

Paper Box Manufacturing Limited of Agincourt, Ontario, a manufacturer of folding paper boxes.

When these decisions by the governor in council were announced on October 7, 1976, the government of the day also announced the undertaking given by Redpath and its parent, Tate & Lyle;

To increase the participation by Canadians in the capital stock of Redpath from 45 per cent to 52 per cent.

That is still their commitment. The undertaking given in 1976 was framed in the light of circumstances at that time. Some time later, as a result of changed circumstances, it became apparent to Redpath and Tate & Lyle that they would not be able to fulfil their commitment as quickly as they had originally expected without considerable handicap. Therefore, they approached the agency with a view to renegotiating the terms of their undertaking. The government of the day was satisfied with the representations made by the companies.

Following negotiations between the agency and Redpath, the government agreed to revised terms under which participation by Canadians in the capital stock of Redpath would be increased in stages. The new agreement contains specific measurable benchmarks relating to the financial affairs of the companies which would reflect their ability to increase Canadian participation, and thus would serve as an unambiguous trigger for fulfilment of the commitment. I want to emphasize that the commitment itself is unchanged, that is, to increase Canadian participation in Redpath from 45 per cent to 52 per cent.

In the matter of enforcement of undertakings given under the Foreign Investment Review Act, the government has reassured investors that common sense and understanding will prevail. That is as it should be. This issue was addressed when the foreign investment review bill was being considered by Parliament in 1973 prior to its enactment. When the bill was before the Standing Committee on Finance, Trade and Economic Affairs, the minister, speaking on behalf of the government of the day, said the following:

In principle, all undertakings are binding. In those cases where a person fails to comply with undertakings, the minister may apply to the courts for an order directing that the undertakings be fulfilled. This, however, is likely to be a procedure of last resort.

You will recall that I suggested some undertakings at least would be based on the medium-term plans of the acquiring company. These plans would, to some extent, be based on the conjecture about the future and therefore would simply reflect the company's anticipation concerning its future development. They would not be guaranteed in their entirety. Thus, flexibility and good sense must be exercised by the minister.

In normal circumstances the inability to fulfil undertakings will lead to discussions with the minister and perhaps to the negotiation of new undertakings. Like any contract, an undertaking can be modified with the consent of both parties. If, however, the failure to comply with an undertaking is clearly the result of changed market conditions—for example, the undertaking to export frisbees is followed by the collapse of the frisbee market—the person would not be held accountable. It should be remembered, however, that some undertakings may be tailored to a range of market expectations.

The purpose of the Foreign Investment Review Act is to ensure that certain forms of foreign investment will be of significant benefit to Canada. I do not believe it would be of benefit to Canada for the government to administer the act in

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a draconian or unreasonable manner by insisting that in all circumstances commitments given in good faith by investors on the basis of their expectations for the future must be fulfilled to the letter, even when circumstances have changed and implementation of those undertakings would impose an unexpected hardship on the investor concerned.

But that does not mean the government is abdicating its responsibility to ensure that investments allowed under the act are of benefit to Canada. Procedures have been established to monitor the implementation of plans and undertakings presented by investors whose applications were allowed. The monitoring is usually carried out at annual intervals. Most undertakings cover an investor's performance over a number of years and require monitoring for a commensurate period of time. The great majority of investors have been able to fulfil their commitments. But in those cases where changed economic circumstances have made it necessary to renegotiate undertakings, the agency seeks new commitments offering at least equal benefits to Canada. The minister has the authority to initiate legal proceedings in any case where an investor fails to comply with the terms and conditions of his investment. To date it has not been necessary for the minister to exercise that authority because both the government and investors have approached this matter in a reasonable and businesslike fashion.

I would now like to address the concerns expressed by the member about the amount of time taken to resolve investment proposals under FIRA and the amount of information required to be filed by foreign investors in the review process.

It should be kept in mind, first of all, that FIRA places an onus on the foreign investor who wishes to acquire control of a Canadian company or establish a new business, to demonstrate that his or her proposal is, or is likely to be, of significant benefit to Canada. The specific factors to be taken into account in the determination of significant benefit, the assessment criteria, are outlined clearly in the act.

The two major points to be kept in mind at this juncture are that the initiative is with the foreign investor to make his case to the government; the other major point is that the test of significant benefit means exactly what it says, a proposal by a foreign investor who is able to demonstrate only that his or her proposal would not be detrimental to Canada, which would, by the terms of the statute, be found to fail.

The assessment criteria, upon which the government bases its decisions, are composed of a number of commercial, industrial, economic and public policy considerations. They include, first, the effect of the acquisition or establishment on the level and nature of economic activity in Canada, including, without limiting the generality of the foregoing, the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada, and on exports from Canada. Second, they include the degree and significance of participation by Canadians in the business enterprise or new business and in any industry or industries in Canada of which the business enterprise or new business forms, or would form, a part. The third consideration is the effect of the acquisition or