

January 10, 2008

Competition Policy Review Panel
280 Albert Street, 10th Floor
Ottawa, ON K1A 0H5
Competitionreview@ic.gc.ca

Re: Submission to Review Panel

Please accept this correspondence and its attachment as the submissions of the authors with respect to the Review Panel's consideration of Canada's investment and competition policies. It had been our intent to focus our submissions on the national security considerations regarding investments by state owned enterprises (SOE) as assigned to the Panel on July 12, 2007. The need for this appeared to be reduced when the new Minister, Mr. Prentice, oddly revoked that mandate during an October 2007 speech in Vancouver and indicated that the Government would be dealing with the issue separately itself in the Fall of 2007.

Like many observers we thought this portended changes to the *Investment Canada Act* and were surprised to learn instead from a Departmental announcement in December 2007 that national security concerns arising from SOE investments would be dealt with by Guidelines pursuant to s. 38 of the Act. Inasmuch as the Guidelines expressly state that the Minister will apply the net benefit principles already enunciated in the Act, it is appropriate therefore that commentary on those principles and that application be provided to you.

In order to do this framed in the context of the existing Act, we thought it would be beneficial to provide you with a copy of an unsent letter from 2004 to then Industry Ministry Emerson regarding the application of the Investment Canada Act to a proposed takeover of Noranda and Falconbridge through investment by China MinMetals a state owned enterprise. The letter and the research within it was prepared by the authors and several others with concerns about the proposed transaction although it was not sent due to the cancellation of the proposed investment following public outcry about the transaction and its potential ramifications. Its observations and analysis, however, remain relevant.

The issues raised within it, particularly in relation to linkages between foreign investors and forced labour or lowered labour or environmental protections are, of course, relevant to your considerations. Quite apart from the human rights or environmental concerns involved, rewarding an economic 'advantage' brought about by forced laogai labour (in this case) is clearly not in the 'net interest' of Canadian workers or, indeed, the competitiveness of the Canadian economy in the long run. Neither is the disregard of intellectual property, product safety or environmental standards to the net benefit of Canadians generally. Equally, an inability to enforce undertakings and consequence of controlling an export market

of Canadian goods are like concerns which may include national security interests but which are of concern above and beyond that.

Determining exactly who is seeking to make an investment in Canada is also critical and in that regard we invite the panel to consider the recent media article regarding the purposeful lack of transparency in relation to Chinese financial institutions.

Finally, the new national security guidelines include consideration of the following as part of the net benefit consideration,

“... the corporate governance and reporting structure of the non-Canadian. This examination will include whether the non-Canadian adheres to Canadian standards of corporate governance (including, for example, commitments to transparency and disclosure, independent members of the board of directors, independent audit committees and equitable treatment of shareholders), and to Canadian laws and practices. The examination will also cover how and the extent to which the non-Canadian is owned or controlled by a state.”

As you will see from our original 2004 submissions, the notion of ‘net benefit’ should itself include like considerations given the inherent balancing of interests required by the Act.

We hope you find these materials of interest and assistance and we are naturally willing to offer any further insight should that be required.

Sincerely Yours,

Scott Newark

Brian McAdam

David Kilgour

Formerly an Alberta Crown Prosecutor, Executive Director of the Canadian Police Association and Director of Operations for the D.C. based Investigative Project on Terrorism, Scott Newark has also served as a Security Policy Advisor to both the Ontario and Canadian Government and is currently the Vice Chair/Operations of the National Security Group in Ottawa.

Brian McAdam is a former Immigration Control Officer with The Department of Foreign Affairs whose work in Hong Kong in the 90’s lead to legislative changes regarding inadmissibility of persons associated with organized crime. Mr. McAdam is an internationally recognized expert with regard to, and the interconnectivity of Triads, Chinese Diaspora business interests and Chinese espionage activities including through investment means.

David Kilgour is a former MP for both the Conservative and Liberal Parties. He has also served as the Secretary of State for Latin America and Africa, Secretary of State for Asia-Pacific and Deputy Speaker of the House of Commons. Further details on Mr. Kilgour’s activities can be obtained by contacting david-kilgour.com

November 15, 2004

The Honourable David Emerson
Minister of Industry
C.D. Howe Building
5th Floor, West Tower
235 Queen Street
Ottawa, Ontario K1A 0H5

Re: Proposed acquisition of Noranda and Falconbridge Mining companies by China MinMetals

Dear Minister,

As you are no doubt aware, several weeks ago it became public knowledge that the Chinese state owned enterprise (SOE) China Minmetals was in final stage, exclusive negotiations with the management of Noranda Inc. to acquire control of the company and all its assets. Such an acquisition will, of course, trigger a mandatory 'net benefit' review by you pursuant to the *Investment Canada Act*.

The purpose of this correspondence is to urge you to consider specific issues relevant to the determination of whether such a transaction will produce a net benefit for Canada as defined by the Act. While many commentators have identified the shortcomings of the criteria contained in the Act, failing a statutory amendment prior to the decision in question, you are bound by the current criteria which, as you know, does not specifically include security interests or Canadian human rights concerns. As I'm sure you appreciate, there is simply no question that the acquisition of Noranda and Falconbridge by the government of the Peoples Republic of China (PRC), which is what this transaction represents, raises both of these issues albeit outside the strict parameters of the Act.

The ramifications of this proposed transaction for Canada and Canadians are such that the security and human rights concerns are actually manifested within the defined statutory criteria and thus require your full consideration. This correspondence is intended to assist in helping to provide information so as to better enable you and your officials to 'ask the right questions' as you discharge your important duty. I suspect, given your background and current position that you fully appreciate that when dealing with any large institution, including government, that the best way to get the right answers is to have the information to ask the right questions. This is particularly so when dealing with a totalitarian regime such as the PRC even when it presents itself through a corporate entity like China MinMetals.

What follows, therefore, is a compilation of relevant information pertaining to the specific criteria and duties imposed under the Act.

1. The Nature of the inquiry required

As the statute makes clear, the Minister is obliged to consider the ‘net benefit’ to Canadians. By definition therefore, this means review of not only the perceived ‘benefits’ of such an acquisition but also the consideration and exploration of the detriments resulting from the proposed transaction. This is not merely a good idea; it’s a requirement of law.

First and foremost in this inquiry is a candid recognition that the proposed non-Canadian purchaser is not only not a Canadian but also not a person or a foreign corporation. China MinMetals is a Chinese state owned enterprise which, literally, means that the Government of the Peoples Republic of China is seeking to acquire Noranda and its assets. Where ‘traditional’ private corporations, irrespective of their home jurisdiction, are governed by profit generation and fiduciary duty, SOE companies are, by definition, subject to other motivations, interests and incentives. As the Minister, you are obliged to investigate and determine what these non-traditional interests are and candidly determine their potential negative impact on the ‘net benefit’ to Canada of this transaction.

While the purpose of Canadian government industry participation might involve job creation, environmental protection, technology development etc...the same is not necessarily the case for China MinMetals. The PRC government’s interests in such areas clearly potentially includes:

- >securing a supply of scarce and strategic minerals for China
- >denying access to such strategic minerals to others
- >controlling processing and secondary use of such minerals
- >promoting the use of Chinese secondary employment
- >legitimizing and furthering the economic advantage brought about by the laogai system of forced labour in China

In this regard, it would be advisable to consider the unanimous report of the bipartisan House Select Committee on the U.S and China, chaired by Congressman Christopher Cox. (www.house.gov/Cox_report/). Without going into detail, the point of the Report is that security and trade concerns are inseparably intertwined when it comes to trade with China. Given the proposed purchaser and the assets of the proposed seller, clearly these issues must, at the very least, be explored within the ‘net benefit’ context of the Act.

2. Laogai forced labour as an economic issue

The government of the PRC does not deny the existence of laogai forced labour system. While there are disputes about the specific treatment of prisoners, the fact of their conscription for labour involving both domestic and foreign corporations active in the PRC is a matter public record. Clearly, this is a matter that you need to explore, as any transaction that involves or potentially involves use of laogai forced labour is an economic disadvantage to Canadian workers and Canada’s economic interests. Supporting the Chinese ‘economic advantage’ of cheaper labour costs by ignoring it as a net benefit consideration under the Act is, with respect, inappropriate.

Presumably our diplomatic or trade officials are in a position to provide you with confirmation of the laogai system and its use as an economic advantage by the PRC. I would also refer you to the detailed work of the bi-partisan *U.S. - China Security Review Commission* on this subject and the *Laogai Institute* (www.laogai.org) in the United States headed by former laogai prisoner, Harry Wu.

Indeed, Mr. Wu testified about China MinMetals use of forced labour during U.S. congressional hearings and a civil court case during the 1990s. In a recent interview he added,

"Minmetals is a state-owned import-export company, and when it exports products from China, some of them, many of them, are made with forced labour."

These views were supported by Jeffrey Fielder of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) who added, *"Mining is a common Laogai activity."*

"Noranda's Chinese suitor cited in forced labour case" CanWest News Service, October 5, 2004)

Laogai has been described as *"...China's hidden Soviet style concentration camps where millions have been imprisoned for political crimes such as using the internet for articles about democracy, practicing one's religious faith, or simply criticizing the Communist Chinese government. There are an estimated 1,000 of these camps in China where an estimated 10 million each year have been sent for "reform" or "re-education" through labour."*

(The Black Book of Communism by Courtouis, Stehpane, Margolin, Jean-Louis & others (1999) published by Harvard University Press, Cambridge, Mass: pages 497-500.)

This is, therefore, not an issue that is speculative or unsubstantiated and indeed the Chinese themselves do not deny the existence of the laogai 'Re-education Through Labour' system. As such, there is a clear obligation to investigate these assertions and include any conclusions about them in the determination of net benefit under the Act.

This is so because, irrespective of human rights concerns, any transaction that potentially involves use of forced labour in China, directly or indirectly, must be viewed as a significant detriment to Canadian economic interests and global competitiveness. Presumably, Canada is not intending to match Chinese labour practices to 'level the playing field' as it were so not supporting laogai's continuation is essential.

No doubt, both the seller and purchaser will advise that China MinMetals is not using or planning on using forced labour with respect to the materials involved in this transaction. While that can be confirmed for operations in Canada, the same certainty is not present for operations within the PRC. In this regard, it is instructive to review the history of PRC actions in relation to other jurisdiction's efforts to ensure non involvement of laogai forced labour in the production of goods intended for export. Once again, the *US-China*

Security Review Commission is a wealth of empirical information that paints a clear and disturbing picture of non-compliance and obstruction on the part of Chinese authorities.

This history is especially relevant in assessing the need and effectiveness of conditions or undertakings placed on China MinMetals pursuant to s. 25 of the Act. Put in different terms, courts don't issue bail or probation conditions without satisfying themselves that there is reason to believe they will be followed and can be enforced. As the Minister, your obligation goes beyond simply ordering no direct or indirect involvement with laogai forced labour; you need to be satisfied that such an undertaking will be adhered to and this necessarily means examining the conduct of China MinMetals and other SOEs.

3. Relevant characteristics of a State Owned Enterprise (SOE) and the importance of China MinMetals

China operates domestic and international corporations as part of government or more accurately, the Communist Party (and Peoples Liberation Army ironically) Party (or PLA) officials are literally appointed to run the affairs of the state enterprises as a component of the government/party. According to the company's website (www.minmetals.com), China MinMetals has recently been "...listed as one of the 39 companies that relates to national security (China's) and Chinese people's economic importance." It is more than noteworthy that the Chinese consider their primary mining company as being of such economic importance as to constitute a national security interest. Perhaps we should as well. Also of note is the fact that Wang Qingtang was named as a new Vice President following a *Party* discussion on the subject.

In order to appreciate the nature and breadth of activities of SOEs in international trade, it would be instructive review the activities of other SOEs such as China Ocean Shipping Company (COSCO), China International Trust and Investment Corporation (CITIC), NORINCO, Greatwall and Polytechnologies Inc., all of whom have a history of corporate activity within Canada and the United States. This review should, of course, include information on the activities of these companies supplied by law enforcement and intelligence agencies. It does exist.

Additionally, the net benefit review should consider the report (<http://www.uscc.gov/textonly/txcpmk.htm>) from the William J. Casey Institute of the Center for Security Policy in June 2001 entitled *Capital Markets Transparency and Security: The Nexus Between U.S.-China Security Relations and America's Capital Markets* commissioned by the United States government. As the extracts from it reveal, several Chinese SOEs have business histories that suggest business interests are not their only pursuit. Several SOE's, including ones operating in Canada, have been the subject of importation bans by the United States for their "business" practices in relation to weapons shipments. This potential of other activity by China MinMetals is relevant to assessment of the net benefit to Canada, even as defined by the Act.

Finally, in order to gain a full appreciation of exactly 'who' is seeking to acquire the Noranda and Falconbridge assets, your review should look behind China MinMetals and include its various strategic partners in this proposed transaction. Specifically, although your review does not have a security focus, security concerns expressed by Canadian

intelligence and law enforcement agencies about the persons and SOEs involved have obvious economic implications for Canada. It makes no sense to permit acquisition of Canadian mineral resources by groups or persons identified as constituting a security concern to our country. Any 'net benefit' analysis that fails to at least consider these issues is, by definition, deficient and thus potentially injurious to Canada.

4. The criteria of the Act and specific economic concerns

Although limited in scope, the Act does provide clear direction in terms of relevant criteria for assessing net benefit and a process to address specific concerns for an individual assessment. These include:

2. Recognizing that increased capital and technology would benefit Canada, the purpose of this Act is to encourage investment in Canada by Canadians and non-Canadians that contributes to economic growth and employment opportunities and to provide for the review of significant investments in Canada by non-Canadians in order to ensure such benefit to Canada

16. (1) A non-Canadian shall not implement an investment reviewable under this Part unless the investment has been reviewed under this Part and the Minister is satisfied or is deemed to be satisfied that the investment is likely to be of net benefit to Canada

20. For the purposes of section 21, the factors to be taken into account, where relevant, are

(a) the effect of the investment on the level and nature of economic activity in Canada, including, without limiting the generality of the foregoing, the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada and on exports from Canada;

(b) the degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada of which the Canadian business or new Canadian business forms or would form a part;

(c) the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;

(d) the effect of the investment on competition within any industry or industries in Canada;

(e) the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and

(f) the contribution of the investment to Canada's ability to compete in world markets.

23(2) Where, after receipt of the notice referred to in subsection (1), the applicant advises the Minister that he wishes to make representations or submit undertakings, the Minister shall afford the applicant a reasonable opportunity, within the period referred to in subsection (1) for so doing, to make representations in person or by an agent and to give undertakings to Her Majesty in right of Canada, as the applicant sees fit.

25. A non-Canadian that implements an investment in accordance with this Part shall submit such information in his possession relating to the investment as is required from time to time by the Director in order to permit the Director to determine whether the investment is being carried out in accordance with the application filed under section 17 and any representations made or undertakings given in relation to the investment.

4.1 Contributes to economic growth and employment opportunities

Extracting more ore and minerals will undoubtedly achieve this goal although there is no inherent reason why China MinMetals cannot simply buy the resources without taking over control of the company and its assets. Further, if, as has been suggested, China MinMetals moves processing of the ore and minerals extracted to China to take advantage of cheaper labour costs, then this is clearly antithetical to 'economic growth' or employment opportunities in secondary processing or manufacturing. Given these factors, it is hard to see a 'net benefit' created for Canada in this acquisition.

4.2 Effect on employment

As noted above, unless China MinMetals chooses to ignore Chinese labour savings by continuing processing and secondary manufacturing in Canada, there will likely be a net detriment to employment in Canada as part of this transaction. It is also advisable to review the practice of Chinese SOEs (COSCO in particular) when they conduct business in Canada in the sense of not using Canadians as employees. Finally, if any labour component in China is contemplated as part of this transaction, it is clearly contrary to Canadian employment interests to tolerate forced labour practices in China which is used by the PRC as a global economic advantage.

4.3 Resource processing

If processing of extracted resources and secondary manufacturing is to continue in Canada, then there would not be a net detriment to the transaction. There would also be no logical reason for that to occur, as China could interact with Noranda as a purchaser not an owner. If, as logic dictates, processing and secondary manufacturing will be moved to China then this is an obvious and huge net detriment in the precise criteria of the Act.

4.4 The utilization of parts, components and services produced in Canada

It is hard to fathom how China Minmetals moving from customer to owner will increase any of the above. If more resources are extracted it is also not a certainty that Canadian parts, components and services will be utilized especially if cheaper alternatives exist, or if the Chinese government determines that it is in *its* best interests to use Chinese parts, components or services. This, of course, is an inherent consequence where the purchaser is a foreign government and *not* a foreign corporation. Such an entirely logical approach could, of course have significantly negative long term effects on the Canadian industries which is why it is identified as relevant criteria in the Act.

4.5 Exports from Canada

If resource extraction increases then exports of resources logically increase. If resource processing and secondary manufacturing shifts to China then exports logically decrease. As noted above, increase in resource extraction can occur without this transaction if China MinMetals wishes to purchase more resources. Control of that however would remain in Canadian hands and not that of a foreign government if it doesn't. This is clearly a matter of long term Canadian economic strategic interest given the scarcity and strategic nature of the resource assets of Noranda. It is also an opportunity to review Canada's trade relationship with China including our substantially growing trade deficit over the past decade as part of the economic considerations required pursuant to the Act.

4.6 Participation by Canadians

As a Chinese State Owned Enterprise, China MinMetals' acquisition of Noranda and Falconbridge will not logically increase Canadian participation in the 'new' business or any ancillary businesses.

4.7 Effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada

Chinese SOE's do not have a history of causing any of the above in a host country. Any increase in 'productivity' or 'industrial efficiency' will result from drastically reduced labour costs and work 'incentives' Canada wants no part of and should not be encouraging. There has been no suggestion that China MinMetals is bringing any technological development or product innovation to this transaction. Indeed, to the contrary, it is the PRC desire to attain exactly these technology enhancements, which are the basis of the current Canadian economic advantage, that is the expressed rationale for this transaction. Helping other countries attain these advantages is decidedly not a 'net benefit' to Canada.

4.8 Effect on competition

Permitting control of a resource based company like Noranda to pass to a foreign government that is not driven by traditional profit motive may produce reduced competition if the foreign government decides not to sell to any other customer but itself. The fact that the foreign government might also decide to act in its own economic and strategic interests by selling to itself at artificially low prices or stockpiling the resource within its own borders, are also potentially contrary to competition within Canada. In fairness, should China MinMetals pursue such a strategy, other resource companies in Canada would likely find themselves much sought after by excluded customers. This marginal benefit must be measured against the potential negative effects described above and indeed would only arise were such hostile, predatory actions occur. Additionally, if this acquisition is approved, any potential future ‘competition’ could be extinguished by further acquisition based on approval of this transaction.

4.9 Canada's ability to compete in world markets.

As noted above, any action which either supports or acquiesces in the PRC ‘labour cost advantage’ brought about by forced labour is inimical to Canadian ability to compete in world markets unless we seek to replicate it here. The same can be said about ignoring environmental consequences of ‘cheaper’ production abroad albeit in not as direct or immediate an economic context.

If Canada permits the takeover of a resource based company by a foreign government that directs and uses forced labour as an economic ‘advantage’, it is acting fundamentally contrary to the interests of Canadian workers, the Canadian economy and the long term capacity of a Canada that does *not* use forced labour to compete globally. Clearly, the laogai system of forced labour and the entire Chinese “labour” market system need to be candidly and fully explored if the net benefit analysis required under the Act is to be properly discharged.

There will, no doubt, be legions of persons and entities counselling against such an approach many of whom will do so out of simple self-interest. Canadians are fortunate, however, to have legislation in place that permits the public interest to prevail. What is required is the political will to exercise the authority provided by the Act so as to ensure appropriate action on behalf of all Canadians and not merely those who stand to gain from this transaction.

5. Other relevant economic concerns

Although not within the strict language of the Act, the following are economic considerations which merit examination in determining the ‘net benefit’ of the proposed transaction.

5.1 Depletion of scarce and strategic resources

Inherent in this analysis is the determination that the resources that the China MinMetals seeks to acquire are scarce and potentially strategic in nature. These facts are relevant to Canada's economic interests inasmuch as a long term economic strategy must consider what happens if specific mineral resources are no longer available to Canada, its allies and the world in general. Just because someone will buy nickel to make cell phones (or trees to make cigarette papers) does not mean it's in our (or anyone else's) long term economic interests to deplete a resource to do so. There is ample material on the relative scarcity of the Noranda minerals (copper, nickel, zinc, cadmium, cobalt etc...)

The Falconbridge website (www.falconbridge.com) is a useful source for reviewing the strategic uses of the various Noranda minerals. The potential security concerns regarding the Noranda minerals are also well documented albeit in a less public format. While 'security' is not identified specifically in the Act, one of the lessons of 9/11 is that physical security and economic security are complimentary rather than competing concepts.

In that regard, the following should serve as a mere *introduction* for what needs to be considered:

- A) Nickel is a critical component in the manufacture of maraging steels (steels generally characterized by high Nickel, very low carbon content, which have a high tensile strength) that can be used to make solid rocket cases, propellant tanks, and inter-stages. It can be used in special aircraft parts, submarine hulls, fencing blades, pipes, and reactors in the chemical and nuclear industries.
- (B) Nickel is a critical component of nickel-hydrogen batteries used to generate electrical power silicon solar arrays used in space and missile tracking systems.
- (C) Cobalt is a critical component of cobalt bombs.
- (D) Ballistic missile and gas centrifuge programs require cobalt components.
- (E) China needs to have the capacity to produce the metal alloys required for advanced airframe construction .

As one commentator has noted,

“Nor does China have the capacity to produce the metal alloys required for advanced airframe construction. Although China is richly endowed with metals such as nickel, titanium, molybdenum, magnesium, and cobalt, China's factories have been unable to ensure the requirements for processing high-purity metals. Regardless of whether or not the military factories will effectively make the transition to civilian production, the effect of current reforms (if implemented) will be to blur further the distinction between civilian

and military production. This will make it even more difficult for foreign suppliers to set constraints that limit use of their technology by the military.

Military needs are probably factored into the purchases of foreign technology and equipment by the machine building industries, though not through any monolithic targeting strategy like the one developed by the Soviet Union to obtain advanced Western technology. The National Defence Science, Technology, and Industry Commission (ND STIC), however, reviews requests for foreign technology above certain dollar amounts to determine priorities and whether Chinese-made equipment could be substituted, thus ensuring that military requirements are at least taken into account in major foreign technology acquisitions. The China Defence Science and Technology Information Centre was set up a decade ago to monitor foreign technology developments for the military.

The conclusion that follows from this analysis is that the military could in principle obtain dual-use technologies, but would not necessarily be in a better position than the civilian factory to assimilate them.

Sources:

<http://www.state.gov/t/ac/trt/5073.htm>

<http://www.globalsecurity.org/space/systems/smts.htm>

http://www.wordiq.com/definition/Nuclear_weapon

http://cns.miis.edu/cns/projects/eanp/pubs/prc_msl.pdf

<http://cns.miis.edu/research/china/chiexp/miscon.htm>

<http://www.exportcontrols.org/centpart1.html>

The notion that acquisition of resources by China is more than a mere economic exercise is not conjecture. In 1997, the Chinese Communist Party formally codified Deng Xiaoping's 16 Character Policy which has among its translated 'principles'

"Combine the military & civil"

"Combine peace & war"

"Give priority to military products"

"Let the civil support the military"

China's overall economic strategy is not aimed therefore solely at a kind of mercantile accumulation of foreign exchange via trade practice weighted in China's favour. It is also aimed at enhancing the acquisition of the most advanced Western technology and supporting resources all capable of dual use for both civilian and military purposes. Although not determinative under the current Act's criteria, such a policy is relevant to any net benefit determination under the Act.

5.2 ‘Feeding’ the Chinese economy

Quite apart from the issue of depleting scarce and strategic Canadian resources, there is a very real question as to whether fuelling the current Chinese economy in its seeming insatiable demand for raw resources is in Canada’s economic self interest or not. Put differently, Canada may marginally benefit for simple immediate resource extraction and export but this does not mean that helping the Chinese consumption driven economy expand is best for Canadians now or in the future.

As the Chinese economy becomes ever more dominant from unbridled and unrestricted consumption, it necessarily drives up prices and forces choices in terms of how such minerals are to be used in the future. Giving control of these resources to that foreign government, cloaked as it is through a state owned enterprise, necessarily means that such choices and the consequences of those choices are vested in others. This is clearly not in Canada’s economic interests and constitutes a ‘net detriment’ of this proposed transaction.

5.3 Transfer of technology and assets

This has long been an issue of note for Chinese SOEs and was specifically raised about Min Metals in particular following its controversial involvement with Sydney Steel Corporation (SYSCO) in Nova Scotia. In statements made in the Nova Scotia Legislature (and reported in Hansard) make clear, the Minister responsible described China MinMetals as having:

- misled the Province at the time of the original transaction,
- failed to live up to a previous commitment to the Province made at the time of the original transaction
- contemplated the removal of technology and capital stock to China
- failed to make payments to the Province as required
- “failed to live up to their corporate responsibilities”

(Hansard: December 4, 1996/November 6, 2000)

Interestingly, the context of the debate was in relation to legislation exempting the Nova Scotia government and any of the Sydney Steel ownership (including China MinMetals) from civil liability with respect to the actions of the company. The fact that a Minister of the Crown of the Canadian government has described China MinMetals in these harshly negative terms must surely constitute critically important evidence for the Minister to consider in assessing the ‘net benefit’ of this transaction. Further, this Nova Scotia experience would appear to constitute hard evidence of China MinMetals unreliability and untrustworthiness with respect to adhering to undertakings and conditions potentially imposed pursuant to s. 25 of the Act. If China MinMetals can’t be trusted, they shouldn’t be permitted to acquire Noranda.

Purchasing assets and then dismantling and removing them to China is not mere speculation insofar as Chinese SOEs are concerned. In 1993 Shougang, which was then a state owned steel company, contracted with General Motors of Canada to buy a foundry in St. Catherines. After purchasing the foundry, Shougang gradually dismantled it and shipped it back to China, resulting in the loss of 2, 100 jobs. A year earlier Shougang bought and exported to China a plant it had purchased from Kaiser Steel Corporation in California.

No doubt, you will want to review the Industry Canada consideration of the Shougang transaction to see whether:

- >the removal of capital assets had been identified and approved;
- >the previous action in California had been disclosed or was known;
- >the ultimate loss of jobs was assessed in the net benefit consideration
- >conditions or undertakings had been imposed and whether they had been honoured or ignored;
- >an after the facts assessment was completed and if so what conclusions were reached relevant to the China MinMetals transaction

You may also want to review the relationship between Shougang and CITIC including subsequent indictment of Shougang officials in China for corruption inasmuch as CITIC is a reported financial backer of the China MinMetals transaction.

I hope the information and perspectives provided in this correspondence will be of assistance to you as you discharge your important duties *on behalf of Canadians* under this Act. It is critically important that you have relevant public interest information on this issue because of its importance to Canadians and, of course, because of the scrutiny to which your decision will appropriately be subjected.

Sincerely Yours,

China investment arm emerges from shadows

By Jamil Anderlini

Published: January 5 2008 The Financial Times Limited 2008

For more than a decade, China's State Administration of Foreign Exchange (Safe) has maintained outposts in Hong Kong, Singapore, London and New York to help manage the nation's rapidly expanding foreign exchange reserves.

These subsidiaries have largely avoided public scrutiny and until now have concentrated on investing the nation's foreign exchange reserves in safe and liquid assets such as US Treasury bonds.

But a series of small equity investments by Safe's Hong Kong subsidiary in three of Australia's largest banks - Australia and New Zealand Bank, Commonwealth Bank of Australia and National Australia Bank - in the past two months has raised new questions over the transparency of Chinese investments.

It also comes at a time when Chinese state-owned companies' increasing presence overseas and the creation of government bodies such as China Investment Corp, a new \$200bn sovereign wealth fund, are causing angst in some quarters over the power China is beginning to wield in global markets.

Located in downtown Hong Kong, Safe Investment Company is one of the largest customers for local Treasury bond trading desks at banks such as Morgan Stanley and yet almost nobody in the wider financial community has heard of it.

It is a direct subsidiary of Safe, the government department that regulates foreign exchange transactions and also manages China's nearly \$1,500bn in foreign exchange reserves.

But the entity is so secret that Safe repeatedly refused to acknowledge its existence to the FT, until it was confronted with incontrovertible evidence.

China's central bank, which ultimately controls Safe, told the FT that Safe Investments was set up just one month before the hand-over of Hong Kong from Great Britain to China in 1997 to "support and promote the development of Hong Kong's financial market" and served a crucial role in defending the value of the Renminbi and Hong Kong's peg to the US dollar against international speculators.

According to people familiar with Safe Investment's operations, it served largely as a minor outpost for Safe in the years following the Asian financial crisis, with only about \$20bn in funds under management.

But the amount under management at Safe outposts has increased substantially, according to one person familiar with its operations.

"Safe's subsidiaries around the world have until now been responsible for running Safe's book over the various time zones and have basically replicated

the portfolio of head office in Beijing but that appears to be changing with the Hong Kong subsidiary taking more risk in managing reserves," the person said.

Safe's main office in Beijing manages portfolios of fixed income securities such as Treasury bonds, currencies and commodities, according to a person familiar with its operations, who said it is common for Safe to execute trades of up to \$1bn at a time.

Analysts say internal politics may account for Safe diversifying away from its previous mandate of low-risk liquid securities, albeit on a relatively small and carefully concealed scale.

"This shows characteristics of a Chinese bureaucratic rivalry," according to Arthur Kroeber, managing director of Dragonomics, an independent research firm. "It might be that, having been forced to surrender control of Huijin to CIC, Safe and the central bank are now lobbying for authority to make alternative investments on their own account."

CIC was established last September to make better returns on a portion of the country's foreign exchange reserves through riskier investments.

Although a Ministry-level entity, CIC was set up under the auspices of the Ministry of Finance, long seen as a rival to the central bank when it comes to controlling the country's financial assets, including its largest banks.

Huijin was set up a few years ago, under the control of Safe, as the government's holding company for state-owned banks and securities firms but CIC spent about a third of its initial \$200bn acquiring Huijin, snatching control of the banks away from the central bank.

CIC officials have stressed they will make global investments in the most transparent way possible.

But Mr Kroeber says: "Even if CIC honours its pledge . . . there are a lot of other Chinese state entities investing a lot of money abroad in a much less transparent manner."