



Industry  
Canada

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Canada



# *Investment Canada Act*



## Annual Reports

2010-11

2011-12

2012-13

Canada 

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# Message from the Director of Investments to the Minister of Industry

Dear Minister:

I am pleased to present the *Investment Canada Act* annual reports for fiscal years 2010–11 through 2012–13. As Director of Investments, I am required to submit to you annual reports on the administration of the Act.

Over the three fiscal years, 49 applications were approved and 1,940 notifications were filed under the Act. Taken together, the Canadian businesses acquired in these transactions represented more than \$128.5 billion in total assets.<sup>1</sup> Of this, applications reviewed by the Minister accounted for over \$79 billion and transactions requiring notification represented close to \$49.5 billion.

In each fiscal year, the resource sector attracted the largest share of investments, with a total of 259 transactions involving companies with combined assets of \$66.93 billion. The 2012–13 fiscal year was particularly notable, with 94 investments valued at \$33.31 billion. The business sector continued to attract the greatest number of investments over the three fiscal years, with 701 investments totalling \$12.71 billion.

The United States led as the source of investments in all three fiscal years, with 1,030 investments worth more than \$50 billion. The European Union accounted for 605 investments totalling close to \$21.5 billion, while Brazil, Russia, India and China—the emerging economies collectively known as BRIC—had a combined total of 78 investments with more than \$34.7 billion in asset value.

You will find similarly notable figures throughout the annual reports.

During the 2012–13 fiscal year, the Government of Canada introduced measures to update the Act and related guidelines. These changes will help ensure greater information sharing with the public, improved flexibility in enforcement and a clearer approach to investments by state-owned enterprises.

I trust that these annual reports provide a useful overview of the administration of the Act over the past three fiscal years. The data show that Canada has a globally connected, sophisticated economy with a proven track record of welcoming investors from all over the world.

I look forward to supporting you in administering the *Investment Canada Act*.

Yours sincerely,

John Knubley  
Director of Investments

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<sup>1</sup> Acquisitions are recorded by the asset value of the Canadian business to be acquired, based on its most recent audited financial statements.





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## Overview

Canada has a modern 21st-century economy based on competition, free enterprise, the rule of law and consumer choice. Our market-based system has created prosperity for our citizens.

The global exchange of goods, services and capital underpins our economic performance. Two-way trade and investment boost productivity, drive innovation and widen access to international markets.

Canada has a broad framework to promote trade and investment while, at the same time, protecting Canadian interests. The *Investment Canada Act* (ICA or the Act) is the primary mechanism for reviewing foreign investments. Its purpose is twofold: to review significant foreign investments to determine if they are likely to be of net benefit to Canada and to review investments that could injure national security.

The ICA came into force on June 30, 1985, replacing the *Foreign Investment Review Act*. Responsibility for its administration and enforcement rests with the Minister of Industry, with the exception of notifications and reviews related to cultural businesses, which was transferred to the Minister of Canadian Heritage in 1999.

How a proposed foreign investment will be treated under the Act depends primarily on the value of the assets of the Canadian business being acquired. In general, an acquisition of control of a Canadian business by a foreign investor is subject to *review* where the business' asset value is equal to, or above, the established threshold. The investor must file a *notification* where the value of the assets of the Canadian business falls below the established threshold.<sup>2</sup>

The review process itself is thorough and rigorous. Industry Canada consults with other federal departments with policy responsibilities that are relevant to the proposed transaction, as well as the Competition Bureau, and affected provinces and territories. In addition, any person or group can provide comments on an investment proposal to the Minister of Industry in writing during the review process.

In approving an application, the Minister of Industry must be satisfied that the proposed investment is likely to be of net benefit to Canada. To determine net benefit, six factors come into play. The six factors include the effect on the level and nature of economic activity in Canada, including employment, resource processing and utilization of parts, components and services; the degree and significance of participation by Canadians in the Canadian business; an investment's effects on productivity, industrial efficiency, technological development, product innovation and product variety; the effect on competition; the investment's compatibility with industrial, economic and cultural policies; and its contribution to Canada's ability to

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<sup>2</sup> The review threshold for investors from World Trade Organization (WTO) member countries was \$299 million in 2010, \$312 million in 2011 and \$330 million in 2012. In 2013, the Government of Canada introduced amendments to the ICA to raise the threshold for review to \$1 billion and to make enterprise value the basis of the threshold with the exception of its application to state-owned enterprises. However, at the time of publication of this report, these changes were not yet in effect.

The WTO review threshold is adjusted annually to reflect the change in nominal gross domestic product in the previous year. The threshold for non-WTO investors is \$5 million for direct and \$50 million for indirect acquisitions. Indirect investments by WTO investors are not subject to review, but the investor must file a notification. An indirect acquisition is an acquisition of a foreign company that has Canadian subsidiaries. Also, where a foreign investor starts a new business, the investor must file a notification.

compete in world markets. The complete factors are clearly laid out in [section 20 of the Act](#). Together, they provide predictable guidance for investors, while maintaining the flexibility required to protect Canada's interests.

In general terms, net benefit is assessed against an investor's plans and undertakings addressing the six factors, and may include commitments on matters such as employment levels, capital expenditures, research and development activities, and corporate governance.

In recent years, the Government of Canada has taken steps to update the Act to respond to global economic realities.

Specifically, in 2007 new guidelines were introduced for state-owned enterprises (SOE) investing in Canada. For such enterprises, the Minister is required to examine whether the investor adheres to Canadian standards of corporate governance and whether the Canadian business, if acquired, will continue to have the ability to operate on a commercial basis.<sup>3</sup>

Additional improvements were made to the Act's administration in both 2009 and 2012, which saw the introduction of a national security review process, further improvement to the SOE guidelines, changes to transparency requirements, and the raising and redefinition of the review threshold.<sup>4</sup> Since 1985, this model has served Canadians well. These improvements have helped ensure the Act remains relevant and responsive to the realities of a changing global economy.

Administering the Act requires balancing the need for investor confidentiality with public disclosure. Strong protection is necessary to ensure that investors provide the Government with the information required to conduct reviews, and to prevent harm to both investors and Canadian businesses.

While respecting these considerations, the Government's recent modernization efforts now allow the Minister greater ability to inform Canadians about specific reviews and decisions. As part of this, annual reports are published and information on [decisions and notifications](#) is posted on Industry Canada's website.

## Summary of Activity in 2010–11

In 2010–11, the Minister of Industry approved 16 applications under the ICA and 580 notifications were filed.

The United States (U.S.) continued to be Canada's biggest source of foreign investment in terms of dollar value and number of transactions, accounting for more than half of the total number of investments. The European Union (EU) ranked second, with almost 26 percent.

In terms of the sectors that have attracted the most foreign investment, the resource sector led all others with a total investment of \$16.51 billion, followed by manufacturing, which captured about half that amount.

On average, the time taken to review an application and make a determination of net benefit was 70 days in 2010–11.

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<sup>3</sup> [Further clarifications](#) on how proposed investments by foreign SOEs are to be reviewed under the Act were announced by the Minister of Industry on December 7, 2012.

<sup>4</sup> At the time of publication of this report, changes to the review threshold were not yet in place.

The 2010–11 fiscal year was noteworthy because of the circumstances surrounding BHP Billiton’s proposal to acquire Potash Corporation of Saskatchewan. The Minister of Industry was not satisfied that BHP’s proposed transaction was likely to be of net benefit to Canada. BHP subsequently withdrew its application.

The year also saw the first-ever court decision on the enforcement sections of the Act. In 2009, the federal government launched legal proceedings against United States Steel Corporation (U.S. Steel) because the Minister was not satisfied the company had upheld the commitments made when it took over Stelco Inc. in 2007. In the course of that litigation, U.S. Steel brought an application challenging the validity of the enforcement provisions of the ICA. The Federal Court dismissed U.S. Steel’s application and affirmed the Minister of Industry’s ability to enforce the regulation of foreign investment under the ICA.

There were no legislative, regulatory or policy developments during the year.

## Summary of Activity in 2011–12

In 2011–12, the Minister of Industry approved 15 applications under the ICA and 696 notifications were filed.

On December 12, 2011, the Minister of Industry announced an out-of-court settlement with U.S. Steel, based on new and enhanced undertakings under the Act.

U.S. Steel committed to:

- ▶ continue to produce steel in Canada;
- ▶ operate at both Lake Erie and Hamilton plants until 2015, generating continued economic activity;
- ▶ make at least \$50 million in capital investments to maintain the Canadian facilities by December 2015, over and above its original undertaking to invest \$200 million by October 31, 2012; and
- ▶ make a financial contribution of \$3 million toward community and education programs in Hamilton and Nanticoke.

Notable transactions approved in 2011–12 included China National Offshore Oil Corporation’s (CNOOC) acquisition of OPTI Canada Inc. (November 2011) and China Petrochemical Corporation’s (Sinopec Group) acquisition of Daylight Energy Ltd. (December 2011).

The resource sector again attracted the highest level of investment in 2011–12, with a total value of \$17.11 billion, an increase from the previous year.

The U.S. remained Canada’s top source of foreign investment, accounting for more than half of the total number of investments over this time period. The EU was our second highest investor, with approximately 35 percent of the total number of investments.

On average, the time taken to review an application and make a determination of net benefit was 80.6 days in 2011–12.

There were no legislative, regulatory or policy developments during the year.



## Summary of Activity in 2012–13

In 2012–13, the Minister of Industry approved 18 applications under the ICA and 664 notifications were filed.

The United States again led in terms of the amount of investment, totalling over \$15 billion in asset value and accounting for just over half of the total number of investments. The EU was again second with investments worth \$7.5 billion in asset value.

The 2012–13 year was noteworthy for two high-profile investments in Canada's resource sector. The first was the purchase of Canadian resource company Nexen by Chinese state-owned enterprise CNOOC—the largest international purchase by a Chinese company. This came alongside the purchase of Progress Energy by Petronas, Malaysia's state-controlled oil and gas company.

### POLICY DEVELOPMENTS

In April 2012, the Government of Canada proposed amendments to the *Investment Canada Act* to provide greater information to the public and more flexibility in enforcement. These amendments, included in Bill C-38, the *Jobs, Growth and Long-term Prosperity Act*, came into force on June 29, 2012. These amendments give the Minister:

- greater ability to publicly communicate information on the review process while preserving commercial confidences;
- authority to accept security, when offered by an investor, for payment of any penalties ordered by a court for a contravention of the Act, promoting investor compliance with undertakings;
- the ability to publicly disclose the fact that he has sent a preliminary notice to an investor that he is not satisfied that the investment is likely to be of net benefit to Canada; and
- the ability to explain publicly his reasons for sending the notice as long as it would not cause harm to the Canadian business or the investor.

In May 2012, a new guideline was issued to make formal mediation procedures available under the Act. The guideline, establishing an alternative to potentially costly and time-consuming litigation that may be initiated under the Act, provides a voluntary means of resolving disputes when the Minister believes an investor has failed to comply with an undertaking.

In June 2012, the Government published proposed amendments to the *Investment Canada Regulations* in the Canada Gazette, which are necessary to:

- raise the threshold for net benefit reviews to \$1 billion over a four-year period;
- establish the methodology for calculating the enterprise value of a Canadian business;

- remove references to the transportation, financial services and uranium production sectors because lower thresholds for these sectors have been eliminated; and
- formalize the process for collecting additional information relevant to the net benefit and national security processes.

In December 2012, the Government made additional changes to the investment review process to ensure Canada continues to benefit from foreign investment. Specifically, the Government:

- revised the guidelines for foreign SOEs;
- clarified how proposed investments by SOEs are assessed under the Act; and
- announced it would proceed with legislative amendments to exclude SOE investors from the \$1 billion enterprise value net benefit threshold increase and to give the Minister the flexibility to extend the timelines for national security reviews, as necessary.

In Economic Action Plan 2013, the Government reaffirmed its intention to amend the Act.

## Conclusion

In general, the 2010–11, 2011–12 and 2012–13 fiscal years saw continued activity under the Act. This reflected the broader economy, which experienced some growth. Canada is not immune to external economic developments. While the global economic environment remains fragile and there is weak growth in advanced economies, the Canadian economy continues to expand, albeit at a modest pace.

The Government of Canada continues to strongly encourage investment that benefits Canada. As a result, after rigorous review the majority of investment proposals have been approved.

## For more information

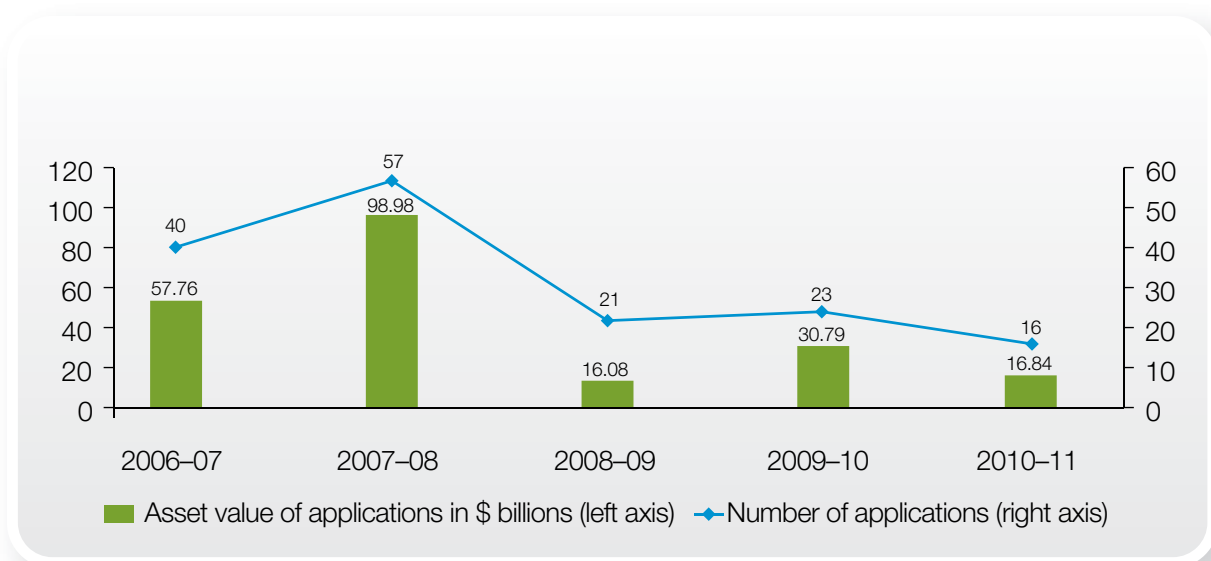
For a general description of how the Act is administered, consult the [\*Investment Canada Act website\*](#).

# 2

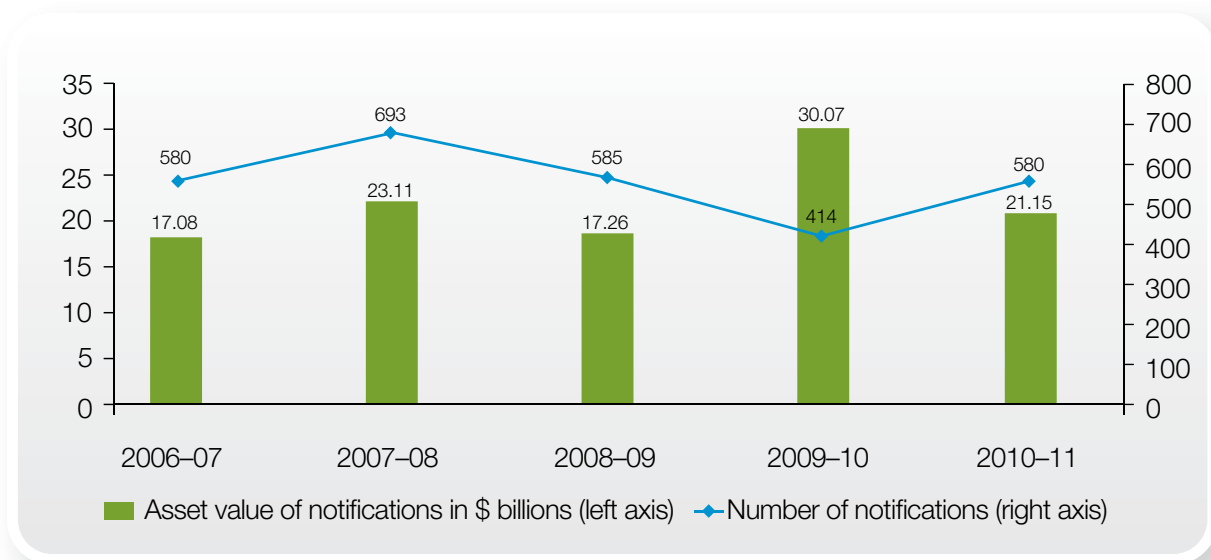
## Statistical Information: 2010–11<sup>5</sup>

In 2010–11, 16 applications for review were approved by the Minister of Industry and 580 notifications were filed with Industry Canada under the Act. Compared to 2009–10, applications decreased by seven, whereas notifications increased by 166 (Figures 1 and 2). There were 144 notifications filed establishing new businesses.

**Figure 1. Applications**



**Figure 2. Notifications**



<sup>5</sup> Information provided by investors is confidential. Consequently, this report does not provide information on individual transactions. To protect investor identity, data on fewer than four investments are not reported if doing so could jeopardize confidential information. Note that the asset value of Canadian businesses acquired or established is in nominal dollar terms and not adjusted for changing asset value over time.

## Investment by Asset Value

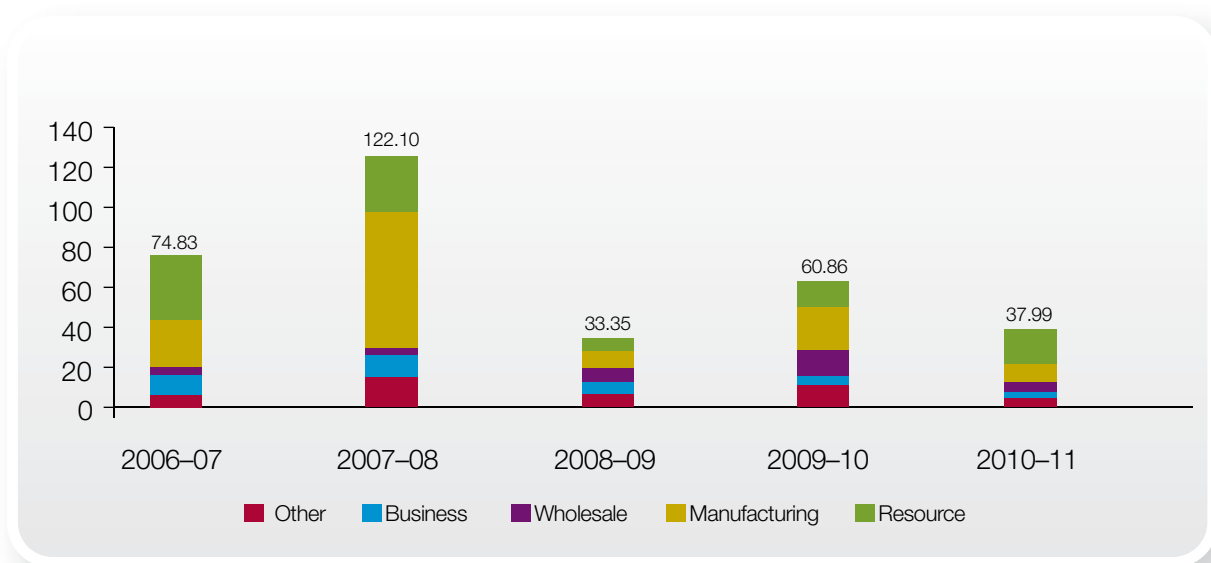
The total asset value of applications and notifications was \$37.99 billion. This represents a decrease from the 2009–10 total of \$60.86 billion (Figure 3).

The value of applications for review was \$16.84 billion in 2010–11 compared to \$30.79 billion in 2009–10, a 45 percent decrease.

The value of notifications was \$21.15 billion in 2010–11 in contrast to \$30.07 billion in 2009–10, a 30 percent decrease.

There were seven transactions subject to the Act where the Canadian business had assets over \$1 billion, five of which were reviewable. The other two transactions were indirect investments and therefore notifiable under the Act. The average value of reviewable transactions was \$1.05 billion and \$36.46 million for notifiable transactions, versus \$1.34 billion and \$72.62 million respectively in 2009–10. Values vary from year to year.

**Figure 3. Asset Value by Sector (\$ billions)**



## Investment by Sector

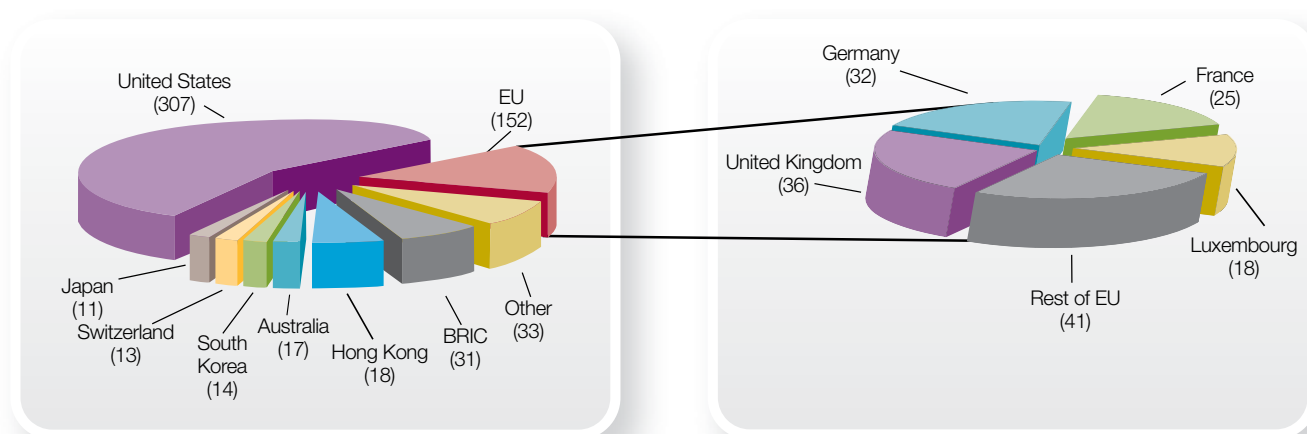
- **Resource sector:** 89 investments. This was the largest share of investments by asset value at \$16.51 billion, with an average value of \$185.50 million.
- **Manufacturing sector:** 145 investments. The total value was \$8.53 billion, with an average value of \$58.83 million.
- **Wholesale sector:** 76 investments. The total value was \$5.48 billion, with an average value of \$72.12 million.

- **Business sector:** 211 investments. The total value was \$2.51 billion, with an average value of \$11.88 million. This sector traditionally has the greatest number of investments.
- **Other sectors:** 75 investments. The total value was \$4.96 billion, with an average value of \$66.11 million.<sup>6</sup>

## Investment by Country or Region of Origin

The U.S. remained the number one investor with 307 investments totalling \$19.87 billion in asset value. This accounted for more than half of the total number of investments over this time period. The EU was second with 152 investments worth \$5.26 billion, approximately 26 percent of the total number of investments (Figure 4).

**Figure 4. Investments by Country or Region of Origin 2010–11**



Within the EU, the following countries had the highest dollar value of investment:

- France—\$1.82 billion
- United Kingdom—\$1.72 billion
- Luxembourg—\$684 million
- Germany—\$530 million

The BRIC countries (Brazil, Russia, India and China) had investments of \$6.44 billion.

<sup>6</sup>The five sectors are based on Standard Industrial Classification codes, with each sector composed of subsectors. The Business sector mainly includes service-providing businesses, such as computer services, engineering services, employment agencies and advertising agencies. The Manufacturing sector comprises businesses that produce or manufacture different types of goods, such as machinery, equipment, parts, food, beverages, etc. The Resource sector consists of agriculture and related services, oil, mining and quarrying industries, crude petroleum and natural gas industries, etc. The Wholesale sector is divided into wholesale trade and retail trade industries. Wholesale trade includes the sale of different types of equipment, machinery, and supplies and chemicals. Retail trade includes clothing, prescription drugs, automobiles and other consumer goods. Other sectors include businesses in the finance and insurance industries, real estate operators, insurance agent industries, communications, and transportation and storage.

In 2010–11, other countries of note in terms of investment included:

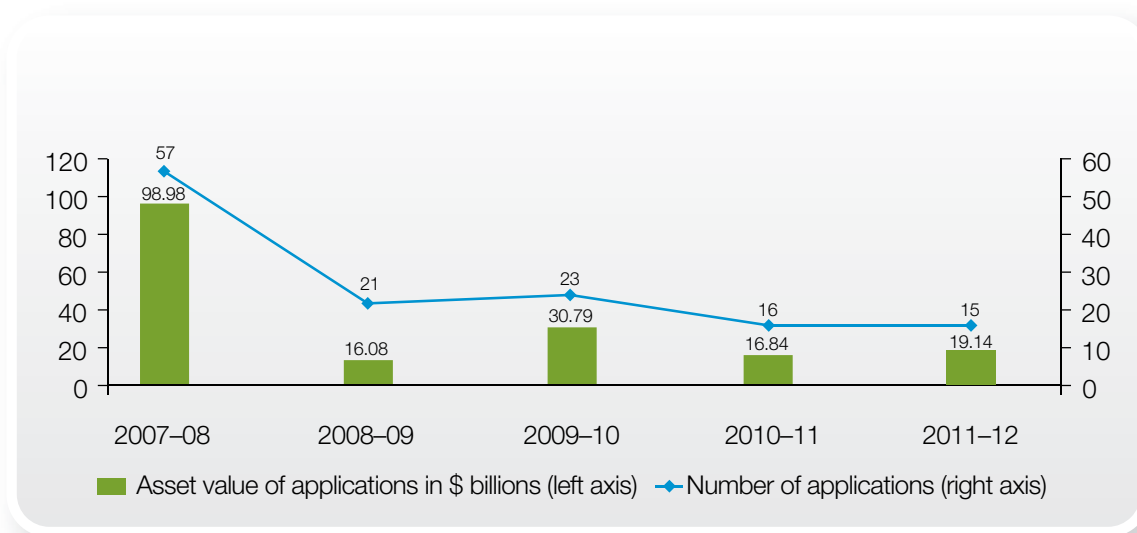
- ▶ Japan—\$1.99 billion
- ▶ South Korea—\$1.20 billion
- ▶ Hong Kong—\$868 million
- ▶ Australia—\$736 million
- ▶ Switzerland—\$426 million

### 3

## Statistical Information: 2011–12<sup>7</sup>

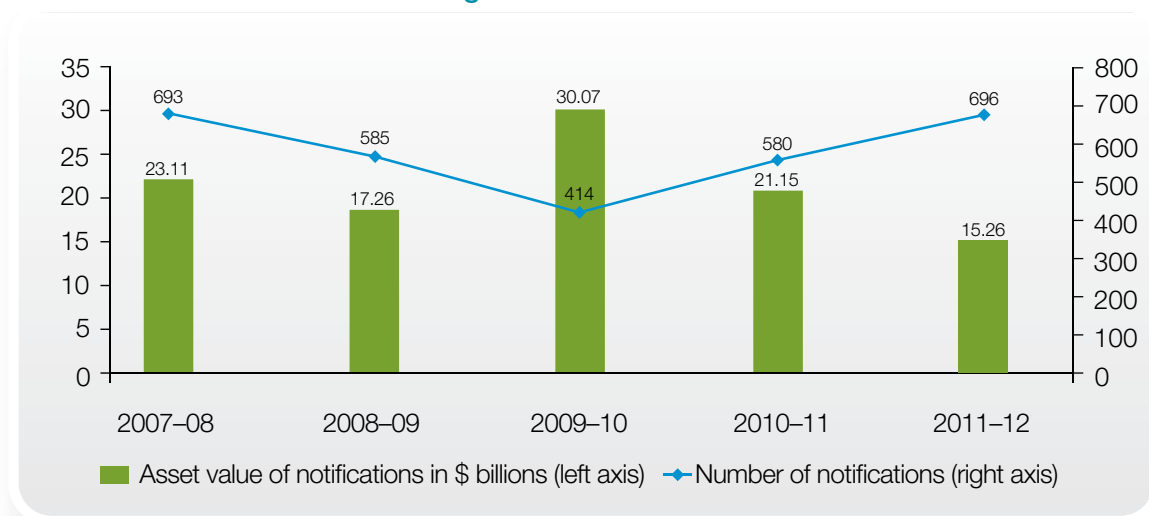
In 2011–12, 15 applications for review were approved by the Minister of Industry and 696 notifications were filed with Industry Canada under the Act. Compared to 2010–11, applications decreased by one, whereas notifications increased by 116 (Figures 5 and 6). There were 190 notifications filed establishing new businesses.

**Figure 5. Applications**



<sup>7</sup> See note 5.

Figure 6. Notifications



## Investment by Asset Value

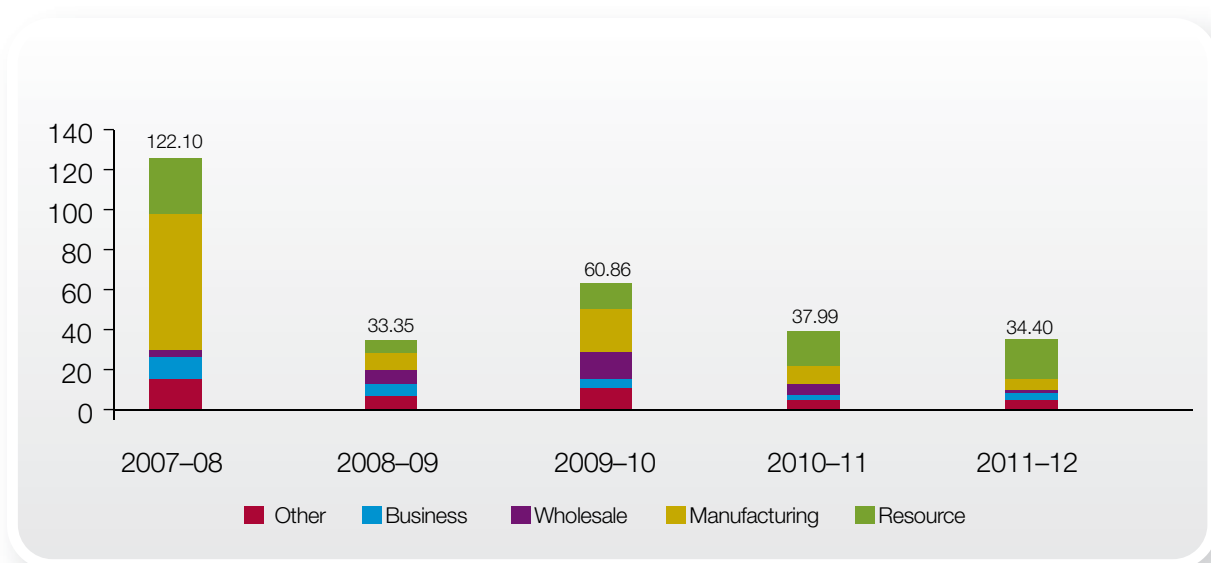
The total asset value of applications and notifications was \$34.40 billion. This represents a decrease from the 2010-11 total of \$37.99 billion (Figure 7).

The value of applications for review was \$19.14 billion in 2011-12 compared to \$16.84 billion in 2010-11, a 14 percent increase.

The value of notifications was \$15.26 billion in 2011-12 in contrast to \$21.15 billion in 2010-11, a 28 percent decrease.

There were eleven transactions subject to the Act where the Canadian business had assets over \$1 billion, nine of which were reviewable. The other two transactions were indirect investments and therefore notifiable under the Act. The average value of reviewable transactions was \$1.28 billion and \$21.92 million for notifiable transactions, compared to \$1.05 billion and \$36.46 million respectively in 2010-11. Values vary from year to year.

Figure 7. Asset Value by Sector (\$ billions)



## Investment by Sector

- **Resource sector:** 76 investments. This was the largest share of investments by asset value at \$17.11 billion, with an average value of \$225.12 million.
- **Manufacturing sector:** 141 investments. The total value was \$5.24 billion, with an average value of \$37.17 million.
- **Wholesale sector:** 143 investments. The total value was \$1.71 billion, with an average value of \$11.95 million.
- **Business sector:** 241 investments. The total value was \$4.98 billion, with an average value of \$20.65 million. This sector traditionally has the greatest number of investments.
- **Other sectors:** 110 investments. The total value was \$5.36 billion, with an average value of \$48.77 million.<sup>8</sup>

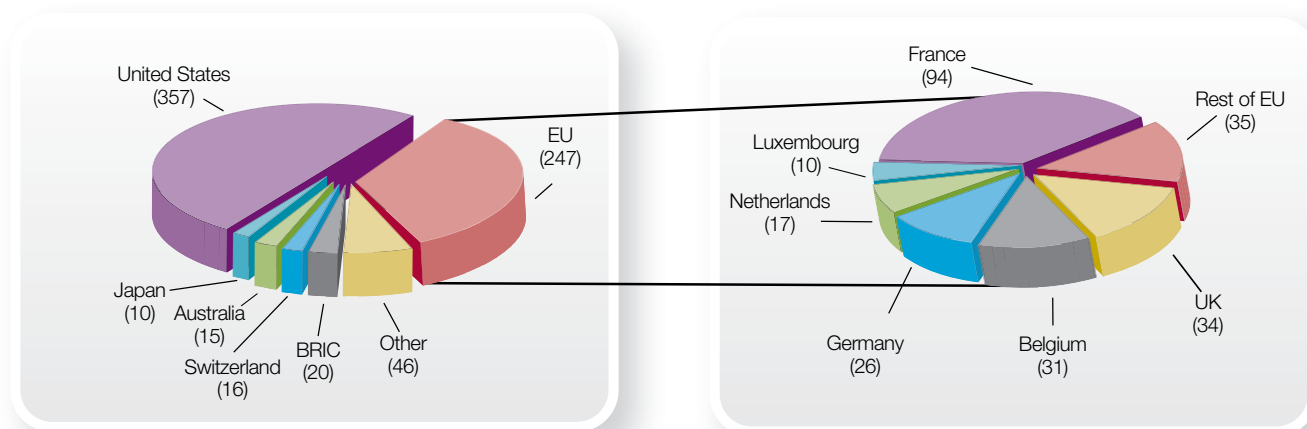
## Investment by Country or Region of Origin

The U.S. remained the number one investor with 357 investments totalling \$15.93 billion in asset value. This accounted for more than half of the total number of investments over this time period. The EU was second with 247 investments worth \$8.69 billion, approximately 35 percent of the total number of investments (Figure 8).

<sup>8</sup> See note 6.



**Figure 8. Investments by Country or Region of Origin 2011–12**



Within the EU, the following countries had the highest dollar value of investment:

- ▶ France—\$1.7 billion
- ▶ United Kingdom—\$1.7 billion
- ▶ Netherlands—\$994 million
- ▶ Belgium—\$761 million
- ▶ Germany—\$113 million

The BRIC countries (Brazil, Russia, India and China) followed the EU with investments of \$7.8 billion, an increase of more than \$1 billion from the previous year.

In 2011–12, other countries of note in terms of investment included:

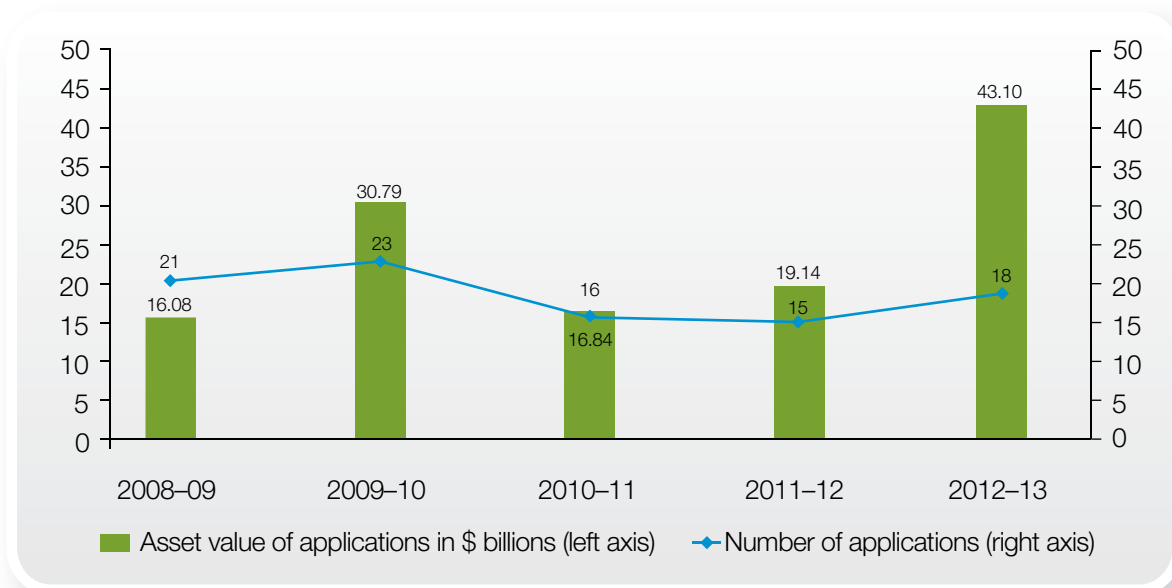
- ▶ Australia—\$182 million
- ▶ Switzerland—\$162 million
- ▶ Japan—\$104 million

# 4

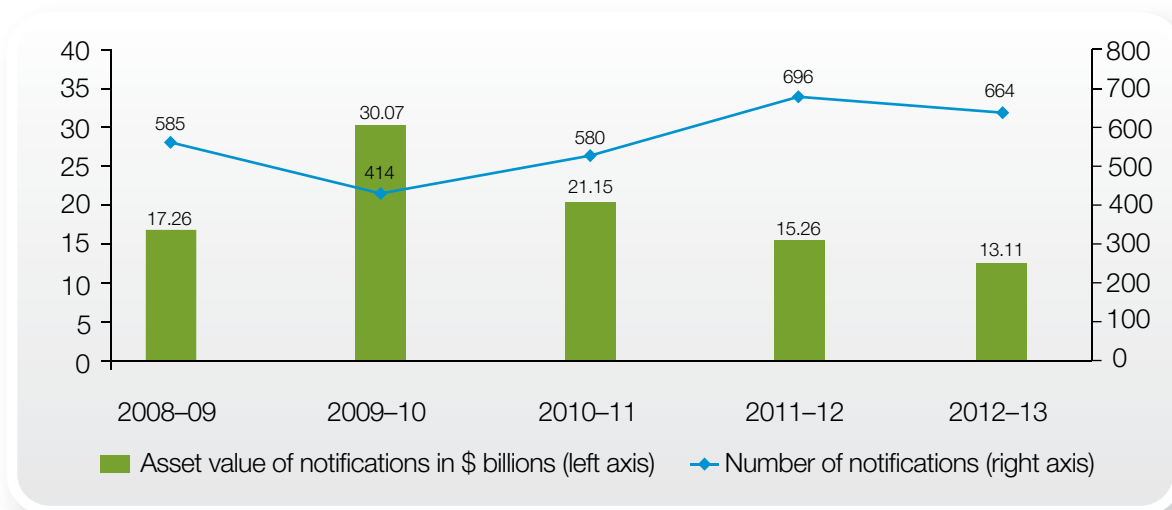
## Statistical Information: 2012–13<sup>9</sup>

In 2012–13, 18 applications for review were approved by the Minister of Industry and 664 notifications were filed with Industry Canada under the Act. Compared to 2011–12, applications increased by three, whereas notifications decreased by 32 (Figures 9 and 10). There were 179 notifications filed establishing new businesses.

**Figure 9. Applications**



**Figure 10. Notifications**



<sup>9</sup> See note 5.

## Investment by Asset Value

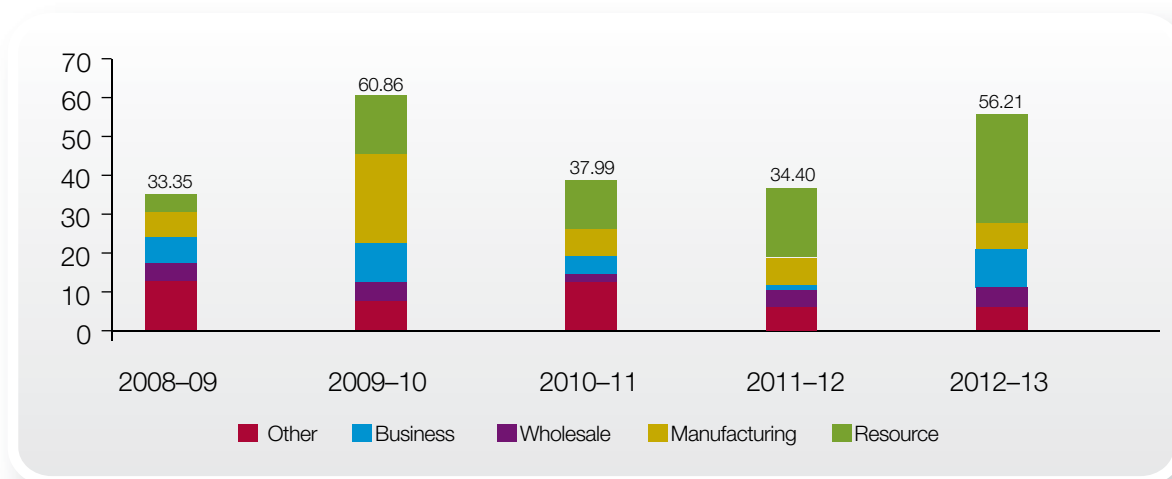
The total asset value of applications and notifications was \$56.21 billion. This represents an increase of about 63 percent from the 2011–12 total of \$34.40 billion (Figure 11).

The value of applications for review was \$43.10 billion in 2012–13 compared to \$19.14 billion in 2011–12, a 125 percent increase.

The value of notifications was \$13.11 billion in 2012–13 in contrast to \$15.26 billion in 2011–12, a 14 percent decrease.

There were six transactions subject to the Act where the Canadian business had assets over \$1 billion, all of which were reviewable. The average value of reviewable transactions was \$2.39 billion and \$19.75 million for notifiable transactions, compared to \$1.28 billion and \$21.92 million respectively in 2011–12. Values vary from year to year.

Figure 11. Asset Value by Sector (\$ billions)



## Investment by Sector

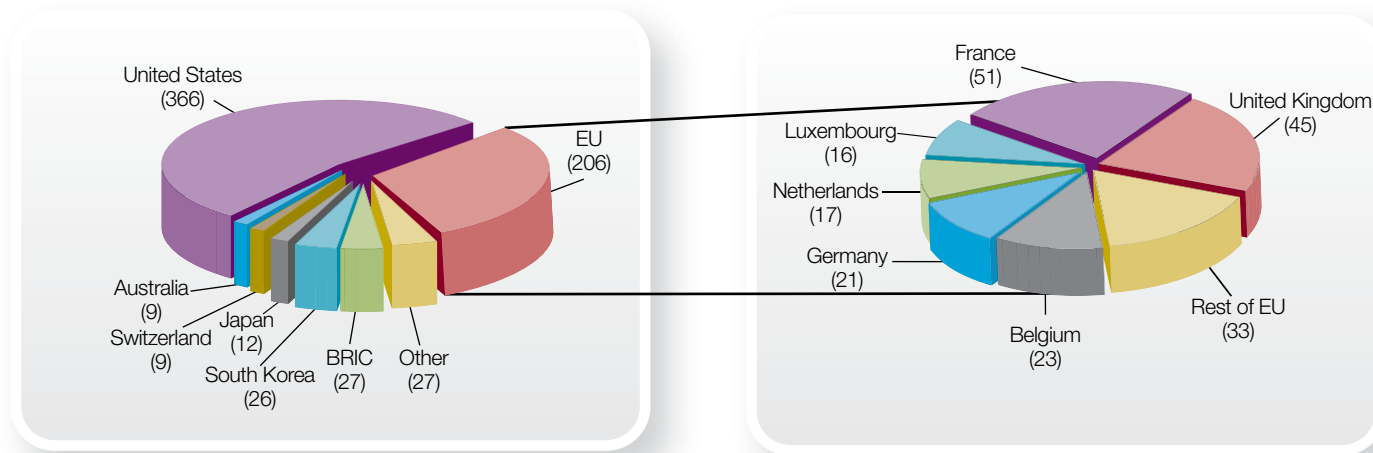
- **Resource sector:** 94 investments. This was the largest share of investments by asset value at \$33.31 billion, with an average value of \$354.33 million.
- **Manufacturing sector:** 141 investments. The total value was \$5.89 billion, with an average value of \$41.77 million.
- **Wholesale sector:** 124 investments. The total value was \$10.35 billion, with an average value of \$83.49 million.
- **Business sector:** 249 investments. The total value was \$5.22 billion, with an average value of \$20.95 million. This sector traditionally has the greatest number of investments.
- **Other sectors:** 74 investments. The total was \$1.45 billion, with an average value of \$19.53 million.<sup>10</sup>

<sup>10</sup> See note 6.

## Investment by Country or Region of Origin

The U.S. remained the number one investor with 366 investments totalling \$15.11 billion in asset value. This accounted for more than half of the total number of investments over this time period. The EU was second with 206 investments worth \$7.50 billion, approximately 30 percent of the total number of investments (Figure 12).

**Figure 12. Investments by Country or Region of Origin 2012–13**



Within the EU, the following countries had the highest dollar value of investment:

- ▶ United Kingdom—\$4.7 billion
- ▶ Sweden—\$1.0 billion
- ▶ France—\$513 million
- ▶ Luxembourg—\$435 million
- ▶ Netherlands—\$378 million
- ▶ Germany—\$162 million

The BRIC countries (Brazil, Russia, India and China) made 27 investments totalling \$20.5 billion, an increase of \$12.7 billion from the previous year.

In 2012–13, other countries of note in terms of investment included:

- ▶ Switzerland—\$7.1 billion
- ▶ Japan—\$1.2 billion
- ▶ Australia—\$193 million
- ▶ South Korea—\$50 million



### Interpretive Notes

- ▶ Data in tables, charts and explanations for a given year refer to the fiscal year (i.e., 2010 and 2010–11 refer to the fiscal year from April 1, 2010, to March 31, 2011; 2011 and 2011–12 refer to the fiscal year from April 1, 2011, to March 31, 2012; 2012 and 2012–13 refer to the fiscal year from April 1, 2012, to March 31, 2013).
- ▶ Acquisitions are recorded by the asset value of the Canadian business to be acquired, based on the corporation's most recent audited financial statements, not by the purchase price.
- ▶ New business proposals are recorded on the basis of the planned amount of investment over the first two years.
- ▶ The actual number and value of acquisitions and new business starts by international investors may not be wholly reflected for the following reasons:
  - From time to time, two or more investors may submit applications for review to acquire the same Canadian business. In such cases, each proposal is recorded as a separate transaction.
  - Since June 1999, responsibility under the Act with respect to investments related to cultural activities listed in Schedule IV of the *Regulations Respecting Investment in Canada* was transferred to Canadian Heritage. Accordingly, our statistics since that time do not include foreign investments in Canadian businesses engaged strictly in activities listed in Schedule IV.
  - Most notifications and applications are submitted to Industry Canada at the proposal stage and processed promptly under the terms of the *Investment Canada Act*. However, for commercial or other reasons, the investor may subsequently choose not to implement the investment or implement it at a later time.

### Data Comparison with Other Statistical Sources

The principal purpose of the *Investment Canada Act* is the regulation of investment activity by foreign investors. As a consequence, Industry Canada data on the value of foreign investments for a given period reflect operations under the *Investment Canada Act*. Only data on new business proposals and acquisitions of control by foreign investors are collected. The value of "planned investment" is tabulated from new business notifications and the book value of "assets acquired" from transactions requiring notification or review. Aggregated figures are published quarterly.

Industry Canada data cannot be compared with either the foreign direct investment flows or stock figures published by Statistics Canada, as the data represent a portion of the value of foreign investment in Canada. For example, the value of major plant expansions by established foreign investors in Canada is not captured.