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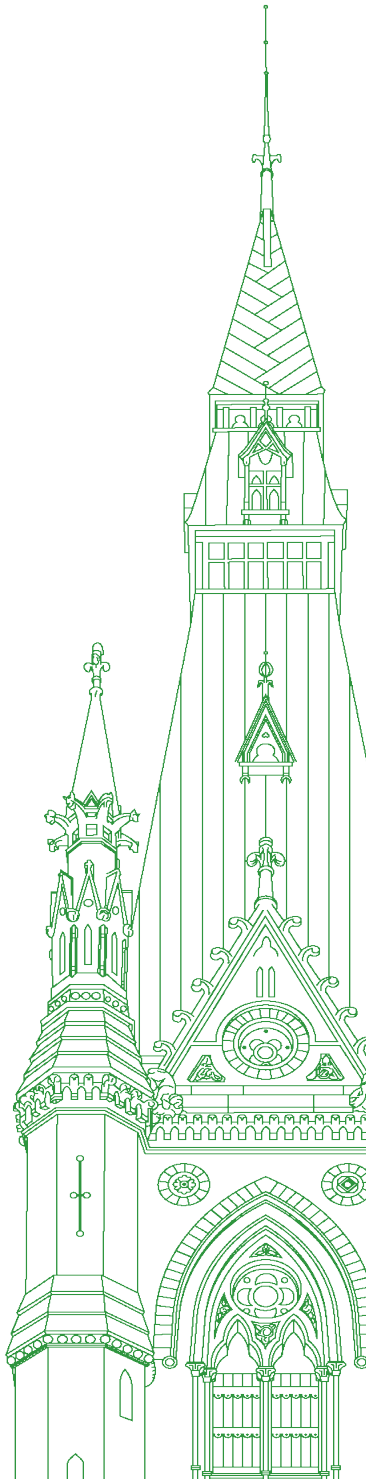

Chair: Mr. Joël Lightbound

Standing Committee on Industry and Technology

Wednesday, June 7, 2023

● (1920)

[*Translation*]

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

Welcome to meeting No. 79 of the House of Commons Standing Committee on Industry and Technology.

Pursuant to the order of reference of Monday, April 17, 2023, we are continuing our study of Bill C-34, An Act to amend the Investment Canada Act. Today we are proceeding to clause-by-clause consideration.

Today's meeting is taking place in a hybrid format, pursuant to the House order of Thursday, June 23, 2022.

We have with us today Mark Schaan, Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector, at Innovation, Science and Economic Development Canada; Jamieson McKay, Director General, Strategy and Innovation Policy, from the Department of Industry; and Mehmet Karman, Senior Policy Analyst, also from the Department of Industry.

Thanks to the three of you for being here today.

[*English*]

I'd like to call new clause 1.1, as consideration of clause 1 is postponed.

[*Translation*]

Mr. Perkins.

[*English*]

Mr. Rick Perkins (South Shore—St. Margarets, CPC): I'm just trying to get my papers organized.

The Chair: On CPC-1, Mr. Perkins, please.

Mr. Rick Perkins: Thank you, Mr. Chair. I will introduce this amendment, CPC-1.

CPC-1 is an amendment to this bill, which in its current form proposes no changes to the Investment Canada Act, as I understand it, with regard to the current definition of "state-owned enterprise". The rationale for this amendment is that the current definition, in my view and in our view, for "state-owned enterprise" is too vague. Companies operating in authoritarian states like China are often beholden to the requests made by the Communist Party of China, even if they are not directly controlled by the state.

This concern is supported by much of the evidence presented at this committee during meetings with witnesses. For example, Dr. Charles Burton noted that no Chinese individual enterprises exist independently from China's one-party state structure. Burton argued that while companies like Huawei do not self-identify as Chinese state-owned enterprises, they do operate similarly to the PRC institutions. Huawei's organization chart suggests that the company's CCP branch takes precedence over Huawei's board of directors in the corporate decision-making and that the company's reasons for existing are not just about economic profitability, but also to serve other PRC regime geostrategic purposes, which threaten Canada's national security.

Because of these concerns, the current definition of a state-owned enterprise, in our view, should be expanded to include any company or entity headquartered in authoritarian states such as China.

With that, I would like to ask the officials a question, if I could. I'm not sure who is the most appropriate official to ask.

Do you agree that this proposed definition would provide the minister with more tools in scrutinizing proposed takeovers by companies based in China, not only as the traditional definition of state-owned enterprise falls under this act but as it falls under international trade law?

The issue brings up China's national security and intelligence act, which China passed, I believe, in 2019. It requires that all companies in China act in the interests of China, including stealing technology, and espionage is possible. That's why companies such as Hytera were banned by the United States from doing business and were actually charged with espionage. Although when you look at the Hytera's disclosures to the stock exchanges in China you will see that it purports itself to be an independent company, as we think of companies, in reality, it has been an effective tool for providing for Chinese espionage and theft of technology in open and democratic countries.

Mr. Mark Schaan (Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector, Department of Industry): Thank you, Mr. Chair, for the question and for offering the opportunity to raise some considerations that are highlighted through the amendment.

I would raise two sets of considerations specific to this amendment for the contemplation of the committee. One is that the existing definition of state-owned enterprises within the Investment Canada Act already allows the government to review investments that involve state-owned enterprises that would be headquartered in a country such as the one the member describes, without setting out parameters—arguably subjective—that would raise a number of concerns with respect to our trade obligations.

Furthermore, the act also already allows the minister to deem an investor a state-owned enterprise, even if it does not self-identify as such. In section 26 and section 28 of the existing Investment Canada Act, the minister has the authority to deem an investor to be a state-owned enterprise, notwithstanding the fact that an investor might not purport as such.

The second consideration I would note is that the current foundational element of the act is that it is technologically neutral and geographically neutral, allowing the minister the capacity to fully consider state-owned enterprises and not encumber potential trade irritants or look to be prejudicial to a particular geography, which would be in violation of our international accords. A definition that would introduce such parameters could be viewed as such and would potentially give rise to concerns for Canada in the international arena.

Those would be the considerations that I'd flag.

The Chair: Thank you very much.

Mr. Vis.

Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC): Thank you, Mr. Chair.

I'll just note, as a British Columbian, that there have been a number of really horrible examples of the role of state-owned enterprises in my province. I think the former premier Christy Clark at one point.... At some point in Canadian history, we were welcoming with open arms all forms of foreign investment from state-owned enterprises or those affiliated with the Beijing regime in China.

What I'm concerned about, as a British Columbian, and where I think in good faith we can get somewhere.... We had a warehouse in Surrey that was flagged as part of the belt and road initiative. That warehouse wouldn't fall under any of the provisions in this act. That's why our party believes so strongly that we need to include a higher degree of ministerial discretion to avoid state actors pursuing objectives that are contrary to the well-being of Canada and our strategic interests.

I want to give the minister, in this context, irrespective of what political party is in power, the ability to counter the negative impact that state-owned enterprises have had in my province.

The other example I'll give is that a company affiliated with the Beijing regime operated care homes in my province, and with horrible consequences. They were eventually taken over by the health authorities because they were so darn bad.

Thirdly, we need more ministerial discretion as it relates to state-owned enterprises because strategic agricultural land in British Columbia is being bought up accordingly.

I don't see how Canada taking a stronger stance against state-owned enterprises is going to challenge us, or that we would be in conflict with our WTO obligations.

Maybe the officials today can say whether China has ever taken action against Canada at the WTO. Has the Chinese government ever taken action against the Province of Saskatchewan—as I raised in our last meeting on this matter—as related to some of the things it has put in place to prevent state-owned enterprises or foreign actors from buying agricultural land in that province specifically? Are there any cases that you can point to there?

● (1925)

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

I would raise a few additional considerations and one to maybe reiterate.

Currently, already under the act, as I noted, in sections 28 and 26, the minister has the capacity to deem an investor a state-owned enterprise, notwithstanding the fact that they don't self-identify as such. The definition of state-owned enterprise that is already comprised within the act, which is jurisdictionally neutral, does allow for us to continue to identify state-owned enterprises and subject them to the SOE provisions of the act. That is why SOE investments are routinely reviewed under the act and are done so at a higher rate, actually, than are private investors.

With respect to issues of international prejudice against potential geographies, I would note two things. One is that in many cases with respect to a state-owned enterprise, or as it relates to cases before the ICA, it's an affiliation with an investor who was actually not from said SOE. In fact, the investor we often see that is the potential party to a Canadian transaction is actually a member in good standing of the WTO and a respected trading partner, an ally, who potentially has an affiliation with respect to an SOE as part of a broader set of investments.

We do need to be wary of the degree to which highlighting or specifically calling out a country in the act, as opposed to allowing the existing discretion to the minister, may actually deem us to be prejudicial to an investor. There have been a number of cases in which retaliatory action has been taken by countries with respect to investment decisions as well as broader actions against them within their economy.

The Chair: Thank you very much, Mr. Vis—

Mr. Brad Vis: Can you give us any specific examples of China challenging Canada at the WTO as it relates to this act or as I asked in my question?

Mr. Mark Schaan: Specific to the ICA, I'm not in a position to furnish the committee with examples of China calling this into question, in part because our existing act is actually geographically neutral and has been interpreted as such. Our definition as it currently stands within the act does not call out a specific country, notwithstanding the fact that we use it routinely in cases incorporating specific geographies.

● (1930)

The Chair: Thank you.

Mr. Vis, are you done with your line of questioning?

Mr. Brad Vis: I'm almost done.

Just to be clear, this doesn't call into question the neutrality. It's just broadening the definition of state-owned enterprises and the discretion of the minister. I was using solely China as an example because there have been so many geopolitical issues in my province specifically.

Thank you.

The Chair: Thank you, Mr. Vis.

Next is Mr. Fillmore.

Mr. Andy Fillmore (Halifax, Lib.): Thank you, Chair.

Thank you to the team here for your instructive and very helpful comments so far.

I'd like to focus on a particular element of this proposed amendment, which proposes a definition of "a foreign state in which democratic rights and freedoms are not recognized".

The amendment seeks to modify the existing definition in the act. The concern is that lack of clarity can follow from that. I wonder if you might shine some light on that for us and on the risk of that particular element of the amendment.

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

The existing definition of state-owned enterprises in the ICA, as I noted, already allows the government to review investments that involve SOEs that would be headquartered in such a country, without setting out subjective parameters.

Obviously, one can imagine that when one sets out parameters like "democratic rights and freedoms are not recognized", there is a degree of subjectivity, to which recognition or non-recognition may be called into question. The degree to which that recognition and the determinations about a geography on the basis of that recognition may actually be seen as potentially prejudicial or discretionary. As such, again, that could set out concerns from others about the degree to which, potentially, the act is not actually geographically neutral.

Mr. Andy Fillmore: Whereas there is a fairly clear definition of an SOE, a state-owned enterprise, that perhaps we should be cleaving to...?

Mr. Mark Schaan: We believe that the current definition of "state-owned enterprise" in the act is sufficiently broad to capture the kinds of corporations in question. In fact, that's why they get reviewed at such a much higher rate than other investors.

Mr. Andy Fillmore: Thank you.

[*Translation*]

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

Mr. Généreux.

Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC): Thank you, Mr. Chair.

If sections 26 and 28 of the act are so well drafted as they stand, can you cite us any examples where the minister had to interpret and apply them? Can you also give us some examples where the minister had the necessary authority to assert that a business came from a country unfavourable to Canada? Do you have any specific examples of that?

In recent years, we've seen many instances of Canadian businesses, particularly in the telecommunications and technology sectors, that have been excluded from business dealings in the United States. Is there a discrepancy between our present act and American legislation, for example? Would that be because the minister didn't want to apply sections 26 or 28 and to make his own decision without the definition of "state-owned enterprise" being changed? A change to that definition is in fact being proposed as we speak in order to improve it or at least to include in it something we consider is an improvement. That's my first question.

My second question concerns the entity. As we interpret its definition in this bill, an entity is a business that has its headquarters in a foreign state in which basic democratic rights and freedoms are not recognized. Do you consider that problematic? Could it give the minister a reason to decide whether that entity or business could or couldn't do business in Canada?

Mr. Mark Schaan: Thank you for those questions.

Two or three important aspects should be considered here.

First, the member has referred to efforts by other countries to exclude organizations or corporations in a specific sector. It's important to note that these legislative measures, including England's Telecommunications Act and the approach of telecommunications in Canada, are geographically neutral. Consequently, they allow governments to exclude actors that are high-risk suppliers, as does the definition of "state-owned enterprise" in the Investment Canada Act, which is both technologically and geographically neutral.

Second, the definition of "state-owned enterprise" set forth in the Investment Canada Act is broad enough to allow the minister to use the provisions, now that they exist, to exclude or allow investments made by state-owned enterprises. This doesn't require the application of sections 26 and 28 given the leeway that the definition provided in the act affords. The problem caused by the inclusion of aspects that may be subjective or are defined in a non-standard manner puts Canada at risk of being perceived by other countries as harbouring prejudices. That's why the definition remains broad and states no specific geography. It doesn't mention any non-standard aspects, such as harmful behaviours, because they are now defined in the act.

● (1935)

Mr. Bernard Généreux: Can you cite any examples from the past few years in which the minister chose to construe the present definition as providing that certain foreign businesses weren't welcome in Canada?

Mr. Mark Schaan: It's hard to give you any examples because the act has been applied in a national security context. It's impossible for me to cite you a specific case.

I would note that the minister has taken steps to oppose investments by state-owned enterprises or businesses that didn't identify themselves as state-owned enterprises. That includes Investment Canada exclusions.

[*English*]

Just to be absolutely specific and make sure I'm precise, the minister has taken multiple actions against state-owned actors over the last number of years, including those who do not define themselves as such. I can't speak to specific cases given the operating environment of the act, but I can say specifically that there have been a number of cases in which state-owned actors' investments have been subject either to mitigating orders or to blocks.

[*Translation*]

Mr. Bernard Généreux: There have nevertheless been highly publicized cases in recent years where one can imagine that the minister opted to exercise his authority under the present definition. I wouldn't dare name any businesses either, but some cases are now public, and we've heard about them in the past few years.

My understanding is that you don't want to discuss specific cases.

Mr. Mark Schaan: I don't want to focus on one case or another. I simply prefer to describe the minister's overall record and the act as regards prevention as well as the way the minister uses the act to block foreign investments or to mitigate the risk they present.

That includes investments by state-owned enterprises and organizations that the department views as state-owned enterprises, even those that aren't included in the statutory definition.

Mr. Bernard Généreux: If my understanding is correct, you don't think this change is necessary.

Do you think the present definition in the act is enough to reach the objective my colleague wants to achieve?

Do you think there might be another way to phrase the definition of "state-owned enterprise" that would improve it?

● (1940)

Mr. Mark Schaan: Once again, I want to emphasize how important it is for the department to have a definition that's broad enough to include many types of harmful behaviours without having to name them all. It's important for the minister to be able to consider all behaviours and measures in order to make effective and fair decisions.

In addition, certain provisions of the act enable the minister to include an organization in the state-owned enterprise class if he wishes to do so.

The department feels that a definition that is more open and less specific than the one proposed in the amendment would be more effective in achieving the objects of the act.

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

Mr. Fast.

[*English*]

Hon. Ed Fast (Abbotsford, CPC): Well, Mr. Chair, here's the problem as I see it. Once an investment decision has been approved by the Government of Canada, our ability to enforce behaviour that is compliant with what Canadians would accept as Canadian values is effectively removed. We do have laws within Canada that have to be complied with, but my big concern is that as investments are reviewed we want to make sure that the actors who will be operating within our marketplace have a clear commitment and a track record of having lived up to democratic principles.

My first question for you is this. If we don't put this provision in the ICA, is there any other place in the ICA where democratic principles, rights and freedoms are articulated in any way as a condition of investment?

Mr. Mark Schaan: Mr. Chair, I would note two important factors. One is that the wide definition and the standardized definition of SOE currently within the act allow for a consideration of a number of questions of importance that the member has raised under the existing definition of state-owned enterprise as a function of the act, and thereby allow the minister the capacity to be able to consider that.

With respect to a decision post, let's imagine that all factors have been protectively assuaged and appropriately mitigated to allow for an investment to continue. Not this provision, but other provisions that the committee will hear about today include the capacity for binding undertakings under the national security provisions of the act. Undertakings have been routinely used under the act to ensure that a number of factors of import are actually brought to bear, including the Canadian makeup of a board and the Canadian makeup of a management team.

The investments require a number of those elements that I think underscore what is at the heart of the comments I heard, which is that there needs to be a binding mechanism by which the investment can be held to account. We believe that is the case under the undertaking provisions that now exist under the net benefit clauses and that will now apply, should Bill C-34 pass, under the national security provisions of the act.

Hon. Ed Fast: What you're suggesting is there's broad discretion for the minister. He's allowed to take to into account a broad range of considerations. He can impose conditions, but there's nothing that requires him to do so. There's nothing that compels him to do so.

My colleague Mr. Vis just raised the examples of companies that have abused their privilege of operating within Canada. Anbang was one of the companies he was referencing. HD Mining is another classic one that brought in Chinese workers, instead of employing Canadians in its operations.

I think Canadians are sick and tired...they're fed up with Canada being a soft touch when it comes to foreign investors abusing their privileges within Canada.

The clause we have here is simply adding as part of the definition of a state-owned enterprise “an entity that has its headquarters in a foreign state in which basic democratic rights and freedoms are not recognized”. That is foundational, I believe, for the investments we want to see in Canada. It's a clear commitment to the values that Canadians hold dear.

By the way, I understand the concern about what this might do in terms of our obligations at the World Trade Organization. I understand that. However, I think you will have noticed that many of these countries that may be problematic as state-owned enterprises and investors in Canada are habitual abusers of WTO rules. I saw that personally over four and a half years, when I was the minister responsible for trade. You see this happening all the time. It's a wilful flouting of WTO rules, because these countries know they can get away with it.

The argument you've been suggesting is that we want to make sure that we're squeaky clean, and if there's any chance this could be challenged, because it's not as clear-cut as we might like it to be.... I think we cheat Canadians when we don't articulate clearly the basic democratic principles that we expect foreign investors to comply with and live by. I'm encouraging my colleagues here at the table to really take that seriously.

I don't believe the proposal that you have before you today is one that we should be overly concerned about in how it will be characterized at the World Trade Organization.

I would also suggest that your reference to wanting avoid subjective measures can go so far, and then we have to say, “You know what? We're going to try this on for size. We're going to include it.” Investors have a chance to challenge this, either under our free trade agreements or under the World Trade Organization rules, but for us to simply go scrambling and hiding every time there's something that may or may not be enforceable or allowable at the World Trade Organization, again, I think cheats Canadians.

I believe it's worthwhile for us to include this provision as an amendment to the bill that the government has brought forward. I hope my colleagues here are going to give appropriate consideration to that request.

● (1945)

The Chair: Thank you, Mr. Fast.

I'm not entirely sure there was a question in there, but Mr. Schaan, I'll give you a chance.

Mr. Mark Schaan: I just want to make sure that.... One thing I articulated was understood, which was not that the subjectivity itself was potentially a cause for concern in terms of the value or the sentiment it expresses.

What I was expressing was that the current definition—“an entity that is controlled or influenced, directly or indirectly, by a government or agency referred to in paragraph (a)”, which goes back to the definition—is sufficiently broad for the contemplation of the act, and the provisions in question are to define what an SOE is for the purposes of the contemplation of the act. It actually has no bearing, then, on the potential actions that must be taken in those cases, other than the fact that they're understood as one.

This definition, and what I was trying to underscore, is actually very broad, and it allows us to be able to contemplate all of those of comportments and behaviours, and that's why we felt comfortable with the fact that this definition is quite broad.

● (1950)

Hon. Ed Fast: Mr. Schaan, my point is that there's nothing in the current definition that actually compels or directs the decision-makers within ISED, or whoever does these reviews and makes the final approvals, which ultimately would be the minister. There's nothing directing them to take democratic principles into account as that decision is made. This particular amendment actually bakes that into the legislation, so there's absolutely no doubt what Canadians believe should be applied as a standard before companies invest.

The Chair: Thank you, Mr. Fast.

We'll now turn to Mr. Perkins and then Mr. Vis.

Mr. Perkins.

Mr. Rick Perkins: Thank you, Mr. Chair.

Just for those watching to understand, I will say that Mr. Fast was international trade minister and was the minister who negotiated the European free trade deal, so he understands these deals inside and out.

Mr. Schaan, I appreciate what you're saying—that the government thinks that the current provisions are fine then. We're not going to spend this much time on every one of the amendments. However, there's sort of the issue of what a state-owned enterprise is. This is fundamental, in terms of the minister's power—to me—in a couple of the other amendments that we put forward, including the threshold and changing the wording from “may” to “shall”. Mr. Fast indicated that. I just want to ask you because you referenced the trade agreements.

The National People's Congress of China passed a national intelligence law in 2017—which I'm sure you're aware of—to compel all Chinese nationals, at home and abroad, to collaborate with agents of the Chinese state, on request, to further Chinese state interests by purloining and obtaining confidential data and engaging in the compromising of infrastructure around the world. That is a fundamental element that compels you, whether you're a technically state-owned enterprise or a company that's operating in China, that's China headquartered, to do the things that have led to the charges that we've seen around the world.

Has any other country in the trade agreements that Canada has signed through the various governments—because that's one of the things where you say we're in compliance of those agreements—passed a law compelling their corporations, whether they're state-owned or privately-owned, to spy on and steal technology in the countries in which they operate outside of their home country?

Mr. Mark Schaan: Mr. Chair, I'm not in a position to furnish the committee with specifics on all of the trade practices of the WTO. I would simply note again that an entity that is controlled or influenced directly or indirectly by a government or agency referred to in the act would include such provisions.

Mr. Rick Perkins: That doesn't answer the question. I'll give you a more specific example, because you would have been present in the department, I assume, for some of these decisions that have been made. That gives the power, but, as Mr. Fast said, it doesn't compel the minister to actually do anything.

As we know, Sinclair Technologies was bought by Norsat in Vancouver in 2011, and then Sinclair was subsequently taken over by Hytera. On that transaction in 2019, two years after this law was passed, the minister of ISED had the power in the existing act to do a full national security review—not a superficial one, but the full one—and to call on the Minister of Public Safety to do that review. That essentially state-owned Chinese company is banned in the U.S, because they're in the telecommunications business and they've been spying. From that full and detailed.... Yet, Minister Bains chose not to do that and allowed this to go ahead with a very superficial, “Oh, it's okay”. While the power is there in that definition, and subsequent definitions, it's not being used. The subsequent exposure of our industries to them, including the RCMP and the Canada Border Services Agency, which subsequently bought equipment from them, is a result of that lack of usage of the existing section. That's why we're arguing for strengthening both the definition of “state-owned enterprise” and some of the other provisions.

Why—and you may say it's a cabinet confidence, or whatever—if the power is there, is it not being used in that case? There are others, of course. The Tanco mine in Manitoba, Canada's only lithium-producing company, was bought by Sinomine without any.... The same minister chose not to have the national state-owned enterprise, Sinomine of China, which was acquiring our only lithium mine that was producing, go through a detailed public security. I would argue as well that in that benefit test under the act, ministers are choosing not to do this.

● (1955)

Mr. Mark Schaan: Mr. Chair, thank you for the question. I will not be in a position to speak to specific decisions on specific cases, given both the national security information at play as well as the fact that, as the member noted, they are cabinet confidences.

The broader point I would make, however, is that while there's much consideration in many cases about whether or not a case proceeds from sections 25.1 to 25.2 to 25.3, it should be noted that all cases are subject to national security review. Some cases do proceed through the maximum allowable timeline associated with that national security review, including the move from “could” to “would”, which is the important stuff in section 25.2 and section 25.3, but all cases are subject to a national security review.

Mr. Rick Perkins: Can you give me a recent example in the last couple of years where that's actually happened by a Chinese state-owned enterprise, where that isn't about divesting, as the minister has said under his new guidelines? Three companies were forced to divest their mining assets after the fact when they were bought. Is there anything other than that?

Mr. Mark Schaan: A public example would be Aecon. I would also just point to our annual report which notes the number of state-owned enterprises that have been subject to investment reviews.

The Chair: Thank you, Mr. Schaan.

Mr. Fast.

Hon. Ed Fast: I just want to seek some clarity here. State-owned enterprises are companies that are effectively controlled by a foreign state. Broadly speaking that's what these companies are—they're not private companies.

Mr. Mark Schaan: The definition in the act says, “an entity that is controlled or influenced, directly or indirectly, by a government or agency”.

Hon. Ed Fast: For the sake of those who might be watching, very simply it's basically a company that is owned directly or indirectly by a foreign state that is now to make an investment in Canada. It does not capture any private companies. As my colleagues have noted, private companies that are not owned by the state is what I'm referring to.

Mr. Mark Schaan: The definition extends to influence.

Hon. Ed Fast: But it doesn't include influenced under the national security law of China, does it?

Mr. Mark Schaan: It is not that specific. It is broadly understood as influence.

Hon. Ed Fast: Exactly, and that's the problem. Every single company in China is compelled to act as an agent of the state under that national security law.

What we're doing here is including an amendment that would broaden the definition to effectively include any company looking to make an investment in Canada that is domiciled in a country where basic democratic rights and freedoms are not respected. Did I get that wrong?

● (2000)

Mr. Mark Schaan: We would understand the current definition to be sufficiently broad and wide to encompass a whole host of behaviours, including those that are influenced by government, and I would note, from our annual report, that we review those with frequency.

Hon. Ed Fast: Just for clarity, you're suggesting that every single Chinese company would be covered under the current legislation.

Mr. Mark Schaan: I can say that in the last year for which statistics were published, the investment review division contemplated 1,200 foreign investments into the country.

Hon. Ed Fast: How many of them are non-state-owned enterprises from China?

Mr. Mark Schaan: I wouldn't have those specifics. I would simply say that the rationale for the high number is a function of the fact that the definition is broad, including for the purposes for national security reviews.

Hon. Ed Fast: By the way, I'm not trying to be difficult. We're trying to get to the bottom of this legislation. This is a once-in-a-decade opportunity for us to review the ICA, get it right and reorient it to clearly reflect Canadian values and principles. That's what our amendments are focused on.

They're not focused on being unreasonable, but we know that Canada is vulnerable when it comes to foreign direct investment in our country. If we don't get it right, we're going to lose our sovereignty. We're selling out our national security if we don't get it right. We have this opportunity to get it right. I'm encouraging my colleagues here to take these amendments seriously.

The Chair: Thank you, Mr. Fast. I appreciate your comments.

I think it's important to keep in mind that the officials are here with us as experts on this specific bill. They're not lawmakers, so they're not here to debate the rationale. They're here to explain the bill as proposed before this committee. Are there any other questions or comments on CPC-1?

[*Translation*]

Shall amendment CPC-1 carry?

I think we'll have to have a recorded vote.

(Amendment negatived: nays 7, yeas 4 [*See Minutes of Proceedings*])

The Chair: Amendment CPC-1 is negatived, which brings us to clause 2.

Shell clause 2 carry?

(Clauses 2 to 6 inclusive agreed to)

[*English*]

The Chair: This brings us to clause 7, where there are amendments. There is G-1, and I recognize Mr. Fillmore.

Mr. Andy Fillmore: Thanks, Chair.

I will preface my comment by saying that we all want public policy that provides clarity and does not introduce ambiguity. This is simply a technical amendment that I think will help to achieve objectives that we all share around the table here for clarity and for the effectiveness of the bill.

It removes some confusion about which types of deals would be subject to section 15. We know they are the kinds of deals covered in paragraphs 11(a) and 11(b) that are subject to section 15, but as currently written they could be contested by an investor. We want to clarify that section 15 does clearly apply to paragraphs 11(a) and 11(b).

With that, I would invite Mr. Schaan to shed a little more light on that.

● (2005)

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

The proposed amendment to section 15 specifies that the investments that are subject to the new pre-implementation filing requirements that are described in clause 2(1) shall not be reviewable for the purposes of section 15, but section 15 will continue to apply to transactions referred to in paragraphs 11(a) and 11(b) of the unamended act.

The amendment is made so that section 15, which allows the review of investments related to cultural businesses, would not inadvertently capture investments subject to review under the new pre-implementation filing requirement.

It's a technical mechanism, because there could have been confusion where a transaction would have seen them fit under two different parts of section 11, leading to an argument that their transaction was exempt from section 15, based on the original wording, which was not the intent.

[*Translation*]

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

Mr. Vis.

[*English*]

Mr. Brad Vis: This is just a technical question. I'm sorry. I am looking for paragraph 11(1)(c) in the original act. Can you please read that? On what page of the act is it?

Mr. Mark Schaan: The amendment introduces and adds proposed paragraph 11(c). What this does is it essentially clarifies the relationship between section 15 and section 11, because paragraphs 11(a) and 11(b) already exist.

The Chair: Mr. Perkins.

Mr. Rick Perkins: I haven't had a lot of time to spend on the government amendments. I'm busy with fires and all of that. Just so that I'm clear on this, anybody who is basically trying to buy a Canadian cultural business is subject to automatic review. Is that correct?

Mr. Mark Schaan: It is at the minister's discretion, but yes.

Mr. Rick Perkins: Bill C-34 provides some sort of confusion to that or—

Mr. Mark Schaan: There is a pre-filing requirement that's introduced. This rewording will, instead of carving out what section 15 does not apply to in section 11, specifying clearly what section 15 does apply to in section 11—namely, paragraphs 11(a) and 11(b). It will be made clear that investment that qualifies as requiring notification under 11(b) must notify under that provision even if there's a theoretical overlap with the requirements of the new proposed paragraph 11(c).

Mr. Rick Perkins: That's on the pre-filing that's required before the transaction—

Mr. Mark Schaan: Exactly.

Mr. Rick Perkins: Okay, thank you.

[*Translation*]

The Chair: Are there any questions or comments on amendment G-1?

Shall amendment G-1 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: That brings us to amendment CPC-2.

I would just like to say that, if this one carries, amendment NDP-1 cannot be moved because they are identical. That goes without saying.

Mr. Perkins.

[*English*]

Mr. Rick Perkins: Thank you, Mr. Chair.

This amendment amends section 15(1) by adding a couple of things. Bill C-34 already does 15(1). We add a couple of a new sections towards the end of the clause. We add a section subsection 15(2) that says:

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

Bill C-34, in its current form, and the Investment Canada Act provide for essentially, in my understanding, two independent review regimes when a transaction comes forward: the national security review and the net benefit review.

The current threshold trigger of the net benefit review for a state-owned enterprise is a formula, as I understand it.

Mr. Schaan, at the previous meeting I think you said it's $512 million this year. In such cases where the investments are at least equal to that amount, the state-owned enterprise must file an application for a net benefit review, and the potential transaction must be approved by the Minister of Industry. That's my understanding if it's correct. If the Minister of Industry chooses—and it's a choice—the investment can also be sent for a national security review, if within the threshold, after the consultation with the public safety minister. That's my understanding of the way it works now.

The rationale for this amendment is that, in the current form, neither the Investment Canada Act nor Bill C-34 require an automatic filing for a net benefit review of a state-owned enterprise investment if it is below that formula—this year being a $512 million asset value... I think the threshold is on asset value. As a consequence of this, any state-owned enterprise investment made below the $512-million figure will not be subject to a net benefit review.

The proposed amendment seeks to exempt all state-owned enterprises from the threshold limit, regardless of the value of the investment, thereby ensuring that all state-owned enterprise investments will be required to file an application for a net benefit review.

This amendment was drafted based on the feedback received from our members after they expressed the need for a lower review threshold for state-owned enterprises to zero and to ensure greater security of any state-owned enterprise investments. It actually comes, as well, from the industry committee report, which was passed unanimously by this committee, on the review of the Investment Canada Act from a couple of years ago. I think it was actually recommendation one in that report that said this should go to zero.

Experience tells us that, in my province for example—and I think I may have mentioned this when officials were before us—state-owned enterprises, particularly from non-democratic countries, are buying a lot of Canadian assets below that and are getting control of industries. In my case, in the fishery industry, they have been acquiring a lot of the buyers of seafood in Nova Scotia and have been paying three, four or five times the value of the company in order to get access to, and control of, the supply chain of the product.

We know—I've had people contact me since we started to raise this issue in this committee on this bill—that in the Prairies, for example, on mineral rights filings and ownership there, state-owned enterprises and business entities from China have filed and have obtained a lot of mineral rights over land in the Prairies.

● (2010)

We also know from my western colleagues that we are seeing farmland being acquired in the prairies in particular.

All of these types of examples—just a few of these types of examples—are well below the formula limits, and we're being taken advantage of, in my view, for our kindness and generosity and our adherence to world orders when we're seeing companies and entities that do not operate on a fair and open market sort of profit motive. For example, if you look at Hytera.... Not to belabour Hytera, but Hytera rarely makes any money. That's the reason why their companies can win government procurement contracts by underbidding companies in Canada that have to be profitable. They buy them and pay four or five times, as they are in my province, for those businesses—which makes no actual business sense, because you can't get a return in any reasonable time—for purposes other than business.

That's all you can conclude when a company that has public documents like Hytera consistently loses money and continues to win these bids. The purpose of that business has to be something other than what we like to think is an open, fair and competitive market that allows fair and open competition to produce the best value for those who buy the products, based on the great joys of our capital system. That's not happening, because they're taking advantage of these high thresholds.

I think for that reason.... I wasn't part of the study, Mr. Chair, that happened and that was referred to here and was done I think over two Parliaments. I think at the last election it was picked up again, because at the front of the report it shows two different committee structures of members and two different chairs. They produced that report unanimously—I think Mr. Masse was part of that—and unanimously asked for this to go to zero.

I was surprised when BillC-34 was tabled to not see that. The committee recommendation was not included in what I think what was a genuine attempt to not only speed up the system but to give the minister more ability and flexibility to deal with some of these issues that I'm talking about, but it's still a too rigid thing in the sense that the formula on the threshold in our mind, and in this committee's mind at the time, is way too high, and that the only way to ensure that this doesn't happen is to not pick another formula that says, well, $220 million is the formula now for this year, or $100 million, because they will start acquiring businesses under that, and they will continue to do that, which they are doing in my province, well below that. I don't think you would ever say that the formula is $10 million.

I think the only way to get at this—and what is the purpose of the amendment here—is to implement what this industry committee said unanimously in its report, which is that the threshold should be zero. As officials, can you tell me why you think the current formula is more useful—this bill doesn't propose to change the current formula—to prevent what's happening below that number, that somehow that will happen anyway? I think the bill is a formula for the status quo to continue in this area.

● (2015)

Mr. Mark Schaan: Mr. Chair, I would flag two considerations for the committee, one of which I hope I'm not excessively repeating myself on, but the thresholds that have been articulated for the purposes of what can be reviewable under a net benefit test are part of international agreements that are set amongst the trading nations of the world to ensure there is not undue friction in the capacity for the global exchange, and thereby allowing for net benefit to concentrate on those very large transactions for which countries want to dedicate significant scrutiny from a net benefit perspective.

I would underscore again that all investments are subject to a national security review and that considerations specific to state-owned enterprises and considerations specific to the implications for investments that actually compromise the national security of the country are significant and are improved by this bill. That is the focus that we have put towards transactions that may not meet the net benefit threshold but still raise important questions for the government to consider.

Mr. Rick Perkins: I have a couple more technical questions for you on this.

Is that formula written into the trade deals that we do, or is it a judgment? Has it ever been challenged if you have gone differently?

Is it in the act, or is it a formula we've come up with?

Mr. Mark Schaan: The formula is in the act, and our trade deals specify that we can't make the act more restrictive than that which appears within the current formula under most-favoured nation clauses. You can't make it worse than what was agreed to at the time, which is the formula that's been set out.

● (2020)

Mr. Rick Perkins: There is no country that I know of that has signed those deals and, subsequent to signing those deals, passed an act like the national intelligence act that China has. This, to me, abrogates any obligation we have when a country says it's going to.... It's abrogated its responsibility as a fair trade, or under fair trading rules, when it says it's going to use all of its businesses for espionage and theft.

Has there been a case where Invest in Canada or the minister has turned down or done a national security review of a proposed acquisition by a state-owned enterprise that is below that threshold? I'm not aware of any.

Mr. Mark Schaan: Multiple times. The critical mineral cases are all below threshold.

Mr. Rick Perkins: They weren't subject to a full national security review, though, in those cases.

Mr. Mark Schaan: They were subject to a national security review.

Mr. Rick Perkins: Is it the superficial one or the detailed one?

Mr. Mark Schaan: I will simply lay out for the chair the way the act works. We draw on the equities of the national security community at the outset of all investments, some of which draw upon the extensional capacity of the act for further time, but all investments are subject to a national security review.

Mr. Rick Perkins: So we are approving them—and I know you can't do this—but the larger ones, like Tanco and Hytera of Norsat, were over the thresholds of the day and the government admitted that a full national security review wasn't done on those.

Now you're telling me that everyone under that threshold is subject to something that Hytera and Tanco by Sinomine weren't subject to.

Mr. Mark Schaan: The thresholds are immaterial to the contemplation of national security. National security reviews are contemplated at the outset of the investment, and national security considerations will determine whether or not further steps are required to be able to understand further detail related to the investment.

Mr. Rick Perkins: There are certain levels of that review, though.

Mr. Mark Schaan: There are different stages of those reviews.

Mr. Rick Perkins: What are they?

Mr. Mark Schaan: Section 25.1 is a generalized commencement. Section 25.2 is an investigation as to whether or not it could be injurious to national security, when there's a presupposition that there could be an injury to national security. Section 25.3 is the continuation of the investigation because it's believed that it would be injurious to national security.

Section 25.3 is “could”. I'm sorry.

Mr. Rick Perkins: You're talking about every acquisition by state-owned enterprise, regardless of whether it's above or below the threshold, if I understand you.

Mr. Mark Schaan: If it can't meet the “could” test by which it could be injurious to national security, on the advice of the national security community, it does not proceed to the next stage.

Mr. Rick Perkins: That's the first level that you described.

Mr. Mark Schaan: Section 25.1 is the commencement of the national security review. Section 25.2 is the extension of it. Section 25.3 is “could”, and then the ultimate decision is then the GIC on “would”.

Mr. Rick Perkins: It's “could” and “would”.

Mr. Mark Schaan: That's correct.

Mr. Rick Perkins: I want to make sure I understand your terminology.

How many have gone to “would” that are below the threshold?

Mr. Mark Schaan: I don't want to get into the specifics of individual cases, but I will note that there are below-threshold cases that have continued to be reviewed to the fullness under the national security provisions. This includes some that have gone all the way through to the notion that they would be injurious to national security.

Mr. Rick Perkins: That's fair enough.

This isn't for you; this is really for committee members when I say that, to me, that doesn't provide me with the assurance I need that this type of activity happening at levels below that is actually getting the in-depth look, under either a net benefit or a national security review. That is, I think, why this committee unanimously recommended that it go to zero in that report.

I would encourage members—I don't know if any of my colleagues have anything else to say—to support this amendment, because it reflects the work this committee did and what it recommended. Now is your chance, as committee members, to support unanimously—including what the government did in supporting this amendment—to implement into this bill what you unanimously put into that report by this committee.

● (2025)

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

Monsieur Masse.

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

To be quick, I was lurking about during that study. Part of the reason I support this amendment is not only that it's almost identical to the one I've put as well, but it's hard to determine even what the value of some companies are. That was one of the things we found with emerging technologies. We also found it with those that are holding patents and other types of intellectual property, which is very difficult to find a true face value of, and it's only becoming more complicated with artificial intelligence and other types of emerging companies.

For me, as a New Democrat, I'll be supporting the amendment. I think Mr. Perkins did a good job of laying out the broader argument for it, but I just want to add that little specific component about the valuation of companies being highly subjective, especially given the nature of some of the industries that are involved. We saw this even when Ericsson took over Nortel at that time. It's because what they wanted was the patents. They didn't really want the rest of the bones; they just wanted the patents where the real value was, and that was the same fate as RIM and others.

That's the reason I'll be agreeing with this amendment.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Masse.

I see that Mr. Fast wants to talk. I have Mr. Fillmore, but just so that everyone's on the same page, there's agreement between the parties—given our late start—that we're going to end this committee at around 8:30, so we might not have the time, Mr. Fast, for your intervention. We'll get back to CPC-2 when we resume clause by clause.

Mr. Fillmore.

Mr. Andy Fillmore: Thanks, Chair.

I just have two quick points that I wonder if the team to respond to. These go to exactly what we're talking about here.

The first is that, in essence, this amendment reduces the threshold for a review to zero for a net benefit review. The challenge there is that this runs counter to our trade agreements. It creates a problem for us, for example, with pension companies that are maybe invested in China, because in China we're a state-owned enterprise and then there could be retaliation. We don't want to create unintended consequences. I'd ask you to reflect on that if you could.

The other is, just to make it really clear for all of us here, in the case of... We just talked about net benefit reviews. Now we're talking about national security reviews. There is no threshold. Every transaction is subject to national security reviews, is that correct?

Mr. Mark Schaan: That's correct.

Mr. Andy Fillmore: Okay.

Expand on either of those points if you would like.

Mr. Mark Schaan: As you note, the thresholds are a part of international negotiation and a function of the fact that there is a degree to which net benefit reviews are to be concentrated on those large-scale transactions that are of import to the net benefit of the country, but there's no threshold for a national security review regardless. That includes the nature of the assets that are potentially in acquisition, whether or not they are patents or broader technologies.

Mr. Andy Fillmore: Could you add a little detail on the risk of reducing the net benefit threshold to zero and the risk to Canadian interests?

Mr. Mark Schaan: Those international thresholds for net benefit are the same that allow for Canadian companies to be able to make investments in our partner, ally countries without being subject to net benefit reviews, and allow them to continue to engage in acquisitions and foreign investment outside of Canada, recognizing that's an important part of the overall growth of our companies, without an additional uncertainty.

Mr. Andy Fillmore: Okay, just in that example, there's a Canadian pension company invested in China. There's a retaliatory strike against the Canadian pension fund because we have applied a zero threshold net benefit review to a Chinese interest in Canada. The impact then on Canadians.... I guess I'm making it clear in my question, in my statement: we don't want to throw the first dart and then have darts thrown at Canadian interests as a result. Is that a fair assessment?

Mr. Mark Schaan: The only other consideration I would add is that oftentimes the linkage to the SOE is actually through an affiliation to the net investor who's not necessarily of the nation of the SOE, but is actually a trading ally.

Mr. Andy Fillmore: Thanks very much.

[*Translation*]

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

That concludes our meeting.

I want to thank Mr. McKay, Mr. Schann and Mr. Karman for being here today and for their patience. We were slow in starting the meeting. We will have a chance to see each other again in the next few weeks to resume clause-by-clause consideration of Bill C-34.

Thanks as well to the interpreters, analysts, the clerk and all the support staff for their patience.

The meeting is adjourned.