



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

## **Standing Committee on International Trade**

---

CIIT • NUMBER 051 • 1st SESSION • 41st PARLIAMENT

---

**EVIDENCE**

**Thursday, October 18, 2012**

—  
**Chair**

**The Honourable Rob Merrifield**



## Standing Committee on International Trade

Thursday, October 18, 2012

• (1530)

[English]

**The Chair (Hon. Rob Merrifield (Yellowhead, CPC)):** Before the committee gets out of hand, I'd like to call it to order.

I want to thank our witnesses for coming forward.

During the first hour we're dealing with the comprehensive study on a high-level economic partnership agreement with Japan. We'd like to thank our witnesses for coming forward.

We have Sustainable Development Technology Canada, represented by Vicky Sharpe, president and CEO. Thank you for coming. You have a guest with you, and I'll let you introduce him as well.

By video conference from Calgary, Alberta, we have the Canadian Association of Petroleum Producers, represented by Greg Stringham, vice-president of oil sands and markets.

Greg, can you hear us all right?

**Mr. Greg Stringham (Vice-President, Oil Sands and Markets, Canadian Association of Petroleum Producers):** I can hear you fine. Can you hear me okay?

**The Chair:** You're coming through loud and clear, so we're all set to go. Very good.

We'll start with Miss Sharpe. The floor is yours.

**Dr. Vicky Sharpe (President and Chief Executive Officer, Sustainable Development Technology Canada):** Thank you very much, Mr. Chairman.

I'd like to introduce my colleague, Sailesh Thaker. He's vice-president of industry and stakeholder relations at SDTC.

Thank you for the opportunity to join you today to talk about what we believe is a very important part of Canada's being able to diversify its economy.

You have in your first couple of slides some references to SDTC. We are essentially a commercialization machine for clean energy and clean technology. We work with the primary industries in this country to provide sources of technology solutions and innovation so that we can be more competitive and more profitable both domestically and internationally.

I'd like to draw your attention to slide 4, which talks about the opportunities globally in clean technology. As you can see here, we have currently defined in 2010 a trillion-dollar market, which brings about \$9 billion in revenue and 44,000 jobs, but you can see that we only have just under 1% of this clean technology market. Clean

technology is very broadly defined, but it does include clean energy and things that are critical to this country.

If we look at the projections for where this market is going, in 2020 we have in the order of a \$3 trillion market. There are larger numbers than that. You can see that if we are able to seize just twice the current share that Canada has, then we will be able to translate that into \$60 billion in revenues and 126,000 jobs, numbers that are absolutely as significant as some of our better-recognized sectors. I point that out as a very important stepping-off point for our observations.

If I move to slide 5, what we're saying is that the companies that we are building to try to capture more of Canada's share of this global market—these clean technology companies—are different from the average SME in that 80% of them are export-oriented, whereas about 10% of the average SMEs are oriented towards export markets. Of this number, some 55% of them are exporting to non-U.S. markets, and atypically, their revenues, some 50% plus, are derived from export sales, so you can see that the work that's being done to undertake various trade arrangements is really important to the clean energy and clean technology sector.

If I move to slide 6, the important point being made here is that while Japan is clearly a hi-tech, knowledgeable, and sophisticated country, I think there are opportunities that perhaps we have missed. You can see a declaration from the Prime Minister of Japan here that they very much intend to be able to solve their technology problems and challenges, and that energy efficiency and renewable energy are an important part of that.

In the wake of the 2011 earthquake, you have a complete repositioning of Japan in the way that it will approach its supply of energy, and also an increased emphasis on using less energy and obtaining it from different sources.

We've also perhaps missed the point in the past, but Canada, in fact, is a global leader in clean technology. From this chart that you can see here—the source is the Cleantech Group—that Canada lies number seven globally in this assessment of the competitiveness of our economy and our ability to provide clean technology solutions globally, and Japan sits at the number 20 position, so we have not only a great capacity here in Canada but a very willing and receptive market in Japan.

If I then move you to the next slide with some more specifics, I'd like to indicate the two areas of clean energy technologies and how we have specific companies inside the SDTC portfolio that are examples of how we might move into this marketplace.

●(1535)

There is a company called Morgan Solar Inc. It is a solar technology that does not fall into the traps of some of the prior investments. It is able to deliver a very cost-effective solar response to Japan's explicit statement that it will bring in feed-in tariffs as a means of stimulating renewable energy supplies into that country. This technology is an example of one that could respond.

We have very innovative clean technologies—cleaner coal and carbon capture and storage—in the form of a company that is working with the Petroleum Technology Research Centre in Saskatchewan. It's a project called Aquastore. Again, Japan has stated quite clearly that it intends to resource more coal, and it would like to use these technologies. This one hits in the bull's eye of what they are looking for.

There are a number of other examples there. There is a tidal power opportunity in Clean Current Power Systems Inc. In the area of liquefied natural gas, we have a play with a company that is improving the ability to ensure safe delivery of gas in pipelines. It's called Synodon Inc. It is highly relevant to that market.

On the energy efficiency side—another declared interest for Japan—I can talk about Fifth Light Technology, a company that has advanced lighting technologies and software controls for commercial buildings. I could also refer to SWITCH Materials Inc., which is a building technology that essentially improves the efficiency of windows.

I also wanted to highlight Sunwell Technologies Inc. It's a company that we have an investment in. It has been working in Japan for 15 years. It provides technology that allows cooling in a more efficient manner, both at the building level and for retail buildings. It makes ice, but it also helps manage the load profile for the companies that use this technology. It's in the Ritz-Carlton in Osaka, if you have ever been there. I haven't.

We have a real foot on the ground there for what is a very broad-spectrum technology opportunity. I think we can demonstrate that we have things relevant to Japan and that we can actually deliver some competitive technologies to them.

Japanese companies are also investing in Canadian clean technology. We have partnered with Export Development Canada; we have entered into a relationship with them to be able to tackle this marketplace. We have had investments from Japan in Canadian companies. You are going to hear from the Canadian Association of Petroleum Producers that Japan was one of the early partners in the oil sands and making the extraction of that resource more economical. It's a long-standing and valuable relationship in a number of sectors critical to our economy. We currently have in our portfolio over \$100 million worth of projects in which we have Japanese partners.

Japan is a market for us. It is an investor in Canada. It is also a partner that we can work with to reach out into larger global markets. They have their infrastructure and connectivity, and it's important that we be able to take advantage of those relationships. There is a company called BioAmber Inc. It is one that is in our portfolio into which Mitsui has put about \$15 million. The technology is being proven out and built in Sarnia. However, they have entered into an

exclusive arrangement so that if this all proves to work well—and we have every belief that it will—you will see a second plant constructed in Thailand and a third plant in Brazil or somewhere in North America. This synergistic relationship with Japan is enabling our companies to move out into broader markets, not just into Japan.

●(1540)

It fits very nicely with what we believe is a very important country for which we should see a bilateral trade arrangement and more partnerships, which will enable ones like BioAmber and Mitsui to be able to progress.

In conclusion, what we are saying is that Canada has a clean technology sector that leads in global innovation. Japan is in need of new clean energy and energy-efficient technologies that meet their particular energy and efficiency needs. We have great companies in Canada that can address Japan's needs and help them to meet those goals. A trade agreement would allow us to increase these opportunities for the Canadian clean technology sector, and because the clean technology sector is so significant globally, that will help Canada broaden its ability to seize a greater share of the global economy, which will obviously have a stimulus response back into our own domestic economy. We consider that to be very important.

Thank you very much.

**The Chair:** Thank you for your presentation. I'm sure it stimulated lots of thought and questions.

Before we get to that, we'll hear from Greg Stringham, from the Canadian Association of Petroleum Producers. Greg, the floor is yours.

**Mr. Greg Stringham:** Very good. Thank you, Mr. Chairman.

Thank you very much for this opportunity not only to appear before your committee but also to do it by video conference. It helps facilitate the technology, as was just referred to by Ms. Sharpe.

I am really appreciative of the clerk of your committee as well as the staff for distributing the materials we sent out, and hopefully you have them in front of you.

Do you have them already, Mr. Chairman?

**The Chair:** Yes, we do.

**Mr. Greg Stringham:** Perfect.

I won't go into this in a lot of detail. I'd like to explain what we see in the opportunities, on behalf of the oil and gas industry, to strengthen what is already a very strong relationship with Japan.

As you and I and also some of your colleagues know, Mr. Chairman, our association represents just over 100 oil and gas companies from the east coast to the west coast to the north of Canada. About 90% of all the oil and gas produced in Canada is represented by our association. When I make these comments, it's really on behalf of the large, the mid-sized, and even the small companies that are looking for the strength of relationship that they have seen over the long period of time with Japan.

Quite interestingly, we've talked about the Asian investments we've seen recently in our sector and also the trading relationship with other countries. Actually, with Japan we have a very long-standing relationship. As Ms. Sharpe mentioned, just to remind some of your committee members, Japan Canada Oil Sands Limited actually commenced back in 1978. To put that in oil and gas terms, that's when we had our first major oil sands project after Suncor. We went into Syncrude in that year, so you can see that they have been here involved in our sector for a long time.

The other thing that is quite interesting to note is that Japan was actually there as some of the formation companies, along with the government research associations that predate the SDTC, but again in the development of this new drilling technology that we call steam-assisted gravity drainage. They were one of the first partners in that project back in 1992, so there has been this long-standing relationship that began on the oil side.

On the natural gas side of things, there were other countries, but they were one of the primary funders and participants in the major gas hydrate research project that the federal government, some provincial governments, and others were directly involved in with industry to try to tap into this new resource up in the Northwest Territories. That pilot project went on for a period of almost nine years, from 1999 to 2008. Again, hundreds of scientists from many countries around the world used that to get not only a look at Canada's resources but at how we can develop technology here and use that in other countries around the world.

That's some interesting background to the Canada-Japan relationship that not many people are aware of when they start looking at that as an opportunity not only for resources but as a partner in developing our resources here in Canada.

Equally, even in this building where I sit right now, there are many Japanese companies that have come to Canada to provide goods and services to our sector. In this building, we have Sumitomo, which provides steel, pipelines, and other things as well. We have Mitsui and others, and they have really tried to integrate into the economy to bring their expertise, their supplies, and other things to help enable the development of Canada's resources.

That's the background. I wanted to give your committee a flavour of what we see as the biggest opportunity to build on a strong base of trading relationship with Japan right now, and that's clearly in the area of natural gas. As Ms. Sharpe mentioned, due to the 2011 incident at Fukushima, the Japanese are clearly interested in generating more electricity for their country through the use of natural gas.

What follows in the subsequent slides—and I will not walk through every one of them—is really a background that sets the case for both why they are interested in that and how we as Canada can capitalize on this opportunity to try to make sure that the Japanese see us as a major supplier of this product.

First off, the technology that's been developed in cooperation with governments and agencies like SDTC has enabled the amount of natural gas accessible in Canada to more than double over the last few years. This technology is tapped into resources that we always knew were there but that we required technology to enable. That

technology is providing not only Canada but all of North America with a very strong surplus of natural gas such that we are now looking at the opportunity to export it around the world. Clearly our industry is already on the global stage, and this is just an enhancement.

In the slides provided to you, I have shown the economic drivers. There's clearly a difference in the LNG, or liquefied natural gas market, in the world that Japan is paying for. It's priced in oil prices. The prices of natural gas here in Canada right now are priced in natural gas prices. It's the big difference between the two that provides this economic driver behind it.

I've also provided some information on the costs of achieving that opportunity. We can answer questions on the details, but it outlines what we need to do in terms of infrastructure, liquefaction, and manufacturing facilities to do that, and a number of other things. It's not simply a question of moving that natural gas as we do across Canada through a pipeline today; it does require significant technology and investment to allow that to happen.

● (1545)

The other slide is important in that what I've given to you is the demand growth that we see happening across all of Asia. While Japan, as you can see from one of the slides I've provided, provides a very strong base load for liquefied natural gas in that region right now, it's only one of several countries that are growing in the use of natural gas as all of those countries look to expand their electric generation facilities and are moving off resources like coal and looking at natural gas as one of those key bridging fuels for them. Japan is really a foundation there, but others are growing, and we could bridge off the relationship they have with Japan to move into those other countries eventually.

The last slide has a map associated with it that discusses the proposed west coast liquefied natural gas terminals that are in place.

Without going into the detail of all of the proposals that are there, it shows a map from northeastern British Columbia and the distance it takes to travel to Asia, in particular to Japan. Not many people recognize that we are actually strategically advantaged by the distance between ourselves and Japan when it comes to shipping routes. That gives us a competitive advantage over other regions, such as the Middle East and even Australia, which is competing in this market right now. It provides a good reason for us and for Japan to look at capitalizing on that opportunity, simply because, even though we often think how long the flights are from here to Japan, it really is close in commodity shipping terms, which many people don't recognize.

We see that as being a major opportunity to develop a strong relationship and maybe even deepen it with a trade agreement between Canada and Japan. We don't see any current tariff barriers that restrict that from happening, providing there's certainty of agreement between countries, as we've seen in other countries where we've done trade agreements, so that the commercial business can then take place on an even greater scale than it has in the past.

I'll now turn the time back to you and I'll be happy to answer any questions.

Thank you, Mr. Chairman.

**The Chair:** Thank you very much. I appreciate both of our witnesses' interventions.

We'll now turn to questions and answers. Mr. Sandhu, you have seven minutes.

• (1550)

**Mr. Jasbir Sandhu (Surrey North, NDP):** Thank you very much, Mr. Chair. Thank you, witnesses, for being here today.

My first question is to Ms. Sharpe. The federal advisory body, the national round table on the environment and the economy, lost their funding of \$5.2 million last year, and today they released their final report because they're not going to be existing after March.

The final report basically issued a clear warning to Canada that we are falling terribly behind when it comes to making the transition to a low-carbon economy and that the economic costs of this inaction are way too big to ignore. Do you share the concerns with the lack of progress Canada is making while economies the world over are transitioning to low-carbon economies?

**Dr. Vicky Sharpe:** I would say that we have to recognize what we have as an economy, which is that we are blessed with a great deal of natural resources and that some of those are high-carbon sources. We are the envy of many economies because we are fortunate enough to have that.

What I think we are saying that it's good, it's important for us, it helps cheap energy, and all these other things are enabling our products and resources to be utilized in a cost-efficient way. What we're doing is overlaying this with what we call clean energy and clean technology so that the technology solutions that are being added into these traditional resource industries are providing increased efficiency, a reduced environmental footprint, and by definition, quite often reducing, if you like, the carbon content relative to the output.

As you've seen in slide 6, in fact, Canada is recognized for being a leader in that arena. You've tackled a very big question—

**Mr. Jasbir Sandhu:** I'm going to get to that, but I have to get to other questions.

**Dr. Vicky Sharpe:** Okay, but I feel we have actually.... We have about 240-odd companies in our portfolio. There's \$2.2 billion worth of projects under management. As far as we are aware, we are the largest clean tech fund globally, so I have to say I think we're doing some valuable things.

**Mr. Jasbir Sandhu:** Okay. Let me ask you a question.

In your organization, the sustainable development tech fund has not been recapitalized. Is that true?

**Dr. Vicky Sharpe:** We were given some money in budget 2011 to keep us moving with the kind of momentum that we've been used to, and we are talking with our colleagues about recapitalization in budget 2013, so obviously we have no idea where that's going.

**Mr. Jasbir Sandhu:** The information I have is that the \$550 million grant that you got from the Government of Canada is going to expire at the end of December 2012. In pre-budget consultations for 2012 you've also asked for a new \$550 million in the Canadian Cleantech Accelerator Fund, which I'm assuming would be in place

of the tech fund that you're losing at the end of this year, but that's also been denied. Is that correct?

**Dr. Vicky Sharpe:** It hasn't been denied. I think there was a considerable effort on deficit reduction in the last budget, and as we were able to continue, it was decided that was not a good time to reach those decisions. We've been talking about that ever since.

**Mr. Jasbir Sandhu:** So you haven't got the—

**Dr. Vicky Sharpe:** We haven't been denied. We've done a number of things that we think will enable us to do more with less. There's a new model coming forward that won't be exactly the same as the SD tech fund, but—

**Mr. Jasbir Sandhu:** As of right now—

**Dr. Vicky Sharpe:** Our current fund will be fully allocated at the end of this year.

**Mr. Jasbir Sandhu:** Right. The government hasn't promised you any new funds in the new year.

**Dr. Vicky Sharpe:** I don't think they promised anybody anything in the budget for next year, so....

**Mr. Jasbir Sandhu:** You just pointed out that there's rapid growth for low-carbon goods and services in the global market, and I saw your slide number 6. As you said, the overall green sustainable energy sector is estimated to be \$3 trillion by 2020. Right now, Canada has less than 1% of that market. We know that in 2011, in one quarter, in the U.S. there were 600 patents for sustainable energy innovation, yet in Canada we only had 10.

It seems to me as if the government is making decisions that will damage the expansion of made-in-Canada technologies for green jobs here and for exports to countries like Japan. Would you agree with that assessment?

• (1555)

**Dr. Vicky Sharpe:** I'm not sure that I follow the linkage in your question. On the issue around patents, I don't have the numbers at my fingertips, but I believe that on a per capita basis Canada produces as many patents as the U.S. does, so that sounds like a strange number, but I really am not familiar with it.

The play that we have is around commercializing that, because the patents in themselves don't produce revenues and don't feed back into the economy, so it's taking companies that have intellectual property that's of value and getting them to be sustainable businesses operating in the global market. We are seeing that happening. Our results show that the compound annual growth in revenues of the companies that are inside the SDTC portfolio versus those that are not in it is twice as fast as the global CAGR, or compound annual growth and revenues. We believe we are building competitive Canadian companies and that they're competitive globally.

On the patent bit, I'm afraid I'm not able to answer.

**Mr. Jasbir Sandhu:** Those are the numbers that I have.

I've looked at your projections with regard to what's going to happen in 2020. Your funding is being cut and the \$550 million is not being renewed. Do you think the government can do more than what they've been doing to reach that goal, that projection, of \$60 billion in trade?

**Dr. Vicky Sharpe:** I would say that based on the amount of effort we're seeing in Asia and other parts of the world at the moment, there is a significant effort to get people aware of Canada and how we can expand and diversify our energy exports. Forestry, agricultural products, and chemicals are all on this list, and I think that clean technology is interwoven among them. As a nation, we think we have a lot to offer, and I would say there's been a significant increase. There's the EU trade deal, which again is something that we were wanting to see happen because we're seeing investments coming from that part of the world.

There's always more to do, and it's a very competitive market. I wouldn't say we're absolutely at the top of our game, but I'd say we have built a significant platform, and I'd say that we were definitely moving in the right direction.

**The Chair:** It's very nice of you to compliment the government on the investment in clean technology.

Mr. Keddy, go ahead.

**Mr. Gerald Keddy (South Shore—St. Margaret's, CPC):** Thank you, Mr. Chairman.

Welcome to our witnesses.

I'm going to follow up a little bit on the whole idea of clean technology and the opportunities that should be there for the development of it in those industries between Canada and Japan.

Having had the great fortune to be in Japan several times, I have to tell you that when I looked at the ranking between Canada and Japan, I was a little bit surprised that Japan was further down the scale than we were, quite frankly. It's an extremely clean country. They are very conscious of everything that they consume and use. The idea that we're actually ahead of them is commendable for Canadian companies and for your industry in particular.

The other thing that obviously comes out of that is the opportunity to increase our trade in clean technologies with Japan and to have Japanese investment coming into Canada. We're in early days on a trade agreement with Japan. We've really just set up the parameters and we are engaging in a real and obvious way. On the idea that we could get foreign investment from Japan, are we starting to see some more interest in Canadian companies already, or is that something we need to build on?

• (1600)

**Dr. Vicky Sharpe:** Thank you.

I would say that we have begun to see some interest and I've given you one example. I can give you another one.

Three or four weeks ago, SDTC held an investor venture summit in Calgary. This is a non-advertised, invitation-only event, and we require that everybody who comes to those meetings be an investor who has money to spend. We had to cut the attendance off at 120 qualified investors. A lot came from the U.S. and Canada, but also

from Asia. Japan was represented there. We had \$10 billion worth of fund investments in the room looking at the clean technology companies and SDTC's portfolio.

We're still tracking the conversations that came out of that event and we hope we will turn some of those conversations into dollars. However, we were actually very surprised and very pleased, considering it is early days for us, not for the oil sands or for the natural gas players that my colleague, CAPP, talked about, but in clean technology. We think we're seeing a pretty big pick-up now in that area, so it's encouraging. Yes, there's more to do.

**Mr. Gerald Keddy:** Excellent.

Not to get off of the Canada-Japan relationship, which is certainly what we're here to discuss today, but it's good to hear of the opportunities that await when we finish the negotiations, hopefully this year, with the comprehensive economic trade agreement with the EU.

One of the other questions that came up earlier from my colleague in the opposition party was the question of patents. Especially for clean technology, how essential is that patent protection or intellectual property protection? We took a number of years to finally get ACTA through the House of Commons. Now that you have a real ability to protect your proprietary information and have patent protection, are you seeing a direct correlation with an increased willingness to invest directly in clean technology companies?

**Dr. Vicky Sharpe:** The rule of law for investment in Canada is obviously so strong that investments into Canadian companies is not an issue. As they begin to partner and move out to other markets, then it is very important for these SMEs to have patent protection. They are often a single-technology company. Their livelihood is dependent upon their making sure that the one thing they build their business on is not lost.

I think there's a variable degree of protection. The rule of law in many of the Asian countries is quite strong, but the adherence to that law does not necessarily occur. Clearly, Japan is a market that has that kind of protection.

With our companies, we have undertaken a number of initiatives and we're still working on that. Singapore is one of them, where we have a touchdown base that is then moving out into Asia. Clearly the Singapore market in itself is too small.

We are seeing companies more willing to come forward and work within these protections. Obviously our partnership with EDC has enabled us to receive the great knowledge and experience that they have in the international markets in providing risk mitigation instruments, etc. It is important, and I am seeing their being more willing, but not universally across that market.

**Mr. Gerald Keddy:** I have one more quick question I want to get in to Mr. Stringham while I still have some time.

Mr. Stringham, I have to say we met last summer during the Stampede week. You're dressed much more formally today. Although I'm sure—

**Mr. Greg Stringham:** That's where you have spaghetti. That's the reason.

**Some hon. members:** Oh, oh!

**Mr. Gerald Keddy:** I'm telling you, the Stampede dress is much more comfortable, I'm sure.

We've got a long-trading relationship with the Japanese. We've got a mature trading relationship, I would say. When the Japanese market looks at Canada, especially the oil and gas industry, how important are things that we take for granted? I mean, for instance, the fact that we have non-conflict oil in Canada or the fact that we have a stability that's guaranteed by our supply chain, because we have a significant supply chain in Canada, which also guarantees some stability of price. We often just take that for granted. How important is it to the Japanese marketplace?

• (1605)

**Mr. Greg Stringham:** Particularly at this point in time, when they're looking at restructuring their entire energy portfolio, it's absolutely critical.

As you well know, when we look at Canada, we almost look at it in the North American context—Canadian first, then North American—but we have now been very much standing on a global stage as we see countries from Europe, the Middle East, and Asia looking to Canada for leadership on that aspect. It is because they see stability. It's because they see resource opportunity. It's because they see the rule of law, as was mentioned earlier, on environmental and labour issues, and others, that they feel comfortable coming and looking at us.

However, I must be very clear: they're not just looking at Canada. There is a window of opportunity for us to get into this and have that relationship deepened, but Australia is very aggressive and the Middle East is not going to see that move away. We have to stand on what we have as our strong foundation, but it will not be enough to simply say we get the guaranteed arrangements. We need to work hard to make sure that happens commercially as well as with governments to ensure stability and a relationship exist at that level as well.

As you well know, in Asian countries the government-to-government relationship is the umbrella that they look for to allow the commercial work to happen underneath.

**The Chair:** Thank you very much.

Mr. Easter, you have seven minutes.

**Hon. Wayne Easter (Malpeque, Lib.):** Thank you, Mr. Chair.

Relative to the Stampede, Mr. Stringham, I don't know if you've ever seen Mr. Keddy answer questions in question period, but now I know why he doesn't answer properly. He must have been kicked by a horse there at the Stampede or something.

**Mr. Gerald Keddy:** You're my friend.

**Hon. Wayne Easter:** Anyway, on the natural gas issue, we in eastern Canada.... What did you say?

**The Chair:** That's very speculative of you, but carry on.

**Hon. Wayne Easter:** On the east coast, we would certainly like to see natural gas come to that part of the world as well. I'm from Prince Edward Island.

In terms of shipping natural gas into Japan, I looked at your map here, and I agree with you. There are tremendous opportunities in Japan with their energy restructuring, but is there already a pipeline to get natural gas to that area to ship out in tankers?

**Mr. Greg Stringham:** There's a small pipeline and right-of-way there, and it's used for natural gas. As you well know, there's also a rail line there that moves in. You wouldn't move natural gas by rail, but there is a right-of-way. It goes up to Kitimat and to Prince Rupert right now.

**Hon. Wayne Easter:** Then there's no need for new pipeline development in terms of pipeline capacity to move natural gas in that direction?

**Mr. Greg Stringham:** There's a small pipeline, but it is not sufficient to deal with all of the projects that are listed on the bottom of that map page. It could probably deal with the smallest one, which is a first nations partnership project. That's one of the ones that are moving ahead most quickly right now.

To meet the needs of Japan as well as the needs for the supply that we have in Canada, there would need to be expansions, and pipeline companies have proposed to expand on that simple right-of-way to get to Kitimat or Prince Rupert harbour.

**Hon. Wayne Easter:** In terms of shipping natural gas into Japan, are there tariff rates? What are the restrictions now for moving energy or natural gas specifically into Japan? Is there a tariff rate structure? What has to be negotiated in an FTA with Japan to make it possible to be competitive with natural gas coming from wherever else?

**Mr. Greg Stringham:** As I understand it—and I'm not a detail person on the tariff side of things, but I did look at it—I don't believe there are tariffs on liquefied natural gas itself. There are on some of the byproducts and smaller commodities that ship as chemicals, but for liquefied natural gas, all we want to entrench in a free trade agreement is something that ensures those tariffs would not come in the future and would remain as open as they are today.

• (1610)

**Hon. Wayne Easter:** Thanks a lot.

Ms. Sharpe or Ms. Thaker, on the line of questioning from the NDP first, we know the funding that went towards your organization. We are worried that the federal government's urge to cut everything, sometimes without substantive research, could have an impact in the future. We will just put on the record that we believe that whatever the government does in terms of its deficit reduction and sometimes misplaced spending, we see investment in clean energy as the right thing to do.

In terms of that, to make it possible for your industry to be in the Japanese market, what needs to be done to add value and create jobs at home? Trade for trade's sake is one thing. Trade agreements are important, and they open up opportunities. What needs to be done to make it possible, from a company side in Canada, for us to develop that clean energy and clean technology?

You say in your conclusion here that Canada's clean technology sector leads global innovation. In my experience, Canadians are great as innovators. We are, but we're damned poor at commercialization, so how do we get to the commercialization point? What needs to be done from the government's perspective, in the trade agreement and beyond the trade agreement, to make it possible to develop companies and have success in that marketplace?

**Dr. Vicky Sharpe:** Thank you.

While I would agree that historically Canada has not reaped the kinds of returns it needs because we are great IP creators but we don't commercialize as well, I believe the Jenkins review from last year looked at the value derived for Canadians from the research dollars the government spends.

To be clear, we were part of that study, but we're not a research organization. Our business is to take, develop, demonstrate, and deploy clean technologies, so we believe we are actually, if you like, in the sweet spot of ensuring we do commercialize clean energy and clean technologies. In terms of attraction of international capital as well as the performance of our companies, I don't have the job creation numbers to hand, unfortunately, but we are seeing that happening. We are really beginning to build a very successful platform from which to lever out into the export markets.

In terms of what needs to happen within Canada—I believe that was part of your question—I think there's a risk aversion that sits within the investment community. I think there's a risk aversion that sits within some of the industries, although not all of them. Some of them are really what I call “technology play” companies, such as we see in the oil sands. That's a pure technology play. There are many other industries in which there's been, I think, a hesitancy to buy domestic technologies just because there's been a hesitancy to place that capital.

We now believe there's actually quite a lot of capital in these companies, both Canadian and international, that are based on these shores. I think we need to do a better job of getting industry to step up to the plate. It can't all be done by the government. It isn't all their job. I think that industry needs to say that we can't be complacent. As my colleague at CAPP said, we have a window, we have to be competitive, and we have to seize it. I don't know how you actually do anything about that from a committee deliberation perspective, but we'd like to see industry step up a bit more.

**The Chair:** Thank you very much. We would as well. I think the industry would step up if we could settle Europe and America down a little bit.

Mr. Hiebert, go ahead.

**Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC):** Thanks, Mr. Chair. I'll be sharing my time with my colleague, Ms. Brown.

Mr. Stringham, you mentioned that there are no tariffs on LNG right now, and you want certainty in a future EPA or FTA. Are there any non-tariff barriers that would prevent your industry from doing well in Japan?

•(1615)

**Mr. Greg Stringham:** Not that I'm aware of directly with Japan, but I know that when it comes to shipping LNG internationally and

the flagging of the tankers, there are some issues there that the commercial parties are working on.

It's something we could look into in more detail, but at this point in time, in the development of these projects that have been proposed—again, I say “proposed” because none of them has actually been built yet—there hasn't been anything identified as a major tariff or non-tariff barrier to moving into Japan at this point.

**Mr. Russ Hiebert:** You believe that you could be competitive, even with the competition, such as Malaysia, China, and Australia, much closer to the market, all with expanded LNG opportunities?

**Mr. Greg Stringham:** They've expanded not only their LNG opportunities, but their demand is also increasing. As you saw from the chart of the entire Asian demand, the fact that we're closest to Japan probably gives us the best competitive angle into Japan, but the other growth in that area is really what is causing the whole area to be looking for increased supplies from a number of different countries.

**Mr. Russ Hiebert:** Okay.

Ms. Sharpe, just briefly, what impact are the tariffs having on you right now, and what impact would an EPA have on your companies? Are there any non-tariff barriers as well?

**Dr. Vicky Sharpe:** I don't think there's a structural issue. It would be better if there were removal of the tariff barriers, but because we are shipping in equipment that is heavy-duty equipment, it attracts tariffs. We're at the stage where we haven't gotten that far into the market, so I'm afraid I don't have a lot of examples to give to you to guide you one way or the other.

What we have seen is the declaration of a feed-in tariff program from the Japanese, whereby they're trying to place a significant amount of solar energy into their mix for generation. We think we have technologies that will be able to address that and move in there, so we expect to play; we're just not quite sure how much yet.

**Mr. Russ Hiebert:** Okay.

I'll share the balance of my time.

**The Chair:** Okay. Go ahead, Ms. Brown.

**Ms. Lois Brown (Newmarket—Aurora, CPC):** Thank you very much, Mr. Chair.

I'm just a visitor to this committee today, so thank you for affording me the opportunity to speak.

Dr. Sharpe, I wonder if you could make a comment here. One of the things that our government has seen as very important is making considerable investments in university programs for science and technology. We know that there are jobs of the future that are wrapped up in the kinds of projects you're looking at now. Can you comment on that kind of investment and what it looks like for the future of green energies?

I have one other question, and it's regarding your funds. When you have all of these companies that are accessing financing, and we know that financing is a scarce resource and that government is dealing with scarce resources, is there any mechanism whereby the companies themselves would replenish the fund once they've been successful in their capitalization and in moving their product to market? Has there been any discussion about that?

**Dr. Vicky Sharpe:** Thank you.

The big picture is that Canada has areas of real strength and excellence around energy, around the use of its natural resources, and around biomass. It's something that we don't get to discuss so much, but we have a lot of biomass. We have some very advanced technologies for converting that to add significant value to the agriculture and forestry communities, which are very commodity-based. These clean technologies take waste streams and convert them into revenue streams. We have strength in these areas.

We are seeing the creation of IP. I don't know the exact numbers, but we see that flowing into companies. Our universities are structured differently from those in the U.S., so the IP has usually left the university and is inside a company before it's something that we would work with. We are seeing that movement there.

I would refer to the Jenkins report, which says that direct programs provide greater societal benefit. Obviously I'm slightly biased, as SDTC is a direct program as opposed to an indirect taxation program. We are not seeing any letting up of opportunity; if you're asking if it's being choked off and if we don't have enough capacity, we are overwhelmed every time we call for a round of investment. It's flowing well, and I believe to good effect.

In terms of being cost-efficient in the way we use public funds, currently we've leveraged one public dollar to 14 private sector dollars. I don't see a comparison to that anywhere else within the system. However, we've now been around long enough since we began, when there was no clean energy and no definition. There was a need to really push things forward.

We've grown enough capability and recognition for Canada that there are ways of structuring the way we and maybe others would operate so that we could issue grants with warrants. We think a warrant mechanism is a sophisticated approach that the market understands, one that would allow us to take an upside on the companies that are the most successful.

We're also looking at a co-investment model that would enable us to make investments side by side with the investment community, both venture and equity, so that we could take small companies that need to grow fast domestically and become more powerful to reach into the export market. I would call it an acceleration methodology.

I believe there are ways of even further improving that leverage and ensuring that the private sector is appropriately engaged in making the commitment and taking their share of the risk.

• (1620)

**Ms. Lois Brown:** Do you see a very bright future for you and the companies that are within your management?

**Dr. Vicky Sharpe:** Yes, we do. Thank you.

**The Chair:** Thank you very much.

We are through the first round.

I'll ask one question, because as a committee we are going to be visiting Japan in another week or so.

**Mr. Stringham,** could you tell us your timeline and your impediment? Is it trying to get LNG to service the market in Japan? On the timeline you say that you have the right-of-way but not necessarily a pipeline, so you'd have to build a pipeline. Do you have a timeline on that? Is it restrictive because of demand, or is the demand there if you get LNG to market? Can you tell us what your crystal ball would look like in terms of timing?

**Mr. Greg Stringham:** Absolutely.

Thanks for the question.

In the critical path of what's going on, the permitting process for natural gas for the liquefied natural gas process has been very efficient. We congratulate the government on doing that. At this point it's a matter of the construction schedule and the commercial terms between the sellers of liquefied natural gas and the purchasers in Japan. They are under negotiation with several projects that I've identified there. That's really what's in motion right now.

In one of those projects they have already begun first nations partnerships and are turning the ground for that first project. It is moving ahead. The critical path will be the construction of the liquefied natural gas facility and the construction or expansion of the pipeline. It gives it about a three-year window before the actual delivery would begin. That's the timeframe.

Is that what you're looking for, Mr. Chairman?

**The Chair:** That's what I was looking for, because I think that's a question that the committee is going to be asked. Thank you very much.

Mr. Davies is next.

**Mr. Don Davies (Vancouver Kingsway, NDP):** Thank you, Mr. Chairman.

Ms. Sharpe, I want to first of all congratulate you for the work you've done. The official opposition, the New Democrats, believe very strongly, I think, in a large capital fund that will help stimulate investment and the creation of a sustainable development industry in this country.

However, I want to try to understand the financing here. If I understand correctly, the SD technology fund was funded by a \$550 million grant from the Government of Canada that will allow you to disburse funds until the end of this year, December 31, 2012. Is that correct?

**Dr. Vicky Sharpe:** It has actually been modified. We have signed a new funding agreement with the addition of that \$40 million in the prior 2011 budget. We are now able to allocate that, and we will fully allocate it by the end of the year. We may disburse funds from now to mid-2017, because we have a very large cohort, if you like, of graduating companies over the next number of years, and they need to be put through the same process that we currently use to ensure we engage private capital.

**Mr. Don Davies:** Is that original \$550 million, plus the \$40 million, the capital that you have to disburse?

• (1625)

**Dr. Vicky Sharpe:** We've also taken some money, some interest income that.... People look at our financials and it's very easy to misunderstand. The money that's in there is committed, so we obviously place it in very advisable, non-risk investments, and some of that money has been made—

**Mr. Don Davies:** I'm not interested right now to look at your investment. I'm trying to find out the capital contribution from the government. That's what I'm zeroing in on.

**Dr. Vicky Sharpe:** It's \$590 million.

**Mr. Don Davies:** That's what you have now.

In the prebudget consultations for this year—I'm reading from your submission—the recommendation from your group was for a Canadian cleantech accelerator fund. You proposed a “...\$550-million Cleantech Accelerator Fund to support clean technology development, demonstration and early commercialization”. Then you went on, “The CCAF, at a \$110M annually for 5 years, has been designed to maintain SDTC's current level of annual investment in cleantech.”

What you were proposing, if I understand it, was a recapitalization of a further \$550 million to take us forward. Do I have that correct?

**Dr. Vicky Sharpe:** That was last year's budget submission, and that is correct in that detail. However, we are actually proposing that we utilize less money but deliver the same results. We haven't made a submission yet for this year.

**Mr. Don Davies:** I have this from the pre-budget consultations for the 2012 budget. Is that right?

**Dr. Vicky Sharpe:** That would be correct for 2012, yes. We haven't done anything for 2013.

**Mr. Don Davies:** Right. It's the 2012 budget that was tabled in the House in the spring and the Budget implementation act that is being tabled today. It's that budget.

**Dr. Vicky Sharpe:** It's that budget, yes.

**Mr. Don Davies:** And your \$550 million is not in this budget, is it?

**Dr. Vicky Sharpe:** No, it's not.

**Mr. Don Davies:** Can you tell us why you requested an additional \$550 million? I take it you thought that was a good idea. You've already talked about getting an enormous leverage of \$14 in private sector money for every dollar, so I take it you would have to agree with me that it's probably not a wise economic or policy decision to not give that money that your group asked for in the budget.

**Dr. Vicky Sharpe:** I would say that we are bound by various constraints in our funding agreement and we had foreseen a future that was, if you like, much the same. What we've been doing since then is seeing how we could further leverage. In fact, we believe that we have a better plan, a superior one, that won't require the same amounts of money but will in fact, because we anticipate.... I can't talk about these plans because they are not signed and sealed—

**Mr. Don Davies:** Okay, and I'm not actually going to ask you about them, Ms. Sharpe, because—

**Dr. Vicky Sharpe:** —but I have arrangements with industry to leverage it.

**Mr. Don Davies:** I'm sorry, I have limited time, so I need to focus my questions.

**Dr. Vicky Sharpe:** I'm sorry.

**Mr. Don Davies:** The Green Energy Act in Ontario, which was an act meant to stimulate a sustainable green energy sector, was unfortunately caught up in trade rules, as we know. In fact, there's apparently a ruling that's going to come out soon that will find the Ontario government's attempt to stimulate a domestic green energy technology industry violated trade rules.

Do you have any comment on that? As we are thinking of negotiating a trade agreement with Japan, are there any pitfalls to avoid there, in your view? Do you have any comment on that?

**Dr. Vicky Sharpe:** I think one can arrange to make sure that in dealing in a businesslike fashion, one can see returns and benefits to a country without it having to be written down explicitly. I think you're referring to the FIT program in Ontario, the feed-in tariff program. There was some language in there that is also around commercial opportunities, recognizing that SDTC is working in the pre-commercial arena. I believe that what we're looking at is enhancing business in a way that is equitable and fair. I'm not seeing it exactly as a comparable situation, but I may have missed your point.

**Mr. Don Davies:** Thank you.

**The Chair:** Thank you very much.

I want to thank all of our witnesses—Mr. Stringham, Ms. Sharpe, and Mr. Thaker—for being here.

I thank the questioners. It's been very informative and will help prepare us in our study.

At this time I want to suspend, as we make way for our next hour of presenters.

We have DFAIT here, dealing with the Government of Canada, and the Government of the People's Republic of China, for promotion of reciprocal protection of investments.

Thank you very much, and with that we will suspend.

• (1625)

(Pause)

• (1630)

**The Chair:** Okay, we would like to call the meeting back to order.

We have our DFAIT representatives here. We want to thank them for coming in. There's a table full of them. I think we have one on the way who will be here shortly, but I believe we have Ian Burney making a presentation.

Welcome back, Ian, and thank you for being here.

This is a very important issue that our committee is keen to be briefed on. We look forward to your comments, and then we will proceed with questioning. The floor is yours.

**Mr. Ian Burney (Assistant Deputy Minister, Trade Policy and Negotiations Branch, Department of Foreign Affairs and International Trade):** Thank you very much, Mr. Chairman. We certainly appreciate this opportunity to appear before the committee to provide a briefing on the Canada-China foreign investment promotion and protection agreement, or FIPA.

I've been introduced, so let me introduce my colleagues who are here with me from the Department of Foreign Affairs. I have Laurent Cardinal, who is the director general for the North America trade policy but also has oversight for our FIPA program; Cam MacKay, who I think you've seen recently in a different capacity, but his day job is director general for China trade policy. John O'Neill is the director of our investment policy division and runs the FIPA program; Vernon MacKay, to his left, was the lead negotiator for the Canada-China FIPA.

We're hoping that Sylvie Tabet will join us in a moment. She's the director and general counsel of the trade law bureau.

[*Translation*]

Mr. Chair, the signature of the Canada-China Foreign Investment Promotion and Protection Agreement, or FIPA, the combination of many years of effort, is a significant milestone in the continuing roll-out of the government's ambitious global commerce strategy. Indeed, deepening Canada's trade and investment ties with the largest, most dynamic and fastest-growing markets in the world, such as China, is an essential feature of the government's pro-trade plan for creating jobs, growth and long-term prosperity.

The FIPA is a tangible expression of the government's determination to help Canadian businesses compete on a level playing field in markets abroad, and will serve as an important plank in our burgeoning economic relationship with China.

Mr. Chair, a FIPA is a bilateral investment treaty designed, first and foremost, to protect Canadian investment abroad through legally binding provisions. By ensuring greater protection against discriminatory and arbitrary practices, and enhancing the predictability of the policy framework in markets abroad, a FIPA allows businesses to invest with greater confidence. An improved business environment can lead to new investments, thus expanding and deepening the economic relations between the treaty partners.

● (1635)

[*English*]

The Canada-China FIPA, Mr. Chairman, is a high-standard agreement. It's comprehensive in its scope and coverage.

This treaty covers various forms of investment, including tangible assets such as real estate or other property acquired for business purposes, portfolio investments and other forms of participation in a company or joint venture, and intangible assets, such as a mining concession or intellectual property rights.

In terms of its commitments, this agreement includes reciprocal obligations related to non-discrimination, a minimum standard of treatment under international law, expropriation, free movement of

capital, performance requirements, and dispute resolution, among others.

In fact, this agreement contains all of the core substantive obligations that are standard in all 24 of our FIPAs currently in force.

One of the most important obligations in the treaty is to provide non-discriminatory treatment on a national treatment and most-favoured-nation basis. The national treatment obligation requires, with respect to activities after the establishment of an investment, that Canada and China treat each other's investors and their investments no less favourably than national investors or their investments in similar circumstances.

The most-favoured-nation obligation requires, with respect to activities leading up to and after the establishment of an investment, Canada and China to treat each other's investors and their investments no less favourably than investors or investments of a third country in similar circumstances. For Canadian businesses seeking to set up in China, this obligation means that China cannot treat a Canadian company less favourably than they would any other foreign company seeking to do the same.

Like our other FIPAs, the agreement with China includes an obligation not to fall below an absolute standard in the treatment of investments of the other party. Thus, Canadian investments in China have a right to treatment not lower than the minimum standard established under customary international law. This means, for example, that they may not be denied justice or due process of law or may not be treated in a manifestly arbitrary manner.

Also noteworthy are the obligations on parties to provide compensation to investors in the event of an expropriation. Such compensation must be based on fair market value and paid in a timely manner. As well, the treaty provides that investors are permitted to make financial transfers related to their investments freely and without delay.

As in all of Canada's FIPAs, this agreement provides mechanisms for the resolution of disputes. Disputes may be brought on a state-to-state basis, or an investor may bring a claim directly to international arbitration for resolution. This latter mechanism, known as investor-state dispute settlement, is a key element of the protection provided by the FIPA to Canadian investors abroad. Indeed, it is a common feature in most modern investment agreements. This allows Canadian companies to be assured of access to an impartial dispute resolution mechanism, which can be particularly important in operating environments where the local judicial system may not be well developed or independent of political influence.

Mr. Chairman, it is Canada's long-standing policy to permit public access to such proceedings. Canada's FIPA with China reflects this policy, and will allow Canada to make all documents submitted to an arbitral tribunal available to the public, subject to the protection of confidential business information. It is noteworthy that this is the first bilateral investment treaty in which China has accepted language on transparency of proceedings.

The Canada-China FIPA, like our other FIPAs, ensures that the federal, provincial, and territorial governments have full policy flexibility in key areas such as health and public education.

In addition, all foreign investors in Canada, including those from China, are subject to the same laws and regulations as domestic investors. This includes laws aimed at protecting the environment and those ensuring the highest labour, health, building, and safety standards.

Of course, as is the case with all proposed foreign investments of significance into Canada, we will continue to have the ability to ensure that investments from China bring concrete benefits to Canadians. Under the Canada-China FIPA, Chinese investment in Canada will continue to be subject to the Investment Canada Act for review under both the net benefit test for acquisitions above the applicable thresholds and for national security concerns with respect to any investment. Moreover, any decisions taken by Canada under the Investment Canada Act are specifically excluded from challenge under the dispute settlement provisions of the FIPA.

An important feature of Canada's FIPAs is the so-called ratchet provision. This means that with few exceptions, China's existing nonconforming laws and regulations are locked in and cannot become more restrictive with respect to Canadian investments. Moreover, as the laws are liberalized over time, the new level of openness is locked in at each reform. This provision brings policy predictability to Canadian investors, and is a large gain for Canada, as China has agreed to it in only a few of its other investment treaties.

• (1640)

[Translation]

Mr. Chair, it is clear that Canada's investment relationship with China is significant and in constant growth. The stock of foreign direct investment into Canada from China was C\$10.9 billion at the end of 2011. Statistics for that same year show that the stock of Canadian direct investment in China was valued at nearly C\$4.5 billion. With China destined to become the largest economy in the world during the coming decade, the opportunities for Canada will only grow.

[English]

China is not, however, an easy market for entry of foreign investments. Almost all investments coming into the country must go through an approval process. Some sectors are completely off limits to foreign investment, such as mining of certain minerals. In other sectors, foreign investments are restricted or "encouraged", meaning that they are subject to foreign equity caps or requirements for Chinese control or joint venture arrangements.

While the FIPA with China is not meant to and does not remove these barriers to entry, it does assure Canadian investors that they

will be treated at least as favourably as investors from third countries as they go through the approval process. The Canada-China FIPA will support Canadian businesses' efforts to explore the growing investment opportunities in the world's second-largest economy across a range of key sectors, including financial services, natural resources, transportation, biotech, education, information technology, and manufacturing.

In closing, Mr. Chairman, I will say that Canada obviously wants to continue to expand its relationship with China, but we want to see it expand in a way that produces clear benefits for both sides.

Canadian companies that do business abroad rely on fair, transparent, predictable, and non-discriminatory rules. In the absence of a FIPA, Canadian investors rely primarily on the laws and institutions of the host country for protection, which adds a variety of risks to their ventures.

By ensuring greater protection against discriminatory and arbitrary practices and by enhancing policy predictability, the FIPA will allow Canadians to invest in China with greater confidence. This agreement will help Canadian companies in their efforts to compete and win abroad, which in turn will help build a stronger Canadian economy here at home.

I thank you, Mr. Chairman.

My team and I will be pleased to answer any questions.

**The Chair:** We want to thank you for your intervention and your briefing. The committee is very keenly interested in this.

We'll start with Mr. Davies, for seven minutes.

**Mr. Don Davies:** Thanks, Mr. Chairman.

Thank you for being here.

What ballpark is the current estimate of Chinese investment currently in Canada?

**Mr. Ian Burney:** At the end of 2011, it was \$10.9 billion.

**Mr. Don Davies:** What is the current amount of Canadian investment in China?

**Mr. Ian Burney:** It was \$4.5 billion at the end of 2011.

**Mr. Don Davies:** I want to turn to article 6, national treatment. If I understand this correctly, no national treatment is to be given by the party for any future investment. National treatment is to apply only to existing investment. Is that correct?

**Mr. Ian Burney:** It's somewhat the other way around. There is no national treatment with respect to establishing an investment, but there is national treatment with respect to the treatment of investment once it's established.

**Mr. Don Davies:** Okay.

Article 8 says that the parties do not have to apply most-favoured-nation status or most-favoured-nation treatment or national treatment to any existing nonconforming measures. Is it a fair assumption on my part that there are more nonconforming measures in China right now than in Canada? Am I generally correct about that?

**Mr. Vernon MacKay (Deputy Director, Investment Trade Policy Division, Department of Foreign Affairs and International Trade):** Yes, I would say you are.

**Mr. Don Davies:** Okay.

Did you compile a list of the nonconforming measures in China and the nonconforming measures in Canada?

**Mr. Vernon MacKay:** Under this treaty, there's no requirement to list the nonconforming measures, unlike some of our free trade investment chapters. The existing nonconforming measures are what we call "grandfathered".

• (1645)

**Mr. Don Davies:** Right, and I understand that.

It says that we know that China does not have to give national treatment or most-favoured-nation treatment to Canadian investments going forward beyond any existing nonconforming measures in place now.

In other words, from my understanding and my information, China, being a command economy, being a state-controlled economy, would have many nonconforming measures that will currently stay in to constrain Canadian investment in the future. Is that correct?

**Mr. Ian Burney:** I just want to clarify that point you made about MFN, because there's a distinction between national treatment and MFN. The MFN obligation in the FIPA also applies to the establishment of investments, not just to the treatment, whereas the national treatment obligation is limited to the treatment of investments once established.

**Mr. Don Davies:** Yes, I understand that.

I'm talking about article 8.2, where it says articles 5, 6, and 7. That's most-favoured-nation treatment, national treatment, and I think there's a third one. Senior management—

**Mr. Vernon MacKay:** It is senior management and board of directors.

**Mr. Don Davies:** There are those three provisions. It says that they do not apply to any existing nonconforming measures.

What I'm saying is that moving forward, investments are subject to more nonconforming measures in China because of their economy than exist in Canada, because we have a much more open economy. Is that a fair statement?

**Mr. Vernon MacKay:** Just to repeat what we agreed earlier, I would say that today there are certainly more existing nonconforming measures. Going forward, of course, we don't know exactly what to expect, other than that the treaty is designed to capture the reforms going forward. We know that they cannot get more restrictive for existing Canadian—

**Mr. Don Davies:** I understand that totally. I'm talking about the investments captured now that are frozen in time. What I would put to you is that there are many nonconforming measures in China that will apply to Canadian investors in China and far fewer nonconforming measures that apply to Chinese investors in Canada. I think I have the answer to that.

I want to move to the investor-state provision. You agree that the investor-state provision is a departure from Canada's usual language in FIPAs. What I'm referring to, specifically, is that this Canada-China FIPA allows a disputing party, a party being sued, to not have public hearings unless it determines that it's in the public interest to do so. It doesn't have to disclose documents unless it determines that it's in the public interest to do so, meaning that China, for instance, does not have to have public hearings and does not have to disclose documents if they don't want to.

Isn't that correct?

**Mr. Ian Burney:** The answer to the last part of the question is correct, but as I pointed out in my opening statement, this is the first time China has accepted any discipline on transparency on any of its investment treaties whatsoever.

**Mr. Don Davies:** It appears that it's the first time Canada has ever signed a document in which we agree to a process that's not transparent as well. It looks like both countries made some history here.

**Mr. Ian Burney:** That's not true. The transparency provisions are a reflection of the current Canadian model for that.

**Mr. Don Davies:** What other FIPA, Mr. Burney, can you point to where Canada has put in language that allows a disputing party to not have public hearings or produce documents if it simply chooses not to? Can you point me to one of the 24 FIPAs that says that?

**Mr. Ian Burney:** I'll turn to my colleagues on that. What I would say is that prior to 2004, that was not a requirement of the Canadian FIPA model, including the NAFTA. The transparency provisions are a relatively new feature. The FIPAs since 2004 typically would have those provisions, yes.

**Mr. Don Davies:** Okay.

Why the departure today? Why did Canada agree to a dispute resolution mechanism that allows one party to have hearings behind closed doors and not produce documents to the public, purely on its own initiative?

**Mr. Ian Burney:** The Canadian public policy objective is primarily to ensure that challenges taken against Canadian government measures are arbitrated in a fully transparent manner. That policy objective was served, and we considered it a significant milestone to have brought the Chinese to a point where they've accepted that those kinds of provisions are permissible in the context of this FIPA.

**Mr. Don Davies:** You have no assurance, in any claims made against the Chinese government moving forward, that they will ever have a public hearing or that they will ever release documents. It's purely up to their discretion.

**Mr. Ian Burney:** What I'm confident of is that any challenge against any Canadian measure would be carried out in a fully transparent manner in full accordance with government policy.

**Mr. Don Davies:** Why did we make that commitment in the FIPA, then?

**Mr. Ian Burney:** The FIPA permits Canada to exercise its policy preference. It also permits China to exercise its policy preference.

**Mr. Don Davies:** That's right; this FIPA permits Canada to also not disclose documents if it determines that it's not in the public interest. It allows Canada not to have public hearings if it determines that it's in the public interest not to do so. If that's not Canada's policy, why didn't we just specifically say all disputes filed against the Canadian government will be held in public and documents will be disclosed to the public, if that's our policy?

• (1650)

**Mr. Ian Burney:** I believe that the government has said that, as a matter of policy—

**Mr. Don Davies:** I know what they said. I'm a lawyer. I'm reading what the document says. They didn't put it in writing, though, did they?

I'll read you the Canada-Romania language. It says that hearings under this article shall be open to the public. It also goes on to say that "all documents submitted to...the tribunal shall be publicly available".

It's up to them, dependent on whether they think it's in the public interest. Why didn't we use that language in terms of the disputes against Canada?

**The Chair:** I'll allow a quick answer to that, Mr. Davies, and that's the end of your time.

**Mr. Ian Burney:** The short answer to that question is that China would not agree to be bound to a commitment along those lines, but Canada preserved its ability to meet its policy requirement to have transparent proceedings in the case of challenges taken against measures in Canada.

**The Chair:** Okay. Very good.

We'll go with Mr. Hiebert. I believe that you're sharing your time with Mr. Cannan.

**Mr. Russ Hiebert:** That's correct.

Mr. Burney, I appreciate that the Canada-China FIPA is a strong step toward greater transparency and opportunities for Canadians to invest in China. At least it gives them the same favourable status as other third countries in respect of the approval process.

You said that China was not an easy market for entry of foreign investments, that almost all investments coming into the country must go through an approval process, and that some sectors are completely off limits. Which other sectors besides mining, which you mentioned, are off limits?

You also said that in other sectors, foreign investments are restricted or encouraged. Which other sectors are we talking about, and can you explain what you mean by "restricted or encouraged"? I'd like to understand more fully the constraints that the Chinese put on Canadians investing in their country.

**Mr. Ian Burney:** To give a specific answer, we'd probably have to take note of the question and provide more specificity down the road, but basically investments are categorized in those three main

categories in the Chinese inward investment law. There are those that are encouraged, those that are restricted, and those that are prohibited. By way of adding to the example I gave of those that are prohibited, I'll see if one of my colleagues can elaborate.

I can tell you that oil and gas investments fall mainly into the encouraged category and so face a less restrictive policy regime than mining. Basically, it has to do with the level of screening procedures. Depending upon the category, there would be a higher threshold to meet for the inward screening mechanisms.

**Mr. John O'Neill (Director, Investment Trade Policy Division, Department of Foreign Affairs and International Trade):** Sectors where investment is prohibited include radioactive materials and rare earth metals. Areas where there are restrictions and approval is required are oil and gas, the manufacturing sector, and financial services.

**Mr. Russ Hiebert:** They're discouraged. If they're restricted, Canadian companies can't really access markets in the financial services or manufacturing sectors.

**Mr. John O'Neill:** It is open to Canadian investors to access those markets, but there are approval processes. There are Canadian investors active in the financial services area and in the manufacturing area. I don't know about oil and gas, but there are active Canadian investors in those other areas, which have an approval process.

**Mr. Russ Hiebert:** I will share the balance of my time with my colleague.

**The Chair:** Okay, go ahead.

**Hon. Ron Cannan (Kelowna—Lake Country, CPC):** Thank you, Mr. Chair.

In respect of transparency, I understand this negotiation started in 1994. Is that correct?

**Mr. Ian Burney:** Yes.

**Hon. Ron Cannan:** The agreement is on [www.international.gc.ca](http://www.international.gc.ca).

**Mr. Ian Burney:** Yes.

**Hon. Ron Cannan:** There was an opportunity for the opposition parties to debate this when in 2008 our government brought in a process to allow public debate in the House of Commons if the opposition felt this was important to debate.

**Mr. Ian Burney:** That's my understanding of how the parliamentary process works for treaties, yes.

**Hon. Ron Cannan:** I have a question. If the Nexen deal is approved, will the FIPA agreement allow Chinese corporations to sue the Canadian government outside of our court system?

**Mr. Ian Burney:** The FIPA has an investor-state dispute settlement mechanism, so an investor in Canada who felt the obligations under the treaty were being violated would have recourse to investor-state arbitration, just like a Canadian investor in China would have access to investor-state arbitration if it felt that the obligations were not being fulfilled.

•(1655)

**Hon. Ron Cannan:** If a Chinese company owns a Canadian resource like Nexen, can it covertly sue Canadian governments, whether municipal, provincial or federal, if the government does anything that threatens the company's profits?

**Mr. Ian Burney:** I certainly wouldn't characterize it as "covertly". As the previous discussion makes clear, the investor-state process would be carried out in a fully transparent fashion in Canada.

**Hon. Ron Cannan:** Does Canada achieve anything in this investment agreement that China has not provided to previous countries with which it has signed similar agreements?

**Mr. Ian Burney:** Yes, this is the first time China has accepted any language on transparency provisions in one of its investment treaties. As I indicated, the ratchet mechanism is very rare in China's investment agreements, so there are a number of areas where Canada made significant strides in the negotiation of this investment agreement.

**Hon. Ron Cannan:** The last question has to do with the timing. This is unprecedented in the sense that we're trying to provide stability and confidence in Canadian investment. We're for trade. We're for investment. Reinforce for us one more time how this will help Canadian investors.

**Mr. Ian Burney:** We've heard consistently from Canadian stakeholders in the business community that they value this agreement a great deal, and particularly the access to investor-state mechanisms, because it provides the kind of confidence and stability with respect to their investments that removes risk, which is the key factor in undertaking a large-scale investment in a foreign country.

This is strongly supported by business stakeholders in Canada. I think there were public statements of support from most of the large business associations in Canada at the time it was signed.

**Hon. Ron Cannan:** Just to clarify one last time, this agreement will then allow the protection of Canadian investors in China who right now would have to deal with a Chinese court system.

**Mr. Ian Burney:** That's correct.

**Hon. Ron Cannan:** Then the decisions of the tribunals would be available to the public?

**Mr. Ian Burney:** Yes.

**Hon. Ron Cannan:** Where will they be available?

**Ms. Sylvie Tabet (Director and General Counsel, Trade Law Bureau, Department of Foreign Affairs and International Trade):** Decisions would be available.... For example, if the ICSID arbitration rules are used, they would be on the ICSID website. All decisions against the Canadian government are on the Canadian government website.

**Hon. Ron Cannan:** Thank you very much.

**The Chair:** Thank you.

That has probably cleared up all of Mr. Easter's questions, but go ahead anyway.

**Hon. Wayne Easter:** I'm afraid not, Mr. Chair.

I would say in the beginning—and thank you, folks, for coming—that an hour's briefing is not exactly enough, given the comprehensiveness of these treaties.

Mr. Cannan suggested that the opposition could debate this by using an opposition day. That's just not the way to do business, and in my view it breaks the word of the Minister of Foreign Affairs, who said in 2008 that "[We] will allow Canadians and parliamentarians to debate these treaties." Well, this is not a debate. This is a briefing.

**The Chair:** Go ahead and ask the question.

**Hon. Wayne Easter:** Mr. Chair, I would say that at the end of my presentation I will be tabling a number of written questions with the witnesses and would hope I could have a response to those within a very short period. They're very technical.

As well, Mr. Chair, on this issue I don't know about government members, but I certainly know that in our offices there's a lot of concern among the public about this agreement. I will admit this: I think there is some mix-up between the FIPA and the proposed CNOOC-Nexen agreement. In any event, there's a lot of concern among Canadians about this agreement, and it needs to be addressed.

Turning to my questions, I'm told on the one hand that the FIPA will apply to current investment but not new investment. I personally think it applies to both, but I'm told by some people in the legal community that it only applies to current investment.

Can you answer that so that it's clear?

**Mr. John O'Neil:** The FIPA will apply to current investment and future investment. The only portion of the treaty that does not apply to future investment is the national treatment at what we call the pre-establishment phase—that is, before the investment is actually established—but every other provision of the treaty applies to existing investments and to future investments that are established, and to those wishing to establish for most-favoured-nation treatment.

•(1700)

**Hon. Wayne Easter:** There's a huge concern that should a province or a municipality make a decision that would impact upon a Chinese company's investment in Canada—make a policy change related to the environment, or whatever—and there was a legal suit, the federal government then would be obligated to compensate, if the Chinese company won the suit.

Is there any way in which this agreement effectively concedes either legislative or judicial elements of our sovereignty in a way that other FIPAs do not?

**Mr. Ian Burney:** No. There is no substantive provision in this FIPA that is different from the FIPA model that we have. If you're asking for a comparison between this FIPA and others, the answer to that part of the question would be no.

**Hon. Wayne Easter:** That is in comparison with others, but maybe there's something we don't know about the total range of the FIPAs out there.

Once we have signed these FIPAs that protect the investments of companies, is there any way that a provincial or municipal decision could result in a lawsuit being filed for which the federal government would end up having to provide compensation?

**Mr. Ian Burney:** An arbitration could be undertaken if an investor thinks that the obligations to the agreement have been violated, but the basic obligations of the agreement are that we not discriminate against foreign investors.

The Canadian policy regime now is not to discriminate against foreign investments. To the extent that this continues to be the case, we would not give rise to exposure to arbitration.

**Hon. Wayne Easter:** I think there's a problem here. I remember well when we ended up compensating Exxon—I believe for close to \$2 billion—when we were in government, over something... We made a change in the additives to fuels, or whatever. That tells me that sometimes investors get protection that does impact upon our sovereignty.

You mention in your remarks on page 3 that the Canada-China FIPA ensures that the federal, provincial, and territorial governments will have full policy flexibility in key areas, such as health and education. In what areas do we not have policy flexibility under this agreement?

**Mr. Ian Burney:** I'll turn to my colleagues for more specificity, but we have basically grandfathered all nonconforming measures and have taken a broad-based exception in a number of areas that allow us not only to maintain currently nonconforming measures but also to expand the degree to which they are nonconforming in the future. The list of these includes social services, rights or preferences provided to aboriginal peoples, rights or preferences to socially or economically disadvantaged minorities, residency requirements for ownership of oceanfront land, government securities, maritime cabotage, licensing fishing or fishing-related activities—

**Hon. Wayne Easter:** These are in the agreement?

**Mr. Ian Burney:** Yes. These are all areas that are—

**Hon. Wayne Easter:** So they're specified.

Now, you went to great lengths to talk about this being the first time that China has gone this far and allowed these kinds of concessions. Our concern here, or certainly mine, is what we gave up in return in order to gain those kinds of limited concessions. I say "limited concessions" because some sectors are completely off limits, as you say in your remarks, to foreign investments—such as mining in certain areas, and others.

What did we give up? I know how trade agreements work: there's give and take. What are the risks for us from China's having granted some concessions to us?

Mr. Chair, I have a number of questions that I'm going to table with the witnesses.

• (1705)

**The Chair:** That's fine. You made that point.

Go ahead.

**Mr. Ian Burney:** I think the key point is that this FIPA is not an instrument pertaining to market access in terms of investment. It's

not intended to open up sectors on either side that are currently not open—and we have ours, too. This is an agreement to basically protect investment, by and large, once it's in the market.

What have we given up? I would say very little. We've basically undertaken not to discriminate against Chinese investments once they're undertaken and once they're here in Canada, but that's the policy framework we currently have—we don't make it a practice to discriminate against foreign investors based on their nationality now—so all we're really doing is undertaking a legal obligation to do what we're already doing, and in return, Canadian investors now have the same protections in China.

**The Chair:** Very good. Thank you very much.

Mr. Shipley is next, I believe.

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

Just to follow up a little bit, it would appear to me that the whole intent of this agreement, which has been brought forward since about 2008, is to make things equal for both countries and to level the playing field in a lot of respects. With regard to the current investor protection and the concern that they may have to be out on their own somewhat in terms of the legal implications, when you went to the investors—either the investors who are in place now or potential investors who are wanting to expand—I think I heard you say that they believe this FIPA is good.

**Mr. Ian Burney:** Yes.

**Mr. Bev Shipley:** How did you actually go out and get input from the investors?

**Mr. Ian Burney:** I'll defer to my colleagues to speak specifically on China.

**Mr. Vernon MacKay:** Typically, when we negotiate FIPAs we do significant consultation on the ground in the partner country because that's where we get access to Canadian companies that can tell us exactly what the issues are, so we did that. There was also a fairly significant consultation with the financial services community. They're an important sector in this industry.

**Mr. Bev Shipley:** Even when we're talking about Nexen, there's always the concern that China's big. It's going to come in. Whatever it says, it will do, regardless. It's a state. It's going to be state-run in terms of overruling businesses or investors. How does this agreement help protect that? How does it give confidence to those investors that, in fact, what is written and what is agreed to will be adhered to?

**Mr. Ian Burney:** The great value of this agreement for Canadian investors is that China has accepted legally binding obligations not to discriminate against them, to provide a minimum standard of treatment, not to expropriate their investments without compensation, and to refrain from prohibited performance requirements. These are meaningful obligations, all backed up by the ability to challenge violations by taking a case before international arbitration. This provides a great deal of added security for Canadian investors seeking to make investments in the Chinese market.

**Mr. Bev Shipley:** Is that the same on the other side? Have we signed the same on the other side?

**Mr. Ian Burney:** It comes down to your assessment of the extent to which the two legal systems are comparable. The FIPA has the greatest value where the legal system is less developed or may be subject to political influence. I'm not going to be making characterizations about the systems in China—people can draw their own conclusions about that—but I suspect that part of the reason the Canadian business community is telling us they really want this is because they believe that having access to international arbitration is valuable.

**Mr. Bev Shipley:** Okay.

I'm going to share my time with Lois.

**The Chair:** Yes, go ahead.

**Ms. Lois Brown:** Thank you very much, Mr. Chair.

Thank you, gentlemen.

I'm a visitor to this committee, so thank you again for allowing me to ask a question.

**The Chair:** We won't hold that against you.

**Ms. Lois Brown:** My constituency is called Newmarket—Aurora, and in the last 10 years it has become a very urban riding. We have quite a number of manufacturers. Magna International is the biggest corporation in Aurora and has many manufacturing plants in Newmarket. Many of those plants have gone overseas to other countries, and we are seeing great interest from our own chamber of commerce in making initiatives happen in China. In March there will be the second visit on which our chamber has taken a full complement of people over to investigate opportunities, and some of them are manufacturers.

I think what I want to hear from you today is that this is the mechanism that my constituents can count on to say they are protected, should they make the decision to put a substantial investment in China. May I go home and say that?

• (1710)

**Mr. Ian Burney:** I think you would be on safe ground in saying that with FIPA they would have substantially greater protection than they do now.

**Ms. Lois Brown:** Thank you.

**The Chair:** Thank you very much.

We'll now move to Mr. Davies.

**Mr. Don Davies:** Thank you.

I think everybody agrees that moving forward, giving investors in both countries some certainty is a good thing. The issue isn't whether or not we want an investment agreement; it's whether this particular agreement achieved the balance and the benefits that we want it to.

I want to come back to this, because many people are alleging that this document does not give reciprocal access, and they point to a number of different things.

First, we know there's twice as much Chinese investment in Canada as there is Canadian investment in China. We know already that the Chinese only have to give national treatment to existing investment in China, so right off the bat we have to give existing

national treatment to twice as much Chinese investment in Canada as they do to ours.

Number two, again it's going back to the existing nonconforming measures. We know that both countries have frozen their nonconforming measures, which will continue to apply. The countries have simply agreed not to adopt any further nonconforming measures. We've already established that China has far more nonconforming measures than Canada does.

I'm going to ask you if during negotiations you compiled a list of the nonconforming measures in China, and I'll ask you to produce those to this committee so we can see what nonconforming measures are going to continue to bind Canadian investors in China. If it's the case that they have more nonconforming measures, obviously, those will hamstring Canadian investment in China going forward much more so than Chinese investors in Canada. When you take those two together, that's what is causing many to think there's been a failure to achieve full reciprocity in this agreement.

Do you have a comment on that?

**Mr. Ian Burney:** Yes. The reciprocity in the agreement is that we've undertaken reciprocal obligations.

China has not granted national treatment on establishing investment to anybody. What we have in this agreement, which is significant, is a most-favoured-nation clause. To the extent that the Chinese ever do grant further concessions to others in separate bilateral negotiations, they will automatically confer to Canada.

**Mr. Don Davies:** How many bilateral agreements has China signed to date?

**Mr. Ian Burney:** About 100.

**Mr. Don Davies:** No, that's FIPAs they have signed. How about trade agreements?

**Mr. Ian Burney:** It would depend on how you define that agreement. Does that include—

**Mr. Don Davies:** I understand they've signed one trade agreement, and that's with New Zealand, I think.

**Mr. Ian Burney:** Are you talking about a free trade agreement?

**Mr. Don Davies:** Yes, a comprehensive trade agreement.

**Mr. Ian Burney:** There are more. I would say roughly 10 free trade agreements.

**Mr. Don Davies:** Again, I understand your point; I don't know if you're getting my point. It's true they have to give most-favoured-nation status, but it's the nonconforming measures that exist today that will continue to bind all those investments in the future. You can't assess the reciprocity of this deal in a vacuum. You can't ignore the fact that there are going to be continuing nonconforming measures in China.

Do you have a list of those nonconforming measures in China to share with this committee so that we can see exactly which ones will bind investment in the future?

**Mr. Ian Burney:** The short answer to that question is no, we don't have a list. As I mentioned in my opening remarks, a key feature of this treaty, which does not appear in very many of China's agreements whatsoever, is the ratchet mechanism. That means every time a change is made in China, it can only be made in a liberalizing direction from where they are today, and every time they do that, it's locked in at that new level of liberalization. That, together with the MFN obligation, ensures that Canada will always have the best treatment available to foreign investors in China. That's a significant milestone.

**Mr. Don Davies:** With respect, Mr. Burney, how could we agree, after 18 years of negotiation, to say we'll accept any existing nonconforming measures in China and that those can continue, but not have a list of what they are and not know what it is we've just agreed to? I find it very hard to believe that our negotiators did not have a list of nonconforming measures to share with this committee.

**Mr. Vernon MacKay:** No, I think that's a mischaracterization of the negotiation. We have access to GATS lists. China's a member of the WTO.

• (1715)

**Mr. Don Davies:** Can you provide those to the committee, then, their nonconforming measures?

**Mr. Vernon MacKay:** Those are easily available. Yes, we can do that.

**Mr. Don Davies:** Thank you.

On the non-disclosure or the dispute resolution mechanism that will go in private, can you tell us in what scenarios it's envisioned that China may consider that it's not in the public interest to have a public hearing? Was that discussed? Did they tell you when they said, in their view, it would not be in the public interest to have a public hearing?

In Canada, in our political culture, Canadians are used to having open court systems. It doesn't depend on the defendant whether a court hearing is open to the public or not. In particular, did they tell you when they would invoke that?

**The Chair:** Allow him to answer.

**Mr. Ian Burney:** Just to be fair, we're talking about a scenario in which a Canadian investor is suing the Chinese government for some action happening in China.

**Mr. Don Davies:** Right.

**Mr. Ian Burney:** The Chinese are reserving the right to carry on those proceedings in private.

**Mr. Don Davies:** Right.

**Mr. Ian Burney:** It may be in the interest of the Canadian investor to have those remain in private as well.

**Mr. Don Davies:** Is it in the interest of the Canadian public, sir?

**Mr. Ian Burney:** The Canadian public's policy objective is to ensure that when a measure in Canada is challenged, the process be fully transparent. We can guarantee that.

**The Chair:** Thank you very much.

Mr. Shory is next.

**Mr. Devinder Shory (Calgary Northeast, CPC):** Thank you, Mr. Chair. It seems as if I'm not the last questioner today.

**The Chair:** No, you're not.

**Mr. Devinder Shory:** Thank you.

Mr. Chair, I was deeply struck by the deep desire I saw from the opposition today when they asked why there was no debate on this agreement. When I thought about it, this measure was tabled in the House of Commons in September. The NDP had three opposition days to debate it. Unfortunately, they did not put any priority on it. I understand they are anti-trade and—

**Hon. Wayne Easter:** I have a point of order, Mr. Chair.

**The Chair:** It had better be a point of order.

**Hon. Wayne Easter:** It is a point of order. What's this got to do with finding out the seriousness of this—?

**The Chair:** That's not a point of order.

**Hon. Ron Cannan:** On a point of order, the Liberals had a couple of days too.

**Mr. Devinder Shory:** My colleague Mr. Easter is very smart. He knows the Liberals also had an opportunity one day. They could have debated it in the House.

Let me go back to Mr. Burney.

Mr. Burney, in your opening remarks you made a comment that all investments coming into the country must go through an approval process. Then you talked about some foreign equity caps, etc. Next you said that “the FIPA with China is not meant to and does not remove these barriers to entry”, but then again you said: The Canada-China FIPA will support Canadian businesses' efforts to explore the growing investment opportunities in the world's second-largest economy across a range of key sectors....

I want you to elaborate on how it will help the investors to explore and move further.

**Mr. Ian Burney:** Thank you.

I think it comes back to the substantive obligations in the treaty. It is the obligation to provide national treatment once an investment is established, but certainly there's an MFN obligation in establishing an investment. There is an obligation not to expropriate Canadian assets once they're in the market and, if they are expropriated, to pay fair compensation promptly.

There are obligations that prevent restrictions on capital flows once the investment is in the market in China. There are performance requirement disciplines in the agreements. All of these things create a more favourable environment for a Canadian investor to invest in China, all backed up by recourse to international arbitration. That is a significant difference from the standpoint of Canadian investors compared to what they would be facing today.

Coming back to the point that China has something like 100 BITs, or bilateral investment treaties, with other partners, a key point here is that we need to put our own companies on a level playing field in the Chinese market. All of Canada's competitors, or many of them, currently have access to the protections of an investment treaty with China, but at the moment Canadian investors do not. This treaty provides state-of-the-art protections that will put Canadian companies on a level playing field with most of their international competitors, and better preference to those that still do not have an investment treaty, including the United States.

**Mr. Devinder Shory:** Thank you.

We understand that China will be the largest economy in 2020 or so. China has not signed similar FIPA agreements with anyone else. This is a great door opening for our investors and our businesses and, in turn, creates jobs here back home.

The primary benefit of an investment protection provision in a trade agreement is the creation of certainty and stability for the investors in foreign countries, in this case for Canadians in China.

Has DFAIT conducted any economic analysis of the costs and benefits of this agreement regarding the promotion and reciprocal protection of investments?

• (1720)

**Mr. Ian Burney:** The office of the chief economist at DFAIT does quite a lot of econometric work to try to quantify the value of trade agreements by measuring and estimating the impact of removing tariffs, but frankly, it's quite difficult to try to come up with a quantitative value on creating stability with respect to a regulatory regime, so there isn't a quantitative assessment of the value.

However, the fact that the obligations are meaningful, the fact that there's access to investor-state arbitration, and the fact that it's supported as strongly as it is by the business community all lead us to believe that the stakeholders that this measure is intended to benefit think that there is considerable advantage to having the agreement.

**Mr. Devinder Shory:** I believe my colleague asked a question about input, but I don't know if he asked this question. What is the feedback from the investors or potential investors?

**Mr. Ian Burney:** There have been public expressions of support from the Canadian Manufacturers and Exporters, from the Canadian Chamber of Commerce, from the CCCE, from the Asia Pacific Foundation of Canada, from the Canada China Business Council, and the list goes on, including a number of the larger companies that have investments in China now.

I'm not aware of any negative commentary that's come from the business community in Canada.

**The Chair:** Okay. Thank you very much.

Go ahead, Mr. Davies.

**Mr. Don Davies:** Thank you.

Following up on Mr. Shory's line of questioning, the Conservative government has 21 sitting days in which to call this matter before the House, if it so chooses, and have a debate and a vote in the House of Commons, for any Canadians who may want to read the record.

There was a motion put before this committee to have the matter brought before this committee. I'm not at liberty to tell anybody what happened there, but suffice it to say that this issue is not on the business of this committee after the meeting we conducted.

Do you consider this to be a major deal, Mr. Burney? Is this a major accomplishment, in your view?

**Mr. Ian Burney:** I think that the Canadian business community considers this to be a significant deal and an important one for business interests.

**Mr. Don Davies:** Do you agree with them? Do you agree that this is a significant deal to Canada?

**Mr. Ian Burney:** I think I said in my opening statement that this is an important milestone in the Canada-China relationship.

**Mr. Don Davies:** You've already pointed out that it took 18 years.

**Mr. Ian Burney:** Well, I should clarify that it wasn't 18 years of negotiation. We're not that slow.

**Mr. Don Davies:** No, it's been eight straight—

**Mr. Ian Burney:** Yes, it has been 18 years since we started, but there were large gaps when we were not actually negotiating because China was focused on its obsession with the WTO.

**Mr. Don Davies:** But we first started raising this issue in 1994 with China. I'm led to believe there's been focus on this for the last eight years. Would you agree with that?

**Mr. Ian Burney:** It was picked up again in 2004, yes.

**Mr. Don Davies:** That's eight years by my math.

**Mr. Ian Burney:** I said yes.

**Mr. Don Davies:** Okay. Would you agree with me, then, that tabling a document in the House of Commons and leaving it there for 21 days is not a sufficient period of time to scrutinize, get official stakeholder input, and study the impact of what you've acknowledged as a significant deal that has taken years to negotiate?

You've commented that there have been public expressions. Would you not agree with me that it would be beneficial to the Canadian public to hear from all the stakeholders in an organized way and for Parliament to study the ramifications of this deal before we go ahead and sign it and make it binding for the next 31 years?

**Mr. Ian Burney:** Well, with all due respect, I think it's not appropriate for an official to respond to a question about what the appropriate—

**Mr. Don Davies:** I wouldn't respond to that question if I were you either, sir.

**Voices:** Oh, oh!

**Mr. Don Davies:** Now, you agree that this agreement will be in force and bind Canada for 31 years. Is that right?

**Mr. Ian Burney:** No, the agreement has an initial period of 15 years, at which point it could be terminated on one year's notice. It would thereafter continue to apply for a further 15 years only for those investments that were made during the initial period.

**Mr. Don Davies:** Right, so all investment in the next 15 years, under this deal, will be bound by this agreement for 31 years.

**Mr. Ian Burney:** Well, that's assuming it's made at the start of the period.

**Mr. Don Davies:** Yes, of course. Okay.

Again, sir, why the rush? Do you see any benefit in hearing, in an organized fashion, from the business community, from the provinces? I won't ask you that, sir. I think I know the answer.

Let me turn to the effect of this FIPA on the provinces and pick up on Mr. Easter's questions. Would this FIPA subject provinces to claims for damages as a result of this legislation if a Chinese investor believed that provincial actions had violated this deal?

**Mr. Ian Burney:** No, it doesn't subject provinces to any claims. The federal government is responsible. The federal government would be accepting all obligations.

• (1725)

**Mr. Don Davies:** Then if I understand correctly, they could claim that a provincial action violated the deal and it could be the basis of a claim by a Chinese investor, and they could be successful, but it's the federal government that would pay.

**Mr. Ian Burney:** Yes. The federal government is responsible for the agreement.

**Mr. Don Davies:** That's right.

To quote the Conservatives, all money comes from the taxpayers, so at the end of the day it's the taxpayers of Canada who pay for any violation of the FIPA made by a province of this country.

Were the provinces consulted, and has agreement been sought in achieving this FIPA?

**Mr. Ian Burney:** Yes indeed, the provinces have been consulted at every step in the process. It's a regular feature of all of the C-Trade meetings that we have with the committee of federal and provincial trade officials on an ongoing basis. It's also been raised in meetings at the deputy minister level.

**Mr. Don Davies:** Do you have sign-off by the provinces on this FIPA? I ask because I talked to a provincial premier today who told me that they have not been consulted about this deal and they have not signed off on it.

**Mr. Ian Burney:** Well, the provinces have all been consulted. No province has objected to it. Some have spoken publicly in favour of it, including British Columbia and Quebec, I believe.

The federal government does not solicit formal sign-off from the provinces, because this is an area of federal responsibility.

**Mr. Don Davies:** Right, but they are doing that in the CETA deal, aren't they? The provinces have a seat at the table, don't they?

**Mr. Ian Burney:** The provinces do have a limited role in the CETA negotiations.

**Mr. Don Davies:** Did the provinces have any role in the negotiation of this FIPA?

**Mr. Ian Burney:** To be clear here, the CETA involves areas that are under explicit and direct provincial responsibility, whereas the negotiation of an international investment agreement is an exclusive federal responsibility.

**The Chair:** Thank you very much.

Mr. Keddy is next.

**Mr. Gerald Keddy:** I shake my head a little bit, because I always wonder what the opposition has against rules-based trading, and I don't know how you expect to encourage development and put an incentive out there for manufacturing or industry to invest and trade with nations around the world. China is a huge presence across the Pacific Ocean dozens and dozens of other countries have already signed FIPAs with. Canada is behind the eight ball, quite frankly, with this.

Let's list them off. They're the second-largest economy in the world, will probably be the largest economy in the world in 2020. We don't have an investment trade agreement with them. No one knows for sure, but they probably have some of the largest reserves of foreign currency of any nation on earth. There's a huge investment potential in that. Are we saying we're not going to trade with them and, not only that, we should put barriers up so we won't trade with them?

I commend you for the job you've done. I think this is late in coming; we understand that. These negotiations aren't easy. It's not easy negotiating with a closed and inclusive society like China. It's a different economy from ours. It's only emerging into a market economy. I think you guys and gals have moved light years, and good for you.

I take exception to comments that somehow rules-based trading is not good for this country. The idea that you would ignore that economy is shocking to me, absolutely shocking. The idea of a foreign investment promotion and protection agreement is to give a basis for investment for Canadians abroad. It also is reciprocal to give a basis for investment and equal status to investment coming into Canada from overseas. That's as simple as it is. I'm not trying to oversimplify this issue, and the idea that somehow we need more discussion on it... Prior to 2008, treaties were never tabled in the House of Commons.

So it's would've, could've, should've, it's not enough, we should have more. Give your heads a shake here, guys and gals. You opened it up. If you wanted to debate it in the House of Commons, you've had four opportunities to do it. We arranged to bring the department in today to make sure that any of the questions that could have been out there that need to be answered—and everyone has a right to information—get answered. I'm not giving you much chance to answer, but I have to get this out. I don't have a question, but I have to finish my statement and we'll end this off for today.

**Some hon. members:** Oh, oh!

**Mr. Gerald Keddy:** Finally, and I think it needs to be said again, for the first time we have some clear rules and clear parameters in dealing with what will soon be the world's largest economy, and that's good for Canada and it's obviously good for investment in China. Thank you for doing that.

**Some hon. members:** Hear, hear!

• (1730)

**The Chair:** As the chair, I have one quick question on this one, if you'll allow me.

China's number one trading partner is Japan, is that right? China's number two trading partner would be the United States of America, I believe. Don't argue; it doesn't matter.

**Mr. Ian Burney:** You just trumped our entire team.

**The Chair:** The question is this: neither one of those has a FIPA, is that right? Is that accurate?

**Mr. Ian Burney:** No, there is actually a trilateral investment agreement now in place between China, Japan, and Korea.

**The Chair:** It's with China, Japan, and Korea.

**Mr. Ian Burney:** Yes.

**The Chair:** I see, but not with the United States.

**Mr. Ian Burney:** No, not with the United States.

**The Chair:** I wanted to mention that, because actually I would echo what was said over here in the sense that you have done a great thing for prosperity and the possibilities for future trade.

With that, I want to thank you for coming in and sharing with the committee.

The meeting is adjourned.

---







**MAIL  POSTE**

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

**Lettermail**

**Poste-lettre**

**1782711  
Ottawa**

*If undelivered, return COVER ONLY to:*  
Publishing and Depository Services  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,  
retourner cette COUVERTURE SEULEMENT à :*  
Les Éditions et Services de dépôt  
Travaux publics et Services gouvernementaux Canada  
Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of  
the House of Commons

### **SPEAKER'S PERMISSION**

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and  
Depository Services  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S5  
Telephone: 613-941-5995 or 1-800-635-7943  
Fax: 613-954-5779 or 1-800-565-7757  
publications@tpsgc-pwgsc.gc.ca  
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the  
following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité  
du Président de la Chambre des communes

### **PERMISSION DU PRÉSIDENT**

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les  
Éditions et Services de dépôt  
Travaux publics et Services gouvernementaux Canada  
Ottawa (Ontario) K1A 0S5  
Téléphone : 613-941-5995 ou 1-800-635-7943  
Télécopieur : 613-954-5779 ou 1-800-565-7757  
publications@tpsgc-pwgsc.gc.ca  
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à  
l'adresse suivante : <http://www.parl.gc.ca>