

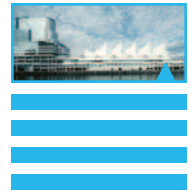
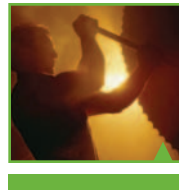


Government  
of Canada

Gouvernement  
du Canada

# SHARPENING CANADA'S COMPETITIVE EDGE

Competition Policy Review Panel – Groupe d'étude sur les politiques en matière de concurrence



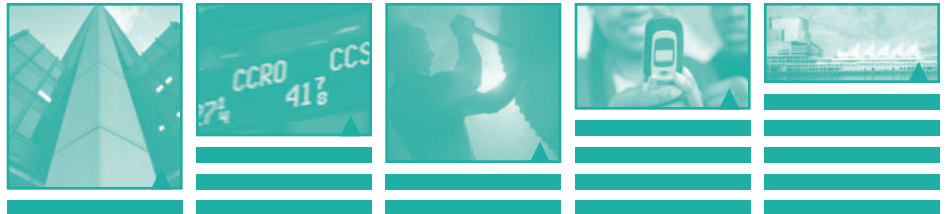
October 30, 2007

A consultation paper issued by the Competition Policy Review Panel



# SHARPENING CANADA'S COMPETITIVE EDGE

Competition Policy Review Panel – Groupe d'étude sur les politiques en matière de concurrence



October 30, 2007

A consultation paper issued by the Competition Policy Review Panel

This publication is available upon request in multiple formats. Contact the Information Distribution Centre at the numbers listed below.

For additional copies of this publication, please contact:

Information Distribution Centre  
Communications and Marketing Branch  
Industry Canada  
Room 268D, West Tower  
235 Queen Street  
Ottawa ON K1A 0H5

Tel.: (613) 947-7466

Fax: (613) 954-6436

Email: [publications@ic.gc.ca](mailto:publications@ic.gc.ca)

This publication is also available electronically on the World Wide Web at the following address:

[www.competitionreview.ca](http://www.competitionreview.ca)

#### **Permission to Reproduce**

Except as otherwise specifically noted, the information in this publication may be reproduced, in part or in whole and by any means, without charge or further permission from Industry Canada, provided that due diligence is exercised in ensuring the accuracy of the information reproduced; that Industry Canada is identified as the source institution; and that the reproduction is not represented as an official version of the information reproduced, nor as having been made in affiliation with, or with the endorsement of, Industry Canada.

Opinions and statements in the publication attributed to named authors do not necessarily reflect the policy of Industry Canada or the Government of Canada.

For permission to reproduce the information in this publication for commercial redistribution, please email:

[copyright.droitdauteur@pwgsc.gc.ca](mailto:copyright.droitdauteur@pwgsc.gc.ca)

Cat. No. Iu4-117/2007E-PDF

ISBN 978-0-662-47115-8

60370

To the Reader:

Thank you for your interest in this paper, and in Canada's competition and foreign investment policies.

In naming the Competition Policy Review Panel on July 12, 2007, the Government of Canada has drawn attention to a number of critical issues that will serve to shape Canada's economic competitiveness in the twenty-first century. In an era of rapid globalization and heightened international competition, a spotlight is placed on Canada's competition and investment policy framework. It is thus both a great honour and a tremendous responsibility to be asked to chair a review of how Canada can best facilitate investment and enhance our competitiveness in the new global economy.

I am equally honoured to be joined on the Panel by N. Murray Edwards, Isabelle Hudon, Thomas Jenkins and Brian Levitt, individuals who have a wealth of experience and knowledge on which to draw. Together, we aim to provide the Government of Canada with recommendations on how best to create an environment that will enhance Canada's attractiveness as a destination for investment and economic activity. We will also aim to create the conditions that will better enable Canadian firms to capture global opportunities.

We want to create an environment in Canada that allows the private sector to capitalize on opportunities presented by global trade, investment and competition.

As part of our deliberations, the Panel has produced this consultation paper, *Sharpening Canada's Competitive Edge*. In it, we outline the changing international economic context, and present what we believe are the issues most central to ensuring Canada's continued success and prosperity.

In this document we pose a number of questions about competitiveness and investment, the answers to which will help inform our recommendations to the Government. It is on these questions that we invite input from Canadians. The Panel is also interested in the impact of relevant matters under provincial and territorial jurisdiction, and will actively seek input from provincial and territorial governments.

We will make recommendations that will strike a balance between capitalizing on global opportunities and enjoying a fair, competitive domestic market in Canada.

With this in mind, I invite you to read and consider the issues raised in this document, and to provide your comments to us by January 11, 2008. By marshalling the ideas, talent and commitment of Canadians, we can continue to enjoy the prosperity that has made Canada the great country it is, and continue to be one of the most envied nations in the world.

Sincerely,



L. R. Wilson

Chair

Competition Policy Review Panel



## Table of Contents

---

<b>1. Introduction</b> .....	1
Our Mandate: Productivity and Competitiveness .....	1
Challenges and Opportunities .....	3
Consultations .....	4
<b>2. Canada in a Global Context</b> .....	5
Globalization of Value Chains .....	6
How Canada Ranks against Global Competitors .....	7
Globalization: Implications for Canada .....	9
<b>3. Investment Policies</b> .....	16
Foreign Investment Policy .....	16
History and Evolution of the <i>Investment Canada Act</i> .....	16
The “Net Benefit” Test .....	17
The <i>Investment Canada Act</i> and International Trade Law .....	18
Treatment of Foreign Investment in Other Countries .....	18
Issues Concerning the <i>Investment Canada Act</i> .....	19
Sectoral Investment Regimes .....	20
<b>4. Competition Law</b> .....	22
International Context .....	22
Canada’s Competition Law .....	23
Evolution of Canada’s Competition Regime .....	24
<b>5. Promoting Canadian Direct Investment Abroad</b> .....	26
Formal Barriers .....	27
Informal Barriers .....	28
Canadian Outward Investment Policy .....	28

<b>6. Becoming a Destination for Talent, Capital and Innovation</b> .....	30
National Best Practices .....	31
The Future .....	31
<b>7. Going Forward</b> .....	34
Consultation Process .....	35
<b>Appendix 1 – Charts and Tables</b> .....	36
Figure 1 – World FDI Stock, Exports and GDP, 1980-2005 .....	36
Figure 2 – Average Annual Labour Productivity Growth, 2001-2005 .....	36
Figure 3 – Relative Labour Productivity in the Total Economy, Canada, 1961-2006 .....	37
Figure 4 – FDI Stocks as a Percentage of GDP among the G7, 2006 .....	37
Figure 5 – FDI in Canada, by Top-10 Sources, 2006 .....	38
Figure 6 – Canadian Inward and Outward M&A Activity, 1993-2006 .....	38
Figure 7 – FDI Flows into Canada and Canadian Direct Investment, 1993-2006 .....	39
Figure 8 – Canadian Cross-border M&A Transactions, 1994-2007 YTD ...	39
Figure 9 – FDI in Canada, 1986-2006 .....	40
Figure 10 – Canadian FDI Abroad, by Top-10 Destinations, 2006 .....	40
Figure 11 – Canadian Direct Investment Abroad, by Industry, 2006 .....	41
Figure 12 – Canada's Share of North American Inward FDI Stock, 1980-2005 .....	41
<b>Appendix 2 – Canada's Sectoral Investment Regimes</b> .....	42
Telecommunications .....	42
Broadcasting .....	43
Cultural Industries .....	44
Transportation Services .....	44
Uranium Production .....	45
Financial Services .....	46
<b>Appendix 3 – References</b> .....	47
<b>End Notes</b> .....	49



## 1. Introduction

---

In its long-term economic plan, *Advantage Canada*, the Government of Canada committed to create the conditions for Canadians to succeed in the new global economy. Recognizing that a new international competitive environment has changed the ground rules, *Advantage Canada* focuses on five economic advantages, all aimed at establishing a policy framework and competitive playing field on which Canadians can continue to succeed in creating growth, opportunity and good jobs.

With Budget 2007, the government pledged to undertake a review of Canada's competition policies and its framework for foreign investment policy, to enhance Canada's economic performance and to ensure that Canada's markets remain competitive. To that end, on July 12, 2007 the Ministers of Industry and Finance announced the creation of the Competition Policy Review Panel. The Panel is chaired by L. R. Wilson, who is joined by N. Murray Edwards, Isabelle Hudon, Thomas Jenkins and Brian Levitt.

The Panel is mandated to review key elements of Canada's competition and investment policies to ensure that they are working effectively. It will receive submissions from interested parties, consult widely, listen and learn, and commission focussed research to support its work. The Panel is supported by a secretariat and is targeting to report back to the Minister of Industry on behalf of the government by June 30, 2008.

### **Our Mandate: Productivity and Competitiveness**

The fundamental task of the Panel's review is to provide recommendations to the government on how to enhance Canadian productivity and competitiveness, as these are keys to generating wealth and creating jobs and opportunity in a fast-changing global economic environment. The Panel will examine a range of issues with an eye to ensuring that Canada's policies are modern and effective, and reflect a competitive environment that is global in scope and typified by fierce competition between national jurisdictions seeking to attract investment, people and economic opportunities. Following the Industry Minister's statement on October 9, 2007, issues related to state-owned enterprises and implications for national security will not be subject to review by the Panel, as the government has signalled its intention to provide more immediate attention to these issues in the period prior to the Panel's report.<sup>1</sup>

The Panel does not seek to insulate Canadians from international competition. Indeed, Canada's record of economic success has been predicated on the ability of Canadian firms to access foreign markets, and on openness to foreign investment and immigration. In the twenty-first century, economic success will not be achieved by being backward or inward looking. The goal is to foster the development of Canadian businesses and to maximize the opportunity for Canadians to capitalize on global trade, investment and competition. The Panel's mandate is therefore to make recommendations to the government on ways to establish the domestic conditions that both encourage Canadian firms to be active and aggressive investors at home and abroad, and maximize Canada's attractiveness as a destination for new investment and talent.

The Panel will orient its work under four broad themes:

### **Investment Policies**

It has long been recognized that foreign direct investment (FDI) brings benefits to Canada through new sources of capital, ideas and know-how. As well, direct investment by Canadian firms in foreign markets enables them to be more productive and competitive and, ultimately, to create more and better jobs in Canada.

Both Canadian and international experience strongly suggest that the free flow of capital is something to be encouraged. At the same time, FDI has raised concerns among many Canadians about excessive foreign control of Canadian industry. The Panel therefore will review the *Investment Canada Act*, the government's principal instrument for reviewing foreign investment in Canada. In particular, the Panel will examine the *Investment Canada Act's* "net benefit" test, with an eye to ensuring that it effectively delivers economic benefits to Canadians without discouraging investment.

The Panel has also been asked to review the restrictions that are currently in place on foreign and domestic ownership of firms in specific industry sectors.

### **Competition Policies**

Fair and transparent competition policies are a key building block in the foundation of modern commerce. However, the establishment of these policies is more complex in a global economy where the marketplace extends beyond Canada's borders. The Panel will therefore review Canadian policies affecting competition, including an examination of the *Competition Act*, to ensure that they foster competition in the Canadian market.

As part of this review, the Panel will look to international best practices and see how they may be adapted to fit the Canadian context. In undertaking its review, the Panel's principal focus will be whether Canada's competition policies enhance our ability to both serve the interests of domestic consumers and enable our most successful enterprises to grow beyond Canada.

### **Outward Investment by Canadians**

A fundamental element of economic competitiveness is the ability of a nation's firms to capitalize on economic opportunities that arise outside its national borders. With our small domestic market, Canada must look outward. To that end, the Panel has been mandated to investigate how best to encourage outward investment by Canadian firms. The aim is to examine what policies would enhance Canada as an environment from which Canadian enterprises would emerge and prosper globally. Of importance in the Canadian economic context is facilitating the participation of small and medium-sized enterprises (SMEs) in global commerce.

### **Canada as a Destination for Investment and Opportunity**

A key aim for any country in the global era is to be a preferred location for the capital, talent and innovative activity that drive the modern economy. Canada is no different. A country's markets and overall economic environment are crucial in attracting the innovative and ambitious individuals and firms that shape a country's economy. Whether through the removal of barriers that inhibit aspiring firms, or through the refinement of policies that are the foundation of economic activity, the government has a significant role to play in establishing the conditions that will assure Canada's position as an attractive destination for investment, both by Canadians and those from abroad. Robust investment drives economic development, and underpins Canada's prosperity and quality of life.

### **Challenges and Opportunities**

If Canada is to continue to be successful and if Canadians are to continue to enjoy the prosperity to which we have become accustomed, choices will have to be made, and decisions taken.

Canadian policies affecting competition and investment have served the country well. However, the global business environment that has evolved over the past 20 years has ushered in a new era, one where governments must formulate policy that reflects a competitive dynamic that has changed fundamentally. The balance

to be struck in policy formation for open economies like Canada's is to capitalize on the opportunities that globalization provides while ensuring that the national interest is accorded appropriate weight.

Our global competitors are growing in number and are becoming more competitive. Unless we adapt and change, Canada and its enterprises risk falling behind others in the global economy, eroding our quality of life. Our sound economic fundamentals and recent performance place us in a strong position from which to respond to new global pressures, but this should not give us cause to be complacent.

The objective should not be to insulate Canada from global competition. Rather, the goal is to ensure that the Canadian economic policy framework positions Canada and Canadian enterprises to compete globally. The public policy objective is to maximize opportunity for our domestic firms to grow into global champions and for our existing champions to further expand their reach.

The potential benefits are substantial. Opportunities abound in the globalizing economy. The developing economies of China and India alone represent a market of more than two billion people. Free trade and open international markets provide ambitious firms having global aspirations the opportunity to become more productive and to deliver their products and services to the world. Many Canadian firms already do just that. The question is: How can we update our public policy framework to enable more to do so?

The answers will not come from the Panel or the government alone. The Panel recognizes the primary role to be played by the management and boards of Canada's private sector companies. While the focus of the Panel's work is on public policy, Canadian success will depend on the commitment and abilities of Canada's private sector.

## Consultations

A central concern of the Panel is for its recommendations to the government to reflect Canadian interests. This paper will guide the consultation process, establish the context in which the Panel is conducting its review, and frame the issues under consideration. This paper also presents both the overarching questions and specific areas of policy on which the Panel is seeking input. The Panel therefore invites written submissions on the policy issues and questions presented in this paper.

## 2. *Canada in a Global Context*

---

**T**he global economic landscape has changed markedly in recent decades. Canada and our companies are adapting to these new economic realities, and must continue to keep pace with the rapid evolution of global commerce.

Globalization, in the economic sense of the word, refers to the sustained and rapid rise in trade and capital market flows between and among nations, along with an increase in international foreign direct investment (FDI). Global FDI stocks have increased dramatically in the past 25 years, with both inward and outward FDI reaching roughly US\$12 trillion in 2006.<sup>2</sup> (Figure 1) Trade volumes have also increased significantly, with world exports doubling in the past decade. World merchandise and commercial services exports rose by more than 10 percent in 2006, reaching US\$11.7 trillion and US\$2.7 trillion, respectively.<sup>3</sup> Global export levels are also expected to increase in 2007 and 2008. Together, increased trade and investment flows have led to the greater integration of economic activity between countries and around the world.

Many factors have contributed to the sweeping forces of globalization. Transportation costs have fallen, resulting in an expansion of both the range of goods that can be exchanged and an increase in the distance over which they can be profitably traded. Advances in information and communication technologies fuel a radical change in how commerce is conducted, and drive the globalization of economic activity. As the costs of these technologies decline, firms have increasingly been able to spread their activities between and across continents.

Experience has shown that the opening of borders and increasingly vigorous competition spur innovation and an accompanying increase in productivity. This results in greater economic efficiency and generally higher-quality products available at lower prices. However, intense global competition also requires adjustment to new dynamics, and often a relentless restructuring of productive activity to reflect changing competitive realities.

When the Canada–U.S. Free Trade Agreement came into force in 1989, Canada embarked upon a new and ambitious path of globalization and openness to trade, one that built upon the positive experience of the Auto Pact. The Free Trade Agreement fundamentally changed the Canadian economic context – our economy

became more integrated into the U.S. economy. In 1994, the North American Free Trade Agreement (NAFTA) advanced this integration a step further. These agreements reduce barriers for Canadian enterprises to expand in North American markets, but also submitted them to the discipline of competition on a continental, rather than on a national, basis.

Adjustment to the new competitive realities presented by the Free Trade Agreement and NAFTA posed challenges for certain industrial sectors. However, the overall effect has been positive for Canada and Canadians. Our economy has been reoriented from simply focussing on competition within the Canadian market to competing in a North American context. Globalization demands a similar reorientation, one where Canada and its firms change their frame of reference to competition on a global scale.

### Globalization of Value Chains

One response to these new competitive realities has been a trend towards the globalization of value chains. The value chain describes the broad range of activities that are required to bring a good or service from its initial conception to the marketplace. Previously, a firm might conduct all the activities in the value chain within its home country. The global era, however, has been typified by the disaggregation of this chain of activity, with constituent elements of a single product being designed and produced in different countries and on several continents, raising the competitiveness of the overall production process.

Many Canadian firms have recognized the new global dynamic and have adapted their operations in response. Some firms have become multinational, detaching the labour-intensive activities of their operations and relocating them to countries where labour costs are more competitive. China and other Southeast Asian economies have been primary destinations for production work in the manufacturing sector, while India has been a prime destination for such work in service-oriented sectors. Other Canadian firms will compete by becoming parts of other firms' value chains.

In this context, the goal for Canada should be to make this country the location of choice for the higher-value elements of these global value chains – whether led by Canadian firms or as part of others' supply chains – as higher-value productive activity translates into higher wages and salaries, more occupational choice and a better quality of life for Canadians.

## How Canada Ranks against Global Competitors

With increased competition on a global scale, and different national jurisdictions competing to attract global capital, it is important to assess how Canada ranks against other global competitors.

### Productivity Performance

A nation's ability to compete on the world stage is tied to a combination of factors that determine its level of productivity. Productivity is a measure of how well a nation's economy utilizes available resources such as capital, labour and raw materials to produce goods or services. Higher productivity translates into better economic performance and therefore a higher standard of living. In other words, productivity is intrinsically tied to national wealth and well-being.

Overall, Canada has shown signs of strong economic performance. However, Canada's productivity growth has been declining, particularly relative to that of the U.S., and continues to lag that of our main competitors. From 2001 to 2005, Canada's average annual productivity growth ranked twenty-first, well below the Organisation for Economic Cooperation and Development (OECD) average, and second lowest in the G7.<sup>4</sup> (Figure 2) In 2006, Canadian labour productivity per hour worked was only 81.4 percent of U.S. levels, down considerably from 87.4 percent as recently as 2001.<sup>5</sup> (Figure 3) The output per hour in the Canadian business sector grew by only 1 percent annually over the past five years, in contrast with 3 percent annual growth in the U.S. over the same period.<sup>6</sup>

Various factors have contributed to Canada's poor productivity growth. One contributing factor is an apparent underinvestment in machinery, equipment and technology, which are all important drivers in boosting productivity, because new technologies enhance efficiency while also spurring innovation and enabling the creation of new products and technologies. As well, Canadian businesses have lagged in workplace reorganization and worker training.<sup>7</sup>

Given demographic changes in Canada, with projections of an aging population and slower growth of the labour force, Canada's productivity performance will grow in importance as a determinant of the future well-being of Canadians.

### Competitiveness Rankings

According to the World Economic Forum (WEF), in 2006 Canada ranked sixteenth among 125 countries in terms of competitiveness.<sup>8</sup> This is down from thirteenth in the previous year. While the method used by the WEF has been modified over the past seven years, Canada has fallen markedly in the rankings, having been ranked third in 2001. A large part of this drop can be attributed to technology and innovation. In particular, Canada ranks below the OECD average when it comes to business expenditure on research and development (R&D), ranking second last among the G7.

In 2007, the Conference Board of Canada released their report card benchmarking Canada's competitiveness performance.<sup>9</sup> The Conference Board called Canada's performance "mediocre" and ranked Canada fourteenth out of 17 comparator countries with respect to innovation. Switzerland, Sweden, Finland, and the U.S. respectively occupied the top four positions in the Conference Board innovation rankings.

Both the Conference Board and WEF reports agree that Canada's relative strengths lie in the areas of education and health, with a large pool of skilled workers, high-quality research institutions, and strong primary and secondary education.

Global business leaders from eight Canadian investor markets (Brazil, China, France, Germany, India, Japan, the United Kingdom and the United States) were interviewed early in 2007 as part of an Ipsos-Reid study titled *Looking Towards Canada*. Interviews were conducted with top-level executives at some of the world's foremost companies and, although Canada was generally perceived in a positive light, many respondents felt Canada lacked a "cohesive investment identity." Canada's R&D environment and superior workforce were primary strengths, and Canada's multicultural society and open immigration policies were noted as important building blocks for success in today's global economy. Commonly mentioned challenges to investment were Canada's small domestic market, and a perception of high business costs, including high taxes and high costs for lower-skilled labour. Overall, the Canadian brand, and Canada's specific investment advantages, were not well known.<sup>10</sup>



## Globalization: Implications for Canada

While there have been challenges, it is clear that Canada and Canadians have benefited from globalization. Over the past decade Canada has performed well across a range of economic indicators. Domestic inflation has remained low. Our state of trade is healthy, with Canadian exports reaching an all-time high in 2006. Rising commodity prices have benefited Canada as a resource-exporting nation. The federal government's fiscal situation is solid, with ongoing budget surpluses and a decreasing debt burden. Unemployment is low compared with previous decades, and Canada continues to enjoy sustained economic growth that compares very favourably with many other leading nations.

### The “Hollowing-out” Debate

Despite Canada's strong economic fundamentals, the recent increase in FDI inflows into Canada, particularly in the form of mergers and acquisitions (M&As), has raised concerns about diminished control and influence by Canadians over the domestic economy.

These concerns are the result of the pace of foreign takeovers of large, well-established Canadian companies – the so-called “hollowing out” of the Canadian economy. While a certain level of anxiety about foreign influence on the Canadian economy has always been present, this concern has been exacerbated by a recent series of significant takeovers, as Canadians have witnessed the acquisition of a number of prominent Canadian firms by investors from outside the country. From mining companies like Falconbridge and Inco, to retailers like the Hudson's Bay Company, foreign investors have found attractive takeover opportunities in Canada. The firms being acquired often have long histories in Canada, and have been anchors of communities across the country. The concerns that these takeovers have raised among Canadians are both natural and understandable.

In particular, these events have resulted in concerns in Canada about the effectiveness of the regime the government has in place to assess foreign investment. The rise in M&A activity has also fuelled a debate in Canada about the importance of domestically-controlled corporations and the benefits of the presence of company head offices. These worries centre on the loss of head-office functions and the valued-added jobs, decision-making power, research and development activity and commitment to building Canada that accompany a corporate headquarters, as well as associated functions such as high value-added consulting, legal and accounting services, and financial and underwriting services.

Concern has also been expressed about the impact that the loss of Canadian control of these firms will have on the wider communities in which they operate. Large firms are not only significant employers. They are often generous and influential donors to charities, and sponsors of community activity, and their executives are often community leaders. Many Canadians question whether foreign owners will demonstrate the same level of dedication to their communities, and continue to provide career opportunities for young Canadians.

Commentators have noted that, adjusted for the size of the economy, the number of Canadian companies acquired from 2001 to 2006 was the second largest total in the world after Australia, and the value paid was the second highest after the United Kingdom. They have also pointed out that since the beginning of 2006 the value of acquired Canadian companies leads all countries.<sup>11</sup>

Ontario's Institute for Competitiveness and Prosperity examined Canadian-owned globally competitive companies (defined as Canadian owned and headquartered firms that rank in the top five of their respective industry, as measured by the worldwide revenue earned in their industry, and having more than C\$1 billion in annual sales in that industry<sup>12</sup>). Canada had only 14 such global leading firms in 1985, but this number had grown to 46 by 2003.<sup>13</sup>

The Institute also noted that the number of global-leading Canadian firms has declined since 2003, falling to 39 such firms at the end of 2006.<sup>14</sup> This decline has coincided with several recent high-profile foreign takeovers. There has nevertheless been a significant net increase since 1985 in the number of Canadian firms that are global leaders.

This net growth, more than doubling the number of category-leading Canadian firms since 1985, suggests that Canada has benefited from globalization, building leading-edge globally-competitive companies. However this growth has been far from smooth. As a result of two decades of corporate consolidations and foreign acquisitions, several of Canada's global-leading companies operating in 1985 were no longer global leaders in 2005. In other words, while Canada has created a sizeable number of new global leaders in recent decades, the Canadian economy has also lost several leading companies.

### **Foreign Direct Investment: Recent Trends and Implications**

FDI is a form of investment involving ownership which provides investors a significant voice in the management of an enterprise outside their own country. FDI can occur through M&As, new greenfield and brownfield investment, reinvested earnings, and cross-border loans and capital transactions between related firms. For operational purposes, a direct investor is defined as having at least 10 percent ownership of the voting equity in an enterprise.

### **Rising Global Value of FDI**

Foreign direct investment has grown substantially in recent years, with global FDI inflows reaching US\$1.3 trillion in 2006, against reported global FDI outflows of US\$1.2 trillion.<sup>15</sup> Similar to trends in the late 1990s, the recent surge in FDI reflects a greater level of cross-border M&A activity. The value of cross-border M&As reached US\$880 billion in 2006, and the number of transactions rose to 6,974. These levels are close to those achieved in the cross-border M&A boom of 1999–2001.<sup>16</sup> An additional feature of the recent global M&A boom is increasing investment by private equity and related funds.

### **Inward FDI**

Canada ranked as one of the top 10 global destinations in terms of the total value of inward foreign investment flows between 1996 and 2005. Despite being the smallest economy in the G7, Canada nonetheless ranked fifth in terms of inward FDI flows over this period, ahead of larger economies such as Japan.<sup>17</sup>

FDI has for decades been a significant contributor to Canada's economic performance. As such, Canada's total **stock** of inward FDI as a proportion of gross domestic product (GDP) is high among mature industrialized countries, reaching 31.4 percent in 2006, much higher than the proportion in the U.S. (13.5 percent) or in Japan at only 2.5 percent.<sup>18</sup> (Figure 4) Canada's share of North American inward FDI stock was 16.3 percent in 2005, an increase from 12.6 percent in 2001. This followed extremely high levels of inflows in the 1960s and 1970s.<sup>19</sup>

Canada's net **inflows** of FDI are also relatively high, accounting for 2.2 percent of Canada's GDP between 2001 and 2005, ranking third in the G7 behind the UK and France. Nevertheless, the OECD has highlighted Canada's high level of formal restrictions to inward FDI, and noted that the *Investment Canada Act* and various sectoral investment regimes impede Canada's ability to attract FDI.

The U.S. is Canada's top source of FDI investment. American FDI investment accounted for 61 percent of Canada's total in 2006, down from a share of 67 percent in 1995.<sup>20</sup> (Figure 5) Other top investors included the UK, France and the Netherlands.

In terms of **composition** across industrial sectors, Canadian assets under foreign control have been relatively stable at approximately 21 percent since 2000.<sup>21</sup> FDI in manufacturing is about 49 percent of total output. The other main sectors with a relatively high foreign presence are oil and gas, at almost 40 percent, wholesale trade at 37 percent, transportation and warehousing at almost 26 percent, and finance and insurance at about 15 percent.<sup>22</sup>

### **Mergers and Acquisitions**

The most commonly reported subcomponent of FDI is M&A investment. M&As are a general term referring to the consolidation of companies. Cross-border M&As involve a foreign company making an ownership investment in a domestic company. In this way, M&As differ from other forms of FDI such as reinvestment of earnings and intra-company loans between parent and affiliate enterprises.

Recently, the largest part of the FDI flows into Canada is M&A activity. Canada accounted for 5.2 percent of world M&A activity at the end of 2006<sup>23</sup>, higher than its share of the global economy (3.2 percent<sup>24</sup>). Recent firm and industry growth has been driven by M&A activity as many global industries seek to grow rapidly through consolidation. This has been the case in recent years in Canada with takeovers in the metals, minerals and energy sectors.

According to data from Statistics Canada, M&As accounted for 51 percent of inward FDI into Canada between 2001 and 2006, but accounted for 71 percent of inward FDI in 2005 and 2006.<sup>25</sup> (Figure 6) By contrast, Canadian direct investment abroad in recent years has not been driven by M&A activity, instead primarily occurring through other investment flows such as the investment of capital into existing foreign affiliates.

According to these data, Canada's M&A investments abroad accounted for only 31 percent of average outward FDI between 2001 and 2006, and averaged only 16 percent of outward FDI between 2005 and 2006.<sup>26</sup> (Figure 7) This implies a significant M&A imbalance in the past two years, with foreigners acquiring more of Canada's corporate assets than Canadian businesses acquired abroad.

Over a longer, six year time horizon from 2001, the data present a somewhat different picture of whether Canada is being disproportionately affected by the increase in foreign takeovers. Annual M&A activity rises and falls sharply from year to year and the value is considerably affected by a few high-value transactions. Between 2001 and 2006, *Financial Post Crosbie: Mergers & Acquisitions in Canada* shows that Canadian companies acquired 1993 foreign firms at a combined value of approximately \$300 billion. Over this same period, 864 Canadian companies were acquired by foreign firms, at a combined value of \$286 billion.<sup>27</sup> (Figure 8)

With respect to head offices, a report by Statistics Canada has concluded that there was no decline of head office functions in Canada between 1999 and 2005.<sup>28</sup>

### **Longer-term Trends**

Overall, the stock of Canadian direct investment abroad currently exceeds the stock of foreign direct investment in Canada. Statistics Canada indicates that Canadian direct investors held foreign assets totalling C\$523 billion at the end of 2006, whereas FDI in Canada reached only C\$449 billion.<sup>29</sup> Americans are still the lead investors in Canada, and directly held investments of C\$274 billion in 2006. Canadian direct investment in the U.S. totalled C\$224 billion in 2006, an increase of C\$19 billion from 2005. (Figure 9) This was mostly the result of capital outflows from Canadian firms to existing operations in their U.S. affiliates.<sup>30</sup>

The overall result is that despite a sizeable increase in recent foreign investment flows into Canada, since the mid-1990s Canadians have maintained a net advantage, building a larger net stock of investments abroad than foreigners investors have in Canada.<sup>31</sup>

As for M&A activity, the **number** of foreign firms acquired by Canadian firms between 2001 and 2006 significantly exceeded the **number** of Canadian firms acquired by foreigners. However, the total **value** of Canadian acquisitions over this period was only slightly higher than the total **value** of foreign acquisitions of Canadian firms, despite significant foreign acquisitions of Canadian companies in 2005 and 2006.<sup>32</sup>

### **Looking Ahead**

The Panel is interested in understanding the factors that might make Canada more attractive than other countries as a location for company formation and development. The challenge is to create a business climate that will attract greater economic activity, including head office functions.

The Panel observes that the emergence of global supply chains and product mandates as a result of globalization and free trade has given rise to a new feature of business organization which sits at an intermediate point between the global, corporate head office and the production site. This intermediate point is the global product mandate centre, or divisional head office. The Panel is aware of some research on the social and economic significance of such entities, as well as anecdotal evidence thereof. However, the Panel would like to better understand this development and its implications for Canada, in particular, the extent, if any, to which public policies foster or hinder the attractiveness of Canada as a location for divisional head offices. The Panel also wishes to understand the advantages for Canada in being home to a divisional head office or lead R&D facility of a globally integrated company.

Small and medium-sized enterprises (SMEs) play a significant role in the Canadian economy. To improve their competitiveness, Canadian companies, no matter their size, must increasingly take a global perspective, including making acquisitions of foreign companies. As well, for some SMEs, being acquired by a larger firm, whether Canadian or foreign, is a welcome development; merging with a larger player is often the most effective growth strategy for small firms. The question is how to create the conditions for Canadian SMEs to further participate in global commerce.

While foreigners continue to find attractive investment opportunities in Canada, including acquiring leading Canadian firms, Canadian firms and investors are also making investments abroad. A question is why Canadian investors in the past few years have been relatively less likely to participate in cross-border M&A activity, instead focussing on portfolio investment and other forms of FDI.

International investment flows are typical of the global economy, and Canadian firms will need to continue to participate in global transactions in order to prosper. The challenge for Canada and our businesses is to ensure that we are prepared to compete globally: What policies would make Canada more attractive as a destination for human and economic capital while at the same time enhancing the potential for home-grown firms of all sizes to become global champions with head offices in Canada?

Globalization is real, and the implications for Canada's future are significant. This is not a time for complacency; developments in the global economy compel us to consider how best to move forward.

---

## CANADA IN A GLOBAL CONTEXT – QUESTIONS

1. **Should Canadians be concerned about foreign takeovers of Canadian firms? How important is domestic control and ownership of Canadian business activities to Canada's economic prospects and ability to create jobs and opportunity for Canadians?**
  2. **How important are company headquarters to Canada's economic prospects and ability to create jobs and opportunity for Canadians? How important are global divisional head offices? What factors influence their location?**
  3. **How do Canada's policies impacting direct investment, both inward and outward, affect Canada's competitiveness as a destination for FDI and as a platform for global growth?**
  4. **Do Canada's economic policies appropriately reflect our increased integration with the North American and global economy? How might these policies be changed to better reflect this new competitive environment?**
-

## 3. *Investment Policies*

---

### Foreign Investment Policy

The *Investment Canada Act* (ICA) provides a regulatory framework whereby the Government of Canada can review large-scale foreign investments in Canada which exceed a designated financial threshold.<sup>33</sup> Review of foreign investment at a lower financial threshold is required in financial services, transportation services (including pipelines), uranium and culture.<sup>34</sup> Approval of the acquisition is granted when the Minister is satisfied that the investment is likely to be of “net benefit to Canada”.<sup>35</sup>

### History and Evolution of the *Investment Canada Act*

Prior to the ICA, the *Foreign Investment Review Act* (FIRA), introduced in 1973, regulated FDI in Canada. FIRA was predicated on the view that “. . . the ability of Canadians to maintain effective control over their economic environment is a matter of national concern . . . measures be taken to ensure that . . . [investments] . . . are likely to be of significant benefit to Canada.”

By the mid-1980s, the Government decided to change course. The ICA, passed in 1985, acknowledged that foreign investment delivers important economic benefits. In particular, greenfield investments by foreign investors, apart from those in the cultural sector,<sup>36</sup> were no longer subject to review, and the test of “significant benefit” was changed to one of “net benefit.” Since 1985, all 1529 reviews that have been undertaken by the Minister of Industry under the ICA have been approved.<sup>37</sup> This does not reflect applications that may have been withdrawn. Since 1999, the Minister of Canadian Heritage has reviewed and approved 98 cultural investments, while disallowing three proposals. The disallowance rates under FIRA and the ICA do not reflect proposals withdrawn before a decision was rendered.

There has not been a policy review of the ICA since it was enacted more than 20 years ago.<sup>38</sup> During that time, the competitive landscape has evolved dramatically, as discussed in the previous section of this paper.



## The “Net Benefit” Test

Under the ICA, a prospective investor has an obligation to demonstrate that the proposed transaction is of net benefit to Canada. The ICA provides a list of factors considered by the Minister of Industry in determining whether a transaction is of net benefit. The factors assessed are:

- the effect of the investment on the level and nature of economic activity in Canada
- the degree and participation by Canadians
- the factors of productivity, efficiency, technological development, product innovation and variety
- competition in Canada
- the compatibility with national industrial, economic and cultural policies
- Canada’s ability to compete in world markets.

The ICA provides no specific weighting to the factors, nor is any single factor determinative. On balance, the positives must outweigh the negatives for an investment to be approved.

To ensure net benefit to Canada, negotiated undertakings<sup>39</sup> with the prospective investor are standard practice. Areas of negotiation address specific concerns identified during consultations and, among other things, focus on future plans for the Canadian business following the completion of the transaction. According to Industry Canada, there has been a shift over time in emphasis and number of commitments towards those related to productivity, technology transfer and efficiency, and away from a focus on employment. Industry Canada indicates that potential improvements in the capacity and capabilities of the Canadian business, as well as the degree of Canadian participation, have taken on more weight in the review process.

## The *Investment Canada Act* and International Trade Law

Canada is signatory to a number of international trade agreements, the most important of these being the World Trade Organization (WTO) Agreement and the North American Free Trade Agreement (NAFTA). Under NAFTA and WTO, Canada is generally required to provide national treatment and most favoured nation status such that foreign investors are treated equally and no less favourably than domestic investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments. Canada has taken reservations in both agreements to preserve its ability to use the ICA to ensure that investments by non-Canadians provide net benefit to Canada. Under international trade law, Canada can amend legislation for which it has taken a reservation but it can only narrow, not broaden, its application.

## Treatment of Foreign Investment in Other Countries

Like Canada, most countries around the world have mechanisms in place, whether formal or informal, to review at least some elements of foreign investment. While investment flows have increased, and the economic importance of foreign investment has been accepted, most nations are sensitive to the control of the more strategic elements of their domestic economy. As such, most governments retain a degree of control over who invests and controls firms active in these strategic sectors. Recent U.S. legislation affecting foreign investment and national security is an example of a formal mechanism.

Australia has a general investment screening system similar to Canada's that reviews foreign investments based on monetary thresholds. Unlike the net benefit test in Canada, Australia's policy is framed such that it can block any foreign acquisition that is judged contrary to "national interest." Most other industrialized countries have general legal authority to block any mergers on the basis of national security considerations. The United States, France, Germany, the United Kingdom, Japan, and China all have such powers.

### Issues Concerning the *Investment Canada Act*

Two general concerns have been raised by critics of the ICA, one being transparency and the second being efficacy.

In its current form, the review mechanism under the ICA has raised concerns from foreign investors over a lack of predictability regarding how the net benefit test will be applied and what combination of factors is required to be met. On the other hand, the flexibility inherent to the net benefit test provides the Minister with discretion to ensure, on a case-by-case basis, that the FDI serves Canadian interests as they evolve over time.

For reasons of commercial confidentiality, details on the undertakings that foreign investors make to meet the net benefit test are not publicized. The absence of information makes it difficult for Canadians to ascertain whether undertakings with foreign investors are being fulfilled, and consequently whether the net benefit on which the approval of an investment was granted is being realized. The lack of transparency of the approval process also inhibits public discussion of the efficacy of the ICA, as the facts on the performance of the policy are not publicly available.

In addition to the foregoing general concerns, there has recently been increasing public discussion of reciprocity in connection with acquisitions of Canadian enterprises by acquirers which are based in jurisdictions in which a Canadian enterprise would not be able to make a corresponding acquisition because of formal or informal barriers in place in such jurisdictions.

---

## INVESTMENT POLICIES – QUESTIONS

1. **What impact has the ICA had on the Canadian economy and Canadian competitiveness, and specifically on our ability to attract FDI?**
  2. **What changes to the ICA and Canada's investment review regime would help Canada address the challenges and complexities of the modern global economy, within the constraints of Canada's international obligations?**
    - **What, if any, changes to the investment review process would enhance Canada's competitiveness and improve Canadians' understanding of the benefits of FDI?**
    - **Should the net benefit test be adapted to reflect the new competitive environment? If so, how?**
-

## Sectoral Investment Regimes

Canada has sector-specific legislation and/or policies on foreign investment in five sectors:

- telecommunications
- broadcasting
- cultural industries
- transportation services
- uranium production.

As well, the financial services sector is subject to generally applicable ownership restrictions, but not specific foreign ownership restrictions.

Descriptions of the individual sectoral regimes are presented in Appendix 2.

Investment restrictions and controls in Canada were introduced to protect important aspects of the economy deemed essential to Canada's sovereignty, cultural identity, national security and overall economic well-being. Other restrictions were imposed to deal with a perceived inability of market forces to support the development of domestic activity. Each sectoral regime is unique and is based upon a distinct policy rationale.

The Panel will focus on the impact of such restrictions and limitations on Canada's competitiveness and will be interested in whether there are alternative, and equally effective, mechanisms that have less impact on Canada's competitiveness but nevertheless meet the objectives of the various sectoral investment regimes currently in place. It is beyond the scope of the Panel's mandate to comment in detail on the trade-off between economic competitiveness and other policy objectives of each sectoral investment regime.

---

## SECTORAL INVESTMENT REGIMES – QUESTIONS

Canada maintains specific regimes to govern, review or restrict investment in six sectors: telecommunications, cultural industries, broadcasting, transportation services, uranium production and financial services.

1. What changes, if any, are required to Canada's sectoral investment regimes to minimize or eliminate negative impacts on Canada's competitiveness?
  2. What have been the impacts of these investment regimes on productivity and competitiveness in the specific sectors?
  3. Are there alternative mechanisms that would achieve the non-economic policy objectives of the sector while also ensuring maximum competitiveness of firms operating in the sector?
-

## 4. *Competition Law*

---

**E**ffective competition law and policies are key elements assuring the competitiveness and efficiency of the Canadian economy. Competition is a key driver of productivity. The benefits of competition are well known: lower prices and more product choice for consumers, and more efficient, dynamic and innovative firms. Competition promotes quality, efficiency and consistent improvement, and it disciplines firms to the challenges of the marketplace.

The Panel has been asked to ensure that Canadian competition policies are relevant in the context of global commerce and economic activity that extends beyond domestic markets. In light of the Panel's mandate, this review will focus on those aspects of competition policy that affect Canada's global competitiveness as set out in this paper.

### **International Context**

Canada is by no means alone in studying and updating its competition laws and institutions.<sup>40</sup>

International organizations such as the OECD and the International Competition Network have engaged in ongoing efforts to develop recommended practices to improve and harmonize competition law enforcement internationally. Competition law over time has become increasingly focussed on international markets. Several high-profile merger cases, subject to review in more than one jurisdiction, have demonstrated the international nature of global competition and the implications this has for domestic competition regimes.

The OECD released in-depth reviews of Canada's competition law and institutions in 2002<sup>41</sup> and 2004.<sup>42</sup> The 2002 review made a number of recommendations on areas for improvement. Among other things, the 2004 review noted that recommendations in the 2002 review on the continued existence of foreign ownership restrictions and regulations that restrict trade among the provinces were not effectively addressed.

Another OECD study released in August 2007 rated Canada as ninth of 30 OECD countries in terms of its antitrust framework and policies related to regulated industries.<sup>43</sup>

### Canada's Competition Law

The *Competition Act* and the *Competition Tribunal Act* set out the legal and institutional framework for competition law in Canada. The Commissioner of Competition (the “Commissioner”) is responsible for investigating alleged anti-competitive conduct and mergers, as well as misleading advertising and other deceptive marketing practices. The Commissioner also heads the Competition Bureau (the “Bureau”), which carries out investigative and advocacy work.

The *Competition Act* contains prohibitions under the criminal law for the most damaging types of conduct such as bid rigging and conspiracies to unduly lessen competition. These provisions are subject to criminal penalties. Other provisions are civil – or noncriminal – as they address commercial activities that are deemed anti-competitive only in limited circumstances. Examples under civil provisions are mergers or abuses of a dominant position that are likely to prevent or lessen competition substantially. There is also an elective two-track civil and criminal system addressing misleading advertising. Remedies in noncriminal matters usually consist of Competition Tribunal orders to prohibit or alter a business practice or a merger transaction.

Canada has a three-part system for the enforcement of the competition law: investigation, prosecution and adjudication.

At the end of an investigation by the Bureau, the Commissioner decides whether to refer the matter to the Competition Tribunal in the case of a noncriminal matter, or to the Attorney General of Canada in the case of a criminal matter. If the evidence is insufficient, the matter is discontinued. Once a criminal matter has been referred to the Attorney General, the Director of Public Prosecutions has the independent discretion to determine whether it is in the public interest to prosecute before the courts.

The *Competition Tribunal Act* establishes the powers of the Competition Tribunal. The Competition Tribunal is empowered to hold hearings and decide matters under the noncriminal provisions of the *Competition Act*.

In practice, contested proceedings before the courts and Competition Tribunal are rare. Most cases are resolved on a consensual basis, and there is a wide range of remedies available under the *Competition Act* depending on the nature and seriousness of the matter. There is also scope for filing lawsuits for the recovery of damages by private parties under the *Competition Act* involving criminal matters, as well as limited private enforcement before the Competition Tribunal in civil matters.

### Evolution of Canada's Competition Regime

Although Canada's competition laws date from 1889, the current regime has been in place since 1986, when the *Competition Act* became law. The Act has been subsequently amended by Parliament in 1992, 1999, 2000 and 2002. In general, these amendments have addressed process issues or emerging issues such as deceptive telemarketing. The legislation continues to be the subject of periodic Parliamentary review and debate within the professional community concerned with such matters. While a full review of all aspects of the legislation is beyond the scope of the Panel's mandate, a few germane topics are discussed below.

Changes to the conspiracy provisions have been vigorously debated over the past decade. Only conspiracies that prevent or lessen competition "unduly" are illegal in Canada. Concerns have been expressed that the current provision fails to adequately deter anti-competitive behaviour such as agreements between competitors to fix prices and allocate markets, customers or output. These concerns also question whether the current provisions might discourage businesses from forming pro-competitive strategic alliances. To date, most of the debate has centred on developing an elective "two-track" system that would define agreements that would be prosecuted criminally, while also reserving a noncriminal approach for strategic alliances and others types of agreements.

Another issue that has been the subject of debate and legislative proposals has been the treatment of efficiencies. The debate centres on balancing the efficiency gains that may be realized by producers against the losses that consumers may experience as a result of an anti-competitive merger. This issue has been fully considered by the Competition Tribunal and the courts only once, in the Superior Propane/ICG Propane merger case from 1998 to 2002. Since 2004, the Competition Bureau has consulted widely on the treatment of efficiencies and has commissioned several independent reports on the issue.<sup>44</sup>



The granting of formal investigatory powers to the Bureau or another independent government agency to conduct market studies is another subject of debate. Currently, as part of its advocacy function, the Bureau undertakes market research to assess the state of competition in various sectors of the Canadian economy. Proponents of granting formal investigatory power to the Bureau or another government agency argue that such a measure would assist in obtaining complete and accurate information, and thus be more useful in increasing the understanding of how certain markets operate. Such formal market studies are conducted in several other jurisdictions. Opponents argue that the Bureau already has sufficient means to conduct market studies using public information and voluntary requests to obtain information from stakeholders in the marketplace. In addition, opponents have raised concerns that the line between the Bureau's market study and enforcement activities would become blurred.

A final and crucial issue for competition agencies is how to evolve their mandates, activities and operations to reflect a new and changing global commercial environment. World economic activity is increasingly driven by multinational enterprises that pursue opportunities and run their businesses with a global perspective. These firms consider not domestic markets and local competition, but rather competition for global markets that span borders. The challenge for competition authorities in Canada and around the world is to internationalize their policies and approaches sufficiently to adapt to these new realities and continue to deliver on their objectives of ensuring fair and efficient competition for producers and consumers alike.

---

## COMPETITION LAW – QUESTIONS

1. **How does Canada's competition policy affect Canadian competitiveness in an environment of globalization and free trade?**
  2. **What changes to Canada's competition regime would enhance the competitiveness of Canadian firms in the global economy? What international best practices, if any, would strengthen Canadian competitiveness as a destination for foreign investment if we were to adopt them?**
  3. **Does Canada's approach to mergers strike the right balance between consumers' interest in vigorous competition and the creation of an environment from which Canadian firms can grow to become global competitors?**
-

## 5. *Promoting Canadian Direct Investment Abroad*

---

**A**s a small, open economy, Canada's prosperity is premised on its success as a trading nation. Total exports currently account for 36.4 percent of our GDP (2006).<sup>45</sup>

Canada is also dependent on international investment as a source of growth. As stated earlier, the stock of inward FDI in Canada was 30.4 percent of GDP in 2006, one of the highest ratios among developed countries.<sup>46</sup> Canadian direct investment abroad (CDIA) is even higher at about 35.4 percent of GDP.

Data indicate that globalization is being heavily driven by investment flows, which have increased at three times the rate of global GDP and double the rate of trade flows.<sup>47</sup> This reverses the traditional paradigm of trade creating investment opportunities: in the global era, direct investment abroad appears to be a key factor in stimulating increased trade.

Much of Canada's foreign investment is situated in the United States, representing 42.7 percent of the total.<sup>48</sup> This is not surprising, given our shared geography as well as the integrative effects of the original Canada–U.S. Free Trade Agreement and NAFTA over the past 20 years. The second largest recipient of CDIA is the United Kingdom (11.3 percent) where Canada has longstanding historical ties. Following the U.S. and the U.K., CDIA is dispersed among Caribbean countries, France, Ireland and the Netherlands.<sup>49</sup> (Figure 10)

CDIA is quite low in rapidly developing markets like China, India and Brazil. For example, Canadians invest more than four times as much in Barbados (7.3 percent) as they do in Brazil (1.6 percent). Indeed, Canadian investment in the relatively small Caribbean economies of Barbados, Bermuda and the Cayman Islands represents 12 percent of total CDIA, while CDIA in large, emerging economies like China, India and Brazil accounts for less than 5 percent.<sup>50</sup>

In terms of outward investment strategies, Canadian investors in recent years have been relatively less active than investors from other nations in making foreign acquisitions. Canada's M&A investments abroad accounted for only 31 percent of average outward FDI between 2001 and 2006, and averaged only 16 percent of outward FDI between 2005 and 2006. Rather than participating in foreign M&As, CDIA has primarily occurred through other investment flows.

The sectoral composition of CDIA reveals a concentration in financial services (44.1 percent) followed by energy and metallic and minerals (23.2 percent) and services and retailing (13.0 percent).<sup>51</sup> (Figure 11) This composition is broadly reflective of traditional Canadian corporate strengths.

The emerging picture of CDIA therefore is one of steady growth but with concentration in relatively few geographic locations and in few sectors. Recent changes in Canada's exchange rate may introduce new opportunities. A key issue for Canada's economic future relates to success in the scope and reach of Canadian enterprises and investors in the global economy.

### Formal Barriers

Over the past two decades, barriers to direct investment have been reduced in many host countries. The reduction in barriers is owing in part to trade and investment agreements, but in larger measure to unilateral policy changes that nations have made to attract FDI.

The World Trade Organization (WTO) has few investment undertakings, focussing largely on measures that prohibit members from imposing performance requirements such as employment or export targets on foreign investors. The scope of the General Agreement on Trade in Services (GATS) includes investment in services industries. However, efforts to add investment *per se* to the WTO negotiating agenda in the current Doha Round of international trade negotiations were abandoned in 2003.

At the OECD, all member countries have committed to publish discriminatory investment measures, but there is at present no mechanism to enforce this practice.

The Canada–U.S. Free Trade Agreement and NAFTA go beyond WTO undertakings to effectively prohibit any new direct investment restrictions (other than in a few industries) while preserving Canada's right to review large direct takeovers under the ICA. Further, key features of the myriad bilateral trade and investment agreements being negotiated by Canada and other countries are aimed at protecting and promoting foreign investment through legally binding rights and obligations.<sup>52</sup> However, these agreements vary greatly in both scope and content.

Thus, while nondiscriminatory treatment of investors is a crucial driver of globalization, the institutionalization of this effort has been challenging.

### Informal Barriers

Concerns have been expressed about the informal or noninstitutional barriers to international investment erected by national governments. By their very nature, such barriers are difficult to identify and evaluate; however, there are various measures employed to prevent foreign investors from acquiring significant stakes in domestic firms. Such practices may entail government efforts to effect mergers of national firms to prevent a foreign takeover, governments holding so-called “golden shares” in firms that allow them to outvote other investors and thereby prevent foreign takeovers, using informal arrangements among owners acting under government influence or encouragement, or imposing overly stringent regulations to restrict outside investment in certain firms and industry sectors. Such barriers raise questions of reciprocity in market-based economies that function according to the rule of law.

### Canadian Outward Investment Policy

Historically, Canadian public policy has been focussed on promoting exports of goods and services. Like our major competitors, we deploy a network of trade commissioners in foreign posts to assist Canadian companies to penetrate foreign markets. In recent years, investment counsellors have been added to a number of key posts, but their main focus has been on promoting foreign investment in Canada. There has been no specific mandate to promote CDIA, although the government's new *Global Commerce Strategy* has identified the importance of increasing both inward and outward flows of investment to enhance future Canadian competitiveness and productivity.

The role of Export Development Canada (EDC) and the Canadian Commercial Corporation (CCC) has been to assist in the financing of Canadian exports, particularly for large infrastructure projects and major procurements. EDC has a limited number of CDIA financing initiatives. New regulatory changes will enhance EDC's ability to invest in private equity and venture capital funds to help Canadian companies expand and grow their businesses internationally, particularly in emerging markets.

It has been suggested that Canadian efforts in support of CDIA have been piecemeal. New business models centred on global value chains place a premium on business engagement internationally, whether in the form of investment (both inward and outward), innovation linkages or traditional exports. Competitive pressures on firms to invest abroad are increasing.

---

## PROMOTING CANADIAN DIRECT INVESTMENT ABROAD – QUESTIONS

1. **What barriers, either formal or informal, do Canadian firms face when seeking to make investments and acquisitions abroad?**
  2. **How should the government adapt its policies to promote increased Canadian direct investment and acquisitions abroad? What measures have been adopted by other countries that are relevant to Canada?**
  3. **Are there policies or approaches that would be useful in addressing the particular challenges faced by small and medium-sized enterprises as they seek to become global competitors and participants in global value chains?**
  4. **What impact does a higher-value Canadian dollar have on CDIA?**
-

## 6. *Becoming a Destination for Talent, Capital and Innovation*

---

FDI for decades has been a significant contributor to Canada's economic performance. The stock of FDI in Canada is higher than in many of our competitors.<sup>53</sup> Historically, FDI was the principal means of obtaining access to the Canadian market because of high tariff levels, creating what was called a "branch plant economy."

With tariffs now being relatively low through successive trade rounds and free trade agreements, many foreign-owned companies have rationalized production in Canada for North American and world markets.

The branch plant model has given way to the global value chain model, with R&D, design and production carried out in various geographic locations. Today and in the future, a key to a country's economic success will be to secure participation in global value chains managed by large multinational enterprises (MNEs), whether domestic or foreign.

It is particularly important for a country with a small domestic market like Canada's to participate in these global value chains. In this regard, there is growing evidence that MNEs, regardless of country of ownership, outperform domestic firms on a wide range of factors, including innovation, wages, productivity, exports and profits.

Many Canadian companies have been gaining this MNE advantage by investing abroad. However, for many Canadian firms, this advantage is gained through FDI. For small and medium-sized enterprises as well, once they achieve a certain size, the most attractive option, both for owners to realize value and for employees to expand their career opportunities, is often to become part of a larger corporate structure with global reach. The challenge for Canada, in regard to both its domestically based MNEs and to attract FDI, is to create an environment that can successfully compete for higher-value activities.

The Department of Foreign Affairs and International Trade markets Canada's advantages as an investment location of choice and provides services to potential investors. A network of investment officers in overseas posts promote investment in priority sectors in Canada from key markets.

## National Best Practices

Two developed countries offer worthy comparisons for Canada in developing policies to promote inward investment: Ireland and Australia.

Ireland's government has taken a proactive stance in reforming its economic policies to make the country more attractive as a location for investment. A key element in its strategy was a significant reduction in its corporate tax rates, seeking to attract foreign firms to Ireland on the basis of its competitive tax regime. The Irish have been very open in welcoming investment in their country, including actively seeking out foreign firms and investors. Recognizing that global corporations and investors look beyond any single national market, Ireland has also promoted itself as a location from which to access to the larger market of the European Union. As well, the Irish government placed a significant priority on investment in education and training, recognizing the importance of a skilled labour force. Since 1990, Ireland has improved its GDP per capita from one of the worst in the OECD to fourth overall.<sup>54</sup>

Australia, a country with many similarities to Canada, offers a second comparison, particularly as an example of a country that sought to strike a balance between attracting foreign investment while continuing the development of its domestic industry. From the mid-1990s onward, Australia has demonstrated a strong commitment to taking action on competitiveness issues, a commitment reflected not only in the federal government, but also at the state level. Structural and institutional reforms to its competition regime, as well as a focus on sustained and ongoing review and reform efforts, reflect Australia's dedication to adapting to a new global competitive environment. This structural reform effort is typified by the 1998 establishment of the Productivity Commission, which continues to make a significant contribution to the cause of Australian competitiveness, in terms of both process and advice to the government.<sup>55</sup>

## The Future

How can Canada best compete on a broad basis for investment? Should Canada concentrate on investment primarily for the North American market? Since the implementation of free trade agreements almost two decades ago, Canada has not been the location of choice within North America. In fact, Canada's share of North American inward FDI stock has fallen from over 40 percent in 1980 to 16.3 percent in 2005.<sup>56</sup> (Figure 12)

An important factor in the North American context is the signing by the U.S. and Mexico of bilateral trade and investment agreements with many countries, both within the hemisphere and outside it. As a result, both the U.S. and Mexico have the advantage of being investment hubs with radiating spokes to numerous free trade markets.

Still, in a North American context, with Canada representing only 10 percent of the Canada–U.S. market, investing in Canada with a view to exporting into the U.S. requires a compelling case of economic advantage to offset potential border risk. Unfortunately, in the post 9/11 world, that risk is higher than before, particularly in manufactured goods and their intermediate components. These challenges are exacerbated by border disputes that periodically arise between the two countries. An efficient Canada–U.S. border is an important factor in determining Canada's North American competitiveness.

Other factors that influence investment decisions include:

- macro-economic environment
- economic infrastructure
- knowledge infrastructure
- human capital
- taxation policies
- access to and cost of capital
- regulatory environment
- quality of management and entrepreneurial culture
- quality of life indicators
- energy costs.

Both the Conference Board of Canada and the Institute on Competitiveness and Prosperity have identified many of these factors as important to a nation's attractiveness as a destination for investment.



---

## **BECOMING A DESTINATION FOR TALENT, CAPITAL AND INNOVATION – QUESTIONS**

- 1. How can Canada better promote inward FDI? What policy change could contribute to the achievement of this objective?**
  - 2. In particular, what mix of policy changes would be required to make Canada the preferred point of entry to, and location in, the North American market for the high-value activities of non-North American business entities?**
  - 3. Is the modernization of Canada's competition and investment laws sufficient for successfully attracting foreign direct investment in Canada? What other priorities and policy issues should governments address?**
  - 4. What impact does a higher-value Canadian dollar have on Canada's competitiveness as a destination for investment?**
  - 5. What further could be done in Canada to promote an ongoing review of Canadian competition, investment and productivity performance aimed at Canada's sustained competitiveness?**
-

## 7. *Going Forward*

---

The issues and questions raised in this paper are diverse and difficult. They are also fundamental to Canada's future economic prospects. The prosperity and quality of life that Canadians enjoy has been underpinned by strong economic performance. Canadian firms will continue to face competitive pressures from traditional sources as well as from new and developing global competitors. If Canada is to capitalize on the significant opportunities of the new global economy, we must consider how to address the challenges that fierce global competition presents.

Canadian competitiveness cannot be enhanced through a single policy, nor is there a simple recipe to accelerate economic growth in the evolving global context. The Panel will examine the *Investment Canada Act* to ensure that it is able to effectively deliver economic benefit to Canadians and review the restrictions that Canada currently maintains on foreign ownership in certain sectors. It will also review the *Competition Act* to ensure that Canada strikes a balance between dealing with these new global competitive challenges and maintaining the domestic interest in healthy competition.

The Panel's objective is to make public policy recommendations for improving the competitive environment in Canada. Ultimately, it will be through the commitment and ambition of Canada's private sector as well as the vision of Canadian boards and managers that Canada's competitiveness will improve.

To deliver on its mandate, the Panel will be seeking out the best possible evidence and expertise. As part of its deliberations, the Panel will commission research, and leading researchers will be engaged to conduct policy evaluation studies. The Panel's research activity will focus on those questions and areas of inquiry most crucial to the Panel's mandate, and on information that is not readily available from existing sources. All research findings will be made public.

The Panel will also focus on the competition policies and investment regimes employed by Canada's trading partners and other nations. The Panel will use this examination of international best practices as it formulates its recommendations to the government.

The Panel also recognizes that it will not conduct its review in a vacuum; other bodies and individuals are also at work on issues related to Canada's competitiveness. To that end, the Panel will follow with interest the research initiatives underway by others.

## Consultation Process

The issues and questions presented here highlight the central areas on which the Panel is seeking input from Canadians. The Panel is committed to listening to a wide range of stakeholders on issues and to receiving their input on the subjects under the Panel's mandate.

To that end, the Panel will consult broadly with Canadians from across the country. This document will guide the consultation process, establish the context in which the Panel is conducting its review, and frame the issues under consideration. This document also presents both the overarching questions and specific areas of policy on which the Panel is seeking input from interested parties and individuals.

Given the breadth of the issues, and the number of interested stakeholders, written submissions will be the primary source for input from Canadians. As part of the consultation process the Panel will participate in a series of meetings with interested parties across the country in order to hear their considered views on the Canadian competition and investment regime. The Panel recognizes that in the time it has been mandated to submit its report it will not be possible to meet all the groups and individuals who are engaged in the consideration of the issues presented in this paper. Written submissions will be given full attention, and will be crucial in informing the Panel's eventual recommendations.

The Panel is also very interested in the impact of relevant matters under provincial and territorial jurisdiction and will actively seek input from provincial and territorial governments.

As part of its review, the Panel invites written submissions from any and all interested parties. Submissions will be accepted to a maximum of 20 pages (including attachments), until January 11, 2008. In the interests of transparency, submissions, whether received electronically or in paper copy, will be posted on the Panel's website at [www.competitionreview.ca](http://www.competitionreview.ca). Submissions are welcome in either English or French.

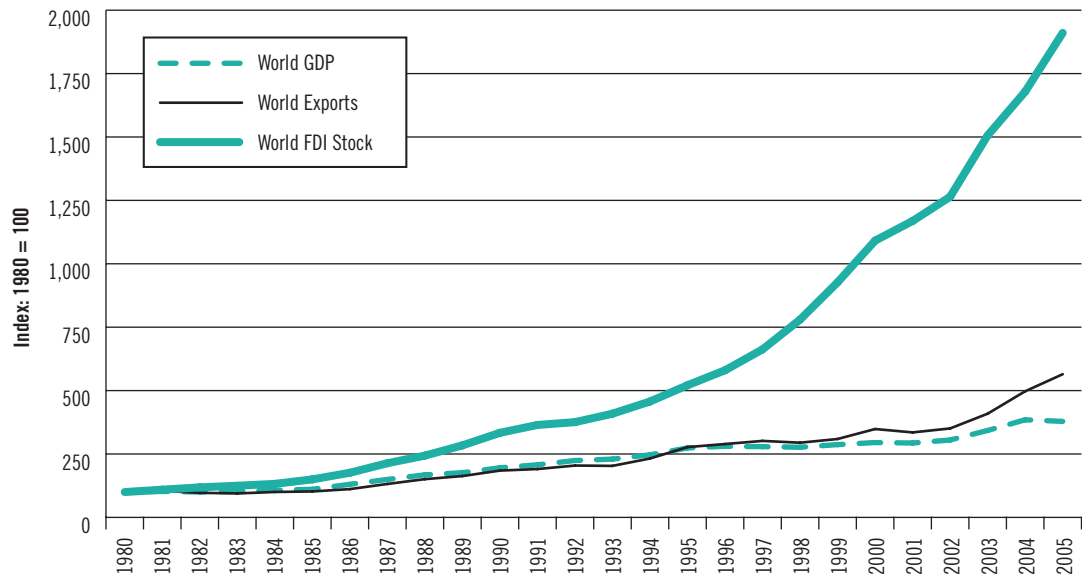
Submissions should be directed to the Panel:

By email: [Competitionreview@ic.gc.ca](mailto:Competitionreview@ic.gc.ca)

By post: Competition Policy Review Panel  
280 Albert Street, 10th Floor  
Ottawa, ON K1A 0H5

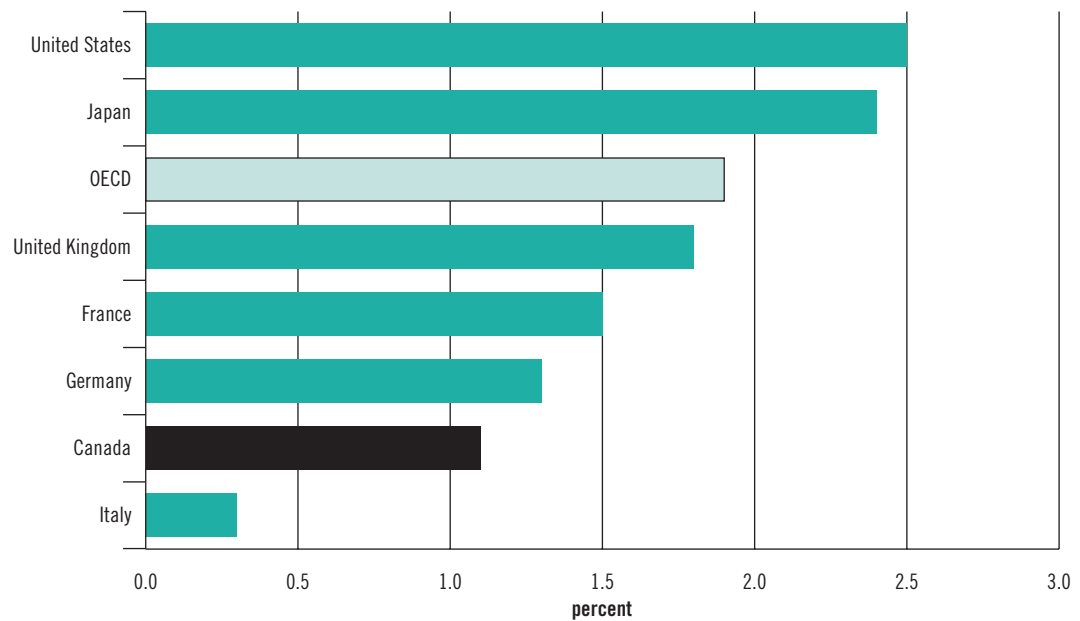
## Appendix 1 – Charts and Tables

**Figure 1 – World FDI Stock, Exports and GDP, 1980-2005 (Index: 1980 = 100)**



Source: UNCTAD 2005 as cited by the Department of Finance

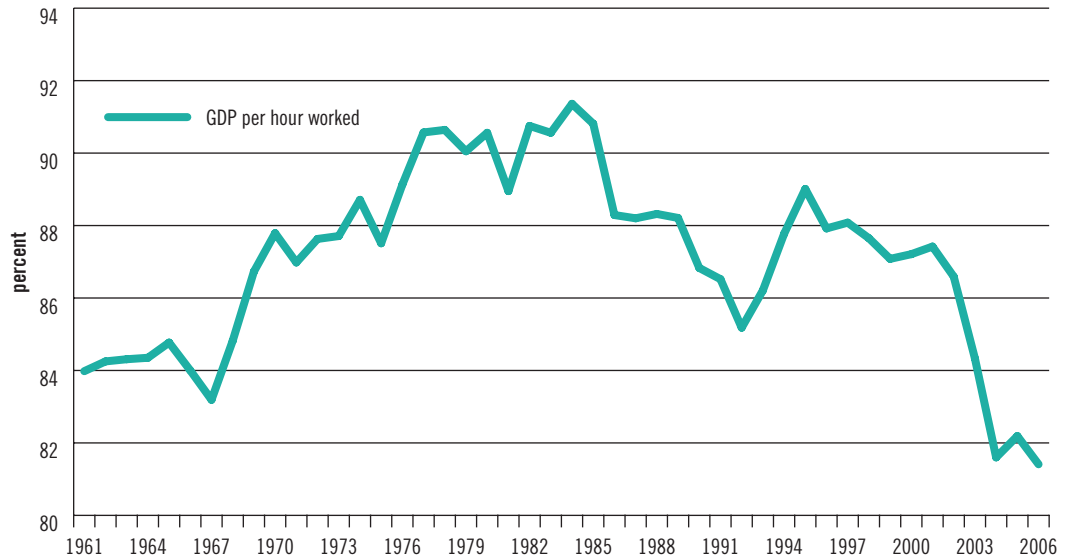
**Figure 2 – Average Annual Labour Productivity Growth, 2001-2005 (percent)**



Source: OECD, Factbook 2007

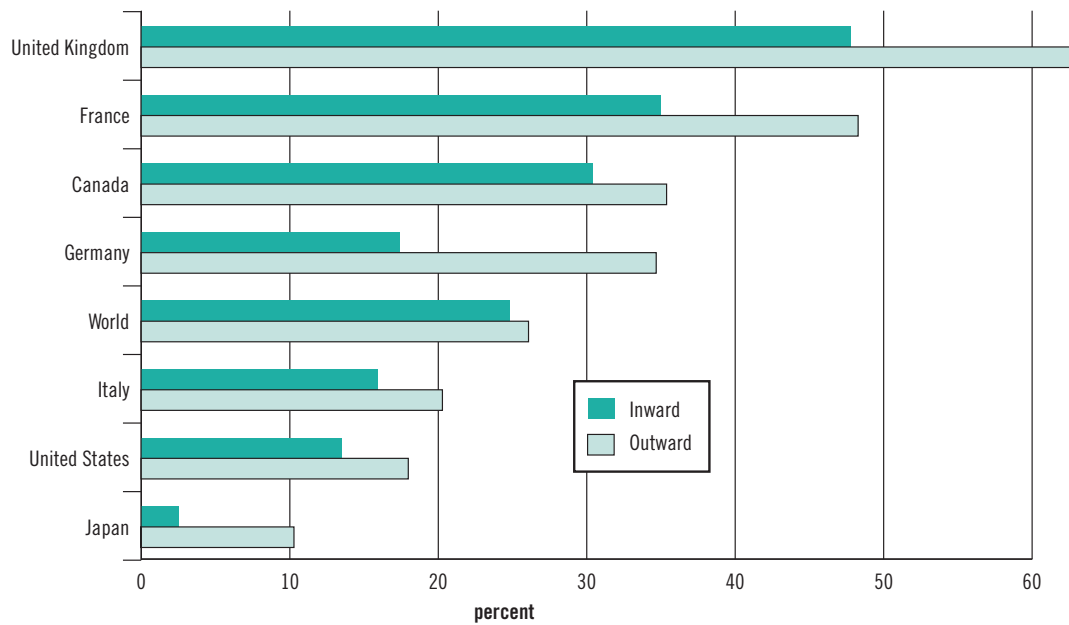
\*Growth in average annual labour productivity per hour worked

**Figure 3 – Relative Labour Productivity in the Total Economy, Canada, 1961-2006**  
(as a percentage of that in the United States)



Source: Centre for the Study of Living Standards, Aggregate Income and Productivity Trends: Canada vs United States, 1961-2006.

**Figure 4 – FDI Stocks as a Percentage of GDP among the G7, 2006**

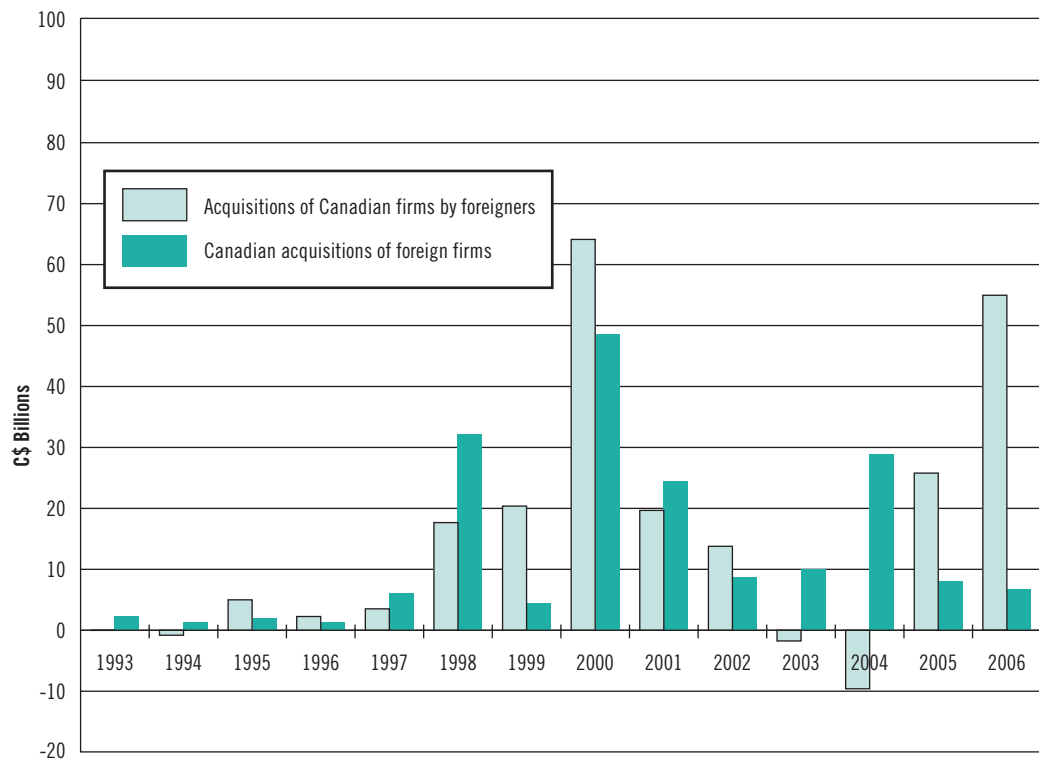


Source: UNCTAD, World Investment Report 2007, Annex table B.3.

**Figure 5 – FDI in Canada, by Top-10 Sources, 2006 (Billions CAD)**

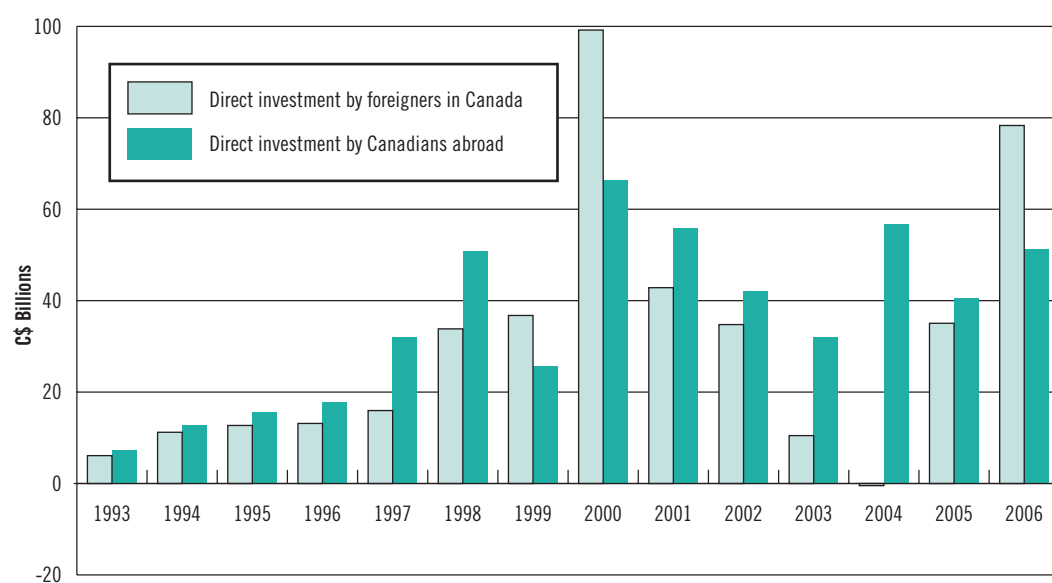
Region	1995	2005	2006	World Share in 1995	World Share in 2006
World	168.2	407.6	448.9	100	100
United States	112.9	259.0	273.7	67.2	61.0
United Kingdom	14.1	30.0	39.0	8.4	8.7
France	5.7	28.4	29.5	3.4	6.6
Netherlands	6.3	22.1	22.6	3.7	5.0
Switzerland	3.4	13.2	14.1	2.0	3.1
Japan	7.0	10.5	11.3	4.2	2.5
Germany	5.0	9.6	9.9	3.0	2.2
Brazil	0.3	3.1	9.4	0.2	2.1
Luxembourg	0.1	3.7	5.8	0.1	1.3
Bermuda	1.6	2.9	3.5	1.0	0.8

Source: Statistics Canada, International investment position, Canadian direct investment abroad and foreign direct investment in Canada, by country, annual (dollars), CANSIM Table 376-0051.

**Figure 6 – Canadian Inward and Outward M&A Activity, 1993-2006 (Billions CAD)**

Source: Statistics Canada, CANSIM Table 376-0016.

A negative value for Canadian inward M&A activity could indicate net repatriation of assets of foreign-owned companies operating in Canada. Inward M&A is defined within Canada's Balance of International Payments system as the difference between the sales of existing interests in Canada and the acquisitions of direct investment interests from non-residents.

**Figure 7 – FDI Flows into Canada and Canadian Direct Investment, 1993-2006 (Billions CAD)**

Source: Statistics Canada, CANSIM Table 376-0016.

**Figure 8 – Canadian Cross-border M&A Transactions\*, 1994-2007 YTD\*\***

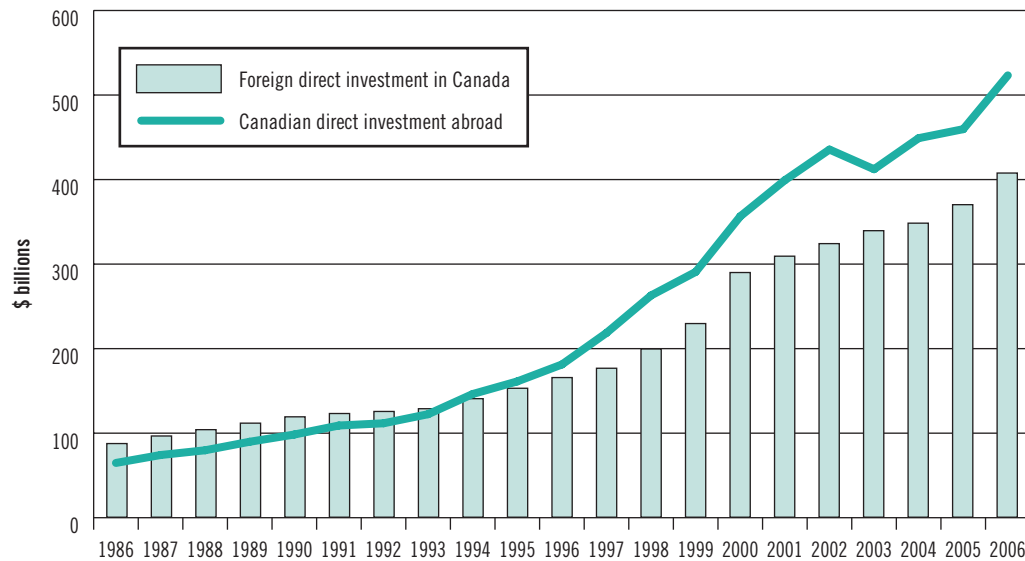
	Canadian Acquisitions Abroad		Foreign Acquisitions in Canada	
	# of deals	Value (\$M CAD)	# of deals	Value (\$M CAD)
1994	277	11,693	151	12,186
1995	212	22,226	169	31,352
1996	284	23,361	178	18,423
1997	324	29,289	186	29,851
1998	332	58,125	205	28,662
1999	296	51,103	227	39,802
2000	333	57,447	278	102,807
2001	253	35,009	175	52,476
2002	263	30,039	135	13,889
2003	252	49,982	100	16,950
2004	279	55,946	119	24,328
2005	413	39,058	147	63,880
2006	533	89,744	188	114,091
2007-YTD	278	64,348	129	155,014
<b>Total</b>	<b>4,329</b>	<b>617,370</b>	<b>2,387</b>	<b>703,711</b>

Source: *Financial Post Crosbie: Mergers & Acquisitions in Canada database.*

\*The data are based on announcements. They include minority purchases of stock where it represents an equity interest of over 10 percent (excluding announcements that are under \$1 million). They are adjusted to reflect bidding up of prices, competing bids, and withdrawn or failed deals.

\*\*Until July 30, 2007.

Figure 9 – FDI in Canada, 1986-2006 (Billions CAD)



Source: Statistics Canada, Foreign Direct Investment, The Daily, Wednesday, May 9, 2007.

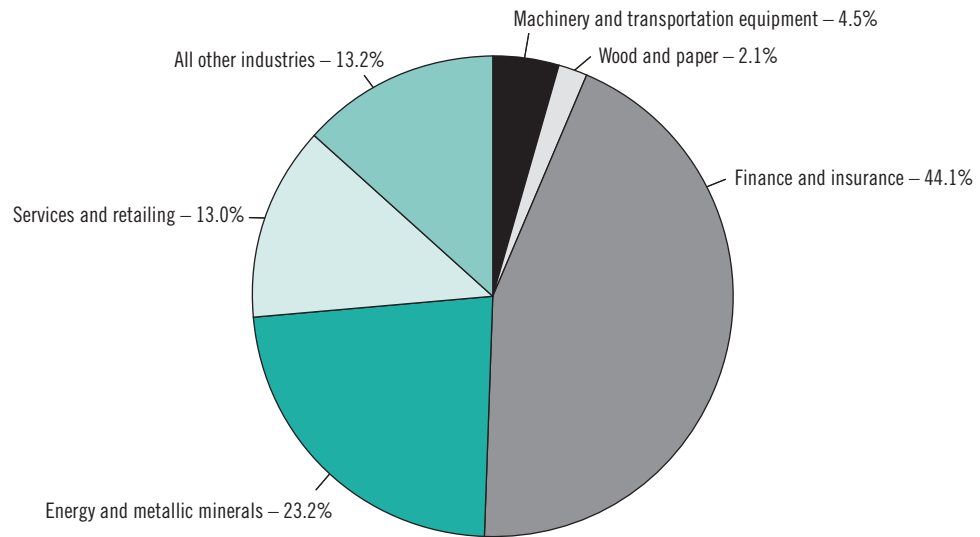
Figure 10 – Canadian Foreign Direct Investment Abroad, by Top-10 Destinations, 2006 (Billions CAD)

Region	1995	2005	2006	World Share in 1995	World Share in 2006
World	161.2	459.6	523.3	100.0	100.0
United States	84.6	204.6	223.6	52.4	42.7
United Kingdom	16.4	48.9	59.0	10.2	11.3
Barbados	5.8	33.6	38.4	3.6	7.3
Ireland	5.9	19.9	24.7	3.7	4.7
France	2.5	14.5	16.9	1.6	3.2
Bermuda	3.0	12.8	15.6	1.9	3.0
Netherlands	2.3	10.6	12.1	1.4	2.3
Hungary	0.1	7.1	9.9	0.1	1.9
Australia	3.1	8.0	9.6	1.9	1.8
Germany	2.6	7.2	9.4	1.6	1.8

Source: Statistics Canada, International investment position, Canadian direct investment abroad and foreign direct investment in Canada, by country, annual (dollars), CANSIM Table 376-0051.

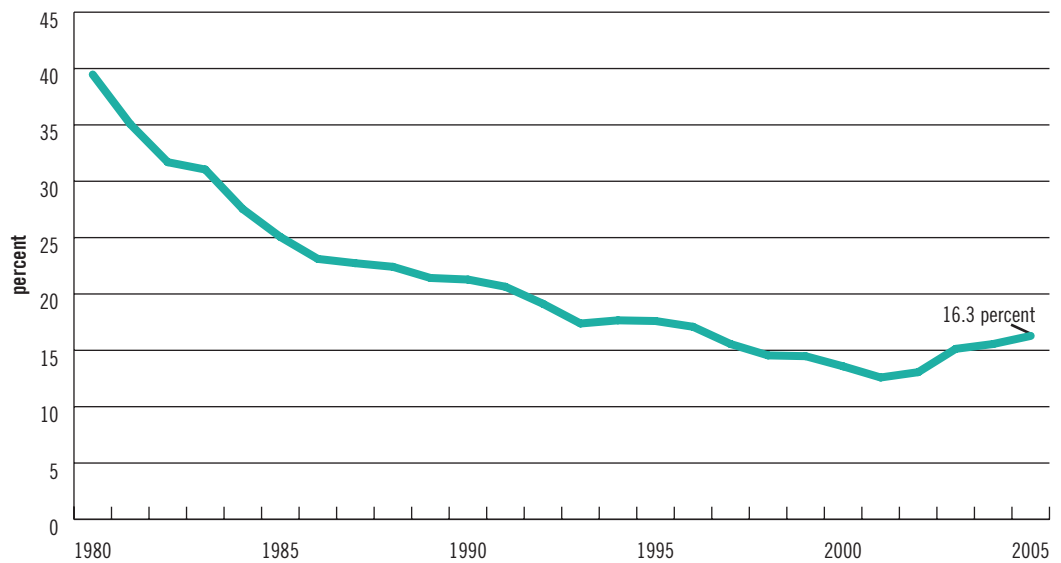


**Figure 11 – Canadian Direct Investment Abroad, by Industry, 2006**



Source: Canada's State of Trade, Trade and Investment Update – 2007.

**Figure 12 – Canada's Share of North American\* Inward FDI Stock, 1980-2005**



Source: UNCTAD Foreign Direct Investment Database, <http://www.unctad.org>.

\* Mexico defined as being in North America.

## Appendix 2 – Canada's Sectoral Investment Regimes

---

There are six sectors of the Canadian economy for which acquisitions of Canadian businesses by non-Canadians are subject to review at lower thresholds under the *Investment Canada Act*. In addition, Canada has sector-specific legislation and/or foreign ownership restrictions in telecommunications, cultural industries, broadcasting, transportation services and uranium production.<sup>57</sup> As well, the financial services sector is subject to ownership restrictions of general application but not specific foreign ownership restrictions.

### Telecommunications

The decision to introduce foreign investment restrictions in the telecommunications sector was taken during the Canada–U.S. Free Trade Agreement (FTA) negotiations to mirror existing U.S. restrictions and to ensure these could be “grandfathered” within the FTA. Restrictions also reflected more general concerns about ensuring economic benefits. Other considerations, reflected in the *Telecommunications Act's* policy objectives, were that telecommunication systems are essential to safeguarding Canada's social and economic fabric, and that increased competition would lead Canadian service providers to use Canadian facilities. There is also the objective of addressing heightened concerns about national security and the use of telecommunication facilities to enable crime and terrorism.

Under the *Telecommunications Act* (under the responsibility of the Minister of Industry), a carrier is eligible to operate as a Canadian common carrier if it is Canadian owned and controlled.<sup>58</sup> With respect to ownership of Canadian telecommunications carriers, the Canadian Telecommunications Common Carrier Ownership and Control Regulations set a minimum for Canadian beneficial ownership of holding companies of Canadian carriers at 66.66 percent of voting shares. Corresponding regulations were established under the *Radiocommunication Act* (RA) governing radio-based common carriers as an eligibility requirement in order to be issued a radiocommunication licence. The requirements under the RA are the same as those of the *Telecommunications Act* (TA) and they are applied by

the Department of Industry. Under both the TA and the RA, the test provides that the carrier cannot be controlled in fact by non-Canadians. Similar rules apply in broadcasting. Ownership and control restrictions under the *Broadcasting Act* often apply concurrently with those under the TA and the RA, since many telecommunications carriers have been granted licenses and/or provide services under the *Broadcasting Act*.

Comparisons to other OECD countries show that Canada has a relatively restrictive foreign investment regime in the telecommunications sector (only Australia, China, South Africa are reported to have an equal or more restrictive regime). However, while some countries have no explicit foreign investment restrictions, they may have public equity investment in main fixed-line carriers (for example in France, Germany, Sweden, and Finland) or rely on other informal barriers. Informal barriers may include national security reviews (for example, by the Committee on Foreign Investment in the United States), licensing or regulatory regimes allowing discretionary control of foreign investments, and imposition of conditions.

## Broadcasting

Governments around the world regulate foreign ownership in the broadcasting industry differently, since each country's broadcasting system operates in a different social or cultural environment and competitive marketplace. In Canada, broadcasting policy is the responsibility of the Minister of Canadian Heritage. While some developed countries have no restrictions, others like the U.S., France and Japan have foreign ownership limits on over-the-air broadcasters. In Canada, our relatively small, diverse population and the availability of U.S. broadcasts limit the degree to which market forces alone can ensure the provision of a range of Canadian news and entertainment programming in both official languages. Canadian ownership rules in broadcasting and broadcasting distribution, established under the *Broadcasting Act*,<sup>59</sup> ensure that Canadian news and entertainment programming is made from a Canadian perspective and with Canadian audiences in mind.

## Cultural Industries

Given Canada's relatively small, diverse market and given that its cultural businesses are small in comparison with their global competitors, successive Canadian governments have based public policy in this area on the premise that market forces alone are insufficient to ensure the availability of a suitable range of Canadian cultural products.

Cultural exemptions in international trade agreements such as the NAFTA recognize that cultural goods are unlike any other product. The right of countries to maintain measures to protect and promote cultural expression is reaffirmed by the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression. Canada is open to foreign investment across most sectors of the cultural industries. In sectors where there are policy measures in place, the government maintains targeted, industry-specific policies under the ICA rather than a single broad policy.

In Canada, policy measures in support of culture are the responsibility of the Minister of Canadian Heritage. Such cultural support measures are not unique to Canada. Other countries use a combination of measures to develop and sustain domestic cultural products such as direct funding programs, foreign investment restrictions and/or tax credits.

The areas with policy measures are the book publishing, distribution and retail sectors; the periodical publishing and newspaper publishing sectors; and the film distribution sector. These policies generally prohibit the acquisition of an existing Canadian-owned business and prohibit or set conditions for the establishment of new businesses.

Foreign investments in the sound recording industry, the distribution and retail sectors of the periodical and newspaper industries, as well as the film production, exhibition and retail sectors are subject to "net benefit" definitions under the ICA.

## Transportation Services

International air relations are governed largely by bilateral air agreements, which have the status of treaties and which, for the most part, incorporate national designation clauses that state only air carriers that are "substantially owned and controlled" by their government or home country nationals may be designated to operate air services under these agreements. There is no single internationally agreed upon definition for the concepts of "substantial ownership and effective control," and contracting states have discretion in choosing how to interpret it.

Under the *Canada Transportation Act*, administered by the Minister of Transport, ownership and control of voting interests held in a Canadian air carrier by non-Canadians may not exceed 25 percent. In particular, a Canadian air carrier must be controlled “in fact” by Canadians and at least 75 percent of the voting interests in an air carrier licensed to operate in Canada must be owned and controlled by Canadians. The Canadian Transportation Agency currently has a mechanism in place to review whether a Canadian carrier meets the ownership and de facto control requirements. It should be noted that, pursuant to the *Canada Transportation Act*, the foreign ownership limit may be increased by regulation as specified by the Governor in Council.

Internationally, some states have eased restrictions to allow up to 49 percent foreign ownership of their carriers. China and India are such examples. In addition, some also permit 100-percent foreign ownership for carriers offering domestic services only, such as Australia and New Zealand (subject to a national interest test) and the European Union (internal market).

## Uranium Production

Most countries with significant uranium/nuclear programs have strong policies and programs in place to protect and support their domestic industries. Canada restricts nonresident ownership of uranium mining properties to 49 percent at the stage of first production. Higher levels of nonresident ownership are permitted if it can be demonstrated that the project remains Canadian controlled. The Minister of National Resources Canada can also grant an exemption, subject to Cabinet approval, in cases where it can be demonstrated clearly that no Canadian partners can be found. There are no restrictions in uranium exploration by foreign entities.

Policy approaches in other countries include investment prohibitions or restrictions in some or all parts of the nuclear fuel cycle, control of access to technology, intervention in the market through procurement policies, or direct political intervention. In the U.S., foreign investment is restricted in uranium enrichment and nuclear plants. China and Brazil bar foreign ownership altogether.

## Financial Services

Federal financial institutions such as banks and insurance companies play a key role in the Canadian economy, as financial intermediaries engaged in the allocation of credit, in the safeguarding of deposits and other savings, and in the management of risk. Because of this role and because of the importance of minimizing prudential concerns, bank and insurance companies are subject to a unique regulatory framework.

As part of this framework, federal financial institutions are subject to certain ownership restrictions and residency rules.<sup>60</sup> Importantly, this sector does not have foreign ownership restrictions: the same rules apply to both foreign and domestic investors. However, large banks and large demutualized life insurance companies are required to be widely held. These rules address the risk of inappropriate self-dealing in order to minimize the risk of failure of our largest institutions to the detriment of the entire financial system. The requirement for wide ownership also encourages transparency and sound governance practices.

The framework for federal financial institutions is reviewed every five years by virtue of a legislative requirement. The framework was most recently updated in March 2007 under Bill C-37. To recognize that valuations in this sector are growing, Bill C-37 raised the threshold that defines a large bank from \$5 billion or more in equity to \$8 billion or more. As well, the residency requirements for directors were adjusted to allow for financial institutions to appoint more foreign experts while assuring that Canadian directors remain a majority.

Most countries do not have explicit ownership restrictions in their legislation, but it is common for governments to require formal or informal approval of investments in financial institutions. Currently, the five largest banks in the U.S., the U.K., Australia, France and Germany are widely held and are not subsidiaries of a foreign entity. As in Canada, governments examine whether an investor is “fit and proper” to make an investment. Residency requirements for directors are also common in major jurisdictions, as are requirements that the head office be located where the institution is chartered.

## Appendix 3 – References

---

- Banks, Gary. *Structural Reform Australian-style: Lessons for others?* Australian Government Productivity Commission.
- Beckstead, Desmond and W. Mark Brown. *Head Office Employment in Canada, 1999 to 2005*. Statistics Canada. July 2006.
- BMO Capital Markets Economic Research. *The Trouble with Takeovers*. October 20, 2006.
- Centre for the Study of Living Standards. *Aggregate Income and Productivity Trends, Canada vs. the United States*. Table 7. June 20, 2007.
- Competition Bureau Canada. *Innovation and Dynamic Efficiencies in Merger Review*. April 2007.
- Competition Bureau Canada. *Report of the Advisory Panel on Efficiencies*. August 2005.
- Conference Board of Canada. *How Canada Performs: A Report Card on Canada*. June 2007.
- Economist, The*. “The Luck of the Irish: A Survey of Ireland.” October 16, 2004.
- Finance Canada. *Advantage Canada: Building a Strong Economy for Canadians*. 2006.
- Financial Post Crosbie: Mergers & Acquisitions in Canada database*.
- Foreign Affairs and International Trade Canada. *Canada’s State of Trade: Trade and Investment Update – 2007*.
- Høj, Jens. *Competition Law and Policy Indicators for the OECD Countries*. OECD, Economics Department Working Paper No. 568.
- House of Commons. *A Plan to Modernize Canada’s Competition Regime*. Report of the Standing Committee on Industry, Science and Technology. April 2002.
- Institute for Competitiveness and Prosperity. *Agenda for Canada’s Prosperity: Report on Canada 2007*. March 2007.
- Ipsos Reid. *Looking Towards Canada*. 2007.
- Koyama, Takeshi and Stephen Golub. *OECD’s FDI Regulatory Restrictiveness Index: Revision and Extension to More Economies*. OECD, December 2006.

Martin, Roger and Gordon Nixon. "A Prescription for Canada: Re-think Our Tax Policy." *Globe and Mail*, July 1, 2007.

OECD. *Canada: The Role of Competition Policy in Regulatory Reform*. 2002.

OECD. *Factbook 2007*.

OECD. *Canada: Report on Competition Law and Institutions (2004)*.  
January 18, 2005.

Speech by the Honourable Jim Prentice, Minister of Industry, to the Vancouver Board of Trade. October 9, 2007.

Statistics Canada. *Balance of International Payments*. CANSIM Table 376-0016.

Statistics Canada. CANSIM table 179-0004.

Statistics Canada. "Foreign Direct Investment." *The Daily*. May 9, 2007.

TD Economics. *Canadian Companies Not Taking Advantage of Investment Opportunities*. TD Economics Special Report. August 14, 2007.

Thomson Financial, Mergers and Acquisitions Review, Fourth Quarter 2006.

United Nations Conference on Trade and Development. *World Investment Report 2007*.

United States Antitrust Modernization Commission. *Report and Recommendations*.  
April 2007.

World Economic Forum. *The Global Competitiveness Report 2007–2008*.



## End Notes

- <sup>1</sup> Speech by the Honourable Jim Prentice, Minister of Industry, to the Vancouver Board of Trade. October 9, 2007.
- <sup>2</sup> UNCTAD, *World Investment Report 2007*.
- <sup>3</sup> Foreign Affairs and International Trade Canada, *Canada's State of Trade, Trade and Investment Update (2007)*.
- <sup>4</sup> OECD, *Factbook 2007*.
- <sup>5</sup> Centre for the Study of Living Standards, *Aggregate Income and Productivity Trends, Canada vs. the United States*, Table 7, June 20, 2007.
- <sup>6</sup> TD Economics, *Canadian Companies Not Taking Advantage of Investment Opportunities*, TD Economics Special Report, August 14, 2007.
- <sup>7</sup> *Ibid.*
- <sup>8</sup> World Economic Forum, *The Global Competitiveness Report 2007–2008*.
- <sup>9</sup> Conference Board of Canada, *How Canada Performs: A Report Card on Canada*, June 2007.
- <sup>10</sup> Ipsos Reid, *Looking Towards Canada*, 2007.
- <sup>11</sup> Roger Martin and Gordon Nixon, "A Prescription for Canada: Re-think Our Tax Policy," *Globe and Mail*, July 1, 2007.
- <sup>12</sup> The annual sales threshold for firms included in the 1985 list of global leaders was \$617 million.
- <sup>13</sup> Martin and Nixon, "A Prescription for Canada: Re-think Our Tax Policy."
- <sup>14</sup> *Ibid.*
- <sup>15</sup> UNCTAD, *World Investment Report 2007*.
- <sup>16</sup> *Ibid.*
- <sup>17</sup> BMO Economic Research, *The Trouble with Takeovers*, October 20, 2006.
- <sup>18</sup> UNCTAD, *World Investment Report 2007*.
- <sup>19</sup> Foreign Affairs and International Trade Canada, *Canada's State of Trade, Trade and Investment Update – 2007*.
- <sup>20</sup> *Ibid.*
- <sup>21</sup> Statistics Canada, "Foreign Control in the Canadian Economy," *The Daily*, June 14, 2007.
- <sup>22</sup> Statistics Canada, CANSIM Table 179-0004.
- <sup>23</sup> Thomson Financial, *Mergers and Acquisitions Review*, Fourth Quarter 2006.
- <sup>24</sup> Foreign Affairs and International Trade Canada, *Canada's State of Trade, Trade and Investment Update – 2007*.
- <sup>25</sup> Statistics Canada, CANSIM Table 376-0016.
- <sup>26</sup> *Ibid.*
- <sup>27</sup> *Financial Post Crosbie: Mergers & Acquisitions in Canada database*. The data are based on public announcements by firms. They include minority purchases of stock where it represents an equity interest of over 10 percent (excluding announcements that are under \$1 million).
- <sup>28</sup> Desmond Beckstead and W. Mark Brown. *Head Office Employment in Canada, 1999 to 2005*, Statistics Canada, July 2006.
- <sup>29</sup> Foreign Affairs and International Trade Canada, *Canada's State of Trade, Trade and Investment Update – 2007*.
- <sup>30</sup> Statistics Canada, "Foreign Direct Investment," *The Daily*, May 9, 2007.
- <sup>31</sup> *Ibid.*
- <sup>32</sup> *Financial Post Crosbie: Mergers & Acquisitions in Canada database*.
- <sup>33</sup> The threshold for notification of large-scale foreign investment from WTO countries is currently \$281 million. For non-WTO countries, it is \$5 million.
- <sup>34</sup> The threshold for review of foreign investment in these sectors is \$5 million for direct investment and \$50 million for indirect investment. As well, foreign investment involving Crown corporations as well as foreign investment involving financial institutions regulated under the *Bank Act* and the *Insurance Companies Act* are exempt from review under the ICA.
- <sup>35</sup> Approval of an acquisition is granted by the Minister of Industry. In 1999, responsibility for administration of the ICA in the cultural sector (music, film and video, books, magazines and newspapers) was transferred to the Minister of Canadian Heritage. Schedule IV of the Regulations to the ICA contains precise wording to determine whether a business activity is cultural or not.

- <sup>36</sup> Upon the recommendation of the Minister of Canadian Heritage, the government may order the review of a greenfield investment in the cultural sector if it believes it is in the public interest to do so.
- <sup>37</sup> Data from <http://investcan.ic.gc.ca>.
- <sup>38</sup> In 2005, Bill C-59 proposed amendments to the ICA but died on the Order Paper.
- <sup>39</sup> Undertakings represent a binding commitment made by the investor to the Minister, enforceable through the courts.
- <sup>40</sup> The United States just completed a major study of its competition laws (the United States Antitrust Modernization Commission reported its recommendations in April 2007). Australia, Ireland, the United Kingdom, Japan, Korea and emerging free market economies in eastern Europe and South America have all moved to strengthen their competition laws since the 1990s. China is scheduled to implement a modern competition law in 2008, and further reforms to strengthen competition law in India are expected to be in place next year.
- <sup>41</sup> OECD, *Canada – The Role of Competition Policy in Regulatory Reform* (2002).
- <sup>42</sup> OECD, *Canada – Report on Competition Law and Institutions* (2004).
- <sup>43</sup> Jens Høj, *Competition Law and Policy Indicators for the OECD countries*, OECD Economics Department Working Papers No. 568.
- <sup>44</sup> Competition Bureau Canada, *Report of the Advisory Panel on Efficiencies* (August 2005), and *Innovation and Dynamic Efficiencies in Merger Review* (April 2007).
- <sup>45</sup> Foreign Affairs and International Trade Canada, *Canada's State of Trade, Trade and Investment Update – 2007*.
- <sup>46</sup> UNCTAD, *World Investment Report 2007*.
- <sup>47</sup> UNCTAD, *World Investment Report 2006*.
- <sup>48</sup> Foreign Affairs and International Trade Canada, *Canada's State of Trade, Trade and Investment Update – 2007*.
- <sup>49</sup> A proportion of Canada's international business transactions may be facilitated through third parties. FDI data do not necessarily capture Canada's relationship with the final destination countries.
- <sup>50</sup> Statistics Canada, CANSIM Table 376-0051.
- <sup>51</sup> Ibid.
- <sup>52</sup> In Canada's case, these agreements are called FIPAs – Foreign Investment Promotion and Protection Agreements. Canada has negotiated 23 FIPAs, with more current under negotiation. For further information, see: <http://www.international.gc.ca/tna-nac/fipa-en.asp>.
- <sup>53</sup> UNCTAD, *World Investment Report 2007*.
- <sup>54</sup> An overview of the Irish experience is available in "The Luck of the Irish: A Survey of Ireland," *The Economist*, October 16, 2004.
- <sup>55</sup> An overview of the Australian reform effort is provided by Gary Banks, *Structural Reform Australian-style: Lessons for Others?* Australian Government Productivity Commission.
- <sup>56</sup> Foreign Affairs and International Trade Canada, *Canada's State of Trade, Trade and Investment Update – 2007*.
- <sup>57</sup> Not described here are companies subject to specific federal Acts. Examples include Air Canada, Bell Canada, Canadian National (CN), Petro-Canada, and Telesat Canada.
- <sup>58</sup> Canadian ownership and control requirements include provisions that 1) not less than 80 percent of the board of directors members be Canadian individuals, 2) not less than 80 percent of the corporation's voting shares be beneficially owned by Canadian individual or entities and 3) the corporation is not otherwise controlled by persons that are not Canadians.
- <sup>59</sup> The Canadian Radio-television and Telecommunication Commission (CRTC) is responsible for ensuring control "in fact" whereby a minimum of 80 percent of the Board of Directors and CEO are Canadians and at least 80 percent of voting shares of the Canadian broadcasting operation company (licensee) are held by Canadians. Where there is a holding company, a minimum of 66.66 percent of voting shares of the Canadian holding company must be owned by Canadians in order to be considered Canadian. These limits mirror those for telecom companies.
- <sup>60</sup> Banks with equity of \$8 billion or more and large demutualized insurance companies must be "widely held" such that no person may own more than 20 percent of any class of its voting shares or 30 percent of any class of its non-voting shares. Residents must also form a majority of the board of directors of a domestic financial institution, and must form one half of the directors of a financial institution that is a subsidiary of a foreign parent. As well, the CEO of every bank or federal insurance company in Canada must be a Canadian resident.