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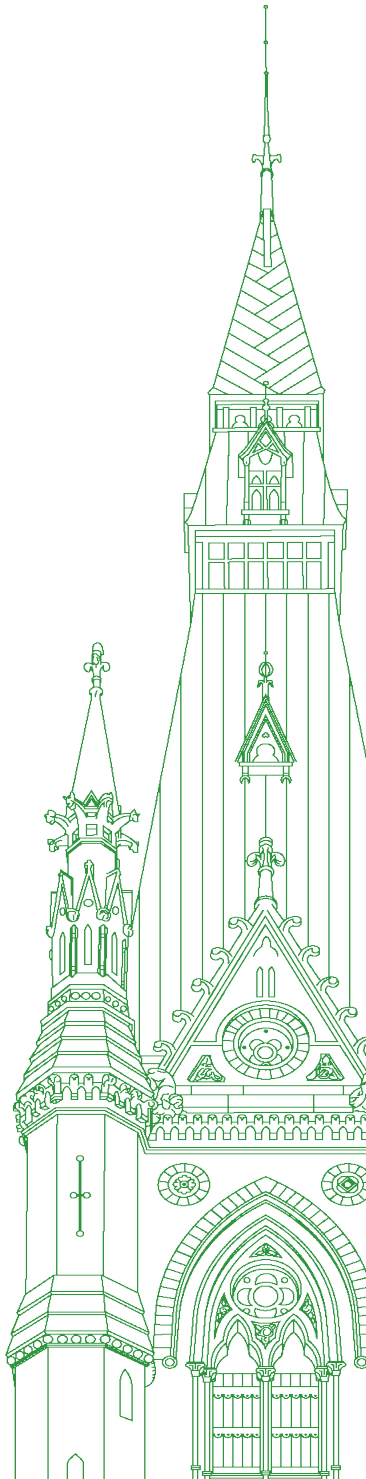

Chair: Mr. Joël Lightbound

# Standing Committee on Industry and Technology

**Wednesday, June 21, 2023**

● (1655)

[*Translation*]

**The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)):** Dear colleagues and friends, I now call the meeting to order.

Welcome to meeting number 83 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 and resuming clause-by-clause consideration. Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022.

I invite members to have a look at the guidelines on the use of earpieces and microphones to ensure that there are no echoes or high-pitched sounds that could disturb our interpreters, whom we thank in passing and even applaud. I sincerely thank them for everything they do.

Joining us again today, from the Department of Industry, are Mark Schaan, senior assistant deputy minister, strategy and innovation policy sector; Jamieson McKay, director general, strategy and innovation policy; James Burns, senior director, investment review branch; and Mehmet Karman, senior policy analyst, investment review branch. They are here to answer our questions.

Thank you all for joining us. Once again, my apologies: it's voting season in the House, so we're often a little late.

(On clause 16)

**The Chair:**Ladies and gentlemen, let us begin without further ado. You will recall that we had reached clause 16 of the bill and that Mr. Perkins had proposed the amendment renamed CPC-11.2 and numbered 12525376.

Mr. Perkins, you have the floor.

[*English*]

**Mr. Rick Perkins (South Shore—St. Margarets, CPC):** Just to clarify, this was the one I was distributing at the end of the last meeting that had the reference number ending in 376, and everyone has that.

This section amends clause 16, as we know, and the genesis of the idea comes from recommendation six in the INDU report on the Investment Canada Act that was released in 2021. If I could reference members to recommendation six:

> That the Government of Canada encourage Canadian entities to keep ownership of intangible assets developed with federal funds, including intellectual property, by requiring, when appropriate, that they return moneys received from federal programs or subsidies in full or in part.

The proposed amendment is drafted to reflect that, and the report at the time said that the question is not whether a foreign investment can be threatened by Canada's national security. Virtually all witnesses in that report recognize that. Rather, the question is whether the Investment Canada Act and its administration effectively protect Canada's national security and evolving circumstances.

On the intangible asset side, we had quite a bit of testimony on the issue of how our economy has evolved over the last 20 years from a tangible asset economy, as we heard Mr. Balsillie talk about, to intangible. More than 90% of the value of the S&P 500 is now in intangible assets.

There's a concern about those assets, particularly those developed in Canada. By my rough calculations—and the ISED officials probably have a better figure than I, but if you include the SR and ED tax credit—we're spending just about $16 billion or so. With granting councils, the clusters, all of the various programs that ISED has, plus the SR and ED tax credit, we're spending quite a bit on invention, as I'll call it—the invention that leads to IP.

We've seen recent issues that I know the officials have been dealing with, for example, issues related to COVID and Medicago in Quebec City, where over $200 million of taxpayer money was invested in producing a plant-based COVID vaccine, which apparently has Health Canada approval yet has not been produced. Now that company has been sold, and we don't have access to it.

There's a concern that we want to stop the free flow of capital in capital markets. We wouldn't want to do that, but if that IP involves that kind of situation, where you have over $200 million of taxpayer money to develop it, consideration of that should be given in the review of net benefit, and there should be a requirement that, if that IP leaves the country, some part of that, if not all of it, will be paid back as the price of doing business.

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

Are there other questions or comments before we move to a vote on the amendment proposed by Mr. Perkins?

**Mr. Rick Perkins:** I guess I should ask the officials if they want to comment on this.

**Mr. Mark Schaan (Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector, Department of Industry):** Mr. Chair, I think the member has laid out the intention of the amendment. We would just note that this is amending the national security process, so the nexus to national security of the repayment would be an important consideration. Then, obviously, I'll just note that many of our programmatic mechanisms do have specific clauses that are specific to the programs around the consideration of intellectual property when there's change of control.

**The Chair:** Thank you very much, Mr. Schaan.

Mr. Fast is next.

**Hon. Ed Fast (Abbotsford, CPC):** I have a question for the officials. Have you been able to quantify how much of the value of taxpayer-paid research that is done in Canada escapes our country or leaves our country through acquisitions and otherwise?

● (1700)

**Mr. Mark Schaan:** Mr. Chair, I wouldn't be in a position to offer a number on that, in part because the benefits of research are multifold and aren't simply expressed in the value of one particular aspect, which would be potentially either a tangible or intangible value.

**Hon. Ed Fast:** My point is this, Mr. Chair. There are two ways in which Canadians invest in research and in the value that's inherent in intellectual property.

One way is that we educate our children. We educate Canadians. These are the human resources that drive our economy, and we have taken great pride in the fact that our country is well educated and that we invest reasonably heavily in our education system. We could probably do more, but I think it's fair to say that Canada is among the most educated countries in the world, and it should be reflected in what our economy produces, especially when it comes to intellectual property and to intangible value.

We invest in their education, but we also directly invest as taxpayers in the research institutions that we have within our federal government. Sadly, over the years it's become apparent that a significant part of that research, with the value of that research, is lost to Canadians, because those companies are unable or unwilling to commercialize within Canada and are bought out and end up being owned by companies elsewhere in the world, primarily in the United States but Chinese companies and Japanese companies will also buy out Canadian companies, and the value of that research that Canadian taxpayers invested in effectively disappears.

It may have created temporary jobs along the way—research-driven jobs—but at the end of the day, the actual value of that research as is translated into intellectual property, the value in that IP, is gone, which is why I feel that this is a reasonable amendment to put forward to clause 16. I think we will serve Canadians very well and, by the way, incentivize taxpayers indirectly to welcome these kinds of investments, because if in fact those investments are lost because of purchases by foreign companies, we at least get the initial investment back.

We'll never get back the dollars that we invested in our children's education, especially if those children leave our country, but this is at least a step forward and is something very tangible that we can do to be accountable for the taxpayer dollars that are being invested in research. I encourage our members here to support this particular amendment.

**The Chair:** Thank you very much, Mr. Fast.

If there are no more comments on CPC-11.2, I will call the vote.

(Amendment negatived: nays 6; yeas 5 [*See Minutes of Proceedings*])

(Clause 16 agreed to)

(On clause 17)

**The Chair:** We're moving on to clause 17.

Are there any amendments on clause 17? If there are no amendments on clause 17, we will move on.

● (1705)

[*Translation*]

**Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ):** Mr. Chair, may I move LIB-1 if the Liberals do not?

**The Chair:** Yes, you may.

**Mr. Sébastien Lemire:** I think it’s important to move LIB-1, but it shouldn’t be up to me to do so, in theory, since this amendment bears Ms. Lapointe’s name. However, I am very happy to do so.

**The Chair:** Mr. Lemire therefore moved LIB-1 to clause 17. The reference number of this amendment is 12447492, and I believe that all members have the text in front of them.

Are there any comments about this amendment?

[*English*]

**Mr. Rick Perkins:** If I understand it, since there hasn't been an introduction for this one, this proposed amendment compels the minister to notify the National Security and Intelligence Committee of Parliamentarians, NSICOP, and the National Security and Intelligence Review Agency of any decision rendered regarding a national security review process. The notification will include the identity of the non-Canadian subject to review, the terms of the investment and whether a divestment decision was taken.

When I read this, I have a couple of questions. Maybe the officials can comment.

The officials already said here at committee that the intelligence review agency is already a key part of the national security review process, along with other government agencies like the RCMP. Why should the intelligence review agency be required to receive additional notification if it is already part of the process?

It looks to me like this time we're doing suspenders and a belt, when suspenders and a belt have been rejected previously.

**Mr. Mark Schaan:** Mr. Chair, national security community that we were referring to in the discussion about who was involved in national security reviews includes the Department of Public Safety and the equity agencies that are aligned with it, including the RCMP, CSIS and CSE. This amendment brings into play NSIRA and then NSICOP, which are investigative bodies that are not part of the national security departments.

**The Chair:** Go ahead, Mr. Perkins.

**Mr. Rick Perkins:** They're investigative parties, but they're not being given an investigative role with this amendment. As I understand it, under the amendment, the members of NSICOP are not privy to the details as to why an investment decision was taken. The committee members, if they are involved, should be involved.

When I look at it, it just says the identity of the non-Canadian subject to review, the terms of the investment and whether an investment decision's been taken, but it doesn't talk about the details of the “why” or the “why not” for that investment decision.

Am I missing something here? It looks to me like all they're being informed of is that there's been an investigation. They're not playing any real role in it, other than just saying it's an investigation. I don't see the purpose of it.

**Mr. Mark Schaan:** The National Security and Intelligence Committee of Parliamentarians and the National Security and Intelligence Review Agency have a responsibility to look at the treatment of national security information—not the outcomes or decisions reached with that national security information but actually the treatment of the information. This amendment simply ensures that they include the national security information that would be part of an Investment Canada national security decision.

**Mr. Rick Perkins:** What does “treatment” mean? I'm struggling with that. “Treatment” is what?

**Mr. Mark Schaan:** The two bodies referenced in the amendment are oversight bodies. They are often provided with the process issues around the treatment of national security information, not the outcomes of the decisions. They're not review bodies for the purposes of appealing decisions related to national security. They're to ensure that the national security information was treated appropriately, kept secret and handled in a reasonable manner.

● (1710)

**Mr. Rick Perkins:** Why wouldn't it be anyway? Why is this needed? I would presume that anyone brought into the process would be bound by those conditions already.

**Mr. Mark Schaan:** That is currently the impact of the law. This is, as I understand it, a mechanism for improved transparency.

**Mr. Rick Perkins:** I will oppose this because I don't see the need for it.

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

If there are no more questions and comments on amendment LIB-1, moved by Mr. Lemire, I will call the vote.

[*Translation*]

Shall amendment LIB-1 carry?

(Amendment agreed to: yeas 7; nays 4—*See Minutes of Proceedings*)

**The Chair:**Are there other amendments to clause 17? I see that there aren't.

[*English*]

(Clause 17 as amended agreed to)

(Clause 18 agreed to)

(On clause 19)

**The Chair:** We move now to clause 19. Are there amendments to clause 19?

I recognize Madam Lapointe.

[*Translation*]

**Ms. Viviane Lapointe (Sudbury, Lib.):** Thank you, Mr. Chair.

[*English*]

The following three amendments have the aim of increasing transparency and accountability. These really stem from what we heard from the witnesses here, as well as from members during various readings and consultations.

The first amendment being proposed would add, after line 15 on page 13, the following:

> (3) Subparagraph 36(4)(e.2)(ii) that the Act is replaced by the following:
>
> (ii) authorized the investment, including if it did so on terms and conditions, or

This amendment, as I said earlier, aims to improve the transparency and accountability. It allows the minister to disclose that a final order authorized an investment, including if it was done on the basis of terms and conditions. I would invite our officials here today to maybe speak to how this change reaches that goal of transparency and accountability.

**Mr. Mark Schaan:** As noted, this amendment clarifies that the minister may disclose that a final order authorized an investment, including if that included terms and conditions. This is a clarification of what we believe to be the existing interpretation, but it ensures that we actually have a full understanding of the minister's ability to do this. The minister would, therefore, be allowed, as he communicated the conclusion of the NSIRA process, to note that there was an authorization for the investment and also to note the terms upon which it was reached.

**Ms. Viviane Lapointe:** Thank you.

**The Chair:** Thank you, Mr. Schaan.

Mr. Perkins.

**Mr. Rick Perkins:** Thank you.

With regard to notifying on the reasons, does it only apply to authorizations, or does it also apply when the minister has decided to decline allowing the investment?

**Mr. Mark Schaan:** This is already applied to blocks. This is simply clarifying that it also applies to authorizations.

**Mr. Rick Perkins:** Do we not do this now?

**Mr. Mark Schaan:** We have not in the recent past announced when we would authorize investments, including on their conditions.

● (1715)

**Mr. Rick Perkins:** No, but this is authorizing giving it to government agencies. Is that right? As I read it, it allows the minister to disclose privileged information to foreign government agencies.

**Mr. Mark Schaan:** This is disclosure to the public.

**Mr. Rick Perkins:** It's not just about disclosing to foreign agencies. Am I reading the wrong Liberal amendment...?

Is it Liberal amendment 2?

**The Chair:** Yes. It's LIB-2.

Go ahead, Madam Lapointe.

**Ms. Viviane Lapointe:** It's my understanding—I'll ask the officials to confirm this—that previously the act included some ambiguity as to whether the minister could disclose final orders if an investment was authorized with terms and conditions.

Is that indeed what we're trying to remove—that ambiguity?

**Mr. Mark Schaan:** Yes.

[*Translation*]

**The Chair:** Thank you, Ms. Lapointe.

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

[*English*]

I will call the vote on LIB-2.

(Amendment agreed to: yeas 11; nays 0)

**The Chair:** We're still on clause 19. Are there other amendments?

Madam Lapointe.

[*Translation*]

**Ms. Viviane Lapointe:** Thank you, Mr. Chair.

[*English*]

There is a further amendment that, again, aims to increase the transparency and accountability around this. This amendment would allow the minister to disclose the names of companies that are subject to final national security orders.

The change that is being recommended is that Bill C-34 in clause 19 be amended by adding, after line 15 on page 13, the following:

> (3) Section 36 of the Act is amended by adding the following after subsection (4.1):
>
> (4.101) For greater certainty, when communicating or disclosing under paragraph (4)(e.2) the fact that an order was made under subsection 25.4(1), the Minister is not prohibited from communicating or disclosing the identity of the non-Canadian and of the Canadian business or entity referred to in paragraph 25.1(c) that is the subject of the order.

[*Translation*]

**The Chair:** Thank you very much, Ms. Lapointe.

[*English*]

Mr. Perkins.

**Mr. Rick Perkins:** On a point of order, Chair, while I think I agree with the intent, I think the parent rule applies on this amendment—doesn't it? Bill C-42 does not actually amend this clause in the actual Investment Canada Act, so I'm not sure that the actual proposed amendment is in order. There's no reference to this clause in the bill, as I understand it.

**The Chair:** Mr. Perkins, I will take your point of order under advisement and verify it with the legislative clerks.

All the amendments were thoroughly analyzed ahead of time to see if they were receivable or not. This was deemed receivable, but I will take it under advisement.

**Mr. Rick Perkins:** Yes. I'm just curious, because—

**The Chair:** In the meantime, Mr. Perkins, I will just move to Mr. Vis. He had his hand up before your point of order. Then I'll get back to you.

**Mr. Rick Perkins:** Sure. I'm just looking for consistency with the ones that were ruled out of order for the same reason.

**The Chair:** Thank you, Mr. Perkins.

Mr. Vis.

**Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC):** This is for the officials.

On the second part of the amendment, “the Minister is not prohibited from communicating or disclosing the identity of the non-Canadian and of the Canadian business or entity referred to in paragraph 25.1(c)”, isn't that already the case?

**Mr. Mark Schaan:** Again, Mr. Chair, this is a clarification of what we understand to be the existing interpretation. This is a power the minister has used. The minister has disclosed the names of companies that have been the subject of orders. This is simply ensuring the transparency standard that's been adopted is never open to ambiguity. This is clarifying that.

● (1720)

**Mr. Brad Vis:** Are you telling me—through you, Mr. Chair—the regulatory approach that was voted against in some of the amendments we've put forward hasn't worked to the benefit of Canada in the interpretation by the minister in conducting national security reviews and/or communicating that information to the public and, therefore, we need to improve this legislation by enshrining in law what the regulation had done previously?

**Mr. Mark Schaan:** My comment was that there may exist in some quarters some ambiguity about the current process. This is simply a clarification of existing practice.

**Mr. Brad Vis:** Thank you.

**The Chair:** Thank you, Mr. Vis.

If there are no more questions and comments on LIB-3, I'll take a few minutes to discuss with the legislative clerks the point of order brought forth by Mr. Perkins.

I will very briefly suspend.

**Mr. Rick Perkins:** Could I reference CPC-3, CPC-7, NDP-2 and NDP-4, which I believe were ruled out of order for the same reason?

**The Chair:** We'll suspend briefly and come back in about two to three minutes.

● (1720)

_____(Pause)_____

● (1720)

**The Chair:** We can resume.

To Mr. Perkins' point of order, after consulting with the legislative clerks, if you look at, for instance, clauses 15 and 16 of the bill, the disposition of the law at section 25.4 is already amended. It's already open. As soon as this clause of the original act is modified by the bill, then it opens it up.

That's why the ruling I've made on the previous clauses does not apply to this one: Bill C-34 already opens section 25.4 to amendments, and section 36 as well.

**Mr. Rick Perkins:** This opens subsection (4.1), a different.... I'm not sure.

**The Chair:** If you look at clauses 15 and 16 of the bill, they open up amendments to section 25.4, if I'm reading it correctly, with the help of the legislative clerk.

I've ruled on your point of order, Mr. Perkins, so it's not up for debate at this point. I appreciate your bringing it up, because we need to be consistent in the rulings. Thank you for that.

On that note, are there any more comments on amendment LIB-3 proposed by Madam Lapointe?

If there are none, I would call it to a vote.

● (1725)

[*Translation*]

(Amendment agreed to: yeas 10; nays 0—*See Minutes of Proceedings*)

[*English*]

**The Chair:** If there are no more amendments to clause 19, shall clause 19 carry as amended?

Are there any more amendments?

I'm sorry, Madam Lapointe. I didn't see your hand.

Madam Lapointe, if I'm not mistaken, it's LIB-4 that you want to move.

[*Translation*]

This is a new clause that would follow clause 19.

[*English*]

(Clause 19 as amended agreed to)

**The Chair:** Now we will go to Madam Lapointe on LIB-4, I believe.

[*Translation*]

**Ms. Viviane Lapointe:** Thank you, Mr. Chair.

[*English*]

This amendment would improve transparency and accountability by ensuring that the annual report, which is required to be published, would include details on the use of the minister's duties and powers for national security review. This would include, for example, the new powers on interim conditions and accepting binding undertakings to mitigate national security risk.

The proposed amendment to Bill C-34 would be that Bill C-34 be amended by adding, after line 15 on page 13, the following new clause:

> 19.1 Section 38.1 of the Act is renumbered as subsection 38.1(1) and is amended by adding the following:
>
> (2) The report shall include information on the exercise of ministerial duties and powers under Part IV.1.

[*Translation*]

**The Chair:** Thank you very much, Ms. Lapointe.

Are there any questions or comments?

Mr. Perkins, you have the floor.

[*English*]

**Mr. Rick Perkins:** This is more of a point of order at this stage than content.

As I read it, adding a new section to section 38, again, is a parent rule issue. Because Bill C-42 does not amend section 38.1, adding a new section is, in my view, and that of some of the legal advice we got from the Library of Parliament, out of order because of the parent rule.

[*Translation*]

**The Chair:** Thank you, Mr. Perkins. In response to your point of order, I will say the following. Since part IV is open, after the bill has been analyzed by the team of legislative clerks, LIB-4 is deemed in order by the Chair, for the same reasons as those I have just mentioned in connection with LIB-3.

[*English*]

**Mr. Rick Perkins:** Can I ask what section the legislative clerk says is open that allows this amendment?

**The Chair:** Just one moment, Mr. Perkins.

[*Translation*]

After verification, part IV.1 of the Investment Canada Act includes sections 25.1 to 25.6, which are open in the bill that was tabled and voted on at second reading. This is why LIB-4 is in order.

[*English*]

**Mr. Rick Perkins:** You're saying part IV.1, but this is amending.... Where am I missing it, because this is amending section 38, isn't it? I'm just trying to understand.

● (1730)

**The Chair:** At this point, Mr. Perkins, I'll have to say I've ruled on this point of order that you brought. If you need some clarification with the legislative clerks, I suggest you take it off-line, because the rulings of the chair are not up for debate. In this case, I have ruled on that point.

**Mr. Rick Perkins:** I'd like to challenge the chair on that.

**The Chair:** Fair enough, Mr. Perkins. You've helped me learn the procedural rules of this committee as it is our last meeting. I appreciate that.

My ruling on this point of order has been challenged by Mr. Perkins. Shall my decision be sustained?

(Ruling of the chair sustained: yeas 7; nays 4)

**The Chair:** We are still on LIB-4. Are there any more questions or comments on LIB-4?

Mr. Vis.

**Mr. Brad Vis:** I'll ask the officials to clarify.

In a hypothetical situation, the minister has made a ruling on a foreign state-owned enterprise that was subject to a national security review. Under this amendment, he's going to publish an annual report on the decisions he has made and the powers he has exercised therewith, with respect to those decisions.

Is that correct?

**Mr. Mark Schaan:** That is correct.

**Mr. Brad Vis:** Thank you.

**The Chair:** Thank you, Mr. Vis.

Are there any more comments on the floor? Let's proceed to a vote.

(Amendment agreed to: yeas 7; nays 4)

[*Translation*]

(On clause 20)

**The Chair:** This brings us to clause 20 of the bill.

Mr. Perkins, you have the floor.

[*English*]

**Mr. Rick Perkins:** I'll ask the officials to explain the change to the Investment Canada Act with the proposals in clause 20 of Bill C-34.

**Mr. Mark Schaan:** Mr. Chair, the subclause 20(1) amendment adds clarifying language to note that, if the foreign investor "has failed to give notice in accordance with section 12 or file an application in accordance with section 17," the minister may send a demand letter requiring the foreign investor to stop the contravention, remedy the situation or show why there is no contravention, or—in the case of undertaking this—justify the non-compliance.

In subclause 20(2), the amendment to paragraph 39(1)(b) reflects the changes made to section 12 and provides that a breach in the pre-implementation filing requirement will allow the minister to send a demand letter to the foreign investor requiring them to "cease the contravention, remedy the default or show cause why there is no contravention of" the Investment Canada Act. We would note that the demand letter is not required to proceed to an application for court order for contravening the pre-implementation filing requirement, as set out in proposed subsection 40(1) and reflected in clause 21.

On subclause 20(3), the amendment reflects the changes made in section 25.3 and provides that the minister may send a demand letter to a foreign investor who does not comply with their written undertakings "referred to in paragraphs 25.3(6)(c) or 25.31(a)" or the minister's "order made under section 25.3". The demand letter will require the foreign investor to "cease the contravention, remedy the default or show cause why there is no contravention of" the Investment Canada Act, or—in the case of undertakings—justify any non-compliance.

Finally, Mr. Chair, for subclause 20(4), the change in paragraph 39(2)(a) reflects the changes made to section 25.12—

● (1735)

**Mr. Brad Vis:** I'm sorry. What are the pages?

**Mr. Mark Schaan:** They are pages 13 to 14 of the bill. It starts on page 13.

**Mr. Brad Vis:** Thank you.

**Mr. Mark Schaan:** The change in paragraph 39(2)(a) reflects the changes made to section 25.12 and section 25.5, allowing the minister to send a demand letter to a person or entity that failed to provide information when requested for a national security review. The addition of proposed paragraph 39(2)(b) reflects the amendments to paragraph 25.3(6)(c) or paragraph 25.31(a), allowing the minister to send a demand letter to the person or entity that failed to comply with their undertakings. The addition of proposed paragraph 39(2)(c) further clarifies that the minister may send a demand letter to the person or entity if they did not comply with an order made under section 25.3 or section 25.4.

**The Chair:** Thank you, Mr. Schaan.

**Mr. Rick Perkins:** Did the minister have this power and the process before? Is this a new power and a process, or is it just trying to make it compliant with the new advance notice rather than afterwards? Is it trying to make it consistent? Right now the minister doesn't have to wait until it's over. He can—

**Mr. Mark Schaan:** The minister has this power, but does not have it yet for the new powers of pre-implementation filing. This is applying the existing powers of the minister to the new pre-implementation filing.

**Mr. Rick Perkins:** Thank you.

[*Translation*]

**The Chair:** Thank you, Mr. Perkins.

If there are no other comments, shall clause 20 carry?

(Clause 20 agreed to)

[*English*]

(Clause 21 agreed to: yeas 11; nays 0)

(On clause 22)

**The Chair:** We are moving on to clause 22.

[*Translation*]

Are there any comments on clause 22?

Mr. Perkins, you have the floor.

[*English*]

**Mr. Rick Perkins:** If I'm reading this right, clause 22 is on the transitional provisions. Is there anything different or new? What are the transitional arrangements you're talking about here? How much time will there be before this comes into effect once the bill passes through Parliament?

**Mr. Mark Schaan:** The transitional provision states that the new amendments will apply to investments undergoing the national security review process on or after the day on which clause 15 comes into force, unless the investment has been referred to the GIC under paragraph 25.3(6)(a) already, or the non-Canadian has received a notice indicating that no further action will be taken for the investment per paragraph 25.3(6)(b). Further, for investments where a notice under subsection 25.3(2) of the former act has been sent before clause 15 comes into force, the minister shall send to the non-Canadian and Canadian business or entity a new notice under proposed subsection 25.3(2) of the new act, which will replace the old notice. The review timeline for these investments will be extended or reset by virtue of clause 15 coming into force.

Overall, the transitional provisions allow the minister's new authority to accept undertakings and impose interim conditions as described in clause 15 to apply to investments that are currently subject to the extended national security review under the unamended ICA without disrupting review timelines or inadvertently allowing an extension of review timelines.

● (1740)

**Mr. Rick Perkins:** That's a lot of stuff. Let's see if I can simplify it. I don't know if I have it right, but when this comes into force, anything that's already in progress is subject to the act before amendment, and anything that comes in to the minister after the changes is subject to the new process. Is that correct?

**Mr. Mark Schaan:** Anything that's not concluded but is already under way gets subject to the new provisions, but not without a change in timelines. Anything received, for instance, that is either at the GIC or at the point where we've already indicated that it can proceed will not be subject to the new provisions, because either it's already at the final decision stage of an order or it's already been concluded. Everything new is subject to the new provisions.

**Mr. Rick Perkins:** For anything that's in progress, does the clock start at the beginning or...?

**Mr. Mark Schaan:** The clock stays exactly where it was, potentially—

**Mr. Rick Perkins:** So if it was 20 days in, it remains at 20 days in.

**Mr. Mark Schaan:** That's correct.

[*Translation*]

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

Are there any more questions or comments on clause 22?

[*English*]

Shall clause 22 carry?

**An hon. member:** I'd like a recorded vote.

(Clause 22 agreed to: yeas 11; nays 0)

(On clause 23)

**The Chair:** We'll move on to the coming-into-force provision.

Mr. Perkins, go ahead.

**Mr. Rick Perkins:** What's the normal period of time after it has received royal assent? I think this clause says that the Governor in Council sets the date. Is this something that's going to be done quickly, or is it going to be a couple of months? Do you know? Maybe you don't yet know the intent of the Governor in Council on it. I don't know.

**Mr. Mark Schaan:** The provisions allow for the Governor in Council to fix the date for the coming into force so as to allow the flexibility for the government to have it come into force when the amendments to the regulations are in place. This simply allows for the regulatory process to ensure that we can actually catch up and that all of it can come into force together.

**Mr. Rick Perkins:** Is that months, years, weeks?

**Mr. Mark Schaan:** I can't speak for the minister, but I would suggest that there is great urgency to proceed with the changes to this act.

**The Chair:** Thank you, Mr. Perkins.

I have Mr. Vis.

**Mr. Brad Vis:** I'm just trying to figure out what I want to....

**The Chair:** We're on clause 23.

Mr. Vis, if you don't have any questions, we'll proceed to a recorded vote on clause 23.

(Clause 23 agreed to: yeas 11; nays 0)

(On clause 7)

**The Chair:** That brings us back to clause 7, which we had stood in our previous meeting.

There was a subamendment to amendment CPC-2 that was moved by MP Gaheer. Just to be sure that we're all on the same page, the subamendment that had been moved by Mr. Gaheer when we decided to stay the review of clause 7 is the subamendment referenced 12540657, if I'm not mistaken.

I will yield the floor to Mr. Gaheer to speak to his subamendment to CPC-2.

Mr. Gaheer, go ahead.

● (1745)

**Mr. Iqwinder Gaheer (Mississauga—Malton, Lib.):** Thank you, Chair.

There are actually three different clauses that our amendment would affect. It would affect clause 4, clause 7 and clause 8. We can take it in three parts because there were three amendments.

With CPC-2, the issue that we had was that it would probably lead to legal challenges and retaliation against Canadian investors such as Canadian pension funds. This was supported by testimony from the officials, as well, last time.

Our compromise was three-fold. First of all is the need to change the period of time prescribed for the subsections in section 15 because it's not enough time. The subamendment would replace 21 days with 45 days, which would match other relevant review periods in the act. This would impact clause 4, and we would need unanimous consent to go back and amend clause 4, as well.

The reference is 12543001, and it was shared with the committee.

**Mr. Brad Vis:** I have 12540657.

**Mr. Iqwinder Gaheer:** That will be the second one.

**The Chair:** Mr. Gaheer, I think we got a little confused because the amendment you're proposing is not on clause 7, which is what we're debating right now. You're moving an amendment to clause 4, and you're right, it would need unanimous consent, but that will have to be dealt with after we first dispose of the clauses that were stayed in a previous meeting.

**Mr. Iqwinder Gaheer:** Okay, so then it's—

**The Chair:** The clauses that were stayed.... We have clause 7 first; new clause 8.1, which is NDP-2; and then we have clause 12, which is CPC-5, CPC-6 and Lib-0.3. Then we can move to the amendment you're proposing on clause 4, which will require unanimous consent.

Right now, we're on clause 7, and I believe the subamendment that you had on clause 7, if I'm not mistaken, is the one referenced, so the reference number—

**Mr. Iqwinder Gaheer:** It's 12540657.

All three of these relate to CPC-2. That's why I brought them up initially. We can proceed with—

**Mr. Brad Vis:** Let's do them in the right order. It's super confusing.

**The Chair:** They do relate to CPC-2, which relates to clause 7, which is why we're debating it now.

**Mr. Iqwinder Gaheer:** Do I need to move it again or has it already been moved?

**The Chair:** I believe you were not moving the subamendment that we're discussing, so yes, you would need to move the subamendment.

● (1750)

**Mr. Iqwinder Gaheer:** I'd like to move a subamendment to CPC-2. The reference is 12540657, which is the one we're discussing. Again, we're changing the time prescribed to 45 days from the 21 days. It will bring it in line with other review periods in the act, and it will give Canadian Heritage and Treasury Board the actual time that's needed for review. We can ask the officials if they have comments on that.

**The Chair:** Thank you, Mr. Gaheer.

Mr. Schaan.

**Mr. Mark Schaan:** Briefly, Mr. Chair, as we understand it, this subamendment would do a couple of important things. One, as noted, it would amend the time frame in which the review would take place. It changes it to 45 days as noted. We need to issue the notice to the investor. We need to consult provinces and territories, and then actually conduct the review of the relative net benefit of the investment, so 45 days is reasonable. Twenty-one days, in our view, is too short.

The second portion is reducing the overall scope of state-owned enterprises that would be subject automatically to a net benefit review, regardless of threshold, by removing those that constitute a “trade agreement investor”, which is a defined term in the act that also relates to the threshold that's set.

**The Chair:** Mr. Vis, go ahead.

**Mr. Brad Vis:** In the context of what Mr. Schaan was saying—because I think this is an important point—it's a non-Canadian state-owned enterprise that is a trade agreement investor.

**Mr. Mark Schaan:** That's unless the non-Canadian is a trade agreement investor—as in, they are subject to a trade agreement with Canada.

That narrows the scope, which, as we noted at the previous meeting, reduces the overall trade risk, notwithstanding that there are others with whom we have other trade obligations. This simply ensures that we can send that non-Canadian investment a notice for review.

**The Chair:** Yes, go ahead, Mr. Perkins.

**Mr. Rick Perkins:** On a point of order, can I take a couple of minutes? I just want to compare things.

Can we suspend for a few moments while we check this against the act?

**The Chair:** We'll suspend briefly so that you can compare it to CPC-2, which is what this subamendment is changing.

We'll suspend briefly.

● (1750)

_____(Pause)_____

● (1800)

**The Chair:** I call the meeting back to order.

We're still on the subamendment proposed by Mr. Gaheer. I believe members have had time to compare it with CPC-2, which is what this subamendment is amending.

I see Mr. Perkins.

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

I appreciate the flexibility to try to figure this out. We want to make sure that it's right.

As you know—and we've talked about this as one of our key amendments—Mr. Fillmore and government members have been very co-operative on this. My understanding, from talking briefly with Mr. Gaheer, is that this one also requires us to do some other things, if it were to pass, in subsequent sections. Therefore, we would have to do unanimous consent to go back there. If it passes, I don't have any problem with that. I just want to make sure that I understand it.

The primary purpose of CPC-2, as we know, is to deal with this issue of how we approach state-owned enterprises in terms of the thresholds within the act and what the minister has the ability to choose to review and not review. I'll go over the rationale a bit for the amendment, because it's important, in my view, to make sure that I understand the context of the subamendment.

The context of CPC-2 is that in its current form, I believe, neither the ICA nor the bill requires an automatic filing for a net benefit review if the state-owned enterprise.... It's a formula, I understand. I think this year, it's $512 million.

Is that correct?

If the acquisition is below $512 million in asset value.... Is it asset value?

**Mr. Mark Schaan:** It's asset value.

**Mr. Rick Perkins:** Right.

As a consequence of that, any state-owned enterprise can acquire anything below that, unless the minister asks for a national security review. That's possible under that threshold, but not for net benefit. Is that correct?

**Mr. Mark Schaan:** It's two separate reviews.

Net benefit reviews, as the member has outlined, are subject to thresholds. The SOE threshold is based on asset sales and is currently set at $512 million.

National security reviews are separate. National security reviews happen on all investments and are separate. It's not if the minister so chooses. It is a function of the act.

**Mr. Rick Perkins:** In the question of what we're trying to capture here, which is, I think, the spirit of the subamendment that the government has worked on to try to figure out what the issue was that we were getting at.

Something I'm seeing, for example in my community in Nova Scotia, Mr. Fillmore, is assets well below this ceiling being acquired and not being subject to any review, including a net benefit review. Politics is local, so I often talk about the lobster industry and the processors. The buyers are being acquired at prices of $5 million to $10 million. As they gain control, as has happened to some extent with some of the licences in the B.C. fishing industry or with some of the crab licences, none of that is subject to a net benefit review.

Obviously, it could be subject to that, if the Competition Bureau decided it wanted to investigate it. It does have some authority.

I was trying to capture the issue where we basically have hostile states that can be hostile today but maybe weren't a few years ago, so that those automatically get this kind of review. I think what Mr. Gaheer's amendment does is make it more focused. I assume that is to ensure that we're not in breach of certain types of trade agreements.

● (1805)

**Mr. Mark Schaan:** Mr. Chair, that's how we understand the purpose of the subamendment. It is to reduce the overall trade risk by focusing on those that are not in a trade investor country.

**Mr. Rick Perkins:** Could you help define what a “trade agreement investor” is and how that differs with different types of agreements? We have bilaterals. We have the WTO. We have multilaterals....

**Mr. Mark Schaan:** The current ICA defines “trade agreement investors”, as referenced in the current legislation, including, as in subsection 14.11(6) of the act, many of Canada's biggest trading partners.

An illustrative non-exhaustive list, just to be helpful, would include the United States, Mexico, the United Kingdom and all of the countries under the comprehensive European trade agreement—sorry, I need to remember my acronyms—including France, Germany, Italy, Spain, Sweden and others; all of the signatories to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership countries, which would include Australia, Singapore, Malaysia, Vietnam, New Zealand, Japan and others; and our trade investor countries of Chile, Peru, Colombia and South Korea.

**Mr. Rick Perkins:** The trans-Pacific partnership I guess would be included as part of that...?

**Mr. Mark Schaan:** Yes. The CPTPP is included.

**Mr. Rick Perkins:** All have various levels of open or closed markets, but we're a signatory to that. The United States, I guess, isn't. Regardless of what that not necessarily democratic country that has signed it is, and what their intents and what their state-owned enterprises are, if we narrow the definition based on this subamendment, then they are exempted from any review regardless of what is their economic or political intent.

**Mr. Mark Schaan:** To clarify, Mr. Chair, if their investment were below the threshold set out in the act, they would not be subject to a net benefit review. Those investments would still be reviewed under the national security review provisions of the act.

**Mr. Rick Perkins:** "Could" be reviewed, "may" be reviewed but not "shall"...?

**Mr. Mark Schaan:** They are reviewed—

**Mr. Rick Perkins:** They are reviewed, no matter what. Okay.

I think Mr. Gaheer may have mentioned it when he introduced this, but could you comment on the need for it to be 45 days? I know that, for a lot of the amendments to the ICA in this bill, the intent is to enable a speedier process and maybe a more thorough process, which is why we put a shorter period of time in here for this provision. We thought that would be something that could be determined fairly quickly.

I take it from what's being proposed here that we might have been too aggressive in understanding how quickly you could make that kind of determination.

**Mr. Mark Schaan:** A net benefit review, as I noted, would require us to notify the investor but also to consult with provinces and territories and then to conduct the review on the merits of the investment. Twenty-one days is simply not, in our estimation, possible. Without comments from my colleagues who have a 21-day time lock on their net benefit reviews, I would suggest that their experience has been that 21 days is insufficient.

**Mr. Rick Perkins:** When you say "consult with provinces", you're not saying that any time we do this, we consult with every province, are you?

**Mr. Mark Schaan:** No, but it allows us the chance to consult with the provinces and territories where warranted.

**Mr. Rick Perkins:** It's to notify them that the company that may be located there and is doing business there is now subject to a review, so don't get too excited yet about what may or may not occur with that company.

**Mr. Mark Schaan:** Yes.

We seek to ensure that we've lived up our obligations to loop in provinces and territories as required where they potentially also may have commensurate authority.

● (1810)

**Mr. Rick Perkins:** We were talking about Bill C-42 last night in the House, which I know you guys are very familiar with. In doing that determination, do you determine on every one of these cases who is the beneficial owner of the acquiring company?

**Mr. Mark Schaan:** We do require the ultimate beneficial owner to be provided to us at the time of application.

**Mr. Rick Perkins:** Are those ever made public?

**Mr. Mark Schaan:** The application of the investor is subject to the confidentiality provisions of the Investment Canada Act.

**Mr. Rick Perkins:** That means it's not usually. Is that right?

**Mr. Mark Schaan:** That's correct.

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

I think Mr. Fast may have some questions. He's just looking something up.

**The Chair:** Thank you.

As a reminder, we're on the subamendment proposed by Mr. Gaheer. If this passes, then we'll move back to CPC-2 as amended to discuss CPC-2.

Go ahead, Mr. Fast, on the subamendment.

**Hon. Ed Fast:** Thank you, Mr. Chair.

I didn't hear Mr. Gaheer explain his rationale for introducing this amendment. Could I ask him to do that? Then I'll follow up.

**Mr. Rick Perkins:** I guess he said it to me.

**Mr. Iqwinder Gaheer:** Yes, I did, and very eloquently, too.

The trouble with the wording we have with CPC-2 is the fact that it could lead to legal challenges with the Canadian pension funds, for example. If there is a reciprocal protection of investments from the other side, then Canadian pension funds could face potential legal challenges.

We're sort of protecting from that by narrowing CPC-2. It's a threefold narrowing. One is changing it from 21 days to 45 days, just to make it more realistic based on the officials' comments. The second is to make sure that the investor gets notified. Last, it's to make sure that it's applied to SOEs in countries we don't have trade agreements with, just to narrow CPC-2 to make sure we don't open up what could be perceived as Canadian companies that are seen as state-owned enterprises to legal challenges abroad.

**Hon. Ed Fast:** I think you've confirmed what I suspected, that this is about making sure Canada complies with its trade agreements, because virtually all of our trade agreements have investment provision chapters, very significant investment chapters, where we provide advantageous access to our economy, and it's reciprocal.

If the CPPIB were investing abroad, obviously we would want to make sure that its investments could be made without another trade agreement partner standing in the way of its obligations under that trade agreement. To make it very simple, this is about our compliance with our existing trade agreements.

I'm going to ask the officials a question, because I want to be very clear. What review are we talking about? Are we talking about net benefit reviews? Are we talking about national security reviews? This looks like net benefit reviews.

**Mr. Mark Schaan:** That's right. CPC-2 amends the provisions related to who is subject to a net benefit review. This shifts the threshold essentially to zero if the investor is a state-owned enterprise.

**Hon. Ed Fast:** Some of our trade agreements are with countries that have very significant state-owned enterprises, where those state-owned enterprises are the primary investors abroad. These are countries like Vietnam or, even more importantly, Malaysia, which is a CPTPP trade partner.

They would be excluded from this provision. Is that correct?

**Mr. Mark Schaan:** Under the subamendment, they would not be subject to a net-benefit threshold of zero.

**Hon. Ed Fast:** Is that because they have preferential treatment under our trade agreement?

**Mr. Mark Schaan:** They have most-favoured nation obligations, yes.

**Hon. Ed Fast:** It's beyond most-favoured nation.

Thank you.

[*Translation*]

**The Chair:** Thank you, Mr. Fast.

Are there any other comments on the subamendment moved by Mr. Gaheer?

Mr. Généreux, you have the floor.

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

I would like to ask the officials a question.

My colleague Mr. Fast was referring to trade agreements in particular, but are there any other treaties or agreements between countries to which this bill will eventually apply? Will future agreements have to be made subject to the provisions or conditions introduced by this bill?

● (1815)

**Mr. Mark Schaan:** Thank you for the question.

The subamendment indicates or introduces a concept currently defined in the act, which includes bilateral and multilateral agreements with other countries. The list includes countries that are signatories to the Canada-European Union Comprehensive Economic and Trade Agreement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the Canada-United States-Mexico Agreement and other bilateral agreements. If Canada concludes an agreement with another country, it will be covered by this definition. That country will be entitled to the same protections and treatment, defined in the act, as other countries.

This does not include all the agreements that Canada has concluded with other countries, particularly within the framework of the World Trade Organization, of which Canada is a member, nor does it include other types of less formal agreements, such as foreign investment agreements or investment protection agreements, because there are many other agreements defined in the act.

**Mr. Bernard Généreux:** Can you give me other examples of agreements that are not as official as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership?

**Mr. Mark Schaan:** There are, for example, digital cooperation agreements, which are not official agreements between countries. There are also foreign investment promotion and protection agreements with certain countries.

**Mr. Bernard Généreux:** I don't know if you remember this or if you were aware of it, but the committee welcomed Jim Balsillie, formerly of Research in Motion, which made phones whose name I forget and which we no longer use.

**Mr. Mark Schaan:** You're talking about BlackBerry phones. Research in Motion is Mr. Balsillie's former company, yes.

**Mr. Bernard Généreux:** You're right.

Without going so far as to say that Canada was light years behind, Mr. Balsillie indicated in his testimony that Canada was lagging far behind, particularly compared to Europe, in its way of doing business and approaching technological developments, which are fast-paced and ever-present. I know I'm straying a little from the subamendment, but it's part of a whole anyway.

I find it interesting that you talk about agreements that could be described as informal in the technological field. Can we consider that the bill in its current form, including the proposed amendments and subamendments, will cover all future agreements that may arise?

I don't know if you understand my question.

● (1820)

**Mr. Mark Schaan:** Yes, I think I understand your question. You raise a number of issues.

First of all, it's important to recognize that the current version of the Investment Canada Act covers intangible and digital aspects, and includes a large section of guidelines on intellectual property and its treatment.

As for the second part of your question, which concerns agreements relating to digital aspects and new technologies, you should know that the latest agreements that Canada has concluded, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the Canada-European Union Comprehensive Economic and Trade Agreement, contain sections on these subjects, including a chapter on intellectual property. This chapter was also a sensitive issue during the negotiations of the agreement with the European Union.

Canada continues to take technological developments into account when negotiating these agreements, and to ensure that their provisions enable it to maintain a good position in the global economy.

**Mr. Bernard Généreux:** Thank you.

In the report or brief he submitted to the committee, Mr. Balsillie talked about very specific things. If you'll allow me, I'll read an extract, because he uses a certain terminology and I want to make sure we understand each other:

> Specifically, economic and security risks should not be analyzed separately. IP and data have multisided features that interrelate, giving rise to the so-called "dual-use" technology that has both economic and national security value. Any assessment of risk and net benefit needs to include the economic and security value of assets as an integrated whole alongside the changed nature of spillovers in the economy of intangibles. Second, the list of strategic technologies and a set of risk factors is incomplete and needs to mirror those of our allies, particularly the United States.

Do you consider that the subamendment and the amendment that we have moved, and the bill as a whole, reflect these elements that Mr. Balsillie talks about? I remember that it struck me when he testified. He said that, even with the bill in its current form, we were not ready to face the future in terms of our relations with our partners.

**Mr. Mark Schaan:** Thank you for the question.

Firstly, on the treatment of intellectual property and data, as I said, there are already certain elements, including guidelines for the consideration of national security aspects. There is a large section on intellectual property and the ability of the Investment Canada Act to cover these aspects.

Secondly, the requirement to consider the list of sensitive technologies and national security aspects is one of the reasons why it is important to give the minister full discretion to consider all aspects of a situation. As Mr. Balsillie pointed out, data, intellectual property and national security considerations need to be intertwined and fit with the investment.

It would also be important for the government to keep an up-to-date list of sensitive technologies, as well as guidelines on intellectual property in relation to national security.

● (1825)

**Mr. Bernard Généreux:** Thank you.

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

Mr. Vis, you have the floor.

[*English*]

**Mr. Brad Vis:** Thank you, Mr. Chair.

Under part III of the act, "Investments subject to notification", in the case of our amendment and the subamendment, the amendment says, "issues an order for the review within 21 days". The subamendment says, "within 45 days". It was stated by Mr. Gaheer that changing the notification time from 21 days to 45 days would prevent lawsuits.

Why would the change of time or a condition by the Government of Canada...? If you want to clarify that for me, that's great.

**Mr. Iqwinder Gaheer:** It's a conjunction of all three. The lawsuits are mainly related to the final point, where we are narrowing that CPC-2 to be applied to SOEs that we don't have trade agreements with. It is mainly—

**Mr. Brad Vis:** Yes, it's related to SOEs. That's one point.

**Mr. Iqwinder Gaheer:** That's one point.

**Mr. Brad Vis:** Yes, it's SOEs we don't have trade agreements with.

**Mr. Iqwinder Gaheer:** The second one was to add a section to make sure that the investors actually get notified that they'll face this review.

**Mr. Brad Vis:** Investors who are subject to the review are notified. Okay.

**Mr. Iqwinder Gaheer:** Yes.

We're going in reverse order now, but the first one was changing it from "21 days" to "45 days". The officials, I think, have testified multiple times to the fact that 21 days just isn't realistic, and 45 days will make it more in line with the rest of the review periods in the act.

**Mr. Brad Vis:** That's right. The "21 days" applies to state-owned enterprises that we don't have a trade agreement with, and the "21 days" to "45 days" for notification.... What I'm concerned about is the incomplete notice, when there is a condition that a state-owned enterprise, in this case, would be subject to, in their notification to the Government of Canada....

Is that correct? What do they actually have to tell the Government of Canada when they notify them of establishing either a Canadian business or an investment to acquire control of a Canadian business?

**Mr. Mark Schaan:** The form that is included at the time of notification has multiple fields. It includes information related to the investor and information related to the investment and the nature of the investment. All of that is provided at the time of application.

**Mr. Brad Vis:** Okay. My question is that section 13 also has subsection 13(2). I always get my language screwed up on this. On page 10 of the act, it talks about an "Incomplete notice". Do we need to consider the application of either the 21 or the 45 days—which I think there's all agreement that we're going to accept—in respect to an incomplete notice. Do we need to look at changing an incomplete notice as well, and should we associate a time frame with that subsection as well?

**Mr. Mark Schaan:** The timeline for an application begins at the time of certification, and certification constitutes a completed application. An incomplete application would not be considered certified.

**Mr. Brad Vis:** If the application is deemed incomplete, the timeline would be irrelevant.

**Mr. Mark Schaan:** That is correct. Certification prompts the 45 days.

**Mr. Brad Vis:** Thank you.

**The Chair:** Mr. Perkins.

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

I'm going to take a bit of time here to talk about my main concern.

I want to make sure that all those who are watching understand why we're spending so much time on CPC-2 and this amendment. It's because of my concern about China's growing influence. It's not only military. The main threat we're seeing in western countries is an economic takeover. In some ways it is more powerful to try to take over assets and find the wiggle room in our rules. We're a generous and open country, as are most western countries. We like to play fair and by the rules.

In our meeting 71 on May 3, Dr. Patrick Leblond, the associate professor at the graduate school of public and international affairs at the faculty of social sciences at the University of Ottawa, appeared as an individual. He said, "Any state-owned enterprise, regardless of where it's from in the world, should notify an acquisition to the minister. The minister should then decide whether this flies or not, and again be able to justify, if there is a decision, to not investigate" it.

With our amendment and the subamendment we're quite narrowing it. There are lots of countries—most countries, I suspect—that have some form of state-owned enterprise, either at a national or subnational level. Some of them get and make acquisitions extraterritorially. I'm not aware that our state-owned enterprises in Canada have done any.

I assume by the way this bill was drafted and the government's proposed amendments that the government doesn't believe that we should be reviewing all state-owned enterprises for net benefit and what the motivation might be, regardless of where they are. Is that correct?

● (1830)

**Mr. Mark Schaan:** I would suggest that the Investment Canada Act balances a number of very critical public policy priorities. One of these is the continued free exchange of investment between global trading nations and ensuring that we allow Canadian enterprises to be able to participate in the global economy with the same degree of frictionless access—or minimized friction—as possible while at the same time preserving the legitimate right of states to be able to ensure that investments into their jurisdictions are in fact of both net benefit and non-injury to the national security of their people and country.

The various aspects of the act strike an attempt to try to ensure that we are preserving all of the capacities to the greatest degree against those various objectives. Hence, the rationale for which we have maintained thresholds under which investments will not be subject to net benefit reviews, thereby corresponding with the global marketplace but still allowing all investments to be reviewed under national security provisions.

Then, what this modernization does is ensure that we actually have additional mechanisms in place under the act to allow for that to be as thorough and as considered as possible, including the capacity for the minister to reach undertakings and for ensuring that the process is complete.

**Mr. Rick Perkins:** Thank you. That's helpful.

I'd just like to add a little colour. I am—as I've said before in previous meetings on clause-by-clause on this act—just concerned. I'd like to make sure that the minister has both the suspenders and the belt as we go through it, to make sure there's certainty.

When was the last time this act was reviewed?

**Mr. Mark Schaan:** There were amendments to the act in 2016, but the most substantial amendments would have dated back to 2009.

**Mr. Rick Perkins:** Right, so it's been quite a while. I don't know if any of us will be in Parliament. Some are younger. Mr. Gaheer, probably—

**Mr. Brian Masse:** I was there.

**Mr. Rick Perkins:** The beard was a different colour then. I don't know if Mr. Masse and I will be here in another 15 years or so, when the next big review might go through, so we have to get this right.

I'm concerned because, as I've said before, I don't believe that government, with all of the flexibility it's had—and I'm not seeing that some of this is doing what we need it to do—is enabling the protection of our assets.

For example, we know that in 2017, when Norsat was bought by Hytera—and I'm going to speak in a few minutes about Hytera—and Vancouver-based Norsat bought Sinclair Technologies in 2011.... These are important telecommunications companies for which a national security review and, obviously, a net benefit review weren't done.

We know that there have been contracts. I know that doesn't directly relate to this, although we had some testimony from some witnesses who were concerned that, for example, in 2020, the Department of Foreign Affairs awarded a contract to China-based Nuctech—which was founded by the son of the Chinese Communist Party's former secretary general—to provide X-ray equipment in our embassies and consulates.

We've talked before about Neo Lithium. Neo Lithium was bought by a state-owned enterprise without a national security review, and the minister hasn't been given the power to go back, even though I've asked him if he would. He said, “I can't.” I won't go over the fact that some of those amendments that would have allowed him to were not accepted by the committee. I still think it's a power that the minister should be trying to have.

However, the minister was able to get more recent ones—the three divestitures through policy recently. We also know the RCMP awarded contracts, as did the Canada Border Services Agency, to Hytera, which was approved by this government, Minister Bains and the Governor in Council to go forward. Hytera, which is headquartered in Shenzhen, China, is partially owned by the People's Republic of China.

Specifically, I'd like to talk a bit about it. The Internet's a wonderful thing. Hytera is a supposedly a publicly traded company in China. When I go through the financials that are available—which they post, as a publicly traded company in China; it's available on the Wall Street Journal's website—I see a company that doesn't make money. It has a lot of sales, but it doesn't make money. It has $6 billion of sales and has gone between net income loss in most years to fairly anemic profits of, say $95 million on $6 billion of revenue.

That is a basic EPS, earnings per share, loss—based on its last year—of almost 800% on a company that is clearly able to continue to exist in China without actually having profits. One has to think that these companies.... It took two minutes for me to find this out, and I'm not privy to all of the national security apparatus that the minister has at his disposal. The publicly available information says that their EBIT, earnings before interest and taxes, growth was down 48%, then down 8%, and the year before that it was down 40%.

Their sales are stable, but they're spending more and more money to get those sales and losing more and more money every year. I would think in a net benefit review—which is what this subamendment and amendment are about—we'd be looking at the financials of these companies to understand whether or not, as we would normally assume, they win the contracts and get access to companies in Canada by underbidding on a government contract or by overpaying in an acquisition for a Canadian company.

● (1835)

They have a motivation that obviously is different from ours, because any acquisition that would be made by a Canadian company or, I'll say, a G7 company, of an asset in Canada is usually done based on sound business principles and a rate of return and a rate of capital return for investors.

They are not. They are losing more and more money every year, yet we don't seem to see that the government, with its power, is looking at it in the same way that I would if I were lucky enough to be in the position of the minister. When you look at Sinclair, it makes a lot of high-end telecommunications equipment that gets installed within Canada. Norsat, the Vancouver-based company, makes a lot of essentially satellite communications. In this world where—just look around this table—we're all connected, and everyone is looking at their phones and trying to do things, access to that data, access to the hardware of our country, our industries and our security system, when it comes to the RCMP or the Canada Border Services Agency, isn't just about the technical access.

The Minister of Public Safety was here on this issue and said—good news—the radio frequency filters that Sinclair was installing in their Hytera, Chinese owned devices were not connected to the database, but now China has access to the knowledge of where all those key communications points for the RCMP are and where the hardware is across the country. They obviously have the ability, to my mind, to know where it is and to figure out how to disrupt them, if they are not. I don't have access to all of those things.

When I look at national security, I look not only at whatever the intelligence agencies are telling us. I also look at the question of whether or not the net benefit review looks at things such as whether this is a credible purchase, based on sound competitive business practices, from a company that is actually driven by the profit motive and driven by the same things that our companies would be driven by, on which we would say, “Hey, that's okay.” Even in a case where you narrow it down to the trade agreement companies, state-owned enterprises only being under review under $512 million, those companies would also be looked at in terms of what the national motivation would be and whether that motivation would fit with our net benefit interest, which is to develop increasingly competitive companies with strong IP.

I am wondering if you could tell me whether or not, in the net benefit review, we looked at those kinds of things, or we said, “Do you know what? That's a company that doesn't have a huge market share, and we're not overly dependent on it, so it doesn't really matter what the motivation of the acquiring company is.”

● (1840)

**Mr. Mark Schaan:** Mr. Chair, perhaps I can offer a few considerations with respect to the question of the member.

One, I would note the increasing number of pre-revenue and other companies that, on the basis of their financial books, are not necessarily earning profits yet are still very much active in the marketplace. I won't name names of companies in this space. Obviously, the financials are one consideration, but a lack or not of profit is not necessarily an indication of relevancy to the market.

More specifically to the member's question with respect to what we take into account when it comes to a net benefit review, I would note the broadness of the factors that are laid out within the act in section 20. They include the following:

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

> (c) the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;
>
> (d) the effect of the investment on competition within any industry or industries in Canada;
>
> (e) 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; and
>
> (f) the contribution of the investment to Canada's ability to compete in world markets.

It is also important to note that we then have specific guidelines with respect to state-owned enterprises:

> It is the policy of the Government of Canada to ensure that the governance and commercial orientation of [state-owned enterprises] are considered in determining whether reviewable acquisitions of control in Canada by the [state-owned enterprise] are of net benefit to Canada. In doing so, investors will be expected to address in their plans and undertakings, the inherent characteristics of [state-owned enterprises], specifically that they are susceptible to state influence. Investors will also need to demonstrate their strong commitment to transparent and commercial operations.

Thank you, Mr. Chair.

**Mr. Rick Perkins:** That was a very good and comprehensive answer.

I have a quick question. Maybe we can have a quick answer to it, because I know we're tight on time. In consideration of a couple of amendments that have come before in that net benefit list, would the disposition of Canadian-owned IP and its ultimate loss or movement out of the country and/or data, privacy data, on individuals or Canadian companies form part of that analysis, which I think was paragraph 20(d) or (e)?

● (1845)

**Mr. Mark Schaan:** Yes. I would simply offer that we very much consider those factors to be included within the considerations for net benefit review.

**Mr. Rick Perkins:** Thank you.

**The Chair:** Thank you, Mr. Perkins.

If there are no more comments or questions on the subamendment proposed by Mr. Gaheer, we will put it to a vote.

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

[*Translation*]

**The Chair:** Thank you all. The subamendment having been adopted, we now return to CPC-2.

Are there any questions or comments about this amendment?

Mr. Perkins, you have the floor.

[*English*]

**Mr. Rick Perkins:** I'll make this quick, because I think we've been over this quite a bit. I think the officials have been great. I thank the government members and the officials for getting to the root of what we were trying to do. I didn't ever intend to exclude countries that we have a good trading relationship with. This was really meant to be focused on others.

I appreciate the goodwill with which the government and officials have treated this amendment going forward. I hope, given all that, we'll get support around this table for this amendment in the bill.

**Some hon. members:** Hear, hear!

**The Chair:** Thank you, Mr. Perkins.

Yes, it's in the spirit of this collaborative committee. Thank you for these words.

Are there any more questions or comments on CPC-2 as amended? No.

I'll ask for a recorded vote.

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

(Clause 7 as amended agreed to)

**The Chair:** This brings us to 6:50. We started the meeting at about 4:50, so I want to....

Is there something, Mr. Perkins?

**Mr. Rick Perkins:** [*Inaudible—Editor*]

**The Chair:** We just did clause 7, so that will need unanimous consent when we come back, unless there's unanimous consent now. However, I don't think you will have unanimous consent to go back to clause 7 at this point.

**Mr. Rick Perkins:** If I could ask for indulgence, then, maybe, because I think we're running short on time. If we could agree....

With Mr. Gaheer's table-dropped...we're going to need unanimous consent to make some of the other clauses—I think it's clause 4—consistent with what we just did.

I'll ask for unanimous consent to be able to introduce one more, if that's okay.

● (1850)

**The Chair:** You'll bring it back in due time.

That concludes the time we have for our committee today.

[*Translation*]

I want to thank the officials who have been with us for a long time working on Bill C-34. I would also like to thank the legislative clerks, the clerk and the members of the committee. Thank you for your cooperation.

[*English*]

I sincerely hope that we get this moving quickly in the fall. There's a lot that's been done already. We have just a few more clauses to get through.

On that note, I wish everyone a good summer. It's been a privilege and an honour to chair this committee with all of you.

**Mr. Rick Perkins:** Mr. Chair, you do a wonderful job on this committee. I very much enjoy it, and I hope you remain the chair when we come back, because I think we have great hearings, whether on this or our studies. I really love your approach to chairing.

**Some hon. members:** Hear, hear!

**The Chair:** Thank you very much, folks.

[*Translation*]

Thank you to the interpreters, the support staff, the clerk and everyone else. Have a great summer. Take care of yourselves.

The meeting is adjourned.