



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

43rd PARLIAMENT, 1st SESSION

Standing Committee on International Trade

TÉMOIGNAGES

NUMBER 015

Wednesday, March 11, 2020

Chair: The Honourable Judy A. Sgro



Standing Committee on International Trade

Wednesday, March 11, 2020

• (1530)

[English]

The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)): I call the meeting to order. This is the Standing Committee on International Trade, in the 43rd Parliament. Pursuant to Standing Order 108(2), we are doing a study of Canada's efforts to reform the World Trade Organization.

We have with us witnesses this afternoon. From the Department of Agriculture and Agri-Food, we have Marie-Noëlle Desrochers, acting executive director, market and industry services branch.

From the Department of Foreign Affairs, Trade and Development, we have Don McDougall, deputy director of the investment trade policy division; John Layton, executive director of the trade remedies and North America trade division; Kendal Hembroff, director general of trade negotiations; Colin Bird, director of the trade policy and negotiations division; and Darren Smith, director of the services trade division.

Welcome to all of you. We appreciate very much your taking the time this afternoon to come and speak to the committee and share some of the knowledge you have with all of us.

Ms. Hembroff, I think you're the one who is going to be making the opening statement. You have the floor.

[Translation]

Ms. Kendal Hembroff (Director General, Trade Negotiations, Department of Foreign Affairs, Trade and Development): Good afternoon, Madam Chair.

I'm pleased to be here today to provide an update on the government's engagement in the reform of the World Trade Organization, the WTO, including Canada's leadership of the Ottawa Group.

I am joined by several colleagues from Global Affairs Canada, namely Colin Bird, director of the Trade Policy and Negotiations Division, Darren Smith, director of the Services Trade Division, John Layton, executive director of the Trade Remedies Division, and Don McDougall, deputy director of the Investment Trade Policy Division.

Allow me to begin by providing a bit of context. The WTO is critical for Canada because it governs trade between 164 members and it provides a stable and predictable framework of rules and market access for Canadian companies accessing world markets, backed up by binding dispute settlement.

Canada is a founding member of the WTO, which was created in 1995, and has a long history and a solid reputation as a committed multilateralist. In fact, members are reminded of Canada's contributions to the multilateral trading system every time they walk through the doors of the WTO Secretariat building in Geneva. Canada donated the large wooden doors to the old International Labour Organization headquarters, where the WTO now sits.

[English]

Over the last few years, the multilateral trading system has faced an increasingly challenging environment, characterized by the rise of protectionism and the use of unilateral trade measures.

Beyond difficulties in concluding negotiations in a number of areas, current challenges include divergent positions on trade priorities, a lack of consensus on how to treat developing countries, an overloaded dispute settlement system, and a stalemate surrounding vacancies to the WTO's appeal mechanism. Such challenges put the credibility and day-to-day functioning of the WTO at risk.

Against this backdrop, several years ago Canada took up a leadership role to build support for reform of the WTO and to identify concrete initiatives aimed at reforming the organization.

As one of the more visible examples of our contributions, Canada has been at the forefront of efforts to reinvigorate the WTO and is playing a leading role in the Ottawa group, a group of reform-minded WTO members first brought together by then minister for international trade diversification Jim Carr in October 2018. The group of 13 WTO members is diverse in terms of geographical representation and levels of development. It remains small, to allow for meaningful exchange of views, but it is meant to support broader discussion involving all WTO members.

Since its creation, the group has met at the ministerial level four times, most recently in Davos this past January.

One of the key achievements of the Ottawa group has been its role as a sounding board for the exchange of ideas. For example, the group has identified ways in which to improve transparency for businesses, especially small and medium-sized enterprises, through more timely reporting and notification of new government regulations, laws and/or measures affecting trade.

Canada has also played a leading role in discussions on how to resolve the impasse in appointments to the WTO's appeal mechanism, also known as the appellate body, which is the most pressing issue facing the WTO.

Driven by concerns about the appellate body's functioning, the United States has blocked new appointments since 2017, so that, as of December 2019, there is a lack of quorum, which means that appeals can no longer be decided. Under these circumstances, a member deciding to appeal a panel finding can prevent the resolution of a dispute by effectively appealing into the void and undermining the legal rights of WTO members.

For a mid-size country such as Canada, this loss of recourse to binding dispute settlement has serious implications. We are an active user of the WTO's dispute settlement system and have been party to a total of 63 disputes since 1995—40 as a complainant, and 23 as a respondent.

The situation has provoked some creative problem-solving on the part of Canada.

- (1535)

This past July, Canada and the European Union developed a bilateral interim appeal arbitration arrangement to allow for appeals between ourselves until such time as the appellate body impasse is fixed.

Most recently, in Davos, this past January, Canada and 16 other WTO members built on the success of that arrangement by agreeing to work towards a similar interim arrangement that would apply between participating members until the appellate body is again functional.

While Canada's priority remains finding a multilateral solution to the appellate body impasse, these types of interim arrangements help safeguard our rights to binding two-stage dispute settlement with willing WTO members until the appellate body is functional again.

Canada is also playing an active role in a number of ongoing WTO negotiations. Although the current comprehensive multilateral round of negotiations launched in 2001, known as the Doha round, has reached a stalemate, negotiations continue on a stand-alone basis on several fronts.

That includes negotiations to address harmful fisheries subsidies, which have reached a critical stage. Fundamentally, this negotiation is about helping preserve fish stocks for future generations, but systemically, it is seen by many as a critical test of the WTO's negotiating function. Members are striving to conclude negotiations in time for the next WTO ministerial conference later this summer, and Canada has made a number of active contributions, including a recent proposal on overfishing and overcapacity.

Canada is also playing an active role on agriculture and has recently sponsored a statement by the Cairns Group in January calling for the reinvigoration of discussions to eliminate trade- and production-distorting agricultural subsidies, which represents a key interest for Canada and Canadian agricultural producers who face a very uneven playing field in trying to access international markets.

Challenges to the multilateral approach to negotiations have also led members to pursue negotiations through plurilateral negotiations, which involve only subsets of the entire WTO membership. For example, willing members have launched plurilateral negotiations, also known as joint statement initiatives, on e-commerce, investment facilitation for development, domestic regulation for services, and micro, small and medium-sized enterprises. These negotiations have the potential to deliver significant benefits for Canadian businesses of all sizes, and Canada is actively participating in each.

Due to external circumstances related to COVID-19, the ministerial meeting of the Ottawa group that was scheduled to be held in Ottawa on March 18 has been cancelled as of a few hours ago. Efforts will continue on how best to plan our work in the lead-up to the 12th WTO ministerial conference, in Kazakhstan in June.

A key priority for Canada in the months ahead will be to deliver on a commitment made by the group in January, in Davos, to enhance its efforts to engage business and our citizens on WTO reform efforts. It is safe to say that there is almost unanimous support that the WTO needs to be reformed in order to ensure that the organization is relevant and fit for purpose for the 21st century. The challenge, however, is that collective agreement on precisely what that means remains elusive.

Perhaps that is a good note on which to end my comments. As you can see, I have a few experts here to help answer any specific questions the committee might have.

- (1540)

The Chair: Thank you very much, Ms. Hembroff.

For questioning, we'll go to Mr. Hoback.

Mr. Randy Hoback (Prince Albert, CPC): Thank you, Madam Chair.

Thank you, witnesses, for being here this afternoon.

I'm glad to hear your announcement on the meeting next week. I understand why that happened, and I think that's a responsible measure you've taken. Hopefully, we'll find a step to work around that, maybe through telephone or video conferencing or something like that, because the work you're doing is very important.

I want to go back to the appellate body and the U.S. concerns around the appellate body. From what I understand—and I know enough to be dangerous here, so I'm counting on you to educate me to a higher level, hopefully after this meeting—a lot of the concerns they had are justifiable concerns. These are concerns that go against what the original intent was when the appellate body was set up.

Obama was complaining. George Bush Jr. was complaining. There's been more than one regime complaining about this scenario in the U.S. There have been many. Why has it taken so long, and why did the U.S. feel it had to take it to a head, as it has now, in order to get the rest of the countries around the table to look at this seriously? Can you give us some background on that?

Ms. Kendal Hembroff: I can start by giving a little context on the U.S. position on the appellate body.

The U.S. concerns—as have been cited by the member—are not new. For a number of years now, we have been hearing concerns about the way in which the appellate body operates.

I think that certainly any WTO member who has been involved in disputes at the WTO probably has some issues with some of the specific results of cases over the years. Certainly in a Canadian context, I can think of more than a few cases where we were disappointed with the way in which the appellate body took a decision on a particular issue.

Notwithstanding the fact that I think there are legitimate issues that need to be addressed by WTO members in looking very critically at the appellate body and the way it functions, both procedurally and how it handles certain substantive issues, what is important is that there is a need for a constructive dialogue on this. Certainly Canada and other WTO members have been ready to engage in discussions in Geneva in trying to find ways to reform the appellate body. We certainly see this as a very fundamental part of WTO reform.

This past year, New Zealand's ambassador to the WTO, Ambassador Walker, launched a series of discussions aimed at trying to find a solution to some of the long-standing problems affecting the appellate body, including addressing problems that have been identified by the United States but also by other WTO members.

Unfortunately, engagement by the entire membership was very uneven, and we did not see any engagement on the part of the United States on some of the specific issues that it had raised in the past.

Mr. Randy Hoback: In light of the Ottawa group being formed, progressing and moving forward on some of these issues, do you see the U.S. possibly stepping in now and saying they're finally taking it seriously and being engaged? It's really tough to imagine any type of appellate body without the U.S. being involved having any clout or ability to do anything. Is that fair to say?

Ms. Kendal Hembroff: We feel that U.S. engagement is absolutely essential, and we have looked for every opportunity to engage the United States. It's not just on appellate body reform but on WTO reform issues more generally. Certainly when the United States is ready to engage, we will be ready at the table.

We have also tried, through our network in the United States, to engage key thought leaders and businesses in the kinds of things that will be required for the United States to be engaged in these discussions.

Unfortunately, engagement thus far has been quite limited on the part of the U.S.

Mr. Randy Hoback: How many Canadian cases are sitting there in front of the body right now that won't be heard or sitting in limbo at this point? We have three judges left, I understand, out of the five.

Ms. Kendal Hembroff: I think Colin has figured it out.

We certainly have a case on wine right now with Australia. We also have a case on aircraft with Brazil. Then we have several cases with the United States, including softwood lumber.

I would have to check on the total number of cases right now. I think it's somewhere in the neighbourhood of five to eight. If the committee would like, we could provide a list of all the active disputes.

• (1545)

Mr. Randy Hoback: Sure. That would be great.

I assume I'm out of time.

The Chair: You have one minute left.

Mr. Randy Hoback: Let's use softwood lumber as an example. You have that case sitting there. Does it just sit there now until we figure out how to move forward, or is it progressing with the existing judges who are there?

Ms. Kendal Hembroff: In terms of providing a little background, there are two levels of dispute settlement at the WTO: the panel stage and the appellate body or the appeal stage. At this point, cases at the panel stage are still proceeding as normal.

The issue we have run into now, as a result of the impasse in appointments to the appellate body, is that it is possible for a party, at the time a panel decision is issued, to appeal that dispute into what is effectively "the void", meaning that, because there is no quorum to hear the appeal, the case does not progress further.

That is the reason Canada and other WTO members have explored this parallel, interim appeal arbitration arrangement, so those members who are part of that arrangement can use that appeal mechanism, as opposed to simply appealing into the void.

Mr. Randy Hoback: That's fine for the members who are part of this organization, but outside of that it's....

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

Ms. Bendayan.

Ms. Rachel Bendayan (Outremont, Lib.): Thank you very much, Madam Chair.

Thank you for the presentation.

I've been speaking with businesses and entrepreneurs, both large and small. Could you speak to the impact that the impasses you've described at the WTO have on our Canadian businesses?

In particular, yesterday we got a question regarding non-tariff barriers and how we can move forward. I know that we are in the middle of negotiations, as you mentioned, on a number of different issues at the WTO. I think it's important for Canadians to understand why and how these WTO issues are important to us in a very real way.

Ms. Kendal Hembroff: I think that's a very timely question.

Minister Ng, last evening, chaired a dinner involving more than a dozen Canadian business people to talk specifically about the WTO and their views on the current challenges that are facing the organization. Some of the key themes that emerged from that discussion include the critical importance of the WTO for Canadian business.

The WTO, of course, governs the vast majority of our trading relationships. Although Canada has a number of free trade agreements in place with some of our key trading partners and 14 FTAs in force with 51 countries, that still leaves another hundred-plus WTO members who are not currently covered under any kind of preferential trade agreement.

In Canada, businesses, in particular, have expressed concerns regarding the impasse at the appellate body and are deeply concerned that Canada's rights at the WTO are undermined by that impasse, in particular vis-à-vis the United States.

We have also heard from Canadian business about the importance of ongoing negotiations in areas like agriculture, for example. E-commerce is another area that has been identified by Canadian business as very important and for which Canada is taking a very active role to try to bring their issues to the table.

I think that many countries have taken the WTO for granted over the last number of decades and have put the bulk of their focus on negotiating bilateral and regional free trade agreements, but the importance of the WTO, especially for a mid-sized country, really cannot be overstated.

Ms. Rachel Bendayan: Thank you.

Would it be possible for you to explain, along the lines of what you were discussing with my colleague, what happens once a case goes into the void? For example, should any of the cases involving Canada that are currently pending require appeal, or should we feel that we would like to appeal those decisions, what would our recourse be as of today?

Ms. Kendal Hembroff: The answer to that question depends on who the other party in question is.

If the other party is a WTO member with whom we have some sort of interim arrangement in place, Canada would have the ability to appeal—if we felt that it was in our interests—under an interim arrangement.

In the event that the case does not involve a party with whom we have an interim arrangement in place, there's also the possibility that Canada could seek agreement with such a member that neither of us would appeal in the event of a panel decision. Failing that, Canada's other option would be to potentially seek dispute settlement under one of our existing bilateral and regional free trade agreements.

For example, all of our free trade agreements in place also contain dispute settlement mechanisms, including agreements like CUSMA, CPTPP and CETA, so we would also have that ability, should we not have the ability to pursue a dispute from start to finish under one of our bilateral agreements.

● (1550)

Ms. Rachel Bendayan: I understand.

How does Canada's leadership of the Ottawa group fare at the WTO? Is Canada's leadership viewed positively at the WTO on this issue?

Ms. Kendal Hembroff: I may be biased, but certainly we have received very good feedback from all WTO members in terms of the role we have taken. Our objective has been—at least at the start of these discussions—to try to build support for WTO reform in order to make sure that the organization is still relevant. More recently, we have focused in on very specific issues.

In fact, that support comes from a number of non-members of the Ottawa group. Certainly, the United States is well aware of our efforts through the Ottawa group and has been very supportive of our efforts to date. Similarly, China has also been very engaged.

The Ottawa group is not intended to be a monopoly of ideas on WTO reform. In fact, in many cases the group has welcomed proposals and presentations made by non-members of the group who also have ideas on WTO reform. It's really meant to be just a sounding board for any WTO members who have specific ideas that they want to bring to the table.

The Chair: Mr. Savard-Tremblay.

[*Translation*]

Mr. Simon-Pierre Savard-Tremblay (Saint-Hyacinthe—Bagot, BQ): Good afternoon.

Thank you, Ms. Hembroff, for coming to testify before our committee.

I listened to your presentation with great interest. It focused mostly on the attempts to reinvigorate the WTO, but unfortunately I didn't hear much about the why.

I believe you said that the efforts to reinvigorate the WTO are primarily motivated by the impasses caused by U.S. inaction. We could even bring up the 2006 impasses. That was the year when the Doha Round talks failed and were followed by protests, particularly in Seattle. The WTO never fully recovered from that challenge and could never re-inspire efforts to hold new rounds so it could start over.

My question is somewhat related to that. I have no problem with reinvigorating the organization, but why? Everyone agrees that there is a need for an institution that regulates trade globally. The principles and rules of the World Trade Organization, which emerged from the Marrakesh agreement, are very different from those that the 1947 Havana Charter, for example, would have had. There are a number of ways to regulate trade globally. There are several positions and approaches.

Is there a willingness to review and reform the organization's basic principles as well, before thinking of ways of implementing them?

Ms. Kendal Hembroff: Thank you for your very good question.

[English]

The fact is the WTO has not kept pace with the manner in which trade has actually been conducted over the last decade or so. We do not have disciplines on electronic commerce, for example, which is increasingly a modality by which a lot of international trade is conducted. While Canada and other WTO members have in many cases been negotiating commitments on e-commerce in our bilateral and free trade agreements for the better part of 20 years, the WTO, at this point, has no disciplines in this area.

Similarly, there are types of disciplines that exist on subsidies, whether in areas like agriculture, industrial subsidies, or fish subsidies. This is another area where the WTO is in urgent need of updating the rules.

I don't want my earlier comments on what we are doing in terms of WTO reform to suggest that we are looking at minor tweaks. In fact, we are looking at fairly substantive changes, both through the negotiations we are undertaking and in terms of some of the more procedural elements. One point I should make, which is very important, is that ultimately WTO reform is not something that will happen overnight. It is something that will take many years to accomplish, and it will have many moving pieces. We do this as a very comprehensive effort, but there are many different moving pieces that are part of it.

• (1555)

[Translation]

Mr. Simon-Pierre Savard-Tremblay: Still, I will ask my question again. Could the principles and rules that the organization is responsible for enforcing be challenged? This is a vision that is very much focused on free trade, but more as an end in itself, rather than as a means. We must admit that there are certain clauses, such as the most-favoured-nation or rules of origin provisions, that have had some perverse effects on several fronts. For example, the dispute settlement system has already prevented Ontario from setting up an energy program with minimum thresholds for both local content and number of jobs created.

Would there be a willingness to challenge the WTO's core positions? If I had to boil it down, I would say that I still don't know whether I want to see the WTO rise again.

[English]

Ms. Kendal Hembroff: As a country that is highly dependent on free and open trade, Canada is very much committed to maintaining the basic principles that govern the WTO.

That being said, as part of our commitment to make trade more inclusive for Canadians but also globally, we have put a fair amount of emphasis on making sure that the kinds of rules that we have at the WTO work for everyone, whether that is in developing countries, where we need to be looking at how we take into account development considerations in terms of rule-making, or whether that is small and medium-sized enterprises, including through the initia-

tive that has been recently launched dealing with micro, small and medium-sized enterprises.

Canada has also worked very hard to try to bring greater awareness to trade and gender issues in order to ensure that we are looking at things through a gender lens. For example, Canada led and championed an initiative in Buenos Aires on women's economic empowerment, which is really intended to ensure that we are looking at trade from a gender perspective and finding opportunities to ensure that trade is made more inclusive.

These are just examples of certain aspects where Canada is trying to ensure that trade works for our population. It is a work in progress where we continue to consult with Canadians to try to find ways to improve on this.

The Chair: Thank you very much.

Mr. Blaikie, go ahead.

Mr. Daniel Blaikie (Elmwood—Transcona, NDP): Thank you very much for your presentation.

I think it was assumed, or certainly at least it was the fallback position of the Canadian government in the CUSMA negotiations, that the WTO provisions around procurement would vouchsafe Canada's access to U.S. government procurement.

The U.S. has since said that they are looking at pulling out of those provisions. They also have legislation in place that restricts Canadian access to U.S. government procurement under the buy America program.

I'm wondering, if Canadian companies don't have any right to access American government procurement, what rights American companies will have to access Canadian government procurement. Are there any corresponding restrictions on U.S. companies bidding on Canadian government work, not just the federal government but provinces, municipalities and other public authorities?

• (1600)

Ms. Kendal Hembroff: We're also very concerned by reports that the United States may be considering withdrawing from the WTO government procurement agreement. This is an agreement that means a lot to Canada and to Canadian business in terms of ensuring reciprocal rights for government procurement access.

We are following these reports very closely, and should the United States take action to withdraw from this agreement, we will have to look very closely at what our options would be. The access that is available to WTO members under that agreement applies to members of that agreement.

Obviously, given the implications that CUSMA, when ratified, could have for Canada in terms of our government procurement relationship to the United States, any withdrawal by the United States from that agreement could be very serious in terms of implications for Canada.

As a result of that, we are working very closely with provinces and territories to ensure that, if the United States does withdraw from the agreement, we have recourse through our own mechanisms.

Mr. Daniel Blaikie: Under the original NAFTA and under the WTO, it seems to me that buy America has restricted Canadians' access to U.S. government procurement.

I know that New Flyer Industries produces diesel and electric buses. They have manufacturing facilities in Transcona, among other places, but they've been losing jobs as the U.S. content requirement under buy America goes up for their buses.

How is it, if the principle is reciprocal access...? I'm not aware of U.S. companies being under any obligation of any kind to have jobs in Canada in order to get access to Canadian government procurement. Why is it that, despite all the boosterism about the WTO and NAFTA, buy America persists and the Canadian government hasn't taken any real action against these measures, which clearly contradict what are supposed to be the benefits of free trade for Canada?

Ms. Kendal Hembroff: We have expressed concerns over the years for a variety of different types of buy America measures. These are obviously measures that can and do have very significant implications for Canadian business. When measures have been proposed or enacted, we have sought out opportunities for us to raise these kinds of concerns using a variety of different channels. We typically try to start through advocacy—

Mr. Daniel Blaikie: Have we ever challenged them formally either under NAFTA provisions or at the WTO?

Ms. Kendal Hembroff: We have not, although that option is there for us should we decide that is a route we want to take.

Mr. Daniel Blaikie: In your opening remarks you talked about a number of committees that are doing work for the modernization of the WTO. You mentioned a committee on domestic regulation for services.

I'm wondering what is being discussed at those tables that would differ from the status quo. What would be the purpose of new rules and what would they be trying to achieve?

Ms. Kendal Hembroff: Chair, I'll ask my colleague Darren Smith, who is the lead for domestic regulation, to answer that question.

Mr. Darren Smith (Director, Services Trade Division, Department of Foreign Affairs, Trade and Development): Thank you very much for the question.

Quickly, I guess it's basically us trying to establish minimum standards with respect to domestic regulations in the sense of transparency and process-oriented matters. These are all the types of rules that would provide the kinds of standards we have in Canada with respect to, again, transparency and process-oriented matters for companies—

Mr. Daniel Blaikie: Would those rules foresee enshrining the precautionary principle or is Canada arguing for the approach that was taken in CUSMA?

Mr. Darren Smith: Yes, this is much more basic. This is more about looking at licensing and certification matters and trying to en-

sure that the regimes for the members of the WTO provide a minimum standard of treatment with respect to these types of procedures.

For instance, if you are in a professionally regulated sector and looking to export your services to another jurisdiction, and you have to apply for a licence in order to provide that service, there are certain rules in place—which, hopefully, we're going to achieve through this agreement—that will allow that service supplier a higher degree of confidence that their application is being processed and regarded in a manner that is similar to what you have in Canada.

It's basically an outcome that we hope will raise the standards in other jurisdictions, because in Canada we already have a very high standard in terms of openness in this regard. It's a matter of putting our service suppliers, in this case, on a much more competitive footing with a wider range of WTO members.

This is also a plurilateral initiative. It involves about 60 WTO members. It's not, obviously, as... The ideal situation would have this be a fully multilateral arrangement, but we're certainly moving the bar forward in this instance.

• (1605)

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

Mr. Carrie, for five minutes.

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

I want to thank all the witnesses for being here and for their commitment and experience on this file.

I'd like to dig down on a couple of things that have already been mentioned.

In terms of the buy America clause, it was pointed out by a company, and I believe it was IPEX, which came here when we had CUSMA witnesses, that one of the things Mr. Harper was able to do was get a buy America exemption.

I believe that Mexico, in the new CUSMA, had a buy America exemption. However, we failed to get a buy America exemption. We've been aware for some time that the Americans are not engaging at the WTO. By not using the leverage we had to get this exemption that we've had in the past, some people see this as a big opportunity lost.

I was wondering if you could comment, Colin. You've spent a lot of time in the U.S. Why is the United States not engaging in the WTO? What are their big issues that they want to have resolved?

Mr. Colin Bird (Director, Trade Policy and Negotiations Division, Department of Foreign Affairs, Trade and Development): Thank you, Madam Chair.

The U.S. issues with the WTO are long-standing. On the dispute settlement side, they have had these issues that are notably around the issues of trade remedies. Frankly, that is a complication for Canada, because we are often finding ourselves on the receiving end of U.S. trade remedy measures.

When you look at the cases that they really complain about at the WTO, they tend to be around public bodies and state-owned enterprises, where there are a lot of common concerns that Canada and the U.S. have, but much of their concern has been around the area of how their trade remedy system has fared at the WTO, and some of those cases are Canadian.

Mr. Colin Carrie: Is this the reason they're giving for not engaging right now?

Mr. Colin Bird: They're not really giving a reason for engaging. They are indicating that they would like the membership to share the same views that they have of the overreach at the WTO. The challenge is that any time a legal question is put before the WTO, there is a winner and a loser. Finding agreement that the interpretations of the AB are inconsistent with the covered agreements is very challenging to do.

Mr. Colin Carrie: You mentioned the softwood lumber dispute. I remember being the parliamentary secretary to industry back in 2006-07 when we were working on resolving it. I remember the Honourable David Emerson working on it. We were able to have that resolved.

With this CUSMA.... Back in 2016, I believe Mr. Obama was here in Canada. One thing he wanted us to do was to sign on to the original TPP, which you guys mentioned was an important part of multilateralism. Unfortunately, we didn't sign onto that agreement and the softwood lumber dispute is ongoing. We were hoping that we would have some leverage with CUSMA and really nothing came of it.

What was our record with the WTO when we actually got it in front of them for our softwood lumber disputes in the past?

• (1610)

Ms. Kendal Hembroff: Chair, unfortunately we don't have that information handy, but we would be happy to provide it to you over the coming days.

Mr. Colin Carrie: My understanding is that we were always quite successful when we actually got a hearing. My concern is if we lose the WTO and we didn't address it in CUSMA. Would you be able to give us an opinion on what our options would then be?

How can we resolve these issues if the Americans aren't being active in these agreements? would it be through the U.S. courts?

What can our companies do if they're feeling that they're not being treated fairly?

Ms. Kendal Hembroff: I would love to be able to answer that question. In fact, another committee is discussing softwood lumber as we sit here now. Unfortunately, we don't have the appropriate expert to be able to answer questions around how we might handle softwood lumber, given the various scenarios that you've outlined.

I can suggest that if the committee is interested in hearing more and having a discussion around softwood lumber, I can certainly suggest someone that you may want to call as a witness.

Mr. Colin Carrie: For that and for buy America, it would be great if you could send it to us.

The Chair: Thank you, Mr. Carrie.

Mr. Arya.

Mr. Chandra Arya (Nepean, Lib.): Thank you, Madam Chair.

My question is for Ms. Hembroff.

I have heard some reports, although I don't know if they are factual, that the U.S. is considering withdrawing the government procurement from WTO. As we know, under the new NAFTA, Canada and the U.S. have left that portion of trade to be considered under the WTO.

What are the chances that the U.S. will withdraw its government procurement from WTO? If that happens, what remedies do we have?

Ms. Kendal Hembroff: I'll maybe build on an earlier discussion. I'm not sure what the chances are that the United States might withdraw from the government procurement agreement. That is ultimately a decision that will have to be taken by the U.S., presumably in consultation with its key stakeholders.

Certainly that is something we will have to take very seriously should that come to fruition or should we perceive that to be a real risk. We will endeavour to engage with U.S. interlocutors at every opportunity to try to clarify their specific position. Ultimately, I'm not sure how that will play out. That is something we would be studying very carefully.

Mr. Chandra Arya: How do we fight the non-tariff barriers practised on Canadian exports by India, Korea and Japan, etc.?

Ms. Kendal Hembroff: Non-tariff barriers can come in a lot of different forms. We have certainly had the opportunity through a number of our bilateral and regional FTAs to try to tackle non-tariff barriers in a lot of different ways. That can be through very comprehensive provisions in areas such as technical barriers to trade, or sanitary and phytosanitary standards. It can be about improved transparency measures. We have taken a very similar approach to that of the WTO. In fact, the WTO agreements do contain a number of provisions that already are designed to try to address a variety of different non-tariff barriers.

One of the biggest concerns that Canadian businesses report to us is the lack of information and transparency about government measures. In fact, Canada and other WTO members have been working very hard to try to improve the compliance record of countries when it comes to notifying measures that are either under review as something that could be put in place, or in fact measures once they're put into place. Unfortunately, a lot of WTO members, especially developing countries, have not had a particularly good compliance record.

Part of what we've also been doing is working with like-minded countries to try to find ways by which we can help developing countries in terms of better compliance. That would go a long way in helping Canadian businesses that are struggling with these NTBs in a lot of markets.

Mr. Chandra Arya: President Trump has stated that countries such as China and India are no longer developing countries and that we have to have a re-look at the preferential treatment they get. I tend to agree with that.

What can be done?

Ms. Kendal Hembroff: Canada takes a very pragmatic view on development at the WTO. The United States has rightly pointed out that there may be some countries that have long-claimed developing country status that—

• (1615)

Mr. Chandra Arya: India is fifth just on a GDP basis. It's 126th on the per capita income basis.

Ms. Kendal Hembroff: Indeed. Our view though is that rather than getting into a lengthy and protracted debate on what criteria we should use in terms of identifying a developing country as such, it is better to identify through the various negotiations that are under way at the WTO, whether it is e-commerce, negotiations on fish subsidies, agriculture, the specific types of flexibilities that may be needed for certain developing countries in a unique context.

Mr. Chandra Arya: You mentioned agriculture. Canada has big agricultural exports. India, because it is classified as a developing country, has some advantage on the agricultural subsidies it provides.

What does that mean for us?

Ms. Kendal Hembroff: There's no doubt that when we started out having agriculture discussions 20 years ago, the big subsidizers were not the same ones we see now. Countries such as China and India are certainly in that top tier of countries that have heavily subsidized their agricultural sectors. A really key interest for Canada and a number of other WTO members is tackling those trade-distorting agricultural subsidies.

The reality is we can't compete, nor should we. Those types of subsidies really do unduly distort trade and are a significant problem for Canadian agricultural producers.

The Chair: Thank you very much.

Mr. Lewis.

Mr. Chris Lewis (Essex, CPC): Thank you very much, Madam Chair.

Thank you, Ms. Hembroff, for a very informative presentation. I appreciated it. I'm going to ask you some very simple questions, because you got my curiosity up.

How many members did you mention are part of the WTO right now?

Ms. Kendal Hembroff: There are 164.

Mr. Chris Lewis: Are all of those member countries in agreement that there should be reform at the WTO?

Ms. Kendal Hembroff: Yes, I would say that is true. Certainly, when we started this discussion, maybe two years ago, I'm not sure that everyone would have been of the same view. However, I would say yes, there is wide consensus that WTO reform is required, but there are very different views in terms of exactly what we should do and where the priorities should be.

Mr. Chris Lewis: I can appreciate that. How long has it been in discussion, a couple of years, perhaps?

Ms. Kendal Hembroff: Yes, roughly. We put out a discussion paper in September 2018, which was not necessarily the beginning of discussions on WTO reform, but it was at that point really that the discussions began to have momentum.

Mr. Chris Lewis: Who would typically take the lead on something like this? Which countries would you expect to take the lead, notwithstanding the fact that it sounds as though the United States may or may not want to be part of it? What does it look like to you?

Ms. Kendal Hembroff: Chair, I'm going to make one small comment, just to be clear.

The United States is actually very much in favour of WTO reform. They're not members of the Ottawa group, and we have not had a lot of engagement from them on reform of the appellate body, but there are actually a number of areas in which the United States is quite engaged. For example, the United States has been a key proponent of improved transparency and notification provisions at the WTO. It's also been very active in discussions on development. I just want to be clear that, notwithstanding some of the discussions here, the United States is quite active on reform.

Certainly the countries we have been working most closely with have tended to be more medium-sized countries that maybe don't have the economic might of some of the large players in order to be able to work outside of the WTO. We have—and this is a generalization—found a lot of success in working with countries like Norway, New Zealand, Australia, Chile and Mexico, countries of a similar economic size who have a shared and common interest in the rules-based system.

Mr. Chris Lewis: Great. You answered all my questions without even knowing it. My question was about medium-sized countries.

Would you consider Canada to be a medium-sized country?

Ms. Kendal Hembroff: I would.

Mr. Chris Lewis: In the grand scheme of the WTO, Canada would be medium-sized.

On timelines, I know you mentioned a couple of years going forward. In the event that a reorganization does go forward, what kind of timelines would we expect to see for this reorganization to happen? The second part of that question would be if we push it off, what kind of ramifications there would be. What is going to tie our wrists together, perhaps? Do you understand what I mean?

How much time do you think it's going to take, and if we don't do something, what will that look like?

• (1620)

Ms. Kendal Hembroff: Right.

I think it's all about incremental progress. We have the 12th WTO ministerial conference which is coming up in June. I think that will be an opportunity to achieve some key outcomes that would push the needle forward in terms of WTO reform.

One of our goals for that ministerial conference is to conclude negotiations on fish subsidies. A lot of work still has to be done between now and then, but we think that would go a long way in delivering on a key negotiation that has been going on for almost 20 years.

Similarly, the negotiations on domestic regulations for services are also getting quite close to conclusion. That would be another key opportunity to modernize the trade rules.

Other elements will take more time. Certainly those aspects, such as reform of the appellate body, will absolutely require engagement by all WTO members.

Speaking maybe quite frankly, it is unclear whether or not the current U.S. administration will be prepared to engage on dispute settlement issues, so there may be other areas in which we can make progress for now. However, in terms of some of the issues related to dispute settlement that we've talked about, we could very well be several years away from being able to have those discussions.

The Chair: Thank you very much.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal (Surrey—Newton, Lib.): Thank you.

Thank you to all the witnesses.

Randeep and I come from Surrey, British Columbia. A large number of businesses are SMEs. I'm going to ask you three or four questions, and then I'll give you all the time to speak.

First, what are some of the positive implications that Canada's trade policies and WTO policies have on SMEs? Do any of these policies create any challenges or barriers to trade for SMEs? Last, what are your recommendations for mitigating such challenges?

Ms. Kendal Hembroff: In answering that question, I would say that all of the WTO agreements have implications for SMEs. SMEs benefit from access to open markets, whether that is in terms of the elimination or reduction of tariffs, which can make their goods less costly in international markets, or whether it is liberalization of trade and services, allowing SMEs with the ability, for example, to provide services on a cross-border basis through electronic means.

Rules on intellectual property are also needed by Canadian SMEs to ensure that their proprietary information is protected.

Beyond that very general answer, I would say that we have been paying more attention to the particular needs of SMEs. A lot of the things I have just mentioned I think would apply to large corporations as well.

In terms of the discussions we have had with the SMEs in Canada, they tend to be especially sensitive to things like very burdensome customs and trade facilitation procedures, onerous paperwork requirements, unclear information regarding regulatory requirements in different markets. We have tried to be very conscious of that in approaching our development of international trade rules.

For example, we are participating in a new WHO initiative, which I mentioned in my opening remarks, dealing with micro, small and medium-size enterprises, or MSMEs. That initiative is designed to take a very close microscopic look at the particular kinds of challenges that MSMEs face in international markets and to try to ensure that we develop WHO rules that are specifically designed for small and medium-size enterprises.

Mr. Sukh Dhaliwal: Vance, do you have a question?

Mr. Vance Badawey (Niagara Centre, Lib.): Yes, if I may, Madam Chair. Thank you.

The appellate body was established in 1995. It's 2020, so I'm sure you and others have a lot of opinions and/or recommendations to update it. We see that there is a Canada-EU interim appeal arbitration arrangement, as well as Canada's efforts to develop the multi-party interim arrangement. How do those align? How do they interconnect?

Also, how do you see the updating of the appellate body moving forward?

• (1625)

Ms. Kendal Hembroff: In an ideal world, we would be in a position to begin new appointments to the appellate body and would have a legitimate appeal mechanism by which WHO members could seek to appeal panel decisions.

Because the United States has been blocking appointments since 2017, that appellate body can no longer hear disputes. Because of the potential impact of that for Canada, in terms of disputes that we have ongoing right now but also disputes that we might launch in the future, it has been very important that we put in place some form of interim arrangement, or arrangements, by which we can ensure we have some form of appeal mechanism. That was the reason Canada sought a bilateral arrangement with the European Union this past summer, and why, on the basis of that, we are now engaged in discussions with 16 other WHO members to do something on a multi-party basis.

That is intended as a temporary solution until such a time as the appellate body is functional again.

The Chair: Thank you very much.

Mr. Savard-Tremblay.

[Translation]

Mr. Simon-Pierre Savard-Tremblay: A few years ago, there was talk of a trade in services agreement at the WTO. That was taking a long time. In the end, we're not sure what the situation is now.

Do you have any information on that potential agreement?

[English]

Mr. Darren Smith: In fact, the trading services agreement negotiations were effectively suspended in November or December 2016. With the change of administration in the U.S., a decision was taken by the Americans to ask for more time to contemplate their position on this issue. To this end, they have not actually sought the re-engagement of all parties in this process. It was the preference of others, including Canada, to see if additional consultations, and other discussions on this issue could proceed, but evidently, that has not been the case. The negotiations are suspended. They could pick up, but at this point in time, there's no specific date I can mention when this could potentially restart.

[Translation]

Mr. Simon-Pierre Savard-Tremblay: If I understand correctly, the negotiations are stalled but could potentially restart.

I have another question.

Earlier, you mentioned e-commerce and you told us this is an area that hasn't been updated. I know that there are negotiations going on right now. Could you give us some idea of where things stand at this time?

We live in a world truly dominated by web giants, which are literally crushing their competitors. This far exceeds the capabilities of the businesses that work directly in the digital sector. Online commerce has become a widespread practice, but the fact remains that these days the power of digital companies is based on their dominance.

One of the aspects to consider, and one that keeps coming up and creating a lot of controversy, is the gathering of information for commercial purposes. We see small scandals break out here and there, especially when companies have gone too far to collect information.

Many people are worried about this potential agreement, which gives even more leeway to web giants. Do you share these concerns? Do you have any information on this?

[English]

The Chair: I'm sorry, Mr. Savard-Tremblay, but your time is up.

[Translation]

Mr. Simon-Pierre Savard-Tremblay: Will we get an answer?

[English]

The Chair: Maybe we can find a way to get the answer to the question.

Mr. Blaikie.

Mr. Daniel Blaikie: I think we can find a resolution to that, actually, because I'm interested in a similar question.

I would add to that question. We just came off a study where we heard a lot about the new digital economy provisions in CUSMA, and some of the problems with them.

In addition to the question that was posed, would it be Canada's position in these negotiations to have the WTO rules reflect what we just negotiated in CUSMA, or are we looking for something better that's sensitive to a lot of the concerns we heard about finalized in CUSMA?

• (1630)

Mr. Darren Smith: The WTO initiative on electronic commerce, and I'll define it a little more broadly as digital trade, because sometimes e-commerce is conceived to be more narrowly about goods bought and sold online. We are talking about something much broader. However, the discussions are very much at an early stage, so the scope of our work and the legal architecture as well as some very fundamental questions are yet to be defined. As in all trade agreements, we certainly take into account what we've done in previous negotiations, learn from it, and try to find new ways to support the interest of Canadian stakeholders.

Indeed, one area we're taking a look at very strongly is on the protection of personal information. We have a concept paper, in fact. I should mention that all of Canada's proposals are available on the department's website, so full transparency is definitely one of our objectives here. Coming back to my response on the protection of personal information, our idea is to ensure that actors and governments don't misuse personal information collected from companies to discriminate against individuals who come from historically marginalized groups on the basis of ethnicity, religion, gender or sexual orientation. These are the types of things we're bringing to the table that perhaps have not existed already in our bilateral FTA agenda.

The bottom line is that the work we're doing at the WTO on e-commerce for digital trade is also very consistent with respect to our domestic regime. We ensure that, on one hand, we're trying to maximize the commercial opportunities for Canadian enterprises abroad, providing for certainty and predictability when they're operating in foreign jurisdictions, and on the other hand, ensuring that the Canadian government has the continued ability to regulate in the public interest on a variety of issues that pertain to the subject matter.

The Chair: Thank you very much.

Mr. Kram.

Mr. Michael Kram (Regina—Wascana, CPC): Thank you.

Thank you to all the witnesses for joining us today.

Ms. Hembroff, in your presentation you talked about the Ottawa group acting as a sounding board for ideas and problems. You also brought up the issue of the need to eliminate output-distorting agricultural subsidies.

Has the issue of output-distorting agriculture subsidies been limited to the Ottawa group sounding board, or has that gone all the way to the WTO's dispute resolution mechanism?

Ms. Kendal Hembroff: For this question I have an expert here, whom I failed to mention in my introductory remarks. Marie-Noëlle is from Agriculture and Agri-Food Canada, and I will let her talk about specifically what Canada has been doing in the agriculture discussions at the WTO.

Ms. Marie-Noëlle Desrochers (Acting Executive Director, Market and Industry Services Branch, Department of Agriculture and Agri-Food): Thank you.

In the context of the agriculture negotiations, Canada has been an active participant from the beginning of the Doha round in 2001. Disciplining trade and production-distorting agricultural subsidies is one of Canada's priorities. To that effect we have provided significant analysis and have engaged with several WTO partners over the course of the years, including towards the next WTO ministerial conference in June.

What Ms. Hembroff has referred to in her introduction is work that Canada has done with the Cairns group, a coalition of agriculture exporting countries. We talked a bit about mid-size economies that depend on agricultural trade, such as Brazil, Argentina, New Zealand and Australia. Canada has co-sponsored a declaration by the Cairns group that sets up a framework to find new disciplines for trade and production-distorting domestic support in agriculture.

Mr. Michael Kram: Okay.

I'm hearing that it has not gone to the dispute resolution mechanism. Is that safe to say?

• (1635)

Ms. Marie-Noëlle Desrochers: In the context of the negotiations, the objective is to improve the existing trade rules. What would go before dispute settlement would be based on the existing trade rules.

The negotiations themselves are there to improve the rules, so in the Cairns group framework there is a common interest in capping and reducing the trade-distorting domestic support entitlements that are given to WTO members.

Mr. Michael Kram: Okay, so we haven't accused anyone of breaking the rules because the subsidies are not part of the rules. Is that an accurate statement?

Ms. Marie-Noëlle Desrochers: There are current rules on trade-distorting agricultural support and there are WTO dispute settlement processes with respect to them. There is one involving China at the moment. Some WTO members have questioned the way China notified its trade-distorting domestic support, so the current rules are also part of domestic dispute settlement processes.

Mr. Michael Kram: Was it Canada that initiated the complaint or was it another country?

Ms. Marie-Noëlle Desrochers: Canada was a third party in that process, but it was not initiated by Canada.

Mr. Michael Kram: Has that dispute been resolved, or what is the current status of that complaint?

Ms. Marie-Noëlle Desrochers: I think it is ongoing, but I will need to verify.

Mr. Michael Kram: Okay.

Let's shift gears a little. The issue of bilateral free trade negotiations came up earlier in our conversation, so I am wondering if Canada had high-level talks about a free trade agreement with the United Kingdom post-Brexit.

Ms. Kendal Hembroff: This question is outside the topic of the WTO, but I can answer it if that is acceptable to the committee.

The Chair: Yes, please do.

Ms. Kendal Hembroff: At this point, following the U.K.'s exit from the European Union, we have agreed to continue to apply CETA, which is the agreement we have with the European Union, until the end of the transition period. Right now that transition period is set to expire on December 31. Of course it could be extended.

We have not initiated discussions for a bilateral FTA with the U.K., but we will continue to consider that, and it will depend on developments.

Mr. Michael Kram: Why haven't we had these high-level talks on that matter?

Ms. Kendal Hembroff: At this point—

The Chair: Please give a short answer, if you can.

Ms. Kendal Hembroff: I can.

CETA still applies, and I think Canada needs to determine, as is the case when we decide to launch FTA negotiations with any trading partner, whether it is in our interest to do a bilateral agreement, and that's dependent on a lot of factors.

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

Mr. Sarai, go ahead.

Mr. Randeep Sarai (Surrey Centre, Lib.): Are the delays by the U.S. on the appointment of judges or vetoing them causing the delay in the softwood lumber dispute resolution? Has it had any effect on that?

Ms. Kendal Hembroff: No, it has not had an impact on the specific pace of that case.

If we have not found a solution to the appellate body impasse by the time that panel decision is issued, then we will be in a situation where it's possible that either Canada or the United States could choose to appeal that decision, at which point it would essentially go into a bit of a void.

Mr. Randeep Sarai: If the new appellate arrangement you have with the European Union comes into effect and the U.S. is part of that, how would the appellate regime change or alter? How would it be better for those having disputes or challenges?

Ms. Kendal Hembroff: The multi-party interim arrangement we're negotiating right now is intended to, as closely as possible, replicate the current appellate body. Because we have been looking for a solution that we could put in place fairly quickly, it does not attempt to include improvements or deviations from the current appellate body mechanism.

At this point, I think it seems unlikely that the United States, given what I've just said, would choose to join such an arrangement. If anything, the United States might, for example, decide to begin allowing for appointments to the appellate body. We wouldn't need an interim arrangement if the United States were prepared to continue with the current appellate body mechanism.

• (1640)

Mr. Randeep Sarai: The interim arrangement isn't any reform of the appeal mechanism; it is simply an interim arrangement of the existing model we have, but done with the European Union and others.

Going from that, are there any reforms being done to the appellate measures? What I find is that the process takes so long. Coming from British Columbia and from a riding with one of the largest softwood lumber employers in the country, I find that waiting years and years really kills a lot of our industry. Unfortunately, a lot of smaller, individual manufacturers go belly up; they go bankrupt. By the time the resolution comes, whoever has bought their assets gets the anti-dumping duties back or whatever was enforced on them and by that time they're gone or they don't have the ability to last that long.

Is there any reform to make it more efficient and quicker to bring resolutions to the forefront faster?

Ms. Kendal Hembroff: One of the things we have tried to talk about with the WTO membership is whether there are ways in which we can try to ensure that decisions are rendered by the appellate body within a 90-day period. We have found that, over the years, the types of discussions and analysis the appellate body has undertaken have increasingly become quite complex. In many cases that has meant that, in fact, it has taken more than 90 days for the appellate body to issue a report.

We have looked at ways in which we can try to constrain that in order to try to ensure at least that the appeal process happens in a more timely manner.

Mr. Randeep Sarai: The appeal process shouldn't be a tactical tool.

I find that when it comes to softwood lumber it's simply a tactical tool. As soon as the agreement ends, it is immediately imposed. You go through years and years of a waiting period until an agreement is reached again, and then the cycle continues. It should not be used as a method to just frustrate the system, but unfortunately, in this case, it is.

What are we doing to ensure that this is not used as a means where invalid...? Some disputes have some validity on both sides, and it's getting to the nuances or how they interpret them. In some, such as this, I find that it's simply used as a tool to punitively damage our industry.

Ms. Kendal Hembroff: Yes.

When the appellate body was created, it was never intended to be automatic. There's no requirement that every dispute actually go to an appeal. The reason it was created is that sometimes panels don't necessarily get it right. The appellate body was created to provide an overarching review process.

In an ideal world, an issue or an irritant with a country would not even need to go to the WTO dispute settlement mechanism. When we have irritants with countries, such as issues like canola with China or pulses with India, we do try for some time through advocacy, discussion and dialogue to avoid getting to the point of a WTO dispute. In part, that is because WTO disputes do take time. They are very resource intensive as well. We have sometimes had good success in avoiding having to go to a formal WTO dispute.

That is another tool in our tool kit that can be very successful in resolving problems more quickly.

The Chair: Thank you very much.

Mr. Hoback.

Mr. Randy Hoback: Thank you, Chair. I have just a few quick questions.

In regard to agriculture issues, I'll use the example of India and the pulses. Here's an example where we know there's not a problem. It seems that there's no remedy or no way to get a remedy, even with the threat of going to WTO. In the scenario that we're facing right now with the reforms that are ongoing, where does something like this fall? Is there any resolution in sight?

It seems that as the resolution gets closer, all of a sudden the willingness of that country to negotiate or find a settlement becomes stronger and stronger.

In that scenario, how does that look?

• (1645)

Ms. Kendal Hembroff: It's a good question. Every case is different. The way we ultimately resolve these disputes can also vary. Sometimes a country may be motivated to resolve an issue because of a change in its domestic situation. It may be in response to pressure from their own domestic stakeholders. It could be as a result of a negotiated solution between two parties.

I can't really provide a general answer to that.

Mr. Randy Hoback: What I always find frustrating is why we wouldn't launch the dispute right away. Knowing that we've started the process and that they know it's started, wouldn't there be more incentive for them to create a negotiation?

If you don't launch the action—like Italy on pasta or durum, for example, or China now on canola—they may not take you seriously. Once you launch it, then they take you seriously. I think even with softwood lumber, until you launch it and get it close to resolution, they won't take it seriously.

I can even use the example of wine and Australia taking us to the WTO on the excise tax. I'd like to think that now that we're close to seeing that come to fruition, we're actually going to take it seriously and maybe negotiate something with Australia and other countries on this.

Why do we wait so long to launch these appeals? As Mr. Sarai said, when you're in the softwood lumber industry or any other industry, that collateral damage over that period of time as you wait is so expensive and damaging. It creates a scenario where you can't recover. I think a lot of countries know that, so they just stall it and stall it knowing that the competition will be gone in three years anyway.

Ms. Kendal Hembroff: Decisions to launch a dispute are complicated and take into account a lot of different considerations. Oftentimes, they also require considerable consultations with Canadian industry. In some cases, Canadian industry is not necessarily unified in their view as to whether or not Canada should launch a formal dispute.

I would certainly agree that registering the problem with a trading partner at a very early stage is really critical. Sometimes these issues can be resolved fairly quickly. Sometimes governments are not even aware at the national level that these measures exist or could be potentially offside of a country's trade obligations. Sometimes it requires getting certain people in the room together.

We agree that these issues have to be raised very early on. Sometimes we choose to do that through formal consultations at the WTO, which is a precursor to launching a formal panel. In other cases we have found good success in doing it through other channels.

There's no one-size-fits-all approach, but we do take into consideration whether or not launching a formal dispute may serve to actually elevate the issue within a foreign government.

Mr. Randy Hoback: I think I'll leave it there, Madam Chair.

The Chair: Mr. Badawey.

Mr. Vance Badawey: Thank you, Madam Chair.

I want to continue on from where I left off earlier, as well as piggyback on Mr. Sarai's questions and what I was getting at with the appellate body.

Frankly, when an appeal is brought to the WTO, it does place a sense of vulnerability on the sector because of the time not only during but afterwards as well, depending on the decision.

What mechanisms are in place to overcome non-favourable WTO decisions that come down from the body? What contingency plans do we have in place to help sectors overcome some of those decisions? The more I think about it, I realize that the more appropriate question would be this: Do we actually need the body?

Look at NAFTA. We have dispute resolution as part of NAFTA. Would it not be more appropriate, more disciplined, more mature with respect to how to conduct a business activity and less arbitrary if the body was dismantled altogether, and what was actually encouraged—I say “encouraged” because I don't want to use too strong of a word—was that these arbitration arrangements, as we

have here in an interim fashion would be once again encouraged with a new association?

• (1650)

Ms. Kendal Hembroff: Madam Chair, maybe I could start with the second question.

It's quite true that under our bilateral and regional FTAs we have, essentially, a one-stage dispute settlement process. There's no appeal mechanism.

In the case of the WTO, there was a decision taken during the Uruguay round by members who felt that it would be important that we have a second level just in case the panel didn't get it right the first time. That was really the primary purpose of adding that second level. I think it's a valid question in terms of whether or not we need a second stage of appeal.

We have found good success at the WTO in terms of that two-stage process. It's true that there are certainly appellate body decisions that we do not necessarily fully agree with and that we wish maybe had gone in slightly different directions, but we have seen a lot of value in that two-stage process. The reality is that we have a very limited number of cases that we have pursued under our bilateral and regional FTAs in terms of state-to-state dispute settlement. Part of that is because of the two-stage system at the WTO. The other part of it is that we also have the strength of other WTO members. There's a certain normative value as well in terms of those decisions.

I've now forgotten what your first question was.

Madam Chair, would it be okay if I asked the member to repeat it?

The Chair: Go ahead.

Mr. Vance Badawey: It was with respect to—

The Chair: Move your earpiece. Somebody's is close by.

Mr. Vance Badawey: Let's try it again.

It was with respect to contingencies. Are there contingencies in place during as well as after the fact with respect to the different sectors that are being affected?

[*Translation*]

Mr. Simon-Pierre Savard-Tremblay: Excuse me. There is a noise that's preventing the interpreters from doing their job. Can we wait a few moments?

[*English*]

The Chair: Is it the microphone? Do we need to change to a different microphone?

It's when we're putting down our earpieces, apparently.

Ms. Hembroff, perhaps you could use Mr. McDougall's microphone.

Mr. Sukh Dhaliwal: Turn the volume down.

[Translation]

Mr. Simon-Pierre Savard-Tremblay: The problem isn't related to the sound volume or my earpiece. It's being caused by some sort of interference that has been going on for some time and is not letting the interpreters do their job.

[English]

The Chair: Turn the volume down on the earpieces.

Mr. Bird.

Mr. Colin Bird: I'll go back to the question on contingency measures and how we implement adverse decisions.

Like other countries, we have a process, and usually after an adverse decision at the WTO, there is a negotiated reasonable period of time at the WTO to implement that decision. That's also an opportunity to work with the opposing party to determine an appropriate route from where the measure is to where it needs to get to be compliant with Canada's WTO obligations.

Mr. Vance Badawey: If they don't retaliate....

Mr. Colin Bird: Well, even after an adverse decision, you have a negotiated period of time in which you have to come into compliance with that decision. That's the period of time in which we work with industry, we work with the opposing party to identify a road forward that is compliant with the rules and that can be implemented either by a subsequent decision of whether it's compliant or not at the WTO, or by a mutually agreed solution with the other party.

• (1655)

Mr. Vance Badawey: However, under article 17 of the rules and procedures, they have a mechanism built in for retaliation at any time, correct?

Mr. Colin Bird: That only takes effect after there has been an arbitration on the level of concessions that they are able to withdraw. From the time that you are found offside of the rules, there is an initial period called the reasonable period of time to come into compliance, and during that period of time, they can't retaliate.

Mr. Vance Badawey: Thank you.

Thank you, Madam Chair.

The Chair: Mr. Savard-Tremblay, for two minutes.

[Translation]

Mr. Simon-Pierre Savard-Tremblay: In that case, I will repeat my earlier question. We were interrupted and I couldn't get an answer. It had to do with the ongoing negotiations on electronic commerce, which some people are worried about.

Will this liberalization give even more power to web giants, who already have a lot of it? I heard you talk a bit about the collection of information, and I'm including that as part of my question.

Will this liberalization give free rein to multinationals, even though they already enjoy a clear advantage in e-commerce?

[English]

Mr. Darren Smith: I think that with the work we're doing in the WTO, along with any other trade agreement, we are looking at creating a level playing field for all companies. In fact, the work that we do in terms of increasing certainty and predictability in our

trade agreement outcomes pertains to digital trade. Actually, the greatest beneficiaries are in fact small and medium-sized enterprises, because they're the ones that cannot bear the type of administrative burdens and costs associated with some of the complex rules that are applicable to digital trade and barriers that could exist in certain foreign jurisdictions. It includes issues like limitations on cross-border data flows, data localization requirements, or maybe requirements on the disclosure of a source code.

I would take your question in the sense that there's going to be, I think, an ongoing debate in society, not only in Canada, but in other countries, as to what role some of these big companies play. These are not some of the types of considerations that we would tackle in the context of a trade agreement. We are simply looking to create a level playing field for all companies, domestic and foreign, with respect to what takes place in the realm of digital trade. As I said, we are tackling issues that, in our belief, will actually give priority benefit to SMEs.

The Chair: Mr. Blaikie.

Mr. Daniel Blaikie: I find the comment interesting, because we did hear a lot of testimony in the study of CUSMA that suggests otherwise, which is that actually what was put in CUSMA is going to benefit the existing large web giants that are predominantly located in the United States, and that what's in CUSMA forecloses on a lot of policy option debates within Canada.

I don't think it's just a simple matter of trying to level the playing field, because we heard very clearly that on some of the provisions you're talking about, it's not a level playing field right now and that those rules are to the benefit of the established players. While it may be a level playing field on paper, in practice it's not going to establish a level playing field, because you already have major players who have serious assets they can use to perpetuate their position within the industry. Also, it may actually be a serious barrier to entry into the industry for smaller players, as those larger players are allowed to continue to use their existing advantage against entry.

When you look at companies like Microsoft and Apple, for instance, and maybe particularly Microsoft, that actually seems to be the business model. It's to use their existing size and clout to keep smaller players out of the market or to only allow them to participate as start-ups that then, once they start to do something that could challenge the position of that larger company, they are bought out and assimilated into those companies.

For what it's worth, this is a word of caution. It sounds great to say that we're just trying to level the playing field, but I'm not convinced that's actually what's going on when we enshrine these kinds of rules. I do think that Canadians have a right to a meaningful policy debate, which is being circumvented by the government, first of all in CUSMA. I'm concerned that this is happening and that Canada is a proponent of circumventing our right to a domestic debate by already taking bullish action on these types of things at the international trade table.

Have I used all my time?

• (1700)

The Chair: You have 15 seconds for an answer.

Mr. Daniel Blaikie: Okay. I wanted to start on a new line of questioning, but I will have to foreclose on that for now. Thank you.

Mr. Darren Smith: Again, I would say that the work we do is again reflective of our domestic regime. We're also basing our activities on the work of extensive consultations with Canadian stakeholders—industry, civil society, organized labour. We certainly have, as I said, put all our proposals on the table. We'd welcome further comments and insights from all Canadians on the work we're doing.

The Chair: Thank you.

Mr. Carrie, you indicated that you have a short question you wanted to ask.

Mr. Colin Carrie: Yes.

From a world trade perspective, if a country wants to protect a certain industry.... I come from Oshawa. As an auto industry, you want to move ahead with future trade agreements. You decide that you want to protect this one particular sector. What does it do to the negotiating ability of Canada or a particular country to actually first get involved in trade agreements? Does it put you at a disadvantage as far as negotiation goes if you go into these discussions with that type of mindset?

Are you able to comment on that?

Ms. Kendal Hembroff: Sure. I'm just wondering if the question can be slightly clarified. Is the question whether or not Canada's ability to negotiate is impaired by a need to protect a particular industry or whether the question is more about Canada's ability to seek successful outcomes if another country is protecting an industry.

Mr. Colin Carrie: It's if Canada decides to protect an industry.

Ms. Kendal Hembroff: You know what? I've been negotiating trade agreements for probably 20 years, and I don't think I have ever been part of a negotiation where we haven't had sensitivities that we had to protect. We are not a duty-free port like Singapore or Hong Kong, for example, so whether we are protecting key sectors such as our supply-managed sectors, our automotive sector or our cultural industries—I'm just giving some examples of sensitivities—that has always been part of our negotiating strategy.

Our interest is to try to negotiate the best possible outcomes for Canadians. We certainly do our best to try to protect our sensitivities in the negotiations. Obviously, at the end of the day, the results of our negotiations are a negotiated outcome, but I think that is something that certainly we are accustomed to. The reality is that there are very few countries in the world that don't have something to protect.

The Chair: All right, we've completed the third round.

Mr. Arya.

Mr. Chandra Arya: I have one question, if I may.

I know we have signed agreements with the 14 countries covering 51% of the population. Still, the bulk of the trade is with North American countries, the U.S. and Mexico.

Are we going ahead with chasing a few more trade agreements or are we consolidating what we have now?

Ms. Kendal Hembroff: Chair, again, because this question is outside of the WTO, I'll ask whether you'd like me to answer that. I can answer it in the role that I have.

The Chair: If you would like to take an opportunity to attempt to, but we won't hold you to the answer as being 100% accurate.

Voices: Oh, oh!

Ms. Kendal Hembroff: Sure.

As director for trade negotiations, I'm responsible not only for our engagement at the WTO but also our bilateral and regional free trade negotiations, so I'm happy to take the question.

We are in the process of negotiating several free trade agreements, including with the Mercosur block of countries, which includes Brazil, Argentina, Uruguay and Paraguay. We are also engaged in negotiations with the countries in the Pacific Alliance bloc, which are Chile, Mexico, Colombia and Peru. In addition to those two negotiations, we're also exploring the possibility of launching negotiations with ASEAN in Southeast Asia. We have also recently initiated public consultations with Canadians on possible modernization of our free trade agreement with Ukraine.

These are some of the initiatives that are currently under way.

• (1705)

The Chair: Thank you.

Thank you very much to our witnesses. We appreciate all of the great knowledge that you've shared with us today.

The witnesses may leave. I need to ask the committee a question.

Currently the routine is that witnesses speak for 10 minutes. We can reduce that to five minutes if the committee would prefer, just to give us more time for questions.

Is that something—?

Mr. Randeep Sarai: No, let them speak.

The Chair: Let them speak for 10 minutes.

Mr. Randeep Sarai: That's my consensus.

The Chair: Okay.

Does the committee agree that the briefs for the WTO study should be a maximum of 2,000 words and that the deadline should be set for Monday, March 30?

That's pretty normal, so I assume everyone is good with that.

Some hon. members: Agreed.

The Chair: Okay, fine.

That's it. We've done what we had to do today and I move adjournment.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the Copyright Act. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the Copyright Act.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: <https://www.ourcommons.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la Loi sur le droit d'auteur. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre des communes.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la Loi sur le droit d'auteur.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante :
<https://www.noscommunes.ca>