



"Foreign Investment in Canadian Energy"
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Check Against Delivery

Good morning. The theme of our conference is, of course, Energy Strategies for Turbulent Times. These are indeed turbulent times and no one is unaffected, even Canada. In that context, I have been asked to speak today on the subject of foreign investment in Canada – in particular as it pertains to oil and gas. This topic is demanding, controversial, relevant to investors and, of late, the source of vigorous public and media debate in Canada.

This controversy has been building for years and it achieved a force in recent months that can fairly said to be "turbulence". This is because of two proposed investments in Canadian energy companies by two State Owned Enterprises – Petronas from Malaysia, and CNOOC from China.

This is a pivotal time for the Canadian government. It must consider its policy on foreign investment in light of the growing and evolving role of SOEs in Canada's oil and gas industry and across its economy, and in the face of changing geopolitical realities.

The focus right now, both inside government and among commentators and observers, is the proposed \$15 billion acquisition of Canada's Nexen Inc. by CNOOC. This is where Canada will begin to decide how to treat foreign investments proposed by State Owned Enterprises. This is where a new way forward will be defined.

The decision on Nexen will almost certainly be adjudicated under the “net benefit test” in the Investment Canada Act and under the Guideline on State Owned Enterprises, which I myself published in 2008 as Canada's Minister of Industry.

This controversy over SOEs has surprised many in the Canadian and international business communities. But all along there was obvious and escalating public concerns in Canada about SOE investments and the blithe assumptions that 'net benefits to shareholders' necessarily equate to a 'net benefit to Canada'.

So, what happens from here?

The short answer is: we don't know. Even the timing of the government's final pronouncement on the deal is a matter of speculation.

But the longer answer is that there are a number of assumptions that can be made by those with an understanding of the Canadian government's perspective and priorities.

Here are three clear guideposts for what can be expected in the days ahead.

First, Canada must and will remain open for business – and that means open to foreign investment. Even a cursory review of Canadian history illustrates that the genius of Canada, as a massive country with a small population, has been its ability to attract foreign capital to help develop the country's resources.

Canadians have done this with an enthusiasm that has allowed us to build one of the world's highest standards of living, outpacing the economic growth rates of virtually all other western democracies over the past several generations. If you listen to the OECD, we're on pace to continue to do so for the next 50 years.

This foreign investment has been recruited from every corner of the globe and has taken the form of private capital as well as the capital of both Sovereign Wealth Funds and State-Owned Enterprises, from both democratic and non-democratic countries.

In my view, none of this will change anytime soon.

Yes, a country must require a broad “net benefit” test – and the residual authority for government to say no must remain. But Canada’s Prime Minister understands that his country’s prosperity will be preserved and its potential fully unlocked only if it remains open to the world.

The second important guidepost: the geopolitical importance of Canada’s energy reserves.

Canada is right now aggressively engaged in diversifying its energy markets with an eye to Asia – and with good reason. The United States, the only customer for our oil and gas, dramatically increased energy production over the past five years. Coupled with continuing continental pipeline bottlenecks, this represents a significant structural impediment to the industry, the immediate consequence of which is a staggering discount on Canadian oil prices. The situation will get worse before it gets better.

In such an environment, saying “no thanks” to the largest new market opportunity, namely China, would be patently unwise – particularly in circumstances where the transactions do not imperil Canadian values or environmental and labour laws. One can fairly expect Prime Minister Harper to move with care and dexterity, balancing Canada’s internal political concerns about foreign investment with the imperative to develop out its “strategic partnership” with China and demonstrate progress on the need for reciprocity.

The Economist magazine observed recently that, and I quote, “The defining battle of the 21st century will not be between capitalism and socialism, but between different versions of capitalism.” That battle is already underway in Canada’s oil sands.

Most of the world’s 10 largest energy companies are SOEs. They have all found Canada. This is not surprising, since the oil sands represent close to 60 per cent of the world’s “investible” oil reserves. As a result, every imaginable permutation of capitalism is active within the Canadian oil sands today.

How this ultimately plays out is a story that will be told over years and decades. More urgent is the question of how this dynamic will influence the government’s response to SOEs. Certainly, some degree of care is warranted as the framework will define the industrial structure of Canada’s energy industry for generations to come.

This leads me to the third and final guidepost: the awareness and understanding that State Owned Enterprises raise unique considerations. These are large companies that harness the power of both capitalism and the state, making them unlike any other free-market player.

It would be naïve in the extreme to think that the acquisition of world-scale Canadian energy resources by foreign governments or their surrogates would not raise public policy questions. Let us not forget that in the early 1980s Canadians themselves soundly rejected the idea that these resources should be developed by SOEs of our own.

Considering that Canada will for many decades to come be a major global supplier of energy, we can therefore expect that the Government of Canada will draw distinctions between free-market foreign capital and that of State Owned Enterprises.

Indeed, the current framework – which was put in place while I was Minister – makes those very distinctions through a Guideline on SOEs. This guideline was intended to provide further specificity for what is expected of state-owned entities that want to invest in Canada.

It did exactly that. Indeed, some of the criticism of the government's current course of action is focused on the fact that at least one of the SOEs involved, namely CNOOC, meticulously respected both the spirit and the letter of the guideline.

It is reasonable to expect that the Canadian government's new framework will give careful consideration to how SOEs will be governed in a North American context: whether they should have public shareholders, independent directors, audit committees and shareholder oppression remedies.

As I have often made clear in my meetings with the CEOs of some of China's largest state-owned enterprises: free markets don't mean a free pass. And while Canada is most definitely open for business – it is not for sale.

At the same time, improvements to the Investment Canada Act – the framework through which Canada evaluates foreign investments – would be desirable. I personally supervised the last legislative amendments to the Act – but they were carried out in the restrictive environment of a minority Parliament. More can be done to reduce opacity, render undertakings truly enforceable and provide greater guidance on what is expected of State Owned Enterprises.

The fundamental point is that the Canadian government should not be – and, in my view, won't be – concerned about the so-called "ethnicity of money." We can't and shouldn't try to force China or other countries to be like us. Closing doors to investment is no way to open minds.

The question must instead be whether the capital in question, once lodged in Canada, will adhere to market principles and to North American standards of governance and transparency. If so, then it should be welcomed. If not, then the investments should be scrutinized closely and potentially refused.

I hope that my comments provide some useful advantage in terms of understanding what is taking place in Canada. If the 21st century does indeed represent a battle between forms of capitalism, then the oil sands will represent a defining showdown. The battle there will continue for years to come. And as it does, the Canadian government would perhaps be wise to follow a very British piece of advice: Keep Calm and Carry on.

Thank you.