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American Trade News Highlights for Spring, 2013: The Keystone XL: To Choose Economic Triumph, or Environmental Disaster

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The Keystone XL: To Choose Economic Triumph, or Environmental Disaster?

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DEPENDENCE on natural resources has been an increasing part of U.S. history over the last century, and with it, reliance on unstable sources of the commodity and unpredictable economic catastrophes. Recently, the United States has sustained its dependence on gas and petroleum products due in part to advances in technology, which have opened access to more reserves of these resources. Today, areas holding natural resources previously thought to be unrecoverable are being exploited regularly, including the coastal shelf, the shale regions, and now, the Canadian oil sands. As Canada sought to develop, transport, and market this massive source, it looked to the United States as its strongest partner in trade and an equally strong consumer of petroleum products. The development of the Keystone XL pipeline is one facet of Canadian oil production, and its approval by the United States may prove to be a facet of the countries' continued harmonious trade arrangement, or its undoing.

I. BACKGROUND

A. Canada-United States Trade Relationship

Historically, the United States and Canada have enjoyed a symbiotic trade relationship, which was memorialized and strengthened on January 2, 1988, when the two countries executed the Canada-U.S. Free Trade Agreement (FTA).[1] The FTA, effective a year later, eliminated many tariffs completely, reduced non-tariff trade barriers, and provided a mechanism for settling trade disputes.[2] Negotiations for the North

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1. Free Trade Agreement, U.S.-Can, Jan. 2, 1988, 27 I.L.M. 293.
2. *Id.* arts. 401, 405-09, 1801-08.

American Free Trade Agreement (NAFTA) ensued shortly after, and an agreement binding the United States, Canada, and Mexico entered into force on January 1, 1994.[3] Under the FTA and NAFTA, the U.S-Canadian border has witnessed an ever-increasing migration of goods and services, totaling over $596 billion in 2011.[4]

Due to an array of natural resources on both sides of the border, high levels of consumption in each country, and provisions in both the FTA and NAFTA, U.S.-Canadian energy trade has flourished, making the countries' interaction "the closest energy relationship in the world."[5] One crucial product involved in the energy trade is crude oil; Canada is the largest exporter of crude oil to the United States.[6] Virtually all—99 percent—of Canada's exported crude oil is imported by the United States, with 70 percent of those imports being directed to refineries in the Midwest.[7] The energy trade is not one directional, as the United States is a prime provider of natural gas and electricity to Canada.[8]

Recent developments in technology have empowered both countries to expand their production of natural resources. Oil and gas production companies have used horizontal drilling and hydraulic fracturing to open up to 315 billion barrels of Canadian oil sands, and similar developments are occurring in shale rocks across the United States.[9] Advances in offshore drilling methods have made 88.5 billion barrels of oil off the coast in the outer shelf of the United States recoverable,[10] and similar offshore expansions are occurring in the Atlantic offshore region in Canada.[11] In addition to the exchange of products, services are also being traded with U.S.-based companies—including Shell, Devon, and Total, which all hold prime spots in Canadian oil plays.[12] While tens of thousands of Americans working in Canada's lucrative oil and gas industry travel by plane, pipelines are the main thoroughfares to transport crude oil.[13] But as a

3. North American Free Trade Agreement art. 2203, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993).
4. *Canada*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, http://www.ustr.gov/countries-regions/americas/Canada (last visited June 9, 2013).
5. North American Free Trade Agreement, *supra* note 3, arts. 601-09; Free Trade Agreement, *supra* note 1, arts. 901-09; *Canada-U.S. Energy Relations*, GOV'T OF CAN., http://www.canadainternational.gc.ca/san_diego/bilateral_relations_bilateral es/energy-energie.aspx?lang=eng&view=d (last modified Jan. 24, 2013).
6. U.S. ENERGY INFO. ADMIN., CANADA 8 (revised Dec. 10, 2012), *available at* http://www.eia.gov/countries/analysisbriefs/Canada/canada.pdf (noting that the United States imported 2.7 million barrels of oil and petroleum products daily from Canada in 2011).
7. *Id.*
8. *Canada-U.S. Energy Relations*, *supra* note 5.
9. *Id.*
10. BUREAU OF OCEAN ENERGY MGMT., ASSESSMENT OF UNDISCOVERED TECHNICALLY RECOVERABLE OIL AND GAS RESOURCES OF THE NATION'S OUTER CONTINENTAL SHELF, 2011 (rev. Oct. 2012), *available at* http://www.boem.gov/Oil-and-Gas-Energy-Program/Resource-Evaluation/Resource-Assessment/2011-RA-Assessments.aspx.
11. *Canada-U.S. Energy Relations*, *supra* note 5.
12. CANADA, *supra* note 6, at 5-7.
13. *Canada-U.S. Energy Relations*, *supra* note 5.

recent report by the Energy Information Administration indicates, infrastructure constraints in the midcontinent are forcing oil producers to increasingly bypass this preferred method for transport by rail.[14]

B. The Beginnings of the Keystone XL

The main objective of constructing the Keystone XL pipeline (Keystone XL) is to transport crude oil produced in the Canadian Midwest from the U.S.-Canadian border to Steele City, Nebraska. From Nebraska, the existing Cushing Extension continues the delivery of crude oil, with most bound for Gulf Coast refineries.[15] The existing Keystone pipeline and Cushing Extensions are primary portions of this project and are being followed by more extensions in the Gulf Coast region currently under construction. The proposed 875-mile Keystone XL would essentially connect the heavy crude Canadian oil sands and Montana and North Dakota based Bakken shale with existing refineries in the southern United States.[16]

The regulatory beginning of the Keystone XL in the United States commenced when TransCanada Keystone Pipeline, L.P. (TransCanada) filed an application requesting a presidential permit for the pipeline on September 19, 2008 (2008 Application).[17] TransCanada, a company owned equally by affiliates of TransCanada Corporation, a Canadian public company, and ConocoPhillips, a Delaware corporation,[18] made this application pursuant to President George W. Bush's Executive Order 13,337, signed April 30, 2004.[19] In the Order, President Bush referred applications for the construction of facilities at U.S. borders for the import or export of petroleum products, coal, or other fuels from a foreign country to the Secretary of State.[20] The Order provides that once the Secretary of State has received such an application, he is to submit the application for review to the Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Commerce, Secretary of Transportation, Secretary of Energy, Secretary of Homeland Security, and Admin-

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14. Canada, *supra* note 6, at 9.
15. U.S. Dep't of State Bureau of Oceans & Int'l Envtl. & Scientific Affairs, Draft Supplemental Environmental Impact Statement for the Keystone XL Project 1.3.1 (Mar. 2013) (hereinafter 2013 Draft SEIS); *see About the Project*, TransCanada, http://keystone-xl.com/about/the-project/ (last visited May 21, 2013).
16. 2013 Draft SEIS, *supra* note 15, at 1.2.
17. U.S. Dep't of State, Application of Keystone TransCanada Pipeline, L.P., for a Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of Pipeline Facilities for the Importation of Crude Oil to be Located at the United States-Canada Border, 2 (May 4, 2012), *available at* http://keystone-xl.com/wp-content/uploads/2012/11/kxl-pp-application.pdf (hereinafter 2012 Application).
18. Public Notice 6422, 73 Fed. Reg. 65,713 (Nov. 4, 2008) (providing notice that the Department of State had received an Application for a Permit for Pipeline Facilities to be Constructed and Maintained on the Borders of the United States).
19. Exec. Order No. 13,337, 69 Fed. Reg. 25,299 (Apr. 30, 2004).
20. *Id.* § (1)(a); *see* 3 U.S.C. § 301 (1951) (granting general delegation powers of executive duties to the President).

istrator of the Environmental Protection Agency.[21] Additionally, the Secretary is permitted to consult with state or local governments affected by the application and to open the application to public comment.[22]

The Department of State took three years to consider the 2008 Application, issuing its findings through its Final Environmental Impact Statement (2011 FEIS) on August 26, 2011.[23] The relatively mild environmental warnings in the 2011 FEIS concluded that a crude oil spill would likely have no effect on the general public;[24] that no viable alternatives to the Keystone XL existed in terms of substitute systems or different pipeline routes;[25] and that the imposition of fifty-seven project specific conditions, which TransCanada agreed to, would result in the project having a "degree of safety greater than any typically constructed domestic oil pipeline system under current regulations."[26] Despite these seemingly positive reviews and the extensive time spent considering the proposal, immediate approval of the 2008 Application did not follow.

C. The Denial of the 2008 Application

Although the Department of State concluded under the Obama Administration in the 2011 FEIS that alternate pipeline routes were not viable options, the Department announced in November of 2011 that it was delaying its decision on the 2008 Application so it could consider alternative routes through Nebraska.[27] The Department cited concern for the potential impacts on the Sandhills area of Nebraska[28] and the state's undeveloped regulatory framework overseeing pipeline placement as the reasons for prolonging the decision.[29] Some speculate that politics and bureaucracy were to blame for the delay. With the ensuing presidential elections, critics—both pro- and anti-pipeline—saw the postponement as an attempt to "avoid the heat from opposing interests—business lobbies or environmental and health advocates—and to find a political middle

21. Exec. Order No. 13,337, 69 Fed. Reg. at § (1)(b)(ii).
22. *Id.* §§ (1)(e), (3)(a).
23. U.S. Dep't of State, Final Supplemental Environmental Impact Statement for the Keystone XL Project (2011) (hereinafter 2011 FEIS) (results of study undertaking to analyze the environmental impacts that could result from the approval of a Presidential Permit authorizing construction, operation, and maintenance of the pipeline, consistent with the National Environmental Policy Act of 1969).
24. *Id.* § 3.13.5.
25. *Id.* § 4.2-3.
26. *Id.* at ES6 (noting that the special conditions pertained to regulating the pipeline design and manufacturing, system construction and testing, and such other aspects as maintenance, monitoring, reporting, and certification).
27. 2012 Application, *supra*, note 17, at 2; Press Release, U.S. Dep't of State, Keystone XL Pipeline Project Review Process: Decision to Seek Additional Information (Nov. 10, 2011), *available at* http://www.state.gov/r/pa/prs/ps/2011/11/176964.htm.
28. The Sandhills Region is a system of wetlands and shallow waterbeds that come together to produce an environmentally-sensitive ecosystem.
29. *Keystone XL Pipeline Project Review Process: Decision to Seek Additional Information*, *supra* note 27.

ground."[30]

Meanwhile, in Nebraska, Governor Dave Heineman called a special session of the state legislature to address two bills pertaining to the pipeline.[31] During this time, the legislature adopted and the Governor approved Legislative Bill 1 (adopting the Major Oil Pipeline Siting Act and declaring an emergency such that the legislation took effect once passed and approved) and Legislative Bill 4 (granting authority for the Nebraska Department of Environmental Quality and Governor to participate in the federal environmental impact statements), essentially resolving the Department of State's cited concerns.[32] Both laws passed by unanimous vote.[33]

In December of 2011, Congress placed a section in the Temporary Payroll Tax Cut Continuation Act of 2011 requiring President Barack Obama to determine whether the Keystone XL would serve the national interest within sixty days of the bill's enactment.[34] Within approximately one month, in a show of unilateral presidential power not frequently seen in the United States, President Obama denied the 2008 Application, explaining simply that the Department of State felt sixty days was an "insufficient period to obtain and assess the necessary information."[35] This denial did not preclude subsequent permit applications for similar undertakings, however, and TransCanada did not merely abandon its multi-billion dollar project.[36] The denial put the process of state involvement the Nebraska legislature had provided for in Legislative Bill 4 on hold, prompting the state legislature to pass Legislative Bill 1161, which allowed the Nebraska Department of Environmental Quality to continue evaluating proposed pipeline routes.[37]

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30. John M. Broder & Dan Frosch, *U.S. Review Expected to Delay Oil Pipeline Past the Election*, N.Y. TIMES, Nov. 11, 2011, at A1. As polarizing as a decision either direction might have been for President Obama's campaign, the middle ground may have been just as polarizing. For example, the President of the American Petroleum Institute commented, "This is all about politics and keeping a radical constituency, opposed to any and all oil and gas development, in the president's camp in 2012. Whether it will help the president retain his job is unclear but it will cost thousands of shovel-ready opportunities for American workers." On the other end of the spectrum, an international environmental activist asserted "This decision just puts off a green light . . . I'm a little dismayed at suggestions that this kick-the-can decision means environmentalists will enthusiastically back President Obama in 2012. Is the price of an environmentalist's vote a year's delay on environmental catastrophe? Excuse me, no." *Id.*
31. Letter from Dave Heineman, Governor of Neb., to President Barack Obama, and Hillary Rodham Clinton, Secretary of State (Jan. 22, 2013), *available at* http://www.governor.nebraska.gov/news/2013/01/docs/0122_Pipeline_Approval.pdf.
32. L.B. 1, 102d Leg., 1st Spec. Sess. (Neb. 2011); L.B. 4, 102d Leg., 1st Spec. Sess. (Neb. 2011).
33. Neb. Legislature Unicameral Info. Office, *Two Pipeline Measures Approved; Legislature Adjourns*, UNICAMERAL UPDATE (Nov. 22, 2011), http://update.legislature.ne.gov/?p=5458.
34. H.R. 3765, 112th Cong. § 501 (2011); Public Notice 7786, 77 Fed. Reg. 5,614 (Feb. 3, 2012).
35. Public Notice 7786, *supra* note 34.
36. 2012 Application, *supra*, note 17, at 3.
37. L.B. 1161, 102d Leg., 2d Sess. (Neb. 2011).

II. CURRENT DEVELOPMENTS

A. The 2012 Application

On May 4, 2012, TransCanada submitted a second application (2012 Application) to the Department of State for a modified route of the Keystone XL pipeline.[38] This proposal cut the length of the pipeline by over 500 miles.[39] Additionally, despite the approving undertone in the 2011 FEIS, the 2012 Application avoided the environmentally sensitive Sandhills region and circumvented two states that the pipeline proposed in the 2008 Application would have crossed.[40]

In January of 2013, Governor Heineman informed the Obama administration that he had received a new proposed pipeline route for the Keystone XL, which was scrutinized by the Nebraska Department of Environmental Quality and had his ultimate approval.[41] In his letter, the Governor noted that the new route avoided the sensitive areas of Nebraska's ecosystem; that the pipeline would generate hundreds of millions of dollars in immediate revenue, as well as over ten thousand dollars in property tax revenues yearly; and that TransCanada agreed to take any responsibility, financial or regulatory, that a spill associated with the pipeline could cause.[42]

The Department of State released a Draft Supplemental Environmental Impact Statement (2013 Draft SEIS) on March 1, 2013.[43] The 2013 Draft SEIS evaluated the changes in TransCanada's proposal since the 2008 Application and summarized the pipeline's possible environmental effects, including socioeconomic impact, consequences of oil spills, and effects on local species from the American Burying Beetle to the Whooping Crane.[44] Except for the shorter pipeline length and rerouting in Nebraska, the results of the 2013 and 2011 statements are similar. Notably, the 2013 Draft SEIS predicts that the construction of the newly proposed route will generate 42,000 jobs and approximately $2.05 billion in earnings.[45] These figures are significantly higher than the 2011 FEIS quote of 5,000 jobs and approximately $350 million in earnings.[46] The 2013 Draft SEIS is currently the subject of a forty-five day public comment period,

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38. 2012 Application, *supra*, note 17; Public Notice No. 7876, 77 Fed. Reg. 27,533 (May 10, 2012).
39. 2013 Draft SEIS, *supra* note 15, at ES6.
40. *Id.* at 6-7. Additionally, the number of perennial rivers the pipeline would cross had been reduced to fifty-six, one-sixth the originally-proposed number; approximately 1,073 waterbodies, however, would still be crossed. Press Release, U.S. Dep't of State, State Department Releases Draft Supplemental Environmental Impact Statement on the Proposed Keystone CL Pipeline (Mar. 1, 2013) *available at* http://www.state.gov/r/pa/prs/ps/2013/03/205547.htm.
41. Letter from Dave Heineman, *supra* note 31.
42. *Id.*
43. 2013 Draft SEIS, *supra* note 15; Public Notice No. 8258, 78 Fed. Reg. 18,665 (Mar. 27, 2013).
44. 2013 Draft SEIS, *supra* note 15, at 14.
45. *Id.* at 16.
46. 2011 FEIS, *supra* note 23, at 25; 2013 Draft SEIS, *supra* note 15, at 16.

after which a public meeting will be held.[47] The State Department will take the public comments collected and the discussions at the meeting into consideration while drafting a final environmental impact statement summarizing the Department's findings.[48] President Obama will use this statement to guide his final decision regarding the pipeline.

III. POTENTIAL RESULTS

The construction of a cross-country, multi-billion-dollar facility could not occur without leaving a lasting impact on the countries it touches, and such is the case with the Keystone XL, both economically and environmentally. The potential effects of this undertaking are extraordinary in two ways: they expand past the borders of the two collaborating countries, and they persist even if TransCanada's 2012 Application is denied and the Keystone XL is never built.

A. Local Effects

Once constructed, the Keystone XL would bring an immense amount of crude oil to the United States each day, with estimates ranging from 700,000 to 830,000 barrels per day, an amount which, once processed, has the potential to reduce current imports from other countries by 7 percent.[49] TransCanada has committed to dedicating 25 percent of the pipeline's capacity to transporting the oil produced from the North Dakota and Montana Bakken shales to southern refineries—a solution to what many American operating companies consider a crisis.[50] In addition to increasing the supply of petroleum products, the construction of the pipeline would bring other economic benefits to the United States. States would have the potential to generate additional income through pipeline construction, property taxes, sales and use taxes, and general economic stimulus from the influx of workers who would require housing, food, and other necessities. Additionally, with unemployment rates still close to 8 percent, the American economy would benefit from the construction jobs described above and from continued prosperous operations in the Canadian oil sands, where one out of three jobs generated in the future is predicted to be filled by an American.[51]

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47. Public Notice No. 8258, *supra* note 43.
48. *Id.*
49. 2013 Draft SEIS, *supra* note 15, at 1; John M. Broder, et al., *Obama Faces Risks in Pipeline Decision*, N.Y. Times, Feb. 18, 2013, at B1; *see U.S. Imports by Country of Origin*, U.S. Energy Info. Admin. (Mar. 15, 2013), http://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_ep00_im0_mbbl_a.htm.
50. *Keystone XL Brings a Secure Supply of Oil to the United States*, TransCanada, http://keystone-xl.com/about/energy-security/ (last visited June 10, 2013). Because the recent oil and gas boom in the northern shale states is unprecedented, very little infrastructure exists to transport petroleum products from the source of production to existing refineries. Without a mode of transportation, the fate of the northern shales is questionable.
51. U.S. Dep't of Labor, Bureau of Labor Statistics, Labor Force Statistics by Current Population Survey (Mar. 21, 2013, 3:43:38 PM), *available at* http://

Still, the Keystone XL as proposed in the 2012 Application could ignite or exacerbate significant environmental concerns. Besides the construction's inherent interruption of the relatively untouched ecosystem of the Midwest, the pipeline brings additional risks, including oil leaks and spills, contamination of waterbodies, and rising greenhouse gas emissions.[52] Further, extracting oil from the tar sands involves unattractive open-pit mining and necessitates a process that is "dirtier" than traditional oil production, releasing more carbon monoxide into the environment.[53] The 2013 Draft SEIS estimates that extracting, shipping, and processing oil from tar sands produces 5 to 19 percent more greenhouse gas emissions than traditional crude oil.[54] But it also notes that denial of any pipeline permit—including the Keystone XL—will not impact the rate at which operators are developing the tar sands.[55] In affected areas, the pipeline will likely bring noise, localized pollution, and traffic congestion; however, all the viable alternative means of transporting the products—*e.g.*, train, truck, or barge—not only share these effects, but would require more time to construct, utilize more U.S. land, and employ fewer American workers.[56] Because the denial of the Keystone XL permit would not affect the continued U.S. demand for crude oil, producers would be forced to turn to these unappealing—and probably more expensive—options.[57] Given the economic reality and the likelihood that denying TransCanada's permit would not alter the environmental effects inherent in petroleum production, working with TransCanada to ensure the best possible means of pipeline construction and maintenance seems the most beneficial solution for the United States.

B. International Effects

1. *If the 2012 Application is Approved*

Looking beyond the U.S. border, the Keystone XL could bring lasting changes to international relations, both between the United States and Canada and beyond. Canada and the United States maintain a constant, mutually-beneficial trade of goods and services that has been called the "greatest bilateral trading relationship in the world."[58] Approving the pipeline would be a show of good faith, strengthening U.S.-Canadian

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data.bls.gov/timeseries/LNS14000000; *Keystone XL Brings a Secure Supply of Oil to the United States*, *supra* note 50.

52. 2013 Draft SEIS, *supra* note 15, at 14, 16.
53. *About Tar Sands*, 2012 Oil Shale & Tar Sands Programmatic EIS, http://ostseis.anl.gov/guide/tarsands/ (last visited June 10, 2013) (a website for public information operated by the U.S. Department of the Interior, Bureau of Land Management in conjunction with an environmental impact statement it generated pertaining to tar sand in the United States).
54. 2013 Draft SEIS, *supra* note 15, at 14.
55. *Id.* at 19-20.
56. *Id.* at 20.
57. *Id.*
58. *The Canada-U.S. Trade and Investment Partnership*, Gov't of Can., http://www.canadainternational.gc.ca/san_diego/bilateral_relations_bilaterales/commercial_relations_commerciales.aspx?lang=eng&view=d (last modified Nov. 26, 2012).

bonds even more, and reducing U.S. dependence on other less amenable trade partners.[59] With the massive involvement of U.S. producers as international oil companies developing Canadian resources, including Chevron, ConocoPhillips, Devon Energy, ExxonMobil, BP, Shell, and Total, the U.S. should promote projects that would bring added benevolence from the Canadian government.[60]

Additionally, added oil imports from the United States' northern neighbor would reduce dependence on imports of petroleum from other—often turbulent—foreign sources. Approving the pipeline could fulfill President Obama's goal of decreasing dependence on oil from the Middle East and Venezuela, which produces crude oil with a heavy grade similar in composition to Canadian crude.[61] While not completely eliminating U.S. dependence on foreign oil, the pipeline could be an important step in breaking free from the whims of the Organization of Petroleum Exporting Countries.[62]

2. *If the 2012 Application is Denied*

A denial of the 2012 Application would have lasting international consequences, even past the local effects of increased oil transportation costs, lost potential jobs and income, and perpetration of the petroleum supply and demand deficit. Given the established trade regime between Canada and the United States and the importance of the oil sands to Canada's economy, refusal to permit the Keystone XL could forever alter the countries' trade relationship. Canada has invested over $100 billion in the oil sands, and plans to use the Keystone XL to propel this "key driver in economic development."[63] Alison Redford, the Alberta Premier, the executive head of the province producing the billions of dollars of oil in question, has stated that hindering this operation "would fundamentally change the [Canada-United States] relationship," implying that decades of Canadian-U.S. integration and economic cooperation would be thrown into question by a permit denial.[64]

Arguably, the United States has already committed to supporting this Canadian undertaking; chapter nine of the FTA begins with the explanation:

> This chapter . . . will secure Canada's access to the United States market for energy goods. The two countries have recognized that they have a common interest in securing access to each other's mar-

59. *See* Broder, et al., *supra* note 49.
60. CANADA, *supra* note 6, at 3.
61. Press Release, Barack Obama & Joe Biden, New Energy for America (Jan. 2009) (available at http://energy.gov/sites/prod/files/edg/media/Obama_New_Energy_0804.pdf).
62. *See* Broder, et al., *supra* note 49.
63. *Id.*; *Canada-U.S. Energy Relations*, *supra* note 5.
64. Shawn McCarthy, *Pipeline Denial Would 'Fundamentally Change' Relations with U.S.*, THE GLOBE AND MAIL (Mar. 18, 2013, 10:55 AM), http://www.theglobeandmail.com/news/politics/pipeline-denial-would-fundamentally-change-relations-with-us-redford/article9871895/.

> ket and enhancing their mutual security of supply. They have, therefore, built on their existing . . . rights and obligations and agreed that, as each other's best customers, they should get fair treatment should there be any controls on energy commodities.[65]

The countries echoed this assertion in the NAFTA, wherein they recognized that "it is desirable to strengthen the important role that trade in energy and basic petrochemical goods plays in the free trade area and to enhance this role through sustained and gradual liberalization."[66] But the same NAFTA article also emphasizes that having competitive and viable energy sectors is important for each countries' furtherance of their own *individual* interests; if disappointed by President Obama's decision, Canada may seek to further its own interests elsewhere.[67]

Presidential power this significant and unchecked is rare, and there are concerns that President Obama's commitments made on the campaign trail and in his recent inaugural address to attack climate change will unduly influence this major decision.[68] As said by Canada's ambassador to the United States, "the decision has to be made on merit and not noise. And if people in Canada perceive that the decision is made on noise, there will be extreme disappointment."[69] Canada's growing relationships with other nations, particularly China, are not merely noise, and should the 2012 Application be denied, it is likely the country will look to these different markets. The Chinese, for example, have massive investments in the Canadian oil sands that would naturally encourage the nation to take measures supporting overseas trade with Canada; Chinese power companies PetroChina, Sinopec, the China National Petroleum Corporation, and the China National Offshore Oil Corporation have all invested in the oil sands, including full acquisition of some projects.[70] And, as said by the Vice President of the Canadian Association of Petroleum Producers, "Canada, right now, with our potential growth in energy, is looking for security of demand wherever that might be throughout the world."[71] The combination of Canada's horizon of new potential energy trade partners and bitter taste from this experience with the United States could bring the end of the "closest energy relationship in the world."[72]

IV. CONCLUSION

While the strength of U.S.-Canadian trade has endured and even flourished for decades, Canada cannot be expected to sit on its cash cow and risk continuing localized gluts in oil prices. Like the United States has in

65. Free Trade Agreement, *supra* note 1, at introduction to Ch. 9.
66. North American Free Trade Agreement, *supra* note 3, art. 601.
67. *Id.*
68. John M. Broder, *Governor of Nebraska Backs Route for Pipeline*, N.Y. TIMES, Jan. 23, 2013, at A11.
69. Broder, et al., *supra* note 49.
70. CANADA, *supra* note 6, at 3.
71. Broder, et al, *supra* note 49.
72. *Canada-U.S. Energy Relations*, *supra* note 5.

its booming shale plays, Canada will capitalize on its oil sands, and inevitably require and seek an active market for its products. As the State Department has conceded, a U.S. refusal of the Keystone XL is unlikely to deter negative environmental effects from the oil sand's development, as operators will likely to continue to exploit the resource, and alternatively, equally harmful modes of transportation will likely bring it into the United States. The direct economic gains the United States would see in construction spending and increased employment are a small portion of the benefits the Keystone XL would reap, with such benefits paling in comparison to the likely indirect gains—ranging from strengthening its relationship with its strongest trade ally to reducing dependence on countries with which interactions have been tempestuous. Given the inevitability of the environmental impact President Obama seeks to avoid and the potentially disastrous consequences of damaging a prime trade relationship, the Obama Administration should undoubtedly approve the TransCanada's Keystone XL application.

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