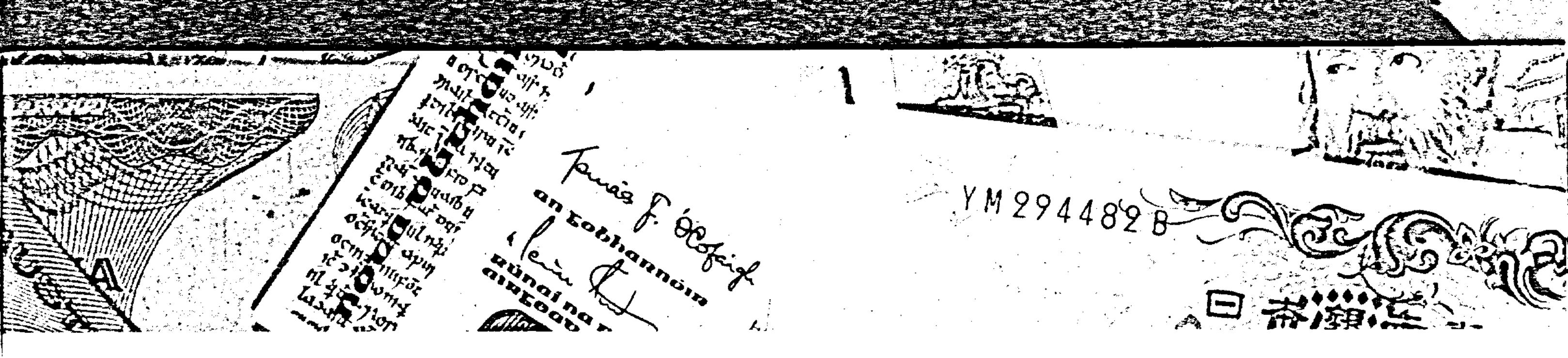

2. The Business Environment

Canada and Foreign Investment

Foreign investment has always played a key role in Canadian industry. Both business and government in Canada are aware of the need to attract a continuing flow of foreign capital investment. Canada places relatively few restrictions in the way of foreign investors. Canada permits the convertibility of currency and does not have exchange controls. Investors are free to repatriate their profits and their investments. The Canadian business climate and every level of government encourage investors to participate in the continued growth of the economy.

Foreign Investment Review Act

Canada's policy is to welcome foreign investment provided that it is likely to yield benefits to Canada as well as to the investor. The Foreign Investment Review Act was established to give the government the opportunity to screen certain foreign direct investment proposals to determine whether or not they are, or are likely to be, of significant benefit to Canada.

Principal Features

The screening process applies generally to the following categories of investors in respect of certain of their Canadian investments:

- individuals who are non-residents of Canada;
- individuals who are permanent residents of Canada (landed immigrants) who have not exercised their right to take up Canadian citizenship within a year of eligibility;
- foreign governments and their agencies;
- companies controlled by any of the above categories or by a group that includes any of the above categories.

Only two types of investment transactions come under the scope of the Act:

- the acquisition of control of a Canadian business enterprise by foreign investors through the acquisition of shares or of the property used in carrying on the business; and
- the establishment of a new business in Canada either by foreign investors who do not already have an existing business in Canada, or by foreign investors who have an existing business in Canada, if the new business is unrelated (in terms of the nature of business activities) to the existing business.

By contrast, the Act is not concerned with portfolio investments where the purchase of shares on assets does not constitute the acquisition of control of a Canadian business. Nor is it concerned with expansions or the establishment of new businesses by foreign-controlled businesses already in Canada so long as the new businesses are related to their existing Canadian operations.

Investments that are subject to the Act must be reviewed by the Government. If the Government determines that an investment is, or is likely to be, of "significant benefit to Canada", then it is allowed to proceed.

For the purposes of determining whether or not a proposal is likely to be of "significant benefit", the Act specifies five factors to be taken into account in the assessment process. They are:

(1) the effect of the investment on the level and nature of economic activity in Canada, including the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada, and on exports from Canada;
(2) the degree and significance of participation by Canadians in the business enterprise and in the industry sector to which the enterprise belongs;
(3) the effect on productivity, industrial efficiency, technological development, innovation and product variety in Canada;
(4) the effect on competition within the industry or industries in Canada; and
(5) the compatibility of the investment with national industrial and economic policies, taking into consideration industrial and economic policy objectives enunciated by a province likely to be significantly affected by the proposed investment.

The assessment factors, which apply to all reviewable investments are, of course, given different weights according to the circumstances of individual cases. The types of industry in which the investment falls, the region in which the investment is being made, and the solvency of the company being acquired in acquisition cases will all affect the relative weights placed on the factors. It is not necessary that an investor demonstrate benefits with respect to each factor. Indeed, in the case of many investments, some of the factors may not even be relevant. While investors may choose to offer a wide range of undertakings designed to enhance the prospects for allowance of their applications, the Government has directed the Foreign Investment Review Agency to confine any discussion of undertakings to key elements of an investment proposal (even though it must consider all undertakings submitted by investors in support of their proposals). For example, research and development would be a key undertaking in the high technology sector, while Canadian participation would be a key element in the oil and gas industry.