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Chair

Mr. Rodney Weston

Standing Committee on Fisheries and Oceans

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• (1535)

[English]

The Chair (Mr. Rodney Weston (Saint John, CPC)): I call this meeting to order.

I want to thank Mr. Hildebrand and Mr. Thompson for joining us again today. I apologize for the last couple of times we've been interrupted. I appreciate your patience and the committee members look forward to your presentation today. I know the other day we got started with Mr. Hildebrand.

Mr. Cleary.

Mr. Ryan Cleary (St. John's South—Mount Pearl, NDP): Sorry to interrupt, Mr. Chair.

Can I give a verbal notice of motion before we start off with our witnesses for today?

The Chair: Sure, go ahead.

Mr. Ryan Cleary: I'll just read it into the record, Mr. Chair:

That the Committee immediately undertake a study on the impacts of the cuts to the inshore shrimp quota off the coast of Newfoundland & Labrador on fishermen and the local economy; and that the study include a review of the Department of Fisheries and Ocean's science related to the shrimp fishery and the management policy known as last in first out; and that witnesses include but are not limited to: DFO officials, DFO scientists, local fishermen, and local processors.

The Minister of Fisheries and Oceans appeared before our committee a couple of weeks ago and I had an opportunity to ask her about impending cuts to the shrimp quota. Over the weekend, the shrimp quota was cut. It was cut by 10,000 tonnes for our inshore fishermen and by less than 1,000 tonnes for our offshore licence holders. The way the quota was cut is a result of last in, first out. A last in, first out policy is basically—

The Chair: Sorry—

Mr. Kamp.

Mr. Randy Kamp (Pitt Meadows—Maple Ridge—Mission, CPC): Is this a notice of motion or are we debating this motion? I don't think we've seen this motion.

The Chair: This is just a notice of motion. That's what I was just trying to ask.

Mr. Cleary, you probably had a notice of motion last week. This is a different notice of motion. Could I have a copy of the notice? Can you provide a text of it?

Mr. Ryan Cleary: Absolutely. The reason why it's different is that the quota has been announced.

The Chair: A notice has been provided by Mr. Cleary. I will give you a text of the motion that's been provided. The motion is:

That the [Standing Committee on Fisheries and Oceans] immediately undertake a study on the impacts of the cuts to the inshore shrimp quota off the coast of Newfoundland & Labrador on fishermen and the local economy; and that the study include a review of the Department of Fisheries and Ocean's science related to the shrimp fishery and the management policy known as last in first out; and that witnesses include but are not limited to: DFO officials, DFO scientists, local fishermen, and local processors.

Thank you, Mr. Cleary. That notice has been provided.

Thank you to our witnesses, once again. I appreciate your patience, Mr. Hildebrand and Mr. Thompson.

Mr. Ström is here to provide legal advice to our witnesses. He's not here to be questioned with respect to the presentation that the officials will make. Just so you're aware of Mr. Ström's presence here at the table.

Mr. Hildebrand, if you want to proceed with your presentation, once again. Thank you very much.

Mr. Marvin Hildebrand (Director General, Market Access, Department of Foreign Affairs and International Trade): Thank you very much, Mr. Chairman.

It's our pleasure to be here this afternoon. I wish all the members of the committee a good afternoon.

My name is Marvin Hildebrand. I'm director general, market access bureau, at the Department of Foreign Affairs, Trade and Development. The market access bureau supports Canada's trade challenge before the World Trade Organization concerning the European Union's seal ban.

I'm here to provide an update on this trade challenge. The DFATD is leading the case in close collaboration with the Department of Fisheries and Oceans, and Aboriginal Affairs and Northern Development.

I'd like to begin my comments with some background information on the WTO challenge, the EU's seal regulation, and then move to the WTO dispute settlement process.

In 2009, after a concerted campaign by animal rights groups, the EU introduced regulations restricting the importation and marketing of seal products in the European market. These regulations ban the importation and sale of all seal products except under three narrowly defined circumstances: one, seal products resulting from hunts traditionally conducted by Inuit and other indigenous communities; two, seal products resulting from hunts conducted for the sole purpose of sustainable management of marine resources; and three, seal products imported for personal use by travellers.

To be placed on the market under the first two categories, seal products have to be accompanied by an attestation document from a recognized body confirming that they qualify for one of the exceptions.

Seal products from Canada's east coast commercial seal fishery do not qualify under either of the first two exemptions. Furthermore, the Inuit Tapiriit Kanatami, Nunavut Tunngavik Incorporated, and the Government of Nunavut have opposed seeking access to the EU market through the indigenous exemption. In their view, the Inuit exemption has little practical value, as it would be costly and administratively burdensome to apply without offering any clear commercial gain. They further indicated that they rely on southern commercial processing and marketing channels, as the remoteness of Inuit communities, and the small scale of the Inuit hunt mean that it is not economically feasible for them to develop their own processing and distribution channels.

The Atlantic and northern seal hunts in Canada are lawful, humane, and sustainable activities that provide an important source of food and income for thousands of sealers and their communities. Canada believes that the EU ban on Canadian seal products is inconsistent with its international trade obligations. We initially attempted to resolve this matter through consultations. When that failed, Canada and its co-complainant in this case, Norway, requested the establishment of a WTO dispute settlement panel. Canada argued before the WTO panel that the EU seal regulation was inconsistent with certain obligations under the GATT 1994, namely national treatment, most-favoured-nation treatment, and import restrictions.

National treatment means that an imported product cannot be treated less favourably than the like domestic product. MFN treatment means that an imported product from one WTO member cannot be treated less favourably than the same product from another WTO member. Canada also made claims under another WTO agreement, the technical barriers to trade agreement, relating to non-discrimination and unnecessary barriers to trade.

The panel hearings took place in early 2013, and the panel issued its final report on November 25, 2013. In that final report, the panel found that the EU seal regulation is inconsistent with the EU's national treatment and MFN treatment obligations under the GATT 1994, on the basis that it permits Greenlandic and EU domestic seal products to be sold in the EU, while prohibiting the sale of the same products from Canada. However, the panel also considered whether the EU's seal regulation could benefit from one of the general exceptions in the GATT that allow WTO members to justify otherwise discriminatory laws.

● (1540)

The EU sought to justify its seal regulation as necessary to protect public morality, given concerns in the EU public about the humaneness of the seal hunt. The panel accepted the EU's argument concerning public morality, but ultimately concluded that the EU had applied the exemptions, both the indigenous and the marine management exemptions, in a manner that arbitrarily discriminated against Canadian seal products.

Similarly, the panel found that the EU seal regulation was inconsistent with the TBT Agreement on the basis that it discriminated against Canadian seal products when compared to Greenlandic and EU domestic seal products. While the panel found that the EU seal regulation violated the EU's WTO obligations, the legal basis for this finding related to the manner in which the EU applies the exemptions to the ban, and not the ban itself.

As this narrow finding would not result in restored access for all seal products to the EU market, Canada and Norway appealed the panel's findings on January 24 of this year. The WTO appellate body hearing was held last month, from March 17 to 19. Canada's delegation was led by the Honourable Leona Aglukkaq, Minister of the Environment, Minister of the Canadian Northern Economic Development Agency, and Minister for the Arctic Council.

In the appeal, Canada argued that the panel erred in its findings with respect to the TBT agreement and with respect to article XX of the GATT. In Canada's view, the panel committed numerous errors of law, both in interpreting the appropriate legal standard and in applying that standard to the facts of this case. The appellate body is expected to issue its report no later than May 20, 2014.

We'd be happy to answer any questions that you have about Canada's WTO challenge.

● (1545)

The Chair: Thank you, Mr. Hildebrand.

We'll start off with a 10-minute round, and Mr. Chisholm will lead off.

Mr. Robert Chisholm (Dartmouth—Cole Harbour, NDP): Thank you very much, gentlemen.

I have to tell you I find this a bit of a head scratcher. I'm glad you're here and perhaps you can help me better understand what's going on. There is a domestic seal hunt in the EU. Am I correct?

Mr. Marvin Hildebrand: There is some hunting and killing of seals that goes on in the EU, yes.

Mr. Robert Chisholm: Right, and it's okay under the current rules for the EU to import seal products from Greenland?

Mr. Marvin Hildebrand: In this context, and for the purposes of international trade and international trade commitments, Greenland is considered to be outside of the EU. It's a third party, if you will, and the effect of the ruling by the panel was to allow the continued import of seal products from Greenland under the Inuit exemption, the first of those three exemptions that I talked about. So that's a yes.

Mr. Robert Chisholm: As I understand, in effect, because there's still a ban, because Greenland gets their seal processed in Canada, that's still affected by the ban. Is that correct?

Mr. Marvin Hildebrand: Are you talking about Greenlandic seals that would be shipped to Canada, processed in Canada, then returned to Greenland and shipped to the EU?

Mr. Robert Chisholm: I'm asking you how it works.

Mr. Marvin Hildebrand: I'm not aware of any processing of Greenlandic seals in Canada, but....

Mr. Kevin Thompson (Director, Government Procurement, Trade and Environment Division, Department of Foreign Affairs and International Trade): The important issue is that the seals that have been harvested in Greenland need to qualify under the certification system that's been established. In order to gain access to the EU market, you have to fall under one of the exemptions. So products from Greenland that are harvested by indigenous communities would qualify now that this certification system has been established. They would qualify to be placed on the European market.

As far as I know, it doesn't matter where the additional processing or downstream processing takes place, what matters is, for the purposes of qualifying for the Inuit exemption, there are several criteria that relate to the hunter and whether or not the hunter meets this criteria for the Inuit exemption.

• (1550)

Mr. Robert Chisholm: Could you explain for me a little bit more about this business of public morality. What does that mean as it relates to this business?

Mr. Marvin Hildebrand: Under the GATT 1994, article XX sets out a number of reasons why a WTO member could impose an import ban or some similar measure, why they could ban the import of certain products. It's a list of six or eight different circumstances or situations. It deals with things like prison labour goods that are.... The first one on the list, article XX(a), concerns products that are injurious or inconsistent with public morality.

So the EU has cited this provision, article XX(a), as a legitimate basis for it to ban the import of seal products. So it has said, on the one hand they have an outright ban of such products, and on the other hand, they have, as I mentioned, established three exemptions from that ban. So products that are harvested by Inuit people, products that are harvested for marine mammal conservation reasons, or goods that are carried in by travellers through airports or whatever.

So the flow of goods from Greenland to the EU, as was mentioned, is allowed by virtue of the first exemption, that related to harvesting of seals by Inuit people. The entire Greenlandic seal harvest, not surprisingly, is done by Inuit people.

Mr. Robert Chisholm: That exemption was defined because of the hunters, or the way the seals were harvested.

Mr. Marvin Hildebrand: By virtue of the nature of the people, the fact that they are Inuit people, their ancestry, and the history of their hunts. So it doesn't have to do with how the seals are killed, it's by virtue of the ancestry of the hunter.

Mr. Robert Chisholm: What is the size of the industry in Canada at this particular time from a dollar point of view? You must know.

Mr. Marvin Hildebrand: We know a couple of things for sure. One is that the size of the industry has been decimated by this measure that came into effect in 2009. In terms of the export capacity and actual export of seal products, that's a little bit difficult to nail down in great precision because some of the products, like oils for example, are combined with other marine mammals. But what I can tell you is that the export of seal products—seal meat, seal oils, and raw seal skins—peaked in 2006 at about \$18 million, and by last year was down to under half-a-million dollars and the overall sum from 2004 to 2013 was just a little over \$79 million. So it has tapered off very dramatically in recent years.

• (1555)

Mr. Robert Chisholm: Was this file part of the CETA negotiations? I'm trying to get some sense of how seriously the Government of Canada takes this particular issue. We've heard great outrage publicly, but I'm wondering, when given the opportunity, how seriously the Government of Canada takes the issue when it comes down to actually trying to negotiate a positive result.

Mr. Marvin Hildebrand: The answer is that the government takes it very seriously. In giving you a more detailed answer to your question, I need to draw the distinction between, on the one hand, a legal challenge to a certain action on the part of a WTO member in this case, and on the other hand, a negotiation of a treaty. Those are entirely different things.

On the one hand, we have put major efforts into this challenge at every turn in the road since it was launched through the initial panel process and also now into the appeal. By far the best framework for Canada to challenge this action on the part of the EU is the WTO, because the rules we consider to have been violated are WTO rules.

In terms of our commercial relationship with the European Union, those are the rules. As we all know, a bilateral trade agreement has been negotiated and is in the final stages of technical work right now with the European Union. That treaty will result in another set of rules, another dispute settlement process that could be used, but it is not fully complete at this time. More importantly, it has not been implemented or ratified, and it's not in force.

The government absolutely takes this as being very important, and in terms of the levers and the mechanisms we have to challenge it—the best by far being the WTO—we have availed ourselves of those.

In addition, in practical terms, that avenue has allowed us to collaborate, in this case with Norway, and to work together with a co-complainant in the case, one that has very similar interests. It has also allowed us to benefit from what's known as third-party participation. There is a good handful of countries—six or more—that are third party to this case.

Specifically on this question of public morality, Canada has argued very clearly that the panel erred in citing this hunt as being offside with public morality. Not only have Canada and Norway argued that, but we have also benefited from third parties saying some of the same things and saying that it makes sense and that it does not pass the test. In Article XX there is a necessity test for invoking an exception, for instance, in the case of public morality. We have argued that they have not met that necessity test.

• (1600)

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

Mr. Sopuck.

Mr. Robert Sopuck (Dauphin—Swan River—Marquette, CPC): Thank you.

At any time during this process, did the EU ever express any opinion or concern about the sustainability of the seal populations in Canada and the effect of the current harvest on the sustainability of the seal populations?

Mr. Marvin Hildebrand: No, they didn't.

Mr. Robert Sopuck: Okay, so they implicitly or explicitly acknowledged that Canada's seal populations are in good shape and that they are abundant. Okay.

Regarding the second exemption, for seal products resulting from hunts conducted for the sole purpose of sustainable management of marine resources, the key word in that statement in my view is "resources".

This committee has heard many times from various experts and fishermen on the coast about high populations of seals affecting commercially valuable fish stock. So if Canada were to have a seal hunt or a seal reduction program for the purpose of conserving fish stocks that are threatened by an overabundance of seals, presumably seal products from that hunt would be allowed into the EU.

Is that true?

Mr. Kevin Thompson: A number of criteria has to be met in order to fall under the marine resource management exemption. One of the most significant ones for the east coast seal fishery is the fact that the seal hunt cannot be commercial. The fishermen cannot make a profit from the harvesting of seals.

Currently, there's only a very limited number of seals that are harvested in the EU under this exemption. I believe it was around 106. So there are some. At this point, in order to take advantage of that exemption, you have to meet these very stringent criteria. On the Canadian side, if we had a sustainable seal hunt but it was done on a commercial basis, that would not currently fit under the EU exemption.

Mr. Robert Sopuck: I'm astonished to hear that. That is clearly stupid and malicious behaviour by the EU, meddling in the management of our natural resources. I find it absolutely appalling that they are going down this particular path.

In terms of the use of this ridiculous public moral concern clause, what are the possible precedents that have been set for the trade in other commodities?

Mr. Marvin Hildebrand: That is an important point. Actually, we are quite concerned about the possible precedent of the panel's findings in this regard. It was one of the grounds of our appeal of the panel's conclusion concerning the interpretation. Application of GATT article XX(a) was a particular concern. Specifically, we argued that the panel failed to support its conclusion that the seal regulation could be justified. It was shared by Norway, and as I said, a number of other third parties in the appeal.

Basically, the concern is that the panel, through its ruling in its report of last November, has set a very low threshold for the invocation of a public morals defence, creating the possibility that a broad range of issues could potentially be recast as moral issues, and potentially be justified under the exemption.

Beyond that, I can't point to specific products that we think might be vulnerable. It's more the precedent of a low bar, and other parties potentially citing that and saying they could do the same thing with something else.

• (1605)

Mr. Robert Sopuck: This, clearly, has the potential to destabilize the entire world trade system if for domestic political reasons, like the EU is doing, certain countries utilize this low bar to ban all manner of different goods from their countries. Am I correct?

Mr. Marvin Hildebrand: We're very concerned with the precedent that has been set under GATT article XX(a). In crafting our arguments in this case and our arguments before the appellate body, we have cited various WTO challenges in other areas over the past 10 or 20 years. Jurisprudence is very important in terms of the functioning of the international trade system and with respect to the functioning of cases in dispute resolution. So yes, we're very concerned about the low bar that the panel found was acceptable in terms of the EU's actions.

Mr. Robert Sopuck: Who are those other third parties who are supporting Canada? Do we have a good case?

Mr. Marvin Hildebrand: The list of third parties goes a little bit beyond this, but the third parties that were particularly supportive of Canada's interests and of the arguments that we put forward were Colombia, Mexico, Iceland, Ecuador, and Japan.

With respect to whether we have a strong case, we obviously have great concerns with the panel ruling. We've argued in a number of ways, and in a submission of scores and scores of pages, the errors in analysis, and the errors in citing of jurisprudence that's not relevant or otherwise not applicable.

Through extensive arguments and analysis, we've put forward our case, which we believe to be the right one. We believe that the panel clearly erred, and that there are good and compelling reasons to rule in a different way, which is our expectation in terms of the appellate body.

Mr. Robert Sopuck: Has the public moral concern clause been invoked in other trade disputes by the EU?

Mr. Kevin Thompson: To my knowledge, it's been invoked in at least one other case involving gambling laws in the United States. I believe it was Antigua that challenged a number of restrictions on cross-border gambling. The U.S. sought to justify those restrictions under the public morals defence. There is a fair amount of WTO jurisprudence under GATT article XX, the general exceptions, generally and specifically in relation to this idea of necessity.

In looking at the general exceptions, there are various components to the test. The first one is that you have to establish that the measure is there to protect something. Is it protecting public safety, protecting public morals, protecting human health, protecting animal welfare, or protecting the environment? There's this notion of protection.

The second step is this idea of necessity. Is the measure necessary in order to achieve that objective of protecting, in this case, public morals?

Then you have this third step, which falls within something called the chapeau where, nonetheless, one has to determine whether the measure has been applied arbitrarily or in an unjustified manner.

There's a significant amount of jurisprudence around the general exception test itself.

• (1610)

The Chair: Mr. MacAulay.

Hon. Lawrence MacAulay (Cardigan, Lib.): Thank you very much, and thank you for your determination to be here.

Public morality, and I know you've been talking about it, how is it established? If I understood correctly, you're dealing with conservation and cruelty. It is truly a fact that our seal herds are much higher, I believe, than they probably need to be. In fact, they're probably the biggest consumer of fish in the world today. They consume all other types of fish.

I was just looking at the sustainable management of the marine resources. How can they use public morality when we have the most humane seal hunt? I'd like you to elaborate on how the seal hunt is done in the EU and other places where they import the product into the EU.

What happens if they decide, under public morality, to put a camera in a butcher shop or where they cook the shellfish. Where are we going in the world with trade? Is this not a trade barrier?

Mr. Marvin Hildebrand: We certainly argue it is a trade barrier, and that it's an illegitimate trade barrier.

Hon. Lawrence MacAulay: I mean illegitimate trade barrier.

Mr. Marvin Hildebrand: We made a number of arguments with respect to the question of public morality and animal welfare. We emphasized the relevance of comparing the standard applicable to the commercial seal hunt with other animal welfare standards, such as wildlife hunts in the EU, for example.

Certainly we recognize the WTO members have a right to establish their own standards for animal welfare, but they have to be based on factual information. They need to not be applied arbitrarily. It's important to look at other standards in similar situations, if a country wants to go down that road and try to justify a ban on the basis of animal welfare concerns.

We pointed out also there is a much less trade-restrictive way of going about this. We pointed out that other wildlife hunts in the EU as I said are, if anything, more of an offender in this area than the seal hunt. In particular we argued an alternative mechanism and a regime that would be less trade restrictive. The EU could have accepted a certification and labelling scheme, based on an accepted animal welfare standard.

We believe, and we argued before the panel and the appellate body, that the existing requirements to ensure a humane seal hunt in Canada are adequate and even more stringent, as I said, than the standards in other EU wildlife hunts such as the deer hunt. We also pointed out the EU applies a different standard to seals, an animal that's largely hunted outside its territory, that exceeds the standard they apply to hunts within their territory.

• (1615)

Hon. Lawrence MacAulay: Thank you.

But you lost your first appeal with the WTO, and you're appealing again. What changes are you bringing forward?

My understanding is that we have the most humane seal hunt in the world. We use the most humane practices. It's wide open to the public, perhaps too much so.

Is it because of the do-gooders trying to say this is inhumane and using millions of dollars to damage our seal fishery? Is this what the problem is in Europe? With public morality, is that because people are offended because of the way we do it, and they fish the seal the same way?

How can you have trade in the world if the EU can do that to us with the most humane seal hunt in the world? It's hard to understand.

Mr. Marvin Hildebrand: Right. We know there has been an extensive campaign in the European Union over a sustained period of time. We know the EU ban was preceded by a couple of country-specific bans in the Netherlands and one or two other countries before it was adopted by the EU generally, and that it has been a subject of great controversy and publicity in the EU by those who oppose the seal hunt.

With respect to the panel report and the appeal, the first panel report that came out in November of last year is the only panel report. There has been one panel to date. They took the information at hand, the submissions of the parties, the third-party information, and they wrote a lengthy report on their conclusions and their findings. That report was adopted. We agree with parts of that report, and there are parts of it we don't agree with.

The purpose of the appeal process we are into now—and there isn't a further appeal process—gives us an opportunity to look at the analysis and the thinking and the jurisprudence the panel members and the panel collectively engaged in. It also allows us to develop arguments as to where we think they went wrong in their thinking, and where they drew wrong conclusions.

Hon. Lawrence MacAulay: Where do you think they drew the wrong conclusions?

Mr. Marvin Hildebrand: One of the main concerns is with respect to their interpretation of Article XX(a), the public morality, the bar that they set in terms of GATT article XX(a), and the invocation of a ban on the basis of preserving public morality.

Specifically, as Kevin said, there's the word "necessary" in that very short line of article XX(a). It says it's necessary to protect public morals—or whatever the words are—and so there's a necessity test. What we have argued, and what we are very concerned about, is that the EU has not passed that test and that the panel erred in concluding that they had met that necessity test.

Those exemptions are only available in situations and to members who can demonstrate the necessity of them in order to accomplish a legitimate end.

Hon. Lawrence MacAulay: In your opinion, they cannot.

Mr. Marvin Hildebrand: They did not and they cannot.

Another of our concerns is that whereas Canada has put forward the idea of... We put this forward to the European Union both before the panel ever started, as part of our advocacy efforts prior to 2009 to resolve this issue. Between the ban coming into place even after 2009, we promoted with the European Union the idea of a certification and labelling regime where—

• (1620)

Hon. Lawrence MacAulay: Will they look at that?

Mr. Marvin Hildebrand: There's been no real uptake on that. At that time, we also put it forward as part of our panel submission and we said this is a less trade-restricting alternative that really needs to be looked at.

They're dealing with what they perceive to be a problem, or they're dealing with this issue with an outright ban. What we said is that we should work together and develop a certification and labelling regime that can be properly enforced that allows legitimate trade to flow. If properly designed and implemented, it would work well for our industry because it would allow all aspects—the Inuit hunt and the non-Inuit hunt—in other parts of eastern Canada, to benefit from access to the European Union market.

The Chair: Mr. MacAulay, your time is up, sir.

Hon. Lawrence MacAulay: I only—

The Chair: You got 10 minutes there, sir.

Mr. Leef.

Mr. Ryan Leef (Yukon, CPC): Thank you, Mr. Chair.

Thank you to our witnesses.

Just touching on a question that Mr. Chisholm asked in terms of the government's approach to this and the seriousness of it, is it common for a minister to appear before a WTO hearing like this?

Mr. Marvin Hildebrand: To my knowledge, it's not common. The minister, as I said, led the delegation. She made a brief opening statement and then our lead counsel on this case, who happens to be joining me at the table today, provided a detailed oral submission to the appellate body, which was accompanied by an even lengthier written submission to the appellate body last month.

Mr. Ryan Leef: We're appealing on logic and facts, I would say. But how helpful is it—we weren't there so that's kind of why the committee is interesting in hearing—to have a minister with traditional and cultural roots and a clear understanding, both from practical experience...? I mean, our minister has hands-on, real-life experience there. She can participate in this discussion with the WTO. How helpful is that?

Mr. Marvin Hildebrand: The appellate body is going to look, as you said, at the facts of the case. We trust that they will make a wise judgment. I think that we were very well represented by the head of our delegation and by all the members of our delegation last month. Certainly the minister has some very definite familiarity with this issue, which was likely brought to bear. I wasn't there as part of the delegation myself, but I think it was brought to bear in the proceedings that went on.

Mr. Ryan Leef: The EU has been holding the position that Greenland has taken advantage of the exemptions and that basically it's Canada's fault for not taking advantage of the exemptions that are being offered them.

If I understand it correctly, they're not measuring... As you've said, they're measuring the group that's engaged in the harvest, not the methods they're using. Canada's hunt is sustainable, it's legal, and it's ethical, and we've deployed a number of strategies over our seal hunt to make it a humane hunt.

How does Greenland compare in terms of that hunt and how humane—for lack of a better word, I guess—is Greenland's hunt compared to Canada's? Is the EU conscious of that or are they asking Greenland to support documents of the humane way in which seals are harvested in Greenland in comparison to Canada...?

Mr. Marvin Hildebrand: For part of that answer, I'll defer to my colleague, but my understanding is that they are not looking at the humaneness at all, because all of the Greenland seal hunt/harvest is coming in under an exemption that is based 100% on the ethnicity or the ancestry of the hunters, so they don't have to demonstrate anything else to qualify under that exemption.

The problem for Canada, or one of the problems, is that this exemption has never been operationalized in the case of Canada. Both de facto and in other ways, it is not available to us, but it's also not available to us because of the nature of our industry, the supply chain, and the distribution and processing chain, and the fact that the Inuit hunt in Canada is a small proportion of the overall hunt historically.

• (1625)

Mr. Ryan Leef: It's perplexing, then, though, that there would be an argument that on moral grounds they're restricting this hunt, but they don't particularly care how the hunt is undertaken and whether it's humane or not humane. They don't care how people kill the seals as long as those people belong to a class of persons. In that sense alone, it's a discriminatory vein the EU is taking by saying that they appreciate the culture and value and their understanding of that, but it's very perplexing for them to say, "We're standing on a moral ground here, but we don't actually care how these seals are killed."

Mr. Marvin Hildebrand: It's certainly problematic, and it's also problematic because.... Well, the reality is that as Greenland avails themselves of this exemption, it's not in any way volume limited either, so—and we've argued this before the panel and the appellate body—essentially the effect of the ban has been to divert trade. It has diverted it away from Canada to places like Greenland, which somehow are able to qualify under an exemption that is not, in a de facto sense and maybe in other senses, available to Canada.

Mr. Ryan Leef: I'm sure the EU is holding their cards close to their chest right now and they probably don't want to deal in hypotheticals at all, but has there been any indication or signalling of what the EU would do should the WTO come back and rule in Canada's favour on this issue?

Mr. Marvin Hildebrand: No. You're right. The parties will always hold their cards close to their chests as long as the proceedings are under way. We would do the same thing.

Frankly, the whole question of the implementation of the appellate body report or decision is something that we'll certainly turn our minds to as soon as we see what that report looks like. But at this time, we wouldn't have any basis on which to second-guess what the EU's strategy or intentions might be.

Mr. Ryan Leef: The ITK position is well known on this, but I have heard that in some positions on the European side, in the political world, they feel that while the ITK is suggesting that it's hurting the market, it's not the general sense of hunters in the communities themselves. I would disagree with that, from being in the Arctic, spending time in the Arctic, and talking directly with them.

I think it's great that they're showing solidarity with our eastern sealers. It's important. But has the WTO heard from other groups beyond the ITK position on this? Are they hearing from individual sealers who represent small community hunts?

Mr. Marvin Hildebrand: There certainly is a mechanism for interested third parties, not only WTO members but others, as you suggested, to make submissions. There was a submission in the case from Canadian industry but not from an Inuit group.

Mr. Ryan Leef: We have spent a lot of time today talking about the Inuit hunt in Canada, but there is a huge eastern market and a great number of Canadians outside of the traditional hunt, as it were, from an Inuit cultural perspective.

This ban on the hunt affects the downstream processing aspect as well, so it's not just the hunt itself but all the downstream end of it. Were the numbers that you talked about—in 2006 the \$18 million, and less than half a million dollars in 2013—reflective of the entire market or just the hunt itself?

•(1630)

Mr. Marvin Hildebrand: Those are Canadian export figures. I don't have any information on Canada's domestic market for such products. Those numbers were strictly related to the exports.

But certainly you're right. Our understanding is that the supply chain and the processing and distribution and other aspects of the commercial pipeline have been effectively decimated by this ban, and that to get it back up and running at the level it was at would

require a certain amount of investment and reactivation and renewed interest. It's an open question as to exactly what might inspire that.

The Chair: We'll now move to a five-minute round. We'll start off with Mr. Cleary.

Mr. Ryan Cleary: Thank you, Chair.

Thank you to the witnesses. This is going to be, as the chair just pointed out, five minutes, so it's the speed round.

Ryan just asked some interesting questions about numbers. I also want to follow on some questions that Mr. Chisholm asked.

You mentioned that 2006 figure of \$18 million for Canadian exports. What is the overall figure for domestic and export sales? That's one question.

As well, is that \$18-million Canadian export figure for exports to the EU, or is it to world markets?

Mr. Marvin Hildebrand: That's to the world.

Mr. Ryan Cleary: So it is \$18 million to world markets. Now, what is the domestic figure to put alongside that \$18-million export figure?

Mr. Marvin Hildebrand: A minute ago I said I didn't have any information on the domestic market. It has just been handed to me, so now I do.

The way the combined sales are measured is in terms of what is called "landed value". It's basically landings. The peak year was 2006, when it was \$34.1 million.

Mr. Ryan Cleary: That was for domestic?

Mr. Marvin Hildebrand: It's for landings. They would have found their way into both the domestic market and export markets.

Mr. Ryan Cleary: I'm looking for some clarity. This is a follow-up to the question Mr. Chisholm asked.

You talk about permitting Greenlandic and EU domestic seal products to be sold in the EU. You mentioned that the Greenlandic hunt is carried out by the Inuit there, but what are the figures for the Greenlandic and the EU hunt? Is the EU hunt also an aboriginal hunt, an Inuit hunt, or is it a...?

I'm looking for numbers for Greenland and the EU in terms of how much their hunts were worth over the same timeframes that you gave us for the Canadian export and domestic markets.

Mr. Kevin Thompson: The EU hunt is primarily in relation to marine resource management.

Mr. Ryan Cleary: Does that mean culls?

Mr. Kevin Thompson: Yes.

For the number of seals that are culled in any one year we have some fairly precise figures for Sweden, and I can't recall the figure specifically for the northern Scotland area. For the one in Sweden, I think it's around 100 seals. It's quite a small number. For Finland the number is about 600.

So in size, the seal cull in the EU is fairly limited.

Mr. Ryan Cleary: If you don't have the overall numbers here for Sweden and the other countries.... Mr. Chair, can we ask the witnesses to provide us with the overall numbers of the animals that are culled and for the value of the products?

Mr. Kevin Thompson: I'm not sure that we have, as a result of the WTO case, the value of the product, but certainly for Sweden it was about 100 seal culls, and then for Finland it was about—

• (1635)

Mr. Ryan Cleary: Was it 100 culls or 100 seals?

Mr. Kevin Thompson: It was the number of seals culled. Then it was about 600 for Finland.

As to the timeframe, these are recent annual numbers.

Mr. Ryan Cleary: To simplify, then, if as a Newfoundland and Labrador politician, a Canadian politician, I talk about the hypocrisy of the European Union in that they banned Canadian seal products but at the same time have culls in Greenland and in the European Union itself....

What is the total number of animals and the total dollar value of those culls in terms of resulting products from the animals that are taken in the cull?

Mr. Kevin Thompson: For the EU itself, it's in the range that I just identified.

Greenland publishes figures on a more systematic basis, and we can provide the committee with that information. But the Greenland hunt is not just a cull for marine resource management purposes. It's in effect a commercial seal hunt.

Mr. Ryan Cleary: Here is one last, quick question.

We know how people in the European Union generally, if you listen to the propaganda from the EU, feel about the Canadian seal hunt. But what has been the impact on Canadian fish products sold into the EU because of people not being exactly overjoyed with the Canadian seal hunt?

Do you get the question?

Mr. Marvin Hildebrand: I don't have any information that indicates that our fish and seafood exports have been compromised as a result of this.

Mr. Ryan Cleary: Is there a fear that they would be with the Canada-EU free trade deal? Is there a fear that this may happen?

Mr. Marvin Hildebrand: What I can tell you about the Comprehensive Economic and Trade Agreement is that it will provide us with unambiguously better access to the EU market, as a result of the elimination of tariffs on a very wide range of products, in fairly short order—if not immediately, then over the implementation period of a number of years.

As I said, I don't have any information to suggest that our fish and seafood or some other exports have been compromised as a result of the seal case.

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

Mr. Ryan Cleary: Thank you, Mr. Chair.

The Chair: Mr. Kamp.

Mr. Randy Kamp: Thank you, Mr. Chair.

Thank you, gentlemen. I have just a few questions. I think they're easier than the last ones, and that will be good.

Can you tell me, first of all, how the panel was composed for the first decision that was made? Who was on it, and how was it decided who would be on it? Then I have a similar question for the appellate body. Is it the same group of countries, for example, that have representatives on that?

Were the most recent hearings in March public? Are there public transcripts available of them that we could look at, if anybody wanted to look at them?

Let me start with those.

Mr. Marvin Hildebrand: Sorry to take up some of your time getting the answer, but the answer to your question is that in both cases, these are three-member bodies, both the panel and the appellate body. They are drawn from WTO-member countries. In the panel itself, the members were from Switzerland, Singapore, and Australia. In the case of the appellate body, the members are from China, Korea, and the United States, appointed by the director general of the World Trade Organization.

In terms of the panel process, these things can vary a little bit depending on who the complainants and defendants are, but in the case of the EU and Canada, one of the things that we see eye to eye on is a robust level of transparency in terms of panel proceedings. So as a practical matter, not only are all of the submissions available upon request, but the actual hearings can be witnessed by the public. There's a mechanism, closed-circuit television sort of thing, for interested parties to be part of it.

Does that answer your question?

• (1640)

Mr. Randy Kamp: And the transcripts, are they...?

Mr. Marvin Hildebrand: There aren't transcripts of the actual process. There's not a transcript, but as I said, the written submissions can be made available.

Mr. Randy Kamp: You mentioned that we should get an answer sometime in May, I think. If we were successful at that, what would it look like? Is there any chance, in your view, that if we were successful we would somehow get back to 2006 numbers, or has the horse left the barn on this issue?

Mr. Marvin Hildebrand: With respect to the first question, if the appellate body rules in Canada's favour and Norway's favour, then the EU will be obliged to bring their regime into compliance. There will be a reasonable period of time for them to do so, as is normal in any WTO case. The WTO cases often involve laws and regulations, which as we all know take some time to change when they have to be changed for whatever reason. So the EU would be obliged to come into compliance over a reasonable period of time, if that is the way things turn out.

With respect to your second question on what the future might hold, I'm afraid that's a very difficult question and it really involves a prediction and any number of variables related to both human decisions and objectives and to market fundamentals that present a rather significant overlay in terms of uncertainties.

Mr. Randy Kamp: Yes, I thought that was the answer. Thank you very much.

The Chair: Mr. MacAulay.

Hon. Lawrence MacAulay: Thank you very much.

Just to follow on that question, if the appeal fails, what happens? If we win the appeal, can the EU appeal the decision?

Mr. Marvin Hildebrand: There isn't a further appeal.

Hon. Lawrence MacAulay: There's no further appeal, and they have to comply.

Mr. Marvin Hildebrand: They are obliged to comply.

Hon. Lawrence MacAulay: If we lose, do we have any other options?

Mr. Marvin Hildebrand: We would certainly weigh our options at that point, but I'm not in a position to speculate as to what our actions might be or what our next steps might be.

Hon. Lawrence MacAulay: Thank you very much.

You also indicated that the CETA agreement gives us improved access. Did the seal issue come up in the negotiations at all, and if it did, how was it dealt with? If the seal issue was not brought up, why was it not brought up?

Mr. Marvin Hildebrand: My answer would hearken back to one of my earlier answers and that is the fundamental difference between the negotiation of provisions and obligations that form a treaty and the enforcement of an action that is perceived to violate an international trade obligation.

It's not surprising that the pursuit in the WTO was done on a totally separate track. The pursuit by Canada of allegations that the EU was not abiding by its international trade commitments is an entirely separate issue from the negotiation of such commitments and of a new and stand-alone treaty.

• (1645)

Hon. Lawrence MacAulay: But if I understand you correctly, you're saying that it dealt with the broader picture. Is that correct?

Mr. Marvin Hildebrand: It's like a negotiation issue versus an enforcement issue.

Hon. Lawrence MacAulay: After it was announced that the CETA agreement was going to be signed there were great expectations and we were going to be able to export more fish.

My only question is: was there ever a mention during the negotiations of the seal fishery in this country? If not, I wonder why not. Would it just jeopardize the negotiations? Was it not valuable enough to be discussed at the CETA, or was it inappropriate to discuss it?

Mr. Marvin Hildebrand: I was not personally involved in the CETA negotiations. But personally, I would say that because that was a negotiation, it would have been off topic, in that the subject really was the enforcement of the EU's existing obligations under the WTO that have been there for many years. I'm not surprised that it wasn't raised because it would have been off topic, in my view, as part of a negotiation versus the enforcement of trade commitments.

Hon. Lawrence MacAulay: Basically what you're telling me is that the negotiation itself did not deal with specifics like wheat, grain, or pork. These subjects were not brought up.

Mr. Marvin Hildebrand: Absolutely the tariff negotiations, by definition, have to deal with individual products. Again, we're talking about the establishment of commitments in a new treaty for wheat or pork or whatever product, as compared to an action—a law, a regulation, a decision—that violates an existing commitment. That is what we were dealing with in this case.

The rules of commerce between Canada and the EU, the very broad foundation of that is the WTO. That is the mechanism, by far the most appropriate and effective mechanism, for us to get them to change what they're doing because they're offside.

Hon. Lawrence MacAulay: What markets are left for our seal products?

Mr. Marvin Hildebrand: There are some eastern European markets, outside of the EU. I have seen Turkey as a market for a small amount. All of the amounts, relatively speaking now, are small relative to what they were. There is China, to some degree, and Turkey. There are not that many.

Hon. Lawrence MacAulay: Those are small amounts, though.

Mr. Marvin Hildebrand: Small amounts because our whole industry has shrunk so much.

Hon. Lawrence MacAulay: Concerning tariffs—

The Chair: Thank you, Mr. MacAulay. Your time is up, sir.

On behalf of the committee, gentlemen, I'd like to thank you for coming today. In Mr. MacAulay's words, thank you for your determination as well to be here and to answer our committee members' questions.

I believe, Mr. Thompson, and Mr. Hildebrand, there was a commitment to provide some numbers for Greenland. If you could do that through our clerk, I would appreciate that and we'll make sure it gets circulated to committee members.

Thank you very much, once again, on behalf of the committee members.

There being no further business, this committee stands adjourned.

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