The Big Screen: Global Crises and the Diffusion of Foreign Investment Review[1]

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The Covid-19 pandemic has affected international flows of Foreign Direct Investment (FDI) by disrupting supply chains and mainstreaming calls for the domestic repatriation of some production activities. The pandemic-induced economic crisis has also rendered many national companies vulnerable to foreign takeovers, especially in strategic sectors. These developments have coincided with a drastic tightening of FDI vetting mechanisms in many advanced industrialized economies. This paper explores change and continuity in foreign investment screening policies. Presenting a newly coded dataset on investment screening mechanisms in OECD countries from 2007-2021, this paper contextualizes recent shifts in investment screening rules as an extension of pre-existing trends toward stronger national security review mechanisms We argue that the Covid-19 crisis has accelerated, rather than prompted, the trend towards increased scrutiny of foreign investments by empowering some political actors above others and bringing to the fore pre-existing challenges -above all the rise of China as a foreign direct investor and the growing appeal of economic nationalist messages in Western democracies. Theoretically, we tie recent changes in the investment screening regime to broader questions about when and how political elites can use crisis events to push through policy and institutional changes that would otherwise invite substantial and powerful opposition. The paper concludes by setting an agenda for future research in the politics of foreign investment policy in an era of rising great power competition.

[1] VERY EARLY DRAFT, CIRCULATED FOR FEB 22, 2021 OSTROM WORKSHOP PRESENTATION. PLEASE DO NOT CITE OR FORWARD WITHOUT PERMISSION.

Dear workshoppers –

I am looking forward to presenting this very early work to you on Monday, February 22. As you will see, this draft is in an unfinished, preliminary stage. Therefore, I especially appreciate your willingness to engage with the work in a messier form, and at a time in the research life cycle where your input is most likely to substantially influence the development of the project.

You will see that I do not yet have data to present. We are still working on cleaning up our coding. I hope to be able to present a couple of figures on Monday, but this will depend on how many snow days my children have between now and then. We know that the trends we indicated in the manuscript are actually present in the data because we have spent the last several months coding these investment screening mechanisms. We just don't have the coded data configured quite yet in a way that facilitates the development of easily interpretable figures. We are also working on getting some missing data on several variables.

As you read our current draft, I would especially appreciate thoughts on the following issues that are front of mind to us:

1) What else do we need to do (and where in the paper) to better explain what investment screening mechanisms are and current political economy theory about their development and use? One of the problems in the literature is that investment screening for national security concerns is largely bracketed from the political economy of investment regulation generally, on the grounds that national security concerns are of course legitimate and don't need much in the way of explanation. We, however, want to complicate this narrative and I'm not sure if we are currently framing this paper in a way that is making the theoretical stakes clear.
2) Is the COVID framing the right path forward? We had planned on developing a dataset and writing a paper on the proliferation of investment screening before COVID hit, but we feel compelled to deal with COVID because otherwise we worry that readers will dismiss the question of investment screening as explained by the pandemic. Therefore, we feel pushed to frame the paper in this way, but we also worry about being dismissed as a faddish paper.
3) We are trying to do a lot in this paper – introduce a new dataset, push back on COVID explanations to justify why we need further study of the proliferation of investment screening mechanisms, and generate a research agenda to move forward. Are we attempting too much? Or not enough? Is our narrative of investment screening and COVID – which seeks to build on theory-building work that has already been published on COVID as it relates to IPE – use and convincing? Or, is it too sweeping? Should we instead provide process tracing over a few key cases to provide convincing evidence that investment screening is not all about COVID (and to connect to theory about crisis politics and institutional change)?
4) Finally, we would love feedback about the dataset itself, including if our scoping conditions make sense and what particular aspects of investment screening you would most find interesting to code for.

Thank you for advance for your thoughtful comment and insights as we work to shape this unruly project into publishable form.

Introduction

In January 2021, the French government announced that it would block a Canadian company's planned acquisition of French retail giant Carrefour (Gatinois, 2021). France's willingness to defend national food brands from foreign takeovers is not new. In 2005 PepsiCo was rumored to be entertaining an acquisition of French dairy company Danone. Facing loud and widespread public disapproval, the French government reacted by creating a mechanism to review foreign acquisitions (Lenihan, 2018). Fifteen years later, France had strengthened its investment review tool before the Carrefour deal was announced. Government officials explicitly invoked COVID-19 as justification for the move. In a radio interview, Bruno Le Maire, the economy minister claimed, "This health crisis has taught us one thing - food security has no price," and pointed out that Carrefour handles 20 percent of France's food supply and is the largest private employer in the country.[2]

Opponents of the Carrefour deal suggested the Canadian buyer could lay off workers, but the acquirer indicated it planned to expand Carrefour's retail presence and invest 2.9 billion euros in the company. The French government's decision to block this acquisition instantiates a key puzzle of international political economy: the inward flow of capital is generally good for economic growth, and this is particularly true for economies hurt by the pandemic. Attracting foreign direct investment (FDI) is therefore a priority for most countries, and this is particularly true during periods of economic distress (Simmons 2014). Yet even as global FDI flows have plummeted 40 percent from their pre-pandemic levels, many countries are imposing more stringent approval processes for inward FDI, and this is part of a growing trend towards the securitization and geopoliticization of economic policy.

The central question we ask in this paper is what explains the proliferation and strengthening of FDI screening mechanisms in advanced economies over the past decade? Our central argument is that though investment screening mechanisms were created or reinforced in many advanced economies in 2020, the economic and political shocks caused by the COVID-19 pandemic accelerated prior patterns of increased willingness to scrutinize FDI. That is, the pandemic did not cause a dramatic rethinking of the cost/benefit trade-off of FDI, but rather provided a convenient opportunity to push through regulatory changes that had already been contemplated, debated, and drafted prior to the crisis.

The objectives of this paper are threefold. First, we aim to describe patterns of investment screening regulations in OECD countries since the 2008 financial crisis and establish an original dataset measuring the scope and strength of these mechanisms. Second, we address the role of COVID-19 in the proliferation of investment screening mechanisms. Using a combination of process tracing and contemporaneous reporting, we demonstrate that the pandemic may have accelerated the embrace of stricter investment screening mechanisms, but the underlying impetus for greater national security-oriented controls over inward FDI preceded COVID. While the politics of crisis can help explain why governments have been more successful at implementing investment screening mechanisms as pandemic politics weaken oppositions and provided convenient scripts for raising issue salience among publics, they are less able to explain why governments and key societal groups had become more amenable to investment screening in the first place. Accordingly, our third objective is to develop an agenda for research on investment screening. We argue that three related

[2] Giorgio Leali "France shields Carrefour from takeover in food security battle," *Politico.* 15 January, 2021. https://www.politico.eu/article/france-carrefour-takeover-food-security-battle/

explanations deserve sustained attention: the role of bottom-up backlashes to economic globalization; elite-driven foreign policy arguments about the increasingly blurred lines between national and economic security in the information economy; and geopolitical transformations that have generated systems-level pressures on international economic law and organizations that were developed under a different, western, market-oriented global order. Within these three explanations, we urge researchers to especially consider how investment screening patterns challenge existing understandings about the processes that generate stability and change in our international political economy. We think the expansion of investment screening powers especially challenges accepted wisdom about the role of state authority in the global economy, the ways in which governments compete with each other for mobile capital, and the role electoral politics plays in shaping orientations toward the global market.

The paper proceeds as follows. The first section provides some background on the concept and practice of foreign direct investment screening. Next, we develop an original measure of investment screening to compare processes and regulations in OECD countries. In Section Three, we explain why the COVID pandemic is not a critical juncture in the international politics of FDI regulation, and that more political economy theory building and testing is necessary to understand and explain the move toward securitizing investment inflows. Section Four sketches an agenda for future research by proposing three explanations for understanding patterns of investment screening policies since the Global Financial Crisis. The conclusion highlights the role of the global pandemic in the recent acceleration of investment screening worldwide and speculates on the future of such screening mechanisms.

Foreign direct investment screening: History and practice

Foreign direct investment is a class of investment where the investor acquires at least 10% of the voting power of an enterprise. The acquisition establishes 'lasting interest' and control over the affiliated company's operations, in contrast to portfolio investment, where investors do not generally expect to influence the management of the enterprise (OECD, 2008). FDI comes in two major modes of entry into the host economy: cross-border mergers and acquisitions (M&A), whereby the investor acquires existing assets, and 'greenfield investment', whereby the investor creates new facilities from the ground up in the host country (for instance, a new factory or distribution centre). Actors involved in FDI are a mix of public and private, ranging from small family businesses to private equity firms to state-owned enterprises.

FDI is usually welcome by host countries because it provides jobs and spillovers in know-how and technological innovation. In fact, countries, and localities, are engaged in fierce competition to attract investment through a variety of incentives and promotion efforts (Bauerle Danzman and Slaski, Forthcoming). However, certain investments carry potential risks, notably for national security. In order to keep the benefits of foreign investment in an open economy while mitigating the threats and vulnerabilities, many countries have, over time, developed procedures for selectively screening foreign acquisitions. The history of foreign direct investment screening practices in advanced economies is characterized by the slow, haphazard emergence of varied review mechanisms throughout the late 20th century, to be contrasted with a rapid acceleration and proliferation over the past decade.

Regulations for the screening of foreign direct investment have been arguably most developed, and for the longest time, in the United States, which may seem paradoxical given the openness of the American economy and the prevalence of neoliberal, laissez-faire ideology. First efforts to screen foreign investment in the US occurred during World War I, when American concerns about the presence of German-owned firms operating in the domestic economy led Congress to pass the Trading with the Enemy Act (TWEA), P.L. 65-91, giving the Executive broad powers to take action against foreign subsidiaries on American soil. President Wilson used these powers to transfer German assets to private US companies, and President Roosevelt invoked the TWEA in World War II to seize the assets of German and Japanese companies (Graham and Marchick, 2006).

The second wave of FDI screening in the US occurred during the oil crisis of the 1970s, prompted by investments from Middle Eastern members of the Organization of Petroleum Exporting Countries (OPEC). In 1975 President Ford created the Committee on Foreign Investment in the United States (CFIUS), an interagency committee designed to oversee the national security implications of foreign investment in the United States. Without clearly defined powers, CFIUS met only 10 times between 1975 and 1980 (Jackson, 2018). The surge of Japanese investments in the United States in the 1980s, with deals such as the 1989 acquisition of New York City's Rockefeller Centre sensationalized in the media, prompted the next wave of investment screening (Milhaupt, 2009). The 1988 Exon-Florio amendment (50 USC App. § 2170) authorised the president to 'investigate foreign acquisitions, mergers, and takeovers of, or investments in, US companies from a national security perspective'. President Reagan in turn delegated this authority to CFIUS. The 1992 Byrd Amendment (Section 837(a) of P.L. 102-484) further required CFIUS to investigate proposed foreign investments when the acquirer is acting on behalf of a foreign government.

The powers of CFIUS to screen foreign investment transactions have considerably ramped up in the 21st century. Several post-9/11 high profile foreign acquisitions, allowable under existing rules, prompted the reinforcement of CFIUS in 2007, notably the China National Offshore Oil Corporation (CNOOC)'s proposed takeover of California oil company Unocal in 2005 and Dubai Ports World (DP World)'s proposed acquisition of six American ports in 2006. The public furor provoked by these transactions and demands for greater oversight of investment decisions resulted in the Foreign Investment and National Security Act (FINSA), P.L. 110-49, which expanded CFIUS' mandate to include a broader range of national security risks (Jackson, 2018). The most recent reform of US investment screening procedures was passed in the 2018 Foreign Investment Risk Review Modernization Act (FIRRMA), incorporated into the 2019 National Defense Authorization Act (NDAA). FIRRMA centralised more CFIUS operations within the Treasury Department, extended the timeline for reviews, expanded the authority of CFIUS to mandate reviews or take unilateral action, and broadened the scope of covered transactions.

Other countries have created their own investment screening mechanisms over time. In Europe, some of the more robust investment screening frameworks have been developed in Germany, France and the UK. Germany introduced a foreign investment control mechanism in 2004 with the Foreign Trade and Payments Act (AWG). The mechanism was augmented in 2009 to examine whether acquisitions over 25% by non European members pose an actual threat to the "public order" and "public security" of the Federal Republic of Germany. In 2020, during the pandemic, the German government widened the scope of transactions potentially subject to review by broadening the trigger for review to "likely to affect" instead of "endangering" and prohibited investors to complete the transaction while under review (Pinsent Masons 2020). It also added new industrial sectors subject to review, such as Personal Protective Equipment, pharmaceuticals, and diagnostics.

France, a country long associated with dirigisme and industrial policy, launched its investment screening mechanism in 2006 (Legifrance 2006). Foreign investors must obtain authorization from the French Minister for the Economy before acquiring a French company involved in a "sensitive" sector, defined in an exhaustive list, which was supplemented with five additional sectors in 2014. The scope of foreign direct investment screening was extended again in 2018 to new strategic "sectors of the future" (including cybersecurity, artificial intelligence, and data storage) (Legifrance 2018). In 2019, France further reinforced and formalized its investment screening through the PACTE Law, which notably established stronger remedial powers in case of breach of rules and mitigation procedures and enhanced transparency and parliamentary control (Legifrance 2019). In 2020, during the pandemic, France reinforced its screening mechanism even further by adding biotechnologies to the list of strategic sectors covered by the requirement of prior authorization (Legifrance 2020a) and lowering the threshold triggering investment screening for non-European investors (Legifrance 2020b).

The UK first tackled foreign investment screening in an indirect way through its 2002 Enterprise Act, which regulates antitrust assessments by the Competition and Markets Authority. The UK government could review some transactions that were mergers above a certain threshold, as well as transactions that raise "public interest considerations". Government powers to review investment posing a potential national security threat will be drastically reinforced if the National Security and Investment Bill is ultimately passed. This bill, which was first unveiled in late 2020 but has not yet passed parliament, would create a legal framework for investment screening separate from the competition framework and created the Investment Security Unit (ISU), a new government agency that many observers have dubbed "CFIUK" (Blanquart and Whitten, 2020).

Outside of Europe and the US, some of the most developed investment screening mechanisms are found in Australia and Canada. Australia started investment screening in 1975 with the Foreign Acquisitions and Takeovers Act, which created the Foreign Investment Review Board (FIRB), tasked with examining whether proposed investments are in the national economic and security interest.[3] In 2020, amidst the pandemic, the Australian government lowered the threshold triggering review of relevant transactions to zero, expanded coverage to include greenfield investment, and mandated notification of any proposed investment in a "sensitive national security business".

In Canada, FDI screening started in 1985 with the Investment Canada Act (ICA), which enabled the Canadian government to review any transaction that could be injurious to national security and also to forbid transactions of significant size that do not represent a "net benefit" to Canada (Legislative Services Branch 1985). For much of the 1990s and early 2000s, the ICA was seen as mostly irrelevant because it was not often used. However, the ICA has become more active in recent years. It has been amended several times since its inception, most recently in 2020 when Canada expanded national security review to investments in public health and the supply of critical goods and services to Canadians.

Patterns of investment screening: An original measure

Despite the growing use of investment screening mechanisms, there is no existing dataset that provides time-series cross-sectional data mapping the content of investment screening regulations across space and time. The OECD's FDI regulatory restrictiveness index, perhaps the most comprehensive detailed measure of FDI

[3] https://www.legislation.gov.au/Details/C2020C0002

regulation, has a dimension for "screening and approval requirements," but carves out national security review, which is at the core of investment screening (Kalinova et al. 2010, 11). UNCTAD's investment policy monitor tracks newly implemented FDI-related regulations of numerous kinds, and has identified 237 policy changes related to "approval and admission" from 2010 to January 2021.[4] However, the dataset does not code the substantive effects of the regulatory changes, nor does it provide any analysis of the legal details of countries' screening mechanisms. Members of the OECD's Freedom of Investment Roundtable are required to notify the OECD of any regulatory changes that could affect national treatment of foreign investment (these data are used to developed the OECD's FDI regulatory restrictiveness index), and so changes to investment screening authorities are reported in lengthy narrative documents but are not coded in a manner to facilitate analysis of trends or compare components of investment review mechanisms across countries. [5] As investment screening mechanisms have proliferated, so too have tony law firms specializing in representing clients through the review process. These firms also publish trade reports that overview recent major changes to screening processes, again in narrative form. The World Bank has published a tracker of investment screening rules that are currently being considered or have been passed in the context of COVID, but this tracker has limited content mapping.[6] Another resource on COVID-related policies affecting investment provides narrative descriptions of changes, but does not arrange data in a way that facilitates comparison.[7]

We need a comprehensive dataset that maps investment screening regulations context over time to answer basic descriptive questions about what investment screening regulations look like, how they compare across different country contexts, and how these mechanisms have changed over time. Such a dataset is also central to being able to explain the politics behind the increasing implementation of investment screening in advanced industrial countries in recent years.

We construct such a dataset for all 37 OECD countries from 2007-2021. We start in 2007 to capture the changes in FDI flows that followed the 2008 financial crisis, the euro crisis, and the rise of China as a major foreign investor. We focus on OECD countries because they are democracies and advanced economies that - as a condition of entry - commit to pursuing broadly liberal economic policies. The 37 OECD economies account for approximately 80 percent of world trade and investment, thereby covering most global supply and demand for FDI. We do not include China in the dataset because the history and political economy of investment regulation in the PRC is fundamentally distinct from those of market-based democracies. Another benefit of restricting our dataset to OECD countries is the transparency of investment-related regulations and availability of primary sources to code. We use publicly available OECD documents on FDI-related regulations, and especially the May 2020 OECD report on policies relating to essential security interests safeguards, as the base of our comprehensive coding of investment screening authorities. We then supplement these data with a variety of other sources including the UNCTAD investment policy monitor, the World Bank FDI Entry and Screening Tracker, Investment Monitor's FDI regulations database, and government websites.

[4] https://investmentpolicy.unctad.org/investment-policy-monitor accessed 1 February 2021.

[5] See http://www.oecd.org/investment/g20.htm#foi

[6] https://dataviz.worldbank.org/views/FDI-COVID19/Overview?%3Aembed=y&%3AisGuestRedirectFromVizportal=y&%3Adisplay_count=n&%3AshowAppBanner=false&%3Aorigin=viz_share_link&%3AshowVizHome=n

[7] https://investmentmonitor.ai/resources/the-rise-of-protectionist-fdi-regulations

We code countries as having an investment screening mechanism if (1) there is some sort of legal mechanism in place to approve or deny an investment in a host country business, (2) that mechanism discriminates between domestic and foreign owners, and (3) that mechanism has a clear and routinized process through which to exercise its authority. In most cases, it is relatively clear and uncontroversial whether an investment screening mechanism exists in a country. For instance, Australia clearly has a screening board (the Foreign Investment Review Board or FIRB) while Switzerland considered and declined to implement a screening mechanism in 2019.

In other cases, determining what "counts" as a screening mechanism requires an exercise of judgement. Iceland, for example, prohibits FDI from state-owned enterprises unless specifically authorized by the Minister of Tourism, Industry, and Innovation (originally Commerce). The same minister may also block an investment on national security or public health grounds and/or compel a divestment for similar reasons. Despite this legal authority, the "act does not stipulate how foreign investment is screened or monitored by relevant authorities."[8] We do not code Iceland as having an investment screening mechanism because there is no clear, routinized legal process through which review occurs. Similarly, the United Kingdom has two statutory bases for investment review - the Enterprise Act 2002, which embeds an FDI review authority within its merger review regime and the Industry Act 1975, which provides the government with the ability to block a sale of manufacturing industry assets on national interest grounds.[9] We code the U.K.'s investment screening authorities from the provisions of the Enterprise Act, which have clear procedural guidelines and evidence of use. We exclude the Industry Act 1975 from coding because the government never drafted implementing guidelines for the act and a 2017 governmental report concluded that the act remains untested.[10]

We scope our dataset to include any type of investment screening mechanism, regardless of its rationale. For instance, Mexico does not have a mechanism that reviews foreign investment for national security concerns. However, it does have a mandatory general screening requirement for both greenfield and acquisition-based FDI for majority investments if investments exceed a certain threshold or for investment of any amount in a few key (non-national security-related) sectors. Investors from certain countries in North and Latin America are exempted from seeking approval, but we code the existence of the screening requirement rather than its exemptions. We choose to include screening authorities unrelated to national security concerns in order to have a more complete understanding of the regulatory contours of contemporary investment screening mechanisms, and to avoid conflating screening with national security concerns. While many screening authorities are scoped around national security, not all are, and some countries empower review boards to evaluate proposed investments on the basis of multiple rationale.

Below we present key insights from the dataset. Our code book is available in the manuscript's appendix.

Observation One - Increased Implementation of National Security-Related Investment Screening

[8] U.S. Department of State. 2020 Investment Climate Statement - Iceland. Available at: https://www.state.gov/reports/2020-investment-climate-statements/iceland/, accessed 3 February 2021.

[9] As of this writing, the U.K. government has introduced a bill that would substantially overhaul investment screening authority and procedures, but it has not yet passed into law as of 3 February 2021.

[10] "National security and infrastructure investment review - The Governments' review of the national security implications of foreign ownership or control," October 2017, p. 26. Available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652505/2017_10_16_NSII_Green_Paper_final.pdf

First, our data show a marked increase in the passage of investment review mechanisms and updates to existing laws. These new mechanisms are [almost] universally national security review mechanisms, rather than screens based on other priorities. Among newer and updated mechanisms, some continue to have net benefits tests, which add economic elements to the screening regime. Despite this, it is exceedingly rare for new screening tools to be unrelated to national security concerns. While governments have enacted investment review-related measures at an increased rate since the onset of COVID, this represents an acceleration of a trend rather than a major shift. A renewed interest in investment screening seems to have developed several years prior to COVID, and concurrent with a substantial increase in Chinese outward FDI into developed economies. The increase in screening mechanism does not register with the OECD's FDI Regulatory Restrictiveness Index, which is an indication that most of these new authorities are scoped to national security concerns.

[Figure 1 should have three time trends - # of investment review mechanisms over time, average FDI regulatory restrictive index for OECD countries over time, Chinese OFDI to OECD]

Observation Two - Broadening Scope of Sector Coverage

Second, the data show that investment screening mechanisms have increased their scope of coverage over time. This happens through two channels. First, there is a growing preference for cross-sectoral screening instruments, which provide governments with review authority over foreign investments regardless of sector. Governments often defend broad screening authority as an important mechanism for adequately confronting national security risks that change over time. While initial national security-related concerns over FDI were narrowly focused on foreign influence in defense contracts, governments' beliefs about what kinds of investment could impair national security have expanded into critical physical infrastructure, food security, data security, and transfer of dual-use technology. A cross-sectoral review mechanism allows governments broad coverage so that it is not necessary to update sectoral lists as views about what sectors may generate risks evolve. Indeed, some countries prefer cross-sectoral review because this allows them to leave the definition of national security quite vague.

Second, some countries continue to use sectorally-scoped screening and they have expanded the number of sectors subject to review over time. [Describe the trends here]

[Figure 2 - number of cross-sectoral screens, average number of covered sectors for sectoral screens]

Observation Three - Lower Review Thresholds

Third, our data indicate that investment review mechanisms cover increasingly smaller transactions, measured both in terms of absolute valuation and as a percentage of deal size. Because it is unrealistic to screen every transaction without severely restricting economic growth, review mechanisms have to determine how to separate "benign" investment from transactions that may generate concern. One way to do this is through sectoral screens as addressed above. Another approach is to place value and interest-based thresholds on transaction coverage. Generally, governments make a distinction between screens for foreign *direct* investment and foreign *portfolio* investment, with screening applying to the former but not the latter.

While, as we describe above, most countries consider FDI to be investments above a ten percent threshold for balance of payments reporting purposes, this definition does not always translate directly into screening thresholds. Many governments set screening thresholds at a specific economic interest percentage of a business or asset, and may also place an additional coverage test related to the size of the investment (with larger investments being covered while small investments are not). The U.S. has always been focused instead on the concept of "control," and does not set an economic interests threshold but instead reviews each transaction to determine if the transaction is structured in a way in which the foreign person could obtain control through governance rights. In general, we see that governments are increasingly lowering both economic ownership and transaction size thresholds. We also see more mechanisms requiring mandatory filing requirements over time.

[Figure 3 - # of temporary measures, (stacked with - lower review thresholds mandatory filing requirements); Figure 4 - # of permanent measures (established new screening authority, review threshold, mandatory requirements, greenfield requirements)]

Observation Four - Some Policy Convergence

Finally, our data map a growing similarity among mechanisms passed. Even recently, investment review mechanisms were marked by a general lack of convergence toward a single standard (OECD 2020, p. 11). We see evidence, however, that investment review authorities among OECD members are becoming more similar over time and that measures passed in the wake of COVID are particularly likely to exhibit characteristics of mimesis. For example, more countries are requiring a larger set of mandatory, pre-closing reviews. As we describe in more detail in the following section, we attribute this increase in policy similarity to the fact that many governments had already begun considering enhanced approaches to investment screening prior to COVID, and that bureaucrats within and between governments had been pressing for policy solutions before the pandemic. The crisis gave these policy entrepreneurs an opening to push through screening because the prior development of "off the shelf" solutions made it possible to offer investment review as a quick response to the economic and security concerns COVID engendered.

[Figure 5]

PANDEMIC POLITICS AND INVESTMENT SCREENING

What explains this rapid increase in investment screening in recent years, and patterns in regulatory content and stringency described above? Many commentators have explained the recent embrace and proliferation of foreign investment review mechanisms as a reaction to the COVID-19 pandemic. A Lexis Nexis search found 439 news articles since 1 January 2020 mentioning investment screening and COVID.[11] International economic organizations, including the OECD and UNCTAD, have issued policy reports analyzing how the pandemic has influenced investment policy, notably in the development of new and enhanced screening mechanisms (OECD 2020, UNCTAD 2020). In discussing the potential security concerns instantiated by COVID-19 in April 2020, NATO Secretary-General Jens Stoltenberg made an explicit appeal for member

[11] As of 25 Jan 2021.

states to enhance their investment security review mechanisms, pointing to the potential of adversarial entities to use ensuing economic vulnerabilities to acquire critical infrastructure, industries, and supply chains.[12]

For all of the COVID-centric narratives shrouding the recent reinvigoration of foreign investment review, however, it is incorrect to attribute the pandemic as a critical juncture that fundamentally altered global political dynamics around the nexus of national security and foreign investment policy (Drezner 2020). Much of the policy activity around investment screening revitalization, notably in the US and the EU, occurred prior to the pandemic.

While COVID did not initiate the global embrace of foreign investment national security review, it does seem to have accelerated it. The EU investment screening mechanism creates a cooperation framework for sharing information about foreign investment with national security concerns and sets standards for investment screening, but competence over screening - and whether to develop a mechanism at all - remains with the member states. Before COVID, it was widely assumed that many EU members such as Ireland would refrain from implementing a screening requirement, and some considered the EU rule to be relatively toothless (Jacobs 2019). But in March 2020, in the face of the rising pandemic, the European Commission explicitly warned the member states who "currently do not have a screening mechanism, or whose screening mechanisms do not cover all relevant transactions, to set up a full-fledged screening mechanism and in the meantime to use all other available options to address cases where the acquisition or control of a particular business, infrastructure or technology would create a risk to security or public order in the EU, including a risk to critical health infrastructures and supply of critical inputs" (European Commission, 2020). As a result, in April 2020, Ireland opened a public consultation period for investment screening and set in motion the process of developing and implementing its own mechanism.[13] Outside of the EU, other countries previously dubious of robust investment screening authorities - most notably Switzerland - have subsequently seen lawmakers introduce investment review legislation, though not all of these maneuvers have resulted in regulatory implementation as of yet.[14]

Crisis Politics and Policy Spillovers

To what extent and in what ways has the global pandemic influenced the growing trend toward viewing foreign investment, an engine of economic growth and technological diffusion, through a more skeptical national security frame? And, what does the case of investment screening reveal about more general political dynamics surrounding crises and change processes in the global political economy?

Lipsey (2020) argues that COVID-19 provides an opportunity for scholars of international political economy to pay greater attention to the politics of crisis in order to develop better models of major transformation in the global system. Embedded in his analysis, and also in a lively debate within the IPE community about whether COVID is a critical juncture in the global political economy, is an emphasis on examining and explaining pandemic-related policies and politics through a crisis-response analytic lens.[15] We build on the

[12] Schultz, Teri. "Nato warns allies to block China buying spree," *DW* 17 April 2020. https://www.dw.com/en/nato-warns-allies-to-block-china-buying-spree/a-53167064

[13] See https://enterprise.gov.ie/en/Consultations/Public-Consultation-Investment-Screening.html

[14] As late as February 2019, Switzerland had determined it was unnecessary to develop a screening mechanism: https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-73973.html

[15] See IO COVID-19 Online Supplemental Issue.

intuition to interpret COVID through the frame of crisis politics, but emphasize the ways in which policy entrepreneurs can use crises strategically to implement preferred policy outcomes in issue domains adjacent - or even orthogonal - to the crisis. That is, COVID may not be the ultimate cause of a major rethinking of the wisdom of economic openness (McNamara and Newman 2020) but the political dynamics surrounding the pandemic may help explain why and how proponents of enhanced investment security review were successful at pressing their case and sidelining opposition.

We argue that, while politicians may have incentives to justify investment screening by appealing to the COVID crisis, the main influence of the pandemic on foreign investment review policies has been to provide politicians with convenient scripts to generate popular support for such measures and to effectively sideline the opposition. That is, COVID did not alter political actors' interests or preferences, but instead strengthened the hand of security-oriented politicians and bureaucrats over societal groups most likely to oppose increased scrutiny over inward investment, namely multinational firms, their industry lobbying groups, and politicians beholden to continued support from such societal actors.. Investment review mechanisms quickly proliferated during the pandemic not because the crisis led to fundamental changes in beliefs and preferences over the benefits of such regulations, but because policy entrepreneurs were waiting in the wings with model legislation for such mechanisms and were able to push forward their regulatory agendas while business interests were supplicating to the beneficence of the state for crisis relief and were therefore unable to mount successful lobbying efforts to counter these proposals.

Indeed, much of the intellectual and legislative drafting work surrounding foreign investment screening had been completed before the COVID outbreak. The U.S. government passed its substantial legislative overall of its investment review mechanism, the Committee on Foreign Investment in the United States (CFIUS), in the summer of 2018, and implementing regulations came fully into effect in February 2020. Included in the CFIUS legislation were increased budgets for policy outreach to partners and allies, and U.S. diplomatic efforts to push other advanced democracies to adopt practices that could keep adversarial capital (i.e. Chinese and Russian) out of ownership networks were well underway before the crisis. The OECD's work stream on investment policy and national security review was explicitly revising guidance around investment screening practices just as COVID spread globally, as reflected by its lengthy review of investment screening practices among its members published in April 2020 (OECD 2020). The new EU investment screening framework took effect in October 2020, in the middle of the pandemic, but the investment screening regulation was passed in March 2019, giving member states 18 months to implement minimum standards for investment screening and enhanced information sharing among member states regarding the potential public order and security implications of inward investment made by a third party state. While the EU framework did not mandate that any member adopt a screening mechanism, it set the agenda for enhanced focus on whether any particular member needed or wanted such a mechanism and also contributed to information sharing among member states regarding best practices.

By the time that COVID hit, therefore, advanced economies were already engaged in sustained discussions about the usefulness and design of investment screening authorities and whether existing mechanisms were adequate to meet the challenges of a shifting global economy and, in particular, a rising China that had aggressively sought strategic and high-tech Western firms to target for acquisition in the aftermath of the 2008 global recession, and especially since 2016. The domestic political dynamics were largely driven by standard policy disagreements over the wisdom of liberal versus protected investment environments and whether investment screening would substantially hinder an economy's ability to attract investment (Chan and Meunier, forthcoming)[16].

These political dynamics were largely swept away as COVID took hold for several reasons. Crises generate uncertainties over the distributive effects of potential policy responses that cannot be resolved prior to crisis policy response because time pressures generate political demands for rapid response (Lipsey 2020, 2). Perceptions of threat, urgency, and uncertainty disorient the typical interest group preferences as well as the processes through which institutions aggregate these preferences. As uncertainty, fear, and urgency take root, leaders and those who have well positioned themselves *prior to crisis* as trusted aides and policy thinkers gain greater latitude to offer their preferred policy solutions. And, in the fog of crisis, these policy solutions may not directly relate to the current crisis, so long as policy entrepreneurs can market their ideas as crisis-relevant. That is, those pressing for enhanced investment screening can take their briefing materials, insert a slide on how the crisis makes this issue all the more urgent, and continue advocating for the same policy innovation they had championed prior to the crisis. Crisis-related relaxation of rules aimed at limiting governmental interference in market operations, such as the relaxation of EU state aid rules to enable greater economic recovery tools to member states, can also provide agents with the policy space necessary to successfully implement new regulations (Bauerle Danzman 2021, Meunier and Mickus 2020).

Pro-investment screening political dynamics have also had an international, rather than purely domestic, dimension. While investment screening legislation has occurred at the domestic level, there are markers of rather substantial policy coordination among core OECD economies. Multilateral engagements such as the Multilateral Action on Sensitive Technologies,[17] the OECD Freedom of Investment roundtables on safeguarding essential security interests,[18] and European Commission engagement with its members over the union's investment screening framework have created shared ideas about the acceptability - and perhaps the necessity - of national security review mechanisms among advanced, democratic economies. This positive example of socialization around a pro-investment screening bureaucratic culture runs counter to international policy responses around the public health dimensions of the crisis, a process that Johnson argues was disjointed and ineffective largely due to a breakdown in group identities and norms of cooperation over the past few years (2020). It also stands as an example of international coordination (at least to some extent) around the development of national security regulation, a phenomenon at odds with arguments that the emergence of national security frames to govern international trade law has been fundamentally incompatible with multilateral conceptions of security (Cohen 2020).

Crises do not simply embolden policy entrepreneurs building coalitions behind the scenes, they can also paralyze the likely opposition and increase issue salience in manners that abet regulatory change. We see both dynamics with COVID. First, while business interests in many advanced economies had previously expressed substantial skepticism toward investment screening, COVID-related economic distress weakened their policy bargaining position. Corporate interests now depended on the willingness of governments to provide financial relief as economies shut down, limiting their ability to push back strongly against legislation over

[16] See also that the U.S. Chamber of Commerce lists as a top priority "Ensure that the implementing regulation for the Foreign Investment Risk Review Modernization Act of 2018 (FIRRA) keep the interagency Committee on Foreign Investment in the United States (CFIUS) focused specifically on legitimate national security concerns associated with inbound investment" https://www.uschamber.com/international-trade-and-investment

[17] https://2017-2021.state.gov/technology-transfer-diplomacy-and-the-challenge-of-our-times/index.html

[18] https://one.oecd.org/document/DAF/INV/WD(2019)17/FINAL/en/pdf

investment screening. These dynamics, which underscore the ways in which the State plays a central role in supporting markets and firms, allow for more robust expressions of governmental power and weaken perceptions that globalization has strengthened global capital interests in ways that increasingly render governmental authority irrelevant. This contrasts starkly with arguments that COVID has functioned to make explicit forces of globalization that have transferred authority from states to markets and other actors (McNamara and Newman 2020).

Second, governments now had powerful and convenient stories to tell to increase public support for investment screening. They reasoned, to great effect, that foreign investment had made supply chains too fragmented and vulnerable to disruption. The argument was particularly powerful with respect to health-related supply chains. The Chinese government's bungled "mask diplomacy" in which it donated large shipments of Chinese-produced personal protective equipment (PPE) and testing kits to countries facing shortages, many of which were later found to be faulty and below international standards.[19] In France, for example, "the shortage of masks, which were revealed in March 2020 to be produced mainly in China, but also of reagents for COVID tests served as catalyst" for a renewed emphasis on "economic patriotism", including investment screening (Belouezzane and Zappi, 2021). The EU Commission issued similarly stark warnings: "In the context of the COVID-19 emergency, there could be an increased risk of attempts to acquire **healthcare capacities (for example for the productions of medical or protective equipment) or related industries such as research establishments** (for instance developing vaccines) via foreign direct investment. Vigilance is required to ensure that any such FDI does not have a harmful impact on the EU's capacity to cover the health needs of its citizens" (European Commission 2020, bold is in original text). As public concerns over the accessibility and reliability of health-related grew, politicians across developed economies argued investment screening mechanisms should consider how foreign acquisitions could adversely affect public health. The Canadian government, for example, released guidance in April 2020 stating "the Government will scrutinize with particular attention under the [Investment Canada] Act foreign direct investments of any value, controlling or non-controlling, in Canadian businesses that are related to public health or involved in the supply of critical goods and services to Canadians or to the Government."[20]

Relatedly, governments fretted to publics about the possibility that foreign firms could use COVID-related economic distress to buy national infrastructure assets and industrial champions at "fire sale" prices. Responding to a contentious April 2020 takeover of a U.K. technology firm by a Chinese-owned investment firm, British MP Tom Tugendhat lamented "We're seeing quite a lot of action by the Chinese state, or state-owned companies, that seem to be exploiting this moment."[21] Also in April 2020, Japan's Ministry of Finance labeled 518 publicly traded Japanese firms as core to national security, a move that triggered screening requirements for general investors seeking to acquire more than one percent stakes in these companies. Coverage of the change noted the inclusion of medical and healthcare businesses on the list and attributed regulatory tightening to "concerns about predatory acquisitions of weakened companies and strategic assets

[19] Charlie Campbell, "China's 'Mask Diplomacy' Is Faltering. But the U.S. Isn't Doing Any Better," *Time Magazine* 3 April 2020. https://time.com/5814940/china-mask-diplomacy-falters/. As Chinese biomedical researchers developed and produced COVID-19 vaccines, a similar dynamic emerged around vaccine diplomacy. See Sui-Lee Wei, "China Wanted to Show Off its Vaccines. It's Backfiring," *New York Times* January 2021. https://www.nytimes.com/2021/01/25/business/china-covid-19-vaccine-backlash.html

[20] https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81224.html

[21] Valentina Pop, "Protectionism Spreads Globally With the New Coronavirus," *Wall Street Journal* 29 May 2020 https://www.wsj.com/articles/protectionism-spreads-globally-with-the-new-coronavirus-11590779442

during the COVID-19 crisis."[22] Roland Lescure, president of the economic affairs committee at the French National Assembly argued, "This is not a change in doctrine. This [COVID] is not a crisis like any other. There are strategic sectors to protect" (Gatinois, 2021).

Consequently, the groups that would normally organize against screening were largely, if temporarily, swept away. Because policy entrepreneurs had previously been developing investment screening legislation and best practices, governments were able to press forward with new investment review proposals quickly, before business interests would be able to regain footing to mount an effective opposition. Thus, the combination of behind the scenes work to generate bureaucratic support and technocratic expertise and a crisis that suspended organized opposition led to the passage and implementation of more robust investment screening authorities than might have been otherwise possible. This dynamic mirrors explanations of other instances of institutional and regulatory transformations, in which policy entrepreneurs use crises to push through change that powerful interest groups would otherwise organize to block (Bakir 2009, Lipsey 2020).

Understanding the proliferation and strengthening of investment screening: a research agenda

If the COVID pandemic only accelerated an ongoing trend towards broader and tighter investment screening mechanisms worldwide, then we need to ask what prompted this trend in the first place. Literature on investment review is scarce, probably because of the difficulty of accessing data on case reviewed since the information is secret everywhere.   ADD HERE REFS AND SUMMARY OF EXISTING LITERATURE

In the remainder of this paper, we propose a research agenda for studying the evolution of investment screening mechanisms. We lay out several explanations for the recent proliferation and strengthening of investment screening mechanisms around the world and we suggest how some of these explanations could be tested, but we leave the actual testing for further research.

1) Globalization backlash and the rise of economic patriotism
2) Increasing blurring between economic security and national security, as well as the greater potential for dual use technology
3) Geopolitical transformations

Cross-cutting issues:

- State vs. firm authority/power
- Diffusion vs. competition
- Electoral politics? (this stuff is pretty bipartisan)

Conclusion

To be written

[22] Gary Mitchel Smith, Kazuyasu Yoneyama, and Ning Ning, "Japan Moves to Tighten Restrictions on Foreign Investment in Healthcare Industries," *Morrison Foerster* 22 May 2020 https://www.mofo.com/resources/insights/200522-japan-restrictions-foreign-investment.html

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