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Chair

The Honourable Rob Merrifield

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•(1535)

[English]

The Vice-Chair (Mr. Don Davies (Vancouver Kingsway, NDP)): I'd like to call to order meeting number 70 of the Standing Committee on International Trade. Pursuant to Standing Order 108 (2), we are hearing evidence today for our study of a comprehensive economic partnership agreement, or CEPA, with India.

We have two witnesses today. Representing the Canadian Council of Chief Executives, we have Ms. Ailish Campbell. As an individual, we have Professor Zhan Su, international business chair, Laval University.

Each of you will have 10 minutes to make an opening statement, and then we'll have questions for you from the members of the committee.

I'll start with you, Ms. Campbell. You have 10 minutes.

Ms. Ailish Campbell (Vice President, Policy, International and Fiscal Issues, Canadian Council of Chief Executives): Thank you, Mr. Chairman and committee members. It's wonderful to be here. Thank you for the invitation to appear before the Standing Committee on International Trade concerning the negotiation of a Canada-India comprehensive economic partnership agreement.

The Canadian government's actions to advance foreign market opportunities are critical. It is a difficult time for economic negotiations. The need to continue efforts towards open, dynamic trade has been described as a bicycle. To avoid backsliding into protectionism, countries must stay on the bicycle and keep pedalling, even if the terrain covered looks quite minimal on a day-to-day basis.

Despite our best efforts, the large bicycle built for the 159 members of the World Trade Organization has, regrettably in our view, stalled. We, Canada, and the rest of the WTO members who've invested in the Doha Round are regrettably somewhat off this bicycle, in fact, and riders with the best support teams are now mounting new, smaller bicycles and pedalling off, and frankly, in many directions.

In this challenging context, we commend the government for having developed a strong suite of bilateral and plurilateral negotiations for Canada. The suite of ongoing negotiations is of course very well known to this committee, and includes the Canada-EU comprehensive economic trade agreement negotiations and bilateral agreements in Asia, including with South Korea, India, and Japan, as well as plurilateral options, namely, the Trans-Pacific Partnership. These agreements will be a vital source of future jobs and opportunities for Canadian workers and families.

As an element of this ambitious agenda, the negotiation of a timely Canada-India comprehensive economic partnership agreement is one that the Canadian Council of Chief Executives fully supports. This negotiation must be well resourced, both in terms of negotiating staff and political will, and should be a top priority given the size and projected growth of the Indian market, in particular once the Canada-EU negotiations conclude, we hope.

GDP is rising in developing countries faster and at a greater scale than ever before in human history. Canadian firms from agriculture to energy, and to financial services and IT, must be part of this growth story.

In our view, the CEPA should be comprehensive and include the elimination of tariffs and non-tariff barriers on the majority of trade within 10 years of entry into force; the liberalization of services trade in most sectors, including, most critically, financial services, and a strong exchange of offers between Canada and India on all four modes of services supply; strong investment provisions to promote Canadian investment in India; simplified rules of origin; a binding dispute settlement mechanism; regulatory coherence and cooperation to promote market transparency; government procurement; transparent and simplified customs procedures; and high standards of IP protection.

Our commercial relationships should develop not simply through the exchange of goods and services, but through dynamic interactions, including investment in foreign subsidiaries and joint ventures, licensing, IP, and supply chains, and across multiple jurisdictions. In short, we call on the negotiators for both Canada and India to ensure that the CEPA aligns and keeps pace with the ways in which business is in fact done on the ground today.

As such, a critical piece to promoting a deeper relationship is the conclusion at the earliest opportunity of a comprehensive Canada-India foreign investment promotion and protection agreement, or FIPA. These negotiations have effectively concluded, but no final deal has been signed. We should examine the FIPA to ensure it is of the highest quality and, in our view, then put in place a clear timeline to finalize this agreement.

For our part, to raise awareness in the Canadian business community and among policy-makers of the opportunities in India and Asia more broadly, the Canadian Council of Chief Executives has launched an initiative called "Canada in the Pacific Century" to promote and identify key policy solutions to enhance Canada's ability to succeed in a transforming global economy. The results of this initiative are available online on our website, www.ceocouncil.ca.

As the secretariat for the newly created Canada-India CEO Forum, along with our critical partner, the Confederation of Indian Industry, the Canadian Council of Chief Executives will continue to promote private sector relations to improve our commercial activities. We are pleased to support our CEO forum co-chairs, Tom Jenkins of OpenText, and Hari Bhartia of Jubilant Life Sciences, and the CEOs who form the committee and working groups.

• (1540)

At that inaugural meeting of the CEO forum on November 6, 2012, members identified priority sectors, including natural resources, infrastructure, education, ICT, and financial services. Forum members clearly expressed support for a timely and comprehensive CEPA negotiation.

I trust that my remarks here today underscore that the private sector itself is of course taking action, working with government enablers, such as Export Development Canada, the trade commissioner service, and our dynamic diplomatic assets in India to deepen our commercial relations.

While firmly keeping our paramount economic relationship with the United States robust and dynamic, Canada must also expand its activities in growing markets such as India. These large markets provide the scale of customer demand required for Canadian firms to create jobs, growth and global presence. The member firms of the Canadian Council of Chief Executives wish to see more businesses using Canada as the staging ground for their global operations. In that regard investment and economic agreements with India and other large economies are particularly critical.

Thank you for your time.

The Vice-Chair (Mr. Don Davies): Thank you, Ms. Campbell.

Professor Su, can you hear us?

[*Translation*]

Mr. Zhan Su (Professor, Director of Stephen A. Jarislowsky Chair in International Business, Laval University, As an Individual): Yes, I can hear you.

The Vice-Chair (Mr. Don Davies): Okay. Welcome to the committee. You have 10 minutes to make your presentation.

Mr. Zhan Su: Thank you, Mr. Chair.

I want to thank the committee for inviting me to participate in this discussion on a project I think is important.

I will first say a few words about what we are doing at Laval University in the area of international management. I have been working at the faculty of business administration since 1990. In other words, I have been a professor at Laval University for exactly 23 winters.

We have been very active in international management training, especially since 2008. I am the Director of the Stephen A. Jarislowsky Chair in International Business. We provide training to students at all levels of education—Ph.D., MBA and undergraduate. We are also conducting a lot of research, especially on emerging countries, including India.

Over the past few years, my faculty has organized trade missions with students. The students leave with company-issued mandates to

explore business opportunities abroad. We have already organized four student groups that went on a trade mission to India. A total of 80 mandates have been given by companies.

When it comes to our companies—in Quebec, for instance—we see a net benefit in exploring business opportunities in India. It is usually not very difficult for our students to convince companies or find mandates. That is why I think this initiative or economic partnership we are discussing with India is a rather worthwhile idea.

I know this project is causing quite a bit of controversy, both in Canada and in India—I was in India not too long ago. There are numerous concerns in Canada. Many people are wondering about the economic importance of that project. It is true that, in terms of figures, trade and economic ties between Canada and India are unfortunately still relatively weak. We are not one of India's key partners, and India is not one of our key partners either. In light of that, many people are wondering what the point is.

I think that India should be seen as not just a potential large market, but an existing one. The fact that the Indian market is still fairly marginal to us is all the more reason to make an effort to increase it. That market is large, if only in terms of population, youth, and a savings rate of over 35% of the GDP.

We have to consider the events of the past few years. Two comparisons need to be made to understand that type of a country. In Canada, we often compare India's situation to our own. Conclusions are drawn very quickly in such cases. For instance, it is said that India's market and economy are still very small and do not account for much. I think another comparison should be made regarding India's recent past. Since 1991, when India committed to making reforms, an incredible change has occurred. Every time I visit, I see economic progress and progress in every sense of the word. You should know that the famous summit of the BRIC countries was held in South Africa today. India has a great deal of potential. Given that country's potential importance, we should prioritize the development of its market.

In addition, India has a lot of potential as a supplier for us. When suppliers are mentioned, many fear offshoring, and that's something people resist. It is true that we must do everything we can to keep more jobs at home. However, the real issue consists in not keeping jobs artificially. We have to increase our competitiveness, and one way to do that is by knowing how to take advantage of other countries' strengths.

• (1545)

I work with businesses, where a very simple principle is applied. Today, given the numerous opportunities around the world, a business must know how to choose. It must decide what activities it should do alone, what it should do with others, and what not to do or to stop doing. That's an important decision. If we manage to capitalize on the strengths of others and, ideally, to create a win-win situation, we will all come out better for it.

Our students' mission led us to the clear realization that our companies needed to find new suppliers. Over the past few years, many of our companies have used China or other countries, such as Mexico, as a sort of a subcontractor. However, the situation in those countries is changing. India seems to be a very intriguing option.

The other reason we should try to promote our trade and relations with India is that this country has a very specific economy. It is often said that the state is fairly weak, but companies are very strong in India. The number of companies is relatively small, but some of them are very large. Even when it comes to R and D, some of them are very successful. In these conditions, if our companies can work with them, we may all come out winners.

Canada, like Quebec, needs more foreign capital. We see that, over the past 20 years, India has begun to invest abroad more. Last year, its foreign investments totalled over \$15 billion. So it would really be good for Canada and India to establish a positive relationship.

Some people think that concluding a free trade agreement will not solve all of our problems, and I agree. I would say that we should not think that, once the free trade agreement has been signed, we can expect easy results. It must be understood that India's society is very different from ours, despite certain similarities in terms of democracy, or even language.

The major challenge for our companies would be to take advantage of the opportunities provided by India. To do that, they need more help. Companies that will internationalize—especially in countries like India—will have to meet additional challenges, particularly in terms of the institutional gap. The state plays a very different role in India. It's a protector that struggles to get involved. It's also a promoter that gets involved a lot. We have seen this in recent years, for instance, when it tried to conclude all kinds of free trade agreements in order to support its companies and promote its economy.

In addition, India is something of a producer state. The state sector is still very strong. It contributes at least 15% of the GDP. It's a state that plans ahead, and a look at its five-year plan is enough to see that. It directs investments and economic activities.

The cultural challenge is also significant. The way things are done in India is very different from how they are done in Canada. The distance is another obvious factor. A vast distance separates us, and that will complicate the operations of our companies that want to do business in India, and vice versa.

• (1550)

If we were able to conclude such an agreement, it would be a very good first step, but we have to continue investing to make it a win-win situation.

Thank you.

The Vice-Chair (Mr. Don Davies): Thank you very much, Professor Su.

We will now begin the question and answer period.

I will yield the floor to Mr. Morin for seven minutes.

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

That was very informative.

In a 2006 study of yours, you talked about major challenges that India was facing. I know things have changed since then. Could you give us a quick update on the situation?

You mentioned a massive debt burden, blatant social inequality, major barriers to foreign investment and a difficulty implementing reforms. Do you think much has changed since 2006? In your view, is it now time for us to consider doing business with India?

Mr. Zhan Su: Is that question for me?

Mr. Marc-André Morin: Yes.

Mr. Zhan Su: I would say that, overall, things have improved significantly since 2006.

India's fiscal year runs from April 1 to March 30. And the expected growth rate for fiscal year 2012-13 is approximately 6%. Between 2006 and 2011, the country's growth rate was extremely high. And given the growth rate, we can certainly say that the country offers elements conducive to business and economic development.

It is important to understand, however, that India is categorized as an emerging country and not one that has emerged. I would still say that, today, India has no shortage of problems. It still has numerous challenges to overcome. But, on the whole, there is a very clear desire to undertake reforms, especially under the current government, which has been in power since 2004. India's anti-poverty measures are one example. Reforms have also been put in place to open up the economy to foreign investors. The country has made great strides, but it still has a ways to go.

In my view, our export market structure, in Canada, is overly dependent on the U.S. market, and in order for us to keep our standard of living high, foreign trade has to play a vital role. What we really need to do, then, is seek out major partners.

And, as I see it, India has the potential to be a very important partner for Canada. But it will take work. Life is a struggle, and knowing when to take risks is key, especially when signing an agreement of this nature. I believe it provides the framework to promote opportunities, to try to take action in that sense and to better protect our businesses. Building this kind of framework is necessary.

• (1555)

Mr. Marc-André Morin: Some people are worried. Among them is the president of CGI, who questioned the federal government's strategy in negotiating the agreement with India. Outsourcing is a troubling phenomenon.

What attitude should the Canadian government adopt during these negotiations, to avoid adverse effects like job outsourcing?

Mr. Zhan Su: I believe that, inherently, outsourcing, especially controlled outsourcing, could actually be beneficial for businesses to some extent. Why? Since the 1980s, we've been hearing about the globalization of the economy and competition from all sides. When it comes to Canadian companies, our market is primarily the U.S., and so our products have to be competitive. Domestically, however, our cost structures are extremely high. If we could outsource certain steps while endeavouring to strengthen our competitiveness at other steps, those two things combined could give us a certain competitive advantage.

I've had the opportunity to work with a number of companies in Quebec, including Procycle. Controlled outsourcing has allowed them to sustain themselves, even in the U.S. market. Of course, a free trade agreement can't benefit all Canadian businesses in all sectors. I would say it's important to wait and to try to create an overall climate that benefits the Canadian economy.

As for CGI, I can understand their reservations; India's IT sector is very well-known for its ability to compete. It is, however, a very broad sector, so carving out a place in niche markets is an important first step.

Above all, we need to strengthen our ability to compete. In that sense, I don't see how we can isolate ourselves by closing our borders and still maintain our prosperity.

Mr. Marc-André Morin: When my colleagues across the way hear what I am about to say, their hair will stand on end.

There are situations in which doing business with less advanced economies can prove very beneficial. You're an expert on China. As you know, after the collapse of the USSR, Russia was able to maintain its economy and recover from the collapse. It did so by taking advantage of products that China manufactured very cheaply, products that Russian factories could not make because the infrastructure had crumbled. So, in the context of certain strategies, it can be very beneficial.

In your opinion, can we expect the final outcome of a free trade agreement to be—

[English]

The Vice-Chair (Mr. Don Davies): Monsieur Morin, you're out of time.

[Translation]

Mr. Marc-André Morin: Does the outcome of such an agreement have more to do with the economic conditions in which the agreement is signed or the strategy adopted by the government?

• (1600)

[English]

The Vice-Chair (Mr. Don Davies): Professor Su, a short answer, please.

[Translation]

Mr. Zhan Su: As far as our relationship with India goes, I would point out that the country has undergone a major transformation in a short period of time, 20 years at the most. The time has come to seriously consider making India a major partner. Beyond that agreement, we must not lose sight of the tremendous efforts we will

still have to make. We can't expect to create wealth without any competition.

Taking into account how Canada's economy is structured, I don't necessarily anticipate confrontation in all of the major industries. In the manufacturing sector, for instance, India's activities are still quite modest and won't affect our economy as negatively as China's sector does.

But we do have resources they are extremely interested in. Despite its relatively low level of manufacturing activity, India still imports 80% of its oil. And that is an opportunity for us. Agri-food is another sector where strong—

[English]

The Vice-Chair (Mr. Don Davies): Professor Su, I'm sorry, I must interrupt you. We're out of time for this.

Dr. Zhan Su: I'm sorry.

The Vice-Chair (Mr. Don Davies): That's okay.

I'm going to go to Monsieur Holder

[Translation]

for seven minutes.

[English]

Mr. Ed Holder (London West, CPC): Thank you, Chair.

In the spirit of equalization, I might ask Ms. Campbell a couple of questions, if that's all right. I appreciate both of our guests' testimony thus far. It will help to enlighten us on Canada's intention to proceed with a CEPA with India.

Mr. Campbell, before I speak specifically about the CEPA, you spoke about the FIPA as being important. I certainly get that.

I thought I heard in your testimony that it's ready to go but it's not quite done yet. What are the impediments to getting a FIPA signed? Why is that so critical to be done, either in conjunction with a CEPA or just before it? Can I have your thoughts, please?

Ms. Ailish Campbell: Thank you.

The issue of foreign direct investment is something that can be looked at from two perspectives. One is that where there is value and mutual business interests, significant investments will occur. So I would echo the testimony of Professor Zhan about the relatively low level of business investment right now between our two economies. There is much more potential, particularly in the infrastructure sector for Canada and in the energy sector here in Canada for Indian investors. Significant investments are of course preceding the FIPA. We have some very dynamic joint ventures happening between Canadian and Indian financial services firms, and very dynamic exchanges of benefits in the ICT sector. Again, I thought the testimony of Professor Zhan was spot on about the mutual benefits around various aspects of the value chain in manufacturing.

With that being said, the FIPA is something that gives investors and businesses a level of confidence that their governments are also fully aligned with their private sector investments. In this case, there are international courts that can help settle disputes and there are of course domestic courts. But the FIPA would bring weight to it. The Canadian government is a huge aspect of our competitive value-added in the world. The government in and of itself, its regulations, activities, dynamism, openness, and the rule of law, brings huge value-added to Canada as a destination, as a location, and as a global platform for business.

If I could speak briefly to the FIPA in India, it's my understanding that negotiations have been concluded for some time. But example if one were to compare the current draft FIPA with other FIPAs, there may be some interest in ensuring that the FIPA is at the same level of a comprehensive package as previous FIPAs. Each one does respond to the market dynamics in each country. I believe that India is taking a very close look at its regime in light of some specific cases that it has seen to ensure that the FIPA meets its domestic interests.

• (1605)

Mr. Ed Holder: It's interesting because India's investment in Canada over the last couple of years has seen exceptionally modest growth, under 1%. Canada's foreign direct investment in India has actually gone down by about 13% over the last couple of years—

Ms. Ailish Campbell: It's a very negative situation.

Mr. Ed Holder: Do you think that having the FIPA in place would give investors that much greater confidence to come back into those markets? Do you think there'd be a correlation there?

Ms. Ailish Campbell: The one-line answer is absolutely. The slightly longer answer would be that the Indian market is very complex, as is our own with both our federal and provincial jurisdictions, with our agreement on internal trade and federal law—which of course help to facilitate a common market in Canada across our fine provinces and territories.

India is an incredibly complex market. In addition to the FIPA, there is so much more work to be done on addressing a host of competitive issues, including non-tariff barriers and red tape, and also a whole host of completely legitimate but no less difficult time-consuming issues. It takes a significant investment of time for a business to make an investment in India given the number of jurisdictions at play, just like it does in Canada on a significant large investment.

So on the FIPA, absolutely, I agree. But there's more work to be done even after that stage.

Mr. Ed Holder: I appreciate the clarity from you.

You might hear from members around the table that there's a difference in the balance of trade between Canada and India, with Canada having some \$2.3 billion of merchandise trade and India has some \$2.9 billion. Why would we want to make investments where we are in a deficit on an overall basis? Is that the whole story, or do you think that irrespective of Canada having a deficit versus any other country it still makes sense to have a trade deal? That certainly has been a point of contention by some members around this table. If I haven't explained it clearly enough, I can try again.

Do you have any thoughts about that?

Ms. Ailish Campbell: Merchandise trade is of course vital. Those statistics are very interesting. The OECD, however, has recently come out with a very interesting set of statistics that I would encourage this committee to look at, both for this particular study that you're conducting and on an ongoing basis. That's the OECD value-added trade data.

If this glass, for example, crosses a border, you would consider that an import from India to Canada. But it doesn't tell you about some of the inputs—some of the sand or various other inputs—that went into this. This is a very simple example, but you can imagine a computer.

So it doesn't actually decompose this investment in terms of where those other parts came from. Furthermore, we have very poor data on investment in services, which we know are very difficult to track, which I believe is one of the more dynamic areas. I think our value-added opportunity is absolutely in imports and exports, but also in being able to go to India....

For example, Dominic Barton, the global CEO of McKinsey, spoke at our Pacific Century conference. He spoke about the \$33-billion worth of investment the Indians need to make in their infrastructure—energy, housing, municipal waste water, for example—over the next 20 years. These are huge opportunities for Canadian firms. They will never be measured in imports and exports, because what we're suggesting is for Canadian engineering, design, and construction firms to actually travel to India and provide the service there. You would never see that show up, for example, as an import-export situation.

So if you will allow me, I do think that somewhat looks at one important part but not certainly the full picture of assessment that we'd encourage this committee to examine as you look at Canada-India economic relations.

The Chair (Hon. Rob Merrifield (Yellowhead, CPC)): Thank you very much.

I'd like to thank my vice-chair for filling in for me for the first half-hour.

We'll now move to Mr. Easter for seven minutes.

Hon. Wayne Easter (Malpeque, Lib.): Thank you, Mr. Chair.

Yes, Ed is right: we will get into the fact that on trade we're not doing anywhere near as well as a country as was hoped under the trade agreements. The OECD value-added trade data will be interesting to look at.

I'm certainly of the opinion that signing trade agreements for the sake of signing trade agreements doesn't seem to be enough. We've had a fairly poor record in recent years in terms of trade surpluses and deficits.

Worse, or as bad, I think is the fact that the oil industry is doing reasonably well—even our oil price is discounted in Canada at the moment, though, for numerous reasons, mainly lack of market—but our manufacturing sector is not doing well at all. It is not doing anywhere near as well as it should be in terms of job creation and value added.

We need to be pursuing areas as a country—and I'll admit, I think the committee should be looking at these—from a policy perspective, both federally and provincially, to enhance our trade agreements. We support trade agreements, but what do we need to do to take advantage of the trade agreements to see that more advantage stays within Canada?

Do you have any suggestions on that, or am I off base?

Mr. Ed Holder: [*Inaudible—Editor*]

Hon. Wayne Easter: Well, you'll say I'll off base, but I don't think I am, Ed.

The Chair: Who are you asking?

An hon. member: Are you asking me?

Voices: Oh, oh!

Hon. Wayne Easter: No, I'm asking Ms. Campbell.

• (1610)

Ms. Ailish Campbell: Thanks.

Again, I would just underscore some of the macro data about Canada's relative successes, of course, coming out of the global recession. As an economist, I would urge the committee to look not so much simply at the trade deficit situation but at our employment numbers, our growth, and the growth potential of our economy.

In fact I've spent 18 months looking at the manufacturing issue in quite some detail, and we at the Canadian Council of Chief Executives along with the Canadian Manufacturers and Exporters and others will continue our work on value-added manufacturing.

Just to specifically address your point, Vice-Chair Easter, I must disagree with you and say that the Canadian manufacturing sector is in fact doing very well. It has significant challenges, of course. We've seen businesses, our members, adjust their business strategies in light of the high Canadian dollar, but the high Canadian dollar is an opportunity to invest in machinery and equipment, our stock of that. It's an opportunity to look abroad for acquisitions and to grow our small and medium-sized Canadian firms into larger operations.

We've seen our auto parts sector—Magna, Linamar, Martinrea, and others—take advantage of that high dollar to in fact increase their global presence and serve other markets. So there are real opportunities despite the challenges, as long as we continue.

I would also encourage us not simply to look at manufacturing as the production process but also to look at the value-added parts of the manufacturing chain—the research and development, the engineering, the prototyping. Once one gets to mass manufacturing—which is often in our minds when we think of India and Asia, but in fact that's not completely true—we think of offshoring those jobs.

I believe we are seeing a real opportunity with some of the energy prices in Canada and North America coming down and new forms of energy coming online. Canada is blessed, as I believe no other country on the planet is, with all forms of energy as an input to the manufacturing process. I believe we will see those jobs stay if we can ensure that we remain internationally competitive.

But there is also the after-market servicing. So we produce the car, but then the mechanics who serve that car, along with all the value-added after-market products that come along with the car, are opportunities for the Canadian sector. We're doing very well in some of these high value-added components of the manufacturing value chain across this entire country. There are success stories from east to west and all the way north.

With regard to the Indian example, we know we have a labour shortage, a demographic pressure in Canada. We must do better about getting Canadians into those jobs and training Canadian workers. But where we have shortfalls and opportunities, we cannot allow Canadian growth to stumble when we have opportunities to use Indian or other service providers in literally a 24-hour market cycle where, for example, we have Canadian teams based in Calgary and others that then hand off at the end of their effective business day to Indian service providers to do work overnight creating these global teams. That can also mean importing Indian engineers, high-tech Indian talent for specific projects, learning from them, and then as I said, also taking advantage of the opportunities for Canadian engineers and Canadian construction firms and others to travel to India to provide value-added services in those markets.

I think it's a huge opportunity. So focusing on those trade-deficit numbers is important—I think we can do better—but it's not the full picture.

• (1615)

Hon. Wayne Easter: In terms of the work you're doing, you're saying you've been looking at the manufacturing sector for quite some time. Will there be a report at the end of your study on that issue that can be made available to this committee or that will be public?

Ms. Ailish Campbell: Absolutely. We've partnered with the Richard Ivey School of Business in London, Ontario, and we are producing a report that we hope will come out in the late fall of 2013. I'd certainly be happy to keep this committee posted on that study.

Hon. Wayne Easter: That would be appreciated.

Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you very much, Chair.

Thank you to our witnesses.

I have a basic question for the Council of Chief Executives. How many organizations do you represent?

Ms. Ailish Campbell: We represent 135.

Mr. Bev Shipley: Are they a diverse group of companies—small, medium, and large?

Ms. Ailish Campbell: You'll forgive me for not having provided a better introduction to the CCCE. Our CEO and president is the Honourable John Manley.

As I said, we represent approximately 135 of the largest firms in Canada. We are generally large firms, although we do have some entrepreneur members. We represent \$2 trillion in assets, \$850 billion in annual revenue, and our members employ over a million Canadians.

Mr. Bev Shipley: Thank you very much.

You talked later in your discussion about the opportunity for Canadian businesses, but also the skills or professions that they have, whether it be engineering or design, or it may be medical or whatever it would take, to go to India to work in or around the infrastructure area. We tend to think about infrastructure as being roads and bridges. I suspect it also revolves around the medical sector, and that it maybe also the development of infrastructure for agriculture, processing, and development.

The organizations that you represent, then, are more of a large corporate size. Do they see the opportunity to get into the market? What we hear is that it is a complex country to deal with. Do many of them come with a background of already having dealt with some of the issues in India?

Ms. Ailish Campbell: Certainly our members are large firms. Many of them do have global presence. They are teams that have done work entering foreign markets and learn lessons and apply those to India.

Let me make it clear, though—and I hope in further appearances before this committee on other topics to bring you a better sense of the supply chains of our firms, which of course include small and medium-sized enterprises—that as a large firm enters the market, it is bringing its business partners and service providers with them. In some cases this includes tens, if not hundreds, of smaller service providers that are embedded perhaps in the larger product of the large firm.

In particular, though, I think we could also make mention of the vital importance of the trade commissioner service of Foreign Affairs and International Trade, which helps, not only large firms but also small and medium-sized firms.

I was very interested in Professor Zhan's remarks about niche manufacturers and finding dynamic areas, whether in specific aspects, for example, of value-added agriculture in the pulses, lentils area, or if that's further up the protein chain of various meat proteins.

You can be a very niche provider with a very important product and leverage that vital trade commissioner service in India to help you get off the ground. You can use India as your growth platform while using a Canadian product and being based in Canada.

I hope I've answered your question. If there's anything further about the firm size—

• (1620)

Mr. Bev Shipley: You actually do very well at answering the unasked questions. You already did that for a couple of them, which I very much appreciate. I'm serious in saying that—you did—because my next question would have been on how the small businesses actually benefit if it's mostly about the large corporates, and you touched on that.

What can we do? We just came through another budget and we continue to build on growth in Canada each year. What can we do, as a Canadian government, to help businesses as they look for foreign investment and exports into countries like India?

Ms. Ailish Campbell: We can do some things at a very high level. Some generally applicable things include the excellent work of Export Development Canada, the export financing component of that being critical; the trade commissioner service; our diplomatic representation; and the ongoing relationship-building that our diplomatic corps provide for us—the high-level visits of the Prime Minister and ministers, and the engagement of provinces with sub-federal entities in India. This ongoing relationship-building is absolutely vital, putting Canada on the map, if you will.

Canada is a geographically gigantic country, but very sparsely populated. It's hard sometimes for our Canadian imagination to see the reality of India, with multiple Montreals and Torontos springing up every day. But our imaginations, frankly, have to get bigger. This is a huge opportunity.

But then I think it's very important for this committee to perhaps pick some priority sectors it wishes to focus on, whether that's value-added agriculture or infrastructure or cultural industries or IT.

You deserve a more detailed answer to your question, but then I would quickly get into what the needs of the sectors are. They can be quite different. They might be marketing and branding. They might be work on specific non-tariff barriers, especially around agricultural products, which require health and safety standards and certification. There's also the understanding of the Indian consumer, for example, unpacking what might be some of the demands of the future in a very different market from our own.

Thanks.

The Chair: Okay. Thank you very much.

[*Translation*]

Ms. Papillon, the floor is yours.

Ms. Annick Papillon (Québec, NDP): Ms. Campbell, in its last budget, the government took India off the list of developing countries that receive a tariff reduction.

Isn't that decision at odds with the overall objective of reducing tariffs to facilitate international trade? In other words, at the very moment we are looking to negotiate lower tariffs with India, our government is increasing them.

Isn't that a contradictory move?

[*English*]

Ms. Ailish Campbell: I think that's a great question.

Ms. Annick Papillon: Thank you.

Ms. Ailish Campbell: We view tariffs, if you will, as the issue that we could deal with almost on day one of a trade negotiation, in the sense that we don't think this is the real barrier or focus for a CEPA or any other trade negotiation. We would like to see Canada move to 0% tariffs, because we do not feel that they're a necessary revenue source for our government. Frankly, the issues really go beyond this, in terms of involving non-tariff barriers and regulation and red tape.

Looking at the Indian example, we have to show some sensitivity to the fact that tariffs as a government revenue stream remain a much more important source of revenue for India than for us, along with taxation and levies and other revenue-raising items. But again, we would argue that these are not the areas that we should focus on in a trade agreement. We should show some sensitivity, I believe, particularly in light of Professor Su's remarks about the fact that more than 50% of India's economy is still agrarian. So there are some, shall we say, mutual sensitivities in agricultural products that I think we could quickly exchange views on.

But we would encourage negotiators and this committee to focus on issues well beyond tariffs.

• (1625)

[Translation]

Ms. Annick Papillon: Thank you very much.

Mr. Su, as the member for Quebec City, I would obviously like to hear your comments from that perspective. I would also like you to comment on the business opportunities this free trade agreement with India could mean for Quebec. If possible, could you tell us whether other countries in Asia offer opportunities in that sense? The focus is really on BRIC nations, but there may be other, smaller countries with whom it would be worthwhile to build a relationship.

Mr. Zhan Su: I'll start with your last question.

Canada has attempted to negotiate free trade proposals with a number of countries. It has signed agreements with some of them, and negotiations with others are still under way.

From my perspective, the issue for Canada is not increasing the number of agreements, but seeking out quality and profitability. That's why I am among those who support finding major partners we can strengthen our relationships with. India is one of those partners.

You're right in saying that, on the whole, Asia is a leading driver of global economic growth. Of course, we could certainly do a lot more with Japan and Korea. There is one player in Asia that we should be a little more careful of: China. Given the country's political system and the way its economy works, we aren't necessarily in a position today to manage or create a win-win situation. Because of that, I think we should start out in Asia by reaching an agreement with India. That alone would be a big step forward.

You asked about the opportunities. If you look at India's economic structure, you will see that it has a very prominent service industry made up of two parts. The first is traditional services. In that area, India has endeavoured to sell its medical expertise, its health services and so forth. The second and more important part is what are called modern services: a new economy, telecommunications and especially information technology. In that respect, we can see why the

president of CGI is so worried; there is competition in that sector. But in all the other sectors, I see tremendous opportunity for Canada.

In terms of India's manufacturing industry and structure, things are still at a very basic level. There are, however, segments of the manufacturing sector we aren't involved in. The automobile sector is one where we excel.

[English]

The Chair: Okay. Thank you very much.

We'll move to the last questioner, Mr. Keddy.

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): Thank you, Mr. Chairman.

I welcome our witnesses. I didn't know if we were going to have time for a final round of questions or not.

I have a couple of points.

Ms. Campbell, I want to pick up a little bit on Ms. Papillon's question on preferential tariffs. To me, I think it's fairly simple, so maybe I'm missing some part of this equation. You have a preferential tariff rate for countries that are emerging economies, developing third world nations, and that gives them some opportunity and some protection, quite frankly, for their industries to be at a competitive advantage to sell into more mature economies. That's quite simply what it was.

Although parts of these countries may still be emerging economies, the fact is that India's middle class is somewhere around 350 million people—larger than the entire population of the United States. China is becoming the second-largest export destination for Canada, and is the second-largest economy in the world. Certainly, I don't think we can call them emerging economies any longer. To me, I think what we're giving them is an incentive. They've lost their 3% advantage. They now have an incentive to sign trade agreements with Canada and to look quite seriously at a free trade agreement. Do you have a comment on that?

• (1630)

The Chair: Could we have just a very short answer or comment?

Ms. Ailish Campbell: I agree.

Voices: Oh, oh!

The Chair: Okay.

Professor Zhan, do you have a comment?

[Translation]

Mr. Zhan Su: The U.S. president recently tried to sign a free trade agreement with the European Union in an attempt to bring down customs tariffs. No doubt it's important to know how to leverage that element. Parliament has long known that differences between countries have the potential to generate significant wealth. If we could eliminate as many tariff and non-tariff barriers as possible, everyone could come out a winner.

[English]

The Chair: Very good. I think that's all. I think our time is gone as well.

I want to thank the witnesses for coming here for this first hour of our final debate actually. This will be the final group of witnesses that we will have on an India-Canada partnership agreement.

For that, we thank you again for your time, Ms. Campbell and Professor Su.

We will suspend as we set up the next round of witnesses.

• (1630) _____ (Pause) _____

• (1635)

The Chair: I'd like to call the meeting back to order. I want to thank our witnesses for being here. We have with us in the room, Mr. Vidler, the director of international policy for the Canadian Chamber of Commerce. Then we have by teleconference—you can't see him—Mr. Bubber.

Mr. Bubber, can you hear us?

Mr. Nav Bubber (Director of Operations, Scotia Private Client Group, Bank of Nova Scotia, Canadian Chamber of Commerce): Yes, very clearly, thank you.

The Chair: Thank you, I'm glad that's working out.

By video conference, we have as an individual, Mr. Van Harten.

Mr. Van Harten, can you hear us?

Dr. Gus Van Harten (Associate Professor, Osgoode Hall Law School, York University, As an Individual): Yes, I can.

The Chair: Very good, we're all set to go. We'll start with Mr. Vidler, I believe you have a presentation, and Mr. Bubber is going to answer some questions if they're posed.

Mr. Cam Vidler (Director, International Policy, Canadian Chamber of Commerce): I'll be speaking first about the agreement more generally and then Mr. Bubber will join in on the financial sector stuff.

The Chair: He's going to be part of your presentation?

Mr. Cam Vidler: He is part of the presentation.

The Chair: Okay, in combination for 10 minutes, go ahead.

Mr. Cam Vidler: Thank you, Mr. Chair, for this opportunity to provide comments on the Canada-India comprehensive economic partnership agreement or CEPA.

I'm Cam Vidler, director of international policy at the Canadian Chamber of Commerce, which is one of Canada's most representative business organizations. Many of our members are active in India, including Scotiabank, which is represented here today by Nav Bubber, director of operations at Scotiabank Private Client Group, who will also be providing remarks after I do.

The Canadian Chamber is a long-standing supporter of increased trade and investment with India. In 2009 and 2010, we called on the federal government to undertake bilateral trade negotiations. Last November, our president and chief executive officer, the Honourable Perrin Beatty, travelled to New Delhi to meet with members of the business community there. Developing strategies for Canadian businesses to access new markets like India is one of the Canadian Chamber's top 10 priorities for 2013.

Last year the Canadian Chamber produced a report called "Canada-India: The Way Forward", which outlines the views of our membership, as well as policy recommendations to improve our relationship with India.

We believe that India is crucial to Canada's global commercial engagement. Rapid economic growth and urbanization, combined with a young population of over 1.2 billion people, are boosting consumption and investment in India, and creating a booming market for Canadian goods and services—right at a time when our traditional markets are slumping.

In addition to the sales opportunities, India is establishing itself as a prime location for innovation and production, based on its growing pool of talent and emerging global companies. We all know about the IT clusters in Bangalore and Hyderabad, but India's manufacturing sector is also becoming more sophisticated, with a number of local and foreign companies supplying the broader region from their bases in India.

Despite a recent slowdown in growth that has led to some skepticism by commentators, India appears to be turning a corner. A new wave of liberalization is under way, and economic confidence is returning.

Canada's capabilities in areas of extreme need for India—including energy, infrastructure, agriculture, financial services, and education—make us very well placed to succeed there. Leading Canadian companies such as Bombardier, Sun Life Financial, McCain Foods, Research in Motion, SNC-Lavalin, CGI, CAE, and Scotiabank, to name only a few, have made significant inroads. Our SME presence in India is growing as well.

Despite these positive developments, the business relationship between Canada and India remains underdeveloped. Distance, language, and cultural differences certainly play a role, but a number of policy barriers in India also hold back Canadian companies.

The CEPA is an opportunity to address them. I'd like to outline four general priorities here. A more exhaustive list can be found in the report I mentioned earlier as well as the submission we made to this committee.

First, the CEPA should reduce and bind Indian tariffs on major Canadian exports, such as chemicals, wood products, manufactured goods, and especially food stuffs, where tariff rates can hover near 30%.

Second, these tariff reductions need to be accompanied by strong disciplines against non-tariff barriers. Licensing requirements, technical standards, and product certification procedures can often be onerous and insufficiently harmonized with international best practices. Companies also report local content requirements and government procurement practices that discriminate against foreign companies.

Third, the CEPA must extend Canada's access to India's services sector. There are, for instance, significant restrictions on foreign involvement in banking and insurance, some of which my colleague Nav Bubber will be able to speak to. Market access should also be complemented in the services sector by arrangements for the temporary entry and mutual recognition of professionals.

Finally, protections should be included in the agreement for Canada's growing stock of foreign direct investment in India. A foreign investment promotion and protection agreement, or FIPA, was signed in 2007, yet India has yet to ratify it. This leaves Canadian investments potentially exposed to discriminatory or arbitrary regulations and taxes, and without recourse to investor-state dispute settlement procedures.

The Canadian Chamber applauds the government's intent to complete the CEPA negotiations in 2013, but it is important that Canada not sacrifice quality for speed. An ambitious and comprehensive agreement that secures real, long-term market access for Canadian companies and their Indian counterparts is an achievement worth waiting for, albeit not forever.

With that, I'd like to pass the microphone to Nav Bubber.

Thank you, and I look forward to your questions.

• (1640)

The Chair: Thank you very much.

Mr. Bubber, go ahead.

Mr. Nav Bubber: Thank you, sir.

It's my pleasure to present to all of you today, and I thank you for this opportunity.

I am Nav Bubber, director of the Scotia Private Client Group at Scotiabank.

You just heard from Cam Vidler of the Canadian Chamber of Commerce on the opportunities that the Indian market has to offer to Canadian companies. I would like to add to Cam's comments, both in my capacity as a representative of Scotiabank and as a board member of the Canada-Indian Business Council.

There are two key points I would like to make today. First, I want to emphasize the importance of securing this agreement. The timing is excellent for a trade agreement with such an important market. Second, Canada has several strengths that make it an ideal trading partner for India, something we believe needs to be effectively communicated.

Before I go into details, let me briefly summarize our experience in India. Scotiabank is Canada's most international bank. With more than 81,000 employees, Scotiabank and its affiliates serve about 19 million customers in more than 55 countries around the world.

We have been in India since 1984 and are proud to be the most active Canadian bank. With more than 170 employees and five branches, we offer a broad range of corporate and commercial services along with some retail banking products. ScotiaMocatta, our precious metals division, is now one of the largest precious metal dealers in India and has been recognized as the "Best Bullion Bank" for the past four years.

But this is just a start. We would love to expand our operations, but the regulatory environment and market access barriers for foreign banks in India have definitely slowed our progress. A trade deal could help remove such barriers and allow us to make a much larger contribution to the development of the Indian banking sector as a whole.

In our view, Canada has some unique qualifications as a potential trade partner for India: the strength and stability of our economy; consistent and transparent policies; a multicultural and educated workforce; and also top-tier sectors in education, energy, and services such as banking.

The mix of stability, policy orientation, and sectoral expertise make Canadian institutions ideal partners, with the ability to meaningfully contribute to India's economic transformation. Looking at the financial sector specifically, Canadian banks are global leaders in risk management, corporate governance, and financial control. We also have a proven track record of partnering in the development of banking sectors around the globe.

We want to bring these strengths to India. In light of what Canada has to offer, the CEPA agreement needs to provide increased market access and transparency for Canadian companies, to increase access for all financial services in respect of right of establishment, and to grant Canada full national and most-favoured-nation treatment.

In terms of market access, the two main barriers are India's 5% foreign ownership limit on domestic private sector banks, which prevents Canadian banks from expanding through partnerships, and the branch authorization policy, which limits the ability of foreign banks to open new branches because of the imposition of non-transparent quotas.

In return, we encourage Canada's negotiating team to consider a strong market access offer to India in areas of their interest, such as labour mobility. This will ensure mutual benefits and a successful agreement.

I believe that Scotiabank's history in India and Asia as a whole, and our deep commitment to the development of emerging markets place us in a unique position to offer insights on this topic. I hope these recommendations are helpful in your deliberations.

Thank you.

• (1645)

The Chair: Thank you, both, for that.

We'll now move to Mr. Van Harten, who is an associate professor at Osgoode Hall Law School at York University.

Mr. Van Harten, the floor is yours.

Dr. Gus Van Harten: Thank you for the opportunity to speak to you.

First, I'd like to say a word of caution: it's difficult to evaluate any treaty without looking at the text, and I understand that negotiations haven't been concluded, so the text isn't available. I will just make it clear that I haven't reviewed the text, so I say all of this with a certain caution.

I'd like to point out at the outset that this is a trade agreement. It's not a FIPA, and it's not, as I understand it, like NAFTA, a hybrid trade and investment agreement. Judging by the information available on the DFAIT website, there are no aspirations at this time to include an investment chapter in the free trade agreement or certain other topics, including intellectual property rights, procurement, and so on. It could be that I'm wrong about that; I'm judging only from the list of topics covered on the website.

With all of that said, I'm actually quite supportive of this approach to the free trade agreement with India. I think it does have the potential to benefit Canadian businesses looking to improve their level of access to India, for goods, exports, and services exports.

I think it's a good idea to take the more modest approach that I see reflected in this treaty. It excludes such sensitive topics as investment, which for other reasons, I think both from an Indian and a Canadian perspective, are raising concerns based on recent information about how investor-state arbitration is being used. That calls for further attention and study, including from a Canadian point of view, keeping in mind that with the exception of NAFTA, Canada has never ratified a FIPA or a free trade agreement with a country whose nationals have owned substantial assets in Canada. We haven't had to think as much about the risks and liabilities that come with the very strong provisions for foreign investor protection that investor-state arbitration entails. We haven't had to look too closely at how that affects Canada as a capital importing country in the relationship outside of NAFTA.

That situation is changing, and it may change quite dramatically in light of a number of treaties that are under discussion and negotiation. I would not put Canada's relationship with India at quite the same level as some of those other treaties. Nevertheless, I think it is significant that Indian companies own several billion dollars of assets in Canada. That's an order of a presence, an inward investment presence, that goes beyond that of other countries Canada has concluded FIPAs with to this point.

Along those lines, I'll elaborate by speaking a bit more of my impressions as to why the proposed FIPA with India has not been concluded. My understanding, especially from colleagues in India, is that it is because the Indian government is not committing to investor-state arbitration in any treaties at this time, and that would include the FIPA with Canada or other possible treaties. The reason for that is that India has joined other countries in initiating a review of its exposure to investor-state arbitration and the risks and liabilities that creates for its governing and regulatory decisions affecting foreign investors in India.

It's also reviewing the issue of whether investor-state arbitration gives special advantages to foreign companies that domestic companies don't enjoy in their own home economy and jurisdiction. These issues have arisen in India because of its experience in about the last 18 months where it has faced approximately six new investor-state arbitration claims against it by investors from a variety of other countries.

•(1650)

My understanding is that it's because of India's caution that investor-state arbitration is presently off the table in a Canada-India FIPA, and I assume, although I have no reason to confirm this, that

may be part of the explanation for why investment is not among the list of topics contemplated for the free trade agreement.

I'd like to speak briefly to some of the comments that were just made about investor-state arbitration and the role that it might play in protecting Canadian investors from arbitrary discriminatory treatment and so on in India. I think that's an important consideration to take into account. Indeed, it has always historically been the primary consideration in Canada's other FIPAs. Because the investment flows were predominantly one way or they were not particularly significant, Canada didn't have to think as much about how consents to investor-state arbitration would affect governing decisions here and would affect domestic investors in Canada attempting to compete with foreign investors. I'd like to add a little more information to shed a bit more light on just how much we can rely on investor-state arbitration, even to protect Canadian investors abroad.

The points I would make are based on the record of investor-state arbitration cases decided under Canada's FIPAs and NAFTA to date when the claim was brought by a Canadian national, usually a Canadian company. There are 17 such cases that are known on the public record wherein a Canadian investor has used investor-state arbitration to sue another country. Ten of them arose under NAFTA, including nine cases against the United States, and seven cases arose under FIPAs concluded by Canada with a variety of countries, such as Venezuela, Costa Rica, and other countries.

The record of Canadian investors in those cases is zero wins and 17 losses. No Canadian investor has ever recovered compensation in a known case involving investor-state arbitration. By comparison, in the several hundred cases to date brought in investor-state arbitration proceedings, the success rate of the investor is around 45% to 50%. That fact in itself might be helpful. I don't know that it tells the whole story. It's just one piece of information, but I'd just like to highlight it as one reason why I think there is legitimate cause for further reflection on just how well investor-state arbitration is serving Canadian interests, including the interests of Canadian companies abroad.

We should keep in mind that there are other instruments available to protect Canadian companies abroad, such as the contracts that they conclude, which can also provide for arbitration, such as the commercial risk insurance that's available in the marketplace, and such as the channeling of their investments through third countries that have concluded investment treaties with India. Some of the claims against India have gone through what we would call "holding platforms" in a third state, such as Mauritius, and there's no reason why a significant Canadian company cannot structure its investments in India to take advantage of the same protections available through those third country investment treaties without exposing Canada and Canadian companies to any of the risks or disadvantages that would follow from a direct commitment to investor-state arbitration between India and Canada.

I would offer those as my opening comments. I thank you again for the opportunity to speak to you.

The Chair: We thank you for those comments.

We will start now with the questions and answers.

Mr. Davies, you have seven minutes.

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

Thank you to all the witnesses for being here.

Dr. Van Harten, I know that you've done a lot of research on the investor-state dispute resolution system. We've already heard from you and other people that India is one of the few countries of the world that is now opposed to including investor-state provisions in their trade agreements. I think they join other countries like South Korea and Australia. I know that Canada of course has been pursuing and in fact has been the demander of such provisions as a standard feature in our trade agreements. I want to drill into a bit of the ISDS mechanism.

My understanding, of course, is that an investor who believes that their rights have been violated under the agreement would then take their case not to the domestic courts of either jurisdiction, but rather to an ad hoc panel of three international trade lawyers that is set up. That's usually who it is. I'm just wondering about it. When they make a decision, where does an appeal of that decision lie? Should the country be aggrieved or not like the decision, or even if the investor doesn't like the decision, to whom do you appeal?

• (1655)

Dr. Gus Van Harten: It would depend on the arbitration rules under which the investor chose to bring the claim. Most treaties give investors a choice of rules. If the investor brought the claim under the ICSID rules, there's an opportunity for so-called annulment proceedings, which are quite light touch and which are decided not by a court but by another panel of arbitrators. The members of that panel would be appointed under the authority of the World Bank president. So there's a light touch review option, but it's outside of any court process under the ICSID rules.

If the claim is brought under other sets of rules, especially the UNCITRAL rules or what are called the ICSID additional facility rules, and this is typical for arbitrations involving Canada.... Canada has been sued about 35 times under NAFTA, and those are usually under the UNCITRAL rules and the ICSID additional facility rules. The way it works is that the arbitrators choose which domestic courts will have the authority to review the arbitrators' decisions. So it could be a foreign court, it could be a domestic court, but again, typically it's a very light touch review. There's not rigorous and extensive judicial review of the ad hoc arbitrators' awards.

Mr. Don Davies: In a short answer, are you of the opinion there's an adequate appeal mechanism in place with respect to ISDS mechanisms?

Dr. Gus Van Harten: No, it's widely held among academics that there's not an adequate appellate mechanism. Some people prefer an appellate body; I personally prefer a proper court, but I think it's widely regarded as requiring a more rigorous appellate process.

Mr. Don Davies: There's been a further criticisms of the ISDS process that these ad hoc appointed panels do not enjoy some of the

prime characteristics or features of what we regard as the rule of law. For instance they don't have security of tenure. Generally, we think in the western school of thought on the rule of law that judges need to be shielded from the consequences of their decisions so that they're free to decide as they wish. Are there concerns about the lack of security of tenure of these people? Also, could you comment briefly on criticisms of bias in the system?

Dr. Gus Van Harten: There are concerns. I have expressed those concerns in some of the work that I've done. What you have here is a very exceptional context when arbitration is used to resolve some of the most sensitive public policy and public law issues that can arise in any country.

Those issues are normally resolved in courts. Courts enjoy institutional safeguards of independence, such as security of tenure, objective methods of appointment of the judge to individual cases, and prohibitions on the judge earning income on the side or working in an overlapping role as both a judge and a lawyer in different cases. All of these concerns arise because of the unique context in which arbitration is used here, and it does give rise to serious concern.

I never allege actual bias because I don't think that's necessarily a decent thing to do. I don't wish to cast aspersions on any individuals, but that's not actually the key concern. The key concern is that everyone involved, investors, states, and so on, be confident that this is a fair and independent process. When you lose the institutional safeguards, you give rise to reasonable apprehension of bias, and that's the problem.

Mr. Don Davies: I think when we get down to what many citizens would be concerned about, it's that they want to make sure that their provincial or federal governments can make policy decisions or pass laws, let's say in the interest of protecting the environment or to develop the economy in some way to require job creation in our country. They're worried that ISDS mechanisms can subject those decisions to challenge by foreign investors, who can then overturn those policy decisions and force the governments to pay damages, which are taxpayer dollars, to those investors.

Not only are taxpayer dollars at risk, but this may also have a chilling effect by causing governments not to want to legislate in areas because they fear getting sued by foreign investors. Is there any basis to that fear?

• (1700)

Dr. Gus Van Harten: The primary basis for those concerns relates to the award of monetary damages against countries when decisions are taken by a legislature, by a government, by a court, that affect detrimentally the foreign investor and are found by the arbitrators to have breached some broad standard of investor protection.

This is becoming more and more serious as we see countries facing awards into the billions of dollars. They are backward looking awards: you have no opportunity to fix the problem before you face that kind of fiscal liability. From the point of view of taxpayers, fiscal responsibility, and the auditing of how Canada's legal obligations create very significant fiscal risks, potentially, for the country, that to me is the primary concern that we should be examining when Canada is signing up to investor-state arbitration, when we're on the wrong end of the stick so to speak because there is a lot of foreign-owned investment from the relevant country in our economy.

The Chair: Thank you very much.

We'll now move to Mr. Cannan, for seven minutes.

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

I have a question for Mr. Vidler, but I wanted to thank, is it Dr. Angus Van Harten, or do you go by professor, or what do you prefer?

Dr. Gus Van Harten: You can call me Gus.

Hon. Ron Cannan: Gus, all right.

Well, I thank you for your patience and perseverance. I think it's the third attempt we've made to get you at committee, so I appreciate your being here today. It's good to see you. You're represented in the media as an international law expert and you have some academic credentials. I guess that would make you able to be a witness, to perceive objectively, I guess, the issue that's before us today.

The Chair: Is that a question?

Dr. Gus Van Harten: I'm sorry?

Hon. Ron Cannan: With your credentials, you can look at these issues from an objective perspective?

Dr. Gus Van Harten: Well, I'm an academic researcher, and that's always my aspiration, yes.

Hon. Ron Cannan: Have you been involved in politics or do you consider yourself non-partisan?

Dr. Gus Van Harten: I do. I've never been involved in politics. I don't have any aspirations to get into politics.

A voice: Good choice!

Hon. Ron Cannan: Have you been involved in political parties at all, or contribute to...?

Dr. Gus Van Harten: I have been a member of—

Hon. Wayne Easter: I have a point of order, Mr. Chair. I do think that's an unfair question. Are we going to start asking witnesses if they've ever been a member of a political party?

The Chair: It's not a point of order.

Go ahead. You can ask whatever question....

Hon. Wayne Easter: I think that's unfair.

The Chair: You're not obligated to answer in any specific way.

Go ahead.

Mr. Don Davies: We'll be asking all the witnesses this question.

Hon. Ron Cannan: I just wanted to clarify if you're Angus Van Harten who's donated on multiple occasions to both the NDP and an NDP leadership candidate. Would that be you?

Dr. Gus Van Harten: I have donated to four different political parties in my life, including the NDP.

Hon. Ron Cannan: Okay.

I just have a list of your donating to the NDP about eleven times in the last couple of years. I think it's important the committee, in our deliberations, know if we're dealing with somebody who's an academic or has a partisan hat on.

I just want to clarify that.

Mr. Don Davies: Everybody's getting this question now, just so you know.

The Chair: Do you have a question, Mr. Cannan?

Hon. Ron Cannan: I just wanted to know which perspective it was, whether a non-partisan hat or an NDP hat or an academic hat that you're wearing.

The Chair: I think he's answered that.

Go ahead. Do you have another one?

Hon. Ron Cannan: Sorry, I didn't hear the answer.

The Chair: The answer was that he's here as an academic and would attempt to be as—

Hon. Ron Cannan: There's nothing wrong with that. We have Conservative academics who are witnesses. I had a chance to debate on CBC with Mr. Van Harten, and I think it's important that he declares his partisanship, that's all.

Mr. Marc-André Morin: On a point of order, Mr. Chair, I think the question is totally irrelevant. Even though over the months we've suspected that some witnesses were partisan, we've never asked that type of question.

The Chair: Yes, and that's debate; it's not a point of order.

But go ahead. Do you have another question?

Mr. Marc-André Morin: It's an attack on the credibility of the witness .

The Chair: We should move on.

Hon. Ron Cannan: I have a question for Mr. Vidler, then. In your handout, you mentioned:

...that Canada [should not] not sacrifice quality for speed. An ambitious and comprehensive agreement that secures real, long-term market access for Canadian companies and their Indian counterparts is an achievement worth waiting for. In the meantime, negotiations could be aided by concerted efforts to raise Canada's visibility in India.

I have two questions. You're saying that it's not a matter of time being the essence here, but that we should reach a quality agreement versus being expedient. Second, you're asking what Canada could do to increase our visibility and profile while we're in negotiations with the government in India, which could have an election in next May.

•(1705)

Mr. Cam Vidler: To clarify the question, I think our position is that it's important that certain issues and barriers identified by Canadian business are included in this agreement. We don't want a symbolic agreement. We want an agreement that will increase real market opportunities for Canadian companies. We would love to see that happen as soon as possible. We are cognizant of the fact that there is an election next year in India and that these things can make it more difficult to implement afterwards. This is obviously a balance that needs to be struck. But we would like to avoid an agreement being concluded that wouldn't provide or open up a whole bunch of new opportunities for us.

I wasn't so clear on the question about the profile.

Hon. Ron Cannan: Well, in the last one you said we should have concerted efforts to raise Canada's visibility and profile in India while negotiations are under way. Do you have any specific examples?

Mr. Cam Vidler: I think there's the example of the government's visit, with Prime Minister Harper as well as Minister Fast, and several other senior government leaders, including a very large business delegation. That trip was in early November.

Those are the types of measures we're speaking of here. It doesn't always necessarily have to be a prime minister's visit or something like that, but our taking initiatives in India through bodies like the trade commissioner service and Export Development Canada. These are ways in which Canada's profile can be boosted.

I think one of the challenges with this negotiation is that India has many countries pursuing its market and pursuing market access. They're negotiating with the Europeans, and there are other countries as well. There's a need to demonstrate why Canada: why they should go through the challenges of providing concessions, having to work with other ministries domestically to be able to present a deal that's attractive to Canada, if Canada is not really seen as a top priority.

Hon. Ron Cannan: With regard to investment, we've identified some of the barriers to preventing further investment for Canadian companies.

Can you maybe elaborate a little bit more on how you think we can some get short-term quick winds—"early harvest", as the Taiwanese would call it?

Mr. Cam Vidler: I'm sorry, I don't quite understand the question.

Hon. Ron Cannan: Well, as far as working in expanding investment into India right now, we have ongoing negotiations, but as I said, it could be stalled because of the election next May.

Do you see anything else we can do to have incremental-increase incentives if there's objection to a FIPA? What are other incentives for Canadian businesses so they have some protection, and certainty while they invest into a foreign country?

Mr. Cam Vidler: I think increased political engagement, or in fact sustaining the level of political engagement that we have seen so far, would be first. Export Development Canada and the trade commissioner service have rapidly expanded in the market over the past couple of years. We would like to see that continued.

Obviously a trade agreement is really only about opening up legal market access. That's not sufficient to take advantage of those opportunities. We need to use the whole tool kit available to help Canadian companies seize opportunities there.

Speaking to the issue of stability, our colleague Mr. Van Harten mentioned commercial risk insurance. EDC, for instance, provides some of these tools as well.

So there are ways of mitigating some of these risks in the meantime; FIPA would be merely a contributing tool as well.

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair.

Mr. Van Harten, you mentioned that it is difficult to determine what we're actually dealing with without looking at a text. Well, we have the same problem. We have the same problem on every trade agreement that we're dealing with, including the Canada-European trade agreement.

It's a real concern. We are parliamentarians, and we have not seen any texts, only what we've seen leaked out from some other countries. It does indeed make it extremely difficult. Not many people are going to basically oppose the theory of a trade agreement. That seems to be what we're dealing with here at the moment.

I know from previous information you've provided us, and from previous statements you've made, that you do have fairly substantive concerns about FIPAs and how they can impact a country. I think you said that no Canadian investor has ever recovered money in terms of our protection abroad, but we have had a substantive number of cases go the other way within Canadian territory.

This really is my question to you: how do we better protect Canada's interests in terms of these agreements, especially as it relates to FIPAs?

•(1710)

Dr. Gus Van Harten: I would suggest that many of our FIPAs don't raise the issue to the same degree as the FIPAs do—and I'll mention the FIPA with China—with major countries or the CETA with Europe, because they just really don't cover very much investment in Canada. So I would suggest perhaps that when a treaty is of such significance, exposing Canada to the risks and liabilities, that you allow for more elaborate processes of study and assessment from different perspectives, beyond the usual trade lawyers and negotiators, in order to really assess properly the consequences for the country based on the text that's available before it's finalized by the Government of Canada. That would just be a suggestion.

A more substantive suggestion, as I've always advocated, is that from a Canadian point of view, I think we'd benefit from a rules-based process, one based on the rule of law, but that depends on having a fair and independent process. Therefore, there are very strong reasons for shifting from investor-state arbitration to a proper judicial process that has the safeguards of independence and the requirements of openness, procedural fairness, and so on, that other international courts and tribunals have. I would hope that this would be something, almost regardless of political stripe—and maybe I'm being too hopeful—Canadians could get behind and support.

Hon. Wayne Easter: Thank you very much.

Mr. Vidler, there a number of things in your remarks that I do want to go into, but if we're going down this road, have you ever been at a political meeting, or are you a member of any political party? If so, which one?

Mr. Cam Vidler: I have been a member of two parties in my life

Hon. Wayne Easter: I hope it's the Liberals.

Mr. Cam Vidler: They are the Liberals and the Conservatives, and I won't tell you which one I am in right now.

Some hon. members: Oh, oh!

Hon. Wayne Easter: Mr. Chair, I made that point, and I did it in jest, because I really do think what happened here is out of line.

The Chair: You made your point, and I think it's appropriate. Go ahead.

Hon. Wayne Easter: You talked on page 4 about Canada's capabilities in areas of extreme need for India, including energy, infrastructure, agriculture, etc., and you mentioned some of the leading countries that are involved in India. How does the chamber see the benefits of this trade agreement and involvement with India coming back to Canada? One of my concerns is that we're not adding enough value in Canada and that we're maybe not creating enough jobs in Canada. Your remarks here imply to me—and maybe I'm wrong on this—that there may be a return on investment for investors in those companies, who are not necessarily Canadian investors. How do you see the benefits, I guess, of the involvements of those companies you've outlined accruing back to Canada?

Mr. Cam Vidler: In some cases, they do stimulate direct exports. For instance, there would be Bombardier's operations there, and there is a lot of local manufacturing in India, but it would be using a lot of imported parts from other markets, including Canada, which supports Canadian jobs here.

If I could use one example, actually—and I think my colleague Ailish Campbell touched on this earlier—there are a lot of different types of value-added. I think oftentimes we conflate manufacturing with value-added, and look at the resource sector as something that does not provide value-added, or look at, as you said, foreign investment in another country not providing value-added in Canada. You have to take a look at the entire supply chain.

I'll use one example to illustrate this. There is Scotiabank, for instance. If you are in Scotiabank's main building in Toronto, and you look out the window there's a nondescript building across the street. That building is full of their international team. So as Scotiabank expands its international operations, it supports high-paying jobs here in Canada as well. I guess the point I'd like to make is that exports can be stimulated by directly investing abroad, as can a lot of value-added that may not show up in your trade statistics.

• (17:15)

Hon. Wayne Easter: Thank you.

How much time do I have, Mr. Chair?

The Chair: You have about 40 seconds.

Hon. Wayne Easter: Okay, I don't have time to use that quote.

Some hon. members: Oh, oh!

Hon. Wayne Easter: Let me turn to Mr. Bubber.

You outlined in your remarks that India's 5% foreign-ownership limit on domestic private sector banks prevents banks from Canada expanding there. Why, from your perspective, does India have that limit?

Mr. Nav Bubber: As far back as 10 years ago, all the banks were nationalized. They did open up that sector, but only for private Indian investment. It's been a very heavily regulated environment. We've seen very recently that they have opened up certain sectors, for example, insurance is now up to 26%. They recently opened up FDI in retail, meaning for foreign direct investment in the retail sector, including companies such as Walmart and other large retail organizations that are going in there. It's been a little more protectionist in the financial sectors. Will that change? Possibly, but we haven't seen anything speaking to that in the recent past.

The Chair: Okay, thank you very much.

Mr. Shory, you have seven minutes.

Mr. Devinder Shory (Calgary Northeast, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for being here today.

Mr. Vidler, I was skimming through the submission you provided us today. I want to thank you, first of all, for your support and reinforcing the fact that it's a win-win situation, an opportunity we cannot afford to lose.

When I was going through some of the paragraphs, I saw that you talked about the challenges and that you called it a “complex market”. You mentioned the different business culture there and that you need to have long-term commitment, etc. At the same time the World Bank has ranked India 132nd out of 185 countries in the ease of doing business and has also ranked India as 184th in the world in terms of enforcement of contracts.

How can these problems of doing business in India be overcome?

Mr. Cam Vidler: That's a very important point. It's one of the first things that comes up when you talk to Canadian businesses that are doing business, or looking at doing business, in India.

There are a lot of different ways we can address that. Let's look at it at a collective level policy-wise here in Canada. I don't want to keep bringing up the same organizations, but I really think they are indispensable: Export Development Canada and the trade commissioner service. Much of the ability to avoid some of these risks has to do with building proper local relationships with the right people, and the organizations I just mentioned can assist with those activities. Export Development Canada can also provide risk protection insurance. It is a cost you will face as a business, but such insurance will allow you to protect yourself against certain volatility that may happen in an uncertain regulatory environment.

I would mention the FIPA as well, as a mechanism through which we can reduce the uncertainty there. I appreciate the points that Professor Van Harten and Mr. Davies mentioned. We don't want to get into the issue of reforming the international dispute settlement system, but if I can just make one or two points about the value of a FIPA. Responding to some of the criticisms of it here, there is typically—and Mr. Van Harten can correct me if I'm wrong—an ability for both the investor and the government to appoint members of that arbitration committee. It is not being selected by the company or an entirely different institution. There's input to ensure that both countries are picking what they see as impartial arbitrators.

There's also an obligation on the part of the governments that sign these agreements to properly instruct their regulators and their legislators about what would and wouldn't comply with an international investment treaty obligation. Ultimately, there is a trade-off. It does limit your policy space as a government, but I think you have to balance that against the need to credibly show that you will protect a foreign investor's investment. A foreign investor doesn't vote in your country. How can you persuade him that you are going to keep that investment secure? That's how a FIPA can help us deal with some of the concerns about the business climate and environment in India.

● (1720)

Mr. Devinder Shory: We had a witness before you from the Canadian Council of Chief Executives. Ms. Campbell told us that they primarily represent the larger business community. In your submission it's written here that: For new entrants, especially smaller businesses, amassing sufficient resources to cover the costs of travelling, understanding local markets and maintaining a presence on the ground is no simple feat.

You have said that our SME presence in India is growing as well. How as a government can we make sure to address those concerns? How do we help the SMEs to enter those markets and get the benefits we all need to have?

Mr. Cam Vidler: The SMEs I think are more likely to face direct risks as they're doing business there. It's also more difficult. The costs they face to get themselves into the market are higher, so we have to look at different support mechanisms that can help them deal with those risks and those costs.

Again, I'm sounding like a broken record here, but the trade commissioner service in India has done a fantastic job of assisting SMEs in finding new customers and protecting themselves against situations that would jeopardize their business.

Mr. Devinder Shory: That would have been my next question. In your experience, are the trade commissioner service and EDC, which you mentioned, helpful to SMEs?

Mr. Cam Vidler: Yes, absolutely.

Mr. Devinder Shory: How much time do I have, Mr. Chair?

The Chair: You have two minutes or a minute and a half.

Mr. Devinder Shory: Oh. Two and a half minutes?

The Chair: You don't have to take it.

Mr. Devinder Shory: Okay. He'll take it.

Mr. Ed Holder: Well, if I may.... Thank you.

The Chair: Go ahead. You have a minute now.

Mr. Ed Holder: Thank you, Chair.

Some of us were part of the Commonwealth Parliamentary Association that went to Bangladesh and India. What was very striking when we were there was, in one sense, the depth of poverty in different places, and then in the other, the optimism because of things like microcredit and what that meant with small amounts of money that would somehow elevate people out of their very sad circumstances.

Do you have any comments about the role—perhaps this is actually directed to our banker friend here—that microcredit has to play in all of this? I'd love to hear any thoughts or comments from any of the witnesses.

The Chair: Perhaps Mr. Bubber...?

Mr. Cam Vidler: I'd suggest that Mr. Bubber—

The Chair: Yes.

Mr. Bubber, go ahead.

Mr. Nav Bubber: I could probably comment on that. Scotiabank has some very significant experience in micro-lending in South America.

The thing is, you can't do it as a standard loan operation in India. It has to be part of a larger financial institution. Because of the way the branches and the network work, it would probably work out better as part of a larger establishment, but the challenge is the restriction on one ownership of an Indian entity. Second, there is a severe challenge for foreign banks in opening new branches in India. The number of branches allocated to foreign banks in India is highly regulated, and it's not a level playing field when competing with Indian banks.

Those are the kinds of restrictions that will prevent foreign banks from going into that kind of lending. With micro-lending, the point of access has to be in the areas where micro-lending is required, typically in rural parts of the country, so that reach is possible only with unrestricted branch opening possibilities.

The Chair: Thank you very much.

Mr. Davies, I think we have time for two more questions of about two and a half minutes each. Go ahead.

Mr. Don Davies: Thanks, Mr. Chair.

Mr. Cannan seems to think that people's personal political beliefs are relevant as to whether or not their testimony is valid here. So, Mr. Bubber, I'm going to ask you this. Have you ever been a member of the Conservative Party of Canada in your life?

● (1725)

Mr. Nav Bubber: No. I'm a young Canadian and still have not decided where I lean to—

Voices: Oh, oh!

Mr. Don Davies: Yes, well, maybe the circumstances today might help you make up your mind.

Mr. Vidler, you said that you had been a member of the Conservative Party.

Mr. Cam Vidler: I had been, yes.

Mr. Don Davies: Have you ever made a donation to the Conservative Party?

Mr. Cam Vidler: Aside from the membership fee, no.

Mr. Don Davies: How much was that?

Mr. Cam Vidler: Oh, that—

Mr. Ed Holder: Mr. Chair, on a point of order, I think you agreed that the point was made with Mr. Easter—

Mr. Don Davies: It's not a question—

The Chair: I think he's reinforcing it. Humour us here....

You don't have to answer. You can answer as you like. Go ahead.

Mr. Don Davies: Yes.

So you've made a financial contribution to the Conservative Party. Do you feel, Mr. Vidler, that it has compromised your thoughts on this?

Mr. Cam Vidler: I do not believe so.

Mr. Don Davies: No.

Thank you.

Mr. Van Harten—

Hon. Ron Cannan: On a point of order, Mr. Chair, I just want to clarify this. There is nothing wrong with their testimony; it's still on the record. I just want to clarify, as an individual, if he's partisan—

The Chair: No, no, that's not a point of order.

Hon. Ron Cannan: There's nothing wrong with that—

The Chair: Go ahead.

Mr. Don Davies: Mr. Van Harten, I just want to ask you quickly, are there alternatives to ISDS mechanisms? Can investors protect their investments in some other way? Can we have it all? Can we have a system based on the rule of law, and protect democratic decision-making, and have an orderly mechanism for protecting investors and ensuring that agreements are enforced, without having an ISDS mechanism with the disadvantages that have been identified?

Dr. Gus Van Harten: Yes, we're very familiar with it in our own domestic law systems in many countries. We have courts that are independent. In some cases, they can override legislatures. That's all very familiar and well established. Investor-state arbitration is different because it's not a judicial process, and that's really where a lot of the conundrums arise.

I think it's certainly possible. I honestly think that if people from a different range of perspectives, other than the lawyers and arbitrators who work in this field and do quite handsomely in the field...if we look beyond that group, I think you'd probably end up finding quite a fair bit of agreement on some of the issues if you really combed away at the details.

If I may take the opportunity to add this, I just want to make clear for a fulsome record that I have donated, including recently, to multiple political parties, and I consider myself to be a bit of a free agent.

Voices: Oh, oh!

Mr. Don Davies: I'll send you an appeal as well.

The Chair: Go ahead, Mr. Keddy.

Mr. Gerald Keddy: Thank you, Mr. Chairman.

I don't know where to go after that interjection.

There was a point made earlier by Mr. Bubber, on Scotiabank. I didn't quite hear the answer for how many branches and how many employees Scotiabank has in India.

Mr. Nav Bubber: To clarify, we have approximately 170 employees in India and five branches in some of the metropolitan cities.

Mr. Gerald Keddy: Okay. That's what I thought I heard the first time.

It doesn't sound like a very large footprint. So is this primarily corporate banking?

Mr. Nav Bubber: Yes. It's primarily corporate and commercial services that we provide. We also have a retail licence, but with a limited product range.

I guess the largest inroad we have made is in the precious metals area. ScotiaMocatta is one of the largest dealers of precious metals in India.

Mr. Gerald Keddy: Thank you for that.

I think I have time for one question.

Mr. Vidler, one of the numbers that always amazes me on the India-Canada commercial relationship is the size of the GDPs of Canada and India. We're talking trillions of dollars—I think it's somewhere around \$3.7 trillion or \$3.9 trillion—yet our balance of trade is a few billion dollars, quite frankly.

I'm a little challenged by that number, but I also see tremendous opportunity to expand this trading relationship. India is our commonwealth partner, one of its main languages is our official language, and it has a similar background in law. How important are all of those dynamics to expanding this relationship—not overlooking for a moment some of the huge challenges between the federal state and state law in India and the protectionism within the Indian economy?

● (1730)

Mr. Cam Vidler: I think we strongly agree that more of an effort could be made. Canada could be doing better in India.

If I could, I'll address one thing and then try to address the others, if I can, afterwards. The focus on the bilateral trade statistics is something that I think the committee should think about. In fact, when I walked in earlier, I heard Ailish Campbell telling you this as well. There is a statistic on trade in value added, which came to light a few months ago. It came from the OECD and the WTO, and it tries to look not just at what's crossing the border to wherever...because a lot of things that Canada may be trading are not being traded directly to India. They're going into the U.S. market and being transformed there a second time and then going to India, or they're going from Canada to Germany and then going to India.

Those statistics that came out demonstrate this value added. In 2009, for instance, when I think our trade was only around \$4 billion with India bilaterally, this new statistic actually argued that it was \$9 billion to \$10 billion in trade in value-added terms. What it has done is to track some of that value added that's gone through third countries.

The Chair: Okay.

Thank you very much, Mr. Vidler, Mr. Bubber, and Mr. Van Harten, for your input. We've found it very valuable and we appreciate your comments.

With that, the meeting is adjourned.

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