The Foreign Investment Review Ac

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(Following is an abridged version of Mr. Batanyita's examination of Canada's 1973 Foreign Investment Review Act. His historical perspective on foreign investment in Canada and his examination of the review measures adopted by the Ontario government have been edited due to space limitations.)

It is commonplace knowledge any country will strive to free herself from any yoke of dependence. Colonialism and imperialism definitely can be considered the worst of such yokes.

Among other qualifications, I describe an independent country where the people of such a country can realize psychological, cultural, economic and political independence; and especially the latter two. Inasmuch as independence is a vast and wide subject to tackle, I will devote my energy to economic independence in relation to Canadian context.

This work is squarely based on "Business and Economics" (Vol. 3, No. 1, August 1974) on Canada's Foreign Investment Review Act. This Review Act looks at the question that Canadians have been asking with increasing frequency as to the desirability of very extensive foreign penetration of their country's economy and its cultural and educational institutions.

This concern has been expressed on many different levels. Examples include discussion about the overwhelmingly large number of foreign citizens in the academic profession, and parliamentary debate about the insufficiency of Canadian content in TV and radio. Economically the concern about foreign influence has largely centered around the extent of foreign ownership and control of Canada's natural resources and industrial or manufacturing sectors.

Parliament's enactment of the Foreign Investment Review Act in December 1973 is a result of this national debate on our concern about foreign ownership and control of the Canadian economy. The intent of the Act is to ensure future foreign investment is of "significant benefit to Canada".

The Act provides for a government agency to screen all proposed foreign take-overs and foreign investments in Canada. The government however, claims that the passage of the Act in no way departs from Canada's "traditional open attitude towards" foreign investment. Nonetheless, the Act could have a large influence on the future pattern of foreign investment in Canada.

Critics predict the Agency would be weighed down by bureacracy

The Foreign Investment Review Act represents a significant departure from all federal and provincial previous legislation. The Act, which has set up a screening agency to approve proposals for foreign takeovers and for setting up new businesses, is the first piece of comprehensive regulatory legislation which will apply across the board to enterprises in every sec tor of the economy.

The Foreign Investment Review Act was developed by the federal government on the basis of their 1972 Gray Report (Foreign Direct Investment in Canada). The unique contribution of the Gray Report, which has become part of official policy, is a re-orientation of the government's strategy away from the former preoccupation with merely increasing Canadian ownership—through either "key sector" restrictions or encouragement of Canadian enterprise—to a new perspective of securing for Canada maximum benefit from foreign capital whether this would imply an increase in Canadian ownership or not.

In the words of the Gray Report, "...ownership by itself does not provide sufficient assurance that performance goals will be achieved ..."

In May 1972, the Canadian Government first proposed a foreign investment review agency to screen foreign takeover bids on a case-by-case basis wherever the gross assets of the firm exceeded $250,000 (or where annual gross revenue exceeded $3 million). This bill died, however, when Parliament was dissolved in October that year.

On January 24, 1973, the Foreign Investment Review Bill was presented to Parliament in essentially the same form as the earlier bill. Its coverage, however, was extended to include not only the review of takeover bids, but also the screening of new investment proposals (including the expansion into related areas of business for foreign firms already operating in Canada).

Critics of the earlier version said a review agency which screened only takeover bids could easily be circumvented by simply establishing a new business. In July, the bill was further amended to give provincial government more opportunity to consult with the federal government (although a proposal by the Progressive Conservative Party to give the provinces veto power over the review agency's decisions was defeated).

The Act was finally enacted on December 12, 1973 and the first part of the bill, covering foreign takeovers of Canadian-controlled businesses, came into operation on April 9, 1974. The government expects to make the second part of the Bill, covering new investment, operative within a year, after the review agency has gained some experience handling takeover bids.

A companion piece of legislation, which government officials have indicated could follow in the foreseeable future, would deal with the registration of international licensing agreements which affect Canadian business.

In evaluating foreign investment proposals the review agency is to assess whether or not such investments will be of "significant benefit to Canada".

Because of this legislation, the government need no longer formulate policy on an ad hoc basis in dealing with important cases such as the Home Oil and Denison Mines takeover bids. On the other hand, the Act could turn out to be little more than window-dressing: The definition of "significant benefit" to Canada will ultimately depend upon how the government chooses to use its mandate.

One very likely way the Parliament may expand the present criteria of "significant benefit" is through an amendment to the review act requiring majority Canadian ownership for major new natural resource projects. This addition would constitute a significant broadening of the review act's present coverage by encompassing business expansion in related areas by companies already operating in Canada - a policy which the government had earlier refused to consider.

Furthermore, if such an addition was enacted, it would be the first time the federal government had imposed an across-the-board ownership requirement for a sector ot the economy in which foreign investment was already heavily concentrated.

Like most legislation, the Act has been subjected to a number of criticisms. Among them we find the contention that the screening agency will be largely ineffectual due to the possibility or inevitability of becoming and being overwhelmed with paperwork and weighed down by bureaucracy.

It has also been observed that certain definitions in the Act are inconsistent with other federal legislation. More significant, however, are the two fundamental criticisms which incorporates a very different attitude towards foreign investment from that of the Act. I will give these criticisms as they appear in the paper with which I am directly working.

The federal government will maintain the 'traditional openess to foreign investment'

The first criticism centres around the fact that The Act focuses solely upon future increments to foreign investment. According to one group of critics this focus upon future investment misses the point: their real concern is the reduction of the present level of foreign investment.

While they do not object to the use of a screening mechanism per se, they argue that the agency established under the present Act, with its focus solely upon future investment, is an inadequate substitute for a comprehensive government strategy which will cope with the basic problems posed by an already high level of foreign ownership.

This criticism was in fact anticipated by the Gray Report which explicitly stated that a