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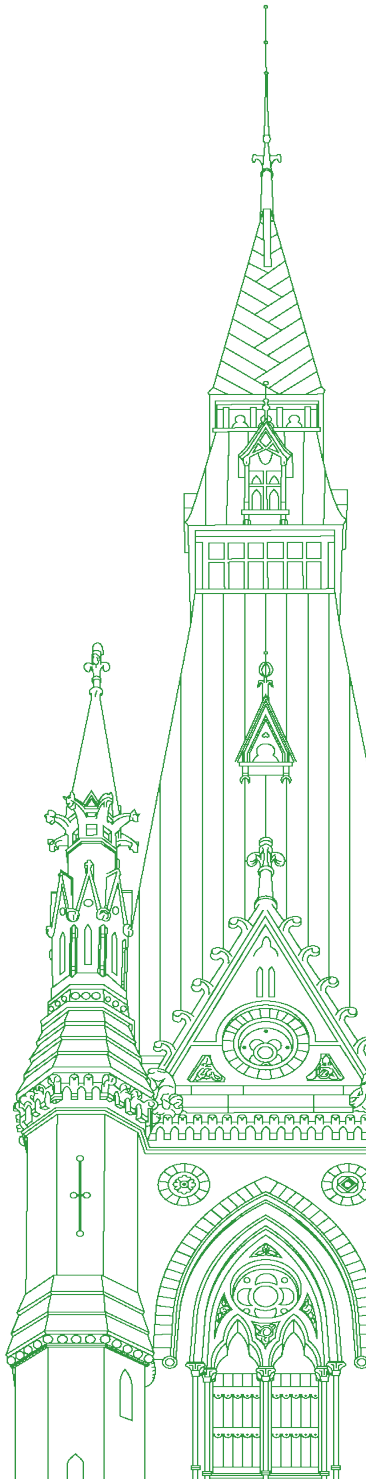

Chair: Mr. Joël Lightbound

Standing Committee on Industry and Technology

Wednesday, June 14, 2023

● (1655)

[*Translation*]

The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)): Friends and colleagues, I call this meeting to order.

Welcome to meeting No. 81 of the House of Commons Standing Committee on Industry and Technology. Pursuant to the order of reference of Monday, April 17, 2023, we are continuing our study of Bill C-34, An Act to amend the Investment Canada Act.

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application. Having said that, I can see that no one is attending the meeting remotely.

● (1700)

Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC): No one is participating using the Zoom app today.

The Chair: Yes, Mr. Vis, no one is participating remotely in this meeting.

I would like to make a few comments for the benefit of the witnesses and members.

First, please wait until I recognize you by name before speaking. For those participating by videoconference, click on the microphone icon to activate your mike and please mute yourself when you are not speaking.

Although this room is equipped with a powerful audio system, feedback events can occur. These can be extremely harmful to interpreters and cause serious injuries. The most common cause of sound feedback is an earpiece which is too close to a microphone. Please be cautious when handling the earpieces, especially when your microphone or your neighbour's microphone is turned on. In order to prevent incidents and safeguard the hearing health of the interpreters, please ensure that you speak into the microphone to which your headset is plugged in and please avoid manipulating the earpiece by placing it on the table, away from the microphone, when it is not in use.

Lastly, a reminder to address all comments to the chair as much as possible, but not necessarily.

Now, I would like to greet three regulars, who are here to discuss Bill C-34. We therefore welcome Mark Schaan, senior assistant deputy minister, strategy and innovation; James Burns, senior director, investment review branch; and Mehmet Karman, senior policy analyst, investment review branch. Thank you for joining us once again.

(On clause 7)

The Chair: We are now ready to resume the clause-by-clause. We left off at clause 7. If I'm not mistaken, Mr. Perkins had moved amendment CPC-2. We will therefore resume where we left off, which is to say at amendment CPC-2.

Go ahead, Mr. Williams.

[*English*]

Mr. Ryan Williams (Bay of Quinte, CPC): Thank you, Mr. Chair.

Yes, this is on clause 7, proposed subsection 15(2). The version with amendment would have:

> 15(1) An investment subject to notification under Part III—other than an investment referred to in paragraph 11(1)(c)—that would not otherwise be reviewable is reviewable under this Part if
>
> (a) it falls within a prescribed specific type of business activity that, in the opinion of the Governor in Council, is related to Canada's cultural heritage or national identity; and
>
> (b) within twenty-one days after the certified date referred to in paragraph 13(1)(a)
>
> (i) the Governor in Council, where the Governor in Council considers it in the public interest on the recommendation of the Minister, issues an order for the review of the investment, and
>
> (ii) the Director sends a non-Canadian making the investment a notice for review.

Adding proposed subsection 15(2) would be:

> (2) Despite the limits set out in subsections 14(3), 14.1(1) and (1.1) and 14.11(1) and (2), an investment is reviewable under this Part [regardless of its value] if
>
> (a) the non-Canadian making the investment is a state-owned enterprise or is controlled by a state-owned enterprise;
>
> (b) the Governor in Council, on the recommendation of the Minister, is of the opinion that a review of the investment is in the public interest; and
>
> (c) the Governor in Council issues an order for the review within 21 days after the day on which the non-Canadian gives notice of the investment to the Director.

Mr. Chair, this is really to look after what we deem to be, at this point in time, threats from state-owned actors into foreign direct investment, really to look at the threshold as a whole.

We had testimony, specifically from Dr. Burton, that really spelled out this whole part. He said:

> all Chinese global enterprises are fully integrated into the PRC party, state, corporate, military and security apparatus, because, as party General Secretary Xi Jinping put it, "Party, government, military, civilian, and academic, east, west, south, north, and center, the party leads everything."

> There are no Chinese industrial enterprises existing independently from China's party-state. Huawei, for example, does not self-identify as a Chinese state-owned enterprise, but, like all PRC institutions, its org chart suggests that Huawei's Chinese Communist Party branch takes precedence over the Huawei board of directors in corporate decision-making.

He also talked about how:

> Chinese law requires that all companies and individuals co-operate with their intelligence establishment and hide that co-operation. That, combined with the Chinese regime's unrelenting cyber and human-source spying on our Parliament, political parties, government departments, universities and businesses, is reason enough to conclude that foreign investment from China must be subject to the most stringent national security test, regardless of what sector or industry the proposed investment may target.

I just want to talk, really briefly, too, about this bill. I think it's been great, Mr. Chair. As we switch from one bill to another in clause-by-clause very quickly, I want to talk about just how important this bill is in a larger strategy around foreign direct investment. We've gone through a lot of different instances of how important it is to look at foreign direct investment in tangible assets and also intangible assets. We're looking at this in broad scope.

This is an important bill. I think everyone in this committee understands that. I think everyone here wants to make it great. We've had some really incredible testimony, but this isn't a slam-dunk yet. When we look through amendments, we're really trying to make sure that we're looking at each aspect of this to the fullest, and that we ask the right questions. Then we can ensure that, when this bill is passed, it is not only a bill that acts on its own but also a bill that's going to work in a strategy for foreign direct investment in tangible assets, and investment as a whole.

One point that was made is that we need to modernize this act to ensure that it tackles economic security as well as national security. I know it was mentioned that this bill does not do that. It only tackles national security. We're missing that extra component. A stat that was bandied around was that only 1% of acquisitions from 2009 to 2019 have been reviewed by the departments at this point.

One part was that small and medium enterprises are essential to Canada, growing them but also protecting them. How are we protecting our SMEs and ensuring that all our small enterprises stay and grow in Canada? Is this looking only at one aspect, which is tangible assets, and not the intangible assets?

● (1705)

My colleague, Mr. Lemire, mentioned an example, the acquisition of Rona, which is really important. The minister had set conditions, but in the end, five years later, there was not much left of the company in Quebec. I think the example there was a company called Garant, with shovels that can't always be found in Rona stores anymore. There was also the example of Osisko Mining, which sold half of its Lac Windfall project to a South African mining company, Gold Fields, for $600 million, of which 50% formed a joint venture. It may not have been looked at as a whole.

It's bigger than just FDI and tangible industries. It's now mostly about intangible industries, and we're losing, as with Sidewalk Labs in Toronto or Dalhousie University, which has had Tesla investment but all of that IP left Dalhousie, left Canada and went to the U.S. Money goes to invest in Canada and Canada says, “Come and take our best stuff.”

One phenomenon of the last 25 years has been that corporations can unbundle parts of the value chain. We've learned that, because of their incredible power, corporations today, in their corporate strategies, can bundle, rebundle, unbundle and sell off an asset without shutting down the firm, and they're selling the firm out in an IPO.

One of the questions we'll ask as part of this amendment is, are we protecting that when we look at reviews of state-owned organizations? Maybe I'll start with the officials with one question on that. When it comes to a review of all state-owned organizations and understanding the significance of that, one of the first questions I have is, how are we looking not only at tangibles in FDI, in that investment, but also at intangible investment in Canada and protecting the IP?

Mr. Mark Schaan (Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector, Department of Industry): Thank you, Mr. Chair, for the question.

As noted in previous testimony, foreign direct investments from state-owned enterprises are subject to review under the national security provisions of the act. They are also subject to net benefit if they meet the threshold test. This amendment obviously seeks to look at that threshold.

With regard to intangible assets, it's worth noting that the act already allows us to look at the investment in the company and its assets, and that has actually been understood to include intangible assets. In fact, without being able to speak to specific cases, I can tell you that we have reviewed transactions that were specifically related to the intangible assets of an entity, and that is part of what makes up our review, including on national security considerations.

Mr. Ryan Williams: If companies are able to unbundle portions of.... This is what has happened with certain companies. They take some of the IP, unbundle it and sell just that aspect or that one part of the company to a foreign direct investment, and then, after that sale is done, they rebundle it.

I know that one of the arguments for the minister's having the power himself to do reviews outside of an order in council would be that it's quick and we're operating at the speed of business. Perhaps also one of the conditions was that employees of those companies couldn't talk for 30 days or 45 days about the ideas that are part of that company, but companies are still able to unbundle parts of that.

Is that something the department has looked at, how companies are getting around the rules that are set in place? Even though this amendment might have a zero threshold, are there still ways in which companies, as we've heard from testimony, are getting around that through the intangible assets and the ability to sell them off, as we've seen in Quebec and elsewhere?

Mr. Mark Schaan: I would compartmentalize the question into two parts.

One, investments into Canada from foreign actors are reviewable under the national security provisions regardless of threshold. There is no threshold. This also includes, as I noted, intangible assets and a portion of a given entity or organization. I am aware that we have actually utilized that power in the past.

With respect to the possibility for organizations to try to sell off a portion and then rebundle that portion, I would say that those transactions are reviewable, particularly at first instance when that foreign investor is actually acquiring that. Should there be a subsequent sale, it would depend on the specifics of the use case, on who was selling it and to whom, as to the interaction with the Investment Canada Act. If that was a subsequent sale that had already been reviewed and was now an indirect transaction, it would still be subject to national security considerations. If it was an indirect sale above threshold, it would not necessarily apply to the net benefit, because the first transaction would have—in the sense that the first transaction, either in whole or in part of an organization, including their intangible assets, would have been subject to the ICA on national security grounds.

● (1710)

Mr. Ryan Williams: Thank you.

Another example that was brought by witnesses was CRRC. It's a Chinese railway sector company that was disqualified for some national security concerns in the U.S. It probably would not have gone through the study here in Canada. However, it got through that because the TTC in Toronto was able to pre-qualify that company through other tenders.

One thing we're going to get into, when we talk about the collaboration of this bill with other bills and with other parts of security in Canada, would be different departments. In terms of ISED and looking at working with other elements of municipalities or provinces in Canada, how do we stop something like that from happening in the future?

We can put a zero-threshold provision in this bill, but is there anything else that stops that kind of activity from happening in the future?

Mr. Mark Schaan: Mr. Chair, I appreciate the question.

One goal of the continued work on economic security is the heightened knowledge and capacity across the entirety of the ecosystem, including other levels of government that intersect and engage with partners. That's at the root of lots of the work that's under way with research security, trying to ensure there is a much stronger base of knowledge for all parties within the system about the ways in which they're intersecting with foreign investors and with national security and economic security concerns.

Obviously, given the responsibilities set out by various levels of government, we don't have a capacity to cut off things like the ability for other levels of government to contract with entities. What we can do is control the foreign direct investment into Canada in the first place and whether they are an illegal Canadian entity for operations within Canada—and those determinations come through the ICA process—and then obviously the degree to which any subsequent investments by those organizations are actually possible.

I think we need to look at the full tool kit within some of those, because obviously we can't bind municipalities or provinces with regard to what's within their full jurisdiction. What we can do is use our tool kits and our knowledge and capacity building to ensure that everyone is at least aware of the situation and working together toward the same ends, and then use the ICA where it is most useful, which is in reviewing foreign direct investment into the country, including the establishment of operations within the country.

Mr. Ryan Williams: Thank you.

I think you have some of those processes in the investment review division, which is where you operate.

There have been other instances, where the minister, for instance, has banned Huawei from Canada. There are universities still working with Huawei right now. There are, again, intangible assets. Of our applied research funding, 95% goes to our institutions and we still have that threat in those institutions, taking that IP away from Canada. Again, we're not addressing it per se in this act. When we have one amendment, how are we then addressing it in other acts? I think that's really important.

We've had a lot of witnesses talk about the supply chain. The current IRD is not going to shape or dictate the value chain in Canada, or supply chains. One of the biggest issues we had a lot of testimony about was critical minerals. When we look at some of this foreign direct investment and some of the tangible assets, the IRD would certainly look at everything through an Investment Canada Act range. However, when it comes to supply chains, is there anything outside of this amendment, outside of this act, that will allow the IRD to look at supply chains as a whole? Could you maybe answer that with any knowledge you have on the supply chain strategy that Canada has right now?

Mr. Mark Schaan: I'd offer a couple of comments. One, obviously, is that the current statement and guidance that we have on critical minerals are, in fact, attempting to ensure that the overall approach to the overall development of the industry is cognizant of the national security considerations at play and that it is setting out the broad framework that should guide key decisions in terms of not only the establishment of foreign direct investment but also the overall establishment of the critical minerals value chain within the Canadian context.

That said, there are a number of other actors, and this speaks again to the capacity building that's required across the entirety of the community, because there are sector-specific regulators, including at the provincial level, who have very key tools within their tool kit to be able to establish the guidance that actually sets out the minimum requirements for their sector specifically.

You raised the telecommunications sector. Obviously, that's exactly what is proposed in Bill C-26. It is to actually establish the specific guidance in a sector that we have federal jurisdiction over to say that these are the minimum requirements in this sector for how we're going to continue to ensure that security is contemplated and that we have very specific guidelines about high-risk vendors. Those same types of approaches can, and should, in many cases, be mimicked in other sectors to ensure that where we actually have jurisdiction, we are following through.

The goal of the ICA is to set the macro around foreign direct investment with the levers that it has, and then look at other mechanisms. As I said, where we actually have those levers, we've done that. In Bill C-26, that is very much exactly what we've set out, and then, with the critical cyber systems protection act, we will extend that as well into other sectors to ensure that there are minimum requirements as it relates to the cyber-readiness and the posture of those sectors.

● (1715)

Mr. Ryan Williams: We have the—

Mr. Iqwinder Gaheer (Mississauga—Malton, Lib.): I have a point of order, Mr. Chair.

The Chair: Just one moment, Mr. Williams.

Mr. Gaheer, go ahead.

Mr. Iqwinder Gaheer: I think the member opposite will find support for this amendment, actually.

I do have a subamendment that I'd like to move, if the member will allow me, but again, it's on friendly terms.

The Chair: From what I understand, MP Gaheer, you have a subamendment, but Mr. Williams had the floor, so I'll defer to him.

Mr. Ryan Williams: I'm happy to hear you're going to support our amendment. That's great.

I don't have too much more time. I'm just trying to get a background for certain things. If you have a subamendment, that's great. As soon as I am done with the floor, we can go to the subamendment. That would be fine.

The Chair: You were next on my list, Mr. Gaheer. You are after Mr. Williams.

Then I have Mr. Masse, Mr. Lawrence and Mr. Vis.

Mr. Williams, the floor is yours.

Mr. Ryan Williams: Thank you. I do appreciate that.

I think this is a really good discussion. We started with the minister and the officials. I reread Hansard last night, and we had really good testimony from all over on this.

My point from the beginning was just to get a background. I think a lot of the committee members had the same concerns, and a lot of witnesses said the same. This does one thing, but we need bills that supplement this; we need strategies to supplement this. We could pass this bill as parliamentarians, and a year from now we would still have all these things happening and we're going to ask why. I think the public and anyone watching, and all of us here, need to understand that this is one aspect, and now we need to move from this to other aspects of what this does and what this does not do. I think that's been really important.

Because this came afterwards, I just wanted to get your opinion. The C.D. Howe Institute proposed a national security amicus or intermediary, which was a review. It's more on the transparency aspect of this bill, but it allowed a review that.... It was almost like CFIUS, where they have different public members and a few judges who would review certain forms of direct investment.

Was that something your department looked at? Did you look at that briefing and see anything around that?

Mr. Mark Schaan: We have taken a look at the report. I think the goal of that particular function in the CFIUS regime is to provide heightened transparency for the purposes of the investor in terms of the degree to which the process is understood from their perspective. Our regime doesn't exactly mimic CFIUS in many ways, but I would say there are a number of transparency measures we have put in place, including annual reporting that has been continuously improved in terms of both the degree and the understanding of what we're reporting on.

I believe, later today, we'll also consider some further measures with respect to the transparency of the process, including some oversight of the national security information that's provided within the process.

Mr. Ryan Williams: I have one last question, and then we'll go to the next amendment.

CFIUS, in its program and how it operates, has a lot of involuntary submissions for FDI. Do we have any of that in Canada? Do we see any involuntary—

Mr. Mark Schaan: Involuntary or voluntary?

Mr. Ryan Williams: I'm sorry. I meant voluntary. That's very different.

Mr. Mark Schaan: We just put in place the mechanism in August, so we don't have enough span of time yet to be able to determine that.

Obviously, the pre-notification measures that are placed within this bill heighten a number of those we would hope to necessarily see as voluntary and actually make them mandatory.

There are a number of things we are moving out of the camp of.... That's for the dual purpose that a voluntary regime would have. You're trying to provide the investor with certainty and also, for the purpose of the foreign direct investment review, you're actually reviewing the stuff that you really want to review. You're telling people “This is the stuff we want to see” and you're actually mandating it and they're coming through.

● (1720)

Mr. Ryan Williams: Thank you.

[*Translation*]

The Chair: Thank you very much, Mr. Williams and Mr. Schaan.

I now give the floor to Mr. Gaheer.

[*English*]

Mr. Iqwinder Gaheer: Thank you, Chair.

I think, around this table, you'll find great support for this bill, and for this amendment as well. We don't want to get into amendments where we can open ourselves up to legal challenges, so I propose three changes. I would like to ask the officials afterwards what they think about those changes in line with the amendment.

Number one, we would like to change the period of time that's prescribed under section 15, and replace “21 days” with “45 days”. The 45 days would actually match other relevant review periods in the act itself. Number two, we would add a section to make sure that investors are notified, because it says “the non-Canadian gives notice of the investment to the Director”, but it doesn't actually say that the investor gets notified. Number three is that this only apply to SOEs where we do not have trade agreements.

That would protect us against legal challenges, as far as I can see, but I'd like to ask the officials.

Mr. Brad Vis: I'm sorry. Can you clarify that? Can you repeat those last two points?

Mr. Iqwinder Gaheer: The first one is to change “21 days” to “45 days” for the review period. Second is to add a section to make sure that investors get notified. Third is that this only apply to SOEs where we do not have trade agreements.

Mr. Philip Lawrence (Northumberland—Peterborough South, CPC): I have a quick point of order.

I assume that you'll circulate this in both official languages.

The Chair: Mr. Gaheer, do you have the exact wording of the subamendment you are proposing that can be circulated around for members in both official languages?

Mr. Iqwinder Gaheer: Yes.

The Chair: I understand that it's been sent to the clerk, and it will be circulated to members via email.

Is that correct, Mr. Gaheer?

Mr. Iqwinder Gaheer: That's correct.

The Chair: You had a question for the officials on your subamendment.

Mr. Iqwinder Gaheer: What do they think of this in line with the amendment? Would it protect us from legal challenges, as opposed to what the amendment was originally?

Mr. Mark Schaan: I will speak to the three pieces, as I understand them, in turn.

On 21 days versus 45 days, to be candid with the committee, 21 days is unrealistic. The time frame to adequately evaluate a notification under the act, analyze whether it should be reviewed for net benefit for public interest, consult with provincial and territorial stakeholders and then perform the necessary work to obtain an order in council—and for anyone who has ever done that, it's not the easiest or quickest process—the 21-day timeline is highly unlikely. I think I could say with relative certainty that it's never going to align with the Treasury Board Secretariat's filing and meeting schedule. The 45 days for a prescribed period is more appropriate, as it would match the relevant review periods in the act.

On the second piece, as it relates to notice to the investor, the existing section 15 includes subparagraph 15(b)(ii), which requires the director to provide a notice to the non-Canadian foreign investor in order to make it reviewable. This is required not merely out of procedural fairness, but because it sets in motion a process, in section 17, where the investor is then required to file an application. Applications require more information and documentation than just a notification. Therefore, the reference in section 17 would need to include the new subsection 15(2) in order to trigger that whole process.

Finally, as it relates to narrowing the scope of SOE investments to those outside of trade agreements.... As you would have heard from me last week—I was going to say earlier in the week, but earlier in the week was a different bill; it's all a blur—obviously, there's some consideration of the degree to which we have trade agreement obligations and WTO obligations. Our trade agreements are specific to the fact that we're trying very hard to ensure we are creating a level playing field for investments and encouraging investments between our countries. That's the case for a number of countries that feature state-owned enterprises. I know that when we think about SOEs, we always think about particular countries. Actually, the Canada Pension Plan Investment Board is viewed in many countries as a state-owned enterprise, by the definition of SOE, as are similar pension funds in a number of other countries.

Limiting the scope to those with whom we do not have a trade agreement still causes trade risk but obviously does not violate the trade agreements we've actually set out and potentially disadvantage Canadian outward investment, which would suddenly now be potentially subject to a reciprocal, retaliatory net benefit, which would potentially create both uncertainty and friction in the system.

● (1725)

Mr. Iqwinder Gaheer: Great, thank you.

For my colleagues, I think this is the path that Mr. Perkins wanted to pursue as well, the middle ground that he wanted to find.

The Chair: I would propose, if the committee members agree, to briefly suspend so that the exact wording of what you're proposing gets circulated in proper form.

Is that okay with members?

Some hon. members: Agreed.

The Chair: We will suspend for five minutes.

● (1725)

(Pause)

● (1730)

[*Translation*]

The Chair: Colleagues, we are ready to resume.

Thank you, Mr. Lawrence. You are always welcome in our committee.

[*English*]

With that attitude, you're always welcome on this committee and a great help for the chair.

There have been discussions among the parties. I'm looking around the table.

The way the subamendment presented by Mr. Gaheer is worded needs to be worked on. With unanimous consent, we could defer clause 7 to the end of the bill.

Some hon. members: Agreed.

(Amendment allowed to stand)

(Clause 7 allowed to stand)

The Chair: Mr. Masse, go ahead.

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

I'm hoping to set an example, seeing that my request for the same thing was denied by the Liberals the last time we went through this.

I just want to put that on the record. The NDP will be supporting this out of collegiality.

The Chair: Thank you, Mr. Masse. You set a good example.

Clause 7 is reserved for later consideration by the committee, so we are moving on to clause 8.

Mr. Philip Lawrence: On a point of order, we're on clause 7, so before we move to clause 8, we have an amendment, a different amendment, Mr. Chair, to put before the committee.

This is on clause 7, reference number 12525751.

The Chair: I don't have it, but the way I understand it, we just had unanimous consent.

Just one moment.

Mr. Philip Lawrence: Mr. Chair, my apologies. We'll move it when we get back to clause 7.

The Chair: Yes, we'll be on the subamendment of Mr. Gaheer when we come back to clause 7, but we've decided unanimously to move on and to reserve clause 7 for a later time.

Mr. Philip Lawrence: My apologies, Mr. Chair. I am from the finance committee, and we get things confused there.

The Chair: In the meantime, I don't seem to have it, so perhaps that amendment could be shared.

On clause 8, are there amendments?

Mr. Masse, go ahead.

Mr. Brian Masse: Thank you, Mr. Chair.

I do have an amendment here:

8.1 Section 20 of the Act is amended by adding the following after paragraph—

The Chair: Apologies, Mr. Masse, but given that you are proposing a new clause, we have to deal with clause 8 first, and then we'll get to your proposed new clause 8.1 in amendment NDP-2.

Shall clause 8 carry?

(Clause 8 agreed to)

The Chair: Now, Mr. Masse, I'll recognize you.

● (1735)

Mr. Brian Masse: Thanks.

Monsieur Lemire is now lecturing me, for good reason.

Really quickly—I don't want to take a lot of time with this—this raises a couple of issues over privacy protection and intellectual property. They come from the experiences that we faced with regard to protecting privacy, in particular. Out on the west coast, Anbang was an example of a Chinese state takeover and getting access to sensitive materials, including people's personal information, through hotels and seniors residences it had purchased. As well, in Windsor, Nemak is about intellectual property that was developed in the auto industry and then moved to Mexico.

This amendment is to create more opportunity for the government and the minister to have enforcement on that, again, with state-owned enterprises. It comes from practical experiences of being at risk here.

[*Translation*]

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

I see that Mr. Gaheer wishes to speak, but first I have a decision to render on this amendment.

The proposed amendment would amend section 20 of the Investment Canada Act. The *House of Commons Procedure and Practice*, third edition, reads as follows at page 771:

> …an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill.

Since section 20 of the Investment Canada Act would not be amended by Bill C-34, the chair is of the view that the amendment is inadmissible.

[*English*]

Before I recognize you, Mr. Lawrence, you understand that the chair's decision can be reversed by a vote but it's otherwise not up for debate.

Mr. Philip Lawrence: I understand.

Although it seems somewhat impolite, since I am a temporary member of this committee, I will challenge the chair.

The Chair: We'll move to a vote on the chair's decision.

Shall the chair's decision be sustained?

(Ruling of the chair overturned: nays 6; yeas 5)

[*Translation*]

The Chair: That brings us to amendment NDP-2, which is now ready to be debated.

Go ahead, Mr. Gaheer.

[*English*]

Mr. Iqwinder Gaheer: Thank you, Chair.

I want to ask the officials whether they think this is actually admissible or not.

Mr. Mark Schaan: Thank you, Mr. Chair, for the question.

We already consider these factors with respect to the nature of the law.

One of the challenges of legislation is positive versus negative lists. There are existing obligations with respect to our capacity to include and understand privacy and IP protections as it relates to the ICA. Specifying them potentially suggests that other legislative obligations and considerations are actually not necessarily within the purview of the act.

Given the nature of the broad responsibility and remit that we believe we have under the ICA, specifically identifying these two considerations potentially may challenge us in the future. It is often something that we believe would be best left to something like guidance, where we can be very specific about the fact that we actually do require this and actually think of it explicitly as something that we want to think about with respect to foreign direct investment.

The Chair: Thank you, Mr. Gaheer.

Are there any more questions or comments on NDP-2?

I'll recognize Mr. Williams.

Mr. Ryan Williams: Thank you, Mr. Chair.

Can you maybe walk us through that? I'm seeing the two paragraphs. What in these two would stop the department from doing any of the work they're doing? How does this stop the work that the rest of the bill is carrying out?

● (1740)

Mr. Mark Schaan: My comment was less that it prevents this work—because we already do this work. It's the fact that by identifying this work—notably, privacy and intellectual property—we actually potentially don't think about other aspects that are also legislatively required. We have many other factors that we believe are actually factors we consider and also that have obligations under statute.

These both have obligations under statute, and we do consider them. By specifying them, we believe we're actually potentially preventing someone from saying to us, “Well, you're not allowed to look at other things because the only two you put in the act were these two.”

Mr. Ryan Williams: Thank you.

Where I would challenge that is—and we've talked about this a lot—that we're not going to put lists, critical lists, into the act because it would be hard to undo them. From what I've understood, everything will be done through regulation, and there's a lot of different testimony we have on that. I think that unless we have another act that spells this out, this would, at least in the interim, point to intellectual property, and we had multitudes of witnesses testifying how important it is that we look at that.

The only risk I see is that if we don't reopen this ICA again for 22 years, we might have to remove it, but I don't see a risk at this point, because there's no other act that points to that, meaning that besides leaving out the list—because that will be done in regulation, which speaks more to the industries we'll be looking at—this does talk about intangible assets: “intellectual property” and “protection of personal information” of Canadians, which has two parts. I think we had one witness, Mr. Balsillie, who made specific mention of both IP and data, and we had a lot of witnesses who backed that up.

It seems to me—and it comes directly from personal testimony—that the risk of having this baked into legislation is that it may affect the future, as opposed to the list that will be in regulation. I don't see that in there. Is that something you agree with or disagree with?

Mr. Mark Schaan: With respect, Mr. Chair, I would disagree. Privacy rights, particularly as they're spelled out here, actually speak to legislative and statutory obligations that exist under the Personal Information Protection and Electronics Documents Act. Where it speaks to intellectual property rights, those are actually spelled out in the Patent Act, in the Trademarks Act and in the Industrial Design Act.

The degree to which this specifies rights that are specific but doesn't actually list all of the other acts we care about, which also come into play and should be respected, runs the risk, actually, of having the contention that the government didn't think about them and therefore they're out of bounds.

With respect to the contention that we need to care about these, I would very much contend that the broad capacity of the ICA to look at factors related to investment in Canada includes intangible assets and privacy considerations. In fact, I know of a very specific case in which intangible assets and intellectual property rights were specific to the considerations that were given under the ICA.

Mr. Ryan Williams: Can you share that with us?

Mr. Mark Schaan: I can't share that because it's from a case.

The Chair: Thank you very much.

I have Mr. Lawrence, and then Mr. Vis, Mr. Sorbara, and Mr. Masse.

Mr. Lawrence, go ahead.

Mr. Philip Lawrence: Thank you very much.

I'll continue on with you, Mr. Schaan. I understand you've been very active, and we appreciate all the time you've spent with this legislation. It's very important. I appreciate your service as well.

Your contention is that specifying these two items could have the effect of excluding other items. I want to be as constructive and helpful as I can be. I do believe these are excellent suggestions. I understand that you're saying it's already included in that, but there's an old saying: Trust but verify. I understand you're doing a great job, but there's no guarantee, unless this is written in law by Parliament, that it will continue on. Regulations can be passed by the government. Your internal guidance can change whenever you want it to change. I think these are critical things that need to be written down.

My constructive question for you is whether you believe it would be helpful if we subamended this to say that this is just one of many different things that the department should consider.

Mr. Mark Schaan: The factors that are currently listed in section 20 are intentionally broad:

> (a) the effect of the investment on the level and nature of economic activity in Canada, including, without limiting the generality of the foregoing, the effect on employment, on resource processing, on the utilization of parts, components and services

I won't read them all, but, needless to say, section 20 right now has intentionally broad parameters for the purposes of trying to ensure that we can contemplate a number of factors. Suggesting that, in addition, it would be non-exclusive these other aspects, I think we'd have to think about.

I would note that there are existing guidelines. You're asking whether or not this is written down. Our existing guidelines on the national security review of investments state that the transfer of sensitive technology and intellectual property is considered during national security review, which applies to all foreign investments regardless of the size and all IP regardless of whether it is government-funded. If the request is that intellectual property be written down somewhere, I would just note that IP is written down in our national security review of investments.

● (1745)

Mr. Philip Lawrence: I understand that, but putting these in, I think, is critical, especially with respect to the examples Mr. Masse gave and fully supported in there. It's been a while since I was at law school, but back when I was studying law in law school.... When we're interpreting legislation, unless there is something that says “exclusive” or “limited by” or language analogous to that, there's no way this would ever, in any way, limit your ability. That's just not the way laws are interpreted.

Mr. Mark Schaan: Intentionally including additional categories into a law is often rationalized. Jurisprudence routinely returns to the question of what the government meant by specifically adding in some clauses and not others. That's actually been a subject of considerable jurisprudence over the years—whether or not the government meant to actually exclude other things, because obviously that was intentional, while giving itself the right to do something it could already do. If it could already do it, why did it specify these things? It obviously might be suggesting that actually it was at the expense of what it could also do in other zones.

Mr. Philip Lawrence: There are provisions in the Income Tax Act—and I apologize that I don't have them off the top of my head, but I'm happy to provide them to you, sir—where it has highlighted certain items but it's not exclusive. In fact, it's quite common in the Income Tax Act—that's my area of expertise—where it will enumerate four or five or 10, 15, 20 different items but then say that the list is not exclusive, which is exactly what this does. I can't see any legal principle that would exclude.... Show me the language in here that says that other factors would be excluded.

Mr. Mark Schaan: Right now the language is exclusive in that there is no such clause at the end of the factors, so by specifying them, you would potentially risk that.

Mr. Philip Lawrence: If we put a subamendment in, that would alleviate your concerns, would it not?

Mr. Mark Schaan: I would raise a potential other concern, which is, notwithstanding the overtly broad and purposeful nature of the factors, to balance that with the desire for some degree of certainty. If this is non-exhaustive and suddenly you can throw in whatever else you want to consider, you're actually bringing uncertainty to potential investors, because now you've actually.... The balance is that it is a broad enough basket to say you can look at the important things—here they are, broadly constituted—which gives certainty to the investor that you can't just make up stuff as you go along and think about and add other factors, while also being broad enough to get at what's important.

Mr. Philip Lawrence: Are the enumerated factors in this amendment outside the current scope, or are they within the current scope?

Mr. Mark Schaan: We believe them to be within the current scope, which is why it's problematic to potentially add them in. We believe we already have the power to do this, and we have.

Mr. Philip Lawrence: I don't understand.

Here's the deal: We're in Parliament. I work for the Canadian public. You work for the Canadian public. If we want certainty, that has to come from the Canadian public, not from you. You don't pass laws; we do. We want this in here, because this adds certainty. We don't trust you, to be clear, not to include this—

The Chair: Mr. Lawrence, to be clear, the officials are here to answer questions that are technical in nature and specific to the bill before us. They're not here to debate the policy rationale or intent.

We have to keep it in a certain tone, Mr. Lawrence. I hope you maintain that tone for the rest of your time with us.

Mr. Philip Lawrence: I certainly wouldn't want to divide and stigmatize.

The Chair: Thank you, Mr. Lawrence.

Mr. Philip Lawrence: If I get passionate, I apologize. It's not directed at.... Like I said, I thank you for your service. To be candid, I just don't think what you're saying makes sense. I think I should be allowed to say that as a legislator and representative of the Canadian public.

Why can we not highlight certain categories within a broader category? It doesn't exclude any. If it does, maybe we should work to get a subamendment, if that would alleviate it. That's where I want to go. I want this to be a good law, but I want to make sure these two highlighted things are highlighted.

I'll yield the floor at this point. Can you put me back on the list? I want to think about this for a second.

● (1750)

The Chair: Thank you, Mr. Lawrence.

Go ahead, Mr. Vis.

Mr. Brad Vis: I was reading a Globe and Mail article by Niall McGee on August 13, 2022, called “China has encroached on Canada's critical minerals industry, with almost no obstruction from Ottawa”.

The article states:

> While Canadian politicians claim to want to scrutinize foreign takeovers, over the past five years fewer than 1 per cent have been subject to in-depth security reviews under section 25.3 of the National Security Act, and almost none were blocked. Last year, out of 826 foreign investment filings, Canada conducted only 11 section 25.3 reviews. The government blocked only one of those transactions: Chinese state-owned Shandong Gold Mining Co. Ltd.'s attempted takeover of Canadian gold mining company TMAC Resources Inc.

There was another example that was listed. I believe it was Norsat technologies, where I believe Mr. Masse's amendment comes from. He's nodding in agreement with me. Intellectual property was indeed lost.

The general mood of the Canadian public is that they want this bill strengthened. I'm glad the government brought this forward, but I don't know whether the regulatory approach has done its due diligence. Now, under Australian law, they have the ability to go back.

My question for the official is this: Have any analysts in your department examined Bill C-34 in the context of...? Say Bill C-34 had been in place five years ago. How many more transactions would have been covered under section 25.3 of the National Security Act, in the context of critical takeovers by foreign state-owned enterprises?

Mr. Mark Schaan: Mr. Chair, I'm not in a position to answer the question that was put by the member.

Section 25.3 is fact-based and use case-specific. A case is determined in consultation with the national security community as to whether or not a given investment meets the test of “could be injurious to national security”. Bill C-34 makes important improvements in a number of ways, but the degree of being able to go back and determine whether or not the national security advice would suddenly rise to the threshold of “could” is not something I'm in a position to answer.

Mr. Brad Vis: I think everyone wants to get this legislation correct, but the problem is that I don't think that as a committee we have all of the relevant information as the act applies. We've heard from officials—and I'm not challenging the officials on this—but they're subject to the security provisions that they have to uphold as officials and, as legislators, we're asked to basically make amendments to one of the most consequential bills for business activity in Canada without access to the confidential information that informed the decision-makers at the Department of Industry.

That's why I tend to side with Mr. Masse on the need for more explicit lists in the bill to provide the assurances that British Columbians especially and, I would say, all Canadians—it's just that in British Columbia it's particularly bad—want to see from this legislation: to see that we're protected.

I don't have anything else to add on this amendment, other than the fact that I think we should move a subamendment to alleviate the concerns raised by the officials and ensure that it wouldn't, under future legal interpretation, be subject to—help me out here, Phil—an interpretation that would exclude other factors by the inclusion of the two factors right here.

With that, I'd like to move a subamendment that proposed paragraphs (c.1) and (c.2) don't exclude any other considerations made by officials or the minister in conjunction with these provisions at hand.

● (1755)

The Chair: Okay, just one second.

Mr. Vis, you're aware that, considering you're moving a subamendment, we would need the exact language in both official languages. Do you have the exact wording?

Mr. Brad Vis: I don't, but if we recess for a second, I can write it up.

The Chair: With the committee's consent, we can suspend for a couple of minutes.

The meeting is suspended.

● (1755)

_____(Pause)_____

● (1755)

[*Translation*]

The Chair: Colleagues, we will resume.

There have been discussions among the parties, and there is unanimous consent to do what we did in the case of clause 7 for the new section 8.1 proposed by amendment NDP-2, which is to defer it to the end of the bill when we have considered all the other clauses.

Do we have unanimous consent?

We have unanimous consent. That's great.

(Amendment allowed to stand)

(On clause 9)

The Chair: That brings us to clause 9.

Does anyone wish to move amendments to clause 9?

● (1800)

[*English*]

I have Mr. Williams.

Mr. Ryan Williams: Thank you, Mr. Chair.

This is reference number 12457710. This is an amendment that Bill C-34, in clause 9, be amended by adding after line 26 on page 6 the following:

> (7) Section 21 of the Act is amended by adding the following after subsection (8):
>
> (8.1) The Minister shall provide reasons for any decision made under subsection 21(1), 22(2) or 23(3) explaining the factors taken into account by the Minister to conclude that he or she is satisfied or is not satisfied that the investment is likely to be of net benefit to Canada, and shall publish in the Canada Gazette any order imposing terms and conditions on the investment implemented or proposed by a non-Canadian.

This amendment, we think, goes to what our point is—transparency—and brings a bit more transparency. We heard from multiple witnesses that they would like to see more transparency in government. We certainly heard from witnesses from CFIUS, in the U.S., where they include a bit more transparency. They even have a public portion to that committee. This was our attempt to add that to this bill, Mr. Chair.

The Chair: Thank you, Mr. Williams.

[*Translation*]

I have a decision to make on amendment CPC-3.

Bill C-34 would amend the Investment Canada Act by authorizing the Minister of Industry, after consultation with the Minister of Public Safety and Emergency Preparedness, to impose interim conditions in respect of investments in order to prevent injury to national security that could arise during the review under part IV.1 and by allowing written undertakings to be submitted to the Minister of Industry to address risks of injury to national security and allow that minister, with the concurrence of the Minister of Public Safety and Emergency Preparedness, to complete consideration of an investment because of the undertakings.

Amendment CPC-3 would add a new obligation for the minister to provide reasons for decisions made under subsections 21(1), 22(2) or 23(3) explaining the factors taken into account to conclude that he or she is satisfied or is not satisfied that the investment is likely to be of net benefit to Canada. The bill makes no provision for the providing of such reasons.

The *House of Commons Procedure and Practice*, third edition, reads as follows at page 770:

> An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

The chair is of the view that, for the aforementioned reasons, the amendment is beyond the scope of the bill. Consequently, I find the amendment inadmissible.

[*English*]

Mr. Philip Lawrence: I see you looking at me, Mr. Chair.

I am going to be polite. We will not be challenging the chair on this.

The Chair: Okay.

[*Translation*]

Shall clause 9 carry?

(Clause 9 agreed to)

The Chair: Are there any further amendments before we go to clause 10?

[*English*]

Mr. Masse, go ahead.

Mr. Brian Masse: It's NDP-3. I move that Bill C-34 be amended by adding after line 26 on page 6 the following new clause:

> 9.1 Section 23.1 of the Act is replaced by the following:
>
> 23.1 The Minister shall provide reasons for any decision made under paragraph 23(3)(b), and the Minister may provide reasons for any decision made under subsection 21(1) or 22(2) or paragraph 23(3)(a). The reasons shall include information on any representations made or undertakings submitted by the applicant.

This is for more transparency and for the minister to have to justify the decision-making process.

● (1805)

[*Translation*]

The Chair: Thank you, Mr. Masse.

I must inform you of another decision of the chair.

The proposed amendment would amend section 23.1 of the Investment Canada Act. The *House of Commons Procedure and Practice*, third edition, reads as follows at page 771:

> …an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill.

Since section 23.1 of the Investment Canada Act would not be amended by Bill C-34, the chair is of the view that the amendment is inadmissible.

As no one seems to want to challenge my decision, that will bring us up to clause 10.

[*English*]

Mr. Philip Lawrence: I have a point of order.

Do we not have CPC-4 on new clause 9.1 there, Mr. Chair?

The Chair: Yes, CPC-4 can be moved.

Who is moving it?

Mr. Généreux, go ahead.

[*Translation*]

Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC): I move that Bill C-34 be amended by adding after line 26 on page 6 the following new clause:

> 9.1 Section 23.1 of the Act is replaced by the following:
>
> 23.1 The Minister shall provide reasons for any decision made under subsection 21(1), 22(2) or 23(3) explaining the factors taken into account by the Minister to conclude that he or she is satisfied or is not satisfied that the investment is likely to be of net benefit to Canada, and shall publish in the *Canada Gazette* the investment implemented or proposed by a non-Canadian.

Mr. Chair, I don't know whether this amendment will suffer the same fate as the other two that we just considered—that is, whether you will have to make a decision regarding them—but we would like this one to be made to the Investment Canada Act.

Once again, I think that, since a number of our parties, including the New Democratic Party, want to do it, I imagine it's because there's a valid reason for doing it. It would be interesting to see later on how this element could be included differently in the act if, considering the decisions you've just made, this amendment isn't suitable. Perhaps there'd be a way to do that differently.

The Chair: Thank you, Mr. Généreux.

You hit the nail on the head. The proposed amendment would amend section 23.1 of the Investment Canada Act. However, the *House of Commons Procedure and Practice*, third edition, reads as follows at page 771, as I just explained with regard to the previous amendment:

> …an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill.

Since section 23.1 of the Investment Canada Act would not be amended by Bill C-34, the chair is of the view that amendment CPC-4 is inadmissible.

Since the decision of the chair isn't being challenged, that brings us up to clause 10.

Go ahead, Mr. Vis.

[*English*]

Mr. Brad Vis: I was going to contest the decision.

The Chair: Okay. I didn't recognize you in time. I will accept your challenge to the chair's decision.

If I'm speaking too quickly, please let me know. Otherwise, pay attention.

Mr. Brad Vis: I'm trying to listen in French and then—

The Chair: Okay, it got lost in translation.

I'll accept your challenge to the chair's decision that deemed CPC-4 irreceivable.

The decision is challenged. Shall the chair's decision be sustained?

(Ruling of the chair sustained: yeas 6; nays 5)

● (1810)

[*Translation*]

(On clause 10)

The Chair: That brings us up to clause 10.

Are there any amendments to clause 10?

[*English*]

(Clauses 10 and 11 agreed to)

(On clause 12)

The Chair: Are there amendments that members wish to move on clause 12?

Mr. Williams, go ahead.

Mr. Ryan Williams: Thank you, Mr. Chair.

We have an amendment, CPC-5, that Bill C-34, in clause 12, be amended by replacing line 11 on page 7 with the following:

> manner described in section 28;
>
> (b.1) if the non-Canadian is a state-owned enterprise, to acquire any of the assets of a Canadian business; or

This was added subsequent to other additions we had, to make sure we are identifying state-owned enterprises and that they're looked at differently from other FDI.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Williams.

I recognize Mr. Fillmore.

Mr. Andy Fillmore (Halifax, Lib.): Thanks, Mr. Chair.

I want to reflect for a moment and then perhaps propose a friendly subamendment to the amendment that might achieve the same intention but perhaps a bit more effectively or with more clarity. I might ask the officials to weigh in on what I propose.

It starts with saying that the amendment seeks to expand the jurisdiction to asset sales. Those asset sales are actually already covered in the bill as is. It may not be clear, and I think that's what the point of the proposed amendment is.

I just want to remind members that all acquisitions of IP assets are already subject to national security review under the ICA, whether the investor is a state-owned entity or not. The concern with the amendment is that it could be interpreted as actually narrowing the scope of this national security review for such asset acquisitions under the act.

The proposal, therefore, is to adjust the language so that we can really cement the interpretation in there: that any acquisition of an IP asset can be reviewed, regardless of who the investor is. The change I'm proposing is to add a new paragraph 25.1(c.1): "for greater certainty, the acquisition in whole or in part of an entity under paragraph (c) includes the acquisition of the assets of such an entity."

I wonder if the officials have something to say there.

The Chair: Before I let Mr. Schaan react, Mr. Fillmore.... You're moving a subamendment. Has it been provided to the clerk in writing in both official languages?

Mr. Andy Fillmore: We'll make sure that's happening right now.

The Chair: Thank you very much.

Mr. Schaan, go ahead.

Mr. Mark Schaan: Thank you, Mr. Chair.

I would concur with the assessment that was provided, in that the ICA has jurisdiction over assets but this definition would essentially ensure that it's understood to include assets to which we believe the act already applies and what's best in light of those.

The "for greater certainty" clause, we believe, just reinforces what we believe the act is capable of doing and draws attention to it, which is helpful.

The Chair: Thank you.

It has not been received yet. I would like members to have it before they debate it.

● (1815)

Mr. Andy Fillmore: I think it's coming. Maybe we could have a very short suspension.

The Chair: Okay. We will have a short suspension until the subamendment from the floor from Mr. Fillmore is received.

We're suspended.

● (1815)

_____(Pause)_____

● (1825)

[*Translation*]

The Chair: Colleagues and friends, we are back.

We are still on clause 12. Mr. Fillmore has moved a subamendment.

[*English*]

The form is not exactly as it should be for a subamendment. I would seek unanimous consent to reserve clause 12 altogether for further consideration.

On the amendment you moved, Mr. Williams, we'll reserve it with unanimous consent and come back to it.

(Amendment allowed to stand)

(Clause 12 allowed to stand)

(Clause 13 agreed to)

(On clause 14)

The Chair: We're making progress.

Mr. Brian Masse: Yay.

The Chair: Thank you, Mr. Masse, for your enthusiasm.

Are there amendments to be moved on clause 14?

Mr. Perkins, go ahead.

Mr. Rick Perkins (South Shore—St. Margarets, CPC): Bear with me while I flip some papers here; two committees in the same two hours is a little challenging.

We have CPC-7. Bill C-34, in its current form, doesn't compel the minister, in my view, to actually conduct a national security review. I know we've had some discussions and questions about this.

Mr. Schaan said there are three stages. What we're looking for is that the minister, in some cases, rather than having the option of asking for the more detailed reviews in the second and third stages, "shall" do it in certain circumstances. My understanding is that the words "may" and "shall" in legal terms have significantly different meanings. The purpose of this amendment, in other words, is to compel the minister to send certain types of investments to a national security review rather than giving him the option.

Part of the reason for that, as I've expressed before, is my concern that several recent acquisitions by companies controlled directly and indirectly by China—the Communist Party of China—were allowed to go through with what I would call, in a non-technical term, a fairly superficial national security review. I am thinking primarily of the acquisition of the telecommunications company in Vancouver called Norsat. It was bought by Hytera, which also owns the Markham-based company Sinclair, which subsequently was contracted by both the RCMP and the Canada Border Services Agency to provide services and equipment to those agencies after the United States and President Biden actually had banned Hytera from doing business in the United States. It has actually been charged in the United States with 21 counts of espionage.

While that's not an acquisition in terms of the procurement, the whole idea that Hytera itself was able to buy important telecommunications equipment, with the minister having the ability to say that he "may" do it, so he'll just do the basic level of security and not the deeper dive into a state-owned enterprise.... We need to have a greater depth of certainty in the national security review in those cases.

The other case, which I mentioned at a previous committee, is the acquisition of the Tanco mine in Manitoba by a state-owned resource company in China, based out of Beijing, I believe. It acquired the only lithium-producing mine at that time in Canada—obviously critical to the EV strategy going forward for our country. The result is that all the lithium being mined at that mine in Manitoba—our only one—is actually going to China to develop the battery technology in China, rather than being used here in Canada. Again, that went through under Minister Bains, with just a cursory first-level review as he was not compelled to go into the more detailed review.

I know there are examples that go further back and that people would probably like to talk about. Mr. Masse and I have talked about Nexen, for example, and the oil sands, and the list goes on.

We feel that in those circumstances it's essential that the government and cabinet have the benefit of that detailed security review and that it shouldn't be an option. It should be required, and it should be a “shall” rather than a “may”.

● (1830)

[*Translation*]

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

Unfortunately, I must inform you of a decision of the chair.

Bill C-34 would authorize the Minister of Industry to make an order for the further review of investments under part IV.1. Amendment CPC-7 would remove the minister's leeway to make such decisions and confer that authority instead on the Governor in Council.

The *House of Commons Procedure and Practice*, third edition, reads as follows at page 770:

> An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

The chair is of the view that, for the aforementioned reasons, the amendment is beyond the principle of the bill. Consequently, the chair finds this amendment inadmissible.

[*English*]

Mr. Perkins, I anticipate that you will challenge.

Mr. Rick Perkins: As much as I hate to do this, I believe in this amendment and the one after it so much that I would like to challenge the chair.

I would ask for a vote on that ruling, please.

The Chair: Such is your right.

Shall the chair's decision be sustained?

(Ruling of the chair sustained: yeas 6; nays 5)

The Chair: The challenge on the decision has failed and amendment CPC-7 is inadmissible.

Are there other amendments regarding clause 14?

Mr. Williams, go ahead.

● (1835)

Mr. Ryan Williams: Mr. Chair, we have CPC-8, which replaces line 28 on page 7 with the following:

> jurious to national security, the Minister shall, within the

It also replaces line 31 on page 7 with the following:

> is to be made under subsection 25.3(1).

We're doing this one because several MPs have expressed the need to create an automatic trigger that compels the minister to conduct a national security or net benefit review when within that threshold. While the bill does provide greater power to the minister to conduct a net benefit or national security review, the minister may ultimately choose not to conduct a review.

We heard from the minister that he would like more power. At the end of the day, we've seen certain examples where the minister has chosen, as with Neo Lithium or others, not to use that power. This part of the bill would ensure that the minister would have to, if there was an automatic trigger.

[*Translation*]

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

Are there any further comments or questions on amendment CPC-8?

Go ahead, Mr. Perkins.

[*English*]

Mr. Rick Perkins: I'll add that this is similar, I understand, to my presentation on the last one, but from the perspective of.... When the minister was here at one of the meetings, I said, you know, not all ministers are created equal, regardless of party. Some, perhaps, aren't as diligent as the current minister in that role. I know he has put out more stringent guidelines for some of these areas, particularly the critical minerals area. Clearly, the current minister is looking a little more rigorously at it than, perhaps, previous ministers. Still, those things are in guidelines, not in law.

With “shall”, the idea that he is required to have this in both net benefit review and national security ensures that the Governor in Council—cabinet and the minister himself—has the utmost detail available in making the final recommendation to cabinet or the final decision, to make sure the net benefit and security interests of our country are well regarded and well protected when there is an acquisition.

I believe this is essential. I think it's proven that ministers are not necessarily, in some instances, following the due diligence the public would expect. They may be getting advice from the department. The official process is, “Okay, we've done a first-level assessment and it looks okay” or “The Minister of Public Safety says it's okay” or “We don't think it's an issue on net benefit”, even though we don't have—not to mix bills—a real beneficial corporate registry that can give us clarity about the concentration levels of companies within particular industries or areas. As I have mentioned earlier, the fisheries department doesn't know who ultimately is the beneficial owner of a licence. It can't tell, on the west coast, for example, whether or not Jimmy Pattison has 50% ownership of all licences. The Competition Tribunal says that it shouldn't be over 30% in any industry, as we know from our discussions around Rogers and Shaw.

I know this seems a little circular, but I think it's incumbent upon us to make sure that whoever the minister is—ministers and governments change—the due diligence is done and that a minister has the full depth of information available to them, from all the security experts or competition experts in corporate concentration and net benefit analysis, before making that final decision, in certain circumstances, to ensure our interests are well protected.

I think the problem with the language of “may” is that it may be a minister who is not as diligent. They may be so in some circumstances, but it's left to chance and the vagaries of who will occupy the office. It has nothing to do with the current government. I could make the same argument about some people in the preceding government, too, who held this job. I'm sure the officials would never be so impolitic as to share their views on the long list of previous ministers and their diligence on some of these issues.

This takes the guesswork out of whether or not this happens, as well as the situation where we have, in Parliament, members of Parliament coming hard at the government of the day, questioning why it did not do this or why it didn't go in depth. It happened in the Tanco case, and it happened in the case of Hytera. I wasn't around at the time of the Nexen oil sands purchase, but I know Mr. Masse was. At least, I understand from him that he raised some of these issues in the House.

This would protect a minister, to a large extent, from making, perhaps, an error after the fact and being subjected to questioning about the decision without the proper information handed to them. They can't put the toothpaste back in the tube. Once it's approved, it's done. It's over. You can't go back. Having more information is only a good thing in this process. It is more certainty for ministers and governments to have more information in making that final decision.

● (1840)

As I understand the process, if there is viewed to be a national security issue or a net benefit issue out of that review, the minister, under the Investment Canada Act, has to go to the Governor in Council with a recommendation. The Governor in Council, for those who are watching and don't understand, is the cabinet. The minister has to go to cabinet to get agreement on the decision or recommendation he's making if there's an issue with the net benefit review or the national security review.

In my days when I had hair, I sat in the back as a staffer in cabinet meetings, so I saw some of that debate behind the curtain. Certainly, from my years at executive and board tables in the private sector, I know that in the decision-making process, a more robust and better decision is always made when you have a lot of people around the table with varying backgrounds who can give their opinion—not just the opinion of a single person, like the minister. That's why it goes to cabinet, to have those discussions, because while the minister may think that it is or isn't an issue, there may be a different perspective, such as a regional perspective or other perspectives from different backgrounds around cabinet. Quite often, the decision that comes out of cabinet may be a little different from what went in. However, it will never go there for that debate if the information and the depth that we're asking for here isn't there and, therefore, is not going to the minister to make sure that he or she has the full benefit of everything possible in making that recommendation.

It seems like a small change, from “may” to “shall”. I thought it should be “will”, but the lawyers told me we don't put that in the act. We don't use “will” to say that the minister will do something. Saying “the minister shall do that” is essentially “will”, apparently. The chair is a lawyer, so he knows this better than I do, but “will” is apparently not a word you use in acts.

I would encourage all members around the table to think about that and to say why we would not want the minister to have the full breadth of expertise and information before him at the highest level of detail that we can get in this government on an acquisition on national security and net benefit.

In case you get a lazy minister—really, there are some lazy ministers—he may not really read the brief, may not do the due diligence in looking through all the documents and may not spend the time with officials to fully understand what this acquisition is about and what's happening. Therefore, the government, taxpayers and industry are exposed to things that we shouldn't be exposed to. One of the guarantees, I guess, against a lazy minister is turning “may” to “shall”.

I would ask you to support us in this proposal to protect us from lazy ministers and to make sure that all of the information that is possibly had is available to that minister, whether they are diligent or less diligent, going forward.

● (1845)

The Chair: That was fascinating, Mr. Perkins. Thank you very much. It was interesting.

Go ahead, Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

I'll be supporting this as well. I think we can aptly name this amendment the “Maxime Bernier clause”, because he was minister at one point in time, and that should cause a lot of concern for Canadians.

These are just simple facts that I've lived through here. I'm not looking to attack anyone or anything. I didn't have any trouble with him as minister, but I can say that the current minister has actually—I'll be quite frank—worked a lot harder in many respects. I'd put that on the public record any time, any place, anywhere, as well as other ministers that I've had—

The Chair: It's already on Twitter.

Mr. Brian Masse: It's already there. Absolutely.

I understand the clause about “shall” and “may” because I worked with then minister Cannon to change that language to ensure that the consultations under the International Bridges and Tunnels Act actually consulted the local communities where the municipality was hosted, whereas before they didn't have to.

I'll support this amendment for those reasons, and I appreciate the efforts of Mr. Perkins on this. I'm ready to support it.

Thank you.

The Chair: Thank you.

Are there any more comments on CPC-8?

Go ahead, Mr. Généreux.

[*Translation*]

Mr. Bernard Généreux: I agree with my colleague, Mr. Chair. We've heard from a lot of witnesses, and many of them discussed the effects of an automatic review triggering mechanism. I think that's a very important element.

If we change the words used in this section, will you also have to challenge it? Will that be automatic?

I'd like you to explain to me the difference between this one and the ones we previously discussed.

The Chair: Since it isn't beyond the scope or principle of the bill on which we have already voted on second reading, it is admissible.

Mr. Bernard Généreux: I'd like to ask the officials a question.

Do you think the new wording would give the minister more leeway on this?

Mr. Mark Schaan: This amendment would reduce the minister's discretion because it would require the minister to go to the second phase of the national security review, that is provided for under section 25.2. Consequently, that wouldn't give the minister more powers because it would reduce his or her discretion.

Mr. Bernard Généreux: Is my understanding correct? It would reduce the minister's powers?

Mr. Mark Schaan: Yes, because the minister wouldn't have the authority to consider the national security implications step by step. Normally, the national security review is triggered, then the decision is made whether to go on to the second phase, the one provided for under section 25.2. Then the decision is made on whether to go to the phase provided for under section 25.3, and, lastly, an order may be made under section 25.4.

The amendment in question would require the minister to apply section 25.2, except for the information gathering process that normally takes place for the purposes of section 25.1 if the minister considers that the investment may be injurious to national security.

● (1850)

Mr. Bernard Généreux: I'm not sure I really follow you. Despite this change, in all the phases, the minister will nevertheless still have the freedom to decide whether or not he or she can extend the investment review.

Mr. Mark Schaan: The difference lies in the fact that one of the amendments concerns the Governor in Council. Although the minister has certain powers, the decision is already made for him or her because this amendment would require the minister to apply section 25.2.

Mr. Bernard Généreux: I see.

This becomes an automatic triggering mechanism, and I think it's necessary that this element in the bill be understood.

The Chair: To answer your question, Mr. Généreux, Mr. Schaan explained that the reason why amendment CPC-8 was admissible and amendment CPC-7 was not is precisely that amendment CPC-8 concerns the minister, not the Governor in Council.

Go ahead, Mr. Perkins.

[*English*]

Mr. Rick Perkins: I'll just follow up on Mr. Généreux's question, if I could.

Mr. Schaan, I get that it does remove that, so I agree that it's narrowing the process. It's doing the intent, which is to do a deeper dive into these issues for the minister. However, it doesn't change the ultimate decision-making process that the minister has from the results of the reviews by those agencies. The minister still has to review those. It doesn't restrict their ability, from my understanding. Once the recommendations come back from those reviews, the minister still has decision-making power. It hasn't changed what to do with that information and whether or not the minister believes that there is a net benefit issue or a national security issue and then makes the decision whether or not to go to cabinet with that.

It doesn't remove his or her discretion on that, I believe. Is that correct? It forces a process, but it doesn't predetermine the result.

Mr. Mark Schaan: It's important to note that there are two aspects to this.

As you note, there's the process that follows from the decision, but the process is based on the information. Therefore, the movement from section 25.1 to 25.2 to 25.3 is an escalating view of the national security evidence. It moves from a concern that there is a national security consideration worth evaluating—and that's the beginning of the process—and that it could be injurious. It's the information that makes the determination on whether or not it moves to the next step. What this does is that, essentially, in process, it makes a determination without the information that it must proceed to the next step.

You are correct, though, that it does not bind the minister to an outcome based on that information. However, normally sections 25.1 to 25.2 to 25.3 are additional information and further scrutiny on the basis of the new information that follows, because the information is actually a further assessment.

Mr. Rick Perkins: I would think that's a good thing. It doesn't bind the minister to the outcome that they, as a minister, want to have and to recommend going forward, but it does ensure that the minister has a deeper level of information than the first level of review would probably give them. It may or may not, I guess. It will all depend on the situation. It may confirm that it's not an issue, for example. You might have been able to get that from the first level, or you might not. It may provide a more robust amount of information, so it guarantees that there's a little deeper dive on the information that goes in. It may result in the same information going back, but we don't know if it would result in more, unless the process makes the minister go to that level.

Is that correct, if you can follow? I don't know if people are following; it may sound a little circular.

Mr. Mark Schaan: I am following.

Right now, the movement from one level or one stage of the national security review to the next is premised on the analysis of the information. By essentially assuming a section 25.2 review, one is presuming that the information necessitates it, whereas the analysis in the current format is this: Here is the information; an assessment is made as to whether or not we believe that it could be injurious; further analysis and assessment are then done to move it to the next level, where it's believed that it would be injurious.

By moving to section 25.2, it's not following the information escalation that currently happens, where essentially we're coming to a series of cascading decisions: Is there a national security concern? Is that national security concern founded? Could it be injurious to the national security of Canada? Would it be injurious to the national security of Canada?

By jumping through to the next set of questions, we have presumed that the answer is yes and yes. In our current world, we allow the information to speak as to whether or not the answer is yes.

● (1855)

Mr. Rick Perkins: But if you skip to that, you're still going to presumably have the information from the other two levels, in the sense that at that next level, it would say.... Let's take the case that you've determined it's not.... You would still get that at this level, even though it's a little deeper, and you say, “Okay, this isn't going to take long.”

Mr. Mark Schaan: You'd be asking the national security community to further assess something they do not believe to have national security risk. It would now further assess it as to whether or not it really doesn't, because you've asked it to basically have a “could” test.

Mr. Rick Perkins: I know you can't divulge the past decisions, but my understanding of the cases I mentioned, going by the public information available from the minister at the time, is that for some reason, in the case of Tanco, for example, it was determined at the first level that there wasn't a national security interest. We never went any deeper or into any deeper thought, when obviously we knew that our only lithium mine was being bought by essentially a Chinese state-owned enterprise.

What I'm struggling with is that I think the process doesn't work. When that happens at the first level—according to Minister Bains and according to all the media I've read on it, that's as far as the analysis went in that case—it doesn't work if that level alone says, “Okay, we don't think there is, so go ahead.” Then, of course, it turns out that the company and the plan and everything they're doing is—to me—injurious to our net benefit and national security, because 100% of what's coming out of that mine is going straight to China and not being managed at all here.

The motivations of the company buying, the intent of the company buying, all those things clearly weren't exposed in that first level, or one might have thought that it should automatically go to the second or third level. I actually haven't seen this, because this level of stuff was long before I ever sat as a staffer in a cabinet meeting. The world didn't have much in the way of free trade of anything back then.

My concern is that the mistakes are...and maybe this is armchair quarterbacking post this thing, but to me, this is suspenders and a belt. I think you asked the other day, on the other bill, if we wanted suspenders and a belt. I think sometimes I do want suspenders and a belt in a law. I wouldn't wear it personally in a fashion sense, but in terms of legislation, I don't think there's anything wrong with having suspenders and a belt so that the minister has clear powers to do what he or she needs to do.

I don't know. Am I missing something? You probably can't speak to the Tanco case.

Mr. Mark Schaan: No. I can't speak to specific cases.

The Chair: If there are no more comments, we could go to a vote on CPC-8.

I see no other interventions, and we've heard plenty on CPC-8, so I will call for the vote.

(Amendment negatived: nays 6; yeas 5)

● (1900)

[*Translation*]

The Chair: Amendment CPC-8 is therefore negatived.

That brings this meeting to an end. Thank you, everyone, for your cooperation.

Thank you, Mr. Karman, Mr. Schaan and Mr. Burns.

Thanks to the legislative clerks, the clerk, the interpreters and our support staff.

Thank you, everyone.

The meeting is adjourned.