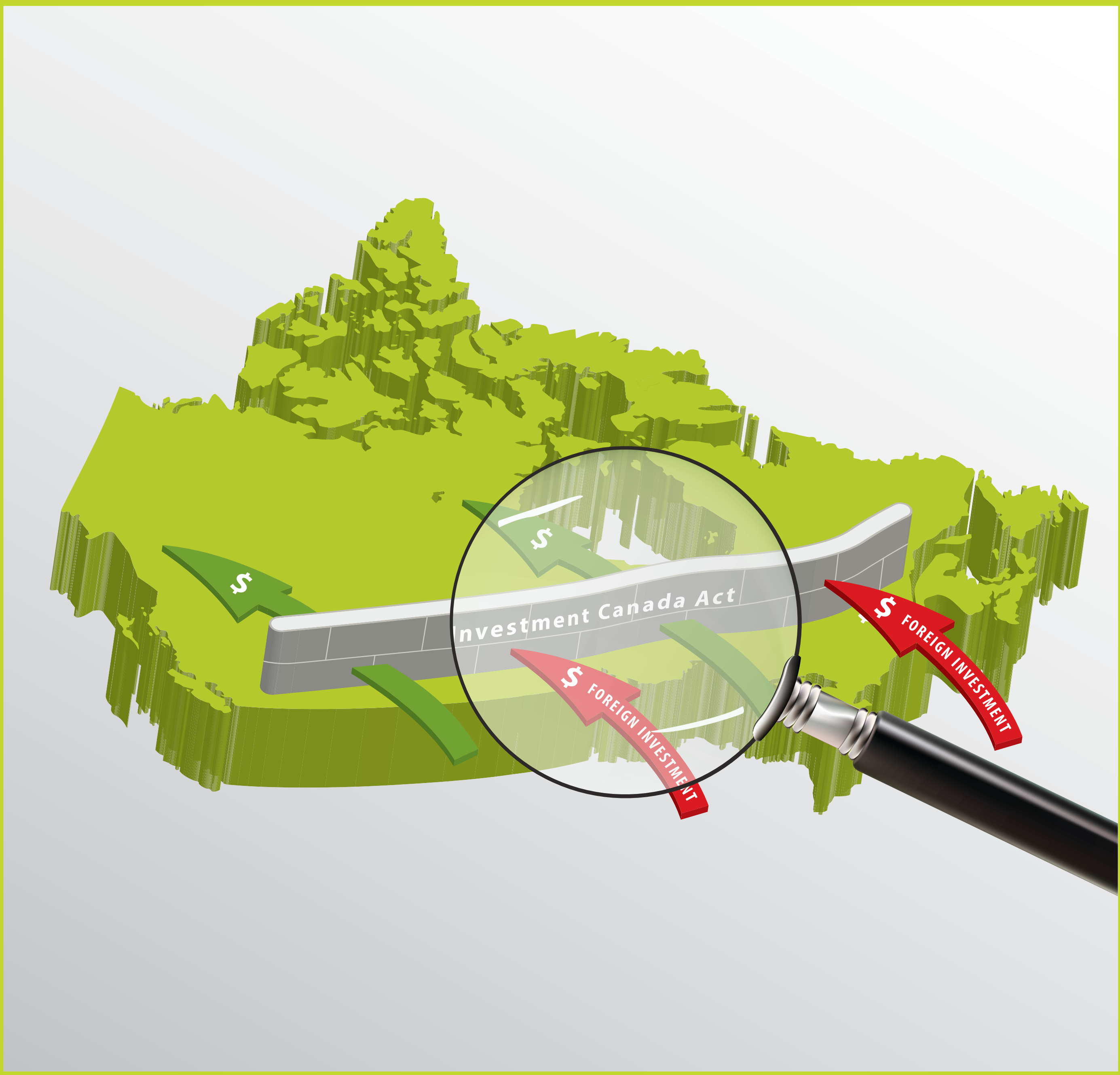
MAY 2015

An ECONOMIC ASSESSMENT of the INVESTMENT CANADA ACT

by Steven Globerman



Contents

Executive summary

Foreign acquisitions of Canadian companies above a certain size are subject to review under the Investment Canada Act. For non-cultural businesses, would-be foreign acquirers must demonstrate that their acquisitions will result in net benefits to Canada above and beyond those that would be realized under existing Canadian ownership. The net benefits can take a variety of forms including increased domestic employment, expansion of output, increased research and development, and so forth. Foreign acquirers typically agree to undertake activities generating acceptable net benefits as a condition of approval of their proposed acquisitions.

Very few proposed acquisitions have been disallowed or obviously discouraged under the Act. However, this does not mean that the screening process is advantageous for the Canadian economy. In a globally competitive market for corporate acquisitions, the prices paid for Canadian companies by foreign investors should typically approach the maximum prices that efficient foreign investors would be willing to pay for those companies. Consequently, any undertakings agreed to by foreign investors over and above those that the investors would find profitable to implement in the absence of the review process, will result in commensurately lower bid prices for Canadian acquisition targets. In other words, the financial costs of undertakings agreed to simply in order to gain approval by the government will come at the expense of existing owners of Canadian acquisition targets in the form of lower capital gains. At the margin, this phenomenon might discourage Canadian entrepreneurs from starting or expanding domestic businesses. Furthermore, to the extent that some or all of the negotiated undertakings reduce the efficiency of foreign investors, the screening process might also contribute to smaller spillover efficiency benefits from foreign direct investment to the Canadian economy.

Foreign takeovers of Canadian cultural businesses are subject to a separate screening process with additional sought-after undertaking criteria. Given that foreign owners of cultural businesses would be subject to the same regulations as Canadian owners of those businesses in the event of successful takeovers, a separate screening process for cultural businesses is arguably unnecessary. Furthermore, the costs of unprofitable undertakings assumed by the foreign investor will again likely come at the cost of a lower bid price for the Canadian acquisition target.

A similar set of considerations applies to the screening of state-owned enterprises (SOEs). A separate review of SOEs is allegedly warranted because the Canadian government sees SOEs as pursuing non-commercial objectives that can harm the Canadian economy. In fact, there is substantial controversy surrounding the degree to which SOEs pursue non-commercial objectives. Furthermore, SOEs will be subject to domestic laws and regulations that constrain much of their allegedly potential harmful behaviour.

Finally, recent amendments to the Act allow the government to reject foreign acquisitions on the grounds that they pose a threat to national security. However, national security is not explicitly defined. Nor are there explicit criteria that identify when a foreign acquisition will pose a threat to national security. In the absence of greater specificity, the review process creates uncertainty among some would-be foreign investors and invites economically wasteful lobbying activities on the part of domestic companies and others with economic interests in blocking a specific foreign takeover.

In summary, the screening process under the Act is more likely to create net costs than net benefits for the Canadian economy. Hence, Canadians would be economically better off if the screening process was abandoned. That said, if the government believes it must continue to screen foreign acquisitions to protect national security, explicit and clear criteria should be established identifying when a foreign acquisition would be likely to threaten national security.

I. Introduction

Many countries that are host to foreign investors have ambivalent attitudes towards inward foreign direct investment (IFDI). Canada is no exception. While there is a general appreciation of the economic benefits that IFDI can bring to host countries, there is also a concern that foreign investors may not always act in the best interests of the host country and that some restrictions on foreign ownership or constraints on the behavior of foreign investors are, therefore, in order.[1]

Canada both restricts foreign ownership in specific sectors of its economy and subjects certain types of IFDI to a review under the Investment Canada Act (henceforth, the Act). The latter intervention is the focus of this essay. Specifically, the essay addresses whether the Act is likely to serve the best interests of the Canadian economy. The paper concludes that it does not and proposes changes that seem appropriate in light of the Act's likely economic impacts. The essay's main specific conclusion is that the Act arguably has greater economic costs than benefits, and that circumscribing the Act to focus on a narrowly and explicitly defined concept of national security would be an improvement over the status quo.

The essay proceeds as follows. Section 2 provides a summary of the Act including several recent decisions that received prominent media attention. Section 3 compares and contrasts the Act to the screening procedures used in other developed economies. Section 4 presents and discusses a broad model of the IFDI process with the goal of identifying the conceptual economic impacts to the host economy of an IFDI screening process. Section 5 provides some evidence bearing upon the impacts of the screening process for IFDI in cases where the foreign investor is a profit-oriented, privately owned company. Section 6 then considers whether there is a rationale for screening acquisitions in the culture sector or acquisitions by state-owned enterprises (SOEs). It also addresses the need to screen inward foreign direct investment based on national security considerations. Section 7 contains a summary and policy recommendations.

[1] For a comprehensive list of restrictions or constraints on foreign ownership in OECD countries, see Kalinova, Palerm, and Thomsen (2010).

2. Summary of the act

The original legislation establishing a formal screening process for inward foreign direct investment in Canada was the Foreign Investment Review Act (FIRA) which became law in 1973.[2] The Investment Canada Act[3] is the successor legislation to FIRA and was implemented in 1985. While the two pieces of legislation differ with respect to a number of provisions, one major difference is the criterion for approving or disapproving a reviewable foreign investment. Specifically, FIRA required that a reviewable investment be of "significant benefit" to Canada in order to be approved. The standard for approval under the Act is that the investment be a "net benefit" to Canada. Industry Canada is the government department responsible for administering the Act, except in the case of foreign investments in the culture sector, in which case the Act is administered by the Department of Canadian Heritage.

The passage of the Act was meant to signal a change in the government's attitude toward IFDI—from concern about relinquishing domestic ownership of assets to foreigners, to enthusiasm about encouraging IFDI that promised economic benefits for Canada. While acknowledging the change in attitude, Raby (1990) argues that the Act represented a change to FIRA not so much in structure as in scope and procedures. Specifically, size thresholds for review, as opposed to purely for notification, were raised, the review time was shortened, and the procedures were streamlined. In particular, notification rather than review was required when non-residents sought to establish a new Canadian business. However, the underlying concept of the Act remained, in essence, the same as under FIRA. Namely, government approval was required before any non-Canadian could acquire control of a Canadian business whose asset value met or exceeded the relevant size threshold.

---

[2] For an overview and evaluation of FIRA, see Schultz, Swedlove, and Swinton, 1980; and Globerman, 1984.

[3] Unless otherwise indicated, details of the Act are taken from Industry Canada, 2014, *Investment Canada Act.*

Reviewable investments

Non-Canadians who acquire control of an existing domestic business or who wish to establish a new, unrelated Canadian business are subject to the Act.[4] The foreign investor must file an application for review of the intended investment. Under the Act, foreign investments are either subject to notification or they are reviewable. A foreign investment is reviewable if one of the following conditions pertains:[5]

1. The foreign investor is a state-owned-enterprise (SOE) from a WTO member country and the investment involves the acquisition of a non-cultural business that has gross assets (in 2014) of at least $354 million;[6]

2. The foreign investor is not an SOE, but is from a WTO country, and the investment involves acquiring control of a non-cultural business that has an asset value (in 2014) of at least $369 million;[7]

3. The foreign investor is from a non-WTO country, and the investment is made to acquire control of a Canadian business with gross assets of $5 million or more or to acquire indirect ownership of a non-cultural Canadian business with gross assets of $50 million or more;[8]

4. The foreign investment is made to acquire direct control of a Canadian cultural business that has assets of at least $5 million or that the Governor in Council considers should be reviewed in the public interest;

5. The Government of Canada considers that the foreign investment might be injurious to national security.

There are no explicit criteria set out for establishing when a foreign investment might be injurious to national security. Nor is the concept of national security defined or explained anywhere in the Act. However,

4 There are a number of exemptions to the Act including acquisitions subject to approval under the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act, and the Trust and Loan Companies Act.

5 The following list is taken from Frigon (2014).

6 An acquisition of control involves a majority share of the voting interests of a company. However, for companies that are widely held, control may be deemed to be acquired once one-third or more of the voting shares are held.

7 Effective April 24, 2015, the threshold for review for this class of foreign investment will be $600 million based on "enterprise value." It will increase in two steps to $1 billion in 2019 after which it will be indexed to reflect annual inflation.

8 An indirect acquisition occurs when a non-Canadian company acquires a Canadian company as the result of a merger or acquisition made outside of Canada.

cultural businesses are identified. Specifically, a cultural business means a Canadian business that carries out any of the following activities:

1. The publication, distribution or sale of books, magazines, periodicals, or newspapers in print or machine readable form;
2. The production, distribution, sale, or exhibition of film or video recordings;
3. The production, distribution, sale or exhibition of audio or video music recordings;
4. The publication, distribution, or sale of music in print or machine-readable form;
5. Radio, television, and cable television broadcasting undertakings, as well as any satellite programming and broadcast network services.

In the case of non-cultural reviewable applications, the Industry Minister has 45 days to determine whether or not to allow the reviewable investment, but the minister can unilaterally extend the 45-day period by an additional 30 days. In the case of investments in cultural businesses, the review rests with the Minister of Canadian Heritage and is expected to take at least 75 days. When national security is the issue, a review is triggered by the Governor in Council or the Industry Minister's recommendation. The Industry Minister consults with the Minister of Public Safety to determine if a proposed foreign investment could be injurious to national security. A reviewable investment may not be implemented prior to the investor receiving a decision that the investment is of net benefit to Canada.

Foreign investors subject to review will ordinarily file business plans identifying how they will operate the acquired domestic assets, presumably to generate greater economic benefits than is the case under current ownership. These business plans are not legally identical to formal undertakings agreed to by the foreign investor in consultation with the government. Specifically, undertakings are commitments that have the force of law and are monitored by Industry Canada. The relevant guidelines provide that a performance evaluation will ordinarily be made 18 months after the implementation of the investment. If the evaluation finds that the investment implementation, subject to subsequent circumstances beyond the investor's control, is substantially consistent with expectations and that the major commitments have been fulfilled, there is no further monitoring of the investment. Failure to comply with an undertaking can result in, among other things, the forced divestiture of the investment or a monetary

Figure 1: Undertakings for the Takeover of Tim Hortons by Burger King Worldwide

1 Global headquarters of the combined company will be based in Oakville, Ontario;

2 Burger King agrees to maintain employment levels at Tim Hortons Canadian outlets and expand the coffee chains global presence at a faster pace than Tim Hortons current owners had planned;

3 Tim Hortons will be managed as a distinct brand with no co-branding at any North American location;

4 Franchise rent and royalty structure will be maintained at current levels for a five-year period.

Source: Vieira, 2014.

penalty. Where a commitment is not fulfilled because of factors beyond the control of the investor, the latter will not be held accountable.[9]

In fact, any distinction between business plans and formal undertakings is moot. Since 2001, undertakings have been negotiated for virtually all acquisitions involving assets above the WTO threshold. Moreover, most government approvals for investments in cultural industries have been linked to legally enforceable undertakings made by the investor (Globerman, 2008). An illustration of negotiated undertakings under the Act is provided by the recent takeover of Tim Horton's by Burger King Worldwide. The undertakings for this takeover are summarized in figure 1. They illustrate the diverse nature of the undertakings negotiated under the Act.

Determination of net benefit

The following criteria are used in determining whether a reviewable "non-cultural" investment is of net benefit to Canada: 1. The effect on the level of economic activity in Canada, on employment or resource processing, on the utilization of parts and services produced in Canada and on exports from Canada; 2. The degree and significance of participation by Canadians

[9] Data are unavailable to assess the extent to which non-compliance with undertakings takes place.

in the new or existing Canadian business and in any industry in Canada; 3. The effect of the investment on productivity, industrial efficiency, technological development, product innovation, and product variety in Canada; 4. The effect of the investment on competition within any industry in Canada; 5. The compatibility of the investment with national industrial, economic, and cultural policies; 6. The contribution of the investment to Canada's ability to compete in world markets (Frigon, 2014). There are no explicit weights attached to any individual criterion, nor are there explicit tradeoffs among the criteria.

In the case of cultural businesses, a different set of criteria are applied to evaluate whether foreign investments will be of net benefit to Canada. They include: 1. Commitments to the creation, production, distribution, marketing, and preservation of Canadian cultural products; 2. Commitments to nurturing new Canadian talent, employing Canadians, and enhancing Canadian infrastructure; 3. Commitments to providing philanthropic contributions or in-kind gifts to cultural training institutions, study programs, and other initiatives designed to enhance Canada's civic life; 4. Commitments to the distribution and marketing of Canadian cultural products, and sponsorship of events and initiatives that showcase Canadian talent and stories (Canadian Heritage, 2013). Again, no weights are given to identify the importance of each individual criterion or to assist in evaluating tradeoffs across the criteria.

Presumably in the case of a reviewable investment, the foreign investor will try to document that the investment will promote some or all of the government's objectives under the Act. If the minister advises that he or she is not satisfied that the investment represents a net benefit to Canada, the Act provides an opportunity for the investor to make additional representations and undertakings which would demonstrate the net benefit of the investment. If the minister is ultimately unsatisfied with the reviewable investment, the investor will be prohibited from implementing the investment or will be required to divest the investment. In making the evaluation, the minister will regularly consult with other federal government departments and provincial governments. Unsolicited representations can also influence the determination of net benefit. All information received by the minister regarding a reviewable investment is treated as privileged and confidential and may not be disclosed "except in relation to the administration of the Act or with consent of the parties concerned" (Industry Canada, 2014, *Investment Canada Act*).

State-Owned Enterprises

In 2007, the government released guidelines for reviewing foreign investments made by state-owned enterprises (SOEs) to determine if they are likely to be of net benefit to Canada.[10] An investor is an SOE if the government of a foreign state or an entity that is controlled or influenced, directly or indirectly, by a government or agency of government is the investor. The new guidance clarifies that the Canadian government, when reviewing investments by SOEs, will consider whether they adhere to Canadian standards of corporate governance. It will also assess the impact the acquisition will have on a company's exports, on the location of its manufacturing and research and development facilities, and on whether the acquirer will provide an appropriate level of capital expenditures to maintain the Canadian business in a globally competitive position (Marchik and Slaughter, 2008).

Two controversial proposed acquisitions of Canadian oil companies in 2012 led to an additional guideline for investments by SOEs in Canada's oil sands. One acquisition involved the takeover of Progress Energy Resources by Petronas, the Malaysian government's national oil company. Petronas' proposed acquisition was initially rejected by the federal government but was ultimately approved after revision of undertakings by Petronas. The second acquisition involved the Canadian company Nexen, which was acquired by the state-owned China National Oil Company (CNOOC). In the aftermath of these two controversial acquisitions, the federal government announced as an executive override that acquisitions of Canadian-owned oil sands companies by SOEs would be approved only in exceptional circumstances, although each case would be examined on its own merits (Assaf and McGillis, 2013).

Several specific risks associated with investments by SOEs were identified in justifying the new guidelines. In particular, a concern was raised that government-owned or influenced SOEs will pursue non-commercial objectives with adverse effects on the efficiency, productivity, and competitiveness of those companies which, in turn, may have adverse impacts on the Canadian economy over time (Industry Canada, 2012). For purposes of evaluating proposed investments by foreign SOEs, the investor must satisfy the minister of the investment's commercial orientation, freedom from political influence, adherence to Canadian laws, standards, and practices, sound corporate governance, and "transparency."

[10] Assaf and McGillis (2013) report that between 2008 and 2011, SOE investments in Canada grew from a marginal share to more than 20 percent of the total asset value of foreign investment subject to review under the Act.

The rationale for the stricter scrutiny in the context of an acquisition of a Canadian oil sands business by a foreign SOE is not entirely clear. However, the guidelines go on to say that where due to a high concentration of ownership a small number of acquisitions of control by SOEs could undermine the private sector orientation of an industry, the government will act to safeguard Canadian interests (Industry Canada, 2012).[11] Presumably the oil sands represent an industrial segment for which acquisitions of domestic businesses by SOEs threaten to undermine the sector's private sector orientation.

National security

Notwithstanding the size threshold for reviewing a foreign direct investment as outlined above, any investment can be subjected to review if the minister has reasonable grounds to believe that the foreign investment could be injurious to national security. This amendment to the Act was made in 2009. The assessment by the Industry Minister is made in consultation with the Minister of Public Safety and Emergency Preparedness. After such consultation, the Industry Minister can refer the investment under review to the Governor in Council, together with a report of the minister's findings and recommendations indicating that the minister is either satisfied that the investment would be injurious to national security, or that the minister cannot make a determination as to whether the investment would be injurious to national security.

On the referral of an investment by the Industry Minister, the Governor in Council may take any measures advisable to protect national security. Those measures include directing the non-Canadian not to proceed with the investment or authorizing the investment to proceed subject to the investor agreeing to specific undertakings demanded by the government, presumably to remedy the threat to national security posed by the investment.

[11] While takeovers of SOEs will receive greater scrutiny, it is unclear if sovereign wealth funds will be treated identically to SOEs. Sovereign wealth funds (SWFs) are government-funded investment vehicles that typically make non-controlling investments in domestic or foreign assets. In terms of foreign direct investments, SOEs are much more significant investment vehicles than SWFs. See Jongblood, Sachs, and Sauvant (2012). For an assessment of the investment behaviour of SWFs, see Bernstein, Lerner, and Schoar (2013).

Table 1: Number of Foreign Investments—Various Time Periods

	1985-1999	2000-2007	2008-2013	2008-Q3 2014
Acquisitions	91,164	4,759	2,763	3,197
New Business	3,089	841	928	1,078
Reviewed and Approved	1,247	284	111	120
Notifications Only	6,989	3,841	2,652	3,033

Source: Globerman (2008); and Industry Canada, Investment Canada Act http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk-50740.html.

Summary

This overview of the screening procedure for IFDI highlights the broad scope that the government has to review any specific foreign investment. Table 1 summarizes the historical notification and review activities under the Act.[12] It is clear from the data reported in table 1 that foreign direct investments primarily take the form of acquisitions of existing businesses (or so-called Brownfield investments), rather thanGreenfield (or brand new) investments. Furthermore, most foreign investments are not reviewed but merely involve notification by the foreign investor. However, those investments that are reviewed are typically relatively large. Hence, from 1985 to 2013, around 60 percent of the IFDI (by value) in Canada was reviewed.[13]

The prior discussion of the Act identifies the range of criteria that the government can use as the basis for determining whether any specific investment is likely to be of net benefit to Canada. The government clearly enjoys a great deal of discretion with respect to the terms and conditions under which IFDI takes place in Canada. The specific policy issues raised are whether it is in the public interest for the government to possess such broad scope and discretion to review foreign investments, and whether the review process for IFDI is likely to have greater benefits than costs for the Canadian economy.

The next section briefly summarizes IFDI screening procedures in other developed countries. To the extent that the review process in Canada is both more comprehensive and more onerous than in other developed host economies, the current review process might contribute to the Canadian economy being disadvantaged with regard to attracting inward FDI.

[12] While not reported in table 1, note that only two reviewable applications have, to date, been rejected.

[13] See Frigon (2014). By number of acquisitions, approximately 30% were reviewed. Only two reviewable transactions were rejected during the full time period.

3. Canada's foreign investment policies in the OECD context

It is certainly the case that Canada is not unique in its restrictive policies toward IFDI, including the screening of foreign investments. But screening is only one policy potentially influencing IFDI flows to a country. In this regard, the OECD reports an overall restrictiveness measure for IFDI for member countries.

Overall restrictiveness

In creating the overall restrictiveness measure, the OECD considers four main types of restrictions on IFDI: 1. Foreign-equity limitations; 2. Screening or approval mechanisms; 3. Restrictions on the employment of foreigners as key personnel; 4. Operational restrictions.[14] The measure of overall restrictiveness is a composite of these four individual elements.

Table 2 reports estimates of overall restrictiveness for a sample of OECD countries, as well as the average value for all OECD countries for three sample years.[15] Higher values in the table indicate more restrictive regimes. Values for the US and Mexico are of particular interest, since they are NAFTA trade partners with Canada. To the extent that would-be foreign investors compare the investment environment across the three NAFTA countries in choosing a preferred host country location, Canada's overall restrictiveness relative to its NAFTA partners might be quite relevant. Values for Australia and New Zealand are also reported, as both share similarities with Canada in being relatively small, natural resource-intensive, open economies. Furthermore, observers see both Australia and New Zealand as being relatively restrictive towards IFDI, as are Korea and Iceland, so that these four countries provide a useful standard against which to evaluate whether Canada is also relatively restrictive.

[14] Operational measures include restrictions on activities such as creating branches, capital repatriation, and land ownership.

[15] Data are unavailable prior to 1997.

Table 2: Overall Inward FDI Restrictiveness (all Industries)

	1997	2006	2013
Australia	.266	.237	.128
Canada	.267	.263	.173
Germany	.030	.030	.023
Iceland	.167	.167	.167
Korea	.532	.143	.135
Mexico	.287	.211	.193
Sweden	.079	.079	.059
New Zealand	.240	.240	.240
U.K.	.081	.077	.061
U.S.	.089	.089	.089
OECD Average	.127	.086	.068

Source: OECD (n.d.), *Regulatory Restrictiveness Index*.

The data reported in table 2 show that Canada is more restrictive toward IFDI than other OECD countries on average. It is also more restrictive than is the United States, although Canada is less restrictive than is Mexico. Among the more restrictive OECD countries, Canada's performance is unfavorable. Specifically, in 2013, only Mexico and New Zealand had higher overall restrictiveness ratings than Canada. The data also show a general reduction in the overall restrictiveness for OECD countries, on average. Canada's relative reduction exceeds that of the OECD average, as well as that of almost all of the individual countries reported in table 2. In short, while Canada ranks relatively highly on the overall restrictiveness index, it became less restrictive relative to other OECD countries from 2006 to 2013.

Screening and approval

As noted above, Canada is not unique in using a screening process for IFDI. In fact, a number of OECD countries, including Australia, New Zealand, Japan, South Korea, and Mexico, also employ a general screening process. Furthermore, most of the other OECD countries reserve the right to review specific foreign investments, usually against some very broad criterion such as "national security" or "public interest." In the case of a number of countries including France, Germany, Italy, and Finland, government reviews are required in "sensitive" industries, where the identities and number of sensitive industries vary across the countries.

Besides differences in the number of industries subject to screening, the criteria used for screening also vary across those OECD countries that broadly screen IFDI. As mentioned earlier, the Canadian government requires the foreign investor to demonstrate a net benefit to Canada associated with the proposed investment. New Zealand also employs a net benefit test in the case of foreign acquisitions of "sensitive land" (New Zealand, 2012). For other reviewable investments, the New Zealand government requires the foreign investor to pass a "character test." In the case of Australia, a foreign investment must not be contrary to the national interest in order for it to be approved; however the national interest criterion is undefined. Similarly, foreign investors in Japan must show that their investments will cause no harm to national security and national sovereignty. South Korea screens foreign investment applications on the basis of national security, public order and morals, and health and environmental concerns. The Mexican government demands that foreign investments convey a benefit to the competitiveness of Mexico's productive system.

In the case of countries that do not employ a broad screening process, specific foreign investments can be blocked on grounds of national security or national interest. Furthermore, a number of countries have established new national security review processes or implemented additional tools for scrutinizing acquisitions by SOEs or sovereign wealth funds.[16] In the case of the US and some other countries, measures to mitigate national security risks can be taken by foreign investors as conditions of approval. In the case of countries that screen foreign investments in specific industries on national security grounds, a number explicitly identify those industries. For example, Germany identifies military equipment and cryptographic technology as sensitive sectors. Norway requires approval of foreign investments in hydropower, postal services, and railroads. In most other cases, the scope for review of foreign investments on national security grounds is vague. An example is Finland, which reviews controlling acquisitions of domestic businesses that are considered critical to the vital functioning of society. Another is Japan, which requires prior notification of foreign investments in Japanese companies that manufacture, among other things, technology infrastructure.

In short, while Canada screens foreign investments across a broader range of industries than most other OECD countries, virtually all OECD countries screen foreign investments in at least some sectors of their economies. Furthermore, Canada is not alone in using national security as a criterion for rejecting specific foreign investment applications. Nor is

[16] To date, most investments by sovereign wealth funds have been passive portfolio holdings rather than controlling stakes (see Marchik and Slaughter, 2008).

Table 3: Restrictiveness of Screening and Approval

	1997	2006	2013
Australia	.200	.181	.102
Canada	.086	.087	.082
Germany	.000	.000	.000
Iceland	.010	.010	.010
Korea	.152	.000	.000
Mexico	.105	.100	.100
Sweden	.024	.024	.027
New Zealand	.200	.200	.200
U.K.	.000	.000	.000
U.S.	.005	.005	.005
OECD Average	.032	.020	.017

Source: OECD (n.d.), *Regulatory Restrictiveness Index*.

it unique in failing to identify explicitly when an investment threatens to harm national security.[17]

Given the heterogeneous screening criteria used by the various OECD countries, it is difficult to compare the stringency of Canada's review process to that of other countries.[18] However, as noted above, the OECD provides an overall assessment of the stringency of the screening processes of its member countries. Table 3 reports the OECD's evaluation of the restrictiveness of the screening and approval process for the same countries listed in table 2. Again, higher reported values identify more restrictive regimes. While Canada's regime is less restrictive than those of Australia, Mexico and New Zealand, it is substantially more restrictive than that of the U.S. or for OECD countries as a whole.

One can draw the following inferences from the information presented in tables 2 and 3. Specifically, Canada has a relatively restrictive overall regulatory climate for IFDI, holding constant the stringency of the review process as set out in the Act. Hence, Canada is arguably at a disadvantage in attracting IFDI based upon factors such as sectoral restrictions on foreign ownership. The fact that Canada also employs a relatively

[17] In the case of several countries, the national security screening criterion is qualified somewhat by its restricted application to specific sectors such as the defense industry.

[18] The *de facto* severity of the screening process will also depend upon precisely how the various rules and regulations are enforced.

restrictive screening and approval process arguably adds to this disadvantage, other things being constant.

It is reasonable to presume that the additional costs and risks imposed on foreign investors by a screening and approval process will discourage IFDI. Nevertheless, some observers argue that by having explicit criteria for reviewing and approving investments, governments actually reduce the political risks faced by foreign investors, thereby encouraging IFDI. In fact, there has been relatively little critical analysis of the conditions under which a review process will affect IFDI, nor has much critical attention been paid to the likely economic impacts of the screening process under the Act.[19] These latter two issues are addressed in the next section of the report.

[19] For one such consideration of the potential impacts of the review process, see Globerman (2008).

4. The net benefit test: A conceptual framework

This section of the report analyzes the underlying economic factors that influence whether and how the government's foreign investment screening process can affect the actions of foreign investors, as well as condition the economic consequences of IFDI for the host economy. The analysis focuses initially on the decision-making calculus of the foreign investor.

The foreign investor's calculus

For simplicity, it is assumed that the investment being analyzed is Brownfield. That is, the foreign investor is assumed to be interested in acquiring an already existing Canadian company rather than assembling the assets required to start a Greenfield or new company in Canada.[20] The target acquisition promises some expected net cash flow over time to the foreign investor, where the expected net cash flow depends, in part, upon how efficiently the foreign investor uses those assets. When the estimated net cash flow is discounted by the foreign investor's cost of capital, the result is the estimated net present value of the Canadian company to the foreign investor. This estimated net present value is presumably the maximum price that the foreign investor would pay for the Canadian company. This maximum price is often referred to in the relevant literature as the foreign investor's reservation price.

The current owners of the Canadian company also anticipate some net cash flow stream over time from operating the assets of the company. The discounted (by the current owners' cost of capital) net present value of the anticipated cash flow stream is a measure of the value of the company under its current ownership.[21] This estimate is presumably the minimum price that the current owners would accept in order to sell their ownership of the company. In this context, ownership of the Canadian company

[20] The analysis and conclusions do not depend upon this assumption; however, it is easier to discuss the purchasing decision for a single bundled asset rather than for an unbundled set of complementary assets.

[21] If the company is publicly traded, the stock price of the company multiplied by the number of shares outstanding is the capital market's evaluation of the net present value of the company.

would be transferred to the foreign investor only if the foreign investor's reservation price is higher than the minimum price that the Canadian owners would accept to relinquish ownership of their company.

The foreign investor's reservation price can exceed the minimum price that the current domestic owners would require to sell the company for one of two reasons: 1) the assets of the company are expected to generate a greater net cash flow if they are owned by the foreign investor rather than by the current Canadian owners. This would be the case for example, if the foreign investor can use those assets more efficiently than the current owners; 2) The foreign investor has a lower cost of capital than the current owners. This could be the case for several possible reasons including access to government-subsidized financial capital.

Bertrand, Hakkala, Norback, and Persson (2012) raise the possibility that the foreign acquisition might reduce competition, thereby making the acquisition profitable for the foreign acquirer. However, it is not clear why the domestic owners would not capitalize any future monopoly profits into their minimum selling price. Also, an acquisition imposing significant risks of reducing competition is likely to be challenged by the Competition Bureau under the merger provisions of the Competition Act.

The policy context

Assume for the moment that the foreign investor's reservation price exceeds the current owners' minimally acceptable selling price. In this case, the foreign investor would pay more for the Canadian company than it is actually required to pay. If the current owners knew the foreign investor's reservation price, they would presumably hold out for an acquisition price that was close to, indeed virtually equal to, that reservation price. Obviously, Canadians would be better off if a higher price were paid by the foreign investor, whether the Canadian company is privately held or publicly traded.[22] Alternatively, if the Canadian government knew the foreign investor's reservation price, it could intercede in the transaction to demand specific undertakings from the foreign investor as a condition of purchase. For example, it might demand that the foreign investor employ more Canadian workers than that investor would otherwise employ. The resulting additional costs to the foreign investor are equivalent to that investor paying a higher price to the domestic owners in order to acquire the company. Presumably, an omniscient government could demand undertakings by the foreign investor equal in value to any difference between the

[22] The more widely held the ownership of the Canadian company, the more widely distributed among Canadians would be the acquisition price premium.

investor's reservation price and the current owners' minimum selling price without discouraging the investment from taking place. If this dynamic occurred, it would improve the welfare of Canadians, since it would be equivalent to the current owners negotiating a higher selling price.

It should be noted that an omniscient government could simply inform the current owners of the foreign investors' reservation price, in which case the current owners would presumably adjust their minimum selling price upward, thereby eliminating the gap between the foreign investors' reservation price and the minimum selling price of the current owners. An important assumption here is that undertakings impose added costs or lower revenues on potential acquirers or they would not need to be negotiated. As such, they are equivalent to a tax imposed on foreign acquisitions of Canadian companies with the implicit proceeds of the tax distributed to the beneficiaries of the undertakings. Alternatively, if the host government negotiated an explicitly higher acquisition price, the beneficiaries would be the current owners of the acquired Canadian company. In short, if the government had a superior ability to leverage higher prices for acquisitions of Canadian companies, it could (in theory) increase real incomes in Canada through a screening process. Whether the government has any such superior ability is, at the least, questionable and, more realistically, implausible.

Setting aside the issue of whether government bureaucrats can identify a pricing gap as described above, or whether any redistribution of income from the review process is desirable, a fundamental question is whether and to what extent a gap between the foreign investor's reservation price and the existing owner's minimum selling price typically exists. If the gap is ordinarily small or non-existent, requiring the foreign investor to assume unwanted and unanticipated undertakings as a condition of approval of the acquisition will simply discourage the investment from taking place, other things being constant. In this case, the Canadian economy will suffer a loss of wealth from two possible sources: 1) the existing domestic owners will fail to realize the capital gain that they would have realized had the acquisition taken place; 2) the Canadian economy will be denied the "spillover" efficiency benefits from increased IFDI.[23] In the long-run, the second consequence is likely to be of greater economic significance for the Canadian economy than the first, although it might be argued that reduced expectations of capital gains from selling out to prospective foreign acquirers will discourage Canadians from starting up new companies, other things being constant. A reduction in the rate to which Canadians

[23] Spillover efficiency benefits are gains in efficiency realized by domestically owned companies as a consequence of IFDI.

open entrepreneurial ventures will also clearly have adverse long-run impacts on the Canadian economy.

Now assume that the foreign investor anticipates with some degree of accuracy the undertakings that will be "required" to gain government approval of its acquisition. In this case, the foreign investor would presumably adjust downward its reservation price to reflect the added costs or lower revenues associated with the required undertakings. The net result in this case is that IFDI will not necessarily be discouraged by the review process, as long as the adjusted (for undertakings) reservation price at least equals the minimum selling price demanded by the current owners. To be sure, there would still be a transfer of wealth from the existing owners to those who are benefited by the undertakings. As noted above, if such wealth transfers discourage Canadian entrepreneurs from starting up companies over time because of lower expected pay-outs when they sell their companies in order to realize capital gains, there could be a substantial penalty to Canada's long-run economic growth prospects. Furthermore, if the undertakings of the foreign investor result in the merged company performing less efficiently over time than it otherwise would, the undertakings would arguably reduce the spillover efficiency benefits of inward FDI, as discussed below.

In short, the imposition of undertakings as a condition of approving a foreign investment can impose long-run costs on the Canadian economy, even if the undertakings do not discourage the foreign investment from taking place. Alternatively, long-run costs will also be incurred if the imposition of undertakings discourages the foreign investment from taking place. The costs of the screening process will be similar under either scenario. In particular, domestic entrepreneurship will be discouraged and the economic benefits of IFDI will be diminished. A potential offsetting benefit would be associated with a higher acquisition price being paid by the foreign investor, even though the existing owners of the acquired company would not be the primary beneficiaries of the higher price.

Now assume that the foreign investor's reservation price would typically approximate the current owners' minimum selling price absent a review process. Also assume that a foreign investor with rational expectations would incorporate the anticipated revenue losses or cost increases associated with undertakings into its bid price. In this case, there would be no scope for the host country government to increase (directly or indirectly) the effective price that the foreign investor needs to pay in order to acquire the target Canadian company. Again, there would be a transfer of wealth from existing owners of acquired Canadian companies to the beneficiaries of the undertakings; however, there would be no net increase in the total price paid by the foreign investor for the acquired domestic company.

In the preceding hypothetical case, there would be no reduction in IFDI as long as the effective price the foreign acquirer is obliged to pay to receive government approval does not exceed the foreign investor's reservation price. Nevertheless, there can still be adverse consequences to the host economy that are similar to those previously mentioned. First, domestic entrepreneurs will view undertakings as an implicit capital gains tax and will have weaker incentives to start new businesses or grow existing businesses. Second, foreign investors will presumably operate less efficiently than they otherwise would in the absence of the relevant undertakings. This, in turn, could diminish the spillover efficiency benefits from IFDI. While there is little evidence bearing upon the first possible consequence, a fair bit is known about spillover efficiency benefits.

Spillover efficiency benefits

There are several possible channels through which spillover efficiency benefits can be realized. One is the increased competition that can result when a foreign investor enters into or expands within a market in Canada. To the extent that domestic firms competing with the foreign investor are not as efficient as they could be given current technology and other market conditions, the increased competition from the foreign investment might spur those domestic firms to improve their efficiency. A second channel is technological and managerial expertise that the foreign investor possesses but which it cannot completely "internalize" once it is operating in the host economy. That is, it is often feasible for domestic firms to replicate the managerial strategies, organizational innovations, and new production processes brought to the host economy by the foreign investor. It is also quite common for managers and other skilled employees to leave a foreign-owned company and join (or start) a domestically owned company taking valuable knowledge with them that improves the productivity of the domestically owned firm. The phenomenon of technological spillovers is well documented in the literature.[24]

If the foreign acquirer is more efficient than the acquired host country firm, as well as other host country competitors, the benefits of the efficiency improvement associated with a change of ownership should be partially captured by the foreign investor in the form of higher profits. However, some of the efficiency gains might be captured by employees (in the form of higher wages) and by consumers (in the form of lower prices).

To the extent that foreign investors perform less efficiently than they otherwise would absent the undertakings associated with the screening

[24] For some evidence in the Canadian context, see Globerman (1979).

process, it also seems reasonable to anticipate smaller spillover efficiency benefits. For one thing, Canadian product markets will be less competitive, and pressures on less efficient domestic firms to improve efficiency will be diminished. For another, there is a decreased opportunity for domestic firms to observe and imitate efficient business practices. Finally, there is less opportunity for consumers to benefit from lower prices. In short, the review process can have economic costs to the Canadian economy, even if it does not reduce IFDI, given plausible assumptions about rational expectations of foreign investors and the relationship between bid prices and minimum selling prices.

5. Evidence bearing upon the economic impacts of the screening process

As noted earlier, only two reviewable acquisitions have been rejected under the Investment Canada Act. In 2008, the government rejected the proposed takeover of the information and geospatial business MacDonald, Dettwiler and Associates (MDA) on the grounds that the transaction was not likely to be of net benefit to Canada. More recently, in 2013, the government rejected the proposed acquisition of the Allstream division of Manitoba Telecom Services by Accelero Capital Holdings. This was the first time a proposed acquisition was rejected on national security grounds.

Perhaps the most well-known proposed acquisition that did not take place was in 2010 involving the proposed takeover of Potash Corporation by BHP Billiton. After its initial review, the government sent a notice to the foreign investor indicating that it was not satisfied that the proposed takeover was likely to be of net benefit to Canada. Rather than submit a new set of proposed undertakings, BHP Billiton withdrew its application for review. As a practical matter, therefore, one might conclude that there were three reviewable acquisitions that were directly or indirectly disallowed under the Act since its inception.

The very few disallowed acquisitions might lead one to conclude that the Act has had a minimal impact on the magnitude or nature of IFDI in Canada. However, this conclusion would be premature. In particular, it is possible that overall IFDI is reduced by the screening process, so that there are fewer reviewable investments. In this case, rejected foreign investments might be a minimal proportion of the overall quantity of IFDI discouraged by the screening process. In this regard, there is some quantitative and qualitative evidence relating IFDI to screening under the FIRA and the Act.

Econometric evidence on the impacts of screening procedures

Several studies identify the determinants of IFDI to Canada, including the legal and regulatory regime. Kudrle (1995) finds weak statistical evidence of a FIRA deterrent effect on IFDI. He also provides some indirect evidence that the replacement of FIRA by the Act contributed to a small increase in IFDI, holding other factors constant. Similarly, Baldwin, Gellatly, and Sabourin (2006) report that the percentage of assets and revenues under foreign control tended to decline during a relatively restrictive (towards IFDI) Canadian regulatory regime and then increased as the regime changed toward a more liberal environment. The former corresponds to a period in the early 1970s, which encompasses the FIRA, while the latter dates from the mid-1980s and corresponds to the approximate implementation of the Act. Conversely, Globerman and Shapiro (1999) find that FIRA had little influence on inward or outward FDI. Furthermore, given the proximate timing of the introduction of the Act and the implementation of the Canada-US Free Trade Agreement (CUSTA), it is not possible to identify the separate influence of each phenomenon on IFDI. However, the authors believe that any increase in IFDI after the introduction of the Act reflects a liberalized trade environment rather than a liberalization of the FDI environment.

In summary, the limited available econometric evidence suggests that FIRA had, at best, a very modest and negative impact on FDI, although no such impact is identified for the Act. This result is broadly consistent with an argument that commitments imposed by the screening process above and beyond those that are already in the interests of the foreign investor to assume will discourage the demand for Canadian-owned assets on the part of foreign investors, thereby depressing the price of those assets. Unfortunately, there is no reliable econometric evidence focusing on the impacts of the Act separate from other policy interventions, especially the Canada-US Free Trade Agreement. Hence, it is possible that the observed slight positive impact of the implementation of the Act on IFDI reflects factors other than a liberalization of the investment screening environment.

Non-econometric evidence

There is also some evidence of a non-econometric nature bearing upon the linkage between IFDI and foreign investment regulations in Canada. One is a Price Waterhouse (1997) survey of lawyers and corporate coun-

Table 4: Ratio of Inward FDI to GDP for Canada (Four year sub-periods)

Time Period	Ratio
1961-65	.017
1966-70	.021
1971-75	.021
1976-80	.017
1981-85	.009
1986-90	.012
1991-95	.010
1996-2000	.039
2001-2006	.026
2007-2012	.034

Source: Globerman (2005, Table 5) and OECD, Foreign Direct Investment Data, http://stats.oecd.org/index.aspx?r=454671.

sel. Perhaps the most notable finding of the survey is the broad agreement among interviewees that with the exception of the cultural sector, the Act is viewed as essentially a policy process. That is, the screening process is not designed to be a deterrent to IFDI as much as it is meant to be a means of conditioning the specific activities of foreign investors. More generally, survey respondents expressed the viewpoint that foreign investments embody many of the beneficial characteristics that are identified in the Act even before a review takes place. Therefore, foreign investment patterns are influenced less by the Act and more by economic considerations.

Rheaume (2004) reports the results of a survey of executives of foreign multinational companies regarding Canada's business environment. In the international context, Canada was commonly described by respondents as an "average" place to invest, although more than three-quarters of the executives felt that Canada's business environment was not favourable for IFDI. Executives interviewed were asked about the foreign investment review approval process and noted that it had become much more rigorous in the past few decades without indicating that it was necessarily important in their choice of location for foreign investments.[25]

[25] Guillemette and Mintz (2004) argue that there is little justification for continuing the review process under the Act, not because the process deters foreign investment, but because investments are approved as a matter of course, while the process itself inflicts needless administrative costs on investors and taxpayers.

Table 5: Ratio of Inward FDI to GDP – NAFTA Countries Plus Australia

	Canada	U.S.	Mexico	Australia
2007-2012	.034	.014	.002	.037

Source: OECD, Foreign Direct Investment Data (Table 4).

The data for FDI flows themselves do not obviously show adverse effects of the Act on FDI in Canada. For example, table 4 reports the ratio of IFDI to GDP for Canada for selected sub-periods. There is some indication of an adverse impact of FIRA on IFDI in the form of a significant decrease in the ratio of IFDI to GDP from the early 1970s through the mid-1980s. However, the ratio increased to its pre-FIRA level and beyond from the mid-1990s through 2012. This latter increase is unlikely to be related to the implementation of the Act and more likely to do with the implementation of NAFTA, along with relatively high natural resource prices.

Table 5 provides some additional support for the view that the Act has not resulted in significant decreases in IFDI relative to GDP. The data in table 5 show that IFDI relative to GDP for Canada is higher than the ratio for its two NAFTA partners from 2007 to 2012. It is also on a par with Australia, which enjoyed a boom in foreign acquisitions of domestic businesses, particularly by Chinese investors, notwithstanding a relatively restrictive stance toward IFDI.

Of course, GDP is not the only determinant of IFDI, although it is an important determinant.[26] Hence, one cannot reject the claim that the ratio of IFDI to GDP for Canada would be even higher were it not for the Act. However, one can seemingly say that, to date, the IFDI performance of Canada relative to its economic size does not seem to have been noticeably harmed by the screening process under the Act.

Interpretation of the evidence

The evidence of a relatively weak to non-existent impact of the Act on IFDI is consistent with elements of the conceptual model of the review process described in the proceeding section. Namely, if the market for corporate acquisitions in Canada is relatively competitive and efficient, foreign investors will anticipate the undertakings that will be approximately required to receive approval under the screening process, and their

[26] For a recent empirical study of the determinants of foreign direct investment flows, see Blonigen and Piger (2014).

bid prices for domestic assets will reflect this anticipation. That is, foreign investors will discount their bid prices to reflect any increased costs or foregone revenues that will result from the review process. As long as the foreign investor's adjusted bid price is marginally higher than the current owners' minimum acceptable selling price, the foreign acquisition will go forward.[27] As a result, the Act will neither increase, nor decrease IFDI at the margin in any significant way, as long as the negative impact of anticipated and required undertakings on the profitability of an acquisition are fully discounted in the foreign investor's bid price. Rather, it will redistribute income across groups in Canada, as explained earlier. In those cases where bid price discounting would result in bid prices lower than the would-be sellers' minimally acceptable selling prices, the potential acquisitions in question will presumably not take place.

Given the small relative size of the Canadian stock market, it seems reasonable to assume that the combination of potential Canadian and foreign acquirers for domestic assets will result in competitive bidding for those assets. In this regard, evidence indicates that Canadian capital markets are relatively efficient, where efficiency encompasses market participants being able to conduct transactions at a competitive cost (Kennedy, 2004). Other evidence indicates that Canadian firms sell at a valuation discount relative to US firms, other things being held constant, although the gap exists mainly for small firms, many of which would fall below the size threshold for review.[28]

Perhaps of greater relevance to the issue of the competitiveness of the market for corporate acquisitions in Canada is evidence that IFDI takes place in a global integrated capital market (Albuquerque, Loayza, and Sever, 2005). This implies that acquisitions of Canadian companies are priced in a global capital market which, in turn, suggests that the bid prices will be competitively determined.

As noted above, to the extent that screening results in lower bid prices, the lower bid prices for Canadian companies that result from the review process should discourage the formation and growth of new companies in Canada. Unfortunately, there is no direct evidence bearing upon this potential consequence, although owners of smaller Canadian compan-

[27] Surveys of lawyers and executives having experience with the Act's review process fail to highlight any linkage between the Act and political risk (Globerman, 2008). This phenomenon might be interpreted as evidence that foreign investors can fairly accurately anticipate the required undertakings of potential Canadian acquisitions. Admittedly, more direct evidence of this phenomenon would be welcome, although any such undertaking is beyond the scope of this essay.

[28] For a discussion of the valuation gap, see Hendry and King (2004).

ies have complained that the screening process does affect their ability to earn capital gains on takeovers of their companies (Globerman, 2008).

Conversely, there is overwhelming evidence that foreign-owned affiliates are more efficient than their host country counterparts.[29] This efficiency advantage reflects the former's larger size, higher ratio of capital to labour, and superior technology and management practices. There is also evidence that plants and/or companies acquired by foreign multinational companies subsequently tend to enjoy faster growth in productivity. Unless the foreign investor is able to internalize all of the benefits of its superior efficiency in the form of higher profits, other suppliers of inputs to the firm will tend to benefit in the form of higher prices. In particular, average wages of workers in foreign affiliates tend to be higher than those of workers in domestically owned firms holding other determinants of wages constant (Conyon, Girma, Thompson, and Wright, 2002).

There is also some indirect evidence that foreign investors will operate less efficiently than they otherwise would in the absence of required undertakings. For example, Baily and Solow (2001) show for nine manufacturing industries in the United States, Germany, and Japan that the more a given industry is exposed to the world's best practice, high-productivity industry, the higher is that industry's relative productivity. More directly, Moran (2001) examines two industries with extensive global FDI—automobiles and computers/electronics. For each industry, he distinguishes between two types of host countries. The first permits parent companies to maintain tight control over affiliate operations and thereby allows affiliates to be integrated into global production networks as the firms see best. The second imposes relatively stringent and/or widespread performance standards on affiliates, such as domestic content requirements. He finds in the case of the latter that plants use older technology and suffer lags in the introduction of new products. While Moran focuses on developing economies, there is no reason to believe that his basic findings would not apply to developed economies as well. As a consequence of foreign affiliates operating less efficiently, one would anticipate the spillover efficiency benefits from IFDI to be commensurately lower.

Summary

Foreign acquisitions of Canadian companies take place in a competitive and relatively efficient global market. As a consequence, there is no scope

[29] A comprehensive review of this evidence is found in Marchik and Slaughter (2008). Comparable evidence for Canada is provided by Globerman, Ries, and Vertinsky (1994).

for the government to extract higher net "overall" bid prices from foreign investors through the screening process. Rather, the required undertakings are "paid for" through lower explicit bid prices for Canadian companies. Furthermore, the relevant undertakings are likely to reduce the efficiency with which foreign affiliates operate in the Canadian economy. The net result of the screening process is therefore likely to be reduced investment in Canada by Canadian entrepreneurs and smaller spillover efficiency benefits from IFDI.

6. Cultural businesses, SOEs, and national security—conceptual issues

This section addresses the conceptual arguments underlying the treatment of cultural businesses and SOEs under the Act, as well as concerns about national security related to IFDI.

Cultural businesses

There is no explanation in the Act for why the foreign investment threshold to initiate a review of a foreign investment is so much lower for cultural businesses than for non-cultural businesses. It is reasonable to presume that government views for-profit foreign investors in cultural businesses less favourably than for-profit investors in other businesses, although the precise reasons are unstated. It might be argued that foreign investors are less sensitive to the cultural imperatives of Canada and will therefore not contribute as much to the cultural identity of the country as do Canadian owners of cultural businesses. One problem with this argument is that there is little evidence to support the claim of a strong linkage between the activities of Canadian-owned cultural businesses and Canadian national identity. A second problem is that if foreign investors in cultural businesses are less sensitive than their Canadian-owned competitors to the public's demand for "Canadian-content," presuming such demand exists, the former should be less profitable in Canada than the latter. Were that the case, it is unclear why foreign investors would value the assets of a Canadian cultural business more highly than the existing Canadian owners—the basic motivation for a foreign acquisition of a Canadian business, as discussed above. In any case, Canadian content regulation and related restrictions apply to cultural industries operating in Canada regardless of the nationality of the owner.

A more subtle argument for a stricter review process in the case of acquisitions of cultural businesses is that the government wants to redistribute income from domestic owners of acquired Canadian businesses to those who benefit from the undertakings needed to secure approval of the takeovers. In particular, the capital gains earned by the owners of the acquired business in question can be potentially reinvested in non-cultural businesses or in cultural activities outside of Canada. Requiring undertakings of the type described earlier in section 2 is an implicit way for the government to tax the capital gains from the takeover (since existing shareholders will receive a lower takeover premium) and ensure that the implicit tax revenue is "reinvested" in domestic cultural businesses and institutions. Of course, it is possible that the existing owners might use the capital gains from the acquisition to invest in new cultural businesses in Canada, and possibly operate more efficiently than those participants in the cultural sector who are subsidized via the undertakings extracted from the foreign investor. Perhaps of greater salience, if the activities of domestic cultural businesses do contribute to the public good called "Canadian identity," it is both more efficient and fairer for the government to use a broad-based tax, such as the tax on personal income, to generate the funding that, in turn, is used to subsidize those who would be otherwise subsidized through required undertakings.

State-owned enterprises

Many critics of the screening process when it involves for-profit foreign investors support screening, and even outright restrictions, on IFDI undertaken by state-owned or state-influenced companies.[30] The primary justification for "tightening" screening provisions for state-owned enterprises (SOEs), as noted earlier in the report, is the presumption that their investments may be motivated by commercial objectives. Hence, they can acquire host firms even if the SOE's expected net cash flows from the corporate assets in question are lower than the expected net cash flows of the existing owners or other potential for-profit acquirers. This could be the case, for example, if the SOE has a lower cost of capital than other potential acquirers, even if the SOE would be a relatively inefficient operator of

[30] State-influenced companies are entities in which the home government does not have a controlling shareholder interest but through other linkages can strongly influence management of the entity. For purposes of convenience, we will simply refer to SOEs throughout the rest of this report. Some observers would group sovereign wealth funds (SWFs) with SOEs. While SWFs are government investors, they typically invest as minority owners of host country companies. Nevertheless, they can sometimes have ownership positions that are large enough for them to influence management decisions. Again, for convenience, we do not draw a distinction between SOEs and SWFs.

the target host country firm. Indeed, a complaint often made about Chinese SOEs is that they have access to government financing and therefore can raise capital for foreign investments at a cost that is below the cost of capital for companies that need to raise money in competitive corporate capital markets.

A related argument for treating SOEs differently than for-profit foreign investors is that the non-commercial objectives of the SOE may lead to behaviour that is harmful for the host economy. A hypothetical example sometimes cited in this regard involves SOEs that acquire Canadian oil companies and then sell the oil to buyers in their home countries at below-competitive prices. Another hypothetical example involves SOEs that make investments in the host economy in order to gain some influence with the host country government.[31]

It is beyond the scope of this report to address all of the evidence bearing upon the motivations for outward FDI by SOEs. Suffice it to say that the available evidence is not conclusive about whether or not SOEs primarily pursue non-commercial objectives.[32] The evidence is inconclusive, in part, because of the heterogeneous nature of SOEs. In this context, a blanket policy that assumes all SOEs are non-commercial in their orientation is bound to be misguided. If anything, the opposite assumption might be better founded. For example, in her detailed study of the behaviour of Chinese SOEs, Cornish (2012) found little evidence to support the contention that SOEs engage in non-commercial behaviour intended to advance the interests of their governments. One reason is that competition forces SOEs to behave more like commercial entities. In a recent study, Chen, Jiang, Ljungqvist, Lu, and Zhou (2015) find that SOEs in China allocate capital less efficiently than do their privately owned counterparts. However, product market competition and external monitoring by outside investors helps discipline inefficient investing by SOEs. If SOEs do not generally act non-commercially, it is unclear why they should be singled out for stricter treatment under the Act.

Even if SOEs pursue primarily non-commercial objectives in their foreign investment strategies, it does not necessarily follow that stricter

[31] Owning large companies might give the foreign government leverage with the host country government so that the latter is more willing to support the former in matters of international diplomacy.

[32] For a comprehensive discussion of the motives for outward FDI by Chinese SOEs, see Dobson (2014). She concludes that China's government has reduced its role in commercial decision-making and seems more comfortable with allowing Chinese businesses to pursue growth based on maximizing stakeholder value. A similar point of view is expressed in The Economist, "Empire of the Sums," August 23, 2014, pp. 75-77. For some contrary evidence for SWFs, see Bernstein, Lerner and Schoar (2013).

screening of investments by SOEs is in the public interest. Much again depends upon the degree of competition in the market for corporate takeovers and acquisitions. If that market is highly competitive, any SOE acquiring a host country firm will need to pay a price that is close to or equal to the net present value of the assets in question when those assets are owned by an efficient entity. Furthermore, the value of the non-commercial benefits from owning the host country company is presumably factored into the SOEs bid price, just as expected future profits are factored into a for-profit foreign investor's bid price. Therefore, as in the case of a for-profit foreign investor, if required government undertakings reduce the non-commercial benefits that the SOE is looking to achieve in the host country takeover, the foreign investor might be discouraged from making the investment. In this case, domestic shareholders of the target company might need to sell their company to another investor at a price that is somewhat below the price that would have been paid by the SOE.

As noted earlier, the primary economic argument for encouraging IFDI is that it creates spillover efficiency benefits for domestic firms other than that which is being bought by the foreign investor. The existence of spillover benefits to inward FDI is linked to superior efficiency of foreign investors compared to acquired host country firms. If SOEs are less efficient than the firms they acquire, it is much less likely that their presence in domestic markets will provide spillover efficiency benefits to other firms. Indeed, the implicit argument either for tighter scrutiny of SOEs, or even total restrictions on acquisitions of domestic firms by SOEs, is that the activities of SOEs will impose external costs on the host economy, although the precise costs are rarely articulated. One might conjecture, for example, that Chinese SOEs will be more inclined to pollute the natural environment than their domestically owned counterparts because they are used to operating in a home market that has much weaker environmental regulations than Canada. Presumably, even if true, the Chinese SOEs in question could not get away for long with violating Canadian environmental laws that apply to them and would be fined for violating them in the first place. Indeed, much of the potential behavior of SOEs that might concern Canadian citizens is addressed by laws and regulations that constrain the behavior of domestically owned firms in Canada as well.

In summary, even if SOEs ordinarily pursue non-commercial objectives, it is difficult to articulate a strong argument for why acquisitions of SOEs should be screened more stringently than acquisitions by for-profit foreign investors. Specifically, non-commercial behavior that imparts no "third-party" impacts will create lower revenues or higher costs that are borne by the foreign shareholders of the SOE and not by residents of the host country. Non-commercial behavior that potentially causes negative externalities for the host economy, while usually not explicitly articulated, are likely addressed by existing laws and regulations in Canada that apply to all firms in the same industries as those targeted by SOE investors. On the other hand, efforts by SOEs to acquire Canadian companies makes the market for corporate acquisitions in Canada more competitive, thereby making it even more likely that the owners of acquired Canadian companies will receive takeover prices that reflect the maximum value that efficient prospective acquirers would pay for those companies.

National security

Concerns about foreign investors posing national security risks are related to concerns about the non-commercial objectives of SOEs, since some SOEs might be owned by governments that are not allies of Canada. In such cases, foreign investors might engage in specific types of post-acquisition behavior that create negative externalities for the host economy that take the form of compromised national security. Again, the precise form such behavior might take is rarely articulated by host country governments. Rather, reference is made to strategic assets, such as farmland, or strategic industries, such as telecommunications, being protected from foreign ownership. Precisely how foreign ownership of farmland or telecommunications companies can realistically compromise national security is rarely addressed by those who support screening foreign investments on national security grounds.

One might conjecture, for example, that a foreign-owned telecommunications company might monitor the communications of key government or law enforcement officials in Canada in order to gain sensitive information that, in turn, assists the relevant foreign government to do harm to Canada. If domestic laws and regulations against such behaviour are inadequate to address the relevant risks, perhaps because technological change outruns changes in laws and regulations it might be in the social interest to prevent the relevant investments from being made in the first place. However, in the absence of specific statements identifying what types of behaviour pose an unacceptable risk to national security, it is impossible to assess whether laws and regulations proscribing the harmful activities are sufficiently adequate to obviate the relevant security risks posed by the presence of foreign investors in "sensitive" industries, or as owners of "strategic" assets. As noted by the Financial Services Institute of Australia, vague definitions of national security are open invitations to opportunistic lobbying in pursuit of special interests that are unlikely to include freer competition.

Conclusions

The "special treatment" of foreign investors in cultural businesses implicitly presumes that foreign-owned cultural businesses will be operated differently than domestically owned cultural businesses. In fact, given that extensive regulations would govern the behaviour of both types of cultural businesses, there is no legitimate basis for the presumption. A similar consideration can be raised in the context of SOEs. To the extent that the latter would operate in a non-commercial manner harmful to the host economy, existing legislation and regulations already constrain much potentially harmful behaviour. Furthermore, the extent to which SOEs will pursue non-commercial objectives is a matter of debate. Even if some SOEs do forego profits in order to promote the "political objectives" of their government owners, the costs of such behaviour are likely to be born primarily by the foreign investors.

National security concerns for screening IFDI are particularly problematic, since national security is not explicitly defined. As in the case of SOEs, many, although perhaps not all, national security concerns are implicitly addressed by domestic laws and regulations that govern the behaviour of all companies operating in Canada.

7. Conclusions and policy recommendations

There have been several recent critical reviews of the Investment Canada Act. One characteristic of the Act that receives broadly shared criticism is the lack of transparency of the review process. In this regard, Bergevin and Schwanen (2011) criticize the current net benefit test as being highly subjective and unpredictable. Similarly, Assaf and McGillis (2013) call for clear rules that provide certainty to the foreign investment process.

On the other hand, there are marked differences in the studies' proposed modifications to the review process. Bergevin and Schwanen propose scrapping the current net benefit test and replacing it with a national interest test. The latter would require the federal government to show that a foreign investment was contrary to Canadian interests in order to block a particular transaction. They argue for a national interest test on the grounds that it would improve transparency and government accountability without compromising the government's ability to implement national objectives and policies. Asaf and McGillis call for modernizing the net benefit test to include additional criteria such as an investment's compatibility with environmental objectives. They also call for the government to publish a list of undertakings that may be attached to a transaction's approval. Since there is already a broad list of possible undertakings, it is unclear whether this latter recommendation would change current practice. Asaf and McGillis also argue for the government to adopt formal guidelines for national security reviews and for clarification of the "exceptional circumstances" constraint on SOE takeover of oil sands companies.

To the extent that foreign investors dislike ambiguity surrounding the implementation of the review process, calls for greater clarity in the screening criteria, as well as greater transparency in the implementation of the criteria are reasonable suggestions, since such changes would likely reduce the costs and risks of undertaking foreign investments in Canada. The practical importance of greater clarity of the rules and increased transparency of their application is uncertain however, particularly since a relatively small group of lawyers in Canada have gained substantial experience handling reviewable cases for foreign investors. To the extent that there is consistency across similar foreign investments in how they are treated under the Act, foreign investors can draw upon this experience for a fee and reduce the adverse impacts of a lack of public transparency.

Putting the burden of proof on the government to show that an investment is not in the national interest, rather than requiring the foreign investors to show that their investments will be of net benefit to Canada, might also have little practical impact if the national interest criteria are so broad as to encompass most or all of the existing criteria under the current Act. Bergerin and Schwanen (2011) suggest four "tests" that might guide the government's identification of whether a reviewable foreign investment is not in the public interest. Again, the tests encompass quite broad considerations such that almost any foreign investment might be deemed inconsistent with the public interest.

The theory and evidence presented in this report suggest that there is very limited scope for IFDI screening to improve the welfare of Canadians. Simply put, the costs of the screening mechanism are likely to outweigh the benefits for the majority of foreign investments undertaken in Canada. Besides the direct administrative costs, screening under the Act will arguably discourage entrepreneurship in Canada and reduce the spillover efficiency benefits of IFDI to the Canadian economy. Furthermore, the potential for the Act to require undertakings on the part of foreign investors creates incentives for affected shareholders, such as incumbent managers, to lobby for undertakings that transfer income to themselves, e.g., the foreign investor agrees to expand domestic head office activities. Such lobbying efforts divert resources from more productive activities.

The excess of costs over benefits to screening is arguably true even for inward direct investments made by SOEs. In particular, the available evidence suggests that the economic performance of SOEs is not much different from that of privately owned companies headquartered in emerging markets (Shapiro and Globerman, 2012). Combined with evidence that SOEs are increasingly managed to achieve standard commercial objectives, the application of tighter screening criteria to SOEs seems inappropriate, as it risks discouraging IFDI from an increasingly important source of global capital. Moreover, ensuring that the market for corporate control in Canada is as internationally competitive as possible reduces the risk that inefficient bidders will gain control of Canadian companies.

Even in the context of national security, it is far from clear that the relevant issues raised could not be handled through specific government regulations that apply to all companies doing business in Canada.[33] It is obviously impossible to rule out the possibility of any specific inward

[33] This caveat is put forth in the context of Australia's foreign investment review process (see Financial Services Institute of Australia, 2014).

foreign investment compromising national security, although even in the context of a "sensitive" industry such as telecommunications, it is difficult to make a convincing case that foreign ownership raises national security concerns that cannot be addressed through other laws and regulations (Globerman, 1995). To the extent that national security is maintained as a criterion for rejecting proposed foreign investments, it is important for the Canadian government to set relatively tight and transparent boundaries around the application of the national security criterion. One approach is to identify sectors for which foreign investments might raise potential national security issues. The relevant sectors should be narrowly and explicitly defined and should be clearly linked to government defense and intelligence-related activities. Only foreign investments in those narrowly defined sectors would be reviewed, and the "burden of proof" would be on the government to justify why existing laws and regulations are inadequate to ensure that a change from domestic ownership to foreign ownership does not compromise national security.

If a national security criterion for screening inward FDI exists, it should not be conflated with broader definitions of national interest such as "strategic assets." Since the concept of a strategic asset is economically meaningless, its use as a criterion for screening foreign investments invites the outcome of the screening process to be determined by interest groups with relatively narrow political agendas. In this regard, as discussed earlier, the separate screening procedure for foreign investments in the culture industries should be abandoned, notwithstanding the implicit linkages that have been drawn between national defense and cultural sovereignty. Simply put, there is very little empirical evidence that the panoply of laws and regulations promoting the production and distribution of "Canadian content" contributes in any measurable way to a stronger sense of national identity on the part of Canadians.[34] Furthermore, there is no reason to believe that laws and regulations promoting the production and distribution of Canadian content would be undermined by increased foreign ownership of Canadian businesses.

In summary, the current screening procedure under the Act does not serve the interests of Canadians. The conditions under which the procedure can increase the net benefits from IFDI to Canadians are highly unlikely to prevail in the real world. Rather, the implicit and explicit undertakings demanded of large foreign investors largely redistribute income away from the owners of acquired businesses in favour of other domestic producers and workers. They also cause foreign-owned firms to operate

[34] For a full discussion of this issue, see Globerman (2014).

less efficiently than they otherwise would. Both consequences have long-term costs for the Canadian economy.

The possibility that the screening process under the Act also discourages IFDI at the margin cannot be dismissed, although this impact has not been clearly identified in econometric work. What has been identified is an adverse impact of recent changes to the Act on the value of small and mid-sized oil companies. Specifically, Beaulieu and Saunders (2014) examine the effect of the federal government's announced guidelines for investments by SOEs in the oil sands. They measure the stock market returns of firms operating in the oil sands before and after the government's announcement that investments by foreign SOEs to acquire control of Canadian oil sands businesses would be approved only on exceptional basis. Their event study shows that the government's policy change resulted in a significant reduction in the share prices of domestic oil sands companies, particularly the smaller oil companies. The decrease in share returns is consistent with the reduced likelihood of smaller oil sands firms receiving takeover premia from foreign investors.

While the case against screening is strongest when applied to privately owned foreign investors, concerns about the negative consequences of IFDI in the culture industries, or of IFDI carried out by SOEs, are either exaggerated or misplaced. Indeed, the logical case for screening IFDI on national security grounds is questionable in many potentially relevant instances given the government's ability to regulate the behaviour of all firms operating in Canada.

To the extent that national security remains a criterion for review of IFDI, it is important to circumscribe the scope for application of the criterion. One approach is to limit reviews to a small number of industry sectors. A problem in this regard is that industrial classifications are not necessarily stable or accurate descriptions of the economic activities that go on in the relevant classifications.

Another approach is to specify the nature of the transaction that is potentially problematic from a national security perspective. Moran (2012) suggests a screening framework in this regard that focuses on specific threats to the host country. Proposed acquisitions would be evaluated with regard to the following potential threats: 1) the host economy would become dependent upon a foreign-controlled supplier that might delay, deny, or place conditions on the provision of goods crucial to the functioning of the home economy; 2) technology or other expertise would be transferred to a foreign-controlled entity that might be used in a manner harmful to the host country's national interests; 3) the foreign investor would gain the capability for surveillance or sabotage in the host economy. In comparing the two approaches to identifying potential national security concerns, the industry-based identification criterion has the strong virtue of being straightforward and easy to implement.

Clearly any application of criteria defining the risks to national security associated with IFDI will be somewhat arbitrary and subject to political lobbying. The policy goal should be to limit the potential for uncertainty about national security criteria to discourage IFDI, at the margin, as well as to limit political lobbying and other pressures that lead to capricious decision-making by the government. In this regard, a feature of any relevant modification of the Act should be a requirement for the government to show why existing laws and regulations are inadequate to mitigate the specific national security threats posed by any specific foreign investment.

References

Albuquerque, Rui, Norman Loayza, and Luis Severn (2005). World Market Integration through the Lens of Foreign Direct Investment. *Journal of International Economics* 66: 267-295.

Assaf, Dany, and Rory McGillis (2013). *Foreign Direct Investment and the National Interest.* IRPP Study No. 40. Institute for Research on Public Policy.

Baily, Martin, and Robert Solow (2001). International Productivity Comparisons Built from the Firm Level. *Journal of Economic Perspectives* 15 (3): 151-172.

Baldwin, John, Guy Gellatly, and David Sabourin (2006). *Changes in Foreign Control Under Different Regulatory Climates: Multinationals in Canada.* Statistics Canada.

Beaulieu, Eugene, and Matthew Saunders (2014). *The Impact of Foreign Investment Restriction on the Stock Returns of Oil Sands Companies*. SPP Research Papers, 7(16). University of Calgary School of Public Policy.

Bergevin, Philippe, and Daniel Schwanen (2011). *Reforming the* Investment Canada Act*: Walk More Softly, Carry a Bigger Stick*. CD Howe Institute Commentary No. 337. CD Howe Institute.

Bertrand, Olivier, Katarina Hakkala, Pehr-Johan Norback, and Lars Persson (2012). Should Countries Block Foreign Takeovers of R&D Champions and Promote Greenfield Entry? *Canadian Journal of Economics* 45(3): 1083-1124.

Bernstein, Shai, Josh Lerner, and Antoinette Schoar (2013). The Investment Strategies of Sovereign Wealth Funds. *Journal of Economic Perspectives* 27(2): 219-238.

Blonigen, Bruce, and Jeremy Piger (2014). Determinants of Foreign Direct Investment. *Canadian Journal of Economics* 47(3): 775-812.

Canada, Industry Canada (2012). *Statement Regarding Investment by Foreign State-Owned Enterprises*. Web page. Government of Canada. <http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81147.html>, as of March 3, 2015.

Canada, Industry Canada (2014). *Investment Canada Act*. Web page. Government of Canada. <http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/home>, as of March 3, 2015.

Canadian Heritage (2013). *Net Benefit Undertakings and Canadian Cultural Policy*. Web page. Government of Canada. <http://www.pch.gc.ca/eng/1360158482694/1360158670409>, as of March 2, 2015.

Chen, Donghua, Dequan Jiang, Alexander Ljungqvist, Haitian Lu, and Mingming Zhou (2015). *State Capitalism vs. Private Enterprise*. NBER Working Paper 20930. National Bureau of Economic Research.

Conyon, Martin, Sourafel Girma, Steve Thompson, and Peter Wright (2002). The Productivity and Wage Effects of Foreign Acquisitions in the United Kingdom. *The Journal of Industrial Economics* L (1): 85-102.

Cornish, Margaret (2012). *Behaviour of Chinese SOEs: Implications for Investment and Cooperation in Canada.* Canadian International Council and Canadian Council of Chief Executives.

Dobson, Wendy (2014). China's State-Owned Enterprises and Canada's FDI Policy. University of Calgary School of Public Policy. <http://www.policyschool.ucalgary.ca/?q=content/chinas-state-owned-enterprises-and-canadas-fdi-policy>, as of March 10, 2015.

Financial Services Institute of Australia (2014). *Regulating Foreign Direct Investment in Australia.* Finsia.

Frigon, Mathieu (2014). *The Foreign Investment Review Process in Canada.* Publication No. 2011-42-E. Library of Parliament.

Globerman, Steven (1979). Foreign Direct Investment and "Spillover" Efficiency Benefits in Canadian Manufacturing Industries. *Canadian Journal of Economics* 12 (1): 42-56.

Globerman, Steven (1984). The Consistency of Canada's Foreign Investment Review Process: A Temporal Analysis. *Journal of International Business Studies* (Spring/Summer): 119-129.

Globerman, Steven (1995). Foreign Ownership in Telecommunications: A Policy Perspective. *Telecommunications Policy* 19 (1): 21-28.

Globerman, Steven (2008). *An Evaluation of the Investment Canada Act and its Operations.* Research paper summary. Competition Policy Review Panel. <https://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/vwapj/Steven_Globerman.pdf/$FILE/Steven_Globerman.pdf>, as of March 10, 2015.

Globerman, Steven (2014). *The Entertainment Industries, Government Policies, and Canada's National Identity*. The Fraser Institute. <http://www.fraserinstitute.org/uploadedFiles/fraser-ca/Content/research-news/research/publications/entertainment-industries-government-policies-and-canadas-national-identity.pdf>, as of March 10, 2015.

Globerman, Steven, John C. Ries, and Ilan Vertinsky (1994). The Economic Performance of Foreign Affiliates in Canada. *Canadian Journal of Economics* 27 (1): 143-156.

Globerman, Steven, and Daniel Shapiro (1999). The Impact of Government Policies on Foreign Direct Investment: The Canadian Experience. *Journal of International Business Studies* 30(3): 513-533.

Guillemette, Yvan, and Jack Mintz (2004). *A Capital Story: Exploding the Myths around Foreign Investment in Canada.* CD Howe Institute Commentary No. 201. CD Howe Institute.

Hendry, Scott, and Michael King (2004). The Efficiency of Canadian Capital Markets: Some Bank of Canada Research. *Bank of Canada Review* (Summer): 5-17.

Jongbloed, Wouter, Lisa Sacks, and Karl Sauvant (2012). Sovereign Investment: An Introduction. In Karl Sauvant (ed.), *Sovereign Investment: Concerns and Policy Reactions* (Oxford University Press): 3-23.

Kalinova, B., A. Palerm, and S. Thomsen (2010). *OECD's FDI Restrictiveness Index: 2010 Update.* OECD Working Papers on International Investment, 2010/13. OECD Publishing.

Kennedy, Sheryl (2004). Canada's Capital Markets: How Do They Measure Up? *Bank of Canada Review* (Summer): 33-40.

Kudrle, Robert (1995). Canada's Foreign Investment Review Agency and United States Direct Investment in Canada. *Transnational Corporations* 4 (2): 58-91.

Marchik, David, and Matthew Slaughter (2008). *Global FDI Policy: Correcting a Protectionist Drift.* CSR No. 34.Council on Foreign Relations.

Moran, Theodore (2001). *Parental Supervision: The New Paradigm for Foreign Direct Investment and Development.* Peterson Institute for International Economics.

Moran, Theodore (2012). *Chinese Foreign Direct Investment in Canada: Threat or Opportunity?* Canadian Council of Chief Executives.

New Zealand (2012). *New Zealand: Economic and Financial Overview.* New Zealand Government. <http://www.treasury.govt.nz/economy/overview/2012/nzefo-12.pdf>, as of March 4, 2015.

Organisation for Economic Cooperation and Development [OECD] (n.d.). *Regulatory Restrictiveness Index*. Web page. OECD <http://www.oecd.org/investment/fdiindex.htm>, as of March 31, 2015.

Price Waterhouse (1997). *Evaluation of the Administration of the Investment Canada Act–Final Report.* Price Waterhouse.

Raby, Jean (1990). The Investment Provisions of the Canada-United States Free Trade Agreement: A Canadian Perspective. *The American Journal of International Law* 84 (2): 394-443.

Rheaume, Gilles (2004). *Open for Business? Canada's Foreign Direct Investment Challenge.* The Conference Board.

Schultz, Richard, Frank Swedlove, and Katherine Swinton (1980). *The Cabinet as a Regulatory Body: The Case of the Foreign Investment Review Act.* Working paper No. 6. Economic Council of Canada.

Shapiro, Daniel, and Steven Globerman (2003). Foreign Investment Policies and Capital Flows in Canada: A Sectoral Analysis. *Journal of Business Research* 56: 779-790.

Shapiro, Daniel, and Steven Globerman (2012). The International Activities and Impacts of State-owned Enterprises. In Karl Sauvant, Lisa Sacks, and Wouter Jongbload (eds.). *Sovereign Investments: Concerns and Policy Reactions.* (Oxford University Press): 98-141.

Vieira, Paul (2014, December 5). Burger King Deal for Tim Hortons Approved. *The Wall Street Journal:* B5.

About the author

Steven Globerman

Steven Globerman is the Kaiser Professor of International Business, Director of the Center for International Business at Western Washington University, and a Fraser Institute senior fellow. Previously, he held tenured appointments at Simon Fraser University and York University and has been a visiting professor at the University of California, University of British Columbia, Stockholm School of Economics, Copenhagen School of Business, and the Helsinki School of Economics. He has published more than 150 articles and monographs and is the author of the book, The Impacts of 9/11 on Canada-U.S. Trade, as well as a textbook on international business management. In the early 1990s, he was responsible for coordinating Fraser Institute research on the North American Free Trade Agreement. In addition, Dr. Globerman has served as a researcher for two Canadian Royal Commissions on the economy as well as a research advisor to Investment Canada on the subject of foreign direct investment. He has also hosted management seminars for policymakers across North America and Asia. Dr. Globerman was a founding member of the Association for Cultural Economics and is currently a member of the American and Canadian Economics Associations, the Academy of International Business, and the Academy of Management. He earned his B.A. in economics from Brooklyn College, his M.A. from the University of California, Los Angeles, and his Ph.D. from New York University.

Acknowledgments

The author thanks Evan Madill for very helpful research assistance. He also thanks John Knubley and several unidentified reviewers for comments and insights that improved the paper substantially. Any remaining errors or oversights are the sole responsibility of the author. As the researcher has worked independently, the views and conclusions expressed in this paper do not necessarily reflect those of the Board of Directors of the Fraser Institute, the staff, or supporters.

Publishing information

Distribution

These publications are available from <http://www.fraserinstitute.org> in Portable Document Format (PDF) and can be read with Adobe Acrobat® or Adobe Reader®, versions 7 or later. Adobe Reader® XI, the most recent version, is available free of charge from Adobe Systems Inc. at <http://get.adobe.com/reader/>. Readers having trouble viewing or printing our PDF files using applications from other manufacturers (e.g., Apple's Preview) should use Reader® or Acrobat®.

Ordering publications

To order printed publications from the Fraser Institute, please contact:

- e-mail: sales@fraserinstitute.org
- telephone: 604.688.0221 ext. 580 or, toll free, 1.800.665.3558 ext. 580
- fax: 604.688.8539.

Media

For media enquiries, please contact our Communications Department:

- 604.714.4582
- e-mail: communications@fraserinstitute.org.

Copyright

Date of issue

May 2015

ISBN

978-0-88975-352-5

Citation

Steven Globerman (2015). *An Economic Assessment of the Investment Canada Act*. Fraser Institute. <http://www.fraserinstitute.org>.

Cover design

Bart Allen

Supporting the Fraser Institute

To learn how to support the Fraser Institute, please contact

- Development Department, Fraser Institute
  Fourth Floor, 1770 Burrard Street
  Vancouver, British Columbia, V6J 3G7 Canada

- telephone, toll-free: 1.800.665.3558 ext. 586

- e-mail: development@fraserinstitute.org

- website: <http://www.fraserinstitute.org/support-us/overview.aspx>

Purpose, funding, and independence

The Fraser Institute provides a useful public service. We report objective information about the economic and social effects of current public policies, and we offer evidence-based research and education about policy options that can improve the quality of life.

The Institute is a non-profit organization. Our activities are funded by charitable donations, unrestricted grants, ticket sales, and sponsorships from events, the licensing of products for public distribution, and the sale of publications.

All research is subject to rigorous review by external experts, and is conducted and published separately from the Institute's Board of Trustees and its donors.

The opinions expressed by authors are their own, and do not necessarily reflect those of the Institute, its Board of Trustees, its donors and supporters, or its staff. This publication in no way implies that the Fraser Institute, its trustees, or staff are in favour of, or oppose the passage of, any bill; or that they support or oppose any particular political party or candidate.

As a healthy part of public discussion among fellow citizens who desire to improve the lives of people through better public policy, the Institute welcomes evidence-focused scrutiny of the research we publish, including verification of data sources, replication of analytical methods, and intelligent debate about the practical effects of policy recommendations.

About the Fraser Institute

Our mission is to improve the quality of life for Canadians, their families, and future generations by studying, measuring, and broadly communicating the effects of government policies, entrepreneurship, and choice on their well-being.

Notre mission consiste à améliorer la qualité de vie des Canadiens et des générations à venir en étudiant, en mesurant et en diffusant les effets des politiques gouvernementales, de l'entrepreneuriat et des choix sur leur bien-être.

Peer review—validating the accuracy of our research

The Fraser Institute maintains a rigorous peer review process for its research. New research, major research projects, and substantively modified research conducted by the Fraser Institute are reviewed by experts with a recognized expertise in the topic area being addressed. Whenever possible, external review is a blind process. Updates to previously reviewed research or new editions of previously reviewed research are not reviewed unless the update includes substantive or material changes in the methodology.

The review process is overseen by the directors of the Institute's research departments who are responsible for ensuring all research published by the Institute passes through the appropriate peer review. If a dispute about the recommendations of the reviewers should arise during the Institute's peer review process, the Institute has an Editorial Advisory Board, a panel of scholars from Canada, the United States, and Europe to whom it can turn for help in resolving the dispute.

Editorial Advisory Board