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Chair

The Honourable Mark Eyking

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•(0845)

[English]

The Chair (Hon. Mark Eyking (Sydney—Victoria, Lib.)):
Good morning, everyone. Welcome.

It's been a hard week for many of us here. We have friends, relatives, and acquaintances in Fort McMurray, and Fort McMurray is going through a rough patch. Our thoughts are with them as we continue. We hope everything works out as best it can for them out there.

We are going to continue with our international trade committee study on the TPP. Our committee has been quite busy since this Parliament started. We had the European trade agreement that we're finishing up. We did a study on softwood lumber, and we have other various issues, but TPP is our main one. This committee is reaching out to stakeholders and the community at large to find out how much impact this trade agreement is going to have, not only on business and companies, but on average Canadians. It's going to affect everybody, one way or another, and so that's what we're doing.

We've had many meetings here in Ottawa but we also embarked on a trip out west. We did four provinces. We're going to two cities in Quebec and two cities in Ontario next week, then we're going to the Atlantic provinces and we'll go to the territories.

That being said, this morning we're going to have some witnesses here who will give us their opinions, and then we'll have an opportunity for MPs to ask questions and get more dialogue.

This morning, as individuals, we have Jim Balsillie, CEO of Research in Motion. We all love our BlackBerrys.

It's good to see you here, sir.

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

Welcome, gentlemen. Try to keep to five minutes each, if you can, and that will give us lots of time for cross-examination—it's not that, but that's what the MPs do.

Go ahead, sir.

Mr. Jim Balsillie (Former Co-Chief Executive Officer of Research in Motion and Co-Founder of the Institute for New Economic Thinking, As an Individual): Thank you very much, Mr. Chairman, vice-chairs, members of the committee, and fellow Canadians. Good morning. Thank you for the invitation to meet with the committee and present my views on the Trans-Pacific Partnership. It is an honour and a pleasure to be here.

I am a self-made capitalist, and I believe in free trade and open markets. I've commercialized Canadian intellectual property in 135 countries to a level never done before or since. My global business experience is unique in Canada.

I would like to echo the words of Jared Bernstein, former chief economist to Vice-President Biden, who called for a third category of trade critics: people who believe in free trade and globalization but who don't like what TPP does to our countries, our working classes, and our environment.

TPP is not a traditional free trade agreement. It's deliberately called a partnership because it describes an economic framework for 21st century prosperity. TPP is not principally about reducing tariffs at our borders, but rather about rules that govern how we run our currently sovereign economy and how these new partnership rules get enforced. In the 21st century, making and exporting tangible goods has given way to a global economy where wealth is made by making and exporting intangible goods: intellectual property.

The chart you will see at the back of the papers illustrates this as well. In 1975 intangible goods were one-sixth of the value of the S and P 500 companies. By 2015 intangibles were five-sixths of the value of that same index.

The economy of intangible goods, unlike traditional trade, is governed by rules and restrictions that govern ownership of intellectual property. The intangible economy is the opposite of free trade. It is about rules and restrictions that grant temporary monopolies to those who own valuable intellectual property. When a country ratifies a bilateral or multilateral agreement that governs intellectual property, it makes the commitment to enact those rules inside our domestic marketplace. These are very different kinds of commitments from traditional trade agreements, because they are about how we commit, to other countries, how Canada will operate its economy internally.

Canada is not a large exporter of intellectual property, so we import a disproportionately large amount. Canada owns and exports very little intellectual property, because we've never had a national innovation strategy.

The other part that you will see here illustrates that we have had zero growth in innovation outputs over the past 30 years. Canada never developed capacity for the 21st century global economy, where wealth is generated by commercializing intellectual property.

The most recent modelling of TPP shows that the agreement delivers negligible results in the realm of traditional free trade. What's even more relevant is that all TPP models do not account for the two most important parts: intellectual property and investor-state dispute settlement. ISDS is a tribunal that supersedes sovereign law in a system that allows no appeals.

Below the charts, you will see a few critical statements from the smartest trade economist I have met in Canada, Dan Ciuriak. Not calculating the economic effects of IP and ISDS is like doing a budget for your family where you don't take rent or food bills into account.

As Nobel Prize economist and trade expert Paul Krugman has noted, most of the tangible goods already move tariff-free. The same is true for intangible goods, where 97% of the world in information technology products already move tariff-free under the WTO's information technology agreement.

So what is TPP if not about free trade? TPP is about expanding freedom to operate for the winners in the innovation economy and restricting it for the rest. Freedom to operate is a core strategic and risk management factor for businesses in the ideas economy. Sophisticated ideas businesses use freedom to operate strategies from the onset of their R and D all the way to commercializing and distribution cycles.

As CEO of a Canadian technology company that scaled globally from an idea to \$20 billion, my principal focus for two decades was to expand our freedom to operate and constrain our competitors' freedom to operate. I look at TPP's impacts on scaling Canadian companies from this unique perspective.

● (0850)

Canada went into TPP negotiations without ever consulting a single Canadian innovator and without a strategy for this critical aspect of an innovation economy. None of the aspects that constitute an effective freedom to operate strategy are present in Canada today. We don't have an innovation office; prior art libraries; sovereign patent pools; bilateral or multilateral negotiation sophistication; federal, provincial, or global judicial strategies; sophisticated standards and regulation strategies; or collaboration frameworks designed to commercialize Canadian ideas globally. It's inexcusable.

We couldn't have negotiated for our prosperity because you can't negotiate a trade strategy without an innovation strategy, let alone talking to the very companies that such agreements are supposed to advance. If Canada wants to build capacity for the 21st century global economy, then we will need all of these sophisticated capacities.

What we need in Canada, and what I hope this committee will ultimately advance, is a more sophisticated discourse on trade and prosperity. It's not enough to peddle old-fashioned trade liberalization theories when our own best trade economists told us we don't even have models to account for the most impactful aspects of 21st century trade. It's not enough to have lawyers looking at TPP through the lens of elegant wordsmithing. Like all global tech CEOs, I've hired and fired dozens of IP lawyers around the world, and, I can tell you, lawyers don't commercialize ideas. They reduce their clients' instructions to legal wording.

I would like to conclude by saying that it's gratifying to share this session with Professor Geist, not only because he does a great job of educating the public about TPP, but because in his recent blog post, Professor Geist brought to light perhaps the most important fact that Canadians have to consider, which is the fact that our own civil servants know that TPP runs counter to our preferred national strategies. In a briefing prepared for Minister Freeland, which I hope you will all read, it's clear that our civil servants understand that Canada prefers to create its own IP policy through multilateral forums rather than being jackhammered by large owners of IP into a set of rigid new rules.

In reading the document that Professor Geist made public, I would characterize our approach to these trade deals as palliative. We know we're going to lose, so we focus on slowing the inevitable erosion.

Let me summarize my concern with TPP with this. We signed an agreement that our civil servants told the minister runs counter to Canadian preferences after concluding negotiations in secret without consulting a single Canadian innovator. Now that the deal is done, we're doing an economic study to assess its benefits, which doesn't include the most impactful elements related to national prosperity. Then we do consultations with relevant stakeholders to assess their views. That is then followed by creating a decades overdue innovation strategy. This is all backwards. This is precisely opposite to how trade deals should be concluded, step by step.

Thank you very much.

● (0855)

The Chair: Thank you, sir. Thank you for that submission.

You have already introduced the other witness.

Go ahead, Mr. Geist.

If you could keep your remarks to around five minutes, we'd appreciate it.

Dr. Michael Geist (Canada Research Chair in Internet and E-commerce Law and Professor of Law, University of Ottawa, As an Individual): I'll do my best. Thank you, Chair.

Good morning. As you've heard, my name is Michael Geist. I'm a law professor at the University of Ottawa, where I hold the Canada research chair in Internet and e-commerce law. I appear today in a personal capacity, representing my own views.

There is a lot to say about the TPP. I've written dozens of articles and posts on the agreement, and I'm currently working on a book on point, but I have limited time, as you heard, so I'll focus on four issues.

The first issue is Canada's price of admission and weakness during the negotiations. As I'm sure you know, Canada was not an initial participant in the TPP talks. U.S. lobby groups urged the U.S. government to keep Canada out of the negotiations until a copyright bill was passed that satisfied its demands. Those demands had a significant impact on the contents of the 2012 Canadian copyright bill, particularly the retention of restrictive digital lock rules that were at the very top of the U.S. policy priority list.

Once the U.S. was convinced that Canada would meet its IP and anti-counterfeiting demands, it set further conditions for entry, including a commitment that Canada could not hold up any chapter if it was the lone opponent. That concession became important in the IP chapter, where there were some issues where Canada ultimately did stand alone and on which it was forced to cave.

As the negotiations neared a conclusion, senior Canadian officials were advised that Canada was at a disadvantage in the negotiations, given the lack of coordination and transparency between government negotiators and interested stakeholders. We went ahead anyway and agreed to the deal.

Second, what did we agree to?

I'll start first with the changes to intellectual property law. One of the best-known examples of this is the term of copyright, where in Canada the present term is the life of the author plus an additional 50 years, which is consistent with the international standards set by the Berne convention. It's also the standard that you find in half of the TPP, including countries such as Japan, Malaysia, New Zealand, Brunei, and Vietnam. The TPP requires an extension by an additional 20 years, which represents a major windfall for the United States and a net loss for Canada.

In fact, New Zealand, which faces a similar requirement, conducted its study on the cost of the extension alone, which it estimated at \$55 million New Zealand per year. Some have taken issue with that study, but just last week a draft report from the Australian government's productivity commission pointed to estimates of their term extension, which occurred several years ago, and pegged it at \$88 million Australian per year. The Canadian cost could even be higher.

The IP changes don't stop there. The TPP includes changes to digital lock rules, longer patent protections, criminalization of trade secret law, changes to trademark law, new border measures, and requirements for ratification by all TPP countries of as many as nine international IP treaties.

Third, it's not just about IP. In fact, the TPP of course goes far beyond that. It touches, for example, on culture, restricting the ability to expand CanCon contribution policies. This means, despite the fact of Canadian Minister of Heritage Joly's recent promise to review cultural policies, that contributions to support the creation of Canadian content may be effectively locked into place, with the TPP blocking new policies aimed at new services and technologies.

The agreement also leaves behind a complex array of regulations for service industries that is almost certain to result in unintended consequences. Hot button issues such as the regulation of online gambling, or ride-sharing services such as Uber, in the news just

yesterday and today, may be decided by the TPP, not by Canadian governments, whether at the municipal or provincial levels.

On the Internet, it reverses our long-standing hands-off approach on Internet governance, and it fails to meet our standards on issues such as net neutrality. It even touches on privacy, restricting the ability for governments to implement restrictions on data transfers or data localizations while setting a very low threshold for privacy protection and anti-spam rules. This could place Canada between the proverbial rock and a hard place on privacy, sitting on the one hand between European demands and, on the other, TPP requirements.

Health is also directly affected, with increases for pharmaceutical pricing likely, locking in protections for biologics, and even sketching out rules for a national pharmacare program if Canada were to adopt one.

Fourth, the risks and potential costs of getting implementation wrong are enormous. The TPP was negotiated behind closed doors and presented to the public on a take-it-or-leave-it basis.

I've read references from some MPs claiming that Canada has already consulted on the deal, but I know few experts, if any, who were consulted during the negotiations. In fact, when I appeared before this committee in June 2013, I was told by government MPs that concerns related to the TPP were premature and that I and others should wait until the negotiations were complete.

Now that they are complete, I hear some saying that we've had enough consultation, yet we must recognize that the risks of getting implementation wrong are enormous. The investor-state dispute settlement provisions in the TPP point to the possibility of significant liability from corporate claims.

• (0900)

Minister Freeland has described the ISDS rules that are found in the Canada-EU trade agreement as the gold standard, but the TPP does not meet that standard. Moreover, even crafting our own rules within the TPP may be a non-starter since the U.S. maintains that it gets to decide for Canada how to ratify the agreement through its certification process. In sum, Canada was at a distinct disadvantage in the TPP negotiations, and it shows, with major losses on intellectual property, digital and cultural policies, as well as the prospect of significant liability through ISDS and U.S. certification into how we implement the deal. The issue isn't about being pro- or anti-free trade. In my estimation, it's about a bad deal that should be renegotiated or rejected and other trade alternatives pursued.

I welcome your questions.

The Chair: Thank you, Mr. Geist.

I'd also like to welcome some new members here. Mr. Picard is here, and Ms. May, and it's great to see you back, Mr. Lametti.

We're going to start off with a round of questions, and we're going to start with the Conservatives and Mr. Hoback for five minutes.

Mr. Randy Hoback (Prince Albert, CPC): Thank you, gentlemen, for being here this morning.

Mr. Balsillie, I'm going to start off with you. You talk about an innovation problem here in Canada, lack of innovation policy and lack of a vision for the innovation sector. What do you see contributed to this lack of strategy? Why wasn't there a proper policy in place?

• (0905)

Mr. Jim Balsillie: Canada had a catastrophic confusion between science and technology strategy and innovation strategy. The fact that the concept of freedom to operate is being introduced for the first time in May 2016 means that the policy community in this country has a tremendous amount to answer for. We thought science and technology was innovation. We thought we had an orthodoxy that if you get free trade and stable banking and then you give a bunch to universities and spray and pray a few grants out there, it would all work out.

What we did not understand is that success and innovation is a set of deliberate and systemic exercises. We did exactly the opposite of what successful innovation economies like Germany, Israel, the U.S., Korea, Japan, and Sweden did. We zigged when the rest of the world zagged. If we don't change our approaches, we'll be doing Einstein's definition of insanity, doing the same thing over again.

Mr. Randy Hoback: We have to get the innovation strategy right, regardless of whether you've got TPP, CETA, or any other trade agreement.

Mr. Jim Balsillie: Correct.

Mr. Randy Hoback: If you don't get the innovation policy right...

Mr. Jim Balsillie: As I said, you start with the strategy, and then trade is a vehicle. We did it backwards.

Mr. Randy Hoback: Where I get confused here is, the lack of innovation strategy is a problem for sure, but you know we've had this lack of strategy through NAFTA, through previous trade

bilateral agreements. How is signing TPP going to fix this lack of strategy?

Mr. Jim Balsillie: No, the difference is that I've talked to the people who did FTA and NAFTA, and they did five years of study, consultation, and strategy, then they modelled it all, and then they went into the negotiations.

Mr. Randy Hoback: But you can't wait for... Again, there's criticism with Canada coming into the deal late. This deal was going on, and if you looked at the entire Canadian economy and what was in play, you didn't have the luxury of doing a five- or 10-year study beforehand to analyze what we should or shouldn't be doing. Decisions have to be made if we're going to ratify this deal. We've already signed it, so now if we're going to actually ratify it, are we still going to get the innovation strategy right? What in TPP is so different from NAFTA and the other trade agreements that it would actually prevent us from getting a proper strategy on innovation?

Mr. Jim Balsillie: Because TPP is designed in a way that enshrines the positions of the actors permanently.

Mr. Randy Hoback: You're an innovator here in Canada and you've spent five years developing a new technology, wouldn't you want that protection? Wouldn't you want to know that you have the ability to actually get a return on your investment, a return on your research? Don't you want that? Don't you want to make sure that somebody from another country doesn't come in and just cherry-pick your assets?

Mr. Jim Balsillie: No, no, there isn't a single study in the world that says innovation will be better in TRIPS Plus under TPP rather than TRIPS under the WTO. It is exactly the opposite—

Mr. Randy Hoback: Again, if I'm an innovator, don't I want that security? How do I protect myself? I develop a new product, a new app, let's say, how do I protect myself then if I don't have ISDS protection, if I don't have IP protection? How do I bank it? How do I go to my banker and say, "I've got this work, I need some research dollars, and once it hits the market I know in five years—five, 10 years, whatever the time frame should be—that I'm going to have the ability to market this stuff and actually get a return on my investment"?

Mr. Jim Balsillie: As the person who's commercialized more in the history of this country, that is not how the system works, not at all. It works exactly the opposite. You have it 100% backwards. What you're doing in these rigid rules massively disadvantages Canadian innovators.

Mr. Randy Hoback: You say I have it backwards. You're in a sector that turns over very quickly on new products and new versions—maybe I'll use that word for lack of a better one that comes to mind. Do you need the IP protection at all, if you're going to keep reinventing yourself every six months, offering a new, updated version?

Mr. Jim Balsillie: IP protection is not about innovation; it is about protecting entrenched interests to preclude the ability of new innovators to come in. This is precisely what Robert Reich—

Mr. Randy Hoback: It's to prevent them from robbing somebody who's spent their blood, sweat, and tears developing the first invention.

Mr. Jim Balsillie: That is a false narrative of how the innovation economy works.

Mr. Randy Hoback: How does it differ? Help me understand why that's a false narrative.

Mr. Jim Balsillie: Because the game is run by patent thickets, and the decision of ownership is decided outside Canada, in courts that are—

Mr. Randy Hoback: That's the same in NAFTA and other agreements that we've had in place.

• (0910)

Mr. Jim Balsillie: No, the ISDS in NAFTA stays in Canada. Under TPP, it goes to the plaintiff country, which is invariably the U. S.

Mr. Randy Hoback: You still have that option of [*Inaudible—Editor*] as a country, to use either NAFTA or TPP.

The Chair: Mr. Hoback, your time is up.

Mr. Jim Balsillie: I guarantee you there will never be another Canadian tech company like RIM under the framework of TPP.

The Chair: We have to move on. Time is up for the Conservatives for that round. We're going to go to the Liberals, Mr. Dhaliwal, for five minutes.

I'd like remind all members to try not to get into a big dialogue in the last five seconds, because it's very difficult for me to shut you down.

Go ahead, Mr. Dhaliwal.

Mr. Sukh Dhaliwal (Surrey—Newton, Lib.): Thank you, Professor Geist and Mr. Balsillie. I'm very proud of the work that both of you do. I'm going to carry on with Mr. Hoback's conversation. You stated that Canadians create world-class innovations, but we fail to commercialize them.

Could you sum up, so ordinary Canadians can understand, how the TPP will negatively affect innovation, when it comes to commercialization?

Mr. Jim Balsillie: Number one, innovating a company is about managing the principle called freedom to operate. That's the core management construct. It's managing the rules, the regulations, the IP, the standards, and all the agreements and treaties that make you stronger or weaker. These things create the environment that you participate in. We don't have those strategies, and every other country does that in collaboration with their innovators. We keep the two separate, when it has to be an incredibly active, ongoing, daily dialogue. We don't get the first principle right, and TPP is written in a way that the other countries get strong, but there's nothing in TPP that is specifically advancing any Canadian companies.

Number two, the nature of the ISDS provision means that in the structure of this agreement ownership of technologies is decided in

the United States through their district court systems, enforced in Canada through the TPP obligations. If corporate interests abroad, principally in the U.S., are not happy, they pull us back into the U.S., in a panel that's not governed by Canada anymore. What do we have to do about it? It's a seismic loss of autonomy and authority.

When you say it gives us certainty, it gives us certainty that we will never be strong, that we will never be supported, that we'll never have sovereignty. The best thing for a Canadian innovator to do under TPP is to move to the United States.

Mr. Sukh Dhaliwal: Is there a way that we can improve the TPP agreement so our innovators succeed and they don't have to move south?

Mr. Jim Balsillie: Yes, through some strategic amendments to the deal, and not take it as an up-or-down deal. There will never be a large Canadian tech company again under TPP.

Mr. Sukh Dhaliwal: What changes should be made?

Mr. Jim Balsillie: Take on the CETA ISDS provisions, make substantial modifications to the IP and transparency provisions and e-commerce.

Mr. Sukh Dhaliwal: Thank you.

Professor Geist, you mentioned Uber. It's been a pretty hot topic where I come from in British Columbia.

Could you expand on how the TPP will decide what happens with Uber and how it would negatively affect our taxi industry and consumers?

Dr. Michael Geist: There's this notion that somehow the TPP and NAFTA are all the same. They are dramatically different. Certainly in a scope perspective, TPP addresses a far broader range of issues than NAFTA does.

Even beyond that, its approach on services is quite different from some of our traditional trade agreements. Many trade agreements look at services, and you identify specific service areas and say that you'd like to liberalize or open those up. TPP flips that on its head by saying we going to open everything and then we're going to seek to identify certain things that we ought to exclude.

As smart as the negotiators may have been, they were not possibly going to be able to identify every kind of service that we might say ought to be excluded from the process, especially when we see newer ones emerging. In the context of ride-sharing services like Uber, we have rules in place that effectively lock in the rules as they stand now, either at a municipal level, so it's exempted as of now but not for the future, or similarly at a provincial level.

B.C. actually has ride-sharing legislation at a provincial level, which is unusual within the country. Usually, it's just at the municipal level. It's actually shared both provincially and municipally. Once the TPP is in place, it will become more difficult for those legislatures to change their existing rules and frameworks.

That applies for Uber, but even more fundamentally—and this speaks to Mr. Balsillie's concerns about innovation—as new innovators come into the space in other areas, we start thinking about rules that are already locked into place due to the TPP.

●(0915)

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

We're going to move over to the NDP for five minutes, Ms. Ramsey.

Ms. Tracey Ramsey (Essex, NDP): Thank you so much for your presentations.

It's been highlighted to this committee many times that this deal is about far more than just trade in the traditional way that we think about it. I think it's clear that only certain groups were included in the consultations that took place under the previous government.

I have to respectfully disagree with my colleague, because this deal began in 2008. There was more than enough time prepare for it before we found ourselves in a position that we are now signed on, and it's yes or no at our current juncture.

Mr. Balsillie, I appreciate that you would indeed make money under the TPP, but you recognize that it's so inherently flawed that it would be bad for Canadians and for our sovereignty.

I wonder if you can speak specifically to the reference you made to the study by Dan Ciuriak from the C.D. Howe Institute basically about the GDP impact...not ratifying the TPP would be negligible. I think there is an idea out there that if we don't sign, we're going to lose.

Global Affairs has no economic impact study. We know that. The studies we've see from Tufts University and out of the Peterson Institute in the States show .2% and 0% growth by 2030. There's no economic modelling that supports us signing on to the TPP.

I wonder if you can speak to that.

Mr. Jim Balsillie: I have a very sophisticated set of networks, globally and domestically, and very smart people in my office who support me in what I do. I have six Nobel Prize winners whom I work with in the Institute for New Economic Thinking that I founded with George Soros.

Canada has the most superficial innovation discourse that I've seen in the world. We take these articles of faith that more intellectual property enforcement is good. Free trade is always good. We have these false myths and orthodoxies that we just take on, unchallenged.

To answer Dan Ciuriak, quite frankly, the benefits of trade under TPP—modelled, peer-reviewed, nobody has challenged—are a rounding error. The costs of being out of TPP are a rounding error.

He also says, and you have it in the notes I put here, that the two most important things aren't even modelled. It's like buying a house or buying a business or entering into a marriage with absolutely no facts whatsoever about what you're getting into, because houses are good and businesses are good and marriages are good. No, they're not good any way, any time, any how. It's a function of understanding what somebody is looking for and making sure that it works.

Ms. Tracey Ramsey: Thank you.

Professor Geist, I wonder if you can expand on this for us. You have the article that was referenced, “Canadian Officials Admit TPP IP Policy Runs Counter To Preferred National Strategy”.

Can you please speak to us about that and maybe inform the committee a little on what you found?

Dr. Michael Geist: Sure. The reference to the document, and Mr. Balsillie referenced it as well, is found in documents obtained under access to information from the briefing notes that were provided to Minister Freeland.

What is speaks to is that Canada, I think, has long recognized—and it is still the case today—that we are most effective when developing rules around digital policies and intellectual property policies in international fora. We make significant contributions. We did, for example, on the Marrakesh treaty, and we've just seen a bill tabled to try to implement that, and the Conservatives tried to do the same. Canada played an integral role at the World Intellectual Property Organization, where it worked with other countries in multilateral open fora.

In a TPP environment it's a completely different environment, and especially when you're negotiating in large measure on some of these issues directly with the United States. They're not shy about making demands that are in their national interest, and we've already heard from Mr. Balsillie about why that is. As a major exporter, whether it's Hollywood interests or some of the other IP or pharma interests, those don't align necessarily with ours.

What I think the minister was being advised, and what I believe is well known within the government, and frankly, well known by most experts, is that obtaining a made-in-Canada solution, or at least a solution that best reflects our national interests, happens in international fora. That's not what happens in the TPP, particularly in a closed-door negotiation of this kind.

●(0920)

Ms. Tracey Ramsey: Can you speak briefly to the patent extension and how you feel that would impact pharmaceuticals and our ability to have a national pharmacare program?

Dr. Michael Geist: Simply on the issue of extending the terms of protection that are possible through this agreement as well as CETA, we see it in the European agreement, and we see it locked in effectively within the TPP. I don't think anybody debates the fact that this will lead to an increase in costs of pharmaceuticals. Indeed, I believe the health minister and officials from that department have acknowledged that indeed that's in fact the case.

Rather remarkably the transparency chapter, of all places, includes rules dealing with pharmacare programs. Why you would have an agreement that towards the very end—chapter 26 on transparency—sets out rules for pharmacare programs? It's not clear why it's there. It recognizes that Canada doesn't have that yet, but what it does is lock us into certain rules were we ever to pursue that. Why we would agree at this point in time to programs that may be of import that we haven't even developed yet and say that we're going to allow someone else to establish those rules boggles the mind, quite frankly.

Mr. Jim Balsillie: If I may just support that one very—

The Chair: I'm sorry, but you might have a chance to jump in later.

We have to move over to the Liberals and Mr. Peterson for five minutes.

Mr. Kyle Peterson (Newmarket—Aurora, Lib.): Thank you, gentlemen, both for being here today and I personally found the presentations informative and I do appreciate your time and effort in that regard.

I have a couple of quick questions, Mr. Balsillie.

I do tend to agree with you that we wouldn't purchase a house or go into any business relationship without an economic analysis that considers all the factors. I'm not so sure I agree that doing an economic analysis before entering into a marriage is necessary, but to each their own on that front. But you assert that IP and ISDS weren't necessarily factored into the analysis.

How would that analysis take place? Have you done any analysis that does factor those in, and what were the results of any of the assessments you may have done?

Mr. Jim Balsillie: No, I haven't done an analysis and it's not my job to do the analysis. It's our government's job to do the analysis.

Mr. Kyle Peterson: I agree. I just wondered if there was some insight, or do you think it would be a net benefit or a net detriment to Canada? I'm hearing that it's probably, in your opinion, a net detriment.

Mr. Jim Balsillie: As a practitioner selling Canadian ideas globally, and what I was about to comment on the pharma stuff and transparency, I look at this agreement through the eyes of somebody who is engaged in these kinds of situations globally and I can see how we'll get out-lawyered and outplayed in these agreements. I cannot see a situation where Canada will not be a colossal loser permanently and systemically under these commitments.

Mr. Kyle Peterson: Let's just say that TPP isn't there and we're starting from ground zero and we have a strategic policy in place that puts a strong emphasis on innovation. What should the Canadian government do to make sure that the Canadian innovators are the winners in any deal, as opposed to the losers?

Mr. Jim Balsillie: Do agreements that are like CETA, not TPP.

Mr. Kyle Peterson: And which facet of CETA? You've commented on the ISDS. Do you prefer the CETA provisions of ISDS?

Mr. Jim Balsillie: Yes.

Mr. Kyle Peterson: Is there more to the CETA that would...?

Mr. Jim Balsillie: I'm not an expert on CETA. I've not read it, but it doesn't seem to be as invasive in our marketplace rules and rigidities precisely because the European countries would be uncomfortable with that kind of loss of sovereignty. So it's the degree to which they run our country on IP and administration and then take the ISDS outside of the country. Those were the things that I read in TPP that gave me great, grave concern.

From my understanding of CETA, though—and I have not read it like I did TPP—I understand those are not there, but I think Professor Geist or others would know CETA better.

Mr. Kyle Peterson: Thank you. That's a good segue. I'm going to ask Professor Geist a couple of questions.

You mentioned in your comments that during the negotiations there were certain issues on which Canada stood alone. What were some of those issues?

Dr. Michael Geist: There were a bunch of issues that we had opposition on in fact. We know this only through some of the leaked documents. Not all chapters were leaked, but on intellectual property, Canada tried largely to stand for its own current domestic rules as long as it could. The goal in many of these negotiations is to say we'd like to see our rules reflected. In fact, I think it is worth noting that this is the approach that virtually all countries take. They want to see their rules reflected elsewhere, which may benefit their companies as they operate elsewhere.

We lost in many instances on that front. We lost on term extension. We lost on the issue of digital rights with respect to rights management information, on which we stood alone.

There were a number of those kinds of issues, on which sometimes we were with a couple of other players and sometimes we were on our own. Then when you saw the progression of the text, and it's difficult because of course this is based just on leaks, you saw that at the end of the day we were forced to cave.

● (0925)

Mr. Kyle Peterson: You also mentioned the term extensions and the idea that they are of net benefit to the U.S. but detrimental to Canada. How is that measured?

Dr. Michael Geist: It is measured in terms of the costs, the additional fees that people are going to pay as works stay within copyright protection for an additional 20 years. At the moment in Canada, we are talking about the entire life of the author plus 50 years. That meets the international standard. That additional 20 years will result in extra costs. We've seen it modelled in other countries. The overwhelming majority of economists who look at this issue recognize that nobody will wake up this morning and start thinking about writing the great Canadian novel and decide they won't do it because their heirs would get only 50 years of protection rather than 70 years. It just doesn't create an incentive for any additional kind of creation or creativity.

I wanted to pick up on the ISDS issue. You asked about examples. The Canadian experience is the example. We are being sued right now by Eli Lilly with potential liability in the hundreds of millions of dollars. Consistently, where ISDS has been applied, we have been a target, and we have lost some of those cases. We ought to recognize that the approach that we find in ISDS is to give foreign companies more power in our own country than our domestic companies have. It is rather astonishing to think that we would establish rules that would allow foreign companies to pursue certain grievances when our own domestic companies might not have the same power to do so.

The Chair: Thank you, sir.

That ends the first round. The second round starts off with the Liberals.

Madam Lapointe, go ahead for five minutes, please.

[*Translation*]

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): Thank you, Mr. Chair.

I'd like to thank Mr. Balsillie for being with us this morning. I appreciate it that we have this chance to get your comments on the Trans-Pacific Partnership Agreement.

In your presentation, you said that you weren't consulted at all about innovation. It's quite strange to think that we could consider being party to an agreement like this with 12 countries when innovation wasn't consulted.

I'd like your comments on this.

[*English*]

Mr. Jim Balsillie: One of my comments is that Canada does not have sophisticated collaboration frameworks for the innovation economy. Therefore, there is no collaboration and communication between innovators on what they need to be successful.

You have to understand that the innovation economy is a set of rules, and these rules are changed and modified dozens of times every day. You have a market only because of rules. What every sophisticated innovation economy does is to tweak these rules in a whole bunch of different places, which I mentioned in my commentary, to advance their companies. You cannot advance your companies in an agreement like this if you don't have an intimate collaborative relationship with them. The U.S. had, I think, 26 different working groups that were actually reviewing text and

advancing it. It was a catastrophic flaw in our approach to the negotiations, which guaranteed failure on the innovation front.

In other sectors, like maybe dairy, or agriculture, or whatever, I'm sure there was extensive collaboration and they made sure that their elements got in there, but the innovation economy did not.

[*Translation*]

Ms. Linda Lapointe: Thank you.

A little earlier, you said that you by far prefer the European free-trade agreement to the TPP, and said that there was a huge difference when it came to innovation. You would prefer that we stay with Europe.

You also mentioned that countries like Germany, Korea and Japan are forerunners in innovation because they seem to have successful innovation policies.

I'd like to understand this matter. At some point, we need to move forward and make decisions. Could you comment on that?

● (0930)

[*English*]

Mr. Jim Balsillie: I'm not saying who we should trade with, I'm saying what should be in our innovation strategies of approach and what should be in our trade agreements that advance our innovation strategies.

From what I know of CETA, I like its approach much more than I do the TPP's, so I would love to see CETA's frameworks in play for these new trade agreements. What I said in terms of innovation economies was that, as we create a complete innovation ecosystem in Canada, we should look at what the successful innovation economies do and adopt their approaches.

[*Translation*]

Ms. Linda Lapointe: In short, if we had the chance to go back to the negotiating table, what would you suggest? You spoke about innovation, but I'd also like your comments on this.

Mr. Geist, do you have any comments?

[*English*]

Dr. Michael Geist: I want to pick up on this issue that somehow the CETA is the model. I think CETA has some things that are better in it, not the least of which is an improved ISDS and the fact that it grants us access to a market with which we don't have trade agreements in place right now of the scale that we have elsewhere.

One of the things about the TPP, one of the reasons why you're finding economic modelling that suggests that the gains are negligible, is that we already have trade agreements with half the TPP countries. We already have it with the United States, with Mexico, and with a range of other countries.

I'd actually submit that the best model for a trade agreement isn't CETA, it's actually the South Korea trade agreement, which does point to the fact that there is the possibility of an alternate trade strategy that takes us into Asia and looks at the most innovative Asian economies. We can conclude trade agreements with those countries because we have one with South Korea, but what we recognize there is that the negotiations and the kind of result that we get don't venture into some of the areas that the TPP does. What it does is try to identify where our respective interests lie, and we try to reach an agreement.

So when people talk about what we can do if we're outside of the TPP, we can do those kinds of things. We can pursue China, as the government has talked about. We can restart the Japan trade negotiations. We can continue what we've been doing with India and, in fact, come away at the end of the day with a far more strategic and effective trade framework in that region with some of the largest economies and fastest growing economies, one that actually puts us at an advantage even as against some of the other TPP countries.

The Chair: Thank you, Madam Lapointe. Your time is up.

We're going to go over to the Conservatives and Mr. Ritz for five minutes.

Hon. Gerry Ritz (Battlefords—Lloydminster, CPC): Thank you, gentlemen, for your presentations here today.

Mr. Balsillie, you made the statement that there would never be another large tech company in Canada should we ratify TPP. Would it then follow that there would be no tech companies in any of the 11 countries as well, because they're under the same rules?

Mr. Jim Balsillie: My read of TPP, based on my experience as a global tech entrepreneur, is that the structure of the agreement enshrines the benefits and the positions of pre-existing winners and it makes it very hard for other countries to join that club of IP exporters.

Hon. Gerry Ritz: There are other countries that are lining up to join TPP. That's another argument.

You also say that Japan has a very successful innovation strategy that Canada should emulate. Would we not be able to do that more easily with an agreement, whether it's multilateral or bilateral, with countries like Japan?

Mr. Jim Balsillie: No, it will do precisely the opposite, because it enshrines the pre-existing positions of people who come into it.

Hon. Gerry Ritz: Well, no, their patents would carry on, but I don't understand how that would stop entrants who may look at Canada's political climate or Canada's taxation, banking, or something and do their investment here as opposed to Japan or—

Mr. Jim Balsillie: Those are relative—

Hon. Gerry Ritz: —they may make an investment here because we'll have access to CETA.

Mr. Jim Balsillie: Those are irrelevant factors for an innovation company.

Hon. Gerry Ritz: Wow, okay.

Both gentlemen, you've said you're very concerned about the ability of governments to be flexible in trade agreements like TPP,

that they are too open and the range is too wide on certain issues. Is your business plan exactly the same today as it was 10 years ago? Is your class outline the same today as it was 10 years ago? Why would you not want flexibility? Do you not adapt to changing specifics that come down the pike at business or at the academic level?

Dr. Michael Geist: Yes, of course you adapt, and one of the problems we have in the TPP is that on certain issues it locks us in without the ability to adapt. A perfect example would be on protection for biologics. This, as many of you know, is really the next-generation pharmaceuticals where we are at just the very early stages of these kinds of new technologies—

Hon. Gerry Ritz: We're going from five to eight.

Dr. Michael Geist: Here's the point I want to make. In the United States they started with even longer protection, and now the Obama administration actually wants to cut back to seven. They recognize the costs are significant and that protection was too long. In Canada —

• (0935)

Hon. Gerry Ritz: It was 12.

Dr. Michael Geist: I know.

Obama has put forward budgets in the last two years that would try to scale that back to seven, recognizing that twelve is too long.

Hon. Gerry Ritz: Yes, but the TPP says eight.

Dr. Michael Geist: The point is that it is early in the day, and the TPP locks us into this five plus three, or eight. If we identify over time—and perhaps we will develop a strong biologics sector—we may find, as a country, that in fact the eight is not suiting us well. The TPP locks us in.

Even our major trading partner has recognized it, and many of the other TPP countries. They come at this from many different perspectives. Why reach an agreement and lock us into a particular policy today, the very paradigm of innovation in that sector, when we simply don't know what the optimal length of protection is?

Hon. Gerry Ritz: Mr. Balsillie, you commented that you very much prefer the CETA outline to the TPP. Having been involved in both of them, I would point to the fact that, on IP, 95% of CETA is exactly the same as the TPP. There are some fine lines, because you are dealing with different countries.

Then, you talk about specific changes. Can you give us those specific changes? Other than just throw it all out and start over, what specific changes would you call for?

Mr. Jim Balsillie: As I am trying to say, many things matter in an innovation economy. The most important issue for a company is freedom to operate. It is a multi-faceted thing, where you expand your ability to own something that is created only abstractly by rules, and you restrict the other persons.

Hon. Gerry Ritz: It is called patent or copyright.

Mr. Jim Balsillie: The way I read the administration provisions and the enforcement provisions of the IP, and the way I read the ISDS under the TPP, I can't see a case where we will win.

Hon. Gerry Ritz: The Council of Chief Executives, the Canadian Chamber of Commerce, and every other business we have interviewed have all said, "This is fantastic. This is what we need to build an economy in the 21st century. This will create jobs and help us grow, having that predictability and stability of trade corridors." How did they all get it wrong, when you got it right?

Mr. Jim Balsillie: Can I ask the question back? Has a single person who has testified before you ever commercialized Canadian ideas globally?

Hon. Gerry Ritz: I have no idea.

Mr. Jim Balsillie: I do—no.

The Chair: Your time is up.

Mr. Fonseca.

Mr. Peter Fonseca (Mississauga East—Cooksville, Lib.): I want to thank our presenters, Mr. Geist and Mr. Balsillie, for their fine presentations.

I also want to commend you for your presentations in the way you.... The lens you have used is whether this is in the best interest of Canada and Canadians. We, as elected officials and representatives of our constituencies, of Canada, are here to do the same. We have to see if this is the best agreement for Canada and for Canadians.

Mr. Balsillie, running a global corporation in 135 countries, and now looking at many of the different trade agreements that you have had to deal with.... Through the lens of the TPP—if the TPP were to be ratified—when corporations are looking to make their next investment and where they are going to go, how would they make those global decisions? What would they be looking at?

Mr. Jim Balsillie: Corporations look at tax strategies, stable banking, and things like that. Definitely, they are factors for investment, for what I would call a "jobs strategy".

However, when it comes to getting money for Canadian ideas, that is called "innovation outputs". There is a very big difference between jobs strategy and innovation outputs.

When a multinational corporation invests in Canada, it is creating what you would call "labour productivity". If you see that chart I showed you at the back—and this is extraordinarily important—Canada's labour productivity over the past 30 years has outperformed the U.S. Our capital productivity has outperformed the U.S. The U.S. has averaged 1% growth a year over the past 35 years in multifactor innovation productivity. We have had zero.

If you look at it through that lens, that explains all of our productivity gaps with the U.S. I have no doubt that we will get investments for jobs and for different things, because Canada is a very good country. Will this lead to innovation outputs of Canadian ideas that bring the wealth from that globally? That is the gap we are looking for in Canada's prosperity.

I am not saying that everything is bad. I am saying that this is shockingly bad for innovation outputs in Canada. That is very different from somebody opening up a plant in Canada, which is a jobs strategy.

● (0940)

Mr. Peter Fonseca: Well, we've actually heard from the auto sector. The comments were that we would be hard pressed to ever land another auto assembly plant again here in Canada under the TPP agreement.

Mr. Jim Balsillie: I'm not an expert on the automotive sector. There are people who know far more than I do, so I cannot comment on that with specificity, although that is something I believe is worth looking at because it's a very important part of our economy.

I look at it through the lens of innovation outputs. What I tried to show you in that S and P chart is that every business is now a technology business; everything is an innovation business. Automobiles, forestry, oil, and agriculture are all going that way. Please understand that this march is happening. If we don't build this sophisticated capacity, I think even our traditional industries will be under progressive profitability pressure, including the automotive industry.

Mr. Peter Fonseca: Given your views of how the TPP favours the U.S., as we've heard, how do you account for the broad opposition to the TPP among the current U.S. presidential candidates?

Mr. Jim Balsillie: I know some of those who are very high profile in it.

What TPP does is enshrine the interests of pre-existing IP holders, and so it advantages those. The problem is that Canada really has none of those, and so Canada is a net loser. It creates inequity between states that have a lot IP, and states and countries that don't. It also creates inequities within countries. I know that the critics in the U.S. are mainly concerned about the inequity it creates within the U.S. I'm just looking at Canada's prosperity to say that I see the cheques rolling out of Canada. We're both concerned about inequity that it creates, but we come at it with the two different elements of inequity that we're looking at.

Mr. Peter Fonseca: Mr. Geist, do you have an opinion on it?

Dr. Michael Geist: I just want to add that, in the context of the United States, the notion that Canada should move expeditiously on the TPP without clarity on what's happening in the United States should clearly be a non-starter.

As I'm sure the committee knows, the TPP cannot take effect unless the U.S. decides to formally ratify it. The idea that we would undertake what are some clear losses, without any certainty the TPP will even come to fruition, makes no sense whatsoever.

Even beyond that, the fact we are seeing this kind of opposition in the United States does suggest that a reopening of the TPP, and renegotiation of some of those terms, may ultimately be a part of the U.S. strategy as well, given where we are seeing some of the presidential candidates speak. Ideally, Canada has to take this up or take it down. I suspect it simply won't be the case.

The Chair: Thank you, sir.

We have room for one more questioner, and that's Mr. Van Kesteren, for five minutes.

Mr. Dave Van Kesteren (Chatham-Kent—Leamington, CPC): Thank you, for coming.

There's far too little time. You've just opened up so many questions. There's some confusion though. I don't know how to frame this question, but I don't have much time. I'm going to try to frame it as quickly as possible.

There are going to be winners and losers. We're going to be positioned, in some areas of our economy where we're strong, to expand. You've said that, in essence. I know that the United States has recognized that for years too. You're absolutely right; they've focused on those high-tech areas.

In regards to the pharmaceuticals, doesn't 12 years being reduced to seven years stand your argument on its head, Michael, as far as the Americans? Doesn't that give them a disadvantage? Wouldn't they want to see a longer period of time?

Dr. Michael Geist: The agreement doesn't do 12 or seven, it does eight, or five plus three.

The U.S., or at least the Obama administration, has recognized that it got it wrong. I would argue, given that it has tried to push forward with a reduction.

In fact, it's not so much that it's a disadvantage. There are studies in the United States coming from the U.S. government that argue that there is no need for additional protection for biologics, that the market already has enough incentives to create, and that it is so

difficult to create the generic equivalent to biologics—referred to as biosimilars—that they already have that effective protection. So establishing additional terms of protection, whatever the length, may not even be necessary.

When you have cutting-edge innovation, the idea that you're going to essentially be driven by either lobby groups or unknown policies that haven't been developed yet, and lock yourself into those choices, is a mistake from my perspective. In fact, we see it playing out even within the United States. We also see it playing out in Australia. One of their most contentious issues is around this very question, because they can draw a direct correlation between the kind of term of protection that they offer and the cost of health care.

•(0945)

Mr. Dave Van Kesteren: Mr. Balsillie, you did a marvellous job. Everybody is proud of BlackBerry.

I look at a country like Finland, and I think Nokia was their brand. Is it a matter of just not having the critical mass in the economy, all the people that you need? Obviously, you've proven that to be the case, but is it getting increasingly difficult to operate in that stage on the world scene, or are the Americans—and I'm hearing that from you—trying to bend the rules? I guess I'm asking, is it the chicken or is it the egg?

Mr. Jim Balsillie: Everybody bends the rules in the innovation game. The innovation game is about rules to advance national prosperity. So everybody bends the rules dozens of times a day all over the place, all around the world. That's how the game is played.

Mr. Dave Van Kesteren: Take Nokia. At that time they didn't have these rules globally.

Mr. Jim Balsillie: Sure they did.

Mr. Dave Van Kesteren: Is that why they faltered?

Mr. Jim Balsillie: No. First of all, Nokia is a 100-plus-year-old company, and Nokia has all kinds of innovators in all kinds of places, as does Sweden. So the Scandinavians do very well. We could do very well to take a page out of their playbook. I'm not talking about one specific company; I'm talking about a national innovation strategy for outputs. Canada has zero growth in outputs over 30 years despite hundreds of billions of dollars of inputs. We're first world in inputs; we're third world in outputs. We're negotiating this agreement like a third world country, a developing country that wants investment, wants to get into it.

Mr. Dave Van Kesteren: I hear what you're saying. I look at, for instance, our farming industry. We see the innovation that's happening there. We see huge advancements in the oil industry, the extraction industry. We've seen companies in Calgary and Edmonton that have done some incredible things. Why can't that happen? I hear what you're saying about the rules. Is that the only reason? Is it the rules that restrict companies like yours from...?

Mr. Jim Balsillie: I'm not saying me, I'm talking about the Canadian economy. I'd say my experience comes from this. In Canada we don't make many of these innovation outputs, that's why our performance is very low in those sectors like farming, oil, and so on. They are going to be increasingly more an innovation game. We had better make sure this isn't about technology products, that it's going to be about all of our sectors. When you talk about there are going to be winners and losers in the traditional game, the traditional sectors, Dan Ciuriak said it's kind of a wash, so it's actually a rounding error.

The Chair: I'm going to have to wrap up our very interesting first hour here this morning. I thank again the guests here for coming today with us. You'll see a report in the upcoming months. Thank you.

I'll just remind MPs, we're only going to break for a few minutes here, and we're going to go right back at it, so it's five minutes at the most.

• (0945)

(Pause)

• (0955)

The Chair: Welcome, everybody, to our second hour this morning.

As everybody knows we're here to look at TPP and how it's going to involve Canadians. We've been travelling quite a bit across the country and we have many witnesses here in Ottawa.

For the second hour we have two witnesses: Lawrence Herman, from Herman and Associates, and Barry Sookman, partner with McCarthy Tétrault.

Welcome, folks, and you both have five minutes.

Mr. Herman, do you want to start?

[*Translation*]

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

I'd like to thank you for giving me the opportunity to address the committee today.

[*English*]

It's a pleasure to be here to provide my views on the TPP.

I'm a lawyer. I deal with international trade and policy. I was many years ago, in the 1970s, a Canadian diplomat. I represented Canada in many international organizations and international negotiations, including at the GATT, at the OECD at the UN Conference on the Law of the Sea, at the OECD at IMCO, and it goes on and on. I have for many years, after leaving the government, practised international trade and policy, and that's where my work has taken me.

Let me address some major points in my introductory comments, and then I'll be pleased to answer questions. I should say that the real expert here this morning, certainly on IP, is Barry Sookman, who's one of Canada's leading experts in this area.

The TPP is part of an evolution of international trade rules inspired by the General Agreement on Tariffs and Trade and furthered by the World Trade Organization. It's part of the progressive development of the rules of law that bind countries together. It evolves from the NAFTA and a range of other trade agreements, multilateral and otherwise, that Canada is a party to. When you look at the TPP, you have to see it in that context. The pillars in the TPP are derived from the multilateral system enshrined in the WTO agreement.

All of this is good. When I was in the government, we were striving to develop rules of international law so that Canada as a middle power would have the certainty of rules of the road—legal rules—and not be subject to power plays by larger nations. Rules are good. It's everything that Canada's foreign and trade policy is about: developing rules. Those have to be good rules, and they have to be rules that comport with Canadian interests, but the whole trend in international trade diplomacy is the quest for legally binding rules between states.

In the domestic context, there have been some negative comments about the TPP. We heard them earlier. I don't intend to join issue with some of those comments, but I would like to give you a more general and, I think, more balanced perspective.

The objective of this committee is to look at the TPP and reach an overall balanced conclusion. It has to be assessed in terms of the balance provided for in the agreement. The agreement is about much more than intellectual property. IP is part of it, an important part of it, but it's only a part of it. A lot of other things in the TPP have to be factored into any assessment.

• (1000)

I might say that in typical Canadian fashion, when we look at international trade agreements, I think we unfortunately tend to look at the defensive aspects, at what we have to give up or where we have to compromise in a negotiated outcome. What we don't do effectively enough is articulate our offensive interests, where we gain by having rules that benefit Canadian suppliers of goods, of services, and of capital in foreign markets. What the TPP does, in short, is provide the certainty for Canadian companies that want to export their intellectual property, their goods, their services, and their capital into foreign markets.

The Chair: Do you want to just wrap up in a few seconds?

Mr. Lawrence Herman: I'm happy to leave it there. Those are my introductory comments. We can deal with issues like preferences, services, investor-state dispute settlement, and the important aspects of environment and labour in the question period.

The Chair: Yes, you'll probably have time to bring them up throughout the rest of the morning.

We're going to go on to Mr. Sookman, for five minutes, sir.

Mr. Barry Sookman (Partner, McCarthy Tétrault, As an Individual): Thank you, Mr. Chairman.

I am a senior partner with the law firm of McCarthy Tétrault, and the former chair of its intellectual property group. I'm an adjunct professor of intellectual property law at Osgoode Hall Law School, where I teach IP.

I'm here today in my personal capacity, not representing any clients.

The TPP has been heralded as a 21st century trade agreement. In my view, both the e-commerce and the IP chapters reflect that.

The e-commerce chapter is truly innovative in that it reduces non-tariff barriers to the use of the Internet and other networks to conduct trade. This gives Canadian businesses the opportunity to do business in the 11 other TPP countries from Canada, and to maintain jobs here in Canada.

Some of the highlights of the e-commerce chapter are as follows:

There are no customs duties on electronic transactions, although taxes can still be imposed.

There are provisions that remove the impediments to the recognition of electronic documents and signatures, something that Canada has already adopted. This is very important for Canadian businesses that want to transact electronically from Canada at a distance.

There are provisions that prevent blocking of market access with respect to trans-border data flows, which in my view again are very important.

These provisions, some of which are related to privacy, have been criticized. In my view, there is flexibility in the TPP to pursue legitimate public policy objectives. The exceptions that are permitted in GATT have been preserved in the TPP. The parties are required to have minimum standards for protection of personal information and anti-spam. Some have claimed that the treaty doesn't go far enough, but this is not a privacy treaty and not an anti-spam treaty, so where the parties landed is what you would expect in a treaty of this sort.

There are robust provisions that protect Canadian culture in the cultural exemption, contrary to what was suggested by Professor Geist.

The TPP prescribes minimum standards for intellectual property protection. Canada played an active role in those negotiations.

The IP chapter, as you heard today, has been subject to criticism. Those criticisms are that the TPP requires significant changes to Canadian law, and will lock Canada into an undesirable IP framework.

In assessing these claims, I submit that this committee should consider the following:

There really are minimal changes to the treaty that are required by Canadian law.

The impacts that had been publicly identified in the aggregate are not very significant, especially in relation to the overall context of

the treaty and when you take into consideration the agreements we made in CETA.

Canada is already committed to many of the TPP's IP requirements, including through other international agreements. It seems unlikely that Canada would repudiate or unwind these obligations or need to materially change how they have been implemented here. It also seems unlikely that any particular change we might want to make would merit pulling Canada out of its existing treaty obligations or would merit Canada not joining the TPP.

Intellectual property laws promote innovation and commercialization of IP products. The 21st century, and the fourth industrial revolution, which we have to engage in, rely on intellectual property protection to raise capital, and to foster innovation and commercialization.

The Canadian market, by itself, is too small for Canadian businesses to succeed. Canadian businesses need to compete internationally, including with our largest trading partners, Japan and the United States. Accordingly, Canadian businesses will need to compete in foreign markets under those IP regimes in place in those foreign markets whether Canada joins the TPP or not, and whether a Canadian business moves to the United States or not; that's the regime under which they have to compete to be successful.

• (1005)

The Chair: Perhaps you could just wrap it up.

Mr. Barry Sookman: I'll make two points in wrapping up.

First, it's hard to see how Canadian businesses would be disadvantaged by entering into a TPP.

Second, I'm not suggesting that the IP regimes in the other countries are perfect, but many of the flaws are not flaws that are embedded in the TPP, such as the U.S. court system that Mr. Balsillie referred to. Those are outside the TPP, not mandated by the TPP.

The last point, Mr. Chairman, is that I'm not by any means suggesting that the IP provisions in the TPP are the conditions that will enable Canada to succeed. I very much agree with Mr. Balsillie that we need an innovation strategy, a commercialization strategy, to succeed, but I think those policy issues are separate.

The Chair: I thank both of you for your presentations.

We're going to start off with the Conservatives.

Mr. Hoback, for five minutes.

Mr. Randy Hoback: Mr. Herman, we heard from Mr. Geist previously that we already have bilateral agreements with a lot of these countries and we don't need TPP. Can you explain to me what our preferential treatment in NAFTA is going to be if we don't sign on to TPP and they do?

Mr. Lawrence Herman: It's a good point.

Agreements like the TPP are all about preferences. What the TPP does is give Canadians preferential treatment in the markets of the other TPP countries. That's what this is all about. It's about preferential treatment, better treatment than countries that aren't members of the TPP get in those markets.

If we are part of the TPP, we will have better treatment in the U.S. market than what we get under the NAFTA. It will be better treatment in the U.S. market—and I'll give you some examples in a moment—than what non-TPP countries get, because it's all about preferences.

If we were not part of the TPP and it entered into force, we would still retain our NAFTA preferences. We would still have preferential treatment in the U.S. market, more than all of the other countries that aren't part of the NAFTA, but we would have lesser preference than the other TPP countries.

• (1010)

Mr. Randy Hoback: So there is a penalty to be had if we're not part of it.

Mr. Lawrence Herman: Absolutely. I'll give you an example.

Mr. Randy Hoback: A quick one, because I have only five minutes.

Mr. Lawrence Herman: Then I won't give you an example.

Mr. Randy Hoback: Mr. Sookman, we heard from Mr. Balsillie that we don't have an innovation policy. He keeps linking the lack of an innovation policy somehow to an impact on trade policy.

How do you see that interacting? Can't we do both? Can't we have a good trade policy and a good intellectual property policy?

Mr. Barry Sookman: I agree with you. I don't see any reason why we can't.

It's true that the Americans and Japanese might be ahead of us in terms of their innovation strategies, and they do rely on intellectual property protection to support innovation. It's not just about preventing others; it's actually about protecting the investment and creating the incentives that are needed for companies to invest and to globalize. They go hand in hand. You can't have successful commercialization without a robust series of frameworks that promote innovation. Those frameworks include both intellectual property protection and some of the things that Mr. Balsillie was talking about.

Mr. Randy Hoback: He's talking about freedom to operate. Is that not just freedom to steal?

Mr. Barry Sookman: Freedom to operate has a number of dimensions to it. I think many businesses that make very significant investments in intellectual property make very concerted efforts to protect it. If they don't, they effectively would be competing against their own technology, not being able to benefit from the investments they had.

If you look at Research in Motion, Research in Motion had engaged in several lawsuits to protect its intellectual property, including when Mr. Balsillie was the co-chairman. It's because of the need to protect your marketplace, your investments, and your jobs that litigation is pursued.

Mr. Randy Hoback: Again, I'm trying to get my head around it.

If I want to see start-ups here in Canada, I want them to have a playing field where they can actually have a time frame to recover that investment so that they are protected through intellectual property. But Mr. Balsillie is saying that if you do that, none of them will locate in Canada; they'll all locate in the U.S.

How does that work?

Mr. Barry Sookman: I frankly don't see it. The regime that we have in Canada is similar to what we have in the United States. From an intellectual property perspective, there is little advantage to locating in one country versus the other. In fact, for a small Canadian start-up to compete, they have to be able to compete in the United States.

I've dealt with many Canadian start-ups, and they see their biggest market as the United States. They want to start in Canada, and they have relationships in Canada, but ultimately the big win is in the United States. They recognize that they have to file for protection in the United States. In fact, the first place they file for patent protection is the United States. They need the protection. Investors look to see if they have IP protection, and if they don't, it could be a reason for not giving companies the rounds of financing they want. It is important to Canadian innovators to have robust intellectual property protection.

The Chair: Thank you.

We're going to move over to the Liberals and Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair, and my thanks to the panel members.

Mr. Herman, you said that we have to reach a balanced conclusion on TPP. There have been criticisms and concerns about the ISDS mechanism contained in the TPP text. Do you see more viable alternatives to ISDS?

• (1015)

Mr. Lawrence Herman: The ISDS provisions follow the model in NAFTA and the model that Canada has followed in over 30 investor-state dispute settlements, or, to put it another way, the Foreign Investment Promotion and Protection Agreement. It largely follows the model in NAFTA. There are some additional protections that are built in.

The TPP defines the elements that are subject to dispute settlement more clearly. This is to avoid wide-ranging or broader determinations that arbitrators can make. They're confined to specific rules of international law in their decision-making. The CETA is different. There are some changes in the CETA that are not in the TPP, but the TPP follows the NAFTA model. Some concern has been raised about the number of investor disputes brought against Canada by American investors. It is true that Canada has been a frequent respondent in these cases. If we abandoned the TPP, the provisions of NAFTA would still apply. I don't think it's an effective argument that somehow we will moderate investor claims by not being part of the TPP. Our FIPAs with other countries allow investors from those countries to claim against Canada. There haven't been any to date, but those provisions remain.

What we want to address are the advantages to Canadian investors in markets like Japan, Malaysia, Vietnam in having the ability to bring investor claims forward. Canadian investors have benefited from our bilateral FIPAs bringing action against countries like Venezuela, Argentina, Kazakhstan, Poland, and a range of other countries. Canadian investors do benefit from these ISDS provisions. That's an important factor.

Mr. Sukh Dhaliwal: Mr. Balsillie claimed that TPP will allow foreign companies more freedom in Canada. Do you agree with that? Could you explain why or why not?

Mr. Barry Sookman: In my view, the TPP makes very few changes to Canadian law. As a practical reality, it's not changing the situation that currently exists on the ground. There's the term extension and there's the possibility of some extra protection for patent restoration. Other than that, when you consider the whole gamut of the intellectual property regime, there are very few differences.

Mr. Lawrence Herman: The TPP on IP tweaks the provisions that we've already adhered to in the WTO TRIPS agreement, in multilateral agreements in the World Intellectual Property Organization, and in treaties such as the Berne convention and the Paris convention.

It does tweak those somewhat, but it doesn't, as Mr. Sookman says, radically alter Canadian laws in any way. I think, with all due respect, that a lot of the criticisms have been very, very much overdrawn.

Mr. Sukh Dhaliwal: Do you see any negative impacts of the TPP on an average middle-class Canadian?

The Chair: It'll have to be a short answer.

Mr. Barry Sookman: I don't see any.

Mr. Lawrence Herman: I don't either.

The Chair: That wraps up your time. It's good to be on time, Mr. Dhaliwal. Thank you.

We're going to move over to the NDP with Ms. Ramsey, for five minutes.

Ms. Tracey Ramsey: I think it's probably appropriate that my colleague just asked that question, because I think there are grave implications, in particular in my riding of Essex, where we have a hub of manufacturing in auto manufacturing. In terms of the 58,000 jobs projected to be lost in Canada under the Tufts University study

economic model, 12,000 of those would occur in southwestern Ontario. It has massive implications for average Canadians and working Canadians, to be quite honest.

We hear that you feel that this would maintain the jobs here in Canada and, of course, it's hard to see how a Canadian business would be disadvantaged in the TPP, but we've had others present here and explain to us how Canadians would be disadvantaged in the TPP. While businesses may be a beneficiary of the Trans-Pacific Partnership, average middle-class Canadians and lower-income Canadians would actually end up having to pay more for pharmaceutical drugs. There would be implications for them.

I did read one of your articles, Mr. Sookman, in which you said, "The costs of being left behind could be staggering for Canada in the long term." I'm wondering what economic modelling you're basing that on.

• (1020)

Mr. Barry Sookman: Like Mr. Balsillie, I'm not an expert in the auto industry, so I can't comment on that. There are people who—

Ms. Tracey Ramsey: What I was referring to is simply that you thought there would be no implications for people.

Mr. Barry Sookman: I was commenting from the IP provisions. I wasn't commenting from the other section. I assumed that was the context of the question.

Ms. Tracey Ramsey: Okay. It was more general.

Mr. Barry Sookman: I was focusing on that, so I'm sorry if that wasn't clear.

When you look at the position of the average Canadian, that's actually a complicated question, because the average Canadian is interested in jobs, in having many opportunities available to them, and in having a variety of goods and services at an economically competitive price. There are obviously in the TPP a number of factors that affect that, at both the micro level and the macro level.

At the macro level, what's important, at least from the IP provisions, is to have a robust framework that promotes innovation and promotes capital, because that promotes high-paying jobs and that promotes goods and services that are competitive. In my view, if that is successful for business, that's also successful for Canadians who work in businesses and also for Canadians who are consumers.

On the pharma side, I'm not an expert. There was a recent study that looked at the impact of drug prices associated with free trade agreements. It looked at the impact of drug prices in countries in which the United States entered into FTEs and actually found that there was no material increase in prices. The other thing I'd point out is that in other countries such as Europe they have more robust patent protection, and yet their prices are lower than Canada's, so there isn't a one-to-one relationship.

On the patent restoration, which is the major change and which we've already agreed to in CETA—so it's there in any event—there is a question about the extent to which there would actually be an increase in the prices of drugs. The reason is, it's meant to deal with delays in the approval of drugs that are caused by the regulatory process, and not caused—

Ms. Tracey Ramsey: When we talk about this extension to patents, do you think that Canada requires greater protection of intellectual property for pharmaceutical products?

Mr. Barry Sookman: There's very little change overall to the patent framework; there are two. The first is the patent restoration that I was referring to.

To finish the comment I was making on that, Canada does have the wherewithal to speed up the approval of drugs. If that's the case, there is a question about whether there would be any significant extra costs if Canada has a more streamlined system. That's something we can control.

Ms. Tracey Ramsey: Before my time runs out, I want to go back to my first question and my quote about the costs. I asked you whether or not you had an economic impact model that you were basing that on. The C.D. Howe, Tufts, and Peterson, all of these models show us that sometimes there will be zero per cent growth and large job loss. What is the basis for saying this is good for Canada? Is it strictly the IP?

The Chair: They will have to be quick answers.

Mr. Barry Sookman: I'm going to turn this to Mr. Herman because I know he's chomping at the bit to answer this question.

Mr. Lawrence Herman: Mr. Chairman, I might address the auto side because it's very important not just for Ms. Ramsey, but for others.

The Chair: I don't want to cut you off, but I think one of the other MPs will ask you that question and give you lots of time to answer. That will be better, because you're on a good roll and I wouldn't want you to have to shorten it. We'll get you back on that.

We're going to move to Mr. Peterson.

•(1025)

Mr. Kyle Peterson: Thanks, Mr. Chair.

Thank you, gentlemen, for being here today.

By way of disclosure, I articulated with McCarthy Tétrault many years ago in Toronto, so it's nice to see you back here, Mr. Sookman.

Mr. Lawrence Herman: You have a long reach.

Mr. Kyle Peterson: Absolutely.

Mr. Herman, you touched briefly on the ISDS, so I want to follow up on some of those questions. We're hearing from some witnesses there are grave concerns about how ISDS prejudices Canada, the Canadian government isn't going to be freely able to regulate in our country, and that there's a history, through NAFTA, of our being the losers in ISDS litigation.

I wonder if you agree with that and can elaborate briefly on how the ISDS system currently works.

Mr. Lawrence Herman: A couple of things in the TPP improve upon NAFTA. The NAFTA ISDS provisions have been interpreted by arbitration panels in a way that has largely favoured Canadian laws and regulations. We've won many important disputes under the NAFTA.

The TPP defines more precisely the basic concept of equitable treatment. Under the TPP, as under NAFTA, countries are required to

provide fair and equitable treatment for all investors. The TPP narrows that very important concept and says that has to be a precise concept agreed to under international law, and not just a vague, open-ended concept that the arbitrators can apply.

It also provides that regulatory changes in themselves are not offensive of the treaty. In other words, you can't claim, as an investor, simply because there's been a change in regulations that might impact on your investment in some way or another. There are also a number of other off-ramps for public policy issues affecting the environment, public safety, public health, and other things.

There's an important narrowing of the scope of ISDS in the TPP.

Mr. Kyle Peterson: We have some concerns that it's a private dispute resolution mechanism that prejudices the Canadian government from being able to legislate. For those of us experienced in litigation, many private dispute mechanisms are employed throughout, in private contracts. I don't think it's necessarily a big change from what's already out there. Thank you for clarifying that.

Mr. Lawrence Herman: There are also enhanced provisions for transparency and public knowledge, public disclosure of the dispute process, which are an advance.

Mr. Kyle Peterson: Okay, thank you.

I want to touch briefly on Mr. Sookman's comment that there's not going to be much legislative change if TPP comes into place in the world of IP and copyright. It is a complex legislative regime. That's why people like Mr. Sookman are able to make a living in helping to navigate it.

Can you elaborate on what those changes would be if TPP comes into place, and maybe highlight some of the differences between current American IP law and Canadian IP law and what effect that will have?

Mr. Barry Sookman: Sure.

Thank you for the question, and thank you for getting Tétrault right previously. We have it all right.

There are changes in the copyright area, and several in the patent area. In the copyright area, the chief one that's been identified is the requirement to amend the term of copyright from 50 years to 70 years of the life of the author. In terms of that context, approximately 90 countries around the world already have protection at 70 years or more, so it's not like this is out of the blue and is reflecting some unique perspective of the United States. It's actually now becoming the international norm.

In terms of the costs of that, which Mr. Geist was referring to—that \$55 million—there was a study that was just released by Professors Barker and Liebowitz that looked at the New Zealand study he cited and came to the conclusion that it was seriously flawed. In fact, when he looked at the costs and the benefits, it might actually be of some benefit to New Zealand. So there would be a change.

There are many policy reasons, which I won't get into because of the time—you only have five minutes—that would support the term extension. I dealt with that in a very lengthy blog.

There is another amendment that would be required with respect to rights management information. That has been exaggerated, in terms of what it is. It's actually a very narrow amendment that would create a criminal offence for removing rights management information for profit, in other words, a commercial entity that's facilitating piracy. It's hard to see why, from a public policy perspective, that would be a problem.

• (1030)

The Chair: We'll have to wrap it up there. Sorry, we're way over time.

That ends our first round.

We're going to move on to Madam Lapointe for a second round, five minutes.

[*Translation*]

Ms. Linda Lapointe: Thank you, Mr. Chair.

Thank you, gentlemen, for being with us today. Your presence is most appreciated.

Mr. Herman, you were interrupted and weren't able to finish your presentation. You were speaking about the export of intellectual property. You also wanted to talk about the workforce and the environment. What would you like to say about that?

Mr. Lawrence Herman: I was going to say that the Trans-Pacific Partnership, or TPP, includes provisions to encourage countries to implement solid environmental measures, not to replace the Paris agreement or the Kyoto accord, but to require all countries in the TPP to implement environmental protection laws. The provisions are fairly detailed.

Ms. Linda Lapointe: It's interesting, especially since we want to score points and improve our environmental standing.

Without necessarily getting into intellectual property, which we've spent a lot of time talking about since the start of the day, could you tell us what you would like changed in the Trans-Pacific Partnership agreement if the negotiations were reopened?

[*English*]

Mr. Lawrence Herman: Let me answer that by saying—

Ms. Linda Lapointe: It's okay if you say it in English, but, for me, it's easier in French.

[*Translation*]

Mr. Lawrence Herman: I can answer in French.

Improving or changing the TPP is out of the question.

[*English*]

The TPP is not going to be renegotiated. If it doesn't get through the U.S. Congress, it's finished, in my humble view, and we will go back to where we were before. The gains, and there are many gains, and the advances in the TPP, will be lost. It is totally unreasonable to think that participating countries can come around the table once again and change the provisions of the TPP. Once you start opening

one or more provisions, the whole thing will start coming apart, in my view. Others may feel differently, but that's my view.

[*Translation*]

Ms. Linda Lapointe: You have certainly heard the comments of people who have testified before you. They have suggested that, should we not sign the agreement, we should establish a trade agreement directly with the countries, particularly Japan and China.

[*English*]

Mr. Lawrence Herman: That's out of the question. If the TPP gets approved in the United States and Japan joins, they will have no interest in negotiating a bilateral deal with Canada, in my view. If they do, it will be a deal that will be based on the TPP. Why would the Japanese enter into bilateral negotiations with Canada and say they'd accept something less than what they got in the TPP?

To me, it's a mug's game to suggest that we'll be all right and that we can negotiate a deal with Japan and anybody else we want. I think that is pie in the sky.

[*Translation*]

Ms. Linda Lapointe: Thank you very much.

Mr. Lawrence Herman: I don't know how to say “pie in the sky” in French.

Ms. Linda Lapointe: Thank you very much.

Mr. Sookman, you spoke about e-commerce. However, people are wondering how this will work with the TPP. I'm wondering about it. You said that there weren't any barriers. Could you expand on that?

• (1035)

[*English*]

Mr. Barry Sookman: Thank you very much for your question. I apologize for answering in English. I actually grew up in Montreal, but my French is so rusty I'd be worried about giving everybody in the room tetanus, so I'm going to answer in English.

The e-commerce provisions are one of the innovative features in the treaty. They're not in CETA; they're not in NAFTA; they're not in GATT. They recognize that trade in the 21st century is quite different from what it had been. We now have powerhouses in Silicon Valley—the Googles, the Facebooks, and others—which we hope we can develop in Canada. Those have made major, major inroads into foreign countries. They found in some of those countries that there were effectively attempts to block their market access. The goal of the e-commerce chapter was to take the GATT's framework, which not only dealt with tariff barriers but started to deal with non-tariff barriers, and to look at what were going to be the barriers in the 21st century, and to then try to deal with those in the same way that the GATT and others dealt with other non-tariff barriers. So when you look at e-commerce, some of the barriers related to recognition of signatures and documents, one out of the way, and they've done that in a very elegant manner by referring to two international documents. They've set out a whole set of rules as one provision, but it has very extensive implications and benefits for Canadian businesses.

It also has benefits with respect to transborder data flows. If you think about Canada, we actually have a very sophisticated IT sector that is very good with networks. There is the potential benefit that we could leverage all those technologies and do business in other countries. In fact, some of our major FIs today run their foreign affiliates from Canada, so we want to be sure they're able to continue to do that.

There are some exemptions for FIs in the commerce chapter, but in general it restricts non-tariff barriers that are specifically related to e-commerce.

The Chair: Thank you.

We're quite over time there. We got some complaints that we went over time here with our committee last time, and we want to be out of here in about eight minutes, so I think the Conservatives are going to split their five minutes.

Go ahead, Mr. Van Kesteren.

Mr. Lawrence Herman: We didn't start on time, Mr. Chairman, with due respect. We were about 10 minutes late.

The Chair: Were we?

Okay, go ahead.

Mr. Dave Van Kesteren: Thank you.

I have two questions for you, Mr. Herman. I'd like you to maybe address the concern my colleague had about the auto workers. That's my part of the world as well.

The second thing I've been hearing about is easy entry by foreign workers and the inability of the Canadian government to guarantee that skilled workers meet Canadian standards, which have resulted in massive job losses for Canadians in, for example, construction. Maybe you could address those two things for me.

Mr. Lawrence Herman: On automotive, if we aren't part of the TPP, we'll be competing in the U.S. market with lower-cost suppliers like the Mexicans. Plants and investments will move to Mexico, because Mexico will be able to get duty-free entry for their automobiles into the U.S. market easier, or at a lower threshold, than

we can. We will be stuck with our NAFTA requirements, which is 62.5% NAFTA content, in the TPP. If we're not there, the Mexicans will have a lower threshold. They will be able to source lower-cost inputs and compete with lower-cost automobiles that they manufacture in competition with our Canadian producers in the U.S. market.

I don't see why any automotive company would not want to be part of the TPP. Do they want to compete with higher-priced products in the U.S. market? We sell most of our automobiles in the U.S. market. It doesn't make sense to me. As well, we mustn't forget that parts suppliers, like Linamar and Linda Hasenfratz, for example, have said they agree that the TPP is of great benefit to Canadian parts suppliers.

On those two grounds, I think the TPP is of advantage to us and we have to think about the downside if we are not part of the TPP.

On labour mobility, what the TPP does—and I don't know if this is answering all of your questions, Mr. Van Kesteren—is to provide greater mobility to allow Canadian companies to send experts, workers, and technicians abroad to service contracts in foreign markets. That labour mobility part of the TPP is very important. It doesn't prevent Canada from maintaining some standards on labour mobility, but it allows our companies to transfer technicians, employees, experts, into foreign markets, which they can't do now. I think that's of great benefit to Canadian employees and a great boon for Canadian jobs, and I hope that would be taken into account by this committee.

• (1040)

Hon. Gerry Ritz: Thank you, gentlemen, it has been a pleasure listening to you. Rather than just saying no, no, no, you're actually backing up your arguments with rationale and reason and I appreciate that.

Stability and predictability are what trade is all about. Under the WTO, there's a clause called favoured nation status, and we've enjoyed that with countries, but it comes and goes with political will. What TPP does is entrench that favoured nation status with a set of rules and predictability that, of course, will strengthen Canadian businesses out there.

There's a lot of discussion that somehow the TPP will supplant Canadian sovereignty. I don't agree with that, and I wonder if you have some comments you'd like to make in that regard.

Mr. Lawrence Herman: Every trade deal is about compromises. It's about giving in order to get, and the balance at the end of the day has to be in favour of your national interest. I think for Canada, having secured both national treatment and most favoured nation treatment in the other 11 countries—we do have it, by the way, in the United States but we would lose our preference even on an MFN basis. But we don't have any preferential treatment or any MFN guarantees in Japan, for example.

Mr. Ritz, as someone from the Battlefords, you know how important access to the Japanese market is for the Canadian agricultural industry. That is of tremendous benefit. That's a good example of where both national treatment and particularly MFN treatment, which would be on a preferential basis, will give Canadian exporters of beef, pork, agrifood products, processed agrifood products of a wide sort, access that we don't have now to the Japanese market, and to other markets in the Asia-Pacific area.

Mr. Barry Sookman: I have one quick comment to add.

The Chair: We're going to have to move over to Mr. Fonseca now. There's three minutes left. You might be able to get your comment in.

Mr. Fonseca, you have three minutes. Go ahead.

Hon. Gerry Ritz: Send me a note, Barry.

Mr. Peter Fonseca: Thank you, Chair. Thank you, Mr. Herman and Mr. Sookman.

The great thing about these meetings is that we get to meet individuals like yourselves, witnesses who bring a great deal of experience and expertise in your field, and also to hear from witnesses who are really polar opposites. Listening to both of you right now, in terms of being very favourable to the TPP, and having heard from Professor Geist and Mr. Balsillie about how the TPP is kind of the worst thing that we can ever sign on to, leads us to trying to balance all of that.

I want to go back to how all this started. Mr. Balsillie mentioned that no Canadian innovator was ever consulted as we were negotiating into this TPP. I want to ask you, were you consulted by the previous government?

Mr. Barry Sookman: There actually was a consultation that I did attend, but let me answer the question by reference to the actual provisions in the TPP.

When you look at them you can see the fingerprints of the Canadians all over them.

Now, to non-experts in IP, it's just 6,000 pages, and the TPP IP provisions are a portion of them. However, I'm very familiar with a number of the provisions, and when you look at those provisions and you look at those footnotes, and then you talk to the negotiators you will see that Canada had a very clear strategy of maintaining many of the flexibilities that we already have in our law. There are a lot of very unique provisions or exceptions in it.

I can't tell you about the consultations, but I can tell you in looking at the changes, which are minimal, and looking at how Canada got to the position where there were so few changes because of all of the exceptions and caveats, that our negotiators did a really good job.

•(1045)

Mr. Peter Fonseca: Just quickly, in the process to CETA as compared to the TPP how would you compare the two?

Mr. Lawrence Herman: CETA was a little different in that the provinces were directly involved for reasons that relate to what the—

Mr. Peter Fonseca: Is that a better process?

Mr. Lawrence Herman: It may be, provided that the provinces can all sing to the same song sheet.

There was—

Mr. Peter Fonseca: Sorry to interrupt, it's just because of the time.

Do you feel there was more consultation on CETA than happening—

Mr. Lawrence Herman: Well, the provinces were involved—

Mr. Peter Fonseca: Were you consulted, Mr. Herman?

Mr. Lawrence Herman: Because the provinces were involved, yes, I was consulted.

The provinces were involved, and so that changed the dynamics, but there was broad consultation in the negotiating process in the TPP. A lot of stakeholders were engaged in the process.

By the way, if I didn't say this earlier, I think it has to be said that our trade negotiators are the best in the world. The suggestion that they are not I think is unfortunate. They are among the top tier of trade negotiators anywhere. I would stack a Canadian negotiating team on trade against any country anywhere, including the United States.

Mr. Peter Fonseca: On the dispute mechanism in CETA as compared to the TPP, which is better for Canada?

Mr. Lawrence Herman: CETA is an improvement over the model. There's no doubt about it because it provides for a panel, a permanent roster of arbitrators and an appellate mechanism. So that is a better model in my view. It couldn't be negotiated in the TPP, which follows, if I can say it, the standard investor protection treaty model. It's hard to compare the two. The dynamics were different.

My preference would be to have an appellate body, but we don't have that in the TPP.

The Chair: Thank you.

Mr. Barry Sookman: My Chairman, on the point about loss of sovereignty, there are two ways to think about these dispute resolution provisions. One is it restricts what governments can do so that they act legally, the other is it prevents governments from acting illegally and protects those who would suffer when governments act illegally.

The Chair: Thank you very much to the witnesses for coming. A good dialogue here.

If you have any more comments that you think you didn't get across to us, we will accept them and we would welcome them.

Thank you to everybody.

We're going to be travelling next week.

The meeting is adjourned.

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