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⊕ (0905)

[English]

The Chair (Mr. Lee Richardson (Calgary Centre, CPC)): We will come to order. The tenth meeting is in session of the Standing Committee on International Trade. Today, pursuant to Standing Order 108(2), a study of Chapter 11 of the North American Free Trade Agreement (NAFTA), we have as witness, from the Council of Canadians, Steven Shrybman, Legal Counsel, and from Équiterre, Hugo Séguin, Public Affairs Coordinator, and William Amos, their lawyer.

We're going to start with a couple of opening statements, first of all with Mr. Shrybman, followed by Mr. Séguin. If we're all set, I'd like to begin. We'll follow that with questions in the usual manner.

Mr. Shrybman.

Mr. Steven Shrybman (Legal Counsel, Council of Canadians): Thank you very much, Mr. Chairman. Good morning, members of the committee. I'm a partner in the law firm Sack Goldblatt Mitchell. I'm on the board of the Council of Canadians and I have represented them in more than one investor-state dispute proceeding under Chapter 11 of NAFTA, and as you know, the Dow Chemical case that you're concerned with today is such a dispute.

So my job is not to talk about the case but to talk about the dispute regime so that you have the context for your consideration of the Dow Chemical case, and I'm going to mention also some of the other environmental cases that have arisen under this extraordinary dispute resolution mechanism that's built into Chapter 11 of NAFTA. I've got about 10 minutes so I'm going to go quickly and try to keep it at a fairly high level.

Under Chapter 11 of NAFTA, private parties--investors and companies from other NAFTA jurisdictions the United States and Mexico--can make a claim for damages arising from an alleged breach. We're going to take the case of a claim against Canada, a Canadian government, a federal government, provincial government, a municipal government, something those governments have done that the private investor or the U.S. company, for example, argues is in breach of the broadly-worded and ill-defined constraints of Chapter 11.

My colleagues will deal with the rules. I'm just going to describe the mechanism and how it has been used.

Virtually any U.S. company is entitled to file a complaint if it has an investment interest in Canada and the threshold is low. You need only have shares in a Canadian company to be entitled to bring a complaint. The only measure of a Canadian government, because policies and laws and programs and practices are described as measures, that are off-limits under Chapter 11 are measures under the Investment Canada Act. Everything else is fair game. There may be exceptions that are relevant to health care measures but that doesn't stop you from getting in the door and complaining that something that a province has done by way of closing the door to private health care delivery doesn't offend NAFTA rules. You may argue about whether the measure is exempt or not, but you have the right to a hearing before a tribunal.

Now the tribunal is one that is nominated by the parties, so if I'm the disputing investor, I nominate an arbitrator and Canada nominates an arbitrator. The two choose a third and that is the tribunal that decides whether a government measure is in breach of NAFTA rules. Typically, the disputes are heard outside Canada. For example, we were involved as intervenors in a UPS case. They brought a complaint against Canada because of the activities of Canada Post. That was argued at the World Bank headquarters in Washington, D.C.

So you have the spectre of a quasi-private tribunal making a determination about the validity of something that a Canadian government has done, which is otherwise lawful and proper under the constitution, and often that tribunal will be sitting outside the

country, and often at the World Bank headquarters in Washington because that just tends to be a convenient place that is often chosen for the adjudication of these disputes.

So that's a broad outline of the mechanism. There is very little opportunity for judicial review of an arbiter award and the review can only be carried out in the jurisdiction which is chosen as the place of arbitration. So in the case of the UPS claim, for example, the place of arbitration was the United States. I practice labour law and other types of law. We routinely judicially review decisions of arbitral tribunal but had that tribunal found Canadian postal policy and law at odds with NAFTA--they didn't, fortunately--we would have had to go to a U.S. court to challenge the award. It's an idiosyncratic feature of the regime but it describes how removed it is not only from parliamentary scrutiny but also judicial scrutiny, once the mechanism is in play.

⊕ (0910)

Environmental laws have become a favourite target of this mechanism.

There are several cases in which environmental laws, including Canadian environmental laws, have been challenged. One of the first cases were a challenge by Esso Corporation. They didn't like federal regulations that restricted the use of a toxic fuel additive. Canada settled that case, wrote the company a cheque for \$19 million to cover its legal fees and rescinded its regulations. The case hadn't even been argued yet.

Another case was with S.D. Myers . Canada banned the export of PCB waste to the United States, which arguably it's obliged to do under the Basel Convention . The tribunal found against Canada and ordered it to pay \$9 million in damages to this U.S. hazardous waste company.

There are a number of other cases. They're available on the websites. A good percentage of them are about environmental matters, but there are two cases proceeding right now that aren't about environmental matters and are terribly important for the future of the country. One is brought by a forest company called Merrill and Ring . It wants to get rid of the ban on raw log exports that exists at both the federal and provincial level in Canada. But for raw log export controls, we wouldn't have a pulp and paper industry in Canada. Yet this dispute is proceeding with very little notoriety, and I doubt that many members of the committee have heard about it.

There's another case that's been brought by a U.S. health company. It's suing Canada for \$160 million. What's its complaint? It argues that it wasn't allowed to establish private health care clinics in Canada, saying that is a breach of its rights to invest under Chapter 11.

This is just to give you a sense of the terribly important issues of public policy that often find their way into a forum which is really created to resolve private disputes, not public disputes, with respect to which there is no broader public or societal interest. Under NAFTA, what's happened is we've allowed this private dispute mechanism, which

used to exist to resolve commercial disputes, now to be used as a forum to resolve disputes about broad issues of public policy and law.

The last thing I'll say is this: While a fair bit of attention is focused on Chapter 11, much less attention has been paid to efforts to implement a similar dispute regime as a feature of interprovincial trade, investment and labour mobility agreements. This has actually happened in the trade, investment and labour mobility agreement entered into between British Columbia and Alberta, which goes formally into effect on April 1, 2009. They have built into TILMA precisely this dispute mechanism, in which a private investor in Alberta or B.C. can challenge a measure by the other government—could be a municipality or even a school board. It's proper and lawful, and the board had the authority to do it, but it offends the broad constraints of this mobility agreement. That's flying so far below the radar screen that I'd be very surprised if any of you have heard of it.

So that's in place. The ministers of Trade for Canada and the provinces signed an agreement last December to expand the dispute mechanism of the agreement in internal trade along the same lines. They haven't made it public. I don't know whether you've seen it. We would very much like to see it. When I speak to federal trade officials, they tell me, well, you'll see it when it's finally ratified. Just to bring home the concerns that you might have about this dispute regime, please be aware that there are efforts underway now to actually implement precisely the same dispute model as a feature of Canadian interprovincial arrangements. In my view, the mechanism is unconstitutional. I don't have time to speak to you about that today.

I'll leave you with that hopefully provocative thought, which might prompt some questions.

Thank you. I think my ten minutes is up.

⊕ (0915)

The Chair: Thank you, Mr. Shrybman.

Monsieur Séguin.

[*Français*]

M. Hugo Séguin (coordonnateur aux choix collectifs, Équiterre): Bonjour, monsieur le président, messieurs les membres du comité.

Mon nom est Hugo Séguin, je suis coordonnateur du dossier des choix collectifs pour l'organisme Équiterre, basé à Montréal, actif depuis 1993 à peu près sur des enjeux de solutions concrètes à des problèmes de développement durable. On travaille particulièrement sur des enjeux d'agriculture, d'énergie, de transport, de commerce

équitable et aussi de changements climatiques. Le dossier des pesticides est un dossier important chez nous, qu'on traite déjà depuis quelques années.

Je suis accompagné ce matin de deux analystes: une de la Fondation David Suzuki et une autre de l'organisme Équiterre, que je représente, et aussi de Me William Amos, de l'organisation Ecojustice Canada, qui représente à la fois Équiterre et la Fondation David Suzuki dans cette cause.

Mon rôle, en quelques minutes, sera de vous présenter un peu le fond de la question, le fond du litige, qui nous apparaît extrêmement important, parce qu'il se situe à la jonction de deux enjeux importants de gouvernance pour le Canada, c'est-à-dire, d'un côté, l'obligation de respecter les traités commerciaux internationaux que le Canada a signés dans le passé, dont l'ALENA, et, de l'autre côté, l'obligation qui est faite au gouvernement du Canada de protéger la santé publique, et notamment la santé des enfants.

Le 25 août dernier, la compagnie Dow AgroSciences a fait connaître son intention de contester devant l'ALENA l'application du Code de gestion des pesticides du Québec, et en particulier l'interdiction de l'ingrédient actif 2,4-D, qui est utilisé comme ingrédient de synthèse dans des pesticides qu'on peut acheter sur les tablettes sur le marché, notamment pour des fins esthétiques, donc d'entretien des pelouses. La compagnie Dow allègue que cette interdiction viole certaines dispositions de l'Accord de libre-échange nord-américain contenues dans le chapitre 11 de l'accord. Le gouvernement du Québec, qui dispose de la compétence constitutionnelle pour intervenir dans le domaine de la vente et de l'utilisation des pesticides invoque, quant à lui, l'importance de protéger la santé publique. C'est en fonction de cet objectif qu'il interdit un certain nombre d'éléments actifs qui font partie de la composition des pesticides.

Le Code de gestion des pesticides du Québec est en vigueur depuis 2003. L'interdiction des pesticides de 20 ingrédients actifs est en application depuis 2006. Notamment, le Code de gestion des pesticides s'applique à des zones gazonnées, notamment des zones qui sont utilisées plus fréquemment par des enfants. Les études de santé publique semblent démontrer que les enfants sont plus susceptibles de risque pour leur santé lorsqu'ils jouent dans des parcs, dans des cours d'école ou des cours de garderie. C'est un peu sur cette base que le Québec, qui n'est pas la seule juridiction dans le monde à interdire le 2,4-D ou un certain nombre de pesticides, a justifié son action. D'ailleurs, c'est le cas en Norvège, au Danemark, en Suède et aussi en Ontario maintenant où un certain nombre de pesticides, dont le 2,4-D est interdit maintenant.

Comme toutes les juridictions que je viens de mentionner, le Québec fonde son intervention sur l'application du principe de précaution qui implique qu'en l'absence de certitude scientifique quant à la toxicité des pesticides, il faut faire preuve de prudence quant à leur utilisation. C'est le principe même du principe de précaution.

Selon le gouvernement du Québec, les pesticides utilisés à des fins esthétiques peuvent en effet présenter des risques pour la santé humaine, et notamment pour la santé des enfants qui, selon le Québec, et je cite le gouvernement du Québec là-dessus:

[...] sont particulièrement vulnérables aux effets nocifs des pesticides et ils y sont plus exposés en raison de leur comportement, par exemple leur tendance à porter des objets à la bouche, surtout quand ils jouent dans des surfaces gazonnées où on a étendu des pesticides. On soupçonne plusieurs pesticides, dont certains sont couramment appliqués sur les surfaces gazonnées, de produire des effets à plus long terme sur la santé, soit d'être cancérigènes ou de provoquer des dérèglements des systèmes reproducteur, endocrinien, immunitaire ou nerveux.

Dans le cas précis du 2,4-D, l'Institut national de santé publique du Québec s'est prononcé à deux reprises sur la question et a recommandé au gouvernement du Québec d'interdire l'élément actif 2,4-D en invoquant le principe de précaution. L'Institut national de santé publique est le conseiller principal du gouvernement du Québec sur des enjeux de santé publique. D'ailleurs, les recommandations de l'Institut national de santé publique sont aussi appuyés sur des études réalisées par le Centre international de recherche sur le cancer, qui relève de l'Organisation mondiale de la santé, qui classe la famille entière d'éléments actifs qui s'appellent les herbicides chlorofénoxi, dont fait partie le 2,4-D, comme potentiellement cancérigènes pour l'homme.

⊕ (0920)

D'ailleurs les recommandations de l'Institut national de santé publique sont aussi appuyées sur des études réalisées par le Centre international de Recherches sur le Cancer, qui relève de l'Organisation mondiale de la Santé, qui classent la famille entière d'éléments actifs qui s'appellent les herbicides chlorophenoxy, dont fait partie le 2,4-D, comme potentiellement cancérigènes pour l'homme.

À la suite des démarches entreprises par la compagnie Dow, le 25 août dernier, Équiterre et un certain nombre de partenaires ont procédé à une mobilisation au sein de la société civile canadienne et québécoise. À l'heure actuelle, il y a une centaine d'organisations et de personnalités, soit nationales, soit internationales, qui appuient notre démarche qui est de demander au gouvernement fédéral de protéger l'intégrité du Code de gestion des pesticides du Québec. Une lettre a d'ailleurs été envoyée à cet effet au ministre du Commerce international, M. Stockwell Day, pour l'encourager à ce que le Canada fasse une action énergique devant un éventuel panel de l'ALENA en fonction de la protection de la santé publique.

En conclusion, nous profitons d'ailleurs de l'occasion qui nous est offerte ce matin pour vous faire part de trois recommandations que nous adressons au gouvernement du Canada. La première, c'est qu'à notre avis, le gouvernement fédéral doit défendre énergiquement devant l'ALENA l'interdiction de l'herbicide 2,4-D par le Québec. De plus, le ministre fédéral du Commerce international doit immédiatement faire connaître publiquement la position du Canada dans cette affaire et reconnaître le principe de précaution qui est à la base même des mesures adoptées par le gouvernement du Québec et maintenant par le gouvernement de l'Ontario.

La deuxième recommandation, c'est que le gouvernement fédéral devrait déclarer que les normes réglementaires non discriminatoires élaborées en conformité avec l'application de la loi et dans l'intérêt public ne constituent pas, au sens du droit international, des

expropriations ou un traitement injuste. En conséquence, ces normes réglementaires ne sont donc pas sujettes à indemnisation.

Finalement, le gouvernement fédéral doit voir à ce que le principe de précaution soit appliqué de façon plus stricte lorsque lui-même, comme gouvernement, procède à l'évaluation des risques posés par les pesticides.

Je cède maintenant la parole à Me Amos qui couvrira certains enjeux que soulève ce dossier en regard des règles commerciales de l'ALENA.

[*English*]

Mr. William Amos (Lawyer, Équiterre): Thank you, Mr. Chair and committee members.

With leave if I'd be allowed an extra five to seven minutes—I recognize that would go over the 10 minutes allotted to us—I think it would allow a better discussion of the case itself.

The Chair: If you get started, you won't be.

Mr. William Amos: Thank you.

My name is Will Amos. I'm the staff lawyer and a part-time professor at the University of Ottawa Ecojustice Environmental Law Clinic. Ecojustice is Canada's foremost non-profit environmental law organization. We're best known for our litigation work and our law reform work to help protect Canadians' right to a healthy environment.

In this context, I am serving as counsel to Équiterre and to David Suzuki Foundation.

First off, I'd like to congratulate the committee for taking this step of holding this hearing. It is really important that NAFTA Chapter 11 disputes the concerned matters of public importance, concerned matters of public regulation, that they're discussed in the light of day before our elected representatives. You certainly have a legitimate role to play in the context of this dispute.

First off, what I'd like to do is quickly give an overview of where this dispute is coming from and a very basic outline of the steps that have been taken and where it's going or where it may go.

On August 25, 2008 a notice of intent to arbitrate was filed. This is the first step that Dow AgroSciences could have taken. They indicated they would be seeking \$2 million in compensation from Canada in addition to further relief including additional damages for lost profits resulting from Quebec's ban on the cosmetic pesticide 2,4-D. The claim was brought under NAFTA's Chapter 11, article 1105 and article 1110. Article 1105 deals with the minimum standard of treatment owed to investors, including fair and equitable

treatment in accordance with international law, and article 1110 deals with expropriation or measures tantamount to expropriation.

Dow asserts that the ban was imposed without scientific justification. It disputes the cancer risk that is associated with the chemical 2,4-D. It asserts that the ban ought to have been lifted, that it's arbitrary and that it's irrelevant and unfair. At first glance, since Dow is not alleging any trade protectionism issues, this is a matter that is purely about process. It's about Quebec's ban and the process that they undertook to enact it, so this is unlike other disputes we have seen in the past under Chapter 11, in particular S.D. Myers, Apple Corp., where there were allegations of trade protectionism involved, alternative motives the Canadian government may have had. In this case there were no alternative motives. It would appear that Dow assumed that the motives were to protect public health and environment. They just don't appreciate the way Quebec has gone about doing it.

After this notice of intent was filed there was a 90-day cooling off period and anytime after that 90-day cooling off period Dow was at liberty to file its notice of arbitration which would kick off the entire process, including the choosing of arbitrators. They have not filed a notice of arbitration, so, in a sense, we're playing a waiting game right now. At least according to the document filed by the Department of Foreign Affairs and International Trade for the purposes of this hearing, there were consultations in January. We're not certain where those have led to if settlement negotiations are ongoing. Civil society is sitting waiting for the notice of arbitration to be filed and waiting for the process to kick off.

I'd like to outline a couple of very simple concerns and then try to hit what I think is the key issue in this discussion.

In terms of our main concerns, even where public interest regulation is challenged by eligible investors, civil society participation in these processes can be severely constrained. We're dealing with a matter of public health and environmental protection, so this is something where civil society's voice should be heard loud and clear. However, even if there were arbitration to go forward, my client's ability to participate would be limited at best to a 20-page written memorandum to an arbitration panel that may not even be in Canada. There is no guarantee that the investor won't request confidential proceedings, which would further limit our ability to understand what case they're bringing, and there will be no opportunity for us to make oral representations before the tribunal. This is totally unlike the Supreme Court of Canada where public interest intervenors with the leave of the court where they have a distinct and unique perspective that the Supreme Court feels is usefully brought. We will not have that opportunity because the arbitration panel will not have that jurisdiction to ask for it.

📞 (0925)

Secondly,--and I believe my colleague Steven Shrybman mentioned this--NAFTA Chapter 11 does establish an imbalance between investor protection rights and party sovereign duty to protect the public interest in health and environmental health.

Over the past several years a series of investor claims in each of the NAFTA parties have claimed that certain domestic measures whether they're health or environmental have conflicted with the terms of Chapter 11 and although recent decisions, notably the Methanex decision, have been better than earlier decisions. Some of the earlier decisions like Metalclad pretty harsh. The uncertainty that is generated by these claims, just the mere filing of a notice of intent really does have an effect on other jurisdictions, provincial and municipal.

I don't want to be too negative about it but the reality is provinces and municipalities are nervous when they think about enacting regulatory measures like pesticide bans because they don't want to face the consequences of a NAFTA Chapter 11 tribunal. Certainly the Canadian government faces those same restrictions.

Despite the underlying legal risk we're very, very pleased to see Ontario enact the ban following Quebec and we're hopeful that further provinces will join the parade.

In terms of our key recommendations, I just want to go to two of them specifically now. The first is our recommendation that the federal government vigorously defend Quebec's ban on 2,4-D lawn pesticides if that proceeds to arbitration. The federal minister of international trade should immediately and publicly announce Canada's intentions in this regard and acknowledge the appropriate precautionary basis for Quebec's action. As well, we want the federal government to assert the position that non-discriminatory regulatory measures that are enacted for a public purpose in accordance with due process under international law are not expropriations or violations of the minimum standard of treatment. As such they should not be subject to compensation.

One of the most controversial issues in investment law that's raised in this claim is how to distinguish between a valid regulation which is not compensable and direct or indirect expropriations which would be compensable. DOW argues that the ban is compensable expropriation. If this goes forward we would want to argue and we believe that Canada ought to argue and we believe Canada will argue that the Quebec ban is a non-compensable public interest regulation. We believe we're supported by the most recent NAFTA Chapter 11 decision in Methanex. I'll quote from that decision:

As a matter of general international law a non-discriminatory regulation for a public purpose which is enacted in accordance with due process and which affects inter alios a foreign investor or investment is not deemed expropriatory and compensable unless specific commitments had been given by the regulating government to the foreign investor contemplating investment that the government should refrain from such regulation.

Obviously we don't feel that Quebec made such representations. However, international law has yet to identify in a comprehensive and definitive fashion precisely what regulations are permissible and commonly accepted falling within the police or regulatory powers with the state and thus non-compensable. So there's no bright yellow line and that's the issue here. I think it's a critical issue of public importance and we're very pleased that this committee has invited us here to speak on this issue. If and when this arbitration proceeds I would request that this committee hold a similar hearing to

follow up on the arguments that are being made to hear formally the position of the Government of Canada and Dow AgroSciences and give the opportunity to the Canadian public for their elected representatives to ask the questions of the government and of the investor because this is not just about Dow's investment this is about our children's best interests.

Thank you.

🕒 (0930)

The Chair: Thank you, Mr. Amos and Mr. Séguin.

In addition to the statements from Équiterre and the Council of Canadians, the committee has received submissions from Meg Sears, PhD, from Dunrobin, Ontario. These have been circulated, from Industry Task Force II on 2,4-D research data, and from Dow AgroSciences.

We also have a statement to be read into the record from Dow AgroSciences.

Dow AgroSciences wishes to thank the members of the House of Commons Standing Committee on International Trade for their invitation to appear. While we recognize that activities and testimony at committee falls under the banner of parliamentary privilege, because we are currently engaged in litigation with the Governments of Canada and Quebec, in the interests of prudence we must respectfully decline appearing before you today.

In our absence we have provided a written submission to the Committee which outlines our position and which we ask you to consider in your deliberations. If we could kindly highlight one theme, it is that Dow AgroSciences fully supports the responsibility of Canadian governments to establish effective regulations to protect Canadian's health and safety and Canada's environment. Furthermore, we believe that Canadian governments have a responsibility to enact effective health and safety regulation that follow established science-based risk assessments/risk management principles.

Should there be questions related to our submission, we would be pleased to address them in writing.

Thank you for your consideration.

That's from Dow AgroSciences Canada, Jim Wispinski, President and CEO.

I think that all of those submissions have been distributed to the members of the committee.

Well, an interesting topic. We've heard from our witnesses and we're now open to questions.

We're going to begin the questions with Mr. Brison, and we're going to try to limit the first round to seven minutes for questions and answers. So I would ask the witnesses to try to keep their answers commensurate with the question and try to keep them all within seven minutes.

Mr. Brison, if you'd begin.

⊕ (0935)

Hon. Scott Brison (Kings—Hants, Lib.): Thank you, Mr. Chair.

Thank you very much for your interventions this morning.

The principal of chapter 11, of national treatment and inherent investor/state provisions, is one that I think most of us understand: the notion that a Canadian company doing business in another country with whom we have a free trade agreement could not be discriminated against by that government or a subnational government in that country; and, by the same token, we would respect the same principal, in terms of a foreign company doing business here. The principal of chapter 11 is as much to defend Canadian companies doing business abroad as it is to defend the rights of American, or Mexican companies in this case, through NAFTA, doing business in Canada.

We've seen cases where chapter 11 yielded what seems to have been a just result, in terms of Methanex, based on your analysis. In other cases, if you go back to MMT, you would allege that case was different, in terms of how it was resolved.

It strikes me that legislators, whether provincial or state or federal, national or subnational, face a significant challenge, in terms of designing legislation that, by nature, is not seen or demonstrably proven to be in some ways discriminatory.

For instance, with 2, 4-D, if the ban had been on pesticides broadly, as opposed on 2,4-D specifically, would it have been more tenable under chapter 11 than it is if you ban a specific chemical?

Mr. William Amos: It's an interesting hypothetical. Obviously the Quebec government did take a targeted measure. This is about 2,4-D and lawn pesticides and cosmetic pesticides in particular.

There are specific carve-outs for different applications, for agriculture, for forestry. Any time the argument sort of gets mixed together we say this is not about agricultural applications of 2,4-D, this is not about forestry applications of 2,4-D, this is about a limited target group.

At the end of the day the government made a decision based on a precautionary principle to protect certain subpopulations. It would have been potentially more difficult for them to justify on the basis of the precautionary principle than on 2,4-D in relation to agricultural and forestry.

I don't want to necessarily take a position on whether there should or shouldn't be a ban on 2,4-D in relation to agriculture and forestry because it's neither here nor there for us today. It's obvious that the Quebec government felt they had a strong argument via the precautionary principle to say “We need to protect our children from these pesticides and even in the absence of absolute scientific certainty, that we're going to move forward and protect them”. They went for it, and I agree with them, on the strongest basis possible.

⊕ (0940)

Hon. Scott Brison: Sure.

Mr. Steven Shrybman: Mr. Brison, can I just respond to your premise there?

I think it's very difficult to argue that this mechanism has been of any utility to Canadian investors. We have lost every single case that we have brought against the United States. I think until recently there were no cases against Mexico, though I'm not absolutely current in that regard.

If you look at the cases we brought against the United States, they were arguably as meritorious, perhaps more so, than the cases that have been brought against Canada that have succeeded. I'm thinking of Loewen in particular where you've got a jury in Mississippi ordering a \$500 million damage award against Loewen because of some dispute involving \$1.5 million that actually puts the company into bankruptcy because under the State law it didn't have the money to appeal which would have meant posting a bond.

There have been very meritorious cases brought against the United States, even though I'm no fan of the mechanism, we lose. The cases brought against Canada succeed. Why would that be? Why asymmetrical results? I think there are two reasons for that. A tribunal—these are private tribunals, they get paid extremely well—if they want ongoing business, they have to find occasionally in favour of disputing investors. If they find against the United States, I think they understand they risk killing the goose that's laying the golden egg because Congress wouldn't put up with it.

Hon. Scott Brison: But the merit behind the principle of chapter 11 you don't dispute, of providing national treatment. That we cannot discriminate against foreign companies simply because they're foreign companies. You don't dispute that.

Mr. Steven Shrybman: National treatment is one rule. There are performance requirements which would preclude say value-added processing requirements for Canadian resources, or the type of stimulus measures that the Canadian government

might want to put into place. There are rules about expropriation which has been interpreted too broadly. There's this jackpot article 1105 about treatment in accordance with international law. So the fairness principle I wouldn't dispute. But I would argue with you that it's a feature of Canadian law in any event and no U.S. investor can claim....

Hon. Scott Brison: You support the principle of national treatment and the need for investor state provisions, but you believe that chapter 11 perhaps is poorly worded. Or do you not support....

Mr. Steven Shrybman: I don't support the mechanism. I don't think there's any argument that it served Canada or Canadian investors.

Hon. Scott Brison: We're talking about chapter 11. I'm acknowledging that it may be poorly worded.

Mr. Steven Shrybman: I'm talking about chapter 11.

Hon. Scott Brison: But the principle of investor state provisions for national treatment, if you say you're opposed to that, then you're opposed to free trade.

Mr. Steven Shrybman: No. We don't have an investor state mechanism at the WTO.

Hon. Scott Brison: In fact, however, if countries within NAFTA do violate national treatment, there is a provision there. Now you could argue that under the WTO, which is not free trade, the WTO is not free trade to the extent that an FTA represents.... My bias is, I believe that investor-state provisions are important, and I think that they are essential.

I do acknowledge that there are challenges with the wording of chapter 11. This is really helpful to us. We need a longer discussion, frankly, on chapter 11, where we bring in more witnesses at some point and we can actually go through this, because I know people from the business community, who believe in investor-state provisions but who believe that chapter 11 is poorly worded, the fact that a Canadian company.... If a Canadian company manufactured 2,4-D for instance, they would not have the same right to challenge the government. It would not have the same right. Chapter 11 does in some ways provide more rights to a foreign company than a Canadian company. That could be argued as being wrong. With MMT that ban was a case of the government using interprovincial trade barriers, as opposed to an outright ban, and as such it seemed to be a circuitous way to approach it, and as such violated the principles of national treatment.

Hon. Scott Brison: But the fact that we do have investor-state provisions and national treatment, I think is very important to Canadian companies and to Canadian jobs. The question is, what are the problems with chapter 11, and how can we address those problems? I think that's where we're going to have to drill down on it at some point. But I really appreciate your help in contributing or shining some light on this, this morning. I

just think we're going to need a lot more light from a lot more people, and a lot more time to really understand this. I think we have to be fairly open-minded in looking at it.

🕒 (0945)

The Chair: I want you to comment very briefly. We're at nine and a half minutes.

Go ahead, Mr. Amos.

Hon. Scott Brison: Thank you very much.

Mr. William Amos: Very quickly.

I appreciate the statements and the question with respect to national treatment. Without taking any position on the utility of investor-state provisions, without making any comments with respect that matter, I think it's very important to distinguish between a number of the provisions that are within chapter 11. Article 1102, which deals with national treatment, is entirely distinct from article 1105, which deals with the minimum standard of treatment. National treatment deals with the fact that Canadian investors are going to have to be treated the same as U.S. investors. The minimum standard of treatment deals with an objective standard of treatment that any investor must be granted.

Dow is not claiming that Canadian investors were treated more favourably. There's no 1102 claim. This is about article 1105 and the minimum standard of treatment.

I think that what we need to do when we start drilling down into this issue and looking at what wording in chapter 11 is simply not working right now.... As I pointed out, the main issue is determining what is a compensable expropriation versus what is a non-compensable regulation? That's the key issue. The problem is that NAFTA, chapter 11, doesn't specify well enough. There's a raging debate out there as to what kind of regulations should be non-compensable. We really need the Canadian government to take a firm position and a very transparent position as to what they feel is non-compensable regulation. I think that's the core issue here.

Hon. Scott Brison: Thank you.

The Chair: Monsieur Cardin.

[*Français*]

M. Serge Cardin (Sherbrooke, BQ): Bonjour messieurs, bienvenue au comité.

Quelqu'un a dit tantôt, dans cette principale préoccupation, le simple avis d'intention de déposer une plainte crée quand même une certaine commotion. Effectivement ça peut être le cas. Malgré le fait que bien sûr ça me déplut de voir que c'était possible, mais il reste que ça donne une occasion de revenir et analyser le Chapitre 11. De ce côté, j'en

suis bien heureux. Bien sûr il y a le côté environnement, le côté scientifique, mais au niveau de l'analyse du Chapitre 11, je suis convaincu qu'il faut en faire une étude en profondeur parce qu'on sait que la tendance, même dans les nouveaux accords de libre-échange, on ne retrouve plus de telles choses, de moins en moins. Bien sûr, il y a des accords sur les investissements qui sont faits parfois séparément, mais on ne retrouve pas la même chose. Ce qui est stupéfiant quand même dans ce Chapitre 11, vous avez parlé du principe d'expropriation qui est excessivement large. Par contre, quand on parle d'intérêt public, on ne définit pas nécessairement et précisément un intérêt public. Donc, il y a quand même un problème potentiel énorme entre les deux.

Si on regarde spécifiquement pour l'interdiction du 2,4-D, c'est l'Ontario, le Québec, mais les autres provinces l'utilisent encore. Au niveau des États-Unis qui voient cette situation où c'est permis à certains endroits et non à d'autres, ça les réconforte dans leur possibilité de poursuivre ou de déposer des plaintes. Quand parle de l'ALENA, d'un accord de libre-échange entre deux pays, si les normes ou les standards d'une province varient d'une à l'autre, pour eux il est facile de s'immiscer et d'entamer des poursuites.

⊕ (0950)

M. Hugo Séguin: En passant, vous dire que cette commotion qui a été créée par le dépôt de l'avis d'intention de Dow AgroSciences LLC, a eu deux effets. Vous avez tout à fait raison de dire que ça remet en lumière des enjeux extrêmement importants tirés de l'article 11 et l'interprétation qu'on en fait. Vous avez tout à fait raison en disant qu'il y a des éléments qui ne sont pas clairs, non précisés, que les définitions d'intérêt public dans l'article 11... J'entends aussi un intérêt de la part de certains membres du comité, de regarder cette question en profondeur et au nom de l'organisation que je représente, on serait tout à fait favorable à l'idée d'une révision, ce que veut dire l'article 11.

J'en profiterais pour dire que cette commotion a aussi eu un effet bénéfique. Au niveau du fond du dossier lui-même, c'est un enjeu de gouvernance, où les gouvernements du Canada se posent la question souvent, comment protéger la santé publique. Le geste posé par Dow AgroSciences LLC ramène aussi le dossier de l'interdiction des pesticides à l'avant-scène, amène certaines provinces comme l'Ontario à se poser la question, à développer un certain nombre de réglementations qui interdisent des pesticides, ramène l'enjeu à la surface et mobilise la société civile. Je ne serais pas surpris que cette commotion amène des municipalités, des provinces et des gouvernements fédéraux à réviser leurs propres règles pour donner un quart de tour plus spécifique au niveau des pesticides, en vertu de la défense de la santé publique.

M. Serge Cardin: À titre d'exemple, on a rencontré des représentants de l'Union européenne il y a quelques semaines et ils parlaient avec conviction des standards qu'ils mettaient de l'avant et ils n'importaient pas n'importe quel produit. Si le produit ne répondait pas à ces standards, c'était réglé, on n'importait pas. Par contre, comme je disais, le fait que différentes provinces l'acceptent, il n'y a donc pas un standard uniforme pour l'ensemble, à ce moment, ça laisse des brèches dans les poursuites aussi.

Vous disiez que ça va ramener le début et peut-être susciter le fait que les gens s'engagent dans la même direction, donc défendre des standards et ça je ne crois pas qu'un pays étranger puisse aller à l'encontre des standards qui sont partagés par l'ensemble.

M. Hugo Séguin: C'est notre prétention, d'abord, de dire que cette réglementation non discriminatoire est tout à fait acceptable et soutenue par la société civile. C'est ce qu'on cherche. Cela me permet de vous expliquer, peut-être, un enjeu qui est périphérique à l'enjeu.

Au Canada, il y a au moins trois niveaux de juridiction qui peuvent intervenir en matière de pesticides. Le gouvernement fédéral a une procédure d'interdiction des pesticides à travers l'ARLA qui regarde un certain nombre de pesticides et les homologues au nom du Canada. Donc, l'ARLA donne en quelque sorte un standard minimal pour l'ensemble du Canada. Les provinces peuvent aller encore plus loin; elles peuvent exclure davantage de produits que l'ARLA et les municipalités peuvent être encore plus sévères au niveau de l'application des pesticides sur leur territoire.

On a la prétention, en voyant ce qui s'est passé au Québec et ce qui se passe en Ontario, que sur la base du principe de précaution, certaines provinces ont compris qu'il faut donner beaucoup plus d'importance à ce principe que ce à quoi le gouvernement fédéral consent pour le même traitement et les mêmes éléments chimiques. Il y a un enjeu au Canada que je veux exprimer à travers cet exemple, mais c'est aussi un enjeu important.

M. Serge Cardin: Étant donné que, maintenant, on reconnaît que le Québec est une nation, si le Québec décidait demain matin que tout ce qui se fait, c'est biologique et que c'est le standard commun pour tout le Québec, on serait la cible de tous les producteurs de produits chimiques. On serait constamment en poursuite.

Quand on regarde le chapitre 11 (14) des mesures environnementales, on dit en conclusion: « En conséquence, le parti ne devrait pas renoncer ni déroger à de telles mesures dans le but d'attirer des investisseurs. » Autrement dit, ils reconnaissent aussi qu'il n'est pas approprié d'encourager l'investissement en adoucissant les mesures nationales qui se rapportent à la santé, la sécurité et l'environnement.

Maintenant, il faut quand même une adhésion de l'ensemble du Canada, comme il y en aurait une, si — vous dites— les provinces et les municipalités ont le droit de statuer, si le Québec le faisait à titre d'exemple, face au chapitre 11. On n'en finirait plus, on aurait des poursuites de façon constante. Il faut se débarrasser, premièrement, du chapitre 11 ou mieux le définir. Ensuite, être capable d'adopter des standards plus élevés pour l'ensemble du Canada.

⊕ (0955)

M. Hugo Séguin: J'ajouterais un commentaire très court à ce sujet.

En matière de pesticides, c'est loin d'être le seul sujet sur lequel des entités fédérées ou des municipalités sont plus proactives que le gouvernement central. Souvent, les provinces ou les municipalités servent de banc d'essais à des initiatives très progressistes qui sont par la suite adoptées dans les autres juridictions et au niveau canadien. Nous voyons cela d'un bon oeil.

M. Serge Cardin: Merci.

[*English*]

The Chair: Thank you, Mr. Cardin.

Thank you for your brief answers as well.

I'll go now to Mr. Julian.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you, Mr. Chair.

Thanks to our witnesses. You make a very strong case for how chapter 11 undermines our democracy and our ability to establish stronger standards for quality of life.

I'd like to start with you, Mr. Shrybman.

You've been very eloquent about how the Canadian government and crown corporations have essentially lost about 80% of the cases brought forward under chapter 11. American government and public corporations have won every one so there's very clearly an imbalance. Could you give us briefly a summary of what has happened with the language around chapter 11 subsequent to NAFTA being adopted.

In other words, what path did the United States take around investor state provisions and what path did Canada take around investor state provisions in bilateral agreements-- you made reference to Tuma , and internal agreements?

Mr. Steven Shrybman: Congress has taken an interest in this mechanism and instructed U.S. trade officials to moderate the language.

Mr. Peter Julian: So the language has changed in the U.S.? They're not using this in subsequent agreements?

Mr. Steven Shrybman: No. They're using other language in subsequent agreements.

It's also important to appreciate that the WTO regime, which is a free trade regime, doesn't include this mechanism because it was rejected on three different occasions by the members of the international trading community. That includes the United States. It's true. The yardsticks have moved in the United States, and arguably, internationally. But that's not true of Canada's position.

Mr. Peter Julian: Okay, just to clarify then, for agreements like the U.S. and Chili, the U.S. and Singapore, Australia, Morocco, whatever, what they do in the United States is actually ensure that it can't attack legitimate public welfare objects, or public health, or public safety objectives that are set by government policy.

Mr. Steven Shrybman: I do believe that at least in one case a bilateral agreement doesn't include an investor state mechanism. I think they're moving away from it as a reasonable way to moderate the interests of investors in states, under these treaties.

Mr. Peter Julian: Okay, in the United States they've rejected the type of chapter 11 structure that was (inaudible)--

Mr. Steven Shrybman: Well they've moderated I think in some cases and they've rejected it in at least one.

Mr. Peter Julian: Okay, and what's happening in Canada?

Mr. Steven Shrybman: We seem to be moving to implement it domestically. Not only are we staying the course in terms of certainly our commitment to the NAFTA mechanism. One of the reasons I think Canada is losing and the U.S. is winning is that Canadian officials haven't been doing a wonderful job of defending Canadian measures if you look at the way in which we've responded to some of the claims.

We caved on Ethyl before we had determination from the tribunal. I think if you look at the S.T. Myers case, you have federal trade officials conceding that the measure wasn't a valid environmental measure. Well, I think that was wrong. It was clearly a valid environmental measure, so you have to scratch your head about the way in which Canada's interests have been represented before these tribunals.

The case we did win, the UPS case, I was involved in. There were interveners for the first time, but really, Canada Post put up a very spirited defence and I think if Quebec's interested in seeing its measures defended, it would have to get itself in the middle of that dispute process to ensure an appropriate outcome.

But we're moving not only to kind of keep in place our commitment to this regime, but to implement it domestically, as I mentioned, as a feature of the agreement on internal trade and it's actually now being implemented as part of this agreement between B.C. and Alberta.

Mr. Peter Julian: Thank you for this. So just to summarize, this is bad policy. The United States moved immediately away from it and Canada, like a virus, our international trade ministry has continued to implant these bad investor state provisions in bilateral agreements and even using it domestically. That's important information to have.

Thank you, Mr. Shrybman.

🕒 (1000)

[Français]

Monsieur Séguin, j'aimerais revenir sur le produit 2,4-D, car on regarde Dow dans leur présentation au comité, ils sont presque en train de dire que 2,4 D est tellement bon que tu peux même le mettre dans un shampoing. Il n'y a pas de problème avec 2,4 D. Pourriez-vous encore mentionner le nombre de pays où le 2,4 D a effectivement été banni ou circonscrit. Deuxièmement, lorsque vous parlez de comment vous devrez changer toute cette intention autour du chapitre 11, pourriez-vous nous dire exactement ce que vous voulez que le gouvernement fédéral fasse vis-à-vis le chapitre 11. Vous avez parlé du droit international, M. Amos aussi, mais ce n'est pas le droit international qui nous circonscrit dans ce cas-là, c'est le fait qu'on a signé une entente autour du chapitre 11. Que devrions-nous faire? Enlever le chapitre 11, essayer de le changer?

M. Hugo Séguin: Merci de votre question, monsieur le député. Comme je le disais dans la présentation, le Québec n'est pas la seule juridiction dans le monde à interdire le 2,4-D, mais au-delà de l'interdiction du 2,4-D, des dizaines d'ingrédients chimiques sont interdits dans ces juridictions, essentiellement au Danemark, en Suède, en Norvège et en Ontario. De plus, certaines provinces canadiennes comptent emboîter le pas prochainement.

Les juridictions n'excluent pas le 2,4-D, parce qu'elles n'aiment pas le nom, mais une procédure est tout de même suivie pour déterminer si le produit a potentiellement des impacts sur la santé. Le gouvernement du Québec s'inspire entre autres des recommandations ou du classement fait par le Centre international de recherche sur le cancer qui dépend des Nations Unies, donc de l'Organisation mondiale de la santé, qui classe la famille de pesticides à laquelle appartient le 2,4-D — le dichlorophenoxyacetic — comme étant potentiellement dangereux pour la santé.

C'est cette idée de « potentiellement dangereux » qui déclenche une réflexion autour du principe de précaution. Si un projet est potentiellement dangereux, et qu'on ne peut pas prouver hors de tout doute raisonnable son caractère nocif, le principe de précaution dit de faire preuve de prudence et d'interdire la substance. C'est sur cette base que l'interdiction du 2,4-D a été effectuée au Québec, deux fois plutôt qu'une en fait.

Quand à votre question sur le chapitre 11 de l'ALENA, il serait à mon avis correct de dire que notre organisation a, dans ce cas, des préoccupations importantes, qui sont confortées par l'action de Dow devant le mécanisme de différends de l'ALENA. Pour nous, le principe fondamental, c'est que le droit et la responsabilité des gouvernements de protéger l'environnement et la santé publique doit primer sur le droit des entreprises de faire des profits ou de protéger leurs intérêts commerciaux.

Quand à savoir exactement comment nous aimerions que le gouvernement canadien regarde cette question, je crois que la réflexion n'est pas faite de notre côté. C'est correct de dire qu'il y a des préoccupations importantes de notre côté, mais on préférerait laisser

aux membres du comité le soin de regarder cet enjeu et de répondre de la façon qui apparaît la plus intéressante et la plus intelligente à ces préoccupations qui sont celles de la société civile, du moins celles de l'organisation que je représente.

M. Peter Julian: Est-ce que j'ai le temps pour une autre question?

[*English*]

The Chair: That's eight minutes and I guess there isn't a new round. I'm sorry, but that's already eight minutes and we've been trying to keep to the record so I'm going to have to go to Mr. Harris now.

Mr. Richard Harris (Cariboo—Prince George, CPC): Thanks, Mr. Chair, and thanks for coming this morning, gentlemen.

In your opening presentations, as Mr. Brison pointed out, that none of you mentioned that this was in fact a reciprocal process where private companies in Canada or citizens could launch disputes against the United States under chapter 11. I think that is important, that the old saying, what's good for the goose is good for the gander, works both ways.

You also pointed out that it isn't fair because the United States is winning more cases than Canada. I'm not a lawyer so this is what I'm getting from your tone, that if you win it's good, if you lose it's bad. Because we've lost so many cases it's bad.

Mr. Shrybman, you made a comment in effect that it sounded like you thought it was wrong for citizens or private companies to be able to challenge government policy even international government policy as the provision in chapter 11 provides for. So someone in Canada, a company in Canada it appeared that you were saying that this is something that shouldn't be allowed in some respects.

I am assuming that what you're presenting today are very similar to the legal presentation that will be presented when this comes to arbitration under the provisions of chapter 11.

So we've got on our hands here a legal question in which there are going to be two sides to. There always is: the defence and the plaintiffs of course and there's always a winner and there's always a loser depending whose got the best lawyers or the most money, it appears which comes to the question of this.

Not being a lawyer I have to ask it just as a private citizen. The qualities of 2,4-D and the case I will leave that to the health scientists. They're the most equipped to answer whether it is good or bad. I think most things that have a chemical sounding name may be bad. Most people might think that. On the other hand they may be good.

The question is this. Is it reasonable to assume, and this is to Mr. Amos perhaps but also to Mr. Shrybman, that if the province of Quebec is in fact successful with the

defence of its actions, banning 2,4-D, using the arbitration provisions within chapter 11, and there is no compensation and 2,4-D is banned, is it reasonable for an average citizen like me, not a lawyer, not a scientist, to assume that chapter 11 provisions in fact were good because Quebec won its case? Is that a reasonable assumption?

🕒 (1005)

Mr. Steven Shrybman: Let me try to respond to that.

The question of pesticide regulation in Quebec has actually been resolved by the Supreme Court of Canada in the Hudson case which did apply the precautionary principle, a principle that an investor state tribunal could not apply.

So your question of me is whether or not a complaint like this should come forward or be allowed and I would say, no.

If a foreign company has a complaint with something that a Canadian government has done there are two places it should be able to take that complaint: to the political process, to you to this committee, to the legislature, to the people who represent the companies and their constituencies or to the Canadian courts. Those are the only two places that a complaint about public policy and law should be allowed, not to a tribunal sitting in another country to pass judgment on Canadian laws.

Mr. Richard Harris: If I can just interrupt though, the process of arbitration works in so many different cases. I think it's unfair to suggest that an arbitration process which works. We use it all the time in Canada: labour agreement disputes. They don't automatically go to court. The court isn't the only place to decide the outcome of a dispute. So arbitration shouldn't be painted as something that's not useful.

Mr. Steven Shrybman: No, I think that's an excellent question.

The difference between arbitration and investor-state litigation is this. In an arbitration there's a contract; there's two parties to a contract; it's a reciprocal arrangement; they both have obligations under the contract; and they can decide if they would rather resolve their disputes before an arbitral tribunal. That happens under collective agreements rather than before the courts. In the case of NAFTA, there is no contract and there is no reciprocity. Private investors who have been given the right to enforce this regime have no obligations under it. It's a completely asymmetrical arrangement, it's a non-reciprocal arrangement. International treaties are agreements among nations. If there is a breach of those treaties the nations are entitled to enforce them, and that's true under NAFTA. There is no reasonable basis for giving private parties, who have no obligations under those treaties, those enforcement rights. There's no contract, there's no privity of contract, and there's no reciprocity. And that's what distinguishes investor-state litigation from arbitration which, I agree with you, has a very important role to play in sorting out commercial and other disputes.

🕒 (1010)

Mr. Richard Harris: I have one final question.

If Quebec wins this case, will you still be of the same opinion about ?

Mr. Steven Shrybman: Yes, I would. We will have dodged another bullet.

Mr. Richard Harris: Thank you.

The Chair: Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): Thank you, Mr. Chair.

I would also like to thank the witnesses for their comments and for allowing us, as a committee, to be able to get to know and familiarize ourselves more with some of the issues of Chapter 11. I agree with some of the past statements that have been made, although I'm not quite sure of all of the complexities, but I do understand that there is a need to make it a fairer system. I'm not sure whether it needs to be replaced at all or whether there's a need to maybe add some new mechanism in place that would in fact deal with some of those concerns.

I would like to ask the witnesses if maybe they could share some of their comments about what they think would be some of the ways the systems inaudible in Chapter 11 could be improved without necessarily ripping the whole thing out. If the idea is to rip it all out, I'm not sure how it can be done within the framework of NAFTA. I'm not an expert on that particular aspect of the law, but I certainly would like to know whether there's a possibility that we, as legislators, could introduce some mechanism where it could in fact make it a little bit better.

Maybe Prof. Amos could reply?

Mr. William Amos: Thank you for the question. I think it's a good one and I think it starts moving us towards solutions while we're dealing with the conflict in this scenario. It does point us towards the need for changes. It also gives me a chance to provide what I think is a different perspective from what Mr. Shrybman provided in relation to Peter Julian's questions on Canada's negotiations of bilateral investment treaties and what direction they have taken on investment negotiations.

First off, I would say that, in terms of distinct improvements that could and should be made in the future, I think it's very clear that what we need is for the Canadian government to negotiate very clear, bright-line distinctions as much as possible between what are compensable expropriations—whether they're direct or indirect expropriations—and what are non-compensable public regulations. That's absolutely critical.

The second area where the bilateral investment treaties or Chapter 11 type provisions could be improved in terms of promoting sustainability while we're promoting international trade and investment is—and this goes back to a point that Mr. Shrybman made earlier—Chapter 11 is a decidedly one-way street. It guarantees foreign investor protections by the host state that the foreign investor can enforce through arbitration. However, there are no corresponding obligations on the foreign investor.

I think what we're talking about here is that there are no mechanisms to hold foreign investors accountable for breaches of international law—for instance, international human rights law and environmental law—through a binding arbitration mechanism. They have a mechanism to challenge measures that they feel affect their investment, but citizens of the states of the party or the parties themselves don't have that same mechanism to challenge their actions. So, I think it has to be made a two-way street.

I would simply say though, to return to Mr. Julian's question—I don't think it would be fair to say that the Canadian government has been standing still in relation to its investment treaties. I think they have definitely made some improvements and the history of Chapter 11 disputes has assisted them in moving towards improved investment protection processes. In 2001, the NAFTA Free Trade Commission issued an interpretive statement on Chapter 11—this was really one of the first steps forward—and it issued guidelines on non-disputing party participation in Chapter 11 arbitrations. That's people like us, who want to be part of the process.

They made it more clear that the arbitrations would be open to the public and that the draft negotiating texts, when they're negotiating these deals, would be made open to the public. Canada has released, and this is old news from 2004, a new model for an investment protection agreement—a FEPA, they call them—which serves as the template for negotiations of bilateral investment treaties and for Chapter 11-like provisions in trade agreements.

I would certainly not suggest that the 2004 FEPA is perfect. I think there are a lot of things that could be improved with it, but this is simply to say that since NAFTA has been signed Canada has been moving forward and they've been making suggestions for changes in these bilateral investment treaties in relation to issues that we're talking about here: scope of expropriation, a minimum standard of treatment and access to hearings.

The yardsticks have been moving forward, but not enough. I'm happy to speak to some of the areas where they have moved forward. I don't want this to be all doom and gloom. I think a balanced perspective is necessary on this issue. I don't think it's necessarily helpful to have a really polarized discussion about Chapter 11, but if Chapter 11 were to be reopened—if there is a will to do that—I think that there are many measures that could be taken to ensure that not only investors were protected but also to ensure that civil society was protected and that the measures went in both directions.

The Chair: Thank you.

I'll remind our witnesses as well as our members, on the second round the questions and answers are five minutes, so we can't have six-minute answers.

Mr. Steven Shrybman: If I just might add something--

The Chair: I'm sorry, we finished that question. It's a five-minute round and we're at six and a half minutes. I just want to make that clear, so you can maybe answer a little later in the next round.

Mr. Cannan.

Mr. Ron Cannan (Kelowna—Lake Country, CPC): Thank you, Mr. Chair, and thank you to our witnesses for being here this morning.

I appreciate, Mr. Amos, your comments about a balanced approach. I think that's important as we try to find constructive ways to move forward so Canada can expand its trade agreements around the world, as we've been falling behind for the last decade-plus. I appreciate your comments.

Just a couple of follow-ups, and I'm going to share my time with my colleague, Mr. Keddy.

The aspect we heard in Newfoundland, the AbitibiBowater case where the company's examining all the legal options. I'm just wondering, what's the time line on the statute of limitations for a company to initiate a claim, and throw that kind of fear into the community, the province, and the country? How long do they have to take action?

Mr. William Amos: There's a limitation period of three years from the time they're aware of the measure. I can't remember if it's article 11(17) or article 11(18), but it's somewhere around there.

Mr. Ron Cannan: We're going back to the Dow situation. They've initiated, and now they're in discussions. It's not just a matter of talks breaking down between the province and the Government of Canada, and Dow, then it would proceed on to the tribunal, then.

Mr. William Amos: It's difficult to speculate. To tie this back into your question about limitation periods, the 2,4-D ban was enacted by Quebec in April of 2006, so by my math, we would be in theory coming up quite close to this limitation period. However, there's an open issue as to whether or not this measure is an ongoing measure. The ban is still in place, so I'm uncertain and don't have an answer as to whether or not a limitation period issue is raised here in this case.

Mr. Ron Cannan: I'm aware that it's been an outstanding issue. I was nine years in local government, and I was involved in Communities in Bloom, and integrated pest management seminars, and all the rest. You mentioned Toronto and Halifax have also instituted a ban. Do you know the rationale from your perspective as to why Dow hasn't initiated any action against those two municipalities?

🕒 (1020)

Mr. William Amos: I can speculate. Municipalities are small fish. Provinces are bigger fish. Quebec and Ontario are among the bigger fish in Canada. I think with Quebec enacting the first ban, it's quite conceivable that Dow decided they were going to try to draw a line in the sand and try, at best, to prevent future bans and repeal this ban.

At worst, delay the other provinces' decisions in enacting bans through this NAFTA Chapter 11 discouragement process, if you will. While there's uncertainty as to the outcome of the litigation, other provinces might be less enticed to move forward, as well as municipalities.

Right now, it would appear that Ontario is moving forward strongly. Other municipalities close by, like Chelsea here, where I live, is one of the leaders in this issue and they're not going to back down either. They welcome the challenge. I guess municipalities are smaller battles, so maybe they decided it wasn't worth it.

Mr. Ron Cannan: Obviously, there's a time process to get through this arbitration and get to the tribunal. The costs, who would cover those for you? You are representing different organizations.

Mr. William Amos: As legal counsel with Ecojustice Canada, my services are pro bono for the environmental groups that I work with. Ecojustice Canada is a non-profit charitable organization. We are funded by public donations and by private foundations. We don't receive a penny of government money, so all of our work is being done for free minus the photocopies and phone expenses.

The Canadian taxpayer, quite obviously, is paying for the legal fees associated with the defence of Canada's--this claim and Quebec's (inaudible).

Mr. Ron Cannan: One last comment with regard to Mr. Shrybman.

In your opening preamble, you talked about the tribunal and its perception of being sort of an American body, as you alluded to. It's one Canadian, one American and the third member of the tribunal is at the agreement of both parties. Do you feel it's American biased because it's located in Washington? Is that what your reference is to or how would you be able to maybe clarify your comments?

Mr. Steven Shrybman: No, I wouldn't suggest that it's an American body. It's a private adjudicative or a quasi-private adjudicative body.

I mentioned the fact that the cases are often heard in Washington, which doesn't make it an American regime. I also made a point, though, about the place of arbitration. That's a determination the tribunal makes and in claims against Canada that's usually some place outside the country, which means that only a court in that jurisdiction has the authority to review an arbitral award.

So it's the removal from the purview of Canadian courts and from the purview of Canadian elected officials that I find problematic with this regime--I think you should as well--not necessarily to an American body but to one that sits outside the framework of Canadian law and outside the framework of the Canadian Constitution. It exists in an international law space largely created to resolve commercial disputes, not disputes about public policy and law. That's the concern.

Mr. Ron Cannan: In the spirit of trying to improve chapter 11 and Mr. Amos' comments, that would be part of your recommendation, then, is to try to find a better mechanism, not just as my colleague, Mr. Harris, said. You still have arbitration, but are you totally against chapter 11 and removing arbitration out of part of the dispute resolution mechanism?

🕒 (1025)

Mr. Steven Shrybman: I think it's very difficult to argue that it serves a useful purpose. I just don't think the evidence is there. When you look at the studies The World Bank has carried out of whether the mechanism even works, you have to have questions about it.

When we had a free trade agreement with the United States in 1988, we had an investment chapter, but we didn't have investor state dispute resolution. So there's a basic question about whether you need the mechanism and I think the evidence is it has not served Canada well and certainly hasn't served Canadian ambassadors.

If you wanted to cooper it up, there are ways to do that, exhausting local remedies. There are a number of technical changes that you would make to the regime to make it more transparent, to make it possible for people to participate in the process.

We've intervened in disputes. I'm now intervening in the Marilyn Ring case, but I don't get to see the evidence. So it confounds any notion of fairness that certainly would apply to labour arbitrations or proceedings before Canadian courts.

It's a system that wasn't created to resolve public disputes. I don't think it's the appropriate forum for that type of argument or legal claim. It could be fixed up, but I think you really have to answer the question first as to whether or not it's serving a valid purpose.

Mr. Ron Cannan: I know the courts prefer to go mediation rather than litigation.

Thank you.

The Chair: Monsieur Guimond.

[Français]

M. Claude Guimond (Rimouski-Neigette—Témiscouata—Les Basques, BQ):
Merci, monsieur le président. Bonjour monsieur.

Simplement une courte question. C'est très intéressant et on peut donner un volet santé et environnement aux discussions que nous avons ce matin, particulièrement en rapport à l'article 11. Sans jeter le bébé avec l'eau du bain, y aurait-il moyen, selon vous, d'améliorer l'article 11. Je pense entre autres à l'article 11.10, pourrait-on selon vous, mieux définir la clause d'intérêt public pour lui donner plus de dents et mieux se faire entendre. On sait que l'entreprise a beaucoup de pouvoir, pourrait-elle mieux servir, selon vous, des sujets dont on parle ce matin si on réussissait réellement à mieux cerner ou définir la clause 11.10 par rapport à l'intérêt public.

M. William Amos: J'aimerais commenter. Merci pour la question, c'est une bonne question et j'aimerais retourner à l'argument proposé par M. Shrybman que je crois bon.

Avant de décider qu'il faut améliorer le chapitre 11, il faut évaluer si cela sert l'objectif de promouvoir l'investissement. Il n'est pas du tout certain que le chapitre 11 et les protections, en particulier le processus d'arbitrage que cela développe, promeuvent les investissements au Canada et dans les autres pays. La première étape consiste à évaluer si cet arbitrage est utile.

En deuxième étape, si nous décidons que promouvoir l'investissement est une bonne méthode, nous pourrions certainement faire des changements, et je retournerais au thème dont j'ai discuté plus tôt, il faut absolument rendre clair ce qui est une réglementation non compensable et la distinguer d'une expropriation, qu'elle soit directe ou indirecte, qui est compensable. Le chapitre 11 est très clair, l'expropriation directe ou indirecte est compensable, et les mesures qui... nous disons en anglais *measures tantamount to expropriation*, les mesures qui sont très proches de l'expropriation. Nous pourrions définir très distinctement ce qui est une réglementation non compensable pour que les juridictions canadiennes sachent dès le début ce qui est en mesure d'être promulgué pour faire bénéficier le public canadien sans qu'il n'ait à se soucier des répercussions possibles de l'arbitrage.

🕒 (1030)

M. Hugo Séguin: Je préciserais une petite différence entre mes deux collègues. D'abord et avant tout, il ne faut pas voir le chapitre 11 en priorité en fonction de son atteinte de l'objectif qui consiste à amener plus d'investissements au Canada, je ne pense pas que pour nous, pour Équiterre, ce soit l'objectif. L'objectif est qu'il ne faut pas que nous fassions primer dans les accords commerciaux internationaux l'intérêt privé sur la

responsabilité des gouvernements de protéger l'environnement et la santé publique. Dans le mesure où les accords commerciaux protègent cette possibilité, il y a d'autres considérations comme la protection des investisseurs. L'un vient avant l'autre et la protection de la santé publique et de l'environnement arrive en premier.

[*English*]

Mr. Steven Shrybman: I would like to give you a more fundamental point about 1110. You are entitled as the Government of Canada to expropriate property for public purchases, and you're entitled as the Government of Canada to decide how much compensation, or whether you're going to pay compensation when you do that because we have not entrenched private property rights in the Constitution. That was debated in 1982 and rejected. What 1110 does is entrench private property rights in NAFTA. So when property is taken, let's say it is the taking as perhaps would be true of Newfoundland not taking back its water licence, but taking the company's mill, it's up to Newfoundland under our Constitution to decide how much money to pay. But under NAFTA Canada must compensate Abitibi for the fair market value of its investment. We rejected that notion as a feature of our Constitution, and yet it's been imposed on us through the back door of NAFTA. That's a fundamental problem with 1110 however you read it.

The Chair: Thank you.

Thank you, Mr. Guimond.

Mr. Keddy.

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

Welcome to our witnesses. I have a couple of quick questions. Are you folks involved in the Newfoundland case that Mr. Shrybman was talking about?

Mr. Steven Shrybman: I think I will be, but there is no case yet.

Mr. Gerald Keddy: If it comes forward.

Mr. Steven Shrybman: Yes, I've had a couple of clients ask me to represent them if it comes forward.

Mr. Gerald Keddy: Is one of them the Province of Newfoundland?

Mr. Steven Shrybman: No.

Mr. William Amos: Just so that we're clear, the Province of Newfoundland would always be represented by the Department of Foreign Affairs--

Mr. Gerald Keddy: Absolutely. Yes, I understand that. But they also have a certain vested interest here. As does AbitibiBowater. That's an interesting case and at this point, I think it's pretty hypothetical of exactly where it goes.

I'm more interested in picking up on Mr. Brison's line. If we've got an imperfect system, if that's the case, and Chapter 11 needs to be massaged or amended to work better and be more equitable straight across the board, then do we throw the baby out with the bathwater? Or do we simply try to amend and make changes to Chapter 11?

I was interested in Mr. Shrybman's comment, that when we're in a court outside of Canada and you want to appeal that decision, then you have to appeal through that jurisdiction. For those of us in the room who are not lawyers, and I think that's most of us, that does present, I think, a fairly serious problem.

I guess just to follow up on that statement, is there any way to predict the--if it's the State of Mississippi, are you back in the State of Mississippi? Are you in the same court jurisdiction that you were in, state versus federal or...? How exactly does it work?

Mr. Steven Shrybman: In the Loewen case that involved--

Mr. Gerald Keddy: Yes.

Mr. Steven Shrybman: I think one of the things, essentially, about the Loewen case is that it was a case that was brought to challenge the determination of a jury in a jury trial that held Loewen liable for this extravagant amount of money.

Under this mechanism, you can actually review the decisions of court, including the Supreme Court of Canada. There's no limit on the level of court that you can seek an arbitral tribunal hearing about. In fact, it happened in another case involving Canada going after a decision of a U.S. district court of appeal. So, right up there. And so, that's problematic, in my view. Why would you entitle a tribunal, a private tribunal, to sit in judgment of a determination made by a Canadian court and whether it was probably made? But that's permitted under this regime.

The Mississippi case, I'm not sure where the place of arbitration was on the Loewen case, but you wouldn't be back before a court in Mississippi; whatever court in the United States has jurisdiction to review arbitral awards, probably a court of appeal at an appellate level. In Canada it's a superior court.

The Metalclad case, for example, which was a dispute between a hazardous waste company in the United States and a small community in Mexico. Of course, it sued the Mexican government.

When the decision was made against Mexico, Canada had been chosen as the place of arbitration; in fact, British Columbia. And so, the only court that Mexico could turn to, to

set aside the award, was the Superior Court of British Columbia; and that's where it went. And the court upheld the award.

But here you have the spectre of a Mexican measure being challenged before an international tribunal and then if Mexico wants to judicially review the decision, it has to go to a court in British Columbia.

Ask yourself this: If it had been the United States, do you think U.S. lawmakers and Congress would put up with an outcome like that?

🕒 (1035)

Mr. Gerald Keddy: Well, I'm not certain on that hypothetical, but I would think that if you have an international tribunal being held, there would be some reason to allow for a third country. So, if it was a dispute between Mexico and the United States, Canada would make the third country being under NAFTA. With a dispute between Canada and the United States, perhaps Mexico should be the...

I mean we have to have a process in rules-based trading to settle disputes. There has to be a process. So, the idea of not having a process--I mean a good portion of what doesn't work in Canada are interprovincial trade barriers. We had that discussion here this morning. You have a dozen--for a truck to haul a load of freight from Nova Scotia to British Columbia, there's several different licences that they require. I mean that's not promoting trade. So, how do we break down these barriers and how do you put a dispute mechanism in place that allows that happen? And maybe Chapter 11 is not perfect--that's not the discussion--but you do need a process to settle disputes.

Mr. Steven Shrybman: But I think those processes have to be consistent with--

Mr. Gerald Keddy: --Mr. Amos is trying to get a word in there as--

Mr. Steven Shrybman: Very quickly, they have to be consistent with Canadian constitutional norms, if Canada is a party, and they have to be reciprocal and fair. By all three measures, chapter 11, you'd have to conclude, would fail.

The Acting Chair (Mr. Gerald Keddy): Mr. Amos.

Mr. William Amos: I would make a very brief point. Ecojustice obviously is a public interest environment organization and doesn't make a habit of taking positions on matters of international trade and so I should probably speak in a personal capacity.

I would simply say that I agree with the need for dispute settlement particularly between trading nations, but I think there's a very open question as to whether or not investors need a specific mechanism in order to protect their investments vis-à-vis the host state of their investment. They can use domestic court processes. The chapter 11 investor state dispute resolution process is something specially designed for those

investors. It doesn't have to be there. They could go through the Canadian court system. For Instance, they could conceivably challenge--

Mr. Gerald Keddy: One more quick question that maybe you could shine some light on.

There are several jurisdictions in Canada that have banned the chlorophenoxy herbicides. There must be, and I'm sure there is, jurisdictions in the United States, whether at a state, city, or municipal level. I'd be shocked if there's not. When a ruling is brought down, does that affect Canada and the United States because we're signed into this trade agreement? If so, why aren't we seeking allies?

Anyone can be an intervener in a case I would expect.

🕒 (1040)

Mr. Steven Shrybman: One of the idiosyncrasies of this regime is that there is no doctrine of precedence. It's not like a court which is bound by higher authority or that needs to respect the decisions of other tribunals. It's open season in every case. Even though the cases might be similar, one tribunal is quite free to ignore the decisions of others if it thinks it has a better view. I don't think there's any precedential value that arises from a dispute like that. If that's your question, but I'm not sure I understood it.

Mr. Gerald Keddy: My question specifically is, if there are jurisdictions in the U.S., wouldn't they have the same interests that Quebec has and Ontario in this case, Halifax municipalities and other areas that have banned the use of certain pesticides, or herbicides in this case?

Mr. Steven Shrybman: The United States has the right to make submissions to the tribunal, the federal government. There's no other right of intervention. You can petition the tribunal and ask for its consent to participate, but there's no right for any other party to participate in the process other than--

Mr. Gerald Keddy: There's no intervener status on behalf of anyone else.

Mr. Steven Shrybman: Only if the tribunal agrees to give it to you. The process that's been set in place for doing that is that you make your submission and application for standing at the same time. You don't necessarily get to see the evidence or any part of it that the company decides should be confidential, and that's happened in every single case. A large part of it has been reserved and there are confidentiality orders in every case. You don't know until the decision is rendered whether or not the tribunal is actually giving you standing. It may refer to your submissions, it may not. You don't find out until the end of the day whether or not they've taken your views into account.

Mr. William Amos: As I mentioned earlier, it's also highly relevant that there's no open door for oral submissions. Whereas the Supreme Court can decide that a given

intervener will bring an important perspective that will help them make a better decision, in the case of chapter 11 arbitration, that will not be. If we submit an application to be a non-disputing party and file an amicus curiae brief, they will not be inviting us to make oral submissions whether or not they think our perspective would be useful to them.

Hon. Scott Brison: Mr. Chairman, earlier today Mr. Julian said that Canada has never won a case, but we did win the UPS case, as an example.

I'm very intrigued by what Mr. Shrybman had said earlier, that the Canadian government has not vigorously defended or utilized legal defence mechanisms effectively to defend Canadian interests. I don't know the cases well enough to judge that.

First of all I would like to know whether or not the Canadian government has done a good enough job using what provisions are in chapter 11 as it stands now, and what are the specific approaches we could take that would be different to strengthen our defence of our interests.

Then a separate issue, notwithstanding defending our interests better with the existing chapter 11 provisions, is what improvements we should make, potentially with chapter 11 and NAFTA, and that would involve a re-opening, or at least, further to Mr. Julian's point, for future FTAs that we can seek to ensure that investor state provisions, if there are any, are better designed.

I'd appreciate any further insight into the specific cases where Canada did not do a good job in effectively going to the wall to defend a Canadian legislative decision. Second, Mr. Amos has actually proposed some changes that could improve that, and it's helpful to have those granular recommendations.

So there's those two points, what have we not done effectively so far in terms of defending our interests with the existing chapter, and what specific changes should we make going forward to any investor state provisions to make sure that they are better positioned to defend our interests.

🕒 (1045)

Mr. William Amos: I'm going to leave the answer on the issue of what has Canada not done well enough to Mr. Shrybman.

What I would like to point out here, which I think answers your question but in the context of this specific case, I think what can arise and what may be arising in this case is a situation where the Canadian government may not be in the best position to defend the interests of a given sub-national entity such as a province, say, Quebec, and I'll highlight why.

Dow has invoked the Pest Management Regulatory Agency's re-evaluation of 2,4-D as a reason justifying their claim that the Quebec process has been unfair and arbitrary and

unjust. So what they're saying is Quebec has decided that on a precautionary basis, they're going to ban 2,4-D for cosmetic use, but that flies in the face of the federal Pest Management Regulatory Agency's own re-evaluation which apparently takes a precautionary approach and has decided that in fact it can be registered in Canada. So they're playing off the federal and the provincial processes and I think what can happen is that the federal government's own approach to the precautionary principle gets called into question, but they're having to defend the province's own precautionary principle. I would simply like to highlight the fact that it's well known that Canada has adopted, on several occasions, a less than progressive stance on the precautionary principle, in its international negotiations. In the trade context in particular, there was the EU beef hormones case that went before the World Trade Organization where the European community argued that the precautionary principle was customary international law and justified its prohibition of beef imports from Canada and the U.S. that were produced with artificial hormones. Canada and the U.S. argued that the precautionary principle was not part of customary international law.

So what we have in this case, to bring it back to Dow, is we have the Government of Canada that has taken certain positions vis a vis the precautionary principle in other international fora and now they're having to represent Canada before a NAFTA tribunal, or potentially they will have to represent Canada before a NAFTA tribunal, and defend the precautionary principle in a particular circumstance. So there's the potential for conflict and that's one of the reasons why groups like Équiterre and the David Suzuki Foundation, represented by Ecojustice, are so keen to be involved in the process, because we think that we have specific perspective on the public interest that the Government of Canada may not be able to bring or may not feel comfortable to bring, because they may find themselves in a conflicted situation. That may not be the case but it may be the case.

Mr. Steven Shrybman: I agree with that analysis. That's not the only conflict of interest, I think, that resides not within the Canadian government so much as it does reside within the Department of International Trade and the lawyers who work for the department who have carriage of Canada's trade agenda and may at one moment be assailing the precautionary principle in a dispute with the United States and then called upon to defend it.

I would do two things. I would take carriage of Canada's defence of its measures out of that department. There are many talented lawyers who work for the federal government or you could retain outside counsel. I often am involved in cases with the federal government, often on the same side, happily. We have a collaborative and cooperative working relationship often with lawyers within the federal government. In fact, my firm represents the lawyers in the federal government in labour management relations. When it comes to these trade cases, even though we're on the same side, you wouldn't know it because I don't get my calls returned. It's very difficult for us, because they know we're critics of the regime and I think they haven't removed themselves from their support for the regime. They negotiated these agreements. They're still negotiating them and they need to vigorously defend the interests of the government writ large, even departments,

they don't maybe share the values of, such as environment or health, in defending Canadian measures.

🕒 (1050)

Hon. Scott Brison: Just on that point, simply taking the legal carriage out of trade and putting it with the department, say justice--justice lawyers can work in the Department of the Environment--is a very specific and constructive approach that could make a real difference.

Thank you very much, and I hope this is not our last discussion on Chapter 11.

The Chair: Thank you.

We have about five minutes here so I'm going to ask Mr. Julian to sum up and keep the questions and answers to five minutes, if we can, and we'll adjourn at 11:55.

Mr. Julian.

Mr. Peter Julian: Thank you, Mr. Chair. I appreciate the opportunity for a supplementary.

I have two very quick questions, one to Mr. Shrybman. When we're talking about bilateral trade agreements--that is my question to you--have we found that the Chapter 11 provisions that Canada has signed on to in bilateral trade agreements, and I'm thinking of Canada-Chile, Canada-Costa Rica, Canada-Israel, have they essentially maintained intact the Chapter 11 structure? That's my first question.

[*Français*]

Ma deuxième question est pour M. Séguin. Vous avez parler du besoin d'une réponse forte de la part du gouvernement fédéral. Êtes-vous satisfait de la manière dont le gouvernement fédéral a réagi jusqu'à présent dans ce dossier de Dow AgroSciences contre le gouvernement du Québec?

[*English*]

Mr. Steven Shrybman: The basic structure of investor-state dispute resolution is intact in the Peru agreement. The one I've seen is the one with Colombia.

But I think Mr. Amos is correct. There has been some softening around the edges and I'm sure that Canada is reflected in those new agreements, the trilateral statements that have been made by the commission, which he referred to. But those weren't Canadian initiatives; those were three-party initiatives. But the essential features of allowing private investors to claim against the state under an agreement to which they are not a party remains intact and to walk away with damage awards if they succeed.

Mr. Peter Julian: Thank you for clarifying that. So with the bilaterals that Canada is signing, we're essentially maintaining the Chapter 11 provisions, which means that we have a NAFTA template that Canada is continuing even though the U.S. has clearly moved away from it. That's an important point for the committee, so I appreciate that.

Mr. Steven Shrybman: You know, I'm not sure how much light exists between the reforms that the U.S. has put in place and those that Canada has put in place. I wish I was more up to speed on this but I understand that the U.S. has negotiated a bilateral without an investor-state mechanism in the agreement. Now that would be a significant reform, if I'm correct in my recollection.

And when I responded to your question previously, what I tried to bring home is that the federal government is fully supportive of implementing a regime like this domestically, which doesn't moderate these disciplines; in fact, arguably expands them if you look at the Telma model.

Mr. Peter Julian: Thank you.

Monsieur Séguin.

[*Français*]

M. Hugo Séguin: Merci pour la question. Si je comprends bien vous voulez savoir si nous avons reçu une réponse claire et sans ambiguïté de la part du gouvernement fédéral. La réponse est non. Nous avons posé des questions à la Chambre des communes, auxquelles L'hon. Stockwell Day (ministre du Commerce international) a répondu. La réponse demeure toujours ambiguë. Nous aimerions avoir une position claire et sans équivoque concernant le fait que le Canada défendra le Code de gestion des pesticides du Québec. À l'heure actuelle, nous n'avons pas obtenu de réponse. Nous avons également envoyé une lettre, en bonne et due forme, au nom de la coalition que nous représentons, au ministre. Cette lettre est, pour l'instant, demeurée sans réponse. Cette ambiguïté dans la réponse est aussi due au fait que nous avons appris récemment qu'il y a eu des consultations, au mois de janvier dernier, entre la compagnie et le gouvernement canadien. Cela nous inquiète puisque nous ne connaissons pas la teneur de ces consultations ni de ce qui se transige. J'aimerais amener à votre attention le fait qu'en l'absence d'une position claire de la part du ministre ou du gouvernement, il est évident qu'une motion de ce comité à l'effet que, comme membre du comité, vous souhaitez que le gouvernement canadien défende vigoureusement le cas devant les tribunaux, serait vue d'un très bon oeil.

🕒 (1055)

M. Peter Julian: Merci. Simplement pour clarifier.

[*English*]

The Chair: Sorry, Mr. Julian, I think we've kind of gone overtime with that one.

I'm going to say thank you for your questions and thank you to our witnesses. It was very useful and I think the committee was very pleased with the presentations and the questions, so, thank you very much. With that, I'm going to dismiss the witnesses with thanks.

I just want to remind the committee that on Thursday I will be bringing to the committee a budget for travel to Washington. There will have to be discussion about that. Apparently, there are two other committees visiting at the same time and that may be one, so I want you to bring your thoughts to the committee for Thursday with regard to the Washington trip.

Mr. Peter Julian: Will you be bringing the budget or do you want us--

The Chair: No, I'll bring the budget and that'll focus on debate. All right, so we'll debate that on Thursday.

With that, we adjourn.