Speaking Notes for Paul Moist
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Review of Investment Canada Act
House of Commons Standing Committee on Industry, Science and Technology
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Thank you to the members of this committee for inviting us to appear. CUPE is the largest union in Canada, representing over 600,000 workers in communities all across Canada, spanning many different sectors, both in the public and private sectors.

Our membership includes over 7,000 in airlines and also thousands in telecommunications and broadcasting which, as you know, are important areas traditionally provided greater protection from foreign takeovers. But the issue of having effective foreign investment rules is of importance to **all** our members as it should be for all Canadians.

It is an issue that is especially important for people in rural, northern communities. When a major employer with roots and national allegiance elsewhere closes up, lays off workers or cuts wages and benefits, it affects everybody in the community. Those in smaller communities are hurt not just by job loss, but also by a decline in property values and then also by lower revenues for local municipality

The Foreign Investment Review Act was first introduced by Liberal minority government in 1973 when there were very legitimate fears of Canadians losing control over resources and industrial future, required foreign investment demonstrate "significant benefit" to Canada. This legislation was weakened in 1985 by Mulroney government after pressure by the United States as part of the NAFTA negotiations to the *Investment Canada Act.* This included weakening the requirement for foreign investments to simply demonstrate a "net benefit" and no longer a "significant benefit".

Until recently, **not one** of many thousand (almost 14,000) foreign takeovers had been rejected by any of the Ministers of Industry since 1985. It has worked as little more than a large rubber stamp. In 2008, after public pressure about the national security implications of selling the company that operates Canadian satellite systems to the U.S. the sale of MacDonald Dettwiler (MDA) was blocked by the Industry Minister. However, no takeover appears to have been rejected under the "net benefit" test, even though many foreign takeovers have led to steep job, pay and benefits cuts, bitter strikes, and even closing of operations and removal of machinery. Clearly, there are many problems with this legislation. Characterizing it as weak would be highly generous.

Some of the problems with the legislation are:

1. ***It is highly secretive.*** Decisions are made by executive order without transparency or accountability. For all we know, decisions may be taken for arbitrary or political purposes. Not only is this against practice of good government and responsible democracy; it also is bad for business. Need full and open transparent communication of decisions, impact analysis and public disclosure of all commitments made by potential investors. There is no reason why all information involved should be kept secret. Given the impact of some of these decisions and the broader range of interests involved, the type of information communicated should go beyond the Competition bureau model. The department should also provide much more aggregate summary information about the number and scale of investments, takeovers and reviews, which appears sorely lacking.

2. ***It needs explicit criteria*** to protect interests of Canadians, with an explicit consideration of jobs, workers' wages, and pensions, and impact on local communities. The only six factors that the department and Minister is supposed to consider in terms of "net benefit" are listed under section 20

of the Act and they don't explicitly consider jobs or the impact on the local community. As Dr Bloom of the Conference Board suggested to this committee there should be an explicit set of criteria. As others have suggested, the environmental, labour and human rights records of the companies involved could also be considered. Consultation should be broader than other government departments and provincial governments, and should also involve public hearings in the communities affected. Also need some definition of "strategic asset" or "strategic resource"— but this also begs the question of what is the country's economic strategy.

3. ***It should have a reduced threshold.*** Instead of increasing asset threshold for review from $312 million to $1 billion as is planned, and eliminating the lower threshold for transportation, financial services and uranium production, Parliament should consider reducing the threshold. This could be determined through a review of the experience of takeovers at a lower rate, as was suggested previously to this committee.

4. ***Stronger transparent monitoring and enforcement*** is needed to ensure investor conditions and commitments are met. It doesn't appear that the enforcement conditions are necessarily that robust or strong. A maximum $10,000 a day fine on a minimum enterprise value of $1 billion for review still works out to less than a fraction of a percent a year—*and* it involves court action.

Proponents of looser rules often point to the fact that outbound Canadian direct investment overseas has exceeded foreign direct investment in Canada. What they don't disclose is that close to 25% of Canadian direct investment overseas is money being channeled by banks and financial firms to international tax havens. Meanwhile, most of FDI into Canada has involved takeovers in our energy and minerals resources area.

Clearly this tax avoidance is of little net benefit to any but a small group of wealthy Canadians: we need much stronger rules not just over foreign investment into Canada, but of these type of financial flows out of Canada.

We can't look at Investment Canada Act in isolation. It needs to be part of a new and proactive strategic approach to our industrial and economic policy and not simply free trade, low taxes, low wages and selling off our resources to the highest bidder.

The federal government has no cogent industrial strategy, no cogent training and labour force development strategy. It has abandoned responsibility for these areas and/or handed them over to the provinces.

At the same time, it fervently pursues "free trade" agreements that have major impact on jurisdiction of provinces and of municipalities. It is astounding that the federal government would, without consultation go over head of the province involved, and give Abitibi-Bowater a $130 million pay-out to settle the case—and then the Prime Minister stated that the next time the federal government would create a mechanism to reclaim this money— essentially leaving the provinces on the hook for it after setting a dangerous precedent.

I have a number of questions that the committee might like to consider:

- What did the Prime Minister mean when he said the federal government would create a mechanism to reclaim monies from the provinces?

- Secondly, what should we understand by the term "strategic asset"

- Thirdly, why has the federal government had to go to court in order to enforce compliance with commitments made with U.S. Steel? Shouldn't we have stronger enforcement provisions?