just a couple of points. Number one is we have our schedule laid out for CETA for the next few days. I would like to send a notice to the independents that we're going to do clause-by-clause study on December 6. Does the committee agree? Can I do that?

I'm going to send it out to the independents so that they know we're doing clause by clause December 6. No problem?

Mr. Randy Hoback (Prince Albert, CPC): Do we have to tell them we're going to do clause-by-clause consideration, or do we just set the deadline for when they have to—

The Chair: I think we have to tell them.

Mr. Philippe Méla (Legislative Clerk): We have to tell them deadlines and set the deadline also.

The Chair: We have to tell them and set the deadline.

Mr. Randy Hoback: Okay. You set the deadline for 48 hours from when it passes the House, so that can go out at that point in time, so 48 hours' notice is given. They have 48 hours from when it goes through the House at second reading.

No? It's not the way I understand it?

Mr. Philippe Méla: No, it's 48 hours...sorry.

The Chair: No, go ahead.

Mr. Philippe Méla: It's 48 hours before the start of clause-by-clause study.

You have to have the deadline for clause by clause to set the deadline for the amendments.

The Chair: Okay. There are no questions on that.

Go ahead, Ms. Ramsey.

Ms. Tracey Ramsey (Essex, NDP): Mr. Chair, I'd like to move my motion that I introduced on Tuesday, November 15.

The Chair: Okay, I think everybody knows the motion. Do you want to read it again?

Ms. Tracey Ramsey: No, I've read it into the record. I think we can go ahead.

The Chair: What do you want? Do you want to vote on it right now?

Ms. Tracey Ramsey: I'll speak to it a little.

Obviously there are a lot of folks who would like to come before us as witnesses. There are some voices that we aren't going to hear without an expansion of the meetings. We've agreed to one already in order to open that space for some folks, but we need to have this expanded.

The other piece is that it's unprecedented at the committee level to not receive written submissions.

Therefore, we need to open that up to be sent to the clerk, and there is a deadline here that has been set for no later than December 15. It's not a large window of time, but it is enough that Canadians will feel that the government and the committee are being transparent and open in allowing them to engage in that way.

The Chair: Are there any more comments before we vote?

Mr. Randy Hoback: I just want to get the record straight.

In the previous government, we did consultations in this committee. We did pre-study, and if you look at the negotiations themselves, everybody who wanted to be involved was involved. If they decided not to be involved, they did so by choice. This agreement has been telegraphed, it has been talked about, it has been in the media. It has been in all sorts of different venues, including committee meetings across Canada.

If you want to extend the meetings for 12 more meetings, you're going to hear the exact same thing that you heard previously. You're not going to get any new additional witnesses. All you're going to do is delay.

My advice is, at this point in time, I can't support this. I vote against it and—

The Chair: Okay.

Ms. Tracey Ramsey: Mr. Chair, I'd like to—

The Chair: I'll let you have the closing comments. If there are no comments from the Liberals, you can make your closing comments, and then we'll get to a vote, because we have people coming from all over.

Go ahead, Ms. Ramsey.

Ms. Tracey Ramsey: Yes, I'm surprised to hear that. I think that the Conservatives have been quite clear that they would like to allow people to be able to engage with the committee on other issues, so written submissions at the committee level....

The other thing that I've heard quite clearly from the opposition as well is the fact that this agreement has changed. There have been many changes to this agreement throughout the past year. We haven't discussed the implication of Brexit. We haven't had witnesses before us to talk about 42% of our trade that may or may not be accessible in this agreement past the hard Brexit.

I think there are outstanding concerns for environmentalists. We're not going to hear from any of them at the committee. Seniors groups have been wanting to engage on this around the cost of drugs, and what that will mean. I think there are other groups that would be interested in coming before us, as we heard last week. We had the Cattlemen's Association, and although they support the agreement, they have some serious concerns about accessibility to the market and are seeking amendments that would ultimately allow them to have more of those non-tariff barriers removed.

I think by limiting what we are able to hear around this new kind of ever-changing agreement in the past year, we limit democracy and Canadians' ability to engage with the committee.

● (1105)

The Chair: Do we go with a show of hands, or does anyone want a recorded vote?

Hon. Gerry Ritz (Battlefords—Lloydminster, CPC): I just want to make one more point, Mr. Chair.

We've been talking about it and we signed it in almost a month ago. I was wondering if the clerk has had a deluge of applications from people wanting to appear before the committee, other than the ones we've called.

The Clerk of the Committee (Mr. Rémi Bourgault): I have received many. I wouldn't say a deluge, because—

Hon. Gerry Ritz: Okay.

The Clerk: The comparison I have is TPP, which was something different.

Hon. Gerry Ritz: Right.

The Clerk: The list was distributed last week, I think. I don't have the exact numbers that we received.

Sometimes it was cross-referenced, in the sense that some submitted their request to appear and at the same time they were also on the list that was submitted.

Hon. Gerry Ritz: Okay.

The Chair: Go ahead, Ms. Ramsey.

Ms. Tracey Ramsey: I want to request a recorded vote, please.

Hon. Gerry Ritz: I want to make a comment and suggest a compromise.

I'm not trying to change the motion, but a possible compromise may be to allow those who have asked to do a written submission to do it, if we don't have time to hear them. That might be a compromise. It would be just those particular ones. I'm not talking about opening the floodgates today; I'm talking about just permitting the ones who have made an application to have the ability to put in a written submission.

The Chair: You would have to amend her motion quite substantially, if she is okay with that.

Are you okay—

Ms. Tracey Ramsey: Is he proposing an amendment?

Hon. Gerry Ritz: Okay, then I'm proposing an amendment that we allow written submissions in the case of the few who have applied and who won't have a chance to be here.

The Chair: The amendment changes the whole motion.

Is that the only part you want in the motion?

Hon. Gerry Ritz: She's talking about hearing further witnesses. I'm saying that we would, as a committee, entertain written submissions from those who have applied to date—not open-ending it, but to date. We would allow written submissions from those few.

Mr. Sukh Dhaliwal (Surrey—Newton, Lib.): That makes sense.

Ms. Karen Ludwig (New Brunswick Southwest, Lib.): Mr. Chair, I have a question.

The Chair: Go ahead.

Ms. Karen Ludwig: It would be to my Conservative colleagues.

When you were negotiating this earlier, in the last couple of years, did people come before the committee? Did they have the opportunity?

Hon. Gerry Ritz: Yes, there was a full series of cross-Canada hearings and so on. The minutes are all available.

Mr. Randy Hoback: It included chambers of commerce, unions....

Hon. Gerry Ritz: All of those.

Ms. Karen Ludwig: Were briefs submitted then, as well?

Hon. Gerry Ritz: Yes.

Ms. Tracey Ramsey: Again, Mr. Chair, the agreement has changed—

The Chair: I really want to get to this motion. We have these people from all over the country, and I really want to get clarification.

This amendment is only one part of the motion. With regard to the rest of the motion, does everybody agree?

Mr. Randy Hoback: What is the motion we're actually entertaining, though?

Hon. Gerry Ritz: It's Ms. Ramsey's motion, with an amendment.

The Chair: The amendment is on the floor.

Mr. Randy Hoback: I want a clarification on the motion. Did we dispose of the 12 extra meetings?

The Chair: No.

Mr. Peter Fonseca (Mississauga East—Cooksville, Lib.): Mr. Chair, would this set a precedent, and would it have any weight in slowing down the process to ratification?

An hon. member: No.

Mr. Peter Fonseca: It would not. This would not at all slow down that process.

Hon. Gerry Ritz: No, in my amendment, should it be accepted, they would put in written submissions without interfering with our doing clause-by-clause consideration by December 6.

The few who have applied to appear before the committee have lots of time to write their submissions. We would not be entertaining any more appearances. The amendment would just allow written submissions for the few who have applied to Rémi.

Mr. Kyle Peterson (Newmarket—Aurora, Lib.): Well, then, what's the point? What impact would those written submissions have, if clause-by-clause study will be done before we get them?

Hon. Gerry Ritz: Well, I mean, we have to—

The Chair: I want to make sure, because in here it says it can be up to December 15. If we're doing clause-by-clause consideration by December 6, that changes it quite a bit.

● (1110)

Hon. Gerry Ritz: Well, you're setting the clause-by-clause date.

The Chair: Yes.

Hon. Gerry Ritz: We agreed to that.

The Chair: We all agreed to that, but here you're taking submissions up to December 15.

Ms. Tracey Ramsey: Mr. Chair, the second part of the motion asks for more meetings. Presumably if we had more meetings, it would push that date further ahead. There are many people who have applied to the committee to be heard.

The Chair: I understand that, but I don't think it's the agreement of the committee to push those dates.

For clarification, I think we have to vote on her motion. If you have a new motion...are you trying to change the whole motion?

Hon. Gerry Ritz: I'm not trying to introduce a whole new motion, because you need 48 hours to do that. I'm trying to address what Tracey is asking for in having more input from different people.

All I'm saying is that we're not taking written submissions, but in order to have a compromise to her proposal to have 12 more meetings—which I don't agree with, because it would slow things down far more than need be—we take a written submission from those who have applied to appear as of today, and not anybody new. To be entertained, they would have to have them in before we start clause-by-clause study on the 6th.

The Chair: You have to read the amendment into her motion. We have a motion on the floor now, so the amendment has to be read into it.

Ms. Tracey Ramsey: Are you calling the vote on the amendment?

The Chair: I think that's what we have to do. We have to see how it fits in there. Everybody has to understand how it fits into her main motion.

Hon. Gerry Ritz: Well, okay. My amendment, then, would be that rather than entertaining 12 more meetings and blowing past the timeline that's established, we allow written submissions from these few applicants who have applied as of today—no longer, and nobody else—and tie them into what will be the final report.

The Chair: That's more clarification for me. Did everybody get clarification on the amendment?

Mr. Sukh Dhaliwal: Just vote on the amendment right now.

The Chair: Yes, you have to have a deadline.

Mr. Peter Fonseca: What's the stop date?

Hon. Gerry Ritz: I'm saying they all have to be tied in and done so that they can be entertained when we do our clause-by-clause study. It has to be by December 6.

The Chair: Go ahead.

The Clerk: It's just that in order to have the submissions distributed to you, as members of the committee, they have to be translated.

Hon. Gerry Ritz: That's fine.

The Clerk: If I receive them only by the deadline of December 6, then you won't have them before dealing with the bill clause by clause.

Hon. Gerry Ritz: All right. I didn't set a deadline, Clerk. I said it was to be done in time to be part of December 6. If you want to set a deadline of November 30 to have time to translate, then that's fine.

The Chair: That's right. He has to back up.

Hon. Gerry Ritz: It gives them a couple of weeks to get it done.

The Chair: Could we have one more reading of the amendment? Does everybody understand it, as read by Mr. Ritz?

Mr. Randy Hoback: I just want some clarification, through you, Chair, to Tracey.

What we're doing is we're not going to have any more meetings. We're just going to let those who have asked to present, but who aren't able to present, to do a written submission. That submission would be given to the committee in time for us to review it before we go through clause-by-clause consideration on December 6.

A voice: Right.

Mr. Randy Hoback: The deadline is going to have to be backed up in such a way that the submissions get translated.

The Clerk: That would be November 30.

The Chair: If it's okay for you, Ms. Ramsey, if you took your motion back and we just agreed on this, it doesn't have to go into a motion and the whole thing, I don't think. It's up to you.

Ms. Tracey Ramsey: I say we vote on the amendment.

The Chair: Okay.

I don't know if there's a length. Do you remember if there's a length for how long a submission could be?

Hon. Gerry Ritz: We've had a standard size that we've required of others. I would say to make it the same.

Mr. Sukh Dhaliwal: It was five minutes, right?

Hon. Gerry Ritz: Well, it's a written submission, so it would be however many words, whatever that is.

Mr. Sukh Dhaliwal: It's written, so it should be that in print.

The Chair: It would be 10 pages, maximum.

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): Is it possible to read it again, please?

Mr. Kyle Peterson: Is the vote on the amendment or the entire motion now?

A voice: No, no. It's just the amendment.

Hon. Gerry Ritz: It's just the amendment.

Mr. Kyle Peterson: What does the amendment replace, Mr. Clerk? Can you clarify that?

Hon. Gerry Ritz: It replaces the 12 meetings.

The Chair: Go ahead.

The Clerk: The amendment will replace the words "consist of at least 12 meetings", and it will allow people who have already submitted their requests to appear to submit written submissions by November 30. We discussed about setting a maximum length of 10 pages, which was the length that we accepted for TPP. The rest of the motion will be close to the same.

The written submissions, once translated, will be distributed to committee members, and they will be published on the website. That part doesn't change much.

● (1115)

Mr. Peter Fonseca: In no way will it be able to impede the clause-by-clause consideration on December 6.

Hon. Gerry Ritz: That's why there's the deadline of November 30, Peter.

Mr. Peter Fonseca: Even if the translation ends up being delayed, that cannot impede the December 6 clause-by-clause study.

The Chair: That's right. We're sticking to December 6, regardless.

Ms. Tracey Ramsey: I just want to speak on the record that I feel this guts the spirit of the motion that I brought forward, but we'll vote on the amendment.

The Chair: Are we ready to vote again?

(Amendment agreed to: yeas 8; nays 1)

A voice: Now we have to vote on the motion.

Mr. Sukh Dhaliwal: It's the motion as amended.

The Chair: Yes, that's right.

Hon. Gerry Ritz: Can you read the motion as amended?

Mr. Kyle Peterson: While you read it, we should get the translation.

The Chair: Can you read the motion as amended?

The Clerk: It will have to be reworked, because it was done on the floor.

Pursuant to the motion of Tuesday, November 1, adopted by the Standing Committee on International Trade to study the Comprehensive Economic and Trade Agreement, the motion is "that the chair publish a news release on the committee's website, inviting Canadians to submit their views on the CETA in writing"—

No, just a second. "That the Chair publish a news release"— well, it's not even a news release. It's not necessary. It's that "people who requested to appear before the committee, before the beginning of the meeting today, be allowed to submit a written submission"—

Hon. Gerry Ritz: Of no more than 10 pages—

The Clerk: —"of no more than 10 pages, before November 30 at 5 p.m.; and that the written submissions, once translated, be distributed to members of the committee."

Hon. Gerry Ritz: Add "and that these written submissions will in no way impede the clause-by-clause on December 6." That was Peter's.

The Chair: Go ahead, Madam Ramsey.

Ms. Tracey Ramsey: I just have to say that it is extremely anti-democratic to say that we're going to cut off submissions on a date that's passed already. There's going to be no opportunity for anyone now to say they'd like to send a written submission to this committee. There's going to be no opportunity, no posting, for anyone to know that we would have accepted anything written to this committee. That's never been expressed to the Canadian people.

This smacks in the face the Liberal government with its vision of transparency and openness with Canadians. You're cutting off Canadians from having the ability to engage at the committee level, and I cannot support the gutting of the motion in this way.

The Chair: We know the new motion, and we'll have a recorded vote on it right now.

(Motion as amended agreed to: yeas 8; nays 1)

The Chair: Order.

Sorry for the delay, folks.

This is the process. On video conference, we have people from France, the United Kingdom, Montreal, and Toronto. Welcome, folks. I would do a bigger introduction, but our time is limited. I would also let the MPs know that Mr. Johnson can only be with us for another 45 minutes, or something like that.

Mr. Pierre Marc Johnson (Chief Negotiator of the Government of Québec for the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) and Counsel, Lavery, de Billy, As an Individual): I have maybe 48 minutes, Chair.

The Chair: Okay, so if MPs have questions pertaining to you, they should ask those questions in the first round.

Without further ado, we'll start off with Mr. Johnson. Go ahead.

Mr. Pierre Marc Johnson: Thank you very much. I'll make my comments in French and answer any questions in whatever language is coming from the floor.

Mr. Chairman, I'd like to first of all, thank you for having me appear at this committee's meeting. I'm sorry, I have to go in 48 minutes because I'm chairing a meeting here in Lyon.

● (1120)

[*Translation*]

Essentially, it's a very good agreement because, first and foremost, it is balanced. It responds to Europe's main offensive objective, meaning the Canadian public markets and, on the Canadian side, our willingness to open up the market to 500 million Europeans in the European Union.

It's also a good agreement, a balanced agreement because it ensures openness in the service sector, while preserving the quasi-monopolistic nature of the provincial governments and the federal government on issues related to social services, health and education. This means that these services, which we see as being largely state-controlled, can be preserved.

In terms of investment, I think the agreement is very balanced if we remember that Canada has almost as much stock invested in Europe as Europeans have in Canada. We're talking here about approximately $180 billion on both sides. I think this movement of capital finds a little more certainty in the text, which is always very important when it comes to investments. The text is very clear about the obligations of the governments, whether they are member states of the European Union, of the European Commission, the Canadian government or the provincial governments, in terms of non-discrimination and fair and reasonable treatment of investment from Europe.

If I may, Mr. Chair, I would add that the participation of the provinces has been very fruitful. The federal government agreed to have the provinces at the negotiating table for one reason: the provinces had to agree to a number of measures to ensure that bargaining succeeded, particularly in the exclusive provincial jurisdictions. Given Canadian constitutional law, these measures require the consent of the provinces in order to implement the agreement.

In addition to being able to establish our positions very clearly, to make them heard and to see them applied in this negotiation, our interests in economic issues have also been heard in a perfectly adequate way. This gave rise to a rich and attractive Canadian offer for Europe, which was, I remind you, a bit skeptical at the very beginning of negotiations.

Lastly, the agreement is interesting because it is “of a new generation”, meaning that it includes chapters on cooperation on sustainable development, environment and work. It also provides for the establishment of a series of committees that broadly cover issues of technical barriers to trade and the certification of goods. This will facilitate the movement of goods between Europe and Canada.

Generally speaking, as the chief negotiator of the Government of Quebec, I am putting forward the positions of the Government of Quebec, which is satisfied with the agreement and intends to take the action required to implement it in its territory.

[*English*]

Thank you, Chair.

The Chair: Thank you very much, Mr. Johnson, and thanks for being on time. We're moving along pretty well.

We're going over to the United Kingdom now, to Jason Langrish.

Go ahead, sir. You have the floor.

Mr. Jason Langrish (Executive Director, Canada Europe Round Table for Business): Thank you for inviting me to be here today.

First, I agree with Pierre Marc's comments wholeheartedly. We collaborated and worked closely with him and his government. Quebec was central for CETA in getting the negotiations going and ensuring that they ran smoothly.

I think it's fair to say that the Canada Europe Round Table, the group that I represent, has been the most active business group, and we've been the earliest mover on this agreement. We've been pushing for some form of liberalized trade between Canada and the EU since 1999. We've lived through various iterations of this. We pushed for the TIEA agreement, the Canada-European Union Trade and Investment Enhancement Agreement, which was a precursor to CETA. We're very pleased that the EU and Canada came together and were able to sign CETA recently.

I'm not going to get so much into the specifics. We can do that during questions. I'm just going to talk about why it's in the strategic interest of Canada to conclude this agreement.

First, one of the reasons we were always an advocate for this agreement was that we thought the architecture that governed the relations between Canada and Europe was underdeveloped and that there was further potential that could be tapped, but it was also for a measure of trade diversification. I think that view was prescient in light of developments with the U.S. presidency and the comments on NAFTA. We'll see what that amounts to, but it does show that it pays to have diversification and other options.

The other reason, to use a formula in international trade, is that if we take a wheel where you have a hub and the spokes, what you don't want to be is just a spoke. You want to be the hub. You want to be the middle of that wheel where all the different spokes, or all the different countries, come through you and funnel their trade and investment through you. You want to be a participant in global supply chains. CETA really does this for Canada.

It will mean that Canada, in addition to its NAFTA agreement, will be the only advanced country to have a free trade investment agreement with the EU, and it will be the most comprehensive and advanced agreement that has ever been signed on a bilateral level.

I think this will have some unintended as well as intended consequences. Essentially, it will place Canada as a liberalized trade investment zone that stretches from the tip of Mexico all the way to the eastern border of Poland. It's an area that encompasses one billion people. This will be attractive to both European investors and Canadian exporters to Europe.

Also, as I said, there is the unintended consequence, I believe, of drawing American investments into the Canadian marketplace. As I'm sure you're aware on the committee, the negotiations between the Americans and the Europeans have essentially come to a halt, and there is no indication that they're going to make progress any time soon. This leaves Canada with a hugely lucrative advantage with the EU. It won't be lost on American competitors that it might be in their interest to relocate activities into the Canadian marketplace so that they can have that duty-free access into the massive European market, so it positions Canada beautifully between these two massive marketplaces. It says to the world that we're really open for business, that we're an open, inclusive, welcoming society, and that we're free-traders at heart.

I will say one thing with regard to the specifics of the agreement. When Canada made its commitments to this agreement, you were opening certain chapters or acts to conform to the treaty. I understand that there can be a tendency sometimes to take it even a little bit further and make further reforms. I would just say that we should exercise caution in that regard, because while it may seem like it's a good opportunity to make some further changes to regulatory structures—for instance, with regard to the Patent Act—that can have the effect of reducing some of the gains that have been accrued by the parties in the negotiations, and that can be reciprocated by the Europeans as well. Therefore, when Canada goes down the path of implementation of this agreement, I encourage really sticking to complying with the treaty and its obligations and leaving it at that.

● (1125)

Overall, I think it's a fine agreement. It's not a perfect agreement; no agreement is. As they say with trade negotiators, if everybody is unhappy at the end of the day, they've done their job. I don't think that's necessarily the case with this agreement, although there are of course some people who are not pleased, but I think that overall it's a very good agreement for Canadian business and Canadian citizens.

Thank you.

● (1130)

The Chair: Thank you, sir.

We're going to go over to Toronto now, and we have Ms. Louise Barrington.

Go ahead. You have the floor.

Ms. Louise Barrington (Fellow and Chartered Arbitrator, Chartered Institute of Arbitrators, As an Individual): Thank you very much.

I should mention that I'm an Ontario lawyer originally, but now I'm an independent arbitrator working out of Hong Kong, Toronto, and Paris. I lived in the European Union, in Paris, for about 12 years.

I endorse the comments of both Pierre Marc and Jason that this is a really positive thing for Canada, because it does give us a very privileged position with the European Union, which is an enormous trading bloc. Also, perhaps we can be a gateway for the United States to Europe, as Jason just mentioned.

However, my comments are going to be focused on the new dispute resolution mechanism of CETA.

For decades—in fact, since the New York convention was born in 1958—international arbitration has been the way people resolved international business disputes. Privacy of the proceedings; confidentiality; efficiency; avoidance of inexperienced, corrupt, or otherwise unreliable courts; and the ability to choose a decision-maker, someone who was trusted by the parties remain valid reasons for choosing arbitration, even though it is becoming increasingly expensive and lengthy.

The stakes, of course, are extremely high. They are enormous. We have more than 3,000 bilateral investment treaties and multilateral treaties in the world, NAFTA being our favourite, of course. The classic dispute resolution system has always been international arbitration, which is more or less an ad hoc system.

The tendency, though, for business people to go to these BITs, these bilateral investment treaties, has been quite recent. It's been in the last two decades that it's mushroomed. A couple of years ago I was in England interviewing the top arbitration partner of a big firm there, who said that it's now the very first stop they go to. When a new client comes in, the first thing they do is look to see if there is a possible treaty claim for their client. It's a multi-million-dollar, even billion-dollar, business.

Also, these awards are getting a lot of publicity. Of course, now that Canada is on the paying end of some of these, we're much more aware of them than we were, say, two decades ago.

It's one thing to want to avoid courts where the ethics are sketchy and the procedures are mysterious or interminable, but some courts are very good and unbiased, so we don't have perhaps the same necessity to avoid the courts.

I think what's happened today is that creative plaintiffs and lawyers have begun to use the treaty system because of the huge possible payoff, and it may be being misused at times. Certainly the secrecy doesn't help, because people are looking at these awards of figures you can't even count anymore and saying, “We are, as taxpayers, going to pay for this.”

I think there's pressure, in fact, from both ends of the political spectrum. You have conservatives saying that these huge awards are going to put pressure on governments and even erode the ability of national governments to legislate for the protection of the public interest. On the other hand, you have small-l liberals saying that big business is getting these markets for its clients, and they lobby for these trade agreements. Then there is also an expense that comes to consumers in health and safety protection, and there's also the labour element.

One other thing is that there's also a perception now that in some cases businesses are using these treaties as a safety net or an insurance policy, and they are actually creating a reverse discrimination in that foreign investors have better rights than local investors. That is a tough argument to counter.

Of course, the secrecy, as I said, has always been a serious problem. ICSID cases are now all published, so we're seeing lot of decisions now and finding out a little bit about what was behind these big decisions.

● (1135)

In 2014, UNCITRAL brought in rules for transparency in international investor state arbitrations, which is going to be a help for future treaties, but I think what has happened with CETA is that we now have this new system that has come about at the very last moment, and there are three main changes that CETA has brought in regarding dispute resolution.

The first one is that instead of an ad hoc tribunal of three arbitrators, with one chosen by each party and then those people choosing a third, we're going to see a roster of 15 arbitrators. There will be five from Canada, five from the EU, and five from outside nations, with the chair from the outside nations.

The Chair: Excuse me. Could you wrap up?

Ms. Louise Barrington: Okay.

The second one is the possibility of an appellate tribunal, which is going to allow for a review on law rather than just on procedural defects.

The third is the preamble, which I think is maybe the most critical. It recites that investors are going to be protected and business stimulated, but without undermining the right of the parties, of governments, to regulate in the public interest within their territories. I think this may be a real key to the success of this new system.

The Chair: Thank you.

We're going to move on to Montreal and Martin Valasek.

Welcome, sir. You have the floor.

Mr. Martin Valasek (Partner, Norton Rose Fulbright Canada LLP, As an Individual): Thank you very much.

It's my honour to appear before you as a witness. Thank you for inviting me. I will provide my opening remarks in English, but I'm bilingual—I'm a Montrealer—so feel free to interact with me in either language.

I'm a partner in the law firm Norton Rose Fulbright, which is a global law firm. We have an important presence in Canada, with offices across the country. I'm based in Montreal, and I'm the head of the international arbitration practice for the firm in Canada. My practice is devoted almost entirely to the practice of international arbitration. It's split about evenly between commercial arbitration between private parties, generally businesses, and investor state arbitration disputes between investors and host states.

I endorse many of the comments I heard from the first two speakers, in particular those relating to the benefits of the agreement in respect of opening up trade and investment. I have perhaps a slightly different perspective on the investor state dispute resolution mechanism in the treaty, which, as Ms. Barrington mentioned, has gone through some changes in the last little while. Let me also make it clear that I'm speaking in my personal capacity. My comments really reflect my own views and not the views of my firm generally or of any clients for whom I might appear in proceedings.

What are my general views on the investor state dispute resolution mechanism as currently reflected in the treaty? I think we need to step back and recognize, as Louise Barrington did, that there have been criticisms of investor state arbitration.

I recall being at a number of conferences a few years ago where isolated voices claimed that these were secret tribunals that were biased against countries, and so on. Frankly, it was a bit of a niche criticism. I thought it was often misinformed and tended to exaggerate certain information. We've seen, over the last year or two, this criticism amplified by various movements, including by groups who are opposed to globalization generally, in my view. This has resulted in some of the opposition we've seen, in particular during the negotiation of both CETA and the transatlantic partnership.

In the context of CETA, it appears to me that there's been an effort to appease the critics by making successive changes or various promises regarding the mechanism. First there was a move away from the traditional investor state dispute settlement model that Louise Barrington described. That's the traditional model of arbitral tribunals established for each individual case, where the investor and the host state can each appoint an arbitrator. Usually there's a third arbitrator who is appointed by those two to resolve the dispute. We've moved now, in the text, to the model of a permanent tribunal selected only by the states, with individual cases to be decided by so-called divisions of the tribunal. This model is being referred to as the “investment court system”, even though it's still very much based on a model of arbitration because the rules applicable will be various arbitration rules.

Most recently, in order to get the treaty adopted in Europe—I think this is very important for members of the committee to realize, although you probably already do—there's been an agreement to suspend the application of even this new model. There's been an agreement to suspend the application of the dispute resolution model until all 28 national parliaments in Europe ratify the treaty. To my understanding, based on published reports out of Europe, there is a serious risk that at least Belgium, anyway, does not have the political will or the support in all of its federal and regional parliaments to ratify CETA's investment court system in its current form.

● (1140)

Where are we right now with CETA? It looks as though the appeasement has not worked. The critics are not appeased. They want a fully fledged, multilateral investment court and an appellate mechanism, with all traces of the arbitration mechanism removed. You can see this in the text of the treaty. Article 8.29, I believe, refers to that effort to continue working on some sort of multilateral investment tribunal.

I'll wrap up with these next two points.

What does this mean for Canada and Canadian companies and investors? For now, CETA has no investment protection regime, because it will be suspended during provisional application. Basically, unless you have that kind of mechanism, none of the substantive protections for investors can be enforced, so what is the future of the investment protection regime? It's highly uncertain. In my view, Canadians would have been better served with the traditional arbitration model in CETA. As I said, much of the criticism, in my view, has been misguided or misinformed, and frankly—

The Chair: Excuse me, sir—

Mr. Martin Valasek: Yes.

The Chair: Can you wrap it up? You're way over time.

Mr. Martin Valasek: This is my last point. Thank you.

According to my watch, I've been speaking for five minutes.

The Chair: It's six and a half Ottawa time.

Mr. Martin Valasek: Oh, sorry.

It's not clear that a consensus will be reached on a new system to replace it.

Finally, if the current system is ratified, it's not clear that it implements a fair system. The members of the tribunal are paid by the state. There's no input from investors, and arguably that's not an independent investor state dispute model.

Thank you very much.

The Chair: Thank you, sir.

Before we go to the MPs, I have a quick question for Jason. We just recently had parliamentarians from England here. Of course, they have left Europe and are quite interested in having more dialogue with us on trade. What buzz do you hear in London about having a stand-alone trade agreement with us?

Mr. Jason Langrish: It's interesting, because we were just talking about that today.

They seem very keen, but if I may be blunt, I've spent quite a bit of time here recently and I think they're struggling to understand what Brexit means. I'm encountering all kinds of discussions among individuals who seemingly don't understand the differences between a soft and a hard Brexit, a soft Brexit being some kind of arrangement that keeps it in the single market and a hard Brexit including unilateral removal from the EU and going back to the WTO schedules.

My thinking is it's more aspirational than real at this stage. I think they have a two-year window, once they invoke article 50, if indeed they are even able to. The initial comments of the courts in England were that this has to be voted on in Parliament.

My personal view is that in the two-year time frame they have, if they could only get through the list of directives in the EU and prioritize which ones they would like to keep and which ones they maybe do not wish to keep, and if they could just commence negotiations, they'd be doing well.

I think their backs are really up against a wall. They are interested, but I think it's a very long-term and more aspirational goal.

● (1145)

The Chair: I guess we have to give them time to digest it.

We're going to start off with the Conservatives.

Mr. Ritz, you have five minutes.

Hon. Gerry Ritz: Thank you, Mr. Chair.

Thank you, ladies and gentlemen, for your great presentations today.

Of course, the major theme here is the ISDS and the arbitration process. We welcome the clarification you bring to that.

Mr. Johnson, that you started out by saying this is a balanced, excellent agreement. I couldn't agree with you more. I do think that the major winners here will be services and investment back and forth between the two partners. To that end, I am very concerned that with the attempts to drop last-minute, eleventh-hour changes into place regarding the ISDS system, we've actually ended up with worse, rather than less. There's a vacuum that will create almost a chill that will offset some of the early-on services and investment dollars that need to happen, because there isn't that backstop. I know there were downsides to what was there, but it was a known quantity.

At this point, as has rightly been pointed out, there's an agreement to suspend all coverage until all 28 states ratify, and then we'll start to look at it again. That's quite some time out into the future. I'm just wondering if any of you, with your expertise, can shed some light on why that last-minute change was made, which actually creates more problems than solutions?

Mr. Pierre Marc Johnson: Mr. Chairman, I will respond to Mr. Ritz, if I may.

I agree with you that the services and investment sectors are sectors out of which Canada can profit the most. Indeed, the suspension of protection of investment and the investment court system that was set up create a certain level of—I wouldn't say uncertainty, but confusion. Why? It's because we're not sure how it's going to be applied.

That said, we have to have in mind that Europe had about $180 billion worth of investment in Canada before we ever signed this treaty, and reciprocally, so there are means, nevertheless, for the parties to decide on that in terms of investment decisions. Canada is a jurisdiction where you can use the domestic jurisdiction to face issues that might come up with investors and, reciprocally, in most European countries you can do the same.

It's not as if we're back to nothing. We're just with the status quo when it comes to investment, largely, and foreign direct investment will take place as it does now.

My colleague, Monsieur Valasek, also has brought about something fundamental. We've decided to depart—for essentially political reasons and the nature of the communications around the issue in Europe—and to land with a system that might be interesting, but really departs from the stability that we used to know. In that sense, it became inevitable at the end that the European Commission and some major countries, including Germany and France, wanted to depart from the traditional model.

I think it actually establishes a floor from which any negotiation from Europe will start. It doesn't mean that it establishes a floor for Canada, which might decide along the way to stay with the traditional system of arbiters, which are appointed by each party and who co-op a third arbiter. In that sense, I would say that it's preoccupying, but not dramatic.

● (1150)

Hon. Gerry Ritz: Okay.

Do I have a little bit of time left?

The Chair: You have half a minute.

Hon. Gerry Ritz: Mr. Valasek, do you have any other comments to add to that?

Mr. Martin Valasek: I agree with Mr. Johnson's remarks.

I believe your specific question asked why this came about, and I tried to explain it in my opening remarks. I think there are critics of investor state dispute settlement. As I said, you can really find a lot of information on this.

I do think that much of that criticism is misinformed. For example, arbitration is traditionally secret or confidential in the commercial setting—

Hon. Gerry Ritz: Yes—

Mr. Martin Valasek: —but in the treaties for many years now—certainly it's been Canada's model under NAFTA, and in many other treaties—it's not a secret or confidential process. It's quite to the contrary. It's very transparent. As an example, you can go on the international trade website, and you can see all the proceedings. You can often participate in hearings.

As Pierre Marc Johnson said, there is a political voice against companies having claims against states. People say that these are terrible tribunals and that they're secret. Well, they're not—

Hon. Gerry Ritz: They're not; that's true.

Mr. Martin Valasek: —so that's a misinformed criticism.

Hon. Gerry Ritz: Thanks.

The Chair: Before we go to Madame Lapointe, since we have four witnesses by video conference, I'll ask that you please point your question to whatever witness you want to answer it. This will help the technicians know so they can switch the audio.

Madame Lapointe, you have the floor.

[*Translation*]

Ms. Linda Lapointe: Thank you, Mr. Chair.

Good morning, everyone. Welcome.

My questions are for Pierre Marc Johnson, since we are both from Quebec. I know that there is also someone from Montreal.

A little earlier, you said that it was a very good agreement, that it was balanced, that it responded to Canada's offensive objectives and that it would open up a market of 500 million people to us.

In Quebec, more specifically, we have heard many comments about the fine cheeses from Quebec that make up 60% of production. We spoke about compensation.

As chief negotiator for Quebec, how should this compensation be translated on the ground? What can our producers and processors expect?

What do you think about all that?

Mr. Pierre Marc Johnson: First of all, I'd like to thank you for your question, Ms. Lapointe. I appreciate the opportunity to clarify this remark.

On the one hand, as you know, we have a supply management system in Canada that presupposes that diary farmers negotiate a price with processors per hectolitre and that, ultimately, the processors must put on the market a product called cheese that reflects the reality of that negotiation with the dairy producers. This is also true for other dairy products.

So it is a system of income transfer in rural areas. There must be significant tariff barriers for the system to work. The agreement recognizes that. However, it makes an exception for part of the Canadian market. The European quota will increase from 3.25% to 6.50% on the Canadian market.

That said, there is de facto compensation insofar as some of the European cheese importers are themselves dairy producer cooperatives. So there's an economic compensation that can be done in the rural community and the milk producers, because of the cooperatives, notably Agropur and a few others.

On the other hand, the federal government has made a commitment. It was Mr. Ritz who made that commitment. I understand that, a few days ago, the federal government announced its intention to compensate producers as much as $350 million. I would like to draw your attention to the fact that 60% of fine cheeses in Canada come from Quebec, and this is the most vulnerable part of the agreement. The compensation would therefore be expected to reflect this reality.

● (1155)

Ms. Linda Lapointe: Thank you.

You were the chief negotiator for Quebec. It has been said that you were proud. What is Quebec's position toward the mechanism for resolving disputes between investors and the states?

Mr. Pierre Marc Johnson: During the seven years of negotiations, the three successive governments in Quebec had concerns that reflected the vulnerability of the governments in the liability between investors and governments. At the time, we thought we had found the answer to these concerns in the initial text, which limited the ability of investors to sue governments for expected profits. It basically limited their demands strictly to proven actual damage.

We thought we had responded to this issue by doing so, along with a much clearer opening of the process. As Mr. Valasek said, these are no longer completely secret processes. What we had provided for in the 23 pages of the chapter about the regulation on investor-state claims in certain circumstances essentially responded to the Government of Quebec's concerns.

That said, it was not enough for the European side for the reasons that Mr. Valasek explained very well. There were prejudices about the arbitration mechanism. There was, I believe, some doubtful information in some cases as to its description. However, behind all that, there was a kind of aspiration to institutionalize this arbitration in the public process. That is why Canada finally came to an agreement on the Investment Court System.

Canada did this because there was a European consensus in favour of the system, meaning that the organization would be permanent. Of course, the problems Mr. Valasek raised may still occur. The organization will be funded from state coffers, while the previous mechanism was funded by the civil party and by the states that were prosecuted.

I would say that although I was—

[*English*]

The Chair: Excuse me, Mr. Johnson. I'm sorry. Your time is not up, but Madam Lapointe's time is up, and I want Ms. Ramsey, with the NDP, to get some questions in here too.

[*Translation*]

Ms. Linda Lapointe: Thank you very much.

[*English*]

The Chair: We're going to move to the NDP, and you have the floor, Ms. Ramsey.

Ms. Tracey Ramsey: Good afternoon, everyone.

I'd like to continue the conversation about the ICS and the changes that were made. What we see coming forward in implementing legislation in the treaty itself really leaves a lot to the imagination. There's mention of an appellate mechanism, but there certainly is no language around that. There's mention of a code of conduct, but again there is no language around that. It's not clearly laid out in the agreement what that court system will look like. In part, I think that's because of the pushback that you're all recognizing is happening in the EU.

I would like to address my question to Ms. Barrington.

Ms. Barrington, thank you for touching on points that many Canadians have expressed in saying such things as “Why are we using this? We have domestic courts. Why is there an avoidance of our domestic courts here in Canada?” That's a grave concern, and I believe that came up in the EU, as well.

Can you give your thoughts on why our domestic court system is not good enough for use in these disputes? Why do we need this secondary layer of a court system?

Ms. Louise Barrington: First of all, I just wanted to mention to you that there is a code of conduct for arbitrators and mediators. It's set out in the papers that go along with Bill C-30. I have it here. It's annex 29-B. You can look at that. That code of conduct is very similar to other codes of conduct that you'll find for arbitration and mediation specialists in the industry.

As to why not use the domestic courts, traditionally there has been a certain distrust of courts that are not our own. That's one of the reasons that arbitration grew up. It's to give a level playing field, so that if there were—

Ms. Tracey Ramsey: Sorry. I don't want to interrupt you. I understand a developing and a developed country, but we're talking about developed countries, such as country to country, with much more in common. They have progressive court systems, as well.

● (1200)

Ms. Louise Barrington: I agree with you entirely. I'm just saying that's the history of it.

There is still a perception that a Canadian court would be perhaps more...I won't say “biased”, but they would want to take into consideration the public policy of Canada to an extent that might not be acceptable by the other party. I think it's really that.

There have been cases where the court system has not, perhaps, given a result.... There have been rather strange results in courts, results that can only be rectified by action from the government, because you can't use the appeal system. I'm thinking of a case, the name of which I forget—

Ms. Tracey Ramsey: That's okay.

My next question goes into the appeal system and into the appellate mechanism.

What exists in this agreement that lays out that appellate mechanism? There's nothing there to touch upon what that will look like. This is an area of concern, because in the EU we see these side letters that determine that they will not be part of the investor state dispute until it goes to the member states. In Canada, we're mirroring that for provisional application, but at the end of the day it's part of our agreement in Canada in a way that it isn't in the EU. We have no understanding of what the appellate mechanism or the court system will look like. We're essentially being asked to sign on to something that will never come before us as legislation.

Ms. Louise Barrington: Yes. I agree. It's pretty vague.

What I've read is that it's going to be like the WTO system, which has an internal appellate body. The appellate body is made up of senior jurists, and many of them are Supreme Court judges from around the world.

How will it work? I guess they'll look at the WTO and take their cue from there, but I don't have any details either.

Ms. Tracey Ramsey: Okay. Thank you.

My next question is to Mr. Langrish.

I appreciate the caution that you encourage us all to take in the regulatory changes that go along with CETA in Bill C-30. Have you had a chance to look at Bill C-30 and its implementing legislation, and what regulations, in particular, are you referring to with that caution?

Mr. Jason Langrish: Whatever I'm referring to would be with regard to the Patent Act.

What was agreed to by the parties in the negotiation was patent term restoration and right of appeal. Data protection was not accepted, but then there's going to be additional movements to remove the dual litigation provisions. That goes above and beyond what was agreed to by the parties, and that's a unilateral move by the Canadian federal government.

Ms. Tracey Ramsey: I think this is one of the—

The Chair: I'm sorry, but your time is up.

Ms. Tracey Ramsey: Oh. I'm all done.

Thank you so much.

The Chair: We're going to move over to you, Madam Ludwig. You have the floor.

Ms. Karen Ludwig: Thank you.

Good morning, and thanks to all of you for your excellent presentations this morning.

My questions are for you, Mr. Langrish. I represent the area of New Brunswick Southwest. We border on the State of Maine, and we're within seven hours' driving distance to the Boston-New England area.

How do you see Atlantic Canadian businesses benefiting from increased access to the EU through services and investment by EU and American investors? Which sectors do you think will most likely benefit? Also, what might be some of the unintended consequences?

Mr. Jason Langrish: Those are very interesting questions. We hosted an event at Canada House today, where Premier Gallant spoke, and really, I can just lift his comments.

I think what you're going to see first on the trade side is that Atlantic Canada is going to be a very major beneficiary. I think from Quebec eastwards on the trade front in particular.... I think all of Canada will benefit with the increase in farm trade and those types of things, but you have a natural export outlet and a relationship with the European Union. It will be in forestry, mining and minerals, fish and seafood, possibly petrochemicals, and industrial goods. There are a wide range of activities there.

With regard to services, for instance, in maritime transportation, the port of Saint John could see an increase in traffic, as would the port of Halifax and the port of Montreal. For professional services, it's across the board, wherever the professional services are operating, whether it be legal or consulting and those types of things. In such a comprehensive agreement, it's a negative list, in that everything is captured unless otherwise omitted. Wherever those services exist in New Brunswick and where there is a desire to sell those services outside of New Brunswick, it could be in the European Union. There will be opportunities.

With regard to investment, I think the real thing about investment is that it used to be that you invested and then it stimulated trade. What may be new now is that trade sort of follows investment. That's the nature of the game nowadays. For instance, let's say you're a wind turbine manufacturer. You create what you call a centre of excellence. You build your little supply chains into that location. You put that wind turbine manufacturing plant in a place where you feel that you have the greatest global export opportunity, the greatest opportunity to service as many people as possible in as large a market as possible.

Why free trade and investment facilitate that is the investment point: it protects the investment in the market. The elimination of tariffs, even if they are relatively small, makes it easier for the supply chains to develop all the inputs that will go into the manufacturing and assembly of the product. Then you have the duty-free access to be able to export that product to all the places with which you have free trade.

Any area where that dynamic could come into play could be advantageous for New Brunswick. It's very difficult to speculate, because economies are so complex, but I think the greatest opportunities would be with regard to the movement of goods eastward, going out through the ports of New Brunswick, probably from the resources and agricultural sector. I think we're going to see a large trade flow. Then there are the services that will really facilitate that, including customs, brokering, transportation, and the professional services that go around that, such as accounting and legal services and things like that.

Of course, it could be much broader than that, but that gives you an idea of how many different factors there are in these types of considerations.

● (1205)

Ms. Karen Ludwig: Thank you.

That's certainly very good information for me to share with people in my riding in terms of getting ready for this and other agreements.

I want to read a quick quote to you as well. Steve Verheul, the chief trade negotiator, came before the committee on November 15 and stated:

> CETA will not lead to forced privatization of public services. Canada has a long experience with the protection of public services in all trade agreements and is confident that CETA will allow for full policy flexibility.

How would Canadian municipalities or provinces be positively or negatively affected, and to what extent, by the opening of a Canadian subnational procurement market when CETA is ratified?

The Chair: Excuse me—

Ms. Karen Ludwig: Is that too big?

The Chair: It's going to have to be a very quick answer. You only have half a minute.

Mr. Jason Langrish: Was that question for me?

Ms. Karen Ludwig: It was.

The Chair: Yes, but, sir, you'll have to give a quick answer, please.

Mr. Jason Langrish: Okay. Just on that, there's nothing that compels privatization. What gets confused so often is the idea of fair, open, and transparent bidding with some exceptions with regard to municipal contracts and on municipal services, but there's nothing that compels a municipality, a provincial entity, or the federal government to privatize a service. The trade agreement does not do that. It just says that if you have a European there and a Canadian there and they both meet the criteria, their bids need to be treated fairly and equally.

The Chair: Thank you. That ends the first round.

We will start the second round with the Liberals. Mr. Fonseca, you have the floor.

Go ahead, sir.

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

Thank you to all the witnesses.

My first question is for Mr. Johnson.

I would ask you, Mr. Johnson, to take us behind the scenes to the inception of this agreement. It has been characterized as the gold standard for agreements and the way that things should be done in terms of its transparency, its engagement, its consultation, and the way it was structured and worked with the provinces and the municipalities. Can you take us behind the scenes in the work that you did and the leadership that you brought to this agreement from its start to where we are today? How did the buy-in from the provinces come about? Were there joint meetings with the federal and provincial governments? How did it all come together? How did it all work?

Can you give us some of that insight?

● (1210)

Mr. Pierre Marc Johnson: Initially the provinces had to be there; otherwise, the Europeans would not have been interested, largely because of the public procurements market, the services sector, which is largely regulated by the provinces.

The provinces found their interest in access to the European market, but also in the interest of opening up the public markets. Why? It's because that's good for competition, and ultimately competition is good for the taxpayers we all are. We had a royal commission recently on things that were not competitive in construction, and realized we that maybe we'd paid a few billion dollars in the past 20 years that we should not have paid as taxpayers because competition was inadequate.

Second, the provinces really worked well together. There were more than 220 meetings or conference calls between the provinces and federal officials or among the provinces themselves with the Europeans. Each chief negotiator of the different provinces was able to speak with the European negotiators to explain how, for instance, we have a monopoly for distributing alcohol in all provinces except Alberta, which is somewhat of a mystery to many Europeans, especially in the country where I am now, France. We had an occasion to explain how provincial legislation worked, and that was very useful in the conduct of negotiation.

At the end, we were insistent that in terms of circulation of goods, this should not be only about tariffs, but it also should be clear on rules of origin to be sure that more Canadian products would qualify, and better qualify with certainty, and finally that we should have certification for our goods. Certification means that if you want to go on the market with an iPhone, you have to demonstrate the iPhone won't be detrimental to health, to security, or to the environment, and we have the possibility not to harmonize our rules between Europe and Canada, but to be able to give to a manufacturer the possibility to go to a laboratory in Canada and get EU certification according to their *cahier des charges*, and the same for Europeans, who will be able to apply for Canadian certification in European laboratories. Especially for smaller companies, that should should ease the burden —

A voice: Your G2J conference is about to end.

Mr. Pierre Marc Johnson: I'm sorry; I'm going.

Mr. Peter Fonseca: The voice of God came in.

Voices: Oh, oh!

Mr. Peter Fonseca: That's right.

The Chair: Thank you very much, Mr. Johnson.

Mr. Pierre Marc Johnson: I thank you, Chair.

The Chair: Thank you for being with us.

Do we still have the other three witnesses?

Mr. Peter Fonseca: Mr. Chair, I'm allowed to—

The Chair: Hold it. You have time. We're in suspension. We're not suspended, they're just going to....

We'll let Mr. Johnson leave.

You have about half a minute left. Mr. Fonseca, are you good to go?

Mr. Peter Fonseca: Yes.

This is open to any of the other three witnesses.

We've talked a lot about our European diaspora communities here. How well do you think that will serve us in this agreement, having such large communities descended from Europeans here in Canada?

The Chair: It has to be a very short answer.

Mr. Jason Langrish: Maybe I'll take a quick stab at that.

Both my in-laws are Polish, and it doesn't hurt, but it's not the primary driver of business.

I think maybe the first wave of migration from a country to come over will maintain strong links to the old country, as they say, but a lot of the immigration from Europe is now into its second or third generation. I think they're just looking for business opportunities, to be honest.

There will be some familiarity with the languages and customs in the various EU member states. They will be familiar with that, making it easier for them to import and to trade and so on, maybe set up business operations, but by and large, the primary driver will be the business opportunity that exists in the European Union, and it won't necessarily be cultural.

● (1215)

The Chair: Thank you.

We're going to move over to the Conservatives now.

Mr. Van Kesteren, you have the floor.

Mr. Dave Van Kesteren (Chatham-Kent—Leamington, CPC): Thank you, Mr. Chair.

Thank you all for excellent presentations.

I'm going to go with Mr. Langrish again. You seem to be taking most of the floor.

My riding represents southwestern Ontario near Windsor. Of course, there's been talk. You mentioned the unintended consequences. I agree with you 100%. I think they'd be positive. We've spoken at length about what we know free trade will do. Often it's those things that nobody saw coming that translate into something negative, but for the most part I think trade deals are positive.

You talked about the corridor going into the United States. I wonder if you could elaborate on that.

I also had the opportunity to speak to this in the House yesterday. Our government, the past government, spent an enormous amount of energy on the new Gordie Howe bridge. How important will those sorts of things be, now and in the future when this agreement begins to play out?

Mr. Jason Langrish: Just to be clear on this, I think I'd take a logical step here. If you're a producer and you feel that Europe is a major market for you and it makes sense to relocate to Canada, especially with the lower Canadian dollar, then all things being equal, you can take advantage of that opportunity. I think some American investment will do so.

Windsor is an interesting example. I think the auto sector is a pretty big winner in this agreement. You have a situation of a tariff rate quota of 100,000 vehicles. That's not inconsequential. There's a fairly low rules of origin requirement. I think the EU has been very flexible with regard to that, so there's going to be a real opportunity.

One of the big three—and I don't want to get too specific—plans to locate production in southwestern Ontario and produce vehicles that can be exported into the NAFTA marketplace and into the EU marketplace through this tariff rate quota of 100,000 vehicles. Now, with the relatively low rule of origin requirement, this could go well beyond 100,000 vehicles.

There's a very good example of how, by having free trade with North America and with the European Union, you increase the desirability of your region as a location for investment for the manufacture and the assembly and export of these vehicles, and then with that come the industries that service that—the auto parts sector, the services sector, and various other elements—and then there's the multiplier effect in the community.

Mr. Dave Van Kesteren: Thank you for that. It becomes apparent, when we study this agreement and the impact that it's going to make, just how significant this agreement is. It's quite remarkable that we were able to do this; I think everybody would agree with that.

I want to expand to another industry that's very prevalent in my riding, and that is the greenhouse industry. I wonder if you could weigh in on that as well.

I know there won't be too much going from Canada to Europe or, for that matter, the other direction, but the possibilities for expansion in the United States are just enormous. How will a free trade agreement with Europe, and having that close connection with a country such as, for instance, the Netherlands, help to expand that industry and subsequently help it to grow and become even stronger?

Mr. Jason Langrish: This is not a sector that I'm particularly familiar with, but, as you say, there's a great deal of expertise in this sector in the Netherlands and other parts of Europe. It won't be lost on them that they will have this access through the CETA into the Canadian marketplace, and then have national treatment, and as an investor located in Canada have access to the benefits of the NAFTA, including access to the vast American market. I just don't really know enough about the sector to talk about it more than that, but I see certainly there could be potential for growth there as well.

We tend to think a lot about Quebec when it comes to agriculture, but of course the largest agricultural producer in Canada is southwestern Ontario. That's where the most agricultural production occurs, and it's also where one of the largest manufacturing sectors in the country is, processed foods, so there are lots of opportunities.

● (1220)

Mr. Dave Van Kesteren: Thank you.

The Chair: Thank you, sir.

We're going to move over to the Liberals now. Mr. Peterson, you have the floor

Mr. Kyle Peterson: Thank you, Chair.

Thank you to the witnesses for being here today. We do appreciate it, of course.

As a commercial litigator myself, my questions are going to relate to ISDS. I'm going to start with Mr. Valasek.

Earlier this summer, my understanding was the treaty was classified as a mixed treaty at that time, which then rendered the IS dispute system subject to member state ratification. Then obviously the original ISDS was, it appeared, going to kill the agreement in Europe, and in Germany and France particularly. I think that's what provoked the necessity of some sort of compromise on those provisions.

You indicated, Mr. Valasek, that you thought a lot of those criticisms were unfounded or misinformed. Can you elaborate on that a bit and just maybe clarify what you thought was ill-informed in those criticisms?

Mr. Martin Valasek: Sure.

One of the biggest criticisms is that it's a secretive process. There have been a number of witnesses who have mentioned that treaties have already injected a fair bit of transparency into that process. Of course, that's reflected in what might be called the gold standard in article 8.36 on transparency of proceedings. People keep coming back to the fact that these are secret tribunals and there's no opportunity for input. I think that's misinformed.

Another big criticism is that arbitrators are selected from, again, a very narrow pool. Some people refer to it as sort of an arbitration mafia, or a club. I think if you really look at it.... I suppose I have a foot in that group, but it's just like any group of specialists. If you took a group of international surgeons who did one particular type of surgery, you wouldn't call them a mafia or a club.

The fact is that there is a certain degree of expertise that's required. If you look at the qualifications that have been agreed to in this treaty, you see that it says in article 8.274:

> The Members of the Tribunal shall possess the qualifications required in their respective countries for appointment to judicial office.... They shall have demonstrated expertise in public international law. It is desirable that they have expertise in particular, in international investment law, in international trade law and the resolution of disputes arising under international investment or international trade agreements.

The reality is that's not going to be every lawyer in the world. It's going to be a select group of people. In fact, selecting arbitrators from a small group can be seen as a positive. You're actually selecting people who are qualified.

The other criticism is that investment arbitration awards have had a chilling effect on the ability of states to regulate, or that they can make countries change their laws. That's just not true. Investment awards can award monetary compensation where there's a finding of a breach of international law. That doesn't mean that the country has to change its policy; it means that in respect of that case, they might be held to owe some money.

More importantly, many of the criticisms in respect of a chilling effect relate to claims that have been brought by investors but don't relate to actual awards. A classic example is the case that was brought against Australia by Philip Morris in respect of tobacco legislation. People raised a big stink and said, “This is impossible. You have a big global company, a tobacco company, going after legitimate policy.” Well, it's true that they're having a go at it, but the award hasn't been rendered yet. I would say, why not withhold criticism of the system until you have an award? The award may well decide that there hasn't been a breach of the treaty.

I don't know. I'm not involved in the case, but if you—

Mr. Kyle Peterson: Thank you. I'm going to interrupt because I have a quick question for Ms. Barrington before I run out of time. I appreciate your input, Mr. Valasek.

Mr. Martin Valasek: Yes, sure.

Mr. Kyle Peterson: Ms. Barrington, could you comment on the importance of having subject matter experts determine disputes in areas like international trade, and why it's important to have a private arbitration, perhaps to meet that goal of subject matter experts making these decisions?

● (1225)

The Chair: Give a quick answer, please.

Ms. Louise Barrington: Thanks.

First of all, I'll comment on your first question. One of the things that I think is perceived is that arbitrators are slanted toward business and that they're going to always see it from a business point of view. I think the reality is that the results are really half and half. I mean, states lose and claimants lose, so I don't think that really is the case.

In terms of having subject matter experts, I think it can be very useful to have the view of people who are in a particular marketplace, who don't have to be educated about it and can look at it from a very practical commercial standpoint, which, of course, is what the business community is looking for.

Mr. Kyle Peterson: I'm out of time, I believe.

Thank you.

The Chair: We're going to move over to the Conservatives now. Mr. Hoback, you have the floor.

Mr. Randy Hoback: Thank you, Chair.

Thank you, witnesses, for being here this morning and this afternoon.

I'm going to look at what we need to do, as a government, and what the Liberals need to do as a government in power, in making sure that we take full advantage of this agreement.

Jason, I'm curious. What has to be put in place so that we can actually take advantage of this trade deal? For example, on homologation, and going through the rules regarding homologation, how do we make our small and medium enterprises and manufacturers aware of what those rules are, to get products approved for not only Canada but for Europe? What other things do you think we need to look at in regard to training, to promoting the deal, and in regard to introducing it to small and medium enterprises and agriculture groups, so that they can actually look at this as an option for them? What would you propose in that area that should be done?

Mr. Jason Langrish: That's sort of a billion-dollar question.

I'll start with one thing. Small and medium-sized enterprises probably are not going to be the ones who are going to take advantage as direct traders and ambassadors between Canada and Europe in a continental relationship. You're going to tend to see SMEs more active in interprovincial trade and cross-border trade, normally with the northern U.S. states but sometimes a bit deeper.

Where the SMEs really get involved in this type of stuff, this longer-distance trade, is by building themselves into the supply chains of the larger multinationals. Most international trade is intracorporate. It's actually trade within large local corporations, companies like Siemens, Bombardier, or what have you.

The real opportunity for SMEs is to become preferred suppliers and build themselves into the supply chain of those large companies and so take advantage of that position. For example, if a company like Siemens gets a contract to build streetcars or something like that, and you're a local contractor or an SME and you develop a relationship with them, that relationship could carry over to working with them on contracts over in Europe or perhaps even in Asia. It's really a gateway for SMEs.

With regard to education, I think it's incumbent upon all levels of government, but it's probably going to fall quite heavily on provincial levels of government to explain what those opportunities are, and to a degree the municipal governments.

It's a bit of a tough one. To be honest, I don't really know. It's not really my forte, to be honest. I guess it's up to large corporations to talk about what the benefits are, but I suppose some governments will do this as well. As I say, it's not really my area of expertise.

Mr. Randy Hoback: I understand that, but I find it really interesting that the business community says to government, “Get out of our way; get these deals done”, and then it comes back to say, “Okay now, government, you take on all the responsibility in promoting it and telling your businesses and our businesses to take advantage of it.”

Where is the role of the business community? Where is the role of the chambers of commerce? Where is the role of the Canada Europe Roundtable for Business? What's your role in promoting a deal like this after it's completed? Do you have a plan to promote the deal, to promote the opportunities within the deal?

I understand what you're saying about small and medium enterprises maybe working through the chains of bigger corporations, but there are also opportunities for unique products and for small and medium enterprises to be part of chains in companies in Europe. Where's the role for the private sector in making sure this deal is promoted properly?

Mr. Jason Langrish: We do go out there, and we do go out and bid on contracts and source locally and run seminars and participate in chambers of commerce and participate in information, but the reality is that the resources available to do this are arguably greater within government.

You were asking how it's done. I was answering your question. I'm not necessarily sure it's something that needs to be there. I think business finds a way, quite frankly, and I think it does it already, but if you think that more needs to be done, I'm just saying that there could be a role for government. I mean, we have things like trade commissioner services for a reason.

● (1230)

Mr. Randy Hoback: That's a good point.

Mr. Jason Langrish: We have economic development agencies that are basically arms of municipal government, and they exist for a reason. Government has a role in this as well.

Mr. Randy Hoback: Okay. I'll just leave it there, Chair.

The Chair: Thank you, Mr. Hoback.

We're going to go to the NDP now.

Ms. Ramsey, you have three minutes.

Ms. Tracey Ramsey: First, I'd like to just touch on the auto trade deficit that we have. You were talking about the auto sector with my colleague earlier.

Europe sells $5.6 billion worth of cars into Canada for the $269 million that we sell back, so we have a massive auto trade deficit of $5.3 billion. In manufacturing overall, we have a $30 billion manufacturing trade deficit with the EU. It's not very likely that CETA would rectify those kinds of massive trade imbalances.

My question, though, is back to the ISDS. I think we have to be honest in saying that the ISDS provisions have not worked well for Canada. In chapter 11 of NAFTA, we have a prime example of that.

Ms. Barrington, you said that the stakes are enormous. Essentially, you talked about this increased trend that is happening in ISDS cases. I wonder if you could elaborate on that trend and how we can curb the trend here in Canada.

Ms. Louise Barrington: It is definitely a trend, and as Martin said, we're hearing about it a lot more. When the stakes are so high, it's difficult to have it curbed voluntarily by saying to people, “You shouldn't do this; it's not a good idea, because in the long run it's going to be negative.” That's not the kind of argument that works.

I'm on the fence, by the way, about this new system, but I think one of the main advantages of it is that with a permanent group of people and with transparency, we may get more consistency. The consistency may lead to more conservatism in dealing with marginal or perhaps vexatious claims. I don't know; I'm hoping that might be the case.

Ms. Tracey Ramsey: One thing you said is that the first place that is being looked at is treaties in which businesses can make money suing governments in order to line their pockets. This is a major concern for Canadians.

The other thing I want to ask you about is the joint interpretive declaration. This has been called a political statement rather than a legally enforceable document. I wonder what your thoughts are around that.

Ms. Louise Barrington: Yes, it's not legally enforceable, but it does provide an overarching principle, which would be a very valid thing to refer to when you are looking at what you're going to decide in a particular situation.

Ms. Tracey Ramsey: One question I asked Steve Verheul was whether there was ever a point in time when we said, "Let's not have this provision; let's not do this. We're between developed countries. We don't need these ISDS mechanisms. We can do a state-to-state resolution."

I wonder whether you could give your thoughts on that. If we had state-to-state resolution rather than this particular mechanism, would that not strengthen our relationship in this trade agreement and provide a mechanism for people that didn't involve this separate court system?

Ms. Louise Barrington: The state-to-state option is one that is not really satisfactory to business. Too many different political variables enter into state-to-state resolution. It may be that my particular claim is not worth the state's jeopardizing its other relationships with the state I'm going to complain against. That has long been seen as unsatisfactory.

That's one reason that arbitration has always been used so much. This whole idea of a private party being able to go against the state, which is a relatively new one that has come out of these BITs, has been so popular because it has allowed private businesses to undertake their own claims against the government they feel has wounded them.

● (1235)

Ms. Tracey Ramsey: I agree, and it's not—

The Chair: Thank you. We'll move over to the Liberals now.

I understand there's going to be a splitting of time.

Mr. Dhaliwal, you go ahead and start off.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair, and thank you to the panel members.

It's my understanding that most of the pharmaceutical generic drugs in Canada are manufactured locally in Canada and that brand name drugs are imported into Canada. Could you explain how CETA would affect the Canadian pharmaceutical manufacturing industry?

The Chair: Which witness are you asking?

Mr. Sukh Dhaliwal: It can be any one.

The Chair: Go ahead.

Mr. Jason Langrish: I don't know whether that is the case, but remember that generics were once research-based products. Essentially they're copying products that were innovative; you thus can't have generics without innovation to begin with. By increasing intellectual property protections, you increase the desirability of Canada as a location for committing to research and development and ultimately running the trials and all the tasks that are required in ultimately commercializing the product.

The thing is that often the pharmaceutical industry is criticized because it says you haven't lived up to your commitment, but the thing is, the intellectual property rules are not a stagnant thing. We can't just look back and say, "The last time we upgraded our intellectual property provisions was 25 years ago. Why aren't they living up to their promise?" Maybe it's because other jurisdictions have not only provided more robust intellectual property protections, but also probably contributed to a more cohesive system that surrounds the innovation and commercialization of these products.

There are many elements to it, but ultimately, although they may not always admit it, the two industries are pretty much linked, because one's innovation becomes another's generic at some point down the road. The question is, how long is their exclusivity as the innovator before the generic can take it off? That's really the balance that CETA sought to establish.

Mr. Sukh Dhaliwal: Thank you.

I come from British Columbia and I heard that CETA would help the service sector, forestry, and mining, so if I were to stand in the House and vote against this agreement, could you tell me why I would be doing a disservice to British Columbians and to Canadians in general?

Mr. Jason Langrish: At the event we had today, one of the speakers was from the Wood Pellet Association. In the U.K. alone they're exporting, I think, up to $300 million a year. There's all kinds of it in the forestry sector. All the tariffs will be below zero upon implementation of the agreement. You have all kinds of developments that are happening over in Europe. I know that in the Netherlands they're now building incredibly tall structures made from wood products that were previously unimaginable, so there are significant opportunities in the construction industry for British Columbia's forestry products in this market.

What was the other sector that you mentioned?

Mr. Sukh Dhaliwal: It was mining, and service.

Mr. Jason Langrish: Absolutely.

The other issue with regard to mining is it's not just about getting the products into the European market. It's also about ensuring that they're not caught up in technical barriers to trade or caught up in a regulation that is capricious or that is not based on sound science. It's ensuring that it's not used as a way of essentially stigmatizing or blocking a product coming in, based on the concept that it may possibly cause some harm. That's not really how we operate within our society. We are a fact-based, science-based society, and the CETA would bring some certainty to those exporters that when their products are being evaluated and going into the European market, they're going to be treated with rigour and based on peer-reviewed science and not politicized. That's an advantage, of course, for your province as well.

Mr. Sukh Dhaliwal: Thank you.

● (1240)

The Chair: Ms. Ludwig, please make it a short question.

Ms. Karen Ludwig: My question is very short. I'm just going to follow up with Mr. Langrish, following up on Mr. Hoback's question about the role of business in trade training and connecting the business sector.

To what extent are you aware of the business community working to help small businesses and even medium-sized businesses know of the opportunities and the benefits of, for example, registering with the virtual trade commissioner service, the benefits of the economic development commission in terms of trade insurance, and the role of exporting and importing? Even on the importing side, there should be opportunities there for domestic businesses.

Mr. Jason Langrish: That's digging down a bit. It goes beyond what my mandate is at the Canada Europe Round Table for Business.

What we really would see, for instance, is larger businesses working with community colleges and educational institutions with regard to apprenticeship programs and that type of thing. Mohawk College, for instance, has a very robust program that works with large manufacturing operations. Obviously it's part of trade training to work with these very specific educational institutions to bring people into the workforce to ensure that they have the right skills that these businesses need so that they can develop productive careers and get involved with these business organizations, whether that means contracting with large businesses locally or globally or working directly for these large businesses. That opens up all kinds of opportunities to get involved in international trade and to perhaps move to different jobs within these larger businesses.

Ms. Karen Ludwig: Thank you.

Mr. Jason Langrish: They also have supplier lists where SMEs can register and can bid to be suppliers to these companies. There are things happening, but I don't know that I can really answer the full scope of what they're doing.

The Chair: Thank you.

Pretty well all the MPs had dialogue today. We had a very good day. I have to commend our technicians for bringing everything together for us.

Thank you, witnesses, for being with us today. As you know, this bill is in the House right now and we'll be dealing with it over the next few weeks. Thank you again for your input. It was very informative today. Have a merry Christmas. Thank you very much.

There is just one more issue here. It's dealing with the amendments. Go ahead, Rémi. Perhaps you can explain it.

Mr. Sukh Dhaliwal: Are we in camera?

The Clerk: No, that's okay. We did it in public in the first place.

We agreed to have the clause-by-clause study on December 6. I want to know if the members of the committee are agreed on the deadline to submit the amendments to the committee. We discussed that, but it wasn't clear. We can give them to the independents and also to the members of the committee. If there are any amendments, they should be given to the clerk of the committee by Friday, December 2, at 4 p.m., for the 48 hours' notice. That will be in the motion I will be drafting following the discussion at the beginning.

Mr. Sukh Dhaliwal: Okay.

The Chair: We're going to be notifying the independents of this.

Mr. Kyle Peterson: When will we get those amendments?

The Chair: Would you get them the day before we do clause-by-clause consideration?

The Clerk: Yes, it would be sometime on Monday, December 5.

The Chair: It will be the day before we do clause-by-clause study.

I can't speak on behalf of the parliamentary secretary, but—

Go ahead.

Mr. Kyle Peterson: I have to at least read them first.

The Chair: David, do you have any updates?

Mr. David Lametti (LaSalle—Émard—Verdun, Lib.): The minister can appear on December 1, but beginning at 12:15, because she has cabinet. If you're willing to go from 12:15 to 1:15 on December 1 in the second hour...?

Hon. Gerry Ritz: I'll have to get back to you.

Mr. David Lametti: Okay. Otherwise—Gerry, I have to stop taking you seriously.

Otherwise, if you want 45 minutes, until one o'clock, that's fine.

The Chair: On that note, then, do we stay booked here until a quarter after? Are we allowed to have the room until a quarter after one?

The Clerk: We should be okay, because there is no other committee here.

The Chair: Is that what you guys want? Okay.

Are there any other updates on Canada and Ukraine or anything?

Mr. David Lametti: Bill C-31, I've now heard, is going to be debated in the House starting Monday.

● (1245)

Hon. Gerry Ritz: Try doing it on division.

Mr. David Lametti: Okay. I'll suggest it.

Hon. Gerry Ritz: We're fine with that.

Mr. David Lametti: Okay. I'll bring that back.

The Chair: Thanks.

That fits well, David, with our schedule too. We had that open.

Everything seems to be going all right. I'll just remind all members that I don't mind when you do a little friendly thing back and forth, but especially when we have witnesses from away, I don't like any barbs going back and forth. We're in public, so I have to be careful. We're not in camera.

Anyway, it's just a note. It's the season to be jolly, so everybody get along.

Thank you. The meeting is adjourned.