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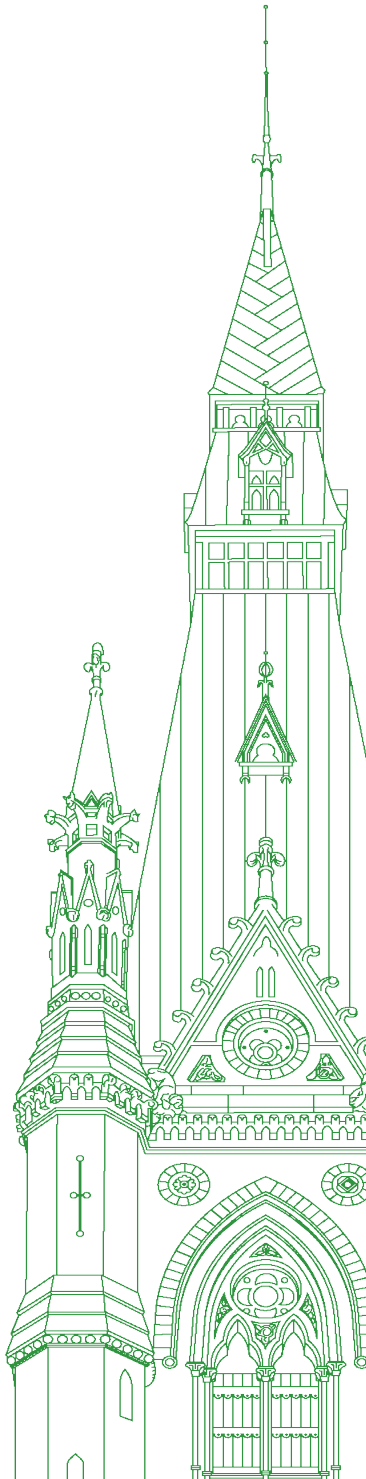

Chair: Mrs. Sherry Romanado

Standing Committee on Industry, Science and Technology

Monday, February 24, 2020

● (0805)

[*English*]

The Chair (Mrs. Sherry Romanado (Longueuil—Charles-LeMoyne, Lib.)): Good morning, everyone. Happy Monday morning.

We are meeting today at the Standing Committee of Industry, Science and Technology to study clauses 22 to 38 and clauses 108 to 122 of Bill C-4, an act to implement the Agreement between Canada, the United States of America and the United Mexican States.

With us this morning we have Mr. Lawrence Herman, who is joining us by video conference from Toronto. We also have with us Mr. Matthew Poirier from the Canadian Manufacturers & Exporters; Mr. David Cassidy, UNIFOR Local 444; and Jonathon Azzopardi, from the Canadian Association of Mold Makers.

Since we have a large panel, we will ask that you each present for approximately five minutes. At the end of the testimony, we will then move into a rotation for questions.

We will start with Mr. Herman, who is joining us by video conference. Just in case we have a technical problem, we want to make sure we get his testimony on the record.

With that, Mr. Herman, please feel free to begin your testimony.

Mr. Lawrence Herman (Counsel, Herman and Associates, As an Individual): Thank you very much.

I'm happy to be able to provide some views. I should make it clear that I'm not representing any particular party or any particular interest. I've been asked to appear in my personal capacity.

To give you a bit of my background, I'm a trade lawyer by profession, but I used to be in the old Department of External Affairs. I've been involved in international trade at the GATT and the WTO, and in Canada-U.S. trade for many years. I deal regularly—every day—with trade policy issues.

I'll be very brief. This is a bill to implement an agreement that has been concluded, signed and ratified by two parties, the United States and Mexico. It is now up to Canada to ratify this deal. The deal is done. It is not open for renegotiation. It is totally impractical to think that the United States Congress would be prepared to change anything in an agreement that they have approved and the President has ratified.

What we're talking about here—and I think the committee understands this—is changes to Canadian laws to bring our laws into line, where necessary, with a concluded agreement. When you look at the clauses you are examining, you will find that they are consistent, at least in my view, with everything that has been agreed to in the CUSMA. The task is to approve legislation to make some adjustments, if necessary—and frankly, I don't think I see any areas where adjustments are needed—to bring our laws technically into line with what has been concluded in the trade agreement.

As I said, in every practical sense, the agreement is not on the table for renegotiation. What is necessary on Parliament's behalf is to enact legislation that, where necessary, brings our laws into line with what has been agreed to with the United States and Mexico. Some of these adjustments are purely technical. They are nothing more than some moderate tweaking of Canadian statutes to comply with the agreement. There are some substantive provisions, as you all know, dealing with customs matters, tariffs and rules of origin, but that's something Canada has agreed to in CUSMA and now it is up to Parliament to pass the necessary implementing legislation.

As a final word, if Parliament were to reject this bill or to refuse to approve the Canada-U.S.-Mexico agreement, it would be unprecedented and, frankly, would set our economic trade and political relations back many years. It would be an astonishing result if Canada did not proceed with ratification.

Those are my views.

● (0810)

The Chair: Thank you very much.

Next we will move to Mr. Matthew Poirier.

Mr. Matthew Poirier (Director of Policy, Canadian Manufacturers & Exporters): Thank you, Madam Chair.

Good morning, everyone. It is my pleasure to be here on behalf of Canada's 90,000 manufacturers and exporters, and our association's 2,500 direct members, to support Bill C-4, an act to implement the agreement between Canada, the United States of America and the United Mexican States, also known as CUSMA.

Before I begin, I'd like to commend the efforts of the Prime Minister, Deputy Prime Minister Freeland, Chief Negotiator Verheul and all their staff for negotiating CUSMA. Being part of the process, we at Canadian Manufacturers & Exporters, or CME, understand how difficult these negotiations were. It was crucial to achieve a positive outcome for Canadian businesses and all their employees, and we did just that. As such, CME fully supports this bill. We urge the government and all parliamentarians to ratify CUSMA as soon as possible.

My goal today is simple. I want to explain why free trade is important to manufacturing and how CUSMA will improve on NAFTA.

Why is free trade so important? Simply put, North American trade is the basis upon which Canada's manufacturing industry is built. Our sector alone employs 1.7 million workers in every community across the country. In 2019 we shipped 455 billion dollars' worth of merchandise exports to the U.S. and Mexico. This represented 77% of our total exports to all countries that year. Two-thirds of these exports, worth about $305 billion, were manufactured goods. The numbers simply speak for themselves.

You see, Canadian, American and Mexican manufacturers don't really compete with one another. Rather, we build stuff together in a continental manufacturing ecosystem bound together by integrated supply chains. North American free trade is therefore a pillar of our national economy. It is why the manufacturing sector produces the bulk of Canada's exports. It is how the sector can compete against the rest of the world. This is why CUSMA—NAFTA before it—is so important. Without this agreement and without integrated production with the U.S. and Mexico, we simply would not have the scale necessary to be a global player. Canada's ability to take advantage of any other trade deal is only possible if North America continues to manufacture and grow.

How does CUSMA improve on NAFTA? CUSMA preserves the integrated manufacturing operations that allow the relatively free flow of goods and services between our three markets. Going into the negotiations, our members made it clear that the primary objective of Canada must be to do no harm to this integrated manufacturing economy. CUSMA accomplishes this. In fact, CUSMA preserves many of the key elements of the original NAFTA that were targets of the U.S. for elimination. This includes the dispute settlement mechanisms and business traveller visa exemptions. This was by no means assured at the outset, but there they are, alive and well.

Importantly, CUSMA updates critical areas of NAFTA, dragging it into the 21st century. This alone will significantly enhance North American trade. For example, the new digital trade chapter recognizes that the Internet is a thing, and establishes a framework for e-commerce in North America. The customs administration and trade facilitation chapter will also go a long way in modernizing borders throughout North America, enabling the free flow of goods.

Lastly, chapter 26, the new competitiveness chapter, has not garnered a lot of attention, but in our estimation it is one of the biggest accomplishments. Why? It sets up a framework for three sovereign countries to become a unified trade bloc. It will do this by promoting better coordination and integration of our manufacturing industries so that it can tackle global trade challenges together. This is a significant accomplishment. We have consistently urged the government to start work on implementing the parts of the agreement—parts like chapter 26—that do not require legal changes. We should be looking to make early progress by establishing committees for North American competitiveness and good regulatory practices, as outlined in the agreement. This would show Canadian leadership, signal to our other partners that we take CUSMA seriously and let us hit the ground running.

Once CUSMA is the law of the land, we need to pivot towards helping manufacturers and exporters take advantage of the new deal. The U.S. is, and always will remain, our largest export market. We must leverage such excellent government resources as the trade commissioner service and Export Development Canada to help companies transition from NAFTA to CUSMA.

● (0815)

Limited access to the U.S. government procurement market is also a big challenge.

This is how government can play a positive role in helping companies capitalize on CUSMA once it's in force—

The Chair: Your time is up. Can you wrap it up quickly?

Mr. Matthew Poirier: Certainly.

In the final analysis, CUSMA is a good deal for Canada and, given the very challenging negotiations, it's an impressive achievement.

Thank you. I look forward to the discussion.

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

Mr. Cassidy, I'll invite you now for your presentation.

Mr. David Cassidy (President, Unifor Local 444): Thank you.

Good morning, Madam Chair and members of the committee. My name is Dave Cassidy. I'm the president of Unifor Local 444 in Windsor.

Local 444 represents just under 10,000 active members working across a range of industries including gaming, long-term care, aerospace, energy and transportation. Of course, we also do auto assembly and make auto parts.

Our local represents approximately 6,500 workers at the Fiat Chrysler Windsor assembly plant, producing vehicles like the Grand Caravan, the Voyager and the Chrysler Pacifica. We also represent thousands more workers at nearby feeder plants, right down the supply chain.

I want to thank you for the opportunity to address you today with respect to Bill C-4 on the implementation of the Canada-United States-Mexico trade agreement. As the committee members will know, our union international president Jerry Dias took a very active interest in NAFTA renegotiations. I can tell you, coming from Windsor, that reopening, or even getting rid of NAFTA, has been top of mind for workers ever since that original deal came into force back in 1994.

I know the terms of NAFTA stretch beyond just the auto sector. It's a deal that touches nearly every good and service that crosses our continental borders, yet among them the auto industry seems to grab the headlines, and for good reason. Building and developing an advanced auto industry is lucrative business. It is also a tool for significant economic development. Canada is fortunate to have invested heavily in the auto sector. Every one job in auto assembly helps generate 10 others throughout the economy.

An auto assembly plant is like a centre of gravity for additional manufacturing investments. Supplier parts, whether seats, doors, wheels or other components, are intentionally located nearby to help meet production schedules and demand. This is exactly the case in Windsor where the auto industry is still a vital cog in the local economy, this despite years of devastating closures, plant reallocations, job outsourcing and layoffs.

In 1994 NAFTA changed the terms of trade and redefined the North American supply chain. It is no surprise that automakers and parts manufacturers started relocating production to low-wage Mexico or in some cases the low-wage U.S. south.

We used to have a $3.5 billion auto trade deficit with Mexico for cars and parts. The deficit is now nearing $30 billion. We expected this would happen. This is part of the reason Canadian auto workers have long been opposed to NAFTA. Over time and through our collective bargaining, we've managed to secure decent wages and benefits for our members doing very difficult, repetitive and skilled labour, but all that gets undercut as Mexican factories pop up and workers are paid a wage that's a fraction of what we earn.

I don't know if you know this, but a new Audi assembly plant located in Mexico, producing a $40,000 luxury SUV, for instance, will pay workers around $2.25 U.S. per hour. Canadian workers will not, and should not, have to compete with that. I'll tell you there is rarely a time when Canadian auto companies fail to point out these disparities when they're trying to lower our wages, trim our benefits or overhaul our pensions. This is NAFTA's effect on working conditions in Canada.

As I said, our union put a lot of time and resources into engaging in NAFTA renegotiations and working with federal officials to make meaningful changes. No one was under any assumption that tinkering with NAFTA would, by itself, undo decades of damage and neglect, but certainly, meaningful changes were made, and we recognize that.

Under CUSMA there is now a much higher threshold to determine a North American-made car than there was under NAFTA. Giving tariff preferences to carmakers that build a car actually made from North American components strengthens the integrity of the deal. This is far different from the approach the Harper government took when renegotiating the TPP wherein they committed to weakening the NAFTA threshold. Under TPP, which Unifor strongly opposed, more than half a car didn't have to be built in a trade zone to receive tariff preference.

● (0820)

It's good news that under CUSMA the trend is reversed. We think that this could help locate production of tier-1 and tier-2 suppliers into Canada as carmakers attempt to meet the new rules.

CUSMA also strengthens rules of origin on key component parts over and above the original deal. For the first time, there are auto rules of origin that apply to steel and aluminum resources, requiring OEMs to purchase at least 70% of these materials in North America.

The Chair: Your time is up. Thank you.

Mr. David Cassidy: Okay. I'm just trying to figure out where I'm going here. I was told I had 10 minutes. I'm sorry, Madam Chair.

The Chair: I'm sure that once we get into the questions you'll have an opportunity to address this and add more comments.

Mr. David Cassidy: Perfect. Thanks.

The Chair: Thank you.

Mr. David Cassidy: In the CUSMA text, there are provisions to give automakers some reprieve from these labour rules. R and D spending, for instance, certainly can help them lower the 40% commitment. Labour value content can be shaved down to as low as 25% if the right conditions are met.

Let's work to streamline investment supports between the federal and provincial governments like Ontario's rather than work at cross-purposes. Let's commit to comprehensive oversight of new auto rules to ensure that things like the labour value content are being properly applied.

Also, let's have this industry committee undertake a detailed study on the future of auto production. Let's fully assess the gaps in Canada's supply chain and the skills needed to lead the electric and autonomous vehicle transition—

The Chair: Mr. Cassidy, I'm sorry.

Mr. David Cassidy: Thank you for the invitation to speak.

The Chair: Thank you.

What I'll do when we're getting close to 30 seconds remaining is lift up a paper, just to give you a cue.

The next presentation is from Mr. Azzopardi. Thank you.

Mr. Jonathon Azzopardi (Director, International Affairs, Laval Tool & Mold Ltd., and past Chairman, Canadian Association of Mold Makers): Good morning, Madam Chair and committee members. Thank you for the opportunity to appear before you.

My name is Jonathon Azzopardi, past chair of the Canadian Association of Mold Makers. I am the current director of international affairs for the association and president of Laval, a mold and part manufacturer in Windsor, Ontario.

Our association is 100 members. There are 216 mold manufacturers in Canada, as well as 14,000 skilled workers, over 230 associate members and over 1,400 companies just in southwestern Ontario alone in manufacturing.

I have to start out by saying that I don't admire the position you're in. A committee that is asked to push through ratification that's already negotiated, but that's trying to put the structure together to be able to create a net to be able to capture those opportunities, does not have an easy task, but it is necessary. We're here to support the ratification of Bill C-4, or CUSMA.

To be a manufacturer in Canada is not easy, but it is a privilege. It comes not without its many challenges. I won't take my time to mention all those challenges, but I will say that if you make things or grow things in Canada, exporting is critical.

I will take the 10 minutes—or the five minutes—to show you the ways in which this agreement can help us and create leverage or a springboard. I believe it is important that we start with a timetable. In 2015 Donald Trump, at the time the president-elect, announced that he was going to renegotiate NAFTA. I have to admit that when you fast-forward to 2016, when the president-elect became President, it sent a shock wave through our industry. That shock wave, through its uncertainty, real or unreal, caused a lot of disheartenment among workers and companies. At the time, our industry was under a great amount of pressure because it wasn't a fair trading relationship. Made in America was causing enough problems, not to mention the fact that 85% of our exports going to the United States were already under pressure from low-cost countries like China that do what we do at a fraction of our costs.

We have the blessing that this agreement was negotiated quickly. I believe our U.S. trading partner made sure that the rules were in their favour, but dragging out ratification can only hurt us more. We only lose more opportunities every day. Why is ratification important? It will dispel the uncertainty. You have to understand that we've been in this uncertainty since 2015, which is nearly five years, losing opportunities every day. You also have to understand that because of our cycles and our agreements with our clients, we won't see all of the bad news until five years after ratification.

The second reason I want to talk to you today concerns future investments. Future investments in Canada, because of this agreement, will fall very heavily on tiers one, two and three. It's very important that you understand that the further down the supply chain in the auto sector, the less likely you have to be in the United States. By moving this agreement forward, all assembly factories—over $20 billion in investments in the United States since 2016—will now become our new clients. That's if this ratification happens quickly.

The next point is that I represent the mold-making industry, which is typically a tier-two industry. This is very important. We must mirror our trading policies with our largest trading partner. For example, in December of 2019, a 25% tariff was imposed on molds coming into the United States from China. This is an example of where, if Canada is not adopting mirroring policies, we will become a dumping zone for Chinese products. It's important that, in stage two, upon ratification, Canada adopt mirroring policies for U.S. steel, aluminum and molds. Without doing this, without adopting these policies, you will begin to erode our manufacturing sector from the inside out.

The last point I'd like to make concerns our vulnerability regarding CPTPP. Without the new CUSMA agreement, I agree with David, this agreement is a disaster waiting to happen in Canada. CPTPP has no apparent value for Canadian manufacturers without CUSMA. It will not help us but actually hurt us, because we'll become a dumping ground for companies wanting to gain access to the U.S. If Canada does not adopt strong RVC policies, it will be an opportunity missed. We'll actually lose ground.

Canada needs to ratify CUSMA as soon as possible, and create protective measures to protect against this dumping by mirroring U.S. protective measures within our own country so that we can take advantage of this agreement fully. One way to protect this is to expand the list of products and strengthen the methods of calculating RVC. Mirror trading policies with the U.S. and get this agreement in place as soon as possible.

I'd be happy to answer all your questions and also to play an active role in helping you move this forward.

Thank you.

● (0825)

The Chair: Thank you very much.

We'll begin our round of questions with Ms. Gray.

You have six minutes.

Mrs. Tracy Gray (Kelowna—Lake Country, CPC): Thank you, Madam Chair.

Thank you for being here.

I have a question for you, Mr. Poirier. Your organization had a press release on December 10, 2019. In that press release, you stated that you were looking for a better understanding of "the potential impacts of concessions" on our aluminum industries. Would you say that your concerns have been addressed since that time? What can the federal government do to better address those concerns?

Mr. Matthew Poirier: At the time of that release, I think everyone was wondering what was going on because there weren't a lot of details out in the media. Now, with the new exigencies put forward in NAFTA for steel and aluminum content in auto, that's certainly a win for the industry and, hopefully, will bring back investment into Canada for those industries.

The Chair: Do you want to share your time? You have five minutes remaining.

Mrs. Tracy Gray: Yes, I'll share my time.

Hon. Michelle Rempel Garner (Calgary Nose Hill, CPC): Thank you.

I'll direct my question to Mr. Poirier. I understand that there's a greater degree of benefit to Canada in this agreement. My concern is less with that and more with the lack of information in terms of long-term economic impact. We've seen reports recently, over a few days, especially from the C.D. Howe Institute and others, saying that perhaps this will have a long-term detrimental impact. I also saw a quote from Jared Kushner earlier this month, who was talking about the fact that the sunset clause, and basically the re-review clause, would allow for the United States to exert leverage.

Are you at all concerned that this particular provision perhaps is going to chase away long-term investment in Canada, given that six years is barely a blink of an eye in terms of investment, perhaps not in your industry but in industries where we're dealing with intangibles such as data or intellectual property?

● (0830)

Mr. Matthew Poirier: I have a few thoughts on that.

You're right. I think that having a review mechanism is good, but the six-year timeline is pretty short. In what we just got over with the negotiations, what we learned is that once we're renegotiating, there is all this uncertainty that hits the market, and where does the investment go? It goes to the safest harbour, which is typically the United States, not Canada.

That's a concern, but that said, this negotiation was a fight for dear life to try to maintain the basic access we had to that market and all the protections in NAFTA that we currently enjoy, so given that this was what we were up against, where we ended up is pretty good. That thought about the renewal and the uncertainty of every six years notwithstanding, where we could have ended up could have been really bad for the industry. We're pleased with what it is and, under that alone, we're very supportive of CUSMA.

Hon. Michelle Rempel Garner: Would you characterize this less as a victory and more as a concession that allows us to continue the status quo-ish...?

Mr. Matthew Poirier: What we maintained under the status quo is a victory for sure, but also, all the new chapters that we're doing, the modernization of the agreement, is stuff that was long overdue and that we got in this as well. I'm thinking particularly of the competitiveness chapter. That's something that's specific for manufacturing and that will let the three countries act as a trade bloc. That wasn't in there before, and that's something that has a lot of potential going forward.

Yes, we maintained, but we got a lot of new good stuff as well.

Hon. Michelle Rempel Garner: Sure. I'm sitting at the table, and we have very important sectors of the economy represented here today, but I'm also questioning what our economy will look like 10 years from now for intangibles. Your industries represent production of tangible goods. Is that right?

Mr. Poirier, did your industry liaise with any associations, or did any of your member associations talk about the fact that intangibles—data, IP, etc.—might be under threat the way that this agreement has been negotiated, especially given the six-year renegotiation clause?

Mr. Matthew Poirier: Certainly for manufacturing it's a win, this agreement. Other sectors have concerns and we share those as well, from just a general business perspective, but the way we look at it is where this could have gone. What stability it returns to the market is the good thing.

Other than that, based on those merits alone.... We can always be concerned about the other issues that are plaguing investment in Canada in general, and we could sit down and have a long discussion about all of those, but as for what we have within our control, that is, this trade agreement and passing it to remove at least one level of uncertainty, we should do it. For everything else that we can't control beyond our borders in terms of economic challenges, let's park that. We can control this.

Hon. Michelle Rempel Garner: Just to follow up on that, because I'm running out of time, do you think the six-year provision—

The Chair: That's your time. Thank you.

We'll now move to Mr. Ehsassi.

You have six minutes.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Madam Chair.

My first question is for you, Mr. Herman. First of all, thank you very much for appearing before our committee. You come at this with a wealth of experience, so we're very grateful that you made yourself available.

Mr. Herman, on several occasions you emphasized that this deal is concluded, signed and ratified. You said that the deal is done, that it's essentially a *fait accompli*.

For the sake of my colleagues, would you explain to us what would happen if any amendments were proposed? Would we not risk losing all those hard-fought advantages that we gained during the negotiations?

● (0835)

Mr. Lawrence Herman: First of all, Mr. Ehsassi, in response to your questions, before you entered politics you were in the trade law field. You and I know one another from days gone by, when we were both practising international trade, so you have an expertise as well.

Let me say this. The bill that you are examining, particularly the clauses that you're looking at, are in line with the negotiated agreement. Parliament can look at implementing legislation and can tweak or make modest changes where necessary to adjust the legislation so that it complies with the negotiated agreement.

Were Parliament to make changes to the bill that were inconsistent with the negotiated agreement, Canada would not be in a position to ratify. Canada can only ratify an international treaty—which this is—when it is in a position to fully comply with the provisions of that treaty. If changes were made to the bill that were inconsistent with what Canada has concluded, signed and not yet ratified, the Government of Canada could not ratify. If the bill were rejected, Canada could not ratify.

The committee has to consider the implications of the non-ratification of an agreement that was painstakingly negotiated under very difficult circumstances, that has been approved by the U.S. Congress through all of those machinations that you all know about, and that has been signed and ratified by the President of the United States. It would be unprecedented in Canadian history, unprecedented—I have to emphasize that—for a trade agreement to be refused by this committee or by the House of Commons or by Parliament in general. It has never happened.

It would be an astonishing result, and it would negate, in my view, not only our trade and economic relations with the United States but long-term political relations with that country. Also, it would put in doubt the future of the NAFTA, because without this trade agreement we'd be relying on the NAFTA, and whether the NAFTA would survive if Canada did not ratify this agreement is doubtful.

Those are my views.

Mr. Ali Ehsassi: Thank you.

I have another question. In the event that we were not to ratify this, am I correct in assuming that the United States and Mexico could proceed without us?

Mr. Lawrence Herman: Yes, they could and I believe they would.

It is in the interest of the United States to conclude a deal with Mexico because of the provisions that Mr. Cassidy outlined in terms of increasing U.S. content in auto production and disciplining the Mexican side in terms of auto production. The U.S. and Mexico could, and I believe they would, leaving Canada very much out in the cold and putting the future of our trading and political relationships at great risk. There should be no doubt about that, Mr. Ehsassi.

Mr. Ali Ehsassi: I'll now turn to you, Mr. Poirier. At one point during your testimony, you emphasized that you were “part of the process”. Were you satisfied with the consultations that were taking place between the government and your organization during the year that we were negotiating or renegotiating CUSMA?

Mr. Matthew Poirier: Yes. We deserve to have a seat at the table when we're talking about manufacturing and trade, just by the sheer number of jobs the industry represents, but I think so.

We were cognizant of the fact that the government had to simplify the task and go and negotiate the deal. At that point, only a few people could do it, but in the process leading up to that, we felt we were adequately consulted, certainly, and part of the process. I know that a great number of other groups, not just business stakeholders but also from society, felt that they were more included in this agreement.

● (0840)

Mr. Ali Ehsassi: Thank you.

Mr. Cassidy, you also indicated that Unifor poured a lot of resources into these renegotiations. Were you satisfied with the consultations?

Mr. David Cassidy: Yes. We were part of the discussions. Unifor welcomed, obviously, NAFTA's renegotiation. There was a myth perpetuated in the business world that NAFTA was too delicate to touch, and that's why it was very important to us, but it was bologna, to tell you the truth, that NAFTA was too delicate to touch.

We had an opportunity at the time. We were very happy that we were there and were part of the solution in terms of where we are today.

The Chair: Thank you very much.

[*Translation*]

Mr. Lemire, go ahead.

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): Thank you, Madam Chair.

My first question is for Mr. Herman.

Mr. Herman, you talked about the importance of quickly ratifying this agreement, but what is done quickly sometimes leaves traces that can disadvantage some parties in that agreement. What are your thoughts on that?

Second, is it possible to protect the aluminum industry by harmonizing Canadian legislation? How do you think we could do that?

Mr. Lawrence Herman: Concerning aluminum, there is a certain level of protection in this agreement that is very important for the aluminum sector.

Regarding molten and cast aluminum, we have reached an agreement with the Americans that will make it possible to revisit this issue within a few years. I'm sure you are aware of that, Mr. Lemire. In that case, I think the aluminum sector is well protected, but we will have an opportunity to reopen the issue of molten and cast metal within a few years. This is a very important outcome for the aluminum sector, especially in Quebec.

Mr. Sébastien Lemire: I would like to put my next question to Mr. Azzopardi on this issue.

As you are involved in manufacturing, can you compare the repercussions this agreement will have on the steel industry with those it will have on the aluminum industry?

In terms of production and supply, what would you say are the constraints imposed by this free trade agreement?

[*English*]

Mr. Jonathon Azzopardi: With regard to the effects on production and supply in this agreement, as long as they go into finished goods, I believe it will help. When we're using Canadian or U.S. aluminum or steel for finished goods, I believe the agreement has lots of opportunities.

From a raw product standpoint, I believe the agreement has good provisions, but I don't necessarily think the government at this time can uphold those provisions when it comes to RVC. We have a concern that steel and aluminum dumping will still continue as long as Canada does not adopt stronger measures to protect against that dumping from low-cost countries. There are examples already of where Canada as a country is receiving those products and RVC isn't necessarily being calculated correctly. We believe this is an area that should see some focus after the agreement is in place.

[*Translation*]

Mr. Sébastien Lemire: In terms of manufacturing, my understanding is that there is a difference between the origin of aluminum and the origin of parts. In the free trade agreement, the famous percentage of 70% is often brought up. When it comes to aluminum, for you, 70% of aluminum is different from 70% of parts, isn't it? Are you able to recognize this?

[*English*]

Mr. Jonathon Azzopardi: We recognize that, and very much so. The raw product itself has one classification, but it changes classifications once it becomes a fabricated product. The way in which you calculate the regional value content is very important. It's very easy for a manufacturer, let's say from a low-cost country, to establish themselves in Canada, make minor adjustments to that product and call it Canadian origin. We're suggesting that Canada adopt a longer and more detailed list of products, use a more defined way to calculate regional value content, and then put in a stronger methodology for manufacturers to use in order to strengthen the ability to stop countries such as China from dropping in product, simply making small adjustments and changing the value.

This is an area that we would actively participate in, from this point forward, to help the government with those products on an individual basis. It is definitely an area that we're seriously concerned about. In the past, this has been taken advantage of by low-cost countries.

● (0845)

[*Translation*]

Mr. Sébastien Lemire: Thank you, Mr. Azzopardi.

Mr. Poirier, first off, do you speak French?

Mr. Matthew Poirier: Yes.

Mr. Sébastien Lemire: The issue of the Buy American Act is often part of your battles.

As Canadians, wouldn't we have benefited from using the same protectionist strategy for certain aspects of the negotiations?

[*English*]

Mr. Matthew Poirier: The buy America provisions are a big issue for the manufacturing industry, simply because it creates this bizarre situation in which, if one side implements buy America and you don't retaliate in kind, it creates the incentive for businesses to locate in the jurisdiction where it can have access to both markets and not the other way around. We have always been a strong proponent for free trade, for free and open markets, but if one side's not playing fair, it's incumbent upon us to respond in kind.

Certainly, we would have loved to see more access to the government procurement market and to start to crack down those buy America and buy American provisions. We understand that it was a difficult negotiation. However, the government and all parliamentarians should be working on increasing that access, because that government procurement market is huge in terms of being able to increase the growth of Canadian manufacturing, if we can tap into it.

[*Translation*]

Mr. Sébastien Lemire: Thank you, Mr. Poirier.

I may have enough time to ask a second question quickly.

Mr. Cassidy, I know that the Unifor union also handles the forest industry. I know your presentation was not about that, but do you feel that this agreement will address the timber crisis?

[*English*]

The Chair: Be very quick.

Mr. David Cassidy: I'd have to defer that question. I'm not well enough versed in softwood lumber. Auto is my baby.

[*Translation*]

Mr. Sébastien Lemire: Okay. I tried my luck, as I am interested in this.

Thank you, Mr. Cassidy.

[*English*]

The Chair: Thank you very much.

The next round of questions will go to Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Madam Chair, and thanks to our guests for being here.

Quickly, this is for Mr. Azzopardi and Mr. Cassidy.

There have been a lot of auto investments in the last 20 years, just not in Canada. Detroit is up to $16 billion with the recent investments in the last five years. In Ontario it was $6 billion for the last five years. I just want to give a chance for you to highlight some things.

I know, Mr. Azzopardi, you mentioned a couple of things, but what more can be done? I'm fearful that the impression is that if we just sign this agreement, there will be labour and environmental improvements that will allow our workers to compete more fairly than before. However, if we just leave that for this agreement, I'm concerned about our future. Perhaps you could outline a couple of things that we might need to do.

Speaking of reciprocity, Mr. Cassidy, you might want to raise the issue with regard to Michigan and the United States' single-events sports betting whereby thousands of jobs are at risk as well, because we won't have reciprocity with the products that they have over there.

Mr. Azzopardi, could you answer first, please?

Mr. Jonathon Azzopardi: For a long time I've tried to answer that question from both sides: from the OEM and from the tier-one, tier-two and tier-three levels. Recently, I've changed my viewpoint. I think they actually have to be broken apart because they're two different strategies entirely.

Tier ones, tier twos and tier threes need to adopt more advanced manufacturing, which means they need to compete. That will help to grow that sector. I believe this agreement will actually help us to be able to strengthen those relationships because of the supply-chain integration we already have. Parts—and this is no joke—will cross that border seven times between the tier ones, tier twos and tier threes before they even get to an OEM.

The investment you make in that lower tier is actually exponentially growing, because we have access to all the OEMs. I believe this is the area that Canada can grow the most. The effect of a dollar from the government dropping into these lower sectors is actually multiplied due to the fact that we have access to all of these investments in the United States.

Investing in an OEM is good and shouldn't be abandoned—don't get me wrong—but they're only one brand. I have access to 44 different brands. It's a huge opportunity in that lower sector, so the strategy needs to be different. We've been trying to attack the strategy in the same way for both, but they're actually different. We need to adopt more advanced manufacturing to make us more competitive. We need to adopt more manufacturing foreign trade policies so that we can take advantage of more markets using the U.S. as a springboard. That's how you grow manufacturing in Canada in those lower tiers.

OEMs are actually a simpler but more complicated solution. They're looking for at least good fair-market access, which means more trade agreements, but they're also very cost-sensitive and there are some more difficult questions, which I don't think this committee is prepared to answer, in order to be able to make those decisions. I believe that at some point adopting a manufacturing policy that includes all aspects—advanced manufacturing, energy, labour, trade—is the way to attract OEMs.

● (0850)

Mr. Brian Masse: Thank you.

Mr. Cassidy, that sounds to me like pushing a national auto strategy.

Mr. David Cassidy: When the announcement came relative to General Motors and there we were with General Motors beefing up in Mexico at the same time, with the trade.... You know, when you go to the cheapest facility or place that you can.... Right across the ditch from us in Windsor, there are 5,000 jobs being added to FCA today. In my facility, the Windsor Assembly Plant, we're potentially losing 1,500 OEM jobs, which obviously would be devastating to Windsor and Essex County and to our auto parts and so on and so forth. As I said, with one auto job there are 10 jobs in the economy.

It's very important that we do the investing and continue to do it. With CUSMA, even if you look at the yellow unions in Mexico, it's an opportunity where you can bring up that skilled labour and bring up where that number is. That $16 an hour they talk about in the trade agreement is a little fictitious in terms of their going from $2.25 to $16 an hour. In fact, there will at least be provisions there so that they'll be able to check on it. The old NAFTA didn't have that opportunity.

It's so important that we get into the technology that can be done around autonomous vehicles and obviously the R and D and the batteries. Our facility builds the only Canadian-made minivan that there is as far as the hybrid goes. Here we are, with a Canadian-made hybrid vehicle, and we can't get batteries. We have to reach out and get batteries from China, if you can believe it. That's a problem.

You mentioned one last thing, Brian, on the single sports betting, if I could just...?

Mr. Brian Masse: Yes.

Mr. David Cassidy: That has been around for a decade. For us, relative to jobs in Windsor and Essex, I represent the Caesars Windsor folks. There are 2,600 members there. Just in that facility, this will add 150 jobs, which is important. We're missing the boat again, because Michigan, New York and other states have already moved this forward. If we can get the single sports betting....

It's very important for all of us in Canada. Fingers crossed, I hope this government.... I know that we're not talking about this here today, but I had to make sure that I.... Thank you for lobbing that one out there and me hitting the ball out of the park. Thanks, Brian.

Mr. Brian Masse: It actually is important because we are talking about equality and reciprocity. The United States is moving ahead with single sports betting while around $10 billion goes into the underground economy in Canada. That means thousands of jobs, not only in our district but across this country. It's tens of millions of dollars for provinces on a monthly basis right now. We're hoping to get that changed.

Thank you, Madam Chair.

The Chair: Thank you very much.

That completes our first round of questions. We do have some time to move into the second round of questions, at five minutes each.

To begin, we will have Mr. Dreeshen from the Conservative Party.

Mr. Earl Dreeshen (Red Deer—Mountain View, CPC): Thank you very much, Madam Chair.

One of the things we're talking about, of course, when we're talking about Canada as a country, is that Quebec is really pushing the fact that it has the green aluminum and so on. Those are the concerns and issues that we've talked about. One of the things we've looked at is the Chinese aluminum being stockpiled in Mexico and the issue about what that is. I think that's been a really critical component of this.

I believe, Mr. Azzopardi, that you were talking about whether it is molded and what percentage is coming in and in what area. I think that's really an important issue. Also mentioned was the 25% U.S. tariff on China and the effects that had and how that pushed us into a situation where we all had to pay attention to what was taking place.

I want to take it in a different direction for a moment. We produce a lot of coal in western Canada and the northwest U.S. It goes through the Port of Vancouver and then heads over to Asia, where it is being used to create steel, which then comes back and becomes part of this problem that we have. There's no carbon tax associated with that, although we see our problems as far as dumping is concerned. I think that really becomes a critical aspect of this. How do we ever expect, then, that we are going to be competitive under those circumstances?

We see some of the other things that are happening with some of the review provisions that we have. How can we be expecting that we are going to be able to have an easier time to get foreign direct investment coming here into Canada unless we're paying attention to all of those micro-issues I've just mentioned?

● (0855)

Mr. Jonathon Azzopardi: I'm glad you brought that up, because we're seeing it as well. We've been seeing it for steel for many years. Aluminum is obviously becoming more popular, so we're seeing it more on aluminum. If this were a panel of Mexican government officials, I'd be saying exactly the same thing. Unless you start to pick up the protectionist measures that the United States is picking up, you will also be the weak link in North America. You have to be. You have no choice. Unless you want to let the erosion continue, you must take on the same policies as the U.S. It's so important. We see it on the ground level all the time.

China has the ability to move product inside Canada through investments. I'll be totally honest with you. Since the agreement has been under question, and then negotiated and ratified, we've actually had more investment opportunities in Canada. The problem now is that you need to filter out those opportunities. Are they going to benefit Canada, or are they going to hurt Canada?

A lot of the opportunities are just so they have drop zones, and we're watching those very closely. Those should go away.

On the other hand, I've also had investments from other countries that want access to the United States through Canada. We obviously want more of those investments.

The way we filter those out.... We can only do so much at the ground level, and we're trying, but the government has to give us the teeth, to arm us with the ability to stop those. It is critical. This is nothing new, I'll be honest with you. It's not new but it will continue, and actually this is where the provisions in the agreement can hurt us or help us. Right now they will help us if we can stop it from happening.

If we don't put those measures in, those RVC increases that Mr. David Cassidy talked about will start to play against us very quickly. Once they're in place, it will be very hard for us to change them. I actually have a grave concern that if this doesn't happen quickly, they will already be in place and then you'll be trying to push them out instead of stopping them from getting in.

Mr. Earl Dreeshen: Thank you very much. Of course, that's one of the key parts, as I've mentioned before, about the Quebec green aluminum, because of the way in which they are able to use their electricity. Of course, if they tried to build a dam now, I think it would be a little trickier.

That's my other concern as far as our oil and gas industry is concerned. We have sections of this country that talk about how great they are doing, but there are also some amazing things happening in our oil and gas industry. Unfortunately, we don't seem to be able to move that forward, so my concern is that when you're talking about foreign direct investment, it's going to find its place, but I really believe that when you have the best technology in the world, that should be the one that is being used.

Mr. Poirier, we have only a few seconds left. Could you perhaps comment on the aluminum portion I mentioned before?

Mr. Matthew Poirier: Just in the sense of investment, we can control trade, and that would be good, but we have a lot of other problems to fix in terms of making Canada a competitive jurisdiction to do business in.

Mr. Earl Dreeshen: Thank you.

The Chair: Thank you very much.

The next round of five-minute questions will go to Ms. Lambropoulos.

Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.): Thank you, Chair.

I'd like first to thank all of the witnesses for being here on such short notice and for providing us with their testimony today.

While I have questions for all of you, obviously due to time constraints, I'm going to stick to some of the most important ones.

Mr. Azzopardi, you stressed the importance of ratifying this agreement as soon as possible and you stated there would be grave consequences, and that every single day we don't ratify this agreement, there are consequences. Can you speak a little more about this?

Mr. Jonathon Azzopardi: Yes. What I'm trying to highlight there is that we're not the kind of manufacturer that has a purchase order agreement for something that we produce and then it leaves. We have five-year agreements, so if one of my members receives a purchase order from the United States, it's for five years. If somebody in the United States receives that same purchase order, it's also for five years, so that opportunity will not come back to a Canadian supplier or manufacturer for at least five more years. Every day that we wait, that five-year clock doesn't start counting.

We've already lost many opportunities over the last five years. Those are already gone. That's water under the bridge, but if we continue to lose these opportunities.... There are great opportunities that are happening in the automotive space alone with autonomous vehicles and electrification and the structure that supports those opportunities. If we're not in place now, we will have to wait five years before we get a shot at it again.

Ms. Emmanuella Lambropoulos: Thank you very much.

Mr. Cassidy, you spoke about how the NAFTA—

The Chair: That is all the time we have today for our first panel, but we'll make sure that in the next panel we'll be able to get some more time there for you.

I want to thank the witnesses again for their time here today.

● (0900)

[*Translation*]

Thank you so much for being here this morning and for your testimony.

[*English*]

With that I will suspend so that we can bring in the second panel of witnesses.

Thank you so much. Merci.

● (0900)

_____(Pause)_____

● (0905)

The Chair: We will begin the second panel of the Standing Committee on Industry, Science and Technology. The subject matter is to study clauses 22 to 38 and 108 to 122 of Bill C-4.

With us today we have Roger Boivin, president, Groupe Performance Stratégique. We also have Mr. Scott Smith from Honey Bee Manufacturing, and Mr. Mark Nantais from the Canadian Vehicle Manufacturers' Association. By video conference, we have Jennifer Mitchell, president of Red Brick Songs, for Casablanca Media Publishing.

Welcome. Each witness will have five minutes to present, after which we will move into questions. When you see the little paper move up, that means you have thirty seconds left to kindly wrap up your remarks. I will try to allow as much time as possible but our time is tight this morning.

With that, we will begin with Mr. Roger Boivin for five minutes.

[*Translation*]

Mr. Roger Boivin (President, Groupe Performance Stratégique): Good morning, Madam Chair. Thank you for inviting us.

Good morning, ladies and gentlemen members of the Canadian Parliament. Thank you for your interest in our aluminum industry. I am here to talk to you about it.

I am from Saguenay—Lac-Saint-Jean and I am the president of an economic research firm. Saguenay has the largest concentration of aluminum plants in the world. In a 50-kilometre radius, we have five aluminum plants, and they produce more than 1 million of the 3 million tonnes of aluminum produced by Canada. Canada is third globally among aluminum producers. In addition, our aluminum is the best, the cheapest, and it has the smallest carbon footprint in the world.

We have a large corporation, Rio Tinto, Alcan's successor. In 2007, Rio Tinto purchased Alcan, which had projects in Saguenay—Lac-Saint-Jean, including project AP-60 and the one focusing on completing the construction of an aluminum plant in Alma. Rio Tinto, as a trustee, is continuing the work in terms of commitments to carry out those projects. In July 2019, as the agreement with Alcan was to expire in 2020, Rio Tinto extended the agreement to 2025, giving itself until then to carry out those two projects. In fact, the corporation announced $300 million in investments related to those two projects—the one in Alma and the AP-60 plant. However, three months later, in October, in a dramatic turn of events, Rio Tinto told us that, in light of the new free trade agreement and the new provisions on aluminum, it would put those $300-million projects on hold.

We are working on this, but we are not alone. Rio Tinto and engineers are also working on it. These are large, high-quality projects that were developed over several years. Hundreds of millions of dollars have been invested in them to produce the best aluminum possible. However, owing to a CUSMA provision you are familiar with—the one on rules of origin, which means that aluminum is not treated the same as steel—we are losing our access to the U.S. market.

There are aluminum plants in the city of Saguenay. In the town of Alma, aluminum workers from Unifor and from the United Steelworkers, which represent plant workers, as well as Aluminium Valley Society, which represents the 4,000 individuals working in some 100 businesses involved in the broader aluminum industry, came together to fund a study to assess what would happen if CUSMA remained in its current form. The result is that it would put on hold the development of projects that could produce 850,000 tonnes of new aluminum that would be extremely beneficial in terms of greenhouse gas emissions.

The production of one tonne of Quebec or Canadian aluminum generates two tonnes of greenhouse gas, compared with 18 tonnes of greenhouse gas for each tonne of Chinese aluminum. Our aluminum production generates the lowest gas emissions in the world, as it is based on hydroelectricity in British Columbia and in Quebec.

The projects I mentioned would produce 850,000 tonnes of aluminum and would generate $6.2 billion in investment in Quebec in previously announced projects. An expansion project is planned at Aluminerie Alouette, which has invested $50 million in a prefeasibility study, but the study has been put on hold because of the new provision. The two projects that were already announced in Saguenay have been put on hold. The industry is very worried by that.

The world is complex—I don't have to explain this to you, as you work on complex files—and this industry is capable of managing the complex world it is part of. However, this new provision creates complete uncertainty in terms of the entry of any aluminum into the world going through Mexico. In fact, the current provision enables any aluminum to enter Mexico and to be considered as North American aluminum.

We already have an industry that employs 80,000 people in Quebec, and the projects underway could generate $1 billion in additional spending per year, without taking into account the $6 billion for the construction. They would generate 3,000 new entry-level jobs at an annual salary of about $80,000 each. This is an extremely important industry. So here is the straw that will break the camel's back.

The association president came here and told you that he supported the agreement reluctantly. He was saying that, at least, there was an agreement. Afterwards, he told you about a dozen elements that were missing from the agreement. They are extremely worried and they are putting projects on hold. So it is in the national interest to resolve this issue and to close this door.

Believe me, we are open to the world. We are a country that is involved in trade; that is clear. Our trade with the French, the British and the Americans has enriched us. We are for trade, but for fair trade. We are from North America, where there are companies. Let's take aluminum for example. Alcoa, the oldest aluminum company in the world is a company. Rio Tinto is a company. However, in the rest of the world, aluminum is not produced by companies, but rather by governments with legitimate political interests.

In Brazil, in India and in China, governments are using aluminum to create jobs, and they are dropping prices. They are dumping. We have affordable aluminum; they have political aluminum. If you let that aluminum in, there is no doubt that our industry will be unable to compete with a government like that of Dubai that will reduce prices.

● (0910)

That is why it is in the national interest to regulate the access of illegitimate aluminum to the North American market, as stated by the president of the Aluminum Association of Canada. We also support that proposal.

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

[*English*]

We still have some technical difficulties at the moment, so we will now move to Mr. Smith.

You have five minutes.

Mr. Scott D. Smith (Manager, Honey Bee Manufacturing Ltd.): Thank you. I prepared for 10 minutes, but I will do it in five.

I'm Scott Smith. I have the privilege of representing the 160 employees of Honey Bee Manufacturing. I have with me Jamie Pegg, our general manager. We want to thank you for this opportunity to discuss these matters, specifically with regard to issues on the competition and copyright acts that are addressed by this committee.

We have manufactured for over 30 years, since 1979, agricultural equipment that attaches to major brands of OEM equipment—John Deere, Case, New Holland, AGCO and so on. We export our products. I would say that 40% of our output is consumed in Canada and 66% is for export, with 33% exported to the United States. We are exporting to about 26 different countries, but we face a challenge. The challenge we face is interoperability. Recently, with technical protection measures and so on, companies have started to use digital locks and keys to prevent us from allowing our equipment to interoperate with these major OEM brands. It's a form of protectionism that allows them to own and operate the entire value chain at the exclusion of independent manufacturers.

In Canada we have 1,400 manufacturers of implements that are attached to agriculture, mining, forestry or construction equipment. Of those manufacturers, 500 are for agricultural equipment. That agricultural equipment is primarily manufactured adjacent to small communities in Canada, rural communities, where the majority of that type of manufacturing takes place. It's a challenge for us to achieve the ability to continue to legally manufacture our product and sell it onto these platforms. The copyright act in the United States has provision for circumventing for the purpose of interoperation. The Canadian Copyright Act does not have this same term in the agreement.

We would like to see that ratified prior to the signing of the trade agreement so that we're not on that uneven footing that prevents us from competing legally in the marketplace here and abroad. The combines that we manufacture our equipment for are the same combines that are sold everywhere in the world. There's no variation. So a blockage here in Canada blocks us globally. That represents about $2.1 billion a year of exports on agricultural equipment from Canada, and about $1.9 billion of that is to the United States. If we don't have the opportunity to interoperate with the American platforms, which are the global platforms in this instance, it has a very serious impact on our communities.

We employ 160 people in a town of 300. Our employees come from an area with about a 100-kilometre radius to the east, west and north of us, with Montana on our back doorstep. Our employees come from all over the world, including from Syria, Germany, Venezuela and India, as well as locally. A lot of our employees are fourth- and fifth-generation farmers' children. This is something that we don't want to see die. It would be devastating to our communities.

At a minimum, we need to have a copyright clause that's the same as the U.S. clause that allows for the exception for interoperability adaptations. These types of adaptations are very expensive, and we would have to do it for every single platform. The preferred solution is, in the long term, a mandated legislation that ensures that equipment imported into Canada has open interoperability rather than custom reverse-engineering. For example, on one product it cost us between $800,000 and $1 million to reverse-engineer and create a workaround solution, or to complete a parallel system, to allow our equipment to interoperate with the OEM equipment.

The OEMs have not provided ease of access to this interoperability. The issue hasn't been a problem in the past. It has been straightforward, like plugging a keyboard into your computer, but as they go to these digital locks and keys, we're seeing already on several platforms that they have locked it down. We need to have their permission to do it. When they do give us permission and they do provide provision for our equipment, then say we are restricted to only selling this product to this market for this customer and no one else. That's not acceptable, and that's what we're looking to deal with here today.

You have our full comments in the papers we distributed, which you can review at a later date.

● (0915)

The Chair: Thank you very much.

We will now move to Monsieur Nantais for six minutes. Thank you.

Mr. Mark Nantais (President, Canadian Vehicle Manufacturers' Association): Thank you, Madam Chair.

Good morning, honourable members.

I'm very pleased to have received this invitation to be here today representing Fiat Chrysler, Ford, and General Motors of Canada. Our members operate four assembly plants, as well as engine and component plants. They invest billions of dollars in the development of zero-emission technologies and advanced vehicle safety technologies. We have about 1,300 plus independent dealerships right across Canada and we contribute to quality employment opportunities for over half a million Canadians.

Passage of the CUSMA is essential to provide certainty to the North American automotive manufacturers. The automotive provisions as well as the side letters that provide protection from U.S. section 232 tariff actions are critical elements to support automotive manufacturing competitiveness within the North American trade bloc. It's important to remember that, for the auto sector in Canada, the alternative to reaching this agreement would be cancellation of NAFTA, reimposition of tariffs on finished vehicles and parts, and likely section 232 tariffs on production material inputs. If we are anxious to see the final ratification, that is indeed why. Again, we want to thank the Canadian negotiating team for working so closely with us throughout the duration, and for ultimately ensuring that we maintain Canada's auto sector as an integrated part of the North American industry.

This agreement was, simply, existential to Canada's largest manufacturing and export industry. The agreement reinforces the long-established integration of the industry supply chain, which is absolutely necessary for its competitiveness, and the ongoing need for continued regulatory alignment of vehicle technical regulations with the U.S., which are integral to trade and the environment, while ensuring greater consumer product choice and affordability. The auto portions of the new agreement, including the rules of origin and the labour value content provisions, and the 232 side letters are things all our members support and can adjust to over a reasonable period of time so we will be compliant, enabling us to continue to enjoy duty-free access to the largest and most beneficial automotive market in the world.

As far back as 1965 with the Auto Pact, Canada's automotive industry and its supply chains have become deeply integrated with the United States, and, over time, with Mexico. Vehicles are built seamlessly on both sides of the border, resulting in deep integration that has led to a more competitive Canadian auto industry, greater consumer choice at affordable prices, and a strong North American trade bloc.

When the original NAFTA came into force in 1994, it provided a foundation for a strong, globally competitive trading bloc—you'll see I keep coming back to referring to it as a “trading bloc”, which is really critical. The geographic proximity of the three NAFTA partners facilitates the multi-billion dollar parts sector, and just-in-time supply chains were critical to the vehicle assembly operations in North America. They also created inherent transportation and supply chain logistics cost advantages.

Today the automotive industry represents the second-largest Canadian auto sector, with $54 billion in trade in 2019, which is about 92% of the total value, which was shipped to the United States. The United States is our number one automotive partner. It's absolutely critical that a trade agreement be in place to provide the foundation for Canadian automotive production and exports.

We must always keep in mind that Canada is, simply, one-tenth of a complex, fully integrated long-lead industry. Multi-billion dollar product plans and manufacturing investment plans generally begin over five years in advance of the start of production. Planners require regulatory certainty to make their decisions. They especially need for Canada to maintain fully harmonized safety, vehicle, GHG and criteria emissions standards with the United States. This remains imperative if we are to continue to be part of this fully integrated long-lead, large investment industry. Put simply, we did not work this hard to modernize integrated-rules trade in North America to then take our eye off the ball and drift away with unique or different regulatory directions. Doing so could put us back to square one and leave us on the sidelines.

Canada's officials must also maintain a high degree of engagement with counterparts in the U.S. and Mexico as we go forward. We cannot relax our efforts to ensure that Canada is sufficiently competitive to win future manufacturing investments that anchor much of the Canadian auto supply chain. Canada must have competitive—or more than competitive, actually—costs of auto operation in Canada, including investment incentives, carbon costs, competitive labour agreements, taxes that keep pace with the U.S., competitive electricity prices, and a competitive regulatory burden environment.

It's important to remember that the auto sector is going through one of the driest periods in its 100-year history. We need to work closely with all levels of government. We fully respect this committee's need to hear Canadians and to ask questions.

● (0920)

For 36 years now, I've been appearing before various House committees. We certainly understand that and we encourage you in terms of your mandate to make this happen. We've worked with all parties over the last two years to discuss the very complex issues involved, and we appreciate your interest in open dialogue.

I thank you again for this invitation, and I'd be pleased to answer any questions.

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

Now we will go to Jennifer Mitchell and Casey Chisick in Toronto by video conference.

You have five minutes to present. Thank you.

Ms. Jennifer Mitchell (President, Red Brick Songs, Casablanca Media Publishing): Thank you very much, Madam Chair and honourable members, for this opportunity. I'm here today with Casey Chisick of Cassels, who is external legal counsel both to Music Publishers Canada and to my companies.

I have had the pleasure of owning and running a Canadian-owned independent music publishing business for almost two decades. I'm here to talk to you about the need to fully implement copyright term extension in accordance with the Canada-U.S.-Mexico agreement immediately, completely and with no conditions. In doing so, small and medium-sized businesses in the music publishing sector and our songwriting partners are able to continue innovating, growing and exporting songs to the world.

Canadian music publishing is a $329-million industry, which grows every year because of innovative entrepreneurs who help create value from songs. In today's digital and globally connected age, songs, music and culture have no boundaries, allowing many Canadian songwriters to achieve international success because of the scale of opportunity outside our country.

The market in Canada is simply too small for songwriters and publishers to succeed only within our borders, so music publishers work hard and make investments to help songwriters expand and grow into international markets. In fact, two-thirds of music publishers' revenue now comes from foreign sources, which is a dramatic change from 2005, when only a quarter of their revenue was from these same foreign sources.

The key to dealing with changes in technology has been our ability to expand globally. Music publishers use their relationships in other countries, built over many years, to create opportunities for songwriters to succeed.

Music publishing is about championing a songwriter and a song through the lifetime of the writer's career and the song's copyright. We take a long-term perspective, and we work a lot behind the scenes to create value. We are the songwriter's partner. We not only make financial investments in songwriters; we also invest time and leverage our relationships to help a songwriter's career evolve.

This means matching people such as songwriter Jeen O'Brien with partners in lucrative markets like Japan to co-write singles that are released by other artists or used in TV, movies, commercials or video games. It means arranging co-writing opportunities for Dan Davidson in London, England, and China and financing radio promotion. Those efforts led to a top 20 Canadian country radio hit.

It means taking a risk to sign emerging songwriter Tom Probizanski, who moved to Toronto from Thunder Bay. We invested in him so he could go to Los Angeles and Denmark to co-write. He released an EP under the name of "Zanski" and we paid for his blog and playlisting promotion so that he was featured in Clash Magazine, EARMILK and various Spotify playlists.

We were able to take these risks and invest that money in Jeen, Dan and Tom only because we could rely on the income of several songs for which my companies hold the copyright. These efforts were made possible by the value that we were able to create from songs such as *Imagine* by John Lennon; *What a Wonderful World*; *My Way*; *Y.M.C.A.*; *Start Me Up* by the Rolling Stones; *Skinnamarink* by Sharon, Lois and Bram; and even the theme for *The Simpsons*.

This brings us to today. I would like to thank the government for agreeing in CUSMA to extend the term of copyright in works by 20 years. It is critical, though, that this be implemented completely, immediately and with no conditions, rather than waiting the 30 months that is allowable under CUSMA. Bill C-4 would extend the term of copyright for a few works: anonymous works, audiovisual works and so on. It would add an extra five years to the term of protection for performances and sound recordings, which was already extended in 2015, a welcome development to be sure.

However, the bill would not finish the job. It would not extend the term of protection for musical compositions known as songs. On behalf of Music Publishers Canada and the songwriters and composers I work with, I urge the committee members to amend Bill C-4 to align Canada with its global trading partners by extending the term of copyright protection for all musical, literary, dramatic and artistic works right now, instead of using the 30-month transition period.

Why is this important? Many works will fall into the public domain in the next 30 months. That will affect creators' and publishers' ability to reinvest in the Canadian economy.

● (0925)

As I mentioned, many music publishing companies are small and medium-sized businesses that rely on steady income from hit songs to develop new talent. For a small business like mine—

The Chair: Ms. Mitchell, unfortunately, that's all the time we have, but I'm sure that once we get into the round of questioning, you'll have an opportunity to add additional comments. I know you've circulated a document to the committee members, which we all have in front of us.

With that, we will move to a six-minute period of questioning by each party, and we will start with Mr. Patzer.

Thank you.

Mr. Jeremy Patzer (Cypress Hills—Grasslands, CPC): Thank you very much, Madam Chair.

First of all, I just want to thank everybody for being able to make it here on very short notice to be part of the discussion we're having today.

My first question I guess would be for you, Scott. First of all, I just want to say, again, thank you for bringing up the point that agricultural manufacturing is such a vital part of rural Canada. It has employment opportunities, and it's a mechanism for small towns to remain viable because it's such an important social fabric of our communities.

Scott, one thing you were talking about was the copyright laws we have in Canada and what they have in the United States. Could you elaborate on the difference between those particular laws and how they affect your industry?

Mr. Scott D. Smith: The primary difference is that the U.S. copyright legislation has exemptions to prohibition, to circumvention. Circumvention of people's intellectual property or their copyrighted material is illegal generally, but when an exemption is provided for the purpose of interoperability, it's very viable and important. It was originally put into the act with respect to handicapped persons or people challenged with physical disabilities who require different keyboard input devices, and software had to be modified to allow these types of tools to be used. In our case, it's not necessary that we have this ability, but it's being decided by the OEMs that this is a requirement because they're closing off the ecosystem for open development.

Historically, our products for 30 years just have a couple of wires we hook up and go. The technology that they're adding doesn't change the functionality of the equipment. It's just creating a digital lock and key so they can choose to exclude equipment.

If we adopt within Canada the copyright legislation exemption they have in the United States, it would give us the legal basis to make these adaptations without breaking the law. That's not really ideal, as I said. It's a very expensive process to reverse-engineer and to develop parallel systems, but it's a starting point. It's the minimum that we would like to see, which is already established in the U.S. copyright legislation, that could be transported into the Canadian legislation without argument from the U.S., without bickering about this thing being added or whatever, in advance of signing the trade agreement. The trade agreement is very important to us, but without this, we're dead. We actually can't interoperate with other people's equipment.

● (0930)

Mr. Jeremy Patzer: For sure. If the clause goes into the Canadian Copyright Act, will it completely solve the issue, or is it just kind of, as you mentioned, the starting point for it? If you want to elaborate further, beyond this particular exemption of the Copyright Act, what else needs to be done to further solve these problems?

Mr. Scott D. Smith: This gives us a legal basis to do what we would need to do for reverse-engineering, but it's the most expensive path. For a single platform it costs between $800,000 and $1 million to develop a full technical system that duplicates everything that the tractor systems already do, to plug in, in parallel and switch one in or out, depending on if our product's attached or someone else's is. This is not viable. The farmer doesn't want this. You don't want to hack your keyboard to pieces to plug it into your laptop one wire by one wire, key by key. You just want to plug it in and have it work.

What's really required is some sort of mandate for open interoperability, and this impacts, as I said, construction, mining, forestry and agricultural equipment. They're all in the same boat. It's something about which, over the long term, we've been working with government over the last year through Global Affairs, ISED, Canadian Heritage, Agriculture Canada and the Competition Bureau, trying to get resolution to this matter through existing legislation and channels. Our case with the Competition Bureau was just closed last week for lack of legislation to support the actions that need to be taken.

Mr. Jeremy Patzer: With a trade deal like this, this is something that definitely could and should have been further addressed. We had a golden opportunity I think to have this addressed in it, and it appears it wasn't.

Mr. Scott D. Smith: It wasn't, and it should be.

Mr. Jeremy Patzer: Do any of my colleagues have any questions they'd like to add?

Mr. Earl Dreeshen: Thank you.

Mr. Boivin, you talked about suspending $300 million worth of products or access to the American market. Unifor was here earlier, and there was no discussion from them about any concerns of theirs. That's where I'd like to start.

When we see all of these products that have been taken off the table, one of the things I mentioned earlier in that regard was the stockpiling of aluminum in Mexico from whatever countries and the concerns we have about that. We also heard that Canada now has 70% protection in the agreement, whereas we had zero protection before. Back in 1994 we had 100% because we were the ones supplying it.

Could you make a quick comment on that?

[*Translation*]

Mr. Roger Boivin: Yes. Historically, we of course had protected access.

However, the aluminum industry in the rest of the world has developed a great deal these past few years. The fact that foreign countries could sell here remained possible. Economically speaking, Canada's aluminum industry has the lowest production costs in the world, among other things because of the self-generation in Kitimat, but also because of Rio Tinto, in Quebec, and of course the preferential tariffs Alcoa or Aluminerie Alouette benefit from.

In terms of the economy, we can compete. For completely legitimate reasons, in the Middle East, in India, in Brazil and in China, a major aluminum industry has developed. The president of the association talked about $35 billion for a single company. I also have documents to support that.

Subsidies of $100 billion have been provided to all the Chinese companies. Those countries encourage aluminum development regionally. It is legitimate, but we cannot be on an equal footing.

The Chair: Mr. Boivin that's all the time we have.

Mr. Roger Boivin: You are right.

I will conclude by saying that things have changed, and this forces us to get protection now.

[*English*]

The Chair: We will now move to Ms. Lambropoulos.

You have six minutes.

Ms. Emmanuella Lambropoulos: Thank you.

I'd like to thank all the witnesses for their testimony here today and for being here on such short notice.

Ms. Mitchell, I know you were cut off and I'd like to give you an opportunity to finish what you were saying earlier.

I'd also like to point out that, obviously, the cultural exception was put into this agreement, which I'm sure affects a lot of the creators you work with and represent. Can you speak a little to this as well in your comments?

Can you finish what you were saying with regards to copyright as well. I know you appreciate the fact that we've protected copyright for an additional 20 years, but you mentioned something about the transition.

Can you continue on that front?

● (0935)

Ms. Jennifer Mitchell: Sure.

Just to quickly finish the points I was making, waiting the 30 months to implement the copyright term extension for all classes of intellectual property, particularly when it comes to songs and musical compositions, will create more confusion in the marketplace.

My first point was that we were stifling innovation and creativity, export potential and growth for small businesses, but we also risked creating more confusion. Commercial users who license songs typically do so worldwide, which means they need to get a licence for the entire world. Remaining out of step with all of our international trading partners will continue to complicate licensing for users rather than providing any kind of relief.

We also risk introducing even more complexity by extending the copyright term for some classes of intellectual property and not others as Bill C-4 would do.

Mr. Casey Chisick (Legal Counsel, CMRRA-SODRAC Inc. (CSI)): The important thing to keep in mind is that this is an international issue at its very heart. We're talking about works by composers like Jimmy Hendrix, Janis Joplin, Duane Allman, the list goes on and on, falling into the public domain during that 30-month period that CUSMA allows for a transition. To the point of a cultural exemption, it's tempting to say these composers aren't Canadians so it doesn't matter, but it does matter because it's income from compositions by composers around the world that gives Canadian publishers like Jennifer the revenue they need to reinvest in the songwriters and the songs she referred to in her initial testimony.

It really is a critical issue. It's baffling that the government would choose to wait another 30 months and allow hundreds or thousands more valuable compositions to fall in the public domain never to be recaptured by publishers who rely on that revenue for their investment in Canadian culture.

Ms. Emmanuella Lambropoulos: [*Technical difficulty—Editor*] on the cultural exception, would any of you be willing to comment on maintaining that protection? This is not something that was in the original CUSMA agreement when they began negotiations.

Can you speak to the importance of including it in there?

Mr. Casey Chisick: I'm sorry. We didn't hear the beginning of your question.

Ms. Emmanuella Lambropoulos: Does the cultural exception in the CUSMA agreement affect your industry? I believe it affects creators of Canadian content and all of the cultural industry.

Mr. Casey Chisick: Yes, it does, and it affects creators and in a positive way. It's important to maintain the fidelity of the Canadian culture that has allowed the Canadian music industry, among others, to thrive for the last 50 years. Preserving that protection in CUSMA and in its implementation is, of course, key.

It doesn't, unfortunately, address the issue that we're here to discuss today, which is the implementation of term extension for copyright.

Ms. Emmanuella Lambropoulos: Thank you very much for your answers.

How much time do I have left, Madam Chair?

The Chair: You have one and a half minutes.

Ms. Emmanuella Lambropoulos: My next question will be fore Honey Bee Manufacturing.

I know you have proposed certain changes. Obviously, we heard from previous witnesses that if we make many changes, we would not be able to ratify the agreement, which obviously would have severe consequences for the Canadian economy and many businesses that do business with the United States. In general it would have a huge impact in terms of job losses and everything.

Can you speak to why it's important that we do ratify this agreement regardless of the changes that need to be made? How would your company and your workers benefit from this agreement's being ratified?

Mr. Scott D. Smith: We're in support of the trade agreement as it's presented in its various aspects.

We manufacture all of our products from steel and aluminum, so all of the issues we have with the tariffs on them really hurt us over the last couple of years. The other issue is with exporting our agricultural output besides our own products, but in general, we've seen the value and importance of a trade agreement.

Our urgency on our aspect of it with the copyright legislation is about having to have this exemption included. If it's not, this trade agreement doesn't matter at all to us in our communities.

● (0940)

Ms. Emmanuella Lambropoulos: Thank you.

[*Translation*]

The Chair: We will begin the next round of questions with Sébastien Lemire.

Mr. Sébastien Lemire: Thank you, Madam Chair.

Thank you for joining us, Mr. Boivin. My first question is for you.

You talked about a study that mentions the consequences of putting on hold projects valued at $6.2 billion. Consequently, that translates to a disaster for the Saguenay—Lac-Saint-Jean region and the North Shore. Right?

I ask that you give short answers, as I have a number of questions.

Mr. Roger Boivin: Of course, but we mustn't forget that the aluminum industry's production is done on the North Shore, in Saguenay—Lac-Saint-Jean, in Donnacona, in the Bécancour region, as well as in Kitimat, but the processing—in other words, the smelting—is done everywhere. There are thousands of suppliers in Ontario and in Quebec. This industry is of national importance.

Mr. Sébastien Lemire: The impact on SMEs is significant. Quite a political game surrounds the signature, and one of the things discussed is compensation for the industry. Of course, the industry is satisfied in that respect.

Are you worried that the money could simply be taken and then invested in Mexico to build plants to enable Chinese dumping?

Mr. Roger Boivin: That is another good observation, Mr. Lemire.

Indeed, the $1.3 billion in compensation has not been paid by the primary steel producers. It was not Algoma, Stelco or Rio Tinto who paid. SMEs in the processing sector have taken on the burden and invested $1.3 billion in steel and aluminum.

It would be indecent at the very least if the $1.3 billion, if it were spent again, were to come back to the aluminum giants, which have their own problems. As a government, you must absolutely ensure that the $1.3 billion would come back to the SMEs who paid it. Otherwise, the wrong individual would be compensated. It would be an aberration.

Mr. Sébastien Lemire: So it is recognized that the situation is currently creating a tremendous amount of uncertainty.

As a result, how can we develop an industry like that of aluminum in the context of that uncertainty if no changes were made and the agreement was ratified as is?

Mr. Roger Boivin: The industry will adopt a defensive position. We will end up with a second or third-rate industry. It will not die, but it will decline. It will become an industry that is no longer competitive. We have an industry in offensive position that has invested a lot in the development of great projects.

This door must absolutely be closed, but not for legitimate aluminum production. We can compete with another country that sells aluminum at a legitimate price, but not with those that receive subsidies for aluminum production. This door that is opening toward Mexico is the straw that is breaking the camel's back.

That is why the industry is going to get back to us in 10 years. There will no longer be any major investments over the next 10 years, aside from investments related to productivity to remain in defensive position. Canada and Quebec need this industry. It is Quebec's second largest industry. It is a very big industry. It is in offensive position, I repeat, and it is developing strategies that perform very well on a global scale.

Mr. Sébastien Lemire: It is an important industry in Quebec and in Canada.

Mr. Roger Boivin: Yes.

Mr. Sébastien Lemire: It is worth mentioning.

So there will be an opportunity to review in 10 years. Are there any immediate measures to be taken to try to salvage the free trade agreement?

Mr. Roger Boivin: Of course. They would involve the monitoring of dumping. The Mexicans are reticent when it comes to that, and we understand them, as it is not in their interest. The authorities must monitor any aluminum dumping and the entry of illegitimate aluminum—that which is not produced in North America. Traceability is required for that. That is what the aluminum industry representatives have asked for in their seven or eight points. They emphasized that. Along with the Americans and the Mexicans, we must monitor dumping and aluminum origin very closely.

On the other hand, as they said, and as the Conservatives and Bloc Québécois members are saying, the amazing value of our aluminum is its low carbon content. Our wood also has a low carbon content. We have to put forward more and more indirect measures in what I could refer to as our “Buy Canada Act”. I don't know what else to call it, but we need something that would enable the government, in its calls for tenders, as was saying the president of the Aluminum Association of Canada, to take into account the low carbon content of our aluminum and to promote that. We are currently selling our aluminum at the same price as the aluminum whose production, for each tonne, generates 18 tonnes of greenhouse gas. That's because there is no value attributed to that advantage of our aluminum. Therefore, measures must be implemented.

However, we do have brains. Let's think of the Department of Industry representatives. We are capable of developing quality measures that benefit not only Quebec and Canada, but the entire world. This industry produces less greenhouse gas emissions than any other. That is what everyone wants. We cannot let in aluminum whose production has generated, for each tonne, 18 tonnes of greenhouse gas. We will destroy the huge efforts people everywhere are making. It is costly for us to reduce our carbon footprint.

It is hard for me to believe that we will let our industry perish like this. I know that none of you want that, but we must absolutely all work together to find solutions, so that the industry can continue to produce this aluminum at a fair cost. What we are asking for is fairness. So there are direct measures to be taken.

● (0945)

Mr. Sébastien Lemire: I have one last question for you.

The industry's reaction was quite different from that of workers in your region, Saguenay—Lac-Saint-Jean.

What interests exactly do you think the industry is trying to protect?

Mr. Roger Boivin: You'd have to ask the industry people, but I'll try to answer.

It may be that the situation puts the industry in an awkward position. Rio Tinto Alcan's largest shareholder is Aluminum Corporation of China, which has made two hostile takeover bids for the company in the past. The Australian government blocked the bids, but 15% of Rio Tinto still belongs to Aluminum Corporation of China. As you know, Australia is the Canada of China. It supplies raw material to China. We think we have a complicated neighbour, but so does Australia.

There is no doubt that the industry is a bit uncomfortable with the whole thing. Rio Tinto is very closely linked to Chinese aluminum.

Mr. Sébastien Lemire: Thank you, Mr. Boivin.

My last question is for Mr. Nantais.

Mr. Nantais, you talked a lot about the importance of signing the new agreement, but do you really think it's a big improvement over NAFTA?

[*English*]

Mr. Mark Nantais: Thank you very much for your question.

The progress lies in the fact that we've been able to preserve a three-country approach in the agreement. Without that, we will not be competitive as a bloc. Our supply chains won't be competitive if we don't have that, so, as I mentioned in my remarks, it's the consequences of not doing this that one really needs to be concerned about.

For our industry we need to have this in place. We need it for our competitiveness. We need it to keep the anchor assembly plants here in Canada and across North America. Without it, there will be no supply chain as well, so whether it's aluminum, steel or many of our parts makers, the agreement is really critical. But I will say this—

The Chair: Mr. Nantais, unfortunately, that's your time. Perhaps in the next round they'll ask you that same question.

Mr. Mark Nantais: Okay.

The Chair: The next round of questions is for Mr. Masse.

Mr. Brian Masse: Mr. Nantais, you can finish, and it was no pun intended when you said the bloc?

Mr. Mark Nantais: Not at the trade caucus.

Voices: Oh, oh!

Mr. Mark Nantais: I will say that the trade agreement, despite it indeed providing opportunities for suppliers and so forth over time, does not offer a guarantee. If we were to lose our anchor plants in Canada or across the U.S., or even in Mexico, the supply chain would be greatly negatively affected by that.

This is what I was going to say.

Mr. Brian Masse: When the original deal was done, it got hung up in Congress when changes were requested. I'm vice-chair of the Canada-U.S. parliamentary association. We were often in Washington during the throes of that. There have been amendments made to the labour and the environmental section that got the deal through. Does your trade association support that?

It appears there is more consistency now on some issues that are creating complications for competition for Canadian workers. We heard a little from the labour side. Are those improvements supported by the Canadian Vehicle Manufacturers' Association?

Mr. Mark Nantais: If you're speaking specifically about the labour value content aspects provisions—

Mr. Brian Masse: Yes.

Mr. Mark Nantais: —yes, we are supportive of them as part of the overall package.

Mr. Brian Masse: With that, though, you also noted several things and challenges that we face as a country. I'm concerned that the impression is that if we sign this agreement, if we do nothing else and we stop here.... What are your thoughts about auto manufacturing in Canada if we just sign the agreement and continue on without dealing with other issues? Where do you think we'll end up?

Mr. Mark Nantais: I have very strong thoughts about this.

We operate in a high-cost jurisdiction, so whilst we have the agreement in place, one needs to think about the overall backdrop here of the high operational costs in this country. If we do not address those and do not continue to show an effort to address those and actually make progress, then it will come to a point in time when people will look at Canada versus other jurisdictions and ask, how can we be relatively profitable here? I use the word “relatively” here because we can be profitable now, but it's really a question for future investment as to whether you can be more profitable in other jurisdictions. You're always competing with other jurisdictions, and if we don't address local operational costs or other issues here, then we'll be no better off.

One needs to look at this whole thing in a very holistic manner on a continuing basis.

Mr. Brian Masse: About five years ago, Ray Tanguay was commissioned by the federal government to produce an auto report. He tabled that with the minister in Detroit, Michigan.

You mentioned in your remarks that you've been appearing in front of committees for 36 years. Do you think that enough of that report has been acted on, or are there still elements of it that could be advanced for the auto industry and Canadian manufacturing? Is the report too stale now, or are there still some chances in that report?

● (0950)

Mr. Mark Nantais: The “Call to Action 2” report has been updated. The “Drive to Win” report replaces it. The report outlines many different things that continue to be necessary. I would suggest that we've probably made very little progress on many of those recommendations.

As recently as a couple of weeks back, or 10 days ago, the Canadian Automotive Partnership Council met and re-emphasized the fact that those recommendations need to be pursued and implemented by government. That includes regulatory co-operation and continuing to align our technical standards with those of the United States, in addition to labour, skills and all of those other things that are in that report. It's an evergreen report and those recommendations are supported by the entire industry, whether it's industry, labour, or government—and when I say “government”, I'm talking about the federal government, the Ontario government and the Quebec government.

Mr. Brian Masse: Investments are happening. I see them across the river almost every month with regard to Detroit, which show that we actually do have a competitive workforce because much of that workforce is connected to my city of Windsor. It's about having fair conditions.

How much time do we have?

The Chair: A minute and 40 seconds.

Mr. Brian Masse: Okay, good.

Mr. Boivin, you mentioned the $1.3 billion, and the tariff with regard to that. Are there things that you can suggest with that tariff? If we don't refund that tariff or use it, it's just another tax. In fact, it's become an albatross around the neck of my local steel manufacturers and the tool and die makers, and others. What I found is that many businesses gave up on bidding on some contracts that they were actually.... The profit margin was used up for borrowing for money owed from different suppliers because it took too long to get it back.

Is that the same experience you're facing?

Mr. Roger Boivin: Yes, in the aluminum industry it's the same thing.

Mr. Brian Masse: They've just given up on some, even...because the 3% to 4% in profit is tied up because some of the smaller ones are having a hard time borrowing money to carry over the cost of it.

Mr. Roger Boivin: Exactly.

Mr. Brian Masse: Okay.

Mr. Roger Boivin: I'll switch languages.

[*Translation*]

It's really important to put that money back in the industry's hands, perhaps through a mechanism that brings together industry associations, to improve the competitiveness of the steel and aluminum processing sector, in accordance with Canadian rules. We play fair. We won't make money improperly. We have the ability to be successful.

However, we have to have clear and fair rules, which set the stage for success. That's how we built our country. We can do it.

[*English*]

Mr. Brian Masse: Thank you. We can control that, too. That's what's frustrating about it.

The Chair: Thank you very much.

Now we will move into the second round of questions at five minutes. The first round goes to Ms. Gray.

Mrs. Tracy Gray: Thank you, Madam Chair.

This question would be for Ms. Mitchell. We're looking at what's in CUSMA with respect to extending the copyright terms to 70 years after an artist has passed. You have to question how this really allows for innovation and creativity within the industry.

I would like to refer to the very comprehensive statutory review of the Copyright Act this committee conducted in the last Parliament. It was very comprehensive, with 52 meetings and hundreds of witnesses, briefs and emails.

Once you look through all of that communication, there does not appear to be an overall consensus or an agreement among the artists and people within the industry on how to move forward.

I'm wondering if you can comment. I'll give you one quote from a well-known author and composer, Bryan Adams. He commented that extending the terms of the copyright “essentially enriches large firms of intermediaries, without providing money to creators”. Could you comment on that point and on how this would help, overall, the actual creators themselves?

Ms. Jennifer Mitchell: I think the issue that Bryan raised is separate from the actual extension of the copyright term.

To speak to Bryan's issue for a second, the majority of agreements these days, in 2020, negotiated between publishers and songwriters are fair agreements. They're more similar to partnerships. The songwriter and the publisher both share in the publishing and act together as partners. Our interests are very aligned. I really do believe that the paradigm Bryan was describing is an old paradigm that doesn't exist anymore. When I speak to my songwriters about these issues, we are always simpatico. We are always aligned.

On the issue of innovation, which you first mentioned, the money we get from having songs that are steady hits, songs that are going to fall into the copyright domain, is what we use to take risks on new songwriters. When I sign a new songwriter to a copyright, to a publishing deal, and we decide to split the copyright together, I am then investing that money to send them on co-writing trips to other places in the world in the hope that they're going to get those songs recorded by international artists. I am spending money on their own artistry, on radio promotion and on their having the time to write and create in the first place.

They're huge risks. They're big gambles. If I don't have profit from a reliable source of income, I won't be able to make those investments. I won't be able to invest in Canadians. We'll have less Canadian content, and I think that goes to the heart of creativity and innovation.

● (0955)

Mr. Casey Chisick: Ultimately, all of those revenue streams generate revenue both for the publisher or the record label, on one hand, and for the songwriter or the recording artist on the other. As Jennifer said, they really are partnerships.

It's simply a mischaracterization of the issue for people like Bryan and others to assume that all of the benefit of the term extension is going to companies and not to artists. It just isn't true, and it's a gross distortion of reality.

Mrs. Tracy Gray: Thank you.

I want to ask you about the concept of registration requirement, because I know that was brought up. A number of people in the field felt that having the copyright extension, where people could apply for the other 20 years rather than its being automatic, would allow for a lot more flexibility in how people manage things. I'm wondering if you can comment on the concept of registration requirement.

Ms. Jennifer Mitchell: I am glad you brought this up. It was in my speech, but I just didn't get around to it.

I know there was a lot of discussion about that, but I strongly disagree with a mandatory registration regime. For one thing, our copyright registration regime was designed to deal with an existing system, which is voluntary registration. It's really not equipped to handle the administration of a mandatory registration regime.

Putting that aside, registration just isn't necessary. Right now publishers and songwriters register their songs with SOCAN and CMRRA, which cover 99.9% of the market, and that system works very well. Commercial users who license songs know how to find copyright owners within the existing system, so they properly clear the use of music.

Introducing a second registration system that is operated by the government is going to require a significant amount of time, resources and money, and I'm not sure—

The Chair: Ms. Mitchell, unfortunately, that's the time we have for this round. I'm sorry.

We'll now move to Mr. Ehsassi.

Mr. Ali Ehsassi: Thank you, Madam Chair.

I know I have only two minutes left, and so I'd like to go to Mr. Nantais.

You have spoken at length about how integrated the auto sector is. As you know, one of the new features of this NAFTA is chapter 26, which has to do with North American competitiveness. It talks at length about regional economic growth.

Is chapter 26 something that would be of great utility to the auto sector, or would it have no application to the future prosperity of the sector?

Mr. Mark Nantais: I wouldn't say that it has no application, but the fact of the matter is that we've been deeply integrated since the Auto Pact. We can't go back. We're moving forward on that basis.

When you look at the multinationals at the table in North America, they also have plants around the world and so forth, but it's really important that we remain competitive here to support our supply base. That's what's really important for the future—the certainty around that. As I said earlier, it may not offer guarantees for suppliers. If you lose an assembly plant, for instance, generally parts manufacturers gravitate to that assembly plant, and if it's not here, then they'll go elsewhere.

● (1000)

Mr. Ali Ehsassi: Thank you very much.

The Chair: That's all the time we have for this panel.

[*Translation*]

Thank you very much for being here today and sharing your views.

[*English*]

With that, we will suspend so that we can bring in the next round of witnesses.

Thank you very much.

● (1000)

_____(Pause)_____

● (1005)

The Chair: We will begin the third panel.

Today we are hearing witnesses on the subject matter study of clauses 22 to 38 and clauses 108 to 122 of Bill C-4.

I will remind folks in the room that no photo taking or video conferencing is allowed. In addition, during testimony, when you see the little yellow card, that means you have 30 seconds to wrap it up. I'll try to give you a little wave to give you the heads-up.

Today we have various folks from the Department of Foreign Affairs, Trade and Development. We have Mr. Steve Verheul, our chief negotiator; Robert Brookfield, director general; Loris Mirella, director, intellectual property; Shendra Melia, executive director; and Nicola Waterfield, deputy director.

Welcome to everyone. We will have a 10-minute presentation from the panel, after which we will move to questions from the committee members.

With that, I open the floor for your presentation.

Thank you.

Mr. Steve Verheul (Chief Negotiator and Assistant Deputy Minister, Trade Policy and Negotiations, Department of Foreign Affairs, Trade and Development): Thank you and good morning, Madam Chair and members of the committee.

Thank you for the invitation to appear before the committee today. We look forward to answering questions regarding the outcome of the new NAFTA agreement, following my opening remarks.

The signature of the new NAFTA on November 30, 2018, followed 13 months of intensive negotiations. It brought together a broad range of officials and stakeholders, with a strong partnership between federal and provincial officials. That agreement achieved several key outcomes. It served to reinforce the integrity of the North American market, preserve Canada's market access into the U.S. and Mexico and modernize the agreement's provisions to reflect our modern economy and the evolution of the North American partnership.

On December 10, 2019, following several months of intensive engagement with our U.S. and Mexican counterparts, the three countries signed a protocol of amendment to modify certain outcomes in the original agreement related to state-to-state dispute settlement, labour, environment, intellectual property, and automotive rules of origin. These modifications were largely as a result of domestic discussions in the U.S. However, Canada was closely involved and engaged in substantive negotiations to ensure that any modifications aligned with Canadian interests.

Throughout the negotiations Canadian businesses, business associations, labour unions, civil society and indigenous groups were also closely engaged and contributed significantly to the final result.

For the negotiations, we need to recall that the NAFTA discussions were unique. This was the first large-scale renegotiation of any of Canada's free trade agreements. Normally, free trade agreement partners are looking to liberalize trade. In this process the U.S. goal from the start of the negotiations was to rebalance the agreement in its favour. The President had also repeatedly threatened to withdraw from NAFTA if a satisfactory outcome could not be reached.

The opening U.S. negotiating positions were, to put it mildly, unconventional. These included a 50% U.S. domestic content requirement on autos, which would have decimated our auto sector; the complete dismantlement of Canada's supply management system; the elimination of the binational panel dispute settlement mechanism for anti-dumping and countervailing duties, which we've used extensively, particularly for products like softwood lumber; a state-to-state dispute settlement mechanism that would have rendered the agreement completely unenforceable; removal of the cultural exception; a government procurement chapter that would have taken away NAFTA market access, leaving Canada in a worse position than all the other U.S. free trade agreement partners; and a five-year automatic termination of the agreement, known as the sunset clause.

The U.S. administration also took the unprecedented step of imposing tariffs on imports of Canadian steel and aluminum, on the basis of purported threats to national security, for which there was absolutely no evidence of any kind of justification. The U.S. administration had also launched an investigation that could lead to the same result for Canadian autos and auto parts.

In the face of this situation, Canada undertook broad and extensive engagement with Canadians on objectives for the NAFTA modernization process. Based on the views we heard and our internal trade policy experience, Canada set out a number of key objectives, which can broadly be categorized into the following overarching areas. First, we wanted to preserve important NAFTA provisions and market access into the U.S. and Mexico. Second, we wanted to modernize and improve the agreement where possible. Third, we wanted to reinforce the security and stability of market access into the U.S. and Mexico for Canadian businesses.

With respect to preserving NAFTA, Canada maintained the NAFTA tariff outcomes, including duty-free treatment for energy products. We preserved the provisions on chapter 19, which is the panel dispute settlement mechanism for anti-dumping and countervailing duty matters. We preserved temporary entry for business persons and the cultural exception. We preserved and improved the state-to-state dispute settlement mechanism.

In the area of autos, changes were made to the rules of origin regime to encourage the use of more inputs from Canada, in particular by increasing the regional value content requirements for autos and auto parts, and removing incentives to produce in low-cost jurisdictions. Together with the quota exemption from potential U.S. section 232 tariffs on autos and auto parts, secured as part of the final outcome, these new automotive rules of origin will incentivize production and sourcing in North America, and represent important outcomes for both our steel and aluminum sectors.

● (1010)

With respect to modernizing NAFTA, we have modernized disciplines for trade in goods and agriculture, including with respect to customs administration and procedures; technical barriers to trade; sanitary and phytosanitary measures, as well as a new chapter on good regulatory practices, including for health and safety. That encourages co-operation and protects the government's right to regulate in the public interest.

Commitments on trade facilitation and customs procedures have been modernized for the 21st century to better facilitate cross-border trade, including through the use of electronic processes, which will reduce red tape for exporters and save them money.

New and modernized disciplines on technical barriers to trade in key sectors are designed to minimize obstacles for Canadians doing business in the U.S. and Mexico, while preserving Canada's ability to regulate in the public interest. We also have modernized obligations for cross-border trade and services and investment, including financial services and telecommunications, and a new digital trade chapter.

On labour and environment, we negotiated chapters that are fully incorporated into the agreement and subject to dispute settlement. These obligations will help ensure that parties maintain high standards for labour and the environment, and that domestic laws will not be deviated from as a means to gain an unfair trading advantage.

The outcome also includes a special enforcement mechanism that will provide Canada with an enhanced process to ensure the effective implementation of labour reforms in Mexico, specifically related to freedom of association and collective bargaining.

There were a number of other outcomes of note. On supply management sectors, I think it's important to keep in mind that the U.S. did make an explicit and public demand for the complete dismantlement of Canada's supply management system. In the end, we preserved the three key pillars of supply management—production controls, import controls and price controls—and granted only limited access to the U.S.

On intellectual property, obligations cover a broad set of areas, including copyright and related rights, trademarks, geographical indications, industrial designs, patents, pharmaceutical intellectual property, data protection for chemical drugs and agricultural chemical products, and border, civil and criminal enforcement of IP rights, including civil and criminal IP rights enforcement in respect to trade secrets.

Certain outcomes will require changes to Canada's current IP legal and policy framework in certain areas such as copyright, and here we will increase copyright terms of protection as well as provide criminal remedies in respect of rights management information.

IP rights enforcement will also provide ex officio border authority for suspected counterfeit or pirated goods in transit, as well as criminal offences for the unauthorized and willful misappropriation of trade secrets.

In many of these areas we negotiated transition periods to implement our commitments, and importantly, under the amending protocol the parties agreed to remove the obligation to provide 10 years of data protection for biologic drugs, meaning that Canada does not need to change its existing regime in this area.

The agreement also includes a new digital trade chapter that requires parties to have regulatory frameworks in place to address such things as privacy protections and fraudulent and deceptive practices, and we will work together to mitigate threats to our cybersecurity.

The agreement also includes commitments to address barriers to digital trade, such as provisions that ensure that companies and individuals can move information and data across borders in a reliable and secure manner while ensuring that legitimate privacy and security rights are protected.

Other notable outcomes include that we will no longer have trilateral investor state dispute settlement for Canada. We will not have investor state dispute settlement applying between Canada and the U.S. There will be no government procurement chapter in NAFTA with respect to Canada. We will maintain our access to the U.S. under the World Trade Organization's agreement on government procurement.

In closing, I would like to underline that our objectives for these negotiations were informed closely by Canadian priorities and interests, very close engagement with provinces and territories, as well as a wide range of stakeholders that we consulted on an ongoing basis.

This concludes my opening remarks. Alongside my colleagues, we would be pleased to answer any questions you may have.

Thank you.

● (1015)

The Chair: Thank you very much.

With that we will begin our first round of questioning. You have six minutes for each question.

I move to Madame Rempel Garner to begin the questions.

Hon. Michelle Rempel Garner: Thank you, Madame Chair.

I will start my questions as they pertain to chapter 19.

Reading chapter 19, I notice that it agrees to prohibitions against restrictions on the transfer of personal information, and prohibitions requiring where computing facilities are located, and this has less policy flexibility on data localization under the CPTPP.

Can you table the analysis that shows that chapter 19 of CUSMA will not prevent Canada from adopting laws that would create similar provisions to those contained in article 20 of the GDPR or California's Consumer Privacy Act?

Mr. Steve Verheul: If I could, Madam Chair, I'd like to bring one of my experts to the table.

Hon. Michelle Rempel Garner: Madam Chair, can you stop the clock? I've lost about 20 seconds already.

● (1020)

The Chair: Kindly introduce yourself and then respond to the question.

Hon. Michelle Rempel Garner: Actually, just to be clear, I'm asking if the analysis on that particular provision could be tabled with the committee.

Mr. Nolan Wiebe (Senior Trade Policy Officer, Information Technologies, Global Affairs Canada): Sorry, we don't have any specific analysis—

Hon. Michelle Rempel Garner: No analysis was completed on that.

Mr. Nolan Wiebe: No.

Hon. Michelle Rempel Garner: Thank you. That's good enough.

I'm wondering if you can point me to anything in Bill C-4 that would preserve the rights of Canada to proceed with similar types of legislation.

Mr. Robert Brookfield (Director General, Trade Law (Deputy Legal Adviser), Department of Foreign Affairs, Trade and Development): The bill generally does not indicate where there is policy flexibility. It does the reverse. It will indicate where there is policy limitation. There is nothing in the bill that specifically says where the policy flexibility is in that area.

Hon. Michelle Rempel Garner: Can you table the analysis that shows that British Columbia's data localization laws would survive a challenge per the provisions in chapter 19?

Mr. Robert Brookfield: That analysis doesn't exist in report form.

Hon. Michelle Rempel Garner: Okay. That's great.

In the absence of a national data strategy, what guidelines was the government using on data privacy, data generation and ownership in a 5G operating environment and Canada's place in the global data economy when taking a position on chapter 19?

Mr. Robert Brookfield: Again, the chapter provides certain policy limits in flexibility—

Hon. Michelle Rempel Garner: Were there specific guidelines on those points used by the negotiating team in putting together chapter 19?

Mr. Robert Brookfield: There were various considerations in putting together the negotiating position, but there are no documents related to that analysis.

Hon. Michelle Rempel Garner: There were no guidelines on chapter 19.

At this point, I would point out that such intangibles as data and IP comprise considerably more of major global economies. The government is spending billions of dollars on things like superclusters. Yet you're telling me there has been no analysis done on this particular issue when this is probably one of the biggest areas of economic growth.

Can you table the analysis that was done with regard to the provisions in chapter 19 around intellectual property, essentially entrenching an American status quo policy framework on IP, on the impact of things like the supercluster program and the ability for Canada, in our investment in those programs, to generate and retain IP in Canada?

Mr. Steve Verheul: I think there's a bit of a misunderstanding here. We don't complete formal pieces of analysis when we're preparing for negotiations. We rely on the expertise of our trade policy team, part of which you see here. We rely on consultations with stakeholders. We don't have the time to produce formal reports for analysis on all of those issues, but I can tell you that this negotiating team is better informed on these issues than any other one in the world.

Hon. Michelle Rempel Garner: But you weren't able to tell me basic things. Data localization is a fairly significant topic, as it's going to pertain to new privacy frameworks, etc. The European Union, as you're well aware, Mr. Verheul, doesn't look at things that are in chapter 19 because of the lack of regulatory frameworks, or best practice on regulatory frameworks, yet we've jumped right into this. We've signed away a bunch of stuff under this provision.

If you're saying that your team had a lot of expertise, that there was no analysis completed, that you didn't have time, why are we doing something that the EU has been loath to do?

Mr. Steve Verheul: I didn't say we didn't have time. I said it's not something we routinely do. We rely on the expertise of the people we have. We addressed many of those issues in the trans-Pacific partnership negotiations, so broad discussions of those issues had already taken place. Many of those issues had already been addressed in those fora.

Hon. Michelle Rempel Garner: Actually, on that note, I would note that specific to addressing personal information protection requirements, where I think there is some discrepancy between that and the CPTPP, all chapter 19 does is include a footnote that acknowledges that enforcing voluntary undertakings of enterprises related to privacy is sufficient to meet that particular obligation. It just seems to me like we have taken a position here that is far apart from where the European Union is.

Do you think that will create any problems in terms of the discrepancy between our agreement with the United States on data versus where the Europeans are? How would a company trying to operate in all of these environments proceed with Canada as a base if we've taken two very disparate approaches to this issue?

Mr. Steve Verheul: Well, you're quite right, the European Union takes a different approach on these issues than the U.S., certainly. We do have agreements with the European Union, as you know, and with the United States. We're required to bridge the gaps if we're going to have the kinds of access we're going to have to both of those markets. We will operate somewhat differently in each of those markets, but we know what the rules are.

● (1025)

Hon. Michelle Rempel Garner: How is that possible?

Mr. Steve Verheul: Well, it depends on the actual specific provisions. When it comes to some of the provisions with respect to data protection, clearly, we will have to offer that to other trading partners as well.

Hon. Michelle Rempel Garner: Thank you.

The Chair: The next round is for Mr. Jowhari.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Madam Chair.

Mr. Verheul, welcome to our committee. Thank you for the great work you did over the challenging period we're facing.

We heard in the first hour of the testimony from an international trade lawyer, Mr. Herman. I was left with a feeling that while this is in front of us, we have to deal with it and approve it. Subsequently, we heard from a lot of other organizations. They highlighted the benefits, how it has helped, how it's been preserved and how it's been modernized.

Also, in the briefing notes I notice that the negotiating team has proposed at least three different dispute settlement mechanisms. Those dispute settlement mechanisms involve bringing in different stakeholders, and the way in which disputes could be handled. Can you shed some light on these three different dispute settlement mechanisms, who the stakeholders are, and how this is actually preserving and modernizing the CUSMA?

Mr. Steve Verheul: Thank you.

I think the whole area of dispute settlement is probably the one where we managed to achieve the most in the negotiations. We came into this negotiation with the U.S. insisting on getting entirely rid of the existing chapter 19 under NAFTA, which is the only reason we've been able to win a succession of cases on softwood lumber over the years, to maintain some degree of access to that market, although it remains difficult. The only way we can challenge U.S. laws is through that chapter 19 process. That is unique in the world. We managed to preserve that over adamant U.S. positions to get rid of it.

When it comes to state-to-state dispute settlement, the U.S. also wanted to render that completely ineffective. They have a view that, because of sovereignty considerations, they should not be able to be challenged if they break international obligations. We not only managed to preserve state-to-state dispute settlement; we actually improved it significantly. We removed the problems that currently exist in the system, where the U.S. can and has blocked the formation of the panels that we have requested to try to resolve disputes. That has been much improved.

We also have the new labour dispute settlement process—the rapid response mechanism—with respect to labour practices in Mexico. That's also a new and innovative approach that doesn't exist in other agreements but gives us the opportunity to pursue any kind of difficulties we might have with specific plants and operations in Mexico that are not respecting freedom of association for unions, collective bargaining and other labour requirements. From a dispute settlement perspective, I think we're on much better ground than we were under the existing NAFTA.

Mr. Majid Jowhari: Thank you.

On top of chapter 19, were chapters 10, 14 and 31 new chapters that were added, or were they amended chapters?

Mr. Steve Verheul: Well, the provisions on trade disputes, on anti-dumping and countervailing duties—the trade remedy issues—were left largely as they exist now. I believe that's chapter 10 now. The state-to-state dispute settlement was significantly modified, as I just pointed out. That's now chapter 31. The rapid response mechanism on the labour side is a brand new initiative that does not appear in NAFTA at all.

Mr. Majid Jowhari: How would chapter 31 be able to help, if it can help us, with some of this dispute we have over softwood lumber?

Mr. Steve Verheul: For softwood lumber, since it involves countervailing duties and anti-dumping duties, we would be more likely to use chapter 10—the new chapter 10—because under that, we can actually challenge the U.S. application of its own laws. We have won many times in the past and demonstrated that the U.S. did not properly apply their own laws when applying and calculating these duties. That's something fundamental to a lot of the cases we've had not only on softwood lumber but on a variety of other products.

● (1030)

Mr. Majid Jowhari: Thank you.

I think I have 10 seconds left, which I'm going to yield to the chair.

The Chair: You actually have one minute.

Mr. Majid Jowhari: I have one minute? Oh, great.

You talked about the role of the transition period. Can you help us understand that? I think it's two years. How does it apply? What are the benefits and the challenges with it?

Mr. Steve Verheul: There are a number of transition periods in certain areas, primarily in intellectual property, although there are also some in agriculture and some other areas in which we wanted to have some additional time to allow us to make adjustments in the sector or industry to allow them to accommodate the changes. We asked for those transition periods. We negotiated those, and they will allow for a much smoother process of changing from the existing rules to these new rules that are going to be in place.

Mr. Majid Jowhari: Would you categorize that as part of the modernization aspect?

Mr. Steve Verheul: It's more a matter of easing the transition, because some of these rules will involve adjustments required by companies and exporters, so it's important to have the time to do what they need to do to adjust to these new rules.

Mr. Majid Jowhari: Thank you.

The Chair: Thank you very much.

We'll now move to Monsieur Lemire.

[*Translation*]

Mr. Sébastien Lemire: Thank you, Madam Chair.

Mr. Verheul, thank you for your contribution today.

Clearly, we recognize the enormous amount of work you've done, so thank you. Unfortunately, our job is to be somewhat thankless, in other words, to shine a light on what you sacrificed, so to speak, in the negotiations.

Do you agree that the aluminum and steel industries are afforded the same protection under the new agreement?

[*English*]

Mr. Steve Verheul: I think you have to step back a bit, because you have to look at the existing NAFTA, in which there is absolutely no protection on aluminum, no kind of provision on aluminum, that requires a certain amount of aluminum to be used in the production of cars. Under the new rules, manufacturers will have to have at least 70% of their purchases of aluminum come from North American sources, which means largely Canada, and more specifically largely Quebec. That's a significant improvement.

There is a difference between the steel and aluminum approaches, given that in this most recent amendment to the protocol that we negotiated and agreed to on December 10 there will be a requirement for steel to be melted and poured in order to qualify as originating in those purchases by manufacturers. However, we also have already established a process whereby we're monitoring imports of aluminum into the North American market. If we start to see a significant proportion of aluminum coming in from other countries, we will address that issue by raising it with the U.S. and Mexico and making the argument that aluminum, for that reason, should be treated the same way as steel with respect to that provision.

[*Translation*]

Mr. Sébastien Lemire: Indeed, that is quite favourable. It appears to be something new that came out of the negotiations—a mechanism that would give us the ability to make an adjustment well before the eight or 10 years in question. That's a positive avenue.

Are there any other mechanisms that could be used to protect aluminum, in particular?

[*English*]

Mr. Steve Verheul: Yes. I think there are two issues we're dealing with on steel and aluminum. We have the provisions in the actual agreement and we also have the national security 232 actions that the U.S. took against steel and aluminum. We also successfully removed those, as you know, but now we do have a process of ongoing consultation with the U.S. about imports of steel and aluminum into North America, and we're trying to determine that there's no transshipment or no back door for other countries to have steel and aluminum come into North America. We want to protect our manufacturing sector, in both steel and aluminum, and those provisions will also help us to do that.

● (1035)

[*Translation*]

Mr. Sébastien Lemire: I should've said this when I asked the last question: there is still a difference between aluminum parts for vehicles and aluminum, itself.

I'm going to switch topics. Concessions were also made with respect to the caps on agricultural exports, especially concentrated milk proteins, skim milk, powdered milk and so forth.

Do you think the protein measure is an attempt by the United States to get around supply management and, if not eliminate it, exert a negative and significant influence on the system?

[*English*]

Mr. Steve Verheul: I have somebody from Agriculture and Agri-Food Canada, the chief negotiator for agriculture. I think he might be better suited to answer that question.

The Chair: Could you kindly introduce yourself?

Thank you.

Mr. Aaron Fowler (Chief Agriculture Negotiator and Director General, Trade Agreements and Negotiations, Department of Agriculture and Agri-Food): Thank you.

My name is Aaron Fowler. I'm Canada's chief agriculture negotiator from AFC.

The export monitoring provisions and export thresholds that are established for skim milk powder under this agreement are unusual. They're not akin to similar provisions in our other FTAs. They were included here because of specific concerns of the United States with respect to aspects of the Canadian supply management system for dairy, and in particular, aspects of the national dairy ingredients strategy that was introduced in 2017. It was a new pricing approach for certain dairy products that was intended to encourage investment and innovation in this sector.

The effect of those pricing changes on the United States resulted in two main areas of concern to them. One was they lost access to the Canadian dairy market for certain products where they had previously been quite competitive, and they saw themselves competing increasingly with Canadian exporters in certain specific types of dairy products where Canadian exports had not traditionally been so high.

As an alternative to addressing their concerns, which they wanted to address by dismantling the supply management system for dairy, we looked for ways to respond to those concerns that would be acceptable to both parties. We explored many ways of doing that with respect to Canada's dairy exports to third countries and ultimately settled on this as the least objectionable way forward.

[*Translation*]

Mr. Sébastien Lemire: Thank you.

My last question is a short one.

Do people think the free trade agreement provides solutions to the softwood lumber crisis that has been going on for at least two decades?

[*English*]

Mr. Steve Verheul: Softwood lumber is obviously a part of the agreement. The U.S. has the right to initiate investigations and impose duties on what they consider to be anti-dumping and countervailing duties, and we have the right under the protection of the trade dispute settlement process for anti-dumping and countervailing duties. That's how that works. Any agreement on softwood lumber would be outside of the NAFTA agreement and provisions.

The Chair: Our next speaker is Mr. Masse.

Mr. Brian Masse: Thank you, Madam Chair.

Thank you to you and your team for your hard work.

I'm part of an interparliamentary association of Canada and the U.S. that involves Parliament and also the Senate. We go down to Washington twice a year and across the U.S. and have co-meetings with Senate and Congress and so forth. We know that both capitals can be logic-free zones at times.

We saw some of the things that emerged over the years. I want to go to the point of the environment and labour. In our meetings with Congress and Senate over the years, and those included Republicans and Democrats, I don't think I can remember—and this is a bipartisan group; we go as team Canada—when labour and the environment weren't raised by members of Congress and the Senate, even in particular with regard to Mexico, as factors against workers being competitive here in our country. Why wasn't that part of the original deal? That really led to the exceptionally longer period of time because it had to go back to Congress.

Can I have your comments about why we weren't pushing that from the beginning?

Mr. Steve Verheul: I think there was an effort to try to improve the obligations on labour. The labour chapter itself is, for the first time under the new agreement, a part of the agreement and subject to dispute settlement. It does include quite a significant number of improvements over the existing side agreement on labour. These include protections for violence against workers and enhanced disciplines and obligations with respect to labour.

● (1040)

Mr. Brian Masse: Right, but why wasn't that part of the original attempt? I mean, we left it to Congress and the Democrats to fix that component of it, and it sat there in limbo for nearly a year because we didn't do that from the beginning.

Mr. Steve Verheul: I think the whole notion of a facility-specific rapid-response mechanism simply hadn't been developed in that kind of detail at that point. To have disciplines targeting specific facilities in another country has never been done before. It did require a much longer negotiation with Mexico in particular, because they are the clear target of this. Working out all of those details was contentious and took a long time. It simply wasn't addressed in the first instance.

Mr. Brian Masse: One of the things that's been left off, and maybe you can provide some guidance on where we go from here, is the TN visa. We still have those who go back and forth across the border in occupations that didn't even exist in the 25-year-old original deal. What do we do about that? In the area I represent, and in many border communities and regionally as well, it seems to be very discretionary when those with certain occupations and jobs are allowed to go back and forth. What do we do about that not making it to these negotiations?

Mr. Steve Verheul: When it comes to those types of issues, when we started, the U.S. position was to get rid of that whole chapter on temporary entry of business people. Our position was to try to enhance and expand it, so we came from completely different places.

We managed to preserve the chapter as it is with the professions that are contained within it. I think we do have opportunities as we move forward to try to further elaborate some of that and provide further specification, but I think the main challenge we had was to simply have a chapter addressing those issues at all, because the U.S. was adamantly against it.

Mr. Brian Masse: With regards to data and privacy, what assurances do Canadians have with regard to.... We have a Privacy Commissioner, for example, and they do not have one.

Are there any vulnerabilities in this deal with regards to the independence of our Privacy Commissioner in crafting Canadian laws in light of changing technologies that will allow that independence to be maintained, but also, I would hope, to be enhanced in the future?

Mr. Steve Verheul: We do have the specific provision related to protecting privacy, but perhaps I could ask Nolan to add a bit to that.

Mr. Nolan Wiebe: Sure.

I'm Nolan Wiebe with Global Affairs Canada. I'm a senior trade policy officer there.

As Steve mentioned, there are commitments in the context of the digital trade chapter as well as in the exceptions chapter of chapter 32 that relate to the protection of personal information. In the digital trade chapter, the context is specifically with online consumers. There's a broader context under chapter 32, Exceptions and General Provisions, where it applies to all aspects of the agreement.

That measure is intended to ensure that countries do have measures in place to protect personal information of businesses and consumers who engage in online trade.

Mr. Brian Masse: That will have no consequences for our Privacy Commissioner, though?

Mr. Nolan Wiebe: That provision will not have any implications for our Privacy Commissioner, nor would any other provisions in the context of this agreement affect the commissioner's their ability to enforce Canada's measures to protect Canadian personal information.

Mr. Brian Masse: Okay.

Lastly, buy America is still a problem. What's your recommendation? There's also buy American, which also gets lost in that.

A voice: It does.

The Chair: Unfortunately, Mr. Masse, that is your time.

The next round of questions will be for five minutes each, and we begin with Ms. Rempel Garner.

● (1045)

Hon. Michelle Rempel Garner: Thank you, Madam Chair.

I'll pick up where I left off. Mr. Verheul, your last comment before I got cut off was that we would have to offer provisions in chapter 19 to other trading partners. Is that being discussed with the European Union?

Mr. Steve Verheul: No, it's not at this point.

Hon. Michelle Rempel Garner: Thank you.

Building on where I was going last time, I know much of the testimony we've heard at this committee and elsewhere from organizations that represent the production of tangible goods has been that the provisions in this agreement represent a victory for the export of tangible goods.

Given the significant concessions on data and IP in chapter 19, and especially since, again, to reemphasize the point that the European Union has declined to entrench similar provisions in their trade agreement, and given the newness of the field, I am wondering if we conceded on these interests in order to get clarity on issues that have more political tangibility, like the export of manufactured goods.

Mr. Steve Verheul: No, we did not look at those kinds of trade-offs. I would take exception to your characterization that those were necessarily concessions on our part when it comes to data. We do have a policy. This is not the first agreement where we've addressed those kinds of issues.

Hon. Michelle Rempel Garner: So, you have a policy.

The last panel said there was no analysis. I asked, in the absence of a national data strategy, what was guiding the discussions. But you said you have a policy on this. Can you table that? What I'm trying to get at is this. What strategy did you use to guide your decisions on the ownership of data—essentially the rights of data creators in Canada—especially with respect to the impact of that on the Canadian economy over the last 10 years?

Mr. Steve Verheul: I don't think there's a country in the world that negotiates free trade agreements that has detailed analysis that they release publicly on these kinds of things.

Hon. Michelle Rempel Garner: Okay, let's talk about strategy and policy. You just said you have a policy on this—what strategy or policy? What was this tying back to? How are the concessions that were made—or however you want to characterize chapter 19—tied to the long-term economic growth of the data economy of Canada over the next 10 years, given that this policy is significantly different from the position that the EU has taken on entrenching those provisions in their trade agreements?

Mr. Steve Verheul: The EU does take a different approach on this; there's no question about that. We have taken a different approach, both in this agreement and, to some extent, in the trans-Pacific partnership.

Hon. Michelle Rempel Garner: Why?

Mr. Steve Verheul: This came about largely as a result of consultations with industry, the private sector—

Hon. Michelle Rempel Garner: Which industry groups?

Mr. Steve Verheul: —provinces and territories. That's how we formulated our positions, along with our own analysis of how we should be conducting this—

Hon. Michelle Rempel Garner: You've said there was no analysis done, that you didn't have time to do an analysis, but your own analysis was completed. I'm just a little confused on this.

Mr. Steve Verheul: Perhaps there are two different senses of analysis. We are always doing analysis on every negotiating position we put forward, but it's not a formal kind of analysis that we set out on paper and put in some kind of public statement. This is based on the expertise that we have among our negotiators. We establish it from that, in conjunction with consultations with the private sector.

Hon. Michelle Rempel Garner: What sort of timeline or horizon did you negotiate to in the economic analysis? Were you looking at the current state or a 10-year period in assessing the impact of this agreement on GDP?

Mr. Steve Verheul: We always look at the long-term implications of anything we negotiate. We don't look at the status quo today; we look at what's likely to develop in the future.

Hon. Michelle Rempel Garner: With regard to the impact that chapter 19 would have on the data economy, the rights of data creators and the valuation of data as an intangible asset in Canada, what sort of analysis was done on potential economic growth under the provisions as negotiated in chapter 19?

Mr. Steve Verheul: Obviously, there are some different views in the private sector about these issues. We took a look at those, obviously. We relied, again, on the expertise we have.

Hon. Michelle Rempel Garner: Who from Canadian industry argued in favour of those provisions in chapter 19?

The Chair: You have 10 seconds left.

Mr. Steve Verheul: Well, we certainly had stakeholders.

Hon. Michelle Rempel Garner: Would you be able to table that with us?

● (1050)

Mr. Steve Verheul: There are very diverse views among stakeholders on those issues.

Hon. Michelle Rempel Garner: Who argued in favour of it?

The Chair: Unfortunately, that is your time, Mrs. Rempel Garner.

Hon. Michelle Rempel Garner: Thank you.

The Chair: Our next round of questions goes to Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks very much.

We have Professor Geist in the next panel, and because much of the work that we're doing at this committee focuses on copyright extension, I wanted to quote Mr. Geist, who said, “The additional 20 years of protection beyond the international standard found in the Berne Convention will be costly for Canadians with little discernible benefit.”

I'm curious. Why are we committed to extending the copyright term for 20 years? Is this something that we put on the table, or something that we accepted because of the totality of the agreement?

Mr. Loris Mirella (Director, Intellectual Property Trade Policy, Department of Foreign Affairs, Trade and Development): Good morning.

That's the outcome of the negotiations. It's part of the negotiations of the whole agreement.

Mr. Nathaniel Erskine-Smith: That's fair. I take that to mean that's not something we put on the table, but something we accepted because broadly or overall, the agreement is in our benefit. While this provision may not well be, it's still worth it.

I have a very specific question and it's just because a previous witness pointed this out. In BillC-4, to amend proposed subsection 6.2(2) of the Copyright Act, there's a reference to 50 years, which is inconsistent with the other dates that I see throughout C-4. I'm curious. Is that reference to 50 years supposed to be 70 years, or is it to be 50 years?

Mr. Loris Mirella: Sorry, could you repeat that clause you referred to?

Mr. Nathaniel Erskine-Smith: Proposed subsection 6.2(2), “Identity of author commonly known”, includes a reference to the remainder of the calendar year in which that author dies and a period of 50 years following the end of that calendar year.

One of the witnesses suggested that that should be 70 years. We're tasked with putting forward recommendations. I know we're pretty limited in what we can do, but that struck me as a little bit inconsistent with the rest of the document.

Mr. Loris Mirella: As far as I know, that relates to anonymous and pseudonymous authors. We're trying to make it so it's 70 years.

Mr. Nathaniel Erskine-Smith: Yes, but in Bill C-4 we've got 50 years cited in proposed subsection 6.2(2).

You don't need to answer now. Some clarity on that would be useful.

With respect to the Criminal Code provision, I'm just curious why this provision in the Criminal Code is necessary. What does it cover that wasn't there previously?

Mr. Robert Brookfield: Presently the Canadian law does not criminalize theft of trade secrets. It's done by common law or by provinces.

Mr. Nathaniel Erskine-Smith: I wasn't meaning the theft of trade secrets. The new provision is in relation to “removes or alters any rights management information”. I'm just curious about why that is necessary in the Criminal Code versus where we already see it elsewhere in the law.

Mr. Loris Mirella: The treaty requires that we have criminal provisions for rights management information, and then it's up to you—

Mr. Nathaniel Erskine-Smith: Fair enough.

Mr. Loris Mirella: —the government, to decide where best to situate how to meet that obligation.

Mr. Nathaniel Erskine-Smith: I understand.

Turning to chapter 19, Ms. Rempel Garner has canvassed data localization concerns, although I note that we can restrict cross-border data flows if it's in the public interest to do so. We may not have data localization rules per se, but we can have some sort of adequacy standard in the same way that the EU does.

I want to turn to the safe harbour provisions, though. In the last parliament, we looked at the liability potentially attaching to the Facebooks and the Googles of the world going forward, and not only as creators. The agreement says, “except to the extent the supplier or user has, in whole or in part, created, or developed the information.”

So we know Facebook and Google don't create or develop this information. They are hosts, but they use their algorithm to encourage the dissemination of that content, and I'm curious to what extent the safe harbour rules in 19.17 would restrict our ability to make these companies liable for increasing the visibility and views of content through their algorithms.

Mr. Nolan Wiebe: This particular article would not affect the ability of Canada to address those types of situations where, as you mentioned, through those companies' use of algorithms, they may in fact have a process in creating the content.

● (1055)

Mr. Nathaniel Erskine-Smith: Not creating the content, though, but promoting the content. Those are two very different things.

The Chair: I'm sorry, Mr. Erskine-Smith, that's your time.

Our next round of questions goes to Ms. Jaczek.

Ms. Helena Jaczek (Markham—Stouffville, Lib.): Thank you very much, Madam Chair.

Thank you to the team, and I would even say congratulations. Prior to my election, I was watching and observing this, and I'm really pleased that we're at this place now that we're looking at Bill C-4.

I've been listening intently this morning and even during question period.

One of the areas of concern that Monsieur Lemire has been probing extensively is the whole area of the aluminum industry in Quebec. We heard this morning that there are really severe concern about the competitiveness of that industry going forward. SMEs are concerned, so I would just like to hear a little bit more about the engagement that occurred with the players and stakeholders in that industry. I know you were able to achieve perhaps more than what was there before, but could you reassure us a little bit more as to how you see this going forward?

Mr. Steve Verheul: Certainly, and I think the aluminum issue is one that has become a bit distorted in some of the discussion.

As I mentioned before, we did issue a new requirement that doesn't exist now, that 70% of purchases by manufacturers of aluminum be of North American origin. On top of that, we have much more North American content required according to the rules of origin for autos, so there's much less room to use foreign inputs than there has been in the past, which is also going to create significantly more of an incentive to purchase aluminum from North American sources.

With respect to the difference between steel and aluminum, after seven years steel will be treated somewhat differently because of its melted-and-poured requirement. That requirement will not apply to aluminum. There's a 10-year review of aluminum to see whether it requires a similar type of process. We have already had discussions with the U.S., and with Mexico, to talk about how, if there is a pattern of aluminum imports into North America from China or from other countries undercutting the North American market, we will have the opportunity to revisit that issue and see whether aluminum does require the same treatment as steel.

There's no requirement for us to wait the 10 years to address that issue. We can address it as soon as we start to see a problem.

Ms. Helena Jaczek: This morning there was some question around RVC, regional value content. Could you just explain a little bit more how that is measured, and how we ensure the accuracy of that type of measurement?

Mr. Steve Verheul: Regional value content is the percentage of North American-sourced materials that have to go into a particular auto that's being manufactured. That applies to every part that's coming up that is part of the auto. Currently you have to meet a regional value content of 62.5%, which rises to 75% under the new agreement.

The new agreement also introduces a new element for core parts: engines, transmissions, axles, and those kinds of things. They also require 75%, which doesn't exist now. There's also of course the steel and aluminum requirement that we've discussed, and there's the labour value content, which we also discussed.

All of that feeds into the kind of content requirements that will be required for the manufacturer of autos, which include an overall emphasis on greater North American content.

Ms. Helena Jaczek: So, there will be an overall improvement.

If I have some time left, there's just one thing. As a physician, I'm always interested in the price of drugs for Canadians. Could you just explain a little bit more what occurred in the agreement relating to drug prices, patent protection, and so on?

Mr. Loris Mirella: As you know, there was a negotiated outcome and then there was a change in some of those elements, including those related to biologic drugs. That obligation was removed from the agreement so Canada can continue to carry out its policy in that area.

There's nothing specifically related to cost as such, but if there's any provision that prevents the entry of generic versions of drugs, that would have a potential impact on drug costs in the future. With the removal of that provision, the only other change that needs to be made to Canada's regime is in respect of the patent term adjustment for delays in the processing of a patent application by a patent office.

● (1100)

The Chair: Unfortunately, that is all the time we have for today.

I would like to thank everyone for coming. Thank you very much for your excellent testimony.

We will suspend so that we can prepare for the next panel.

Thank you.

● (1100)

_____(Pause)_____

● (1105)

The Chair: I will call the meeting to order.

[*Translation*]

Welcome to the Standing Committee on Industry, Science and Technology. Today, we are studying clauses 22 to 28 and 108 to 122 of Bill C-4.

[*English*]

Today we have with us Professor Michael Geist, Canada research chair in Internet and e-commerce law at the faculty of law at the University of Ottawa.

[*Translation*]

Joining us are Bruno Letendre, the chair of Les Producteurs de lait du Québec; François Dumontier, its director of communications, public affairs and trade union life; and Luc Boivin, the owner of Fromagerie Boivin.

Welcome to all of you.

[*English*]

We will start with presentations of 10 minutes by each group, followed by questions for each. We have three groups today instead of four at this panel, so we have a little more time for the witnesses.

[*Translation*]

If you see the yellow card, that means you have 30 seconds left.

We'll start with Luc Boivin, the owner of Fromagerie Boivin.

Welcome, Mr. Boivin.

Mr. Luc Boivin (Owner, Fromagerie Boivin): Thank you, Madam Chair.

My name is Luc Boivin, and I am the president and CEO of Fromagerie Boivin. On behalf of our company, I thank you for inviting me today to discuss the bill to implement the Canada–United States–Mexico Agreement, or CUSMA for short, as well as the impact it will have on my business and the dairy industry overall.

I will be drawing your attention to the harmful effects CUSMA and the other trade agreements will have on my company and my region. Then, I'll recommend mitigation measures the government can take to help the industry as it tries to adapt to the new market landscape it now faces as a result of CUSMA and the other trade deals.

Fromagerie Boivin is a fourth-generation family business, founded by my great-grandmother in 1939. Back then, the cheese dairy was used to process the surplus milk from the family farm and other farms in the area. It produced aged cheddar for export markets. With the acquisition of Fromagerie Lemaire, the Boivin group now processes 40 million litres of milk to produce 4.3 million kilograms of cheese. The group employs 340 full-time workers. We produce fresh, unripened cheese under the Boivin-Lemaire label, as well as the Amooza cheese snacks, which are available across the country thanks to a deal we signed with a major Canadian company.

In addition, we operate the only drying facility in eastern Quebec, where we dry whey from Fromagerie Boivin, as well as Fromagerie Perron and Fromagerie Saint-Fidèle, in Charlevoix, which we also have shares in. Fromagerie Saint-Fidèle processes 10 million litres of milk for Canadian Swiss cheese and employs 45 people in the regional county municipality of Charlevoix.

Fromagerie Boivin is committed to continuing its investments and exploring new markets. Unfortunately, the uncertainty created by government decisions is a major hindrance to our investment plans. The current slump in Canada's dairy processing industry has had a disproportionate impact on remote regions, particularly where I'm from, Saguenay—Lac-Saint-Jean. The current system is conducive, not to milk sheds in remote regions for dairy processing, but to consumers.

When the trade deals are fully implemented, the market access granted under CUSMA and the others will be unprecedented, accounting for 18% of the Canadian market.

It would be naïve to think that dairy market access of 18% will simply mean lost volume for Canadian dairy processors. It is important to note that, unlike dairy farmers, Canadian dairy processors do not have access to regulated pricing when selling their products. Dairy processors sell their products in a marketplace rife with fierce competition, not just among dairy processors, but also among food processors.

The level of Canadian market access—I repeat, 18%—granted under the various trade deals signed by the Canadian government reduces profit margins and expected volumes for dairy processors. Those government decisions are behind the current slump, shifting the focus these days to disinvestment, closures and consolidation in the dairy processing sector.

Let's be clear here. There is a contradiction between proclaiming that you support supply management and, then, turning around and suffocating the dairy processing sector. Supply management can't be sustainable without a viable production and processing sector. It's often said that food processing hinges on a thriving agricultural sector, but I would also point out that, without a thriving food processing sector, agricultural production could not survive.

Let's talk about the $1.75-billion compensation package that was announced for dairy farmers. When I heard about it, I was very happy for my dairy farming friends, who are not just my suppliers, but also friends I play hockey with. However, more than six months later, nothing has been announced for dairy processors. That's an insult.

If the federal government wants to mitigate the negative impact of these trade deals, it needs to announce a compensation program for dairy processors as soon as possible. The time for empty promises is over. Now is the time for action. Such a program should have a component specially designed for small and medium-size businesses in Canada's dairy processing sector, businesses like ours, to meet our unique needs.

That means having access not just to technical expertise, but also to funding to help the dairy industry deal with this consolidation. The industry was sacrificed three times on the altar of international trade, and many will go out of business as a result. Closures have already been announced. Let's at least help them die with dignity, so to speak. That's what the government committed to doing.

● (1110)

The market access granted has led to the closure of 16 Canadian companies the same size as ours.

Now I will turn to solutions that go beyond financial assistance.

We need to seriously explore export opportunities, particularly for cheese curds, a product we, in Quebec, take great pride in. We invented it, and there could be opportunities to sell it abroad, but breaking into new markets is very tough.

Other mitigation measures include allocating import permits, commonly known as tariff quotas, to dairy processors. This is my heartfelt plea: stop issuing import permits to our customers, meaning, retailers and distributors. Does the government realize the impact decisions like that have on our markets? When the government issues import permits to distributors and retailers, it transfers product volumes in a sector developed by dairy processors through its investments in our customers. It makes no business sense. It completely dismantles the market, decimating our margins and creating an unfavourable investment environment.

Once again, I would ask the government to consider the unique needs of small and medium-size businesses in the dairy processing sector when it grants import permits.

In conclusion, this is what I'd like you to take away from my presentation.

A sustainable supply management system is not possible without a viable production and processing sector. The dairy products covered by the trade agreements are value-added products, such as cheese, yogourt and fluid milk, which generate the most revenue under the supply management price structure. Even more disturbing is the fact that supply management is attacking our sovereignty by accepting limits on exports. Before you know it, we'll be pouring huge quantities of skim milk down the drain.

I urge all the parties to remember our recommendations when they proclaim their support for supply management. The time for talk is over. The government must now put its money where its mouth is. Dairy processors need a compensation package and a program under which they are allocated import permits. The time for action is now.

● (1115)

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

We will now go to Mr. Letendre and Mr. Dumontier. I'm not sure who will be presenting, but you have 10 minutes.

Mr. Bruno Letendre (Chair, Les Producteurs de lait du Québec): Thank you, Madam Chair.

My name is Bruno Letendre, and I am the chair of Les Producteurs de lait du Québec, as well as a member of the Dairy Farmers of Canada board of directors. Thank you for the opportunity to address the committee today.

The dairy sector produces a stable supply of nutritious dairy products for Canadian consumers. As one of the top two agricultural sectors in seven out of 10 provinces, Canada's dairy sector is a driver of economic growth, and a leader in innovation and sustainability.

With over 10,000 dairy farms and 500 processors, the dairy industry has been a bedrock of Canada's rural communities for generations. In 2015, the sector's economic contributions amounted to nearly $20 billion towards Canada's GDP and $3.8 billion in tax revenues. In addition, the dairy sector sustains approximately 221,000 full-time jobs across the country.

In Quebec, some 5,000 dairy farms produce 3.37 billion litres of milk, generating a farm gate value of more than $2.6 billion. Dairy farmers and processors are responsible for 83,000 direct, indirect and induced jobs in Quebec and contribute $6.2 billion to GDP. Lastly, they generate $1.3 billion in tax revenue.

Canada's three most recent trade agreements were made on the backs of Canadian dairy farmers. CUSMA is but the latest example. The outcome of CUSMA negotiations goes far beyond dairy market access concessions, which alone represent 3.9% of Canada's 2017 milk production, in addition to the existing imports under the World Trade Organization, plus access already granted under the Canada– European Union Comprehensive Economic and Trade Agreement, or CETA, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, or CPTPP. CETA and the CPTPP represent 1.4% and 3.1% of the Canadian market, respectively. By 2024, total imports will be the equivalent of 18% of Canadian milk production.

CUSMA also requires consultation with the U.S. on any changes to the administration of Canada's dairy supply management system. A trade deal that forces a Canadian industry to consult with its direct competitor in another country over any administrative changes it might make domestically in the future sets a dangerous precedent, and in doing so, Canada is giving up part of its sovereignty.

The impacts of the recent trade agreements have created uncertainty, especially among young farmers, and could have a dramatic impact on investments in agricultural exports and processing. The agreements may also lead to job losses, with ripple effects in communities across the country. These impacts go beyond economic considerations; displacing Canadian dairy to grant increased market access creates additional uncertainty at a time when the mental health of farmers and rural Canadians continues to be a concern.

The Prime Minister has repeatedly committed to full and fair compensation to the dairy sector for the cumulative impacts of CETA, the CPTPP and CUSMA.

That commitment was reiterated in a motion unanimously adopted by the House of Commons in October 2018. It reads as follows:

> That the House call on the government to implement a program that provides financial compensation to egg, poultry and dairy farmers for all the losses they sustain due to the breaches to the supply management system in CETA, the CPTPP and the USMCA, and that it do so before asking parliamentarians to vote on the USMCA.

On August 16, 2019, the federal government announced a $2-billion compensation envelope to mitigate the impacts of CETA and the CPTPP. This does not include CUSMA. Of the announced $2 billion, $250 million was provided previously under the dairy farming investment program. The remaining $1.75 billion will be paid out over eight years. The dairy direct payment program, launched in the fall of 2019, is expected to pay out $345 million to dairy farmers by the program end date of March 31, 2020. The remaining commitment of $1.4 billion needs to be confirmed as direct payments and be paid out over the remaining seven years.

Canadian dairy farmers, who are all impacted by the recent trade agreements and are best positioned to know their own needs, have indicated that compensation should come in the form of direct payments. This is consistent with farmers' recommendations from the mitigation working group established by the federal government after the signing of CUSMA and the government's commitment to listen to farmers on how compensation should be paid.

The announced compensation package for the access granted in CETA and the CPTPP was a first step in this regard. However, in order to fulfill its commitment, the government will also need to deliver on its promise of full and fair compensation for the impacts of CUSMA.

● (1120)

The Canadian government has repeatedly stated that it wants a vibrant, strong and growing dairy sector that creates jobs and fosters investments. Compensation is needed to restore confidence within the sector. The compensation will provide stability for dairy farmers to move forward. Our dairy farms aren't relocating.

The government's assistance will be spent and reinvested in the Canadian economy. It will also help ensure that farmers can continue to maintain investments at current levels in the development and adoption of innovative on-farm best practices and sustainable technology. A viable and sustainable dairy industry is key to the ongoing provision of nutritious and healthy dairy products at an affordable cost to Canadians.

Instead of compensation in exchange for concessions granted in recent trade agreements, Canadian dairy farmers would have preferred to have seen no dairy concessions. Therefore, the Dairy Farmers of Canada recommend that:

1- The Canadian government continue to provide dairy farmers, in the form of direct payments, the remaining seven years of full and fair compensation to mitigate the impacts of CETA and CPTPP, and that the total amount be included within the 2020 main estimates.

2- The Canadian government fulfill its commitment to fully and fairly compensate dairy farmers to mitigate the impacts of CUSMA, as per the recommendations made by the mitigation working group established by the government following the announcement of CUSMA.

Let's move on to export charges.

CUSMA also contains a provision imposing export charges over a certain threshold on certain dairy products, setting a dangerous precedent that could affect other sectors in future trade deals.

CUSMA requires any exports of skim milk powder, milk protein concentrate and infant formula, beyond a specified amount, to face an export charge that effectively equates to a worldwide cap on the export of Canadian dairy products. As a result, these products won't be competitive in relation to the products of other global players.

The impact of the export charges must be mitigated. This could be done through administrative agreements with the United States, even after the ratification of CUSMA. These caps would set a dangerous precedent for any Canadian product that may be exported, since the caps would limit Canada's competitiveness in world markets.

It's also important to note that the impacts of recent trade agreements aren't limited to dairy farmers. The agreements also affect dairy processors, which are key to the long-term sustainability of the sector, as well as to other supply managed sectors.

Therefore, the Dairy Farmers of Canada recommend that:

3- The Canadian government negotiate an administrative agreement with the American government to mitigate the impact of the export charges contained in CUSMA, which are triggered after a threshold on certain dairy products, such as milk protein concentrates, skim milk powder and infant formula, has been reached.

It's important to note that, should CUSMA enter into force before August 1, the beginning of the dairy year, the export thresholds for skim milk powder, milk protein concentrate and infant formula will see a dramatic decline of nearly 35% after only a few months. This would be another blow to the dairy sector, which wouldn't be able to benefit from a transition period. It's also important to consider that the impacts of recent trade agreements aren't limited to dairy farmers.

Therefore, the Dairy Farmers of Canada recommend that:

4- The government establish a proper transition period for the dairy industry to adapt to the export thresholds, by ensuring that CUSMA doesn't enter into force until after August 1, 2020.

Unfortunately, the Canada Border Services Agency, or CBSA, doesn't have the training, tools or resources to effectively monitor what's coming in to Canada. These agencies must guard porous borders, which will become even more problematic as imports continue to increase.

Therefore, the Dairy Farmers of Canada recommend that:

6- Increased resources, tools and training be provided to CBSA to improve its effectiveness in dealing with border issues in a timely and transparent manner, particularly given the additional level of imports granted under recent trade agreements.

In conclusion, Canadian dairy farmers still maintain that any future trade agreement mustn't include market access concessions for the dairy sector.

The Dairy Farmers of Canada understand the importance of international trade for the broader Canadian economy. They're in no way opposed to Canada exploring or entering into new trade agreements, provided that such agreements don't negatively impact the dairy sector any further. With the support of the federal government, Canadian dairy farmers can continue to build on their successes, while contributing to the health and well-being of Canadians.

Thank you.

● (1125)

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

[*English*]

I now invite Professor Geist to present his testimony.

Thank you.

Dr. Michael Geist (Canada Research Chair in Internet and E-Commerce Law, Faculty of Law, University of Ottawa, As an Individual): Thank you very much. Good morning.

As you heard, my name is Michael Geist. I'm a law professor at the University of Ottawa, where I hold the Canada research chair in Internet and e-commerce law, and I'm a member of the Centre for Law, Technology and Society. My areas of specialty include digital policy, intellectual property, privacy and the Internet. I appear today in a personal capacity representing only my own views.

As you know, the typical approach before a committee on bill study is to examine the bill, identify provisions to support and areas for amendment. In this case, at least for my areas, what really matters is not what is in the bill, but what's not. The most notable issues from a digital policy perspective, which obviously have significant implications for issues addressed by this committee, won't be found in Bill C-4, by and large. Rather, they are found in CUSMA itself and they typically limit Canada's policy options for future policy reforms rather than require immediate legislative action.

This raises a significant challenge, since the flawed aspects of the deal can't be fixed in C-4. Rather they require a change in a trade agreement that is largely presented as a take it or leave it deal.

I'd like to briefly discuss four issues along these lines, some of which could create costs that run into the hundreds of millions of dollars for Canada: copyright term extension, the cultural exemption, privacy and data protection and Internet platform liability.

I'll start with copyright term extension, and I know you heard about that earlier today. The IP provisions in the agreement raise some significant concerns, but none more so than the requirement to extend the term of copyright from the international standard of life of the author plus 50 years to life plus 70. The additional 20 years is a reform that Canada rightly resisted for decades under both Liberal and Conservative governments. By caving on the issue, the agreement represents a major windfall that could run into the hundreds of millions of dollars for rights holders and creates the need to recalibrate Canadian copyright law to restore the balance; for example, perhaps addressing some of the issues you heard earlier on digital locks.

The independent data on copyright term extension is unequivocal. It creates less access to works, higher costs for consumers and no incentive for new creativity. In the words of professor Paul Heald, one of the leading researchers on the effects of term extension, "it's a tax on consumers" with no obligations to benefit the public.

This committee's copyright review conducted an extensive review into the issue and recommended establishing a registration requirement to obtain the additional 20 years of protection, to mitigate against the disadvantages of term extension and increase overall transparency of the copyright system.

Term extension doesn't appear in C-4 because the government negotiated a 30-month transition period to address the issue. I think the government has rightly not rushed into term extension and we should be taking full advantage of the transition period to follow this committee's recommendation to establish a registration requirement for the additional 20 years. That would allow rights holders who want it to get the additional protection they're looking for, while also ensuring that many other works enter into the public domain after their term of protection expires after life plus 50 years.

Second, I'll turn to the cultural exemption. Much like copyright term extension, there is no reference to the cultural exemption in Bill C-4. That's because the exemption doesn't require legislative reform. However, I'd argue that the exemption is one of the most poorly understood aspects of this agreement, at least in the areas I focus on.

Consistent with government claims, the cultural exemption covers a broad range of sectors with a near complete exemption for Canada. While the government has emphasized its broad scope, it rarely speaks of what the U.S. demanded in return, namely the right to levy retaliatory measures of equivalent commercial effect where Canada relies on the exemption. The retaliatory measures provision means the U.S. is entitled to levy tariffs or other measures that have an equivalent commercial effect in response to Canadian policies that would otherwise violate CUSMA, if not for the cultural exemption.

Since the provision does not limit the response to the cultural sector, the U.S. can be expected to target sensitive areas of the Canadian economy such as the dairy sector in order to discourage its use. That was the U.S. strategy recently when responding to a French plan to levy a new digital tax, which led to plans or threats to levy $2.4 billion U.S. in tariffs against French goods such as wine, cheese and handbags.

How could this play out in a Canadian context? The recent broadcasting and telecommunications legislative review panel report—the so-called Yale report—contains what I would view as many ill-advised recommendations on regulating the Internet and online news services such as news aggregators.

● (1130)

Should the government adopt the broadcast panel recommendations on content, the U.S. would have a strong case permitting retaliation with measures of equivalent commercial effect. Panel proposals that may violate the new trade agreement include requirements to pay levies to fund Canadian content without full access to the same funding mechanisms enjoyed by Canadian firms, licensing requirements for Internet services that may violate NAFTA standards, and discoverability requirements that limit the manner in which information is conveyed on websites and services.

I emphasize that I think this is bad policy that should be rejected. However, for the purposes of this review, note that the policy flexibility to enact reforms in this area is severely limited by the agreement, which establishes the possibility of retaliatory tariffs in the hundreds of millions of dollars.

Third, I'll address the digital charter and privacy. Limitations on Canadian policy also arise in the context of privacy and data protection. Unlike the cultural exemption, which permits violations of the treaty subject to those retaliatory tariffs, on the issue of privacy, Canada would run the risk of simply being offside its commitment under CUSMA.

Once again, there is no provision on point in C-4—there's no need for one—because CUSMA prohibits certain privacy-related provisions, rather than requiring them. For example—and I know this came up in the previous panel—CUSMA includes a provision restricting data localization, which refers to measures requiring data be stored within Canada. It features a more restrictive provision than that found in the CPTPP. There are some general exceptions, but the Canadian government will be restricted in its ability to establish localization requirements under the agreement.

Those implications I think are far-reaching. Consider the wide range of policy issues with data right now: Canada's digital charter and its proposed privacy and data reforms, concerns about data sovereignty, AI-related issues and fears about the competitiveness of Canadian businesses in relation to Canadian data.

The Canadian government itself has established localization requirements as part of its cloud computing policy. Indeed, there is a recognition that data localization may be needed in some circumstances, yet under this agreement, Canada has limited its ability to regulate. The same is true on the issue of data transfers, as CUSMA also limits the ability to restrict them. As we enter into a discussion with the European Union about the adequacy of Canadian privacy laws, there are concerns that a data transfer provision could leave Canada between a proverbial privacy rock and a hard place, with the EU demanding certain restrictions and CUSMA prohibiting them.

Finally, I'll address Internet platform liability. A similar dynamic arises in the context of Internet platform liability, which raises the question of what responsibility lies with Internet companies for third-party content on their sites. The issue captures large players such as Google and Facebook, but frankly, almost anyone that offers user comments or content. There's no provision in C-4 on this either. Once again, the reason is that CUSMA restricts policy in the area, rather than requiring a new provision.

CUSMA includes a legal safe harbour for Internet intermediaries and platforms for content posted by their users. The rule is designed to provide Internet platforms with immunity from liability, both for the removal of content, as well as for the failure to remove content. Contrary to some claims, that does not mean that everything goes: sites and services are still subject to court orders and the enforcement of criminal law. Further, intellectual property rights enforcement is also exempted. However, some have now argued that the responsibility of Internet intermediaries should go further, with potential liability for failure to act, even in cases of harmful, albeit legal, content. I think that issue raises important freedom of expression concerns and questions about how we balance freedom of expression and speech with protection from harm.

The issue with C-4 and CUSMA is not to debate where Canada should land. The broadcast panel recommended liability for online harms, even if the content is legal. Others, including me, would argue that liability should rest with illegal content, but to create liability for legal content is to render Internet companies judge and jury over what remains online, thereby further empowering the large Internet companies, as well as limiting competition and freedom of speech.

The key point here is that there is a policy debate to be had, and under CUSMA, Canada has already committed to a position, one that restricts our ability to establish liability for third-party content.

I look forward to your questions.

● (1135)

The Chair: Thank you very much, Professor.

We'll now begin with our six-minute round of questions. Our first speaker is Mrs. Gray.

Mrs. Tracy Gray: Thank you, Madam Chair.

Thank you for being here, Mr. Geist. I have followed some of your podcasts; I find them interesting.

I have a couple of quick questions. You started off by talking about innovation and competitiveness with this extension and how it could potentially restrict them. I'm wondering if you could talk a bit more about that and how it impacts the industry, and also how it impacts public organizations such as libraries and educational institutions in accessing information in the future.

Dr. Michael Geist: Thanks for that question, and for the podcast plug as well.

Voices: Oh, oh!

Dr. Michael Geist: In fact, I would note that this week's podcast, which dropped just a couple of hours ago, features an interview with Paul Heald, the expert on copyright term extension. We specifically talked about his research in the area and the costs and consequences of term extension. He's done some really interesting work that looked at things like Amazon data to try to identify the impact of access to works when they're in copyright and once they fall into the public domain. What he found in fact was that works that are out of print but still in copyright become much tougher to access. It hurts both authors and the public, whereas once works fall into the public domain, they become more widely accessible. He looked at Wikipedia data to try to put a value on the value of the public domain by noting the use of pictures that are in the public domain and what their value would be. He noted that it runs into the hundreds of millions of dollars.

In direct answer to your question, we now have multiple studies that point to the enormous costs that come from term extensions. What that would do in this case is literally stop our public domain from expanding for two decades—for really an entire generation. What that means from an education perspective at a time when, if you go into our schools, especially at elementary and high school levels, you find that the public domain works still play a critically important role.... In fact, the Ontario Book Publishers Organization conducted a study on the role of Canadian works in our schools. What they found was that the public domain still constitutes an important part of what we are accessing and using in our classrooms. If we extend the term of copyright, we increase costs and we make those works ultimately less accessible and more costly for education.

Mrs. Tracy Gray: Great, thank you for that.

I also want to touch base on registration requirement. You did mention it briefly. It seems there are a number of different beliefs about this and whether it's good or not. Could you explain the analysis as to why that would be appropriate for the industry to move forward with.

Dr. Michael Geist: As I mentioned, it is something that was recommended by this committee as part of the copyright review. I think what it seeks to do is strike a balance between what we now face as an obligation under the treaty.... The committee also noted that it would not extend the term of copyright, but for an obligation under one of these treaties, and now we face that.

What registration would do is essentially say that we will meet the international standard of the Berne Convention of life plus 50, and that Berne Convention does not allow you to put forward registration requirements. That's for the standard of the life plus 50. For that additional 20 years, that effectively can fall outside that registration requirement found in the Berne Convention, so we can therefore say that we are at life plus 50 plus 20. We will give the option to extend the term of copyright so, if you have witnesses and others who say they think they would benefit from term extension from that extra 20 years, they can get it.

However, for the overwhelming majority of works, people don't have those same kinds of concerns, and they are oftentimes happy for it to enter into the public domain. Bear in mind that we're talking about the life of the author and now 50 years after they've passed away. Those would fall into the public domain without that extension. I think it would put Canada in the position of really being a model for how to more effectively deal with term extension, and into a better job of striking the balance between, on the one hand, providing protection for those who want it while, on the other hand, doing what we can to preserve the harm that comes from term extension.

● (1140)

Mrs. Tracy Gray: Thank you.

I'm going to split my time since we only have one round of questions.

Mr. Earl Dreeshen: Thank you very much.

I have a couple of questions for the dairy farmers and producers and a quick comment on the precedent regarding the sovereignty we've given up in regard to milk powder, protein powder and infant formula, and also the question of the export threshold. Were there any discussions on that? Does the agreement follow any of the international trade rules you've seen? Was there any consultation with you?

First of all, perhaps I could ask Mr. Letendre if you would speak to that—and I only have about a minute left for both of you.

[*Translation*]

Mr. Bruno Letendre: Thank you for your question.

No, we were not consulted on these items. I'll give you an example. The cow produces a product that the consumer doesn't always need, so we always have a surplus. By agreeing to limit that, the government has attacked the sovereignty of the country. Dairy processors could add their comments, because they have these products to process and they are unable to sell them.

So we have not been consulted, and this is an obstacle to our sovereignty and the development of the dairy industry.

[*English*]

Mr. Earl Dreeshen: Thank you.

Mr. Boivin.

[*Translation*]

Mr. Luc Boivin: I agree with that. I am sharing with you the latest consumption data from the Canadian Dairy Commission, or CDC.

Fluid milk sales in Canada this year are down 1.8% and yogurt sales are down 3%. Cheese sales increased by 1.5%, but this includes the measures related to the tariff rate quota, i.e. imported cheese. Sales of Canadian cheese are therefore down. It is the increased demand for cream and butter that creates the need in the market, which means that there is no outlet for non-fat solids. That drives the price down at the farm gate. Under the CDC's current mechanism, a force majeure is declared at that time and the price of class 1, 2 and 3 products is increased.

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

Mr. Lemire, you have the floor.

Mr. Sébastien Lemire: We can clearly see that this new free trade agreement is a step backwards for you, compared to the old NAFTA, and that it hurts your bottom line.

Do you think that what can be done indirectly about managing surplus protein, milk powder and all that is a concrete step towards the end of supply management?

Mr. Luc Boivin: That's what they say. There have been so many blows to supply management that the model is falling apart. We cannot ask cheese plants, people who make yogurt and who produce fluid milk to continue to pay a higher price for their milk in order to maintain the status quo on the farm.

Since the last agreements, the government has hurt our lucrative Canadian cheese markets. Now we are feeling the effects of falling prices. I will take the example of Fromagerie St-Fidèle. Swiss cheese is imported from Europe at a cost of $5.50 per kilogram once it arrives in Montreal, while the cost of our milk at the plant is $9 per kilogram. How do you want us to be competitive in a market that is not growing? This market is stagnant, despite some small breakthroughs for butter and cream. On the whole, we are facing unfair competition and this is affecting our profit margins. We are losing markets and our sales are declining. This is what we are seeing.

Profit margins in the Canadian dairy processing sector are collapsing. This is hurting our competitiveness and the sustainability of our businesses. You have sacrificed the dairy industry and there will be negative repercussions. You are Quebec MPs; listen to us. Quebec will be the most affected province. Our industry processes 80% of Canada's yogurt, and 65% of Canada's fine cheeses are made in Quebec. There will be repercussions in all regions of Quebec.

The supply management system ensures that we deliver milk FOB to the plants. This will mainly affect plants located in dairy basins where there are not many consumers to encourage consolidation of the industry towards the markets, and therefore towards the consumer basins in the Toronto and Montreal regions.

On the whole, it won't be good. In the early 2000s, I experienced the closure of the Lactel Group in my region. Plants were closed and many jobs were lost in Quebec regions. In my opinion, there will be big repercussions, but the government is not reacting at all. We are proposing solutions, but nothing is happening.

● (1145)

Mr. Sébastien Lemire: Thank you.

I will now address Mr. Dumontier and Mr. Letendre.

Gentlemen, as you mentioned, May 1 is a very important date for you. There will be a three-month period left before CUSMA comes into effect on August 1.

You said tons of surplus protein could be exported. What will be the practical impact? Currently, how many tonnes are you exporting?

Mr. François Dumontier (Director, Communications, Public Affairs and Trade Union Life, Les Producteurs de lait du Québec): Today we export about 80,000 tonnes and this could increase to 100,000 tonnes. We've done a multi-year modelling and submitted it to the government. This will continue for the reasons Mr. Boivin mentioned. The increase in the consumption of fatty products necessarily leads to an increase in the structural surplus of non-fat solids.

You mentioned that the ratification date is important. Indeed, the implementation will take place in two phases: a first ceiling of 55,000 tonnes and a second one of 35,000 tonnes. The agreement provides that these ceilings will be calculated in terms of the dairy year, which begins in August. If the agreement is ratified before then, we will automatically move from the first ceiling to the second, which is 35,000 tonnes, in August. This will accelerate the impact that this ceiling will have on us.

Mr. Sébastien Lemire: For the benefit of my colleagues, I'd like you to confirm my understanding. If Canada signs the agreement before May 1 or even a month before that, then you're going to be in a race against time because you're going to have to move up to 55,000 tonnes of product in a very short period of time, in two or three months. Is that right?

However, if the agreement is signed after May 1, you would have at least one dairy year to dispose of 55,000 tonnes before being subject to a 35,000-tonne ceiling. You would then go from 80,000 tonnes to 35,000 tonnes. Is that right?

Mr. François Dumontier: This agreement provided for a transition period that set a higher ceiling for the first year and then a lower ceiling for the second year. So, if the agreement is ratified and comes into force before the second year of the dairy sector, that is, before August, the transition period will last less than a month. We will move immediately to the second phase and the lower ceiling.

Mr. Sébastien Lemire: With respect to the offset program, my question can be directed to both groups.

We're talking about full and fair compensation. Would you have preferred a cash payment mechanism, a protection mechanism against competition, or both?

Mr. Boivin, do you have any comments?

Mr. Luc Boivin: Presentations were made regarding the measures. One of the measures we are advocating is, of course, the one related to the retailer code. It is a matter of framing practices to ensure that, with regard to supply management, there is control throughout the chain.

We are subject to price controls with respect to our raw material, but once we begin to sell our products in the marketplace, we face a highly consolidated retail market. This is not regulated. Similar measures have been put in place in England, among others, which have been successful and have helped control the profit margins of dairy processors.

Another important point we want to highlight is that we have been sacrificed on the altar of international trade. The government needs to take action.

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

[*English*]

Our next speaker, whom I skipped by mistake—my apologies—is Mr. Erskine-Smith.

You have the floor.

Mr. Nathaniel Erskine-Smith: Thanks very much.

Professor Geist, thanks for joining us.

We heard testimony earlier that maybe it wasn't our idea to extend copyright, that we didn't want it, but accepted it in consideration of the totality of the agreement and its benefits overall.

I take it that you would have us make a recommendation that this committee has previously made, which is that we should encourage the government to take the 30-month period to create a registration framework for the extension of 20 years. Is that right?

Dr. Michael Geist: That's right.

Mr. Nathaniel Erskine-Smith: I'm less familiar with the cultural exemption concerns that you raise. Are there any particular recommendations that you think ought to be made by this committee?

Dr. Michael Geist: Listen, I think it's quite clear that there is a desire to have the cultural exemption in place, and I understand why, but I raise it to ensure that members of Parliament better recognize the costs associated with the cultural exemption, particularly in the current environment that we're facing.

Within, let's say, the digital chapter, there are provisions that could be triggered. As I've mentioned, there are clearly proposals, such as in the Yale report, that could be triggered. I've seen some that I think mistakenly think this is almost like a “get out of jail free” card, that you can do whatever you like from the perspective of the Canadian cultural sector.

● (1150)

Mr. Nathaniel Erskine-Smith: So it was preserved, but at some cost.

Dr. Michael Geist: At a significant cost, yes.

Mr. Nathaniel Erskine-Smith: When we talked about the digital chapter, I think you highlighted something that Ms. Rempel Garner had highlighted as well, namely, the concerns about data localization rules.

When I read article 19.12, I think it would have been preferable if it mirrored article 19.11, which at least allows us to limit cross-border data flows where it's in the public interest to do so. We don't see any exception or limitation on the restrictions on data localization.

When we look at the cross-border transfer of information by electronic means, is it any comfort at all that we can restrict cross-border data flows in the public interest, especially in reference to article 19.8, which deals with privacy protections?

Dr. Michael Geist: I think it's of limited comfort.

When this kind of provision was being negotiated as part of the TPP—indeed, they're similar provisions, although this one is even more limited, as I mentioned—a U.S. group, Public Citizen, did a study on the kind of comfort that the public interest exception provides. They took a look specifically at WTO cases where that language was used. They found, I believe, in 43 out of 44 cases that attempts to use public interest as the exception were defeated.

Mr. Nathaniel Erskine-Smith: That's interesting.

Dr. Michael Geist: The practical effect, at least under WTO jurisprudence, has been that it has not provided much comfort.

Mr. Nathaniel Erskine-Smith: One note of optimism may be the fact that there is in 19.8 a consideration specifically of the public interest related to privacy, but I take your point on the history of it.

When we talk about safe harbour—and you have previously written critically of the copyright extension, but in support of embracing safe harbour rules—I generally side with you in that we shouldn't be talking about imposing liability for content that isn't illegal in the first place.

My worry when I read 19.17, I think it is.... Perhaps I can read it out a little bit here:

> ...no Party shall adopt or maintain measures that treat a supplier or user of an interactive computer service as an information content provider in determining liability for harms...except to the extent the supplier... has, in whole or in part, created, or developed the information.

I don't expect Facebook, Google or whatever online company is hosting third-party content, to be developing and creating content. Otherwise, of course, liability would attach. My concern is with the promotion of content.

I can list off any number of illegal kinds of content—defamation, harassment, hate speech, disinformation in the context of elections, counterfeit goods that are advertised for sale. Shouldn't there be some liability? Is the liability limited to the criminal law, and would that be the way around the safe harbour provision?

Dr. Michael Geist: I think there are a few things. One, where we're talking about unlawful content, and one of the platforms is made aware of it, I think the answer is yes, there ought to be liability for failure—

Mr. Nathaniel Erskine-Smith: Would this provision get in the way of that in any way?

Dr. Michael Geist: I don't think it gets in the way of illegal content. Part of the problem is that fake news isn't necessarily illegal content, although we can recognize the harm—

Mr. Nathaniel Erskine-Smith: Sure.

Dr. Michael Geist: —and so there are questions about how to address or deal with some of those kinds of issues.

Mr. Nathaniel Erskine-Smith: But is that only because it's covered by the criminal law and there's an exception at paragraph 4 of article 19.17 in reference to the criminal law?

Dr. Michael Geist: The potential applicability here does still cover illegal content.

I think it's important to recognize that this language didn't come out of nowhere, right? It came out of U.S. legislation—

Mr. Nathaniel Erskine-Smith: Yes.

Dr. Michael Geist: —known as the CDA, section 230(c). I don't think we have to guess a lot about how that kind of provision can and will be used. There are two decades of jurisprudence in the United States to see precisely how it's used, and it has been used to grant a very broad—

Mr. Nathaniel Erskine-Smith: So if I want a law, for example, that says where there is illegal content at a minimum for, say, advertising counterfeit goods—that seems like an obvious thing that shouldn't happen—so where goods are advertised that are counterfeit and Facebook profits from that ad, or YouTube profits from that ad, I would like them to disgorge that funding or those profits in some fashion. I would like a law in place to ensure that happens and would not be precluded by 230 or precluded by CUSMA.

● (1155)

Dr. Michael Geist: I think there are a couple of issues there. One is whether we're talking about illegal content to the extent to which you have legislated to render this kind of content illegal, and it sustains a potential Charter challenge, then you're okay on that front.

Bear in mind that you switched quickly to say it's a Facebook ad. Oftentimes what we are talking about here within this context, though, isn't necessarily the advertising that Facebook might be profiting from, but rather the third party content that is posted by users. That's where a lot of the attention has to be focused.

Mr. Nathaniel Erskine-Smith: But—

The Chair: Mr. Erskine-Smith, unfortunately that's your time.

We now move to Mr. Masse.

Mr. Brian Masse: Thank you, Madam Chair.

Thank you to our witnesses.

Mr. Geist, I'm going to continue. One of the things I was hoping the Americans would have put on the table for us is Crown copyright. They don't have Crown copyright, but now we're in a situation that we're looking at either we accept this deal—there have been some improvements from the Democrats in Congress from the original one that was drafted—or we continue under status quo.

The status quo is what we have now. Really there is quite a debate about whether Trump could even pull out on his own, and then we would reverse to the free trade agreement. There's a whole process in place. There's quite a legal debate about how that would go, but we're left with the choice now as to whether we go ahead, or not.

Looking at the two options, I find going ahead is preferable, but also looking at ways we can ameliorate some of the damages we have.

Would Crown copyright be one of those small things that we can do? This is the elimination—I have tabled that again in the House of Commons—so that public information data, all our studies that are done here that are now restricted.... Canada is the only country that does that, which I'm aware of. Our law is based from 1909 from the United Kingdom and has been updated in 1911.

If we were to abolish Crown copyright to provide more public access to research and other government documents, would that be a thing that at least would have a small benefit to deal with some of the restrictions we have on information and changes we might get here?

Dr. Michael Geist: Right. Thanks for the question.

Listen, I'm in agreement with the private member's bill you have put forward. I think there are many from across the country from a wide range of areas who are concerned about the continued use of Crown copyright.

I guess I would say this. I thought this committee did exceptional work as part of the copyright review. I recognize that not everybody around the table was part of that review, although some were. I would say it provides the road map for action for this government.

In particular, if we are to move forward on a number of issues that I think would be widely recognized as measures that weren't things Canada was looking for, but basically we have to take because it's part of the deal.... Term extension is one. Some of the expansion on digital locks with criminalization would be another.

Mr. Brian Masse: Yes.

Dr. Michael Geist: It seems to me that recognizing the need for balance in copyright would suggest that one of the things the government ought to be doing is seeking to restore some of that balance. Crown copyright is one way to do it. Digital locks is another. Full flexibility, frankly, with fair use or flexible fair dealing provision—all things recommended in the industry committee's copyright review—are the sorts of things I think would help restore the balance. I think it would be in our broader interests as well.

We don't necessarily need a trade agreement, of course, to do it, but given that we have this 30-month period, we ought to be using that 30-month period both to get the term extension issue right but at the same time recognize that this has created or this will create a distortion in the balance of copyright, given that we largely are just acquiescing to some U.S. demands.

So it would be in our interests to restore that copyright balance by looking to the copyright review by the industry committee and looking at some of those kinds of changes—Crown copyright, the registration requirement, digital locks, expansion of fair dealing to a flexible fair dealing approach.

Mr. Brian Masse: We spent a lot of time on that. There were a few members who were here. We went across the country. We just finished it before Parliament broke. We could use that as a road map.

I did ask a question earlier about our Privacy Commissioner. I just want to make sure of this. Is there any risk in this agreement that decisions of our Privacy Commissioner might be challenged? The U.S. does not have a privacy commissioner. I'm worried, too, that we could have CRTC decisions challenged, as an example. You may not have an answer for that now. But with the U.S. not having a privacy commissioner, I'm just wondering what....

Dr. Michael Geist: That's a really interesting question. My instinct is to say that, unlike some of the broadcast and telecom issues coming out of the Yale report that would largely be enforced by the CRTC, which I do think would be subject to challenge.... If you put in a licensing system for news aggregators online and mandate that they have to pay levies, that does strike me as the sort of thing the CRTC would enforce, and that would create the possibility of a challenge.

● (1200)

Dr. Michael Geist: The issue on the privacy side, though, and this points to the weakness of our privacy laws, is that the Privacy Commissioner's decisions are simply findings and are not enforceable.

Mr. Brian Masse: Yes.

Mr. Brian Masse: Yes.

Dr. Michael Geist: I think the Privacy Commissioner could issue a finding that ostensibly runs afoul of the agreement. I think the initial response would be, well, nobody has to actually abide by it if it's merely a finding. You actually need a court order to be able to do that, which I think points to an area I hope this committee takes up with earnest in the comings months, which is to ensure we have better privacy laws—

Mr. Brian Masse: Yes.

Dr. Michael Geist: —that include the kind of enforceability that, in theory, might lead to the potential for a challenge if there were an issue that was offside.

Mr. Brian Masse: For privacy, we won't know until we try to craft stronger privacy laws whether they could be challengeable under this new agreement. Right now it's not likely to be challenged because our privacy laws aren't strong enough the way they're written.

Dr. Michael Geist: As I say, I don't think a privacy commissioner's decision would be challengeable because they're not enforceable.

Mr. Brian Masse: Yes.

Dr. Michael Geist: As for what our privacy laws look like, the agreement speaks of privacy laws, but it's very flexible in that regard. It even incorporates some of the lower U.S. standards that we see in many places in the United States as meeting “the standard”.

Mr. Brian Masse: Thank you very much.

The Chair: Thank you very much.

That is all the time we have today, so I'd like to thank the witnesses again for their time and testimony.

With that, can I have a motion to adjourn?

An hon. member: I so move.

(Motion agreed to)

The Chair: We are adjourned. Thank you.