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Chair

The Honourable Rob Merrifield

Standing Committee on International Trade

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• (1530)

[English]

The Chair (Hon. Rob Merrifield (Yellowhead, CPC)): We'd like to call the meeting to order. We want continue our study on the benefits for Canada of the Trans-Pacific Partnership.

We have before us today two witnesses in the first hour, including from the Forest Products Association of Canada, Isabelle Des Chênes. Thank you for being here.

We also have Michael Geist, the Canada research chair in Internet and e-commerce law at the University of Ottawa.

I understand, Mr. Geist, that you're first, so I will yield you the floor. I just want to mention that we'll save about five to ten minutes for some committee business at the end of our second hour, when we will go in camera.

The floor is yours, sir, go ahead.

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

My name is Michael Geist. I'm a law professor at the University of Ottawa where I hold the Canada research chair in Internet and e-commerce law. I'm also a syndicated weekly columnist on law and technology issues for the *Toronto Star* and the *Ottawa Citizen*. I've edited several books on Canadian copyright and appeared many times before committees on copyright and trade policy, but I appear before this committee today in a personal capacity representing my own views only.

I greatly appreciate the invitation, as I have some very serious concerns about Canada's participation in the TPP. I should start by noting that I'm not anti-free trade. I support the government in its efforts to explore opportunities to expand markets for Canadian businesses.

That said the TPP raises some concerns. I would like to focus on some of the TPP's substance, particularly the copyright provisions in the draft agreement, as well as address some concerns related to process.

Let me start with the substance. Given the limited amount of time available, I'll focus primarily on the copyright provisions, though copyright is only part of the broader intellectual property issues raised by the TPP. You heard recently from Scott Sinclair on some of the patent issues, and if you're interested I'd be happy to discuss the implications of the TPP for governance of the domain name system in Canada.

As members of the committee know, Canada recently completed a long, difficult copyright reform process. Over a decade of debate ultimately resulted in Bill C-11. Virtually all stakeholders would say that the bill, which received royal assent last June, was imperfect. Yet it did reflect a genuine attempt at compromise, with many made-in-Canada provisions that are often cited as progressive, effective, and forward-looking digital copyright rules.

My single biggest concern is that the TPP will undermine the Canadian compromise that the government struck, and require radical changes to our national copyright law.

I should preface the analysis by noting that last year DFAIT conducted a public consultation on Canada's potential participation in the TPP, in which copyright was the top issue cited by individual respondents. No public report summarizing the responses was ever published, yet according to documents I obtained under the Access to Information Act, the government was overwhelmed with negative comments urging officials to resist entry into the TPP and the expected pressures for significant intellectual property reforms as part of the deal.

In addition to tens of thousands of form letters and e-mails criticizing the TPP, the government received hundreds of individual handcrafted responses that unanimously criticized the proposed agreement. In fact, a review of more than 400 individual submissions did not identify a single instance of support for the agreement; rather, those submissions focused specifically on copyright-related concerns.

Now based on a leak of the draft intellectual property chapter, let me provide four examples that lie at the heart of the public concern.

First, Canadian law now features a notice and notice approach on Internet provider liability, or ISP liability. This approach establishes the obligations for Internet providers and intermediaries when there are claims of copyright infringements, and grants copyright holders powers to raise allegations of infringement with the sites and their subscribers.

Moreover, it protects the privacy of subscribers and does not result in takedowns of content based on mere allegations. During the debates on Bill C-11, Canadian Heritage Minister James Moore repeatedly pointed to notice and notice as an example of a positive Canadian-specific approach. Yet according to leaked documents, the TPP would require that Canada drop its approach in favour of a more draconian takedown system that could stifle free speech and result in the removal of content without the need for any proof of infringement.

Secondly, the term of protection for Canadian copyright is presently the life of the author plus an additional 50 years after his or her death. This term meets the international requirement as established in the Berne Convention. The TPP would require Canada to add an additional 20 years to the copyright term. The extension in the term of copyright would mean that no new works would enter the public domain in Canada at least until 2034, assuming that the agreement takes effect in 2014. Many important authors would immediately be affected, since their works are scheduled to enter into the public domain in the period, let's say, between 2014 and 2034. These include Canadians such as Marshall McLuhan, Gabrielle Roy, Donald Creighton, and Glenn Gould, as well as non-Canadians such as Robert Frost, C.S. Lewis, T.S. Eliot, John Steinbeck, J.R.R. Tolkien, and Ayn Rand. Given the potential to make those works more readily accessible to new generations once they enter the public domain, extending the term of copyright as potentially required by the TPP would have a dramatic negative effect on access to literature and history, particularly Canadian literature and history.

• (1535)

Thirdly, Canadian copyright law now features an important distinction with respect to statutory damages, as it contains a cap of \$5,000 for all non-commercial infringements. While the reforms have been unsuccessful in stopping thousands of potential lawsuits against individuals, they do ensure that individual Canadians won't face the threat of hundreds of thousands or even millions of dollars in liability for non-commercial infringement.

The government, I think quite rightly, consistently argued that the reform was the right thing to do, yet the TPP would require Canada to drop the non-commercial cap and restore statutory damages that could climb into the millions of dollars for individual Canadians.

Fourthly, the digital lock rules were the most contentious aspect of Bill C-11. The provisions were widely criticized, but the silver lining, in an approach that, I have to say, went far beyond international requirements, was that the government kept the door open in the legislation to future reforms and exceptions to the digital lock rules. The TPP would close that door, increasing the penalties for circumvention and restricting the ability of Canada to create new digital-lock exceptions.

The copyright provisions in the TPP threaten a Canadian compromise that took a decade to achieve and that was strongly defended by the current Conservative government. I think undoing that compromise would constitute an enormous setback for Canadian sovereignty and for our long-term digital cultural policy.

I would be remiss if I did not also raise process concerns involving the secrecy associated with the TPP and the creation of a

two-tier approach that involves special access to TPP information for some insiders.

The TPP negotiations have been ongoing for years, yet there has still been no official release of the draft text. To conduct a hearing on the benefits of the TPP without public access to the draft text forces participants to rely on leaked information that has not been officially confirmed. Canada should be demanding that a draft text be made available for all to see. Instead, it is deeply troubling that DFAIT has established a secret insider group, with some companies and industries associations being granted access to consultations as well as opportunities to learn more about the agreement and Canada's negotiating position.

I realize that Minister Fast denied the existence of such a group when he appeared before you last month. However, the documents I obtained under the Access to Information Act indicate that the first secret industry consultation occurred weeks before Canada was formally included in the TPP negotiations, in a November 2012 consultation with telecommunications providers. All participants were required to sign confidentiality and non-disclosure agreements.

Soon after, the circle of insiders expanded with the formation of a TPP consultation group. Representatives from groups and companies such as Bombardier, the Canadian Manufacturers and Exporters, Canadian Agri-Food Trade Alliance, and Canadian Steel Producers Association all signed a confidentiality and non-disclosure agreement that granted "access to certain sensitive information of the Department concerning or related to the TPP negotiations."

I have copies of the signed NDAs right here that make specific reference to the TPP consultation group. The creation of a secret TPP insider group suggests an attempt to shy away from public consultation and scrutiny of an agreement that could have a transformative effect on dozens of sectors at a time when we should be increasing efforts to gain public confidence in the talks by adopting a more transparent and accountable approach.

I believe the TPP's highly secretive and non-transparent approach runs counter to Canadian values of openness and accountability. We should be actively encouraging participants to increase TPP transparency and should lead by example by ceasing the two-tier insider approach to trade agreement information.

I welcome your questions.

The Chair: Thank you very much.

We'll get to those, but before we do that we'll move to Madame Des Chênes.

The floor is yours.

Ms. Isabelle Des Chênes (Vice-President, Market Relations and International Trade, Forest Products Association of Canada): Thank you.

On behalf of the member companies of the Forest Products Association of Canada, I'd like to thank you for the opportunity to present to you today.

With mills in almost every province, FPAC's members manufacture a comprehensive line of primary and secondary pulp, paper, wood, and bioproducts. The Canadian forest sector represents 12% of the country's manufacturing GDP, and FPAC members account for about 60% of its total manufacturing capacity. The industry is also one of Canada's largest employers, operating in 200 communities across the country and providing 600,00 direct and indirect jobs.

As you're all aware, the industry has been emerging from one of its most difficult periods in a generation. It became very clear to our members that business as usual was simply not an option. As a result, a significant effort was undertaken to implement an economic competitiveness strategy and rework the business model by improving productivity and competitiveness, diversifying products and markets, building world-class environmental credentials, and looking for ways to produce innovative products from wood fibre. That hard work is beginning to pay off.

Last year, FPAC unveiled vision 2020, an ambitious plan to drive the industry forward with aggressive goals around performance, people, and products. First, we hope to deliver a further 35% improvement in our environmental footprint. Second, we want to renew the workforce by about 60,000 recruits, including women, aboriginals, and new Canadians. Finally, we want to generate an additional \$20 billion in economic activity from innovative products and by growing markets.

Vision 2020 builds on all of the hard work of recent years. We've increased our productivity and operating efficiency. We've established world-class environmental credentials that are second to none. We're making technological breakthroughs and producing new innovative products, from cosmetics to clothing to car parts, all made from wood fibre.

Our initial efforts to diversify our markets have been incredibly successful. Canadian wood product exports to China, for example, were \$1.4 billion in 2012. That's a dramatic 44 times increase from 2001. If you add pulp and paper to that figure, total forest products become Canada's largest export to China, at over \$4 billion. Throughout our transformation, the government has supported the industry as a strategic partner, in particular with initiatives on the trade front: opening up new markets and helping us market Canadian wood products globally.

Canada's forest products industry annually exports nearly \$30 billion worth of products to markets around the world, making it one of the countries leading export industries and one of the most successful exporters of forest products globally. The continued expansion of existing markets and diversification into new markets remain an essential component of the industry's economic competitiveness strategy and vision 2020. For this reason, the industry is supportive of the government's trade agenda, including the negotiation of new trade agreements and focused program spending to help secure opportunities in new markets.

The Trans-Pacific partnership presents a unique opportunity to build on our relationship with the United States, our largest export market, and to expand our trading relationship with some of the world's fastest growing economies. As a bloc, TPP countries imported more than \$18.3 billion of Canadian wood, pulp, and paper products in 2012. The combined sales of Canadian forest products to

TPP countries, not including the United States, amounts to \$1.8 billion, making it the industry's third largest market.

The industry's competitive position will be further enhanced by secure and open access to the TPP market as its transformation accelerates and it introduces new biochemicals, biofuels, and biomaterial products to the market. In addition to obvious offensive interests, participating in the TPP will allow the Canadian forest products industry to protect its competitive position, particularly in the critical \$1.3 billion Japanese market, where New Zealand and Australia are significant competitors. All told, the TPP represents an important opportunity for the Canadian forest products industry and the communities it supports.

As negotiations proceed, we recommend that the government consider the following points related to forest products.

Several TPP members currently levy tariffs on Canadian pulp, paper, and wood products, ranging anywhere from 1% to 40%. These render Canadian exports uncompetitive vis-à-vis competitors that face a reduced or no-tariff rate on the same product lines. The architecture of the agreement should ensure that non-tariff environmental trade barriers are not used as means of blocking the Canadian industry's access to markets.

Moreover, the deal should recognize as being equal all three forest certification standards that are used in Canada, as well as recognize Canada as a low-risk jurisdiction with respect to illegal logging.

- (1540)

To the greatest extent possible, the agreement should expedite regulatory approvals for the use of Canadian forest derived products in TPP member states, once they have been approved for safe use in Canada. This should apply to solid and engineered wood products, forest fibre derived fuels, chemicals, and specialty products.

Finally, the U.S. Lumber Coalition has pressured the U.S. administration to address NAFTA chapter 19, and elements of Canada's timber pricing and forest management systems as part of the TPP negotiation process. We urge the government to continue to hold firm on chapter 19 and other existing trade remedy protections.

Expanding international trade relationships helps the forest products industry to grow and diversify its markets and products mix. Ultimately, a successful negotiation of the TPP will help sustain Canada's forest communities and the hundreds of thousands of jobs the sector supports across the country.

Thank you once again for the opportunity to be here today.

• (1545)

The Chair: Thank you very much for your presentation.

We'll now move to question and answer.

We'll start with Mr. Caron.

The floor is yours, sir, for seven minutes.

[Translation]

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): Thank you very much, Mr. Chair.

[English]

I'll be alternating between French and English, if you don't mind.

Mr. Geist, you mentioned that your research and some documents that you received prove the existence of an insider consulting group. I'd like to re-enter into the record what Minister Fast said on May 6. At this committee he said:

...we also seek the advice of stakeholders on a very regular basis. There's no stakeholder who is told that they can't have input into the process.

He also said:

I seriously challenge your insinuation that there's this insider group, but I make no apologies for meeting regularly across a broad, diverse cross-section of stakeholders to seek their input. We'll continue to do that.

He mentioned that he was meeting with stakeholders but denied the fact that there is such an insider group. How do you reconcile the information you have with his statement? Can you do that?

Dr. Michael Geist: In some ways that question is better posed to the minister.

I look at these documents and to me it's readily apparent what this is. There are opportunities to discuss either Canada's position or perhaps other positions with respect to the TPP, and that's granted only to a select few who have signed these declarations of confidentiality and undertaking of non-disclosure. It's obtained under access to information. It's even described as a TPP consulting agreement. I don't have access to that, the general Canadian public doesn't have access to that. From my perspective, that means we're dealing with an environment where there are two tiers, those who have this access and those who don't.

Mr. Guy Caron: Do you have these documents with you right now? Would you be willing to table them for this committee?

Dr. Michael Geist: Sure.

Mr. Guy Caron: Thank you very much.

[Translation]

So you are going to receive the documents? Very good.

[English]

Thank you very much.

[Translation]

You talked a lot about substance, and we'll get to that.

On the matter of transparency, you said something to the committee that you've also mentioned in articles you've written. With respect to the TPP negotiations, you said that transparency may be an even bigger concern than the substance of the agreement.

Could you elaborate on that? In discussing a trade treaty, we usually focus on its substance, but you raised the issue of transparency, as well. I'd like you to comment further on that, because it's a very important consideration.

[English]

Dr. Michael Geist: I think the issue of transparency is hugely important.

For example, if you take a look at the Anti-Counterfeiting Trade Agreement—the trade agreement that Canada signed along with the United States, Europe, and some other countries—which was defeated in Europe as the result of the protests of hundreds of thousands of people, much of that centred around the lack of transparency.

I think there is a public sense, particularly when you're talking about some of my issues.... I recognize that in some trade agreements it's a give and take and a commercial negotiation. When you're talking about issues that involve cultural sovereignty, things like intellectual property, which for a very long time haven't even been included in these kinds of agreements, but are instead typically negotiated at places like the World Intellectual Property Organization in a much more open forum.... For example, just next week Canada is going to be participating in a diplomatic conference to create a treaty for the visually impaired, with special exceptions for the visually impaired to copyrighted materials. That takes place in an open environment where all stakeholders have the ability to see draft text, provide input, and ensure that their interests are adequately represented and that we get the best possible outcome.

In the context of something like ACTA, or now in the context of TPP, that's not what happens. The only thing that the public—experts in the field or the general public concerned with these issues—have access to is that either they happen to be invited to become part of these sort of groups and then sign these NDAs, or more likely, are simply kept out of the process and the entire thing is presented as a *fait accompli*, as in, “Here's the agreement, take it or leave it.”

I think that lack of transparency fundamentally undermines future public support, such that it's in everybody's interest to blow this open.

Mr. Guy Caron: If I could summarize what you said, the difference in transparency between the TPP and something like CETA, for example, is the fact that we are actually currently negotiating things that we never traditionally put on the table.

Dr. Michael Geist: Well, that's been the issue. It's not that there were never intellectual property issues in prior trade agreements—although this one here goes right down to the domain name system and other issues which, in the past, we haven't addressed. It's that it delving into a different area that conventionally has been held in a much more open forum. With the TPP, that's just not happening.

• (1550)

[Translation]

Mr. Guy Caron: Okay.

Ms. Des Chênes, I'm going to be quick about this.

Actually, how much time do I have, Mr. Chair?

[English]

The Chair: You have two minutes.

Mr. Guy Caron: Thank you very much.

[Translation]

Ms. Des Chênes, has the Forest Products Association of Canada been consulted so far in the negotiating process and has it received a briefing from TPP negotiators?

Ms. Isabelle Des Chênes: We take part in group briefings whenever a round of consultations comes to an end. Ms. Hillman and her team hold a teleconference, and we receive instructions at a high level.

We have also had the opportunity to sit down with the negotiators to share our concerns with them, but we haven't received anything in writing.

Mr. Guy Caron: You're saying that the Forest Products Association of Canada was consulted during a group briefing. Other groups took part as well?

Ms. Isabelle Des Chênes: Yes, other groups took part. It was a consultation of industry stakeholders.

Mr. Guy Caron: I also assume that you probably signed a confidentiality agreement regarding the content of the briefing.

Ms. Isabelle Des Chênes: Yes.

Mr. Guy Caron: Very good.

Mr. Geist, you spent a lot of time discussing the copyright issue specifically, and the fact that the treaty could extend the copyright term by 20 years.

Have other trade agreements extended the copyright term by that much, despite so little consultation being done? I'm referring to agreements between countries, not necessarily to any specific agreements.

How will the 20-year extension impact consumers and the cultural industry?

[English]

Dr. Michael Geist: I'll answer the second question first in terms of the impact. If we extend the term of copyright, works that would otherwise be made available to the public, which could be used without permission in classrooms and in a range of different environments, would simply fall out of the public domain, in effect, if we extended that term of copyright, creating all sorts of restrictions. We've seen that in the United States, which did extend the term of copyright so that there are works today—Orwell is an example—that are in the public domain in Canada, but not in the public domain in the United States. They can be more freely and openly accessed in Canada because it is open in a way that it can't be in the United States. So there are real costs.

The U.S. has tried to incorporate this extension in the term of copyright in its bilateral trade agreements, but this is the first time that we're entering into these kinds of negotiations and facing that sort of pressure from the United States.

The Chair: Thank you very much.

Mr. Holder, for seven minutes.

Mr. Ed Holder (London West, CPC): Thank you, Chair, and I'd like to thank our guests. Welcome back, both of you, to our committee.

I appreciate your testimony. It gives me some opportunity to reflect on how I want to understand better your probably divergent thoughts on the TPP.

We've studied this. We've had folks who have made representations to us before on a variety of trade agreements that we've looked at. It's interesting, and CETA is a good example. You made a brief reference to it, Mr. Geist. CETA is an example where the provinces are in step with the federal government. They've been consulted. I'm not hearing any leaks from the provincial governments about what they like or don't like about the CETA agreement. I certainly hear some things from the municipalities, but certainly not from the provinces. I'll presume that they've made certain commitments in their dialogue. I'm not sure if these are consultations or briefings or a mix—frankly, I don't know—but at certain points when a government wants to get more information from an organization or share some information to get more information, I would presume that kind of thing would be in confidence. It would seem logical to me that you would sign some kind of privacy or confidentiality agreement, because I wonder...

Maybe this is a question for you, Mr. Geist. I'm trying to understand this better. Perhaps you could give me some insights on this. What do you think the diplomatic fallout for Canada might be if we were releasing TPP documents or segments when several other countries involved aren't participating, particularly before there's a final draft. Do you have any sense of...? I presume you've been involved in negotiations before, but what impact would that have on Canada's negotiating position, or even its credibility?

That's a very sincere question. I'd appreciate it if you would give me your thoughts on that.

● (1555)

Dr. Michael Geist: It's a fair point. I think the best reference, especially on the intellectual property provisions in this, is the Anti-Counterfeiting Trade Agreement, ACTA, wherein the U.S., as they do with the TPP, maintains quite explicitly through the Office of the U.S. Trade Representative, the USTR, special groups that do have access. They're not shy about making that clear.

That created some real contention with the Europeans and some others who felt that if we're going to keep this confidential, we're going to keep it confidential. Privileging some over others created a significant problem. But more broadly what happened within ACTA was that some of the leaks were inevitable. Some of the concerns about starting to create that two-tier approach become inevitable if in fact that's what happens. What it ultimately does is to undermine public confidence in an agreement.

I'm not here to tell you that I think Canada should go out there and say, here's the TPP for all to see. It's quite clear that we undertook not to do that. In fact, these same documents that I obtained under the Access to Information Act make it clear that the department takes those obligations very seriously in not making it widely available to the public. The problem is that if we are going to be a participant in this and at the same time hold values around accountability and transparency at the level I think we do, then it behooves us, together with as many of the TPP participants as possible, to push for more transparency, more public access, sooner.

That's actually what ultimately did happen within ACTA, as Canada and a number of other countries began to push for greater transparency. Ultimately those standing in the way relented and said, "Here are some draft agreements."

We're pretty far along the way in these negotiations with still no draft text.

Mr. Ed Holder: My guess is that the reason there is no draft text is that we're not that far along at this stage, and yet I would suggest to you, from what you've said—I'm just trying to think this through a little bit—is that other countries aren't doing this as well. They're not negotiating in public.

Your next questioner might talk about secrecy when the member opposite starts talking about these things, but I recall that when his party was in power and his government signed trade agreements, these weren't negotiated in public. That has not been our practice.

I'm mindful that when you want to garner some information a confidentiality agreement would make some sense. Here I'll be candid that I don't know the impact of the back and forth dialogue between our government and those specific groups, but it suggests to me that if we're trying to garner more information to assist us, such an agreement would indeed make some sense. Do you not think so?

Dr. Michael Geist: I can totally understand why that happens, and I can equally understand why, in the context of many of the prior trade agreements, the approach would be to say that this is happening behind closed doors. A distinction between some of those prior agreements and what we see today is that where you're negotiating tariffs on certain things, that's just basic commercial negotiation, and I can understand there that you would want to keep your cards close to the vest as part of the negotiations.

Where we're talking about copyright notice and takedown, or term of extension, or a range of these kinds of cultural policy issues, these have rarely, if ever, been part of these bilateral TPP-style negotiations. Instead, they have been in broad, open, public fora, and that's where we're out of step with what has long been the conventional approach when we're talking about intellectual property.

Mr. Ed Holder: I guess, to be fair, it's not clear at this stage all of what is in that agreement.

Ms. Des Chênes, I sense that you like the direction we are going in with TPP, and I'm not trying to be flippant as I say that. I looked at a press release that came out—and I share this with my colleague from Malpeque because this is actually very good news—where you talked about the export of forest products from Canada now being

worth \$26.4 billion and how Canada has a trade surplus in forest products of \$17.2 billion. That's pretty serious.

This is my question for you. While the world did not start in 2006, it is a point to which I will make reference. Since the Conservatives came to power in 2006, have there been any trade deals—and here I don't know the answer to this; it is not a set-up question—that have not been to the advantage of the Forest Products Association of Canada, or that have hurt you at least, where we have been involved? Have you supported our trade deals to this point?

Ms. Isabelle Des Chênes: Yes, we have for the most part. That's because in particular areas we did have some opportunities to expand our forest products exports. In some other areas, take Panama for instance, that was a small deal but it really impacted a single mill, and that single mill impacts the community and supports a broader community.

Mr. Ed Holder: Pulling that back to Mr. Geist, I'm not trying to isolate you down a road here, but I'll just come back to the world starting in 2006 for this purpose. Since the Conservatives took power, have there been any trade deals within the focus of our discussion that you have supported?

• (1600)

Dr. Michael Geist: I'm not aware of any trade deals that have included significant intellectual property provisions. The only agreement that I know we've negotiated and completed to date that have them is the Anti-Counterfeiting Trade Agreement. I was against it, but I was in good company, given that the European Parliament voted against it, and which all members of the European Union now, quite clearly, won't be ratifying.

Mr. Ed Holder: Thank you both for your testimony.

The Chair: Thanks very much.

Mr. Easter, the floor is yours, seven minutes.

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

And thank you, folks, for your presentations.

No, Ed, I'm not going to take the bait. The fact is that under this government, we do have—

Voices: Oh, oh!

Hon. Wayne Easter: —a fairly substantial trade deficit, and for some reason, people do not want to look at the real reasons behind that merchandise trade deficit. Those are the things we should be looking at. We support trade, but we need to find ways to ensure that we're gaining value in Canada.

Mr. Geist, you're not the first one who's come before this committee on this whole "lack of transparency" business. I submit that you are absolutely correct. This is not just a negotiation on trade in commodities and on tariffs. It's a much broader agreement that can have implications for—you named copyright, intellectual property—a whole range of other areas. In fact, previous governments did provide texts to groups that held that information confidential. So those groups could actually see the text and comment on it, and were not just given a briefing on it, which might either have been accurate or just somebody's opinion. Previous governments did have a much more.... It wasn't open to the public, no, but it was open to a cross-section of representatives of the public, who could actually deal with it. That's not happening any more, and I think that's a problem.

How would you suggest going about ensuring that transparency, in terms of a good cross-section of the public, and still maintaining confidentiality, which we have to do?

Dr. Michael Geist: Right. Well, I guess there are two issues here. There's the issue of the relationships we have with other TPP partners, and concerns they would have about having a single country just simply taking the text, and, let's say, throwing it up on the Internet, which we assume, quite rightly, is a non-starter.

We joined this TPP late, and as has been widely reported, we were forced to accept a number of conditions as part of that. Perhaps one of them was the level of secrecy that's associated with this agreement. But I would submit that Canada ought to be publicly on the record pushing the various other partners. I suspect, at least from my experience within ACTA, that there are some other TPP members that were similarly supportive of greater transparency, pushing to make the text, officially and in a draft version, available as quickly as possible, and I think that's in the interests of all negotiating parties.

In terms of what takes place domestically in the establishment of essentially a two-tiered approach, from my perspective that has to stop. That's not to say that you can't have discussions with various industry groups. Certainly, where it's a conversation, where the industry group is providing them with information about their concerns, that doesn't necessitate the need for confidentiality or an NDA. You need a confidentiality or non-disclosure agreement only when you're providing information back to those groups. If they're providing that level of information back to those groups, frankly, I would submit that that information ought to be made publicly available to all.

Hon. Wayne Easter: We're not sure on this one where the provinces are at, whether they're at the table or not. I don't know if they're provided with copies of the text either. But in terms of the industry groups that are given access at the moment, do you have any information on how broad or how narrow that might be?

Dr. Michael Geist: I don't, and it's difficult. If I look, for example, at this first page that I received under the Access to Information Act, large amounts of it are redacted. There are clearly many stakeholders there, with contact names. Some are included, some are not. Even in terms of the list of those that signed NDAs and made that available, some of it's confidential, some of it's made public. Then, of course, these are private consultations. We don't know what happened.

As an example, the telecom industry is an area that I focus on a lot. It's quite possible that a discussion with telecommunications companies would have implicated some of the issues that I just talked about. Notice and take down, for example, or notice and notice, the role that an intermediary plays where there's an allegation of infringement on their network, is something that is presumably of direct concern to a telecommunications company. Was that discussed at the November 2012 meeting? Did they gain information as to what Canada's position is, what other countries' positions are? I don't know. They're not talking. In fact, they can't talk, because they've signed these NDAs that preclude them from doing so.

• (1605)

Hon. Wayne Easter: From our the last meeting on May 27, I just tried to get the exact quote from Richard Doyle, who was with the Dairy Farmers of Canada.

He said basically the same thing, that they don't have a copy of text, and it's a problem. From my point of view, if you're advising the government and you don't have the text, then the consultations are a farce because you're dealing with somebody's interpretation of what they saw in the text. Other people might see different things.

To the Forest Products Association, where are you in these open discussions? Do you think they should be broadly based? Albeit they shouldn't be public, but if the government is using an advisory group, shouldn't civil society be represented in those discussions as well, because we're not dealing just with forest products: lumber and trees. We are dealing with international property, copyright, etc.

Ms. Isabelle Des Chênes: We do recognize the need for the government to be able to negotiate in a manner that serves Canada's interests, particularly given such a large negotiating group that they're focused on at this point.

We've signed an NDA, as I said earlier. We've done so with every agreement: the Canada-Japan, Canada-India, softwood lumber agreements—in all of those areas. We're provided with briefings on a regular basis in terms of—

Hon. Wayne Easter: But you weren't entitled to the text either.

Ms. Isabelle Des Chênes: We haven't seen text. We haven't seen text for CETA either. It's one of those areas where we would like to see the text, but we've been given some strong assurances by our negotiators and we're pretty confident in the fact that they're seized with our issues.

The Chair: Thank you very much. Your time is gone.

We'll now move to Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you.

To pick up where my colleague left off, Ms. Des Chênes, it sounds as if it's a standard operating procedure for the department to provide briefings, not text, and use NDAs as a way of keeping the information in-house? Is that what you'd say?

Ms. Isabelle Des Chênes: I'll admit I've been on the trade file since last fall. I don't know how far back that goes, but that has been my experience. I'm given as much access as I need to government officials, but I haven't seen text, I have to admit.

Mr. Russ Hiebert: One of the things you asked us to consider was something relating to the U.S. Lumber Coalition and chapter 19. Could you elaborate on that briefly? I didn't catch all of that.

Ms. Isabelle Des Chênes: Chapter 19 is the dispute resolution chapter of the NAFTA, and certainly the U.S. Lumber Coalition has been very active and creative in finding opportunities to raise their concerns with the U.S. federal government around softwood lumber access. Certainly this was another opportunity for them to make a pitch to change the dispute resolution mechanism in NAFTA. Our understanding is that given the timeframe within which this agreement is expected to be negotiated, opening up NAFTA is a non-starter. So we're very comfortable with that and we continue to urge the government to stand firm on that.

The dispute resolution mechanism, to be fair, has been quite good for Canada in recent softwood lumber disagreements. Their position is that this could be modified to create a more favourable opportunity for them.

Mr. Russ Hiebert: Mr. Geist, in your testimony you highlighted the need for Canada to maintain the line on statutory damages and digital lock agreements. Could you elaborate on those two, which I presume are your primary concerns?

Dr. Michael Geist: Sure.

I highlighted four examples on the copyright side: the notice and notice approach that we have in the bill; term of copyright; digital locks; and statutory damages. Let me elaborate on the latter two you just raised in the context of statutory damages.

I think there was a recognition by your government, by Ministers Clement, Paradis, and Moore, that in the United States, which has seen lawsuits against individuals running into the millions of dollars in cases of non-commercial infringement.... They consistently on the public record have argued that it was not fair and not right to put an individual at risk over a non-commercial infringement.

The government, in an innovative approach that I, quite frankly, and many others were strongly supportive of, said that it was going to distinguish between commercial infringement—those who seek to profit from their infringement—for which we will have very strong statutory damages still in place, and non-commercial infringement. The non-commercial infringement under the law now creates a cap of a maximum of \$5,000 for all infringements. So someone isn't at risk of losing their house, so to speak, on the basis of an allegation of non-commercial infringement.

I think that was a wise decision, and it is one that is now in effect under Canadian law due to your Bill C-11. However, based on the leaks of what's contained in the TPP, Canada would be required to drop that distinction and move back to the full statutory damages approach, so that individual Canadians would face the prospect of millions of dollars in liability.

On the issue of digital locks, I didn't agree with the government's position. But the one thing it did do within the law was specifically to identify how instances of new exceptions might come about so

that the government could do that through regulation as opposed to having to fully amend the bill. Based again on the leaked texts of the intellectual property chapter, that flexibility would be removed. The government would be required to make changes to its digital lock rules, adopting a more restrictive approach than even it thought was appropriate just a few months ago when it passed Bill C-11.

● (1610)

Mr. Russ Hiebert: How reliable do you think these leaks are?

Dr. Michael Geist: They're the text, and I don't think we've seen any denials from the U.S. They come from the U.S. proposals on these bills. They are the versions that many stakeholders who are attending these various negotiations, most recently in Peru, are relying upon. We haven't seen the U.S. say it's not what they're proposing.

Mr. Russ Hiebert: Obviously they wouldn't do that. Whether they were accurate or inaccurate, there's a standard policy where you don't comment on leaks, just like you don't negotiate with terrorists.

I'm not sure why you would expect to have them deny or affirm those leaks.

Dr. Michael Geist: They are leaked documents that show every sign of being the real text. They're the basis upon which hundreds of civil society groups and other stakeholders around the world are providing analysis until those governments come forward, as they did under the Anti-Counterfeiting Trade Agreement, to provide copies of the text.

I think it's a bit unfair to say to those same groups that we can't really take your concerns seriously because we don't know if this is the accurate text, when at the same time you do not make that text available.

If you want fully accurate analysis, then provide the text. Until that comes about, I think everyone who is looking to try to properly assess the implications of this agreement is going to have to rely upon those leaks.

Mr. Russ Hiebert: You come across as a very reasonable individual, stating earlier that you understood that Canada might have entered into these negotiations under certain conditions that would have precluded them from sharing any information. Yet at the same time you're asking that the government publicly release this information.

So I'm not sure. If the government has in fact entered into the negotiations with its own version of confidentiality agreements in place, it is simply not an option—if they want to continue to be considered a viable partner—for them to do anything other than stay within the terms they have agreed to.

Dr. Michael Geist: I think what I said was that in the context of the international negotiations with other countries, we ought to be trying to convince our negotiating partners to make a draft text available. With respect to what takes place domestically, what I said was that I don't think a two-tier approach is appropriate. Certainly, at a minimum, the department ought to be disclosing whom they have signed these NDAs with so that we know who has privileged access.

With respect, while it may be described as standard operating procedure in the context of the Anti-Counterfeiting Trade Agreement—which with regard to these provisions would be the closest analogy that the government has engaged in—the Department of Foreign Affairs considered creating a similar kind of insider group, but ultimately dropped that idea once people became aware that such a group would be created. So certainly in the context at least of these IP-related negotiations, it hasn't been standard operating procedure.

The Chair: Thank you very much.

Madame Papillon, you have five minutes.

[*Translation*]

Ms. Annick Papillon (Québec, NDP): Thank you.

Ms. Des Chênes, I want to steer the discussion back to a topic that seems to concern everyone, the matter of transparency or the problem of access to texts. I'd like you to describe how that can be problematic for you in your own efforts to consult your members or have discussions with them. How does that affect your work? Does it make your job difficult, if not impossible, at certain times? Are you truly able to engage in a discussion, since all you have to go by is the interpretation of a few department officials? That doesn't really address the specifics of the issue in question.

Are you able to speak on behalf of your members during those industry consultations?

•(1615)

Ms. Isabelle Des Chênes: I have to say that our concerns aren't as complicated as those involving intellectual property. Things are much more nuanced. The main issues on our end are tariffs, environmental considerations and the supply programs. It's not quite as complicated.

As for the interpretation that the negotiators give us, it's easier for them to provide us with pretty sound briefings that are sufficiently detailed without giving us the texts.

As I said earlier, it's always better to have the text, because it gives us a better grasp of what it says in detail and allows us to do a better job of informing our members.

Ms. Annick Papillon: Wouldn't having access to those texts allow you to prepare by consulting with your members first? Doesn't that situation prevent you from performing a certain function?

Ms. Isabelle Des Chênes: I would repeat that our concerns are not quite as complicated and are almost always the same for every agreement.

Ms. Annick Papillon: But you don't deny it.

Ms. Isabelle Des Chênes: Pardon me?

Ms. Annick Papillon: You don't deny that it could have an effect.

Ms. Isabelle Des Chênes: It would be very useful to see the text and share it with our members, but so far, I have been working well with the negotiators. The information they give us isn't as detailed as I would like, but it's enough to assure our members that the government is negotiating in good faith.

Ms. Annick Papillon: Thank you.

Briefly, Mr. Geist, I'd like to ask you about the concerns of the major telecommunications companies when it comes to negotiating

trade deals. Specifically, I'd like to know about the rules governing the responsibility of Internet providers. It seems to be a real concern.

What can you tell us about where Canada stands on those concerns?

[*English*]

Dr. Michael Geist: As I mentioned, I think the government did the right thing when it reformed copyright last year with respect to how it treated our Internet service providers and telecommunications companies, adopting an approach known as “notice and notice”, which in fact other TPP members such as Chile have adopted as their own. I think it was a very positive approach. The concern within the TPP is that, again, based on leaked text coming out of the United States, the U.S. would like to see that approach changed and mandate instead what's known as “notice and takedown”, the experience of which, in countries that have used that approach, raises serious free-speech issues. Under that approach, content may be removed without any sort of actual review, without any court taking a look at it, without any sort of analysis as to whether it's appropriate or fair under the circumstances. The Canadian approach, I think, does a really nice job of balancing things. Again, that's put at risk based on the text we've seen to date through leaks within the TPP.

[*Translation*]

Ms. Annick Papillon: Thank you.

My colleague has one last question.

Mr. Guy Caron: I'll be quick.

Ms. Des Chênes, I worked a bit in forestry. You talked about the importance of opening up markets, especially Asian markets, to Canadian products. You also talked about the competition we will be facing from those countries. You said that fibre might be weaker in Southeast Asia, but was growing much more quickly elsewhere.

There are also sustainability and environmental considerations. Companies like APP come to mind. Could you comment on how satisfied you are with the negotiations under way, in relation to sustainability and the environment, and the competition we will be going up against?

Ms. Isabelle Des Chênes: They want to focus on provisions, rules and a policy that ensure that the fibre is certified and derived from legal sources, particularly in the chapter dealing with the environment. We are quite confident in that regard.

•(1620)

[*English*]

The Chair: Thank you very much.

Mr. Keddy, five minutes.

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

Welcome to our witnesses. I have a couple of questions.

Mr. Geist, I'm struggling a little bit with the position you've taken. You talked about Bill C-11, the ACTA legislation, and a couple of issues—the statutory damages cap, the digital lock, and the term of copyright.

I think most of us here are in agreement with your summary. What I'm struggling with is that you seem to think that somehow this is all on the table—yet the negotiations aren't complete.

You can believe that, but what makes you correct? Since there is no position on the table, since there is no open access to the negotiations.... And all the negotiations I've ever participated in have been in private, and I suspect your own personal negotiations are mostly in private.

So you can say that it could happen, but I can say that I don't expect it will happen. And who's right?

Dr. Michael Geist: Listen, I would assume that the reason you've called me here, and the reason you're conducting this, is that there isn't a final agreement yet. One hopes that this helps inform a Canadian position, and ultimately helps inform what the agreement looks like.

What I am able to say is that based on the current positions that are being taken at the TPP, based, again, on leaked versions of the text that are out there, that are coming from major TPP participants, particularly the United States—their starting-point position in terms of what they want to see to happen, one that may be supported by a number of other TPP members, will have the implications that I've just described.

Do I know that this is what the final version will look like? I sure hope not.

Mr. Gerald Keddy: Thank you, Mr. Geist, for that.

I want to back you up a little bit.

Dr. Michael Geist: Okay.

Mr. Gerald Keddy: You talked about the \$5,000 cap and the statutory changes. Then you went on to say that we're not alone, that Chile has legislation very similar to ours. So I expect that they would be a partner who would be looking to maintain the legislation, the same as we have.

What I'm saying is that I don't think.... You can summarize, but in ongoing negotiations we don't have an accurate piece of legislation to lay out there until the negotiations are completed. Although there may be two factions, one faction wanting to change copyright and another faction wanting to maintain copyright, that debate's not over.

Dr. Michael Geist: I recognize that it's not over. The concern that I would have, and that I think thousands of people who've been represented by civil society groups and others have, is that under the scenario you've just described, it gets presented to everyone as a fait accompli: here's the deal; we didn't have the opportunity, or we couldn't provide it to you, all along the way, but here's the agreement at the end. It's done on a take-it-or-leave-it basis.

On the copyright-related issues, maybe some of the issues I've just outlined aren't in the agreement and maybe some are. Maybe some of Ms. Des Chênes' issues are adequately addressed and maybe they're not. The position that's taken is that it's an agreement and you have to live with it.

What I'm saying is that on these copyright issues—you heard previously about patent, and we could talk about domain names—I think they'll have a significant negative effect. That's why I'm taking

the position that it would be enormously problematic if that's where the TPP took us.

Mr. Gerald Keddy: Except you're taking a position that is presumptive; you can't accurately say what the end is until the negotiations are completed. That's the problem with your theory.

Dr. Michael Geist: Well, with respect, in that case, then, there's no reason to even hold the discussions, because we'll just wait to see what we get.

Mr. Gerald Keddy: To Madame Des Chênes, obviously we have an opportunity with forest products. We're a forest products producer. I would say we're a forest products giant.

You mentioned some of the advantages that Canada has that we've not taken enough advantage of in the past. I think you stated that there's little illegal logging. I'd say there's no illegal logging, or none that I'm aware of, at least on the east coast of Canada. Most of our forest companies already have green certification or sustainable logging certifications. When you look around the world, that's not the case in eastern Europe, that's not the case in Russia, that's not the case in much of Asia.

That should give us a serious competitive advantage at the table.

• (1625)

Ms. Isabelle Des Chênes: I agree. Particularly when you have countries like Vietnam that are emerging as global furniture manufacturers, for instance, they are being pressured to source legal supply because they re-export back to the United States and to Europe, where there is legality legislation in place. Australia is about to introduce its legality legislation.

So it's really important for us to take advantage of those opportunities. We are a source of very well-managed, third-party certified forests, the most certified forests in the world. Certainly it gives us a leg up on other jurisdictions that want to source legal supply.

The Chair: Thank you very much.

Thank you for your presentations and for your time before the committee. This will be a very interesting study as we continue.

With that, we will suspend as we set up for the next panel.

• (1625)

(Pause)

• (1630)

The Chair: We call the meeting back to order.

We have with us two individuals. First is Charles McMillan, professor of international business at the Schulich School of Business, York University.

Thank you for being here.

Second is Michael Hart, professor and Simon Reisman chair in trade policy at the Norman Paterson School of International Affairs, Carleton University.

We have two experts and we look forward to your testimony before the committee.

I believe we will start with Mr. McMillan. The floor is yours, sir.

Dr. Charles McMillan (Professor, International Business, Schulich School of Business, York University, As an Individual): Thank you very much for the—

The Chair: Maybe just before I yield the floor to you, I see that you've handed me some information. One is an opinion piece and a paper, but it's unilingual, in English.

If I get unanimous consent, I will have it passed out.

Dr. Charles McMillan: I was going to explain that.

The Chair: If you're going to explain it, you just go ahead and we won't pass it out. Unless we get unanimous consent, we won't bother with it.

Go ahead.

Dr. Charles McMillan: Well, I was just going to say thank you for the invitation and mention that I've just spent three months in Tokyo and touring around some Asian capitals. Ironically, when I got the invitation I was in Paris and London talking to folks about the European deal, which is another story. So I've provided some copies of summary papers, obviously in English. I apologize that they're not in French. Having worked for the Prime Minister, I know all about bilingualism, and I'm 100% in favour of it, etc.

The Chair: We can get this translated and passed out. Go ahead.

Dr. Charles McMillan: Yes, exactly.

There are three papers: one on Canada-Japan; one on the TPP; and one on the study I did with George Stalk of the Boston Consulting Group on the "North American Gateway", which is an outcome of the flow of goods and services from Asia and Europe into all of North America, using Canadian infrastructure. It's would be enormous job creator if we got our act together, but I'll leave that for the moment.

I'll make a couple of comments quickly and then turn it over to my old friend Michael, who I worked with several years ago on the U.S.-Canada free trade agreement.

The TPP, as most of you know, because several of you were at our big conference in Tokyo on the Canada-Japan agreement, which has overlapped the TPP discussions and a recent conference in Toronto with the chamber of commerce, talking about the TPP and the Canada-Japan EPA..... As you know, in Asia there are at least four related sets of agreements, and it's hard to disentangle them. You have the TPP, but only recently with Japan as a partner, and I regret that Canada was the last country among the partners that endorsed Japan to become part of the TPP.

One geopolitical issue on the TPP is that it's a U.S. strategy to contain China. If that is the case, it's going to fail, because in Asia there are other agreements. When the Japanese prime minister announced their entry into the TPP—and the partners have to agree for each new member, which happened to Canada as well—he also singled out the China-South Korea-Japan free trade agreement. In the last 10 years, there has been—to use a phrase used in Asia—a plethora of agreements. There are several bilateral deals, such as India-Japan, for instance, and Korea-Japan, and that has a bearing on the TPP, which I'll come back to. Then, of course, for us in Canada, which I think is a central issue, there is the Canada-Japan EPA.

So we have to put these in context. All of these agreements, with overtones of the previous discussion, are political agreements, and you have to get agreement. With anything involving the United States, as we know with free trade, they have a fast-track procedure: it's all or none. You can't just pick and choose as you see fit, which I think is going to be the central issue for the TPP.

The TPP now has 12 partners. It would be phenomenal if it were successful, but Japan has just joined and, for political reasons, Abe has to face the upper house elections in July. It will be a real problem if he loses those elections, but I don't think he is going to. But as you know, anything in Japan involving trade is rice farmers, with roughly a 780% tariff, and these rice farmers have enormous political clout in the Japanese system. I just mention that.

• (1635)

That leads us to Canada-Japan, wherein we're now facing the third round of negotiations. The last one was in April in Ottawa. The next one is in July in Tokyo and another round is scheduled for the fall, probably in Canada. It may not be in Ottawa.

I'll end my remarks with this: if we can get the European deal and the TPP deal, it will be enormously advantageous for Canada, but unfortunately time is against us.

I was out for dinner in Tokyo and my wife was watching a replay of President Obama's address to Congress. He was talking about the EU-U.S. agreement. The worst case for Canada, in my view, is to have a Japanese-U.S. free trade agreement and a U.S.-European free trade agreement without Canada having an agreement with either. It would put Canada in a situation of being almost like a spoke in the hub of the United States.

If we can get the European deal possibly in the next month, and the Japanese deal perhaps at the end of this year, we will be in a very good position regarding the European deal with the United States, and the TPP. These deals are not only political in nature, but timing is extremely important. We can't wait. If we wait—because we can't get an agreement—we will be in a very defensive position.

Let me leave it at that and turn it over to Michael, and then I'll be happy to answer questions, *en français, en anglais*.

The Chair: Very good.

Go ahead.

Professor Michael Hart (Professor and Simon Reisman Chair in Trade Policy, Norman Paterson School of International Affairs, Carleton University, As an Individual): Thank you, Mr. Chair, and my thanks to all of you for inviting me to participate in this committee's deliberations.

I don't have a long prepared statement. Let me just give you some thoughts, and then I'd be happy to answer questions.

I'm of two minds on the Trans-Pacific Partnership. At one level, I think it would not be wise for Canada to absent itself from these discussions. Having looked at them from the outside for a few years, I think that this would probably not be a good strategy. I think it makes sense for us to participate in it, even if in the end it's not going to become much of an agreement. But the ideal of having a high-quality agreement that involves one of the most dynamic economic regions of the world is, at a minimum, a good idea.

That being said, I have some strong reservations about things as they stand. The TPP originated as an idea among the New Zealanders, the Singaporeans, the Chileans, and the Bruneians. The four of them thought it would be useful for them to negotiate a quality agreement. Given the high level of activity going on in the Asia-Pacific region, they wanted to make sure they set some parameters with what a high-quality agreement would be. But as the number of members has increased, the chances of getting that high-quality agreement have decreased, because the more partners you have, the more difficult it is to find common ground.

I think that was particularly the case when the United States became a party. The United States has a very strong agenda. It has more or less taken over these negotiations and indicated that it's their agenda or no agenda, and yet they do this without any allusion to the fact that they have no negotiating authority. As a former trade negotiator, one of the first things I learned when I became a government official back in the early seventies was that you never negotiate with the United States unless they have a mandate. In fact, during the Tokyo Round, the Uruguay Round, the FTA negotiations, and the NAFTA negotiations, one of the most important things that we considered was what the U.S. mandate really was. What mandate had Congress given to the administration? Well, that mandate ran out in 2007. That's six years ago. President Bush did not think it was worth his political capital to seek new authority at the end of his mandate, and President Obama has shown no interest whatsoever in gaining that kind of mandate. Even if he were to seek it, I don't think he would get it, because his view of what a successful negotiation would involve is very different from what the Republicans and Congress think a successful negotiation would involve.

If you're negotiating with the United States when they don't have a mandate, one result is that you have an agreement that must meet the standard of a treaty, which means it has to go to the U.S. Senate and get a two-thirds majority there. This is an extremely difficult thing to achieve, as we have learned to our regret in earlier negotiations. The most famous case was the east coast fisheries agreement, where two senators successfully destroyed an agreement that had been faithfully negotiated between the U.S. administration and the Canadian government. There are also—and this may come as a surprise to the committee—other agreements sitting in the in-basket of the chairman of the foreign relations committee that were sent to Congress by President Truman. In other words, the Senate foreign relations committee doesn't always act with the kind of expedition that we would like. That's one chance. That way it would, in effect, be the Senate saying yea or nay on the basis of a two-thirds vote.

The other way, which was the case until 1933, when Congress first mandated the President to negotiate agreements, was that an agreement would come to Congress and Congress would pass

legislation to bring it into force, but Congress had no obligation to bring it into force without changing the agreement to suit its liking.

So the idea of a TPP being negotiated by all 12 parties, and then going to the U.S. Congress for some fixes, is not one that appeals to me. You end up with two negotiations, and you have no idea what the second negotiation is going to be all about because you're not party to it. Given the U.S. lack of negotiating authority, that is a very large question mark that I would raise.

• (1640)

Secondly, the most dynamic and interesting markets in the Pacific are not participating, and those are China, Indonesia, and India. If they were to participate, it would be a very different kind of negotiation, and it would probably be much more variable. But all three of them have shown no interest. They are much more interested in negotiating their current interests on a bilateral basis. As you know, the Chinese leadership kind of tweaked Mr. Harper on his last visit and challenged him to enter into a negotiation, and we're supposedly studying this. I understand that is on the back burner, and not much studying is going on.

Thirdly, I think the committee should keep in mind that we have well functioning agreements with all the current partners to the TPP. It isn't that we don't have agreements with these countries. We have. First of all there's a very good agreement through something called the World Trade Organization. In addition to that, we have the FTA, and the NAFTA with the United States and Mexico. We have FTAs with Peru and with Chile. We're negotiating FTAs with some of the other ones. So the idea that negotiating with these countries is the only game available is false. We do have good agreements with these countries, and we can pursue further agreements bilaterally. So negotiating multilaterally sometimes has an advantage in that you have the larger leverage that other members can bring to bear on a negotiation, but there is also the risk that you're looking for the lowest common denominator among the participants, and with a large country like the United States participating, the U.S. agenda is the real agenda, and the rest of the parties are part of the chorus.

The United States does have an agenda. I think the previous panel spoke to you about part of that agenda that is problematic, which is the intellectual property part of the negotiation for which the United States basically has an agenda that is different from that of the rest of the world. If you analyze it, it comes down to looking after the interests of the pharmaceutical companies and the audiovisual companies. The rest of the U.S. industry really isn't all that concerned about IP any more. The bargain that was struck in the Uruguay Round, which is reflected in the TRIPS agreement, is considered by most serious analysts to balance well the competing interests that you try to deal with in an intellectual property agreement. Those are the interests of consumers and competition and the interests of innovators. I think that balance was struck in the TRIPS agreement. The desire of both the European Union and the United States to strengthen that agreement in order to benefit their rights holders is one I can see from their perspective. I don't see it from our perspective. I don't think there are very many benefits to be gained by Canadians from strengthening the IP provisions.

Finally, I think that much of the agenda that's being pursued at the TPP, to the extent that we can understand what the agenda is, is the wrong agenda. At one point a kind of draft agreement was available on the Internet, and then it abruptly disappeared about 18 months ago. What we have is a text that was put out by the ministerial meeting in November 2011, which outlined what a good agreement would involve. If you look at those issues, I would say it's the wrong agenda. It's not the agenda that is important to the world of commerce as we know it today. It is what I would consider to be a backwards-looking agenda that is to perfect the trade agenda of the past, rather than to address the trade issues of the future. It's all well, and I think all these negotiations that Canada's engaged in now are of great interest to officials. They are of interest to the legal community. They are of minimal interest to the business community. The business community is basically sitting on its hands and saying to the government, "Negotiate these agreements and if they're of interest to us, we'll let you know." But they're not going to put out any political capital to convince the government to negotiate these agreements, and there's a reason for that.

Many of the kinds of remaining problems that exist in the world of trade policy after the Uruguay Round and the NAFTA agreement are the most difficult politically, but commercially they're fairly marginal. So from a commercial point of view, most businesses have found their own solution to these problems. What they want governments to do is to look at the agenda of the future to deal with the really ticklish problem of how to ensure that the emerging markets, particularly in east Asia but also in countries like Brazil and South Africa, are truly contestable and to deal with the trade policy issues that are enshrined in the WTO. Free trade agreements will not do it.

• (1645)

Those markets are very similar to the Japanese market. They are what I call "permissions economies", that is, economies where the government and business are heavily intertwined with each another, where much of what takes place in the economy is dependent on government involvement either through permissions in licensing or through state-owned enterprises, or other kinds of ways. That's where our businesses have a hard time.

We have many successful businesses that have made their way into those markets, but they've had to do this with some fairly expensive strategies.

What they would like is to see the government negotiate agreements that make those markets truly contestable. That would involve negotiating agreements that include disciplines on competition policy, investment policy, intellectual property rights, and state trading rules. If you are able to negotiate an integrated set of rules governing that, which is judicial in settlement provisions, then you would have an agreement that is of great interest to the business community, and that would have a major impact on Canadian economic interests.

Thank you.

The Chair: Very good. Thank you very much.

I'll now move to questions and answers. You've stimulated a lot of thought, I'm sure.

We'll start with Mr. Sandhu. The floor is yours.

Mr. Jasbir Sandhu (Surrey North, NDP): Thank you both for being here today.

Professor McMillan, we heard earlier in the committee today that the government trade minister has been consulting a secret group, and also debriefing certain sectors of the Canadian economy. Have you had any approach from the government? Have you been consulted? Have you been debriefed? No?

I have the same question for you, Professor Hart. Have you been consulted by the government on these negotiations?

• (1650)

Prof. Michael Hart: No, I have not.

Mr. Jasbir Sandhu: Professor McMillan, you talked about the timing of the EC and European deal, and also the Japanese deal, which is critical that we absolutely sign. If there is such an urgency for the government to sign this, do you think we can compromise our positions?

Dr. Charles McMillan: I'll answer both questions together.

Michael and I were heavily involved when we set up the U.S.-Canada free trade negotiations with the mandate of both governments. We set up strategy structures, so that in Canada some 15 industry groups were consulted. We did all kinds of studies, building on the Macdonald report, etc., which was an enormous help to our negotiators, seeing the impact industry by industry, sector by sector in Canada—and the same with the U.S.

Most trade agreements—I half agree with Michael, but half disagree—are ongoing. So we went through seven rounds with the GATT, Uruguay Round, the WTO, or whatever. These are not in stone, and obviously the big change in the last 20 years is the emerging markets—the BRIC countries, if you want to call them that. For a variety of reasons they want to do their own thing first, because they don't feel they're in a position to go up against big Europe and big United States. Canada and Chile are little players on that.

Quite apart from this mandate issue in terms of timing, the problem is that each government only has a certain number of negotiators. For Europe, they're going to be faced with dealing with the United States. It's the same thing with Japan dealing with the United States, because there are ongoing talks with the U.S. and that's going to tie up political capital and time.

Obviously, without compromising all that kind of stuff, we have to be aware that each government has only so many people who can negotiate. If the Europeans move to the U.S. soon, and Japan moves to the U.S. or to the China-South Korea regional agreement, where does that leave us?

Mr. Jasbir Sandhu: It's my understanding that we have only seven chief negotiators, and I agree with you that if we have a limited number of chief negotiators, going into these different trade deals might be problematic for the government.

Professor Hart, I have a question for you. You talked about the intellectual property rights and the interests of pharmaceutical companies in the States and in Europe. Knowing what you know of some of the trade agreements that are being negotiated, what impact would that have on drug costs in Canada?

Prof. Michael Hart: It would raise them.

Mr. Jasbir Sandhu: You're saying that the drug costs for—

Prof. Michael Hart: If you extend the patent time for an original drug, that means you are reducing the time that you can have a copycat drug, a generic drug, on the market, and there may be some regulatory issues with generic drugs to put more pressures on the generic maker to reduce their prices, but prices by both the original manufacturers and the generics are extremely high. They are much higher than they need to be. The drug companies try to tell us that much of that money goes into research and so on, which is nonsense. Most of the research is done with grants either from the NIH in the U.S. or by medical societies here. Most of the money goes into advertising and distribution; in other words, get more people to take the drugs whether they need them or not.

As I get older and I become more dependent on them, I appreciate their efforts, and, yes, they do have a wonderful impact, but the price for them is outrageous, and therefore I see no reason why a government should extend this monopoly power even further to keep those prices that high.

Mr. Jasbir Sandhu: Mr. Hart, I'm actually looking at the article you wrote back in 2006 in *Policy Options*. The title of the article is "Waiting for Conservative Trade Policy". In 2006 we had a trade surplus of \$18 billion, and now we have a trade deficit of \$50 billion.

You don't seem to be too enthusiastic about where we're going. You talked about this being a wrong agenda. The businesses are taking minimal interest in these trade agreements. Can you expand on that? Maybe you were right back then and you're right now.

Prof. Michael Hart: I must have been, or else I wouldn't have written the article.

Voices: Oh, oh!

Prof. Michael Hart: At the time I thought that the government was being awfully cautious, not all that interested in pursuing what I thought was the kind of agenda we should be pursuing. I have not changed my mind.

You asked me earlier whether I had been consulted. I have not been consulted, but I certainly have expressed my views to the minister, indicating that I think we are majoring in minors rather than pursuing what I think are the issues that are of grave moment to the Canadian economy as a whole. Most of the trade agreements we are pursuing can be characterized as retail trade agreements.

•(1655)

The Chair: Thank you very much.

Mr. Shipley, you have seven minutes.

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

Thanks to our witnesses.

It's been quite an interesting day, and you've raised a number of points.

First of all, let me congratulate you and say thank you to both of you. In the history of our country, we developed and worked on one of the greatest trade agreements that is out there, a Canada-U.S. one that is now obviously Canada-U.S.-Mexico. It has done so much for Canada, not only in terms of trade but in terms of labour also.

This is for Mr. McMillan. We know there are 12 partners in the TPP. Japan, as we know, has been asked to join. The comments have been pretty specific, not only from you but also from earlier witnesses, that when the U.S. gets involved, it's sort of all or nothing, and they sort of elect as trump whatever rules fit their domain. Though they are our closest neighbour, those of us in Canada do recognize from time to time that this scenario falls in place.

We have Japan. As we know, rice is one of their main crops. I may have the numbers wrong, but I think you talked of a 780% tariff just on that one product alone. If it becomes an all or nothing, what happens?

Dr. Charles McMillan: Well, there are two or three things.

Just to pick up from earlier, CIBC put out a report. The last decade was a lost decade for exports. One of our largest exports is gold to the U.K. Then you could take out energy from our export performance.

I'll give another example. Fifty companies, led by Boeing, account for 50% of U.S. exports. When you look at U.S. agreements and all of that, some very big powerful companies guide U.S. trade policy, which means that a vast number of smaller companies don't even export to a neighbour. In new technologies, whatever, we—Canadian companies, and smaller provinces as well—have to become engaged in exporting.

What Michael didn't quite refer to is that when we did the bilateral deal, we were a multilateral country, and so was Japan—the European round up to the Kennedy round setting up the GATT, and then the WTO. We were a multilateral country, because small countries... Don't forget that Canada, roughly, has the same population as 20 cities in Asia—Shanghai, Tokyo, Osaka, or whatever. We're a small open economy, whereas there's this big group called the United States, and a collective Europe, which may not be so collective.

We knew from day one, and that was part of the negotiating team, that the bilateral deal between U.S. and Canada would be consistent with that of the WTO and would add to it by covering a number of areas, including dispute settlement.

I think the Canada-Japan negotiation can become a model on a number of issues, including intellectual property, which will guide us in future negotiations. These two conferences were very high level and specific, and whatever. The good news about Canada-Japan is that they're complementary economies, and we don't grow rice. So these really sticky problems on the Japanese side, let's say, don't affect us.

In a lot of cases, we have complementary issues—autos, for example. One really good area where we're in the driver's seat if we allow our cards right is energy, including alternative energy. Hydro-Québec has operations in Japan, and the Caisse de dépôt invests in Japan. The Japanese have gone through a lot. They are sitting on \$12 trillion, and they're only now getting back into the stock market.

The problem with the TPP is that... Take the rice thing. There are rice equivalents in a lot of these developed countries. One example would be textiles. The governments want to protect the textile trade because they need the jobs. Vietnam is a communist country. They need the jobs. There's a problem in China. They need the jobs to protect their position in the government. So they're not going to allow intellectual property, or whatever. With the TPP, the problem is that there's going to be a massive number of exemptions, and it's going to be a son-of-a-b of a problem getting that agreement through the Congress, even if you had a mandate.

• (1700)

Mr. Bev Shipley: I'm going to thank you for expanding on it. With your comments about Canada-Japan, quite honestly, you've hit the target of why it is so important for Canada to continue to move quickly on it. It's the same with CETA.

It goes back to my thought. You raised a question—and maybe it was Mr. Hart, also. The United States has now become the holder of the trump card in their eyes about how this deal is going to move forward. They don't have a mandate to be negotiating is what I understand from the discussion. If they don't have a mandate, why do the partners, especially the original ones, allow them to continue on in that manner?

You might have to be fairly frank.

Dr. Charles McMillan: I will be frank.

It's geopolitics. A lot of these TPP countries, including Vietnam, which is communist, are afraid of mother China. There's a massive number of border settlement problems, the islands, or whatever. There is even conflict between Taiwan and China. So the geopolitics—the U.S. Navy, the 5th Fleet—has a lot to do with it, as you know, in the United States, with their bases in Japan.

That paints the issues, if you want to call them that. Therefore, the United States gets away with a lot, even though they don't have a mandate.

The Chair: Your time has gone. That's what happens when you're having a good time.

Mr. Easter, seven minutes, please.

Hon. Wayne Easter: Thank you, Mr. Chair.

I'm sorry I missed your presentations. They were the ones I really wanted to hear, especially Charlie being a fellow islander. I don't know if he's a resident there or not; we have some who are not. In any event, you both know how this place operates, so I had to go over and give the government a little praise for their current budget implementation bill.

Both of you had fairly extensive involvement in previous agreements on the inside, and one of the things that we're hearing a lot about at this committee is the extreme secrecy surrounding TPP.

In some previous negotiations, committees, a broad section of Canadian society, did actually see the texts. We're under confidentiality, and that's understandable, but I think in the past it did provide the public and organizations with some confidence that they were getting firsthand knowledge of what was happening in the negotiations and that they could sincerely critique or praise that relevant sections of the agreement.

In this one there's no such thing. There are briefings but there's no text. How do you see getting around that and how important is it to be at least relatively open? You have to protect confidentiality and I think we all understand that, but how do you see getting around that?

• (1705)

Prof. Michael Hart: This is a really ticklish issue. As a former official and a negotiator, obviously there's a great advantage in not having to deal with the political noise off-stage of people criticizing you for things that you're not doing—because that's often what happens. Much of the criticism has very little to do with what you're actually doing, but at the same time, because of the delicate nature of the negotiations, you don't want the other side to know exactly what you're thinking, and so on. So you need a certain level of confidentiality.

We worked out a compromise during the FTA and the NAFTA negotiations and the Uruguayan negotiations, which was basically the same compromise. We regularly briefed members of the sectoral advisory groups as well as the broader international trade advisory committee, and whenever we had an opportunity we wrote speeches for ministers in order to outline where we were going with things. The thing that we feared the most was ministers making statements in the House that would compromise our ability to negotiate.

You will appreciate, for instance, what kind of impact Mr. Clark's announcement in the House had one day, in response to a question, that supply management was part of the very warp and woof of this country and would not be part of the negotiations. Poof! Out went an important piece of coinage of ours that we needed to use. So, pfft, it was gone. So the less said by ministers without having a clear idea of what you're doing and thinking it through strategically, is helpful.

But in the case of the TPP, I have no idea what they're negotiating, other than a very broad outline based on the document they put out two years ago—which any first-year graduate student could write up for me as to what would be contained in a quality trade agreement. It didn't take ministers sitting around a table approving it. It's a fairly rudimentary document, and that's all we know.

I think it is not in the best interests of either the negotiators or the government to maintain this level of secrecy.

Hon. Wayne Easter: Before you answer the same question, Charlie, I'd like you to tie this into your answer as well. I read a lot of your work from Japan, and I know you're one of the real experts on Japan and that you've been working toward better trade with Japan for decades.

My concern is that the current government is all over the map. On TPP, the Prime Minister was down on the Pacific alliance. We did a study on the Pacific alliance; we've already got trade agreements with those countries. Wouldn't it be better for the government to...? If Japan isn't in a TPP—well, they are now—but it really means virtually nothing to us anyway. The government should be establishing some priorities, rather than being all over the map, and Japan should be one of those priorities.

I only wanted to make that comment, and let you answer with your thoughts on that and the previous question.

Dr. Charles McMillan: I have talked to some of you as individuals and some of you were in Tokyo. At a conference, I talked to you as individuals and friends and whatever. To me, the current negotiations are with Japan and Europe—and I've advised various people in Ottawa.

Picking up on Michael's point, Simon Reisman was our negotiator, but inside the negotiating team—the American and Canadian—we had people on both sides who would engage on the political pitfalls for both countries of certain issues. We would meet regularly. We had a cabinet committee, chaired by Mike Wilson, and it was cabinet secrecy so you know....

Australia is the country pushing the most for the secrecy. Australia was against Canada's coming in initially and against Japan's. Unfortunately, we were basically the last country to approve Japan. But the private sector is fundamentally at this stage interested in two agreements, with Europe and Japan, because they know the practical political pitfalls of the TPP and some of these other agreements.

Some of these other agreements may be retail, but they're trivial. They don't amount to much. Trade with some of these countries, as I wrote in an article, is like a day's trade with the United States or three days or a week with Japan.

Concentrate on a limited number of issues, with a limited number of negotiators on the two big issues. The Europeans, by the way, would love a deal with us, as a prelude for negotiating with the Americans.

• (1710)

The Chair: Okay, very good. The time has gone.

Ron Cannan will be our last questioner, and then we'll go in camera for committee business.

Go ahead.

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

And thanks to our witnesses. I know you both have a plethora of wisdom and experience, so I thank you for sharing your time with us today.

To Mr. Hart, first of all, I know that Mr. Sandhu referred to your 2006 *Policy Options* article. When I started on the committee seven-and-a-half years ago, there was lots of optimism or a somewhat optimistic sense the Doha Round was maybe going to be resuscitated with a defibrillator and all the rest. I see now that it's maybe not even in the ICU. But if you were the trade minister looking at the opportunity, as you alluded to in your opening comments, we're

probably wise to go the direction we are—at least in taking a participatory role in the TPP. Maybe you could expand a little bit more, from where we've come from 2006 to today, and what you see in the future.

Prof. Michael Hart: In the 2006 article I was doing what a former official loves to do, which is to criticize their former colleagues and indicate that they're not doing enough serious work, and so on. By that time I'd been retired for 10 years, and my colleague in crime, Bill Diamond, had been retired for six years, so we were having a lot of fun at the expense of officials, more than of ministers.

I don't envy Ed Fast and his predecessors in their job. If you look at it, the Minister of International Trade really has three jobs.

The first job is to be the minister of trade promotion and to lead trade missions and so on. Once you've done two or three of those, it's not a terribly exciting thing to do. Sure, officials are constantly looking for ways to get the minister to open another fair and do that kind of stuff, but the minister, from a political perspective, looks upon that as not a terribly sexy activity. It certainly is not going to get his name in the newspaper and so on, so that's not great.

The second thing is he's the minister of trade disputes, and given the way the system now works, that we have a good set of rules and a good set of settlement provisions, we're going to lose more than we win. So he then becomes the minister of losing trade disputes, because that's the way the system works. We are now using the system in order to make sure that some of the sins we have committed in the past are righted. So we're going to lose them. No matter how many nice speeches the minister makes about how hard we're going to work, etc., we're going to lose them—because we should lose them. For example, the recent one on the Ontario FIT program was a loser from day one. Any trade official would have told the Ontario government that, but the federal government has a duty to put on the best face and so on and to try to protect that.

Third, he's the minister of trade negotiations. Their officials are saying, "Minister, if you go here, you can announce this negotiation, and if you go there you can announce that one, and you'll get a lot of good press, people are interested in what you're doing", and so on. The difficulty is in closing those negotiations. It's very easy to open them, as we've done. The Prime Minister is going to Morocco. What's he going to do there? Oh, well, let's announce a free trade negotiation. Has any homework been done on this? Well, you know, it would help our wheat sales. All right, let's do that. It's the same thing with Ukraine, and one country after another. And the trade minister says "Wonderful, it's activity for me and I'm going to get my name in the paper", and this is all positive stuff until it comes time to deal with the hard issues, and then we find it very hard to close.

For instance, the Korea negotiation is the biggest of the ongoing ones that are useful—other than Europe. And I won't speak about Europe, as we'll let Charlie have his view on that one. With the Korea negotiation we got off to a good start, and it's hung up by one industry and one interest group in that industry. We should have given up on that a long time ago. We don't make entry-level vehicles; we import them from Korea and Taiwan and Malaysia and so on. Yet that one interest group is strong enough to convince the government not to proceed with it. The Koreans knew that was a vulnerable point and used their own hard knocks on beef and so on to get what they wanted.

Trade agreements, once you get into the smaller agreements where you don't have a broad spectrum of economic interests supporting you, are very hard to close.

• (1715)

Hon. Ron Cannan: Thank you for that scenario.

That's basically where we're at, that we're going for the close.

Mr. McMillan, I would appreciate your views on Japan. I was there with the committee in November. Coming from British Columbia, I think the ports are very important. You had an article on innovation in the global supply chains, and that trade is central to Canada's wealth. We all agree with that around the table.

Maybe you could expand a little bit more on the potential opportunities with these bilaterals and with the TPP for enhancing not only the Atlantic port of Halifax, but also the Prince Rupert and Vancouver ports.

Dr. Charles McMillan: I'll just pick up on Michael's earlier comment about forward-looking agreements. The supply chain is now central, so you mentioned autos, Korea, or whatever.... Hyundai put a plant in Canada. I was in Korea when we negotiated, and I predicted it would fail if they put it in Quebec, which they did, because it's outside the supply chains.

Energy, textiles, a whole bunch of things.... Europe as a union is the most integrated region, followed by Asia and then NAFTA, through these.... Walmart accounts for roughly 13% of Chinese exports. Canadian Tire has a rising number of imports from Asia. But as the Japanese firm Makita saw, it's advantageous to have parts and components from Korea and assembled in China. These firms

can use Canadian know-how and technology, including auto parts, but in terms of the vehicles produced in North America, Canadian auto parts are in decline. Actually, imported auto parts are going up. There is something wrong here.

Having said that, to me it's not just trade promotion for your committee. The new link is trade and transportation. Ninety-two per cent of world trade is done on the oceans, and you need ports. And we would have four outstanding ports if we got our act together. If we could get 3% to 5% of Walmart's goods to Prince George, instead of from Long Beach, it would be bordering on 50,000 jobs, paying \$100,000.

Our strength is in the North American gateway, but that's a link between the companies, the ports, the terminals, the railways, and the trucking firms. They have to start working together. The good news is—and I'm seeing a guy tomorrow—is that they are looking, for example, now, and not at Halifax, which I think is sinful, at the dwell times. When a ship arrives at Prince George or Vancouver, for example, how long does it sit there?

An hon. member: That's true.

Dr. Charles McMillan: We can vastly improve that, and shipping companies and firms like Walmart will then start looking at Canadian ports because of the infrastructure.

The Chair: That's very good and probably very accurate.

We want to thank you both for coming and presenting and being part of this study that we'll continue. I'm sure we will find it very interesting as we continue.

With that—

Hon. Wayne Easter: Mr. Chairman, to do business are we—?

• (1720)

The Chair: Yes, we are going to do business.

Hon. Wayne Easter: Yes, but are we dealing with the motions in public or in secret?

The Chair: We are going in camera right now, and we will clear the room and do that.

[*Proceedings continue in camera*]

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