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## **Standing Committee on International Trade**

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**EVIDENCE**

**Thursday, October 9, 2014**

**Chair**

**Mr. Randy Hoback**



## Standing Committee on International Trade

Thursday, October 9, 2014

• (1530)

[English]

**The Chair (Mr. Randy Hoback (Prince Albert, CPC)):** Pursuant to the order of reference, Wednesday, October 1, 2014, Bill C-41, an act to implement the free trade agreement between Canada and the Republic of Korea, I'll call this meeting to order.

Mr. Davies.

**Mr. Don Davies (Vancouver Kingsway, NDP):** Mr. Chairman, during the course of the testimony we heard about the Canada-Korea agreement. The concept of currency manipulation and use in the context of trade came up. I think the Canadian Council of Chief Executives talked about it. I know that some auto companies have also mentioned it.

I want to read into the record the motion that I will be tabling for this committee's consideration:

That, pursuant to Standing Order 108(2), the Committee undertake a study of the use of currency intervention by states throughout the world to create advantages in international trade, policy options available to address unfair currency interventions, and report its findings back to the House. The focus of this study should include:

- a) investigating the challenges and opportunities in using trade and investment agreements to address currency intervention;
- b) examining the status of progress at multilateral bodies in developing fair international rules on currency intervention; and
- c) balancing respect for sovereign nations in the management of their monetary policy with the development of fair international rules to level the playing field for exporters in all countries.

I look forward, Mr. Chairman, to discussing this motion in committee business and receiving the unanimous support of all committee members at that time. I did want to get on the record on this because I think it came up as an important issue in this study and I think it's something this committee would be well advised to study.

**The Chair:** Your intent then is that actually we'll hear this motion on the Tuesday we come back, when we do committee business on that day.

**Mr. Don Davies:** Then, or at the end of committee business today. Or we can do it at your leisure, Mr. Chairman, but I wanted to serve notice and put it on the record.

**The Chair:** It's on the record that you served such notice.

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

**The Chair:** Colleagues, we do have one bit of housekeeping to do. We have an operational budget in the amount of \$7,500 that's sitting in front of you right now. I think it's fairly straightforward. It's

more or less for paying for some of the witnesses to appear in front of us.

I need a motion to approve the budget.

**Mr. Don Davies:** I so move.

All those in favour?

(Motion agreed to)

**The Chair:** Then we'll move into clause-by-clause.

Pursuant to Standing Order 75(1), consideration of clause 1, the short title, will be postponed of course.

If it's okay with the committee, I'd like to clump clauses until we get to the point of an amendment and then I'll stop there. For example, clauses 2, 3, 4, and 5 and then the new clause 5.1 would be the first NDP amendment.

If there is consent I'd like to combine clauses 2 to 5.

(Clauses 2 to 5 inclusive agreed to)

**The Chair:** Mr. Davies, we have amendment NDP-1 that would establish new clause 5.1. I'll give you a minute or a minute and a half to discuss your amendment.

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

This amendment makes it clear in the agreement that nothing in the Canada-Korea trade agreement would affect or minimize or adversely affect the ability of the Government of Canada or any of its sub-national governments to legislate or regulate in the public interest.

Many people in Canada have expressed concern about the investor-state provisions of trade agreements and are concerned that by giving rights to investors to challenge government legislation or regulation that they believe unduly adversely affects their financial interests, this may in some way negatively impact the ability of governments to take bona fide decisions to legislate and regulate the public interest.

Some examples of that include government legislation on the environment, or on our natural resources or social policy.

We have seen claims in the world filed in this regard, whether it's a challenge to plain packaging laws for tobacco companies in Australia, or a challenge currently in Canada by a company that is challenging the moratorium on fracking adopted by the Government of Quebec. It is a real concern.

What this amendment would do for greater certainty, Mr. Chairman, is to make it clear that nothing in this act affects the powers of the Government of Canada or of provincial, municipal, or first nations governments to enact legislation in the public interest. It would make it absolutely clear that when it comes to investor rights or trade agreements that the sovereign right of government to legislate or regulate bona fide in the public interest is unaffected.

I would conclude by saying that a response of those who favour ISDS provisions is often that they have taken care of the right to regulate in the public interest and that's clear in the agreements. When I read the agreements I don't think it's as clear as this. This amendment would make it crystal clear.

**The Chair:** Thank you, Mr. Davies.

Mr. Cannan.

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

I appreciate my colleague's perspective. When I read it, I thought his proposed amendments, rather than providing for greater certainty, actually created more ambiguity and confusion in interpreting this act and agreement, given the absence of such a rule of interpretation in Canada's previous implementation acts. I'm not clear why the language in the federal statute would refer to legislative powers of provincial, municipal, or first nations governments.

This agreement, like other free trade agreements Canada has entered into, includes reservations and exceptions where additional policy flexibility is required to address sensitive areas such as health, safety, the environment, and the provision of preferences to aboriginal people.

In conclusion, Mr. Chair, I think this is unnecessary because Canada's free trade agreements are negotiated and drafted to ensure that governments retain their right to regulate in the public interest. I think that's so important as long as the measures are applied in a non-discriminatory and non-arbitrary manner.

**The Chair:** Any further debate on clause 5.1, amendment NDP-1? All in favour?

(Amendment negated [See *Minutes of Proceedings*])

**The Chair:** We'll move to clause 6, and then clauses 7 and 8.

(Clause 6 agreed to)

(On clause 7—*Purpose*)

**The Chair:** Mr. Davies, on amendment NDP-2.

• (1535)

**Mr. Don Davies:** Thank you again, Mr. Chairman.

Mr. Chairman, it's quite common in Canadian provisions and trade agreements on the environment to provide a number of obligations on both parties. One of them, that I have read in previous agreements, makes it very clear that the parties to the agreement are legally obligated not to reduce or in any way degrade their environmental standards or regulations for the purpose of attracting trader investment.

The environmental provisions in this agreement do not contain a clear enough provision in that regard, so my amendment is to provide that clarity. The amendment says:

For greater certainty, in relation to the objective referred to in paragraph 7(f), no federal law establishing environmental protection standards may be repealed—or amended so that its effect is diminished—in order to facilitate increased investment under the Agreement.

Mr. Chairman, I don't think that this is inconsistent with the chapter on the environment or with any of the objectives of the party, so I don't think either the Government of Korea or the Government of Canada would have any objection to this kind of clarity.

I would respectfully submit that this improves the chapter in this regard.

**The Chair:** Mr. Richards.

**Mr. Blake Richards (Wild Rose, CPC):** Although I appreciate the thoughtfulness in the amendment, I think it's another unnecessary amendment, Mr. Chair. As with previous agreements, there is already a provision in the environment chapter that prohibits parties from wavering or derogating from their environmental law to encourage trade or investment between the parties.

There is also a provision in the investment chapter that discourages derogation from environmental measures, and also includes health and safety and other measures that would be in order to encourage investment. I think what he's suggesting here is unnecessary.

**The Chair:** Any further debate?

(Amendment negated [See *Minutes of Proceedings*])

(Clauses 7 and 8 agreed to)

(On clause 9—*Agreement approved*)

**The Chair:** On clause 9 and amendment NDP-3, Mr. Davies.

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

Mr. Chair, this amendment would remove from the Canada-Korea trade agreement all of the provisions respecting the investor-state dispute settlement mechanism.

We could probably spend quite a long time debating the pros and cons of investor state, which I don't propose to do here today.

What I will do is summarize a couple of concerns. Investor-state provisions, in effect, allow investors to take disputes over the agreement not to the domestic courts of either jurisdiction, particularly the jurisdiction in which it is alleged that there is a violation of the agreement, but rather to an international tribunal that is outside the domestic sovereign court systems of the parties to the agreement.

It is my understanding that this originated in chapter 11 of the Canada-U.S. Free Trade Agreement and then NAFTA. One of the reasons for that was because at that time Mexico, one of the parties, was not considered to have a judiciary that was considered to be robust enough. Their commitment to the rule of law was not such that the parties would have confidence that they could get a fair adjudication of their claims in Mexico.

What's happened, in my view, is that investor-state provisions have made their way into all trade agreements, even when the signatories to the agreement have mature judiciaries, established rules of law, fair court systems with attributes like security of tenure for the adjudicators, and solid appeal systems, and where the people of the country can be quite satisfied that litigants appearing before the court get a fair hearing. I think that's the case in both Canada and Korea.

So the case to be made for the investor-state provisions is not present in this case, particularly when the risk of the investor-state provisions is that we are subjecting Canada to potentially massive liabilities by investors to be heard before foreign tribunals that we are not confident have security of tenure; for which we're not confident that there is an effective appeal mechanism; and where judgments could be made against the Government of Canada, subjecting taxpayers' dollars to liability when those claims, we think, should be more properly adjudicated in the Canadian courts or the Korean courts.

I would urge my colleagues to support this amendment and remove the ISDS provision from this agreement.

• (1540)

**The Chair:** Mr. Cannan.

**Hon. Ron Cannan:** Thank you, Mr. Chair.

You shouldn't be surprised that we're absolutely opposed to this amendment because the investor protection provisions are the cornerstone of a modern trade and investment agreement, as we've heard from Mr. Burney and a number of staff who've appeared at this committee over the years.

The fact that the NDP want to remove this component is, I would say, very disappointing. The fact that we'd send the negotiators back, and the January 1 effective date would be delayed because they'd have to renegotiate the agreement, is basically anti-trade. You'd be cutting the premise of the agreement.

We talked about providing fairness and equality. This basically is, as I said, the rule of law. We have fairness in interpretation of all our agreements.

I can understand Mr. Davies looking after his core supporters, in particular from some of the unions and some of the anti-trade groups that have appeared over the years. But it's not in the best interest of, I believe, hard-working Canadians. We even heard from one of the unions that presented here last week—or earlier this week—at our committee. This agreement is in the best interests of Canadians. We fully support this investor-state provision in this agreement and our 21st century agreements as we move forward.

We'll be voting against this amendment.

Thank you, Mr. Chair.

**The Chair:** Mr. Davies, do you have a quick rebuttal?

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

I will rebut that a little bit.

The New Democrats believe that the Canada-South Korea agreement is good overall for Canada. There's no question about

that. Our amendments are, in our view, intended to build on that good agreement and make it stronger, so they're not anti-trade at all.

The other thing I would point out is that we also believe that investors need to have protection. The question that we raise with this amendment is: in what venue are investors to enforce their claims? According to this agreement, they get to enforce their agreements in international tribunals, not in domestic courts. We agree that investors should have protection, but we see no reason why a Korean investor who's aggrieved by a Canadian government decision shouldn't have to establish and prove that claim in a Canadian court, where we have every belief they'll be treated fairly. And vice versa for a Canadian investor in Korea.

My final point would be that one thing these kinds of provisions do is give extra rights to Korean investors that Canadian companies don't have. Domestic Canadian companies that have disputes over commercial agreements have to use the Canadian court system, but international investors are allowed to take their claims to an international tribunal. We don't think that's fair to Canadian corporations.

**The Chair:** Thank you.

Ms. Liu, quickly.

**Ms. Laurin Liu (Rivière-des-Mille-Îles, NDP):** I'd just like to add my comments in support of Mr. Davies' amendments. I think the Conservatives have failed to make the case as to why it's a necessary part of this trade agreement between, as Mr. Davies mentioned, two countries whose judicial systems are very robust. I think the fact that it's taken for granted is something we should question. In fact, countries across the world, among others Germany, are actually putting into question the need to have ISDS in trade agreements. I don't think it's something we should take for granted. I'd like to second all of Mr. Davies' comments.

**The Chair:** Thank you.

Mr. Shory.

**Mr. Devinder Shory (Calgary Northeast, CPC):** Mr. Chair, we can talk about it for maybe days and months, but the fact is that this will force us to renegotiate something. We all understand that January 1 is the deadline we want to meet. This is, of course, absolutely the NDP's anti-trade agenda that they indirectly want to enforce. I will be opposing it.

• (1545)

**The Chair:** Any further debate?

Mr. Cannan.

**Hon. Ron Cannan:** I just want to clarify that investors in both countries have the option to use their home domestic or international tribunals. It's not favouritism for the Koreans or the Canadians. They are being treated equally.

**The Chair:** I'll come back to you, Mr. Davies, once more.

**Mr. Don Davies:** I have a final point.

Mr. Chairman, I do agree that we should be doing what we can to have this agreement in place by January 1. We heard a lot of good evidence about the effect of the KORUS tariff tranche of tariff reduction slated for January 1, and we want that. But on the other hand, this agreement has taken years and years. In fact, it's taken a decade to negotiate. I think it behooves us to take care to make sure that we improve it as best we can before it comes into place, particularly when we have no confidence that this agreement will be in place by January 1. My understanding is the Senate is not necessarily going to cooperate by getting this agreement passed by January 1, and we have no assurance that the Korean government will have this agreement passed by January 1. So while it is a laudable goal for us to work towards that, we shouldn't sacrifice the quality of the agreement, and us doing our job as parliamentarians to make sure we have the best agreement possible, to meet some arbitrary rush deadline.

**The Chair:** Okay, I don't think we're going to see any changing of minds here, so....

**Mr. Don Davies:** I'm not making any progress.

**The Chair:** As far as the NDP motion is concerned, I think I'll move to a vote.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 9 agreed to)

**The Chair:** I could group clauses 10 and 11 since there are no amendments, if that's okay?

(Clauses 10 and 11 agreed to)

(On clause 12—*Powers of Minister*)

**The Chair:** We've got amendment NDP-4.

Mr. Davies, I'll give the floor back to you.

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

This is something that I really think all members of this committee should be able to get behind. That is, what we'd like to see is that the government establish an annual trade mission to South Korea to monitor the operation of this agreement, and in particular to observe and monitor the progress that we will or not make on eliminating non-tariff barriers, and then report the results of that trade mission back to Parliament on an annual basis.

Mr. Chairman, we have been in close contact with our legislators in the United States, who have the benefit and experience of implementing the KORUS agreement since 2012. Of course, it takes a fair bit of time to implement a trade agreement. In the early days it's hard to draw too many conclusions, but we also know from the Americans that there are a number of challenges in accessing the Korean market. A fair number of the challenges in the Korean market relate to non-tariff barriers. It's our view that the Canadian exporters' and the Canadian business community's ability to make the most of this agreement will depend in large measure on our ability to encourage the Koreans to give access to their market, which in turn requires them to make progress on eliminating the non-tariff barriers. That's key to unlocking the benefits of this deal, so we would urge all members to help Canadian exporters and businesses

by making sure that the government does its part in making sure that the implementation of this agreement goes as well as possible.

**The Chair:** Thank you, Mr. Davies.

Mr. Richards.

**Mr. Blake Richards:** Thanks, Mr. Chair.

When you look at this, to be so prescriptive as to legislate the need to organize an annual trade mission to Korea, in my mind probably wouldn't be the most effective way to ensure that Canadian companies are benefiting from this agreement. Obviously, over time, needs and approaches will change.

I think you also have to take this in the context of the government's broader trade agenda of trying to ensure we are providing a diversity of markets. We need to ensure we're looking at the priorities in our global markets action plan. We need to work with Canadian companies to ensure there's flexibility in circumstances and needs over time, to better ensure that companies can benefit from a range of agreements and trade missions.

I think that to be so prescriptive as to say that there must be an annual mission would not best serve Canadian companies.

• (1550)

**The Chair:** Thank you, Mr. Richards.

Mr. Davies, quickly.

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

Mr. Richards made a good point, and I think it deserves a small explanation.

This agreement has been touted as an important one for some important reasons, one of which is that it's the first agreement that Canada has ever signed in Asia. That's point number one.

Number two, another advantage of this deal is that Korea is considered to be a gateway market. It's not only an important agreement for accessing the 50 million people in Korea, but also in establishing a beachhead in Korea for accessing other key important markets, notably, China, Malaysia, Indonesia, Vietnam, and others we don't have trade agreements with.

That's why I think that taking the rather exceptional step of requiring an annual trade mission, at least for, say, the first three or four years of this agreement, would be a good one. It would make sure that the government, from our point of view, is monitoring the operation of this agreement to make sure it's actually being implemented.

A number of witnesses have appeared before this committee and said that trade agreements, while often necessary, are not necessarily sufficient. Signing a trade agreement and going away is not a guarantee that we're going to penetrate the markets in the way that we hope.

I think there is a role for government. We signed this agreement. We negotiated it. The private sector will obviously start to implement it, but the government has a role in making sure that the agreement operates in the way that they intended.

That's why I think the rather exceptional suggestion we have made is justified in this case.

**The Chair:** Thank you, Mr. Davies.

I'm going to go to Ms. Liu, and then I'll come back to Mr. Richards.

**Ms. Laurin Liu:** I'd like to point out that we heard from witnesses at this committee that lowering trade tariffs is not the only way we should increase trade, that other measures are necessary. I think this amendment is to that effect.

I think the portion on eliminating non-tariff barriers is crucial for our manufacturing sector, which is so important to Quebec and Ontario. We've met with manufacturing stakeholders in committee, and I'm sure we've met with them individually. I think we need to do everything we can to eliminate non-tariff barriers.

I've been hearing that one of the best ways to do so is to shed light on these non-tariff barriers. I think we do need to take this extra step, not just to lower tariffs, but to deal with these non-tariff barriers.

I'll be voting in favour of Mr. Davies' amendment.

**The Chair:** Thank you, Ms. Liu.

Mr. Richards.

**Mr. Blake Richards:** At risk of getting into a back-and-forth, a prolonged debate—

**The Chair:** I won't let that happen.

**Mr. Blake Richards:** Mr. Chair, I appreciate your authority, but I want to respond very briefly.

I will confess to agreeing with much of the preamble that Mr. Davies provided in his last comments on how important this agreement is and why it's important. I certainly couldn't agree more, as it opens up the Asian market and there are opportunities that it creates.

However, I don't see the leap from there to the need to be so prescriptive about an annual mission. Certainly we want to do everything we can to ensure that Canadian companies have the chance to benefit, but we need to have the ability over time to be flexible with the various circumstances that arise. He even pointed that we want to have access to further Asian markets, and that may in itself necessitate that the focus be on some of those markets.

Although he's right that it's an important agreement, on the need to be so prescriptive about an annual mission, I don't see the leap from the preamble to that.

I appreciate his comments.

As far as Ms. Liu's comments, I think that market access issues like non-tariff barriers can best be addressed through institutional mechanisms like those that already exist in the agreement. I don't see the necessity for that in this amendment.

**The Chair:** Mr. Morin.

[*Translation*]

**Mr. Marc-André Morin (Laurentides—Labelle, NDP):** Thank you, Mr. Chair.

Out of respect for the people who spent 10 years working to get us to this point and for all those who incurred industry losses because the agreement was not signed sooner, once a year, we need to ensure that we are reaching our objectives. I see nothing wrong with that. It's certainly not wasteful. I can't even begin to fathom how much it has cost to get us to this point, as compared with what it would cost to organize a mission every year to measure our results.

• (1555)

[*English*]

**The Chair:** Thank you, Mr. Morin. Again, I see the debate coming to a close. The arguments are starting to be repetitive.

With regard to the amendment, Mr. Cannan, would you have a comment? I missed your name.

**Hon. Ron Cannan:** Thanks, Mr. Chair.

I appreciate it because it is important that it not bind the hands of future governments. This agreement talks about a joint commission to be co-chaired by the Minister of International Trade of the day, whoever he or she may be, and the Korean counterpart. It is important once a year that the joint commission, upon the review of the request of either party, can have that commission report, as we heard from Ms. Campbell and others who were here earlier to testify.

There are some robust international mechanisms in place, institutional mechanisms like those established by this agreement. I don't see any need to support this additional amendment.

Thank you, Mr. Chair.

**The Chair:** I'm going to bring the NDP amendment on clause 12 to a vote.

(Amendment negated [See *Minutes of Proceedings*])

**The Chair:** On the unamended clause 12—I could group clauses 12, 13, and 14, if that's okay.

**Mr. Don Davies:** I'd prefer you just do clause 12.

**The Chair:** On clause 12, unamended.

(Clause 12 agreed to)

(Clauses 13 and 14 agreed to)

(On clause 15—*Orders re Article 21.11 of Agreement*)

**The Chair:** We have amendment NDP-5. Mr. Davies, would you like to take the floor?

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

This can be summarized by describing this as an auto snap-back provision—

**The Chair:** I'm sorry, do you want to do both the amendments at the same time, or do you want to do them individually?

**Mr. Don Davies:** I can do them both at the same time.

**The Chair:** Okay, why don't we do that?

**Mr. Don Davies:** Mr. Chairman, both amendments have to do with the snap-back provision, the first one for the auto sector and the second one for the Canadian steel sector. They are worded identically, and the concept is identical.

In terms of autos, we know in the KORUS deal the U.S. was able to negotiate with Korea a provision that, if there is a surge in Korean auto products into the United States and it has been determined by a panel that that has done damage to the domestic U.S. auto production industry, there is a provision for the 2.5% auto tariff against Korean imports to be snapped back into place.

There's some sound reasoning and factual basis for that. Of course, the auto sector in the United States and in Canada are very important industries, not only for direct jobs but indirect jobs in our countries. We know one of the historic concerns of the North American auto sector has been that the Korean auto market is very closed to North American products through a variety of tariff and non-tariff barriers, but the North American market is relatively open.

In order to make sure there is fair trade between the two jurisdictions, there is a provision to protect our domestic production, again not from competition and not from Korean products, but from a surge in those Korean products that we believe is caused by, and is found to be caused by, trade practices that are not in keeping with the trade agreement.

We find the snap-back provision is an effective tool, and it has been called for by a number of industry sources in Canada.

I'll talk briefly for a moment about steel, before I conclude, Mr. Chairman. I had occasion to meet with representatives of the steel sector in Canada. When we were in Nova Scotia studying CETA and the TPP, concerns were expressed about European steelmakers and the effect it will have on Canadian steel producers. But also there has been a fairly long-standing concern in Canada about Korean steel manufacturing. While not necessarily constituting dumping—although that has been alleged—there have been a lot of Korean steel products coming into Canada at very low prices that are pushing out Canadian-made steel production, without concomitant steel access from Canadian producers to the Korean market.

We think there's a solid justification to help the Canadian steel industry make sure they are competing on a fair, level playing field, and if that turns out not to be the case, that the tariffs on steel have the ability to be snapped back if it turns out Korean steel products are surging in Canada and causing damage to the Canadian steel industry.

• (1600)

**The Chair:** Thank you, Mr. Davies.

Mr. Cannan.

**Hon. Ron Cannan:** Thank you, Mr. Chair.

When I read this, I thought “this is capital NDP protectionism at its finest”. I can't believe you would even propose this. When I heard my honourable colleague speak in the House eloquently about supporting the agreement, I was very excited and appreciated his support.

Reading this was very subjective and hard to define. As I said, it's very protectionist and the fact that “or threat of serious injury”... When you're competing in a global marketplace, you want to have a level playing field and a mechanism in place. I agree with the fact that, with our accelerated dispute mechanism in place, it's going to

help or even be superior, as has been indicated by others, as far as the snap-back provision is concerned.

I think my colleague across the way could maybe check out for sound reasoning the safeguard mechanism. Chapter 7 of the agreement provides for a transitional safeguard mechanism that applies to all products. I know with regard to how integrated our supply chain is...I heard six or seven times a car goes across the border, so any actual protective value snap-back would also cover Canada.

Since we have our panel of expertise here, I wonder, Mr. Chair, if I could call on our chief negotiator, Mr. Burney, to clarify. It seems to me there's some misunderstanding of the agreement, and my colleague has maybe muddied the two as far as the accelerated and the snap-back provisions go.

**The Chair:** Mr. Burney.

**Mr. Ian Burney (Assistant Deputy Minister, Trade Policy and Negotiations Branch, Department of Foreign Affairs, Trade and Development):** I think there is perhaps some confusion between the safeguard provisions and those that pertain to dispute settlement in the case of a violation of the agreement.

In the case of a safeguard action, which was intended to protect either market in the event of a surge, the provisions in the Canadian agreement are the same as those in the KORUS agreement with the United States. In fact, they don't apply just to autos, as they do in the case of KORUS, but they apply to all sectors. If the issue is protecting the Canadian market from a surge in either automotive or steel goods, the protections in the Canadian agreement are equal to or surpass the KORUS.

The element of snap-back that is sometimes referred to is not in the Canadian agreement. It is the notion of fixed retaliation in the event that the other party doesn't comply with the dispute settlement panel. Hypothetically, if the Koreans were to violate the non-tariff provisions in the automotive chapter, in the KORUS, the United States would have the right to reinstate the automotive tariff. In Canada, we would only have that right to the extent that the violation matched the level of damage we were imposing through our retaliatory measure.

Our view is that this is not a material difference. We think that the impact of being able to reinstate a 2.5% tariff is not that great, that it can't actually be snapped back in the first four years because it's still in place. Most importantly, in the KORUS, that provision will sunset in 10 years if there hasn't been a violation against the Koreans in the interim. The Koreans, of course, will be highly motivated to avoid that situation from arising.

To the extent that there is any value from that snap-back provision, we think we would benefit indirectly anyway. As a practical matter, it would be hard for the Koreans to impose a non-tariff barrier in a way that discriminates between Canadian-built and U.S.-built cars.

The upshot is that we think under our deal we would benefit from the provision in the KORUS for as long as it lasts. Then, in the likely event that it sunsets, we would still have the benefit of our accelerated dispute settlement procedures that last permanently, whereas those same provisions in the KORUS would sunset. On balance, we think we actually got the better deal.

**The Chair:** Thank you for the explanation.

Mr. Davies.

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

I'll respond briefly to Mr. Cannan and then to Mr. Burney.

The provision we're proposing would require that the complaint of surge be put to an independent panel, so it's not something that would be unilaterally invoked or decided by the party.

In terms of whether this is protectionist, I think it's hardly the case that we would accuse the United States of being protectionist. This is a provision that the United States has negotiated and is present in the Korea-U.S. trade agreement. It's not protectionist at all.

This is—and Mr. Burney kind of confirmed that—a way of dealing with something that all parties acknowledge needs to be dealt with, which is a potential surge in products. The current agreement deals with that. Obviously it's not protectionist, or else the Canadian government has been protectionist in negotiating the provisions that are already in the agreement about dealing with surges. With great respect, that's absurd.

What our amendment proposes is that there be, as Mr. Burney put it, a specified retaliatory measure.

By the way, I have to tell you that if you get excited about my speeches in the House, you have get out more, Ron.

•(1605)

**The Chair:** Through the Chair, please.

**Mr. Don Davies:** In response to Mr. Burney, I respect that position, but I would say that it's not universally held.

It's unanimous with the people I've talked to in the auto sector. They do believe that the ability to have snap-back provision of the tariff is a superior retaliatory measure than leaving it simply open. In fact, the auto industry executives I've talked to prefer the snap-back provision. I think it's a question of fair comment as to whether the provisions we've negotiated, as opposed to the Americans, are better or worse. That's a subjective call. I think there's fair comment and perspectives on both sides.

On the 10-year provision in terms of the U.S., I think the parties recognize that with phasing out of tariffs and having provisions that deal with surges over a 10-year period, that recognizes that the industry will adjust. Over a period of time, like a decade, I think everybody assumes that the auto producers will make the adjustments necessary so they'll be able to competitively deal with each other. The concept of surges after the agreement because of tariff reductions won't be the cause of problems, and the industry will be able to respond.

I can see where the respective parties sit on this. It's our view that the KORUS provision of having a specified 2.5%, where in our case it would be a 6.1% snap-back on auto, will help to protect the Canadian auto sector.

I'd urge all members to support it.

**The Chair:** Thank you, Mr. Davies.

Mr. Pacetti.

**Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.):** Thank you, Mr. Chair.

I'm wondering if I can ask the officials where the clause is on the surge. Where would that be in the legislation?

**Mr. Ian Burney:** It would be in the provisions dealing with the Canadian International Trade Tribunal. The provisions later on, dealing with the tariff, have provisions that deal with how we would be able to invoke a safeguard action in order to protect the Canadian industry from a surge or threat of surge of imports. And those provisions, as I said earlier, are exactly the same as in KORUS, but they don't apply only to autos, they apply to all sectors.

**Mr. Massimo Pacetti:** So it wouldn't be in the legislation.

**Mr. Ian Burney:** It's in the bill.

**Mr. Massimo Pacetti:** Which paragraph?

**Mr. Scott Winter (Senior International Relations Officer, Tariffs and Market Access, Department of Finance):** The amendments to the Canadian International Trade Tribunal Act provide the tribunal with authority to make such a determination on the request of domestic industry and then, specifically clause 51, the amendments to the customs tariff provide the Governor in Council with the authority to either suspend tariff concessions or reimpose the pre-FTA tariff levels as a result of a positive determination from the Canadian International Trade Tribunal.

**Mr. Massimo Pacetti:** Okay. Another quick question.

What would be the definition of a surge? Is there a percentage or a range of percentages?

**Mr. Ian Burney:** No. The standard is serious damage or threat of serious injury. Is that right, Scott?

**Mr. Scott Winter:** Yes, that's correct. It's imports increasing in such a quantity and under such conditions so as to cause serious injury to the domestic producers of competitive goods. Effectively, that can be a range of economic factors that are considered by the tribunal: lost sales, lost market share, things of that nature.

**Mr. Massimo Pacetti:** Thank you.

**The Chair:** All right.

We'll do amendment 5 and then we'll do amendment 6, if that's okay.

**Mr. Don Davies:** That's a snap-back on auto.

**The Chair:** All those in favour of amendment 5?

(Amendment negated [See *Minutes of Proceedings*])

**The Chair:** On amendment 6, all those in favour?

(Amendment negated [See *Minutes of Proceedings*])

**The Chair:** As far as clause 15 is concerned, all those in favour?

(Clause 15 agreed to)

**The Chair:** This completes the last of our amendments. Is it okay with the committee that I basically group clauses 16 to 61?

**Some hon. members:** Agreed.

**The Chair:** Seeing consensus, all those in favour of clauses 16 to 61?

(Clauses 16 to 61 inclusive agreed to)

**The Chair:** Thank you, gentlemen and ladies.

Shall schedule 1 and schedule 2 carry?

(Schedule 1 and schedule 2 agreed to)

**The Chair:** Shall clause 1 carry?

•(1610)

**Mr. Don Davies:** What is the short title, Mr. Chairman?

**The Chair:** The act may be cited as the Canada-Korea Economic Growth and Prosperity Act.

(Clause 1 agreed to)

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the bill carry?

**Some hon. members:** Agreed.

**The Chair:** Shall I report the bill to the House?

**Some hon. members:** Agreed.

**Hon. Ron Cannan:** At the next sitting of the House.

**The Chair:** My plan would be to report it tomorrow.

Thank you, gentlemen and ladies.

Mr. Burney, I'd like to congratulate you on a job well done and your department officials. Thank you for being with us. This is definitely an historic event for us. We're very proud of what you've done and what you've accomplished here and we look forward to seeing the results from it.

Committee members, I want to thank you for your professionalism around the table here this afternoon and being able to work together to get a good piece of legislation for Canadians on board.

I'd also like to thank all the support staff we have here in the room who allowed us to basically start this here this week and get it through to fruition today. Again, a job well done, folks.

Mr. Cannan.

**Hon. Ron Cannan:** I just wish everybody a happy Thanksgiving.

**The Chair:** I do the same.

Mr. Davies.

**Mr. Don Davies:** I'd like to send an extra special thanks to the clerk who did a lot of work under very tight circumstances and timeframes.

**The Chair:** All right.

Seeing no other business, we are adjourned.

We'll see you the Tuesday after the break week and we'll talk committee business at that point in time.

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