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• (1505)

[English]

The Chair (Mrs. Sherry Romanado (Longueuil—Charles-LeMoyne, Lib.)): I call this meeting to order.

Welcome to meeting 25 of the House of Commons Standing Committee on Industry, Science and Technology. Pursuant to Standing Order 108(2) and the motion adopted by the committee on June 1, we are meeting to study the Investment Canada Act.

Today's meeting is taking place by video conference, and the proceedings will be made available via the House of Commons website.

As a reminder to members and witnesses, before speaking, please wait until I recognize you by name. When you are ready to speak, please unmute your microphone and return it to mute when you are finished. When speaking, please speak slowly and clearly so the interpreters can do their work. Please make sure that you are on the language you will be speaking on the Zoom app.

As is my normal practice, I will hold up a yellow card when you have 30 seconds left in your intervention and a red card when your time is up.

We have two panels today. The first panel will be from 3:00 p.m. to 4:00 p.m. We will take a break at 4:00 p.m. so we can switch out the witnesses and have a little health break, because we will then go into a two-hour meeting for the second panel.

I'm not going to read out all of your titles again, as I did that last week, but I want to welcome back Mr. Hahlweg, from the Canadian Security Intelligence Service; Mr. Davies, from the Department of Industry; and Mr. Dominic Rochon, from the Department of Public Safety and Emergency Preparedness.

You will each have five minutes to testify, followed by the rounds of questions.

I will start with Mr. Hahlweg.

Mr. Hahlweg, you have the floor for five minutes.

Mr. Tim Hahlweg (Assistant Director, Requirements, Canadian Security Intelligence Service): Thank you, Madam Chair and members of the committee. Good afternoon.

I'm currently the assistant director of requirements at the Canadian Security Intelligence Service. Among other things, my directorate is responsible for the analysis of intelligence that CSIS collects on threats to the security of Canada. Our intelligence assess-

ments and the advice are provided to the government to inform decision-making.

I want to thank you for the invitation today to participate in the committee's study of the Investment Canada Act.

I want to begin by briefly outlining CSIS's mandate, which is to investigate activities suspected of constituting a threat to the security of Canada, to advise the Government of Canada on these threats, and to take measures to reduce these threats. The threats to the security of Canada are defined in section 2 of the CSIS Act as espionage or sabotage, foreign-influenced activities, terrorism and subversion of government through violence.

As discussed in our recent public report, state-sponsored economic espionage activities in Canada continue to increase in breadth, depth and potential economic impact. In order to fulfill their national economic, intelligence and military interests, some foreign states engage in espionage activities. Foreign espionage has significant economic ramifications for Canada, including lost jobs, intellectual property, and corporate and tax revenues, as well as competitive advantages.

With our economic prosperity and our open academic and research communities, Canada offers attractive prospects to foreign investors. Although foreign investment is a key driver of Canada's economic prosperity, it also has the potential, in certain cases, to adversely affect our national security. The acquisition of sensitive intellectual property, technology, or vast amounts of Canadian citizens' private data for foreign use, or with foreign-state control, can threaten national security. While the vast majority of the foreign investment in Canada is carried out in an open and transparent manner, some state-owned enterprises and private firms with suspected or known ties to their government and/or intelligence services can pursue corporate acquisition bids in Canada or other economic activities on a non-commercial basis for their own strategic objectives.

Foreign states have engaged in espionage and foreign interference targeting Canada for years. This is not a new activity. CSIS director Vigneault has spoken publicly about the impact of these threats to Canada's economy and national interests, including the threats posed by China and Russia. In its 2019 review of foreign interference and public report, the National Security and Intelligence Committee of Parliamentarians also reflects that these, among other states, are of concern.

While I cannot speak in detail about any operational matters, I can assure you that CSIS is actively investigating all suspected threats of foreign interference and espionage, and we engage with your NSICOP colleagues on these important matters in a classified space.

These threats pose particular concerns during the COVID-19 pandemic, which has created economic vulnerabilities for Canadian companies upon which foreign threat actors may seek to capitalize.

To assess such impacts, the ICA authorizes the government to review foreign investments on national security grounds. CSIS is a prescribed investigative body under the national security provisions of the ICA. As such, the service conducts investigative efforts related to national security concerns arising from foreign investments linked to foreign government entities. CSIS obviously works with other government departments and agencies—these include Innovation, Science and Economic Development Canada, the Department of National Defence, the Communications Security Establishment and the RCMP—to provide advice in support of the national security review process.

While I cannot comment publicly on any specific advice that CSIS has provided, or on any specific ICA transactions, I would note that it's ultimately within the prerogative of the Governor in Council to allow, disallow or impose mitigation measures on investments that would be injurious to Canada's national security.

Corporate acquisition is not the only way through which hostile actors can threaten Canada's economic security. Threat actors can also access proprietary government information through cyber-attacks, espionage and insider threats. Insiders are individuals with direct access to the systems and intellectual property in corporate and research environments. This could potentially include business people, scientists and researchers. Put another way, today's spies also wear lab coats, not just trench coats.

CSIS observes that technology or know-how particularly in academia and small to medium-sized enterprises is often less protected and more vulnerable to state-sponsored espionage.

Thank you very much. That ends my opening comments.

• (1510)

The Chair: Thank you very much.

We'll now go to Mr. Davies.

You have the floor for five minutes.

Mr. Mitch Davies (Senior Assistant Deputy Minister, Industry Sector, Department of Industry): Thank you, Madam Chair, for this opportunity to discuss the Investment Canada Act as related to the committee's study.

I'm the senior assistant deputy minister of the industry sector for Innovation, Science and Economic Development Canada and the deputy director of investments, responsible for supporting the director of investments and advising the Minister of Innovation, Science and Industry on the Investment Canada Act.

In my brief opening remarks, I would like to provide background to the committee on how we administer the act, including in the current context shaped by COVID-19.

As has been widely recognized, foreign direct investment, or FDI, plays an important role in the development of Canada's economy, contributing to productivity and providing vital links to global value chains. It fuels innovation and creates well-paying jobs. FDI will be an important component as the economy recovers from the effects of the pandemic. At the same time, the government has a responsibility to ensure that FDI benefits Canada and to protect Canadians against national security threats that can arise through foreign investment.

With respect to how the authorities in the act are administered, information about decisions is made public through an annual report on the ICA, including disclosure of summary statistics on the operation of the net benefit and national security review processes.

The government's net benefit review authorities are based on the value of the Canadian business. Based on the recommendations of a blue-ribbon panel in 2008, successive governments have raised the net economic benefit review threshold for private, WTO and trade agreement investors. The threshold now stands at \$1.613 billion in enterprise value for private investors from Canada's trade agreement partners and \$1.075 billion for private investors from other WTO investors, while it is at \$428 million in asset value for state-owned WTO investors. These amounts are updated each calendar year in accordance with changes in nominal GDP.

The top three source countries or regions of investors by number of ICA filings were the United States, at 59%; the European Union, at 24%; and China, as a third, at 4%. The United States and the European Union have been historically Canada's largest investors under the act. Additionally, all foreign investments—regardless of value, regardless of the investor or country of origin—are subject to review under the act's national security review process.

Threats to national security are complex and evolving. Accordingly, the ICA and its associated regulations do not define national security. However, to provide transparency for investors and Canadian businesses, the government published national security review guidelines in December 2016. These guidelines are complementary to the national security provisions of the act.

Recognizing the unique challenges brought about by COVID-19, the minister issued a policy statement on April 18, 2020, which indicates that the government will apply “enhanced scrutiny” under both the net benefit and national security provisions of the ICA to foreign investments related to “public health or...in the supply of critical goods and services”.

In addition, given that “investments into Canada by state-owned enterprises may be motivated by non-commercial imperatives that could harm Canada's economic or national security interests”, the statement indicates that all foreign investments by state-owned investors will be subject to “enhanced scrutiny” under the ICA. Enhanced scrutiny could involve the minister requesting additional information during the course of a review or extended review timelines in order to ensure the government can fully assess these investments.

The goal of the statement was to inform foreign investors that we would exercise these authorities to their utmost, with a focus to preserve net benefits to Canada of proposed investments and to protect Canada's national security. In particular, the review processes would consider closely the effect of proposed transactions on potential risks to the supply of critical goods and services during the period of the pandemic.

This approach under the ICA, including as articulated in the COVID-19 policy statement, is consistent with general intelligence assessments shared by the national security departments and agencies. I am pleased that my colleagues from Public Safety Canada and the Canadian Security Intelligence Service are with me here today to speak to the important roles their organizations play in the administration of the national security provisions of the act.

Thank you, Madam Chair. I'm happy to answer any questions the members may have.

• (1515)

I should note that I am unable to speak to or respond to questions with respect to specific investment reviews due to the strict confidentiality provisions of the act.

Thank you.

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

Our next guest is Mr. Rochon.

You have the floor for five minutes.

Mr. Dominic Rochon (Senior Assistant Deputy Minister, National Security and Cyber Security Branch, Department of Public Safety and Emergency Preparedness): Thank you, Madam Chair, for this opportunity to discuss the Investment Canada Act. Good afternoon, everyone.

I am the senior assistant deputy minister of the national and cyber security branch here at Public Safety Canada, responsible,

among other things, for advising the Minister of Public Safety and Emergency Preparedness on the national security dimensions of the ICA. My remarks will focus on the national security provisions under the ICA, which is administered by the Minister of Innovation, Science and Industry, as we just heard, who consults with the Minister of Public Safety and Emergency Preparedness as part of his deliberations.

The national security provisions of the ICA are broad by design and enable Canada to assess all inbound foreign investments, including the establishment of a new Canadian business or an entity carrying on operations in Canada, the acquisition of control of a Canadian business of any dollar value, and the acquisition of all or part of an entity carrying on operations in Canada.

National security is not explicitly defined within the ICA, as this allows the government to remain nimble in response to the ever-changing threat environment. Public Safety Canada manages a national security review process in collaboration with 18 departments and agencies. As we heard Mr. Hahlweg point out, this ranges from CSIS, the Communications Security Establishment, the Department of National Defence, the RCMP and Global Affairs Canada to Natural Resources Canada, the Public Health Agency and the Department of Finance. This whole-of-government approach brings the relevant expertise to bear as we assess the national security risks of each transaction.

The review takes into account a variety of factors, including the potential effects on Canada's defence capabilities and interests; the potential effects on the transfer of sensitive technology or know-how outside of Canada; involvement in the research, manufacture or sale of goods or technology important to Canada's national defence; the potential impact on the security of Canada's critical infrastructure; the potential to enable foreign surveillance and espionage; the potential to hinder current or future intelligence or law enforcement operations; the potential impact on Canada's international interests, including foreign relationships; and the potential to involve or facilitate the activities of illicit actors, such as terrorists, terrorist organizations or organized crime.

In light of COVID-19, we have also applied increased scrutiny to all foreign direct investments in Canadian businesses that are vital to public health and the security of supply of critical goods.

The national security review is rigorous, with multiple steps and thresholds that must be met before taking action. Unlike many countries, Canada has a mandatory notification scheme where an investor must let the Department of Innovation, Science and Economic Development know when they establish or take control of a company.

The process begins once we become aware of a transaction, with a preliminary assessment of all filings and information sharing among partners. If there are reasonable grounds to believe that the investment could be injurious to national security, the process moves into a notice period, with a 45-day window for the community to investigate concerns. If, after this period, concerns remain that the transaction could be injurious to national security, a national security review is ordered by the Governor in Council on the recommendation of the Minister of Innovation, Science and Industry, after consultation with the Minister of Public Safety and Emergency Preparedness.

The national security review period provides Canada with another 45 calendar days, with an optional 45-day extension, to investigate whether this investment would be injurious to national security. In total, from receipt of notification to recommendation to cabinet, the process can take up to 200 days. Further extensions, of course, may also be granted with the investor's consent.

At the end of the national security review period, the government has three options. If it is determined that the investment does not meet the threshold of "would be injurious to national security", the investment is allowed to proceed. If the government determines that an investment meets the threshold, then it may decide to either allow it, subject to the imposition of mitigation measures to address residual risk, or order that the investment be blocked, if it hasn't been implemented yet, or divested, if it has been implemented.

To conclude, the national security review process is a robust one, involving a multitude of investigative bodies that work collaboratively to ensure that Canada is safeguarded against national security threats that can arise through foreign direct investment.

• (1520)

Madam Chair, I would be pleased to now answer questions that members may have. I'll offer up the same disclaimer as my colleague from ISED, in that I may be unable to speak to, or respond to, questions related to specific investment reviews that are currently under way or that have taken place.

Thank you.

The Chair: Thank you very much.

We will start our round of questions with MP Rempel Garner.

You have the floor for six minutes.

Hon. Michelle Rempel Garner (Calgary Nose Hill, CPC): Thank you, Madam Chair.

I'll start by directing my questions to Mr. Hahlweg. I'll begin by pointing to a part of the department's 2019 report that discusses SOEs "with close ties to their government and or intelligence services", and acquisition bids and economic activity in Canada.

The report says specifically this:

Corporate acquisitions by these entities pose potential risks related to vulnerabilities in critical infrastructure, control over strategic sectors, espionage and foreign influenced activities, and illegal transfer of technology and expertise.

I'm interested in knowing which countries you were referring to within this section of the report.

Mr. Tim Hahlweg: As stated in the public report, and as indicated by our director in public, there are many countries of concern in this space. I specifically noted Russia and China. The NSICOP review of 2019 also reflects that those two countries are countries of concern, but there are others. Foreign interference and economic espionage have been around for a long time in this country, unfortunately. We are bringing all of our investigative efforts to bear to make sure we identify those countries and advise the government in a proactive manner.

Hon. Michelle Rempel Garner: Can you provide the committee with a list of recent SOE acquisitions in Canada that raise the specific concerns noted in your report?

Mr. Tim Hahlweg: Unfortunately, given the unclassified nature of this committee and this conversation today, I can't get into any specific SOE acquisitions and talk about any specific cases.

Hon. Michelle Rempel Garner: Can you perhaps table with the committee a table of the countries and the number of acquisitions that would have led to this recommendation?

Mr. Tim Hahlweg: I would defer to my colleagues from either Public Safety or ISED to comment on that. I believe they would have those numbers from specific countries.

Hon. Michelle Rempel Garner: Thank you.

Has CSIS noticed any use of shell companies that are heavily influenced or connected to undemocratic countries? What I'm trying to get at here is whether your department has flagged the use of shell companies, or companies that may be from a country that we wouldn't necessarily flag but that have been owned or significantly owned by an authoritarian government. Is this something that has come up frequently in your review?

Mr. Tim Hahlweg: It's a very good question. I can't speak to specific operational matters and get into any specific details, but I can tell you that acquisitions by shell companies, state-owned enterprises, or ones directly linked to intelligence services or foreign governments are the ones that we focus our energy and our attention on.

Specifically related to the sectors that were already discussed, the threat landscape changes, as you can imagine, frequently. We have to make sure we are alive to what those current threats are, and make sure we're focused on the right sectors, to make sure that we can inform the government appropriately.

Hon. Michelle Rempel Garner: To the panel as a whole, I have heard concerns that because some of the screening that happens under the ICA happens under a division of Global Affairs that is also responsible for the promotion of trade, this might be an actual conflict of interest within the government department.

Do you think the responsibility for screening should be separated out from any department that has responsibility for the promotion of trade?

Mr. Mitch Davies: Madam Chair, perhaps I could address the question.

The screening process is initiated in part by notices. Some 900 notices are received under the Investment Canada Act each year. There were over 900 the last fiscal year. Those are all made available in the system to our investigative bodies. They are able to come to their own conclusions and review the information—

• (1525)

Hon. Michelle Rempel Garner: That is not the question I asked. I asked if you thought there was a conflict of interest in having screening happen in a department that also has a mandate or deliverable where they are measured on the attraction of trade and FDI.

Mr. Mitch Davies: Madam Chair, in this case the two ministers involved in the process are the Minister of Public Safety and the Minister of Innovation, Science and Economic Development. Those are the two ministers who are involved in the identification of cases for which notices need to be offered, and also the recommendation of the Governor in Council. So to that extent—

Hon. Michelle Rempel Garner: Thank you. That's [*Inaudible—Editor*].

Mr. Mitch Davies: —that's a strong process built into the law.

Hon. Michelle Rempel Garner: Thank you.

Also, I note that there's a difference between a security screening and a security review. How many cases go through a security screening versus a security review? What's the threshold?

Mr. Mitch Davies: Madam Chair, I'll just start, and then my colleagues may wish to comment.

I mentioned over 900 notices received under the Investment Canada Act in the last fiscal year. All of those notices—

Hon. Michelle Rempel Garner: Okay, that's not the question I asked. I asked about screening versus review.

Mr. Mitch Davies: —are part of the information. Those are then reviewed to determine which ones are prioritized.

Hon. Michelle Rempel Garner: That was not helpful.

I guess the problem here is that there seem to be gaps in how we screen versus review, and we don't have department officials who are prepared to answer those questions.

Mr. Mitch Davies: Madam Chair—

Hon. Michelle Rempel Garner: I guess we'll just have to recommend policy to the contrary.

I know my time is up. It's difficult. Thank you.

The Chair: Thank you very much.

The next round of questions goes to MP Longfield.

You have the floor for six minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thanks, Madam Chair.

Thank you for the great presentations from our witnesses.

I'm going to start with Mr. Rochon.

I've been looking at the ICA annual report. On page 5, it talks about the national security provisions, which allow for a broad review that could be considered national security. Is this in line with comparator jurisdictions, or do they not have a provision and they might want to introduce broader terms in terms of being fluid to risks?

Mr. Dominic Rochon: I'll allow my colleague from ISED to weigh in, in terms of comparators, on what we're seeing in other countries.

If I understand your question, I feel that the review process we have.... I guess I would need more specificity in terms of what you're after. When you're saying "broad review", I feel like, the way the provisions are set up in Canada, we certainly have leeway to look at every aspect of national security. Could you provide further specificity of what you're after?

Mr. Lloyd Longfield: Sure. I'm thinking of the thresholds that might trigger a review, either a percentage of ownership or the value of the investment to broaden the sector coverage of a review. What I'm saying is that the more specificity we put, the more we limit the type of review we would be doing, and whether that compares to....

Mr. Davies, if you have a comment, that would be great.

Mr. Mitch Davies: Yes, I do.

I've just made clear that, with regard to the national security review provisions, we're talking about a very broad set of provisions where there is no dollar value. The definition of "national security" is left to the discretion of the government to assess based on the evolution of events, taking full account of current circumstances, which is an integral part of the act.

The other thing is that it's really on a case-by-case basis. The notification process also provides for information to come into our system on all new businesses that are established and all control takeovers that are initiated. Then we can also reach out and look into any investment that may well be under the scope of the act and pull those investments in for scrutiny.

It's quite a broad base. In fact, a number of countries are moving towards this model, which provides quite a wide aperture in order to screen investments across a range of different types of investments. There's no sectoral restriction in this regard. It's wide open in that sense.

Mr. Lloyd Longfield: Thank you.

Really, what I am wondering and want to get testimony on is in terms of keeping our options open for emerging threats that may not be included if we get too specific.

Mr. Davies, I'll stay with you, if I could. What actually happens, then, if a state-owned enterprise is in violation of the agreement by not being transparent, or in violation of the guidelines or the net benefit assessment? What happens on the other side, if it's able to get through the process but then is in contradiction of what it said it was going to be doing?

• (1530)

Mr. Mitch Davies: In general, I would describe the process as providing.... That depends on the net benefit or the national security process in the act, because the state-owned enterprise guidelines apply to both, but of course there are also different considerations.

In terms of net benefit, the matter that is looked at is the corporate practices, the transparency and the commercial orientation of the businesses. That can be assessed in cases where we're looking at net benefit to Canada for the economy. If an investment is allowed to proceed and the minister wishes to allow it, we can secure commitments, and then those are enforceable.

In terms of national security, of course, it is much broader in the degree to which different considerations are brought to bear. Those investments, if they are allowed—and this is the question—could be allowed on the basis of a variety of mitigating measures that would be enforceable on the investor on an ongoing basis. The act provides for the upfront process of review and engagement with the investor, and then also subsequent processes to follow up on adherence to commitments, if commitments have been accepted as part of the process.

Mr. Lloyd Longfield: Right, and that could include shell companies or other things that could be used to try to hide information.

Mr. Mitch Davies: I would like to add to an answer that was previously given, as we're talking about shell companies.

The minister has the authority, and does exercise it, to seek full disclosure of the ultimate controller of any investor. That is to say, we will look at the party that's initiating the investment or the act. We always look up all the way through the chain of control to the ultimate owner. In fact, the minister's determinations as to the control of an enterprise, whether or not it is a state-owned enterprise, can look into that in a very expansive way.

I think that should help with some of the information that's been provided so far.

Mr. Lloyd Longfield: Great. Thank you.

I'll stay with you, Mr. Davies. We have about a minute left.

The annual report talks about improvements in 2016 and 2017 to the national security review. What were these improvements? Were they for increasing transparency or review methods, or both?

Mr. Mitch Davies: In legislative terms, regulatory changes have been made to allow for longer review periods, so the 200-day maximum for a national security review. We also added disclosures in the public reporting on which reviews have been undertaken, the country of origin and the outcome of those reviews, to provide more information.

The Chair: Thank you very much. Unfortunately, that is it for your time.

[*Translation*]

We'll begin the next round of questions.

Mr. Lemire, you have the floor for six minutes.

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): Thank you, Madam Chair.

I'd also like to thank the witnesses for being with us. As a new member of Parliament, I must say that I found their presentations very informative and the exercise very interesting. I also took a lot of notes.

Mr. Davies, you first reviewed the thresholds, and then added that governments have raised those trigger levels over the years.

I am concerned about the value of our businesses in the current context of the COVID-19 pandemic. If there were a decline in the value of companies at current thresholds, would our companies be at greater risk?

Wouldn't it be appropriate, in the current context, to revise these thresholds downward to ensure that the interests of Canadian businesses are protected?

[*English*]

Mr. Mitch Davies: I'll offer a distinction. The dollar thresholds in the act apply to the net benefit provisions and do not apply to the national security provisions. Any dollar value investment can be examined under those provisions, so no change in the market valuation of any Canadian business would affect the national security review process at all.

As for the other provisions, if it's an investment by a state-owned enterprise, recall that it is reviewable over \$428 million, based on asset value, and this is not revised off the books of the company. Even in the current circumstances, changes in asset values would not change the threshold in any real terms.

I mention this in reference to the concern that the honourable member has raised.

[*Translation*]

Mr. Sébastien Lemire: Thank you.

Mr. Hahlweg, what criteria or mechanisms trigger your intervention?

In your opinion, is the current law sufficient or should it be given more teeth and more power to protect our businesses and our economy?

• (1535)

[English]

Mr. Tim Hahlweg: CSIS's involvement is triggered if something comes to light that is a national security concern. As I mentioned at the outset in my opening comments, from a national security perspective, the lens keeps changing, and right now we're quite concerned with the state-owned enterprises that are linked directly to certain countries and/or their respective intelligence organizations. Those can hit on sectors of concern. Again, those threat landscapes change as well, but we're talking about critical infrastructure, emerging technologies and organizations that hold significant amounts of personal information on Canadians, such as financial and health records. The combination of two, from a service perspective, is worrisome from a national security perspective.

As for whether or not we need to be bolstered more, from a security perspective, to do more, I would say that as a prescriptive organization in the ICA process that does the investigations, we do not comment on policy and/or make policy recommendations. We're strictly focused on the security aspects and conducting investigations to inform government.

I would defer your second question to my colleagues from ISED or Public Safety Canada, but thank you for your question.

[Translation]

Mr. Sébastien Lemire: My next question is for Mr. Davies, firstly.

Mr. Davies, in the context of the review of the act, I think it would be beneficial to strengthen the stakeholder aspect of the act by including shareholders, employees, suppliers, creditors, consumers, government and the environment.

At the last meeting, Mr. Jim Balsillie raised an interesting point about the importance of also including a framework for patents, innovation and strategic technologies, since he believes that today's economy is based on intellectual property and data.

What mechanisms could we insert in this legislation to ensure that we protect the modern economy of Canada and Quebec?

[English]

Mr. Mitch Davies: Thank you, Madam Chair.

In reference to the question and the earlier testimony, which we did note, I think it's important to take into consideration the changes made under the Investment Canada Act, after a previous review changed the basis for evaluation to "enterprise value". What that does is capture the market value of the intellectual property of the business. Previously, an asset-based threshold only would not capture that. Now, in fact, the type of enterprise that is largely valued-based on its IP...that obviously, then, can see that there's a net benefit review conducted in certain circumstances where the threshold is exceeded.

In terms of national security, of course, all matters that might relate to important intellectual property and any national security-re-

lated risks around that can be assessed by the investigative agencies as part of a review, notwithstanding the extent of the investment or the dollar value.

[Translation]

Mr. Sébastien Lemire: Thank you, Mr. Davies.

My last question is for Mr. Rochon.

Mr. Rochon, you say there are two options: give the green light to the investment and impose mitigation measures, or prohibit the investment.

Wouldn't it be better to be more transparent in the interest of Canadians?

[English]

Mr. Dominic Rochon: Thank you for the question.

I think we have enough transparency in place with regard to reporting on decisions that are being made through annual reporting and such. Obviously, national security matters have a certain level of classification that needs to be respected.

The Chair: Thank you.

Our next round of questions goes to MP Masse.

You have the floor for six minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Madam Chair.

I'm hoping that this microphone is good for our interpreters. Thank you to the House of Commons services, as quick as they are.

My first question is for CSIS.

With regard to investments in Canada, we have a good chart here from our researchers, which shows that the vast majority comes from the United States, then the Netherlands. Luxembourg is third on the list, and there are a few others. I'm curious as to whether any screening is done in general about where the investment is coming from—and I have a subsequent question to that—but do you look at nation-states as well?

I'm surprised that Luxembourg is third. I'm wondering whether there's also a lens beyond the person, as to where they come from, in terms of the company.

• (1540)

Mr. Tim Hahlweg: Thank you very much for the question.

I can tell you that regardless of where it comes from, if there's any security threat or any suspected impact on our national security, then we will review it in that lens and bring all of our investigative efforts to bear on that. It really doesn't matter where the investment comes from. For us, as one of the investigative bodies, it's the potential injurious impact of that threat actor.

I can tell you that in the foreign interference space and economic espionage space, I'm often quoted as saying that our best defence is education. That's why I'm super proud of the service and our outreach efforts, especially in the pandemic space. We're getting out there and being proactive with companies in the biopharmaceutical space and the health sciences space. We're actually giving them information on what threat actors might come at them so they can put their own mitigation efforts in place. That's been very successful.

As a matter of fact, I think it was two weeks ago that we had a talk with BIOTECanada, which represents a lot of the biopharma industry. That was very well received. We will continue with those outreach efforts as much as we can.

Mr. Brian Masse: That kind of answers my question, but there's still a little more to it.

If we go down the list a little further, we have the United Kingdom, Switzerland, Japan, Hong Kong, China, Bermuda and Brazil. Given what's taking place in Hong Kong and China right now.... They are respectively sixth and seventh on the list, but if you add them together, they move up. Would there be further work done...? Say, for example, an investment is coming from Hong Kong. With the state of affairs there, would there be extra analysis? The second-largest after that is China. That would cause me concern. Is there fieldwork or anything you can highlight?

Bermuda is really interesting. I'm willing to bet that we're getting a lot of Bermuda money coming in because it's a tax haven. That's aside from Hong Kong. With respect to Hong Kong, perhaps you could answer that.

Mr. Tim Hahlweg: As I mentioned, I can't get into specific operational reasons. In this secure space, I'm very glad that we have your NSICOP colleagues that we engage with to talk about these specific threat actors. I did mention China and Russia specifically as they have been noted in the public forum before, but I can tell you that the nature of the threat prescribes how much effort we put against looking at this from an investigative perspective and then providing that advice to the government, which then ultimately takes the decision.

Mr. Brian Masse: Thank you.

Mr. Rochon, one of the biggest buyouts that we have had in Canada is in our manufacturing sector. We saw the response with COVID-19. Where I'm from, the auto sector has diminished quite a bit, but we still have capacity there. One of the plants that is now producing PPE is one that we actually had to fight to keep open a number of years ago.

Is there any kind of a lens happening now on our manufacturing or an analysis of it? It's been shrinking significantly as part of our economy over the last number of years. It's pretty much vulnerable. Also, what we have left over are often branch plants that are owned, operated and managed for the most part for product realignment from other countries. Is there anything related to this that is being determined or at least re-examined in the lens of not having decision-making for PPE?

Mr. Dominic Rochon: Thank you for the question.

What I would say from a national security threat perspective sort of dovetails to the question you were referring to my CSIS col-

leagues a moment ago. Obviously, national security covers a broad swath of areas.

In light of the pandemic that we just went through, all of a sudden issues of manufacturing in personal protective equipment, or indeed biopharma, have increased in terms of interest. Analysis is being done when it comes to investment in those areas, absolutely. That comes to bear in terms of our analysis when we're looking at various investments to decide whether or not they pose a threat to supply chains or things of that nature.

• (1545)

Mr. Brian Masse: Does that also include a bit of a competition lens? I've often advocated updating our competition laws. Is there a bit of a competition lens put on that? We maybe could have a lack of movement to produce things because they don't want to increase competition if it's a foreign subsidiary operation.

Mr. Dominic Rochon: From a competition perspective, I think I will defer to my colleague at ISED, Mr. Davies.

Mr. Mitch Davies: Madam Chair, I think it's an important question on the role of manufacturing.

Obviously, we count on our manufacturers to help produce this critical equipment in this particular time. I would say also, just in terms of the foreign investment, that we do have to realize that some of those large foreign investments are anchoring our supply base as well, our small businesses, and came more or less to our rescue to produce necessary equipment. There's a relationship between these things.

The Chair: Thank you so much.

We'll now move to the second round. I offer a gentle reminder—we're very tight on time—to respect the cards.

MP Gray, you have five minutes.

Mrs. Tracy Gray (Kelowna—Lake Country, CPC): Thank you, Madam Chair.

My questions today are for CSIS.

In 2016, concerns were raised about the purchase of InnVest Real Estate by a company called Bluesky. The Financial Post reported that Bluesky may have connections to a Chinese state-owned enterprise, Anbang. The Financial Post also stated that the CEO of Bluesky said that she was representing Anbang but "it didn't want to be named as the buyer".

Mr. Hahlweg, do you think transparency in the use of intermediaries in these acquisitions is a gap that should be better addressed by the Investment Canada Act?

Mr. Tim Hahlweg: It's a great question. I'm going to have to defer part of that question to my colleagues from ISED and, potentially, Public Safety.

I can say that it is obviously a concern from a national security lens if people are trying to obfuscate their original intent or their goals in this area. This is why we put in a lot of efforts from a service perspective in investigating these types of things.

I would defer to my colleagues from ISED regarding the other part of your question, because I cannot speak to any specific transaction.

Mrs. Tracy Gray: Fair enough. If I may, actually, just because I have a limited amount of time, I'll go thorough a couple of other questions first, rather than flipping back and forth, because that does eat up time.

Does CSIS consider keeping Canadians' data stored within Canada versus companies storing that abroad? What is your opinion on that with respect to national security?

Mr. Tim Hahlweg: I'm not sure I fully understand the scope of your question. Obviously, protecting Canadian data is hugely important for national security, and as I mentioned in my opening remarks, that is a concern for us that we highlight in all our public reports and in all our talk on economic espionage. It's one of the primary sectors we want to protect.

Mrs. Tracy Gray: Thank you.

I think part of this context is when we're talking about hotels potentially, the data owned by a hotel, and if that hotel is owned by an SOE, would that be more at risk for espionage.

Mr. Tim Hahlweg: I'm not sure if it would be more specifically at risk. It would depend on the circumstances. But going back to my original comments, having a broad range of Canadian data going to an SOE, which is linked to another country's intelligence organization, is problematic from a national security perspective.

Mrs. Tracy Gray: In your 2019 report, CSIS touched on potential risks to control of strategic sectors. Would you consider Canada's hotel and hospitality sector strategic?

Mr. Tim Hahlweg: I don't know about strategic. I would turn that question to my colleague Dominic Rochon.

From our perspective and our lens, organizations that hold significant amounts of personal information on Canadians, as I mentioned, critical infrastructure including the telecommunications, transportation and energy sectors, but also emerging technologies such as artificial intelligence, quantum information processing and semiconductors, that's our principal concern right now from a service perspective.

Mrs. Tracy Gray: Are there any other potential national security risks that can arise from a foreign state-owned enterprise backed corporation owning a hotel or real estate chain in Canada, for example? Do you have any thoughts on that?

• (1550)

Mr. Tim Hahlweg: I couldn't speak to those specific operational areas, but generally any time we have a state-owned enterprise that has its own national interest advanced and in the fore as opposed to Canadian interests, that would be problematic.

Mrs. Tracy Gray: Some health experts have called on the government to start a registry for those who lobby or communicate on behalf of foreign principals to influence Canadian government policy. Would you say that implementing such a registry would be a step in the right direction for transparency?

Mr. Tim Hahlweg: Again, that's a policy consideration, and I would turn to my colleagues in ISED for that.

Mrs. Tracy Gray: Do you have any recommendations for us today on the Investment Canada Act?

Mr. Tim Hahlweg: Absolutely, thank you very much.

The recommendation, as I indicated, is that we will continue to investigate. We are very engaged, very active, with our domestic and our foreign partners in this space, but as I mentioned, I think getting out there proactively and educating anybody in this space and anybody in a vulnerable sector is critical.

The Chair: Thank you very much.

Our next round is with MP Jowhari.

You have the floor for five minutes.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Madam Chair.

Thank you to the witnesses.

I'm going to start with CSIS and Mr. Hahlweg.

Mr. Hahlweg, in your submission you state:

CSIS observes that technology and know-how, particularly in academia and small-to-medium enterprises, is often less protected and more vulnerable to state-sponsored espionage. The national security community and the business community have a shared interest in raising public awareness regarding the scope and nature of state-sponsored espionage against Canada and its potential effect on our economic growth and ability to innovate.

Mr. Hahlweg, I understand raising awareness is important, but how does that work into the national security review on the guideline, whether it's the review or whether it's assessment? How is what you just stated taken into account?

Mr. Tim Hahlweg: I think it's a great question.

By educating people in vulnerable sectors, especially now in the COVID context, if we use the biopharma example, that education piece and that outreach is critical for these companies to know and be aware when they might be vulnerable to attack.

Once they are armed with that information, they can start to spot signs and then they can get in touch with the government to say they think something is going on here and you might want to review this. That education piece kick-starts everything, because we're only alive to the threats when they're brought to our attention. That's the importance of that outreach.

Mr. Majid Jowhari: I'd like to hear Mr. Davies' input on that, especially on the innovation.

Mr. Mitch Davies: With so many small and medium-sized enterprises with a lot of really interesting technology in Canada, these types of businesses may not have the significant corporate resources to make the assessments sometimes that might be required, and of course that's important. They are also often lacking in financial resources and need investment.

In some ways it keeps the doors open. People come through the doors, make offers and so forth.

Mr. Majid Jowhari: That's exactly where I wanted to go. You took the words out of my mouth when you said that not only do they not have the financial resources, but also they do not have the capacity to do this.

If you're talking about a small business, an SME that has anywhere from 10 to 15 people, and they are focusing on, let's say, innovation and the environment, they may not have the capacity. How do we safeguard against it?

Mr. Mitch Davies: The committee's review of this is timely and important in that regard to raise awareness.

My colleague from the service has also mentioned extensive efforts being undertaken by CSIS to get out there and talk to Canadian businesses. Of course, we do that in partnership with them, and support them in that, because we have many connections in the business sector.

Mr. Majid Jowhari: For us to be able to get out and talk to small businesses, we need the partnership from all the different departments that are being discussed.

Is that in the mandate? Does sufficient funding exist to be able to do this or do we need to go back and advocate for the education, as well as the funding for the departments to spearhead that?

• (1555)

Mr. Mitch Davies: Certainly, advocacy is important. I have made that comment.

There were also, in a budget two years ago, I believe—my colleagues might remember the exact budget—additional resources added to the system for the investment review process. It was very much aimed at strengthening the overall network in government that does this work, recognizing its importance.

Mr. Majid Jowhari: Mr. Rochon, I see you nodding. Can you chime in?

Mr. Dominic Rochon: We also outreach public safety. Part of that outreach is with our provincial and territorial friends, of course. Educating individuals at the forefront of investment attraction or securities is part of our mandate.

As Mr. Davies pointed out, the government did invest in economic security writ large, putting in something like \$67 million. The ICA is but one tool. We have export controls, controlled goods regulations, the banking sector and the Bank Act, so there are many controls in place. Economic security is a suite of efforts, including raising awareness.

Mr. Majid Jowhari: Thank you.

The Chair: Ms. Rempel Garner, you have five minutes.

Hon. Michelle Rempel Garner: Thank you, Madam Chair.

Mr. Davies, has the government advised your department to provide any recommendations on potentially lowering the threshold for review on the ICA?

Mr. Mitch Davies: The question of lowering the threshold, if you're speaking of the dollar thresholds that apply in terms of the WTO, the free trade agreement, or SOE, those—

Hon. Michelle Rempel Garner: Specifically, the net benefit test.

Mr. Mitch Davies: Yes, that would be the part of the act where there are dollar thresholds.

There are important trade law implications—

Hon. Michelle Rempel Garner: Just a straight yes or no. Has the government advised you to undertake any work to lower that threshold, or conversely, has your department provided advice to the government that it is something it should be undertaking?

Mr. Mitch Davies: Canada has made a number of commitments in trade agreements in terms of the openness of its trade regime, and it's a ratchet provision—

Hon. Michelle Rempel Garner: That's not particularly helpful. I was looking for a yes or no, Mr. Davies. That's not helpful.

Mr. Mitch Davies: There are legal issues with respect to reducing the limits.

Hon. Michelle Rempel Garner: I was just looking for a yes or no in light of COVID.

Has the government directed your department, or have you provided advice to the department that the definition of state-owned enterprise should be broadened to look at state-influenced enterprises, and have a greater scrutiny on shell companies?

Mr. Mitch Davies: The definition in the act is actually quite broad. It encompasses direct and indirect influence, influence of individuals, and it allows the minister to make a determination after taking into account all of the facts. In fact, if you ask the members of the bar, and I believe you've had a number of them before you, they would probably say that is quite an open provision, and it's actually one that we would log—

Hon. Michelle Rempel Garner: So I take that as a no?

Mr. Mitch Davies: Well, the provision is quite broad as it's structured now.

Hon. Michelle Rempel Garner: Thank you.

Mr. Hahlweg, has your department advised the government that there should be certain countries in which Canada, or Industry Canada, or any department, should be providing greater scrutiny of corporate acquisitions, given the current global context?

Mr. Tim Hahlweg: There are a number of threat actors out there, as I noted, so within the classified space with your NSICOP colleagues, we do have those discussions about the countries that are potentially problematic. Foreign interference cuts the swath, and we've been subject to foreign interference and economic espionage for a number of years.

Hon. Michelle Rempel Garner: To your knowledge, has the government acted on your recommendations?

Mr. Tim Hahlweg: I can't comment specifically on that, because it does impact operational considerations.

Hon. Michelle Rempel Garner: You make our jobs pretty difficult, I have to say.

Mr. Davies, has your department provided any advice to the government to enact either legislative change or regulatory change to provide greater scrutiny on a state-owned enterprise acquisition or state-influenced acquisition from countries that may have been flagged either by CSIS or by Public Safety?

• (1600)

Mr. Mitch Davies: Madam Chair, the minister's policy statement, which was made in April, was to provide very much that direction on investments by state-owned enterprises. Investments that might encompass investments in health care related to public health or critical goods would be subject to enhanced scrutiny, so I would say that is a direct response—

Hon. Michelle Rempel Garner: What does that mean? What does “enhanced scrutiny” mean?

Mr. Mitch Davies: As I said in my opening comments, Madam Chair, it could involve more questions in the area of looking into the impact or potential impact on the health system, critical infrastructure or the supply chains that are so important to Canadians right now. It could lengthen the time of the review process, and obviously, we want to signal to investors that if they're contemplating a sale, they should take that into account.

Hon. Michelle Rempel Garner: Thank you.

With regard to enforcement, an investment might be approved with promises from the company or conditions put in place by the government, but there seems to be little enforcement of those conditions. Has the department provided any advice to the government, Mr. Davies, to propose legislation or a stronger regulatory framework to enforce conditions placed on SOE acquisitions that might be approved by cabinet?

Mr. Mitch Davies: Madam Chair, it's of course a policy question in terms of direction. Appropriately, you'd ask that question of the minister with regard to any policy changes that might be considered with the act—

Hon. Michelle Rempel Garner: I asked if your department had provided advice to the minister on that.

Mr. Mitch Davies: We administer the act and ensure its enforcement and work in that regard, and there's a penalty system under the act, the ability to—

Hon. Michelle Rempel Garner: This has been a very frustrating line of questions.

Thank you, Madam Chair.

The Chair: Thank you very much.

The next round goes to MP Lambropoulos.

You have the floor for five minutes.

Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.): Thank you, Madam Chair.

Thank you to all of our witnesses for being with us today.

My first question is for anybody who can answer it.

Are there currently any measures in place to investigate whether or not foreign investors are influencing the companies that are trying to invest in Canada, the ones that are not as obviously influenced by the state in different countries?

Mr. Dominic Rochon: Let me jump in. I think anyone can answer the question, but the truth of the matter is, whenever a flag is raised with regard to any potential investment, we're looking at whether there's a vulnerability, and we're looking at whether or not the actor, as the case may be, poses a threat. It's on a case-by-case basis. As we look at areas of concern, vulnerabilities, we will assess them each on their own merits.

Ms. Emmanuella Lambropoulos: Thank you.

Mr. Hahlweg, you mentioned that you only really investigate these when a threat is brought to your attention. How exactly are threats brought to your attention? Are they really brought to you by the ministries, or do you find out in other ways as well?

Mr. Tim Hahlweg: It's a great question. As part of the ICA process, obviously we're very engaged from a national security community perspective, along with DND, the RCMP and other people. We have a lot of different government departments out of which that threat information may emerge, and then we have those discussions as to whether or not they meet something we need to investigate further. That could be driven by Public Safety. It could be driven by ISED itself or by the service. It comes from a lot of different areas. We can also, given our investigative mandate, come up with some of these on our own as well.

Ms. Emmanuella Lambropoulos: Thank you very much.

I believe my next question is for Mr. Rochon.

You had mentioned earlier that the Investment Canada Act is quite broad in order to give the minister the powers to investigate whatever he sees as a threat. Could you please tell us all of the benefits of keeping it broad and not having some kind of a baseline?

Mr. Dominic Rochon: Indeed, the truth of the matter is that national security needs to be flexible, because what is a threat today may not have been one last year. The best illustration of that is, as we were talking about with Mr. Masse earlier, personal protective equipment. A year ago a company investing in a manufacturing company that is developing PPE would not have popped up on anyone's radar, but now it would fall into play with regard to supply chains and dealing with pandemics.

National security needs to be flexible. To expand on the comment that Mr. Hahlweg just made, Natural Resources Canada may talk about critical minerals, for example, and Health Canada may talk about supply chains for vaccines. At Public Safety, we're particularly interested in sensitive technologies like artificial intelligence or quantum computing. Different departments have different areas of expertise and they can flag certain things that are of importance to national security. With that flexibility, we're then able to turn our attention to various investments to decide whether or not there needs to be mitigation or action taken with regard to any potential investment.

• (1605)

Ms. Emmanuella Lambropoulos: Thank you.

My final question goes to all of our witnesses.

Have you noticed any gaps in the Investment Canada Act, and do you recommend anything that could strengthen the act? I'm sure that working with it on a daily basis, you could probably think of ways that we could strengthen it. What are those ways?

Mr. Mitch Davies: Madam Chair, I'll take that question.

I think, and I'm going to refer back, I can't overemphasize the importance of awareness. This act is meant to be used as a reserve instrument when, perhaps, measures haven't been taken by the parties involved that might take into account Canada's interests, particularly in the area of security. The more parties are able to take that into account in their planning, the more they're going to follow investment transactions that they can actually see through. To encounter a review and a notice from us, or to have a review process that disallows an investment, is very disruptive.

In other words, society has to take this on board. We actually need to have an increased general awareness so that the transactions that are going on, which are obviously rewarding and helpful for those businesses, also respect national security interests, which are very important as well.

Awareness is not a minor matter. It may not necessarily be a question of the nature of the law; it's actually what happens before you encounter the law.

Ms. Emmanuella Lambropoulos: All right. Thank you very much.

The Chair: Thank you.

[*Translation*]

I now yield the floor to Mr. Lemire.

Mr. Lemire, you have the floor for two and a half minutes.

Mr. Sébastien Lemire: Thank you, Madam Chair. I appreciate your taking the time to complete the second round of questions.

Yesterday, I was at a meeting of the Standing Committee on Finance at which representatives of the Canada Revenue Agency made a presentation. I asked them questions about tax havens. I wanted to know which countries were particularly targeted by their investigations to ensure that there were no tax optimization, tax evasion or tax avoidance schemes. To my surprise, Luxembourg was mentioned. You will understand that I was surprised to see that country ranked third in the table provided to us today by the Library of Parliament. However, this list also includes Switzerland, Hong Kong, China and Bermuda. It seems to me that these are all countries whose national interest may be different from Canada's.

I come back to the question of Luxembourg. Would it not be wise to question the interests of that country further, given that it is the third-largest country in terms of investment and is under investigation by the Canada Revenue Agency?

[*English*]

Mr. Dominic Rochon: I'll take a stab at answering the question. Thank you for bringing that to our attention.

I will note that CRA is one of the 19 departments and agencies that are at the table when we review items for national security.

The nature of a lot of the questions you're asking us is whether or not something warrants a proactive look at a specific area, for example, a specific country or a specific issue. The way the national security provisions work is that when something raises a flag—and it could be something coming out of Luxembourg, or it could be coming out of another country or a particular area—we bring to bear all of the intelligence from different departments and agencies, and CRA would be one of those, should something of interest pop up from that part of the world.

That's how I would answer the question.

[*Translation*]

Mr. Sébastien Lemire: Thank you for this very pertinent information.

Do you think our current law is strong enough to protect us from investments by countries that are tax havens?

[English]

Mr. Mitch Davies: Madam Chair, I would simply say that the law encompasses the national security review process and obviously a net benefit review. Of course, it's one statute. There are many statutes, as well as the Income Tax Act, which of course is directly aimed at the question of collecting the revenues that are due and payable to the Government of Canada. Any measures taken to contravene that are a matter under another law.

I guess that would be the most straightforward answer to the question of the member.

• (1610)

The Chair: Thank you very much.

That is a little over the time, but I wanted to make sure that you had a chance to answer.

We'll now go to MP Masse for two and a half minutes.

Mr. Brian Masse: Thank you, Madam Chair.

I'll put this question out. Mr. Davies, I think you might be the best to respond, but anybody else can answer too.

Under the current laws we have now, if a foreign investor comes in and buys a company, they have a footprint here. Later on, if their operations are taken over by China, by a state-owned operation, or by some other type of equity form or something else, is there a review done? The ownership de facto changes in our country as a result of that company being bought internationally.

Do the current powers that we have under ISED, CSIS, Public Safety or even the minister warrant a divestment to protect Canadians? Can we issue an order of divestment?

Mr. Mitch Davies: Madam Chair, the question is, if there were to be a subsequent takeover in another country that could affect a Canadian business that's been part of a foreign-held enterprise, is that investment something that can be reviewed under the national security provisions of the Investment Canada Act. I mean, there is no simple answer. Of course, each of these—

Mr. Brian Masse: I just want to know if we can do it, so there is a simple answer. We either can or can't do it. Can we order divestment?

Mr. Mitch Davies: The question would be, can we order a review and is it lawful to have a review of that investment? Then, in a case where there can be an order for review, obviously divestiture could be an outcome of such a review. There would be a question at the beginning as to whether there's jurisdiction in the act, and you'd have to look at the facts. I would say that I'm not trying to evade it; I think it's just a question legally.

In fact, there would be members of the bar who would be arguing this question as to whether an investment has occurred, but if there's a Canadian business where the control is taken over, that's a control change, and if it's a foreign controller, then it could well be something that we could review under the act. I could go that far, sir.

Mr. Brian Masse: So we can order a divestment at the end of the day. That is a possibility under our current laws.

Mr. Mitch Davies: Madam Chair, it could be an outcome, but again, I would say that the fact circumstance from the point of view of the law would have to be taken into account—

Mr. Brian Masse: Fair enough.

Mr. Mitch Davies: —but the Canadian business being bought is something that could well be under the scope of the act, for certain.

Mr. Brian Masse: Thank you.

I know my time is up. Thank you, Madam Chair, and thank you to the witnesses.

The Chair: Thank you very much.

With that, we end our first panel.

On behalf of the INDU committee, I want to thank our three witnesses today. It is public service week, and I want to thank you again for joining us, for your excellent testimony and for helping us in this study.

With that, we will suspend for a few minutes so we can switch over for the next panel. We'll be starting momentarily.

• (1610)

(Pause)

• (1625)

The Chair: We will continue, and I'm going to yield the floor to MP Erskine-Smith.

Go ahead, MP Erskine-Smith.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks, Madam Chair.

Consistent with the notice of motion that I provided to the committee on Monday, I move that our committee invite senior executives from Loblaw, Empire and Metro to testify to our committee and explain their decision to cancel, on the same day, pandemic pay for essential workers in the middle of the pandemic, and explain to this committee and the Canadian public how that decision is consistent with competition laws.

The Chair: Thank you very much, MP Erskine-Smith. The motion is in order.

With that, I open the floor for debate.

Mr. Brian Masse: Madam Chair, I would like to add witnesses. I want organized labour to present in front of the committee as well so that the workers are represented through their organized labour associations, like Unifor and others. There are just a few.

I hope that would be taken as a friendly amendment. I support the motion and thank the member for bringing it forward.

The Chair: We have a friendly amendment on the floor.

Is there any debate on the friendly amendment?

Mr. Nathaniel Erskine-Smith: Madam Chair, perhaps for simplicity we could simply say “and other witnesses”. Monday we have an in camera meeting to discuss committee business. We could discuss who those other witnesses might be and could flesh out a list.

I'm perfectly comfortable with this. I think we should have the workers' representatives attend. It's worthwhile to discuss in camera which witnesses should attend and speak on behalf of workers at our committee.

Mr. Brian Masse: Sure. That's very good.

The Chair: Thank you very much.

Is there further debate on the amendment?

I'm going to turn it over to the clerk for a recorded vote on the amendment.

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): I have a point of order, Madam Chair. If there's unanimous consent, we can deem the amendment and the motion adopted so that we can get on with the study that we're scheduled to do today. We would be comfortable with proceeding in that fashion.

The Chair: My apologies, but we cannot have unanimous consent in these virtual meetings. We must have a recorded vote, so unfortunately we have to go through the recorded vote.

I will turn to the clerk.

(Amendment agreed to: yeas 11; nays 0 [*See Minutes of Proceedings*])

• (1630)

We will now do a recorded vote on the motion, as amended.

(Motion as amended agreed to: yeas 11; nays 0 [*See Minutes of Proceedings*])

With that, we will now move to our witnesses.

Witnesses, thank you very much for your patience.

As we are running a little late on time, I'm going to give you a quick heads-up, as a reminder. Please make sure that you are on the correct channel for the language that you will be speaking. When you see this yellow card, you have 30 seconds remaining in your intervention. The red card means there is no more time for your intervention. Each witness group will be given five minutes to present, after which we will go through rounds of questions.

I'm going to introduce the witnesses when they speak so we can save some time.

We will start with Mr. Houlden.

You have the floor for five minutes.

Professor Gordon Houlden (Director, China Institute, University of Alberta, As an Individual): Thank you very much, honourable committee members, for this opportunity to speak to you today.

The China Institute, which I head since leaving government, is the only think tank in Canada focused solely on China. Others cov-

er all of Asia or other issues. We cover economy, social issues, political issues and bilateral relations.

Frustrated when I went to the China Institute as its first director about the lack of good data on foreign and Chinese investment in Canada, we created, at a considerable expense of our own, a comprehensive database. It tracks right back to the parent Chinese company, be it in Hong Kong or on the mainland.

For example, Statistics Canada counts less than \$20 billion CAD of Chinese investment, and the Chinese Ministry of Commerce is similarly flawed. There are flaws at both. They have their own utilities.

We have collated over \$93 billion CAD of Chinese investment in this country. We sell a subscription. I'm not here to advertise it, but our subscribers include the Library of Parliament, Public Safety Canada, GAC, ISED, Natural Resources Canada, the U.S. embassy and USTR. We have many subscribers also from law firms and private business.

We use very smart Ph.D. students, largely. Using a range of logarithms and databases in Canada, Europe, the United States and China, we pull together all of this information.

We went back as far as 1993, when Chinese investment was almost non-existent. The big acceleration took place in this century, in 2003-04, when China began to make investments of \$2 billion to \$3 billion, largely in the energy sector but also in mines. Then there was the blockbuster deal of 2013, the acquisition of Nexen by CNOOC. That was, at the time, the largest Chinese investment ever abroad. There have been much larger ones since.

Chinese investment peaked in that year, reaching \$21 billion of investment. It dropped in 2018-19 to between \$2 billion and \$4 billion. We expect this decrease to continue in 2020 due to three reasons: the global economic recession, the bilateral difficulties in the Canada-China relationship and also China's own stricter rules about who can take money out and what they can buy. For example, Anbang has been told, “Don't be buying retirement homes. Stick to your core business, which is insurance.”

From my perspective, maximum market intervention is not a good thing. Foreign investment has, for centuries, quite literally, helped this country develop, as it has the United States. Traditionally that capital has come from Europe and the United States, but as the centre of gravity moves towards Asia, it has changed. It is important, particularly in capital-intensive resource industries. We have lots of them. They do need capital.

Foreign investment can bring much needed innovation, and it also can bring inclusion in supply chains, but there is always a risk involved, and in China—I can be frank as I'm no longer in government—state-owned enterprises are not independent actors. Even private firms can be state-controlled. Not all SOEs are created equal. There are almost 300,000 of them. Some of them might be state-owned enterprises focused on food production in a small municipality in China, which are low risk.

I'm more nervous, quite frankly, about a private Chinese company buying a high-tech firm for \$20 million, where the IP can either be carried away in a briefcase or go down a fibre optic cable. I'm more nervous about that than I am about a \$100-million investment in a coal mine, where everything is up and visible on the surface, China is taking the product, Parliament is supreme, and *in extremis* they can stop that exit. IP, once it's gone, is gone. That, to me, is the risk. You need a more sophisticated analysis than just looking at SOEs versus private companies, which isn't to say that SOEs can't perform badly.

In Africa, where I have some experience looking at Chinese investment, sometimes the SOEs have better practices, more environmentally sustainable and better labour practices, than some of the private firms, which behave very badly indeed. It's not a one-size-fits-all thing.

Greenfield investment is generally better in my view. I know of a wire wool manufacturer in a community with very high percentage of African Americans in the American south. It went bankrupt. China came in, bought the firm and rehabilitated it with a lot of money of its own. The mayor of that town is very happy, and unemployment has gone down. Similarly I'd argue, in a Canadian example, Feihe International put \$225 million into a greenfield investment to produce infant formula. That's a company that started off as an SOE and then was privatized.

• (1635)

It's not easy, even when you look hard, to tell sometimes what is an SOE and what isn't—

The Chair: Unfortunately, Mr. Houlden, that's your five minutes, so I'll have to stop you there. My apologies.

Prof. Gordon Houlden: No, don't apologize.

Thank you.

The Chair: As our next witness, I'm inviting Mr. Kingston from the Business Council of Canada.

You have the floor for five minutes.

Mr. Brian Kingston (Vice-President, Policy, International and Fiscal, Business Council of Canada): Thank you, Madam Chair and committee members. I very much appreciate your invitation to take part in these consultations on the Investment Canada Act, ICA.

The Business Council of Canada represents CEOs of 160 leading Canadian companies, and we're represented across the country in every sector and region. Our members employ around 1.7 million Canadians and account for about half the value of the TSX.

I would like to begin by underlining the critical importance of foreign investment to the Canadian economy. Prior to COVID-19 and the associated economic downturn, advanced countries around the world were already experiencing slower growth prospects, largely driven by demographic forces and weak productivity growth. In addition to those challenges, though, Canada faced heightened trade uncertainty, ongoing tensions with China, crippling rail blockades and a deteriorating investment climate due to regulatory uncertainty.

The already weak outlook for the economy pre-pandemic has now reached previously unthinkable lows. According to the PBO's analysis released just today, the economy is expected to shrink by 6.8% this year, and that is the weakest on record since the series began in 1961.

As we start to think about economic recovery, trade and investment absolutely have to play a central role. We are a trading nation. We depend on open access to the world. Foreign investment not only produces jobs, it enables technology adoption, promotes new management techniques and creates market access opportunities. We have a clear interest in creating stability, transparency, predictability, non-discrimination and protection for Canadian companies that invest abroad, but also for foreign investors wishing to invest in Canada. We need to ensure that any changes to the rules governing investment in Canada are as consistent and stable as possible. We absolutely cannot afford, as a country, to be perceived as a difficult place to invest.

Unfortunately, I believe that Canada could do better when it comes to attracting investment. Global FDI stocks have increased dramatically over the past 25 years, but Canada's share of global investment has been on the decline. Looking at the 2018 data, our share of total world inward investment stocks fell to 2.8%, which is the lowest level in about 20 years. Meanwhile, countries with more competitive business environments have witnessed an increasing share of global inward investment stocks. We must do better.

Turning to the ICA specifically, we support the government's recent policy statement of April 18 enhancing scrutiny under the ICA, given the extraordinary circumstances we find ourselves in. The pandemic and the associated economic fallout could create opportunities for acquisitions by companies that are motivated by non-commercial factors. That could put Canadian interests at risk. However, because we depend on trade and investment, we believe that the government should be very careful not to discourage commercially motivated foreign investment activity, and given that markets have rebounded somewhat since the depths of the crisis, the opportunity for predatory acquisitions by SOEs, for example, is diminishing. We think that these measures should be temporary in nature.

Finally, on the question of strategic industries and the ICA, the legislation clearly provides provisions to protect Canadian national security and absolutely must continue to do so, but I do think what requires a bit more thinking is identifying exactly what industries should be considered strategic and make sure that we have the economic framework in place to support those sectors.

For example, I think what we've witnessed throughout this pandemic is the importance of a strong—

• (1640)

The Chair: My apologies, Mr. Kingston, but is it possible for you to move your mike a little bit away from your mouth? It's a little too close.

Mr. Brian Kingston: Is that better?

The Chair: That's perfect, thank you.

Mr. Brian Kingston: One of the things that we've witnessed through the pandemic is the importance of a strong manufacturing base. Companies like CAE, General Motors and Linamar pivoted very quickly to produce critical equipment used in the fight against COVID-19. As businesses re-examine their supply chains with an emphasis on resiliency and insulating themselves from future disruptions, I think we really have an opportunity to make sure that Canada puts in place the framework to help these companies grow here to attract new investment into Canada in those critical sectors. That could be done through improving the regulatory environment and addressing the tax system. Those measures would help make Canada more attractive and ensure that we have that strong base to protect us in the future.

I'm happy to expand on that, and I'll leave it there.

Thank you very much.

The Chair: That was good timing, thank you so much.

I will now introduce the Canadian Bar Association. With us today we have Debbie Salzberger, Michael Kilby and Marc-André O'Rourke.

You have the floor for five minutes.

Mr. Marc-André O'Rourke (Lawyer, Advocacy, Canadian Bar Association): Thank you. I'll just set the stage here.

Good afternoon, Madam Chair and members of the committee.

I am a staff lawyer with the Canadian Bar Association, and we're very pleased to be part of your study.

[*Translation*]

The Canadian Bar Association, or CBA, is a national association of more than 36,000 lawyers across the country.

The CBA's primary objective is the improvement of the law and the administration of justice. It is with this goal in mind that we are here today on behalf of the Competition Law Section of the CBA.

[*English*]

Our written brief was prepared by the competition law section of the CBA, namely, experts from the foreign investment review committee. With me today are Debbie Salzberger and Michael Kilby, chair and vice-chair of that committee.

I now turn it over to Michael and Debbie to address the main points of our submission.

Thank you.

Ms. Debbie Salzberger (Chair, Foreign Investment Review Committee, Competition Law Section and Partner, McCarthy Tetrault LLP, Canadian Bar Association): Thank you, Marc-André.

Thank you to the committee and to the chair.

On behalf of the Canadian Bar Association's foreign investment review committee, we offer two primary conclusions in respect of the reform proposals put forward in the context of the current pandemic.

I will speak to the first conclusion relating to national security reviews, and my colleague Michael Kilby will speak to the second conclusion, which relates to national benefit reviews.

Our first conclusion is that the government has no practical need to adjust the ICA's national security review regime in response to the COVID-19 crisis, given the tremendous powers already available to the government under that regime and the April 18, 2020 policy statement articulating its intention to utilize its existing powers to more closely scrutinize certain investments under the ICA.

The ICA authorizes the government to review any foreign investment by a non-Canadian involving a Canadian business on national security grounds where the government believes that an investment may be injurious to national security.

The national security provisions of the ICA do not specify threshold requirements based on the size of the target, the transaction nor the extent of the interest being acquired by the foreign investor, nor is the scope of activities that may implicate national security defined. This means that the ICA's national security provisions apply to an extremely broad array of investments, including minority investments across a wide variety of industries at the government's discretion.

The April 18 policy statement amplifies the existing discretion and the latitude available to the government to assess transactions that may be injurious to Canada's national security and explicitly includes opportunistic investments such as investments in public health-related businesses, investments in businesses that supply critical goods or services, none of which is defined, and investments by state-owned enterprises or private investors influenced by state-owned enterprises.

Under the current legislation, the government can issue a notice initiating a national security review process at any time from when it becomes aware of an investment until 45 days after receipt of the investor's filing under the Investment Canada Act, or 45 days after it learns of the investment if no filing is required under the legislation. In sum, the current legislation provides the government and its intelligence partners a significant amount of time to determine whether the investment raises potential concerns, and in such cases, has broad discretion to extend its review and ultimately mitigate any identified risk or block the investment altogether.

The April 18 policy statement articulates the government's intention to utilize these tools fully in the COVID-19 environment.

For these reasons, there is no practical need for any immediate adjustment to the ICA in response to the potential threats arising out of the current environment.

I will now turn it over to Mike to talk about our conclusion with respect to net benefit reviews.

● (1645)

Mr. Michael Kilby (Vice-Chair, Foreign Investment Review Committee, Competition Law Section and Partner, Stikeman Elliott LLP, Canadian Bar Association):

Thanks, Debbie.

I'll be very brief.

Our second conclusion is that the government's ability to adjust the ICA net benefit thresholds in response to the crisis may be significantly limited by Canada's international trade obligations and, in any event, any such adjustment may result in an unintended chilling of desirable foreign investment in Canada.

I see I just have a minute, so I'll be very quick.

The net benefit thresholds are set out in our submission. You're probably also aware of them from other testimony provided. They have been increased substantially since 2015. This has been a policy choice of successive governments. The very high nature of the thresholds means that very few transactions are subject to that benefit review. Approximately nine were subject to review last year.

I see I have a red card, so I will stop there. I want to respect the time.

The Chair: Thank you.

[*Translation*]

I now invite the representative of Équiterre to take the floor.

Mr. Viau, you have five minutes.

Mr. Marc-André Viau (Director, Government Relations, Équiterre): Thank you, Madam Chair.

Distinguished members of the Standing Committee on Industry, Science and Technology, thank you for having us here today. My name is Marc-André Viau, and I am the director of government relations at Équiterre. I will be sharing my time with Ms. Tzeporah Berman, from Stand.earth.

We are here today as part of this committee's study on foreign investment, following the adoption of the motion. Our contribution to the work of this committee is to present to you the results of a study that my colleague conducted, and with which Équiterre has partnered, on foreign ownership of the oil sands.

This is a report that shows that 70% of the oil sands are foreign-owned. So we're wondering if it's really still a Canadian resource.

The Chair: Mr. Viau, forgive me for interrupting, but I'm told the interpreters are unable to do their work because you are speaking too quickly.

Can you slow down, please?

Mr. Marc-André Viau: I'll try, Madam Chair.

If profits are increasingly going into the pockets of foreign investors, then the question arises as to who benefits from this operation. Is it Canadians, who have to foot the cleanup bill? My colleague will talk more about this in a few minutes.

Now, with respect to the motion passed and the specifics of the study, our report provides some answers as to the extent to which firms in strategic Canadian industries have depreciated as a result of the COVID-19 crisis.

As you will see, the loss in the value of oil sands companies predates the pandemic, and we invite the committee members to consider the reasons for this devaluation.

In addition, if the phenomenon predates the pandemic, committee members are invited to consider a second element of the motion, namely whether Canada should impose a temporary moratorium on acquisitions by the state-owned enterprises of totalitarian countries, in connection with the COVID-19 pandemic.

We also invite committee members to comment on why such a moratorium is more relevant now than it was in 2012 when the government approved CNOOC's purchase of Nexen. This raises the question of whether the nature of the political regime from which the investment is made is significant and whether this could be correlated with the devaluation.

Finally, the assessment thresholds in the Investment Canada Act are appropriate for a net benefit review. We support a review of the net benefit criteria as defined in section 20.

We invite elected officials to review paragraph 20(e), which deals with the compatibility of investments with national industrial, economic and cultural policies.

Considering that industrial, economic and cultural policies are increasingly linked to environmental policies, and considering Canada's progressive trade agenda, I think it would be good to include the concept of environmental compatibility in section 20 so that we can really talk about net benefits to Canada.

I now give the floor to my colleague Tzeporah Berman.

• (1650)

[English]

Ms. Tzeporah Berman (Director, International Program, Stand.earth): Madam Chair, thank you very much for having me here today.

I've been asked to speak briefly on the results of our investigative study of ownership and financial benefits from the oil sands.

I will say a quick word on methodology. This report is based on data from Statistics Canada, the oil companies' annual and quarterly reports, and data obtained from the Bloomberg terminal.

The global COVID-19 pandemic has devastated the global economy and plunged the price of oil to record lows.

I will provide a bit of context as to why we did this particular research. Even before the world was turned upside down by the first global pandemic in a century, as my colleague noted, the oil and gas industry in Canada, despite rising production levels, was cutting jobs, paying less in royalties, while demanding higher and higher subsidies. To be specific, despite increasing oil sands production, the number of jobs created by the oil and gas sector has continued to decline.

Since 2014, the industry has shed 53,000 jobs. In addition, reclamation of the oil sands, conventional oil and gas wells and pipelines in Alberta is now estimated to cost at least \$260 billion in liabilities. There is increasing concern that taxpayers, not polluters, will be left holding the bill for the cleanup of this massive toxic liability.

Finally, in addition, using WTO definitions, ISED studies are showing us that the federal government is subsidizing the industry with billions of dollars to producers, not consumers, providing disproportionate advantage to fossil fuel producers over renewable energy.

For many years, industry lobbyists and spokespeople have argued that increased support and greater subsidies were fair because

we all benefit from the oil and gas industry. While Canada has enjoyed many benefits of the oil and gas industry, this investigation reveals that the majority of profits from the industry are leaving the country.

We now know that most oil sands production is not owned by Canadians. Ten of the 14 publicly traded companies invested in the oil sands are headquartered in Canada, but only two of those are majority owned by Canadians.

The Chair: Unfortunately, Madam Berman, that is the five minutes. I believe you were sharing with Monsieur Viau.

Ms. Tzeporah Berman: Yes. Do I have 30 seconds just to summarize the findings?

The Chair: Absolutely.

Ms. Tzeporah Berman: I'll go right to the summary, then.

We found that 70% of oil sands production is owned by foreign companies. Foreign-controlled operational profit in the oil and gas sector doubled between 2012 and 2016. That's 3.5 times the economy-wide average. Even for the big five oil sands companies, through the first three quarters of 2019, their profit rate was 14.2%, almost double the Canadian industry average. They're doing well. They're making record profits. The majority of these profits are leaving the country.

Thank you.

The Chair: Thank you very much.

We will now turn to Osler, Hoskin and Harcourt.

Mr. Glossop, you have the floor for five minutes.

Mr. Peter Glossop (Partner, Competition, Osler, Hoskin and Harcourt LLP, As an Individual): Thank you, Madam Chair and honourable members of the committee, for inviting me to speak today. My comments are personal and do not necessarily reflect the views of my firm or clients.

I've been advising clients on the Investment Canada Act for over 30 years. During that time, I've seen the structure of the act evolve. In my early years of practice, the review thresholds were extremely low. Too many foreign investments were reviewed. The act didn't address state-owned investors or national security concerns. In contrast, today the act permits review only of significant investments and of all investments that could injure national security.

Because of COVID-19, administration of the act needs some temporary fine-tuning, but no significant changes.

I support careful scrutiny of state-owned investment and the application of national security considerations to all investments, as set out in the ministerial policy statement of April 18. I do not support lower review thresholds or a moratorium on state-owned investments from authoritarian countries, along the lines of the June 1 motion.

Lowering the thresholds runs counter to the trend in Canada's trade agreements for the last 30 years. If we adopt this change, Canada will send a strong signal that it is not open to foreign investment. It would reduce the options for Canadian business owners at a time of great financial distress, and it would call into question Canada's adherence to its international obligations.

Equally concerning is the proposed moratorium on acquisitions by state-owned enterprises, or SOEs, from authoritarian countries. How would "authoritarian" be defined? Not all SOEs are just government proxies. Some SOEs are legitimate investors, with corporate governance and a commercial orientation. Some SOEs are listed on a stock exchange and are accountable to their public shareholders.

The act already contains tools to carefully assess SOE investments on a case-by-case basis. All SOE investments are subject to review at a much lower threshold, based on book value. More of them tend to be captured relative to private sector investments. The definition of SOE captures a wide range of state-owned and state-influenced investors. The minister has the power to determine who is an SOE and whether an acquisition of control by an SOE has occurred. In a reviewable investment, an SOE must satisfy the normal net benefit to Canada criteria. The SOE investor also must satisfy additional criteria concerning good corporate governance and adherence to free market principles.

Problematic SOE investment from authoritarian countries can also be reviewed for national security reasons. Investments of any size can be reviewed on these grounds. The timelines in the act allow for a lengthy, careful review for national security. If enacted, Bill C-17 would enable the minister to extend these timelines further. Security review applies even when the investor does not acquire a complete Canadian business, and there are guidelines that list a full range of factors to be considered in the assessment. Using these powers, the government can block an investment, order a divestiture or allow it to proceed conditionally.

In conclusion, the review thresholds for private sector and SOE investments are set at appropriate levels. The existing review process for SOE investments is sufficiently thorough, and there is a robust national security review process.

Thank you for your time. I would be pleased to answer your questions.

• (1655)

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

I now turn to Michelle Travis from Unite Here Canada.

You have the floor for five minutes.

Ms. Michelle Travis (Research Director, UNITE HERE Canada): Thank you.

My name is Michelle Travis, and I am the research director of Unite Here Local 40, which represents hospitality workers across B.C. and is affiliated with our national union, which represents workers across Canada and the U.S.

Thank you for giving me the opportunity to speak to you today about the ICA.

In the context of COVID, the committee is studying the adequacy of the current ICA evaluation thresholds and whether to place a temporary moratorium on certain state-owned enterprises. In April, the minister announced that certain foreign direct investments in Canadian businesses will receive enhanced scrutiny. These measures will be in place until the economy recovers from the pandemic. We think enhanced scrutiny is needed; however, the real concern to us is the broader ICA review process.

There should be greater scrutiny of all deals reviewed by Ottawa, and that should not stop once we are on the other side of the pandemic. The valuation threshold for non-state-owned enterprises jumped significantly to \$1 billion in 2017 and is now adjusted annually. That was a huge increase, and the higher threshold suggests that fewer transactions involving foreign direct investment will be reviewed for their impact on Canadians.

While a temporary moratorium may be worth consideration for state-owned enterprises of authoritarian countries, we also ask if this will apply to companies that are not officially state owned, but may have deep ties with authoritarian governments. We urge the committee to focus more broadly on the rigour of the ICA review process itself.

We ask the committee to consider these questions: How rigorously does the government assess the net economic benefit of certain transactions, and how can the review be made more transparent? What due diligence review is conducted on the ultimate beneficial owners seeking to invest in Canadian businesses? What heightened privacy protocols are foreign buyers expected to adopt when undergoing ICA review? What would trigger a new security review for transactions already approved under the ICA? What recourse is there to publicly review the undertakings and commitments made by foreign investors?

The average Canadian hotel worker may appear to be far removed from these issues, yet some of them work for companies acquired by opaque corporate entities in transactions approved under the ICA. In 2016, B.C.'s public pension fund, BCI, sold its hotel management company, SilverBirch, and a portfolio of 26 hotels to Leadon Investment for over a billion dollars.

The ultimate ownership of Leadon remains opaque. The Vancouver Sun tried to learn more about Leadon at the time and found only a downtown Vancouver-based law firm's mailing address and one director who listed his address in suburban New York. The Hong Kong connection was not obvious.

That same year, in 2016, Beijing-based Anbang initiated negotiations to acquire InnVest Real Estate Investment Trust, one of Canada's largest hotel owners, but backed out suddenly. The Financial Post reported that Anbang did not want to be named as the buyer and when that was met with objections, their representative, Lydia Chen, said she was representing a new pool of capital based in Hong Kong called Bluesky, which acquired InnVest for over \$2 billion approved under the ICA review process.

Anbang was reportedly also under examination by China's insurance regulator at the time. They have denied any connection to Bluesky, but Anbang's former representative, Ms. Chen, is now the CEO of Bluesky and InnVest. Their ultimate beneficial ownership is unclear. Records from Hong Kong's corporate registry trace Bluesky to a shell company in the British Virgin Islands.

Questions about Bluesky's ownership bring us to Anbang, which underwent ICA review when it acquired Retirement Concepts for approximately \$1 billion in 2017. Retirement Concepts is British Columbia's largest private senior care chain with 21 facilities and others in Alberta and Quebec. The facilities continue to be operated by an affiliate of Retirement Concepts. We don't represent workers at these facilities, but do represent workers in U.S. hotels owned by Anbang, as well as those who work in a hotel owned by an affiliate of Retirement Concepts.

Critics of the takeover raised concerns about Anbang's murky ownership and its CEO's ties to the Chinese state. Others questioned whether Anbang would adequately maintain staffing levels and quality of care. One year after Anbang received approval under the ICA, it was seized by Chinese authorities; its CEO was sentenced to 18 years in prison for fraud and embezzlement, and the Chinese government took a 98% stake in Anbang. Notably, the B.C. government has since taken temporary control of four of its seniors homes that were reportedly failing to provide proper care to residents.

Despite murky ownership and other concerns, the Leadon, Bluesky and Anbang transactions appear to have moved relatively quickly through the ICA review process. We wonder what criteria was used to determine the net benefit of these transactions.

Then there's the larger political context to consider, at least in the case of Anbang. Prior to our heightened tensions with China, there were already concerns about China's efforts to obtain sensitive information through economic espionage and direct investments. This has not been limited to so-called strategic sectors.

In 2018, the Marriott hotel chain revealed that it was the target of a massive cyber-attack that compromised the personal information of over 300 million Starwood guests over a four-year period. The attack was reportedly traced to hackers working for China's Ministry of State Security.

• (1700)

In conclusion, if the point of the ICA review process is to ensure that foreign investments benefit all Canadians, we think that a more rigorous and transparent net benefit analysis and security review should demand more of foreign investors, regardless of their countries of origin.

Thank you.

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

We'll now go to our round of questions.

Our first round of questions goes to MP Genuis.

You have six minutes.

• (1705)

Mr. Garnett Genuis: Thank you, Madam Chair.

I'll start with Professor Houlden.

You came to speak to the Sherwood Park Rotary Club, which I was a part of eight or nine years ago. You probably don't remember, but I want to thank you for being engaged with our community back in my constituency.

I want to probe a little bit some of the distinctions you made. I found it quite interesting that right now the Investment Canada Act looks at dollar value and generally at state-owned enterprises. However, you made the point, I think quite well, that we might distinguish between state-owned enterprises that are of a certain scale and that we also might want to be particularly cautious about private but state-affiliated companies.

Could you talk about those private state-affiliated companies in the Chinese context? We know that virtually all private companies of a certain scale are expected to have party committees that are central to the decision-making of those companies, and that those companies are expected to be gathering IP that is useful to the military and partnering with the military on an ongoing basis. There really isn't the state-owned enterprise and the private sector distinction that we would see in other economies; there's a centralization of power and control. Maybe we should make other kinds of distinctions around whether IP is involved or not.

Could you speak about possible changes that we could make to the act that would bring in this concept of private state-affiliated companies?

Prof. Gordon Houlden: Thank you.

I'll speak to any community organization at any time—that's a policy—and I'm delighted to have that connection.

I think you're quite right. Not all SOEs are created equal. There are 300,000 of them; some pose a lower risk and some a higher risk. In general, an SOE with a more direct connection in sensitive sectors is more risky, but if you're, let's say, in China's Ministry of Science and Technology or China's Ministry of National Defense and you're interested in a potential dual-use technology, you may well want to approach that acquisition through a private company.

If you look at our dataset, we divide SOEs and private enterprises in the investment in Canada. One of my researchers just came last year and said, "Look, there's about 5% we can't even figure out because there are, it looks like, historical tendencies, some connections there." I said, "Do we put it in one or the other, or divide it?" He said, "No, leave it as an unknown because it makes the point that you can't always even determine if it is an SOE or not."

I would say this: Don't focus on the big, lumbering coal miner where we know where the product is going, which is probably to China—the firm may need a market; the province may need a market. Look at the high-tech—and we don't have enough of it—innovative companies. That's where I would focus maximum effort. Public safety and the intelligence capacity of this country are not unlimited. There's one company in Edmonton, for example, that produces pot stickers and ships them to Japan, the U.S. and Canada. That's not the focus. It is a state enterprise, but it's harmless, in my view. Go for where the risk is greatest, and that's innovation, IP threat. Focus on that to the degree necessary. That, to me, is even more important than the threshold issue: focusing on the best targets.

Mr. Garnett Genuis: I'm going to try to get in a couple more questions for you quickly.

It's very interesting what you just said, that intelligence capacity is limited. This means that right now, with the present funding levels for our intelligence agencies, from your perspective, the government is forced to make choices about looking into this aspect and not as much into this other aspect, even if we can't necessarily know if there's some possible risk.

Prof. Gordon Houlden: Even within those agencies, from my experience in working with them when I was in government and even subsequently, there's not always enough capacity. You don't make China experts overnight. It requires language skills, cultural understanding, understanding China, long postings, building up the skill set, giving them promotional avenues. You don't move people around on a chessboard. We're never going to be equal to the U.S. I've met with the CFIUS group and lectured to them in the United States. They have much more capacity, and fortunately, we have access to that.

I'd say this: Identify risk and go for that rather than a shotgun approach. If and when China appears, it may be risky or it may not be risky, and that's a key determination to make.

Mr. Garnett Genuis: It sounds like we need to have the capacity and the willingness to conduct these reviews.

I wonder what you think about how political factors could influence the government's willingness to conduct national security reviews in certain situations and about the risks around that. We've seen cases of Chinese state retaliation aimed at defending the par-

ticular interests of even not officially state-owned but state-affiliated companies that are sort of darlings of the regime.

Some of the witnesses are saying that the government has the power to do national security reviews already, so what's the problem. But if we're hearing that there's limited resource capacity and there are also political factors, might that pose some problems in terms of the government's will or ability to do these reviews when necessary?

• (1710)

Prof. Gordon Houlden: They shouldn't be. There shouldn't be those hesitations. They ought to just go to the heart of the matter, in my view, irrespective of who might be annoyed. However, if you're going to write into the ICA naming companies, put on your seat belt, because there'll be a strong reaction.

To me, using language such as "state-owned enterprise" or "authoritarian regime" is fine. China figures that out just like that. They know it's pertaining to them, because they're the only large authoritarian country that is putting a mountain of investment, a large amount of investment, into Canada. They'll figure that out, but if you name them and you make a lot of public statements, you're going to worsen it, not just for our two Michaels but for that broad political relationship that, like it or not, we do need to maintain.

The Chair: Thank you very much.

We'll now move to MP Ehsassi. You have the floor for six minutes.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you very much, Madam Chair, and thank you very much to all the witnesses who have kindly appeared before our committee today.

For the first question, I'd like to go to Ms. Salzberger.

Ms. Salzberger, I've had the opportunity to review the submission you've made. Thank you very much. It's very comprehensive and has answered some questions and concerns that I had.

You referred to the national security guidelines under the ICA, which were published in 2016. As you indicate in your submission, it is a very broad provision. There are no monetary thresholds, and it's quite obvious that the 2016 statement is concerned about the transfer of sensitive technology. It discusses critical infrastructure, critical goods and services. How significant is the 2016 notice that was provided by Industry Canada?

Ms. Debbie Salzberger: Do you mean the guidelines?

Mr. Ali Ehsassi: Yes. You've stated that this is very broad, that it encompasses and covers any type of transaction that would be of concern. Would you delve into this one more time just to unpack it for us and tell us how it would cover everything?

Ms. Debbie Salzberger: Sure. I guess there are two ways to answer that.

One way is the fact that it is undefined by definition, for non-definition means that there is very broad discretion within the act to cover evolving threats, current threats and so on, across a variety of industries, including technology, IP and so on. That's been a topic of discussion, I think, of this committee over the last few days.

The Investment Canada Act guidelines also make reference to public safety commentary on the types of issues that might be covered or concerns that might be covered under the national security provisions of the Investment Canada Act. For those who aren't as familiar with the guidelines, there's a laundry list of potential effects of the investment that are covered. They include not only defence-related capabilities, transfer of sensitive technologies and know-how, things that you might expect, but given the April 18, 2020, statement, we also understand, and it has been emphasized, that the guidance covers things like supply of critical goods and things that are covered under government contracts.

To sum up, I think it's quite broad. I don't know if that answers your specific question.

Mr. Ali Ehsassi: Absolutely.

On page 5 of your submission, you state that under the national security review provisions, these provisions “extend beyond acquisitions of control even to minority investments”. From a procedural standpoint, is there a de minimis threshold if someone wants to make a portfolio investment? How does that process work? How is it flagged for our various government agencies?

• (1715)

Ms. Debbie Salzberger: The Investment Canada process works in the context of an acquisition of control. An acquisition of control by any foreigner of a Canadian business requires the submission of a notification or an application for review to the investment review division.

The statement in respect of our submission speaks to the fact that the national security review provisions of the Investment Canada Act extend beyond notifiable investments, i.e., beyond acquisitions of control, and could include, within the jurisdiction of the government, to review investments that are minority investments which otherwise are not notifiable.

I think your question is on potentially how those investments would come to the attention of the government.

Mr. Ali Ehsassi: Yes, exactly.

Ms. Debbie Salzberger: There are various ways. It's possible that they may be through public disclosure. As well, as I think you heard earlier from our friends at CSIS and Public Safety, our understanding is that there are avenues through which there is monitoring. That is outside of the scope of the Investment Canada Act, in the sense of non-notifiability, but not out of the scope in the sense of jurisdiction.

Mr. Ali Ehsassi: Thank you.

Now, I will go to Mr. Glossop.

Mr. Glossop, you come at this with many decades of experience.

One of the concerns that's been raised today is on how ownership can be opaque if there are investments. How is beneficial ownership determined, and how robust is the system that we currently have in place?

Mr. Peter Glossop: Thank you for the question.

I think the system does permit the government to unpack ownership quite well. There are extensive provisions around determining ultimate control of the investor. When an investor is submitting a notification or an application for a review, that information must be submitted, including, for example, the directors of the investor, the highest-paid officers and the nature of any foreign state ownership in that investor.

Mr. Ali Ehsassi: Thank you.

That's my time.

The Chair: Thank you very much.

[Translation]

We will begin the next round of questions.

Mr. Savard-Tremblay, you have the floor for six minutes.

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

Thank you, Madam Chair.

Mr. Viau, thank you for your presentation on behalf of Équiterre.

You mentioned in your report that a major part of the oil sands industry was foreign-owned. I would be curious to have the figures as well as the trend because, in 2016, I read a text by Mr. Daniel Breton, Quebec Minister of Sustainable Development, Environment, Wildlife and Parks in 2012, in which he stated that fewer and fewer foreign companies were interested in the oil sector. I should point out that this was about the oil sector in general, not just the oil sands. That may be the difference; you may or may not confirm it, since you are the expert.

Mr. Breton indicated that, in the end, there were fewer and fewer royalties, and that the large and growing share was in fact pension funds. In other words, the pensions of Canadians and Quebecers were at risk. In fact, the Caisse de dépôt et placement du Québec jumped into this for a while. We were putting pensions at risk for this sector which, in the end, was anything but interesting in the long term.

I'd like to get your comments on that.

Mr. Marc-André Viau: Thank you very much for the question, sir.

I will answer, and then I'll give the floor to my colleague so she can complete my reply.

Our study shows that 70% of production is controlled by foreign interests. In terms of growth, control of operating profits is said to have increased from 31.6% in 2012 to 58.4% in 2016. These are profits that go into the pockets of foreign interests. There is certainly an increase in this area. On the other hand, there is a decrease in jobs, 53,000 fewer jobs compared to the peak in 2014, and an increase in the cost of cleaning up orphaned wells. So there is a combination of factors.

• (1720)

[English]

Maybe you want to add a word on that?

Ms. Tzeborah Berman: You are right that there has been a major flight of IOCs from the oil sands. Over the last five years, we've seen about \$30 billion to \$50 billion from major international oil companies pulling out of the oil sands, companies like Statoil, Total, etc. We've also seen major investment houses and insurance houses make statements saying they will no longer insure oil sands or related activities, and they will no longer invest in oil sands or related activities, because of the high-carbon nature of our oil, some because of concerns relative to indigenous rights as well.

Despite foreign ownership pulling out of the oil sands directly, the ownership of the existing companies, the investors in the existing companies, still tops 70%. This is because of increased investment by Chinese national oil companies, which now control 5.2% of oil sands production, which is 3.5 times more than the majority of Canadian-owned companies. American interests now own more than 52% of oil sands production, more than twice the number of Canadian shareholders, and more than all other non-U.S. investors combined.

We looked at each company, and looked at their percentage that was Canadian-owned. If you look at the average Canadian ownership within the eight largest Canadian companies, it's only 18.8%.

[Translation]

Mr. Simon-Pierre Savard-Tremblay: It's interesting that there's a small disengagement trend, but the majority are still there.

Mr. Viau, earlier you mentioned the possibility of controls in this sector and in many others depending on the country of origin, according to certain criteria which could be linked to the regime, for example.

Have you thought further about the criteria, and more importantly, about how to establish them in order that an evaluation be done before authorizing an investment?

Mr. Marc-André Viau: What I said earlier is that we should ask ourselves whether the political regime should be a determining criterion for takeovers or investments. In some sectors, several stakeholders have shown that this criterion might be relevant. I am thinking of the technology sector, for example.

For our part, we would like to see environmental factors taken into account in determining a net benefit to Canada. When there are environmental costs associated with investments, there cannot be a net benefit to Canada.

Mr. Simon-Pierre Savard-Tremblay: I see the red card coming up.

Mr. Marc-André Viau: I was able to finish my answer.

Mr. Simon-Pierre Savard-Tremblay: Thank you, Mr. Viau and Ms. Berman. This was very interesting. We will certainly have cause to think about these things in the near future.

The Chair: Thank you very much.

[English]

Mr. Masse, you have six minutes.

Mr. Brian Masse: Thank you, Madam Chair.

Ms. Travis, with regard to Anbang, it really brings to light the real results of this. People often think of foreign investment in Canada as something that's basically product-driven, or it's the oil sands, or manufacturing, where they might see some product at the end of the day. However, here, our product is our own citizens and our people, who, at the end of the day, needed help and British Columbia had to step in.

Maybe you can highlight a little bit the work that's been going on there, because this is not an unknown factor, the problem that came about. There were a series of warning signs along the way.

Lastly, what are your thoughts with regard to divestment of some of these facilities? It seems odd that we'd have the Chinese government owning and controlling, at the end of the day, the future of our seniors, and the facilities that it operates, and it can't even do that within the law.

• (1725)

Ms. Michelle Travis: I think, when looking at the Anbang deal—and again, we don't represent the workers at those facilities but have been watching Anbang for some time because of their involvement in the hotel industry—what's striking to us is that there were questions raised about Anbang prior to the review under the ICA and during the review, and it was surprising that the deal went through.

Given what's happened since the approval, the takeover and the dismemberment, basically, of the company by the Chinese government, it's not clear what happens next. Seeing what's happened in terms of the conditions at the long-term care homes.... The unions representing those workers raised issues about staffing problems and quality of care, and that prompted the B.C. government to take over several of those homes. I don't know what happens next; it's temporary.

In terms of divestment, that's something that Ottawa really should be taking a closer look at.

I also want to comment on a comment that was raised by a couple of the witnesses about the tools that are available under the ICA right now. It does sound like the government currently has at its disposal the tools to really scrutinize these investments. I think the question is, what happened in 2017 during that review process that allowed that deal to move forward? How rigorous was the due diligence?

To us, that's reflected in the approval of these other deals that involve the hotel sector, where we still don't know who owns these hotels. That's problematic. It's strange to be in a situation where you have hotel workers who don't know who owns the hotels they work in, and when we ask questions, we don't get a firm response.

I think it does call into question the nature of the review process. How do we make those processes more rigorous? I think it's good that the government wants to heighten scrutiny, particularly with regard to investments in those sectors, but that should have been the case all along.

Mr. Brian Masse: With regard to this situation, I'm glad you mentioned the hotel ownership, because that's also personal data, information and a whole series of exposures that are very important.

Even when you look at where I come from, the auto sector, one of the biggest things that are changing is not necessarily.... You see innovation taking place, but also data collection on the way the vehicle is used.

Can you highlight a little bit the exposure of people's private data and information? Starwood was one of the ones I was even affected by as a customer. Can you detail a little bit about that exposure, because that's pretty serious?

Ms. Michelle Travis: Sure. The Marriott cyber-attack was probably one of the biggest cyber-attacks in recent memory. I'm sure there will be a larger one that comes soon, but the hotel sector really does have a reputation for being notoriously sensitive to hacks and cyber-attacks. Hotels have access to large amounts of information. When you go into a hotel, you use their Wi-Fi system and you use your credit cards. There's a large amount of information collected on customers because you want to understand their preferences and target certain services to them.

While hotels have not been considered a strategic industry, I would put them in the category of sensitive, given the amount of information that's at their disposal.

Mr. Brian Masse: It's not only domestic, but the hotel chains are international, so there are questions about the security of data and information not only domestically but also internationally.

Ms. Michelle Travis: That's right. Hotel chains cross borders. Marriott is in just about every country around the globe, and they're not the only hotel operator you can find operating across borders

Mr. Brian Masse: Thank you. I see the yellow card up.

Thank you, Madam Chair.

Thank you to the witnesses.

The Chair: Thank you very much.

We now move to round two. The first round of questions goes to MP Patzer.

You have the floor for five minutes.

Mr. Jeremy Patzer (Cypress Hills—Grasslands, CPC): Thank you, Madam Chair.

I'll start with Professor Houlden. You said earlier, before you ran out of time, that it's hard to tell what's a state-owned enterprise and what's not. Would you mind finishing that point, especially as it relates to authoritarian countries investing in Canada?

• (1730)

Prof. Gordon Houlden: The majority of said enterprises we can determine, and we have 20 people strong in our think tank. In the majority of those cases, it can be fish or fowl. We sort that out.

However, there's a minority, about 5% of the Chinese investment in Canada, where some of the senior executives appear to come from SOE and the capital appears to come from a state bank or maybe from an SOE that existed before. Some SOEs are privatized, but it's not really clear in what way they've changed, other than that they're issuing shares.

It's a minority, but it's still a significant minority of investment that we've decided, on my instruction, to keep uncertain rather than divide in half, as one of our researchers suggested, because it makes clear the fuzziness of some of the data regarding state enterprise.

Mr. Jeremy Patzer: Does any of that make it more difficult to distinguish them, or make it easier for them to escape screening and review? Is there any issue with that?

Prof. Gordon Houlden: Conceivably, I suppose. For that 5%, let's imagine that the Canadian review authorities look at that and determine that it's not an SOE, but in reality it may be. So yes, it would be a small minority, but potentially, yes.

An SOE is not necessarily masquerading. In some of these cases, managers—as has happened in the former Soviet Union—have migrated with capital and then may appear as a private enterprise. Or they may have left their former SOE, but somehow, oops, they got funding that came from the SOE, the same people. There would be some cases like that. I would like to think that, again, with really capable analysts in our agencies of various sorts, we'd be able to sort that out.

We can do so quite well. When we see investments that appear to have Chinese dimensions coming in from Barbados or Cayman Islands, heavens. If you look at the amount of money coming from Cayman Islands, every man, woman and child would have to be investing \$5 million in Canada. We sort that out. The Chinese data...they go for the first destination. It's all Hong Kong; 80% of the investment appears to go to Hong Kong, but then it diversifies into other places where there are tax advantages, and it's coming in from some of those other destinations. It's not always nefarious, but you need to push back that screen to find out where it actually originated.

Mr. Jeremy Patzer: My colleague was asking an earlier panel about the difference of process and threshold between a security screening and a security review, without really a clear answer. Do you have any insight on how well either of these is working to meaningfully protect our national security? Could they be improved?

Prof. Gordon Houlden: There's always room for improvement. I spent 32 years in government, and I can assure you of that. At my university, for that matter, that's a given.

Staffing levels are important. Expertise is absolutely critical. It's not easy to get. If you ask Public Safety whether it has enough fluent Chinese speakers who can get a security clearance, the answer I'm sure would be no.

The other thing that was hinted at by one of the panellists, I believe.... One of the other speakers mentioned follow-up. I wonder sometimes if the conditions that are imposed are being adequately examined. I'm not just thinking of Chinese firms. I think of Alcan, which vanished and is now in foreign hands. I can think of other examples. I'm not always sure if the initial undertakings have enough legs or duration, and whether they are being sufficiently investigated.

Mr. Jeremy Patzer: We've heard from other witnesses about a variety of indirect methods for foreign influence, specifically how the Chinese government has plans for many social and economic targets in different countries. Based on your ongoing study, do you think there is or could be Chinese influence among Canada's legal and public policy experts, because of their business or other professional connections?

Prof. Gordon Houlden: This is such a difficult question. I wish you would pose easier questions.

The truth is, yes, China does misbehave. It does look at targets of influence. It's the job of our security agencies to detect and deal with that. Quite frankly, I'm of the school that naming and shaming helps. Americans do a better job. At any given time, there are usually about 30 different cases before the courts in the United States. We often request the person to quietly leave.

It would be painful in the bilateral relationship, but it's better sometimes. We've done it on a few occasions, where there was actually a court proceeding or it was clear, even if the persons had fled, what they had done.

The principal targets tend to be—and here they need our help—Canadians of Chinese ethnic origin. They are the primary targets.

The Chinese, for a bunch of historical reasons, are afraid of that group.

• (1735)

Mr. Jeremy Patzer: Thank you.

The Chair: Thank you very much.

Our next round of questions goes to Mr. Ehsassi.

You have the floor for five minutes.

Mr. Ali Ehsassi: Thank you very much, Madam Chair.

Ms. Travis, as you are well aware, the mandate of our industry committee is to look into the Investment Canada Act and to determine whether it's robust enough. On several occasions today, you brought up the Marriott cyber-attack.

Would you agree with me that it has nothing to do with the Investment Canada Act?

Ms. Michelle Travis: It's an example of how the hotel industry can be ripe for cyber-attacks, and it's used in the context of information and how that—

Mr. Ali Ehsassi: But cyber-attacks happen all the time. There's no way the Investment Canada Act has been [*Technical difficulty—Editor*] with those types of scenarios. Is that correct?

Ms. Michelle Travis: Well, if we're going to talk about security, and the sort of review of security in terms of deals under the ICA review, it was used as an example to illustrate why we should take a closer look at hotels in particular.

Mr. Ali Ehsassi: But you would agree with me that the Investment Canada Act [*Technical difficulty—Editor*]. Is that correct?

Ms. Michelle Travis: The subject was not about the Marriott cyber-attack.

Mr. Ali Ehsassi: Thank you.

I'll now go to Mr. Marc-André Viau.

Mr. Viau, as you know, on April 18 Industry Canada issued a policy statement, and in that policy statement it acknowledged the fact that some Canadian companies may be distressed and there may be incidents of predatory investments. As a result of that, on April 18, Industry Canada announced that the government will subject “all foreign investments by state-owned investors, regardless of their value...to enhanced scrutiny under the Act.”

Are you in favour of that statement?

[Translation]

Mr. Marc-André Viau: I am not in a good position to assess the information available to Industry Canada to make this analysis. I will therefore rely on their expertise and competence in this area.

[English]

Mr. Ali Ehsassi: But, sir, that's not analysis. They're telling Canadians that going forward during this period, every investment by state-owned enterprises will be subject to enhanced scrutiny.

Is that a good step, in your opinion?

[Translation]

Mr. Marc-André Viau: As I said, this must be based on information that demonstrates that this recommendation should be made. If it's a recommendation—

[English]

Mr. Ali Ehsassi: As I understand, sir, you said you were in favour of a moratorium on foreign investment by state-owned enterprises. Is that correct?

[Translation]

Mr. Marc-André Viau: No. What I said was that I was inviting committee members to assess the appropriateness, as part of the study we presented, of basing the acquisition of certain strategic businesses on the nature of the political system involved. Are there other factors that should be included? Yes, perhaps.

[English]

Mr. Ali Ehsassi: Thank you. I appreciate that.

Now I'll go to Professor Houlden.

Professor Houlden, as I understood, you said that the U.S. CFIUS process is more robust than ours. Can you provide us with an example of why CFIUS is more robust than the Investment Canada Act?

Prof. Gordon Houlden: CFIUS has changed dramatically in the last two years. Previously, security was the only thing they could look at. They couldn't even look at anything approaching our net benefit.

When I spoke to the congressional economic and security commission, they were envious of what we were doing. Now they've come up with a mark two, which allows them to look at the same kinds of principles as Australia and Canada. Is this really good for us? That is the big question. But they have—

Mr. Ali Ehsassi: But from a substantive standpoint, would you agree that the Investment Canada Act is just as robust as the CFIUS process, or the amended CFIUS process?

Prof. Gordon Houlden: Properly followed, the full capacity is there. My concerns lie in the analysis: Is it sufficient?

Mr. Ali Ehsassi: Thank you.

You've also stated that, in your opinion, our bureaucracy doesn't have sufficient resources to screen and look into investments. What is that based on?

• (1740)

Prof. Gordon Houlden: Well, my experience in my adult life has been almost entirely China, so when I speak about that issue, I'm thinking only of China. In that regard, there are linguistic challenges and cultural challenges. You can't come into an organization like Public Safety and understand the nuances and complexities of how SOEs operate and how the party operates, party committees and private companies.

That is where I think we need that cadre. I don't know the numbers, but I have some reasons to believe that we need to build capacity. That starts in our universities. Unfortunately, you can't take—

The Chair: Unfortunately, that is all the time we have for this round.

We'll now move to MP Gray.

You have the floor for five minutes.

Mrs. Tracy Gray: I want to ask some questions today of Mr. Houlden.

This afternoon, another witness went into detail about how the foreign takeover of nursing homes by Anbang has gone wrong. It owns Retirement Concepts, a company with private long-term care facilities throughout the country, 20 of which are in British Columbia. This takeover was approved by the federal government and by Minister Baines himself, who scrutinized it under the investment review division because it exceeded the dollar threshold. We heard from other witnesses and we know that, as part of the Investment Canada Act, reviews can occur at the discretion of the minister.

Considering this, and based on your experience, is there a lot of subjectivity around this? Are there other parameters that we should be considering when we're looking outside of the dollar value for consideration?

Prof. Gordon Houlden: You raise a very important point. I think even the Chinese government, quite frankly, had cracked down hard on Anbang. It began to realize there was capital flight. SOEs were investing in things that had nothing to do with their core business.

I would argue that from the ICA perspective—this is in retrospect, which is not really the way one wants to be looking at it—yes, this question might have been raised. Does this company have the capacity, the experience and the know-how to be looking after aged people across the Pacific? That's a question, looking back. At the time, I didn't think [*Technical difficulty—Editor*], but it's probably crystal clear now that it was out of their area of expertise.

That would mean changing the way in which the review process is done. You'd have to look at the qualitative capacity of the incoming company to manage something sensitively. I can see where it also might need to be done in environmental terms. Can this company manage an environmentally delicate space in, let's say, the Arctic? Are they up to it?

Those are the sorts of broad questions that I wouldn't want to see abused, but they're the sorts of questions that might well be posed if you're looking at the full effect of that FDI.

Mrs. Tracy Gray: Thank you.

Moving forward, using that as an example, or perhaps other examples, do you think there should be some type of standards for these state-owned enterprises that should result in some type of action if there are issues that come out of previous investments from these companies? Is there some type of recourse or action down the road for future investments that you would consider?

Prof. Gordon Houlden: I would think that would be reasonable. In other words, if you've done badly and you want to come back to the well, we may be concerned that you would do badly again.

One small point is that I think you'd have to be just as hard on Canadian companies. Otherwise, you get into difficulties with discrimination under international trade agreements. We don't want a situation where you give the Chinese a good excuse to beat up on a company; they may anyway. We need to have high standards for us and high standards for them.

Mrs. Tracy Gray: Thank you.

I have a couple of questions for you, Ms. Travis. In your testimony and in some of the other questions, you went into the issue of the hotel industry and a cyber-attack. You went into some explanation there. I'm wondering, from the perspective of your members, how this affects them from a worker's point of view, from a business point of view and also from a customer's point of view.

Knowing that you have a hotel chain that might potentially be owned by a state-owned enterprise, if there's a cyber-attack, what are the various concerns you've seen around that?

Ms. Michelle Travis: I think it's one of the things where people want to have their information secure. They want to make sure—

The Chair: I'm sorry, Ms. Travis, but could you put your mike a little closer, please?

Ms. Michelle Travis: Sure.

Can you hear me now?

The Chair: Yes, thank you.

Ms. Michelle Travis: In terms of the Marriott situation, to use that as an example, it was alarming for folks, I think, to understand the scale and reach of that situation. Now, the folks who hacked Marriott didn't own Marriott, but I think in a case where you have a company like Bluesky, where we don't know whether Anbang really owns that company or not, there is a question about how your information is at risk if, in fact, the Chinese government does have a role in that company.

I think once an attack happens, people are naturally concerned about how their information is being used. We're dealing with the

risk of our information being used in ways that we don't expect every day, whether it's using an iPhone...or the company that owns the hotel we work in.

That's just to say that it's always a concern, but I think it's one of those things where we have to be proactive about it to avoid a situation happening rather than react to it after the fact.

• (1745)

The Chair: Thank you very much. That's all the time we have for that slot.

We will now move to MP Longfield.

You have the floor for five minutes.

Mr. Lloyd Longfield: Thank you, Madam Chair. We could do with a few more hours, with all these witnesses.

Thank you, all, for coming today with all your expertise.

I'd like to start off with Mr. Houlden and then follow up with a question about trade with Mr. Glossop.

Mr. Houlden, when we talk about the acquisition of a long-term care facility, part of the conditions have to be cross-jurisdictional with the provinces, which have full jurisdiction over long-term care and whether it's a viable business, and doing an evaluation. We had testimony earlier in this study that just briefly mentioned cross-jurisdictional matters. Could you expand on that for 30 seconds or so, please?

Prof. Gordon Houlden: Absolutely. Very quickly, there is provision within the act for input from provinces, and that's absolutely critical. Again, there's a political dimension in provinces as well, but there are also health issues and management of sectors, as you suggest. Where provinces have the responsibility, they need to be brought in and allowed to provide their opinions before an investment goes forward.

Mr. Lloyd Longfield: Fortunately, or unfortunately, a lot of that is confidential, so the public doesn't see it happening.

Prof. Gordon Houlden: That is one of the challenges. If they don't see it, they may not believe it happens, and that is a fair point.

Mr. Lloyd Longfield: Yes. Thank you.

I think we saw in our first panel, too, that a lot of these matters are confidential.

Mr. Glossop, I'm not coming from a legal background; I'm coming more from a multinational business background, with the importance of having predictable standards, so when you make decisions at board meetings that may not get implemented for a few quarters, you know that nothing has moved around too much in your due diligence and how you make your decisions.

We did have a jump that was flagged in terms of the number of review cases, which went from 1% to 9% in the fiscal year 2018-19, up from 4% in previous years. There was a change there, a jump. Do you know the background of why we're doing more reviews?

Mr. Peter Glossop: I'm not sure there was necessarily a jump. There has generally been a decline in the number of net benefit reviews over time, because the thresholds have risen. I believe the CBA brief cited nine cases reviewed in the annual report for that fiscal year. Interestingly, however, there has been an increase in the number of national security reviews, so I think you'll find an equal number of both in the annual report.

Mr. Lloyd Longfield: Right, and the value was part of the change as well. The amount of dollars exchanging was higher, if I remember the report.

Mr. Peter Glossop: Yes. Thresholds go up each year. They're not that significant. It depends very much on the flow of transactions from year to year. If there's a decline in the number of transactions overall, there may well be a decline in the number of reviews. Here we're only talking about very significant transactions that cross these thresholds.

Mr. Lloyd Longfield: The retrospective review, if there is one.... The last discussion we just had was about a transaction that really didn't end up in Canada's interest. I've asked this in a few different ways with other witnesses. Looking at critical infrastructure and technology, is there a means for us to look at the fact that what was acceptable in 2020 may not be acceptable in 2025, if environmental regulations, for instance, take a jump or if we introduce some type of social benefit that needs to be included in the way businesses operate? Is there something where you have to go back and say that business likes stability? If you change some legislation or regulations in terms of investments, do you ever go back and look at that to see whether it would still meet your current criteria?

• (1750)

Mr. Peter Glossop: In practical terms, probably not. The reality is that most undertakings given by investors are for a period of three years. For that period of time, people are operating under a set of laws and regulations they assume will be relatively constant. One thing—

Mr. Lloyd Longfield: Okay. If I can interrupt, in terms of trade agreements, it's very important that we stay constant because of the agreements we have in place.

Mr. Peter Glossop: Absolutely. Our trade partners trust us to provide a stable framework for them to invest, and likewise for us to invest in their countries.

Mr. Lloyd Longfield: Thank you.

Thank you, Madam Chair, for giving me three extra seconds.

The Chair: Thank you very much.

Our next round of questions goes to MP Lemire.

[*Translation*]

Mr. Lemire, you have the floor for two and a half minutes.

Mr. Sébastien Lemire: Thank you, Madam Chair.

My first question is for you, Ms. Travis. In your speech you asked a question, and I'd like you to answer it.

You asked whether the government rigorously assesses Canada's net benefits. You noted the transparency of the triggers and possible remedies.

Do you feel that this rigorous evaluation is being done and that our law has enough bite?

[*English*]

Ms. Michelle Travis: I would argue that it could be more rigorous, based on some of the deals that we've looked at. We would like to see more transparency around the different aspects that are being looked at when undertaking a net benefit review. What level of due diligence is taking place when looking at a transaction? What questions are being asked when looking at how this affects Canadian workers, other stakeholders, customers or anyone who is going to be affected by the transaction? We'd like to see more transparency in the process.

Also, what are the commitments that we are able to get from foreign buyers in terms of living up to the commitments that we expect when they decide to invest in Canadian businesses? How do we have an opportunity to go back and look at those commitments to see if those commitments need to be changed or if they need to be tightened somehow?

I think there has to be some process for being able to look more closely at the deals, for the public to actually look at how these deals are scrutinized, so that we have more tools to be able to say, "That review process didn't make sense, and going forward we need to make some changes to make sure certain aspects of it are tightened." I think that would be good for the review process long-term.

[*Translation*]

Mr. Sébastien Lemire: Thank you very much.

I have a brief question for Mr. Kingston.

Mr. Kingston, are your members concerned about the possibility of receiving hostile offers from other countries? Should our legislation be adapted to take into account the abolition of voting rights for acquirers, and should we be more closely aligned with U.S. anti-takeover measures to protect your members?

[*English*]

Mr. Brian Kingston: Once the pandemic unfolded and the initial economic hit was evident, yes, there was concern as we saw valuations decline. That's why we supported the temporary measures—and it's very important that they're temporary—to make sure that the companies aren't taken over by non-commercial actors.

The Chair: Thank you very much.

Our next round of questions goes to MP Masse.

You have the floor for two and a half minutes.

Mr. Brian Masse: Thank you, Madam Chair.

Ms. Travis, I want to return to the hotel and the cyber-attack.

I think there are a couple of things with the cyber-attacks that are taking place. We don't really have.... We've had some good testimony before that some of those that are cyber-attacked right now are settling behind the scenes, with no accountability as to the data that's been breached, and they're doing payouts. Others are public institutions that have had cyber-attacks. They have made settlements as well. Some have brought in the police; some have not. This has been the feedback that we've gotten.

My question to you is with regard to this one that took place, and even further in the future. If the hotel ownership is the state government of the Chinese, then if a cyber-attack takes place, we may never know the full exposure or what they do about it, whether it's an internal problem that led to something that's far more spectacular than we would think or whether it's something that they let pass because they have other national interests.

• (1755)

Ms. Michelle Travis: Yes, at this point, we don't really have any clarity on any of those questions. This is why I think it's so important to understand what kind of privacy protocols Canada expects in the course of a foreign takeover like that.

I would raise another question. Under PIPEDA, there is a business transaction exemption that allows parties to share personal information for due diligence purposes without having to obtain consent for sharing information. If the party that's buying the Canadian company has some ties to the Chinese government or another actor that's problematic, what sort of controls are put in place to make sure that sensitive information isn't shared that shouldn't be shared, and how does the government maintain some sort of ongoing review to make sure that this information is protected on an ongoing basis?

Mr. Brian Masse: Great, thank you. I know that I'm out of time.

Thank you, Madam Chair.

Thank you, again, to the witnesses.

The Chair: Thank you very much.

Our last round of questions will go to MP Van Popta.

You have the floor for five minutes.

Mr. Tako Van Popta (Langley—Aldergrove, CPC): Thank you, Madam Chair.

My question is for Professor Houlden.

Professor, you stated that you might be more nervous about the acquisition of a smallish Canadian company that has important IP that would leak out of the country—you used the hypothetical example of its going out in a briefcase, or maybe more realistically on an optical fibre.

Do you think it would be fair to say that the dollar threshold in the Investment Canada Act is maybe not always the appropriate measure?

Prof. Gordon Houlden: I would agree.

The national security review can be applied in any instance, even for small transactions. That's where I think some of the real dangers appear. With a mine—let's put aside all other environmental is-

sues—you know where the product is, what it is and where it's going. It's very well understood. These small companies, often led by a brilliant individual who's come up with a great innovation, don't often know that much necessarily about business internationally, let alone about China. They are vulnerable. Or you may have someone who's just looking at dollar signs and saying, "I'm going to sell this out."

A similar challenge is a professor coming up with a great agreement. Maybe he's been working in collaboration with a Chinese firm. Where are they going to manufacture that widget or that thing? With all due respect to my home town of Calgary, it's not going to be Calgary, Edmonton or Prince George. It's going to be Hangzhou, Ningbo or Guangzhou, where there is already an ecosystem for manufacturing.

That is a challenge, even for academic collaboration, as well as for those small companies that are looking for joint ventures.

Mr. Tako Van Popta: Thank you for that.

Mr. Balsillie was here the other day in front of this committee. He's the chair of the Council of Canadian Innovators. He's advocating for adjustments to the Investment Canada Act to keep pace with Canada's digital economy. He talked about IP leakage. I have a quote from him that I just want to read to you, and I want to know if you agree with that. I'm going to put the same question to the two CBA lawyers as well.

This is what Mr. Balsillie said:

[T]he act is based on the premise that, with FDI, the direction of the flow of knowledge and technology is into Canada. This used to be the case with FDI into industrial production. It is not the case with FDI into the innovation economy where FDI is extractive.

Do you agree with that?

Prof. Gordon Houlden: Fundamentally, I would. Intellectual property and knowledge are flowing in both directions. China is producing five times as many STEM graduates as the United States right now. We need to tap into that. But in looking at individual deals, we need to make sure that we're not allowing what is our still pretty small pools of innovation, compared to China or the United States, to just evaporate or disappear.

• (1800)

Mr. Tako Van Popta: Could I put the same question to you, Mr. Kilby?

Mr. Michael Kilby: I think certainly the Investment Canada Act is one important tool in the tool box in that regard, in particular in terms of its national security provisions. As we've heard, they're very broad in scope. They can be used at the unfettered discretion of the government to prevent transactions that it views as problematic from a national security perspective.

I would add, though, that there are other tools in the tool box too, perhaps more precise or surgical tools, including things like the export control list, the controlled goods regulations and other statutory instruments. We know a lot about the Investment Canada Act. It's very well known. It meets the headlines. But there are other tools that can be used as well to control technology transfer and who is entitled to own, transfer or possess goods and technology in Canada.

Mr. Tako Van Popta: Good, thank you.

Ms. Salzberger, do you have any comments on that?

Ms. Debbie Salzberger: No. I appreciate that we are a little bit light on time. I would echo everything that Mike just said, including his last point, which I think is a key point for this committee to consider.

Mr. Tako Van Popta: Fair enough.

While I'm talking with you, Ms. Salzberger, I think you said that Canada might benefit from a better definition of what critical industries are. If you didn't say that, I'm going to ask you the question anyway. Would we benefit from more detailed, exhaustive lists of what are actually identified as critical industries that are subject to a greater degree of scrutiny?

Ms. Debbie Salzberger: I don't believe I said that. If I did, I think it was misunderstood. What I would say, though, is that we would benefit from additional guidance in respect of what types of industries might be considered critical industries for the purposes of national security reviews. I say that only to benefit the knowledge base. Transparency is a point that's been raised throughout this discussion. For the benefit of transparency, for the benefit of understanding what might be in scope, I think it would be helpful to have additional guidance, but to have an exhaustive definition of what constitutes national security, I think, is inflexible.

Mr. Tako Van Popta: We're out of time. Thank you.

The Chair: That brings us to the end of our meeting today.

I want to thank the witnesses for being with us and for their excellent testimony.

Thank you very much to our clerk, our analysts, our IT people and our interpretation staff, who are helping to make this possible.

The meeting is adjourned.

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