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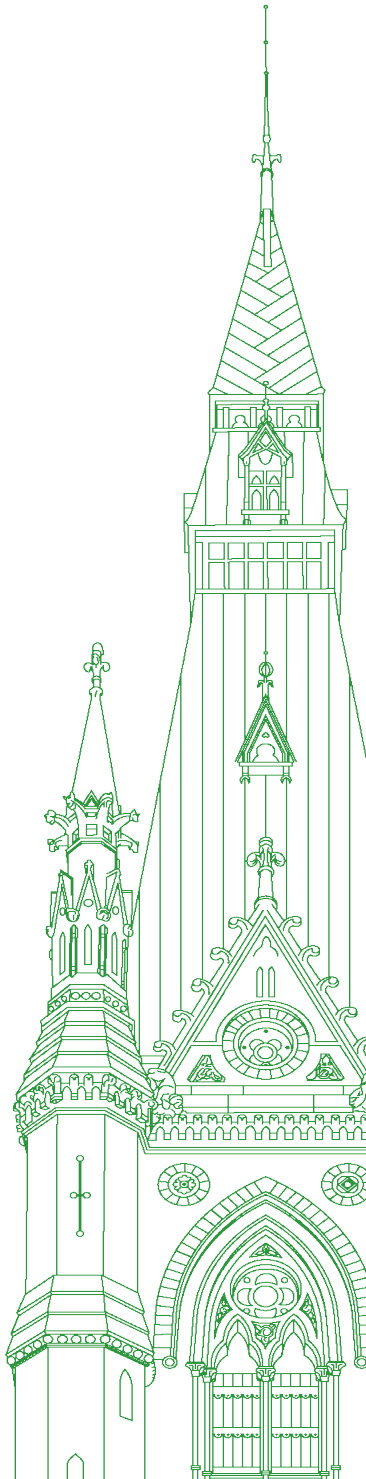

Chair: Mr. Joël Lightbound

# Standing Committee on Industry and Technology

**Monday, June 19, 2023**

● (1715)

[*Translation*]

**The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)):** Good afternoon, everyone.

I now call the meeting to order.

Welcome to meeting number 82 of the House of Commons Standing Committee on Industry and Technology.

**Some hon. members:** Oh, oh!

**The Chair:** I would ask for a little order, please. Order, please. Let's have a little decorum. I know it's the summer and we're all anxious to get out of here, but we have important work to do.

I want to say to the witnesses that I apologize for the delay.

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 today we are continuing clause-by-clause consideration.

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application.

I would also like to invite members to take a look at the guidelines that have been sent regarding the proper use of microphones and headsets for the benefit of the interpreters' hearing health.

Joining us again today is Mark Schaan, senior assistant deputy minister, strategy and innovation policy sector, Innovation, Science and Economic Development Canada. From the investment review branch, we have James Burns, senior director, and Mehmet Karman, senior policy analyst.

At our last meeting, we left off with clause 14, and CPC-8 was defeated. We were on CPC-9, if I'm not mistaken.

We will now resume consideration of amendment CPC-9. I believe Mr. Perkins had the floor.

Mr. Perkins, you have the floor.

[*English*]

**Mr. Rick Perkins (South Shore—St. Margarets, CPC):** Thank you very much, Mr. Chair.

It's nice to see the officials back again, after talking about the F1 on the weekend.

I'm pleased to move CPC-9, which would add a new subsection to the act. I'll read it:

> (1.1) For the purposes of subsection (1), the fact that a non-Canadian has previously been prosecuted, within or outside Canada, for an offence involving an act of corruption constitutes, by itself, reasonable grounds.

This amendment is put forward in tandem with other amendments we've put forward targeting subsections 25.2(1), 25.3(1) of the act and proposed subsection 25.3(1.1). This amendment seeks to ensure that an automatic—we've had that chat before on the "may" versus "shall"—national security review is conducted whenever an investment is made by a non-Canadian enterprise that has previously been prosecuted for corruption.

Witnesses like Charles Burton have argued in the committee that Canadians cannot expect companies that behave atrociously in foreign nations to suddenly operate normally once they arrive in Canada. In fact, in meeting 70 on May 1, 2023, Dr. Burton said in his testimony:

> In terms of our previous policy of allowing Chinese investor immigrants, for example, to come to Canada, the basis for assessment was whether the Chinese person who wanted to invest in Canada had behaved in a way that maintained the standards of China in how much income tax they evaded and how much bribery they paid, on the assumption that if they were following the norms of China, they would follow the norms of Canada.
>
> The program was eventually cancelled, because that just doesn't work. You can't expect a company to behave morally in Canada when it's been behaving atrociously in foreign nations. That's my opinion....

That is what he said.

I'll use Hytera as an example. I know I've used it before, but I want to mention it again. Hytera—in 2019, I believe it was—acquired Norsat in Vancouver, which in 2011 had acquired Sinclair Technologies. Hytera itself, the parent company, a Chinese state-controlled company ultimately, was charged in 2022 with 21 counts of espionage in the United States, as well as being banned by President Biden from doing business and bidding on contracts in the United States.

While it wasn't an acquisition per se, eight months later both the RCMP and the Canada Border Services Agency procured equipment from Hytera. In 2019, the minister of industry of the day put forward only the first level of security review for that acquisition, saying, "That's okay. We don't need to go any deeper."

Now, I've not seen the details of the deeper reviews on any national security reviews in quite a while. The level of detail may have changed.

The purpose of this is twofold. One is to make sure that if they are charged....

I guess the reason is this. I've had some discussions with government members about the issue of “prosecuted” versus “convicted”. Here's my challenge there. I think I may have said earlier, in a little email exchange, that I have a problem when a company has a remediation agreement and whether or not that's technically a conviction. Whether or not a company has found itself in a place where it could do a settlement out of court for whatever reason, the undisclosed elements of that, which are usually private and undisclosed, would prevent us from having an automatic review for corruption.

If you changed it to say they had to be “convicted” as opposed to “charged”...I've not seen a way, other than to say “charged”, where you can take account of all of those circumstances in legislation. It doesn't mean that this would be rejecting any takeover; it's just forcing it through a review.

● (1720)

To me, any time there is a charge on a company, there is a bit of where there's smoke, there's fire. Sometimes there are reasons it got off. To me, that would mean the company is perhaps operating with some not particularly savoury practices. It's been charged. It's probably been doing it well beyond what has been charged in other countries.

Some Canadian companies have even been charged abroad with similar types of issues. Famously, we had the issue of the remediation agreement that Canada was putting on SNC-Lavalin. That was the court case that resulted in the Minister of Justice and Attorney General's leaving.

Canada has to set a higher standard for the companies it allows to operate in this country. By doing this, we also perhaps send a signal to Canadian companies to be a little more careful. We are not just saying that bribery and corruption in certain parts of the world are a part of doing business and how you get contracts; we aspire to a lot more than that. We aspire to a higher level of business ethics.

The Investment Canada Act does not reflect right now the ability for the minister to do that. It has only net benefit review and national security review as options. I believe that corruption, bribery and a charge itself warrant making sure that we take a second look at any company that intends to try to make an acquisition in Canada.

● (1725)

[*Translation*]

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

I will now give the floor to Mr. Fillmore.

Mr. Fillmore, you have the floor.

[*English*]

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

Mr. Perkins and I have had several conversations about this matter.

At the end of it, though, our team is much more comfortable with the language of “convicted”.

I would like to go ahead and move the amended language that was distributed last week, which removes “prosecuted” and replaces it with “convicted”.

**The Chair:** That's a subamendment that is proposed for CPC-9, to change “prosecuted” to “convicted”.

**Mr. Rick Perkins:** I know you and I exchanged some emails, but I don't recall the clerk sending anything out.

**The Chair:** I'm not sure. Give me a moment.

It will be sent around to members. It's a very simple change. If you look at the third line of CPC-9, it will be “that a non-Canadian has previously been convicted” instead of “prosecuted”. That's the subamendment moved by Mr. Fillmore.

On the subamendment, Mr. Williams.

**Mr. Ryan Williams (Bay of Quinte, CPC):** I have a question first, through you, Mr. Chair, to Mr. Fillmore.

Could you just clarify why? The second part of that would be, if it's not “convicted”.... Let's say there's a settlement with a company, would that still be included in your definition?

**Mr. Andy Fillmore:** At a high level, it's about that old canard of innocent until proven guilty.

However, to go deeper on the detail, I would invite Mr. Schaan to weigh in, if that's helpful to you.

**Mr. Mark Schaan (Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector, Department of Industry):** I think “convicted” would be the technical definition of convicted, which would mean that you've been found by a court to be guilty. It would depend on the specifics of the jurisdiction and how their law is structured as to whether or not that would in fact be the case where there may be some form of a plea. Often, that actually involves a guilty trade, in the sense that you agree to the guilt charge in addition to the mitigation factor, so it would depend on the use case and the specifics.

**Mr. Ryan Williams:** I'm going to give an example. Everyone knows Walmart. Walmart Mexico was involved in a bribery scam for permits for store openings. I guess it was a big scandal in Mexico.

It's a multinational company. It was never convicted. It reached a settlement with the U.S. Department of Justice and the Securities and Exchange Commission. It paid substantial fines.

It's an example of one company. There are tons of them. I'm not going to name all of them, but the point was they were not convicted. As a major company....

When we look at the review process of other allies, I've been comparing a lot in this committee CFIUS and the United Kingdom's Investment Security Unit. Both of them will include companies that were even alleged to be in a mandatory review in some part of their process. Walmart may be a bad example for that, because there are going to be other companies that we've talked about at length around a critical strategic list of industries.

If any of those companies, for instance, was not convicted or reached a settlement, the premise would be that it could not be involved with a mandatory review. There are lots of examples where we might need that to be included. It doesn't always mean....

Based on our conversations in the last little while, the review process is triggered only in certain circumstances right now. Fewer than 2% are reviewed. Is that correct?

**Mr. Mark Schaan:** National security reviews take place in every instance of investment.

**Mr. Ryan Williams:** In terms of going through the whole process, though, there's a really low number.

**Mr. Mark Schaan:** On the full process, by which you mean they've exhausted the additional avenues available for an extension of the review period, that is correct, but that is a relatively small number of investments. All investments, on the merits of the investment, are contemplated from a national security perspective.

● (1730)

**Mr. Ryan Williams:** I guess I look at it the other way, then. What is the risk of any company involved with any bribery or corruption not being reviewed?

The innocence, I understand. We want to have every company innocent until proven guilty, but if almost every company goes through the review process as a whole anyhow, why would we not then just include that as a definite?

Again, I'll go back to the Investment Security Unit, the ISU, for the U.K. and CFIUS for the Americans. They all include that under part of the process in evaluating an investment security review.

They even go so far in the U.K. as to have a National Security and Investment Act 2021. That was legislation that provided a new regime for reviewing and scrutinizing investments on national security grounds. They require mandatory notifications for certain types of transactions and companies with corruption or bribery charges. They've actually named it. This is part of the United Kingdom's legislation.

Again, comparing apples to apples, when we look at some of our Five Eyes allies that are doing it, the U.K. has done it.... We need to really ensure that....

The question I have is this: If a company has been named with bribery, corruption or any other kind of malicious intent in that sector, what's the harm in having everyone mandatorily reviewed, if we're already seeing mandatory reviews across the board in many instances?

That's a staff one.

**Mr. Mark Schaan:** As noted, right now, what determines whether or not an investment moves from section 25.1 to 25.2 is the information that's developed and the analysis that's provided by the national security agencies. This amendment would automatically make the determination that the information warranted a section 25.2, as opposed to allowing information to make the determination.

The only consideration I would raise for the committee is that this amendment speaks to any jurisdiction, and there are politically motivated prosecutions and, in a limited number of cases, convictions on the basis of corruption. This would be extending to a firm a mandatory section 25.2, which is not the same as the mandatory national security review, which would allow the national security agencies to determine whether or not we move from section 25.1 to 25.2 to 25.3.

**Mr. Ryan Williams:** Mr. Chair, who would make that determination, then? Is that the investment review division? If we leave it up to interpretation—an important question—who makes the determination of whether a company is going to go through that review process?

**Mr. Mark Schaan:** National security agencies are consulted, and their advice is sought through the Minister of Public Safety to the Minister of ISED, who makes that determination as to whether or not that investment moves from section 25.1 to 25.2.

**Mr. Ryan Williams:** Through you, Mr. Chair, what's the timeline difference if a company goes to section 25.2 in terms of the report period or delaying that transaction?

**Mr. Mark Schaan:** Initially it's 45 days.

**Mr. Ryan Williams:** What we're saying here is that if this goes through with a mandatory, it's 45 days automatically, no matter what, for every single company.

**Mr. Mark Schaan:** Every single company that meets this test would automatically be considered to sufficiently, on national security grounds, require further analysis and further assessment as to whether or not they met the next test. As I said, right now the decision tree has the information determining the test, which is the following: Is this a national concern? Could this be injurious to national security? Would this be injurious to national security?

It's the analysis of the security agencies that right now prompts those shifts from section 25.1 to section 25.2 to section 25.3 in advice to the minister. This would essentially mandate an additional period and an additional analysis on the premise that it had already met that test.

**Mr. Ryan Williams:** I guess it comes down to how the committee feels about corruption and bribery charges in terms of the investment review process. There are so many different companies that have been involved with this. Even companies we all know, like Rolls-Royce Holdings, Embraer SA, Walmart, as I mentioned, and BAE Systems. These guys have operations across Canada. There's also Siemens AG, which is a German company.

We have a lot of different companies involved in this. I guess the question would be, what are we trying to protect in this legislation and review process, and what kind of pressure are we trying to put on companies that may in fact just be trying to make a legitimate investment in the country? I believe, if we're looking at what other countries are doing, especially the U.K. and the Americans, they seem to have this included. I don't know why Canada would have to be a little more lax on that. I would think Canada would want to be at least on par with our Five Eyes counterparts. I know we're looking at a lot of different issues, like transparency. One of my big concerns is that we need to look at how the investment review division works across multiagencies, which I think is really important. I'd leave the remainder of that for debate for the committee, but I certainly think we should consider leaving the mandatory in.

Thank you.

● (1735)

**The Chair:** On my list I have Mr. Vis, Mr. Boulerice, Mr. Généreux and Mr. Fillmore.

I would just respectfully remind members that we are now not on amendment CPC-9 but on the subamendment, in which Mr. Fillmore has proposed changing “prosecuted” to “convicted”. My understanding also is that there's support for amendment CPC-9, but we're on the subamendment right now. If it's not on the subamendment, we'll get back to the amendment once the subamendment has been decided upon.

[*Translation*]

Mr. Vis, do you want to wait until we come back?

[*English*]

**Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC):** I'm going to speak to the subamendment.

Thank you, Mr. Chair, and thank you to our newest members of the committee, who will be with us for many months to come. It's great getting to know you guys, and I'm looking forward to many months of deliberation over this bill.

The terms “convicted” and “prosecuted” are related to the legal process, but they refer to different stages and outcomes of that process. Would that be correct?

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

**Mr. Brad Vis:** “Prosecuted” would refer to the action taken by the state to bring criminal charges against a corporation. Is that correct?

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

**Mr. Brad Vis:** When a company is prosecuted, it means they are officially accused of committing a crime and are subject to legal proceedings.

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

**Mr. Brad Vis:** Okay.

The prosecution presents evidence and arguments to prove that the accused, in this case, corporation...beyond a reasonable doubt—

**Mr. Mark Schaan:** That would depend on the jurisdiction.

**Mr. Brad Vis:** Okay. That's perfect.

The objective is a conviction. A conviction, on the other hand, refers to the legal determination of guilt made by a court or a jury.

**Mr. Mark Schaan:** It depends on the jurisdiction.

**Mr. Brad Vis:** That's generally speaking, in legal theory.

**Mr. Mark Schaan:** That's generally speaking, yes.

**Mr. Brad Vis:** If a company is convicted, that means it has been found guilty of a crime by a judge or a jury, either through a trial or as a result of a guilty plea.

**Mr. Mark Schaan:** It would depend on the jurisdiction.

**Mr. Brad Vis:** Okay.

A conviction typically follows the prosecution's successful presentation of evidence and the defence's failure to sufficiently challenge or refute that evidence.

**Mr. Mark Schaan:** Again, it would depend on the jurisdiction.

**Mr. Brad Vis:** Once convicted, would the company face penalties, such as imprisonment of certain directors of the company, fines, probation or other consequences, as determined by said law and said jurisdiction?

**Mr. Mark Schaan:** Depending on the jurisdiction, it might, yes.

**Mr. Brad Vis:** In the context of this bill here, when we go back to when we wrote this amendment, and now, as we discuss the subamendment, it really comes down to what a government should do to prevent foreign investment from a company that either has a poor human rights record or, as we have clarified now, has been convicted or prosecuted of a heinous crime in another country.

When Canadians think about the act we're discussing today, they want to make sure our elected representatives and the officials in their respective departments have the tools they need to sufficiently protect Canadians from undue harm in cases of business activities.

Governments, in general, have a number of ways they can look at this. One pertains to legal and regulatory measures that we're discussing today. Based on our conversation last week with Phil Lawrence, we had a great debate about whether we can have positive lists, or positive determinations, put into our legislation to ensure we receive the outcomes that people want. I'm glad the government is willing to work with us on bringing this forward.

This is what I'm scared about through this whole process—not any of you specifically but regarding due diligence in screening. That's where Canadians really want us to home in on what we can do to improve due diligence in screening as it relates to the review of possible investments in Canada. Of course, when other states take seriously egregious actions, we can blacklist them. We can put up different tariffs, and we can seize their assets. The Government of Canada holds that right, but when we're looking to see investment flow into Canada, the due diligence of screening is essential to what people want.

A clause like this one, as amended by the government side, will really provide a lot of assurances to Canadians that we're moving in a direction with a more direct law that is clearly understood and clearly articulated. Canadians can hold us as elected officials to account to make sure we get this right, so we're not going to see more cases in Canada—in British Columbia, for example—of companies buying up long-term care homes and treating seniors like crap, which I believe constitutes a crime. I don't think anyone was ever convicted in those situations.

We have a really big responsibility here to get this right. I'm glad we're working towards that level of transparency.

Thank you, Mr. Chair.

● (1740)

**The Chair:** Thank you, Mr. Vis, for such a clear exposé.

I will now turn to Mr. Boulerice.

[*Translation*]

**Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP):** Thank you very much, Mr. Chair.

I find the subamendment that has been proposed very worthwhile and important. In our justice system, a person is presumed innocent until proven guilty. I think it's important to make that distinction and to be able to say, not only here but abroad as well, that just because a person is prosecuted doesn't mean that they have been found guilty.

If a person is prosecuted for acts of corruption, we can trust in the Canadian legal system enough to say that certain elements must lead people to believe that it's worth taking that person to court and putting them on trial. We're talking about here or abroad. If a person is prosecuted in Russia, in the United Arab Emirates, or in a country where democracy or the judicial system is more or less formal, what happens then?

Is it true that some people could be excluded because they are victims of frivolous lawsuits?

I'd like to hear Mr. Schaan's comments on that.

**Mr. Mark Schaan:** Amendment CPC-9, as drafted, indicates that a decision would be made by a court of any country in the world. That would apply to all territories, and it might include the ones you mentioned.

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

Thank you, Mr. Boulerice.

We're still discussing the subamendment to CPC-9, as Mr. Fillmore indicated.

Is there any further debate on the subamendment? If not, I will put it to a vote, unless there is unanimous consent.

[*English*]

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

**The Chair:** Okay, we'll put the subamendment to a vote.

(Subamendment agreed to: yeas 7; nays 4)

● (1745)

[*Translation*]

**The Chair:** Are there any further comments on CPC-9?

[*English*]

Yes, Mr. Perkins.

**Mr. Rick Perkins:** Now that it's been amended, I have a question for the officials. If there has been a remediation agreement, it would not go to an automatic review now. Is that correct? Is a remediation agreement a conviction or not?

**Mr. Mark Schaan:** It depends a little on the jurisdiction. As I noted, I'm familiar with remediation agreement terms in various jurisdictions, some of which require an exchange of a guilty plea held in abeyance until such conditions are met. It would depend on the specifics of the case.

[*Translation*]

**The Chair:** Thank you.

Is there any further discussion on CPC-9?

(Amendment as amended agreed to: yeas 11; nays 0)

[*English*]

**The Chair:** Shall clause 14 as amended carry?

(Clause 14 as amended agreed to [*See Minutes of Proceedings*])

(On clause 15)

**The Chair:** Moving on to clause 15, we have Mr. Perkins.

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

I'd like to move CPC-10.

This is, again, the “shall” and “may” thing. In its current form, Bill C-34 doesn't compel the minister to conduct a national security review, as we've talked about before. Rather than making it optional, we believe it would be helpful to have an automatic trigger that would compel a minister to go a little deeper into the security review.

As I've mentioned before, my poster children for this are Tanco and Hytera, where the minister of the day, on whatever recommendations he chose, did not go into enough detail. I don't know what the recommendations were, but in my view they needed to go further than the first stage of the review.

My concern in this case is that I just don't see how a state-owned enterprise, a Chinese company, being primarily or controlled through the state-owned enterprise—or if not through the state-owned enterprise, at least by the 2017 national security law that was passed in China requiring it to spy and requiring it to steal technology as part of being a good citizen of the Chinese Communist Party—didn't get the in-depth review for these acquisitions.

How could a telecommunications company and its assets in Canada not be considered strategic? They obviously are in the U.S. I know attitudes may have evolved toward Huawei, and with Hytera being charged last year and the only lithium-producing mine in Manitoba being so critical to the issue going forward.

Hopefully, the Ring of Fire and those things will eventually be developed in Canada, and we're not at the point at which our only lithium-producing company is owned by a Chinese state-owned enterprise and everything it mines goes to China.

Given the emphasis on the EV strategy by the government, and by governments of the day, and the move to that, it was probably a little short-sighted to not get a more in-depth strategic look at either the net benefit or, in this case, the national security review. Perhaps today, security might be viewed a little differently from how it was viewed in 2017. I'm not sure, but hindsight's always 20/20. This forces it to go to a deeper dive. It removes some of that ambiguity and gives the minister a little more heft around the table for the minister's ultimate decision.

I won't go over the diligence of various ministers. I went over that last time and got a few smiles. Regardless of government, not all ministers are created equal. Mr. Masse called this the Maxime Bernier clause, and I tend to agree with that. At least he didn't leave any documents.... Well, maybe he did leave documents around on that too, but I'll leave it there for now. This just provides a suspenders and belt approach, as someone said a few meetings ago.

Thank you.

● (1750)

[*Translation*]

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

You now have the floor, Mr. Gaheer.

[*English*]

**Mr. Iqwinder Gaheer (Mississauga—Malton, Lib.):** Thank you, Chair, and thank you to my colleague for the amendment.

I guess the worry is that there could be cases where the act of imposing interim conditions won't actually reduce the risk. It could actually increase the risk by, for example, disclosing the location of sensitive infrastructure.

I'd like to propose a subamendment, and I'm under the impression that it's already been shared. I move that motion CPC-10, proposing in paragraph (c) to amend clause 15 of Bill C-34 by replacing line 26 on page 8, be amended by replacing the word "review" with the following:

> review, provided that the imposition of interim conditions does not introduce significant new risks of injury to national security.

**The Chair:** There is a subamendment on the floor. I believe it has been circulated. I'll make sure that it is sent again, but for everyone's benefit, essentially it's at paragraph (c).

If I understood you correctly, Mr. Gaheer, after "review" there would be a comma and "provided that the imposition of interim conditions does not introduce significant new risks of injury to national security". I believe members have received and will receive the exact wording of the subamendment to CPC-10 that MP Gaheer is proposing.

We can open the floor on the subamendment if there are questions and comments. We will wait one second.

I understand that it has been received by all. Are there any questions or comments?

Go ahead, Mr. Perkins.

**Mr. Rick Perkins:** I'm trying to read it and compare notes. Is this substituting for my change or is it...? I'm trying to figure out where it goes.

**Mr. Iqwinder Gaheer:** It will go in paragraph (c), to amend clause 15 by replacing line 26 on page 8.

**Mr. Rick Perkins:** It doesn't say what I—

**Mr. Iqwinder Gaheer:** If you look at your amendment, it says "that could arise during that review", so it will just continue after "review" with a comma and "provided...."

**Mr. Rick Perkins:** The one I got is still the corruption one, unless I'm reading my email wrong here.

Oh, here we go. Okay. I've got it.

**Mr. Brad Vis:** That's provided during the review and then a continuation before the period....

**Mr. Rick Perkins:** It's just an addition. Could the officials explain a little more about the risk that you're trying to...?

**Mr. Mark Schaan:** It's mandating the imposition or deletion of interim conditions, essentially. There are examples—for instance, on national security cases—where interim conditions may not be appropriate.

For instance, if it's a transaction involving the purchase of a business with a location that is sensitive due to its proximity to a sensitive site, if that transaction hasn't closed, there would be no appropriate interim conditions. The only thing that's appropriate in that review would essentially be the final conditions.

There would be a national security risk during the review if we were to have interim conditions disclosed, until the determination has actually been made. This essentially would ensure that there's a consideration of national security risk about the interim conditions.

● (1755)

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

Go ahead, Mr. Perkins.

**Mr. Rick Perkins:** I'm just trying to understand, because the principal thing that we're doing in ours is changing “may” to “shall”. We're not really changing a lot of the other section in the act that Bill C-34 amends.

I don't mind. I'm just trying to understand that this is just an addition, not because my proposed amendment is causing a concern. You're just providing a little more clarity.

**Mr. Mark Schaan:** Your amendment mandates interim conditions. What we believe this subamendment would do is essentially balance the mandate for interim conditions with as long as they don't cause “injury to national security”.

**Mr. Rick Perkins:** Because it would be public—

**Mr. Mark Schaan:** Exactly.

**Mr. Rick Perkins:** That's the issue. Okay.

**The Chair:** If there are no more questions or comments on the subamendment proposed by MP Gaheer, I will put it to a vote unless I have consensus on the subamendment.

I'm looking around the room. We have a consensus.

[*Translation*]

Mr. Boulerice also seems to be in favour of the subamendment.

(Subamendment agreed to)

**The Chair:** We're now back to CPC-10.

Are there any other comments or questions on CPC-10?

Mr. Vis, the floor is yours.

[*English*]

**Mr. Brad Vis:** I just want to comment briefly.

You know, Mr. Perkins has put forward...and I was so, so annoyed. I looked at my package, and I was like, “What the frick? There are a million things on 'may' and 'shall'.”

I want to clarify for Canadians listening today that “shall”, in legal language, is often used to impose a mandatory obligation or requirement. When a law or regulation uses the term “shall”, it means that the action or condition specified is necessary and must be followed. Failure to comply with the “shall” provision can result in legal consequences or penalties. It indicates that the specified action is mandatory and binding.

“May”, on the other hand, is used to confer discretionary power or give permission. When a law or regulation uses the term “may”, it grants an authority or decision-maker the option to exercise their judgment or discretion in a particular matter. It indicates that the specified action is permissive, allowing the authority or individual to choose whether or not to act.

Let's take this example: “The minister may grant an exemption in exceptional circumstances.” In this case, the minister has the discretionary power to grant an exception under exceptional circumstances, but it is not mandatory.

For the purposes of Bill C-34, again, Canadians are looking for a stronger bill that will, in some cases, dictate that the respective minister take certain actions and do certain things to provide confidence in our institutions and, at other times, exercise great discretionary power in the national interest of Canada. That is why we are putting forward these types of amendments.

Thank you, Mr. Chair.

**The Chair:** Thank you.

On that note, shall CPC-10 carry as amended?

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

**The Chair:** We're still on clause 15. Are there other amendments?

Mr. Perkins.

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

I will make a slight alteration to CPC-11, if I can, as I table it. Just to be clear, I believe there's an issue in CPC-11 with what I proposed as new subsection 25.3(6.2). That's at the bottom on the page.

I propose that we put forward this motion without that new subsection. There perhaps is an issue, as I understand it, around whether or not it would be out of order. It imposes, I believe, a new condition or a new requirement on the minister, and it's a minor element of what we're trying to do with this amendment.

This amendment deals primarily with the fact that no clause in Bill C-34 allows the minister to review past acquisitions and mergers under the national security review process. The amendment seeks to give the minister power to review past acquisitions by non-Canadian state-owned enterprises through the national security review process. The geopolitical situation in the world is constantly changing, as we know. Acquisitions conducted by authoritarian states like China 10 years ago did not pose the same sort of national security threat, in my view, at that time, that they perhaps do now, but could pose a threat today.

Several of us have pointed out, and some of the witnesses have pointed out, that the minister needs to have the power to review previously approved ICA acquisitions by non-Canadian companies through that. Indeed, I've actually had a couple of sidebar conversations generally with the minister on this, on some acquisitions in the past. While the minister ordered last year three mine interests to be divested under policy, there were some other ones I brought up, like the Tanco mine, where he said it didn't allow him to go back far enough to deal with that issue. I think, actually, I may have even read about the minister referring to something more recently in the media when he was asked about reviewing an acquisition.

We put this forward because, whether it's this minister or current ministers, we would need the ability to go back when the geopolitical situation changes, as it has with regard to China. We had what I call sort of the "Bill Clinton" policy for many, many years through various governments—that through broader trade and economic engagement in the WTO, we could help China become a more open and a more...maybe not democratic, but a more human rights-based country.

I think that actually did work for a while, but the regime changed. With that regime change, we've seen, in my view, quite a bit of a step back. The regime has very different motivations in terms of how it engages internationally than we hoped for over the last 20 years. In fact, I think we're in a business cold war right now, in some ways, with China in particular. They are very aggressive in acquiring mineral rights around the world and companies under certain levels in our country. They have already acquired some of our strategic assets that we cannot get back.

Mr. Chair, I would urge members to at least give the minister the authority in the act and to give the government the ability to go back and revisit some of these, as I believe many other countries have in some of their acts. I think Britain and certainly the United States have given the minister some ability to go back further than ours does.

● (1800)

**The Chair:** Mr. Perkins, before anything else, I understand that you are moving a subamendment to your amendment.

**Mr. Rick Perkins:** Is that what it's called?

**The Chair:** Well, I would think so. Or is it...?

No. It's not a subamendment to your amendment. Just to be clear on what your amendment is, everybody has received CPC-11. You are proposing to remove proposed new subsection 25.3(6.2) entirely from CPC-11.

**Mr. Rick Perkins:** That's correct. That was after my consultations with the clerks—

**The Chair:** Yes, the legislative clerks.

**Mr. Rick Perkins:** —about that being the part primarily that made it out of order.

**The Chair:** Yes. Hence, without new proposed subsection 6.2, CPC-11 is receivable.

The debate is on the amendment as proposed and not as written or drafted in the package you received.

On that note, we're debating CPC-11.

I recognize Mr. Williams.

**Mr. Ryan Williams:** Thank you.

To my colleague, the word that we used and we heard in testimony was "unwinding" or "divestment of transactions".

I want to get some comment from the staff. I know that CFIUS uses this. The National Security and Investment Act uses this. Australia and its Foreign Acquisitions and Takeovers Act.... They all have unwind legislation or unwinding of a completed transaction.

I want to get a comment, perhaps starting with the staff, on what they feel about this amendment.

● (1805)

**Mr. Mark Schaan:** As we understand it, the proposal would eliminate ministerial discretion in subsection 25.3(1) to determine whether the threshold for an order to further review certain investments had been met. Also, subsection 25.3(6) allows the minister to recommend a block or a divestment for every SOE transaction involving a previous transaction only if it was already subject to a net benefit review under the ICA.

Essentially, the notion of subsequent takeovers has been discussed. As we noted, those are already subject to national security review. This would essentially prompt the minister to always go to section 25.3 of the act and issue an order in the cases in which that was the case.

**Mr. Ryan Williams:** Do you see this as beneficial to unwinding? Are you saying we already have unwind pieces in the legislation as it stands?

**Mr. Mark Schaan:** Every transaction is reviewed under national security grounds and has the capacity to be blocked or unwound, if it's a new transaction essentially—if it's the first instance of that transaction. That power already exists.

This will essentially force the transaction to go to the order-making stage at section 25.3.

**Mr. Ryan Williams:** In essence, we already have unwind legislation. If we determine that a state that already made an investment is now seen as threatening to our FDI as a whole, can the minister already go and direct the investment review division to start a new review on a transaction from a decade ago?

**Mr. Mark Schaan:** No. A transaction that has not had a first instance hearing under the Investment Canada Act can be reviewed for national security purposes. An investment that has already been considered by the Investment Canada Act cannot be reconsidered by the Investment Canada Act, because the initial decision of the Investment Canada Act is determinative.

**Mr. Ryan Williams:** Would you see this amendment allowing that?

**Mr. Mark Schaan:** As we read it, no, it won't.

**Mr. Ryan Williams:** Okay. I want to get your opinion, then, on what we are getting and maybe something that you'd want to see. It seems to me that the U.K., the U.S. and Australia have that provision in their legislation. It seems that for the United States, for instance, CFIUS has the authority to review and potentially unwind transactions that have already been completed if national security risks are identified.

**Mr. Mark Schaan:** That's the first instance.

**Mr. Ryan Williams:** They can initiate a review of a completed transaction, if they determine that the transaction threatens national security.

The United Kingdom National Security and Investment Act—this is from 2021—provides powers to unwind completed transactions. That's the same thing. Is that correct?

**Mr. Mark Schaan:** The important distinction here is first instance versus.... I think we're potentially confusing two different concepts. One is whether you can unwind a transaction at first instance before your national security or foreign direct investment review. There is that capability under the ICA, under CFIUS and under the U.K. act.

What CFIUS, the U.K. and Canada do not allow is a second hearing under the ICA to come to a different determination. Subsequent transactions, new transactions and transactions that build off previous transactions are all eligible for further national security review.

What is not possible is to go back to a determination of the ICA if it's already been heard at first instance. That's true for both CFIUS and the U.K. regime.

**Mr. Ryan Williams:** I think they also have specific conditions, processes and safeguards associated with it. Is that correct?

**Mr. Mark Schaan:** As do we. In our regime, as noted, if a transaction is closed and completed but it's the first-instance hearing of the transaction, under the Investment Canada Act we have the capacity to unwind that transaction. What we cannot do is have a consideration of an investment under the Investment Canada Act, come to a determination on that investment, then come back to that investment at a later date and make a secondary determination.

● (1810)

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

**The Chair:** Thank you.

Go ahead, Mr. Perkins.

**Mr. Rick Perkins:** This is more like a point of interest.

The committee members will remember that in the 43rd Parliament, in March 2021, this committee issued a report, “The Investment Canada Act: Responding to the COVID-19 Pandemic and Facilitating Canada's Recovery”.

I think this was unanimous, but I wasn't part of the committee then. On page 43, it says:

> Since 2009 and as of 2018−2019, 15 of all 22 national security reviews ordered by the Governor in Council targeted investments by investors whose ultimate controller(s) originated from China. Of these 15 investments that underwent a national security review, nine were either blocked, divested, or withdrawn....

Actually, going into a more detailed review led to recommendation 8, which states:

> That the Government of Canada...introduce legislation amending the Investment Canada Act to allow for the review of and ability to prevent the subsequent takeover by a state-owned enterprise of a previously ICA approved acquisition of a Canadian firm or assets by a foreign privately owned corporation.

This amendment is meant to try to deal with some of that recommendation this committee put forward in the act. I would urge all members—hopefully—to.... Some members here, I think, may have participated in the production of that report. I know Mr. Masse did, but he's not here today.

That was the intent behind this motion: to try to implement that provision of the report.

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

Are there any more comments on CPC-11?

[*Translation*]

Madam Clerk, please proceed with the recorded division on CPC-11.

(Amendment negatived: nays 6; yeas 5)

**The Chair:** Before we move on to other amendments to clause 15,

[*English*]

I wish to inform members that the clerk has informed me that we have an extra 15 minutes free. Given that we started late and that we're not moving very quickly—I must observe—I suggest we take this free 15 minutes.

[*Translation*]

Are there any other amendments to clause 15?

Mr. Boulerice, you have the floor.

**Mr. Alexandre Boulerice:** I'm happy to move amendment NDP-4 to clause 15. This amendment was introduced by my colleague from Windsor West.

I'll leave it to the committee to discuss.

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

Before we can debate it, I regret to inform you of my decision.

Bill C-34 amends the Investment Canada Act to, among other things, authorize the Minister of Industry to impose interim conditions on investments to prevent national security breaches that may occur during the review, to make an order to extend the review under part IV.1, and to allow written undertakings to be submitted to the Minister of Industry to address national security risks and to provide that the minister may, with the agreement of the Minister of Public Safety and Emergency Preparedness, terminate the review as a result of the undertakings that have been made.

However, amendment NDP-4 seeks to add a new obligation for the Governor in Council, that of providing the reasons why an order has not been made, which constitutes a new provision not provided for in the bill as adopted by the House of Commons at second reading. As *House of Commons Procedure and Practice*, third edition, states on page 770:

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

In the chair's opinion, for the reasons stated above, the amendment is beyond the scope of the bill. Therefore, Mr. Boulerice, I rule this amendment out of order.

As you know, that decision is not debatable, but it can be overruled if a member of the committee requests a vote on it.

Mr. Perkins, you have the floor.

● (1815)

[*English*]

**Mr. Rick Perkins:** I quite like NDP-4, so as much as I hate to do this, I'd like to do a vote to challenge the chair.

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

[*Translation*]

**The Chair:** The decision of the chair is therefore sustained. Accordingly, amendment NDP-4 is defeated because it is out of order.

Are there any other amendments to clause 15?

Mr. Boulerice, you have the floor.

**Mr. Alexandre Boulerice:** Thank you, Mr. Chair.

We have amendment NDP-5, which you have in front of you. I'd like us to move to debate and then vote on this amendment.

**The Chair:** Are there any questions or comments on NDP-5?

Go ahead, Mr. Perkins.

[*English*]

**Mr. Rick Perkins:** Could I ask the officials for a comment on what this would or would not do?

**Mr. Mark Schaan:** Mr. Chair, this proposal would include new factors of personal information and the right to use IP, which the minister must consider when determining whether or not to advance a review to section 25.3. We would point members to the current guidelines on the national security review of investments, which clearly indicates that among the factors taken into account in national security reviews are the transfers of technology or know-how and access to sensitive personal data.

The existing guidelines on sensitive technology and IP are actually broader than this amendment and are not limited to whether or not its development was funded by the government, and that's taken into account in our national security reviews.

**Mr. Rick Perkins:** I looked at this as an addition...that it wasn't narrowing it.

Are you telling me that it narrows it, further restricts it? To me, it provided a little more certainty by saying that in addition to the powers the minister has, we want a special emphasis on or look at things involving privacy and intellectual property.

**Mr. Mark Schaan:** We'll go back to the same discussion we had last week about whether or not things are for greater certainty or whether they're actually narrow.

If there was an indication that this was for greater certainty, it would not negate what precedes...as in, already calling on allowing for it. By explicitly calling for just these two factors, it draws attention to these two factors and suggests that potentially they were intentional and that no others are.

As noted, our national security guidelines already include this and are broader than this, so the question is whether or not this potentially draws attention to why they were specifically iterated and not others.

**Mr. Rick Perkins:** If I propose an amendment saying “for greater certainty”, are those the words that are needed? It would be a subamendment, I guess.

**Mr. Mark Schaan:** In the previous discussion about “for greater certainty” clauses, it was because there was an itemized list. This is just for the purposes of national security, which is obviously broadly defined, and then we have guidelines that are already articulated.

“For greater certainty” may actually.... We'd have to look at the specific wording to know whether or not it was potentially adding greater certainty or whether it was potentially limiting the national security considerations.

**Mr. Rick Perkins:** Not being a lawyer, that's why we're suggesting the words “for greater certainty” to deal with it, as opposed to some other—

**Mr. Mark Schaan:** It depends on how they're drafted, unfortunately, Mr. Chair.

● (1820)

[*Translation*]

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

If there are no further comments on NDP-5, I will call the question.

[*English*]

**Mr. Rick Perkins:** Can I propose a subamendment that just adds—

[*Translation*]

**The Chair:** I just called the question on NDP-5, Mr. Perkins. If there's unanimous consent to go back and allow you to move a subamendment, I'm prepared to hear it.

[*English*]

We didn't pass it. I just put it to a vote.

I'll let you quickly move your subamendment, Mr. Perkins.

**Mr. Rick Perkins:** I don't have this written out. It starts with “In determining whether”, and I want to add the words “For greater certainty” before that.

**The Chair:** Has everyone heard the terms of the subamendment proposed by Mr. Perkins?

The legislative clerks are asking if you could you repeat that, Mr. Perkins.

**Mr. Rick Perkins:** In NDP-5, the start of (1.01) would be “For greater certainty,” and then it would continue on in the way it is written.

**The Chair:** Everyone has heard the terms of the subamendment proposed by Mr. Perkins.

Mr. Vis.

**Mr. Brad Vis:** I'll speak to the subamendment.

I wish Mr. Masse were here today. This is a really important amendment, when you think of businesses such as TikTok, for example, coming into Canada, and using Canadians' information. I wish he were here to speak to it, frankly, because he knows the subject pretty well, and we would have been better informed. That's not the case today.

As we're going to be debating in the fall and examining very closely...Canadians are very concerned about protecting their personal property. This subamendment, along with the subsequent amendment, will go a long way in ensuring that foreign companies protect the rights and privileges of Canadians and don't use their information in a negative way.

I'm concerned, especially in the realms of social media and companies already operating in Canada, that we don't have more provisions in place already to ensure that we have the information we need.

With that, my comments are done.

[*Translation*]

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

If there are no further comments, I will call the question on Mr. Perkins' subamendment.

Madam Clerk, please proceed with the vote.

(Subamendment negatived: nays 6; yeas 5)

**The Chair:** We're back to NDP-5.

Mr. Perkins, you have the floor.

[*English*]

**Mr. Rick Perkins:** I lost my place. Don't worry about it.

**The Chair:** We are starting the roll call on NDP-5. I believe we had ended debate.

[*Translation*]

Shall NDP-5 carry?

(Amendment negatived: nays 6; yeas 5)

● (1825)

**The Chair:** That brings us to the vote on clause 15.

[*English*]

**The Chair:** Do you have an amendment to clause 15, Mr. Perkins?

**Mr. Rick Perkins:** Yes, and the clerk has copies of it. Perhaps she could circulate it.

When I was reviewing the amendments we submitted last week, there was one area of testimony I was concerned about that we hadn't addressed. I think we had a discussion. A lot of it came from Mr. Balsillie and a few others.

It is the area of intangible assets. I would propose—and the amendment is being circulated now—that Bill C-34, in clause 15, be amended by adding after line 18 on page 8 the following: “(1.01) In determining whether to make an order under subsection (1), the Minister shall have regard to whether the non-Canadian could, as a result of the investment, have...the right to use intellectual property whose development has been funded, in whole or in part, by the Government of Canada.”

I'm sorry. I'm reading the wrong amendment, am I not? I'm sorry. That's the wrong one.

**The Chair:** Just to be clear, Mr. Perkins, is it the amendment referenced 12524557? I think that's the one.

**Mr. Rick Perkins:** Yes, I read the wrong one. I'm sorry.

Is it 751?

**The Chair:** I believe you were reading the right one. It's 12524557.

**Mr. Rick Perkins:** As it is, the primary purpose of that follows up on recommendation 6 from the report I referred to earlier, which said:

> 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.

It arises from the testimony and the committee report on this that said that the minister should have more power to deal with intangible asset sales.

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

Just to make sure and be clear, the amendment is the one referenced 12524557.

Are there any comments or questions?

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

**The Chair:** Shall clause 15 as amended carry?

(Clause 15 as amended agreed to [*See Minutes of Proceedings*])

(On clause 16)

**The Chair:** Are there any amendments to clause 16?

Go ahead, Mr. Perkins.

**Mr. Rick Perkins:** I didn't give them this one. I'm sorry. It's 12525376 to clause 16, that Bill C-34 in clause 16 be amended by adding after line 28 on page 10 the following:

> (2) section 25.4 of the act be amended by adding the following after subsection (1):
>
> (1.1) If the investment would give the non-Canadian the right to use intellectual property whose development has been funded, in whole or in part, by the Government of Canada, an order made under subsection (1) may require any person or entity from whom or which the Canadian business or the entity referred to in paragraph 25.1(c) is being or has been acquired to repay all or part of any such funding

Again, it comes from the same report from the industry committee from the last Parliament. It called on the government to look at any IP related to an acquisition that is being sold to say that, if that's been done and it's going to a foreign entity, the taxpayer money that may have gone into that through a grant in council or any of the other various mechanisms.... If that IP is leaving the country, then that IP should be repaid.

I know the officials have just gotten it. They can take a look. I don't know if they—

● (1830)

**The Chair:** In any event, Mr. Perkins, we're out of time. We'll keep in mind that, when we resume, we will be at clause 16, with your amendment from the floor being debated.

Colleagues, just to be transparent, given that we've lost a bit of time today and that we are moving very slowly, I'll seek additional resources for after Wednesday's meeting and see how it goes. At Wednesday's meeting, if we make good progress or not, we'll have some extra time to work on this important bill for Canadians. I'm sure you will all agree that it's a priority.

[*Translation*]

Thank you to our friends of the committee, who will be with us again next Wednesday. We hope that will be the end of this work.

I'd like to thank the legislative clerks, the clerk, the support staff and, of course, the interpreters.

The meeting is adjourned.