Remarks for The Standing Committee on Industry, Science and Technology
By Jim Balsillie, Chair & Co-Founder of the Council of Canadian Innovators

Madame Chair,
Honorable Members,

Thank you for the opportunity to present today. I am Jim Balsillie, Chair of the Council of Canadian Innovators.

I welcome the Committee's study on the Investment Canada Act (ICA) because it's a critical regulatory tool for ensuring Canada's prosperity and security. In the modern knowledge-based and data-driven economy, the sources of prosperity and the vectors of risk have changed. The ICA must therefore change as well to ensure it remains fit for purpose. Specifically,

1) The understanding of foreign direct investment (FDI) that informs the construction of the ICA is based on investment in tangible production. It does not reflect the contemporary economy in which the most valuable national economic and security assets are intellectual property (IP) and data.
2) The ICA is based on the premise that with FDI, the direction of the flow of knowledge and technology is into Canada. This used to be the case with FDI into industrial production, which brought advanced production technology and skilled technical personnel to Canada. It is not the case with FDI into the innovation economy where FDI is extractive and the flow of technology, knowledge asset, and critical technical personnel is out of Canada.
3) The concept of net benefit (or risk) could be reasonably applied in the industrial economy based on the size of the acquired business assets. In the knowledge-based and data-driven economy, prosperity and risk do not scale with size but with spillovers – both positive spillovers that drive innovation dynamism and negative spillovers that create security risks.

Today's economy

In my May 25th presentation to you, I submitted a chart that shows how the digital transformation over the last 30 years created a knowledge-based and data-driven economy where intangible assets – first IP and now data – restructured the composition of markets by reconfiguring how an economy extracts benefits from technology and introduces new risks.

Meanwhile, Canadian policy remained firmly grounded in industrial era concepts, failing to develop national strategies for IP or for data. Our intangible assets move

seamlessly across borders with the stroke of the pen, currently without any national security or economic review. This lacking is reflected in the ICA, including its most recent 'Policy Statement'.

Companies and countries now compete by owning and controlling intangible assets. The EU is building its own cloud not because Europeans lack faith in the multilateral trading system but because EU policymakers understand that whoever owns the IP and whoever controls the data, controls who and what interacts with it and this has major implications for their prosperity, security and democracy.

The Direction of Prosperity Flows

Canada is on the sidelines in the global competition for IP and data, contributing to their creation but not contesting their ownership and ensuing benefits. Consequently, we see the exfiltration of knowledge assets out of Canada on a regular basis:

- Foundational IP for AI that Canadian taxpayers funded for two decades is transferred from U of T to Google, who thank Canada for it and say: "*We now use it throughout our entire business and it's a major driver of our corporate success*."
- Huawei creates 17 research partnerships with Canadian universities on equally valuable 6G infrastructure. Two years after The Globe and Mail investigation that exposed it, there are still no guidelines for our universities on how to manage strategic technologies.
- There are many other examples, such as Facebook's AI "partnership" with McGill University.

Meanwhile, smart countries like Germany with its 72 Fraunhofer Institutes has one central "exploitation department" which administers and manages IP applications and exploitations as well as contracts.

Germany, UK, US, France and even the EU created updated FDI strategies while Canada has not. Quite the contrary: recent report from IRPP shows that a majority of IP created by Canadians is owned by foreign entities and that the trend is *accelerating*. Germany even went as far as blocking the hiring of one of its computer engineers, a recognition by policymakers that the negative spillovers for Germany outweighed the private returns to the computer engineer.

IP and data have strong "public good" characteristics; so private decisions do not price the associated externalities or spillovers into their contractual agreements. Data has pervasive "dual use" characteristics with potential implications not only for the security of a country's backbone infrastructure (i.e., transportation, telecommunications, energy

and finance) in the Internet of Things (IoT) era, but also across all economic sectors and areas of human interaction.

Recommendations

Three aspects of the current ICA study are particularly noteworthy as inappropriate for today's economy:

1. The valuation thresholds,
2. A moratorium narrowly focused on acquisitions from state owned enterprises (SOEs) of authoritarian countries; and,
3. A principle economic focus on "jobs".

Very few strategic transactions would require review based on these criteria and they don't guide the attention of policymakers administering the Act to the issues relevant in the contemporary economy.

The focus on acquisitions from SOEs of authoritarian countries is a wholly insufficient lens when assessing partnerships, licenses and transactions involving strategic intangible assets. If the assets are critical to Canada's prosperity, security, and sovereignty, then we need to ensure they remain in our control regardless of the foreign counterparty.

Finally, there are many other economic consequences beyond "jobs" that must be considered, especially since the key skills for the IP and data driven economy are in short supply. Most purported jobs created often reflect a reshuffling of existing scarce talent, until the very best are moved to company headquarters. Instead we need to ask the following questions:

- Where does the value proposition in our economy lie?
- How is the value we generate connected to our prosperity and security?
- Is the ICA structured to guide an informed assessment of a given investment into the innovation intensive knowledge-based and data-driven economy?

Our current approach to dealing with Canada's most valuable economic and national security assets is akin to putting an additional bolt lock on the front door while advertising that our screen door on the side is open. In my attached **Appendix**, I propose an updated analytical framework for the ICA. Updating the Act is a critical piece of building Canada's digital policy infrastructure and vital for our prosperity, security, and sovereignty. Thank you.

Appendix

Figure 1. Economic Spillovers

Effects of investment type on tangible and intangible stock assets

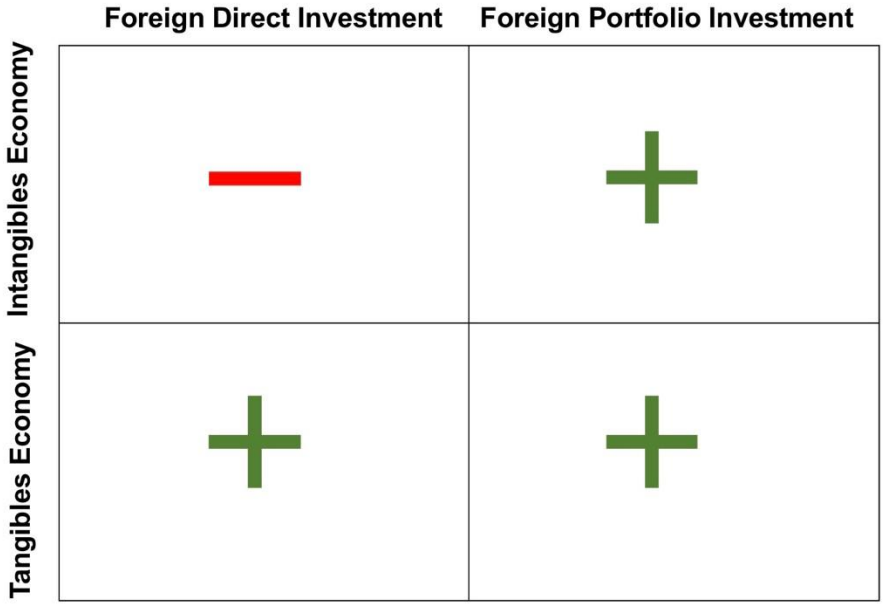


Figure 2. An Analytical Framework for Foreign Transactions Involving Canadian Intangible Stock Assets

Considerations for the Investment Canada Act

A. ECONOMIC PROSPERITY

1. Jobs Created (key skills such as computer engineering and data science have negative unemployment)
2. Wealth Effects
3. Management Development
   a. Remote Direction/Supervision vs. Autonomous Branch Operation
   b. Expansiveness of Employee Non-Disclosure Agreements
   c. Comprehensiveness of Non-Competition Agreements
4. Top Talent Exfiltration
5. Data Exfiltration
6. Ecosystem Dynamism Effects
7. Erosion of Tax Base
8. Value Chain effects (particularly for high potential emerging firms)

B. NATIONAL SECURITY

1. Cyber Security Impacts
2. Critical Infrastructure Impacts
3. Public Health Impacts
4. Military/Defence Impacts
5. Social Good Impacts (democracy, values, cohesion, autonomy) 6. Geopolitical Considerations