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Witness: Mauro Petriccione

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Members present

Lord Tugendhat (Chairman)
Baroness Bonham-Carter of Yarnbury
Baroness Coussins
Lord Foulkes of Cumnock
Baroness Henig
Lord Jopling
Lord Lamont of Lerwick
Baroness Quin
Earl of Sandwich
Lord Trimble
Baroness Young of Hornsey

Examination of Witness

Mauro Petriccione, Director, Asia and Latin America, DG Trade, European Commission

Q186 The Chairman: Thank you very much indeed for agreeing to give evidence to us. As I think you know, this is part of our inquiry into TTIP. We felt that it would be helpful to look at some of the past agreements to form a view on this one. We have a number of questions. I think we have an hour and I hope we will not run over that. I am extremely grateful to you for agreeing to appear before us. I shall kick off—my colleagues will then come in—with a very straightforward question: how do the Canadian agreement and TTIP compare in their substantive content? Obviously, the size of Canada and the United States is very different, but in terms of substantive content, potential economic consequences, sectors under negotiation, a focus on regulatory alignment and the level of ambition, how would you compare the two?

Mauro Petriccione: First, I hope that my reply will be helpful to your work. Yes, the economies are different. The expected gains are different. The expected gains from the TTIP are about 10 times what we expect from Canada. Still, from Canada we are expecting upwards of €11 billion in gains for the European economy, so it is not negligible. The other thing to be borne in mind is the difference in the structure of the two economies. Canada is

very much a transformational economy, very dependent on the United States, to the point that while you could say that while the United States makes things, there are many cases where Canada participates in the production of things made in the United States. That, for instance, is very much the case in the automotive industry. So the interests are sometimes different and that makes the comparison—when you come to concrete commitment—sometimes a little awkward and sometimes clearly inappropriate.

In terms of the structure of the agreement, its coverage and the level of ambition, they are obviously comparable because all our agreements, at least in their initial intentions, are comparable. We take into account the level of development of our partners in the level of ambition for what we aim to achieve at the end, but that is clearly not an issue between Canada and the United States. The level of commitment that we expect from North America is the same as we would expect Europe to be able to take. There is similarity in the level of ambition.

The greater relevance is sometimes not only in the difference of the economic structure but sometimes, in spite of economic integration, in the difference in legal traditions and in administrative structures. That sometimes makes a great difference between what we have done with Canada and what we might be able to do with the US.

Q187 Lord Foulkes of Cumnock: Mr Petriccione, thank you very much. This deal with Canada was agreed in October. As I understand it, it has not yet been approved by the Council or Parliament. Are there any problems?

Mauro Petriccione: No. What we had was an agreement in principle. Now we are busy translating much of it. Some if it was already in the form of legal language. Much of it, especially the parts that were agreed in October, was in the form of an agreement in principle, where we listed the elements of substance in various areas. Now we have to translate that into binding legal language.

Lord Foulkes of Cumnock: So when do you expect to go before the Council and the Parliament?

Mauro Petriccione: Not before the end of the year.

Lord Foulkes of Cumnock: Not before the end of this year?

Mauro Petriccione: Absolutely. What we call the legal scrubbing process is very long and tedious. We will have to translate it into all the official languages. Canada wants to verify all our official languages so they will have to be equipped for that. This will take a little while.

Lord Foulkes of Cumnock: Would that be the same for the TTIP?

Mauro Petriccione: It would be slightly the same; it is the same for all our agreements. The agreement with Korea took a little longer than two years between the political breakthrough and implementation by the Council. We have agreements with Central America that took a bit more than two and a half years. We expect this to take about two years.

Lord Foulkes of Cumnock: But we are told that you hope to conclude the TTIP by the end of 2014. There is a big gap between April and autumn, when the institutions are being reformed. Is it not a very optimistic timetable?

Mauro Petriccione: I will not speculate about a negotiation I am not in charge of. Negotiations are very variable. With Canada, we had political blockage on some key issues, which made us lose about a year and a half. It took us four years but could have taken two and a half if we had not hit that obstacle. We were doing some new things with Canada. It is very unpredictable. It can be done but do not ask me whether it will.

Q188 Lord Lamont of Lerwick: I think you have partly answered the first part of my question, about how the level of ambition—the scope—was sustained on both sides. How were the EU member states and the Canadian provinces brought into the negotiations? Are

there lessons to be learnt from that for TTIP? Could you say a word about the UK's contribution to the negotiations?

Mauro Petriccione: As far as member states are concerned, there is no change. We have a system that is enshrined in the treaty and we have decades of experience in running it through the Trade Policy Committee and the Council at a political level. So this was run, as far as the member states were concerned, like every other negotiation. That is how TTIP will be run. As far as Canada was concerned, it was innovating. A basic political decision was taken by the Canadian federal Government that they would involve the provincial Governments directly this time. Traditionally, the Canadian federal Government negotiate the areas of federal competence directly and consult the provinces privately on the areas of their competence. They often refuse to negotiate international agreements in those areas. In this case, we made the point that some of the areas of provincial competence would be indispensable for a balanced agreement, and the EU would not be interested in an agreement that did not cover those areas. So the Canadians took the decision to consult the provinces and, this time, involve them directly in the negotiating process. In a way, they had to invent mechanisms for consultation similar to those that we have in the treaty for consulting member states. It has been a bit of a messy process but, in the end, it was very effective. We had a reasonably solid assurance that the provinces will implement the outcome in full for the areas of their competence.

As far as our internal set-up is concerned, particularly the role of the UK, the UK has been one of the strongest supporters of this agreement from the very beginning—before it was launched. For the rest, we have consulted the UK in the same way that we consulted other member states. I think there are some areas where the UK has had difficulty with some of the Canadian requests. I think we have found an outcome that is acceptable. Sometimes our

Canadian friends have not been very satisfied. However, overall they seem to have worked as well as with any other member state.

Q189 Lord Trimble: I turn to the question of public opinion and the media and ask in particular if there was any domestic opposition on either side when you were negotiating the Canadian agreement, and what sort of relationship there was with civil society organisations.

Mauro Petriccione: Perhaps opposition is too strong a word. Certainly there were concerns. It is difficult to say what the motivation for these concerns is—you are not in people's minds. My impression over the years has been that the concerns were more about this being part of our general trade policy, and were therefore concerns that we all know part of civil society feels about trade policy and liberalisation rather than anything specific to Canada. From what I could see travelling through Canada and visiting some of the provincial Governments, there was a very similar situation there, more focused on what more trade liberalisation would do to the Canadian economy than specifically on more trade with Europe.

One set of concerns that was certainly less pronounced than with other countries was in respect of labour rights. The level of protection of labour rights is very high both in Europe and in Canada, so we never had any substantive difference. We have had difficulty in expressing this consensus in a situation where we have different legal traditions and different instruments, so it has been complicated rather than difficult. Environment has been a bit more difficult. The current Canadian Government have a slightly different view from us on issues such as environmental protection and climate change so it was a bit more difficult to achieve consensus there. On the other hand there is a debate in Canada, as in the EU, and many of the provinces liked our position.

Finally, culture was another issue where there was concern on both sides. Canada, because of its geographical position and its cultural proximity to the United States, has perhaps even greater concerns than do some of the member states. They expressed a need for maintaining policies based in more areas than we normally do. Again, there was no disagreement on substance there but rather a need to accommodate different traditions and different instruments. The fact is that we have some interests in culture. If I take book publishing, we have considerable interest in the Canadian market both as far as the English-speaking and French-speaking publishing is concerned. We wanted to preserve that while leaving Canada the policy space that it requires. I think that we managed, but I would call it more fiddly and complicated than difficult, both in the relations between the two parties and with civil society.

Baroness Henig: To follow on from that, you have just said that a substantial level of labour rights and environmental concerns are negotiated into CETA. Could similar provisions be negotiated into TTIP, and does the CETA agreement put any structures in place to monitor the long-term social impact of the deal or the consequences of it for consumers?

Mauro Petriccione: I should make a premise here. Anything we have done in predicting the impact or the precedent value of anything we have done in CETA for TTIP is highly speculative, so I beg you to consider that. Even when you have very similar legal structures and a very similar situation, negotiations develop in a very different manner, and the United States is not Canada. Certainly what we have done with CETA will inform our starting position in TTIP. We will do different things if we have a reason to do them.

As far as labour rights are concerned, we have a consistent policy. Perhaps what we have done with Canada is a more solid outcome than what we have achieved in other cases, but our starting position was very much the same and is likely to be the same in TTIP. We have

agreement with Canada that core obligations in the field, in particular ILO conventions, have to be implemented in law and in practice, and that both parties need to maintain the right to keep their level of protection for workers, their legislation and labour rights and their margin of manoeuvre. At the same time, we both agreed that this should not be used as a disguised means of protectionism. We have a robust review mechanism based on government consultation, civil society involvement and third-party review. So we will start from the same position with the United States. All I can say—even though I am not in charge, but knowing what I know about the position of the US—is that I think we will have a similar consensus with the US on the objectives. The US legislation on labour is not exactly the same as Canada's. I cannot predict the actual solution we will find to express this consensus in a way that works for both sides, but I can predict a similar convergence of interest, if you like, in this field.

As far as monitoring is concerned, we have two aspects. One is the day-to-day monitoring. With CETA we will organise, as we did for Korea, a domestic advisory group for civil society that will advise us, and the Canadians will do likewise. As with the Korean agreement, there will be regular meetings between the two sides; we have a Committee on Trade and Sustainable Development. That committee will also meet regularly with the two advisory committees. We have innovated with Korea in the sense that we and the Canadians decided to open up the participation; it will not just be the members of the domestic advisory group that will participate but the meeting may be open to a broader participation from civil society from both sides. Again, the Canadians were more amenable to this kind of mechanism than were many of our other partners.

For longer-term monitoring, the Commission has initiated a review of its policy and has taken a decision of principle that all FTAs will be subject to a full ex-post evaluation on a regular basis. We are now setting up a methodology to do that, and we ran a pilot project

for the agreement with Chile, which has been reasonably satisfactory. We will now refine the methodology in examining the agreement with Mexico, so by the time we will have enough implementation of CETA for an evaluation to be meaningful we will have a solid, tried and tested methodology to do so.

Q190 Lord Jopling: Can we turn to the technical barriers to trade and technical alignment? Can you point out the differences over this matter between the negotiation between the EU and Canada, and the EU and US? How comparable are they, and will the EU and US negotiations be significantly more difficult? How were the negotiations with the Canadian regulators handled? It seems to me that if I were a state legislator in Iowa, let us say, a whole lot of these matters are within state powers, not federal powers, and my temptation would be to pick the ones that suited us and to ignore legislating over the ones that did not, cherry picking them. Could you explain that? I think that you said earlier that you thought there was a good deal of hope in getting the individual provinces to row in and conform. But it seems to me that that is quite a problem. Finally, could you say a word about how the conformity assessment works, as that area will be important in this context?

Mauro Petriccione: I think you are describing not a state legislator but human nature in general. We are all good at cherry picking if we can. Part of the trade negotiations is precisely persuading each other not to do that. When we talk about regulation we have to look at different avenues for different types of regulation. I will start with product regulation. You mentioned conformity assessment, but the result we got on that in Canada was very tentative, largely because Canada has very little autonomy in terms of product regulation when it comes to health and safety of products or consumer protection, because of its integration with the North American economy. There is very little independent manufacture in Canada, so de facto you have a system of North American standards which are not entirely dictated by the US, although the US is the dominant partner. We did what we could,

for instance in terms of Canada recognising international standards that we also adhere to as the basis for our respective regulations. But it was recognised early on that we could only go further if the US was involved. So we have a number of specific review clauses which will reopen parts of CETA if and when we have an agreement with the US. Canadians will be very interested. We have provisions that will enable Canada and us, if we establish a good regulatory co-operation mechanism with the US, to plant Canada in that process, which will in the end be in the interests of everybody, both in Europe and in North America.

On conformity assessments specifically, we could go further. There we have a protocol on performing assessment which has been finalised. We are now discussing with Canada which areas this can be applied to immediately and which areas require more technical work, and which can therefore be brought in only over the life of the agreement. That simplifies what we used to have as mutual recognition agreements with Canada on conformity assessment. I will try not to get too technical, but essentially, our accreditation authority and the Canadian accreditation authority will establish a dialogue to explain to each other what the respective requirements are to accredit laboratories as conformity assessment bodies. On that basis our accreditation laboratories will accredit European laboratories to certify to Canadian standards, and vice versa. This should be applicable, at entry into force of the agreement, for up to half a dozen sets of regulations, and we plan to expand it over time.

That is certainly an option for the US. Whether it will be the option is impossible to say at this stage. US regulations are similar to Canadian ones but they are not identical. Their regulator's mandate is not exactly the same and they do not have the same system of accreditation as we or the Canadians have, so it is impossible to say at this stage whether this model can be replicated with the US, although it can certainly be explored. Certainly, something that achieves the same purpose will be necessary—I can say that with a certain confidence.

In other areas of regulation things are very different. On financial services, which is now a very important area, we took a traditional negotiating approach with Canada, trying to concentrate on opening market access and achieving reciprocity in national treatment. We quickly realised that both parties were not prepared to go very far. That area has become much more delicate than it was five or 10 years ago. With the US we will take a different approach. We will focus on regulatory co-operation first, to make sure that both sides are confident about how financial services are regulated on the other side, which will open the way to greater recognition, reciprocity and market opening.

So I do not think that we can talk about regulation in general terms. The only general statement I can make, in conclusion, is that this will be indispensable with the US, and we will go as far as possible in terms of regulatory co-operation to try to achieve convergence among regulators, because the regulatory objectives of Europe and the United States are very similar. The means have been different—that is the obstacle we have to overcome.

The Chairman: It sounds as though it will be much more difficult, in this field, than it was with Canada.

Mauro Petriccione: That is hard to know, but US regulators are at least as competent as ours. Persuading regulators that there are different ways of doing the same thing and achieving the same result is not always easy. We have a better record of that in Europe, because we are used to doing it among ourselves.

The Chairman: The next questioner is Baroness Quinn. You have touched on one of the things she was going to ask you about, but I turn to her.

Q191 Baroness Quin: Good morning. The Commission, as far as we understand it, estimates quite considerable GDP gains for the EU because of market access in terms of services and investment. You mentioned financial services a few minutes ago. However, we do not have many details of what exactly was negotiated in these areas. Can you say more

about what significant achievements were made in the financial services and investment chapters, and—following up on your comment that with the United States you would tackle some of the regulatory problems head-on—whether, if successful, that might in turn have the effect of further opening up the Canadian market?

Mauro Petriccione: All those matters are very hard to predict. In the services areas the Canadian regulations are more different from those of the United States than they are in the fields of industrial products or agriculture. Certainly, if we had better mechanisms for regulatory cooperation in TTIP than we have achieved in CETA, we would have an interest in importing them into CETA. In CETA we have explicitly built in a number of review clauses—in agreement with the Canadians—to import anything that comes out of the TTIP that both sides find useful. The Canadians are as eager as we are to have, in economic terms, as smooth an interaction as possible between Europe and North America. So if we manage to go further there will be avenues to bring it back, though it will not necessarily be very automatic. In the area of product regulations, on the other hand, while it has not been entirely automatic, once we have gone further with the US than with Canada the Canadians will want to adopt the same regulations very quickly.

Let me give you a quick round-up of areas we have covered. We start from the fact that the European services market is much more open than the Canadian market. As a result we have not granted Canada any new liberalisation in Europe in any sector. We have guaranteed to Canada, on a bilateral basis, the maintenance of our existing liberalisation, which is valuable for legal certainty and investor confidence but will not require us to change our laws or regulations to admit Canadian service suppliers or investors. On the other hand, Canada has committed to some new liberalisation towards us. Thus there has been a substantial rebalancing of the situation on the ground.

With regard to telecom services, Canada is reserving its current situation but has agreed, through a ratchet clause, to commit to the EU every future liberalisation, and the Canadian Government is embarking on a process of liberalisation of its telecom market. We will benefit from that when it happens. Similarly, in relation to maritime transport we have achieved some very useful commitments on filtering services and on dredging services, which will be useful to some of our member states.

Many provinces have made commitments on the kind of conditions they put on investments in natural resources—oil, natural gas and mining. Canada will remove its requirement to have a Canadian partner in uranium processing. On postal services, likewise, Canada will not immediately liberalise its market but has bound any future liberalisation to a ratchet clause. Here again there are plans for the liberalisation of postal services, from which we would benefit.

We have obtained commitments from some provinces, notably important ones such as Alberta, on insurance and reinsurance. We have also obtained commitments on airport operation and ground handling and on outbound international mail.

On investment, of particular importance is the fact that Canada is perhaps the only developed country that still has an investment control mechanism for economic reasons. The Investment Canada Act gives the Canadian Government the power to block foreign investment above a certain threshold if it is not of net benefit to Canada. Virtually every other developed country only has investment controls for national security reasons. Canada will not abolish this mechanism, but will raise the threshold below which investment will not be scrutinised from 300 million Canadian dollars to 1.5 billion Canadian dollars. This will ensure that no routine European investment will be subject to scrutiny. Investments above 1.3 billion euros are bound to attract some scrutiny in any country. I think we are satisfied with this level of liberalisation.

All in all, therefore, the service and investment deal with Canada is a rather ambitious one, through which we have succeeded in bringing Canada very close to the level of liberalisation that Europe has achieved itself. We would like to have the same arrangements with many other countries, but usually find it very difficult to achieve.

Lord Lamont of Lerwick: I refer to that point about the investment control system, which you say that Canada, alone of developed countries, retains. You go on to say, "Well, they've upped the threshold, and anything worth $1.5 billion would be bound to attract attention in any country". However, is not this mechanism highly protectionist for Canadian companies? I remember that there was a bid for the Toronto stock exchange that was just blocked. I remember also that there was a large bid for one of the mining companies, and that was also just blocked. Is this not a mechanism for protecting Canadian companies, and is it not quite anomalous and unique?

Mauro Petriccione: Absolutely. I could not agree more. You do not get all you want in a negotiation. It was a hard decision for us to scale back our request from a complete exemption for European companies to acceptance of this increase in threshold. The comment I made is that, as a practical matter, this should fix the problem for our companies. As a matter of principle we would have liked to see this legislation go, or at least to have obtained a complete exemption for European companies.

The Chairman: Thank you very much. That is a very clear answer.

Q192 Baroness Coussins: Good morning. I would like to ask you about the investor-state dispute mechanism. Just this week we heard that this issue has been taken off the table at TTIP, at least for the time being. We have also heard that the CETA agreement on this issue was very innovative—it broke new ground, although we do not know in what way. Was this issue also controversial in the negotiations for CETA, and did the ways in which

you managed to break new ground address the concerns of NGOs and trade unions that were raised in relation to TTIP? Does TTIP need an ISDS, or can it do without one?

Mauro Petriccione: I will just collect my thoughts, because it is a very complex question. I will start with the principle in CETA. No, the principle of ISDS was not a very controversial issue between Canada and the EU. Some member states questioned whether we needed an arbitration mechanism to protect our investors in a developed country like Canada which has a functioning legal system. The answer has been "yes", notably because of certain practices we have seen at the provincial level. We have had cases—admittedly rare—of provincial legislation overturning current legislation to allow a specific expropriation that would not have been allowed under the generally applicable rules. In one of these cases the European investor involved was fortunate enough to have invested through a US subsidiary, and was able to obtain a remedy through the North American investor-state dispute mechanism. So we quickly came to the conclusion that it was useful to have one.

The difficulties were twofold. The first was different legal traditions, complicated by the fact that we are still merging the legal traditions of investment protection in member states. The first negotiations we have had on investment protection and investor-state dispute settlement at the EU level have been with Canada and Singapore. Our precedent comes from 1,200 agreements by member states that are not very different from each other but are far from identical. So there was a complication in terms of how you write a bilateral mechanism in legally sound terms for both sides.

The second complication was that we were aware of the concerns of civil society about the transparency of these proceedings, about their relationship with domestic court proceedings, and about the need to avoid frivolous claims or abuses by unscrupulous investors. It took a while to persuade Canada of the wisdom of making changes to their

model in this respect. However, we fully persuaded them, and then the discussion became a difficult legal discussion but a very productive one.

Provisions agreed include a stipulation that the ISDS between Canada and the EU will be fully transparent; the hearings will be open; all the documents will be made public; interested parties will be able to make submissions; the parties will retain controls over the substantive rules. The EU and Canada will be able to agree on binding interpretations, so that if we see that arbitrators are interpreting the agreement in an unintended way we will be able to clarify the matter and bind the arbitrator to what we intended with those provisions.

There will be lists of arbitrators that will be chosen by the parties so we will be able to ensure their competence, honesty and seriousness. There will be strict controls on costs. There will be a strict application of the "loser pays" principle, which should be a powerful disincentive for investors to bring unfounded claims. We have seen many cases under NAFTA of frivolous claims being rejected. So far in investment agreements the question of cost has not been very clear, and we have had winning Governments having to pay part of the cost. In this agreement it is clear that the loser pays the cost, so that if an investor brings an unfounded claim it will cost them dearly. It will be easier for arbitrators and they will be encouraged by a number of legal rules to dismiss frivolous claims before they go too far.

At the end of the day, to state this precisely, this is an arbitration mechanism. The real question is: what are the substantive rules that they have to apply? The substantive rules on investment protection have been improved in a very clear manner. I shall give you two of the biggest examples that have caused controversy, and which in our view are the foundation of some of the societies concerned. There is the notion of fair and equitable treatment, which is not defined in most bilateral investment treaties. Some investors have made extraordinary claims about unfair treatment, and sometimes it is complicated to reject these. We have clearly defined fair and equitable treatment and disagreement. An investor can demonstrate

that they have been treated unfairly or inequitably only if there has been a denial of justice; if there has been a fundamental breach of due process; if there has been manifest arbitrariness; if there has been targeted discrimination or manifestly wrongful grounds such as gender, race or religious belief; or if there has been abusive treatment of the investors, such as coercion, duress or harassment. Legitimate expectation would be a cause for complaint only if the state had made a specific promise to the investor, on the basis of which promise the investment was made and that promise was not honoured. We have restricted the application of this very important principle to the same situation where basically any court in Europe would take a case.

Likewise, we have defined indirect appropriation in a way that clearly identifies a situation where an investor can claim to have been expropriated indirectly. I shall give you some important elements of that. A legitimate public policy measure cannot constitute indirect expropriation. Compulsory licences for access to medicine, according to the WTO, cannot be considered an expropriation. Changes of lower regulation per se cannot be considered an expropriation. The fact that new laws increase costs for investors cannot be considered an indirect expropriation. Shell companies will not enjoy protection against expropriation. Some of these rules should also go a very long way towards discouraging frivolous claims and enabling or even forcing arbitrators to throw them out early on without having to waste too much money and time.

Baroness Coussins: So would you recommend that TTIP should adopt similar terms?

Mauro Petriccione: This will certainly inform our initial position. The United States has a similar model to Canada but it is not Canada. It has very similar final objectives, if you like, to those of Canada and the EU, but has a different legal tradition and has to negotiate a different agreement. I will not speculate on where that will end up, but certainly this position will inform ours in all our negotiations on investment protection.

Q193 Lord Lamont of Lerwick: When you answered my question earlier, you referred to the United States sometimes using national security concerns to block investment. That can be a highly protectionist thing, can't it? For example, there was the attempt by Dubai Ports World to buy port facilities in the US, notwithstanding that Gulf states provide dock facilities for the American Fifth Fleet. That seemed rather asymmetrical, to put it mildly, and was simple protectionism, was it not?

Mauro Petriccione: That is a difficult question to ask a civil servant. I will try to answer it without insulting any of my partners. The United States has a legal process for national security controls that is rather clearly defined. Obviously, when it comes to national security there is a point beyond which transparency is difficult to ensure, but that is common to all countries, including ours. The Dubai Ports World case did not go through that process. That investment was a legitimate one that had not been chosen for scrutiny by the Committee on Foreign Investment in the United States, which is the body charged with such examination. Dubai Ports World abandoned the investment after persistent voices in the US Congress had raised questions about it so, strictly speaking, it was not an application of national security controls. It is not the only case where that has happened. Many countries have alleged that the US abuses national security controls. In the past we have expressed concerns about the criteria that the US uses and the preoccupation that economic considerations may creep in. The US has consistently tried to reassure us on that score, both publicly and privately, and the recent reform of the CFIUS mechanism has gone some way towards enshrining those reassurances in the law. We constantly monitor the application of national security controls by our partners precisely because, given the confidentiality of the proceedings, you can never entirely exclude the risk of protectionist considerations creeping in.

The Chairman: This is a very interesting answer, but I am conscious that we have only about 10 minutes of our allocated time left and I think we are getting way from the Canadian agreement.

Lord Lamont of Lerwick: But it sheds light on this. The purpose of discussing Canada is to shed light on the negotiation with America.

The Chairman: Yes, but we have a number of other questions.

Q194 Earl of Sandwich: If we may, we will move swiftly on to agriculture and the SPS. We are encouraged by CETA that you have made significant progress. I am interested in what the pragmatic solutions are that would develop to overcome the divergent SPS regimes. Perhaps you could quote the example of France, which after all has a lot in common with Canada, and whether that is a precedent. If I can ask a second question, we heard from Commissioner De Gucht about the quota system for sensitive agricultural products. How is that working in practice, and does it offer a useful precedent? The provisions focus primarily on high-value cuts of meat with negative consequences for the rest of the meat—does that create a wrong precedent?

Mauro Petriccione: On SPS first, we have a view with the Canadians that the basis of our relationship in this field remains the WTO SPS agreement. Then, in the implementation of that, we follow somewhat different paths. In this field, Canada is constrained by the fact that their system is very similar to that of the United States and that if they were to change it radically, they might block North American trade in this product. That severely constrained what we can do. In the end, we concentrated on consolidating and achieving legal guarantees for some of the features of the Canadian system that were trade facilitated. The Canadians have gone a long way in trying to make the system work smoothly for importers. They have regulated the time limits for examination by authorities. They have tried to adhere to international standards, which we also adhere to. All this was done on a voluntary basis. As a

matter of fact, we have not had any serious SPS problems with Canada for along time. We have achieved basically a legal consolidation of a de facto situation.

The US has a very similar system, but the trade in the US looks different and we have had more problems in exporting to the US than we have had with Canada, so it is very difficult to know whether this is transposable. Also, with Canada we had a long-standing veterinary agreement that had been very useful in solving any problems that arose in the meat trade, for instance. That agreement has been incorporated into CETA so we will benefit from greater transparency from its dispute settlement mechanism, and it is being updated at the same time. We have a work programme to achieve a similar level of co-operation with the Canadians on plant and plant health matters. So it is not a revolutionary outcome, but it is a consolidation in legal terms of much useful work that has been done bilaterally with in the Canadians over time and a work programme to continue that work in a situation where we have not really had major SPS-related problems with Canada in the past decade.

Quotas are a very common instrument in trade agreements. They are the traditional instrument to obtain some real additional market access for products that are considered very sensitive and for which a country is not prepared to grant eventual tariff liberalisation. The problems that were sensitive between us and Canada are the same that are sensitive with a number of other countries, and were similarly sensitive in the multilateral negotiations. In those negotiations, too, the outcome that had been sketched out was that of tariff rate quotas. As a matter of fact, in 2008 the Council gave the Commission, if not a strict mandate, at least an envelope of liberalisation for the products that the Commission could exploit in trade negotiations.

We have been working within that envelope. I would say that Canada has obtained its fair share of that envelope. We have granted Canada tariff-rate quotas on beef and pork. Canada had a similar problem on dairy produce, particularly cheese. It has granted us a tariff-rate

quota on cheeses, which is largely—90%—for high-quality cheeses. Basically, imports within these quotas will be at zero duty, whereas outside the quota imports will remain free but will continue to pay the applicable duty, which is, in both cases, rather high. We have more than doubled our access to the Canadian cheese market. We are currently exporting around 14,000 tonnes of cheese a year as our share of the multilateral quota that Canada has granted. We have obtained an additional 18,500 tonnes of cheese, of which 1,700 tonnes are industrial grade. The rest is high-quality cheese. That is a 130% increase in our exports. We will fill that quota immediately; our export capacity is up to it.

We have granted Canada a bit more than 45,000 tonnes of beef, to which we have had to add a quota that we already owed the Canadians, giving a total of about 50,000. In total, 31,000 tonnes will be fresh beef; the rest will be frozen. The quota does not distinguish between prime cuts and other pieces of beef. There will be no way to restrict it or to channel it. The concern of European industry is that mostly the Canadians produce high-quality beef. They will concentrate on exporting prime cuts, which have a much higher value added.

Having said that, the channels for trade are not infinitely elastic. It is virtually impossible that Canada can export only prime cuts. The whole quota represents 0.6% of EU consumption, so we are reasonably confident that the impact on European industry, if any, will be limited. The same largely holds true for pork.

The Chairman: I am very conscious that our hour is up. We still have some more questions that we should like to ask you. How much longer can you be with us?

Mauro Petriccione: Another 15 minutes.

The Chairman: We will try to get through them; thank you very much indeed.

Q195 Baroness Bonham-Carter of Yarnbury: I want to ask you about GIs—geographical indications. We heard evidence that CETA had struck a very good deal on GIs.

However, as you will know, Commissioner De Gucht judges that this is a potentially big stumbling block for TTIP. We have had news of a debate in the French Senate where, picking up on cheese, one of the senators said about TTIP, "We may be solving the champagne war, but it would not be responsible to start a camembert war". Does CETA offer the EU a good deal on GIs? Do you agree with that? What were the key Canadian demands? Can a similar deal on GIs be negotiated in the TTIP?

Mauro Petriccione: It is a very good deal. We already have a wine agreement with Canada that grants protection to our geographical indicators in the area of wines and spirits. The WTO TRIPS agreement already provides for good protection for GIs. The wine agreement has implemented that and provided the practical means to achieve that protection. The same has not been true for other food products. The main achievement with Canada has been to extend the same protection that we enjoy for wines and spirits to other food products. We have a list of—I should know but I have forgotten—in the region of 160 or 170 names, the great majority of which will be fully protected with no conditions. The protection is enshrined in the agreement, so it is not dependent on changes by Canadian legislation. If Canada wishes to have national legislation to provide that kind of protection, it is free to do so. In that case, we will monitor it. However, the obligation to protect, the level of protection and what has to happen on the ground are enshrined in the agreement. That is a first for the EU. It is a much more solid level of protection than having to rely exclusively on domestic legislation in a country that is not entirely persuaded of the value of geographical indications.

We have found reasonable compromises, of different types, for about 15 or 20 controversial names. We had a handful of GIs where the problem was co-existence with existing trademarks in Canada. As a matter of fact, the existence of those trademarks prohibited European exports using the same name. The biggest example was Parma ham but other

Italian, Hungarian and French products were also involved. Now we have achieved co-existence and those four products can be lawfully exported to the Canadian market and will be protected against everybody except the holder of those prior trademarks. I think our exporters are extremely happy, because they reckon that their superior quality, with an appropriate media campaign, will enable them to capture the market, especially in Canada, where it is fractured across ethnic lines because of the large immigrant populations. They do not fear the competition from the trademark-holders.

In a number of cases, we have granted a transitional period for users of those names in Canada to phase out their production. The most difficult cases were products that the Canadians insisted until the last minute had become generic in Canada, and therefore were not deserving of protection under geographical indications, notably five cheeses: feta, three Italian cheeses and a French one. We achieved a compromise which leaves current users of the name in Canada—both users of the name in Canada and importers—free to continue to use it but no new uses will be allowed unless accompanied by terms such as "style", "imitation", "kind" et cetera. Again, it is a compromise. We fully protect these names in Europe against all users but we have to live with the fact that things have evolved differently in a number of countries, especially those with very strong European immigration, where people have brought their traditions, products and names. Many of the owners of these geographical indications in Europe are not necessarily happy; they will not enjoy exactly the same protection as they do in Europe. On the other hand, we have to recognise the sorrier reality.

Baroness Bonham-Carter of Yarnbury: There is already a taste for them, I suppose.

Mauro Petriccione: Absolutely. Canada did not have many demands in this field, except the basic one: go away and leave us in peace. We did not and, in the end, we persuaded them that this was an indispensable element. We will have similar issues in the United States. As a

matter of fact, some of the problems in Canada come from US imports. Will the US wish to go as far as Canada? I am sorry, I simply will not speculate.

Baroness Bonham-Carter of Yarnbury: What about the issue of different states?

Mauro Petriccione: This is not a provincial competence in Canada; this is a federal competence.

Baroness Bonham-Carter of Yarnbury: No, I meant in the United States.

Mauro Petriccione: Likewise. I do not know what competence there is in the US to regulate this. I do not know whether it is a federal or a state competence. In Canada, I am sure that it was a federal competence. In fact, some provinces are introducing their own system of geographical indication modelled on ours.

Q196 Baroness Young of Hornsey: My question is about public procurement, which clearly has some issues in common with what we have just been discussing around GIs, notably the issue of state versus sub-federal regulation. With regard to public procurement, we have been told that in the CETA agreement there have been some notable developments. We are wondering exactly what was negotiated on public procurement. What were the challenges for the management at sub-federal levels of government and how were they addressed? Also, what lessons can be learnt for TTIP?

Mauro Petriccione: This was one of the conditions for us to have accepted at the beginning of these negotiations. We made it very clear to Canada that if it was not prepared to engage, one way or the other, on procurement—not only at the federal level but at the level of the provinces and municipalities, our economic interests in this negotiation would probably not pass the threshold required to obtain a mandate from the Council. The Canadian provinces collectively took a political decision early on—it must have been at the end of 2008 or the beginning of 2009—to issue a public reassurance that they would engage in this negotiation and make commitments. I have to say that they have participated fully in the negotiation.

They were present, they were consulted by the Canadian Government and we have obtained very satisfactory commitments at all levels of government.

On the question of the routes applicable to procurement, that has never been a huge problem. Canada, like us, in negotiation advocated more transparent rules and more detailed procedures, so it was reasonably easy to agree on a bilateral set of rules, which is WTO-plus. The question would be: what contracts would be open to foreign bidders? There we were basically able to offer the Canadian participants an internal market if they would match it. As it happened, the commitment we obtained from Canada—between the federal Government, the provinces and the large municipalities—is, we reckon, between 70% and 80% of the Canadian procurement market. This is very speculative, because nobody has any precise figures on this market. So we then scaled down our offer to match, in agreement with Canada. In addition, once Canada had taken that step, it agreed to something that was not in the negotiating mandate—to adopt the same kind of tender database that we have developed in Europe to give access to tenders across the European Union. The Canadians are now developing the same database using software that we have supplied, and this will be interconnected with the European database. So not only do we have very solid legal commitments, we also have a very practical means, which we have tried and tested in Europe, to make it accessible to people who live and operate thousands of kilometres away. In the end, this was a very difficult discussion but it ended up having one of the more satisfactory outcomes.

We are also extremely interested in the US procurement market. In the US it is similar. The situation is the same everywhere; in every country, the responsibility for procurement is split between national, sub-national and local authorities. We are capable of offering access to all levels if our partners will do the same. Time will tell where we end up with the US.

Q197 Baroness Young of Hornsey: Do you think that the differences between the sub-federal level in the USA and that in Canada are too great to make a comparison in terms of what can be gained from TTIP?

Mauro Petriccione: The differences are not legal or administrative. If you look at European countries, even those without a federal structure have local autonomies in procurement. The money is spent by the authorities who have the power to do so, whether they are national or at a local level. So that is not a big difference. The big difference is whether a federal Government is capable of committing sub-federal levels of government with or without their consent. In both Canada and the US, we understand that the federal Government is not in a position to do so without the consent of the local authority.

In Canada that consent was given in advance, partly because the Canadian provinces realised that they were losing out. You have to recall that Canadian protectionism at the level of local procurement is a reaction to the United States. It is retaliation against the US. Throughout the negotiation, we had to be very careful that the commitment that Canada made could be strictly—in law and in fact—limited to European companies. Canada is certainly trying to obtain more now from the United States in the TTIP negotiations.

The Chairman: Mr Petriccione, thank you very much. We have exceeded our time and you have given us very full answers and a great deal to think about. If there is anything we need to follow up, perhaps we could write to you for further clarification. Thank you very much for the thoroughness with which you have answered our questions.

Mauro Petriccione: You are very welcome. I am happy to be of help.