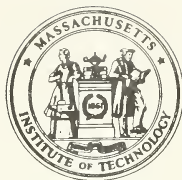

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CANADIAN CONTROLS OF FOREIGN BUSINESS ENTRY: PRESENT FORM AND FUTURE PROSPECTS

Louis A. Calvet

WP 959-77 September 1977

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I INTRODUCTION *

In contrast to the stringent limitations placed on goods entering into Canada, entry into business activity had always been, until recently, free of restrictions - a fact which set Canada apart from most major industrial economies.

The openness of the Canadian economy to foreign investment, whether direct or portfolio, was the result of a long-lasting governmental policy[1] which opposed free-trade as having detrimental effects on the infant Canadian industry. In contrast, the inflow of capital and labor was considered beneficial for the economic development of the country and thus was allowed unconditional entry.

This open Canadian attitude, particularly towards foreign direct investment, began to undergo radical changes in the late sixties; following several studies[2] which warned against the reliance on foreign direct capital as a main component in the country's development strategy, the government's stand hardened to the point of preventing several takeovers of domestic businesses by foreign investors.[3] In addition, more and more popular resentment against alien interests started to appear in the early seventies.[4] It all culminated in the Foreign Investment Review Act, passed by Parliament on December 12, 1973.

The 1973 law is in substantial contrast with the non-intervention policy that prevailed until then. Indeed, it calls for a governmental review of (1) certain acquisitions of control of Canadian business enterprises by foreigners, (2) investments to establish new businesses in Canada by aliens who do not already have an existing business, and

(3) diversification of existing foreign-controlled firms into unrelated businesses. The Act goes even a step further and institutionalizes the regulatory system for foreign investments by creating the Foreign Investment Review Agency (FIRA), responsible for the screening of foreign investment proposals as well as for the monitoring and enforcement of the entry agreements. A screening procedure has been in effect for a little over three years and approximately five hundred cases have already been examined by the Agency.[5]

The basic economic objective pursued by the Canadian government, according to an Agency official,[6] is the development of an efficient and competitive economy through the screening of foreign direct investment (FDI). Since the law only covers FDI cases, one might infer that the Canadian government is, in fact, trading increased foreign control for increased efficiency; as a result, only foreign investments which clearly meet the performance-oriented criteria embodied in the law are allowed into Canada.

Undoubtedly, the reasons for passing such legislation are complex and go beyond simply economic objectives. One can hardly overlook the fact that many vested interests are at play when the government decides to intervene in a decision-making process previously left to market forces. A full understanding of the political process which instigated the law would therefore require a more extensive examination than the one we are prepared to make in this essay.[7] Although we will refer briefly to some of the political forces which lie behind the government's new orientation

towards foreign direct investors, our main concern will be the economic foundations and implications of regulating foreign direct capital.

The purpose of this essay is to review the operations of the Canadian foreign business entry control system and to evaluate its impact on the behavior of alien firms. To accomplish our task, in Part II which follows we first develop a background and framework for analyzing a regulatory system. Since such an evaluation undoubtedly involves value judgements we make explicit our underlying convictions as to which are the proper ways of tackling its performance evaluation.

In Part III we examine the administration of foreign investment regulations by FIRA, after briefly summarizing the legislation as it now stands. Here we are concerned mainly with the organizational aspects of the control process.

Part IV deals with the interactions between the policy governing foreign business entry and other governmental policies. This approach will focus on factors external to the foreign business entry controls.

Subsequently, Part IV seeks to assess the impact that the governmental regulations are having on alien firms, especially multinational corporations (MNCs). The emphasis in this section is on drawing specific hypotheses regarding the costs and benefits perceived by foreign businesses and their expected reactions when facing the review procedure. These hypotheses are then used to identify crucial elements of the regulations which have to be given special attention if the government is to attain its economic aims.

Lastly, we conclude the paper by identifying areas for future research.

Our sources in writing this essay are derived from data published by various governmental institutions, in particular the Foreign Investment Review Agency. We also draw on the literature pertaining to multinational organizational structures and theories of foreign direct investment. In addition, five interviews were conducted with officials of the Agency, two with officals of the governmental bodies, several with people in academia, and five with executives whose companies have been subjected to the screening process. We selected firms from those which had their proposals disallowed on the first submission, and from those whose negotiations with FIRA have been rather difficult, so as to gain a better insight into the operations of the controls.

II A FRAMEWORK FOR ANALYZING FOREIGN BUSINESS ENTRY CONTROL SYSTEMS

The surge of foreign business entry controls in many capital and technology importing countries[8] has resulted from a shift in host government's attitudes towards foreign investors in general and MNCs in particular. Many factors account for such a change in attitudes. To mention a few: the increased awareness by host governments of the strategic importance of their own natural resources; the fact that many technologies have become "mature", are largely standardized, and are available from an increasing number of suppliers, including semi-industrialized countries such as South-Korea and Taiwan; the appearance of alternative sources of long-term capital, including the Eurocredit markets and certain OPEC countries. These and other changes in the international environment have tended to increase the bargaining power of host governments in their dealings with alien corporations.

The *de facto* situation of today's new international order allows host governments to place constraints on the operations of international firms; it does not, however, provide the former with an indication as to the specific direction in which they should be aiming when dealing with MNCs. Consequently, many countries have been devising their own particular means of regulating FDI, without establishing solid economic and political foundations capable of justifying the increased governmental intervention. As a result, it is not infrequent to witness countries modifying their regulations on foreign investment rather sharply and frequently.

The most widely accepted motive for controlling FDI is the host government's desire to bring about a more desirable allocation of resources. Canada is a good illustration in this respect, since its publicly stated policy is to accept only foreign investments which will eventually increase the efficiency and competitiveness of its economy. This official stand presupposes, however, the existence of some degree of imperfection in Canadian markets to account for the possible entry and perpetuation of undesirable investments, i.e., investments which do not make an efficient use of resources. In a competitive environment these investments would either not be undertaken or fail to survive. Hence, a strict domestic competition policy could, in principle, take care of market imperfections without discriminating between foreign- or domestic-controlled firms.

Furthermore, if, once recognizing the imperfection of its markets, Canada tries to screen only FDI on the basis of performance-oriented criteria, this begs the question of why to leave domestic investors out of the screening process. Some distortions will surely occur if domestic-controlled investment is free to obey market signals while foreign-controlled investment has to follow legislated criteria.

The differentiated treatment to which domestic and foreign investments are subject can be explained, however, by the fact that Canada places some "cost" on foreign control and therefore requires offsetting efficiency gains. Whether such perceived cost is purely of a nationalistic kind, e.g., a psychological dissatisfaction "à la Harry Johnson", or more tangible in terms of real resources, is a matter outside the scope of this paper. What

is nevertheless evident is that the Canadian government is really trading increased efficiency by foreign firms, as measured by the legislated criteria, against release of domestic control.

The previous comments highlight the difficulty of establishing clear economic foundations for controlling solely foreign interests. Leaving this debatable question aside for the moment, let us propose a framework for analyzing foreign business entry control systems under four different headings: (1) the determinants, (2) the structure, (3) the impact, and (4) the performance of the system.

The determinants of an entry control system refer to the economic, social and political forces which are the basis for a national commitment to regulate the entry and behavior of alien firms. Understanding how the system originates requires an analysis of the policy-making process of the country under consideration: interest groups have to be identified and policy formation explained.

The way in which an entry control system is structured varies from country to country on the following accounts: (1) the degree to which formal regulations are institutionalized, e.g., the creation of a regulatory agency with policy-making powers being the extreme case; (2) the level of specificity in formal regulations or administrative guidelines, e.g., a fixed time-period for spinning off a certain percentage of equity to local nationals; (3) the extent to which the regulatory system covers areas that are of concern to foreign-controlled firms, e.g., technology transfer, foreign exchange transactions, securities issues; and (4) the interactions the system has with other governmental institutions and policies,

e.g., competition policy.

According to the above, we could describe the Canadian regulatory system as being institutionalized, flexible, limited in scope and little integrated within federal policy and institutions, respectively.

The impact of the foreign investment regulations on the behavior of alien firms is a delicate question to tackle, for it does not suffice to look at the firms which invest. This would obviously ignore those firms that do not invest because of the regulations. Hence, any study that would only take into account actual investors would be biased at the outset. This poses an almost unsolvable problem, for it is virtually impossible to identify "would-have-been" investors who changed their plans because of the existence of governmental controls. The only alternative way to perform such a study is therefore to develop a theoretical model able to answer the kinds of questions we are interested in, i.e., what impact are the controls having on the behavior of foreign firms? The last section of the essay deals with this exact question in the Canadian context.

The performance evaluation of a foreign business entry control system is equally a very complicated task, for there are a legislation, a policy and an institution to be evaluated.

An evaluation of the legislation would have to go along the following lines: how realistic is it - given what we know about the structure of the Canadian economy and the international environment - to impose regulations on foreign firms? are the aims underlying the law within "reasonable"

reach? are the criteria devised to judge investment proposals consistent and compatible? Note, incidentally, that some, if not all, of these questions can only be answered fully if one has a clear understanding of how foreign firms will eventually react to the regulations. Also, a complete evaluation would foresee the kinds of distortions that the various measures could be fostering.

To evaluate the policy stand vis-à-vis alien firms and the foreign-controlled sector, the key question to ask would be: is there another policy which could meet Canadian objectives more effectively, that is, one which would create fewer distortions? Also, given the current legislation, is the government doing the most it can to implement its policy? In other words, how has governmental policy reacted to and internalized environmental constraints and unexpected changes in the international situation?

Finally, the question remains how to evaluate the institution in charge of administering the controls. This is a problem of organizational performance. Pertinent questions in this context would be: how fast are the investment proposals screened? how soundly are the negotiations conducted with foreign firms? how expert are the agency negotiators in obtaining concessions from foreign investors in accordance with screening criteria? how alert is the negotiating team in detecting a "bad" investment - one that scores low on the agency's priorities? are the undertakings properly monitored? Incidentally, little can be done by a regulatory agency to influence directly the behavior of foreign firms or the efficiency of the economy. Responsibility on these grounds rests with the Parliament which passed the

law and with the government which defines actual policies.

The previous paragraphs have outlined the frame of reference used in this essay. It is most important to emphasize that we distinguish three main components within a foreign business entry control system: (1) a legislation which provides the legal framework to regulate alien capital, (2) a governmental policy which outlines the general directions to follow *vis-à-vis* foreign interests, and (3) an institution in charge of implementing the law under the guidance of the policy-makers. The assumption that the system can be separated into these three components is crucial, especially when determining responsibilities and performance.[9]

III INSTITUTIONALIZATION OF THE CANADIAN CONTROLS OVER FOREIGN DIRECT INVESTMENT: THE FOREIGN INVESTMENT REVIEW AGENCY

III.1 A SUMMARY OF THE LEGISLATION

The Foreign Investment Review Act, passed on December 12, 1973 has been implemented in two phases. The provisions of the Act which relate to the acquisition of control of existing businesses in Canada (phase I) by foreigners have been in effect since April 2, 1974. Phase II of the law, covering the establishment of new and unrelated businesses by aliens, came into force on October 15, 1975.

The legislation maintains the final authority for allowing entry of foreign businesses within the Cabinet, although it makes the Minister of Industry, Trade and Commerce responsible for the administration of the Act. The Foreign Investment Review Agency assists and advises the Minister in the review, the monitoring and the enforcement of foreign investment applications.

At present, acquisitions of Canadian firms and first investments in Canada by non-Canadians, as well as diversification by existing foreign-controlled firms, are all reviewable by the Agency. Canadian joint-ventures, partnerships and other similar unincorporated organizations also fall under the scope of the Act as long as one joint-venturer is a non-eligible person,[10] hence making no use of the normal presumptions[11] in regard to control. It has been argued[12] that this part of the legislation would tend to limit business arrangements at a time when local political leaders have been encouraging joint-ventures to foster Canadian participation.

In addition, provisions have been issued to exempt venture capitalists, franchisees, investment dealers and certain limited corporate reorganizations from the application of the law. The venture capital exemption, however, is conditional upon a fixed divestment schedule, which has been considered by many as a deterrent to tapping foreign sources of capital, thus making it more difficult for Canadian companies to get foreign equity investment for risky projects.[13] Even more controversial is the reorganization provision which exempts statutory amalgamations within Canada of two or more corporations into a single entity, but leaves subject to review mergers or internal reorganizations which take place in foreign jurisdictions and result in the deemed acquisition of control of a Canadian subsidiary. Another, yet more general, exemption concerns the acquisition of a small business (gross assets of less than $250,000 and gross revenues not exceeding $3 million) by a foreign-controlled firm already carrying on a business in Canada related to the one being acquired. Here again the exemption is conditional on satisfying very stringent provisions.[14]

The impact of the legislation on the growth potential of existing foreign companies stems from the provision to consider diversification into unrelated areas as subject to review, therefore requiring governmental approval. Guidelines have been issued which provide a very wide interpretation of "relatedness" of the established business and the new one. Their linkage can be shown by means of vertical integration (backward and/or forward), production of a substitute product or service, use of the same

technology or production process, falling into the same industrial classification, or the fact that a product or service resulted from research and development carried on in Canada. Any one of these alternative ways is sufficient to claim relatedness: moreover, the guidelines acknowledge that a new business may be related to an established business on the basis of some other principle. The obvious implication is that few cases of expansion by already established foreign-controlled companies give rise to reviewable operations. Hence, growth of existing foreign-controlled assets are out of reach of the Act, provided no further acquisitions are involved.

III.2 A DESCRIPTIVE EVALUATION OF FIRA'S PERFORMANCE

In accordance with the proposed framework just described, the performance of the Agency is an organizational matter to be carefully distinguished from political or legislative considerations. We rely, in our evaluation, on basically two sources of information: (1) personal interviews with FIRA officials, and (2) talks with executives of firms having dealt with the Agency.

The 1973 law provides broad guidelines to screen foreign investments. The "quality" of any proposal is assessed with respect to ten factors, ranging from increased employment to compatibility with industrial and economic policies and including new investment, increased resource processing or use of Canadian parts and services, additional exports, Canadian participation (shareholders/directors/managers), improved productivity and industrial efficiency, improved product variety and innovation and, finally, beneficial impact on competition.

Applying these broad criteria to specific investment proposals is a very subjective task. The information we were able to gather on the screening process points in the following directions: (1) Canadian participation in ownership and/or management is actively bargained for, but mainly in cases of acquisition of Canadian-controlled companies; (2) the evaluation of technological aspects is rather deficient, apparently due to a lack of technical staff in an agency where all employees are economists or lawyers; guidance on these matters comes from other departments or more often from the companies being screened which, in turn, have been "educating" the Agency's personnel; (3) little or no consideration is given to restricting payments for technological and managerial assistance from parent companies; (4) a commitment to train local employees is generally obtained in the negotiations; and (5) at the present time, the employment factor plays a disproportionate role in evaluating a proposal.

It was found that provincial governments' pressures have been very strong - to the point of reversing previous decisions in order to disallow the investment.[15] Also, a certain rivalry has allegedly emerged between FIRA and the Department of Regional Economic Expansion (DREE). In talks with an official of the latter, the impression was that, although no development incentive or loan guarantee is authorized unless a person has complied with the requirements of the Act,[16] certain foreign investors, already screened by local branches of the DREE, were being "helped" in getting the Agency's approval. This is not an unreasonable practice, for both institutions have overlapping interests. It points, though, to possible

incompatibilities among their sets of criteria and to an undermining of the Agency's responsibilities.

Some commentators have found it difficult to understand how Canadian participation can be increased when the acquiree is a firm totally owned and managed by Canadians. Since most acquisitions take place through an already existing subsidiary, FIRA bargains for Canadian ownership and/or management in the latter. Also, when the acquisition can be run as a separate entity, FIRA opposes its integration as a division of the foreign-controlled subsidiary, hence requiring a different directorship and management. Incidentally, the fact that FIRA does not reject out-of-hand acquisitions of firms totally owned and managed by Canadians sustains our previous assertion that the Canadian government is ready to accept some loss of domestic control provided gains brought by foreign firms are considered enough to offset it.

Among the large corporations visited, the feeling is that the Agency's staff consists of highly responsible and dedicated men. It appears that no attempts are made by companies to bypass the civil servant to whom the case is assigned so as to exercise undue pressure at higher levels. It was mentioned, however, that the unclear nature and wide interpretation of the assessment criteria enhance the civil servant's position in the negotiations. In one case, there was resentment that the civil servant was generally not at the same "level" as the executive negotiating for the company. This difference was perceived in terms of status and orientation. Only a very high-level corporate executive can

handle those kinds of negotiations. Yet the official to whom the case is assigned more often than not ranks at a comparatively lower hierarchical level. Also, time is seen as much more valuable from the manager's viewpoint than from that of the government employee. In another case, it was reported that the mere fact of being an acquiror leads to a presumption of wrongdoing on the Agency's part, which did not help the negotiations. Since most companies use lawyers as intermediaries in the application process, there is occasionally a lack of understanding because of the mere presence of a go-between. Furthermore, the high turnover of personnel in the Agency hampers effective dealings with the applicants.

An "honest" attitude is apparent among the firms in their willingness to meet the conditions of their undertakings. In this respect, FIRA regularly (every year) sends forms to the concerned companies asking for their comments not only on specific commitments but also on other items contained in their original applications to the Agency, thereby extending its regulatory role beyond the initial approval process. When a significant departure from the terms agreed upon occurs, the Agency usually verifies the reasons submitted by the firm, to the extent of conducting thorough industrial studies in support of the case. The present recession has, however, not favoured a strict stand towards foreign investors and most of their expansion plans have not been completely carried out. It was found that some foreign firms plan to back out of certain items of their undertakings, stating, for example, "We found out later that the business was not what we originally thought it was." It is difficult to guess what the position of

the Agency will be when confronted by this type of resistance. As yet, no remedial action through the courts has been taken.

A finding not directly related to the question at hand, but which may have relevant implications, is that there appear to be significant national differences in the personnel policies of multinationals operating in Canada. This point has not been investigated thoroughly, but the impression is that MNCs from large European countries, such as Germany or Britain, have a strong "head office bias," thereby making it difficult for Canadians to reach top management level. On the contrary, MNCs from small countries such as Switzerland show a more open attitude towards promotion of people within the host country. Reasons given for these perceived differences are various: ethnocentrism, large internal labor markets at home, centralization, etc. As for the U.S. MNCs, a problem is that most of them do not perceive Canada as a country in itself and, therefore, make decisions which, while they reflect U.S. concerns, may be in contradiction to the present Canadian situation. These contrasting attitudes among nationalities could not be corroborated in interviews with FIRA or in any data, but deserve study in that the differences are widely believed to exist.

Over the last three years, Agency officials have acquired experience and expertise - qualities conducive to improving their bargaining with foreign investors. In earlier negotiations, it was apparent that civil servants did not know what to ask the companies for; but with a solid background of cases, they are now able to conduct their negotiations knowledgeably. The basic idea behind this bargaining is obviously that something

can be gained over and above what the normal course of events - the market - would yield. Sometimes that something may be solely to prevent the curtailment of Canadian interests and in other instances, a different ordering of priorities by the foreign investor and a resulting change in its plans. No one among the Agency's officials would argue that the former has not been accomplished. More reservations about the latter were encountered.

Overall, the Agency can undoubtedly be credited with positive achievements. Our interviews revealed that at least some foreign-controlled companies had significantly altered their proposals in line with the screening criteria. Sometimes the parent company had to shift its strategy and overcome its initial reluctance to accommodate FIRA's demands. On other occasions, the reorganization imposed by FIRA untangled legal ties that were being maintained by companies which had expanded through acquisition and had never been forced to revaluate their multiple links. The additional control that local subsidiaries acquired through negotiations between FIRA and the parent companies was highly praised by Canadian managers.

Certainly, many more foreign companies now regard Canada as a separate entity and yet they are, on the whole, unable to fully understand what the country really wants - not only what it wants but how they, in turn, can meet the country's expectations. It is interesting to note how some foreigners react in this respect: e.g., the Japanese attitude, we were told, is to avoid rejection by all means. That is to say, they would rather withdraw than face an unfavorable decision - presumably, a question of pride.

To go one step further, the Japanese would prefer a set of "fixed rules" restricting foreigners than the more flexible screening board. Strictness takes precedence over uncertainty.[17]

Although indirectly, the legislation and the Agency may well be having their desired effect in "Canadianizing" foreign-controlled businesses. Companies from joint-ventures to conglomerates are seeking Canadian status before FIRA to avoid the need for approval of future investments and acquisitions. Under FIRA's rules, a company with 25% of its voting shares in the hands of foreigners is not considered Canadian unless the contrary can be established. The burden of proof has forced companies to reshuffle and rearrange boardrooms, executive committees and shareholders' stakes to show that control is in Canadian hands. However, the common belief about these changes is that although ownership still remains largely outside Canada, enough management positions are offered to Canadians to satisfy FIRA's officials.[18]

The extent to which the Agency's performance can be improved depends on (1) how well it will resist pressures not only from provincial authorities but also from influencial people having a stake in a specific proposal; (2) how much its bargaining will be enhanced by technical changes in the legislation and appropriate personnel; and (3) how well the Agency will maintain an upper hand, over existing government institutions, as regards FDI.

The first two items have already been partially dealt with earlier and will be tackled again later in the study. With respect to the third,

the Agency has not yet asserted itself fully. As any other newly-created institution, it has to gain recognition from existing departments, assimilate information transferred at departmental and interdepartmental meetings, and receive guidance in its operations. It is important to bear in mind that the Agency relies heavily on other organizations for specific expertise. Also, FIRA has no policy-making authority as yet; policy rests with the Minister of Industry, Trade and Commerce and ultimately with the Cabinet, and so it is crucial for FIRA to have the utmost support on recommendations where the criteria of "benefit to Canada" yield to political motives. As a step towards recognition of its role, the Canadian government is allowing the Agency to participate in the elaboration of "Codes and Conduct for Multinational Corporations" and delegating official representatives to the OECD (Organization for Economic Cooperation and Development).

In its relations with the public, the Agency's officials have to bring to the forefront objective information on the foreign investment question - as far as the strict rules of confidentiality allow it - and engage in a constructive dialogue with concerned Canadians. To meet these priorities, FIRA has started a publication of working papers on topics related to FDI and is preparing a magazine to help create a public forum on the same matter. Unfortunately, the very strict dissociation of the political aspects from the pure economic reasoning being pursued within FIRA takes on a somewhat artificial character.

III.3 ISSUES AND CHANGES

The question we want to address to ourselves now is which operations of the organization are raising problems and creating tensions, thus forcing the entry control system to undergo changes.

At present, the application procedure is extremely burdensome, and companies complain of too much time and cost involved in the reviewing process. Examples of negotiations going over four months are not infrequent, and executives are quick to display the voluminous amounts of information that their dealings with FIRA have required. As a result, new rules have been introduced recently for companies with gross assets of less than $2 million and employing fewer than 100 people. Less formal documentation is required and ten days without a reply from the Agency implies automatic approval by the Minister.

The length of the negotiations has other disastrous effects not yet corrected. In the case of an acquisition, it leaves the vendor company - very often owned by an individual - in the dark about the screening process, since FIRA does not communicate with it. Very often the acquiree is in a precarious financial position, which further complicates the matter. As for the acquiring company, the delay leaves it at a standstill, disrupts its plans, consequently accumulating expenses and management time in the course of the negotiations. In our talks, the companies that went through this laborious process also complained about the substantial losses in human capital, for the best employees usually do not wait until the operation is completed. This has an impact on the cost of the transaction. Furthermore, in the case of a rescue operation, the financial

losses per day can reach substantial amounts. We were told that, on the whole, the acquiror has to pay more than the initial price, either because of related costs or interest payments demanded by the initial owner. Management pointed out several times that "the Agency does not seem to understand that an acquisition that looks attractive today, might not be attractive anymore tomorrow." The resentment was very high among executives on this issue.

On a different level, the legislation is not clear on several points. It is sometimes difficult to know whether an investment represents a new business or not. For instance, a company may have been licensing a product and now decides to enter into business in Canada. Under which heading should it be classified: new business or expansion of an existing business? The approach followed by Agency lawyers seems to be that an established business is so qualified only if a working activity has been carried out in Canada, regardless of the legal parameter, i.e., whether incorporated or not, etc. To clarify this matter, a provision has recently been issued which concerns foreign distribution companies operating in Canada. If they want to produce products in Canada now made at their home base, approval is automatic.

Confidentiality plays a major role in FIRA's operations. Presently, the Agency receives take-over proposals for screening from privately-held companies whose intentions remain undisclosed to the public. Publicly-held companies, on the contrary, have to reveal a great deal of information because of stock exchange regulations in many countries and, therefore,

stand at a disadvantage with respect to private companies. FIRA is concerned because, in its role as an insider, it is unable to disclose the information that would give other people a chance to make pro and con arguments about a sale. Incidentally, it was found during our interviews that, although FIRA remains silent about a deal (bid), provincial governments are not always so. Along with departments concerned, provincial governments receive a copy of the investment proposal in order to examine its compatibility with local policies. In at least one case, and one suspects in many others, the bid was disclosed to a competing company, thereby complicating the already intricate deal. It is also worth mentioning that in another instance where two firms were competing to acquire a Canadian company, labor was called in to decide on the final buyer. This is a trend which, as far as we know, is also developing in Swedish companies, where the fate of an acquisition is determined by the local union.

One of the most crucial problems the Agency faces relates to intangibles. Indeed, the value of a foreign subsidiary often depends on the ability to go on using trademarks and designs developed by the parent company. If the latter wants to sell its Canadian interests to another firm but FIRA - or the Minister - prefers to propose a Canadian buyer, the original owner may object to the continued use of its "intellectual property", thereby making its subsidiary virtually valueless. This undermines FIRA's and the Cabinet's control of foreign businesses and forces a search for new regulations to avoid this kind of situation. The possibility of ordering a company to leave "intellectual" assets on the property of the subsidiary

it sells, for an agreed-upon length of time, is in the process of being discussed. In case of a refusal to do so, the company would either have to maintain its existing subsidiary in operation or close down completely.

Regarding the Agency's monitoring process, companies allowed to go ahead with the acquisition of an unprofitable operation complain that they have limited possibilities of manoeuvring to get it in the "black" again. FIRA carefully watches for any changes in the business being acquired - for instance, dropping a product line - and grants permission to do so, but only on its terms. This introduces rigidity which may, in the long-run, be counter-productive in solving employment problems.

Finally, the Agency is faced with a high personnel turnover. A possible reason could be its small size - slightly over 100 employees - with little opportunity for promotion. And, especially in the case of lawyers planning to join the private sector, it provides a natural stepping-stone for getting government training and connections.

IV CANADIAN POLICY-MAKING AND REGULATIONS OF FOREIGN BUSINESS ENTRY

IV.1 AN OVERVIEW OF CANADA'S POLICIES

The effectiveness of the Canadian foreign investment policy is a two-fold question: on the one hand, its performance has to be measured against a set of goals that "Canada" as a whole wishes to attain. On the other hand, it has to be considered relative to alternative ways of achieving these goals.

Limitations similar to those found in the first part of this study occur here: there are no clear-cut ways of measuring results, comparing them to a pre-determined set of well-defined objectives and obtaining variances that will enable one to modify the system and better fulfil its objectives. For one, the federal government provides little guidance as to how it sees the foreign ownership debate. Surely, the creation of the Agency can be viewed as a step towards a firmer position in regard to foreign interests but, even then opinions vary as to how far the Canadian government is prepared to go. Nevertheless, since the effectiveness of the system is at the heart of its "raison d'être", it deserves our full attention. Accordingly, we will try again to extract the main components from the Canadian political and economic environment to serve the purpose of our investigation.

The situation prevailing in Canada at the time of the Gray Report,[20] which recommended the creation of the Agency, has changed dramatically. In the early 70's, Canada, notwithstanding its high level of foreign ownership,

thought it could afford a strict stand _vis-à-vis_ foreign direct investment. This position was based on several factors: vast reserves of natural resources, a high level of savings, a strong Canadian dollar and a larger-than-average rate of growth of its economy. As almost everyone knows by now, Canadian reserves of oil and gas are not exactly what the foreign-controlled petroleum industry maintained they were a few years ago. The high level of savings, either because they are being improperly channelled or because they are used in large-scale projects with a very long payoff, do not seem to help finance the country's present needs. The Canadian dollar has sunk by close to 10%, showing how precarious its situation is in the absence of large inflows of capital. Finally, the rate of growth of the economy has decreased as a result of U.S. and world-wide recession, and lack of capital outlays in a country plagued with political uncertainty. As a result, unemployment figures reach levels unknown since the depression of the 30's (over 8%). The balance of payments deficit is a staggering one - well over $5 billion - in spite of the fact that Canada is still a net exporter of oil.

This rapidly degenerating situation brings to mind the same problems that were in existence years ago and that remain largely unsolved, namely: (1) Canada's reliance on imports of manufactured goods (mainly from the U.S.), (2) its role as a major raw materials exporter with little processing at home, and (3) its total dependence on foreign sources of technology. On none of these regards has Canada been able to change the existing historical pattern; it has perhaps worsened.

Indeed, manufacturing activities have tended to shrink in relation to the total economy. In 1943, they amounted to about 32% of the total output but fell to under 23% in the early 70's.[21] Finished products have been coming into Canada at record rates in recent years. In 1970 the end-product deficit was about $3 billion; in 1975 it was a staggering $11 billion, most of it involving trade with the U.S.[22] Similar figures were recorded for 1976.

In the technology field, the deterioration is even more pronounced. There is, first of all, a total absence of a coherent science policy in the country. During the current period of restraint, the government has responded by reducing its current level of R & D expenditures and its support for university research. Moreover, some of the mechanisms that were set-up in the 60's to induce companies to engage in R & D have been abolished. Until the end of 1975, most companies were aware of how much government assistance they would receive under the Industrial Research and Development Incentives Act (IRDIA). Companies could plan their yearly budgets appropriately. This program has been cancelled. To further illustrate the government's attitude on the matter, it should be noted that the Anti-Inflation Board (AIB) now lumps R & D expenditures under "charitable donations".[23]

The closest thing that would appear to be a government policy with regard to industrial R & D is what is referred to in the literature as the "make or buy" policy. It was introduced three years ago and its objective was to get R & D out of the government laboratories and into industry. So far, it has gone out of the government and is even going out of the country,

as some large Canadian MNCs are establishing part or all of their research and development facilities in the U.S.[24]

The abrupt drop in new inflows of FDI in 1976 has accelerated its already downward trend recorded since 1971. Moreover, since 1973, the net value of FDI in Canada and Canadian FDI abroad has been negative, indicating that Canada has become an exporter of direct capital (see Appendix, table 1). It would be misleading to think that all of the direct investment abroad is carried out by Canadian-controlled firms. In fact, foreign-controlled companies account for a substantial share.[25] The main reason given for this exodus of capital is that Canada's economy is getting out of hand in relation to that of the U.S. - Canadian wages have outpaced those in the U.S., although productivity is seriously lagging (see Appendix, table 2). Profits have been curtailed by the AIB and increased political uncertainty makes investment in Canada riskier. Among the first to react to this unfavorable situation have been the Canadian-controlled multinationals. Announcements of major expansion plans outside the country have become common occurrences. Large amounts have been invested abroad in such sectors as mining, banking and utilities - traditionally strong areas of Canadian-owned companies. Comprehensive data on this subject show that about 25 companies account for 75% of Canadian direct investment abroad and that these same companies are becoming increasingly "Americanized" both in ownership (see Appendix, table 3) and location of their facilities.

Furthermore, in a study carried out especially for FIRA by the Department of Industry, Trade and Commerce and surrounded by extreme

confidentiality, it was found that capital outlays of foreign-controlled firms are growing at a faster rate than those of Canadian-controlled companies,[26] thereby increasing future claims on the Canadian economy. Moreover, over 90% of the investment funds come from retained earnings and local borrowings.

The literal drying up of inward FDI has paralleled a massive borrowing in 1975 and 1976 in the U.S. market by federal, provincial and municipal authorities to such an extent that serious doubts have been placed on Canada's ability to repay these loans. To make matters worse, domestic public debt and interest expenses have grown exponentially (see Appendix, table 4).

In this context, arguments about the cost of FDI often invoked in LDCs have also made it to the forefront. "Good Old Canada" is paying large, not to say exhorbitant, amounts of interest, dividends and "service charges." Business service payments made to non-residents show staggering rates of increase in items such as rents, royalties, management fees, professional fees and the like (see Appendix, table 5). This is a natural consequence of an economic slowdown since inflows of capital appear to be more sensitive to a fall in profits than do outflows. However, a historical perspective shows a persistent disequilibrium in favor of outward flows. Indeed since 1967, the cumulative flow of earnings <u>from</u> Canada to the U.S. has exceeded the total inflow of U.S. direct investment from 1950 to 1967 by over half a billion dollars.[27] By 1974 the net outflow of earnings had reached twenty billion.[28]

Public policy, in the past decade, was unable or unwilling to face these problems. Politicians and bureaucrats reacted to the foreign entry mainly by strengthening the vested interests of a handful of Canadian corporations, through tax advantages[29] and the like, leaving most of the new, small and medium sized firms at an obvious disadvantage. Consequently, the wave of takeovers by both large foreign interests and by privileged Canadian giants accelerated the pace of concentration of economic power in the economy. Curiously enough, acquisition of Canadian-controlled firms was by no means limited to foreign investors[30] alone, although measures were only taken against the latter. (See Appendix, table 6)

The foreign investment issue has not appeared in political platforms in any significant way, with the exception of that of the New Democratic Party, and even there it did not rank high. Recent polls[31] conducted across Canada showed, however, a changing mood in the public towards foreign domination. Groups such as the Committee for an Independent Canada[32] have been active in pressing for a much stronger stand against foreign interests in general and multinationals in particular.

Certain provinces have been leading the way in reacting against foreign investors. Ontario has recommended that for the future, as a development and job creation strategy, FDI should be de-emphasized and replaced with corresponding Canadian participation and Canadian-owned economic development.[33] Saskatchewan has gone even farther by forcing the foreign-controlled potash industry to divest its assets in the province. Compensation was paid by the provincial government.

IV.2 EFFECTIVENESS APPRAISAL

Within the framework prescribed by the legislation, the government has various degrees of freedom in implementing the regulations over foreign direct investment: it can slow down or accelerate the setting-up of the control mechanisms, influence the evaluation made by the Agency, be more or less strict in enforcing the law, and even attempt to minimize the latter's impact when environmental circumstances seem inappropriate to a rigorous implementation. Hence, there is undoubtedly a question of timing and tuning-up of governmental policy in order to best meet the final objective of the entry control system.

As noted earlier, the government's objective in regulating foreign business entry is to improve the performance of the Canadian economy. This objective is nevertheless subject to the constraint of maintaining the quantity of FDI entering the country in view of its long-term needs of capital, technology, markets, etc. However, for the first time in Canadian history, in 1976, direct foreign investment in Canada was negative - the outflow of capital reached $410 million (a net decrease of over a billion with respect to 1975) - indicating that some divestment by foreign-controlled companies is taking place.[34]

It is unlikely, however, that the Canadian government's policy _vis-à-vis_ alien investors is responsible for this abrupt change. Data provided by the Agency show that a relatively small proportion of investment proposals have been rejected (15% for the latest available figures of 75/76).[35] To the extent that these investments would have been financed from abroad,

the screening process did curtail the flow of FDI; estimates made by FIRA for the same period 75/76 range from $15 to $20 million. In addition, another 15% of the proposals received were withdrawn prior to decision. The foregone investment in this case has been estimated at $4 to $5 million.[36] Furthermore, the Agency argues, in some circumstances foreign investors have been persuaded to obtain the required funds for their investments from abroad instead of financing locally, therefore contributing to the inflow of FDI. We found also that in a few cases companies resubmitted their applications and they were accepted,[37] hence further increasing the number of acceptances.

It is likely that because of leads in the investment process the flow of FDI in 1976 was significantly altered. The Agency reports, indeed, that very few applications for new investments were received in the last quarter of 1975, which coincided with the implementation of Phase II. Applications started to pick up again in early 1976. It is conceivable that a number of investors had accelerated their investment plans in anticipation of the entry into force of the new business provisions of the Act, achieving by the same token "grand-father status."[38] Conversely, the length of time required to screen the applications has created per se a lag in the normal development of investment operations. These facts do not explain, of course, why FDI fell so dramatically in 1976 but suggest that the difference in flows of FDI in 1975 and 1976 should not be taken as a permanent shift.

From the records of the Agency's operations, it is easy to see

that the government policy was very open in approving applications. Furthermore, the numerous reassuring visits by Canadian officials to the U.S. to explain the intent and scope of the 1973 law corroborates the concern of the Canadian government to minimize the impact of the legislation.

All in all, it appears that it is not the strictness of the screening procedure - a large number of refusals on first submission - which has discouraged FDI. It is just that inflows of FDI have been missing. Three explanations can be advanced for this fact.

First, foreign firms could have reacted very negatively to the existence of the regulations and changed their previous plans for new investments in Canada. We will deal with this possibility in the last section of the paper where such change in behavior will be examined.

The second explanation concerns a reduction in the relative attractiveness of Canada, possibly because of government innovations such as the creation of the Anti-Inflation Board to establish limits on wages, prices and revenues. Executives of foreign-controlled companies blame increasing labor costs (high minimum wage), low productivity, labor unrest and political uncertainty as the main deterrents to new foreign investment, together with the sluggishness of the world economy as a whole. In fact, many indicators point to a general deterioration of economic conditions in Canada: for instance, profits per unit of output were negative in 1975, total investment and real GNP stagnated, and labor productivity actually decreased (see Appendix, table 2).

The third possible cause of the actual drop in FDI is of a historical nature. Acquisition activity in the U.S. and foreign acquisition activity in Canada have borne a close relationship over time; they both reached a peak in the late 60's and have steadily declined ever since.[39] Since acquisition operations represent the predominant way - both in absolute numbers and in dollar volumes - for foreign firms to enter and/or expand in Canada, any drop in acquisition activity would be reflected in a substantial reduction of FDI.

None of the three explanations suggests that the government policy vis-à-vis foreign capital was especially restrictive. To wit, while acquisitions by domestic-controlled firms decreased rather sharply, acquisitions by foreign-controlled companies picked up slightly in 1975 (see Appendix, table 6). Even more pronounced was the sharp increase in portfolio flows into Canada, indicating perhaps a change in the composition of foreign claims but not an absolute decline in the amount Canada was able to obtain abroad. Finally, foreign-controlled companies already established in Canada, and over which the law has no direct impact, increased their investment plans in 1976 (according to a survey of the Ministry of Industry, Trade and Commerce).

IV.3 IMPEDIMENTS AND FUTURE PROSPECTS

It is essential to recognize the constraints the government has when trying to implement its policies vis-à-vis foreign firms. Their effectiveness is indeed intimately related to the power of the federal

government over the provinces on the subject of controlling alien investment. Although other factors are undoubtedly important in exercising such power, the constitutional parameters should not be overlooked. Sections 91 and 92 of the British North American Act grant legislative authority over "property and civil rights" to the provinces and over "trade and commerce" to the federal government. The control of foreign investment can be considered as going under either section,[40] and it appears that only a rewriting of the Constitution may solve the intricacy of legislative authority. In this respect, one of the principal missions of the Agency, in the eyes of its officials, is to unite the provinces under the federal authority and avoid competition in granting conditions to the foreign investors.

If the aim of the Canadian government were to recover control of the foreign-controlled sector of the economy - a step some nationalists would like to see - the legislation would have to undergo serious amendment. Foreign domination stems mostly from assets held by large MNCs already carrying on business in Canada and which are only marginally affected by the Act. But the government goal is quite different. The strategy is to stop Canadian participation from further deterioration and increase it, wherever possible, without any major upset to the actual status quo. This is more easily attainable in the area of natural resources because untapped possibilities - new mines - can be singled out and reserved for Canadian firms which already possess the required technology and know-how to carry out the exploitation. In the case of manufacturing, although new possibili-

ties - in terms of new product lines - are more frequent and larger in dollar volume, the implementation of such strategy meets with much more formidable barriers. Indeed, most of the possibilities originate within existing foreign-controlled companies through differentiation operations.

Our meetings with Agency officials gave us the impression that the Canadian government is giving priority to regaining control over natural resources (current legislation on uranium exploitation points in this direction),[41] and that it is unsure as to what to do in the manufacturing sector where foreign domination is more extensive. One suggestion currently evolving in high circles is that the Agency should become a kind of broker responsible for finding other buyers to replace an applicant that has been turned down.[42] Obviously, this is another way of saying that FIRA should look for a "domestic solution" before surrendering to foreign demands. Not surprisingly, Canada has in the Canadian Development Corporation a potential buyer for such offerings.

The actual drop in inward flows may force the government authorities to make the Agency more attractive to prospective investors. At the present time potential investors go through the Agency to pass the test of "significant benefit to Canada"; yet, in addition, they still have to comply with federal and, mainly provincial regulations. This creates a certain amount of confusion in their minds and redundancy within the public service. One could well foresee the Agency becoming more of a "service" organization dispensing relevant information to the applicants along with screening their proposals, hence centralizing more decision-making concerning foreign

investment. A future possibility (although strongly opposed by Jean Chrétien, the present Minister of Industry, Trade and Commerce) is the granting to the Agency of policy making authority. This would have the advantage of discharging the Cabinet of some embarrassing "prises de position"[43] that could be ruled on by the Agency without committing the Cabinet.

There are other external factors that may have an impact on the Agency's future. The Combines Act is undergoing changes that may alter the existing relationship between FIRA and the Competition Board. Presently, we were told, the Agency consults with the Board on matters of competition policy before approving an acquisition. So far, only about five cases of foreign acquisitions or expansions ruled on by the Agency have also faced inquiries under the Combines Act.

Under the modifications proposed at the present time, the responsibilities of the Competition Board would be extended in order to review different aspects of trade arrangements that are occasionally used to the detriment of the small business and the public. Examples of items for review include refusals to deal, consignment selling, tied sales, etc. Also, service industries, which account for 20% of Canada GNP, would be brought under regulation by the new Act. The most important point of the revision is, however, that authority would be given to the Board to have hearings and issue remedial orders without necessitating permission from the courts. This differs from the present legislation, which is contained within the criminal code of Canadian law. Under the latter, the alleged

offender is innocent until proven guilty beyond any reasonable doubt, and the court is constrained to "criminal" considerations rather than economical or social justifications. Undoubtedly, the new approach would substantially increase the Competition Board's influence, enabling it to overturn a decision reached by the Cabinet under FIRA's recommendation if the foreign investment violated the new competition law. For a while, a few months ago, it was even argued that foreign investments would have to be screened first by Combines' officials. Only after a Combines determination had been made would the proposed investment have gone through FIRA. This approach was not followed and, apparently, investors will be able to get an advance (but non-binding) ruling from the new Competition Board if they think their proposals might be judged anti-competitive. And if competition inquiries do occur, the new board will try to carry them out at the same time as the FIRA investigation.[44] Under the proposed law, relations between the new board, FIRA, and the Cabinet could become a nightmare for the foreign investor, therefore undermining the whole entry control system.

The aforementioned facts bring us to the question stated earlier in this section: is there a more efficient way to achieve control of foreign investors? Knowing that such a control is being justified in terms of "significant benefit to Canada", the new legislation on anti-combines is a serious candidate to exercise this control. Indeed, the new proposals call for the legalization of several anti-competitive practices if they can be shown to bring increased efficiency to a firm's operation.[45] The terms of the proposal would eliminate from the Competition Act the criminal

clauses that concern mergers. Practices that were "blatantly anti-competitive" before, such as market sharing agreements, price differentiation, predatory pricing, etc., would be allowed without being subject to tight government controls. Only when those practices influence the efficiency of another small competitor would the Competition Board intervene. Mergers would also be allowed if they offer "efficiency benefits". Hence, the Board would not be permitted to curtail the operations of an enterprise that had achieved a dominant position in the market solely as a result of greater efficiency and innovativeness over that of its competitors.[46] Given the spirit of the proposed legislation, one wonders whether it complements the law on control of foreign businesses or whether it duplicates it under a different heading. If the latter were true, the existence of the Agency would be close to redundant, for both laws would cover the same domaine and, in addition, the Board would have a farther reach since it would not distinguish between foreign and domestic investors.

Were other means of controlling foreign interests to come into play, the Agency's role would be significantly altered. Since the publication of the Gray Report, concern has been expressed over the regulation of technology transfer, patents and trademarks. So far, no legislative action has been taken in these areas. Currently, the proposal of a new bill is being discussed which would modify the patent system.[47] This law would shorten the duration of patent protection, force companies to disclose more information on the exploitation of their rights and allow importation, regardless of the existence of a patent, if prices charged on the Canadian

market were judged excessive in relation to foreign prices for the same product. In section 90 (1) the proposal mentions that the new patent Board would be linked to the Department of Corporate and Consumer Affairs or to another department or agency. It would be the Cabinet's decision. This move could certainly change the entry control system and bring changes in the Agency as well.

Finally, one must realize that Canada does not have foreign exchange controls supplementing controls on direct investment. The question that comes to mind is, whether it makes sense to control foreign investors without controlling their financial payments. No one answer can be provided to this question, for the Canadian financial system is so integrated with the American capital market that major disruptions could occur as a result of an implementation of foreign exchange regulations. In the event of a growing pressure from the balance of payments deficit, the Canadian position may have to be reserved. In such a case, the entry control system could be extended to include the Bank of Canada, and, possibly, the Department of Finance, thereby centralizing all policies affecting foreign investment.

In summary, the foreign investment policy of the Canadian government has accommodated the changes taking place both internationally and domestically and lost part, if not all, of its restrictive stand towards foreign investors. This temporary orientation, coupled with the actual design of the entry control system, makes it difficult to progress towards the ultimate aims, i.e. achieving a high degree of efficiency in the economy while preserving both Canadian interests and a steady inward flow of FDI.

Hence, the entry control system has to undergo some modifications, as we have just indicated. They would, however, have to take into account the structural changes occurring in the world economy as well as the historical patterns still very much present in the Canadian environment. It is to these last two points that we now move.

IV.4 DOMESTIC DILEMMAS

We do not intend to give a full picture of the current events that have affected the world economy - only to point out two factors relevant to the Canadian situation. Firstly, massive transfers are going on of financial (and real) resources to OPEC countries. The likelihood of these countries ever undertaking FDI appears questionable since most of their funds will move into capital markets, which are large, where regulation to protect investors is relatively strong, and where a substantial amount of competition among financial institutions occurs.[48] This investment pattern protects OPEC's minority interests and provides flexibility in trading. Secondly, European and Japanese FDI is growing at a fast rate, directed mainly to the U.S.,[49] hence reverting the post-war pattern of flows from U.S. to other developed countries. These changes in financial flows give rise to at least two remarks: one, that the Canadian capital market is very unlikely to receive funds from abroad since it does not meet many of the conditions sought by OPEC investors. (Incidentally, investments in real estate, where OPEC countries have become very active, are also in part controlled by FIRA). Two, the U.S. is competing very aggressively for foreign investors and that

is likely to continue in the future.[50] Moreover, U.S. state governments, coast to coast, are locked in massive competition to attract the foreigners by giving away all sorts of incentives and opening offices abroad to promote their facilities. Meanwhile, Canada screens foreign investments.

The following quotation summarizes the historical patterns, to which we referred, as still being very deeply embedded in the Canadian setting:

> The response of Canada governments to the problem inherent in the degree of foreign ownership - especially the employment crisis that has resulted from the overexpansion of resource industries relative to manufacturing and the drainage of surplus income as service payments for foreign investment instead of its being used to generate new capital formation within Canada - has been surprisingly predictable. Industrial integration with the U.S., reliance on imported technology, the twisting of the capital market on a north-south basis impeding inter-sectoral flows of funds within Canada, and competitive "bonusing" by various levels of government: all these phenomena are rooted deep in the logic of Canada development strategy... They are the result not only of the weakness of the Canadian economic structure, but also its strengths, the two being inseparable. The power of commercial and financial capital to exploit the resource base led to weakness in industrial development. This in turn was the result of the "British tradition". Born a colony of the British mercantile system, Canada inherited a class structure and a set of economic institutions appropriate to its colonial status. They also proved remarkably adaptive to the rising American order. 51

Those comments are particularly appropriate to the Canadian financial system. The commercial banks grew up in a field of international commodity agreements and were of little value to industry. "Integration" of the continental capital market went hand-in-hand with foreign industrial

domination. Stock markets in Canada remained thin, thereby adversely affecting the liquidity of new issues and hence reinforcing the preference for more stable American securities offered by big institutional investors. The proliferation of wholly-owned subsidiaries has greatly contracted the supply of industrial equity in Canada, thus causing a much slower growth of Canadian stock exchanges as compared to those in the U.S. At the same time that brokerage costs appear much higher in Canada than in the U.S., Canadian banks do 50% of the call loans business in New York to sustain Wall Street. Similar problems impede the marketing of new corporate bond issues in Canada.[52]

The traditionally conservative orientation of the Canadian banks places limits on the effectiveness of the government policies and the entry control system. Primarily, it is not conducive to helping new and small businesses find financial resources in order to expand facilities or even overcome temporary difficulties. Such businesses sooner or later become the proposed acquirees of foreign investors, thus making it difficult for the government not to comply with the latter, given the dramatic character of rescue operations that most of these acquisitions take. Incidentally, although the risk-aversion expressed by Canadian bankers in their preference to lend to multinationals and large firms is not a characteristic unique to Canadian banks, the lack of investment banking as such in Canada compounds the difficulty for small or medium-size companies to get enough funding.

Also, based on the Agency's findings concerning the vendor companies' reasons for selling, one can assume that few Canadian owners are ready to

start a new business with the freed capital obtained from a sale to a foreign investor. Since no mention is made of any willingness on their part to start a new venture, this capital is likely to be deposited in the banking system or invested in publicly-traded securities. Thus, it leaves the Canadian industrial sector to be invested in the U.S. capital market.

Lastly, federal, provincial and municipal authorities, as well as companies, are compelled to borrow from the U.S. rather than through an organized Canadian capital market. The result is increased foreign indebtedness. Consequently, while more decision-making is taking place at the firm level owing to the implementation of controls on FDI, one wonders whether the growing portfolio investment will not on the whole reduce Canada's decision-making capabilities. Let us clarify here a point frequently misunderstood in the literature of FDI. It is often argued that portfolio investment differs from direct investment in that it does not involve control. Hence, many commentators claim, portfolio investment is a better strategy for development in less developed countries (LDCs). The Canadian example shows that the tariff wall erected in 1879 was designed, in part, to protect British capital by restoring revenues, thereby easing the anxieties of British holders of Dominion public debt.[53] In some instances then, portfolio investment implies a specific development strategy designed to guarantee the rights of foreign creditors. The influence of portfolio investments on domestic allocation of resources manifests itself along different channels from those of FDI, but there is no doubt that it still curtails the freedom of decision-making of the host governments. The argument

being made is that there is no point in controlling FDI only to fall back into the surveillance of foreign banks and international institutions, as some LDCs have discovered recently.

The second remark on the historical patterns inherited from Canada's hinterland status concerns the distribution of power within the country. The foreign investment controls have as their "raison d'être" the search for a different set of priorities and a resulting allocation of resources on the part of the foreign investors. To try and bring back home some decision-making power is only the tip of the iceberg. The rest has to do with the distribution of power among Canadians. This begs then the question: is the old or a new Establishment going to benefit? This question is of crucial significance for the effectiveness of the entry control system, since the way an Establishment organizes itself determines how a nation will pursue its objectives. To be more explicit, if increased Canadian ownership, increased Canadian participation, and the like, mean more power to the already concentrated elite - perhaps a thousand men who make most of the investment decisions in the country[54] - then the case for such controls is weakened from the standpoint of equity. If, on the other hand, the regained decision-making power is used to enhance the participation of all Canadians then the entry control system has some social significance.

The previous discussion shows how critical the establishment of an entry control system is, for it deals with the decision to invest, that is, to allocate resources. And the decision to invest determines how these resources will be distributed later on. A condition for success in the

Canadian context, is that the government bureaucracy must finally break its ties with the influential business community[55] and start a redistribution of power among social groups which have been kept apart from the decision-making process until very recently. This is why it is difficult to isolate control of foreign investment from domestic issues.

V CANADIAN CONTROLS AND IMPACT ON FOREIGN FIRMS

V.1 ENTRY CONTROLS AND CORPORATE STRATEGIC PLANNING

The controls established by the Canadian government represent indeed a significant change in the Canadian environment, one which has to be appraised not in isolation but rather within the context of the international environment in which foreign firms operate. Global changes taking place elsewhere in the world - recession, wealth transfers to oil-producing countries, rapid dispersion of skills, emergence of material controls of foreign business entry in many countries, to mention a few - affect indirectly the way the management of an international firm perceives the Canadian situation. Hence, the relative weight of the Canadian environment with respect to other foreign opportunities determines its perceived market access value,[56] i.e. internal market, resources, sites etc.

Changes in the Canadian environment resulting from the imposition of controls have an impact on the environmental assessment conducted by corporations as part of their strategic planning process. For example, one component of the scanning is the analysis of markets outside company lines, i.e. diversification.[57] The fact that diversification is allowed only after submitting to the Agency's screening procedure is likely to be taken into account in the scanning of the Canadian market. Likewise, the company assessment is also affected by the controls to the extent that there is a differential treatment for already established companies or new investors. To elaborate, an existing firm may perceive as a company strength the fact that it can

avoid the entry mechanism, while a new investor may consider it a weakness of its company *vis-à-vis* industry and competition to have to adjust itself to governmental controls. It is not necessary that the existence of an entry system introduces factual disadvantages for newcomers and helps perpetuate existing operations. Our contention is simply a matter of perception.

Given these previous assessments, management is faced with a strategy choice which can be fully described by the following alternatives: (1) to avoid the controls, (2) to conform to them, (3) to evade them.

Avoidance can take, in turn, three different routes. First, the foreign firm can withdraw from Canada, i.e. divest itself in case of an established firm, or abandon its entry plans in case of a new potential investor. Second, the foreign firm can "Canadianize" its subsidiary by proving that effective control remains in Canada. Both ways, there is a change in behavior of the foreign firm. Third, it can expand in its present area of business and escape controls. Here there is no apparent change in behavior of the foreign firm unless it has discontinued a previously planned diversification or acquisition strategy.

Conforming to the entry controls implies the possibility of expanding through takeovers and diversification operations upon submission to, and approval of, the Agency. In light of the previous comments on the Agency's efficiency, we postulate that there are indeed changes in behavior resulting from the screening procedures.

Finally, evasion of the controls is the third alternative which can be pursued, while not fulfilling the undertakings of the entry agreement.

Such an action is only feasible if strict enforcement is not carried out by the Agency and/or the courts in case of remedial pursuits. A more disguised way of evading the controls rests on a loose interpretation of "relatedness" which defines the boundaries of diversification on the one hand, and expansion in the same area of business on the other. Incidentally, such an evasion with respect to the Foreign Investment Review Act is a way in which the government can limit the strict implementation of the legislation and hence lessen the scope of the Act.

Management's perception of the entry controls will determine how they will be evaluated and therefore which alternative to choose. Its perception is influenced by (1) its background, (2) the nature of the business, and (3) its attitudes and goals.

Management's background refers, in this context, to several elements: the importance of the Canadian affiliates within the multinational corporation (MNC); the influence of the managers of the Canadian affiliates within the MNC; the nationality of the management of the Canadian affiliates; the past experiences of the MNC, i.e. joint-ventures with Canadian partners, etc. All these factors will shape management's behavior in the face of controls. For instance, we found in our interviews that Canadian managers actively demanded autonomy from headquarters and thus agreed with the Agency's goal of more autonomous decision-making on the part of Canadian subsidiaries.

The nature of the business also affects management's perception. Being a mining or a manufacturing company is not equivalent in terms of how well a screening procedure can be faced. For instance, a mining company

may feel more threatened given the Canadian government's desire to recover control over its natural resources. Likewise, the degree of international integration of the firm will affect management's willingness to face the controls. The same is true for firms evolving in a new or mature technology sector.

Finally, management's attitude towards risk and return clearly has an impact in evaluating the strategy to be followed in response to the controls.

V.2 COST-BENEFIT ANALYSIS AT CORPORATE LEVEL

For purpose of our analysis we will assume that the firm's choice of strategy rests upon a cost-benefit analysis based on the previously described variables and perceptions. To "narrow down" the evaluation, we hypothesize that the costs of conforming to the entry controls are assessed by corporations for their impact on the following two components: (1) the determinants of the firm's international operations i.e. the reasons why it has expanded internationally,[58] (2) its organizational form. The first component measures how disruptive the controls are to the intrinsic nature of the firm. For instance, if the firm has invested abroad because of higher returns, limitations imposed during the negotiations on equity ownership would be very disfunctional. If, on the contrary, the company wishes to expand because it has superior knowledge over local competitors, i.e. technology, and as a result can increase the value of ventures, it will be reluctant to negotiate controls of transfers of skill or technology

although equity ownership limitations would not be as sensitive an issue. Exhibit 1 summarizing the perceived costs of controls is given hereafter.

The organizational form adopted by the foreign firm also gives an indication of the costs perceived by management in conforming to the controls because (1) certain organizational structures are better suited than others to give autonomy to local subsidiaries,[59] (2) there is a close relationship, in theory, between the level of technological involvement of the firm and its organizational structure; hence, its willingness to release equity-based control. For instance, a multinational operating in a technologically-stable environment is generally organized internationally along functional lines and tends to follow a strategy of standardization and cost minimization. Its mature technology is not enough to give the firm a sufficient edge over local competitors and, consequently, reluctance to release control can be expected. In contrast, a multinational operating in a fast-moving technological environment and organized on a world-wide product basis will not feel threatened by demands for some local autonomy since its main strength is to be as close as possible to particular markets, so that it can rapidly adapt to market needs. However, one would expect that such a firm would want to protect very dearly its royalties, remittances and technology transfer through legal protection, i.e. patents. Exhibit 2 indicates again the more sensitive or costly issues for different kinds of organizations.

To further illustrate the meaning of these two exhibits, it should be noted that determinants of the firm's international operations are in a

Exhibit 1

The relationship between determinants of foreign firm operations and government controls

Entry control variables to affect the level of \ determinants of foreign firm operations	Industrial organization			Capital market imperfections	
	Superior knowledge	Oligopoly growth	Economies of scale	Diversification	Higher return
Skill and technology transfer	✓				
Control release*		✓	✓	✓	✓
Equity spinoff		✓	✓	✓	✓
Redivision of earnings				✓	✓
Local integration			✓		
Competition		✓	✓		
Export operations	✓				

* autonomy of local subsidiary

NB: The ✓ symbolize very sensitive, hence costly, issues.

Exhibit 2

The relationship between organizational forms and government controls

Organizational forms / Entry control variables to affect the level of	International division	Functional organization	Area organization	World-wide product organization	Matrix organization
Skill and technology transfer		✓		✓	
Control release	✓	✓	✓		✓
Equity spinoff		✓	✓		
Redivision of earnings					
Local integration	✓		✓		✓
Competition					
Export operations			✓		

NB: The interpretation of this table rests on the fact that each organizational form is the outcome of certain characteristics which make the international firm more or less sensitive to the control variables.

sense related to its objectives. Hence, high returns due to capital market imperfections are indicative of an objective of short-run profit maximization. The organizational form is on the other hand a reflection of its strategy, which in turn is related to the technological environment in which it operates. Let us suppose that we select a multinational company whose objective is short-run profit maximization and which is organized along area lines. We can infer from this that it operates on a mature or intermediate level of technology, that its main strengths reside in moving products and services geographically to take advantage of higher local returns and in avoiding local governments' rules and regulations, etc. Consequently, we can assume that it is disfunctional to local governments and as a result unwilling to face a screening process, since the firm's competitiveness could be endangered by restricted freedom of action.

Needless to say, this is an oversimplification of reality, as is any theoretical approach. It is, however, conducive in giving us some insight into how, in general, firms will behave when faced with entry controls. Before this we still need to analyze the benefits derived from conforming to the controls.

The Canadian regulations do not provide special incentives to make the screening process attractive to foreign firms. As a result, the benefits that can be derived from conforming to the screening process are the same as the avenues that the controls guard: (1) the possibility to grow through acquisitions, (2) the possibility to diversify in unrelated business fields, and (3) the possibility of entering the Canadian market. The last item is more relevant to small investors planning to enter Canada for the first time

than to multinationals which generally are already established in the country. The market access value to Canada is, as noted earlier, a function of other alternatives and of the internal situation of the Canadian economy. We have elaborated on the latter aspect in Part IV of this paper.

With respect to the benefits to be derived from engaging in takeovers and/or diversification, we can single out a few of them: higher returns to be gained in unrelated sectors, good opportunities in undervalued Canadian companies, shorter waiting time in initiating new operations as opposed to building new facilities from scratch, etc. No attempt was made to investigate these benefits thoroughly, although several relevant comments can be made at this stage. First, acquisition activity in the late 60's by foreign-controlled companies was paralleled by a surge of acquisitions by large Canadian-owned firms,[60] indicating perhaps that such a preferred pattern of expansion has little, if anything, to do with the international nature of certain acquiring firms (see Appendix, table 6). It seems to be more the result of economic restructuring triggered by fundamental technological changes, e.g., computers and advances in management science which allow the management of larger units more efficiently.[61] Also the motivation to preserve certain established interests and eliminate or regulate competition can satisfactorily be included in some instances as a reason for the surge of acquisitions of Canadian firms, irrespective of the origin of the acquisitions. Given the existence of the controls, only the exceptional economic reasons could then be strong enough to overcome the perceived costs of the controls and make foreign firms conform to them.

Hence, unless a need to acquire companies takes place comparable to the one in the late 60's and early 70's, one would expect less motivation to trade off takeovers against governmental controls. Second, the alleged higher prices paid by multinational investors over local ones can be explained in at least two different ways. On the one hand, a large multinational is able to integrate the acquired company in an international network of operations, thus enhancing the opportunities open to the future subsidiary and making it worthwhile to pay a high price for it. In contrast, a local producer is limited in its scope to find new markets, resources, technology, etc. Obviously, if the Canadian bidder is a Canadian multinational, this argument would fail to explain anything whatsoever. It must be kept in mind, however, that there are only a few Canadian MNCs concentrated in specific sectors (utilities, mining, etc.) and therefore more often than not the foreign MNC is faced by a small or medium sized Canadian challenger, if any, in the acquisition bid. On the other hand, the higher price paid by foreign MNCs can be explained because the international diversification of their operations reduces the risks they face and hence commands a lower rate of return, unacceptable to a local producer.[62] Assuming that Canada does not restrict the intracompany payments and that the level of taxation is similar to that of the U.S., companies from the U.S. would have a very good rationale for acquiring Canadian companies. Moreover, this can also explain why the level of foreign acquisition activity in Canada is closely related to the level of acquisition activity in the U.S., because the free flow of funds between the two countries allows repercussions of U.S.

structural changes to take place in Canada.[63] Indeed, data published by the Agency show that reorganizations taking place abroad account for a large part of the restructurations occurring in Canada.[64]

Diversification into unrelated business fields is not really a separate issue from acquisition activity, for it is rather unlikely a company operating in Canada would start "from scratch" in an unfamiliar area. More likely, diversification would be achieved by taking over an existing company or part of it. Whether for the above-mentioned reason or because of evasion of controls, only one case of diversification has so far been screened by the Agency.[65] It is also well known that knowledge is a specific sector and that capital moves more easily across boundaries in the same industrial sectors unless one can purchase such knowledge through takeovers.[66]

A cost-benefit analysis would therefore evaluate how necessary expansion is through takeovers and/or diversification in relation to the costs of being subject to controls. It must be remembered, however, that the lack of "fixed rules" on ownership, profit remittances, royalties and the like makes the costs perceived by management also dependent on the negotiation of the entry agreement. In other words, management can manoeuvre to minimize the impact of controls on sensitive issues, as described previously, by taking up a strong bargaining position. Here is where very heavily weighted criteria, such as employment, can distort the long-term contribution of the foreign firm in terms of technology transfer, equity spin-off, control release, etc., via a short-term and localized

beneficial effect on unemployment. The contention here is that the Agency should not be waiving other requirements on the announcement of a relatively large investment or employment program.

V.3 FOREIGN FIRMS' EXPECTED REACTIONS

The previous analysis has prepared the way for determining how one would expect firms to behave after the imposition of entry controls. The expected behavior that will be described hereafter is based upon the assumption that a "rationale" analysis is made by management before choosing its strategy. Deviations from this pattern can be expected and will be dealt with subsequently.

In the case of firms already operating in Canada, we will distinguish between manufacturing and extractive industries. In manufacturing, we can expect the following patterns to emerge:

1) Firms which expand through diversification and acquisition of other firms in unrelated fields, e.g. conglomerates, with an objective of profit maximization will:
    a) spinoff ownership if the stake of their operations in Canada is substantial, i.e. "Canadianize", or
    b) consolidate their existing operations and look elsewhere in the world for opportunities.

    Indeed, it is very unlikely that these firms would be able to offer significant benefits to Canada repeatedly and would be willing to undergo controls for each takeover.

2) Firms in high-technology sectors, with world-wide product structures, will be less affected in their strategies, since they have external leverage provided by their superior technological knowledge. Diversification and/or takeovers would likely result in increased technology transfer to Canada as long as royalties are not restricted and enough patent protection is provided.

3) Firms highly integrated internationally and area-organized will avoid the controls and expand along existing lines since they highly value centralized control. Only a strong bargaining position on their part, i.e. a large proposed investment accompanying the acquisition activity, would encourage them to face the controls.

4) Firms in sectors with mature technology, having highly standardized policies and being functionally structured, will have little incentive to change their behavior and will avoid controls while remaining in their product lines.

In the extractive industry, the fact that technology is wide-spread and is a highly sensitive sector will force foreign companies to stabilize their operations and only expand when the particular mineral gives Canada an important comparative advantage over other producers.[67] Otherwise, association with Canadian firms would be expected in new ventures.

In the case of firms not yet operating in Canada, one would expect the following to occur in the manufacturing sector.

1) Firms with mature technologies, that are highly centralized, functionally or area-organized, will only consider entering Canada on a contractual basis.

2) Firms with new technology will either

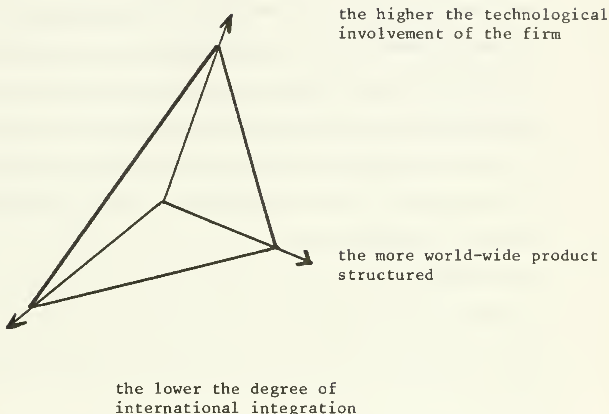
   a) enter Canada and be subject to controls, since the lack of restrictions on contracts between related partners allows them to maintain a certain level of control over their Canadian operations, or

   b) license, since no restrictions on contracts between unrelated partners exist.

Their strategic choice will depend on how transferable the technology is, whether it is a continuous flow or a one-time innovation, etc.

With respect to extractive industries, firms will only enter Canada as a joint-venture, i.e. mixed or private venture. Note that the availability of suitable partners will determine, in some instances, whether the international firms will enter the Canadian market or not.

One can schematize the main points of the previous analysis in the following graph:



NB: The axes are not orthogonal

The farther the plane from the origin, the stronger the willingness of the foreign firm to release control and the less disfunctional it would appear to the Canadian government.

The previous analysis rests on several pivotal elements. First of all, the release of equity-based control by foreign firms is conditional upon three factors: (1) the ability to get an acceptable price for equity, (2) the absence of restrictions on payments for technology transfer, and

(3) the existence of an adequate legal protection (e.g., patent), as perceived by foreign corporate management. Recent events in the political arena and the proposed revision of patent laws could alter the results previously described. For instance, two firms, which had agreed to spin-off part of their equity in their Canadian subsidiary established in Quebec, were doubtful that they would get an acceptable price, given the political uncertainty presently existing in the country. Secondly, as noted earlier, if evasion occurs because either diversification is loosely interpreted or Canadian status too easily granted, very different results could emerge. Thirdly, if the negotiations are not conducted with the intention of allowing investments which bring to Canada significant benefit, as measured by a balance of relevant criteria, but instead focus solely on a single element such as employment, then distortion from the expected behavior will take place.

An important result of the analysis is seeing to what degree the behavior of foreign firms will have impact on the structure of the Canadian economy. If the relative market access value of Canada declines, and if controls are carried through, new foreign investment would tend to dry out. In such an eventuality, existing interests could be perpetuated in certain sectors, unaffected by the entry of new firms. The tariff protection would compound the protection from competition and tend to increase the oligopolistic structure of the Canadian industry. Sectors where mature technology is predominant would be the most serious candidates to the lessening of competitive forces and overall efficiency. Three government actions

could prevent such occurrences: (1) a stricter competition policy, (2) a decrease in tariff protection, or (3) the imposition of incentives on foreign firms entering the Canadian market. As noted earlier, a new competition bill is being prepared, although some doubts have been cast on its real significance. Also, for many years the lowering of tariff protection has been discussed without any apparent progress. Finally, the introduction of incentives for foreign firms to enter the Canadian market would require rethinking of the links between FIRA and other provincial and federal bodies, such as the DREE.

VI CONCLUSION

In reviewing the operations of the foreign business entry control system and its impact on foreign firms, this paper has, purposely, traded specificity for generality. It has, indeed, embraced many aspects which, individually, would require as much coverage as was given here to all of them together. The advantage of having taken such a general approach is, however, that it raises many questions and sets the stage for further work.

Future research should concentrate on several important points. First, to what extent are the controls having a real effect on merger activity in Canada? To elaborate, the pattern of acquisitions in Canada has followed rather closely the U.S. pattern until the controls over FDI were established. Hence, one could test whether the former pattern has been broken, by making Canada a separate entity with regard to the industrial re-organizations taking place in the U.S. If this were true, the foreign entry control system would be a backward step in the trend towards economic integration of the North American market - a matter of so much concern to Canadian nationalists. By the same token, one would expect the U.S. predominance in the Canadian economy to be eroded.

Second, it would be of interest to test whether the controls are having discriminant effects on foreign firms. Are foreign firms differently affected as a result of their organizational forms and the nature of their international expansion?

Finally, the partial analysis developed in Part V which deals with the impact of the entry controls could be complemented by tying in other interacting policies - in the fields of capital markets or entrepreneurship - to determine the total effect on the structure of the Canadian economy.

REFERENCES

* I am very grateful to Donald R. Lessard and Richard D. Robinson for their help in the writing of this paper. I am particularly indebted to Donald R. Lessard for his constructive criticisms and valuable comments. My appreciation also goes to all the executives and government officials who so willingly cooperated in providing me with information essential to my work.

1. For a complete study on the Canadian Government's policies see T. Naylor, The History of Canadian Business, Vol. I and II (Toronto: James Lorimer & Company Publishers, 1975).

2. See, for instance, the Gordon Report, Task Force on the Structure of Canadian Industry; Foreign Ownership and the Structure of Canadian Industry; Report (Ottawa; Queen's Printer, 1968). Also, the Gray Report, H. Gray, "Foreign Direct Investment in Canada", (Ottawa, Information Canada, 1972).

3. The federal government interfered in 1971 to prevent a takeover of Denison Mines Limited, and again in 1972 regarding the proposed acquisition of Home Oil Company Limited. Strangely, however, when the shares of Supertest Petroleum Corporation Limited were offered for sale to B.P. Canada Limited in 1971, although there was some public debate, no government action was taken.

4. J. Alex Murray and Akira Kubota, "What Canadians think of U.S. Investments", The International Review, February, 1973.

5. Annual Reports 1974/1975 and 1975/1976, Foreign Investment Review Act (Ottawa, Foreign Investment Review Agency, Information Canada, 1975 and 1976).

6. See, for instance, "What Does Canada Want From Foreign Investment?", a paper for delivery at a seminar on Canadian-U.S. Relations at the Center for International Affairs, Harvard University, November 3, 1976 by Gorse Howarth, Commissioner, Foreign Investment Review Agency.

7. A good example is provided in Moises Naim, "Ideology, Dependencia and the Control of Multinational Corporations: A Study of the Venezuelan Policy on Foreign Investment and Technology Transfer", Alfred P. Sloan School of Management, WP 922-77, (April 1977).

8. For a detailed study on national controls imposed by capital and technology importing countries see R.D. Robinson, National Control of Foreign Business Entry: A Survey of Fifteen Countries, (New York, Praeger Publishers, 1976).

9. Political scientists would, undoubtedly, criticize the words used for the first two components of the system. An alternative and less controversial way of stating our intention would be to substitute (1) "legislated policy" for "legislation", and (2) "implementation of the legislated policy" for "governmental policy", as it appears in the above text.

10. Persons whose investment proposals are subject to review.

11. In the case of an unincorporated business, control is gained by the acquisition of all or substantially all of the business property.

12. R.A. Donaldson and J.D.A. Jackson, "The Foreign Investment Review Act: An Analysis of the Legislation", The Canadian Bar Review, Vol. LIII, No. 2, (May 1975), p. 203.

13. Ibid., p. 203.

14. The assets and revenues of any other Canadian business enterprise that is by reason of inter-relationship of management, ownership or financial affairs, associated with that enterprise must be included unless the Minister is satisfied as to their separate existences. For more on the subject see ibid., p. 203.

15. For example, the acquisition of J.H. Corbeil Ltd. by Canadian Blue Bird International Inc. was originally refused but when the Quebec government protested the decision was reversed.

16. Regional Economic Expansion, Regional Development Incentives, p.5.

17. For a similar argument see R.D. Robinson, op. cit, pp. 321-339.

18. "How Genstar won its own identity in Canada", Business Week, April 18, 1977, pp. 144-145.

19. "Fast FIRA Four and Five", The Financial Post, March 26, 1977.

20. H. Gray, "Foreign Direct Investment in Canada", op. cit.

21. Donald J. Daly, "It's a bad combination: High costs and low productivity", The Financial Post, August 21, 1976.

22. Statistics Canada, various issues.

23. R.H. Grasley, Canadian Conference on Technology Development, Ottawa, June 1976.

24. I.A. Litvak and J.C. Maule, "Canadian Multinationals in the Western Hemisphere", Business Quarterly, Vol. 40, Autumn 75.

25. Statistics Canada, Canada's International Investment Position, 1970-1973 Ottawa, Information Canada, 1976, p. 25.

26. Annual Report, Foreign Investment Review Agency, op. cit., p. 25.

27. T. Naylor, The History of Canadian Business, Vol. I, op. cit. preface xviii

28. Reported in M. Hurting, "The sharing has been done: now we need equitable dividing: a nationalist's formula", International Perspective, Special Issue, 1976, p. 11.

29. For instance, the 1971 Tax Reform Legislation to allow full deduction for interest paid on money borrowed to buy shares in other corporations.

30. G. Rosenbluth, "The Relation Between Foreign Control and Concentration in Canadian Industry", Canadian Journal of Economics, February, 1970.

31. M. Hurting, op. cit., p. 13.

32. Formed in 1970 as an ad hoc coalition of intellectuals, businessmen and other nationalists.

33. Report of the Select Committee on Economic and Cultural Nationalism, Ontario Legislature, 1975.

34. Statistics Canada, Quarterly estimates of the Canadian balance of international payments, fourth quarter, 1976.

35. Annual Report 1975/76, Foreign Investment Review Act, op. cit. p. 23.

36. Ibid., p. 23.

37. Examples include Ciba-Geigy Canada Ltd, Bestpipe Ltd, Midco Equipment Co. among those that resubmitted their application and were accepted.

38. The status of these firms and individuals who, because they have already made their investments before the proclamation date, cannot be affected since this could otherwise be a roll-back.

39. G.A. Edwards, "Foreign Acquisition Activity in Canada: A Long-term Perspective", FIRA Papers, No. 1, (February 1977).

40. E. Arnett, "Canadian Regulation of Foreign Investment", The Canadian Bar Review, May 1972, pp. 213-214.

41. A piece of legislation to be tabled soon and entitled "The Uranium and Thorium Review Act". Foreign ownership will be limited to 33% in the uranium industry.

42. "Past FIRA Four and Five, op.cit.

43. Reference to the disallowance of the acquisition by WCI Canada Ltd. of the appliance business of Westinghouse Canada Ltd.

44. Duncan, Stephen, "Competition Board could overrule the Cabinet", The Financial Post, March 26, 1977.

45. Bryan, Jay, The Gazette, Report - Business and Finance, March 17, 1977, p. 37.

46. Chevaldayoff, Wayne, The Globe and Mail, Report on Business, March 17, 1977, p. B-1

47. The Department of Consumer and Corporate Affairs, working paper on Patent law revision (Ottawa, June 1976).

48. S.J. Kobrin and D.R. Lessard, "Large Scale Direct OPEC Investment in Industrial Countries and the Theory of Foreign Direct Investment - A Contradiction?", Review of World Economics, 1976.

49. "The World Scramble for Foreign Investment", Business Week, April 11, 1977, pp. 40-B - 40-P.

50. Ibid., p. 403.

51. T. Naylor, op.cit., preface p. xix.

52. Ibid. preface p. xix.

53. T. Naylor, op.cit., vol. II, p. 227.

54. P.C. Newman, "The Establishment has abandoned Quebec to its own dark devices", The Financial Post, April 30, 1977, p.6.

55. Ibid, p. 6.

56. R.D. Robinson, op.cit., introduction xxix.

57. J.S. Schwendiman, Strategic and Long-range Planning in the International Firm, (Cambridge: MIT, Alfred P. Sloan School of Management, 1971).

58. For a comprehensive review of FDI theories see G. Ragazzi, "Theories of the determinants of direct foreign investment", IMF papers, July 1973.

59. See J.M. Stopford and L.T. Wells, Managing for Multinational Enterprise, (New York: Basic Books, Inc., 1972).

60. G. Rosenbluth, op.cit.

61. G.A. Edwards, op.cit.

62. T. Agmon and D. Lessard, "The multinational firm as a vehicle for international diversification: implications for capital importing countries", working paper 847-76, Alfred P. Sloan School of Management (1976).

63. G.A. Edwards, op.cit.

64. Annual Report 75/76, op.cit., p.6.

65. Private interview.

66. R.E. Caves, "International Corporations: The Industrial Economics of Foreign Investment", Economica, 38, (Feb. 1971).

67. Uranium firms are expanding in Saskatchewan despite the recent nationalization of the potash industry by that province. Otherwise little activity is taking place in the mining industry.

APPENDIX

Table 1

Annual Flow of Direct Foreign Investment Into Canada and
Canadian Direct Investment Out
(in millions of dollars)

Year	1970	1971	1972	1973	1974	1975	1976
FDI in Canada	835	880	715	725	725	630	-410
FDI abroad	-295	-220	-385	-775	-775	-650	-550
Net	540	660	330	- 50	- 50	- 20	-960

Source: *Statistics Canada*, various issues.

Table 2

Changes in Labour Costs and Profits Per Unit of Output in Canada

	1972	1973	1974	1975
Real GNP	6	6.9	2.8	0.2
Output per worker	2.7	1.6	-1.5	-1.7
Compensation	11.5	13.4	16.9	14.0
Cost per unit of output	5.1	6.1	13.8	13.8
Profit per unit of output	16.5	25.6	23.6	-3.1

Sources: Canadian Business, November 1976, p. 78, quoting *Statistics Canada*.

Table 3

U.S. Ownership of Canadian-controlled MNCs
(1975)

Company	U.S. Share (%)
Massey-Ferguson	35.4
Alcan Aluminium	38.4
Inco	37
Moore	36.2
McMillan-Bloedel	12.9
Noranda	4.0
Northern Telecom	8.7
Seagram	13.2
Abitibi Paper	8
Genstar	10
Stelco	2.2

Source: Meyer, H.E., "Canada's Nationalism Exacts a High Price" Fortune Magazine, August 1976, p. 180.

Table 4

Foreign Portfolio Investment in Canada (in millions of $)

Year	1971	1972	1973	1974	1975	1976
Total	326	1696	757	1772	4727	7092
U.S.	392	759	678	1313	2938	4992

Interest and Dividend Payments
(millions of $)

Year	1971	1972	1973	1974	1975	1976
Total	1699	1667	1905	2469	2796	3358
U.S.	1444	1392	1572	2009	2313	2632

Canadian Government Interest Expense
(millions of $)

Year	1971	1972	1973	1974	1975	1976
Total	92	103	112	765	2508	3215

Source: _Statistics Canada_, various issues.

Table 5

Business Service Payments to Non-Residents
1966-1974
(in millions of $)

Year	Payments
1966	584
1967	688
1968	745
1969	748
1970	830
1971	925
1972	907
1973	996
1974	1,256

Source: Statistics Canada, Corporations and Labour Unions Returns Act, Report for 1974, January 1977.

Table 6

Total Number of Acquisitions

Year	Foreign*	Domestic**	Total
1960	93	110	203
1961	86	152	238
1962	79	106	185
1963	41	88	129
1964	80	124	204
1965	78	157	235
1966	80	123	203
1967	85	143	228
1968	163	239	402
1969	168	336	504
1970	162	265	427
1971	143	245	388
1972	127	302	429
1973	100	252	352
1974	78	218	296
1975	109	155	264

* Acquisitions involving a foreign-owned or foreign-controlled acquiring company (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian).

** Acquisitions involving an acquiring company not known to be foreign-owned or foreign-controlled (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian).

Source: Annual Report of the Director of Investigations and Research, Combines Investigation Act, for the year ended March 31, 1976.