

## **Review of the Investment Canada Act**

Presentation by the Communications, Energy and Paperworkers Union of Canada to the House of Commons Standing Committee on Industry, Science and Technology

**Thursday, March 3, 2011, 3:30 pm**  
**La Promenade, 151 Sparks - Room 268**

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Mr. Chairman and members of the Standing Committee on Industry, Science and Technology:

My name is Dave Coles and I am the President of the Communications, Energy and Paperworkers Union of Canada (CEP). CEP represents 130,000 members concentrated in the forestry, energy and telecommunications sectors. Sitting next to me is Guy Caron, CEP's Director for Special Projects. I thank you for the opportunity to appear before your committee.

Unfortunately, foreign direct investment leads more often than not to foreign ownership and control. I am sure that your committee is already aware of Industry Canada's numbers showing that since July 1985, 18,046 foreign investments have been made, almost 14,000, consisted in the mere takeover of Canadian companies which then fell under foreign ownership or foreign control.

These investments have represented \$969 billion for the past 25 years, of which only \$21.5 billion – only 2.2% of the total – were NOT for takeovers.

You will probably be told that this doesn't matter, as the outbound FDI from Canadian companies are roughly equal to the inward FDI Canada has been receiving. However, as our CAW colleague Jim Stanford has explained, the outbound and inward FDI are of

very different nature. Half of the inward FDI consisted in the loss of Canadian control in mining, oil and gas and the primary metals industries, that are decidedly strategic sectors, while 80% of the new outbound FDI over the last five years were in banking and finance. If we remove the financial sector from the equation, Canada's net FDI position is at its worst since the 1970s.

So let's not kid ourselves: Foreign investment means foreign ownership. It means foreign control. And workers bear the brunt of these acquisitions.

These are, more often than not, followed by job losses through "consolidation", by lack of accountability, by the disrespect from the foreign entities for the rules they have agreed upon (ValeInco comes to mind), and by the disrespect for the communities that often depend on a mill, a plant or a factory, for their well-being.

Peter Lougheed had it right when he stated, in 1999, that

People will fall from their chairs to hear me say this but maybe right now we need to return to the Foreign Investment Review Agency. We need to be more interventionist; the passive approach isn't working.

Why isn't it working? That's because since it first negotiated the Canada-U.S. Free Trade Agreement in the 1980s, the Government of Canada has been assuming that all foreign investments in Canada are good investments. That there is no difference whether it is foreign capital injected in a Canadian company in a joint venture between equals, or a clean takeover of a Canadian company by foreign interests.

Shareholders may not see the difference between foreign investments and foreign control, but this difference has been abundantly clear to Canadian workers.

Telecommunications is a case in point: the Industry Minister has said that he was seeking to allow foreign investment in that industry. The three large Canadian telecommunications companies – Rogers, Bell and Telus – are not very popular with customers, and the conventional wisdom claims that allowing more players in the market will create the competitive conditions that will discipline them, lower prices and improve the quality of the service these companies offer. Some mostly domestic players have recently entered the market, and the result is that Canada now has 11 mobile network operators, the second highest number among OECD countries.

Yet, allowing foreign investments – which as we've seen largely means foreign ownership – is being portrayed as increasing the number of players. It is believed that AT&T, Vodafone, Telefonica and other players will simply come in, set up their networks and compete, for the benefit of consumers.

This conventional wisdom is wrong: it will be a lot more tempting for these foreign companies to come in, buy the existing companies and launch a round of mergers and acquisitions that will eventually decrease the number of competitors. With the exception of the U.S., Canada, Poland and Japan, no OECD country currently has more than four (4) mobile network operators, even though all of them allow foreign ownership. By and large, allowing foreign ownership in these countries didn't result in more companies competing, but simply in a money shuffle between the various players trying to position themselves in various markets.

And this is what will happen in Canada, with the result that we risk losing control of our vital communications infrastructure, and also of our broadcasting industry, as the four largest private television networks – CTV, GlobalTV, CITY-TV and Quebec's TVA – all belong to telecommunications companies.

If foreign investment – that is, foreign ownership – in telecommunications is allowed, the smaller new entrants such as Mobilicity and Public Mobile would, in all likelihood, be

swallowed without even an examination under the Investment Canada Act, as their value would likely fall under the \$312 million threshold.

As for the larger companies, such as the Big Three, Shaw and Videotron, their future would be tied to the political pressures of the moment, as past experience shows.

The oilsands provide us with another interesting case in point: in 2009, PetroChina International Investment Co. Ltd. bought a majority stake in Athabasca Oil Sands Corp. for \$1.9 billion. The acquisition was reviewed by Industry Canada and received its blessing. Now, a \$5.4 billion joint venture between PetroChina and Encana to develop the Cutbank Ridge shale natural gas properties on the border of British Columbia and Alberta will also be reviewed. Why would it be different than the previous transaction? If the takeover of Athabasca Oil Sands Corp., meaning the loss of control over a strategic natural resource, was viewed by Minister Clement as a benefit for Canada, why could we expect anything different in the purchase of 50% of Encana's interests in a major shale gas project?

This raises another interesting question: how can the Industry Minister evaluate that a transaction in the oilsands – which everyone will agree is a strategic resource – is to the benefit of Canada if there is not a national energy policy to guide Canada's direction in the management of its natural resources?

Finally, a very recent case shows us that the rules set out in the Investment Canada Act can be circumvented very easily, by setting up shop in Canada while still calling the shots from away. In that sense, the recent transaction where Australian-controlled, but Canadian-incorporated Equinox Minerals Ltd., which just acquired Toronto-based Lundin Mining Corp. for C\$4.8 billion, is problematic.

In view of this, we strongly recommend that the threshold for review of foreign takeovers not be increased, but rather reduced. Currently, over 88% of takeovers are

not even reviewed as they fall under the current threshold. It is difficult to imagine that it's a net benefit to Canada to let even more fall through the cracks.

Transparency is another issue that is currently problematic. Why was the PetroChina acquisition of Athabaska Oil Sands Corp. deemed to be to the benefit of Canada? What will make the next deal involving Encana to the benefit of Canada? There is no way to know. We understand that some details of these transactions are proprietary, but the little information that is trickling down is insufficient to understand the rationales and consequences of these decisions.

The case of Vale, and the clear violations of the conditions it agreed to when it absorbed Inco, either in Sudbury or now in Thompson, makes it clear that the federal government ought to use its countervailing powers to assess dissuasive penalties that will force the acquiring companies to abide by the terms of their agreements. Failure to do so means that they aren't worth the paper they're written on.

Finally, there is a need for clear definitions and guidelines as to the meaning of "net benefit to Canada". Without such guidance, it is simply impossible to expect and witness coherent and consistent decisions being made. And defining what is a "net benefit to Canada" will require defining a Canadian industrial strategy, which Canada currently lacks.

Members of the Committee, you have your work cut out for you. There is certainly a middle ground to be achieved between blind protectionism on the one hand, and a free-for-all, leave-it-to-the-market and to heck with the losers on the other hand. But that middle ground is certainly not located even further down that latter path.