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Chair

The Honourable Mark Eyking

Standing Committee on International Trade

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• (1550)

[English]

The Chair (Hon. Mark Eyking (Sydney—Victoria, Lib.)): Good afternoon, everyone, and welcome to the international trade committee. My name is Mark Eyking.

We had some meetings throughout the summer and are going to continue with our study on the future of trade with our North American partners. We have heard from many witnesses so far. We have done quite extensive travel in the United States, and next week the committee will be going to Mexico and the central United States.

Before we get under way, I'd like to welcome our three new committee members. As we brag, we are one of the most exciting, active, efficient, “get 'er done” committees on the Hill. You'll see how that works. We are here for Canadians, to work with Canadians, to help have more trade, and to help our economy grow.

Without further ado, I am going to start off. We have witnesses with us. As you know—the witnesses probably have had a heads up—you get a five-minute start to explain your case, and then we go to the MPs for dialogue.

I think we're going to start with the Canadian Council for Aboriginal Business and Max Skudra.

Go ahead, Max. You have the floor.

Mr. Max Skudra (Director, Research and Government Relations, Canadian Council for Aboriginal Business): Thank you.

Do we have five minutes and then questions after that?

The Chair: No, everybody does five minutes, and then we'll open it up.

Mr. Max Skudra: Excellent.

Thank you for having me, and condolences on the loss of a parliamentarian.

I will cut right to it. I represent the Canadian Council for Aboriginal Business. We have a membership of more than 500 companies. Of those, 70% are aboriginal firms. We are the largest such business organization in Canada. We have been doing public policy research as well as corporate social responsibility in events and networking for aboriginal companies. The mission is to effectively connect corporate Canada with aboriginal firms. The 30% of our members who aren't aboriginal are some of the largest corporate players in Canada, including Suncor, Syncrude, IBM, Tim

Hortons, etc. We bridge the gap between indigenous business and the indigenous economy and mainstream corporate Canada.

As I said, we do quite a bit of public policy research. Our findings, in partnership with Environics Research Group as well as TD Economics, have demonstrated that the aboriginal economy in Canada is booming. It is growing at a remarkable pace. There are roughly 43,000 aboriginal companies in Canada. Those companies have increased in the last five years. The profitability of those companies has increased by 15%. The number of profitable companies as well as the profitability has increased markedly.

The research we did with TD Economics demonstrates that aboriginal companies do more business abroad than the Canadian average and they introduce more new services, processes, or products to their firms than the Canadian average. Based on that, we would say that they innovate more than the Canadian average.

This significant growth is something that I think is overlooked in most of the Canadian discourse. I would say it's a significant bright spot in the relationship between indigenous Canadians and the broader society. We have been working for the last 30 years at CCAB to support and facilitate that growth.

What I would like to put forward to the committee is the importance of a number of very key things in the NAFTA renegotiations and as well in the broader policy context. We are quite concerned, obviously, because of the dependence and predominance of aboriginal companies that do business abroad and in the United States in particular, about anything to restrict that flow of trade across the border, as well as anything that would restrict the freedom of movement for indigenous peoples in businesses—in particular currently, set-asides for NAFTA.

That's the defensive position. The more offensive position that we see is that the current reservations in NAFTA allow for set-asides from the Canadian government to support aboriginal businesses. We would like to see that language expanded somewhat to be more reflective of what is in CETA. This would give the federal government a broader scope of action to support aboriginal businesses. What you see in Canada right now is firms such as Suncor or Bruce Power doing considerable work to support aboriginal businesses through procurement processes, companies such as TransAlta doing really innovative work to help with financing, and the Government of Canada federally being somewhat tied by trade policy. We would like to see that changed with the updated NAFTA.

We would also really like to put forward, as I'm sure some of my colleagues will as well, the point that there is a concern around intellectual property. We would be quite concerned about anything that negotiates away parts of indigenous intellectual property, which may not be on the top of the agenda or the first thing that comes to mind for the government when discussing this issue with the United States.

How am I doing for time? I usually don't do this in five minutes.

• (1555)

The Chair: You only have half a minute, but we like the way you finished early.

Some hon. members: Oh, oh!

The Chair: You know, there's a lot of time during questions and answers. You might have new thoughts and we're not that strict here.

Mr. Max Skudra: I can keep talking.

The Chair: We'll move on, and you'll have lots of time to speak as we go along. Thank you for your comments.

Mr. Max Skudra: Thank you, I appreciate it.

The Chair: We're going to move on now to the International Inter-tribal Trade and Investment Organization, and Wayne Garnons-Williams who is the chair.

Go ahead, sir. You have the floor.

Mr. Wayne Garnons-Williams (Chair, International Inter-tribal Trade and Investment Organization): Good afternoon. *Bonjour. Tanisi.*

I'd like to acknowledge that we've gathered on the traditional territory of the Algonquin peoples.

I am chair of what we call IITIO. My core recommendation for you today as legislators is to enable enabling legislation for international inter-tribal trade. IITIO's raison d'être is to assist in the global flow and exchange of indigenous goods, services, and investments, while respecting its principles, which are respect for indigenous culture and teachings; establishing environmentally sustainable practices; informing, educating, and encouraging all parties to adopt these practices; fostering indigenous communities that are healthy, robust, and stable; and above all, growing indigenous economies.

Canada, the United States, and Mexico are countries founded on trade with their original indigenous peoples. The 1996 Royal Commission on Aboriginal Peoples comprehensive review issued priorities that included a vision of a renewed relationship based on the economy, lands and resources, and economic development.

Canada's legal obligations to indigenous peoples are basically duty to consult and accommodate under section 35 of the Constitution Act, 1982, and various comprehensive land claim settlements, which include an express treaty obligation to consult indigenous parties if their interests may be affected by new international treaties Canada is negotiating. In short, meaningful, full, and informed consultation is key.

Canada, Mexico, and the United States are all signatories to the United Nations Declaration on the Rights of Indigenous Peoples,

which celebrated its 10th anniversary just last week. Article 19, to paraphrase it, is that the countries shall consult with indigenous peoples to obtain their free, prior, and informed consent on issues that may affect indigenous peoples. This is consistent with the Government of Canada's July 2017 statement to the 10 federal-indigenous relationship principles. I focus only on principles six and eight. Principle six is basically the free, prior, and informed consent. Principle eight is renewed fiscal relationships developed in collaboration with indigenous nations that promote a mutually supportive climate for economic partnership and resource development.

In previous NAFTA arrangements, as my friend was saying, Canada, Mexico, and the United States each inserted specific non-conforming measures that exempt specific sectors from the operation of NAFTA. The aboriginal affairs sector is one of them. A NAFTA indigenous chapter could include topics like traditional knowledge, not to be confused with intellectual property, inter-tribal trade, indigenous free passage rights, i.e., the Jay Treaty border crossing principles, market access, agriculture, rules of origin, dispute settlement, sustainable development, inter-tribal international investment, procurement, financing, labour, and HR. Again, we ask parliamentarians to pass enabling legislation for international inter-tribal trade.

In conclusion, I'd like to close with the following words of Justice Murray Sinclair of the Truth and Reconciliation Commission in his 2015 final report. He states:

Reconciliation calls for national action....

Laws must change.

Policies and programs must change....

The way we do business must change.

Members of the Standing Committee on Trade, reconciliation includes federal government recognition of pre-existing indigenous economic rights through enabling legislation for international inter-tribal trade.

Those are my comments, and I open it for questions.

• (1600)

The Chair: Thank you, sir.

We're going to move on to the National Aboriginal Economic Development Board, and we have Dawn Madahbee Leach, the interim chair. Thank you.

Go ahead, you have the floor.

Ms. Dawn Madahbee Leach (Interim Chair, National Aboriginal Economic Development Board): Thank you. *Meegwetch.*

I would like to take a moment to acknowledge that we're gathered on the traditional territory of the Algonquin and Anishinabe people. I speak to you as interim chair of the National Aboriginal Economic Development Board.

Our board is made up of first nations, Inuit, and Métis business and community leaders from across Canada, whose mandate is to advise the whole of the federal government on indigenous economic development.

As you know, the Government of Canada now supports the UN Declaration on the Rights of Indigenous Peoples without qualification. As the declaration celebrates its 10th anniversary, the board welcomes and congratulates the Government of Canada for taking this important step towards true reconciliation with indigenous people.

We urge the Government of Canada to take a bold and decisive leadership role in ensuring that a modernized NAFTA integrates indigenous rights and considerations into the very fabric of the agreement. Not only is this in keeping with Canada's stated commitment to a renewed relationship with indigenous peoples in Canada, but it is also consistent with Canada's commitment to promoting human rights, inclusion, and respect for diversity around the world.

During the first NAFTA negotiations in 1994, indigenous peoples in North America expressed different opinions. While some felt that trade liberalization would create economic opportunities, many felt that NAFTA would not benefit indigenous people as a whole. Many of the concerns stemmed from the fact that NAFTA was negotiated without proper consultation and participation of indigenous peoples.

Our board strongly believes that the success of this renewed agreement for indigenous peoples in Canada, Mexico, and the U.S. will hinge upon the process by which the agreement is negotiated, as well as meaningful engagement with indigenous peoples. This is the base requirement upon which the specifics of the terms and conditions of the agreement must be built.

Traditionally, our people had free and open borders. Trade between nations that today fall on both sides of the U.S. and Canadian borders was unencumbered, and there are numerous examples today of communities whose traditional territories exist on both sides of the border. The Jay Treaty of 1794 between the U.S. and Britain sets a precedent for the recognition of traditional indigenous practices and systems of trade, commerce, and mobility that existed long before European arrival to North America. The Jay Treaty recognizes and confirms our pre-existing rights—rights that are constitutionally protected.

For Canada, it is in this context of rights that a modernized NAFTA must be negotiated. In Mexico, since 1994, indigenous communities have faced human rights violations under the agreement through the loss of lands and livelihoods. Our board stands in solidarity with all indigenous communities across North America and urges the Government of Canada to lead in rectifying the issues that led to the violation of indigenous rights under NAFTA. An indigenous chapter is of critical importance to ensure that indigenous rights are inherent in the agreement.

Our board's report, called "Reconciliation: Growing Canada's Economy by \$27.7 Billion" estimates that Canada's GDP would grow by 1.5%, or \$27.7 billion per year, if barriers preventing indigenous Canadians from participating on an equal footing in the Canadian economy were removed.

In Canada, Supreme Court cases such as *Tsilhqot'in versus B.C.* have recognized aboriginal title to lands and resources, giving the first nations exclusive rights to the use of this land. Across Canada, indigenous ownership and control over large tracts of land that encompass significant natural resources is a reality that will likely grow, increasing indigenous land ownership and creating opportunities for international trade.

Much of northern Canada, for example, is governed by modern land claim and self-government agreements. These constitutionally protected agreements provide indigenous peoples in the north ownership of large tracts of land, as well as harvesting rights, capital transfers, and participation in land and water management regimes. Canada's north covers 40% of the country's land mass and is almost exclusively covered by land claim agreements.

The forestry sector—one of Canada's biggest trade industries, worth \$22 billion annually—involves many indigenous communities and businesses. Across Canada, 58% of indigenous communities have a contract or a partnership with a forestry company. This creates immense opportunities for both indigenous communities and private natural resource companies to respond with innovative solutions domestically as well as across borders.

• (1605)

Besides forestry, indigenous businesses are directly involved in primary resource-related industries including fisheries and mineral development.

Through meaningful inclusion in NAFTA, indigenous peoples in Canada have a unique opportunity to grow our economy by harnessing the energy and expertise of indigenous communities across Canada.

An area of concern for our board in the current round of NAFTA renegotiations is procurement. Subnational procurement in Canada is worth an estimated \$18 billion annually, and it is a significant contributor to indigenous economic development.

The Chair: Excuse me. Would you mind wrapping it up a bit? We're way over time.

Ms. Dawn Madahbee Leach: Okay.

I just wanted to also say that the board encourages the Government of Canada to negotiate strongly for exemptions from the "buy American" requirements and to enhance Canadian and business access to procurement opportunities in the U.S. Indigenous minority suppliers in the U.S. are already provided with procurement opportunities that are substantial and measurable, and so should we be.

In closing I just want to say first that indigenous peoples' and indigenous corporations' access to economic opportunities must be protected, that economic development must be meaningfully supported through the inclusion of an indigenous chapter in the agreement, and that the federal government has committed to full implementation of the Truth and Reconciliation Commission calls to action, including actions number 44 and 43, which call for full adoption and implementation of the UN Declaration on the Rights of Indigenous Peoples.

I would welcome any questions you may have.

The Chair: Thank you very much.

We are going to get into dialogue with the MPs. We're starting off with the Conservatives. They have the first five minutes.

Mr. Carrie, you have the floor.

Mr. Colin Carrie (Oshawa, CPC): Thank you very much, Mr. Chair.

I want to thank the witnesses for being here today. This is such an important treaty. I'm going to try not to talk very much, which is extremely hard for politicians, but we have only five minutes.

You mentioned the Jay Treaty, and really when you think of it, indigenous people were the first free-traders. I'd like to know to what extent indigenous people have participated in the Government of Canada's consultation process, and on balance whether you think your views have been heard and considered.

Ms. Dawn Madahbee Leach: I know that the Jay Treaty discussion has been pretty extensive, because it's been very much a grey area here in Canada where we do have some borders that are pretty open for trade, especially amongst indigenous people across the borders, and it has not been an issue. We've had people in our area selling fish into the U.S., for example, but in some areas that wouldn't be allowed. It always depends on the border crossing.

I really think we need to clear up the area. It's not consistent. Looking at the spirit of the Jay Treaty and the fact that we have communities right on the border with people living in the same community, with the same chief and council, but with homes in different locations on the U.S. and Canadian borders, that's just how our people hunted in those areas. This really is an area where there ought to be more discussion to come to some sort of an agreement so that all parties, especially under the NAFTA discussions, clarify what the process would be.

•(1610)

Mr. Colin Carrie: Do you have any specific recommendations for us to bring forward?

Ms. Dawn Madahbee Leach: I think that the spirit of the Jay Treaty should be recognized. I think that if there are companies that are identified as being indigenous and are verified by their communities as being indigenous, they should be allowed to have that trade across the border. There could be a registry system for the companies that are allowed to trade. I think that's one thing.

Mr. Colin Carrie: I think Mr. Garnons-Williams wanted to add something.

Mr. Wayne Garnons-Williams: Yes,. Thank you.

My friend here is right in the sense that it's the spirit of the Jay Treaty because, as we all know, the Jay Treaty has no force or effect in Canada currently as a result of both judicial decisions saying Great Britain was a signatory and not Canada, and we've never passed enabling legislation to that effect. So there's that, but it's the principle behind it.

When you roll back the clock and you look at the fact that, back in 1794 when Great Britain, in what we know as Canada, and the United States were establishing a border, they realized they had whole bunch of indigenous people trading all over the place. We have, for instance, the Mohawk in what we now know as Ontario, Quebec, and New York. We have the Athabasca, who are in Alaska and Yukon. We have the Coast Salish in B.C. and Washington. We have the Colville Confederated Tribes and Okanagan in Washington and B.C. respectively. I could go all the way across the border and find first nations that have been cut in two. Some of them are vehemently trying to re-establish their links, but it's very hard because, of course, back then, when you roll back the time, you see the fact that the federal perspective on indigenous people back then was very "You're not citizens, you're not necessarily even people, and through manifest destiny, we're taking over."

It's this new field that we're looking at to revisit the past. We can't move forward without acknowledging that what happened with respect to the Great Britain and the United States was an acknowledgement of the pre-existing economic right of trade, indigenous inter-tribal trade, embodied in the Jay Treaty.

I'll quote the Jay Treaty, if I could, just a very short little section:

...the Indians dwelling on either side of the said Boundary Line freely to pass and repass by Land, or Inland Navigation, into the respective Territories and Countries of the Two Parties on the Continent of America (the Country within the Limits of the Hudson's Bay Company only excepted) and to navigate all the Lakes, Rivers, and waters thereof, and freely to carry on trade and commerce with each other.

That is what it's all about, and to respect that is part of reconciliation, if Canada wants to put their money where their mouth is. That's why I'm saying pass legislation like what's happening in the United States with respect to the Jay Treaty. I mentioned the fact that the Jay Treaty was revoked because of the War of 1812 and then, as a result of a stalemate, the United States said, "Hey, why don't we pass legislation to support the principles of the Jay Treaty?", which they did.

Section 289 of the Immigration and Nationality Act of 1952, as amended in 1965, has embodied the spirit of the Jay Treaty in the United States, so it's not hard to imagine that Canada could pass legislation enabling inter-tribal trade between the nations and just clear that up, because the moment you do, then all the other departments have to get in line, customs, excise, and port authority. All of those organizations have to say, "Okay, great. Parliament wants this, we're going to make this happen." Without that, you can see it, in the history of trying to move indigenous trade, getting hamstrung by the departments.

The Chair: Thank you, sir. We're way over time, but it was such a good dialogue, I let it keep going.

We're going to move over to the Liberals now.

Mr. Fonseca, you have the floor.

Mr. Peter Fonseca (Mississauga East—Cooksville, Lib.): Thank you, Chair.

Thank you to the witnesses for your presentations. As I was listening intently, Mr. Skudra, you spoke to many of the successes that the indigenous peoples have had in terms of business success and in terms of trade. It's fabulous to hear that. I think, through the consultations that we've heard and we've received as a government, over 22,000 submissions have come in. Through many of those submissions and many of the conversations that have been had with indigenous peoples, the minister and our government proudly put forward having as a priority of ours an indigenous chapter within NAFTA, and we think this is terrific.

We're going to push forward with our table, with our trade negotiators. They're being informed by many of these discussions and conversations at the table.

If that chapter does not make it into that final agreement of NAFTA, what other options would you like Canada to pursue with our other two trading partners?

• (1615)

Mr. Max Skudra: I think that the first thing and the minimum thing is the exceptions that Wayne and I were discussing. I think that expanding the scope of federal action, especially around procurements of aboriginal companies, beyond just set-asides to more proactive initiatives would be a mandatory minimum we would like to see. I think that it would be very important, as well as protect other key interests around intellectual property and traditional knowledge. The protection of traditional knowledge in particular would be another high priority from CCAB's perspective.

Mr. Peter Fonseca: Thank you.

Go ahead, Mr. Williams.

Mr. Wayne Garnons-Williams: It would be enabling legislation for international inter-tribal trade to basically make right past wrongs concerning the principles underlying the pre-existing economic right of inter-tribal trade.

Ms. Dawn Madahbee Leach: I work every day financing indigenous businesses and we do have businesses that are doing trade in the U.S. already. It is easy for them to do trade in the U.S., more so than for companies that come to Canada, so this enabling legislation would be most helpful. Also, recognizing intellectual property and that we need to have those kinds of things, as well as meaningful procurement.

Our procurement system that we have here is not measurable. There's nobody making sure that it's actually happening and that there's a report done to provide the public with the fact that this many indigenous businesses are actually doing that. There's no audit of it. I think we need to do that to show that there are actually indigenous businesses benefiting from what this government's contracting out.

Mr. Max Skudra: If I could just second that again. What you see in the private sector are points on scorecards. You're seeing really progressive work to drill down supply chains. If Bruce Power puts out a \$250-million nuclear refurbishment procurement, there's no

aboriginal company that can do it. They're very good about making sure that it gets down their supply chains to the level that aboriginal companies can begin to feed into the system. They measure it. They can produce reports on it. To Dawn's point, we would really like to see the federal government start to do more to give teeth to their procurement projects, initiatives, and policies, as well as to measure the outcomes of those policies. I think that there's some great stuff in place, but it's just not being measured.

Mr. Wayne Garnons-Williams: I support Max's concept. Intellectual property must not be confused with traditional knowledge. Right now, we have no legislation protecting traditional knowledge and it's being confused with intellectual property.

Here is a quick little synopsis of the difference.

Intellectual property, as you know, protects an individual or an entity for a specific period of time for a product that they've developed. The sweat equity and all the capital that went into that, they get a chance to make their money back, so it's a specific individual or organization for a specific period of time for a specific product.

In comparison, with respect to traditional knowledge, there is no specific person. It started from time immemorial and there is no end. It goes on for perpetuity and it's owned collectively by the nation. I use the example of the Cowichan sweater. There have been various attempts to copy the Cowichan sweater through various companies internationally. It's the capacity for the Cowichan people to protect their property right in that traditional knowledge because it's not just the sweater and it's not just the design, but it's the stories behind it. It's the lore and the legends that go with each of those patterns, so traditional knowledge means a lot to indigenous people.

Ms. Dawn Madahbee Leach: I just want to say one quick thing on this. I know it's going to be difficult to get this chapter into the NAFTA agreement, but at least I think there needs to be some kind of acknowledgement about UNDRIP. You might not have a full, complete chapter about indigenous people, but I think it's so important that we have something in there that acknowledges this. It's global acceptance and I think it's so important that Canada push forward with that, as a commitment that it's been making to indigenous people here.

• (1620)

The Chair: Thank you.

We're going to move over to the NDP now. Madam Ramsey, you have the floor for five minutes. Go ahead, please.

Ms. Tracey Ramsey (Essex, NDP): Thank you, Chair, and thank you to all of you.

That's actually an excellent segue into what I really did want to ask you. The work of my colleague, Romeo Saganash, and his private member's bill would ensure the laws of Canada actively respect the government's obligation to obtain free, prior, and informed consent and respect the human rights of indigenous people.

In your opinion, would adopting Mr. Saganash's bill help to further respect international obligations with respect to indigenous people?

Ms. Dawn Madahbee Leach: Absolutely. He's an individual who's worked so hard on this. He has a complete understanding of all of the issues internationally. I'm so happy that Canada has finally stepped up to endorse this. This has to be part of everything that we do in any kind of Canadian law going forward. I think it's so critical. It makes sense. When you read that declaration, everything in there is so important.

Having that type of support, or reference at least, in an international document like this is going to be really key going forward. That's the kind of role that Canada can play in the world today.

Ms. Tracey Ramsey: My question, as a follow-up, is to you, Mr. Garnons-Williams. How would the implementation of UNDRIP and its full adoption by Canada help to protect intellectual property rights and the traditional knowledge that you spoke of?

Mr. Wayne Garnons-Williams: The problem with UNDRIP is that it's only a declaration, and as you all know, declarations are non-binding. It's the goodwill of each of the signatories to follow the declaration or choose not to, and the way they implement it or choose not to implement it is discretionary.

There's an argument out there that UNDRIP may be in the field now because these are things that are taken for granted as being considered customary international law. If it's customary international law and determined to be so by an international court or a domestic court, then it's enforceable. If it's just declaratory, then it's discretionary.

To answer your question with respect to traditional knowledge, it's a matter of putting teeth in the bill. Make it real; don't make it discretionary.

Ms. Tracey Ramsey: Make it enforceable.

My colleague asked, what if we're unable to get a chapter? But, first of all, do you feel that indigenous people are at the table as an equal partner in this negotiation? Where do you see opportunities coming out of this chapter, and what would you like to see inside the chapter?

I'm always an optimist, so let's assume we have the chapter, and then there is also the question of whether you feel you're there as an equal partner.

Mr. Max Skudra: Why not? What we'd like to see within the chapter is more of what we've been talking about a bit already.

Some of the really key things that we would like to see are proactive tools around procurement and improving procurement in the public process.

First nations communities will often create economic development corporations that are first nations, Inuit, or Métis companies that represent their community. We need to make sure that those are protected from any SOE terms in NAFTA. We'd like to make sure that there is as great a freedom of movement of people and businesses for aboriginal companies as possible. Also we'd like to see, I guess, a recognition of the environment for aboriginal peoples in Canada today and an increased ability for inter-community trade.

Ms. Dawn Madahbee Leach: I don't think we're there as equal partners today, and I think that can be improved.

I can tell you that there are many capable indigenous people who could help write that chapter. We could put the specifics together. I can think of a group of people right now from across the country who would do a great job in putting together the chapter for you, with all the details that are needed. I've read all of the input that's been provided by indigenous people today and I know that there are some great solutions and ideas that we could put forward in working on that.

● (1625)

Mr. Wayne Garnons-Williams: From my perspective, I see inter-tribal trade as something that must be protected and enhanced. I see a system in which ideally a NAFTA chapter would have an inter-tribal trade option or a structure that allows, for example, for American Indians and Canadian first nations or Métis or Inuit to negotiate something amongst themselves that's protected and enshrined, so that there's full economic sovereignty of the tribes to negotiate their own trade apparatus by using the NAFTA aboriginal chapter as a mechanism to negotiate something that's a win-win for them.

Mr. Max Skudra: Just to get to your point in your first question, I think what you've seen with this round of NAFTA negotiations is a really impressive crack at engaging indigenous peoples. Having the national chief be so involved, and the civil service, as well as this, is great. It's a great starting point, with I hope some great results. We don't know yet. We'll see, but we're very optimistic. I am at least.

What is complicated is the specificity of the discussion. Wayne is a lawyer with a lot of experience in the civil service, so he's uniquely capable of commenting, but I think what we'd like to see is more—more opportunities and as well more resources around putting these conversations together.

To speak to Dawn's point, it's a very complicated technical subject to provide input on. There are many qualified people who could do it, but to create the formats, the venues, the vehicles for indigenous people to work together to provide that input is something we would really like to see.

The Chair: We're going way over, but the dialogue is so good, do you want to....

Mr. Wayne Garnons-Williams: There's a core matter of concern with respect to this. Granted, Global Affairs is doing a great job of doing consultations with stakeholder groups and with rights holder groups as best they can, but there's a problem with the rights holder groups and the federal obligation. That is when we go back to the principles of what consultation is all about, and we don't have to go farther than read the Supreme Court of Canada cases of *Delgamuukw* and *Tsilhqot'in* to understand what is consultation and what is not.

I know we have tight timelines, where there are 11 days between each round, but 11 days between each round does not in my opinion provide full, frank, fair, and meaningful consultation with rights holders. It's fraught with danger because what happens is that you negotiate something and think you've done your consultation, but there are problems all the way with rights holders saying, "Wait, we don't have enough time to review this. This is too complicated. We have to get people in to review this complicated trade stuff."

My concern here—and I know there's no control over the timeline—is that 11 days between rounds is not a lot of time for a full and meaningful consultation with the rights holders.

The Chair: I have a quick question, and maybe Wayne could answer it for me. We've recently been down to Washington, and we met the committee that's similar to ours, the ways and means committee, which is dealing with this. It's a little different, but doing the same thing. If I had known what I know now, I would have asked them how closely the first nations people in the United States are working with their trade committee and negotiators. Does even Mexico have its indigenous people working on this? We know we are, to a certain extent.

Often, as our committees travel and hear from witnesses, there are a lot of farmers from here dealing with farmers down in the United States who are working behind the scenes. I'm just wondering, and it might be a long question, whether you are working with first nations people in Mexico and the United States, so that they're giving inputs similar to yours.

Mr. Wayne Garnons-Williams: Yes. I received a note on September 14 of this year from the National Congress of American Indians, drafted by their executive director, Jacqueline Pata. She wanted to let me know that their organization, a national organization for American Indians, supports the inclusion of an indigenous chapter in a modernized North American free trade agreement. They're aware of it. They're supportive of the efforts by Canada to introduce it, and they're lobbying their government prospectively to get them on side.

I was lucky enough to attend the National Congress of American Indian Tribal Unity Impact Day in Washington a week ago, and one of the senior Indian Affairs representatives was speaking. He used to be an indigenous law professor, and he drilled down the Trump administration's perspective and policy on indigenous rights. The phrase that pays—i.e., words make worlds, especially when we're looking at this stuff—with respect to the American policy here is "tribal economic sovereignty". That is their position. From an argument standpoint, an indigenous chapter makes a good fit for that tribal economic sovereignty policy of the U.S. government, so I'm hopeful.

• (1630)

The Chair: Thank you. Our committee is going to Mexico, and I think we're going to be asking them the same questions when we go down there.

We have time for one more slot. Ms. Ludwig, if you want to take up the last five minutes, go ahead.

Ms. Karen Ludwig (New Brunswick Southwest, Lib.): Thank you, and thank you very much to the witnesses for your excellent

presentations. I'll be fast on my questions, so I'll give you lots of time for your responses.

As the chair has mentioned, we have travelled extensively. We've had many witnesses talking about Canada-U.S. relations. Certainly, the piece that perhaps is missing is the cultural piece with indigenous peoples.

Max, you talked about opportunities. I'm very heartened to hear that more indigenous businesses are working abroad than the average Canadian company. Maybe you could all respond to this. Where do you see the opportunities for growth, and where do you see the challenges?

Do you see a model agreement that we could emulate, or is this something that we're starting fresh and we will, in fact, be the model? Please just start with those.

Mr. Max Skudra: Absolutely. We are a fairly optimistic organization, because we represent a lot of businesses and they are pretty optimistic, overall.

It's a really interesting environment right now, because there are so many innovative frameworks for success that we've seen across Canada, for example, Membertou in the east and the Atlantic region. You see private companies like the Bouchier group of companies partnering with Carillion, a major multinational out of the U.K., which now owns 48% of the Bouchier group of companies. You see, as I said, TransAlta, which made a deal with a local first nation to have power lines go across their community, and then, instead of paying them a small amount of money every year in perpetuity, it bundled that money, took it to the bond market, and was able to come back with enough money for the community to buy into an equity position in the project.

I think there is no lack of imagination on the business side. It's not quite one-size-fits-all. There are similar problems, absolutely, but there are a number of solutions around partnerships, procurement, and financing.

A few of the highlights would be reducing some of the lingering restrictions imposed by the Indian Act on business on reserve; ensuring there is robust access to procurement policies, as well as support for small businesses to act to go through those processes, which can be quite complicated; and increasing support for financing, particularly through AFIs, aboriginal financial institutions. I think those would be some of the highlights.

Ms. Karen Ludwig: I would quickly add to that. My question for Dawn would be about looking at women. I've sat on a couple of different committees, and we've heard from so many witnesses about the economic security of women and the challenges to getting financing.

Is there a similar situation among first nations? How do we create a stronger people-to-people opportunity and integrated supply chains?

Ms. Dawn Madahbee Leach: It was referenced that aboriginal financial institutions work with indigenous businesses. I can tell you that we have a higher rate than any other financial institution in Canada in supporting women's businesses and women entrepreneurs. I think that's something we need more of, the support of that aboriginal financial institution network, to support indigenous women and their businesses.

Just to add to the comments here, I also have to say that, when I first came here, I was thinking that I could promote that we work primarily in the resource development industries, but we don't. Every day I finance indigenous businesses and they are in every sector. Last Thursday, our board met, and we were financing a company operating in Canada and the U.S. that builds parking meters for commercial parking lots for hospitals, government buildings, and all, and their business has grown four times in one year. They are doing a lot of export. They are doing amazing work.

We have companies, of course, in every sector. Fisheries is really important to look at in Canada. That's one of the areas where we can provide food security around the world, and we have the resources to do so. Indigenous people are the first ones involved in that kind of industry. There are all kinds of sectors we can be involved in, and I think more of that should be supported.

•(1635)

Ms. Karen Ludwig: Thank you.

Mr. Wayne Garnons-Williams: We have to look back to look forward. We can't forget about the past. Some people say the past is in the past, but quite frankly, it's not. Look at the reserves. Those were created 100 years ago, and they are still here. The reserves were designed to economically and politically isolate indigenous peoples. We are still suffering because of that.

What I am suggesting is a bold move, to do what the United States has tried to do, which is to create tribal trade zones in those reserves, regardless of where they are isolated, so that there is an economic opportunity for inter-tribal trade.

The Indian trade and commercial act, which unfortunately never got passed, was one of those ideas that were spearheaded to give a recognition of the fact that we have these reserves and these people are isolated. How can we help them? We have to turn this problem into an opportunity, and the opportunity there is to create an economic zone that helps to make right wrong and give them the economic advantage they have been so desperately deprived of.

Ms. Karen Ludwig: Thank you.

Mr. Max Skudra: Can I just make one more quick point on that?

Something we've been heartened with in the last few months that we've seen in the government is something that my boss would say, if he were here, "All roads can sometimes lead to INAC." No matter what the issue is, we always end up back on INAC's desk. I've been really heartened to see that spread out a little bit. A number of different ministries—Agriculture and Agri-Food Canada, Global Affairs Canada, ISED—have started to take up work, which we think is a very positive step.

Lastly, I quoted those figures about aboriginal companies trading more than the Canadian average and innovating more than the Canadian average. Aboriginal women business leaders actually

innovate and trade more than the aboriginal average or the Canadian average.

The Chair: That wraps up our time. We're running a little late, but we're sorry we started late. We had some comments on one of our colleagues in the House who passed away, so we were late.

We've had very good dialogue here this afternoon. If you have any more thoughts or information you want to add for our committee, we'd appreciate it.

As the chair, I'd appreciate it if, for your counterparts that you were talking about in the United States or Mexico, we could find out who they are. Maybe we can get some information. If there's going to be a good deal for North America, it's everybody working together. The more we know where everybody's at would be good. I'd appreciate our committee receiving that so we can ask questions to them when we're travelling abroad.

Thank you again for coming. This report should wind up around the end of November, and we should be done December 1 with the report. We'll get you copies to show you what's in it. Thank you again.

We're just going to stop for a minute here to change to our next panel. I don't want MPs taking off too far, as we're only stopping for a minute.

•(1635)

_____ (Pause) _____

•(1640)

The Chair: Let's get going, folks.

We're going to get started here, but before we get started, Mr. Allison has some comments.

Mr. Dean Allison (Niagara West, CPC): Yes. Thanks, Mr. Eyking.

I just want to state for the committee that I realize we're new here, and I also know that negotiations are ongoing right now. I would like a chance for the committee to talk about where we're at with the negotiations. We could possibly bring one of the ministers in—I know Ms. Freeland is busy, but even if it's Mr. Champagne—to give us an update, especially after the next round that's going to be here.

I want to have that discussion. Now is not the time because we have witnesses, but we need to find some time on the agenda over the next couple of weeks, and I realize you'll be travelling next week. We need to figure out if we can get some updates here, find out what's going on, whether we need to go in camera, or any of these other kinds of things to get a handle on what's going on with this negotiation.

The Chair: That's a good suggestion. On Wednesday, I'm going to leave 15 minutes or so at the end for new business. We can do that, and then maybe we'll make sure the parliamentary secretaries can give a report. It's a good idea. We'll do it Wednesday.

Mr. Dean Allison: Okay. Thank you.

The Chair: Without further ado, we're going to continue on with our study. I welcome the guests here today. Our study, of course, as you know, is on the future trade agreements we're going to have in North America with our counterparts.

Ms. Tracey Ramsey: Is it? Is that our study?

The Chair: Do you want me to be more specific?

It's a study of the "Priorities of Canadian Stakeholders Having an Interest in Bilateral and Trilateral Trade in North America, Between Canada, United States and Mexico". Maybe we could shorten it up.

• (1645)

Ms. Tracey Ramsey: Good idea.

The Chair: Anyway, that's where we're at, folks.

Welcome, guests. Many of you have been here before, so it's good to see you again. You know how we operate. We try to keep the presentations under five minutes so we can have lots of dialogue with the MPs.

Without further ado, we're going to go with the Dairy Farmers of Canada.

Congratulations, sir, you're the new president. You represent a lot of cows. Go ahead.

Mr. Pierre Lampron (President, Dairy Farmers of Canada): Thank you. I'm doing my presentation in French.

[*Translation*]

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): That's good.

Mr. Pierre Lampron: On behalf of Dairy Farmers of Canada, thank you for the invitation to appear before the Standing Committee on International Trade as part of its study on the North American Free Trade Agreement (NAFTA). I invite all members to read the brief we have submitted to the committee, since it contains a lot more information than my short presentation.

I would like to point out that Canada's dairy sector contributes significantly to Canada's economy. In fact, every year, our contribution is \$19.9 billion to the GDP, and \$3.8 billion in tax revenues. In addition, the dairy sector sustains 221,000 jobs.

It is important to remember that Canadian dairy farmers derive their returns from the market, without any direct government subsidies. The situation is completely different in the United States. Although we focus our efforts on serving the domestic market, international trade talks are very important for us when it comes to maintaining our supply management system. The system is described in our brief.

The Canadian dairy sector was excluded by the Canadian government from the original NAFTA. As such, Dairy Farmers of Canada urges the Canadian government to continue to exclude the Canadian dairy industry from NAFTA negotiations. Let me stress that Dairy Farmers of Canada is not opposed to Canada entering into trade negotiations with other countries, provided that there is no negative impact on the Canadian dairy industry.

Opening the Canadian dairy market to the U.S. would be costly for the Canadian economy in terms of GDP losses, reduced contribution to the GDP, job losses, especially in the regions, and

lower returns to producers. In addition, it would bring no benefits to Canada.

As the current Government of Canada has pointed out on many occasions, in terms of dairy trade between Canada and the U.S., the U.S. enjoys quite a favourable dairy trade balance. In 2016, the trade surplus for the U.S. was more than \$400 million Canadian. In addition, almost 10% of Canadian demand is met through imported dairy products, much of which is being dumped on the Canadian market from the U.S. In comparison, in the U.S., only 3% to 4% of domestic demand is filled by imports from all countries. It is therefore wrong to say that the Canadian market is closed.

Not only does Canada honour its international trade commitments, but it also allows heavily subsidized American products to enter the Canadian market and compete with our domestic production. The amount of support provided to U.S. agriculture through direct and indirect government subsidies clearly precludes a level playing field, and is not likely to change any time soon. It is therefore critical to address this question as part of the NAFTA renegotiations in order to ensure a level playing field between Canada and the U.S.

In addition, it is worth noting that the U.S. limits its imports of foreign dairy products through tariff rate quotas, making their dairy industry just as protective as Canada's industry, if not more so. For information purposes, the U.S. has a total of 24 tariff rate quotas for dairy, compared to 12 for Canada. Furthermore, it is important to remember that, in some cases, the U.S. has even more stringent protectionist policies than Canada; they are in place for so-called sensitive U.S. industries, including dairy and sugar.

The last point I want to discuss is compliance with the rules. Some have suggested that Canada has not played by the rules by adopting policies that allegedly impede trade. Dairy Farmers of Canada strives to ensure that the Canadian dairy industry is dynamic and responsive. The dairy industry continuously responds to changes to the domestic market environment. Any new policy is created in order to respond to those changes.

The agreement in principle between producers and processors for a national ingredient strategy, including the class 7, isn't any different.

• (1650)

The introduction of class 7 fosters innovation, which will result in the growth of the Canadian dairy industry.

The purpose of the strategy is to upgrade our capacity, provide an array of products for use in foods and non-food applications, simplify supply chain management, and increase flexibility in order to meet market demand in a more timely and efficient manner, all while adding value to domestically produced protein in the Canadian market.

Once again, the Canadian system is concerned about meeting the needs of the domestic market, and is not export-focused like the U.S. industry. It is important to remember that, on several occasions, the U.S. has circumvented trade regulations in its trade with Canada. For example, the U.S. developed a product rarely used domestically, diafiltered milk, specifically in an attempt to take advantage of loopholes in existing trade agreements and undercut the Canadian dairy market. Canadian dairy producers have lost approximately \$230 million annually since 2015 as a result of the importation of diafiltered milk directly displacing Canadian domestic production.

Additional examples are provided in the document that we have submitted to the committee.

The Canadian dairy industry has respected and will continue to respect existing international trade agreements. The same cannot be said for the U.S. dairy industry.

Let me conclude by stressing that other representatives from Dairy Farmers of Canada and I are present at every round of negotiations. In our view, so far, the Government of Canada has been successful in handling the negotiations effectively and keeping stakeholders informed, but we will stay alert.

Thank you for your attention.

[English]

The Chair: Thank you. We're going to move on now to Food and Beverage Ontario with Norm Beal.

Mr. Norm Beal (Chief Executive Officer, Food and Beverage Ontario): Thank you, Mr. Chair.

Good afternoon, committee members. Thank you for inviting us to speak to the NAFTA priorities of Food and Beverage Ontario.

Food and Beverage Ontario represents a critical sector in the national economy. The Ontario food and beverage processing sector is one of the largest in North America, representing more than 3,800 provincial food processing businesses, which generated \$42 billion in revenue and exported \$9.6 billion in food goods last year. I refer you to our written submission for more details on this sector and the magnitude of our economic impact.

Our members are concerned about these negotiations because there is so much at stake for them. Over three-quarters of Ontario's agri-food exports are sold to the United States. Much of the reason for this trade dependency is location. As part of the vital Great Lakes regional trading hub, our companies are within a one-day shipping radius of some 142 million consumers. That is a market pull that simply cannot be ignored.

Further, the interests of our members are somewhat unique. The products that food processors deal in tend to be seasonal, cyclical, or perishable, or all three. In this respect, food goods are distinct from widgets, and just-in-time delivery has greater import when considering food goods with a finite shelf life. It is not only contract fulfillment that is at stake if timely delivery is not accomplished, but often the very value of the shipment itself.

Supply chain integration has been one of the key and enduring successes of NAFTA. The high level of integrated business operations established under NAFTA underlines the strong compe-

titive position of Ontario's food and beverage sector. The food distribution chains that stretch across the continent are the reason that industry can meet consumer demand for a consistent supply of fresh, healthy, affordable food goods.

Let me re-emphasize the point. These goods tend to be seasonal, cyclical, or perishable, or all three; thus trade—particularly the unfettered movement of goods, services, and people between Canada and the United States—is critical to the ongoing success and competitiveness of the sector. Such border infrastructure as the Ambassador, Blue Water, Peace, and Lewiston-Queenston Bridges are the sector's lifelines.

I'm pleased to tell you that FBO is not alone in viewing NAFTA as critical and that this view is not distinctly Canadian. I had the privilege to participate with Ontario agriculture minister Jeff Leal in an ambitious U.S. advocacy tour that took us to Wisconsin, Michigan, Ohio, Pennsylvania, New York state, Illinois, and Missouri earlier this spring. We met with U.S. state government and business representatives, and I was struck by the commonality and the interests we share when it comes to NAFTA renegotiation.

The common thread in our discussions was that reopening NAFTA should do no harm. The NAFTA has largely benefited the food and beverage processing sector on both sides of the border. Any new provisions in the NAFTA 2.0 that undermine the current level of market access and supply chain integration would be detrimental to our industry and ultimately to consumers across North America.

Sure, there's room and opportunity for improvement. In modernizing NAFTA, it is hoped that there will be further streamlining of border crossings and further reductions in administrative burdens to allow for timely, efficient border processes.

In other words, this is an opportunity to reduce the cost and the burdens of doing cross-border business, an opportunity to thin the border, if you will. NAFTA 2.0 should be about simplifying customs procedures by reducing document and certification requirements, expanding the use of electronic filing, ensuring timely border inspections and release of goods, and allowing for expedited customs treatment of low-risk shipments.

Regulatory disconnects still occur around food safety and non-food safety issues. These need to be minimized. To accomplish this work, the work of the U.S.-Canada regulatory co-operation council should be expanded and made permanent.

In addition, NAFTA modernization may be an occasion to take regulatory co-operation a step further and entertain the establishment of a joint Canada-U.S. authority to oversee food safety risk assessments, with a joint bilateral office that would ensure stronger linkages between existing Canadian and U.S. authorities to allow for regulatory alignment on the following: science-based food safety risk assessments, using common data for hazard identification and characterization, exposure assessment, and risk characterization; best practices in food safety risk management along the farm-to-fork continuum; and collecting, analyzing, and communicating food safety knowledge for the benefit of consumers, government agencies, food producers, exporters, and importers.

• (1655)

NAFTA 2.0 represents an opportunity to enhance public protections, cross-border business competitiveness, and efficiencies in regulatory program delivery. In addition to the above, it is important that these negotiations reach a timely conclusion and that governments offer sufficient transparency in the negotiating process to keep stakeholder groups well informed regarding the process. The uncertainty and unpredictability regarding the breadth and length of NAFTA negotiations has already cast a chill on future business investment.

Finally, once a revised version of NAFTA is reached, governments must ensure a seamless transition to any changes in the agreement. Businesses will require sufficient lead time to understand, adapt, and modify, as necessary, established processes in supply chain relationships to achieve and ensure compliance.

Thank you again for the opportunity to present to this committee, and I welcome any questions you may have.

The Chair: Thank you, Mr. Beal.

You, of course, represent Ontario, but I think you have a national group, too, that speaks very similarly.

Mr. Norm Beal: Absolutely. I'm the vice-chair of an organization called Food and Beverage Canada. We also have a memorandum of understanding with my Quebec counterpart, so I'm speaking for all of the—

The Chair: That's why I thought I'd let the committee know that what you're saying is not just for Ontario; it's for the country, from your industry's perspective.

Mr. Norm Beal: Absolutely.

Remember that Ontario and Quebec alone represent 65% of the food processing industry.

The Chair: Thank you, sir.

We're going to move on to Mr. Geist. He's no stranger to our committee. It's good to see you back.

Go ahead, sir, you have the floor.

Dr. Michael Geist (Canada Research Chair in Internet and E-commerce Law, Faculty of Law, University of Ottawa, As an Individual): Great. It's good to be back.

Good afternoon. From speaking for the country to speaking for myself, I'm a law professor at the University of Ottawa, where I hold the Canada research chair on Internet and e-commerce law. As

always, I appear in a personal capacity representing only my own views.

There's much to say about NAFTA, and I've written a lot of articles and posts on the agreement, but I have limited time, so I thought I'd focus really on two issues: primarily the intellectual property chapter, and then, with a couple of comments, the e-commerce chapter.

While Canada is accustomed to playing defence when it comes to U.S. intellectual property demands in trade talks, this round of renegotiation offers the chance to proactively ensure that Canadian IP priorities and policies are reflected in the agreement.

To put the IP issue in context, over the past five years Canada has implemented anti-circumvention laws—the digital lock rules—similar to those found in the United States, has added stronger enforcement measures, has enacted anti-counterfeiting legislation, has extended the term of protection for sound recordings, and has engaged in patent and trademark reforms. It should be recognized that Canada already meets its international IP obligations and has largely addressed previous U.S. demands regarding further reforms.

At a broad level, the Canadian negotiating goal should be to retain an appropriate IP balance that fosters creativity and access while ensuring that there is room for Canadian-specific policies that sit within the flexibilities of the international IP framework.

What might that look like? I'd like to raise five points.

First, Canada should insist on the inclusion of language on maintaining balance across all IP rights: legitimate interests of users, promoting access to and preserving the public domain, ensuring that IP rights do not create barriers to legitimate trade, and facilitating access to affordable medicines. Similar language was raised during the negotiations of the trans-Pacific partnership—the TPP—and belongs in NAFTA.

Secondly, the availability of the fair use provision in the United States represents a significant competitive advantage for U.S. businesses and creators. To ensure a level playing field for innovation and creativity, the NAFTA IP chapter should require that all parties feature a fair use, or fair use equivalent, provision.

Third, Canadian copyright laws' anti-circumvention provisions are among the most restrictive in the world and badly undermine the copyright balance in the digital world, which may create unnecessary restrictions for innovation. While the Canadian exceptions were narrowly constructed and limited to just a handful of circumstances, the United States has actually been expanding its digital lock exceptions. That imbalance creates another uneven playing field for innovation and should be remedied within NAFTA.

Fourth, the Canadian IP chapter should also address the abuse of intellectual property rights that may inhibit companies from innovating or may discourage Canadians from taking advantage of the digital market. The advantage of anti-IP-abuse provisions could be used to touch on patents, trademarks, and copyright, and I would be happy to spell out why.

Fifth, one of the chief concerns from past trade negotiations is the expectation that the United States will require other countries to mirror its IP laws, even if those laws extend beyond international law requirements. The Canadian approach should be to require NAFTA parties to meet international law but retain the full flexibility that is found within those laws.

I'll give you an example. The term of copyright in Canada is presently the life of the author plus an additional 50 years, a term that is compliant with the international standards set by the Berne convention. The United States is expected to pressure us to increase that term from life plus 50 to life plus 70, or by 20 more years.

I recently conducted research on the role of copyright term in the public domain in Canadian schools, using data obtained by the Ontario Book Publishers Organization. According to data submitted by hundreds of schoolteachers and school districts in Ontario, half of the most popular books taught in grades 6 through 12 are in the public domain or about to enter into it. If we extend the term of copyright, as the U.S. seeks, dozens of books used by thousands of students today that are scheduled to enter into the public domain would be shut out for decades. The prospect of using those books in new and innovative ways without the need for further licensing or royalties, as well as increasing access in open electronic form—and we're seeing a lot of that open education emphasis—would be lost for a generation. These are crucial IP issues that I don't think should be overlooked.

I know my time is limited, so I'll just quickly reference the e-commerce chapter, but I'd be happy to address more in questions.

I note that Canada should be wary of including provisions in the e-commerce chapter that undermine legitimate public policy interests, particularly privacy and security.

• (1700)

The United States has identified restrictions against local data storage mandates—it's often called data localization—as one of its objectives. I believe the Canadian government should resist efforts within NAFTA to limit the ability for both federal or provincial governments to establish legitimate privacy and security safeguards through data localization requirements. We already have a couple of provinces in Canada that do just that.

Finally, limitations on data transfer restrictions, which mandate the free flow of information on networks across borders, can raise similar concerns. While the U.S. is seeking a ban on data transfer restrictions, Canada should ensure that privacy and security laws will not be superseded by NAFTA restrictions. In fact, I would argue that throughout the e-commerce chapter Canada should be seeking higher-level privacy protections and e-commerce regulations similar to those found within our own country.

I welcome your questions.

The Chair: Thank you, sir.

We're going to start a dialogue with the MPs. It looks like we have time for a one full round here. We're going to start off with the Conservatives.

Mr. Allison, you have the floor.

• (1705)

Mr. Dean Allison: Thank you very much, Mr. Chair.

Thank you also to our witnesses.

Since I only have five minutes and there's hardly enough time to get started on anything, I can't ask “go to all” questions, but I'm going to go to Mr. Beal.

What keeps you awake at night when we look at the negotiation in terms of what the U.S. has stated in their document to say, “This is our negotiation and where our starting point is”? What are some of your concerns as it relates to your industry in terms of what they're at looking trying to do?

Mr. Norm Beal: It seems to change almost every day, but certainly chapter 19, the dispute resolution clause, is of critical importance to the long-term validity of NAFTA. That is a major concern of all food processors across the country. The key here—and I mentioned this in my submission—is that I spent a month on the road with Minister Leal, and we went down with 13 secretaries of agriculture from 13 different states. We met with many business leaders. The supply chain integration in our industry is extremely important. As a matter of fact, as the Canadian dairy council has alluded to, most of those states run in surpluses to Ontario, Quebec, Alberta, and Manitoba. Those states are running surpluses, so they're actually a higher risk if we start thickening that border and impacting the integrated supply chain. Minister Leal used to talk about his wife's Dodge Caravan and how it was assembled in Windsor, but it crossed the border eight times by the time it was assembled. That is exactly true of the food and beverage processing industry as well.

We visited Blommer Chocolate, which is one of the largest raw chocolate processors in North America, and as we were pulling into the parking lot of the plant, there were seven transport trucks with Ontario plates on them. They were taking product up to the Campbellford plant to be further processed, and then it would be shipped back down to the United States for further processing, whether it was going into chocolate milk or into a chocolate bar, that sort of thing. That integration is quick and important. Anything that creates a slowing down or thickening of that border will have a massive impact on the competitiveness of our industry. There's that, and then, of course, the dispute resolution is critical as well.

Like I say, tomorrow I'll wake up, and there will be something else that was tweeted out that we'll be concerned about.

Mr. Dean Allison: Thank you. That's two and a half minutes, and I know my colleague wants to answer questions, so I'm going to go to Mr. Dreeshen for at least one.

The Chair: Go ahead, Mr. Dreeshen.

Mr. Earl Dreeshen (Red Deer—Mountain View, CPC): Thank you very much. It's certainly an honour to be here and to be able to speak with you folks.

It will be no surprise that perhaps I want to talk about the Canadian dairy sector. I was on the agriculture committee for a number of years. When I was on the industry committee, we went down to the U.S. and talked to various New York senators about dairy and the issues that are taking place there. Of course, one of the things that they mentioned was a simple technical thing: simply going from milking two times a day to three times a day, increasing the volume by 15%. Then they wondered why the price was going to go down because of the extra milk in the system, and of course, after that, having the ability to take the milk solids, split them, and then move them into Canada. They perhaps wondered why it was that we got a little testy in that particular area.

I'm wondering if you can expand upon that because—and you mentioned it somewhat in your discussions, Mr. Lampron—there are so many U.S. subsidies out there as well. When we talk about what is taking place, that seldom comes up on the table. Could you expand a little bit on some of the issues that you see as far as the dairy industry is concerned and the issues that keep getting thrown at us in the discussions?

Could you then talk about what the U.S. subsidies are, specifically in the dairy industry, but obviously with your other sources you would no doubt know what some of the subsidies are for other commodities?

[*Translation*]

Mr. Pierre Lampron: Subsidies for agricultural production are part of food sovereignty. Every nation, every country, protects their agriculture. In the case of supply management products, such as milk, Canada has decided to implement a system that protects its borders and that provides producers with guaranteed income directly from the market.

The U.S. has another system. They are in a free market and follow the world price. However, they have the Farm Bill that supports producers, who would otherwise not be able to survive. We in Canada have the supply management system, and the Americans have another system. We need to have the same system to be able to trade with them. That's the foundation of our supply management system. That is why we are constantly protecting it and need borders.

I mentioned diafiltered milk. It is certainly complicated, but the filtration process did not exist when the first agreements were reached. The U.S. developed it so that it could cross the borders and replace the proteins produced by Canadian dairy farmers.

Ms. Bouchard, would you like to add anything?

• (1710)

[*English*]

Ms. Isabelle Bouchard (Director, Communications and Government Relations, Dairy Farmers of Canada): We are

working very closely right now with the Canadian negotiating team. As you probably know, we have a study that we are updating on all the American subsidies for the dairy industry. For example, we're not calculating this because we cannot put numbers on that, but you have seen reports that most of the dairy workers in dairy farms in the U.S. are illegal immigrants. That cannot be quantified. What we know from the dairy farmers themselves and the American dairy farmers' association is that, if those workers were to be legal and therefore declared their income, the price of milk in the U.S. would go up by more than 50%. Those are examples.

Like I said, we are working very closely with the negotiators, so that the negotiators can use that study, at some point. Therefore, we are waiting to make it public, so that Canada can use it before we do that.

The Chair: Thank you very much. That's a good question.

We're going to move over to the Liberals.

Ms. Lapointe, you have the floor.

[*Translation*]

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

I would like to acknowledge and welcome my colleagues who are new to this committee.

My thanks to the witnesses for being here.

I am the only francophone on the committee and I'm pleased to see that a witness really wants to speak French.

You mentioned the workforce and said that there is a big difference in the U.S. and that there are a lot of illegal workers there.

What is the difference between Canada and the U.S. in terms of dairy production? You mentioned the workforce, but there's also the issue with growth hormones. What is their impact on trade?

What are your views on that? I have other questions for you afterwards.

Mr. Pierre Lampron: You are thinking of somatotropin, a hormone banned in Canada. For price comparison, we also have to look at milk without somatotropin. Canadian milk does not have the hormone, unlike American milk.

We must also keep the climate in mind. Canada is a northern country. In addition, U.S. farms are significantly larger, and in some states, we are talking about industries. Canadian farms are family farms with an average of 78 cows per farm.

Ms. Linda Lapointe: You briefly talked about the workforce. You said that you continue to conduct studies on the market. Are you able to estimate the number of workers not accounted for? I guess not.

Ms. Isabelle Bouchard: We would need much more exact figures than we are able to get.

Ms. Linda Lapointe: Okay.

Ms. Isabelle Bouchard: It is hard to count who is illegal. They are not counted because they are illegal.

Ms. Linda Lapointe: You always talk about the American and Canadian markets, but never about Mexico. Can we assume that things in this area are going well in Mexico?

Ms. Isabelle Bouchard: Yes.

I would simply like to add the following about Mexico. Over the past three weeks, we have heard in the media that Mexican dairy farmers have shown their support for U.S. farmers, but that's because they are under a lot of pressure. The U.S. market has a presence in the Mexican market, and those two countries do a lot of business together. In terms of Mexico alone, there is no pressure on its producers to enter the Canadian market.

Ms. Linda Lapointe: Thank you.

I would like to ask a question about e-commerce.

Last week, the Parliamentary Secretary to the Minister of International Trade, Pam Goldsmith-Jones, kindly met with businesses in my riding to talk about free trade. Two groups expressed their concerns about e-commerce. You did not really talk about it earlier, except to say that we must ensure that we have the highest standards of security.

If you had to prepare a new chapter, which did not exist 24 years ago, what would you like to add in it on this issue?

[English]

Dr. Michael Geist: I should start by noting that while it will be new to NAFTA, it's unlikely to be new to Canada and the United States. I think the expectation is that the blueprint being used is the e-commerce chapter that was included in the trans-Pacific partnership, the TPP.

We have a pretty good sense of the kinds of issues that are out there. In fact, U.S. officials have highlighted the e-commerce chapter as one of their priorities. They foresee updating NAFTA to include some of these digital issues. To the extent to which they're representing, let's say, large Silicon Valley companies that have set up very large, cloud-based servers, they want to ensure that data flows freely to the United States and can be actively stored in the United States.

One thing we have seen take place over the last number of years, especially as people become more aware of some of the privacy implications and surveillance activities that take place around the world, is that more and more Canadians, more and more Europeans in Europe, and people in other jurisdictions are anxious to ensure that their data resides locally within the country and that it is subject to their own local or national laws.

In fact, both British Columbia and Nova Scotia have set up, for certain kinds of information, laws that require that information to be stored within the province. Also, the EU, as you may know, has become increasingly aggressive about limiting disclosure across borders outside the EU unless the country it goes to has strong privacy protections.

The danger we face is really two-fold, one aspect being the prospect that this chapter might limit our ability to say that we want to ensure at least in certain circumstances that Canadians' information is subject to Canadian privacy law and may be required to be retained locally in some circumstances. Also, we run the risk

that if there is a data transfer provision that says you can't put up any restrictions on transferring between borders, we could on the one hand have NAFTA say "no restrictions" and the EU on the other hand say that if you want to continue to transfer data between Canada and the EU member states you must have some restrictions, because you can't allow that same data to, let's say, leak down to the United States.

That puts us between the proverbial rock and a hard place, whereby we have one major trading bloc saying no restrictions and another saying that you have to have some restrictions in order to trade.

• (1715)

[Translation]

Ms. Linda Lapointe: You are talking about the U.S. and Canada, but do you have any concerns about Mexico?

[English]

Dr. Michael Geist: On these kinds of issues, on IP and e-commerce, Mexico hasn't been particularly aggressive when it comes to their own interests. They've tended to prioritize some other issues. It has tended to be the United States that prioritizes both the intellectual property chapter and the e-commerce chapter.

From a Canadian perspective, I'd argue that over the last decade we've really crafted some of our own, in a sense, "made in Canada" solutions in the case both of intellectual property and of e-commerce within that international framework that I've talked about.

I think it's important to ensure that those kinds of Canadian policies and priorities, which we've worked quite hard to ensure reflect Canadian values, also be reflected within NAFTA.

[Translation]

Ms. Linda Lapointe: Thank you very much.

[English]

The Chair: Thank you.

Before I go to the NDP, I have a question for you, Mr. Geist.

You mentioned the e-commerce "chapter". We have talked about TPP, and now we're dealing with the NAFTA, but was there a chapter with the European Union—there must have been—and was it fairly robust or was it fairly modern? Also, can't we use some of that language in this agreement with NAFTA?

Dr. Michael Geist: No. There's no equivalent e-commerce chapter in the CETA, the Canada-EU trade agreement. Given that the TPP, at least for the moment, is either sidelined completely or likely to be renegotiated through TPP 11, NAFTA would represent really the first time that Canada had agreed to some of those provisions.

I think it's worth noting that from a U.S. perspective, the TPP e-commerce chapter really reflected what they wanted to see happen. They are anxious to see it implemented in some agreement, and in a sense we're at the very front of the line, given where NAFTA stands amongst their trade talks.

The Chair: Thank you for that clarification.

We're going to move over to the NDP now.

Ms. Ramsey, you have the floor for five minutes. Go ahead.

Ms. Tracey Ramsey: This is tough. There are certainly good questions for all of you. I'll go to the dairy farmers first.

We hear you clearly that you must be kept out of NAFTA. I can assure you that from the NDP side of the House, we'll be defending that and your interests going forward.

We also see what just happened in CETA, wherein there was compensation promised. After one week, that is completely closed to farmers, so any opportunity they would have had for those funds to offset CETA is gone. I do not want to see the same thing happen in NAFTA, that we give up a portion, promise something, and then are unable to follow through and farmers again are hurt.

I represent a rural riding, so I have a passion. I have dairy farmers in my riding and I've heard clearly from them how concerned they are about NAFTA. I want to ask you to share with us what you expect in this next round, which is starting on Saturday here in Canada.

[*Translation*]

Mr. Pierre Lampron: The position is always the same. The government wants to see no impact on the Dairy Farmers of Canada. That is what we expect. Of course, there is a lot of pressure from the Americans. President Trump says all sorts of things, but nothing that the Americans really want from the Canadian markets has been put on the table yet. Canada's position, which is defensive, is not to provide access to the markets. Although some states want to access the Canadian markets, most of them feel positive about the trade.

Ms. Bouchard, would you like to comment?

• (1720)

[*English*]

Ms. Isabelle Bouchard: Yes, I would.

When CETA was announced, if you remember, the government at the time said to prove to them that we are losing something and they might consider compensation.

During the TPP negotiation it became clear to the Canadian government that dairy farmers were actually having negative impacts from trade deals, so when the compensation package for TPP was announced, there was a portion for CETA. We were very pleased by that recognition.

Then the compensation for CETA was announced and now it is being put in place, I may say. The first phase actually took place and closed very fast, because obviously the farmers are very interested, but that was the first phase. There will be other opportunities, because the \$250 million has been divided. There will thus be other opportunities.

The government acknowledged that the first phase was not a real success, so we're working with them right now—with Agriculture Canada and Mr. MacAulay's office—to correct the imperfections for the second phase so that farmers don't go through the same thing.

We think now that the Canadian government realizes that whenever they give access, there are impacts upon the farmers. For Dairy Farmers of Canada, the important thing for government is to ensure that there be no negative impact upon dairy farmers.

Ms. Tracey Ramsey: Thank you.

Mr. Geist, there are so many things I could go through. I wonder whether you can touch on “notice and notice” versus “notice and take down” and their impact. There was a reference to this in the 18-page document that we saw from the U.S. about their priorities, but it wasn't mentioned from the Canadian government among our priorities.

Can you talk about that and about how exactly we can protect our digital copyright regulations?

Dr. Michael Geist: Sure. What you're referring to is the system that was established in 2012, which actually had been in place in Canada for quite a number of years on an informal basis, that when there is an allegation of infringement, rights holders have the ability to send a notification to an Internet provider, who is then obligated to forward that notification to their subscriber. They don't disclose their personal information, so their privacy is protected.

At least in concept it was seen as an excellent way both to educate the public on copyright and when infringements take place and to preserve their privacy, as well as to encourage new business models to emerge.

The U.S. has adopted a different approach known as “notice and take down”. The problem with it is that it creates a system whereby millions of pieces of works may be taken down with no judicial oversight whatsoever. It's sometimes described as a “shoot first and aim later” approach whereby there are many allegations of infringement, content comes down, and nobody does any sort of oversight at all. The incentive is simply to remove it without any of that oversight.

The U.S. has pressured us in the past to adopt this. As part of the TPP, the Canadian government was anxious to ensure that notice and notice was preserved. We haven't seen the government make the same point of emphasis yet, although we're hopeful that they will continue with the notice and notice approach.

I should note, however, that notice and notice itself has been subject to some real problems, as it has been subject to widespread abuse. You may have heard from some of your own constituents who received these notifications, because rights holders have been using them to send along demands to settle. That was never envisioned as part of the system.

In fact, I did a piece just last week that noted that Minister of Innovation, Science and Economic Development Navdeep Bains was notified in a memo as much as a year ago that this was not the intent and that this widespread abuse is taking place.

There is an easy fix for it. I would argue that the sooner we can get this fixed in Canada through regulations so that there is not that kind of misuse, the sooner we're in a position not only to preserve a good system but to make the case to the United States that, if anything, they ought to think about adopting notice and notice as a more effective and balanced approach to dealing with allegations of infringement.

Ms. Tracey Ramsey: I have had constituents caught in that fraud and paid money to bodies that were demanding it from them. They couldn't legally force them to pay it, but people get that notice. They get afraid. A lot of the time it's seniors, and maybe their kids or grandkids have been on their laptop or on their iPad. All of a sudden they're being sent this, so they just go and pay it. It is a real concern for people who are having fraud committed on them.

• (1725)

Dr. Michael Geist: That is precisely what happens, and it's a bit difficult to understand, given that we've had this in place for two years and it can be easily remedied through regulation, why nothing has happened to date.

The Chair: Thank you, sir.

We're going to go to the last slot. The last MP is Mr. Peterson. You have the floor for five minutes, go ahead.

Mr. Kyle Peterson (Newmarket—Aurora, Lib.): Thank you, Mr. Chair.

Thank you, everyone, for being with us this afternoon on our first day back in this session. Just before I start, I want to welcome our new members across the table here and pay a quick tribute to Mr. Ritz, who not only left the committee but actually left the House. We wish him well in his future endeavours. He was always a vociferous advocate of the positions he held, but we appreciated his contribution to the committee. I speak for myself, and perhaps everyone on the committee, when I say that it was a pleasure to work with him for the almost two years that we worked with him. I expect from our three new members just the same vigour that Mr. Ritz provided.

Back to the substance at hand here, I want to follow up with Professor Geist on the notice period. I know there's a merit to both systems. Each country has its own interests that it wants to protect. In an ideal world, how would you see a system working that would protect these interests but also allow for some fair use without being subject to fraud, and actually be a viable system in place that would reach all of the goals that it ought to reach?

Dr. Michael Geist: I've been banging the table to get someone to let me write the Copyright Act for a long time.

Mr. Kyle Peterson: Here's your chance; this will be draft one.

Dr. Michael Geist: Right, so thank you for that.

On the issue of enforcement—ensuring that rights holders have effective tools to ensure their rights are respected—I actually think the government in 2012 did a good job of that. We have, for example, an enabler provision that allows rights holders to go after sites that enable and foster infringement. It's not widely found elsewhere.

Frankly, notice that's implemented appropriately represents the best of breed. A number of other countries have taken a look at it. One place where we fall short is on the issue of fair use. If you take a look at a lot of the innovation you see taking place, many of those U.S.-based companies and many of the U.S. creators rely on fair use. In Canada, we have a fair dealing provision, which has admittedly been interpreted in a broad manner but is not as flexible as that fair use provision.

To the extent to which part of what we're trying to achieve in NAFTA is a level playing field, so that Canadian businesses and creators can innovate in the same fashion as their counterparts in the United States, ensuring that we have that fair use approach is clearly one way to try to do that. In fact, it's worth noting that some of the most innovative economies around the world—I'm thinking of countries like South Korea, Singapore, and Israel—have in recent years adopted fair use, precisely because they see those kinds of advantages. We run the risk of falling behind if we don't have it, and NAFTA is an ideal mechanism to try to ensure that it gets implemented.

Mr. Kyle Peterson: Thank you for that elaboration.

I was going follow up on something else, as well. I think we talk about the phrase “legitimate interest of users” when we talk about that balance. How would we determine that legitimate interest? Ought that to be part of a trade deal? Are there other ways to do that? Is it through regulations? What do you think is the best approach to that?

Dr. Michael Geist: We often talk about user rights, which is, I think, the reference you're making, and the Supreme Court of Canada has often talked about creator rights on the one hand and user rights on the other. We've done a pretty good job through the courts and then through the legislation itself in terms of trying to articulate that kind of balance. You read about court cases that sometimes go in one direction and sometimes in another.

We have a sense of how you try to strike that balance a little through the courts. I'm not sure that's the sort of thing you'd want to see in NAFTA, except to the extent to which you want to make it clear that striking a balance is a core part of what it means to have an intellectual property chapter. It's why there was discussion of having that included within the trans-Pacific partnership. It's the sort of thing we need within NAFTA to ensure that all countries, including Mexico of course, recognize that part of creating a modern, flexible, innovative IP system is respecting both creator rights and user rights. In other words, it's trying to ensure there's an appropriate balance.

Mr. Kyle Peterson: Thank you for that.

I want to focus on our food and beverage witness. I'm a fan of both food and beverage, so it's nice to have you here. Thank you for being with us.

I think it's fair to say that NAFTA, as it stands now, is probably serving the interests of your organization fairly well.

• (1730)

Mr. Norm Beal: Absolutely.

Mr. Kyle Peterson: Are you striving for status quo and that would be great, or are there improvements you'd like to see? If so, what would they be?

Mr. Norm Beal: As I mentioned in my opening remarks, clearly, we would like to see a continued thinning of the border, co-operation streamlined, particularly on food safety regulatory measures, and things like that.

Right now food can be held up. As I mentioned, food is perishable, generally speaking. You can find some overzealous border agents slowing down that transfer of goods across the border to the point where food is spoiled.

There's really no need for that, and sometimes it's a direct reflection of trying to thicken the border for trade protectionism.

We see there's a real opportunity through the trade co-operation council and another body at a higher level that drills down into some of the food safety assessment mechanisms and things like that, where we can sit down with our U.S. counterparts and agree on all these top-line items, particularly on low-risk food safety issues where it's streamlined, and it's automatic. That would improve the transfer of goods on both sides of the border.

I think there's a really important opportunity in NAFTA to see that whole regulatory process streamlined.

Mr. Kyle Peterson: Thank you for that.

The Chair: That wraps it up. You're over a bit.

Mr. Kyle Peterson: Thank you, everybody.

The Chair: That wraps up our afternoon. I thank the witnesses for coming.

This panel alone shows how diverse trade is and how it impacts every citizen in this country in various ways. We really appreciate your coming. We're going to be presenting our report before December so we'll give you a copy. Thank you very much again.

Before I adjourn the meeting, I have to remind all MPs that we have a very heavy workload on Wednesday. We're going for three hours, we have nine witnesses, and we're going to have future business, so be here on time. Let's get our sleeves rolled up and we can get it done.

That adjourns the meeting for today.

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