THE SCHOOL OF PUBLIC POLICY

MASTER OF PUBLIC POLICY CAPSTONE PROJECT

Lost in Translation: A study of how unclear application of the Investment Canada Act has deterred foreign investment into the oil sands.

Submitted by:

Sunny Kullar

Approved by Supervisor:

Dr. Ron Kneebone

Submitted in fulfillment of the requirements of PPOL 623 and completion of the requirements for the Master of Public Policy degree

THE SCHOOL OF PUBLIC POLICY

Acknowledgements

I would like to acknowledge the staff and fellows at the School of Public policy for their hard work and assistance throughout the MPP program and the capstone process. I would also like to acknowledge Dr. Ron Kneebone for his patience and assistance through the capstone process.

THE SCHOOL OF PUBLIC POLICY

Table of Contents

Capstone Executive Summary 4
Introduction 6
Background 7
1985-2008 8
2008-2012 9
2012 Policy Shift 11
Literature Review 13
Methodology 18
FDI Landscape 19
Rise of Asia 20
Pre-Policy SOE Participation in the Canadian M&A Market 21
Post-Policy effects on Investment Market 23
Increased Regulatory Costs 23
Drop off in FDI 24
Higher Costs of Capital 25
Laricina Energy 26
Long Term Effect of the Current Policy 28
Arguments against SOE Investment 31
Response to SOE Criticism 32
Market Efficiency 32
Ownership Concentration and National Security 33
Moving Forward 35
Clarify the Term Exceptional Net Benefit and how it applies to SOE Investment. 35
Eliminate the Net Benefits Test and Focus on National Security 36
Policy Suggestion 37

THE SCHOOL OF PUBLIC POLICY

Capstone Executive Summary

Prime Minister Harper's statement following the 2012 takeover of Nexen by CNOOC that "going forward, the Minister will find the acquisition of control of a Canadian oil-sands business by a foreign state-owned enterprise to be of net benefit, only in an exceptional circumstance" represented a major shift in the Canadian government's attitude towards foreign direct investment into the energy sector by state owned enterprises. While the policy announcement was intended to clarify application of the Investment Canada Act (ICA), it has done the opposite. By adding the term "exceptional net benefits" when reviewing state owned enterprise's bids for control of Canadian oil sands companies, the Canadian government has unfairly targeted Asian SOEs and confused the use of the net benefits test when assessing foreign investments. The resulting policy has had a negative effect on the development of the oil sands and on investor sentiment towards Canadian energy projects. Evidence suggests that the policy change has had negative consequences on investment activity including: increasing investment costs for acquirers, increasing costs of capital and decreasing available capital for junior oil and gas companies, and creating uncertainty in the minds of foreign investors leading to them questioning Canada as a place for future investment.

As the industry moves forward with development it must have access to adequate, and fairly priced capital to fund new and existing projects. Blocking out SOEs from the market removes an important source of relatively cheap financing and forces companies to consider more expensive alternatives. If the oil sands are to reach their full potential, then the government's policy on state owned investment must change. Instead of an ambiguous policy that relies on state owned firms to prove they can provide an exceptional net benefit, the government must shift its focus to national security. An investment screening process that is focused on

threats to national security is less ambiguous and the likelihood of it being skewed to favor political objectives over economic interests is significantly decreased. Changing the focus of the ICA and rebalancing it towards national security will increase investor confidence and reassert Canada as a leader in attracting risk capital from foreign investors.

Introduction

The Alberta oil sands hold the third largest deposit of bitumen in the world. While other oil producing regions are characterized by geopolitical instability, government interference, corruption, and other regulatory risk, the same cannot be said be said about the oil sands. As the former governor of Minnesota Brian Schweitzer put it, “you do not need to send the National Guard into Alberta”, alluding to the safety of supply that the oil sands provide.[1] The economic benefits that the oil sands and related industries provide to Canada are immense, with the sector accounting for $91 billion of Canadian GDP in 2012 with expectations for that number to grow to $171 billion in 2025, which would be comparable to adding an economy the size of Saskatchewan today to Canada.[2] It is clear that the oil sands are important to the economic prosperity of Alberta and Canada, and that they present an opportunity for Canada to become a world leader in innovative extraction processes and in exporting oil.

To develop such a vast resource however, billions of dollars of capital needs to be invested both domestically and from abroad--the Canadian Energy Research Institute (CERI) has estimated that approximately $100 billion will need to be invested from abroad over the next five years to fully realize the potential of the oil sands.[3] $100 billion over five years is an attainable goal given Alberta’s investment attractiveness. However the solution is not that simple. With delays in pipeline development, the rise of the US shale industry, increasing development costs, and recent changes to the Investment Canada Act, investor sentiment towards the oil sands is increasingly negative.

This paper will examine the changing landscape of foreign direct investment into Canada, and will assess how recent changes to the Investment Canada Act (ICA) put into place in 2012 has effected investment into the sector. Building off of available literature on the topic, this paper will explore the consequences

---

[1] Ted Morton, "Republicans Need to make it Clear that Keystone Will Help End U.S. Dependence on Mideast Oil," *National Post*, sec. Full Comment, 2015.

[2] . *Special Report: Oil Sands Economic Benefits-Today and in the Future*IHS CERA,[2014d]).

[3] Wendy Dobson, *China's State-Owned Enterprises and Canada's FDI Policy* (Calgary, AB, CAN: School of Public Policy, University of Calgary,[2014a]). http://site.ebrary.com.ezproxy.lib.ucalgary.ca/lib/ucalgary/docDetail.action?docID=10863153&ppg=1.

of ambiguity in the application of the ICA and examine the financial effects of restricting state owned enterprises from investing into the oil sands. Specifically, the paper will examine how adding the term exceptional net benefit has influenced investment costs for acquirers and investigate whether this has resulted in decreased foreign investment. Moreover, discussion will review how unclear policy application has created uncertainty in the investment climate and has led to investors questioning Canada as a place for future investment

Background

This section will provide context on the formation and application of the ICA since its inception and will outline how the act has transformed from its original purpose of encouraging investment to a restrictive policy that is unclear in its application to foreign acquisitions of Canadian energy assets.

Prior to the creation of the ICA, the governing legislation for investment into Canada was the Foreign Investment Review Act (FIRA). FIRA was developed at a time when there was a global distrust of foreign investments and a trend towards nationalizing ownership of key industries. Citing unfair exploitation of their resources countries such as Iran, Libya, and Saudi Arabia began expelling foreign companies and nationalizing ownership of natural resources in an attempt to secure more of the benefits of resource extraction. Canada was no different, pressured by nationalist interest groups and prominent public figures like Walter Gordon FIRA was created to protect Canada from "creeping foreign interests" and remained in place until 1985.[4]

Upon his election to office in 1985, Prime Minister Brian Mulroney ushered in a new era of investment into Canada by dismantling the FIRA and implementing the ICA as a replacement. Warren Grover notes that while the ICA is seen as being the same as the FIRA, it is based on a different concept, "[Whereas] FIRA was based on a fear of creeping foreign domination . . . [the] ICA is based on the assumption that new investment in Canada that contributes to economic growth . . . should be encouraged, whether the

[4] Azzi Stephen, *Walter Gordon and the Rise of Canadian Nationalism*McGill-Queen's University Press, 1999).

source is foreign or domestic.” [5] Under the ICA, the government’s focus shifted away from fear of foreign ownership and towards the expansion of the Canadian economy.[6] It also narrowed the scope of reviewable foreign transactions and clarified the criteria for assessment. As well, the ICA contained new criteria, specifically, “compatibility of the investment with national, industrial, economic and cultural policies, which will take into account the cultural and other policies of the provincial governments affected, and the effect on Canada’s ability to compete in world markets.”[7] Moreover, under the FIRA all foreign bids for ownership of Canadian companies were subject to review. This included small businesses that were not of national or cultural importance. Under the ICA, investments would be reviewed only if they exceeded certain dollar value thresholds that would increase over time to reflect inflation and the state of the economy.[8]

1985-2008

Since its inception the ICA has gone through three phases, each with its own unique characteristics. The first period, between 1985-2008, is known for a lack of government intervention in the investment review process. From 1985-2008 the Government accepted all investments classified for review. The American Bar Association described the investment review process during this period as a “welcome to Canada wave from the sleepy Canadian border guard to the foreign investor speeding through on its way to taking over a Canadian target.”[9] In addition to overhauling the investment review process, the Mulroney government also signed the North American Free Trade Agreement (NAFTA), which allowed more free trade and investment into Canada. As a result of signing NAFTA, and the government’s new hands off strategy to foreign investment, foreign direct investment (FDI) into Canada grew from 20% of GDP in

---

[5] Warren Grover, "Investment Canada Act the Commentary," *Canadian Business Law Journal* 10 (1985)475.
[6] Ibid.
[7] Ibid..
[8] Mathieu Frigon, *The Foreign Investment Review Process in Canada: Background Paper* (Ottawa, ON, CAN: Parliamentary Information and Research Service,[2011]). http://site.ebrary.com.ezproxy.lib.ucalgary.ca/lib/ucalgary/docDetail.action?docID=10516226&ppg=1.
[9] Howie Wong and Robert Dechert, "Canadian Foreign Takeover Review," *Business Law Today* 18, no. 3 (February 2009, 2009), October 9, 2014. http://www.americanbar.org/content/dam/aba/publications/blt/2009/01/keeping-current-takeovers-200901.authcheckdam.pdf.

1980 to 31% in 2006.[10]

2008-2012

The first 23 years of the ICA were uneventful as the Canadian Government approved nearly 1500 foreign takeovers, and maintained a hands-off strategy.[11] As a result, Canada benefited from the increased investment until 2008. In 2008, the Government blocked Alliant Techsystems (ATK), C$1.325 billion takeover bid for MacDonald, Dettwiler and Associates (MDA) and then in 2010 they blocked BHP Billiton's C$39 billion bid for Potash Corp of Saskatchewan.[12]

MDA is Canada's leading aerospace firm; their trademark product is the Radarsat-2 technology that has been developed with $450 million dollars of Government funding.[13] Radarsat-2 is considered to be critically important to protecting Canada's Arctic sovereignty; so when ATK issued their bid the Government was faced with a dilemma.[14] If the Government accepted the bid, they would be turning over jurisdiction and operation of Radarsat-2 to an American aero defence firm, however, if they rejected the bid, it would appear that they interfered in the market and were involved in restricting investment. Under pressure from the official opposition the Government rejected the takeover.[15] Industry Minister Jim Prentice said he did not feel that the deal would be of a "net benefit" to Canada and that "the jurisdictional aspect in relation to the satellite [was] a relevant consideration and specifically, where jurisdictional law would sit for the satellite, post transaction [was] a relevant consideration". [16]

Rejecting ATK's bid had two important implications on Canadian policy. First, it set a precedent for government intervention in the market. By using legislation the government was able to stop a perceived

---

[10] Simone Collins, "Recent Decisions Under the Investment Canada Act: Is Canada Changing its Stance on Foreign Direct Investment?" *Northwestern Journal of International Law & Business* 32, no. 1 (Fall 2011, 2011), 141-164.
[11] Ibid.

[12] "Alliant Bid for MacDonald Unit Rejected by Canada (Update6)," Bloomberg, , accessed October 2, 2014, http://www.bloomberg.com/apps/news?sid=areIp.MQUTXc&pid=newsarchive.; Phred Dvorak and Anupreeta Das, "Canada Slaps Down BHP's Potash Bid," *Wall Street Journal*Nov 4, 2010, 2010.
[13] Wong and Dechert, *Canadian Foreign Takeover Review*, October 9, 2014
[14] Deslongchamps and Lococo, *Alliant Bid for MacDonald Unit Rejected by Canada (Update6)*, 1
[15] Ibid.
[16] "Federal Government Blocks Sale of MDA Space Division
 ," , accessed October 10, 2014, http://www.cbc.ca/news/business/federal-government-blocks-sale-of-mda-space-division-1.703999.

threat to Canadian sovereignty. Second, it led to a review of the ICA and subsequent amendments. One of the major amendments was the introduction of a national security element to the ICA.[17] The national security test allows the Industry Minister to reject foreign acquisitions if they are seen as a threat to Canadian security. What constitutes a security threat is ambiguous, which gives the Minister more discretion when reviewing the takeover.[18]

The second rejection under Prime Minister Harper did not involve fears about national security; however it was just as contentious. In 2010, Australian resource giant BHP Billiton placed a C$39 billion bid to acquire control of Potash Corp.[19] And for the second time in 3 years, a bid was rejected under the ICA as the Government concluded that it did not represent a net benefit to Canada.[20] The Saskatchewan Government opposed the bid for several reasons. First, according to Premier Brad Wall, as the world's largest producer of potash Saskatchewan wished to retain control of an important strategic asset.[21] Second, a Conference Board of Canada study (2010) showed that Saskatchewan stood to lose nearly C$2 billion in royalty payments over 10 years if BHP Billiton acquired Potash Corp.[22] While the study did recognize the risks of the takeover, it also noted that the takeover would have few negative effects and would be of benefit to Canada. After much debate, Industry Minister Tony Clement rejected the bid saying he did not believe that the investment would be of a net benefit to Canada. The Government did not offer a clear explanation for rejection, leaving many to wonder what constitutes a net benefit in the government's eyes and if there were other motives for their decision.[23] The government did not use the act in accordance with its purpose and instead of making an economic decision based on empirical

---

[17] Frigon, *The Foreign Investment Review Process in Canada: Background Paper*5.
[18] Dany H. Assaf and Rory A. McGillis, *Foreign Direct Investment and the National Interest: A Way Forward* (Montreal, Canada, Montreal: Institute for Research on Public Policy,[2013]).
[19] Anupreeta Das, Scott Kilman and Liam Pleven, "A $39 Billion Food Fight --- Canada's Potash Corp. Rejects Bid by Miner BHP to Tap Agriculture Market," *Wall Street Journal*Aug 18, 2010, 2010.
[20] Assaf and McGillis, *Foreign Direct Investment and the National Interest: A Way Forward* ,12.
[21] Collins, *Recent Decisions Under the Investment Canada Act: Is Canada Changing its Stance on Foreign Direct Investment?*158.
[22] Michael Grant, Michael Burt and Lin Ai, *Saskatchewan in the Spotlight: Acquisition of Potash Corporation of Saskatchewan Inc.— Risks and Opportunities* (Canada: The Conference Board of Canada,[2010]).

[23] Collins, *Recent Decisions Under the Investment Canada Act: Is Canada Changing its Stance on Foreign Direct Investment?*159.

evidence the government made a politicized decision intended to boost support for an upcoming election.[24]

Rejecting both deals can send negative signals to the markets and makes investors think twice about investing into Canada. In addition, Premier Wall's description of potash as a strategic asset that should not be sold to foreign interests added a new term to the public debate.[25] Despite the federal government's position that strategic asset is not a term used in the ICA or in the assessment of foreign takeovers, use of the term has persisted. These new elements have important implications for the future of foreign investment into Canada, as the continued use of "strategic asset" and the addition of new assessment criteria "create an informal category of reviewable, easily politicized transactions, and [further confuses] the ICA net benefit analysis."[26]

2012 Policy Shift

Since the BHP Billiton bid, the focus of foreign investment regulation has shifted to the role that SOEs play in the Canadian natural resources sector. Two recent cases have involved SOE's from Asia investing into the energy sector in Alberta. The first case involved the Malaysian SOE Petronas. Petronas is a major player in the international natural gas markets and is a leader in LNG transportation. In 2012 Petronas issued a C$6 billion bid for Progress energy, a Canadian company with major investments in Alberta. The initial bid was rejected under the ICA and the government asked Petronas for further concessions.[27] Eventually the government did approve the deal after Petronas complied with their requests. The second, and more contentious deal was a C$15.1 billion bid by Chinese SOE China National Offshore Oil Company (CNOOC) for Calgary based Nexen. Nexen is a diversified oil and gas company with assets in the North Sea and Alberta's oil sands. Again, there was much discussion and review but the deal was eventually accepted.

---

[24] Ibid.

[25] Assaf and McGillis, *Foreign Direct Investment and the National Interest: A Way Forward*, 12-13.

[26] Ibid.

[27] Alistair MacDonald, Paul Vieira and Sharon Terlep, "Corporate News: Canada Rejects Malaysian Energy Bid," *Wall Street Journal*Oct 22, 2012, 2012.

Both the CNOOC and Petronas transactions caused much concern. The question of foreign investment evolved from one about private enterprises owning strategic assets in Canada to one about the appropriateness of allowing foreign governments to purchase Canadian natural resource companies and place an important asset in the hands of unpredictable regimes. Following the approval of the CNOOC deal, the government of Canada changed their stance on foreign investment again. Whereas before the government was concerned about private companies owning strategic assets (BHP Potash bid) the focus has now become foreign governments owning Canadian natural resources. The change in the government's stance has created more uncertainty in the review process, causing investors to question whether or not Canada is open to foreign investment. Prime Minister Harper tried to clarify the government's position by stating the following:

> When we say Canada is open for business, we do not mean that Canada is for sale to foreign governments . . . to be blunt, Canadians have not spent years reducing the ownership of sectors of the economy by our own governments, only to see them bought and controlled by foreign governments instead.[28]

Accompanying the PM's statement was a review of the ICA and how it applied to SOE control over oil sands companies. There were several changes, some more significant than the others.

- First, the government expanded the definition of SOE's in the ICA. Before the acquisitions of Nexen and Progress Energy, when assessing SOE takeovers the language stated that an SOE was an entity that was controlled directly or indirectly by a foreign government. The act now includes entities that are *influenced* directly or indirectly by a foreign government.
- Second, the increase in thresholds for review will not apply to SOEs. In 2008, a government panel suggested a gradual increase in review thresholds from C$295 million to C$1Billion.[29] However, based on new guidelines the increase in the thresholds will not apply to SOEs. This

[28] "Statement by the Prime Minister of Canada on Foreign Investment," Government of Canada, , accessed June 3, 2015, http://www.pm.gc.ca/eng/news/2012/12/07/statement-prime-minister-canada-foreign-investment.

[29] Competition Policy Review Panel, *Compete to Win: Final Report June 2008* (Ottawa, ON, CAN: Competition Policy Review Panel,[2008]). http://site.ebrary.com.ezproxy.lib.ucalgary.ca/lib/ucalgary/docDetail.action?docID=10232104&ppg=1.

means that any controlling investment by an SOE for a sum greater than the current threshold of C$354 million will be subject to review.

- Third, and the most important, investments into the oil sands for control by an SOE will be subject to automatic review and will found to be of ***a net benefit on an exceptional basis only***. The government has not given any clarification on the term exceptional net benefit, effectively leaving the industry minister with more discretion and exposing the decision to politicization.[30]

The final bullet point represents the most crucial change to the legislation. Moving forward, assessment of the policy will focus on how the change in the ICA's language from net benefit to exceptional net benefit has created confusion and effectively removed SOEs from the oil sands investment market.

Literature Review

The effects of the 2012-policy change will be assessed by completing a qualitative analysis, focusing on the effects of adding the term exceptional net benefit and subjecting SOEs to stricter regulations. Dr. Eugene Beaulieu's and Matthew Saunders' event study on how changes to the Investment Canada Act (ICA) in 2012 have eroded shareholder wealth in the oil sands will form the reasoning for discussing the financial and economic impacts of the policy change. [31] Beaulieu & Saunders' study compares company performance before the policy change and after, and suggests that since the policy announcement the stock market performance of oil sands companies has suffered because the exclusion of SOEs from the investment landscape has reduced capital in the industry. They suggest that restrictive policy will negatively affect the viability and development of oil sands companies, as they won't have the funds required to finance their growth. When reviewing the importance of continued investment by state owned enterprises (SOEs), Wendy Dobson's[32], Theodore Moran's[33], and Margaret Cornish's[34] studies will guide

[30] Dobson, *China's State-Owned Enterprises and Canada's FDI Policy*
[31] Eugene Beaulieu and Matthew Saunders, *The Impact of Foreign Investment Restrictions on the Stock Returns of Oil Sands Companies* (Calgary, Alberta: The School of Public Policy,[2014])..
[32] Ibid.

my assessment. In regards to the government's policy change, the authors suggest that SOE behavior has changed enough over the last decade that a policy of only allowing SOE investment on an "exceptional basis" is neither fair nor efficient. Responding to statements made by the Prime Minister about SOEs operating as policy arms of their government[35], Dobson and Moran propose that this is not true and that Asian SOEs are increasingly operating on a commercial basis and do not present a threat to the Canadian economy. Dobson's analysis also includes a review of the changing incentive structure for SOEs in China, with her research suggesting that the pressure placed on SOEs by the Chinese government and global competitors is forcing them to operate according to according to market standards.[36] Changes in policy within the Chinese government and a renewed focus on SOE efficiency mean that they are no longer complete extensions of the government, and that they are being given some autonomy to operate on a commercial basis. Whereas before the priorities of the state ruled, a renewed policy focus as laid out in *China 2030: Building a Modern, Harmonious and Creative Society* includes using state resources more efficiently and modernizing the state's governance of SOEs by promoting the idea that the state's role should be to produce public goods only.[37] The evolution of Chinese SOE behavior suggests that updates to the ICA based on fears about non-commercial objectives and foreign government influence are misguided and may require revision.

When reviewing the cumulative effect of restrictive government policy on total foreign direct investment

---

[33] Theodore H. Moran, *Chinese Foreign Direct Investment in Canada: Threat Or Opportunity?* (Ottawa, ON, CAN: Canadian Council of Chief Executives,[2012]). http://site.ebrary.com.ezproxy.lib.ucalgary.ca/lib/ucalgary/docDetail.action?docID=10586084&ppg=1.

[34] Margaret Cornish, *Behaviour of Chinese SOEs: Implications for Investment and Cooperation in Canada* (Toronto, ON, CAN: Canadian International Council,[2012]). http://site.ebrary.com.ezproxy.lib.ucalgary.ca/lib/ucalgary/docDetail.action?docID=10545153&ppg=1.

[35] Harper, *Statement by the Prime Minister of Canada on Foreign Investment*

[36] Wendy Dobson, *China's State-Owned Enterprises and Canada's FDI Policy* (Calgary, AB, CAN: School of Public Policy, University of Calgary,[2014b]). http://site.ebrary.com.ezproxy.lib.ucalgary.ca/lib/ucalgary/docDetail.action?docID=10863153&ppg=1.

[37] Development Research Center of the State Council and The World Bank, *China 2030 : Building a Modern, Harmonious, and Creative Society* (Herndon, VA, USA: World Bank Publications, 2013). http://site.ebrary.com/lib/ucalgary/docDetail.action?docID=10685350&ppg=1.

and alternative policy suggestions, the works of Steven Globerman[38], Simone Collins[39], and Dany Assaf & Rory McGillis[40] will be used. Their analysis reviews the effects of restrictive foreign investment policy on all sectors of the economy and is not just limited to the energy sector. Separate reports published by Collins and Assaf & McGillis provide a historical timeline of government intervention in the Canadian market. Collin's review provides important background on the rejection of bids for Potash Corp and MacDonald Dettwiller and Associates. She argues that past rejections under the Harper government have created a precedent for government intervention, and inconsistent policy application has created the impression that acceptance is more about politics than economics. Without clarification on how the ICA will be applied moving forward, Canada will lose credibility in the global community and investment dollars will flow elsewhere.[41] Assaf & McGillis argue similar points, but their report includes an analysis of the 2012 changes to the ICA and the role of SOEs. In their review, Assaf & McGillis propose that there is little benefit to policy that shuts SOEs out of the oil sands; instead they suggest that additional guidelines are needed to clarify what aspects of their investments are relevant to the review process. If there are concerns about national security or environmental standards, they suggest that those should be clearly stated and addressed by the policy. No good is served by maintaining an unclear policy as it allows for political motives to rule over economic sense and instills doubt in the mind of foreign investors.[42] Incorporating this research is useful for gaining an understanding of the potential for strict regulations in one sector to impose negative spillover effects in another.

In addressing the effects of increased regulatory barriers on capital and acquisition costs this paper will take a theoretical approach that incorporates financial and economic theory supported by industry case

---

[38] Steven Globerman, *An Economic Assessment of the Investment Canada Act* (Canada: The Fraser Institute,[2015]).

[39] Collins, *Recent Decisions Under the Investment Canada Act: Is Canada Changing its Stance on Foreign Direct Investment?*, 141-164

[40] Assaf and McGillis, *Foreign Direct Investment and the National Interest: A Way Forward*, 0_1-46

[41] Collins, *Recent Decisions Under the Investment Canada Act: Is Canada Changing its Stance on Foreign Direct Investment?*160

[42] Assaf and McGillis, *Foreign Direct Investment and the National Interest: A Way Forward*39

studies and corporate surveys. The economic theory of bid and reservation pricing states that an acquirer will pay a price equal to their own net present value (NPV) analysis of a company's cash flows using their own cost of capital and that the target will only accept a bid above their own NPV analysis. Differences in costs of capital will result in a spread between the targets bid price, which is the minimum bid, and the acquirer's reservation price, which is the maximum price. Hypothetically, an omniscient government that can predict the acquirer's reservation price could demand undertakings equal to the value of the spread without discouraging foreign investment from taking place, while increasing total welfare. However, the ability of the government to identify pricing gaps is limited. Therefore if the pricing gap is small or non-existent, requiring the foreign investor to provide an exceptional net benefit by subjecting them to stricter and unanticipated undertakings will increase the costs to the acquirer, decrease the price paid to the target, and likely discourage foreign investment from taking place. In the long run this will reduce total Canadian welfare as existing domestic owners will fail to realize capital gains, and the Canadian economy will not benefit from the positive spillovers of increased FDI.[43]

Capital market theory will form the basis for assessing the impact of regulatory restrictions on the cost of capital for junior oil sands companies. New policy in the ICA that only allows for SOEs to invest into the oil sands in exceptional circumstances reduces available financing options in the industry leading to an increase in the weighted average cost of capital (WACC) for firms. The WACC is a measure of a firm's cost of capital that weights each category of a firm's capital proportionately. It is composed of the following: Re = cost of equity; Rd = cost of debt; E = market value of the firm's equity; D = market value of the firm's debt; V = E + D = total market value of the firm's financing (equity and debt); E/V = percentage of financing that is equity; D/V = percentage of financing that is debt; Tc = corporate tax rate.

$$WACC = \frac{E}{V} * Re + \frac{D}{V} * Rd * (1 - Tc)$$

As the role of SOEs in the industry has grown over the last decade, their capacity and willingness to

[43] Globerman, *An Economic Assessment of the Investment Canada Act*19

participate in mergers and joint ventures has been an important source of industry growth. Under the current policy, SOEs don't have the ability to participate in the market reducing available equity capital and forcing borrowers in the industry to compete for domestic lending in the debt markets. As industry demand for debt capital surges, and the supply decreases, the price of debt or Rd will increase. Increases in Rd mean that financing becomes more expensive and company WACC's rise. Higher WACCs mean that project NPVs will be less and the profitability of firms will decrease. If the cost of capital is too high to produce positive NPV projects there will be underinvestment in the industry leading to a decline in the profitability and development of junior firms.[44]

Finally, when assessing the impact of the revised application of the net benefits test on M&A activity and Canada's investment reputation, this review will look at discussions in the public domain, corporate reports, and legal documents released by firms known for advising firms on M&A within Canada. Specifically, reports by the law firms Stikeman Elliott[45] and Osler[46]will provide the inside knowledge on investor perception of the Canadian investment market. Because these firms are the leading advisors on M&A transactions into the energy industry, their reports constitute an unfiltered and legally sound analysis of the ICA and the effects new regulation have on investment activity. In their analysis, both law firms report that foreign investors, particularly those from Asia, are increasingly confused about what represents an exceptional net benefit and whether their offers will be scrutinized more for political reasons than economic reasons. They also note that because of continued confusion on how the new rules apply, firms are more cautious in their bids because they don't want to spend the time and money to navigate the regulatory process. Over time, continued inconsistency in application of the policy can lead to a negative reputation effect causing investors to question Canada as a destination for their capital.[47]

[44] Beaulieu and Saunders, *The Impact of Foreign Investment Restrictions on the Stock Returns of Oil Sands Companies*, 2

[45] Glenn Cameron, *2015 Oil & Gas M&A Trends*Stikeman Elliott,[2015]).

[46] Peter Glassop and Frank Turner, *Capital Markets Report 2014*,[2014]).

[47] Ibid.

Methodology

To shed light on the topic, this paper will employ a qualitative review of the literature. Because the policy changes are relatively new, very few academics have conducted econometric analysis on the effects of the policy on the oil sands, but there are theoretical approaches in the literature. This paper will use a theoretical approach that combines bid and reservation pricing to assess the importance of foreign investment and postulates that regulatory restrictions that go beyond normal expectations reduce the price and volume of bids for Canadian firms. [48] To support the theory that SOE investment is imperative to the development of the oil sands, analysis will integrate a review of total and SOE investment into the industry since enactment of the new policy. Analysis will strive to show that SOE participation should be encouraged as there is limited capital available to develop the industry and show that because SOEs often place higher bids for firms than their private counterparts they contribute to an increase in total welfare. Countering viewpoints on the necessity of state owned investment are separate reports published by Dambisa Moyo [49] and Matt Krzepkowski & Jack Mintz[50] that suggest that more should be done to limit SOE participation in the energy sector. Opposing views will be considered and then analyzed to show that many of the concerns raised by critics are outdated and do not consider the evolving nature of state owned enterprises. To ensure validity of the research design, literature and analysis has been restricted to the time period after 2008. Containing analysis within this time period will allow for a review that includes the changing landscape in SOE activity and their approach to investing and will integrate data that accounts for the evolving role of the Alberta oil sands.

Adding the term exceptional to the net benefits test when reviewing SOE investments into the oil sands has resulted in unintended consequences that have scared away investors from the oil sands. Evidence

[48] Globerman, *An Economic Assessment of the Investment Canada Act*, 15

[49] Dambisa Moyo, *Winner Take all : China's Race for Resources and what it Means for the World*Harper Collins, 2012).

[50] Matt Krzepkowski and Jack Mintz, *Canada's Foreign Direct Investment Challenge: Reducing Barriers and Ensuring a Level Playing Field in Face of Sovereign Wealth Funds and State-Owned Enterprises* (Calgary, AB, CAN: School of Public Policy, University of Calgary,[2010]). http://site.ebrary.com/lib/ucalgary/docDetail.action?docID=10425531&ppg=1.

used to support the hypothesis that policy changes have deterred investment from the oil sands will be sourced from surveys and public statements made by investors with an interest in investing into Canada. Analysis of investor sentiment suggests that the effects of the policy change are not just theoretical and that there are real world consequences that have manifested themselves in investor's publicly condemning policy, leading to uncertainty in the investment community and smaller companies scrambling to find new sources of capital. Because the screening process is confidential, much of what is reported on investment decisions comes from analyst reports, public statements, and from the advising law firms. Therefore this project will use legal analysis produced by advising firms in the industry to represent the viewpoint of foreign investors.

While evidence shows that SOE activity in the oil sands has dropped off dramatically, there may be other mitigating factors for this drop off, including Chinese government officials scrutinizing SOE investments more carefully, increase in oil sands operating costs and decrease in the price of oil, continued delays in tide water access, and a slow-down in the Chinese economy.[51] There has also been increased competition for investment dollars from the cheaper and more profitable shale oil industry in the US, which will draw both state and non-state capital away from the oil sands.[52] Readers should also be cautioned, as there is only one quantitative review of the policy change, which does not account for the recent steep drop off in oil prices and the increasingly negative sentiment towards the oil sands in general.

FDI Landscape

This section will review recent trends in FDI into the oil sands and split them into two periods: pre-policy change and post. The pre-policy period will analyze the shift in the FDI landscape, with China emerging as a dominant player in the global FDI market. In the regional context, this period includes the expanding role of Asian SOEs in developing the Alberta energy market up until 2012. The post-policy analysis will

[51] "After a Decade of Canadian Investment, China is Pulling Back. What Now?" Alberta Oil Magazine, last modified June 232015, http://www.albertaoilmagazine.com/2015/06/china-pulls-back-on-canadian-investment/.

[52] "Capital Concerns," Alberta Oil Magazine, last modified December 15, 2014, accessed June 12, 2015, http://www.albertaoilmagazine.com/2014/12/capital-concerns/.

include a study of the rule changes on regulatory costs, investment flows, and costs of capital for oil sands companies. Finally, this section will conclude that poor government policy choices have resulted in a material effect on oil sands investment and have created a negative reputation effect for the industry.

Rise of Asia

The new rules regarding SOE investment are intended to apply to all nationalized companies investing into the oil sands, but evidence suggests that the legislation has unfairly targeted Asian SOEs, specifically from China. As China is the leader of the SOE pack, any policy targeted at Asian countries is essentially targeting China, therefore it is important to separate out Asian and Chinese SOEs from non-Asian and look at the their distinctive characteristics.

Asian investors present a unique opportunity for investment. Led by China, Asian countries are becoming bigger players in the foreign investment market. It is expected that by 2020 China's total outward FDI stock will increase from US$509 billion to anywhere between US$700 billion on the conservative side and US$1-2 trillion on the optimistic end. In either scenario China's global FDI stock will be on par with Canada and Japan's FDI stocks, which have been accumulated over a much longer time period.[53] Looking at the Canadian context, in 2014 inward FDI from Asia to Canada increased by 13% from 2013, while Chinese investment into Canada increased by 2602% between 2005 and 2014.[54] With the majority of FDI into Canada coming from the US-with the latest figures showing that US investors increased their holdings in Canada by $19.5 billion to $361.4 billion in 2014-diversification in the form of more Asian investment is the key to limiting portfolio risk and volatility.

As emerging economies grow, so does their wealth. However, many of these countries are not economically mature so they rely on SOEs to conduct investment domestically and internationally; as a result, they have grown into massive multinationals with billions of dollars in capital. For example, in

---

[53] Dobson, *China's State-Owned Enterprises and Canada's FDI Policy*

[54] "Canadian Inward Foreign Direct Investment from Asia," Asia Pacific Foundation of Canada, , accessed June 12, 2015, http://www.asiapacific.ca/statistics/investment/inward-foreign-direct-investment/canadian-inward-foreign-direct-investment.

2014 three Chinese energy-related national oil companies (NOC) were ranked in the top 10 of Fortune's annual global 500 ranking of the largest companies in the world.[55] These companies are backed by large amounts of capital and have access to favorably priced credit allowing them to acquire companies often for considerable premiums (Nexen Inc. was acquired at 61% premium to its fair value) and grow their reserves faster than non-state owned competitors. Over the last decade PetroChina has led the charge amongst SOEs and has grown its production from 2.6 million barrels of oil equivalent per day (boepd) to 4 million, while Saudi Aramco has added 1.2 million boepd, Qatar Petroleum has doubled its production to 2.4 million boepd, and Kuwaiti and Brazilian national oil companies have each added about 1 million boepd. While all of this has been going on, the traditional large multinational corporations such as Exxon Mobil and Chevron have added only 100,000 and 200,000 boepd respectively, while Royal Dutch Shell and BP have each lost production. There are other factors to consider such as national oil companies having access to new reserves in their home country that supermajors are not allowed to access. But the broader theme shows that SOEs are major players in the industry and that they play in important role in developing high risk/high cost projects. [56]

Pre-Policy SOE Participation in the Canadian M&A Market

A key factor to the development of the oil sands market is competition amongst firms, and competition for firms. Rivalry leads to efficiency and innovation, as companies know that if they cannot keep up with the pace of change in the industry the likelihood of their firm being bought out increases. Mergers & Acquisitions (M&A) are a form of market natural selection as larger more efficient firms consume the weaker underperforming firms leading to a healthier economy and better competition.[57] Before the implementation of stricter regulations against SOE participation in the oil sands, M&A activity led by Chinese SOEs was booming. From 2005-2015 Chinese private companies and SOEs invested nearly $50

[55] "Global 500," Fortune Magazine, , accessed October 20, 2014, http://fortune.com/global500/.

[56] "The World's Biggest Oil and Gas Companies-2015," Forbes, , accessed June 21, 2015, http://www.forbes.com/sites/christopherhelman/2015/03/19/the-worlds-biggest-oil-and-gas-companies/.

[57] Dobson, *China's State-Owned Enterprises and Canada's FDI Policy*

billion into Canadian energy assets, reaching a peak of $27 billion in 2012.[58] The table below shows major Chinese investments into the Canadian energy industry, all of which were conducted by SOEs.

Year	Investor	Investment	Province (City)	Per cent Share	SOE?	Value ($ millions)
OIL & GAS						
2009	Sinopec	Northen Lights	AB (Calgary)	10	Yes	N/A
	CNPC	Venerex	AB (Calgary)	100	Yes	499
	PetroChina	Athabasca Oil Sands Corp.*	AB (Calgary)	60	Yes	1,900
2010	Sinopec	Syncrude	AB (Calgary)	9	Yes	4,657
	China Investment Corporation (CIC)	Peace River	AB (Calgary)	45	Yes	702
	CIC	Penn West Energy Trust, Joint Venture	AB (Calgary)	45	Yes	1,230
2011	CNOOC	OPTI	AB (Calgary)	100	Yes	1,997
	Sinopec	Daylight Energy Limited	AB (Calgary)	100	Yes	2,000
	CNOOC	Northern Cross (Yukon) Limited	AB (Calgary)	N/A	Yes	N/A
	Sinopec	Enbridge Inc.	ON (Toronto)	N/A	Yes	100
2012	PetroChina	Athabasca Oil Sands Corp.*	AB (Calgary)	100	Yes	680
	CNOOC	Nexen	AB (Calgary)	100	Yes	15,100 (est.)
	PetroChina	Royal Dutch Shell PLC*	BC (Groundbirch)	20	Yes	1,000
	PetroChina	Encana*	AB (Calgary)	Failed	Yes	5,400

Sources: Michael Grant, "Fear the Dragon? Chinese Foreign Direct Investment in Canada," (Ottawa: The Conference Board of Canada, June 2012); and various newspapers and public websites.

[a] Jointly with Telus and Bell.

** Investment in properties and projects instead of the entire company.*

Moreover, since 2010 Asian SOEs have accounted for more than 25% of total capital invested into the oil sands, representing the largest source of foreign source capital after the United States. It can be argued that the additional capital provided by Asian SOEs has led to the sectors impressive growth, particularly the rise of junior oil sand's companies. Not only are Asian SOEs providing capital, they are also bidding more often and at higher premiums for assets and companies than their competitors. For example, Chinese companies completed 80 transactions from 2010-2015, and in 2012 prior to the policy change Chinese companies paid on average a 49% premium for oil and gas assets, 18% higher than the industry average.[59]

[58] Glassop and Turner, *Capital Markets Report 2014*, 10

[59] Ibid.

Post-Policy effects on Investment Market

This section will examine the post policy effects of adding the term exceptional net benefit to the ICA and show that by increasing barriers to SOE participation in the oil sands, the new policy stance has materially affected the oil sands investment market. Analysis will focus on how the current policy has increased regulatory costs, decreased investment, and increased capital costs. Finally, it will conclude that unclear policy implementation has culminated in a negative reputation for the oil sands as a place for future investment, which will threaten potential long-term investment decisions.

Increased Regulatory Costs

From an economic perspective undertakings prescribed by the government that go beyond normal regulatory compliance measures cause harm to the Canadian economy in the long term. When a company agrees to terms that go beyond their expectations to meet the exceptional net benefits test, they are increasing their costs, which will reduce the bid price for Canadian acquisition targets and reduce capital gains that would accrue to Canadian business owners. Over time, higher costs imposed on acquirers can result in a decrease in M&A activity.[60] Foreign firms place bids that are higher than the domestic firm's minimum acceptable bid for two reasons. First, through management experience, efficiency in operations, and internal expertise the foreign firm can create synergies that allow them to generate greater cash flows than the domestic firm cannot. Second, foreign acquirers often have lower costs of capital; this is especially true with SOEs as their financing is provided by government institutions at low rates. The combination of these two factors results in foreign acquirers paying premiums to acquire companies. By subjecting SOEs to a stricter acceptance process, the government has pushed the costs for acquirers up by increasing their cost of compliance, reducing operational efficiency, and by increasing regulatory risk, which can put upward pressure on costs of capital.[61] Over time increased regulatory barriers decrease the number, and size of bids as companies will avoid paying the high legal, banking, and operating fees to

[60] Globerman, *An Economic Assessment of the Investment Canada Act*, 15

[61] Ibid.

comply with government undertakings, resulting in a decrease in welfare for Canadian firms.

Drop off in FDI

Since 2012 uncertainty in the application of the ICA has turned both potential SOE and non-SOE investors away from Alberta's oil sands. Empirical evidence shows that after the policy announcement, FDI into the oil sands fell by 92%, from C$27 billion in 2012 to C$2 billion in 2013 and as a result the performance of oil companies suffered.[62] Furthermore, while investment into the oil sands dropped from 2012 to 2013, global FDI actually increased by 11% to US$1,460 billion, a number on pace with pre financial crisis levels.[63] Regionally, FDI into North America grew by 6% during this period led by investment into Canada increasing by 49% to approximately US$64.1 billion.[64] This shows that while global and regional FDI was increasing from 2012-2013, investment into the oil sands was decreasing.

More recent data shows that energy sector M&A rebounded and increased in 2014, reaching $63 billion by the end of the year representing both conventional and unconventional oil plays. But when looking at the details, it is clear that SOEs have reduced their investment. Since 2012 there have been no significant SOE investments into the oil sands and only one deal conducted by a Chinese SOE. The two most notable transactions involving SOEs were Indian Oil Corporation's purchase of a 10% interest in Progress Energy, and Kuwait Petroleum Corp.'s C$1.5 billion purchase of Chevrons interests in the Duvernay shale fields in Alberta. As for Chinese investment into the oil sands, there have only been a handful of smaller deals since 2012, with only one deal conducted by an SOE, Yanchang Petroleum Inc.'s $232 million bid for Novus Energy.

Another interesting trend amongst private Chinese investors is to only make investments below the regulatory threshold of $354 million. Deals structured in this manner are not reviewable under the ICA

---

[62] Beaulieu and Saunders, *The Impact of Foreign Investment Restrictions on the Stock Returns of Oil Sands Companies*, 2.

[63] UNCTAD, *Global FDI Rose by 11%; Developed Economies are Trapped in a Historically Low Share*UNCTAD,[2014]).

[64] Ibid.

and allow Chinese investors to avoid the embarrassment that could come with a rejection.[65] This shows that even private investors without links to the government are wary of investing large sums into Canada because they are unsure if the government will accept their proposal if it goes to review. Because there has been no clarification on how the rules are applied, an investor bidding above the threshold could be deemed to be under the influence of the Chinese government and thus be subjected to the exceptional net benefits test, decreasing the likelihood of acceptance. For Canadian companies that value themselves near the threshold, the size and number of bids will also be less as investors may look to avoid the review process resulting in the target company being forced into accepting a bid at a lower valuation.

Higher Costs of Capital

Junior oil sands firms have felt the brunt of a policy that has made it harder for state owned enterprises (SOEs) to participate in the M&A and Joint Venture (JV) market. Because the oil sands are unique in both their capital requirements and reserve lives, the universe of firms with sufficient capital to fund and maintain an oil sands project is limited, as projects require significant upfront investments to achieve an acceptable level of production and a positive return on investment. While larger companies such as Suncor and Canadian Natural Resources can use a combination of cash on hand, equity offerings, and their high credit ratings to attain favorable debt terms to develop projects, for junior oil sands companies the story is much different. Because it is costly to go to equity markets, juniors often have to partner with domestic and foreign investors in the form of joint ventures, divest their assets to outside interests, or take on large amounts of debt priced at a premium (juniors are inherently more risky) to fund their projects. As the role of SOEs in the development of the oil sands has grown over the last decade, juniors have come to depend on them as an important source of financing. The current policy of restricting the ability of SOEs to invest into the industry reduces the flow of capital into the industry and has a disproportionate effect on smaller oil sand companies, and so their performance suffers.

---

[65] Snyder, *After a Decade of Canadian Investment, China is Pulling Back. what Now?*

Regulating out SOEs from the oil sands depletes the pool of available capital and leads to more competition for credit, which results in lenders charging higher premiums to already unproven junior firms to offset the risk of their loans. For example, Sunshine Oil Sands Ltd., a junior oil sands firm searching for capital was able to secure $200 million out of a possible $325 million in financing in August of 2014. But to attract that level of interest, they had to shorten the maturity on their bonds from five years to three years and agree to pay a yield of 17%, a 10% premium on the average yield of junk bonds that are rated CCC. Analysts suggest that part of the reason why Sunshine paid such a large premium was because of increased competition for credit and lack of willing partners in the JV market.[66] If debt is priced at a 10% premium for an already highly leveraged and risky firm, the WACC increases, and as a result the performance and viability of junior firms suffers as investing into new projects and servicing debt becomes more expensive. To further illustrate this point we can examine junior companies that have recently filed for creditor protection, and have indicated that foreign investment regulations are to blame.

Laricina Energy

Laricina energy is a junior oil sands firm operating in Alberta, with two pilot projects currently being developed in the Western Athabasca region.[67] Laricina is highly regarded in the oil sands industry for their use of innovative SAGD technology to produce oil in a region that has very limited development because of how difficult it is to develop. While Laricina's operations have not been scaled up to commercial production yet, their success so far has been encouraging and represents a shift in the development of that region.

Laricina's CEO, Glen Schmidt has been one of the most outspoken critics of the federal government's new policy. Commenting on the policy in March 2013, Schmidt stated that any constraint on his company's ability to finance its operations would scare away investors and force management to delay

[66] Cruickshank, *Capital Concerns*

[67] . *Laricina Energy 2014 Annual Report*Laricina Energy,[2015b]).

taking the company public. He also suggested that by cutting off one of the world's largest sources of capital, the option to sell off potential projects outright and use the proceeds to finance other projects would be off the table. Over time the new policy would force companies to turn to other more costly and time consuming options such as debt financing and joint ventures, which would ultimately effect capital inflow and production.[68] While he was critical of the policy, he was also optimistic that the effects would not be as harmful as predicted.

Fast forward to 2015 and much has changed. In February, Laricina filed for creditor protection as the Canada Pension Plan Investment Board (CPPIB) recalled $150 million in loans. The fact that there was no alternative way for Laricina to raise additional capital, whether through a merger or joint venture is a function of the uncertainty of working with innovative technology, volatile energy markets, and foreign investment restrictions.[69] Schmidt believes that his company would not have been in this position if it weren't for the changes to the Investment Canada Act. In the months before the 2012 rule changes, Laricina was in talks to close $350 million in private financing, but as Schmidt argues that opportunity "evaporated when the federal government put in the new regulations because it created a tremendous amount of uncertainty."[70] Had Laricina been able to secure that financing, they would not be in this position and the possibility of an innovative producer having to file for creditor protection would likely not be on the table.

While Laricina's problems are documented and their CEO has directly attributed rule changes to its current struggles, there are other junior firms in the industry struggling as well, and evidence suggests that lack of capital availability has played a part. Heading into November 2014, small firms such as Connacher Oil & Gas, Southern Pacific Resources Corp., Sunshine Oil Sands were all struggling with

---

[68] "Will Canada's New Foreign Investment Rules Kill Oil Sands Development," Alberta Oil Magazine, last modified March 1, accessed June 10, 2015, http://www.albertaoilmagazine.com/2013/03/foreign-investment-oilsands/.

[69] Deborah Yedlin, "Laricina's Financial Struggles Highlight Challgenes of Developing New Technology," *Calgary Herald*, sec. Business-Energy, 2015.

[70] Ibid.

their share prices dropping by 45.7%, 87%, and 42% respectively.[71] The CEO of Connacher at the time, Chris Bloomer, suggested that lack of capital was partly to blame as competition for credit was becoming more intense and that the 2012 revisions to the Investment Canada Act only compounded the problem. Since then, these companies have either gone through a restructuring or are on the brink of receivership with their management citing a lack of capital availability to fund them through a low price oil environment as a key factor to their struggles.[72] As mentioned above, when a company is looking to raise funds and there is a limited group of buyers for assets, partners for joint ventures, and fierce competition for financing, costs of capital will rise. If servicing debt becomes too expensive, companies will look to refinance or sell off assets, and in some cases default on their loans and go into receivership.

The current policy stance of restricting the ability of SOEs to invest into the oil sands has negatively affected capital flows and the result has been a disproportionate impact on the viability of junior oil sands companies. The long-term effects of such a policy will be less innovation and fewer emerging players in the market as smaller companies will have a harder time finding adequate capital to fund their operations. Moreover, if application of the policy remains discretionary, and there is no consistency on how it is applied, Canada will develop a negative investment profile amongst foreign investors.

Long Term Effect of the Current Policy

Increased scrutiny and hostility against state owned acquisitions of Canadian energy companies has created the perception that Canada is closed off to investment and that politics plays too large of a role in the review process. In game theory, a company's reputation is considered vital to its success. If we assume that the Canadian Government is a firm, and their product is selling the attractiveness of Canadian companies, then their strategy of building a strong reputation for investment attractiveness has failed. Successful firms know that branding and reputation is just as important as the product they sell, and one

[71] "Junior Oilsands Players Brace for Stunted Growth Ahead," Financial Post, , accessed June, 16, 2015, http://business.financialpost.com/news/energy/junior-oil-sands-players-brace-for-stunted-growth-ahead?__lsa=4b48-3b3c.

[72] Ibid.

bad experience for a customer can create a lasting effect unless it is meaningfully addressed. Investment into Canada is no different.

Felix Chee, head of China Investment Corp's operations in Canada, and one of the most active minority investors into the Canadian energy sector responded to the 2012 rule changes by suggesting that they would change business relations between Canada and China, "This appears to be stringent. I am pleased to see the [Nexen and Progress] deals approved. But going forward one would expect Chinese companies to re-evaluate their investment plans in Canada to ensure they can still make desirable investments under the new rules."[73] More recently, Acceloros' CEO Naguib Sawiris had some bitter comments for the Government of Canada after his bid for Manitoba Telecoms Company Allstream UTS was rejected because of national security concerns. Sawiris' commentary is one of the first public statements from a major investor regarding political whim and unclear application of the updated ICA:

> I am finished with Canada, I tell you. The world is big and my money can go anywhere, I regret that we wanted to invest in Canada. It's totally unacceptable to have foreign investors waste their time and money, hold their capital captive, and then come up with a comment like that. The incumbents have enough muscle to prevent real competition in the market, and my advice for any foreign investors is not to waste their time investing in Canada. They change their laws for foreign investment, and then they block you.[74]

Sawiris' remarks represent a broader issue. If a successful investor with previous holdings and relationships within Canada can be rejected based on what seems like political whim, what does that mean for new investors and companies within the oil sands? Wendy Dobson has argued that "those firms likely to suffer most from reduced funding, paradoxically, will be emerging players whose viability and pace of development could be undermined by perceptions among potential investors of 'political whim' in Canada."[75] If potential suitors fear that poorly defined legislation allows for political interference and decreases the probability of their proposal being accepted, they are less likely to pay the high banking, legal, and regulatory fees to submit a bid for a Canadian company. Data supports this argument, as M&A

---

[73] Glassop and Turner, *Capital Markets Report 2014*, 10

[74] Christine Dobby, "Egyptian Telecom Investor Naguib Sawiris 'Finished with Canada,' Plans to Spend Money Elsewhere," *Financial Post*, sec. FP Tech Desk, 2013.

[75] Dobson, *China's State-Owned Enterprises and Canada's FDI Policy*

activity in the oil sands fell by 80% the year after new legislation was announced, with analysts arguing that new rules related to SOE investment were a factor in this drop.[76]

The changes to the ICA have had consequences on investor sentiment that go beyond just state owned firms. A recent survey released by Citibank on Canadian M&A in February 2015 offers some insight on this trend. The report surveys CEO's, VP's, and Managing Directors at firms across various industries and asks them what their opinions are on a variety of trends and developments in the Canadian M&A market. The authors of the report asked respondents the following question, "Under the Investment Canada Act, investments in Canadian businesses, particularly those by foreign state-owned enterprises, are receiving greater scrutiny. How will this impact the level of Canadian cross-border M&A activity in 2015?" 20% responded by saying that the new rules will significantly impact M&A activity with another 69% saying that it would have somewhat of an impact. 89% of respondents believe that new foreign investment regulations will deter investment into Canada.[77] The fact that an overwhelming majority of the interviewed decision makers believe that the Act will deter M&A is significant. Whether or not their concerns are justified, the negative reputation effect created by previous rejections and changes to the ICA suggest that investors will avoid investing into Canada.

The preceding section has shown the importance of foreign capital in the development of the oil sands. A reduction in available capital brought on by limiting state owned investment and unclear policy application can negatively impact the development of emerging players in the industry. This section has also shown that recent rejections, politicization, and ambiguity in how the Investment Canada Act (ICA) is applied has created a negative reputation effect, which has caused investors to think twice about investing into the Canadian market. If the current policy stance is not revised, and investors remain unclear on how the new rules apply to their proposal, the Canadian market will suffer in the long term, as

[76] "Deep-Pocketed Private Equity Firms Eye Canada's Oil Patch," Financial Post, , accessed October 21, 2014, http://business.financialpost.com/2014/04/03/deep-pocketed-private-equity-firms-eye-canadas-oil-patch/?__lsa=36c8-7f7e.

[77] "Charting the Course: The Future of Canadian M&A in Volatile Markets," Citibank, , http://files.newswire.ca/1397/Citi_MA_Report.pdf.

capital will flow to other, better-defined jurisdictions.

Arguments against SOE Investment

While the importance of SOE investment and the negative effects of the current policy have been established in previous sections, there are still those who argue against state owned investment. Common themes that emerge when discussing the negatives consequences of SOE investment into the oil sands include: market inefficiency, ownership concentration, and national security concerns regarding company motives.

Jack Mintz argues that the government should continue to restrict SOE investment, as they do not operate on a commercial basis and are only buying resources to secure supply for their own growth, leading to inefficiencies in operations and price distortions.[78] Mintz' point of view is supported by top security officials in Canada who have insisted that "Chinese state-owned companies like CNOOC remain closely allied to leaders of the Communist Party, and operate as policy arms of the Beijing government rather than commercial companies, especially in times of crisis".[79] In addition, he suggests that because SOEs are subsidized by their home governments and can obtain cheap financing, they are able to bid at higher rates than the private market and purchase firms without necessarily having better management. Over time, SOE participation may allow for inefficient firms to operate longer, thereby leading to inferior performance and loss of profits, causing a decrease in total welfare.[80,81]

SOE investment also brings about a fear that foreign countries led by China are buying up all of Canada's resources and if the trend continues they will have a disproportionate ownership stake in the oil sands allowing them to exert undue influence over prices and policies in Canada. In her study of investment

---

[78] Jack Mintz, "Harper is Right on SOE Takeovers," *The National Post*, sec. Financial Post, 2012.

[79] "CNOOC's Bid for Nexen Fuels Security Concerns," The Globe and Mail, , accessed October 20, 2014, http://www.theglobeandmail.com/globe-investor/cnoocs-bid-for-nexen-fuels-security-concerns/article4619564/.

[80] Mintz, *Harper is Right on SOE Takeovers*

[81] Krzepkowski and Mintz, *Canada's Foreign Direct Investment Challenge: Reducing Barriers and Ensuring a Level Playing Field in Face of Sovereign Wealth Funds and State-Owned Enterprises*

patterns of BRIC countries (Brasil, Russia, India, China), Dambisa Moyo notes that the current Chinese strategy of aggressively investing into natural resources for future growth is turning China into a monopsonist – the key buyer of commodities such as coal, copper, and oil – making them a price maker in the global commodities markets.[82] Criticism also includes worries about national security, as recent high profile hackings and scandals within China and abroad has made Canadians question the motives behind Chinese foreign investment.

Response to SOE Criticism

Market Efficiency

While critics such as Jack Mintz argue that SOEs are extended unfair advantages by their home governments and that they do not contribute to efficient markets, recent studies indicate that this has changed. In response to claims that SOEs are extended unfair financing advantages Margaret Cornish refers to an example of a merger where a Chinese SOE was extended financing for 80 basis points cheaper than the announced commercial lending rate of 4.85%:

> Given the quality of the assets financed, the ability to sequester revenues, and the creditworthiness of the borrower the idea of unwarranted advantage seems difficult to sustain. In Canada and other OECD markets the best credits borrow well below the lending bank's average corporate lending rate. Most tellingly, global rivals financing a similar acquisition would access international bank lending rates typically around London Interbank Offered Rate (LIBOR) +1% at the time, well below the 4%-5% charged by Chinese banks.[83]

As for the market efficiency argument, Theodore Moran notes that Chinese SOE behavior is changing and they are increasingly operating on a commercial basis. According to global commodity traders, "Chinese resource companies continue to buy and sell [commodities] on a regional basis to the highest bidder rather than automatically directing the product to their home market."[84] CSIS confirmed this thinking as they found that Chinese SOEs are increasingly operating on a commercial basis and widespread apprehension of Chinese firms "locking up" natural resources is not supported by evidence. One study also found that

[82] Moyo, *Winner Take all : China's Race for Resources and what it Means for the World*

[83] Margaret Cornish, *Behaviour of Chinese SOEs: Implications for Investment and Cooperation in Canada*

[84] Moran, *Chinese Foreign Direct Investment in Canada: Threat Or Opportunity?*

China's national oil companies (NOC) actually sold more oil on the open market than back to China, noting that of the 260,000 barrels that a Chinese NOC produced in Kazakhstan, only 50,000 barrels were returned to China. It is also important to note that none of China's production in Canada, Syria, Venezuela, and Azerbaijan reached Chinese shores during the study period.[85] Further to the point, fears about companies locking up resources only for home country use are countered by the fact that Industry Canada requires that all firms operate on a commercial basis, and companies that are found to be violating this statute are prosecuted accordingly. In addition, there is no significant infrastructure available for SOEs to divert oil and gas to their home countries as the Canadian regulatory process has delayed new pipelines and it is becoming increasing likely that they will not be approved soon.

Ownership Concentration and National Security

Much of the opposition against SOE investment in the energy sector centres on national security issues. The policy question has now become should the government allow foreign governments to own 'strategic assets' and does the sale of these assets present national security risks? Moran suggests that national security should only be a concern when the following criteria are present: SOE dominance of supply that penalizes the host country; transferring technology that harms host country interests; or engaging in sabotage or espionage.[86] There is little evidence to support the first two criteria, as according to IHS-CERA, Chinese SOEs only control 5% of oil sands production versus American corporations that control 29% of oil sands production and their citizen's account 54% of the production weighted ownership in the oil sands.[87]

Concern about SOEs transferring oil sands technology back to China is countered by the fact that Canadian firms and universities are willingly taking their expertise and technology over to China through trade shows and Canadian led missions. These missions are intended to market Canadian technology in

[85] Margaret Cornish, *Behaviour of Chinese SOEs: Implications for Investment and Cooperation in Canada*

[86] Ibid.

[87] . *Oil Sands Economics Beneifts: Today and in the Future* (United States: IHS-CERA,[2014c]).

energy development to potential Chinese partners.[88] For example, in October of 2014 the University of Calgary signed a partnership agreement with the Kerui Group, a Chinese industrial giant, to open a jointly-funded research centre in Beijing to collaborate on the development of new technologies and resource extraction methods. The centre will share research, technology, and expertise between Canada and Beijing in an attempt to help Chinese resource companies unlock their vast unconventional oil and gas fields.[89]

Sabotage and espionage are however legitimate concerns for the Canadian Government. In 2010, the head of the Canadian Security Intelligence Service (CSIS) Richard Fadden stated that at least two provincial cabinet ministers and several members of the bureaucracy were under the control of foreign countries as part of espionage schemes. He also suggested that the Chinese government was involved, along with countries from the Middle East.[90] More recently, during the acquisition of Nexen by CNOOC, hackers infiltrated two Calgary based oil & gas companies. Many have speculated that the breaches originated in China and that it was a form of economic espionage to gather more details on the CNOOC-Nexen deal.[91] Since then, cyber-attacks have continued to be on CSIS' radar with a recent report by CSIS that singled out Chinese hackers conducting corporate espionage for the Chinese government as a great threat to Canadian security. In their report, CSIS warns of Chinese espionage rings that infiltrate corporate targets to gather trade secrets and gain negotiating advantages.[92] These are serious concerns, but limiting investment to address security issues is not the most effective approach, Canada has strong regulatory regimes and they should be employed in a manner that addresses these issues instead of a blunt policy that chokes out investment capital.

---

[88] Jeff Henwood, *Minister Cal Dallas' Mission to China-March 2014* (Edmonton, Alberta: Government of Alberta,[2014]).

[89] Shawn Mccarthy, "University of Calgary, Beijing Centre Partner on Energy-Extraction Research," *The Globe and Mail*, sec. Energy & Resources, 2014.

[90] "Some Politicians Under Foreign Sway: CSIS," CBC, , accessed October 19, 2014, http://www.cbc.ca/news/politics/some-politicians-under-foreign-sway-csis-1.909345.

[91] "Ottawa Won't Say if China Involved in Hacking of Oil Patch Software Firm," The Financial Post, , accessed October 18, 2014, http://business.financialpost.com/2012/09/28/ottawa-wont-say-if-china-involved-in-hacking-of-oil-patch-software-firm/?__lsa=2bd3-5f66.

[92] "The Security Dimensions of an Influential China," CSIS, , https://www.csis.gc.ca/pblctns/wrldwtch/2013/20130930-en.php#tc17;.

Moving Forward

The threat of foreign government influence on company operations is real, but it is not to be feared to the extent that critics have made it seem. The economic impacts of blocking SOEs from investing into the Alberta oil sands cannot be ignored. If the oil sands do not receive the needed capital to develop and innovate at a pace that makes them competitive with projects across the globe, their future viability will suffer. Laricina Energy is a leading example, they have an innovative and proven approach to extracting bitumen from a region that is largely untouched because of its difficult geological features, yet they will likely have to delay or abandon their projects because they cannot raise adequate funding or find a JV partner. Analysis has shown that blocking out SOEs is more harmful than allowing them to operate within Canadian borders. To ensure continued investment, the ICA must be revised and the government should consider the following alternatives to ensure clear and consistent application of the policy.

Clarify the Term Exceptional Net Benefit and how it applies to SOE Investment

Decision makers in the energy industry have clearly stated that even three years after the rule changes, they are still concerned about what the changes to the ICA will mean for their potential investments. It is in Canada's national interest to ensure the continued and sustained growth of the oil sands, policies that limit the ability of firms to raise low cost capital for growth are detrimental to the long term economic prosperity of Canada. Assaf and McGillis have suggested that because market conditions can change quickly i.e. the US becoming energy independent and the implications for Canada, it is imperative to take a proactive approach instead of an ex-ante approach to policy. It is difficult to predict what the industry will need in the future to adequately develop its resources, trying to solve the problem five years down the road will not be optimal, nor efficient.[93]

To resolve the uncertainty around the application of the ICA the federal government must clearly state and define what the terms exceptional and net benefit mean. Without defining the terms they can be

[93] Assaf and McGillis, *Foreign Direct Investment and the National Interest: A Way Forward*, 0_1-46.

interpreted as meaning that all state owned investments for control are prohibited, and suggest that political factors outside of the actual bid will be considered. In addition, because the new policy is seen as targeting Chinese investors the government must reassure the Chinese that the policy is non-discriminatory in its application, as they will be the largest source of global outward FDI over the next decade. By clarifying what constitutes a net benefit and then extending that to what represents an exceptional net benefit, ambiguity in the approval process can be solved. Doing so will allow potential investors to assess the likelihood of their proposal being accepted beforehand, instead of going in to the process blind and leaving acceptance of their bid up to special interest groups and politics. In addition, the burden of approval should fall on the Industry Minister and not the company. The Industry Minister should state publicly why an investment is or is not a net benefit to Canada, instead of placing the onus solely on the investor. Doing so will mitigate the likelihood of political interference and hold the government accountable for the decisions it makes regarding investment.

Eliminate the Net Benefits Test and Focus on National Security

A more concrete step to ensure Canada's competitiveness in the foreign investment market and clarify its stance on SOE investment would be to get rid of the benefits test all together and make national security the sole focus of foreign investment reviews. The net benefit test is a subjective test that can be easily influenced by public opinion, politics, and special interest. It allows opponents of foreign sourced investment to paint investors as pillagers coming to Canada to hollow out our national champions and threaten Canadian identity. Once a deal is accepted, to ensure an investment provides a net benefit investor's face sanctions in the form of restrictions intended to maintain the company's Canadian footprint and identity. While aspects of government mandated restrictions are required, some, such as forcing CNOOC to retain their entire Canadian management team, maintain a certain level of Canadian staff, and listing their shares on the Toronto Stock Exchange may go too far.[94] These limitations go above and beyond what would be required of a Canadian firm purchasing a company within Canada.

[94] Dobson, *China's State-Owned Enterprises and Canada's FDI Policy*

Restricting SOE investment into the oil sands should only be considered when they dominate enough supply that it penalizes the host country; when they transfer technology back to their home country that harms host country interests; or when they engage in sabotage or espionage.[95] Of the three situations above, only sabotage or espionage have been shown to be of a real concern to Canada. Therefore, to improve the ICA, its focus should be limited to threats to national security such as sabotage, and explicitly state which industries it applies to and in what circumstances. As Assaf and Mcgillis suggest, Canada should take a similar approach to the US and be transparent in which issues are being assessed based on national security.[96] Ideally, any rejection for national security reasons would be accompanied by a detailed public report citing the specific reasons for rejection, however because of the sensitivity of national security issues a generalized report would suffice and help quell investors' fears. Removing the net benefits test removes ambiguity in the screening process and leaves a national security test that is harder to skew to favor political interests. Whereas the ability of a company to provide an exceptional net benefit is subjective and open to interpretation, national security threats don't present the same scope of interpretation. Rejecting a company's proposal because of a previous history of corporate espionage is a clearer reason for refusal than simply stating a company does not present a net benefit.

Policy Suggestion

The current version of the ICA and how it pertains to SOE investment into the oil sands is unclear and highly subjective, as the term exceptional net benefit is more of a political tool than it is an economic lever. Analysis has shown that the increased scrutiny has deterred investment into the Alberta oil sands and the ability of smaller oil sands companies to raise capital to fund projects. Therefore to calm fears about the approval process **the focus for investment reviews moving forward should be on national security and not net benefits**. A national security test is robust in its application and is less susceptible to outside influence as threats are easily identifiable. Testing companies based on security measures won't

[95] Moran, *Chinese Foreign Direct Investment in Canada: Threat Or Opportunity?*

[96] Assaf and McGillis, *Foreign Direct Investment and the National Interest: A Way Forward*23

have the same negative effects as the net benefits test, as companies will be clear on what is required for acceptance of their bid. It will also create more bid competition as all firms, including SOEs, will be on a level playing field and their offers won't be scrutinized for political reasons.

As Canada goes forward into the latter part of the decade much of its success will be linked to how the energy sector in Alberta develops. Capital investment into the oil sands is expected to fall 32% this year to $17.9 billion, with 28% of that $17.9 billion being fed to the industry by foreign investors.[97] Foreign sourced capital from Asian SOEs in the form of JV's and M&A will only increase in importance as the sector grows. Currently we are seeing what decreased oil prices, investment, and exports mean for the economy as Canada is on the brink of a recession. If investment dollars are continually pushed away from Canada because of protectionist policies, the pace of development and viability of all firms in the industry will suffer as Canadian markets will not be able to make up the capital gap in the long term. While the government claims that the ICA is intended to ensure net benefits to Canadians, evidence suggests that use of the ICA is more of a political tool and it is actually hurting Canadians. Unlike application of the ICA, the solution to policy problem is clear, scrap the net benefits test, make the focus on security, and give companies the access to resources they need to continue to develop the energy industry.

---

[97] Dan Healing, "Forecast Calls for 'Muted' Growth in Oilsands Production," *The Calgary Herald*, sec. Business-Energy, 2015.

Bibliography

"Canadian Inward Foreign Direct Investment from Asia." Asia Pacific Foundation of Canada. Accessed June 12, 2015. http://www.asiapacific.ca/statistics/investment/inward-foreign-direct-investment/canadian-inward-foreign-direct-investment.

"Charting the Course: The Future of Canadian M&A in Volatile Markets." Citibank. http://files.newswire.ca/1397/Citi_MA_Report.pdf.

"Global 500." Fortune Magazine. Accessed October 20, 2014. http://fortune.com/global500/.

. *Laricina Energy 2014 Annual Report*: Laricina Energy, 2015b.

. *Oil Sands Economics Beneifts: Today and in the Future*. United States: IHS-CERA, 2014c.

"Ottawa Won'T Say if China Involved in Hacking of Oil Patch Software Firm." The Financial Post. Accessed October 18, 2014. http://business.financialpost.com/2012/09/28/ottawa-wont-say-if-china-involved-in-hacking-of-oil-patch-software-firm/?__lsa=2bd3-5f66.

"Some Politicians Under Foreign Sway: CSIS." CBC. Accessed October 19, 2014. http://www.cbc.ca/news/politics/some-politicians-under-foreign-sway-csis-1.909345.

. *Special Report: Oil Sands Economic Benefits-Today and in the Future*: IHS CERA, 2014d.

Assaf, Dany H. and Rory A. McGillis. *Foreign Direct Investment and the National Interest: A Way Forward*. Montreal, Canada, Montreal: Institute for Research on Public Policy, 2013.

Beaulieu, Eugene and Matthew Saunders. *The Impact of Foreign Investment Restrictions on the Stock Returns of Oil Sands Companies*. Calgary, Alberta: The School of Public Policy, 2014.

Cameron, Glenn. *2015 Oil & Gas M&A Trends*: Stikeman Elliott, 2015.

CBC. "Federal Government Blocks Sale of MDA Space Division
 ." . Accessed October 10, 2014. http://www.cbc.ca/news/business/federal-government-blocks-sale-of-mda-space-division-1.703999.

Collins, Simone. "Recent Decisions Under the Investment Canada Act: Is Canada Changing its Stance on Foreign Direct Investment?" *Northwestern Journal of International Law & Business* 32, no. 1 (Fall 2011, 2011): 141-164.

Competition Policy Review Panel. *Compete to Win: Final Report June 2008*. Ottawa, ON, CAN: Competition Policy Review Panel, 2008.

Cornish, Margaret. *Behaviour of Chinese SOEs: Implications for Investment and Cooperation in Canada*. Toronto, ON, CAN: Canadian International Council, 2012.

Cruickshank, Ainslie. "Capital Concerns." Alberta Oil Magazine. Accessed June 12, 2015. http://www.albertaoilmagazine.com/2014/12/capital-concerns/.

CSIS. "The Security Dimensions of an Influential China." CSIS. https://www.csis.gc.ca/pblctns/wrldwtch/2013/20130930-en.php#tc17;.

Das, Anupreeta, Scott Kilman, and Liam Pleven. "A $39 Billion Food Fight --- Canada's Potash Corp. Rejects Bid by Miner BHP to Tap Agriculture Market." *Wall Street Journal,* Aug 18, 2010, 2010.

Deslongchamps, Alex and Edmond Lococo. "**Alliant Bid for MacDonald Unit Rejected by Canada (Update6)**." Bloomberg. Accessed October 2, 2014. http://www.bloomberg.com/apps/news?sid=areIp.MQUTXc&pid=newsarchive.

Development Research Center of the State Council and The World Bank. *China 2030 : Building a Modern, Harmonious, and Creative Society*. Herndon, VA, USA: World Bank Publications, 2013.

Dobby, Christine. "Egyptian Telecom Investor Naguib Sawiris 'Finished with Canada,' Plans to Spend Money Elsewhere." *Financial Post,*2013, sec. FP Tech Desk.

Dobson, Wendy. *China's State-Owned Enterprises and Canada's FDI Policy*. Calgary, AB, CAN: School of Public Policy, University of Calgary, 2014a.

———. . *China's State-Owned Enterprises and Canada's FDI Policy*. Calgary, AB, CAN: School of Public Policy, University of Calgary, 2014b.

Dvorak, Phred and Anupreeta Das. "Canada Slaps Down BHP's Potash Bid." *Wall Street Journal,* Nov 4, 2010, 2010.

Frigon, Mathieu. *The Foreign Investment Review Process in Canada: Background Paper*. Ottawa, ON, CAN: Parliamentary Information and Research Service, 2011.

Glassop, Peter and Frank Turner. *Capital Markets Report 2014*, 2014.

Globerman, Steven. *An Economic Assessment of the Investment Canada Act*. Canada: The Fraser Institute, 2015.

Grant, Michael, Michael Burt, and Lin Ai. *Saskatchewan in the Spotlight: Acquisition of Potash Corporation of Saskatchewan Inc.— Risks and Opportunities*. Canada: The Conference Board of Canada, 2010.

Grover, Warren. "Investment Canada Act the Commentary." *Canadian Business Law Journal* 10, (1985): October 8, 2014.

Harper, Stephen. "Statement by the Prime Minister of Canada on Foreign Investment." Government of Canada. Accessed June 3, 2015. http://www.pm.gc.ca/eng/news/2012/12/07/statement-prime-minister-canada-foreign-investment.

Healing, Dan. "Forecast Calls for 'Muted' Growth in Oilsands Production." *The Calgary Herald,* 2015, sec. Business-Energy.

Helman, Christopher. "The World's Biggest Oil and Gas Companies-2015." Forbes. Accessed June 21, 2015. http://www.forbes.com/sites/christopherhelman/2015/03/19/the-worlds-biggest-oil-and-gas-companies/.

Henwood, Jeff. *Minister Cal Dallas' Mission to China-March 2014*. Edmonton, Alberta: Government of Alberta, 2014.

Hussain, Yadullah. "Deep-Pocketed Private Equity Firms Eye Canada's Oil Patch." Financial Post. Accessed October 21, 2014. http://business.financialpost.com/2014/04/03/deep-pocketed-private-equity-firms-eye-canadas-oil-patch/?__lsa=36c8-7f7e.

Krzepkowski, Matt and Jack Mintz. *Canada's Foreign Direct Investment Challenge: Reducing Barriers and Ensuring a Level Playing Field in Face of Sovereign Wealth Funds and State-Owned Enterprises*. Calgary, AB, CAN: School of Public Policy, University of Calgary, 2010.

MacDonald, Alistair, Paul Vieira, and Sharon Terlep. "Corporate News: Canada Rejects Malaysian Energy Bid." *Wall Street Journal,* Oct 22, 2012, 2012.

Mccarthy, Shawn. "CNOOC's Bid for Nexen Fuels Security Concerns." The Globe and Mail. Accessed October 20, 2014. http://www.theglobeandmail.com/globe-investor/cnoocs-bid-for-nexen-fuels-security-concerns/article4619564/.

———. "University of Calgary, Beijing Centre Partner on Energy-Extraction Research." *The Globe and Mail,* 2014, sec. Energy & Resources.

Mintz, Jack. "Harper is Right on SOE Takeovers." *The National Post,* 2012, sec. Financial Post.

Moran, Theodore H. *Chinese Foreign Direct Investment in Canada: Threat Or Opportunity?*. Ottawa, ON, CAN: Canadian Council of Chief Executives, 2012.

Morgan, Geoffrey. "Junior Oilsands Players Brace for Stunted Growth Ahead." Financial Post. Accessed June, 16, 2015. http://business.financialpost.com/news/energy/junior-oil-sands-players-brace-for-stunted-growth-ahead?__lsa=4b48-3b3c.

Morton, Ted. "Republicans Need to make it Clear that Keystone Will Help End U.S. Dependence on Mideast Oil." *National Post,* 2015, sec. Full Comment.

Moyo, Dambisa. *Winner Take all : China's Race for Resources and what it Means for the World* Harper Collins, 2012.

Romanowska, Patrycja. "Will Canada's New Foreign Investment Rules Kill Oil Sands Development." Alberta Oil Magazine. Accessed June 10, 2015. http://www.albertaoilmagazine.com/2013/03/foreign-investment-oilsands/.

Snyder, Jesse. "After a Decade of Canadian Investment, China is Pulling Back. what Now?" Alberta Oil Magazine2015. http://www.albertaoilmagazine.com/2015/06/china-pulls-back-on-canadian-investment/.

Stephen, Azzi. *Walter Gordon and the Rise of Canadian Nationalism* McGill-Queen's University Press, 1999.

UNCTAD. *Global FDI Rose by 11%; Developed Economies are Trapped in a Historically Low Share*: UNCTAD, 2014.

Wong, Howie and Robert Dechert. "Canadian Foreign Takeover Review." *Business Law Today* 18, no. 3 (February 2009, 2009): October 9, 2014.

Yedlin, Deborah. "Laricina's Financial Struggles Highlight Challgenes of Developing New Technology." *Calgary Herald,*2015, sec. Business-Energy.