

**Submission by the
Canadian Labour Congress**

**to the
House of Commons Standing Committee
on Industry, Science and Technology**

**regarding the
Study of the *Investment Canada Act***

March 10, 2011



Canadian Labour Congress
Congrès du travail du Canada

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On behalf of the 3.2 million members of the Canadian Labour Congress (CLC), we want to thank you for affording us the opportunity to present our views. The CLC brings together Canada's national and international unions along with the provincial and territorial Federations of Labour and 130 district Labour Councils whose members work in virtually all sectors of the Canadian economy, in all occupations, in all parts of Canada.

This Study of the *Investment Canada Act*, which sets out rules for the review of foreign acquisitions and the establishment of new foreign-controlled enterprises, is timely.

Canadian workers have experienced the negative consequences of a massive, recent wave of takeovers in the natural resources sector in the form of bitter industrial disputes with global corporations, such as Vale and U.S. Steel, who have broken their commitments to invest and create jobs, and instead, have used their muscle to demand major concessions from workers.

Most Canadians have watched in dismay as some \$170 billion of foreign capital came to Canada over the past five years and cemented majority foreign ownership and control of the mining and oil and gas sectors. This has greatly undermined our ability to shape the development of the Canadian economy in the interests of working Canadians.

Not to be misunderstood, we do not oppose all foreign investment or all foreign takeovers. Some foreign corporations operating in Canada create high quality jobs, contribute to the overall health of our economy, and are good corporate citizens.

We do, however, insist that large foreign acquisitions should be reviewed in a meaningful and transparent way to determine if they are of significant benefit to Canada, and should be approved by the Government of Canada only if that is the case.

There are several grounds to believe that foreign corporate control is not generally in the public interest.

Research has shown that Canadian-owned companies which operate on an international basis are more innovative and productive than transnational corporations operating in Canada. Our key goal as a country should be to promote the growth of the former. Canadian-owned companies are more likely to maintain significant head office employment; more likely to undertake significant research and development in Canada and to build links to our universities and colleges; more likely to engage Canadian suppliers of goods and services, including professional, financial, and consulting services; and are more likely to be part of regional networks and clusters of firms. It is for these reasons that many prominent representatives of corporate Canada have argued that many foreign takeovers lead to a “hollowing out” of Canadian operations.

In the natural resource sector, a key Canadian goal must be to create more good jobs by promoting value-added resource processing, and by deepening linkages from resource companies to Canadian suppliers of machinery and equipment and specialized services. Foreign ownership is likely to undermine these goals, as shown by some recent closures of mills and smelters.

Some takeovers, as has again been the case in the mineral sector, are essentially intended to create giant global corporations with significant control over specific commodities. A key problem is that the Canadian operations of such firms will represent only a small share of total global

production under the control of the company. In this context, the global corporation has enormous bargaining power compared to both unions and governments. Vale, for example, has demanded major concessions from workers despite the fact that their Canadian operations have been, and continue to be, highly profitable. Provincial governments will find it much more difficult to negotiate decent royalties when production can be readily shifted to non-Canadian mines owned by a global corporation.

Foreign ownership can also undermine regulation and government action in the public interest. U.S. companies operating in Canada can, under Chapter 11 of NAFTA, claim damages for government actions which reduce expected profits, even though those government actions are legitimate and would be legal if undertaken against a Canadian firm. Similar requirements are expected to be part of any future Canada-E.U. agreement.

In the high tech sector, a foreign corporation may make an acquisition in Canada mainly to gain control of patents and other intellectual capital developed in Canada, with the aim of transferring that capital out of the country despite the fact that it was developed with the use of research and development tax credits and other government incentives.

While a few foreign investments finance an increase in real investment in Canada in new buildings, machinery, and equipment, foreign takeovers result in a continuing outflow of profits from Canada to shareholders in other countries. This undermines personal income tax revenues.

Foreign takeovers may also take place on such a scale as to be destabilizing for the Canadian economy as a whole. The rise of the exchange rate of the Canadian dollar against the U.S. dollar since 2002 has been driven in significant part by a large inflow of foreign capital into

the Canadian resource sector to finance takeovers. The rise in the dollar has led to major job losses in manufacturing and to an overall trade deficit.

The central point is that acquisitions by foreign corporations of Canadian companies may be in the interests of shareholders and corporate executives, but harmful from the perspective of workers and local communities, and negative in terms of sectoral and national economic development.

Under the current review process, a foreign corporation acquiring a large Canadian company, assets of over \$300 million in most cases, must file a plan showing that the transaction is of “net benefit” to Canada. The plan is reviewed by the government against a broad set of criteria, including the level and nature of economic activity in Canada; the impacts on productivity, innovation, and technological development; and compatibility with national industrial development policies. The government may require the company to amend its plan in the form of specific undertakings and commitments as a condition of approval and, as has happened on only two occasions to date, the acquisition may be denied.

The review process is completely hidden from the public. The plan is not made public, nor are any specific undertakings, such as promises to maintain or expand employment and investment, to maintain Canadian head offices, and to undertake research and development in Canada. It is entirely up to the government to monitor compliance with commitments made, and on only one occasion has legal action been formally taken in response to noncompliance.

Since review and enforcement takes place entirely behind closed doors, we do not know how many acquisitions have simply been “rubber stamped” or how many have been approved only on the basis of significant corporate commitments. The small size of the staff relative to the number of transactions suggests the former.

The existing *Investment Canada Act* does give the government the tools it needs to regulate acquisitions in the public interest if it chooses to do so. The “net benefit” test clearly gives the government great room for discretion, and the government does ultimately have the power to say “no” to a transaction.

The Canadian Labour Congress, for the reasons set out below, believes that many foreign acquisitions are not in the public interest. This demands much more active use of the current provisions of the Act to impose binding commitments on proponents, or to simply deny approval. To be meaningful, reviews must take place in the context of advancement of sectoral development strategies.

The current Act should not just be more vigorously used, but also amended.

Consideration should be given to lowering the size threshold for review, which currently allows many smaller but innovative Canadian companies to be taken over with a resulting loss of intellectual capital developed with public support.

Acquisitions should be improved only if they are of “significant” rather than of “net” benefit to Canada.

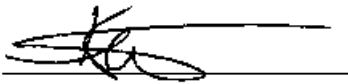
The current criteria for determination of a benefit should be broadened to explicitly include jobs, in terms of the quantity and quality of employment, as well as impacts of acquisitions upon government royalties and revenues.

To the maximum degree possible, the plan put forward by a foreign corporation proposing an acquisition should be made available to the public, including through disclosure to unions representing any employees of the Canadian company, and to local and provincial governments where the company has operations. (The plan as filed may have to be revised for public disclosure to preserve some space for legitimate business confidentiality.)

Public hearings should be held when requested by affected workers and/or government and community representatives.

Any undertakings made by a foreign corporation to secure approval should be made public, and the government should issue regular compliance reports and undertake legal action where it is needed to secure compliance.

This document is respectfully submitted on behalf of the Canadian Labour Congress:



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