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**Chair**

**The Honourable Mark Eyking**



## Standing Committee on International Trade

Wednesday, December 14, 2016

• (1530)

[English]

**The Chair (Hon. Mark Eyking (Sydney—Victoria, Lib.)):** Good afternoon, everyone, and welcome to our trade committee.

As everybody knows, we're dealing with Bill C-30 in clause-by-clause study today. Fortunately, it got through the House and everybody got to speak to it.

I welcome the officials.

It's good to see you and your team, Mr. Verheul. This is your baby, for a lot of you guys, and you did a lot of work.

Before I get started, Mr. Hoback, I'd like to pass on from the committee best wishes to your colleague Mr. Fast. I've heard that he has some health issues. Mr. Fast did a lot of work on this file in the many trips he made to Europe. Our thoughts are with him. If you could pass that on, I'd appreciate it.

Are there any questions from the committee before we get rolling here? Hopefully, we'll have a very productive next couple of hours, and then everybody can enjoy their evening Christmas party.

Without further ado, we're going to start this off. We have our trusted clerk with us—

**Mr. Philippe Méla (Legislative Clerk):** Thank you.

**The Chair:** —and our legislator, right?

**Mr. Philippe Méla:** I'm the legislative clerk. You are the legislator.

**The Chair:** I'm the legislator and you're the legislative clerk. Okay. If I run into any problems, you're going to let me know real quick.

We'll start with the short title, which we will postpone pursuant to Standing Order 75. Everybody has their homework done today, hopefully, and we're going to start rolling through this.

If it's the will of the committee—you have the same sheet in front of you as I have, I take it, or very close to what I have—is it agreed that when we have a grouping of clauses without amendments in between them we will group them together? Is that okay?

**Some hon. members:** Agreed.

**The Chair:** Without further ado, shall clauses 2 to 6 carry?

(Clauses 2 to 6 inclusive agreed to)

(On clause 7)

**The Chair:** That takes us to clause 7 and amendment NDP-1. Everybody has that in front of them. Is there comment on amendment NDP-1? Can the NDP move that clause?

**Ms. Tracey Ramsey (Essex, NDP):** Yes. May I speak to this clause?

**The Chair:** Yes, sure. Go ahead.

**Ms. Tracey Ramsey:** For the first portion that's there, the change is:

Canada and the European Union, while attempting to preserve the

The language that exists says “while preserving”. We can't ensure that it will preserve, so I think this change is an attempt to preserve that.

Do you want me to keep going?

**The Chair:** Yes, go ahead.

I didn't get the last part of what you said.

**Ms. Tracey Ramsey:** What I'm saying is that we're changing the language to “attempting to preserve” because you can't ensure that you will preserve. The language in the agreement says:

while preserving the right of each of the parties

—and then in next piece, paragraph 7(f) says:

provide adequate and effective protection and enforcement

We're saying at the beginning there, to:

provide additional protection and enforcement

We think it's important to put that in so that it's not just “adequate and effective”, so that we're talking about additional protection to ensure that happens.

When we look at paragraph 7(g), we see nothing enforceable in what exists there. It says:

(g) protect, enhance and enforce basic workers' rights, strengthen cooperation on labour matters, and build

We'd like to change that to:

protect, enhance and enforce basic workers' rights through voluntary mechanisms,

This is incredibly important because of the changes to the cabotage, which we'll go through later when we get to the Coasting Trade Act. People are quite concerned about workers who will be coming in under flags of convenience on those ships and who will be impacted by, unfortunately, what they know to be true on those ships, which is that the labour conditions are not anywhere near the Canadian conditions, so changing this to the language we have here strengthens it.

**The Chair:** Thank you.

Mr. Dhaliwal, do you have a comment?

• (1535)

**Mr. Sukh Dhaliwal (Surrey—Newton, Lib.):** Mr. Chair, the amendment paragraphs (a), (b), and (c) do not accurately reflect the objectives set out in the CETA text agreed to jointly by all parties, so I would not be able to support that.

**The Chair:** Okay, I guess—

**Ms. Tracey Ramsey:** May I ask a question about that?

How do you think it doesn't accurately reflect it?

**Mr. Sukh Dhaliwal:** The proposal in paragraph (a) of the amendment would result in a lack of consistency between the text of CETA, the text of the joint interpretive instrument, and the text of Bill C-30.

With regard to paragraph (b) of the amendment, it is inaccurate to state that “additional protection” was an objective of the intellectual property provisions in CETA. While CETA provides for supplementary protection for certain patent-protected pharmaceutical products, this is only a very narrow subset of intellectual property provisions in CETA.

As to the amendment under paragraph (c), it is unjustified and inaccurate to suggest that CETA provides Canada, the European Union, and all its member states with the discretion to voluntarily enforce basic worker rights.

**Ms. Tracey Ramsey:** To go back to the first point, which was about paragraph (a), you said that you were referencing lines in the declaration that are counter to that. Can you tell me what lines in the declaration go counter to that?

**Mr. Sukh Dhaliwal:** I would ask the chair if we could look for the opinion of the experts here.

**The Chair:** Okay.

Go ahead.

**Mr. Steve Verheul (Chief Trade Negotiator, Canada-European Union, Department of Foreign Affairs, Trade and Development):** With respect to the interpretive instrument, there is a reference, in paragraph 6(a), on the protection of investments, that:

CETA includes modern rules on investment that preserve the right of governments to regulate in the public interest including when such regulations affect a foreign investment, while ensuring a high level of protection for investments and providing for fair and transparent dispute resolution.

This is in the purpose section of the bill. The purpose was not to attempt to but to ensure that we would do that.

**Ms. Tracey Ramsey:** Okay.

**The Chair:** Is there any more comment on the amendment?

Go ahead.

**Ms. Tracey Ramsey:** I want to go back to paragraph (c) in the amendment.

The lines in here are really important to workers in Canada. I heard Mr. Dhaliwal say that they're unjustified and inaccurate. I'm wondering if he could tell us why he thinks that's so.

**The Chair:** Sometimes I can let you guys have a flow of dialogue back and forth without going through the chair, but I don't want to put people on the spot if they really don't want to comment.

**Ms. Tracey Ramsey:** Fair enough. I'll go through you, Mr. Chair. That's fair.

**The Chair:** Does Mr. Dhaliwal or anybody else have any more comment on this amendment?

Nobody wants any more comment on this amendment, so I think we have to bring it to a vote.

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

(Clause 7 agreed to)

(On clause 8)

**The Chair:** The NDP has an amendment. Is there any comment on NDP-2?

Go ahead, Ms. Ramsey.

• (1540)

**Ms. Tracey Ramsey:** In section F of chapter 8, we're talking about the court system and we're talking about the ISDS provisions. If the EU is not approving this—it's provisionally applied—then we in the NDP believe that Canada shouldn't either, that it shouldn't be part of the agreement. It can come later, after the full ratification, but really we're looking at many years before we hit that amount.

We know that EU states have said they won't ratify it with these positions, so why should we? We really feel strongly, and EU members do as well, that they haven't left this to the EU Parliament. They have carve-outs that exist for themselves around this. We don't mirror that in this agreement, and there's a concern there about that.

**The Chair:** Is there any more comment on this amendment?

If not, I'll ask for a vote on amendment NDP-2.

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

**The Chair:** There's a side note here. NDP-2 has been defeated, which means NDP-11 is defeated as well, as they are interrelated.

**Ms. Tracey Ramsey:** That's right.

**The Chair:** Okay.

(Clause 8 agreed to)

(Clauses 9 and 10 agreed to)

**The Chair:** Now we'll go to amendment NDP-3.

Are there any comments on NDP-3?

**Ms. Tracey Ramsey:** As long as there are carve-outs from the declaration, I think the minister should be reporting to Parliament. This is an addition that's asking for the minister, within two months after the end of each calendar year, to prepare a report on the implementation of the agreement in Canada and the European Union.

As a method of understanding what's happening, because we're in this mirroring space where there are pieces of the agreement that are carved out, I think it's important that we get reports from the minister. We're requesting that we would receive those within two months after the end of each calendar year to support where the agreement stands at that point in time. Because we know that it will take three to five years to go through the European member states, it would be good to have the minister reporting to Parliament every year on where we stand.

**The Chair:** Thank you.

Mr. Ritz.

**Hon. Gerry Ritz (Battlefords—Lloydminster, CPC):** On that point, as this is provisionally applied, and as state by state in the EU they ratify it, coming on at different times, is there a provision for a reporting mechanism that allows Canadian businesses to know what they have available to them, at what stage we are, and how soon they should be ready for such and such a market? Is that type of information going to be available on a going forward basis?

How will they know, Steve? Do you know?

**Mr. Steve Verheul:** Mr. Chairman, member states will all have to individually ratify the agreement before those remaining sections come into effect.

**Hon. Gerry Ritz:** That's right.

**Mr. Steve Verheul:** It doesn't come into effect as each member state ratifies it. They have to wait for all of them to have completed it.

**Hon. Gerry Ritz:** Okay.

Thank you.

**The Chair:** Is there any more comment—

**Hon. Gerry Ritz:** It's not staged. It's all or none.

**Mr. Steve Verheul:** That's right.

**Hon. Gerry Ritz:** Okay.

**The Chair:** Are there any more comments on the proposed new clause 10.1?

Go ahead, Mr. Hoback.

**Mr. Randy Hoback (Prince Albert, CPC):** Is there any evidence of having a reporting stage on a trade agreement in the past? Are there any agreements that have it already built into them that we report on them every year?

**Mr. Steve Verheul:** I'm sorry. I couldn't [*Inaudible—Editor*]

**Mr. Randy Hoback:** Is there a clause in any of our previous trade agreements that has a reporting mechanism like this?

**Mr. Steve Verheul:** No, there is not.

**Mr. Randy Hoback:** Okay.

**The Chair:** Thank you.

If there's no more comment.... This amendment is for a new clause.

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

(On clause 11)

**The Chair:** We have an amendment from Ms. May.

Thank you for joining us today.

**Ms. Elizabeth May (Saanich—Gulf Islands, GP):** Thank you, Mr. Chair.

**The Chair:** Do you want to speak to your amendment PV-1?

**Ms. Elizabeth May:** Yes. The “PV” stands for “Parti vert”.

• (1545)

**The Chair:** Sorry, Ms. May, but before you go ahead, let me say that if PV-1 is adopted, NDP-4 cannot be moved, as they amend the same lines.

Go ahead.

**Ms. Elizabeth May:** Thank you.

Of course, this is deemed moved under the terms of the motion that I objected to but which this committee passed and which requires that I be here. There are always conflicts; if I weren't here, I could be speaking to Bill S-4 in the House. That is one of the reasons that I find these provisions that require members of parties with fewer than 12 members to submit amendments 48 hours in advance and have them deemed moved not really a fair or equal opportunity, but it's the one I have. I appreciate that you've given me the floor, Mr. Chair.

The amendment here, just to situate you in the proper part of the bill, is to clause 11, which deals with approval and representation on the CETA joint committee, and specifically the powers of the minister under clause 11. You may recall the evidence of Professor Gus Van Harten from Osgoode Hall Law School, when he testified before the committee. He made a number of very quick points, but one of them was that under clause 11, in his words:

...the Minister of Trade is given the power to appoint members of the roster.... I... want to stress...this is a very significant power, because we could think of the members of that roster as, very simply, almost equivalent to Supreme Court of Canada judges in the extent of their powers to review the passage of laws, passage of regulations, and so on in Canada.

I won't read the rest of his testimony, but his point was that to have this solely vested in the trade minister without a broader consultation could leave some public interest matters.... No offence to any current or future trade minister, but these are very significant powers to appoint members of the tribunals. The amendment I'm proposing is in two parts, as follows:

(1) The Minister may, in consultation with the Attorney General of Canada,

It's just like appointing a judge. It's in consultation with the Attorney General, the Minister of Justice.

Then we add another line to ensure that, for the roster, the pool of potential nominees from which the minister, in consultation with the the Attorney General, chooses someone to be a member of the tribunals, should exclude any individual:

who has served as legal counsel in an arbitration proceeding in respect of an investment dispute.

Let me just say, as you may anticipate this, that we do know that the text of the comprehensive economic trade agreement specifically says that people can't be members of the tribunal if they have served or take up a position as an advocate in a CETA dispute. This amendment is to broaden that, so that we couldn't have people serving as members of a tribunal on CETA who had been, for instance, legal counsel under a chapter 11 suit, where they were representing a corporation against the Government of Canada, or under a bilateral investment agreement, such as we have with Ukraine, a one-off bilateral.

If you've worked in that investment climate as an advocate, the argument that I'm asserting is that you don't have the same neutrality that you really want for a judge. That principle of neutrality is enshrined in CETA, but they just kept it to the comprehensive economic trade agreement, not that whole other sphere of work of a very elite group of lawyers who have a pattern of, can we say, not necessarily fair or neutral arbitration.

I have put these before you. I hope you'll consider them. I'm certainly, at the chair's discretion, happy to answer any questions.

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

Are there comments on this Green Party amendment?

Go ahead, Ms. Ramsey.

**Ms. Tracey Ramsey:** Mr. Chair, I think you'll find that I have a similar motion coming forward in NDP-4. Again, it speaks to the sweeping powers that will be afforded to the minister, and I think the member for Saanich—Gulf Islands speaks well about the fact that it won't necessarily be the current minister, in that this is going forward in perpetuity.

It's important, I think, that we pause to look at the way these individuals will be named and who will potentially be sitting there, so that it's in the best interests of Canadians, and so we learn some lessons from what's happened in regard to chapter 11. I do support the spirit of her motion in terms of saying that we need to ensure that people who have sued us before under chapter 11 don't now find a window inside CETA to do the same thing.

**The Chair:** Thank you.

Is there any more comment on this? All in favour of the Green Party motion?

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

**The Chair:** It does not carry, and that being the case, we have to move on to amendment NDP-4, which is very similar. The NDP members have the floor if they want to explain it.

Go ahead.

**Ms. Tracey Ramsey:** In this amendment that we've proposed, we're adding some other people into the decision-making process so that it's not just at the hands of one minister and the government. We're proposing that:

The Minister may, following public consultations, propose jointly with the Minister of Justice and the Minister of the Environment the names of individuals

to serve as members of the tribunals established under Section F of Chapter Eight of the Agreement.

Again, I think this speaks to solely the minister having that ability to appoint people. I think we do Canadians a service when we have a couple of different people looking at those who are proposed in terms of sitting in this court system that will be coming forward out of CETA, versus this being in the power of one particular minister.

• (1550)

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

Is there any more comment?

Mr. Ritz.

**Hon. Gerry Ritz:** I'd just like a verification. My notes say that actually the ministers of finance, labour, and environment all have the ability to propose names. They come to the Minister of International Trade, but they all have an ability to put names forward.

**Mr. Steve Verheul:** When it comes to the dispute resolution process in the labour chapter, in the environment chapter, and in the financial services chapter, there's certainly input provided by those ministers, yes.

**Hon. Gerry Ritz:** Yes, and we're a co-chair with the EU on the names that are put forward, so we would need to have the EU's consent to actually do this.

**Mr. Steve Verheul:** That's right.

**Hon. Gerry Ritz:** Thank you.

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

Are there any more comments on the NDP-4 amendment? If not, we'll go to a vote.

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

**The Chair:** There is a note here that if it's defeated, the related NDP-12 will not pass either.

(Clause 11 agreed to)

(Clauses 12 to 38 inclusive agreed to)

(On clause 39)

**The Chair:** We are on amendment NDP-5.

Is there any comment on NDP-5?

Go ahead, Ms. Ramsey

**Ms. Tracey Ramsey:** This was the request that came out of the generics group when they came. They spoke to us about the concerns they have. The pharmaceutical industry in Canada is highly litigious, and a lot of case law exists. That language could be impacted, going back to case law that already exists, so there is a bit of a change here with the preamble in order to reinstate the language of the Patent Act.

I want to be clear that the amendments here, and even this proposal, are not required by CETA. This is one of the pieces where we heard from the generics group that they saw, inside of the changes to the Patent Act, that we are going above and beyond the requirements of CETA.

I'd actually ask Mr. Verheul if he could speak to that, because this was something we heard after his presentation to us. We heard from the generics group that pieces of the legislation go above and beyond what is necessary for enforcement of CETA.

I wonder if you could speak to that. Perhaps you could speak to this particular clause and to whether we could go back to the reinstatement of the language of the Patent Act.

**Mr. Steve Verheul:** I will ask one of my experts from the Department of Innovation, Science and Economic Development to respond to that question.

Mark.

**Mr. Mark Schaan (Director General, Marketplace Framework Policy Branch, Strategic Policy Sector, Department of Industry):** Mr. Chair, in the balance of the agreement, on the pharmaceutical provisions and the intellectual property provisions, there were elements that were specifically in the CETA text, and then there were portions that were fundamental to the balance we struck for the Canadian implementation. One of them was actually ending dual litigation, which was a fundamental ask of stakeholders within the overall process.

Your motion reflects or expresses the views of CGPA, but our view is that it's overbroad. This is actually a necessary provision to allow for the ending of dual litigation. It's fundamental to the implementation as articulated.

**The Chair:** Ms. Ramsey.

**Ms. Tracey Ramsey:** The proposal we have here is to reinstate that language of the Patent Act. Are you saying that it's necessary to go above and beyond that in order to prevent dual litigation?

**Mr. Mark Schaan:** I'll actually turn to my other colleague on that.

**Mr. Denis Martel (Director, Patent Policy Directorate, Strategic Policy Sector, Department of Industry):** The purpose of the regulatory-making authority is to make sure that we can meet our obligations, and the first is to provide equal and effective appeal rights. We will do this by ending the practice of dual litigation, and this will be done through the regulatory schemes, through what we call the patented medicines notices of compliance.

To do these there are different features. One of the main ones is to turn what is currently a summary procedure into a full action to determine validity infringement. To do this, some of the regulations will need to change. The Governor in Council will need this extra regulatory-making authority to make sure that the regulations can come into force and won't be challenged down the road.

• (1555)

**Ms. Tracey Ramsey:** Specifically, the language that there's issue with is taking out the reference to "directly" or "indirectly", which appears lower down on the page. It's referenced several times, actually, throughout the changes that I've amended here. There's a thought that this unnecessarily broadens the language, and it could introduce new concepts. Again, it's not that the generics have been clear in saying it is not required in CETA; they're concerned about the interpretation of the language being broadened by the usage of "directly" or "indirectly".

**Mr. Mark Schaan:** Our view, in consulting and meeting with stakeholders, is that these powers are required for the regulation-

making power that we believe is necessary for effective appeal rights, and in consequence, for the ending of dual litigation. It's fair to say that, as you indicated, this is a zone of particular litigation, and ensuring that we have effective regulation-making authority is a critical aspect of ensuring that we have the capacity to implement as we've set out.

**Ms. Tracey Ramsey:** Is there a concern that changing that language, the "directly" or "indirectly", could have an impact on the case law, that it could impact previous cases?

**Mr. Mark Schaan:** The intent is to ensure that we've actually given ourselves the authority so that parties cannot potentially use this provision to suggest that we don't have the regulation-making authority to move forward.

**Ms. Tracey Ramsey:** You mentioned the stakeholders that were involved. Were the generics involved? Were they one of the stakeholders that you engaged with around this particular change?

**Mr. Mark Schaan:** We've engaged with stakeholders of every nature in the pharmaceutical industry, including the Canadian Generic Pharmaceutical Association, in trying to ensure that we get the balance right and can implement effectively.

**The Chair:** Thank you.

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

(Clause 39 agreed to)

(On clause 40)

**The Chair:** The NDP has amendment NDP-6. If it is adopted then amendment LIB-1 cannot be moved as they amend the same lines. Are there any comments?

Go ahead.

**Ms. Tracey Ramsey:** This speaks about the repeal of section 62. It's our understanding that's already pending from the previous budget, so is this required by CETA in order to have this recommendation, or is that covered in the budget? I just want some clarification.

**Mr. Mark Schaan:** In consultation with stakeholders, with respect to section 62, there has been previous action to repeal this clause. We have come to the conclusion, following our consideration, that a portion of it is useful to us and is necessary. The coordinating amendment is in line with drafting convention and gets at the same aim. We're in line with the spirit of this, but we believe that we're following modern drafting conventions as to how we would frame it.

**Ms. Tracey Ramsey:** Okay.

**The Chair:** All in favour of the amendment?

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

**The Chair:** Now we go to amendment LIB-1.

**Mr. Kyle Peterson (Newmarket—Aurora, Lib.):** I'll speak to that, if I may, Mr. Chair.

**The Chair:** Go ahead, Mr. Peterson.

**Mr. Kyle Peterson:** Our amendment LIB-1 regarding article 40 is actually the result of some conversations we had with both the generics and the innovative medicines. We came up with what I know is an accepted compromise between those two stakeholders, so we're hoping it's acceptable to the committee as well. It does address some of the problems in section 62, but I think it addresses them with a more balanced approach than did the previous amendment.

**The Chair:** Are there any more comments on this amendment?

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 40 agreed to)

(Clauses 41 to 58 inclusive agreed to)

(On clause 59)

**The Chair:** We have a few amendments here. Amendment NDP-7 is first.

Go ahead, Ms. Ramsey, if you want.

• (1600)

**Ms. Tracey Ramsey:** This is an addition. First of all it replaces line 2. Currently it says:

sued on or after the prescribed day

It would say:

sued on or after the day on which this section comes into force.

It's just a small change to the language.

Then we propose the addition of a paragraph 106(1)(c.1) about specific details of the scope of the combination.

With regard to proposed subsection 116(3.1), most countries have a maximum cap on the monopoly. The cap in the U.S. is 14 years. The cap in the EU is 15 years. There are some improvements we can make to bring us in line with that. This seeks to have 14 years put in there to be in line with others around the certificate of supplementary protection.

**The Chair:** Mr. Ritz.

**Hon. Gerry Ritz:** The only point I would make is that the negotiated finality of what we did with the EU has a certain term, and now you're trying to change that arbitrarily. I'm not sure that's possible or that we can even—

**Ms. Tracey Ramsey:** It's an addition.

**Hon. Gerry Ritz:** Well—

**Ms. Tracey Ramsey:** They have 15 already.

**Hon. Gerry Ritz:** I'm going to ask Steve how we do that. We have this, which we've negotiated and now we're starting to fine-tune these negotiations over here. Can they actually be dovetailed or is this a no-go simply because we have an agreement in principle?

**Mr. Steve Verheul:** Yes, it's not consistent with what was negotiated in the treaty, so that does present a problem.

**Hon. Gerry Ritz:** Yes.

**The Chair:** Thank you.

Are there any more comments on NDP-7?

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

**The Chair:** Now we go to amendment LIB-2. Are there any comments?

Mr. Peterson.

**Mr. Kyle Peterson:** Again, by way of background, this amendment was reached after taking into consideration the generics' perspective and balancing it in consultation with the innovative medicines, and to deal with the retroactivity, of course, in clause 59. Again, we think we've reached what is... We know that it's an acceptable compromise to the stakeholders, and we hope it will be acceptable to the committee as well.

**The Chair:** Are there any more comments on LIB-2? Shall the amendment carry?

(Amendment agreed to [See *Minutes of Proceedings*])

**The Chair:** Okay. On LIB-2.1, are there any comments?

**Mr. Kyle Peterson:** This one is the most recent one that we've submitted, and I think it's meant to correct an error that we identified during some stakeholder outreach, so this is housekeeping, so to speak. It provides some clarification that is needed when disputed applications expire following a court proceeding. In an attempt to eliminate that confusion, I think this amendment provides greater clarity and certainty to the applicants, which will allow them to benefit from the regime as anticipated, contemplated, and intended.

**The Chair:** Are there comments?

Ms. Ramsey.

**Ms. Tracey Ramsey:** Yes, I want some clarification as to why this change is necessary. Why the difference between all of those and the change to "if two or more"? What was the intent of that change? I hear you saying that you think it would be a positive change, but I'm just wondering why it's necessary.

**Mr. Kyle Peterson:** The current language, I think, led to some confusion. A possible interpretation could be that an application would expire at the end of the dispute period, even when only a single application remains. We're just trying to get rid of some of that confusion, because that obviously was not intended. We're trying to accurately reflect what the intention was.

**Ms. Tracey Ramsey:** If you had one that was remaining, then are you suggesting that does not expire, that it continues, and only if there are two or more?

**Mr. Kyle Peterson:** Correct.

**Ms. Tracey Ramsey:** Okay.

**The Chair:** Shall amendment LIB-2.1 carry?

(Amendment agreed to [See *Minutes of Proceedings*])

**The Chair:** On amendment LIB-3, are there any comments?

**Mr. Kyle Peterson:** I think LIB-3 is consequential to our amendment to clause 40. Again, this was made in consultation with both the generics and the innovative medicines in trying to come up with a compromise that is acceptable to the stakeholders. Again, we hope it's acceptable to the members of this committee so that we can pass the amendment.



•(1605)

**The Chair:** Are there any more comments?

**Hon. Gerry Ritz:** [*Inaudible—Editor*] also been adopted before, as a continuation of—

**Mr. Kyle Peterson:** It will, yes, when we get there. It's all consequential.

**The Chair:** All in favour of amendment LIB-3?

(Amendment agreed to [See *Minutes of Proceedings*])

**The Chair:** Does clause 59 carry with those three amendments?

(Clause 59 as amended agreed to)

**The Chair:** Now we have another big stretch here, with clauses 60 to 79. If I don't hear anything, we're going to pass those.

**A voice:** Yes, to clause 79.

(Clauses 60 to 79 inclusive agreed to)

(On clause 80)

**The Chair:** We have amendment NDP-8.

Go ahead, Ms. Ramsey.

**Ms. Tracey Ramsey:** What we're doing here is bringing the level back to \$600,000—

**A voice:** It's \$600 million.

**Ms. Tracey Ramsey:** Yes, \$600 million. Pardon me.

Thank you, Gerry.

If we go to \$1.5 billion, then all countries that we have most favoured nation status with will enjoy that as well. Once we enter into it, other countries like China and the U.S., under our most favoured nation status, will be able to access at that level. That's the way we're looking at that language.

**Mr. Steve Verheul:** No. Those countries with which we have free trade agreements that include investment provisions will also be able to benefit from this change. It won't be provided across the board to all countries with which we have MFN relations.

**Ms. Tracey Ramsey:** Okay.

**The Chair:** All in favour of amendment NDP-8?

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

(Clause 80 agreed to)

**The Chair:** We have no amendments between clauses 81 and 135.

Go ahead, Ms. Ramsey.

**Ms. Tracey Ramsey:** I want to go to page 73, to the Coasting Trade Act.

**The Chair:** Where do you want us to go?

**Ms. Tracey Ramsey:** It's on page 74, clause 91, under the Coasting Trade Act.

**The Chair:** Can we just finish up these other clauses?

**Ms. Tracey Ramsey:** Do you want to come back to that, or are we going through the agreement in order?

**The Chair:** Okay, so you just want us to stop at clause 90.

**Ms. Tracey Ramsey:** Yes.

**The Chair:** I'm sorry, I didn't understand you.

We don't have agreement to go from clauses 81 to 135, so we'll stop at clause 90.

(Clauses 81 to 90 inclusive agreed to)

(On clause 91)

**The Chair:** Ms. Ramsey, you have a question about clause 91.

**Ms. Tracey Ramsey:** I want to take a pause here at the Coasting Trade Act, because some things have come forward from the seafarers and from a lot of cabotage workers inside our country around the changes being proposed in CETA. In particular, I have the Coasting Trade Act here. The changes being proposed are expanding the scope of foreign-flagged vessels, foreign vessels, flags of convenience, inside our country. Cabotage workers in the country feel that this is a direct threat to their work, that there will be many Canadian jobs.... They estimate 3,000 from the beginning.

We were unable to hear from witnesses from these groups, from these stakeholders, at committee because of the limited meetings we had, so I want to ask Mr. Verheul and some of the experts who are joining us today if they could speak to the changes that are being proposed. The changes start, I believe, on page 75, in proposed subsection 3(2.1), with regard to the repositioning of empty containers. These are significant changes to our current Coasting Trade Act that would expand the scope of foreign ships and what they're able to do in Canada.

I wonder if you could speak to that to give us an understanding of it, because we haven't had the opportunity to discuss it here at committee.

•(1610)

**Mr. Steve Verheul:** Sure.

To start with, on the issue of repositioning of owned or leased empty containers on a non-revenue basis, this is something that was requested of us by stakeholders—port authorities, the Shipping Federation, others. There is no scope for any enterprise involved to offer this to others. It's only on their owned or leased empty containers.

We did not receive any kind of objection from industry on this issue of repositioning of owned or leased empty containers. It's an issue of efficiency, we were told.

**Ms. Tracey Ramsey:** Was there consultation with labour groups?

**The Chair:** Mr. Ritz has a comment.

**Ms. Tracey Ramsey:** Oh, sorry.

**Hon. Gerry Ritz:** On that point, Steve, is this addressing the 30-day exit that we have on empty containers right now so that shippers can actually make use of them on day 32? They don't have to rush them back to port and ship them out empty when there are actually backhauls to be had. Is that the issue here?

**Mr. Steve Verheul:** It's the ability to move their containers back and forth so that any particular shipper doesn't have to hire an outside company to move an empty container back. They can move it back and forth on their own. They can't make any money from it. It's on a non-revenue basis. It's just an issue of efficiency for those—

**Hon. Gerry Ritz:** Yes. It's efficiencies and.... Okay, but that 30-day window of exit is sometimes arbitrarily applied and we lose the backhaul capacity.

**Mr. Steve Verheul:** That's right.

**Hon. Gerry Ritz:** So this addresses some of that as well.

Okay, good.

**The Chair:** This is not an amendment. It's a clarification for clause 91.

**Ms. Tracey Ramsey:** I have an amendment that I'm going to propose.

**The Chair:** For clause 91?

**Ms. Tracey Ramsey:** Yes, based on this exchange, Mr. Chair.

**The Chair:** Okay.

**Ms. Tracey Ramsey:** Were there any labour stakeholders that you engaged with?

**Mr. Steve Verheul:** Yes. We did engage with labour stakeholders as well, including the Seafarers' union.

**Ms. Tracey Ramsey:** Okay.

Can you speak to the issue of flags of convenience? Was there any concern about or was there an eye to flags of convenience being used in Canada to undercut the work of the Seafarers' union?

**Mr. Steve Verheul:** Well, that's a broader issue. In most cases, we have not allowed use of flags of convenience; certainly, on any of the feeder issues, you were not allowed to use flags of convenience. We did ensure that labour requirements have not been changed whatsoever. The labour laws that exist now remain in place for those EU operations that are going to enter Canada in these fields. We did maintain protections in those areas. I think that, by and large, we received a lot of support from the sector for these issues.

**Ms. Tracey Ramsey:** It is expanding, though, because in the Coasting Trade Act it's very clear in terms of the provisions under which a foreign ship or non-duty-paid ships can enter into our waters. It is only under specific circumstances, which largely have to do with approval from the government for things like marine scientific research and different things like that.

Now we're talking about actual cabotage jobs, so we're talking about the repositioning of those containers. There's a lot of mention of the Montreal-to-Halifax connection. Are these the only waterways that are going to be impacted by the changes in CETA or will it open up all Canadian waterways to these changes in the repositioning of empty containers?

**Mr. Steve Verheul:** Let me provide a bit of context. There were three areas of concessions that we made in the issue of international maritime transport. One was the repositioning of empty containers. I have to say that we did not receive any objections to that particular provision. It was viewed as fairly non-controversial. The second area where we did make some changes was with respect to dredging, both

private dredging and federally procured dredging. Finally, and I think this is the issue you're talking about, we did make some concessions with respect to feeder traffic that is restricted only to between the ports of Montreal and Halifax.

What we were told during those consultations was that there is currently no one operating any ship traffic between Montreal and Halifax. The goods are being transported by rail or by road, so there were not actual operations going on at that point. For both elements of the feeder traffic that we've done—and we did two elements, a continuous route between Montreal and Halifax, and a route between Montreal and Halifax that was part of a continuous route either from or to the EU—there were restrictions on the types of ships and the ownership of those ships that could be used for those particular routes, so it is very contained. It doesn't apply to anywhere outside of that single route between Montreal and Halifax.

• (1615)

**Ms. Tracey Ramsey:** We have received some briefs around this particular issue from the Canadian Maritime and Supply Chain Coalition, which is requesting some changes because they feel that there is a threat to jobs in Canada. The Seafarers' International Union has been engaging, and I believe they sent a brief to the committee as well, around a similar issue. They are saying that they have serious concerns about these provisions.

You mentioned the dredging issue, which starts in proposed subsection (2.2), and that's also of concern to them as well. Basically, this won't be done anymore simply by Canadian ships or Canadian workers. I do have an amendment to propose around that.

**The Chair:** If you want to read the amendment, we can see if it's admissible.

**Ms. Tracey Ramsey:** It starts after proposed subsection (2.6) on page 77. We're going to add a new proposed subsection (2.7), which states that:

(2.7) Any foreign vessel operating in Canadian waterways must operate under the same labour and minimum standards as a Canadian-flagged vessel and any Foreign vessel granted a coasting trade waiver must give employment preference to Canadian workers over Foreign workers

**The Chair:** Can you bring that forward to us?

**Ms. Tracey Ramsey:** Yes.

**The Chair:** All in favour of this amendment?

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

(Clause 91 agreed to)

(Clauses 92 to 135 inclusive agreed to)

**The Chair:** Now we go to the next one and that's clause 136. We have amendment LIB-4, which was already carried because of a previous one.

**Mr. Kyle Peterson:** It's consequential to another one.

**The Chair:** Shall clause 136 carry?

(Clause 136 as amended agreed to)

(Clause 137 agreed to)

(On clause 138)

**The Chair:** We have a few amendments here.

Ms. Ramsey, do you want to comment on amendment NDP-9?

**Ms. Tracey Ramsey:** We're just asking—

**Mr. Kyle Peterson:** Procedurally there are four amendments to the same clause, so what's the impact of one?

**Hon. Gerry Ritz:** I think they fall together.

**Mr. Kyle Peterson:** Okay. That's what I'm getting at. If amendments NDP-9 and NDP-10 are accepted, that means amendments NDP-11 and NDP-12 are done.

**Hon. Gerry Ritz:** They're already done.

**Mr. Kyle Peterson:** Thanks for that clarification.

**The Chair:** Does everybody understand? Because of what we did before, amendments NDP-11 and NDP-12 are done. We just have to deal with amendments NDP-9 and NDP-10.

Ms. Ramsey, you have the floor.

**Ms. Tracey Ramsey:** In amendment NDP-9, the change we're looking for, which is in the coming into force piece on page 108, is as follows:

The Governor in Council may make an order under subsection (1) only if the Minister tables, in each House of Parliament, a report containing an economic impact analysis of the potential benefits and costs of the Agreement for Canadians.

No economic impact analysis has been done for many years. I believe the last existing one was in 2008 or 2009, so I think it would be helpful to all parliamentarians to have that tabled at this time. Certainly at this committee we've discussed the impact of Brexit and different things that have fluctuated throughout the European Union, and I think it would be very helpful for all parliamentarians to have an updated economic impact analysis.

• (1620)

**The Chair:** Go ahead, Mr. Ritz.

**Hon. Gerry Ritz:** Mr. Verheul, as we were analyzing CETA and having witnesses, everybody talked about there being so many moving parts and so many variables and said that basically it would take a computer analysis, with data in and data out and your best guess, to determine who was going to take up what and how you'd actually get a cost-benefit analysis. Would it even be viable to do such a thing that would be accurate or worthwhile?

**Mr. Steve Verheul:** Certainly the accuracy would be questionable, because I think in any of these kinds of studies you have to make a whole series of assumptions that could be challenged. The fact is we don't know what exactly the behaviour will be of Canadian exporters, or for that matter of EU exporters to Canada, in the coming years, so there is a limited value to that kind of a study.

**Hon. Gerry Ritz:** Thank you.

**The Chair:** Go ahead, Ms. Ramsey.

**Ms. Tracey Ramsey:** We don't have an explanatory memorandum. Because of the way CETA was tabled in the House, we didn't get some of the supporting documents that we normally would, and because an economic impact study was done previously, obviously there's value in doing this regardless of the methodology used. I think it's understood that it is the best method we have in order to have some sort of snapshot of that economic impact. I think this is particularly important because we saw last week that an EU

parliamentary committee came forward and said it wouldn't support CETA because it projected the loss of 200,000 jobs in the EU. We need an understanding of what that looks like currently for us in Canada, in terms of what we are facing.

Certainly using a 2008-09 model in 2016 doesn't give us the best ability to have our hands on what we're facing here. Is it normal practice to have an economic impact study or analysis done around a trade deal of this scope? Really this is the largest trade deal we've engaged in since NAFTA. It's quite an ambitious piece for us to do, and I think having all of the information available to us would help all parliamentarians, because I'm certain they won't be able to read all 1,500 pages of it and do the assessment we've attempted to do here at committee.

I wonder if you could speak to that, Mr. Verheul.

**Mr. Steve Verheul:** Sure.

When we did the economic study in 2008, it was comparatively easy because we made a lot of assumptions without knowing the outcome of the negotiations. You can assume that all tariffs will be eliminated, for example, whereas the actual negotiated result will be much more nuanced. The same thing applies in services, government procurement, and other areas. When you're doing a study without knowing the final detailed results, it's easier to do. To tailor it in a way that you can actually capture the finer nuances of the final agreement is an extremely difficult thing to do.

Having said that, we will be doing a final environmental assessment of CETA—we're working on it at this point, but it will take a number of months to complete—that will have an economic assessment as part of it in order to conduct the environmental assessment of the impacts. As I mentioned, though, that is a ways ahead of us.

**Ms. Tracey Ramsey:** I just want to be clear, though, that including this amendment in no way impacts the agreement itself or the legislation in any way. This would be something coming into force where we would have this provided to us. I just want to be clear that this doesn't in any way jeopardize the intent or the spirit of the legislation we're looking toward. Would you agree with that?

**Mr. Steve Verheul:** If we look back to all of the previous free trade agreements we've done, we have never had any kind of legislative requirement to do any kind of economic study like this. There have been many studies done, and the majority of those studies, including by outside firms, have been indicating that there would be a positive benefit.

Now, the scope of the benefit varies between the studies. I'll acknowledge that some studies have suggested that there would be a negative impact, but the majority of the studies have found a positive impact. We are quite confident that a positive impact will be there and will be significant. To have a legislative requirement to do this before ratification and implementation will slow down the process considerably and will prevent us from getting the agreement into force as we'd like—as soon as possible—so that we can start to enjoy the benefit.

• (1625)

**The Chair:** Is there any more comment on this amendment?

If not, all in favour of amendment NDP-9?

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

**The Chair:** The next amendment is NDP-10.

Ms. Ramsey, you're good to go.

**Ms. Tracey Ramsey:** On this one, I feel that the cost of pharmaceutical drugs and the changes to the Patent Act, the scope of it inside the implementing legislation.... It's very serious. I cannot get a response from the minister or the government on this, any acknowledgement, I believe, of the fact that it will cost Canadians more money. I know we've heard that eight to 10 years is when we'll start to see the effects of that, but that's certainly not a long period of time before Canadians will start to pay more for their pharmaceutical drugs.

I think it is really incumbent on us to have a report containing an analysis of the potential impact of the agreement on the cost of pharmaceutical drugs in Canada. I don't believe it would be difficult to get, because the PBO received one from Health Canada. They put out to several departments around CETA a request for these reports, and Health Canada returned one. It's confidential, so we're unable to see that publicly, but data does exist on what the cost impact will be to Canadians. I think it's fair to ask that this data be revealed to Canadians so that they understand what we're facing in the patent changes that exist in CETA.

Is that possible? Do you have the Health Canada study that the PBO requested?

**Mr. Mark Schaun:** A wide range of estimates has been provided on the potential costs of pharmaceutical changes under the intellectual property provisions of the act. There has been a number of those sets of analyses. It's extremely difficult work. In fact, we don't believe the estimates we would be able to provide would meaningfully advance the issues, because we have no foresight as to the nature of the drugs that will potentially be on the market, post the coming into force, for those that would actually benefit from a certificate of supplementary protection, for instance. It's impossible to know which patent will be selected and on which drugs, so to our end it would be nearly impossible to predict what the specifics of the impacts would be.

**Ms. Tracey Ramsey:** So Health Canada has that study. Can we get that study released to us? Can we get the information around that released? The deputy minister appeared at the health committee and stated that the PBO had requested these and that there was a report from Health Canada on the costs.

**Mr. Mark Schaun:** It's not a study. It's data. I can't speak to what the PBO has in their possession. I can say, from our perspective as the department responsible for the intellectual property statutes, that in our assessment, based on what we see as the changes to the intellectual property statutes, it would be very difficult to predict what the potential impacts would be, given the forward nature of the changes being proposed.

**Ms. Tracey Ramsey:** I think it's widely accepted that there will be an increase in costs. I don't think that's being debated on any level.

I will move to you, Mr. Verheul, and ask if you have access to the data from Health Canada and if you're able to share it with us, either at the committee level or publicly in any way.

**Mr. Steve Verheul:** I have not seen any data from Health Canada on that.

**Ms. Tracey Ramsey:** Okay.

**The Chair:** Are there more comments on this amendment?

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

**The Chair:** Okay. That amendment has not passed, and as everybody knows, those other two amendments we don't need to do because they flow with the other ones. I'm talking about NDP-11 and NDP-12. We'll go right to the main clause. Shall clause 138 carry?

(Clause 138 agreed to)

**The Chair:** I don't see any more clauses. Now we'll go to the schedules. Shall schedules 1 to 6 carry?

(Schedules 1 to 6 inclusive agreed to)

**The Chair:** Shall clause 1, the short title, carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the title carry? If I don't hear anything, I'm assuming it is.

**Some hon. members:** Agreed.

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

**Some hon. members:** Agreed.

**The Chair:** Shall I report the bill as amended?

**Some hon. members:** Agreed.

**The Chair:** Shall the committee order a reprint of the bill?

**Some hon. members:** Agreed.

**The Chair:** Folks, it was a long, long road to get to here, and I really appreciate all the work that the negotiators, the staff, and the MPs and their staff, of course, did on this one.

There are a couple of little things that I have to tidy up here. I don't need to go in camera.

As everybody knows, the House is closing today, so I don't know if they'll let me throw this in the door on the way through.

• (1630)

**Mr. Sukh Dhaliwal:** It's not closing; it's rising.

**Mr. Kyle Peterson:** You have 10 minutes to make it there, Mr. Chair.

**The Chair:** There's one more thing that was brought to my attention, and since we have the officials here, I will say that there's another important negotiation on Bill C-31, as our clerk has informed us. It's my sense that we have fairly good agreement on Bill C-31 with CETA, but it has to come here for clause-by-clause consideration. We went through our schedule, and I think it would be good if we hit the Canada-Ukraine deal as soon we come back and do the clause-by-clause consideration. Is everybody agreed on that for our first day back?

**Hon. Gerry Ritz:** Definitely.

**Some hon. members:** Agreed.

Unless there's something else, have a good holiday, everybody.

**The Chair:** What a hard-working committee we have.

Thanks for all the hard work. I'll do my best to get this into the House.

The meeting is adjourned.

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