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Chair

Mr. David Sweet

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● (1530)

[*English*]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): I call the meeting to order.

Good afternoon, ladies and gentlemen. Welcome to meeting 60 of the Standing Committee on Industry, Science and Technology.

We have five witnesses before us and two panels of witnesses, so we need to be expeditious today in our business beforehand.

I'll introduce our guests right now. From the Canadian Bar Association, we have Oliver Borgers and Anthony Baldanza. From the Communications, Energy and Paperworkers Union of Canada, we have David Coles and Guy Caron. We also have Calvin Goldman, who is a partner at Blake, Cassels and Graydon.

I'll start from my left to right for opening remarks. It'll be by organization, with five minutes each for opening remarks. I'm going to stick to that pretty closely, particularly because we only have one hour for this panel, but first we have a bit of business to clear up.

Mr. Rota, you gave notice of a motion. You may speak to the motion now.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): I don't have a copy of the motion with me.

The Chair: Everybody has a copy of your motion.

Mr. Anthony Rota: I'm the only one who doesn't have one. Thank you for the advance notice on that, Mr. Chair.

Voices: Oh, oh!

Mr. Anthony Rota: Basically, the motion is very straightforward. It asks Minister Clement to join us here on March 10 to go over the estimates. I don't think there's anything controversial or unusual there. It's something we do every time the estimates come up. That's basically all it is asking for.

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

I believe I looked around the table last time, when you introduced the motion, and there seemed to be a consensus. Do I have that right now? Is there consensus on that?

Go ahead, Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): I don't have any issue with inviting the minister and I love estimates, but I'd rather deal with the bureaucratic level after you have done the political stuff. Do they also get invited to come?

The Chair: The officials as well as the minister will be here. We're hoping it will be for two hours, but it may only be for one hour. We'll see about their availability.

Mr. Mike Wallace: I may have some difficulty being here next Thursday. Are you hell-bent for that day, or can we do it next Tuesday?

Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.): No, Tuesday is when we're doing the census.

Mr. Mike Wallace: Okay. Why don't we vote on the census now? I'm opposed and you guys are in favour—it's done.

Mr. Anthony Rota: If we can stay with the March 10, I think that would be best.

The Chair: Go ahead, Mr. Lake.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): I just want to clarify the schedule again. Will this push back the Investment Canada Act study even further? Is that as per our discussion last time?

We may want to consider cancelling what will probably be more of a redundant meeting on the census, since we've already had hours and hours of meetings on it. Maybe we want to push that back to put give priority to this Investment Canada Act study. Everybody seems to say it's important, but nobody seems to actually put any importance behind it.

Can we get some clarification on the schedule again? When would the next Investment Canada Act meeting be if we did this?

The Chair: The next one after that would be on the 24th. There's a week in our constituencies between that.

Just for the committee's knowledge, there's also a meeting removed on the private member's bill, because the budget day is the 22nd. Both are set back, for different reasons: one is for the supplementary estimates, and the other is for the budget.

On what we have conceptually in front of us, on the 10th will be supplementary estimates, on the 22nd will be the Minister of Finance's budget, and on the 24th will be ICA.

Mr. Mike Lake: So it will be on the 24th.

In January we moved a motion, which everybody supported, to have an immediate study. Now we're on our third meeting, two months later, at the end of March. I just want to clarify that for the record. It seems as though....

The supplementary estimates are obviously important, but the committee might want to consider moving the study of the private member's bill on the census, which isn't really due to be finished until May. We may want to put that at the end of the Investment Canada Act review, which we all seem to talk about as being important, but only one party seems to treat it as being important.

I'm just throwing that out there.

The Chair: If you're saying that your support for the supplementary estimates on the 10th is based on that, maybe we should put it back to the opposition parties.

● (1535)

Mr. Anthony Rota: I'd like to thank the honourable parliamentary secretary for bringing that up, but no, we'd like to keep it on March 10. I think it would work well for all of us. I do appreciate his bringing that up, because I know it is important to him. We'll just leave it at that.

We already had this discussion a couple of weeks ago or a couple of sessions ago. If we can just stay with what is proposed, that would be ideal.

The Chair: I sense that Mr. Lake has more to say about that.

Mr. Mike Lake: No, I'm okay.

The Chair: Is there any other debate? Seeing no other debate then, those in favour of supplementary estimates on March 10?

(Motion agreed to)

The Chair: Thank you very much, ladies and gentlemen.

Now we'll move on to our witnesses. First we'll hear from Mr. Borgers of the Canadian Bar Association. Please go ahead, sir, for five minutes.

Mr. Oliver Borgers (Chair, Foreign Investment Review Committee, Competition Law Section, Canadian Bar Association): Mr. Chair and honourable members, good afternoon.

My name is Oliver Borgers. I am a partner in the competition law group of McCarthy Tétrault in Toronto. I am here today as the chair of the foreign investment review committee, also known as FIRC. The committee focuses on the Investment Canada Act, which is part of the national competition law section of the Canadian Bar Association.

I am appearing with my vice-chair and friend, Tony Baldanza. Tony is chair of the antitrust, competition, and marketing law group of Fasken Martineau DuMoulin LLP. Both Tony and I are regularly involved in providing legal advice in relation to major transactions that are subject to the Investment Canada Act.

The CBA, as you probably know, is a national association that represents some 37,000 lawyers, judges, notaries, law professors, and law students from across Canada. The CBA's primary objectives include improvement in the law and in the administration of justice.

We thank the committee for inviting the CBA to appear before you and hope that we can be of assistance. We understand that you are undertaking a study of the Investment Canada Act to determine potential approaches to three issues.

In this opening statement we will briefly address each of those three points. Then we would welcome any questions that you might have.

Your first question is whether restrictions on the public disclosure of the rationale behind decisions to approve or reject an application under the act serve Canada's interest, and what form that disclosure might take.

We are of the view that transparency and predictability are very important elements in the proper and fair administration of the Investment Canada Act. It is therefore in the interest of Canada and future potential investors to learn of the rationale behind a minister's decision to approve, and particularly reject, an investment.

The goal of transparency and predictability should not, however, result in any disclosure of an investor's or a target's confidential or competitively sensitive information—unless, of course, they consent. The minister should also not be required to reveal reasons that might be based on national security concerns.

We believe that public disclosure of a minister's rationale on a general level would suffice to build an inventory of decisions that would give future investors and their advisers direction and guidance. As an additional note, we submit that the minister should have an obligation to disclose his or her rationale if a decision is made in the first instance, even if the investor subsequently withdraws the application.

You have also asked whether the act provides for effective enforcement mechanisms and how they could be improved.

The enforcement mechanisms in part VII of the Investment Canada Act are robust and do not, in our view, need improvement at this time. To date we do not have many examples of the government's enforcement activity in relation to the Investment Canada Act. There is therefore no basis to conclude that the current mechanisms are insufficient. The discretion of the enforcement officials determines how often the provisions are utilized, of which there have only been a few to date. In our respectful view, only once there is a body of decisions under part VII of the Investment Canada Act would we be able to assess whether they are sufficient.

We would remind the committee that the current provisions provide for the court to make any order as, in its opinion, the circumstances require under subsection 40(2), including divestment, injunctions, directing an investor to comply with an undertaking, and penalties of $10,000 for each day of contravention. These enforcement mechanisms are, as we said, robust and are likely adequate to ensure adherence to the act.

You have also asked whether consultation with provinces affected by a decision would serve Canada's interest and what form those consultations might take.

It is our understanding that the government divisions that administer the review of investments—the investment review division of Industry Canada and the cultural sector investment review division of Canadian Heritage—do currently consult with all affected provinces in respect to any investment that is subject to review under the Investment Canada Act, consistent with the investment review factors set out in paragraph 20(e) of the act.

We are of the view that the confidential consultation process currently in place is appropriate. The competition law section would not advocate public consultations. We would suggest, however, that the feedback received by the government in the consultations be communicated to the investor, which is currently not the practice.

● (1540)

We hope that our brief opening statement was helpful. As indicated, we would be pleased to respond to any questions you might have.

Thank you.

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

Now we'll go to the Communications, Energy and Paperworkers Union of Canada. Is it Mr. Caron or Mr. Coles who will make the opening statement?

Mr. David Coles (President, Communications, Energy and Paperworkers Union of Canada): We're going to split it, sir. I will present for two and a half minutes in English, and then Mr. Caron will do it *en français*.

We are not going to bore you with all the details in our written presentations. I think they're in both languages. I'll make some remarks on the highlights.

Who are we? We are a national union that represents industrial and private sector workers in many of the key sectors of our economy, from the bitumen sands to potash to telecommunications and so forth.

We see a number of problems with the current legislation. One is transparency. There were approximately 18,000 foreign investments made, of which 14,000 were takeover bids and 1,600 were reviewed. The question has to be, "Why?"

We suspect the reason is that the thresholds are too high. Since 1985 or thereabouts, approximately $1 trillion in foreign investment has been made, of which only $21.5 billion has not been for takeovers. Foreign investment means, with a few exceptions, foreign takeovers.

Why should we care? The answer is that 50% of all investment was for takeovers of resource-based primary industries in Canada: oil and gas, mining, and primary metals. We find that problematic when those are, in fact, the key sectors of our economy, which we believe should be under the control of Canadian companies for a whole series of reasons. A strategic investment strategy based on our own resources, controlled by our own companies, has to be a cornerstore of that strategy and of our economy.

I'll now turn it over to Guy Caron to talk about telecommunications.

[*Translation*]

Mr. Guy Caron (Director, Special Projects, Communications, Energy and Paperworkers Union of Canada): I will make this short.

Telecommunications is an interesting case. You know very well that Minister Clement announced his intention to open this industry up soon to foreign investment. We also know that the three large companies that are currently sharing the market are not very popular and that people see this decision as a positive one. However, we should keep in mind that, over the last two years, Canada has gone from 4 to 11 mobile network operators. We are the second country in terms of mobile network operators. Other countries, with the exception of four countries that include Canada, have a maximum of four mobile network operators. So, even though they allow foreign ownership, those countries don't have more than four mobile network operators.

What I'm trying to say is that, if we allow foreign ownership, it is obvious that the easiest solution for companies like AT&T, Vodafone or others that want to integrate the market is not setting up a parallel structure, but rather acquiring existing companies. When all is said and done, the result will not necessarily be more competition.

In this case, if such a transaction is brought before Industry Canada, the issue will consist in determining whether, though it does not involve natural resources, for instance, the transaction will be assessed to determine if it is to the benefit of Canada and what this benefit is based on. There is currently no way to know this. We think that this will not be the case, but transparency is a glaring issue here. The brief I submitted also talks about our concerns regarding tar sands and the mining sector. We see the transparency issue as a key one.

● (1545)

[*English*]

Mr. David Coles: In conclusion, sir, and panel members, one issue that I think is important to all of us and to investors is that there be a clear definition of the term "net benefit to Canada". What is it? What does it mean, and can both Canadians and investors understand it?

As well, our issue around enforcement is that it doesn't appear to be working at all. If you look at all of what we believe to be infractions of promises made by Vale Inco and others, it doesn't appear that enforcement was any deterrent.

We do not support blind protectionism—that's not in the best interest of Canada—nor do we support total laissez-faire and leaving it up to the market. I've never been introduced to this guy named "the market", and politicians can't get hold of the rationale for the market, so we think that you have to attempt to find some middle ground.

Thank you very much.

The Chair: Thank you, Mr. Coles.

Mr. Goldman is next.

Mr. Calvin Goldman (Partner, Blake, Cassels and Graydon LLP , As an Individual): Thank you, Mr. Chair, and honourable members.

My name is Cal Goldman and I'm a partner at Blake, Cassels and Graydon, based in Toronto, where I co-chair the competition, anti-trust, and foreign investment group. I'm here today at the invitation of the committee, which I appreciate. I'm speaking in my personal capacity.

Like my colleagues from the Canadian Bar Association, I've been regularly involved in providing legal advice on major transactions that have been the subject of review under the Investment Canada Act. I've been doing this since the late 1980s, at which time I was in the public sector as head of the Canadian Competition Bureau. Since the early nineties, I've been a counsel in the private sector. I hope my opening remarks will assist the committee.

Let me start by saying that I agree with and support the comments made earlier by my colleagues from the Canadian Bar Association with respect to the three specific topics being addressed on a primary basis by this committee.

First, transparency and predictability are important elements in the proper administration of the Investment Canada Act, subject to important considerations regarding the protection of competitively sensitive or confidential information, as provided for in section 36 of the act.

I have one suggestion. It may enhance both the transparency and predictability of the process if the minister, upon making a decision, could consider issuing more detailed backgrounders, as is done with decisions on major merger cases in Competition Act proceedings, subject to confidentiality and protection of competitively sensitive information. Some backgrounders run three or four pages or more.

Second, as to the enforcement mechanisms in the act, in my respectful view, they do not require statutory amendment.

Third, the consultations process set out in the Investment Canada Act does not require amendment either. The statute is clear that the decisions under the act by the minister are to be made by the minister with consultative input from affected provinces rendered and with the net benefit of Canada in mind.

I have a few more suggestions that I'd like to put on the table. If time doesn't permit now, I'm happy to amplify upon them if the committee would like me to address them. They go to the fundamental principle that to make informed decisions on whether to invest in Canada, investors need to know with reasonable certainty and predictability the governing principles applicable to foreign investment decisions. To Canada we want to attract proper, sound investments for the benefit of the Canadian market, as determined by the minister, with the net benefit test applicable to such investments.

In that regard, I would suggest that any continued discussion that has appeared in media and otherwise about the use of terms such as “strategic acquisition” or “strategic resource” in considering a particular transaction raises considerable additional issues of uncertainty. The concept of a strategic asset, as was discussed by the assistant deputy minister and deputy director of investments Marie-Josée Thivierge in her statements of February 17, is not in the statute. Since those words are not in the statute, the discussion of them in media in relation to possible transactions, in my respectful view, based on what I've heard from colleagues at the bar and business people both in Canada and abroad, serves to generate uncertainty. I want to flag that for the committee's benefit. It's a subjective term, “strategic”. It assumes different meanings in the eyes of different stakeholders.

The second suggestion that I'd make is to provide enhanced summaries. These would result in greater transparency and a deeper stakeholder understanding of the reasons behind the minister's decision.

A third initial suggestion is greater use and encouragement of confidential guidance. This is already provided for in the administrative guidelines in the act, but it can be the subject of greater awareness to the business community in considering possible transactions. It works under the Competition Act, and I think it could be made to work even more so under this act.

These suggestions do not require statutory amendments and can be effected by administrative process through the direction of the minister. Parliamentarians may decide that the act needs to be amended; in my respectful opinion, however, no such amendments are necessary at this time.

I recognize that this is in Parliament's mandate, not mine. I'm just offering my views.

● (1550)

Those are my initial remarks, and I'd be pleased to respond to any questions.

Thank you.

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

Mr. Mike Wallace: Do you have notes of your speech that you could submit to the committee?

Mr. Calvin Goldman: Yes, I do. I've given a copy—

Mr. Mike Wallace: Is it in both languages?

The Chair: It's okay; we'll have them translated, and they'll be distributed.

Mr. Calvin Goldman: I didn't have time. I got the invitation a week ago.

The Chair: That's quite all right, sir.

We're going to move on to questions now, and because we have another panel and a limited amount of time, we'll go with five minutes each.

We'll go first to Mr. McTeague. You have five minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Chair, and thank you for being here, witnesses. To those I've known for a good part of my life, Mr. Borgers, and to Mr. Goldman, whom I've known for a good part of my political life, it's great to have you here, as well as members of the CEP.

I want to start with you, Mr. Goldman. You've offered something here in the way of an alternative. You've suggested, on the question of transparency and predictability, putting together a backgrounder that would amplify and give light to the reasons. I'm not suggesting building case law, but at least it would give greater understanding and certainty.

I wonder, Mr. Goldman, if you've had an opportunity as an individual to discuss this idea with Mr. Borgers of the Canadian Bar Association. Perhaps I could also canvass their ideas as to whether they've looked at this at all or if they'd care to give a comment.

Mr. Calvin Goldman: Thank you, Mr. McTeague.

I haven't discussed it with my colleagues from the Canadian Bar Association in advance of presenting this today. The overriding and balancing consideration at all times, in my respectful submission, must be section 36 of the act and the parallel need to protect competitively sensitive information, as is done with backgrounders under the Competition Act.

I say it's overriding and fundamental because not only does the statute currently require such protection for privileged information under the terms of section 36, but in attracting investments to Canada the principles of fairness in a competitive marketplace, which you and your colleagues are certainly very, very familiar with, necessitate that an investor—an entity taking on a position in a business in Canada—not face unfair disadvantages.

Those disadvantages would arise if a highly sensitive competitive plan for specific capital expenditures, for example, or other such strategic investments or plans were the subject of public disclosure, which their competitors could see, while the competitors did not have to disclose. In my respectful submission, issuing broader and more detailed backgrounders can be done, as is done in the Competition Act, while balanced at all times with the need to protect the kind of information that has a long history of being protected in the competition reviews.

It can be done. It takes considerable time, and I'm not suggesting that the minister and his officials aren't prepared to devote that time. It's an example of an area that does achieve some more informed discussion and helps businesses going forward. It also helps the public in understanding and appreciating the reasons for the decisions.

● (1555)

Hon. Dan McTeague: That's very thorough. Thank you, Mr. Goldman.

I know that you, Mr. Goldman, and Mr. Borgers and Mr. Baldanza have all had extensive experience in competition law, and I wonder whether you would advocate or consider—not necessarily advocate—guidelines very similar to what you have in the Competition Act. I realize that all transactions are not one-size-fits-all, but at least to provide against or repel the perception of decisions based on whim, might that be considered a second step? We already have, if you will, some background, some understanding of how those kinds of transactions take place on a domestic basis. Could we transpose that to have an effect when it comes to ministerial decisions?

We understand there are limits in terms of security. We've seen this in the past in terms of certain jurisprudence. I think we all understand the importance of keeping information in such a way that it does not harm the parties that are there, offering—as the Canadian Bar Association has suggested—that advice be given or concerns be raised with the potential investor, but I'm wondering if there is a more precise way of doing this—in other words, perhaps an issue of reciprocity. What are the international best practices in this area? Have we gone beyond simply the question of saying we'll have a little bit of transparency? Are guidelines a possibility, are international best practices a possibility, and what about the implications of reciprocity?

Mr. Borgers, I'd love to hear from you.

Mr. Oliver Borgers: Certainly, Mr. McTeague. It's my pleasure.

In answer to your earlier question, while we've not discussed Mr. Goldman's suggestion of backgrounders, without a doubt the Canadian Bar Association supports disclosure information, subject to concerns of confidentiality, from the minister's office and the Industry Canada divisions that administer this law.

The act currently allows the minister to give reasons for decisions for approvals and requires the minister to give reasons for rejections. Whether you call those reasons or backgrounders, I think the concept is fundamentally the same. We want some information, some guidance, that allows for that transparency and predictability and that allows advisers and investors to understand what might be coming from those types of decisions.

In terms of international practices, Canada is relatively unique in this kind of law. Unless you're looking to Australia or New Zealand, you probably won't find an international standard, because it is a law that is somewhat unique to Canada. In terms of guidelines, the divisions right now that administer this law for Canadian Heritage and Industry Canada do issue guidelines in certain subject areas—for instance, state-owned enterprises and cultural investments that are of concern—and we would, of course, encourage those divisions to continue to issue many more of those guidelines to assist all stakeholders.

The Chair: Thank you very much, Mr. Borgers. That's all the time we have for that round.

We'll go on now to the Bloc Québécois and Monsieur Bouchard.

[*Translation*]

You have five minutes.

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chair. I will share my time with my colleague Mr. Cardin.

Mr. Serge Cardin (Sherbrooke, BQ): If there is any time left.

Mr. Robert Bouchard: Good afternoon, gentlemen. Thank you for coming to testify. My first question is for Mr. Caron.

Mr. Caron, you know that the Investment Canada Act enables the Minister to set certain conditions when assessing a foreign investment. Given that this has been the case for several years, I would like to know whether foreign investors have a solid record in this regard and whether they have complied with the set conditions related to, for instance, minimum employee levels at the head office.

Mr. Guy Caron: I will answer together with Mr. Coles, the Union President.

An example that comes to mind is that of Vale Inco. Vale had acquired Inco, and certain conditions were involved in the purchase. Those conditions were related to employment and were not complied with, as we later learned.

Clearly, we are talking about possibilities that are covered by the legislation, but these conditions must be applied and used to impose the government's will on those who do not comply with the terms of the legislation or of their agreements.

The Vale issue was actually of critical importance, especially in Sudbury's case. We are currently witnessing the same thing in Thompson.

What bothers us somewhat, when it comes to the lack of transparency, is the fact that people are not always aware of the conditions involved, except for those that are published or reported publicly.

In addition, a lot of time was invested in providing Vale Inco with all the relevant information. Therefore, we can have well-written legislation, whether it is amended or not, but we still have to have the will to enforce it, which didn't happen in this case.

● (1600)

[*English*]

Mr. David Coles: The additional modern example—and there are a number—would be the U.S. steel situation in which, once again, transparency is the issue, because we don't know all that was promised. What is public knowledge is that they did not live up to their commitment with regard to employment and operating certain portions of their operation in Canada.

Those are the two most modern we're aware of, but there are others that have taken place. Without knowing exactly what the conditions were, it's very difficult to see what else was violated.

[*Translation*]

Mr. Serge Cardin: Good afternoon and welcome, sir.

I view as important the elements of transparency, predictability, enforcement mechanisms that you describe as "robust," consultations and the need to inform investors of the outcome of those consultations. Last week, if I'm not mistaken, Industry Canada provided us with a document on the Minister's decision that supports the importance of these elements.The document stated the following —and this came from the Minister: "The Minister's decision is an exercise of discretion and final, not subject to appeal. Process may be appealed to the Federal Court." According to this, transparency is eminently important and mandatory. It enables us to get as much information as possible on issues of safety, competitiveness and confidentiality, of course. I think that these are important elements.

The act is currently before the committee. Which elements do you think it would be important to improve? You talked about what's working well, but what provisions of the act require improvement? Messrs. Caron and Coles also gave us a few suggestions. Competition and investments are vastly different considerations. Therefore, there should be guidelines not only for encouraging takeovers, but also for attracting new investments and encouraging the setting up of new companies. Mr. Caron talked to us about telecommunications, which is an obvious example. A representative of Globalive, a foreign company, actually went to the Federal Court.

What can we do to improve the Investment Canada Act even further and to make sure that net benefits are known and understood in a transparent way?

[*English*]

The Chair: Monsieur Cardin, you are way over the time limit on your question, so we'll have to leave that with the witnesses, and if they want, they can to try fit it in at another time. *Excusez-moi, monsieur.* I'm sorry. We're way over.

Keep that question in mind, if you want to try to fit it into one of your answers.

Now we go to the Conservative Party. Mr. Lake, you have five minutes, please.

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

Thank you to the witnesses for coming today.

Mr. Coles, you've been pretty clear: you made the statement that more investments should be reviewed. What specifically should be the threshold for review, in your view?

Mr. David Coles: My own personal experience of late has actually had to do with the transparency of what's required and what would make the test of net benefit to Canada.

I'm in a strange situation for a trade union leader: I have been around the world trying to market pulp and paper mills to foreign companies. I have to find commercial lawyers for them to talk to, and it always comes back to questions like the net benefit to Canada and what they mean by that.

That's one area, but I think that—

● (1605)

Mr. Mike Lake: Do you have a dollar value? I only have a short amount of time and I have lots of questions.

Mr. David Coles: Arbitrarily you could look at the numbers, and if you reduced it by half, one would calculate that probably far more of the investments would be reviewed, and you could have some comfort that the act is being administered. If you raise the threshold, as some suggest, then it just means fewer get reviewed.

Mr. Mike Lake: So you're talking about half of the $312 million?

Mr. David Coles: It's a suggestion.

Mr. Mike Lake: Mr. Borgers and Mr. Goldman, what impact would that have? What are your thoughts on that?

Mr. Oliver Borgers: Lowering the threshold would of course increase the number of transactions reviewed by the Minister of Industry.

Mr. Mike Lake: Yes.

Mr. Oliver Borgers: The acquisitions of cultural businesses are at the lower $5 million threshold at this point.

Mr. Mike Lake: What impact would that have on foreign investment in Canada?

Mr. Oliver Borgers: It's hard to predict what impact it would have on foreign investment. It would increase the number of reviews by government.

Mr. Mike Lake: Okay—

Mr. Anthony Baldanza (Vice-Chair, Foreign Investment Review Committee, Competition Law Section, Canadian Bar Association): Might I just build on that? In terms of lowering thresholds, we are constrained under the treaties Canada has negotiated in terms of reverting to a lower review.

Mr. Mike Lake: Maybe I can have you comment a little further, because there has been talk about having a clear definition of net benefit, for example. I was going to come to that question. As you talk about having a clearer definition of net benefit or having tighter restrictions, what impact would that have from a treaty standpoint, in your view?

Mr. Anthony Baldanza: I don't think clarifying the meaning of net benefit would conflict with our treaty obligations, so I think there is opportunity there.

That being said, it strikes me that it is something that might be elucidated through guidelines rather than through legislative amendments.

Mr. Mike Lake: There have been some who have talked about adding things to the net benefit factors that we consider. Would that be something that would have an impact on our trade agreements?

Mr. Anthony Baldanza: Conceivably, yes.

Mr. Mike Lake: How so?

Mr. Anthony Baldanza: To the extent that it involves a further restriction on foreign investment, it would conceivably violate our treaty obligations.

Mr. Mike Lake: Okay.

Mr. Coles made the statement that enforcement is not working at all, and yet, Mr. Goldman and Mr. Borgers, you've actually recommended no change to the enforcement provisions. Can you elaborate on that a little bit? Why would you say that there is no need to change?

Mr. Goldman can go first.

Mr. Calvin Goldman: I submit that there is no need at this time to change the enforcement provisions because the sections of the act contain multiple provisions with extensive powers that the minister has, including the ability to resort to the Superior Court to make a range of orders from divestiture to compliance to penalties, and so on. The act does have a very strong structure in it following the monitoring process.

In recent years we've seen some issues falling out of the financial crisis, but when you go back and look at the history of this act, since it was first brought in, in 1985, there really haven't been multiple problems in achieving enforcement or compliance with undertakings that had been given across a very wide range of cases. The powers are there.

There are ways in which it can be supplemented, again without need to amend the act. It may be that the minister's office and the investment review division could be given more staff and more support. It may be that in some instances, particularly in sensitive or high-profile matters and only in exceptional cases, that it is possible to look at what is done in other parallel merger reviews, for example under the Competition Act, such that professional bodies, such as a major accounting firm, are brought in to assist with the monitoring. There are these kinds of support vehicles available to ensure that the powers that already exist in the act, which are quite extensive, are implemented as effectively as possible.

● (1610)

The Chair: That takes up all of our time in that round.

Go ahead, Mr. Angus, for five minutes.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Chair. It's a fascinating discussion.

I come from Timmins—James Bay, which is part of international mining. My neighbours are on international mining crews, and we're no strangers to investment. We live by investment and we invest elsewhere.

I'd like to talk about four cases in my region, because I think they lay out some of the issues we're dealing with.

We had De Beers, Georgia-Pacific, Xstrata, and Vale.

De Beers came in and set up public meetings. They signed impact benefit agreements with communities. They have basically tried to have, as well as they can as a massive multinational mining company, an open door policy with regional politicians if there were problems with communities, and they invested $1 billion. We have a major economic driver in our region that we might not have had.

Georgia-Pacific came in after Xstrata and Vale, and we will get to those two characters in a minute. They came in to buy up a company.

Mr. Coles, it was one of your locals that had gone into receivership, one of the largest OSB mills in North America, and there were lots of concerns.

We held public meetings. They weren't official public meetings, but people had concerns. The unions came, the community came, and we asked lots of questions. Georgia-Pacific was approved, and they've invested in the mill and are trying to be, as far as we can see, good corporate citizens. We know that CEP supported that. There's another example. We could have had a mill go down or we could have a mill that's reinvested in. As much as we'd like to have it local, *c'est la vie*.

Then we have Xstrata and Vale. The issue here isn't just that there were bad or rotten corporate citizens, but that we had the opportunity at that time for a plan between Inco and Falconbridge to merge. These were two companies with an incredible track record. The synergies in the Sudbury basin alone would have transformed the base metal mining industry. They had excellent international reputations.

The question at the time wasn't whether to stop the Xstrata takeover, but to give a Canadian company a chance to get through the regulatory hurdles. This government decided that they weren't going to give the Canadian companies the chance. Then they gave the go-ahead to Xstrata, a company with a pretty poor record. Anybody looking at Xstrata would know they were there for the short term, not the long term.

What have we seen? We've seen them high-grading the deposits. They've shut down the copper refining capacity of Ontario. We've seen Vale basically wage war against Sudbury, Voisey's Bay, and Thompson, Manitoba. If you to talk to labour or to anybody in the industry, they'll tell you that it's the equivalent of the Avro Arrow for Canada's mining industry in losing the power that we had with Falconbridge and Inco to these two corporate bandits.

Mr. Coles, your people were involved in one of these takeovers. Is it a failure of the act, or was this just a basic failure of due diligence?

Mr. David Coles: As I said before, I'm certainly not opposed to foreign ownership, because they bailed out a lot of Canadian corporations that had gone bad. The minister made a decision. Whether I agreed with it or didn't, he made the decision, and that's his political right.

My problem again is enforcement. Maybe the lawyers are right. Maybe it's in the act that you can do it, but it's whether the minister wants to do it. Our problem is that promises were made; one corporation won over another by making these promises, and they were never required to live up to them.

It's not that we're anti-foreign investment at all. The problem is enforcement. I'm not a lawyer, but I think it's at the minister's discretion that they weren't enforced.

Mr. Charlie Angus: Mr. Borgers, I'll ask the question to you, then. With U. S. Steel we have three companies that I think have made it difficult for many foreign companies coming in. I've talked to Georgia-Pacific, and they said to me, "Listen, we came in after Vale and Xstrata. We understand that people are feeling pretty raw, and they are double-guessing everything we are going to do".

Was this a case of just three rogue players who thought they were going to take some assets and didn't play well with the Canadian public? If that's the case, should we learn from that, or, as has been suggest by some, is there a problem that this happened in the first place?

● (1615)

The Chair: Be as brief as you can be, please.

Mr. Oliver Borgers: I'm really not in a position to comment on any particular transaction. The investors would, no doubt, have made an application to the minister and supplied all the information required and requested, and I think there's no doubt that they all would have entered into lengthy and detailed written commitments in respect of those investments.

The reasons for enforcing some but not others rests with the administration and the minister. I think we here have insufficient details to understand the differences because of a very important element, which is the protection of confidential and competitively sensitive information. I think investors would find it difficult if that were put out in the marketplace, because of the competitive disadvantages that it would cause.

The Chair: Thank you, Mr. Borgers.

Madam Coady is next, for five minutes.

Ms. Siobhan Coady: Thank you very much for being here today. I certainly appreciate not only your time but also your intelligent and well-researched comments.

I've been listening to you today as you've talked about the need for guidelines and backgrounders, greater transparency, and those types of issues. I hearken back to the 2008 Red Wilson report, "Compete to Win". It talked about greater transparency. I think it talked about predictability and timeliness. I happen to have a copy of it here. I'll just read a couple of lines from it. I'd like to know from Mr. Goldman, Mr. Borgers, and maybe Mr. Coles if this is what we're talking about when we're talking about transparency.

It says in the report that they recommend requiring ministers to report publicly on the disallowance of any individual transaction, and in so doing giving reasons for the disallowance, and that their annual report should provide information on the development of any new policies or guidelines as an overview of all transactions related to the ICA and undertakings provided by foreign investors. Then further down the page it talks about how the government should also make increased use of guidelines and other advisory materials to provide information concerning the review process.

This was two years ago, in the "Compete to Win" report by Red Wilson.

Mr. Goldman, are you familiar with the report? Is this what you're talking about when you're asking about using guidelines, backgrounders, greater transparency?

Mr. Calvin Goldman: Yes, indeed. That report has a number of very well thought through and well-considered recommendations. I was one of a number of individuals and stakeholders who appeared before the panel.

The recommendations for additional guidelines are certainly in the same direction that we're talking about today. I'd add one supplement.

There are other laws in Canada, the U.S., and elsewhere such that, as Mr. McTeague indicated, guidelines have been used to add flesh to the framework, to give both investors—parties that may be considering mergers or acquisitions—and the public and interested parties—that is, stakeholders across the marketplace—much more appreciation of the particular statutory provisions that are listed. For example, the key factors in section 20 will be applied with more specificity by the enforcement body, by the investment review division, and ultimately by the minister.

That has been done in merger reviews. It is currently the subject of further consideration—which Mr. Borgers and Mr. Baldanza are participating in—by the Competition Bureau.

Ms. Siobhan Coady: Mr. Borgers, you did mention Australia and New Zealand.

First of all, before I finish with the Red Wilson report, Mr. Goldman, what I'm hearing from you is an urge to have government implement the recommendations.

Mr. Calvin Goldman: I only want to be taken as suggesting that it's an area that does warrant further consideration and study.

Mr. Oliver Borgers: I echo my colleague's remarks. In terms of the Red Wilson report, amendments were made to the law that require the minister to give reasons for disallowance, so that was implemented. I understand the investment review division is working on an annual report, so that also appears to be in the works, and while we strongly encourage more guidelines from the investment review division and the cultural sector investment review, Heritage Canada is right now working on a new and more detailed book distribution policy as well, so some of that definitely seems to be in the works.

Tony, do you have any elaboration?

● (1620)

Mr. Anthony Baldanza: I would concur with what Oliver Borgers has just said. There are steps being taken with respect to transparency. In many ways—and this echoes a sentiment expressed by Cal Goldman—the Competition Bureau and its practices might be viewed as a bit of a template or model for proceeding in respect of transparency. There are lots of guidelines, there are backgrounders, and there's a fairly high level of predictability that decisions are made on a principles-based system. That's something that can assist in this regard.

Ms. Siobhan Coady: Thank you.

I have one final question to Mr. Coles. I have only a few moments.

You spoke about clear definition of net benefit. Then we heard a little bit later from another person about how a strategic asset or resource is not really in the statute. Would you care to clarify or give a little bit more of your rationale regarding the clarity around net benefit? Do you have any suggestions or thoughts, or just a direction for us, to clarify that?

Mr. David Coles: Very briefly, it's a request for direction. I'll argue with you on whether you got it right or wrong, as long as there is a definition. With any foreign investor I've been dealing with, one of the first questions they ask is what it means. For them to have a fair footing, there has to be some form of definition.

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

We will move on to Mr. Van Kesteren for five minutes.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair.

Thank you, panel, for appearing before us.

We obviously have some difficulties. We have some areas that we certainly would like to have changed, and every one of you has a different idea about that.

I'm of the firm conviction that what we always should do is look outside Canada. We're not unique. Our circumstances are not unique in terms of our resources, our people, and our system. I would suspect that other jurisdictions have struggled with the same things.

Is there another jurisdiction out there about which we can say these guys have it right or have just about got it right, and they just need to tweak this or that?

I'm going to leave that open.

I'll start with Mr. Goldman. Is there somewhere we should be looking to, one of the other countries?

Mr. Calvin Goldman: Respectfully, in my experience in various international forums and in bilateral communications both from experience in the public sector and for many years in the private sector—for example, last week I was at the OECD, where many nations are in dialogue—I don't think we can suggest there is any one model which has it in a significantly more effective manner.

The law in Canada in this area, unlike competition law, is unique to Canada. Coupled with our net benefit test, which isn't exactly the same as any other law, we have now, since the Red Wilson report and the amendments of Parliament, we have the national security provisions. This is a very challenging statute. It is trying to address consultation with provinces and various policies in our federal structure in the unique dynamics within Canada.

Mr. Dave Van Kesteren: Does the fact that provinces have jurisdiction over their own resources make it a little bit tougher? Is that one of the hurdles we're trying to jump over?

Mr. Calvin Goldman: One of the unique hurdles that Canada is facing now, in my respectful submission, is to provide more clarity on one of the issues you have before you, which is the consultative process with provinces, by clarifying that under the act, no one province has in effect a de facto veto, but rather has important input, with the federal decision being made for the net benefit of Canada. This would go some distance in enhancing reasonable predictability and certainty, but these are issues unique to Canada in the current environment.

I hope I am answering your question.

● (1625)

Mr. Dave Van Kesteren: I will go to a few others, but I want to ask you one other question. Are we getting the reputation that we're closed to investment?

Mr. Calvin Goldman: From various discussions I've had and colleagues I know have had with other counsel and business persons, I don't think we've reached the point where we're getting that reputation. What we do have are questions about what the guiding principles really are when one drills down today in a high-profile matter that raises a host of issues. There are a series of questions from the one I touched on, such as whether there is a de facto veto in a province or whether there is special treatment to be given to a strategic asset. These are in the media. They're apparent to all of us, and because of the great media coverage that has occurred in recent months related to this act, those questions are the ones that are being asked both in Canada and abroad.

That is the way I prefer to answer. I don't think we've crossed the bridge to the level that you were asking about. We just have questions.

Mr. Dave Van Kesteren: Does anybody from the Bar Association want to jump into that one briefly?

Mr. Oliver Borgers: We know of no evidence to date that would suggest Canada is closed for business resulting from the administration of this act.

Mr. Dave Van Kesteren: Do you look at another jurisdiction and say we've got to make some changes here, based on these guidelines?

Mr. Oliver Borgers: There's no other jurisdiction that I would prefer have implemented here in Canada. I think the act does have its benefits for Canada. It's designed for the benefit of Canada. We would like more transparency and predictability so that when non-Canadian investors come here, they have an understanding of what needs to be overcome to secure that investment.

The Chair: Thank you, Mr. Borgers.

Thank you, Mr. Van Kesteren. I'm sorry about the time, sir. We've pretty well run out, and another panel is waiting.

Thank you very much, gentlemen, for your testimony.

We're going to suspend for a couple of minutes so that we can change names and bring in the other witnesses, and then we'll begin again with panel number two.

● _____ (Pause) _____

●

● (1630)

The Chair: We're now resuming our meeting, ladies and gentlemen.

We have three new witnesses before us. From the Conference Board of Canada, we have Michael Bloom, vice-president, organizational effectiveness and learning; from the Canadian Centre for Policy Alternatives, we have Bruce Campbell, executive director; we also have Michael Hart, Simon Reisman chair in trade policy, Norman Paterson School of International Affairs, who is testifying as an individual.

I'm going to follow the order that is in front of you, so I'm going to ask Mr. Bloom to go first.

I'll keep you very close to five minutes for your opening statement, and then we'll get on to questions.

Go ahead, Mr. Bloom, for five minutes, please.

Dr. Michael Bloom (Vice-President, Organizational Effectiveness and Learning, Conference Board of Canada): Thanks, Mr. Chairman.

I think it's important, as we reflect on the Investment Canada Act, to consider that there are several strategic concerns here. One is that it's important to provide a positive investment environment to sustain capital flow into Canada.

Second, it's important that we ensure that investments are transparently economically based rather than political or governmental in original. We should at least be clear about whether or not they are.

Third, it's important to sustain the confidence of the international business investment community in fairness and openness when it comes to opportunities in this country.

We have done some work on the issues. We did a report on PotashCorp for the Government of Saskatchewan last fall. We've done some other work on corporate takeovers, mergers, and acquisitions. Our findings, through our work, are that they are net mildly beneficial and that there are certainly lots of opportunities through the existing legislation rules to ensure that benefits are obtained for the country. But the issues that seem to be coming up more and more are how we understand the issue, how we reasonably and fairly assess it, and how we communicate that to ourselves and to people outside the country.

In our work we came up with a typology of takeover effects for acquisitions. We looked at shareholders, governance, management, operations, capital, people, and community effects. We used that typology in our potash study, which was not intended to draw the recommendation of the Government of Saskatchewan but rather was for analyzing scenarios for takeovers and options.

Out of that, I have come up with some recommendations, which I think would be useful. First of all, and you may have heard some of this, consider a set of criteria and metrics to apply to all reviewed mergers and acquisitions. Again, the Competition Act may be a bit of a model.

Second, if you do it, have a typology that covers the full range of benefits. Get beyond the narrowly financial and look at the full range of benefits and costs as a basis for assessment.

Third, make these criteria and metrics well known to the investment community in Canada and abroad so that people know the rules of the game.

Fourth, consider the term “strategic asset” or “strategic resource”, and either explicitly reject it as a part of this or, if you accept it, provide a definition and associated tests that would make it understandable in the real world of potential takeovers.

Fifth, consider making the results from the reviews known publicly, either in summary form or in full form, so that markets gain a clear understanding of the decision-making process. The next time people are considering an opportunity, they will be able to gauge a priority and whether it is likely to work.

Sixth, clarify the criteria for mergers and acquisitions by state-owned enterprises. Are there some no-go sectors, beyond what we already have, that we really aren't interested in having people come into, such as some kinds of resources? What about a state-owned enterprise that is partnered with Canadian organizations? What relationships would be allowable there? Is there a standard for control, and so on?

Seventh, similarly for sovereign wealth funds.

Finally, clarify the role of provinces. Do they have anything more than an advisory role, de facto or de jure? Should they? How can that be set out for understanding the federal-provincial relationship?

I'll stop there.

● (1635)

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

We'll move on to Mr. Campbell for five minutes, please.

Mr. Bruce Campbell (Executive Director, Canadian Centre for Policy Alternatives): Thank you, Mr. Chairman.

I'm going to start by making a number of observations. First, all of the major recipient countries of foreign direct investment limit it in key or strategic sectors, and all have review or screening mechanisms. These do not appear to significantly affect overall FDI flows.

Brazil, for example, has foreign investment limits on mine assets. In certain areas, only majority-owned Brazilian companies can operate. It's interesting that the takeover of Inco by the Brazilian company Vale, had it been the other way around, would have almost certainly been rejected. The government holds golden shares that protect Vale from unwanted foreign takeover.

In the case of Australia, which has rules similar to our own, the regulator has indicated a clear preference for foreign investments in its large companies to be kept below 15%. The takeover of Alcan by Rio Tinto, an Australian company, would likely have been rejected had it been the other way around.

The U.S. screens foreign direct investment. The main tool is the national security clause, which is notoriously undefined. You know that it has been used. It was used in the United Arab Emirates company Dubai Ports World in its purchase of the U.S. company that ran the U.S. ports system. It forced it to sell off its U.S. operations. It was also invoked in 2005. The Chinese state-owned oil company was forced to drop its bid for the U.S. oil company, Unocal.

My second observation is the obvious: that Canada is open to FDI and can't be accused of not being so. You know the figures on the approvals of takeovers by Investment Canada, and it only reviews 10% of takeovers. Foreign-controlled corporations held 56.4% of manufacturing assets in 2008—those numbers just came out today. And foreign-controlled companies held 45% of operating revenues in the oil and gas sector. In 2006, foreign control over Canada's mining sector assets rose, in the wake of takeovers, to 47.4%, and in the case of operating revenues, to 66%. So Canada is definitely open.

We know there are problems. We've heard about some of them today. I listened to part of the last panel and the issues of transparency. The minister himself has indicated that his government wants to compel foreign investors to make their undertakings public on jobs, local processing, technology transfers, etc.

I'm sure you're also aware of some of the high-profile examples where the process broke down. In the case of Vale Inco, amongst its undertakings were no layoffs for three years and employment not to fall below 85%. It cut 463 jobs in 2009, and in the face of really stringent concessions, it forced a long and bitter strike in Sudbury and elsewhere. It finally announced last fall that it was closing its operations in Thompson, throwing 500 people out of work—and that's 40% of the city's workforce.

With the Australian company, Rio Tinto, and Alcan, commitments were made and they weren't lived up to.

The final example is the steel industry, which in the space of a few years was pretty much sold off.

● (1640)

I would say that in revisiting the foreign investment review policy, it should be part of a broader industrial policy. This would include a plan for protecting, nurturing, and developing strategic natural resources, strategic technologies, and strategic sectors.

The Chair: Thank you, Mr. Campbell. I'm sorry, we're well over the time.

Mr. Bruce Campbell: I was going to indicate a couple of suggestions for changing the act. I'll do it in the questions.

The Chair: That would be great. You'll have a chance. We have enough time for questions.

Mr. Hart, for five minutes, please.

Professor Michael Hart (Simon Reisman Chair in Trade Policy, Norman Paterson School of International Affairs, Carleton University, As an Individual): Thank you, Mr. Chairman.

I'm here as a private individual, a former official, and currently as a professor of public policy, so I can stand back and take a broad look at this.

When you put this into the context of broader Canadian interests, over the last 60 or 70 years, Canada has participated actively in efforts to reduce impediments to international exchange, whether that be of goods or services or capital.

In the earlier panel one of the members asked where Canada stood compared to others. My view would be, unlike Mr. Campbell, that Canada is an outlier. Among OECD countries, Canada is an outlier along with Australia.

I take the view that we have come a long way since the foreign investment review act. When it was passed in 1984, the Investment Canada Act, served a very useful purpose as a transition instrument. But I think in the world we live in today, decisions about what to buy, whom to buy it from, and where to invest should largely be left up to private sector interests, whether they be consumers or investors.

From that perspective, I thought the report that Red Wilson did for the government a little over two years ago on competition policy in Canada, and which also looked at investment issues, was spot on. I was one of the witnesses for that committee. Let me quote his advice:

> ...that any restrictions on foreign investment should be rare, narrowly conceived, limited to very large takeovers, and grounded in concerns about national security.

If I were sitting in your chairs, I would be looking seriously at scrapping the Investment Canada Act and replacing it with a narrowly conceived national security act. Foreign investment restrictions are a very poor instrument for dealing with the issues that people try to use it for.

If your objective is to deal with corporate behaviour, for instance, then you should do that through the Competition Act or the corporations act. If you're trying to deal with fiduciary issues, deal with them through the Financial Administration Act and similar kinds of acts.

Using foreign ownership restrictions almost always has perverse effects. It devalues the assets held by Canadians, reduces the opportunity for Canadians to benefit from foreign capital and expertise, and it reduces entrepreneurship in this country.

I cannot think of any public policy purpose that would be served by foreign ownership restrictions, except in those rare circumstances when the foreign investor is masquerading as a private investor but it is really a government that is investing. When governments invest, whichever vehicles they may use, they have other objectives than private investors. Other than that, I think the decision as to where to invest and how to invest should be made by the private investor.

There is a mistaken idea in Canada that when we have a foreign takeover of an existing Canadian corporation, that is a net loss to Canadians. I think that's a very big mistake to make. In effect, all that means is that a group of investors outside of Canada have a view that a particular asset can be used more effectively than the current investors are using it. They're willing to take that chance. In return, they provide capital to the former investors who can then invest it in whatever venture they think would be more profitable. The result of that is a better functioning Canadian economy.

From that perspective, I'm going to take a much more root-and-branch view than I think some of your other witnesses have. Rather than tinkering with the act, I suggest you rethink the act.

Thank you.

● (1645)

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

We have a bit more time because we didn't deal with business and we got going quite quickly after the change. So we'll start with seven-minute rounds.

Mr. Rota, for seven minutes.

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

And thank you all for being here.

It was interesting. In listening to the presentations, it seems that Canada would be more similar to Australia or New Zealand, or some other countries that have a large number of natural resources. When I look at foreign investment, I look at what it will bring to the country as far as jobs, technology, and innovation. That applies to the natural resource sector as well.

But when I'm looking at foreign investment, it's money coming in and actually growing something, as opposed to a natural resource, where it's coming in, taking a raw material out of the country, and maybe creating a few jobs.

Could I get some comments on that? Could you differentiate, if you can, between a foreign investment and an acquisition of a natural resource?

Mr. Campbell, would you like to start off?

Mr. Bruce Campbell: I think you could perhaps look at the specific case. Look at the case of potash. I think the government was wise to decide to disallow that. I think that was a wise decision because I think that is a strategic resource. I think as Dick Haskayne, a former chair of a number of resource companies and a strong opponent of the proposal to take it over, indicated, what happens when one of our national champions—and he considered it a national champion, and there are others—is taken over and the decisions are made outside the country is that those effective decisions, even if there is a branch plant or head office, are made outside the country. In the case of the marketing structure... particularly if Potash had decided—and it indicated that it had decided—it was going to pull out.

I just think that's an example of a strategic company, and when you're talking about removing the main decision-making from the board of directors and the CEO outside of the country, then it is not in the public interest. That's an example of the divergence between the public interest and the private corporate interest.

Mr. Anthony Rota: Mr. Bloom, I'd like your thoughts on that as well.

Mr. Hart, I'll have another question for you on the next one, if you don't mind. It's just that I have very limited time.

Dr. Michael Bloom: I'll take the example of the potash deal, which I've spent some time thinking about. It was an opportunity to bring capital into the country. It may turn out, as it does in so many deals, that the capital comes anyway, because BHP is still considering the Jansen Lake mine and the $12 billion investment.

I think it's very important to note that if you looked at the analysis up to 2030 of that potential takeover, you would find that there would have been more than 1,000 jobs created in the Jansen Lake mine for the building of it and in connection with all the ancillary infrastructure required for a big mine. Then there would have been a large number of jobs in the mine and then direct and indirect and induced effects on the economy.

So you can actually get, in the case of a resource, depending on what the resource is and how it's used, very substantial investment in jobs and communities out of it with foreign capital coming in—depending on the resources.

In the case of potash, it can't be stored out of the ground for long periods of time, and the market for it is international.

● (1650)

Mr. Anthony Rota: It really comes down to the negotiations that take place with the government at the time when they're coming in to buy a natural resource.

Dr. Michael Bloom: It does indeed. It was pretty clear, for example, in Saskatchewan, that the government there clearly had authority through the royalty regime and its taxation structure to ask for and get a structure that would satisfy it in many ways.

Mr. Anthony Rota: I'll just cut in there, because we are limited in time.

I'll go to Mr. Hart. I don't want him to feel left out on this one.

There is a term that's come up quite often, and I've heard it again today, and I'm hearing it more and more from constituents, and that is reciprocity. Why are we allowing countries to come and invest in Canada if they will not allow us to invest in their country? I'm not saying that's the way to go, but it is becoming a stronger and stronger voice. I'm not sure if it's protectionism as much as it is a question of saying if it's going to be free trade, then let's make it free trade. Let's not let others come in and buy us out if we cannot then go into their countries.

What effect would reciprocity have on the Canadian economy? I'd like to hear from Mr. Hart and then Mr. Campbell, if they don't mind.

Prof. Michael Hart: I think it would have a very negative effect. The use of the concept of reciprocity in trade negotiations was an effective technique in order to get barriers to come down. To use that same technique to get at investment barriers, I think, would be a very effective way to shoot yourself in the foot, because the issue is not the nationality of capital but the acquisition of capital.

In almost all instances, capital does not have a nationality. So if we're interested in developing this country—and I don't care whether it's a natural resource or a manufacturing or service part of the economy—then we will need capital. If that capital is not readily available for a particular venture in this country, then we should welcome it from any other investors who are prepared to risk that capital.

Mr. Anthony Rota: It doesn't matter where that money comes from, then, whether it comes from China, a state-owned company, or whether—

Prof. Michael Hart: No, I said there was one area where I thought it did matter, where the investor is not a private investor but a government-controlled investor. In that case, I would want to look behind it to see whether there are national security implications.

Mr. Anthony Rota: Mr. Campbell.

Mr. Bruce Campbell: If we're going to talk about strategic sectors as part of the net benefit calculation, then we have to have a strategy. I think this review should also be considered part of a bigger review of what the strategy is. I'm not so much concerned about the reciprocity, although in my opening presentation I mentioned a couple of examples where there wasn't reciprocity.

The important thing is to have a policy and then identify, within that policy, the key strategic sectors.

The major recipients of the foreign directive—Brazil, Russia, India, and China—all have industrial policies. They all have strategies. Within that, they review foreign investments or disallow —

The Chair: That's it. I'm sorry. I was giving your witness a little more time.

Monsieur Bouchard from the Bloc for seven minutes.

[*Translation*]

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

I want to thank our witnesses for being with us this afternoon. My first question is for Mr. Campbell.

You talked about Rio Tinto's takeover of Alcan. Did I understand correctly that the Minister should have nixed that transaction?

[*English*]

Mr. Bruce Campbell: I'm not privy to all the proceedings of that relationship and review. But I do know that in the case of Rio Tinto certain undertakings were made, certain commitments, and those commitments were not fulfilled, it would seem.

They made commitments to capital spending, which they did not uphold. On the major upgrades in their plants in Saguenay and in Kitimat in B.C., those capital investments weren't made. They closed the plant in Beauharnois. They reduced production in Vaudreuil. They cut head office jobs by almost 20%. I think it was 1,100 jobs in all. That's the estimate of the jobs loss.

It seems to me that under the act, if you're going to have criteria for measuring net benefit, you have to be able to monitor and you have to be able to enforce. That enforcement should include sanctions up to and including revoking the transaction, the takeover.

● (1655)

[*Translation*]

Mr. Robert Bouchard: So, conditions were not met from the outset. You think that there were major issues in terms of failure to comply with the conditions that had been set.

[*English*]

Mr. Bruce Campbell: Exactly. Let's face it, I think Alcan can be considered along with PotashCorp. That was about equivalent in size to the Potash proposed takeover, about $40 billion. It is one of our national champions. It is open to scrutiny whether that was a wise decision to make. If it was, then the conditions that were applied were not properly met.

[*Translation*]

Mr. Robert Bouchard: I have another question for you, Mr. Campbell.

We know that the applicable threshold for determining the “net benefit to Canada” is set at $312 million currently, so anything below that amount is not subject to review. We also know that, in Canada and in Quebec, there are many small- and medium-sized companies. How will Canada and Quebec be affected by foreign investors taking over small- and medium-sized companies? Will the impact on them be significant? Will changes occur?

[*English*]

Mr. Bruce Campbell: What I would definitely say is that I would be very skeptical of raising those thresholds from the current levels. I know there have been recommendations that they be raised to a billion, in some cases, and to weaken the net benefit tests.

I think before making a judgment as to whether...they should be reviewed beforehand. Under the national security clause they can be reviewed, even if they're smaller, and in sectors like culture, of course.

But for others we have a track record. We have a history of Investment Canada reviewing or at least giving notification, so we have the record of those transactions. There are something like 13,000 of them. It would be really interesting to do a report or a study of those, or a sample of those, underneath the threshold and what has happened, in fact. Before considering whether to raise or lower the threshold, I think it would be important to actually review just what the history has been with respect to those takeovers. Have the companies thrived or not thrived in the wake of those takeovers?

[*Translation*]

Mr. Robert Bouchard: Do you consider this threshold increase from $312 million to $1 billion to be a good thing? Would we not basically be depriving ourselves of a tool that we will no longer be able to use for certain transactions? Currently, any transaction below $312 million is affected, but eventually, the Minister will not have a say in transactions below $1 billion. No government authority will be able to speak out. Do you think we are depriving ourselves of an important tool?

● (1700)

[*English*]

Mr. Bruce Campbell: The short answer is yes, and I don't think it's advisable to raise the thresholds.

[*Translation*]

Mr. Robert Bouchard: Thank you.

[*English*]

The Chair: You have one more minute.

[*Translation*]

Mr. Robert Bouchard: I still have one minute left? The answer was really short, it's true.

I would like to get back to the example of Rio Tinto and its acquisition of Alcan. In Quebec, Alcan is seen as a jewel, and people would like the Minister to set two conditions: the level of employment and the obligation to keep some processing plants in operation in our region. Do you think that it would have been a good idea for the Minister to include these two conditions in the acceptance protocol?

[*English*]

Mr. Bruce Campbell: Absolutely, and I think they should have been made public right upfront so that everything was clear from the perspective of the company as well as for the communities in which those companies operate. I think that would have certainly resolved the matter in a much better situation than what, in effect, happened with Rio Tinto.

[*Translation*]

Mr. Robert Bouchard: Thank you.

[*English*]

The Chair: Thank you very much, Mr. Campbell and Monsieur Bouchard.

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

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you, Mr. Chair.

I want to thank all of the panellists for being here this afternoon. I certainly feel that we've had two very thought-provoking panels this afternoon, so thank you again very much.

I'm hoping to get a question or two to each of you, and I'll start with you, Mr. Hart.

In your comments you indicated that you thought Canada was an outlier. Could you just elaborate a little bit on what you meant by that?

Prof. Michael Hart: Mr. Campbell mentioned that Canada is one of the large in-takers of investment. As a matter of fact, Canada is also a large investor abroad, so Canada should really properly be counted among the OECD countries that are capital-exporting as well as capital-importing countries. And in that sense Canada is an outlier, because only Australia, among other OECD countries, pursues similar kinds of policies.

I do not think we should consider ourselves to be part of the group of Brazil, China, Russia, and India. If you look at the economic development in Canada compared to the economic development in those countries, I don't think we want to emulate their policies.

Mr. Peter Braid: Thank you.

You've set me up perfectly for my second question for you. I want to ask you this.

We have this delicate balance that we need to try to strike where we want to make the appropriate, careful, prudent decisions with respect to proposed investments here in Canada, but at the same time we don't want to impede the ability of great Canadian companies that are operating internationally and are in the process of acquiring in one of the markets they're operating. Can you comment on that? How do we strike that balance? Is that an important consideration, and why?

Prof. Michael Hart: The balance is that we should accept that it's private capital and therefore the decisions of a private investor should be the primary consideration. I do not see why it is a matter of public policy what one group of investors thinks compared to another group of investors. I think in a mature economy that's the way it ought to be.

The fact is, in the kind of world in which we live, companies—in order to succeed in whatever line of business they're in—need to have an international focus; they need to be part of much larger value chains and supply chains. They need to have relationships with customers and suppliers around the world that may involve investment in some cases, and in other cases, other kinds of relationships.

I would not suggest that the government should be interfering in those kinds of decisions, that we should charge a group of civil servants in the Department of Industry to second-guess the decision of investors.

Having been a civil servant, I am painfully aware of the inability of civil servants to make those kinds of analyses and decisions. My view is that this should be left to the wisdom of investors who stand to lose or to gain.

Mr. Peter Braid: Thank you.

Mr. Bloom, as we segue into questions for you, recent reports, including Conference Board of Canada reports, indicate that Canada has been a net beneficiary of overall international investment activity. What are the factors that have been leading to that success?

● (1705)

Dr. Michael Bloom: First of all, it's the fact that we have an open economy and we have a willingness to bring capital in and let capital go out. Our gold companies, our banks now, and a number of our other firms are engaged in a very busy buying spree around the world. For the most part they're being received happily. I think the considerations around national security pertain in many places, but most places where we're going are open to us and most of the countries that invest heavily here are open both ways.

I think the thing is that we have an attitude that we actually want capital and that we're willing to invest where the opportunity lies. I hope that continues.

Mr. Peter Braid: Thank you.

In your opening comments you listed eight recommendations. In your second one you suggest, as one recommendation, that we should consider a full range of benefits and costs. What did you mean by that?

Dr. Michael Bloom: I think if there are concerns.... For example, our analysis of 540 mergers and acquisitions between 1994 and 2007 found that the average premium paid to shareholders was 28%. This was the case of the surge in the resource sector that brought in an extra $50 billion or so to Canadian investors. You can track, and we do track, things like the shareholder return. We can also look at some aspects of the operational footprint and so on.

I think the concerns that come out—when you hear a discussion about champions and the broader impacts—are people thinking: what is it doing to our communities? Is it affecting our donations? Is it affecting the capacity of the region to support our schools and colleges, etc.?

I think if we have a typology that says we're looking at covering all the financial benefit, but going beyond that, it would give a level of confidence. People are saying there's a more holistic approach to this.

Mr. Peter Braid: Great. Thank you.

Just to be fair, I have a final question for Mr. Campbell.

We spent a lot of our time in the previous panel talking about the importance of perhaps considering the minister having more latitude with respect to communicating the specifics of an individual transaction when that's appropriate.

Can you comment and speak to why that might be important? What are the advantages, not only on a case-by-case basis but over time, to this process?

Mr. Bruce Campbell: I think if you're talking about public consultation and the obligation, should it be at the minister's discretion whether to consult with the workers involved, communities involved, or with the lower level—

Mr. Peter Braid: Actually, it's not as much about the consultation, which is more front end. This is more back end, talking about the specifics of the transaction itself and the minister having more latitude to do that, to bring more—

Mr. Bruce Campbell: You mean to make public the commitments and undertakings.

Mr. Peter Braid: Yes, at the appropriate time.

Mr. Bruce Campbell: Absolutely, it's in the interests of transparency. I guess I would go one step further and say that it should be an obligation rather than at the minister's discretion. That should be made public. Those should be part of the results of the deal.

I wonder if I could comment on—

The Chair: I'm sorry, Mr. Campbell, you managed to get that answer in under the time.

Mr. Bruce Campbell: Thank you.

The Chair: I'm sorry to cut you off again. Time always marches on.

Mr. Angus, for seven minutes, please.

Mr. Charlie Angus: Thank you, Mr. Chair.

When I talk with people in the mining industry who are domestic and working internationally, they talk about something that I think this committee has spoken about many times: we need rules-based decision-making, we need transparency, we need certainty. Any investor who comes into Canada or goes overseas wants to know what the rules are.

I just want to ask you a bit about telecom, because the Globalive decision I think is indicative of a disturbing trend. Any investor coming in knows the CRTC is a semi-judicial body and it adjudicates. You win some, you lose some. There's a set of rules in place. So the CRTC decides if Globalive doesn't meet the test. Then the minister steps in and overrides Globalive. Then the Federal Court steps in and overrides the minister, and then the minister says he doesn't care what the Federal Court says, he'll take it all the way to the Supreme Court. And he's a minister in a minority government. If I were an international investor in telecom, I would stay the hell out of Canada because I wouldn't know who I'm dealing with.

Mr. Campbell, do you think we're sending a very disturbing signal that the minister decides that independent bodies don't have authority, that he can step in on a whim even if the courts overrule him?

● (1710)

Mr. Bruce Campbell: I think you've put your finger on something that's really important. I think of the importance of transparency, clear rules, and consistency. If you have one arm of government contradicting another and then in turn that being reversed, I think that clearly leads to uncertainty and negatively affects the investment climate overall. This is just in a case where there are limits on foreign direct investment, but I think it affects all areas of investment.

Mr. Charlie Angus: Mr. Bloom, you talked about the need for a more holistic approach, and again I know more about mining than I know about many other sectors. But to develop a mine you could high-grade the deposit. You can take the easy stuff and leave town. That's been done. Many companies have done that. You can take a long-term approach and say we're going to go for some lower-grade ore and use the rich high-grade to make sure the mine life is long, and we're going to have a value-added processing.

So you look at a company like Falconbridge. It had a track record we could see for 90 years. We knew what Falconbridge did. They had excellent metallurgical work. They were known around the world for their processes and their advancement.

Xstrata is a company that comes out of nowhere, and they're riding a peak in the market and they're flush with cash and they basically have a dodgy record. But all being said, all capital is not equal. There is capital that's in there for the short term and capital that has a record that's going to build. So Falconbridge gets taken over by Xstrata, and that leads to Inco being gobbled up by Vale. Our minister at the time said that Vale came to save Sudbury, that Sudbury was in, he said, the “Valley of Death”. That was a pretty bizarre comment to make when Inco and Falconbridge were on the verge of a merger at the height of the biggest metal boom in memory.

So we see the loss not just in terms of what they did to the communities and not just what they did to the copper-refining capacity, but no one has ever talked about the job losses in Toronto in terms of head offices, management, sales, that area of expertise that those companies have developed; that once you are a branch plant you're not in the same game at all in terms of a value to a national economy.

Mr. Bloom, would you have any comments about the effect of what it means to become a branch plant as opposed to a world leader?

Dr. Michael Bloom: I can give you some examples of branch plants in Canada that are world leaders in their area. Some of our biggest R and D operations are foreign-owned enterprises. If you go to Xerox or IBM you'll see major investment, and in some of the pharmaceutical firms that are foreign-owned as well.

I don't connect the two parts, but if you want to come back to the first part of your comment about the impacts of a takeover, it is a legitimate point to require investors to meet certain conditions that are in the public interest, if they're transparently in the public interest and the representatives of the public have announced them and people understand what the circumstances are so there's a level playing field.

I have to tell you that we've been doing some work. I have a recent report that we've done on headquarters in Canada, looking at their impact on employment among other things. I do not see any evidence of this decline in jobs coming out of the changes. Toronto doesn't seem to be suffering in any particular way, for example. One has to be careful about making associations between outcomes in one place and another.

That being said, I do think it is a legitimate role for government to have a look at this and to set out and say it wants to explore this and there is some evidence there and there is a basis for setting some rules out, but let's make them clear and consistent and apply them across the board.

● (1715)

Mr. Charlie Angus: Finally, Mr. Campbell, I'll just ask you about this. I asked the previous panel if we are basically trying to look at a coroner's inquest into the train wreck that was Vale, Xstrata, and U.S. Steel. Is that the main problem here?

Is there a problem with the act, or is there a problem with the due diligence that went into allowing those three companies to come in and have a decidedly negative impact for our resource-based sector?

Mr. Bruce Campbell: It's a bit of both. There's definitely a problem with the act. I don't think the calculus of net benefit and the enforcement...there is probably too much space for the companies concerned to kind of wriggle out. More broadly speaking, in those mining takeovers you mentioned, as well as in the steel industry, which became totally foreign almost overnight, there was a failure to have an industrial policy that identified these strategic resources or these strategic assets and the need to have a policy to nurture and protect and develop those and to develop the value-added and high-technology spinoffs that would come from that. It is a failure both of the broad policy and of the specifics of the industry.

The Chair: Thank you, Mr. Campbell.

Now we will go on to Madam Coady for five minutes.

Ms. Siobhan Coady: Thank you very much. I certainly appreciate your taking the time today to be with us to share your expertise. It has been enlightening.

My first question is for Mr. Hart. I've been reviewing a report from the Institute for Research on Public Policy . I'm going to quote from the report. On page 3 it says:

> ...Canada has been losing its attractiveness, relative to other countries, as a destination for foreign investment. Canada's share of global inward foreign investment has been falling since the mid-1980s, and this result holds true whether we include emerging markets or not. Given the positive benefits that come with foreign investment, including technology transfer and increased domestic competition, this trend has harmed Canada's prosperity.

That was a very interesting point that I found in the IRPP study. I want to ask you, Mr. Hart, if you agree with that statement. Second, do you think it's because we don't have a transparent and predictable system, or is it because of other reasons?

Prof. Michael Hart: Our system is not an untransparent system, but there is scope for some serious improvement, because, as other witnesses have already indicated to you, there is a certain lack of predictability. Any time you have an act that gives a minister a significant amount of discretion, it means investors then have to work around that particular set of issues, and you're going to have investors asking if this is the place to do it or if they want to do it elsewhere.

I don't take a lot away from statistics that talk about our share of investment. I don't know what our share of investment is. The important issue is not whether we're getting some kind of a fair share, but whether we are an open economy that welcomes investment and that looks forward to working with investors, just as we want other countries where we invest to be open and transparent and predictable.

We have some room to increase that predictability and that welcome.

Ms. Siobhan Coady: You mentioned the Red Wilson report in your earlier comment and that you were supportive of the approach. Do you have any concerns about the overall approach this report takes to increased transparency, predictability?

Prof. Michael Hart: I had an opportunity to discuss that report a number of times with Mr. Wilson. I think his basic approach is a very sound one. After all, his mandate was not to review the Investment Canada Act, but to look at competition policy in Canada, so he added aspects on the investment dimension. I think if he had had a broader mandate, he would have gone into greater detail, but I think the broader kinds of recommendations he made were right, that we should open the economy and make it more predictable and make the whole question of reviewing takeovers a very narrowly focused activity.

● (1720)

Ms. Siobhan Coady: Thank you.

I have a question for Mr. Campbell. An earlier panellist talked about defining net benefit, to ensure we are informed when we say the words. An earlier panellist talked about strategic assets or resources not necessarily being in the statute as they are today. Could you comment further on net benefit? Have you looked into the net benefit issue at all?

Mr. Bruce Campbell: First of all, I think there's some value in identifying or defining what you mean by "strategic", but I think to do that you have to have a strategy, right? So it has to be strategic within an overall industrial policy strategy, and I think that's lacking.

I think the Red Wilson report, if I remember correctly, wanted to replace the net benefit test with the national interest test, which I think is even vaguer than the net benefit test. I would move in the opposite direction, make it clearer, strengthen it, and make it more precise and make it publicly accessible.

Another aspect of the recommendations of that report was the notion of onus, burden of proof. That committee recommended reversing the burden of proof, so you assume that all investments are good and it's up to the government to determine. I would disagree with that. We've seen this trend in the regulatory field—Mr. Hart knows it well—where, for example, when companies introduce a harmful chemical, the onus is on the regulator to prove it is harmful, rather than on the company to prove it is.

Ms. Siobhan Coady: I have a quick question, Dr. Bloom, if you'd be so kind. You talked a little earlier about consulting with the provinces, and mechanisms to have that as part of the transparent and predictable process. Could you elaborate on that?

Dr. Michael Bloom: Yes, I think there are some sectors where there is a great sensitivity in the provinces, in the resource sector, for example, where some provinces feel very deeply about this. Currently, depending on the particular industry, the province has no role officially, but it has a political role. I think being clear about how that's working, is that playing in? Is it an advisory capacity? Being up front about that would be helpful to everybody to understand. Then you'd know whether or not all the provinces were operating in the same way, and that would shed light for the investors.

The Chair: Thank you very much, Dr. Bloom and Madam Coady.

Now on to Mr. Wallace for five minutes.

Mr. Mike Wallace: Thank you, Mr. Chair, and I thank our guests for coming this afternoon.

I'm hoping for some leadership from the chair. Mr. Chair, we've heard from panel after panel about the OECD, and I think it's time this committee makes a visit over there to see them.

Hon. Dan McTeague: Mr. Wallace, I second that motion.

● (1725)

Mr. Mike Wallace: On a more serious note, this topic is interesting to me. I'm from Burlington, the riding across the bay from both the former Stelco, now U.S. Steel, and the former Dofasco, now ArcelorMittal Dofasco, which kept the name. We have two steel companies right on the same street, with two different experiences.

Mittal is investing, and things are going well. There is foreign investment there, takeover, I guess you would call it. Unfortunately, it's not going quite as well with U.S. Steel, and we're taking them to court as a government. Even Mr. Angus in the previous panel gave four examples, two that worked and two that did not—or were not working the way he expected.

Based on what I've been hearing thus far, it's difficult to pick who's going to win.

Mr. Hart, you said if you were sitting in our chair, this is what you would do. The one thing I think you're missing in that equation is that, like it or not, we are politicians and there's a political aspect to everything we do, so it might not be quite as easy to do as you think.

With respect to the study, one of the questions has to do with increasing the ability of the minister to comment afterwards on whether something had a net benefit, why the decisions were made, and the criteria that went into making the decision. Are you supportive of that change? Let's assume the act is going to stay as it exists, not as you're recommending. Are you in favour of that? Are there limits to it, or do you think that will make any difference?

Prof. Michael Hart: There is an advantage in the minister's being required to publicly explain his or her decision. That transparency in and of itself will force the minister and his public servants to look carefully at what they're doing in justifying these decisions. I would have been interested, for example, in seeing the current minister justify the decision in the case of Potash, and he was spared that difficult task.

I'm convinced that the minister made the opposite decision before the Prime Minister's Office changed his mind. He had to convince his officials that all the work they had done should be turned upside down. It would have been an interesting exercise, and I would like to have seen the results.

But the real point to make is this: it is good public policy to narrow the scope for discretion. The more discretion a minister has, the more opportunity there is for political finagling. So I think it is in the interest of government and politicians alike to have a narrowly conceived area of discretion rather than a vague and wide one. If it's vague and wide, it is hard to deal with lobbying efforts.

Mr. Mike Wallace: Mr. Bloom, I have used your study to push back a little bit. Often, as a local member, I'll get a call: how do you as a government let so-and-so buy so-and-so? You're selling Canada down the river, blah, blah, blah. I push back a little bit by saying no, there have been studies, including one from the Conference Board of Canada, which is pretty neutral, that this is not really the case. In fact, Canadian investors are doing more outside the country than what's come in. I don't get into the details, but that's it.

What investments and activities are you doing to make Canadians invest more in Canada in Canadian companies? Does the Conference Board have any position on what the government of the day could be doing to make sure that the investment environment is better for Canadians wanting to invest in Canadian companies?

Dr. Michael Bloom: That's a thoughtful and interesting question. We are starting some work on a centre for business innovation. One of the issues tied to this propensity to invest is access to capital. Another is the expertise and attitude about investment that Canadians have. We seem to be more conservative than some others. Arguably, that stood us in good stead with the banks in recent days, but there's a challenge there.

I've talked to a number of CEOs about this, and I don't think people feel there's a problem with the tax regime. I think they feel it's pretty reasonable. I think the bigger issue is developing a culture that sees certain, measured risks as worth taking. That is easier to state than to actually make happen.

The Chair: I'm sorry, Mr. Wallace, that's all the time we have.

Mr. Mike Wallace: He had three solutions he wanted to put on the table. I don't remember him doing that.

Mr. Bruce Campbell: I didn't.

The Chair: We have one minute left in the meeting.

[*Translation*]

Mr. Serge Cardin: I will use the remaining minute, Mr. Chair, since you took a total of four minutes away from me.

[*English*]

The Chair: I'm sorry, Mr. Cardin, we've run out of time. I just wanted to check and see if you're okay with Mr. Campbell using the last minute to give us his three recommendations.

Mr. Campbell, your three recommendations.

Mr. Bruce Campbell: Thank you very much. I really appreciate getting them on the record.

In terms of strengthening net benefit, I'll mention three.

First is binding commitments with regard to production and employment levels, existing worker contracts, new investments in fixed capital and technology, and expansion of Canadian content in supply contracts and inputs.

Lower levels of government, community stakeholders, and workers' organizations should be allowed input into the process of evaluating and reviewing proposed foreign takeovers.

All commitments should be made public, and this should be obligatory, not discretionary. They should be effectively monitored to ensure compliance. Failure to live up to the commitments should incur sanctions up to and including retroactive revocation of the takeover.

So those are a few.

● (1730)

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

Thank you very much, gentlemen.

Again, I apologize; however, I have no responsibility for how fast time marches. Thank you very much for your testimony.

We are adjourned.

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