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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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● (1530)

[*English*]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good afternoon, ladies and gentlemen.

Bonjour à tous and welcome to the 58th meeting of Parliament's Standing Committee on Industry, Science and Technology.

We have some guests with us today. I'll introduce them briefly.

Marie-Josée Thivierge, who is the assistant deputy minister of small business, tourism, and marketplace services, will be giving the opening remarks today. Richard Saillant is the director general of investment review and strategic planning branch. Pierre Legault is assistant deputy minister in the Department of Justice.

Just before we go to the opening remarks—and I see Mr. Lake is trying to get my attention as well—I wanted to cover one other thing and see if we have agreement from the committee. For our CRTC hearings, we have of bill of $5,875. That was, if you remember, for the video conferences and witnesses' expenses, etc. I just need a motion to accept that.

Mr. Mike Wallace (Burlington, CPC): So moved.

The Chair: All in favour?

(Motion agreed to)

The Chair: Thank you very much.

Mr. Lake.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Yes, Mr. Chair. Again, I am wanting to address the issue of the importance of this study. It was brought up again in question period the other day by the leader of the NDP, I think, in the opening round. Given the importance of this study, which I think we all agree on, I want to move a motion that we use at least the next four meetings, including this meeting, to study the Investment Canada Act—that we change the schedule to do that.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): I think we already came to an agreement on this, Mr. Chair, and—

Mr. Mike Lake: Well, I think circumstances have changed, obviously, since we came to the agreement. We now have a choice as a committee to at some point have.... Let's look at our choices. Our choices are to listen to the same witnesses on the census issue that we heard over the course of several meetings in the summer, on a private member's bill that's not due to be back to the House until May 12, or we can hear witnesses on the Investment Canada Act.

It's incumbent upon us as a committee to decide what our priority is. The new information, obviously, is that there's news of a merger. It's obviously very public. It has been a topic of questions in question period during leaders' round in recent days.

Mr. Chair, with respect, I think it's incumbent on us as a responsible committee to focus on priorities. I think the Investment Canada Act study should be a priority for us.

The Chair: Thanks.

I'm going to go to Mr. Rota next, and then to Madam Coady. I don't see anybody else on the speakers list at the moment, but I should tell you that our next meeting is on the private member's bill. [*Technical Difficulty—Editor*]...CRTC. That's the UBB issue. Then we are going to go to the private member's bill, just for your information.

I'll go to Mr. Rota now.

I'll come back to you, Mr. Lake.

Mr. Anthony Rota: Thank you, Mr. Chair.

There was substantial debate, with a lot of discussion that took place. The Conservatives forced us out of camera into the public so that they could play this game before. I'm not ready to play this game again. I believe that the decision was made and we are all—

Mr. Mike Lake: On a point of order, Mr. Chair, a point of privilege, actually, again, I believe that Mr. Rota has just spoken about something that happened in camera.

Mr. Anthony Rota: I was talking about when we were forced out. We were out of camera—

Mr. Mike Lake: How did we get there? How we got there was in camera—

Mr. Anthony Rota: I guess there's a fine line there. I'll retract that. I apologize. There was a fine line there, between whether we were in camera or out of camera, and we were forced out of camera, I guess. I was talking about the out of camera...but that's okay. I won't mention that again. I promise.

● (1535)

The Chair: Thank you, Mr. Rota and Mr. Lake.

Go ahead, Mr. Rota.

Mr. Anthony Rota: In any case, Mr. Chair, this has been discussed and it has been debated. The decision was made by the committee. I think the will of the committee was pretty clear at the time. I know that our Conservative friends were not happy with the decision, but I think it was a good compromise that satisfied both sides of this argument. I wouldn't be ready to support this motion.

The Chair: Madam Coady.

Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.): Thank you very much, Mr. Chair.

We have guests waiting for us to interview them. May I make a suggestion that we have this put towards the end of the day? We've already been through this discussion. If we want to have another discussion on it, I just think it's not very appropriate at this point in time to allow our guests to sit there waiting for us to begin.

I can appreciate Mr. Lake's apparent desire to move this early, but I would suggest that in the interests of our witnesses we continue with the plan we had for the day. We can talk about this at the end of the day.

The Chair: Thank you, Madam Coady. I'll be glad to do that once the speakers list is exhausted. It is business that's germane to what we're talking about.

Mr. Lake.

Mr. Mike Lake: I'm quite certain that our guests understand the importance of the Investment Canada Act, so they'll certainly understand the importance of this debate in terms of our study.

Obviously, I'm willing to accommodate the next meeting, when the minister is supposed to be before us to finish the study on the UBB. I'm okay with that, but I think we should dedicate this meeting and at least the following three meetings during that two-week stretch to this study. I think it's too important to be interspersing it with two meetings on the census private member's bill and to hear from the same witnesses we've heard from over multiple days in multiple meetings.

The Chair: Okay.

Just a moment, members. Just let me confer with the clerk.

Mr. Lake, I think the best course of action right now, since we have witnesses before us, is to come back to this motion on the schedule. Hopefully we can come to some kind of consensus about the move forward regarding your motion, if you're okay with that.

Mr. Mike Lake: When do you think we would vote on it?

The Chair: Well, if you want to vote on it now, we can, but we'd just be back to debate on the schedule once more, I'm certain, from what I see in the committee.

Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Like my colleague, I think it would be entirely appropriate to discuss the question with our guests. We normally consider it to be a good approach to discuss our future proceedings after hearing our guests.

I can still see us quite well starting immediately with questions for the witnesses about foreign investment.

[*English*]

The Chair: Okay, Mr. Bouchard.

Mr. Rota.

[*Translation*]

Mr. Anthony Rota: I agree with Mr. Bouchard. We invited these guests. They have come to make a presentation. I don't think it would be polite on our part to start a new discussion. This is a matter of changing a decision we have already made, but I don't really want to tackle that right away. If Mr. Lake agrees, we can do it at the end of the meeting, once the Industry Canada witnesses have appeared. They are very busy people. They came here to give us a presentation and they are well prepared. If this continues, they will be the ones who came to hear us. We are wasting their time and our time, Mr. Chair.

[*English*]

The Chair: Mr. Lake.

Mr. Mike Lake: I'm not on the list. If the debate is done, we can vote right now. I'd like a recorded vote when we do, please.

● (1540)

The Chair: The motion was to accelerate the meetings on the Investment Canada Act and dedicate the next four meetings after the minister is here for UBB specifically to the ICA.

Mr. Stoffer.

Mr. Peter Stoffer (Sackville—Eastern Shore, NDP): For clarification, if you could put those acronyms you spoke of in full language it would be very helpful.

The Chair: There's the Investment Canada Act.

Mr. Peter Stoffer: I know that, but what are the other ones you talked about?

The Chair: Usage-based billing was the other issue.

Mr. Peter Stoffer: Okay.

The Chair: Did I mention any more...?

Mr. Peter Stoffer: Okay. Thanks, buddy.

The Chair: Mr. Bouchard.

[*Translation*]

Mr. Robert Bouchard: Mr. Chair, are we going to put the motion to a vote or discuss the Investment Canada Act with our guests right away? Is that in fact what we are deciding? Is that the subject of the motion?

[*English*]

The Chair: Once a debate has collapsed and the mover of the motion wants to vote, if the debate continues, we don't go to the vote. We're speaking on that right now. Once we vote, we'll go to the witnesses.

Mr. Anthony Rota: Let's vote against it—

Mr. Mike Lake: Point of order, Mr. Chair.

The Chair: Mr. Lake.

Mr. Mike Lake: I'm willing.... It looks like the opposition parties want to get together and discuss how they're going to vote. I'm willing to give them a minute to have that conversation before we vote.

The Chair: Okay.

Mr. Lake is just saying that he's going to give members a minute to discuss it. We'll officially suspend for two minutes

● (1540)

(Pause)

● (1540)

The Chair: We're now resuming our meeting.

Mr. Plamondon.

Mr. Louis Plamondon (Bas-Richelieu—Nicolet—Bécancour, BQ): Would you please read the motion again?

The Chair: I don't have the exact wording written down. Let me just check to see if the clerk has it.

The Clerk of the Committee (Mr. Jean Michel Roy): Do you want me to read it?

The Chair: Yes.

The Clerk: Mr. Lake moved that the next three meetings after the appearance of the minister on the CRTC study be concentrated on the review of the Investment Canada Act.

The Chair: Madam Coady.

Ms. Siobhan Coady: Thank you very much.

Can you advise us of what the current schedule is? We know that the minister is coming. Then we were going to do a day on the census and a day back on this particular issue. That's what we agreed to do. We were going to alternate this study with the study on the census. That's what we agreed to. Is that what the plan is at the moment?

The Chair: That's what the plan is at the moment. It was to try to stick to Thursdays for the ICA, and alternate everything else on the Tuesdays.

Ms. Siobhan Coady: Everything else, including whatever other business we have...?

The Chair: Yes. There's some.... It's not exactly like that, because we have the UBB as well—

Ms. Siobhan Coady: But every Thursday we're going to focus on this particular study.

Thank you.

The Chair: Mr. Rota.

Mr. Anthony Rota: Just to clarify, if we vote yes, we change everything we've worked for and put together. If we vote no on this motion, we keep everything intact—how we worked to get everything done—so that it would be a fair and already voted-on motion. Everything would stay status quo, correct?

● (1545)

The Chair: Well, if you're asking me to respond to that, I think—

Mr. Anthony Rota: It would stay as we had planned earlier. I'll leave it at that.

Thank you.

The Chair: Yes. That's correct, Mr. Rota.

Mr. Mike Lake: I will make that further clarification, because it is important. If we stay with the way the opposition parties decided it would be last time, we would study today, and then if we alternate with the census on the open meeting dates, we would study this on March 8, which would be our second meeting, and on March 22, which would be our third meeting. Over a month from now, we would have our third meeting on the Investment Canada Act, and we think that's too slow given the importance of the situation.

The Chair: We're just conferring with the calendar, but I think, just from my gut, that Mr. Lake is correct, because we have a week back in the constituency next week, and then we have another one two weeks after that.

Go ahead, Madam Coady.

Ms. Siobhan Coady: I don't have the committee calendar, but there's Thursday, March 3 and there's Thursday, March 10. Then we have a constituency week and then there is Thursday, March 24. As I understand it, those would be the days for.... So on March 3 and March 10, we would study this particular—

Mr. Mike Lake: Not for alternating meetings, it's not.

Ms. Siobhan Coady: Tuesday would be one set—

Mr. Mike Lake: Tuesday is with the minister on UBB, and the next meeting would be on the census, because we were alternating meetings.

The Chair: Madam Coady.

Ms. Siobhan Coady: As I understood it before, Tuesdays were going to be for one set of business, and Thursdays were going to be for this business. That's what I understood. I don't have the calendar in front of me.

The Chair: That's correct.

Ms. Siobhan Coady: That's why I'm seeking clarification. Is that correct?

The Chair: That is correct. The UBB was going to be on March 1, then the ICA, and then March 8 is the census. Then it's back to ICA.

Ms. Siobhan Coady: That would be on March 3 and March 10.

[*Translation*]

The Chair: Mr. Bouchard, you have the floor.

Mr. Robert Bouchard: Mr. Chair, I don't have the schedule in front of me, but as Mr. Rota said, and I would like to hear you repeat it, if we vote against Mr. Lake's motion, that means we are abiding by the schedule we established several meetings ago. I would like you to tell me again whether that is in fact the case. I don't want to see changes made to the work schedule for upcoming meetings, given that we have already discussed it at length.

[*English*]

The Chair: At present, Mr. Bouchard, this is the last meeting for February.

After we come back from our constituency week, on March 1 the minister will be here on usage-based billing with the CRTC; Thursday, March 3, will be the Investment Canada Act; Tuesday, the eighth, will be Bill C-568, the census bill; and Thursday, the tenth, will be the Investment Canada Act.

Then we'll go to a constituency week again. We come back and it's Bill C-568. Then it will be the Investment Canada Act on March 24, Bill C-568 on the 29th; and the Investment Canada Act on the 31st.

Does anybody else need clarity? Is there any other debate? Okay.

A recorded vote has been requested. I'll leave that to the clerk.

(Motion negatived: nays 6; yeas 5)

The Chair: Without any further ado, then, we'll go to the officials for their opening remarks. I hope the committee is fine with the fact that I've given the officials some latitude because of the complexity of the Investment Canada Act and the fact that we're trying to do a full review and give the minister the advantage of Parliament's input. They will go ahead for about 15 to 20 minutes.

Madame Marie-Josée Thivierge, please go ahead. You have the floor.

● (1550)

Ms. Marie-Josée Thivierge (Assistant Deputy Minister, Small Business, Tourism and Marketplace Services, Department of Industry): Good afternoon and thank you, Mr. Chair.

I would also like to thank the members of the Standing Committee on Industry, Science and Technology for this opportunity to explain how the Investment Canada Act works.

[*Translation*]

I am the Deputy Director of Investments, and as such am responsible for providing the Director of Investments with information he provides to the Minister of Industry to advise him in the administration and enforcement of the Act.

[*English*]

I would like to introduce my colleagues who are here with me today. Richard Saillant is the director general of the investment review and strategic planning branch. Pierre Legault is the assistant deputy minister, business and regulatory law portfolio, Department of Justice.

At the outset, I would like to note that as the deputy director of investments, I have experience with respect to the administration of the act and its processes. I am here today to explain how the act currently works and how it is administered.

[*Translation*]

In support of this discussion, a deck presentation has been sent to the clerk of the committee, a copy of which I understand has been sent to all members of the committee. This deck provides an overview of the act and its administration. Given time constraints, I will not go through this deck slide-by-slide. Rather, I thought I would offer a few introductory remarks to provide some context and touch on some of the highlights of the deck.

[*English*]

Let me start with some general context for the act. The act is Canada's primary mechanism for the review of foreign investments. It came into force on June 30, 1985, replacing the Foreign Investment Review Act, often referred to as FIRA. Although it contains many provisions that are similar to those of FIRA, the adoption of the Investment Canada Act was intended by Parliament to make Canada a more welcoming destination for foreign investment, as has been captured in the purpose section of the act.

The act provides for the review of significant foreign investments for their likely net benefit to Canada. While much of the public focus is on transactions that are reviewed for their likely net benefit, the range of transactions covered by the act is actually much broader.

In fact, under the act, any foreign investor who proposes to establish a new business in Canada must notify the Minister of Industry. The same applies to any foreign investor—or “non-Canadian“, in the language of the act—who acquires control of a Canadian business with assets below the established threshold for review.

If the assets of the Canadian business that an investor proposes to acquire exceed the relevant threshold, the proposed transaction is reviewable for likely net benefit. For 2011, the threshold that applies to investments by WTO member investors is $312 million.

[*Translation*]

Where a proposed investment is subject to a net benefit review under the act, the investor cannot implement the transaction without the approval of the Minister responsible. Under the act, the Minister of Industry is responsible for determining the likely net benefit in all sectors except when it involves the acquisition of cultural businesses, which fall under the responsibility of the Minister of Heritage.

Let me say a few words about the strict confidentiality provisions of the act. It is important to understand their role in the review process.

[*English*]

The act contains, under section 36, confidentiality provisions that were adopted by Parliament to protect the information provided by investors during the review process. These provisions reflect the fact that much of the information shared by investors is commercially sensitive and, if disclosed, could move markets and harm their competitive position and that of the Canadian business that they are proposing to acquire.

Without assurances that their commercially sensitive information will be protected, investors will be reluctant to share with the minister the essential information he needs to do his work under the act. All information obtained about an investor and a Canadian business in the course of administering the act is privileged, and anyone who knowingly discloses privileged information is committing an offence punishable on summary conviction.

Although there are limited exceptions under section 36 to the confidentiality provisions of the act, before releasing information under these exceptions, the minister must be convinced that the disclosure is necessary for the administration of the act and that releasing the information would not be prejudicial to the investor or the Canadian business. This is why today my colleagues and I are constrained in regard to what we can say about any particular transaction under the act.

Moving to the net benefit test, the net benefit review begins when a complete application is received from the foreign investor.

● (1555)

[*Translation*]

The act provides the Minister an initial 45 days to complete the review of a proposed investment and to make a determination of net benefit. The Minister may extend the review period, if necessary, by 30 days. The review period can be extended further if both the investor and the Minister agree.

[*English*]

Under the act, the minister approves a proposed investment only if he is satisfied that it is likely to be of net benefit to Canada. In making his determination, the minister must consider the factors listed in section 20 of the act. These are the only factors the minister may consider in making his determination.

The factors include: the effect of an investment on the level and nature of economic activity in Canada; the degree and significance of participation by Canadians in the Canadian business; the effect of the investment on productivity, industrial efficiency, technological development, product innovation, and product variety in Canada; the effect of the investment on competition within an industry in Canada; the compatibility of the investment with national, industrial, economic, and cultural policies, taking into consideration the stated policies of the provinces that are affected by the acquisition proposal; and the contribution of the investment to Canada's ability to compete in world markets.

In reaching a decision on likely net benefit, the minister considers the effect of an investment—both positive and negative—with respect to each of these factors where relevant. The results for all factors are then aggregated for the minister's consideration.

[*Translation*]

Unless the Minister is satisfied that the net effect is positive and, therefore, the investment is likely to be of net benefit, the transaction cannot proceed. The review process under the act is designed to ensure that the Minister has all the information he needs to make an informed decision whether to allow an investment.

[*English*]

It achieves this by allowing for constructive dialogue with investors as well as consultations with ministers and officials at both levels of government, and by protecting the commercially sensitive information of investors, without which the minister could not do his work effectively.

Investment review division officials engage with investors at various stages throughout the review process. They typically work with them to explain any aspects of the review process that may not be fully understood. Officials also discuss the details of investment proposals with investors to fully understand the various aspects.

Also, as part of the review process, officials consult widely with the federal government departments with policy responsibility for industrial sectors involved in the proposed acquisition, with the Competition Bureau, and with the provinces in which the Canadian business has substantial activities or assets.

[*Translation*]

The purpose of the consultation is to engage sector specialists at both the federal and provincial level to identify any policies that should be considered in the review, and to obtain the views and concerns of the consulted parties relating to the acquisition. If any areas of concern are identified through the analysis and consultation process, investment review officials will discuss them with the investor. Typically, they will seek legally enforceable undertakings to address them.

● (1600)

[*English*]

Although the minister cannot share information obtained through the administration of the act with third parties, he may accept third party representations and take these into account in his determination.

Once all of this is done, the director of investments, whose role is to support the minister in carrying out his duties under the act, provides the minister with the information he requires in making his net benefit determination. The act requires that the director of investments provide specific information to the minister.

Included in those documents are the investor's plans, undertakings, and other representations, and the representations from the provinces, as well as results of consultations held with other consulted federal government departments. It is on the basis of this information and the net benefit factors listed in section 20 of the act that the minister determines whether an investment is likely to be of net benefit to Canada.

Let me speak for a moment about monitoring and enforcement.

Investors who have implemented investments that are subject to review under the act must submit information required by investment review officials to determine whether the investment is being carried out in accordance with the application. An evaluation of an investor's performance in implementing its plans and undertakings under the act is ordinarily performed 18 months after the implementation of the investment. Additional monitoring may be conducted depending on the results of the initial evaluation and the duration of the undertakings.

Where the minister believes that an investor has failed to implement a written undertaking or that the investment has been implemented on terms and conditions that vary materially from those contained in the application, the minister may issue a demand letter under section 39 of the act requiring the investor to cease the contravention, remedy the default, show cause why there is no contravention, or, in the case of undertakings, justify any non-compliance with the undertakings. This is the first stage in the enforcement process.

Where the investor fails to comply with a demand, the minister may apply for a court order to seek remedies from an investor. This is the next stage in the enforcement process. The court may order any remedies it sees appropriate, including directing the divestment of control of the Canadian business, directing the investor to comply with an undertaking, imposing a financial penalty, or directing the disposition of any voting interests or any assets acquired.

Let me speak very briefly about recent policy changes that were made to the Investment Canada Act.

There have been a number of changes to the Investment Canada Act in recent years. In December 2007, the Minister of Industry issued new guidelines for the review of investments by state-owned enterprises. These guidelines essentially make it clear that the commercial orientation and corporate governance, including transparent reporting practices, are taken into account by the minister in assessing the net benefit factors under the act where a state-owned enterprise investor is involved.

On February 6, 2009, responding to the core recommendations of the competition policy review panel, the Government of Canada introduced legislation to amend the act as part of the Budget Implementation Act, 2009. The amendments reform the net benefit review process by doing a number of things.

First, they change the basis for the general review threshold from the book value of assets to enterprise value.

Second, they raise the general review threshold to $1 billion in enterprise value over a four-year period. In 2011, the threshold is $312 million in gross assets.

Third, they eliminate the application of the lower review threshold in the transportation services, financial services, and uranium production sectors, previously set at $5 million for direct investments and $50 million for indirect acquisitions.

The 2009 amendments also contained provisions to enhance transparency. Prior to these amendments being in place, the minister had some limited exceptions available to him to disclose information obtained through the administration of the act.

● (1605)

He could, one, disclose information to other ministers or officials for the purpose of administering the act; two, disclose information where an investor had provided written instructions to do so; three, disclose information contained in undertakings provided that, before doing so, the minister was convinced that the disclosure was necessary for the administration of the act and that releasing the information would not be prejudicial to the investor or the Canadian business; and four, disclose information contained in some of the notices he sends under the act, such as decisions to allow or disallow an application or a certificate of notification.

The 2009 amendments provided the minister the ability to do a number of other things: first, to disclose the reasons for decisions under the act, provided he is satisfied that it does not prejudice the investor or the Canadian business; second, to disclose the fact that an application has been filed and the stage of a transaction in the review process, again provided, though, that he is satisfied it does not prejudice the investor or the Canadian business; and third, publish an annual report on the administration of the act.

All of these amendments are now in effect, except for the shift to the enterprise value as the basis for the general review threshold and its progressive increase to $1 billion. These amendments are not yet in force, as regulations are necessary for their implementation, and these have not been yet been adopted.

Before I conclude, I want to say a few words on national security. The 2009 amendments to the act also included a new part on national security. This amendment provides the Government of Canada with the authority to review foreign investments that could be injurious to national security.

Under this new part, a review is triggered by the Governor in Council. For the Governor in Council to order a review, the Minister of Industry must have reasonable grounds to believe, after consulting with the Minister of Public Safety and Emergency Preparedness, that a foreign investment could be injurious to national security, and the Minister of Industry must make a recommendation to the Governor in Council for a review. In addition to ordering a review, the Governor in Council has the authority to take any measure in respect of an investment that it considers advisable to protect national security.

That, Mr. Chair, concludes my introductory remarks. With my earlier caveat about confidentiality pertaining to the act, I would be happy to take questions from the committee members, whatever questions they may have regarding how the act operates and works.

The Chair: Thank you, Madame Thivierge.

Now we'll move on to the Liberal Party and Madam Coady for seven minutes.

Ms. Siobhan Coady: Thank you very much.

First of all, thank you for your patience at the beginning of the meeting. Also, we certainly appreciate your taking the time today to be with us.

I have several questions. They basically centre around transparency, enforcement, and evaluation, as well as consultation.

But my first question really is around transparency, if I may...? These questions are broad. I can appreciate the need for confidentiality with regard to enterprises, so I'm going to keep these very broad and try to centre them around these three pillars.

About transparency, around the decisions on the potash—and now we have a lot of discussion around the TMX/TSE merger—there's been a call for greater predictability, greater transparency, and timeliness in Canada's investment review process. I noted in *The Globe and Mail* the other day that somebody was talking about the investment review act and was saying that, really, we need more predictability and transparency in this particular issue.

One of the questions I'd like to ask is, in broad terms, how do we get to a clear rules-based system that takes the political expediency out of the mix?

Ms. Marie-Josée Thivierge: As I indicated during my presentation, the act is based on the fact that the minister makes a decision. It is the Minister of Industry who makes a decision. His decision is informed by documentation that is provided by an investor and the results of consultations that have been held as provided for under the act.

To your issue around predictability, there are the factors are listed in section 20 of the act. It is provided for under the act that in order for the minister to come to a decision on likely net benefit, he must do so based on the factors that are outlined in the act. There are six factors, which I touched on earlier.

I'd be happy to go through the more specific details of those factors. But essentially, it is based on those factors that ultimately the minister will make a net benefit determination.

● (1610)

Ms. Siobhan Coady: Finn Poschmann, vice-president of research at the C.D. Howe Institute, recently said in a *Globe and Mail* article that a clear, rules-based system takes politics out of the mix and tells the world—and Canadians—why decisions are made. I just want to get to that for a moment.

Are there alternatives to ensure—and I know you've given us the six and all of that—increased transparency and information? I reflect back on the competition review panel. It recommended the increased use of publicly available guidelines and advisory material. Has Industry Canada considered this?

Ms. Marie-Josée Thivierge: Again, the competition review panel made a number of recommendations, many of which were adopted by the government through changes in legislation. I think that to the extent that the Investment Canada Act provides a fairly detailed articulation of a process from application to decision, the factors that will be considered in the act, and to enforcement, this is the process that has been laid out. Hopefully I'm getting to your question.

Ms. Siobhan Coady: I'll go to the threshold, because some of those things were implemented but the threshold was not. So under the Budget Implementation Act, there was a threshold change from \$312 million, I believe, to a book value of \$1 billion in the enterprise value. That was a recommendation coming from the competition review panel.

You said that most of the recommendations that were in the Budget Implementation Act were implemented except for that one, and that's because there was a regulatory change required. That was two years ago, so I'm just wondering where we are with changing that threshold as the competition review panel suggested.

Ms. Marie-Josée Thivierge: Draft regulations were published for purposes of consultations. Extensive comments were received on those draft regulations and they are being considered. I can't predict when these will go forward, but this is a process of engagement, and consultations have been held on draft regulations, describing what is—

Ms. Siobhan Coady: So for clarity, Parliament voted on increasing the threshold to \$1 billion, and you're making the changes based on that, but you're consulting before you make that change...?

Ms. Marie-Josée Thivierge: One of the things that is involved in the regulations is defining what is enterprise value.

Ms. Siobhan Coady: Okay.

Ms. Marie-Josée Thivierge: What we have found through the consultations is that there are many views out there, so finding a definition that in fact is clear, predictable, and transparent—

Ms. Siobhan Coady: Okay. That's where you are right now.

I want to go to the evaluations. In the Industry Canada slides that you provided us earlier, you noted that the evaluation of the implementation of undertakings is ordinarily performed 18 months after the implementation of an investment.

Is every approved investment consistently evaluated at the 18-month mark? How long does that evaluation take and how frequently is non-compliance an issue?

Ms. Marie-Josée Thivierge: As suggested in the deck, it is the normal practice because the timeframe for undertakings can vary quite extensively, from a few years to several years, or can go to perpetuity. The duration of undertakings varies from transaction to transaction. Normally, we will look at the 18-month point in time.

That being said, one of the provisions in the act is that we can ask for information at any time. This is very clearly articulated in the act. Therefore, if we are made aware of any change that may have an impact on the plans of the investor or their undertakings, we will immediately consult the investor.

Ms. Siobhan Coady: Can you tell me...and again, how frequently is non-compliance an issue? Is it never an issue? Is it sometimes an issue? Is non-compliance often an issue?

Ms. Marie-Josée Thivierge: I can't answer that question with precision. What I can say is that there are times when in fact non-compliance is on something that is very small in consequence. At other times, it is something that's a bit more significant. Clearly, sections 39 and 40 of the act provide enforcement mechanisms. So to the extent that non-compliance is identified, we will have discussions with the investor. Ultimately, the minister will decide on the appropriate course of action.

● (1615)

Ms. Siobhan Coady: I only have—

The Chair: I'm sorry. That's all, Madam Coady.

[*Translation*]

We will move on to the Bloc Québécois now.

Mr. Bouchard, you have seven minutes.

Mr. Robert Bouchard: Thank you, Mr. Chair.

Good afternoon, Ms. Thivierge.

Ms. Coady asked a question about the threshold for evaluation. At present, it is $312 million, and I think over the next four years it will rise to $1 billion without review by the Minister. Is that correct?

Ms. Marie-Josée Thivierge: I said a little earlier that there was a provision in the legislation, and under it, over a four-year period, the threshold could rise to $600 million, first, and second, two years later, $1 billion. That provision is not in force at present.

Mr. Robert Bouchard: Is the objective to increase foreign investment in Canada? If that provision is brought into force, what repercussions will allowing the threshold to rise from $312 million to $1 billion without the Minister doing an evaluation have?

Ms. Marie-Josée Thivierge: I wouldn't want to speculate on what the impact of such a change will be, given that the definition of what will be considered in the enterprise value will be an important factor. The definition of enterprise value still has to be established.

Mr. Robert Bouchard: Where I am, in the Saguenay-Lac-Saint-Jean region, Rio Tinto, a foreign corporation, bought Alcan. I can tell you that everybody misses Alcan. At present, important decisions are no longer made in Montreal, they're made in London.

Is the place where decisions are made, that is, either in Canada or abroad, considered in the act? Is the fact that decisions are made abroad considered to be a net benefit to Canada?

Ms. Marie-Josée Thivierge: Mr. Bouchard, you have asked similar questions about specific cases before. Given that I am not free to discuss the effect of a specific transaction, I would invite you to read section 20. I think everyone has received a copy of the act. Section 20 talks about six factors that the minister shall and may consider. They are not necessarily all applicable from one transaction to another. One of those factors deals with participation by Canadians in the business.

Without giving details about the scenario you referred to, I will note that paragraph 20(*b*) says:

> the degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada of which the Canadian business or new Canadian business forms or would form a part;

Mr. Robert Bouchard: I did present you with a specific case, but I expected a hypothetical answer. From what I understand, you consider the fact that a foreign enterprise that purchases a company in Canada has its head office outside Canada to be an evaluation factor.

Ms. Marie-Josée Thivierge: What is considered is the role of Canadian participation.

Mr. Robert Bouchard: I have another question to ask you. Suppose that a foreign company wants to acquire an auto manufacturing company here in Canada, and another foreign company wants to acquire dams to produce electricity, which to some extent involves an asset that belongs to the public. Would the same criteria apply in the two cases?

● (1620)

Ms. Marie-Josée Thivierge: There are only six factors that apply under the act, and they apply to any transaction that is subject to review. Those are the six factors listed in section 20 of the act.

Mr. Robert Bouchard: They are the same, whether it is public or individual in nature.

Ms. Marie-Josée Thivierge: There are six factors, and those are the factors the Minister must consider.

Mr. Robert Bouchard: Since 1985, two plans for acquisition of a Canadian company by foreign investments have been rejected by the Minister of the day, and the last was the Potash Corporation deal.

Could you tell me what differentiated those two cases that were rejected from all the others that were approved? What was it that meant that the Minister rejected them in those two cases?

Ms. Marie-Josée Thivierge: I want to make a clarification. Only one transaction was rejected. In the second case you are referring to, the investor withdrew its application. So there has been only one transaction rejected under the act.

With respect to your question about what determines whether a transaction is approved or not, it's done on a case by case basis. The Minister must assess the information provided to him. Under section 19 of the act, it is very specific: the Director shall refer the plans, the undertakings, the representations made by the investor, the other representations received by the provinces that are affected by the transaction, and the consultations done with other federal departments. In light of all that information, he applies the factors set out in section 20.

So it is really done on a case by case basis, and the Minister alone decides. I would not be in a position to venture into one transaction or another in terms of the information that made him make a decision on one side or the other. That being said, the information and factors are the same, as provided by the act.

The Chair: Thank you.

[*English*]

That's all the time we have for that.

We'll now go to Mr. Lake for seven minutes.

Mr. Mike Lake: Thank you, Mr. Chair.

Thanks to the witnesses for coming in today.

It is kind of a complex process, so again, I'm just going to walk through a few of the different concerns we've heard from folks.

One, I guess, is regarding enforcement mechanisms. First, how many times has the Government of Canada taken a company to court to enforce the Investment Canada Act obligations?

Ms. Marie-Josée Thivierge: The first time was with U.S. Steel.

Mr. Mike Lake: That's the only time?

Ms. Marie-Josée Thivierge: Yes.

Mr. Mike Lake: Maybe you can speak to the enforcement mechanisms available to the minister to ensure that commitments provided under the act are implemented. Can you highlight that in the act? Is it in section 39 of the act that we find those provisions?

Ms. Marie-Josée Thivierge: Yes.

Mr. Mike Lake: Could you maybe walk us through that a little bit?

Ms. Marie-Josée Thivierge: Sure. So to the extent that you might provided with an act, the enforcement provisions are sections 39 and 40. Essentially, where an investor has implemented an investment subject to the act, as per section 25—I was referring to it earlier—the investor must provide the information that is requested by investment review officials.

So we essentially will request information at the 18-month point, or earlier, if we have a reason to believe that information is needed. Then we do an evaluation of the investor's performance. Essentially we look at its plan and its undertakings and at how it has performed vis-à-vis those plans and undertakings.

Now, to the extent that more information is needed, we will do additional monitoring under the act. That's where the sections of the act come in specifically. Where the minister believes that an investor has failed to implement a written undertaking or that the investment has not been implemented as per the terms and conditions that had been agreed to in the application, then the minister may issue a demand letter under section 39 of the act, essentially requiring the investor to do a number of things.

He can cease the contravention and remedy the default, show cause why there is no contravention, or, in the case of undertakings specifically, justify any non-compliance with the undertakings. This is really the first stage in the process.

Now, under section 39.1, the act also provides that the investor can submit new undertakings. So as part of this process, if there is in fact non-compliance, the investor can come in and submit additional undertakings. Where the investor ultimately fails to comply with the demand or the minister is not satisfied, essentially, with how things are unfolding, pursuant to section 40 of the act the minister can apply for court orders to seek remedies from an investor. That's really the second stage in the enforcement mechanism.

The court may order any remedies that it sees appropriate. That's where section 40 of the act lists a number of remedies directing the divestment of control of the Canadian business, directing the investor to comply with an undertaking, imposing a financial penalty, or directing the disposition of any voting interests or the assets that are acquired.

Essentially, this is the enforcement mechanism and the monitoring provisions that are provided for under the act. Monitoring is further detailed in guidelines that are issued by the minister. The minister has the authority under the act to issue guidelines. There are such guidelines that detail the nature of the monitoring that is done under the act.

● (1625)

Mr. Mike Lake: In terms of that enforcement mechanism, have there been suggestions made by organizations or companies that have gone through the process—or by anybody else—as to how to strengthen the enforcement mechanisms or change them in a way that would be beneficial to the act?

Ms. Marie-Josée Thivierge: Maybe I can turn to my colleague.

Mr. Richard Saillant (Director General, Investment Review and Strategic Planning Branch, Department of Industry): The competition review panel, to my recollection, was silent on the issue of an enforcement mechanism. I am not aware of any proposal to which you are referring at this point.

Mr. Mike Lake: That might give us a little bit of a direction, so that as we pursue the study, we might ask some questions in that regard.

In regard to the minister's authority to disclose information, maybe you could speak to that a little bit, because that has been a topic of some discussion. Maybe you could highlight again the area in the act that lists the restrictions on the minister in terms of his ability or authority to disclose information. Perhaps you could explain why those restrictions exist.

Ms. Marie-Josée Thivierge: I would invite committee members to turn to section 36 of the Investment Canada Act, on page 38. Essentially, it refers to what we're talking about today—confidential information—but it's actually privileged information. The act contains, under subsection 36(1), the main confidentiality provision, which essentially says:

> ...all information obtained with respect to a Canadian, a non-Canadian, a business or an entity...by the Minister or an officer or employee of Her Majesty in the course of the administration...of this Act is privileged and no one shall knowingly communicate or allow to be communicated any such information or allow anyone to inspect or to have access to any such information.

This is the article that forms the basis of the strict confidentiality provisions under the act. That being said, there are some exceptions, and I would turn to a few of the provisions.

Subsection 36(3) of the act provides that information that is privileged under subsection 36(1) may, “on such terms and conditions and under such circumstances as the Minister deems appropriate”, be released if the investor has provided us in writing the authority to release it. Where an investor essentially makes the request for us to release information, that can be released.

The second exception under subsection 36(3) is where, for purposes related to the administration of the act, the minister wishes to consult and to disclose information for purposes of consultation “to a minister of the Crown in right of Canada or a province or to an officer or employee of Her Majesty in right of Canada or a province”. This provision allows for it. We may consult ministers and officials at the federal and provincial levels. The minister does rely on those provisions to share information that is privileged, as I said, with government officials.

Subsection 36(4) of the act also provides the minister with the discretion to disclose specific information under certain conditions. Paragraph 36(4)(b) actually provides the minister with the authority to disclose information contained in undertakings—not the undertakings themselves, but information contained in undertakings.

Also, subparagraph 36(4)(e)(ii) provides the authority to disclose information contained in notices. When the minister issues notices under the act, he may share that information. In deciding to do so, in making undertakings public, the minister needs to exercise his discretion to disclose any privileged information only where he is satisfied that, one, it is required for the administration of the act, and two, that confidential commercial information is not being disclosed in that process, and that disclosing the information will not prejudice the investor.

Those are the conditions attached to those exceptions.

● (1630)

The Chair: Madame Thivierge, just for full disclosure, we've already gone way beyond the amount of detail that's needed on this answer. If it's okay with the rest of the committee that we continue with this answer, then I'll allow it.

Okay?

Go ahead, Madame Thivierge.

Ms. Marie-Josée Thivierge: There's also section 23.1 of the act in terms of disclosure. Section 23.1 of the act says that the minister can provide reasons for any decisions that are made under a number of paragraphs. This provision requires the minister to give reasons to the investor for a disallowance and authorizes the minister to give those reasons to the investor for allowing a transaction. In the case of a disallowance, the minister must give his reasons to the investor. In the case of an approval, the minister may give his reasons to the investor.

In terms of disclosing such information around the reasons to the public, those are governed by paragraph 36(4)(g) and subsection 36 (4.1). In essence, the minister cannot disclose financial, commercial, scientific, or technological information unless he is satisfied that this disclosure will not prejudice the investor.

The Chair: Thank you very much, Madame Thivierge.

I'm going to go to Mr. Stoffer now, but I should note that the riding I represent, Ancaster—Dundas—Flamborough—Westdale, is part of the greater City of Hamilton.

I'm also the chair of the steel caucus, and I have received a lot of calls—I know that it's a specific case, but I'm talking about enforcement, really—regarding the U.S. Steel issue. A lot of people have concerns that the only option for enforcement in the act is to take someone to court. There's no previous option, other than the one you mentioned as far as new undertakings go.... There's no other place. Just to let you know, I certainly have had a lot input from citizens regarding that issue.

We're on to Mr. Stoffer now for seven minutes.

Mr. Peter Stoffer: Thank you, Mr. Chairman.

Folks, thank you very much for coming.

When it comes to the billion-dollar threshold, does that mean that if a company is worth, say, $200 million or $350 million, and a foreign investor wishes to take it over or purchase it, there doesn't have to be a review? Is that correct? It has to be under that threshold.

Ms. Marie-Josée Thivierge: Once the definition of enterprise value is set, effectively, if the business enterprise value is below the threshold, it would not be reviewable.

Mr. Peter Stoffer: I'm thinking of an incident in the United States. One of my concerns is that you may have unintended consequences in terms of security.

As you all are aware, when a company in Dubai wanted to take over the security aspects of the seaports in the United States, they were legally allowed to do it until Congress got really upset about it. They were worried about security and, basically, the image of this. They were going to move forward a bill, but apparently Mr. Bush said at the time that they would veto anything. It didn't turn out that way. The buyer just backed off.

One of my concerns is that you don't have the “I don't like you clause” in here. I'm just thinking of someone like Hugo Chavez of Venezuela wanting to invest in a $400-million company here in Canada to get his foot in the door and then spreading whatever he wanted to from there. Is there not a factor in terms of security concerns in this regard?

I have another question that links with that. When you review a company or its investment, do you check its board of directors, the history of the company, its practices in other countries, its human rights record, and its environmental record? Does any of that come into play?

You talked about state-owned enterprises as well. China has a lot of state-owned enterprises that are trying to purchase anything they can in raw materials and so on. But their human rights record—and everything else—is sometimes questioned. Is there not a fear that you can have unintended consequences by raising that limit and not doing a thorough check in terms of security, human rights records, environmental records, and so on?

Finally, are there any other countries in the world that have systems similar to what we have when it comes to foreign investment? The reason I ask is that the government is involved in a lot of free trade negotiations right now, such as the FTA with the Americas, the Canada-EU talks, and Canada and Japan. Investment rules and changes would have to be part of those discussions, I would assume. What role do the trade deals play in what happens with your work?

Thank you very much for coming today. Take all the time you want. We have until 5:30, by the way.

Ms. Marie-Josée Thivierge: I will—

Mr. Peter Stoffer: I'm just kidding, by the way.

● (1635)

Ms. Marie-Josée Thivierge: I will make two comments and then turn it over to my colleague, Richard Saillant.

Under the Investment Canada Act, as a result of the last round of changes to the statute in 2009, there are two tests. There's a likely net benefit test, and there is the national security provision, which is a new part under the act. It's part IV.1. Essentially those are the two reviews that can take place under the act.

Mr. Peter Stoffer: But if I may say so, once it gets to the billion-dollar threshold, anything under that amount, like a $400-million or $500-million company, would not be covered by that review.

Ms. Marie-Josée Thivierge: I'll come to that in a minute.

Section 25.1 of the act actually "applies in respect of an investment, implemented or proposed, by a non-Canadian". The threshold does not apply. The tests apply to any transaction that is to take place. This lists establishing a new Canadian business, acquiring control of a Canadian business, and acquiring in whole or in part a Canadian business or the assets of a Canadian business. All the scenarios are provided for under section 25.1.

These are the two tests. In terms of how Canada compares to other countries in our trade obligations, I will turn to Richard.

Mr. Richard Saillant: Thank you.

The first thing I would say before I get to the comparison of Canada with other countries is that in regard to the test under national security under the act, the words "national security" are not defined, and that's to take into account the evolving nature of national security threats and the inability to draw a bright line somewhere.

However, the government has international trade obligations, and under its international trade obligations—WTO and NAFTA—there is an exception for measures that allow governments to treat parties that are non-nationals differently than they treat individuals domestically. It's under those provisions that you can have measures to protect national security. These trade agreements do define "national security", so there are limitations, and the government has to be mindful to apply the act in a way that is consistent with the definitions under the acts.

With regard to the practices in other countries, there are two main points to consider here. Canada is one of the few countries that has a formal review mechanism of general applicability that extends to matters that are primarily economic in nature. That doesn't mean that in other countries there are no other laws or other instruments by which mergers may or may not be easier. I'm not going into other things related to crossover ownership of institutional banks and companies or anything like that. I won't go into that.

I think only two other countries in the world have similar mechanisms: laws of general applicability that apply across sectors. That being said, there are a lot of other countries that do have review mechanisms for transactions that are reviewed on the basis of national security. In fact, before the amendments to the act in 2009, Canada was the only one of the G-7 countries that did not have some form of mechanism that provided them with the authority to review transactions on national security grounds. So in that sense, it was more common on national security grounds.

● (1640)

Mr. Peter Stoffer: Okay.

The last one, of course, is that it's one of the concerns of money laundering and how people can move money fairly quickly around the world. What investigative techniques do you have in terms of determining whether the finances that a particular company wishes to invest into Canada, the money or the investment they have, is actually clean money and not something that came from, I would say, criminal activity?

As you know, the drug trade is into the billions of dollars, and it's easy to set up companies that look legitimate and then invest in Canada under particular provisions and be able to operate freely in order to launder their money. Is that taken into any consideration at all?

Again, there are the questions of human rights, environmental rights, and labour rights for particular state-owned enterprises that wish to invest in companies. Are those given any consideration at all prior to the approval or disapproval of an investment in Canada?

The Chair: Be as brief as possible, please.

Ms. Marie-Josée Thivierge: Again, I would say that under the net benefit test, the economic test under the act, the factors that can be considered are very clearly laid out. There are six factors and those are the factors the minister can consider.

Under national security, what the provision calls for is that after consulting with the Minister of Public Safety and Emergency Preparedness, if the minister thinks that a transaction might be injurious to national security, then the minister can go to the Governor in Council and have the Governor in Council make a determination as to whether the transaction should be reviewed.

So there are two steps and they're very much in consultation. I cannot elaborate, because there's no definition of national security and what the factors are under national security, contrary to what is under the net benefit test, where the factors are clearly laid out.

The Chair: Thank you, Madame Thivierge.

Mr. Rota, for five minutes.

Mr. Anthony Rota: Thank you, Mr. Chair.

We've had a couple of pretty high-profile refusals over the last couple of years. How many refusals have we had since 1985? Am I missing something? There hasn't been that many. Is there a number of how many have actually been turned down?

Ms. Marie-Josée Thivierge: Under the responsibility of the Minister of Industry, there has been one. I am not aware of how many there have been under the review of the Minister of Canadian Heritage.

Mr. Anthony Rota: Okay, very good. That's pretty well what I expected.

One of the things that I'm hearing about as well is withdrawals. We hear that corporations withdraw. Since 1985, how many have actually withdrawn after having applied? Or is there an average per year?

Ms. Marie-Josée Thivierge: There are not many transactions where withdrawals take place. I don't have the exact number.

Richard, do you have that?

Mr. Richard Saillant: I'm being told by Richard Lajeunesse, my manager, who is here, that there are four.

Mr. Anthony Rota: In total?

Mr. Richard Saillant: In total, but my understanding is that this has to be taken carefully, because there are instances where transactions do not proceed for a variety of reasons that have nothing to do with the Investment Canada Act. It could simply be because they no longer wish to proceed with the transaction, so we have to be careful about that.

Mr. Anthony Rota: That's where my next question was going. I guess it's difficult to say, in those four cases, whether it was discussions that started with the minister's office and that then, seeing that it wasn't worth going ahead with, they pulled out. Is the act maybe a way of discussing with the corporation, of saying that this isn't going to get approved and maybe they should withdraw?

Now, there were only four in the history of the act. Is that correct?

Mr. Richard Saillant: Yes. There were actually four following what we call the issuance of a notice under section 23(1), which is the minister sending a notice that he's not satisfied that the transaction is likely to be of net benefit and giving 30 days to give further representations.

It's following an initial decision, let's call it. The minister doesn't make a decision; he sends a notice. There are four instances where the investor has withdrawn after that, but we cannot provide information or speculate as to the reasons.

● (1645)

Mr. Anthony Rota: No, and I'm not expecting one in particular; I'm just trying to get a feel for how it works and whether it's after consultation with the minister's office that people withdraw, or whether the act has some influence on that.

I'll go on to something else, if you don't mind. In broad terms, what are the principal difficulties that Industry Canada identifies through the process of enforcing undertakings?

Ms. Marie-Josée Thivierge: Would you mind repeating that, please?

Mr. Anthony Rota: Sure. What are the principal difficulties that Industry Canada has identified through the process of enforcing undertakings? What are the obstacles? Is there anything that stands out? I'm trying to get a feel for what there is.

Ms. Marie-Josée Thivierge: The act is pretty clear in terms of the powers that are given to the minister and the administrators in terms of enforcement.

I think I went through that in great detail earlier on. As part of the application, investors have to submit detailed plans. Investors have to provide information. Again, I can turn very briefly to slide 5 in the deck that was provided to committee members.

When you look at the receipt of an application that is called for under section 17 of the act, you see that an investor has to submit detailed plans on the proposed investment, annual reports, and purchase and sales agreements. So there's essentially a great deal of information available to the people who are reviewing the transaction and ultimately to the minister who will make the decision. This is informed also, as you see, through the process that is laid out for “discussions of undertakings”. Undertakings are legally enforceable. You have the basis to then use sections 39 and 40, should the minister wish to go there.

As I indicated earlier, section 39.1 also provides the minster with the ability to request additional undertakings should something change in the transaction and how it's being implemented.

Those are the instruments available. I wouldn't want to comment any further on that.

Mr. Anthony Rota: I was wondering if there was anything—

The Chair: Very briefly, please.

Mr. Anthony Rota: Briefly, then, I'll give you one last question having to do with the undertakings. If a company doesn't abide by the undertakings, can you think of a situation where the government has been unable to enforce the agreement?

I guess the biggest thing here is the Federal Court process, which is rather lengthy and cumbersome. Can you think of any situations where the government has tried to enforce them, but because of the situation in the courts, it hasn't been able to? I've read somewhere that a tribunal possibly would be an alternative that would work well, because it would be dedicated to such a process.

Ms. Marie-Josée Thivierge: I wouldn't want to speculate on—

Mr. Anthony Rota: In your experience, can you just say “this does work” or this doesn't work”? I'm drawing on something that I know you have—

Ms. Marie-Josée Thivierge: That being said—again, this is section 36 kicking in—it's very difficult for me to talk about individual transactions. You're asking if there are instances. I would say, really, that in terms of the act and how it works now, there are provisions in the act that allow for the minister to take enforcement actions. There are some guidelines that clearly articulate what investors are expected to do under the Investment Canada Act.

In terms of proposing future government policy in this area, I don't feel that this is the purpose of my presentation today.

The Chair: Thank you, Madame Thivierge.

Mr. Braid has five minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chairman.

Thank you to our officials for being here this afternoon.

To recap or confirm, we have two scenarios where the act applies and a review takes place. One is where the book value is over a certain threshold, which currently is $312 million. The second is where there are national security concerns involved. Is that correct?

● (1650)

Ms. Marie-Josée Thivierge: That's correct.

Mr. Peter Braid: In a situation where there are national security concerns involved, that's a unique and independent review in and of itself, I presume. In other words, the threshold doesn't need to apply when there are security concerns. It's separate and distinct. Is that correct?

Ms. Marie-Josée Thivierge: The threshold does not apply under part IV.1.

Mr. Peter Braid: Okay.

When reviews take place, are they reviews of transactions involving only publicly listed companies or can they be privately held companies as well?

Ms. Marie-Josée Thivierge: They can be both.

Mr. Peter Braid: Very good.

Are most of the acquisitions involved in the transactions direct or indirect? What has been the experience?

Ms. Marie-Josée Thivierge: We have both. I don't have those numbers with me.

Richard, do you wish to add anything to that?

Mr. Richard Saillant: Yes.

Since the negotiation of NAFTA, I believe, indirect acquisitions by WTO members are not reviewable for likely net benefit. If they are from the investor, or if the investor is from a non-WTO country, then the indirect acquisitions are reviewable.

Mr. Peter Braid: Thank you.

Now, national security concerns are not defined in the act, as you've covered. What about the term “strategic resource”? Is that referred to in the act or is it defined? Is that an important consideration that's covered in the act?

Ms. Marie-Josée Thivierge: You will not find the words “strategic resource” in the act. The factors that the minister considers as part of his likely net benefit determination are listed under section 20 of the act. There are six factors that are clearly defined. They are the factors that the minister must consider when making his ultimate decision.

Mr. Peter Braid: Thank you.

I'm curious to know if you have this particular statistic. Since the act has been in force, do you know what the average length of time is that it has taken a minister to review and make a decision? On where I'm going with the question, are the timeframes sufficient? These are pretty complex transactions.

Ms. Marie-Josée Thivierge: Richard, do you have that information?

Mr. Richard Saillant: I do not have that information with me right now. We measure it by using the median time, but we do report on that. I'd be happy to send you that information.

Mr. Peter Braid: Okay. Thank you.

Ms. Marie-Josée Thivierge: The act provides 45 days plus an extension of 30 days, which is within the discretion of the minister. Then it can be further extended if the investor and the minister agree, so the length of time is on a case-by-case basis.

Mr. Peter Braid: Thank you.

I wonder if you can elaborate a little on this one point on page 9 of your deck presentation:

> The Minister's decision is an exercise of discretion and final, not subject to appeal. Process may be appealed to the Federal Court.

Can you explain that?

Ms. Marie-Josée Thivierge: Yes. On that one, I think I will turn to Maître Legault.

Mr. Peter Braid: Wonderful.

Mr. Pierre Legault (Assistant Deputy Minister, Department of Justice): The minister indeed has full discretion under the act to apply the factors in section 20 and normally the courts would not review that decision; however, the minister also has to follow the process that is described in the act, including the factors in section 20, the information provided to him under section 19, and so on and so forth. Indeed, a party could take the minister to court if they believed he did not follow the steps he has to follow under the act. That is possible.

Mr. Peter Braid: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Braid.

Thank you, Mr. Legault.

Monsieur Cardin, you have five minutes.

[*Translation*]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chair.

Good afternoon and welcome, ladies and gentlemen.

I imagine that someone has analyzed the potential impact of the objective, which in my opinion is to bring in more and more foreign investments, on industry in Canada. Let me explain.

Small and medium-sized businesses create most jobs in Canada and Quebec. When we had a threshold of $312 million, a certain number of businesses fell below that threshold. Do you have statistics that show how many there are today? When the threshold is $600 million, how many businesses will be exempt from review? And when we reach the $1 billion threshold, how many businesses will not be subject to review and will be able to be sold like that? I imagine you studied these statistics before suggesting that the government include this in its budget act.

● (1655)

Ms. Marie-Josée Thivierge: I will say first that I administer the act. So I work with the tool that I am given to administer. That being said, I would like to clarify one point, that the $312 million is still the threshold in effect.

Mr. Serge Cardin: Yes, but it's going to change.

Ms. Marie-Josée Thivierge: It hasn't changed yet, it is still the threshold in effect.

In terms of what might happen, it is difficult to predict the level of activity exactly since it varies a lot from year to year. So we can't predict exactly and with certainty how many transactions would have a enterprise value above the threshold at that point. Now, we essentially know with greater certainty that in the present circumstances and with the rules and thresholds that apply at present, in 2010, there were 16 transactions with a total value of $16.1 billion.

I will also be happy to give you the 2009 statistics. In 2009, there were 21 transactions, with a value of $30.3 billion.

Mr. Serge Cardin: Certainly we aren't yet at $1 billion, but when we are, a lot of businesses will probably be covered. If we look at the impact of the book value of the asset being changed to the enterprise value, we note that the amount of the enterprise value as such is probably going to be higher as compared to the book value. A relatively significant number of businesses will therefore be accessible to foreign investment without review, unless there is some security in all this.

The Competition Policy Review Panel strongly suggested that the government accept these changes. The government ultimately included them in Bill C-10. These people did a lot of analyses. You enforce the act and the regulations, but it is the group that gave the government its policy direction. Is that right?

Mr. Richard Saillant: Yes. I can quickly explain their underlying logic.

An initial concept that is not necessarily related to raising the threshold from $312 million to $1 billion is the concept of enterprise value. The reason they adopted it is because, in their view, it was a more accurate reflection of the significance and importance of the business in financial terms. When the concept of enterprise value has been clearly defined, its relationship with the concept of book value may vary from one industry to another and one economic cycle to another, because market capitalization is constantly changing.

Based on the concept that is adopted, the enterprise value and the relationship with the book value, that is, the ratio to be established, will be very variable.

Mr. Serge Cardin: It also depends on what speculation there may be by a foreign group.

Mr. Richard Saillant: That's right. So there are going to be variations from one industry to another, but it will also be influenced by conditions in the economic cycle.

The second reason cited by the review panel for raising the thresholds was to focus on what it considered to be the transactions that are most significant for the Canadian economy. That was the review panel's reasoning.

The Chair: Thank you, Mr. Saillant and Mr. Cardin.

We will now move on to the representative of the Conservative Party. Mr. Généreux, you have five minutes.

● (1700)

Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC): Thank you, Mr. Chair. Thank you all for being here. You all have fine francophone names and it is a pleasure to hear you. I hope one day to be able to speak English as well as you, even though I understand everything you say.

In the documents you gave us, Ms. Thivierge, the expression "net benefit" comes up frequently. We are proud to be Canadian and obviously we want Canada to grow. This act essentially consists of allowing there to be net benefits for Canadians in each of these transactions. I don't think I'm mistaken in saying that.

Are you in a position to tell us how many transactions have taken place? You talked about 2009-2010, but since the act came into effect in 1985, is that kind of figure available?

Mr. Richard Saillant: I don't have the exact figure with me, but there are over 1,600 reviews at present.

Mr. Bernard Généreux: There are over 1,600 reviews?

Mr. Richard Saillant: Yes.

Mr. Bernard Généreux: If I understand correctly, one of those transactions was recently officially rejected. Before that, three others may have reached an initial stage before it was decided to drop them. That means that 1,596 or 1,597 transactions have passed the test. So there is considered to be a net benefit for the foreign companies to make Canadian acquisitions. Is that correct?

Ms. Marie-Josée Thivierge: Yes, that's right.

Mr. Bernard Généreux: Are you in a position to estimate total investments since 1985? I'm making you work hard.

Ms. Marie-Josée Thivierge: We do have that information. We would be happy to send it to you.

Mr. Bernard Généreux: We will come back to it at other meetings, in any event. I don't know whether it will be you at those meetings, but I imagine so.

Ms. Marie-Josée Thivierge: We have that information. The value of the investments is reviewed every year. So we can provide cumulative information.

Mr. Bernard Généreux: However, when a Canadian company buys a company abroad, are there any dealings with Industry Canada? On the same basis as foreign companies that buy something in Canada, is the reverse also true? Do Canadian companies have to go through a process with Industry Canada or not at all?

Ms. Marie-Josée Thivierge: No, the Canada Investment Act is for transactions by foreign firms that want to acquire Canadian firms.

Mr. Bernard Généreux: Is the opposite true?

Ms. Marie-Josée Thivierge: For the opposite situation, the laws of the other countries would apply. We have no role to play in that regard.

Mr. Bernard Généreux: A Canadian company that buys an American company will be subject to American laws and will have to deal with...

Ms. Marie-Josée Thivierge: ...American officials.

Mr. Bernard Généreux: Obviously, changes were made to the act to improve it. Do you think there are things that could have been added or incorporated to improve it more? Were some things left out?

Ms. Marie-Josée Thivierge: As I said earlier, the purpose of my appearance is to explain the act as it now stands in its present form.

Mr. Bernard Généreux: That's right.

Ms. Marie-Josée Thivierge: I'm not here to propose possible changes.

Mr. Bernard Généreux: You understand that the committee's goal and the purpose of your presence here is, first, to clearly understand the act, the spirit and role of the act. However, we also need to see whether the implementation of the recent amendments meets expectations.

I have been a member of Parliament in Ottawa for about 15 months. I understand the importance of the confidentiality of a transaction between companies very well. Obviously, I'm not a stockbroker. But still, when a transaction is made, and I did that for 20 years, I bought other companies, it is essential and fundamental that the information between the companies be strictly confidential. Otherwise, it would make no sense.

We are often accused in the House of not being transparent. We saw this particularly in the case of PotashCorp. The word "transparency" is very broad. Myself, I have never understood why we were told we were not being transparent enough on the question of that specific transaction since we could not get access to the information.

In terms of transparency and confidentiality, do you think the information that the Minister may disclose under the act is sufficiently complete for the various parties around the table?

One region or another is going to be affected by a transaction. So it inevitably has an effect on individuals, on human beings. Do you think the information about the transaction itself is sufficiently general to disclose it to the public at large? I don't know whether you understand my question.

● (1705)

[*English*]

The Chair: Madame Thivierge, be as brief as possible, please.

[*Translation*]

Ms. Marie-Josée Thivierge: I understand your question very well. The last time an independent committee reviewed the Canada Investment Act, certain recommendations were made to the government by that group regarding the provisions for disclosing information and offering more transparency. Some of them were proposed by the government, including starting to publish an annual report. The first annual report is being prepared. So measures were taken, after the last review of the act, to add certain provisions that offer more transparency.

[*English*]

The Chair: Thank you very much.

Mr. Stoffer, for five minutes.

Mr. Peter Stoffer: Thank you, Mr. Chair.

Am I correct that you said, in answer to a question, that more than 600 reviews were done last year?

Ms. Marie-Josée Thivierge: No. Allow me to quote the number again.

Mr. Peter Stoffer: Thank you.

Ms. Marie-Josée Thivierge: In 2010 there were 16 reviews, worth, in aggregate, $16.1 billion.

Mr. Peter Stoffer: How many people on the staff actually do a review?

Ms. Marie-Josée Thivierge: We are a group of approximately 11 people, and we work, as provided for under the act, in consultation with other federal departments and provincial departments as applicable, depending on the specifics of the given transaction. We also call on our colleagues from the Department of Justice.

Mr. Peter Stoffer: Right. Thank you for that.

I'll go back to two things. My colleague Niki Ashton raised an issue in Thompson, Manitoba, the other day of a company that purchased a smelter plant with the purpose of shutting it down. I question what economic benefit goes to Canada on that issue.

I'm just wondering; obviously, if you review a company and they have good practices and they meet all the criteria and they come in and do something like U.S. Steel does, for instance, then besides taking them to court, what other things can we do in that regard if indeed they plan to shut something down in order to withdraw some of the competition they have?

Two, 45 days doesn't seem to me to be a long time to complete a review. What is the average length of review? You said there were 16 of them. What was the average time it took?

I would go back to this question. If a company operates in certain countries of the world with very poor labour records, very poor environmental standards, very poor work standards and safety records and the whole bit, and that company comes in and wishes to invest in Canada, my fear, and my line of questioning, is that I don't think they're going to change their habits in any way. They're going to sort of downgrade the labour wages and benefits and everything else that we have here. We saw that with Vale Inco in Sudbury and everything else.

What thorough review do you good folks do to ensure that the investor or investors have clean hands and are reputable, that they have high levels of human rights and environmental and labour standards, before we allow that investment to take place—bearing in mind the net benefit test and the six factors? I don't see human rights here as part of your six factors. I don't see environmental standards as part of your standards.

This is my concern. I know that an awful lot of unions and workers are very concerned that when takeovers happen, their wages, their situations, start diminishing. I just question what benefit that is to Canada when people of that nature have to suffer those types of consequences.

I thank you.

Ms. Marie-Josée Thivierge: As I've indicated before, there are only six factors under the act. Those are the factors that are considered part of the review process.

That being said, on your point about non-compliance, to the extent —and I'm not talking case-specific—that an investor had a number of plans that were supplemented by undertakings and ultimately received approval to proceed with the transaction, and they then exhibit behaviour after a certain period of time while those undertakings are still valid such that they are non-compliant with one of those undertakings, sections 39 and 40 kick in.

If they exhibit a behaviour that happens to be totally outside the plans or undertakings that were part of the transaction, then the ability of the minister to trigger section 39 or section 40 might be limited. To the extent that what happens was very much goes against the plans and the undertakings that were provided to the minister, the act provides, under sections 39 and 40, for the minister to take enforcement action.

As for the average time of review, Richard, can you address that?

● (1710)

Mr. Richard Saillant: I do remember that number by heart. For 2010, the median time was 67 days. It doesn't mean—

Mr. Peter Stoffer: So it's beyond the 45 days.

Mr. Richard Saillant: Yes. It doesn't mean that there aren't complex transactions that for whatever reasons expanded for much longer than that.

Mr. Peter Stoffer: Thank you.

The Chair: Thank you, Mr. Stoffer. I'm sorry, but all of your time has been exhausted.

Now we're on to Mr. McTeague for five minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): I apologize for my tardiness. I didn't miss your introductory remarks. I've tried to read up a little bit.

If I could, I have a few what may be housekeeping questions to ask, without dragging this on much longer. Most importantly, I want to know the extent to which international treaties, obligations, or undertakings, impact—and how they would impact—the determination of a net benefit. For instance, if Canada concludes an agreement with Panama, would that trump, would that modify, or can that modify the minister's decision? It seems that the minister has quite a bit of latitude here. One would almost say it's bordering on arbitrary in terms of determination of net benefit.

But for the argument, is it that international obligations can indeed trump, define, or set aside the impact or the considerations, the factors, or the criteria for the net benefit test?

Ms. Marie-Josée Thivierge: I will say that in terms of the net benefit determination, the factors are set in the act. The transaction that is subject to review will be reviewed using the six factors in the act.

The six factors are the following: effect of the investment on the level and nature of economic activity in Canada; the degree and significance of participation by Canadians in the Canadian business; the effect of the investment on productivity, industrial efficiency, technological development, product innovation, and product variety in Canada; the effect of the investment on competition, and on this, as I mentioned earlier, we consult with the Competition Bureau; the compatibility of the investment with national industrial, economic, and cultural policies that are in place; and whether or not it contributes to Canada's ability to compete in world markets.

That being said, I will note that the Investment Canada Act was very much recognized as part of some of our international treaties. In that context, what I could do is turn to Richard Saillant if he wants to speak to that.

Hon. Dan McTeague: Sure.

Mr. Richard Saillant: With regard to the specific application of the factors, Madame Thivierge just listed them clearly. There has been, in the context of negotiating NAFTA—that's more than 15 years ago—a general lifting of and an increase in the review threshold as a measure that was put for NAFTA investors and then subsequently applied to WTO investors.

But pertaining to your question, I think Madame Thivierge answered in terms of what the factors are.

Hon. Dan McTeague: Just to be clear, though, let's say a company investment takes place abroad into Canada to buy an industry but not necessarily control it. Does that affect the nomenclature of the act as to how it is perceived, how it is interpreted? If I want to buy 49.999% of a company, with the other 50.1% still controlled by Canadians, to what extent is the ICA not triggered?

Mr. Richard Saillant: On the net benefit side, for acquisitions of control of Canadian businesses, what the ICA does is provide for the review by the Minister of Industry strictly of acquisitions of control of Canadian businesses. Control is generally defined as involving a majority of the voting interests in the company. In the context of companies that are widely held, there is a rebuttable presumption that control may be acquired once you have one third or more of the shares.

So that's the rebuttable presumption—

Hon. Dan McTeague: Right.

Mr. Richard Saillant: Maybe a final point is that you can also acquire a Canadian business if you acquire the assets, or substantially all of the assets, and not necessarily a voting interest. For instance, a mine or anything like that—

● (1715)

Hon. Dan McTeague: Sure.

Mr. Richard Saillant: But to answer your question regarding control, if you are buying a voting interest that is less than control, it is not reviewable for likely net benefit under the act.

Hon. Dan McTeague: What happens in the circumstance where a company does and acquires by creep a year later, two years later, or four years later...? It has not gone through the test as stated here. but a year later it purchases that extra per cent that gives it effective control some time after.

[*Translation*]

Is there a way to circumvent the act as it is now worded?

[*English*]

Mr. Richard Saillant: The obligation of the investor under the act is not to implement the transaction if it is reviewable before the minister determines whether it is likely to be of net benefit to Canada.

Hon. Dan McTeague: Thank you.

How much time do I have?

The Chair: Be very brief.

Hon. Dan McTeague: For my final one, perhaps, it says in the definition here as it relates to the consideration of provinces—and I'm just going to go back to the words you've used—where there is consultation with provinces as it relates to state or provincial policy, “the stated policies of the provinces”. This is not a loaded question, but I think it deserves some fleshing out.

If a provincial government that has some authority over a particular regulated industry—and I'm not referring to the TSX, I'm not—assuming that in a perfect world it had control or authority over a particular market in a regulated way, and it is not a stated priority, but it does develop that as a policy on the fly because it is perhaps analogous to Minmetals many years ago, when we had a very similar situation with SOEs.... Are there provisions in the undertaking or the consideration of the minister to consider the fact that regulations or concerns by a province might suddenly appear out of the blue given a particular unique transaction that was hitherto unfathomable or unthought of?

Ms. Marie-Josée Thivierge: I will answer by saying that paragraph 20(e) clearly says that, for the minister, one of the factors is “the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment”.

So one of the factors is to the extent that it is enunciated by a province.

Hon. Dan McTeague: Thank you. I think you know where my concern lies.

Thank you, Chair.

The Chair: Is it clear now? Good.

Our final questioner will be Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chair.

Thank you for coming today. You are an excellent example of the quality of public servants that Canada has. I appreciated the presentation today. It was very good.

I' have one question from my riding that I wanted to ask you about that someone came to me with recently. You may or may not be able to answer this question about the changeover in 1985 from one piece of legislation to another, from the FIRA. The vision of this person was that the FIRA legislation was much tougher on foreign investment than the new investment act is.

Could you give me a response to that so I can get back to them? Is that an accurate statement? Or did it do different things in the new act from what it did in 1985?

Ms. Marie-Josée Thivierge: On this one as well, I would be tempted to turn to Pierre, who knows the FIRA legislation very well.

Mr. Pierre Legault: FIRA indeed was a more severe piece of legislation. For example, right now we have the net benefit test. At the time under FIRA, we had to have some substantial benefit, which meant that the bar was much higher.

Also, pretty much all transactions were reviewed at the time. So if somebody was selling his mom-and-pop corner store, it was captured by the act. Pretty much all economic activity and all transactions were reviewed. Under this act, starting in 1985, not all transactions were reviewed.

So there were some differences like that.

● (1720)

Mr. Mike Wallace: Here is another very naive question. I own a company—I don't, but if I did—that was at this level, but I own all the shares. It's private. What act is it that triggers me to let the government know that I'm selling it to whoever I want to and that it's reviewable? Is it this act or is it the Corporations Act? How do you even know that I'm selling a private company?

Mr. Richard Saillant: Well, the first consideration is that I'm assuming that if your company is worth $312 million in assets, you would have good lawyers and—

Voices: Oh, oh!

Mr. Richard Saillant: —they will be in touch with people on Bay Street who, when it involves sales to foreigners, know the legislation very well. They will advise you very well as to your obligations under the Investment Canada Act.

Mr. Mike Wallace: So it's in the law, even on a private corporation, that if I'm selling to a foreign entity, I have to inform the government of that exchange.

Mr. Richard Saillant: You have to notify under the act, but if the book value of your assets exceeds the threshold, which is $312 million—

Mr. Mike Wallace: Okay. I appreciate that.

Ms. Marie-Josée Thivierge: I was wondering if I could just add that the obligation under the Investment Canada Act is for the investor who wishes to acquire a Canadian business to inform the minister of this potential transaction.

Mr. Mike Wallace: Thank you for that.

I appreciate your setting up the six net benefit criteria. With my neighbour here, I get calls. We've had Dofasco and Stelco purchased over the last little while, and people don't think there's such a thing as a net benefit in some instances. In other instances, they think things are great.

Of the six, are they weighted? Are they all the same in weighting criteria? Is there an evaluation criterion of those criteria? For example, on “significant to competition”, meaning there's only one in Canada or there are a thousand in Canada, how is that determined?

Ms. Marie-Josée Thivierge: There is no weighting. There are no weights attributed to any of the factors.

It is in the minister's discretion to review the specifics of a given transaction, to establish which of these factors apply to the given transaction. Ultimately, it is based on the information provided to him by the director, which, as I said earlier, means the plans, the undertakings, the representations, and the outcome of consultations with the province and other federal department, to establish whether or not the transaction is to be of net benefit to Canada.

Mr. Mike Wallace: Here is my final question. I want to respond to a question from my colleague across the way. He said that this is almost arbitrary in terms of the minister's ability. They must forget that they were—I've forgotten about it already—in power for 13 years and before that, when this act was in place, and I don't think they turned down any of the reviews.

Would you consider the advice and the position of the cabinet minister, whether it's a man or a woman, an arbitrary decision-making process? Or is there a process for them that's followed in a plan, in a regular way, so that we have consistent decisions made over time?

Ms. Marie-Josée Thivierge: I'm not sure I fully get your question. I'm sorry.

Mr. Mike Wallace: I was just trying to get it on the record. That is really what I was doing.

Thank you, Mr. Chair.

The Chair: We only have about seven minutes left.

Did you have a brief question, Mr. Van Kesteren?

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Yes. It is just a brief question.

I don't think I heard this, but in regard to other jurisdictions, are we targeting a specific jurisdiction when we look at a possible review that, first of all, would mirror what we have here in Canada, and possibly our philosophy of doing business? Is there another country out there that has a piece of legislation we're looking to possibly emulate?

Ms. Marie-Josée Thivierge: Do you want to speak to the benchmarking?

Mr. Richard Saillant: As I discussed previously, I think that there are about two countries that have a regime similar to ours. It is different, but it's similar to ours. They are Australia and New Zealand. This is something you will probably encounter in the next sessions you have.

Canada is limited in amending the act in terms of not making it more restrictive than currently, and these are commitments that are taken under international trade obligations. This is something you will find along the study: that there are limitations surrounding that.

● (1725)

Mr. Dave Van Kesteren: There is a last question I want to ask. When we talk about net benefit, how much of that net benefit is taken into consideration as investment into Canada?

Mr. Stoffer pointed out the importance of looking after our workers, and somebody else has mentioned looking after our resources, but how much of this legislation centres around the need for capital coming into the country and its being a net benefit?

Ms. Marie-Josée Thivierge: I think it's fair to say, when you look at the factors in the act, that clearly some factors are tied to things like the level and nature of economic activity in Canada. This is tied to the extent that there will be more or less economic activity as a result of a potential transaction.

The purpose statement, which is section 2 of the act, clearly lays out that it recognizes that increased capital and technology benefit Canada. To your point about capital coming into Canada, it is certainly referenced in section 2 of the act.

Mr. Dave Van Kesteren: Thank you.

The Chair: Thank you very much.

Before we finish, I have two follow-up questions based on some of the questions that were asked.

In regard to the six factors that are enshrined in legislation, that make up the framework of what the minister has to have as far as the decisions are concerned, to add to or change them, there would have to be an amendment to the legislation. Is that correct?

Ms. Marie-Josée Thivierge: To the extent that one of the factors would be changed, they are in statute, so it would require a legislative change.

The Chair: All right. Then I'll go back again to Mr. Stoffer's question. He mentioned three pillars, but would it create problems internationally if we added another one, like an environmental one, or labour relations, or anything like that? Is this the kind of thing that you were saying might create complications internationally?

Mr. Richard Saillant: I wouldn't necessarily say that automatically. The only thing under the act is that Canada internationally has taken what we call “reservations” under trade agreements. Essentially these reservations work to reflect the act as it existed when they negotiated the trade agreements. The issue becomes whether in doing so you would be making the application of the act more restrictive, from a trade standpoint, than it was before.

The Chair: Finally, I think you mentioned section 12.5, but I may not have recorded it quickly enough.... Mr. Wallace asked a question in that regard as well: what triggers an Investment Canada Act investigation for compliance?

You mentioned that it was the foreign investor's obligation to report a purchase, but there was also some talk about purchases that were lower than the $300-million threshold, where the minister had some discretion. Is every foreign investor obliged to report to the minister on a potential purchase? This also goes to the core of Mr. McTeague's question as far as creep is concerned.

Ms. Marie-Josée Thivierge: The section that actually talks about the duties and powers of the minister is section 5. To the extent that there's an acquisition of control by a non-Canadian of a Canadian company, the minister, under the act, has to be informed.

Now, there are two parts to the act: notifications versus reviews. If it is below a certain threshold, then it's a notification. The minister is notified that a transaction is about to take place. Where transactions are above a certain threshold, then it becomes reviewable under the act.

The Chair: So literally any foreign purchase of control in any Canadian corporation has to be reported?

Ms. Marie-Josée Thivierge: An acquisition of control.

The Chair: An acquisition of control. Less than that, it does not have to be reported. Is that correct?

● (1730)

Mr. Richard Saillant: Yes, this is accurate, but I would add that if you have additional increments.... Let's suppose you do it in a stepped manner. If the additional increment leads you to have an acquisition of control, after that, you will need to apply.

The Chair: Okay. So that answers the creep situation: that if you bought 49%, as soon as you went over the threshold, then you'd have to report, even though you're already presently an owner.

Mr. Richard Saillant: That's right.

The Chair: Very good.

Thank you very much. You've been very helpful to the committee.

The meeting is adjourned.

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