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China: Investing in the world

Dr Megan Bowman

Research Fellow
Centre for Law, Markets and Regulation
Faculty of Law
UNSW Australia

Dr George Gilligan

Senior Research Fellow
Centre for Law, Markets and Regulation
Faculty of Law
UNSW Australia

Professor Justin O'Brien

Law Professor
Director, Centre for Law, Markets and Regulation
Faculty of Law
UNSW Australia
Australian Research Council Future Fellow

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China: Investing in the World

Megan Bowman, George Gilligan and Justin O'Brien¹

ABSTRACT

It is clear that China has emerged as a key investment actor in the current global milieu. What is not so clear is why this is so. This paper adds an historical perspective to the state capital story by examining China's trade and investment patterns through a longitudinal lens. The paper outlines the emergence of China as a modern global investment force and discusses the strategic importance of securing supply as a motive for China's outward direct foreign investment. The paper also focuses on Australia as a recipient nation of foreign direct investment from China and highlights some regulatory tensions that can arise from a state capital investor-investee relationship.

INTRODUCTION

China has emerged as a prominent global foreign investment actor in the current global milieu. It is a significant recipient of global foreign direct investment (FDI) and one of the largest outward investors in foreign jurisdictions, both of which have stimulated China's importance as an investment actor across markets and continents today.

Using a short timeframe lens, it appears that China's welcoming of inward FDI and its pervasion as an outward investor are both relatively new. However, looking longer term, China has demonstrated a strong tradition of external trade and a historical record of investment ambitions. Accordingly, this paper adds an historical perspective to the state capital story by examining China's trade and investment patterns through a longitudinal lens. Specifically, the purpose of this paper is twofold: first, it explicates why and how China has become a modern global investment force by documenting its historical record; and secondly, it telegraphs where China's investment ambitions are likely to focus in the future. Notably, this paper references China's Five-Year Plans in order to trace trade and investment patterns and ambitions from a Chinese national perspective.

Part I documents the emergence of China as a global investment force. It traces China's traditions of outward trade back to the 12th Century, through succeeding centuries into the post-war 'globalized' boom of the 1930s, then to the relative isolation under Mao Zedong in the 1950s, the 'open door' FDI policy of the 1980s and the most recent 'going global' outward investment strategy of the current era.

The strategy behind China's global investment behaviour is explored in Part II. Data detailed and discussed in this Part reveal the global sectors and jurisdictions in which China invests and show that significant Chinese investments are occurring: in both developed and developing nations,

¹ Dr. Megan Bowman is a Research Fellow, Dr. George Gilligan is a Senior Research Fellow and Professor Justin O'Brien is Director of the Centre for Law, Markets & Regulation (CLMR) within the Law Faculty, University of New South Wales. We thank CLMR intern, Ms. Lisa Soo, for her additional research assistance. We acknowledge the financial support of the Centre for International Finance and Regulation (for project Enter the Dragon: Foreign Direct Investment and Capital Markets, E002), which is funded by the Commonwealth of Australia and NSW State Government and other consortium members (*see* www.ciffr.edu.au).

but more so in the former; and in mining/natural resources with emerging diversification toward energy and agriculture. It predicts that increasing consumer demand of China's growing middle class with concomitant declining domestic supply will undoubtedly shape China's strategic investment priorities in the future.

Part III focuses on Australia as a recipient nation of FDI from China and highlights some of the regulatory tensions that can arise from a state capital investor-investee relationship. Specifically, the data evidence shows that state-owned enterprises are the primary modality of Chinese investment in Australia and that these enterprises appear to be pursuing commercial opportunities in a source-rich foreign jurisdiction in much the same way as Western multinational corporations have historically done and continue to do.

Overall, international predictions regarding global food security and China's changing domestic demand-supply make clear that China's significance as a global foreign investor as well as a recipient of global soft commodities will only continue to rise.

I. THE EMERGENCE OF CHINA AS A GLOBAL INVESTMENT FORCE

A. China's Traditions of Outward Trade

China has a long-standing tradition of external trade. For example, in the 12th to 14th Centuries it enjoyed economic advancement and dynamism far exceeding its Western counterparts.² During this period China reputedly established a professional navy and vigorous international trade into India, Asia, Arabia and East Africa.³ By the early 15th Century however, trade missions had become costly for the Chinese Government but with little commercial reward; with the death of Emperor Zhu Zhanji in 1435 the fleets were recalled.⁴ Griswold asserts that by 1477 China began a path of self-sufficiency that comprised "cultural and economic inwardness, a closed and centralized political system, and an anti-commercial culture" that lasted the next 400 years.⁵ Despite this, Cheung and Qian note that China still ran a substantial trade balance surplus during the 16th and 17th Centuries,⁶ and Maddison estimates that China accounted for nearly one third of world GDP output from 1700 to 1820.⁷

In the early 1840s foreign powers such as Great Britain pressured China to open its economy to receive international trade through a series of treaties that pried open ports to allow transactions with foreigners. For example, the 1842 Treaty of Nanking permitted foreign trade with China through five ports and stipulated a 5% tariff on almost all goods leaving and entering the country.⁸ Nonetheless, the scale of Chinese trade and production was relatively small until China's 1895 defeat in the Sino-Japanese war, which precipitated the Treaty of Shimonoseki that permitted Japanese businesses to invest directly in China and to produce goods and services that

² China's per capita GDP has been estimated as higher than that of Europe before 1280: Yin-Wong Cheung and Xingwang Qian Suny, 'Empirics of China's Outward Direct Investment' (2009) 14(3) *Pacific Economic Review* 312, 312.

³ As attested by Marco Polo: Daniel Griswold, 'Trade and the Transformation of China' (Paper presented at the *James and Margaret Tsend Loe Chinese Studies Center Conference*, St Vincent College, 6 November 2002) 1-2.

⁴ Ibid.

⁵ Ibid 3.

⁶ Cheung and Qian, above n 2.

⁷ Angus Maddison, *Chinese Economic Performance in the Long Run* (OECD Development Centre, 1998).

⁸ Kris James Mitchener and Se Yan, 'Globalization, Trade & Wages: What Does History tell us about China?' (*Working Paper No 15679, National Bureau of Economic Research*, January 2010) 5.

could be sold within China and abroad.⁹ Soon after, this privilege was extended to other foreign nations via most-favored nation agreements with the result that foreign capital financed China's industrialization by injecting funds into its telecommunications, railroad and shipping industries. By the early 20th century, 48 Chinese cities had been opened to foreign trade.¹⁰

The treaties as well as Chinese supplication in the Boxer Uprising in 1901 signaled an end to an era of conflict with foreign powers. As ports opened up and foreigners were allowed to invest and trade, China transitioned from a closed to an open economy. Cheng estimates that from 1900-1913 the total value of Chinese trade grew twice as much as it had during the 40 years prior; and that China's trade growth was faster than the world average in the first three decades of the 20th Century.¹¹

Indeed, Mitchener and Yan claim that the period 1901-1930 was comparable with the present period of globalization in trading terms.¹² Specifically, the exogenous shock of World War I had dramatically raised the price of Chinese exports and increased the demand for its goods abroad. For example, China's exports to the U.S. grew at an annual rate of 6% before World War I, but boomed after the war started, growing at approximately 27% per year; similarly, exports to Japan grew at 5.8% per year pre-war and then jumped to 17.4% per year after 1913. Trade costs declined when the war ended in 1918, which in turn led to a rise in China's terms of trade and further growth in its export sector, particularly in exports of unskilled-intensive manufactures, mining, and agricultural products. Indeed, while the war disrupted trade in many other parts of the world, it created "new markets for Chinese goods that had previously been served by producers in belligerent countries".¹³ Mitchener and Yan's archival data reveals that China's total trade as a share of GDP almost tripled during the period 1903-1928.¹⁴ This kind of increase was not to be experienced again by China for nearly 60 years.

B. The Long March into Isolation

On 1 October 1949 Mao Zedong, having led the Communists to victory against the Nationalists, proclaimed the founding of the People's Republic of China. During the late 1940s and early 1950s, China followed the Soviet model of centralized economic development, emphasizing heavy industry and de-prioritising consumer goods.¹⁵ However, Mao disapproved of Khrushchev's de-Stalinization policy in 1956 and, by the late 1950s, he had developed different ideas for how China could directly advance to Socialism through the mobilization of China's

⁹ US-China Institute, *Treaty of Shimonoseki, 1895* (17 April 1895)

<<http://china.usc.edu/ShowArticle.aspx?articleID=405&AspxAutoDetectCookieSupport=1>>.

¹⁰ Mitchener and Yan, above n 8, 5 (Figure 1).

¹¹ China's share of world trade increased from 1.5% around 1898 to 3.44% by 1928: Yu-Kwei Cheng, *Foreign Trade and Industrial Development of China* (University Press of Washington, D.C., 1956).

¹² Mitchener and Yan, above n 8, 2-3, 6. Their data show that an exogenous shock to price of traded goods can boost unskilled industries more so than skilled industries; and that the observed decline in the skill premium in China in the 1920s is consistent with China's changing terms of trade.

¹³ Ibid 3.

¹⁴ Ibid 38, 41, 43, 48, Appendix (Figure 1).

¹⁵ Chi-Kwan Mark, 'Ideological Radicalization and the Sino-Soviet Split, 1958-64' in *China and the World Since 1945: An International History* (Routledge, 2012) 45.

workers; ideas that precipitated China's Great Leap Forward in 1958 and a contemporaneous Sino-Soviet split.¹⁶

The Great Leap Forward introduced human labour intensive industrialization and collectivized farming and was initially intended as a five-year economic plan (see Appendix); however, it was abandoned after only two years due to economic breakdown following poor harvests and mass starvation.¹⁷ Six years later, Mao instigated the Cultural Revolution of 1966, which continued until his death in 1976. During this time diplomatic trade relations warmed between China and the U.S., culminating in a declared desire by both countries to normalise relations when President Richard Nixon visited Beijing in 1972.¹⁸

Under the leadership of Deng Xiaoping far-reaching economic reforms were instigated from 1977 which included the 'open door' policy designed to encourage foreign trade and investment via market-oriented measures¹⁹ (see Appendix). By the late 1970s Chinese policy makers were cooperating with foreign oil companies regarding access to offshore oil and gas fields within China's sovereign seas. Howson notes that this commercial initiative precipitated intense internal political debate regarding China's potential loss of control over strategic natural resource assets in a context of hidden foreign political agendas; ironically, these concerns are echoed by US constituents *vis-à-vis* U.S. assets nearly 40 years later.²⁰ Indeed, in 1977, two years before China's history-changing 'Reform and Opening to the Outside World' strategy, the *Beijing Review* proclaimed: "We do not allow foreign capital to exploit China's resources nor do we run joint enterprises with foreign enterprises, still less beg them for foreign loans".²¹

Nonetheless, China continued to enter into production sharing contracts with U.S. oil companies such as Mobil, Chevron and Exxon in order to explore and access Chinese offshore oil and gas resources. The prime commercial entity established by the Chinese government at this time for these purposes was the China National Offshore Oil Corporation ('CNOOC') Ltd; a state-owned enterprise (SOE) that plays a prominent role today as an investor in foreign jurisdictions.

C. China's Economy Opens Up and Trade Imbalances Spur Outward Investment

Apart from domestic economic and law reform, a key element of China's 1979 'Reform and Opening to the Outside World' policy emphasized increased trade with foreign nations and inward FDI into China. Unlike the earlier opening in the 19th century, this strategy was unilaterally and voluntarily initiated by China.

¹⁶ Lorenz M. Luthi, 'Mao's Challenges, 1958' in *The Sino-Soviet Split: Cold War in the Communist World* (Princeton University Press, 2008) 80. Relations between China and the Soviet Union remained strained until the visit to Beijing of then-Soviet leader Mikhail Gorbachev in 1989.

¹⁷ Nicholas R. Lardy and John K. Fairbank, 'The Chinese Economy Under Stress, 1958–1965' in Roderick MacFarquhar (ed), *The People's Republic, Part 1: The Emergence of Revolutionary China 1949–1965* (Cambridge University Press, 1987); See also Jisheng Yang, 'The Fatal Politics of the PRC's Great Leap Famine: The Preface to Tombstone' (2010) 19(66) *Journal of Contemporary China* 755.

¹⁸ Nixon titled the visit 'the week that changed the world' and "For eight days and nights, American television audiences tuned in to a spectacular parade of images from China, the first they had seen in more than twenty years": Public Broadcasting Service (PBS), *The China Visit* <<http://www.pbs.org/wgbh/amex/china/sfeature/nixon.html>>.

¹⁹ Linda Yueh, 'China's 'Going Out, Bringing In' Policy: the Geo-economics of China's rise' (Paper presented at the *IISS Seminar, International Institute for Strategic Studies*, 23–25 March 2012) 2.

²⁰ Nicholas C. Howson, 'China's Acquisitions Abroad – Global Ambitions, Domestic Effects' (2006) 48(3) *Law Quadrangle Notes* 73, 75.

²¹ *Ibid* quoting a 1977 *Beijing Review*.

Policy reform of inward FDI was first evidenced by China's creation of Special Economic Zones (SEZs) in 1979-1980. SEZs were introduced in the coastal provinces of Fujian and Guangdong; they permitted preferential treatment (with regard to corporate income tax and duty free imports) to foreign invested companies.²² Subsequently, Economic and Trade Development Zones (ETDZs) were created in 1985 in port cities along China's eastern coastline, which granted preferential investment as well as import treatment.²³ The creation of SEZs and ETDZs greatly facilitated FDI to China, particularly in consumer electronics and computer-related goods.²⁴

Some commentators argue that China viewed inward FDI very strategically at this time. Howson asserts that it was seen "as a way to attract hard currency financing for China's bankrupt state-owned or controlled assets, and gain additional benefits like foreign technology, management know-how, distribution and marketing skills, and foreign sales channels for hard currency earning exports."²⁵ Moreover, Yueh notes that China exerted significant control over the form and destination of inward FDI; for example, joint ventures were usually 50:50, with the Chinese partner holding 51% of shares, and only approved if two criteria were satisfied: first, the foreign partner had superior technology of interest to China; secondly, the manufactured products were export-quality and had demand in global markets.²⁶ In this way, China was able to mitigate foreign takeovers while developing domestic technological capacity.

From 1979, China's industrial policy focused on developing partnerships with well-established foreign multinational corporations. In the early 1990s, China began to look beyond inward FDI to international capital markets in order to raise finance for state assets. At this time China started issuing stock in SOEs to both domestic and foreign investors buying on the foreign exchanges of London, Tokyo, New York and Hong Kong. However, China did not make any bold moves to 'go global' until the late 1990s. Prior to this, Chinese SOEs were making only tentative forays into Hong Kong and Southeast Asia;²⁷ and only shell companies operated in the West to facilitate simple foreign trading activities.²⁸ Cai demonstrates that China's annual outward foreign direct investment (ODI) was negligible in 1979, moving up to US\$628 million in 1985 and US\$913 million in 1991, then leaping to US\$4 billion in 1992 and US\$18 billion by the end of 1996.²⁹ Indeed, hallmarks of ODI are not notably evidenced in China's Five Year Plans until the 19th Five-Year Plan, which commenced in 1996 (see Appendix).

²² Yueh, above n 19, 2–3.

²³ For a comprehensive list see, China.org.cn, *China in Brief: Opening to the Outside World* (13 July 2007) <<http://www.china.org.cn/e-china/openingup/sez.htm>>.

²⁴ Yueh, above n 19, 4.

²⁵ Howson, above n 20, 76.

²⁶ Yueh, above n 19, 3.

²⁷ In terms of geography, nearly two-thirds of China's ODI occurred in Asia during 1979-1993, particularly in Hong Kong and Macau: Kevin G. Cai, 'Outward Foreign Direct Investment: a novel dimension of China's integration into the regional and global economy' (1999) 160 *China Quarterly* 856, 864. In terms of investment-type, 60% of China's ODI was invested in services, 25% in natural resources and 15% in manufacturing in Africa, Asia and the Pacific: Leonard K. Cheng and Zihui Ma, 'China's Outward Foreign Direct Investment' in Robert C. Feenstra and Shang-Jin Wei (eds), *China's Growing Role in World Trade* (University of Chicago Press, 2010) 545, 546–7.

²⁸ Howson, above n 20, 76.

²⁹ Kevin G. Cai, 'Outward Foreign Direct Investment: a novel dimension of China's integration into the regional and global economy' (1999) 160 *China Quarterly* 856, 864.

The situation changed radically in the early 2000s when China initiated its so-called ‘going out’ or ‘going global’ strategy³⁰. This strategy was launched in China’s 10th Five-Year plan in 2001 (see Appendix), which was the year that China acceded to the World Trade Organisation (WTO). At this time President Jiang Zeming announced that the ‘going out’ policy included increased ODI, undertaking construction and engineering projects abroad, and exporting labor services.³¹ While it is difficult to catalogue exact policy measures due to a lack of publicly available information, initial measures certainly included relaxation of investment restrictions abroad and increasing financial support for corporate champions.³²

Cai and also Deng contend that Chinese ODI was motivated by, amongst other things, the need for strategic assets (such as brands and marketing networks),³³ supplies of raw materials and energy for its role as “a world factory”,³⁴ and also a desire for technological and managerial skills and financial capital.³⁵ Similarly, Hong and Sun argue that the motives and mode of corporate entry, amongst other things, changed during the 1990s: securing natural resources remained important but more Chinese firms began using FDI to acquire managerial skills and advanced foreign technologies, which increased their investments in the U.S. market.³⁶

The effect of China’s going out policy was almost immediate: China’s ODI stock reached approximately US\$36 billion and ranked sixth among 118 emerging economies by end-2002.³⁷ In 2004 a gradual liberalization of the ODI regulatory regime began with the ‘reform of the investment system’.³⁸ This process comprised multiple prongs, including decentralization of investment verification and approval at the provincial level, relaxation of foreign exchange controls, and stimulus packages to ease the transition of Chinese companies onto the world stage.³⁹

Importantly, the going global strategy motivated Chinese SOEs to actively seek to *acquire* foreign assets and equity interests as opposed to merely *trading* in global commodities and raw

³⁰ The Chinese word is ‘zouchuqu’ which literally means ‘go out’ (as adopted by some authors such as Howson, above n 20; but it can also be interpreted as ‘go global’ (as other authors have done e.g. KPMG and the University of Sydney, ‘Demystifying Chinese Investment: Update August 2012’ (Report, The University of Sydney China Studies Centre and KPMG, August 2012) (hereafter ‘KPMG and University of Sydney 2012’). For the translation, see Leonard K. Cheng and Zihui Ma, ‘China’s Outward Foreign Direct Investment’ in Robert C. Feenstra and Shang-Jin Wei (eds), *China’s Growing Role in World Trade* (University of Chicago Press, 2010) 545, 550.

³¹ Cheng and Ma, ‘China’s Outward Foreign Direct Investment’ in Robert C. Feenstra and Shang-Jin Wei (eds), *China’s Growing Role in World Trade* (University of Chicago Press, 2010) 545, 550.

³² Ibid.

³³ Ping Deng, ‘Outward investment by Chinese MNCs: Motivations and implications’ (2004) 47(3) *Business Horizons* 8.

³⁴ Cheng and Ma, above n 31, 548.

³⁵ Cai, above n 29.

³⁶ Eunsuk Hong and Laixiang Sun, ‘Go overseas via direct investment: Internationalization Strategy of Chinese corporations in a comparative prism’ (Discussion Paper No 40, University of London, Department of Financial and Management Studies, School of Oriental and African Studies, 30 January 2004) 10, available at <<http://www.cefims.ac.uk/cgi-bin/research.cgi?id=28>>. China has also been the fastest-growing export market for U.S. firms since the 1990s: Dong Wang, ‘China’s Trade Relations with the United States in Perspective’ (2010) 39(3) *Journal of Current Chinese Affairs* 165, 188.

³⁷ Hong and Sun, *ibid.*, 6.

³⁸ People’s Republic of China State Council, ‘Decision of the State Council on Reform of the Investment System’ (Guofa Paper 20, National Development and Reform Commission, 2004).

³⁹ Cristelle Maurin and Pichamon Yeophantong, ‘Going Global Responsibly? China’s Strategies Towards ‘Sustainable’ Overseas Investment’ (2013) 86(2) *Pacific Affairs* 281, 286–7.

materials.⁴⁰ This was a significant shift in emphasis with substantial geo-political implications regarding the scale of trade imbalances between China and its trading partners and also perceptions of weakened national control over assets and increased vulnerability to Chinese strategic priorities, which are detailed in Part II. Nonetheless, China's going global acquisition strategy continues today, with high-profile examples including CNOOC's successful acquisition of Nexen in Canada (2012) and the multi-jurisdictional penetration of Huawei Technology services into 45 of the world's 50 largest telecoms operators.⁴¹

D. China's Growing Influence in the Global Economy and its Surging Investment Portfolios

China is a relatively new but pervasive outward investor. Data compiled by Husted and Nishioka reveal China's rapid export growth and international market pervasion since initiation of the going global strategy. In 1968 China's share of the world market was negligible; in 1998 it had less than 2% of the world market share; and by 2010 China ranked first in international exports with a world market share of 10.4%.⁴² Despite the fact that China is a relatively new outward investor it now "has a market presence in virtually every country in the world; this presence has grown in almost every market in recent years."⁴³ Accordingly, this global external trading presence has stimulated a significant rise in China's importance as an investment actor across markets and continents.

Moreover, the recent rapid growth in Chinese ODI flows has come from a small base. UNCTAD data show that China's ODI stock in 2008 was US\$183 billion, being 1.11% of world stock and placing China 19th in global rankings; however it has increased year on year to reach US\$509 billion in 2012,⁴⁴ which equates to 2.16% of total world stock placing China 13th in global rankings.⁴⁵ Thus, while China's ODI stock has been quite small relative to other nations, it is clearly growing.

Importantly, China has never been in arrears on foreign debt, and its foreign borrowing is relatively modest and what exists is predominantly medium-to-long term.⁴⁶ Moreover, China's foreign reserves are significant. In 2007 China had accumulated huge foreign exchange reserves of \$1.2 trillion,⁴⁷ which nearly doubled to just under US\$2.4 trillion by end-2009,⁴⁸ and then to

⁴⁰ Howson, above n 20, 73; Hong and Sun, above n 36.

⁴¹ Ashlee Vance and Bruce Einhorn, 'At Huawei, Matt Bross Tries to Ease U.S. Security Fears', *Bloomberg Businessweek* (online), 15 September 2011 <<http://www.businessweek.com/magazine/at-huawei-matt-bross-tries-to-ease-us-security-fears-09152011.html>>.

⁴² Steven Husted and Shuichiro Nishioka, 'China's fare share? The growth of Chinese exports in world trade' (2013) 149 *Review of World Economics* 565, 566.

⁴³ *Ibid* 567.

⁴⁴ UNCTADSTAT, *Inward and outward foreign direct investment stock, annual, 1980-2012* <<http://unctadstat.unctad.org/TableViewer/tableView.aspx>>. UNCTAD data for China is tabled separately to that for China SARs (being Hong Kong and Macao) and Taiwan.

⁴⁵ Note that Hong Kong's global ODI stock was ranked 5th in 2012: *Ibid*.

⁴⁶ From 1979-2005 China's foreign borrowing totaled only US\$147 billion: Angus Maddison, *Chinese Economic Performance in the Long Run: 960-2030 AD* (OECD Publishing, 2007); OECD Development Centre, *Chinese Economic Performance in the Long Run; Reformist Policies since 1978 Produced Three Decades of Dynamic Growth* <<http://www.oecd.org/dev/chineseeconomicperformanceinthelongrunreformistpoliciesince1978producedthreedecadesofdynamicgrowth.htm>>.

⁴⁷ *Ibid*.

⁴⁸ Dong Wang, 'China's Trade Relations with the United States in Perspective' (2010) 39(3) *Journal of Current Chinese Affairs* 165, 168.

US\$3.1 trillion in 2012 or 45% of its annual GDP.⁴⁹ As a result, China has been able to become a significant foreign investor and also a world banker, with Wang noting in 2010 that China held US\$585 billion of American government debt.⁵⁰

The huge increases in China's economy and its foreign reserves are testimony to strong underlying growth trends. Importantly, these trends are expected to continue. For example, using a sample of 122 countries accounting for more than 95% of global GDP, Jorgensen and Vu have predicted how shares of global trade between major trading blocs may change if current growth trends are maintained.⁵¹ As depicted in Table 1 below, by 2020 China is predicted to replace the U.S. as the world's largest economy with 20.08% of global GDP (up from 13.92% in 2010). In the same period the U.S. share of global GDP is expected to fall from 20.14% to 17.44%.

Table 1 Percentage Share of Global GDP⁵²

	2010 (%)	2020 (%)
China	13.92	20.08
US	20.14	17.44
G7	40.62	33.30
Asia 7	25.16	33.18
China as % of Asia 7 GDP	55.35	60.52
US as % of G8 GDP	49.59	52.39

If these trends transpire into reality, which seems likely, then it constitutes a dramatic shift in economic power; and history demonstrates that these economic shifts influence change in other arenas such as foreign policy, strategic alliances and regulation in multi-lateral contexts. Indeed, China has already surpassed Japan as the world's second largest economy and America as the world's biggest market for many consumer goods.⁵³ The combination of these factors raises questions about the strategy behind China's global investment behaviour, which is explored in the next Part.

II. CHINA'S GLOBAL INVESTMENT STRATEGY AND SECURING SUPPLY

A. The scale and spread of Chinese overseas investment

Part I documented the emergence and rise of China as a prominent global foreign investment actor today: its stock is relatively small but growing, it is now the second largest recipient of global FDI flows (behind the U.S.),⁵⁴ and it is ranked third in terms of global ODI flows (behind the U.S. and Japan).⁵⁵ China's growth as an importer and exporter of FDI in the last two decades

⁴⁹ Kenneth Rapoza, 'China's Cash Hoard Nearly Half its GDP', *Forbes* (online), 25 May 2012 <<http://www.forbes.com/sites/kenrapoza/2012/05/25/chinas-cash-hoard-nearly-half-its-gdp/>>.

⁵⁰ Wang, above n 48, 168.

⁵¹ Dale W. Jorgenson and Khuong M. Vu, 'The Rise of Developing Asia and the New Economic Order' (Research Paper PP11-21, Lee Kuan Yew School of Public Policy, 2011), available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1904716>.

⁵² Ibid 25.

⁵³ David M. Marchick and Daniel R. Bowles, 'The State of Chinese Investment in the United States' (Paper presented at the Conference on China's Economic & Trade Relations, Columbia University, 10 November 2011).

⁵⁴ United Nations Conference on Trade and Development, *World Investment Report 2013: Global Value Chains: Investment and Trade for Development* (United Nations, 2013), xii, xiv.

⁵⁵ China moved up from the sixth to the third largest investor in 2012: Ibid xiii, xv.

is reflected in its investment practices, which also elucidate, in general terms, the sectors and jurisdictions in which China invests.

Sectors

Table 2 below shows the sectors throughout the world in which Chinese ODI has been directed during the past seven years.⁵⁶ Together, energy, power and metals account for over 70% of Chinese ODI since 2005; and real estate and construction, and agriculture are described by the Heritage Foundation as “areas of high interest”.⁵⁷

Table 2 Sector Breakdown 2005-2012: Chinese Global ODI (US billions)⁵⁸

Sector	Investment
Energy & Power	186.1
Metals	90.2
Finance	37.3
Real estate and construction	21.7
Transport	16.6
Agriculture	11.8
Technology	8.7
Chemicals	6.2
Other	8.2
TOTAL	\$386.7

Moreover, Heritage Foundation research demonstrates that Chinese business activity has changed since 2009 in three ways.⁵⁹ First, investment within energy investment and construction sectors has focused on oil to date but is moving toward gas and alternative energy. Secondly, investment flows are increasing into real estate and transport contracts and away from finance. Finally, China has become more interested in agriculture and technology, and investment in these sectors is showing slow progress.

Cheung and Qian provide similarly informative data about the changing pattern of Chinese ODI prior to 2005. For example, they reveal that China’s ODI share of the manufacturing sector fell from 60% in 1993-1995 to less than 15% in 2005.⁶⁰ During the same period, resources exploration grew from approximately 5% of Chinese ODI stock in 1993-1995 to 15% in 2005.⁶¹ Indeed, Cheung and Qian noted back in 2005 that the figures for resources exploration did not seem to match the hype at that time about China’s aggressiveness in securing natural resources around the world.⁶² We return to this issue in Part III.

⁵⁶ Noting that these contracts are valued at or above US\$200 billion: Derek Scissors, *Chinese Investment in the U.S.: Facts and Motives* (9 May 2013) The Heritage Foundation <<http://www.heritage.org/research/testimony/2013/05/chinese-investment-in-the-us-facts-and-motives>>.

⁵⁷ Ibid.

⁵⁸ Ibid. See also The Heritage Foundation, *Chinese Outward Investment* (January 2013) <https://thf_media.s3.amazonaws.com/2013/xls/China-Global-Investment-Tracker2013.xls>.

⁵⁹ Derek Scissors, *Chinese Outward Investment: Acceleration Features the U.S* (9 July 2012) <<http://www.heritage.org/research/reports/2012/07/chinese-foreign-investment-outward-investment-acceleration-features-the-us>>.

⁶⁰ Cheung and Qian, above n 2, 317-18.

⁶¹ Ibid.

⁶² Ibid 318.

Jurisdictions

China often negotiates investment treaties on a one to one basis with other countries via bilateral investment treaties or 'BITs'.⁶³ China currently has the most BITs in the world due to massive investment acceleration in the 1990s and 2000s.⁶⁴ Statistics show that there are 26 Chinese BITs with African countries (including Ghana, Tunisia, Kenya, South Africa, Mozambique and Mali);⁶⁵ various Western countries, including Germany and Canada; various Asian countries, including Korea and Japan; and that China is currently negotiating free trade agreements with the Gulf Cooperation Council, ASEAN, Singapore, Iceland, Norway, the South African Customs Union, Australia, Turkey and Chile.⁶⁶

These investment practices have assisted global penetration of Chinese foreign investment. However, at a more granular level, BITs are not the only modality of Chinese investment; it often occurs through the merger and acquisition (M&A) activity of SOEs, which is discussed in detail in Part III. Moreover, while Chinese ODI may criss-cross the globe, there are particular jurisdictions that feature as recipients of large amounts of Chinese investment, as detailed below.

A number of commentators have noted the unreliability and paucity of data on Chinese ODI flows compared to those for FDI.⁶⁷ Specifically, the Heritage Foundation notes that Chinese data are not always accurate for determining the distribution of Chinese ODI around the world because those data tend to treat some Asian nations as final destinations for investment when in

⁶³ A list of China's BITs is available at: United Nations Conference on Trade and Development, *Full List of Bilateral Investment Agreements concluded* (1 June 2013) <http://www.unctad.org/sections/dite_pccb/docs/bits_china.pdf>; The text of each BIT is available at: United Nations Conference on Trade and Development, *Investment Instruments Online* <http://www.unctadxi.org/templates/docsearch____779.aspx>; The World Bank also has information on China's investment treaty partners at: International Centre for Settlement of Investment Disputes, *ICSID Homepage* <<https://icsid.worldbank.org/ICSID/FrontServlet>>.

⁶⁴ China concluded its first BIT in 1982 with Sweden, and ratified the International Centre for Settlement of Investment Disputes (ICSID) Convention in 1993. See: International Centre for Settlement of Investment Disputes, *List of Contracting States and Other Signatories of the Convention (as of April 18, 2012)* (20 May 2013) <<http://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=ShowDocument&language=English>>. See also: Jane Y. Willems, 'The Settlement of Investor State Disputes and China New Developments on ICSID Jurisdiction' (2011) 8(1) *South Carolina Journal of International Law & Business* Article 2; and Monika C E. Heymann, 'International Law and the Settlement of Investment Disputes relating to China' (2008) 11(3) *Journal of international Economic Law* 507.

⁶⁵ See also: Peter Kragelund, 'Knocking on a Wide Open Door: Chinese Investments in Africa' (2009) 36(122) *Review of African Political Economy* 479; Paul Bennell, 'Foreign Direct Investment in Africa: Rhetoric and Reality' (1997) 17(2) *SAIS Review* 127; Chris Alden and Martyn Davies, 'A Profile of the Operations of Chinese Multinationals in Africa' (2006) 13(1) *South African Journal of International Affairs* 83; United Nations Conference on Trade and Development, *Asian Foreign Direct Investment in Africa: Towards a New Era of Cooperation among Developing Countries* (United Nations, 2007).

⁶⁶ Other FTAs with India and Switzerland are under consideration: Leon Trakman, 'China and Foreign Direct Investment: Looking Ahead' (*Research Paper 2013-24*, University of New South Wales, 2 April 2013), available at <<http://ssrn.com/abstract=2244634>>. See also Bilaterals.org, *China* <<http://www.bilaterals.org/spip.php?rubrique118>>.

⁶⁷ See, e.g. Cheung and Qian, above n 2, 318–19; Raphael Kaplinsky and Mike Morris, 'Chinese FDI in Sub Saharan Africa: Engaging with Large Dragons' (2009) 24(1) *European Journal of Development Research* 551, 554–55; Cheng and Ma, above n 31, 547–49; Derek Scissors, *Chinese Outward Investment: Acceleration Features the U.S* (9 July 2012) The Heritage Foundation <<http://www.heritage.org/research/reports/2012/07/chinese-foreign-investment-outward-investment-acceleration-features-the-us>>.

fact they are not. For example, Chinese Ministry of Commerce (MOFCOM) has depicted Hong Kong as the final destination for almost two-thirds of Chinese ODI whereas the Heritage Foundation evidences that Hong Kong is almost entirely a trans-shipment point.⁶⁸

Keeping these caveats in mind, Heritage Foundation data show that foreign investment from China is fairly concentrated in a few economies.⁶⁹ Data from both MOFCOM and The Heritage Foundation show that Australia and the U.S. have been leading recipients of Chinese ODI since 2005; they remained so in 2012 with other major recipients being Canada, Brazil and Indonesia (Table 3).⁷⁰

Table 3 Top Ten Country Recipients of Chinese ODI: 2012⁷¹

Ranking	Country	US\$ billions
1.	U.S.	54.2
2.	Australia	53.5
3.	Canada	36.7
4.	Brazil	27.5
5.	Indonesia	25.0
6.	Iran	16.8
7.	Nigeria	15.6
8.	Britain	14.7
9.	Kazakhstan	14.0
10.	Venezuela	13.9

In terms of regional distribution, Table 4 shows that North America gained the largest world share of Chinese ODI in 2012 (US\$102.4 billion), followed by Sub-Saharan Africa (US\$97.8 billion) and East Asia (US\$80.2 billion).

Table 4 Ranking of World Regions as Recipients of Chinese ODI: 2012⁷²

	Region	US\$ billions
1.	North America	102.4
2.	Sub-Saharan Africa	97.8
3.	East Asia	80.2
4.	South America	73.2
5.	West Asia	72.5
6.	Europe	69.3
7.	Arab World	58.2
8.	Australia	53.5

⁶⁸ Scissors, above n 59.

⁶⁹ The China Global Investment Tracker tracks investments of US\$100 million or more from the beginning of 2005. The dataset does not include bond purchases, trade, loans, or aid. Interestingly, the Heritage Foundation notes that its investment figures are similar to those published by MOFCOM since 2005: Ibid.

⁷⁰ Derek Scissors, *China's Global Investment Rises: The U.S. Should Focus on Competition* (9 January 2013) The Heritage Foundation <<http://www.heritage.org/research/reports/2013/01/chinas-global-investment-rises-the-us-should-focus-on-competition>>.

⁷¹ The Heritage Foundation, *China Global Investment Tracker dataset* (January 2013) <http://www.heritage.org/~media/Images/Reports/2013/01/b2757/map-1_750px.ashx>.

⁷² Ibid.

Moreover, the geographic distribution of Chinese ODI has changed over time. Cheung and Qian demonstrate that Asia's share increased to nearly half of total Chinese ODI in 2005 up from 16% in 1991.⁷³ During the same period, Australia, the U.S. and Canada accounted for a decreasing aggregate share of Chinese ODI stock, which fell to less than 10% in 2005 from over 40% in 1991.⁷⁴

Similarly, Derek Scissors of the Heritage Foundation describes how Chinese ODI has changed geographically over time, noting that "Chinese enterprises have shown a clear tendency to move in packs" regarding geographic distribution of ODI:

Large-scale investment started in Australia in the middle of the past decade. Sub-Saharan Africa received a rush of investment at the end of the past decade, then it was South America's turn in 2010-2011. Now the focus is on North America. If form holds, 2013 should be another strong year of Chinese investment in North America but, before year's end, a shift may have begun to another region. Europe and the oil-producing states in West Asia are possibilities.⁷⁵

China's ranking as an ODI State is sure to rise in the coming years with the increasing consumer demand of a growing middle class and declining domestic supply. These factors will undoubtedly shape China's strategic investment priorities in the future.

B. Strategic investment priorities for China

Data in the preceding section demonstrate that Chinese ODI has been substantially directed into energy, power and metals over the past seven years and that certain jurisdictions are favoured investment destinations. These empirics reflect Chinese policy.

As stated in the 11th Five-Year plan (2006-2010), China's energy policy approach focused on developing domestic supply as the primary means of meeting its energy demands, supplemented by foreign energy sources (see Appendix). Pursuant to China's *Policy on Mineral Resources* (2003)⁷⁶ and *Policies for Development of Iron and Steel Industry* (2005),⁷⁷ government support is given to Chinese investments in foreign mining assets,⁷⁸ which has notably manifested as preferential

⁷³ Cheung and Qian, above n 2, 316–17.

⁷⁴ Ibid 317.

⁷⁵ Scissors, above n 70.

⁷⁶ China's Policy on Mineral Resources, available at: Gov.cn, *China's Policy on Mineral Resources* (December 2003) <http://www.gov.cn/english/official/2005-07/28/content_17963.htm>.

⁷⁷ National Development and Reform Commission, *Policies for Development of Iron and Steel Industry: Order of the National Development and Reform Commission No. 35* (8 July 2005) AsianLII <<http://www.asianlii.org/cn/legis/cen/laws/pfdoiasi501/>>.

⁷⁸ China's *Policy on Mineral Resources* focuses on domestic utilization of minerals within China as well as the opening up of Chinese minerals resources to foreigners. Nonetheless, Item IV provides that: "The Chinese government encourages domestic enterprises to take part in international cooperation in the sphere of mineral resources, and in exploration, exploitation and utilization of foreign mineral resources. It will promote and protect investments in mineral resources prospecting and exploitation outside China..." Art. 30 of the *Policies for Development of Iron and Steel Industry* states that: "We should, according to the principles of making their advantages complement each other and achieving the win-win situation, intensify the international cooperation regarding overseas mineral resources. We should support those large backbone enterprise groups to establish overseas production and supplying bases of iron mines, chrome ore mines, manganese mines, nickel ore mines, waste steel and coking coal, etc. by way of setting up solely-funded enterprises, joint-equity enterprises, contractual enterprises and purchase of mineral resources... Where two or more domestic enterprises are engaged in vicious competition for overseas

loans granted to SOEs through the China Development Bank and China Exim Bank.⁷⁹ The result has been twofold. First, there has been a surge in global resources investments by China during this policy timeframe with China's ODI stock in the mining sector (oil, gas and minerals) rising starkly from US\$5.94 billion in 2004 to \$44.66 billion in 2010.⁸⁰ Secondly, the prominent modality of Chinese foreign investment is SOEs: for example, SOEs accounted for approximately 70% of China's ODI stock in 2009.⁸¹

Indeed, the central role of SOEs in the rise of China's ODI continues to flourish under the 12th Five-Year plan (2011-2015) which builds on the 'going out' strategy by stipulating that China will, amongst other things, gradually increase the level of international operations of its multijurisdictional corporations and financial institutions (see Appendix). The Heritage Foundation predicts that Chinese ODI will likely reach US\$100 billion annually by 2016.⁸²

Moreover, in terms of key investment targets, the 12th Plan stipulates that China will increase international cooperation in the agricultural sector and develop overseas engineering contracts (see Appendix). Data for Chinese ODI in global agriculture, real estate and construction sectors are beginning to reflect this policy emphasis (see Table 1 above) and it will likely continue according to recent international predictions. Specifically, the OECD-FAO *Agricultural Outlook 2013-2022* report released in July 2013 focused on China in the context of projected production, consumption, stocks, trade and prices for agricultural products for the period 2013 to 2022.⁸³

The OECD/FAO Report sets out key data and analysis in Chapter 2 titled 'Feeding China: Prospects and challenges in the next decade', which was pre-released in June 2013 in the *OECD-FAO Agricultural Outlook 2013-2022: Highlights* report.⁸⁴ A clear message is the increasing symbiosis between global markets and China's appetite and output. The Highlights Report predicts that although China should remain self-sufficient in the main food crops (such as rice

resources, the state may adopt administrative coordination to hold alliance or select one of them to make investment so as to avoid vicious competition. The relevant enterprises shall be subject to the administrative coordination of the state.": Ibid.

⁷⁹ National Development and Reform Commission and China Import and Export Bank, *Circular on Credit Support Policy to Key Offshore Investment Projects Encouraged by the State* (NDRC, 2004); NDRC and China Development Bank, *Circular on the Issues on Offering More Financing Support to Key Overseas Investment Projects* (NDRC, 2005).

⁸⁰ Ministry of Commerce of People's Republic of China, *2010 Statistical Bulletin of China's Outward Foreign Direct Investment* (16 September 2011)

<<http://english.mofcom.gov.cn/article/statistic/foreigninvestment/201109/20110907742320.shtml>>;

Note also that China has relied on construction and engineering contracts as well as ODI to secure foreign supply of oil, gas, minerals. Cheng and Ma state that China even 'swapped' its construction projects for oil when it agreed in 2004 to invest US\$1 billion in Brazilian port facilities in return for Brazil's oil, iron ore, bauxite and other raw materials: Cheng and Ma, above n 31, 560.

⁸¹ Marchick and Bowles, above n 53, 11. Interviews with businessmen in Beijing by Cheng and Ma also confirmed the advantages enjoyed by Chinese SOEs with regard to energy-related ODI: Cheng and Ma, above n 31, 561.

⁸² Scissors, above n 56.

⁸³ OECD/Food and Agriculture Organization of the United Nations, *OECD-FAO Agricultural Outlook 2013-2022* (OECD Publishing, 2013), available at <<http://www.oecd.org/site/oecd-faoagriculturaloutlook/>>. The report is a collaborative effort of the OECD and the United Nations Food and Agriculture Organization (FAO) with assistance from the Chinese Ministry of Agriculture and the Chinese Academy of Agricultural Sciences.

⁸⁴ OECD, *OECD-FAO Agricultural Outlook 2013-2022: Highlights* (OECD Publishing, 2013), available at <<http://www.oecd.org/site/oecd-faoagriculturaloutlook/highlights-2013-EN.pdf>> (Hereafter 'Highlights Report').

and sugar), overall agricultural output growth from China will slow in the next decade even as Chinese demand rises due to a rapidly growing and urbanizing population.⁸⁵

Part of the issue is that China now lacks the rural workforce needed for more complex large-scale farming operations; its rural sectors have been drained of modern, skilled agricultural workers due to land tenure policies and higher urban wages. Moreover, there are serious constraints to any further expansion of agricultural production. Increased urbanisation will likely limit the usage of arable land and the quality of extant cultivated land is deteriorating. The Highlights Report makes the situation clear: “Affected by global warming, reduced rainfall, depletion of surface runoff and groundwater levels, the northern region, especially the northern farming and animal husbandry areas, faces very serious soil wind erosion and desertification problems.”⁸⁶ Specifically, cereals productivity will likely decline, such as maize and coarse grains for livestock feed.⁸⁷ The Highlights Report concludes that the net result will be limited productivity within the decade, which will necessarily curb supply from China.⁸⁸

Concomitantly, however, the rapid increase in China’s urban population will continue to impact on global food demand patterns. The Highlights Report projects a total population explosion to 1.392 billion by 2022, comprising a potential significant urban population increase.⁸⁹ And urbanization has significant ramifications for food demand and global markets. Urban zones are associated with higher incomes and larger food consumption rates, including meat, dairy and fish. Indeed, while China is expected to remain the largest fish exporter and maintain its aquaculture leadership at 63% of global production, it is also predicted to become the world’s leading consumer of pig meat per capita, surpassing the European Union by 2022.⁹⁰

The result of reduced domestic supply and increased domestic demand is just simple economics: China’s policy choices will need to address domestic resource constraints, which necessarily entails higher foreign imports. The Highlights Report explicitly notes that China may well import more meat, for example to contain environmental problems associated with livestock production and limit the growth in feed requirements while lowering competition for land associated with high intensity crop production by importing more coarse grain to meet rising demand.⁹¹ Such policy choices give strong impetus to China’s transition from export-driven economy to a consumer-based one in the next 10-30 years, an aspiration confirmed by China’s Prime Minister Li Keqiang during the 2013 Fortune Global Forum.⁹²

The opening of ‘soft resources’ commodities markets in China clearly indicates China’s burgeoning predicament and represents timely new opportunities for Western meat, dairy and grain producers. A prime example is the merger agreement announced on 29 May 2013 between Smithfield Foods, Inc. (Smithfield) and Shuanghui International Holdings Limited (Shuanghui), which has been unanimously approved by both boards. U.S.-based Smithfield is the world’s largest pork processor and hog producer, and one of the biggest and oldest pork producers in the US. Hong Kong-based Shuanghui is the majority shareholder of China’s largest meat processor, Henan Shuanghui Investment & Development, which is publicly listed on the

⁸⁵ Ibid 61.

⁸⁶ Ibid 65.

⁸⁷ Ibid 70.

⁸⁸ Ibid 63.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid 84.

⁹² Fortune Live Media, *Fortune Global Forum* <<http://www.fortuneconferences.com/global-forum-2013/>>.

Shenzhen Stock Exchange. The total proposed deal is valued at US\$7.1 billion, pursuant to which Shuanghui will pay \$34 per share and assume Smithfield's debt. In short, it represents the largest Chinese takeover of an American company. The U.S. Committee on Foreign Investment (CFIUS) reviewed the proposal for potential national security concerns about, amongst other things, whether the takeover places Shuanghui in a position to disrupt food supply in the U.S. before approving the takeover on 6 September 2013.⁹³

It is yet to be seen whether the U.S. decision will influence foreign policy in other jurisdictions that have demonstrated reticence toward Chinese FDI. Certainly, the OECD/FAO Report is optimistic, predicting that markets will become increasingly open and integrated within the decade. To this end, it contends that information sharing and policy cohesion "will be critical in best utilizing global resources to feed the world's population sustainably in the longer term".⁹⁴

C. Supply priorities in China's global investment strategy

The preceding data and discussion demonstrate that SOE-led investment is the dominant investment modality in Chinese ODI and that sectoral investment continues to focus on resources (particularly in metals and mining) but is diversifying into energy (particularly gas) as well as food production. These sectors clearly represent China's national interest in supporting a rapidly urbanizing population that exceeds indigenous resources on a per capita basis. In this regard, some commentators argue that China has a coordinated state strategy beyond simply seeking higher financial return given that China is a latecomer playing global catch-up in procuring natural resources,⁹⁵ and that it seeks ownership of commodities sources to ensure continuous supply of necessary imports.⁹⁶

⁹³ There is an initial 30-day review following notification of a potential acquisition after which CFIUS has the option to extend the process for a period of up to 45 days longer in accordance with the 1988 Exon-Florio Amendment to the *Omnibus Trade and Competitiveness Act 1988*. For analysis of implications of the proposed takeover and CFIUS decision, see Megan Bowman, *One More Time: The Ongoing Investment Review of Smithfield-Shuanghui* (16 August 2013) Centre for Law, Markets & Regulation Portal, University of New South Wales <<http://www.clmr.unsw.edu.au/article/risk/one-more-time-ongoing-investment-review-smithfield-shuanghui>>.

⁹⁴ Highlights Report, above n 84, 87.

⁹⁵ E.g. Jiangyong Lu, Xiaohui Liu and Hongling Wang, 'Motives for Outward FDI of Chinese Private Firms: Firm Resources, Industry Dynamics, and Government Policies' (2010) 7(2) *Management and Organization Review* 223, 229; Cheung and Qian, above n 2, 330.

⁹⁶ E.g. Scissors, above n 56.

Nonetheless, the intrinsic nature of an SOE captures media and policy concern given that an assumed investment priority of SOEs is political purchase rather than commercial strategy. This was seen clearly in concerns around Chinese acquisitions (attempted and actual) during 2004-2005, which included CNOOC's failed bid for Unocal in the U.S. (2005), Beijing Lenovo's acquisition of IBM's PC unit (2004-5), and Shanghai Automotive's purchase of Korea's Ssangyong Motors (2005).⁹⁷ Indeed, the Unocal bid raised well-documented "fierce political opposition" in the U.S.,⁹⁸ with media headlines at the time documenting the US-China political tensions that resulted from the proposed commercial venture.⁹⁹

Concerns have also manifested in more recent media and policy debates in Australia. For example, headlines in Australia in 2012-2013 include 'China's state-owned enterprises obtain FIRB approval by stealth',¹⁰⁰ and 'Don't mix politics and deals: FIRB in warning to state-owned investors',¹⁰¹ and a very recent comment by the incoming Prime Minister Mr. Tony Abbott that there should be no "colour ban" on investors, which was an implicit reference to concerns over Chinese FDI into Australian.¹⁰² Indeed, Australia's Foreign Investment Review Board (FIRB) amended Australia's Foreign Investment Policy on 4 March 2013 to extend the concept of direct investments of less than 10% to cover scenarios in which investor consortia that include foreign investors may be amassing strategic stakes in target investments.¹⁰³

Some understanding of SOEs is relevant at this point. Howson gives valuable insight into the multi-faceted dimensions of Chinese SOEs, stating that the traditional Chinese SOE was an organizational form, not a legal form.¹⁰⁴ As such, an SOE did not have separate legal personality nor issue stock or equity ("ownership") in itself; instead it was administratively controlled by the state, which had the right to appoint management and appropriate revenues or profits. Since commencement of the Chinese corporatization program, as expressed in the 1994 Company Law and 2006 PRC Company law, Chinese companies can take the form of a company limited by shares, limited by liability, or wholly owned by a state agency. However, Howson is clear that this legal process has not resulted in wide-spread private corporate ownership; rather Chinese

⁹⁷ Howson gives excellent coverage of these deals and associated political concerns: Howson, above n 20.

⁹⁸ David Barboza, 'China backs away from Unocal bid', *New York Times* (online), 3 August 2005 <http://www.nytimes.com/2005/08/02/business/worldbusiness/02iht-unocal.html?_r=0>.

⁹⁹ E.g. Michael Rowland, 'China-US tension mounts over Unocal takeover bid', *ABC* (online), 6 July 2005 <<http://www.abc.net.au/worldtoday/content/2005/s1408416.htm>>.

¹⁰⁰ Bryan Frith, 'China's State-Owned Enterprises Obtain FIRB Approval by Stealth', *The Australian* (online), 13 March 2013 <<http://www.theaustralian.com.au/business/opinion/chinas-state-owned-enterprises-obtain-firb-approval-by-stealth/story-e6frg9kx-1226595937750>>.

¹⁰¹ Enda Curran and Michael Sainsbury, 'Don't Mix Politics and Deals: FIRB in Warning to State-Owned Investors', *The Australian* (online), 7 August 2012 <<http://www.theaustralian.com.au/national-affairs/foreign-affairs/dont-mix-politics-and-deals-firb-in-warning-to-state-owned-investors/story-fn59nm2j-1226444324395>>.

¹⁰² Mr. Abbott made this comment during the final leadership debate on 28 August 2013 prior to the Australian federal election held on 7 September 2013, which was won by the Coalition Party led by Mr. Abbott. For details of that debate see: Jacqueline Maley, 'Federal Election 2013 Live: August 28, 2013', *Sydney Morning Herald* (online), 28 August 2013 <<http://www.smh.com.au/federal-politics/the-pulse-live/federal-election-2013-live-august-28-2013-20130828-2sp2u.html#ixzz2dKrEZ48y>>.

¹⁰³ Foreign Investment Review Board, *Australia's Foreign Investment Policy (2013)* <<http://www.firb.gov.au/content/policy.asp?NavID=1>>. FIRB is the federal government advisory body and delegated decision-making authority for specific foreign investment proposals in Australia under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

¹⁰⁴ Howson, above n 20.

companies are now corporatized, not privatized¹⁰⁵ given that an SOE is now administratively *and* financially controlled by an entity of the state (central or local). Consequently, a controlling shareholder of an SOE in China has political as well as economic dominance, which has important implications for the nature of a state-controlled corporation and who it seeks to serve.

Thus, a challenge for commentators of state capital is to discern and appreciate the impacts of three factors when ascribing political and/or nefarious motives to SOEs. First, China's increasing need to secure supply for its domestic demand is not a secret. For example, Scissors states: "Beijing perceives economic needs and strongly encourages state enterprises to meet them. The desire for resources and technology is well-known, as is the desire for national champions who can expand overseas. The foundations for Chinese outward investment are neither subtle nor, except for advanced dual-use technology, dangerous."¹⁰⁶

Secondly, tensions may exist between the goals of central and provincial state entities. Ruskola's depiction of local (not central) government actors as germane to the commercial success of traditional TVEs/SOEs is relevant.¹⁰⁷ Fragmentation of SOE ownership and thus potentially competing priorities between levels of government adds internal complexity to SOE investment behaviour.

Thirdly, SOEs may be exercising independence from the government entities that formally own or control them. The Chinese State-owned Assets Supervision and Administration Commission (SASAC) provides the operating framework for SOEs. In March 2012, SASAC issued new regulations requiring central state-controlled SOEs to: register with SASAC before undertaking 'key investment projects' in their core businesses; obtain SASAC approval prior to investing overseas in non-core areas of business; and lodge details with SASAC of sources of investment and financing for proposed non-core area investments.¹⁰⁸ Despite the SASAC framework, there is some evidence to suggest that the Going Out strategy is being led by Chinese firms rather than central government. The Peterson Institute for International Economics asserts that SOEs operate and make investment decisions not as agents of the state but similar to any other corporation.¹⁰⁹ Howson makes a similar claim, citing the action of CNOOC in bidding for

¹⁰⁵ Ibid.

¹⁰⁶ Scissors, above n 56.

¹⁰⁷ Teemu Ruskola, *Legal Orientalism: China, the US and Modern Law*, (Harvard University Press: Cambridge, 2013).

¹⁰⁸ State-owned Assets Supervision and Administration Commission, *Interim Measures On The Supervision And Administration Of Outbound Investments By Central SOEs* Circular No. 28 (2012) (hereafter Circular No. 28). It was issued on 18 March 2012 and came into force on 1 May 2012. Circular No. 28 builds on extant SASAC regulations: State-owned Assets Supervision and Administration Commission, *Interim Measures On The Supervision And Administration Of Overseas State-Owned Assets Of Central SOEs*, Circular No. 26 (June 14, 2011) and State-owned Assets Supervision and Administration Commission, *Interim Measures On The Supervision And Administration Of Overseas State-Owned Equity Interests Of Central SOEs* Circular No. 27 (June 14, 2011). These measures regulate: foreign investments by central SOEs from their initial decision-making through to project management and operation; and the way in which equity interests in foreign investment projects are managed and monitored by central SOEs and SASAC. For details see Wei Chen and Jiahao Xie, *New SASAC Rules Enacted to Consummate Outbound Investment Supervisory System for Central SOEs* (4 July 2012) International Institute for the Study of Cross-Border Investment and M&A <<http://xbma.org/forum/chinese-update-new-sasac-rules-enacted-to-consummate-outbound-investment-supervisory-system-for-central-soes/>>.

¹⁰⁹ Theodore Moran, Barbara R. Kotschwar and Julia Muir, 'Chinese Investment in Latin American Resources: The Good, the Bad, and the Ugly' (*Working Paper 12-3, Peterson Institute for International Economics*, February 2012).

Unocal in 2005 despite central government opposition.¹¹⁰ Similarly, KPMG argues that ‘Chinese SOEs abroad have shown strong commercial motivations, similar to those of multinational corporations from developed countries’.¹¹¹ Commercial motivations are evinced by SOE capital investments to secure stable and high-quality supplies of natural resources, mergers and acquisitions to acquire new brands and technology, accessing new markets, and exporting Chinese brands. Moreover, multiple external parties are involved in Chinese SOE investment decision-making abroad, including domestic consultants, corporate partners and financiers, such that decisions cannot be made solely by a government entity.

Importantly, Australian statistics show that Chinese investors rely heavily on local talent to manage Australian companies in which the investor gains a controlling interest. For example, during the period 1 January 2005 to 31 December 2012, Chinese nationals were appointed as Chief Executive Officer only in 32% of corporate acquisitions in the Australian energy and resources sectors, and Chief Operating Officer in only 10% of same.¹¹²

Indeed, regarding Chinese strategic investment in Australia, 78% of completed Chinese investments in Australia from January 2005 to December 2012 were for the purpose of securing supply to an underlying commodity; and the largest recipient of Chinese investment was the mining sector of 73% of all Chinese investment, which is consistent with patterns of Chinese investment in other jurisdictions as evidenced above.

These statistics pave the way for a focused analysis of Australia’s investment relationship with China in Part III. Australia is a significant recipient nation of foreign direct investment from China, which highlights some regulatory tensions that can arise from a state capital investor-investee relationship.

III. CHINESE INVESTMENT IN AUSTRALIA

A. Trade and investment: Australia and China

Australia’s commercial relationship with China represents a national strategic issue given that, first, China has become Australia’s most significant two-way trading partner and, secondly, Australia’s stability and economic well-being is increasingly intertwined with neighbouring jurisdictions in the Asian region.

Table 5 below, using official Department of Foreign Affairs and Trade (DFAT) data, demonstrates this economic reality very clearly. In terms of Australian two-way trade, China is top with 19.9%, followed by Japan (11.9%), the US (8.9%), South Korea (5.4%) and Singapore rounds out the top five with 4.6%.

¹¹⁰ Howson makes this point in relation to the CNOOC bid for Unocal, which was opposed by Chinese central government actors: Howson, above n 20, 73.

¹¹¹ KPMG and University of Sydney 2012, above n 30, 13.

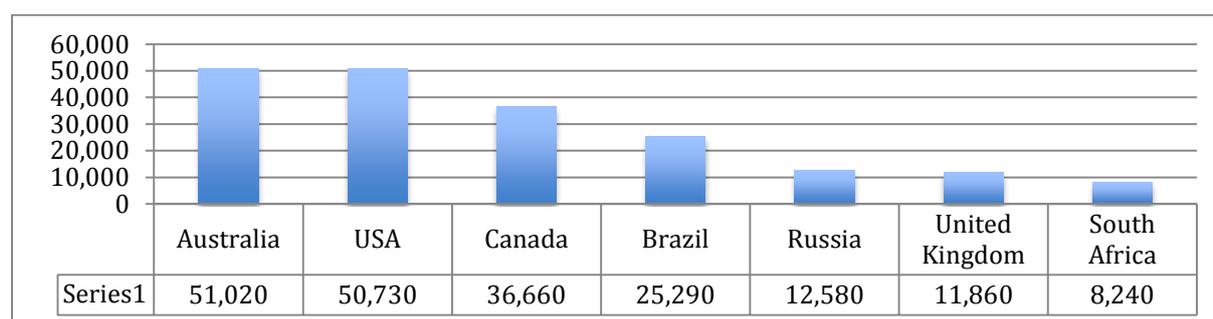
¹¹² Clayton Utz, *Digging Deep: Chinese Investment in Australian Energy and Resources* (14 March 2013) <http://www.claytonutz.com.au/publications/edition/14_march_2013/20130314/digging_deep_chinese_investment_in_australian_energy_and_resources.page>.

Table 5 Australia's Top 10 Two-way Trading Partners 2011 (US\$ billion)¹¹³

	Goods ^(a)	Services ^(b)	Total ^{(c)(d)}	% Share
1 China	113.6	7.4	121.1	19.9
2 Japan	68.4	4.0	72.5	11.9
3 United States ^(e)	38.1	16.1	54.2	8.9
4 Republic of Korea	30.4	2.2	32.7	5.4
5 Singapore	20.5	7.1	27.7	4.6
6 United Kingdom	14.3	8.7	23.0	3.8
7 New Zealand	15.3	6.3	21.6	3.5
8 India	17.5	2.9	20.3	3.3
9 Thailand	15.2	3.3	18.5	3.0
10 Malaysia	13.1	3.0	16.0	2.6
Total two-way trade^(b)	499.1	109.1	608.2	100.0

In terms of accumulated Chinese FDI, Australia is the top destination for actual Chinese investment, narrowly ahead of the U.S. (Table 6 below).

Table 6 Accumulated Chinese Investment by Country for Deals Above US\$100 million: 1 January 2005 - 31 December 2012 (US\$ millions)¹¹⁴



However, while Australia is the largest recipient of Chinese foreign investment, China is not Australia's largest investor (Table 7 below). Australian Bureau of Statistics (ABS) data for the calendar year period 2006 to 2012 show that accumulated actual direct investment in Australia from the U.S. equated to AU\$747 billion, being a 24% share of Australia's total foreign direct investment stock.¹¹⁵ This compares strikingly to China's direct investment for that same period

¹¹³ (a) Recorded trade basis; (b) Balance of payments basis; (c) Excludes imports of aircraft from regional import total from Sept 2008 onwards (excluding the US - see (e)). This has a significant impact on import totals for France; (d) Total may not sum due to rounding; (e) Based on unpublished ABS data and includes confidential aircraft imports for the US only: Australian Government Department of Foreign Affairs and Trade, *Trade at a Glance 2012* (Department of Foreign Affairs and Trade, 2012).

¹¹⁴ The Heritage Foundation, *Chinese Outward Investment: China Global Investment Tracker, Dataset 1 Investments* <<http://www.heritage.org/research/projects/china-global-investment-tracker-interactive-map>>; See also KPMG and the University of Sydney, 'Demystifying Chinese Investment in Australia: Update March 2013' (Report, The University of Sydney China Studies Centre and KPMG, March 2013) (hereafter 'KPMG and University of Sydney 2013').

¹¹⁵ Australian Bureau of Statistics, *5352.0 – International Investment Position, Australia: Supplementary Statistics 2012*, Table 2 (2 May 2013) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5352.02012?OpenDocument>>.

which equated to only AU\$57.3 billion or 2% share of the total. Accordingly, by the end of 2012, China was Australia's ninth largest direct investor, which may be lower than that assumed by many in the community given the high media coverage of China as Australia's most important trading partner.¹¹⁶

Table 7 Accumulated FDI in Australia for All Deals: 1 January 2006 – 31 December 2012)¹¹⁷

	Value (AU\$ millions)	Percentage of Total	Investor Ranking
TOTAL - all countries	3,099,195		
Top Countries			
United States	746,792	24.1%	1
UK	443,804	14.3%	2
Japan	303,638	9.8%	3
Netherlands	196,334	6.3%	4
Switzerland	136,602	4.4%	5

FIRB Annual Reports provide breakdowns of foreign investment applications considered and decided by value, sector, and investor country per fiscal year. However, these reports track only approved proposed investment, and proposals may not necessarily proceed to completion. For the fiscal year 2011/12, there were 10,703 FIRB-approved proposed foreign investment contracts (Table 8).¹¹⁸ Chinese investment contracts comprised nearly half of this number, making China the largest proposed investor by contract *volume* followed by the UK, Japan, the US and Canada. However, in dollar *value*, the US is Australia's largest proposed investor, followed by the UK and then China, Japan and Canada. More specifically, for the 2006-2012 period, 196 Chinese investments were announced in the energy and resources sectors, amounting to a *proposed* value of AU\$100.7 billion.¹¹⁹ However, 83% of those deals were completed, which equates to *actual* investment into Australian mining and energy worth AU\$50.4 billion;¹²⁰ that is, around half of the proposed figure.

¹¹⁶ Indeed, Clayton Utz asserts that the value of completed Chinese investment in mining and energy sectors would 'likely amount to considerably less than 10%' of the total value of resources and energy projects in Australia: Clayton Utz, above n 112, 9.

¹¹⁷ Australian Bureau of Statistics, above n 115

¹¹⁸ Commonwealth of Australia, *Foreign Investment Review Board: Annual Report 2011/2012* (Foreign Investment Review Board, 2012).

¹¹⁹ Clayton Utz, above n 112.

¹²⁰ Ibid. Clayton Utz data comprise only the energy and resources sectors, which includes renewables but excludes power generation.

Table 8 FIRB Approved Proposed Investment: 2011/12¹²¹

Approved proposed investment	Deal Value (AU\$ billions)	Number of Contracts
TOTAL	170.71	10,703
Top 5 countries by proposed investment value		
United States	36.613	268
UK	20.343	1,018
China	16.190	4,752
Japan	13.920	324
Canada	8.871	131

B. Australia's Boom is a China-dependent Boom?

Chinese investment in Australia has increased significantly year on year since 2006 (Table 9). This increase is partly due to resurging energy and metals investments¹²² and natural resources and mining sector investments dominate the Australia-China FDI landscape.

Table 9 Chinese Investment in Australia: 1 January 2006 – 31 December 2012 (AU\$ millions)¹²³

2006	2007	2008	2009	2010	2011	2012	Total
550	not published	3,643	9,058	12,944	14,404	16,741	57,340

Of the completed Chinese investments in Australia from January 2005 to December 2012, the largest recipient of Chinese investment was the mining sector and 78% of deals were for the purpose of securing supply to an underlying commodity.¹²⁴ In 2012 alone, however, total Chinese investment into Australia consisted of 48% into mining and 42% into gas, which may indicate a diversification toward energy and away from resources (Table 10).¹²⁵

¹²¹ Commonwealth of Australia, above n 118.

¹²² KPMG and University of Sydney 2013, above n 114, 7.

¹²³ Australian Bureau of Statistics, above n 115.

¹²⁴ Clayton Utz, above n 112, 5.

¹²⁵ KPMG and University of Sydney 2013, above n 114, 6.

Table 10 Chinese investment in Australia by Industry of deals above US\$5 million: September 2006-December 2012 vs. 2012 (US\$ millions)¹²⁶

	2006 - 2012		2012	
	By volume	By value	By volume	By value
Mining	73%	\$36,874.95	48%	\$5,471.46
Gas	18%	\$8,867.01	42%	\$4,785.20
Renewable energy	4%	\$2,212.60	2%	\$182.60
Agriculture	>2%*	>\$843.16*	2.6%	\$24.56
Other (e.g. logistic equipment & services; finance; architecture)	<3%*	<\$1994.16*	5.4%	\$919.64
TOTAL	100%	\$50, 791.88	100%	\$11,383.46

The diversification away from mining and toward energy reflects an increased global demand for LNG in conjunction with China's plan to diversify its energy consumption structure beyond coal.¹²⁷ Indeed, Sinopec, a Chinese corporation predominantly owned by central government, operates solely in the energy (gas & oil) sector and constitutes Australia's third largest Chinese investor based on accumulated investment figures from February 2005 to December 2012.¹²⁸

Moreover, patterns of investment diversification are evidenced over time. According to the Heritage Foundation, 46 Chinese investment deals valued above US\$100 million were completed in Australia during the last seven years:¹²⁹ of this number, deals in the steel and aluminum industries occurred only during 2005-2009;¹³⁰ and energy deals in the gas and coal industries commenced from 2008 and 2007 respectively.¹³¹ Further, all large agriculture deals occurred only in the past two years¹³² with increasing Chinese investment in Australian agriculture and real estate sectors predicted for 2013.¹³³

Importantly, when FDI into Australia is viewed through a state capital lens, the majority of the 50 largest acquisitions of Australian assets since 1990 comprise several notable state-related capital actors, of which China is but one.¹³⁴ Indeed, the four most frequent state capital investors

¹²⁶ Ibid 6-7, 12-13. Note that KPMG data comprises deals valued US\$5 million and above, hence the slight disparity in total value 2006-2012 between ABS and KPMG figures. *Figures are not exact because agriculture sectoral investment for South Australia is not specified in the report.

¹²⁷ Ibid 9.

¹²⁸ The Heritage Foundation, above n 114.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid; See also, Clayton Utz, above n 112, 12.

¹³² The Heritage Foundation, above n 114.

¹³³ KPMG above n 30, 18.

¹³⁴ Adrian Blundell-Wignall and Gert Wehinger, 'Open Capital Markets and Sovereign Wealth Funds, Pension Funds, and State-Owned Enterprises' in Renee A. Fry, Warwick J. McKibbin and Justin O'Brien

in Australia in descending order have been Singapore, China, UAE and New Zealand; and the largest value energy & power (i.e. ‘boom’ sector) investments being made by Singapore, Malaysia, China and the United Arab Emirates (UAE) (Table 11).¹³⁵

Table 11 State-related Capital Investment into Australian Companies: Ten Largest Deals from 1990-2009¹³⁶

Deal Value (\$US mn)	Target Sector	Acquirer Name (Nation)	Target Name	Date Effective
8,491.1	Telecommunications	SingTel (Singapore)	Optus Ltd	17 Sept. 2001
3,720.0	Energy & Power	Singapore Power Ltd (Singapore)	TXU Australia Ltd	30 July 2004
2,489.2	Energy & Power	PETRONAS (Malaysia)	Santos Ltd-Gladstone Liquefied	23 July 2008
1,376.9	Materials	Sinosteel Corp (China)	Midwest Corp Ltd	15 Sept. 2008
1,264.2	Energy & Power	Singapore Power Ltd (Singapore)	GPU Power Net Pty Ltd	30 June 2000
1,098.0	Energy & Power	IPIC (UAE)	Oil Search Ltd	5 Mar. 2009
595.6	Real Estate	GIC Real Estate Pte Ltd (Singapore)	Westfield Parramatta	30 Apr. 2007
556.0	Energy & Power	Sinopec Intl Petro Expl, Prodn (China)	AED Oil-Expl Permits	18 June 2008
537.3	Energy & Power	CNOOC Ltd (China)	North West Shelf Gas Pty Ltd	18 Dec. 2004
465.0	Energy & Power	SINOCHEM (China)	SOCO Yemen Pty Ltd	21 Apr. 2008

The preceding data show that although China is not Australia’s only or even largest investor; however it is a significant investor in ‘boom’ sectors (i.e. mining, resources, energy & power). This is particularly relevant to resource-rich domestic jurisdictions *within* Australia, such as Western Australian (WA). In a recent speech, WA Premier, Mr. Barnett, confirmed WA’s dependence on foreign investment: “For Western Australia, with our reliance on trade, international investment, commodities, obviously the game for us is not the Australian domestic economy. We’re interested, but we’re not going to cut our throat over it. Our focus is what’s happening internationally...For us in Western Australia, really it is Asia”.¹³⁷ According to qualitative evidence from O’Brien, WA officials differentiate between ‘stock market miners’ and

(eds), *Sovereign Wealth: The Role of State Capital in the New Financial Order* (Imperial College Press, 2011) 105, 139, Table 6.5.

¹³⁵ Ibid.

¹³⁶ Statistics excerpted from Blundell-Wignall and Wehinger: Ibid.

¹³⁷ Auscript Australasia, *Transcript of Proceedings: The Australian and Deutsche Bank Business Leaders Forum* (28 June 2013) <<http://resources.news.com.au/files/2013/07/01/1226672/662892-aus-bus-file-business-leaders-forum.pdf>>.

‘real miners’ when facilitating inward investment.¹³⁸ Given the decrease in commodities’ value, many stock market miners are not activating their exploration rights to actualize extraction and hence royalty accumulation.¹³⁹ However, Chinese investors are activating their rights and therefore making real mining investments that manifest real dollars to help perpetuate the state’s long-term agenda.¹⁴⁰ Importantly, the mining sector absorbed 89% of all Chinese investments into WA for the period 2006-2012.¹⁴¹ Indeed, the 2011 WA-China Memorandum of Understanding on the promotion of investment cooperation between WA and China evidences WA’s reliance on Chinese investment.¹⁴²

Nonetheless, there is now discussion that Australia’s so-called ‘resources boom’ has peaked following the release in May 2013 of the report *Energy in Australia* by the Commonwealth Government’s Bureau of Resources and Energy Economics (BREE).¹⁴³ BREE is the key forecaster on commodities for the federal government and it delivered a number of chilly messages on the near-term projections for Australia’s resources and energy sector, including a 96% fall in large-scale investment in energy and resources in only five years, which prompted a flurry of headlines proclaiming that Australia’s resources boom has indeed ended.¹⁴⁴

Yet, what is the effect of post-boom predictions for Australia in a context of diminishing demand for resources and the resulting increasing competition for FDI? Some indication is given by quarterly ABS figures released on 5 June 2013, which show that Australia’s GDP grew 0.6% in the quarter from December 2012.¹⁴⁵ However, WA’s state final demand (the partial measure of state economic growth contained in the national accounts) fell by 3.9%, seasonally adjusted, which is the biggest fall in the country and came on top of a 0.9% decline in the previous quarter. While WA has averaged annual growth rates of almost 8% over the past decade, these state final demand statistics have wiped 0.6 percentage points off the Australian economy in the

¹³⁸ Justin O’Brien, ‘Mapping the Trajectory of the Regulatory Debate: Securing the National Interest or Justifying Protectionism’ in Renee A Fry, Warwick J McKibbin and Justin O’Brien (eds), *Sovereign Wealth: The Role of State Capital in the New Financial Order* (Imperial College Press, 2011) 155, 165.

¹³⁹ Richard Schodde and Pietro Guj, *Where are Australia’s Mines of Tomorrow?* (September 2012) Centre for Exploration Targeting <<http://www.cet.edu.au/research-outcomes/publications/revise-cet-paper---australian-mineral-exploration-3-sept-2012927088B5F038>>. Schodde and Guj state that ‘Australian exploration expenditure fell during the March 2012 quarter in all states and for all commodities, particularly for iron ore and coal’.

¹⁴⁰ E.g. Between 2006-2012 China invested US\$16, 030.82 million total into WA of which 89% (\$14, 307.66 million) was in the mining sector alone: KPMG 2013, above n 113, 13.

¹⁴¹ Ibid.

¹⁴² Western Australia and National Development and Reform Commission of the People’s Republic of China, *Memorandum of Understanding Between the Government of the State of Western Australia of the Commonwealth of Australia and the National Development and Reform Commission of the People’s Republic of China on Promotion of Investment Cooperation* (20 September 2011) Government of Western Australia, Department of State Development <http://www.dsd.wa.gov.au/4868_8430.aspx>.

¹⁴³ Australian Government Department of Resources, Energy and Tourism, Bureau of Resources and Energy Economics, *Energy in Australia* (May 2013) Bureau of Resources and Energy Economics <<http://www.bree.gov.au/publications/energy-in-aust.html>>.

¹⁴⁴ Paul Garvey, ‘Resources Boom is Truly Over says Focus Minerals Chair Don Taig’, *The Australian* (online), 15 May 2013 <<http://www.theaustralian.com.au/national-affairs/treasury/resources-boom-is-truly-over-says-focus-minerals-chair-don-taig/story-fnhi8df6-1226642524237>>; Gemma Daley, ‘The Party’s Over: Resources boom has peaked says chief commodities forecaster’, *BRW* (online), 23 May 2013 <http://www.brw.com.au/p/business/forecaster_party_over_resources_xmIAuQKUh2Iq3Yx4cbYtl>.

¹⁴⁵ Australian Bureau of Statistics, *5206.0 – Australian National Accounts: National Income, Expenditure and Produce, March 2012* (6 June 2012) <[>](http://www.abs.gov.au/AUSSSTATS/abs@.nsf/Previousproducts/5206.0Main%20Features6Mar%202012?opendocument&tabname=Summary&prodno=5206.0&issue=Mar%202012&num=&view=.)

past year.¹⁴⁶ While we need to be cautious with causality, arguably the decline in state final demand for WA can be correlated to the declining demand for natural resources. In June 2013, then-Treasurer Mr. Wayne Swan stated that ‘WA is a demonstration of the transition that we are making which is amplified in WA because mining is such a greater proportion of the economy’.¹⁴⁷

C. Chinese Strategic Investment Priorities in Australia

It is clear from the data that the primary modality of Chinese investment is SOEs. FIRB Annual Reports do not differentiate between SOE and non-SOE investments in Australia (whether from China or elsewhere). Thus, SOE-specific information must be extracted from multiple other sources, which include government agency sources (e.g. Australian Bureau of Statistics (ABS), Department of Foreign Affairs and Trade (DFAT), Ministry of Commerce of the Republic of China (MOFCOM), China State Asset Supervision and Administration (SASAC), and the National Bureau of Statistics of China (NBS)) as well as industry sources such as Clayton Utz, KPMG, and The Heritage Foundation.

It is important to note at the outset that these different datasets are not easily compared.¹⁴⁸ This is due to a number of differences between the sources regarding deal value,¹⁴⁹ deal type,¹⁵⁰ investor location,¹⁵¹ compilation methodology,¹⁵² and particular world view.¹⁵³ Being mindful of disparities between data collection methods enables more accurate SOE investigation.

¹⁴⁶ David Uren, ‘Growing Pains as Western Australia Hits Slow Lane’, *The Australian (online)*, 6 June 2013 <<http://www.theaustralian.com.au/national-affairs/state-politics/growing-pains-as-western-australia-hits-slow-lane/story-e6frgczx-1226658170307>>; see also Bernard Keane, ‘National Accounts: How long will exports keep us growing?’ *Crikey (online)*, 5 June 2013 <<http://www.crikey.com.au/2013/06/05/national-accounts-how-long-will-exports-keep-us-growing/>>.

¹⁴⁷ Uren, *ibid*.

¹⁴⁸ For a full exposition of this methodological issue see George Gilligan and Megan Bowman, ‘State Capital: Global and Australian Perspectives’, 37 *Seattle University Law Review*, Special Issue: Berle V: Capital Markets, the Corporation and the Asian Century (forthcoming Dec. 2013).

¹⁴⁹ E.g. the Heritage Foundation tracks deals only above US\$100 million; KPMG tracks deals above US\$5 million; and the Clayton Utz Merger & Acquisition (M&A) database tracks deals only above AU\$50 million. See, The Heritage Foundation, above n 114; KPMG and University of Sydney 2013, above n 114 preamble; Clayton Utz, *The Real Deal: M&A Trends and Developments* (Clayton Utz, 2013) 72.

¹⁵⁰ E.g. FIRB collates ‘approved proposed investment’ figures; whereas sources such as ABS, the Heritage Foundation, MOFCOM, and Clayton Utz produce ‘actual’ or ‘completed’ investment figures. Moreover, different sources tend to cover different methods of investment, being M&A, joint ventures, greenfield projects, and/or Chinese stock/bond acquisitions.

¹⁵¹ That is, most sources do not include deals by investors located in Special Administrative Regions (SARs) - being Hong Kong and Macao - or Taiwan. One exception is KPMG, which tracks investments by subsidiaries or special purpose vehicles (SPVs) based in Hong Kong and Singapore: KPMG and University of Sydney 2013, above n 114, preamble.

¹⁵² The ABS has noted a lack of international standardisation in this regard, detailing difficulties where figures are compiled using different rationales, the most basic issue being measurement. The Balance of Payment Manual 5th edition (BPM5) recommends that direct investment flows, income transactions and stocks be valued at market value. However, an entity may choose to use cost measurement over market value, in which case figures will not align at all. See, Australian Bureau of Statistics, ‘FDI Data Collection: Overcoming Hurdles and Obstacles in FDI Measurement and Collection’ (Information Paper 5370.0.55.001, Australian Bureau of Statistics, 2003); International Monetary Fund, *Revision of the Balance of Payments Manual Fifth Edition (Annotated Outline)* (IMF Statistics Department, 2005).

¹⁵³ E.g. The Heritage Foundation is self-described as a think tank “whose mission is to formulate and promote conservative public policies based on the principles of free enterprise, limited government,

According to recent KPMG reports, total Chinese inward investment (valued US\$5million and above) to Australia from the period September 2006 to June 2012 comprised 116 deals by volume of which nearly 80% were made by 45 SOEs; and over 95% of deal *value* involved SOEs during this same timeframe (Table 12 below).¹⁵⁴ Those percentages are notably higher than average SOE investment figures of deal value in the US (65%) and Europe (72%).¹⁵⁵ More specifically in the Australian mining and energy sectors, Clayton Utz reports that for the slightly longer period of January 2005 to December 2012, SOEs accounted for 76% of deal volume and 100% of *all* deals greater than AU\$250 million; and 97% of the accumulated *value* of those actual investments.¹⁵⁶

Table 12 Chinese Investment into Australia: September 2006-December 2012 vs. 2012¹⁵⁷

	2006-2012		2012	
	By volume	By deal value	By volume	By deal value
SOE share of capital invested	80%	94%	74%	87%
Private (non-state) investment	20%	6%	26%	13%

Indeed, Table 13 below identifies the ten largest Chinese corporate investors in Australia, which all happen to be SOEs. These ten SOEs accounted for US\$39,000 million out of a total accumulated direct investment of US\$51,020 million for 1 January 2005 to December 2012, which equates to 76% of accumulated Chinese direct investment into Australia over the past seven years.¹⁵⁸

individual freedom, traditional American values, and a strong national defense”: The Heritage Foundation, *About Heritage* (undated) at <<http://www.heritage.org/about>>.

¹⁵⁴ KPMG and University of Sydney 2012, above n 30, 9. In 2012 alone, SOEs completed 74% of all deals (valued US\$5mn and above) by volume and 87% by deal value of the total Chinese inward investment into Australia: KPMG 2013, above n 114 1. Note, however, that the KPMG reports do not reveal original sources of their SOE figures.

¹⁵⁵ See Daniel H. Rosen and Thilo Hanemann, ‘An American Open Door? Maximizing the Benefits of Chinese Foreign Direct Investment’ (Special Report, Asia Society, May 2011) 33, noting that SOE investment in the US by deal *volume* is much less at 26%; and Thilo Hanemann and Daniel H. Rosen, ‘China Invests in Europe: Patterns, Impacts and Policy Implications’ (Special Report, Rhodium Group, June 2012) 4, 45, noting that SOE investment in Europe by deal *volume* is only 33%. Chinese statistics of SOE-led outward foreign investment is approximately 70%: Ministry of Commerce of People’s Republic of China, *2010 Statistical Bulletin of China’s Outward Foreign Direct Investment* (16 September 2011) <<http://english.mofcom.gov.cn/article/statistic/foreigninvestment/201109/20110907742320.shtml>>.

¹⁵⁶ Clayton Utz, above n 112, 4.

¹⁵⁷ KPMG and University of Sydney 2013, above n 114, 1, 15.

¹⁵⁸ The Heritage Foundation, above n 114. Note that these figures comprise deals valued at US\$100 million and above.

Table 13 Largest investors in Australia: 1 January 2005 – 31 December 2012 (\$US millions)¹⁵⁹

Ranking	Company name	Enterprise type	Level (%) of State Ownership	Managing Owner	Sector (sub-sector) of investment	Accumulated Value
1	Chinalco (Shining Prospect Pte. Ltd.)	SOE	Central (100%)	Chinalco	Metals (Aluminium)	\$14,300
2	Yanzhou Coal Mining Company	SOE	Shandong (52.86%)	Yankuang Group	Energy (Coal)	\$6,590
3	Sinopec Corp.	SOE	Central (75.84%)	Sinopec Group	Energy (Oil & Gas)	\$3,070
4	CITIC ¹⁶⁰	SOE	Central (100%)	CITIC Group Corporation	Metals (Steel), Energy (Coal)	\$3,020
5	Minmetals Resource Ltd	SOE	Central (71.56%)	China Minmetals Corp.	Metals	\$2,960
6	Taurus	SOE	Central (100%)	Guangdong Nuclear Group	Metals	\$2,280
7	CNOOC Ltd.	SOE	Central (64.43%)	CNOOC Group	Energy (Gas)	\$2,200
8	China Datang Corp Renewable Power Co.	SOE	Central (88.4%)	China Datang Corp.	Energy (Alternatives)	\$2,030
9	Sinosteel	SOE	Central (100%)	Sinosteel Corp.	Metals (Steel)	\$1,460
10	China Metallurgical Corporation	SOE	Central (64.18%)	Metallurgical Group Corp.	Metals (Steel)	\$1,090
TOTAL						\$39,000

The above figures reflect two key factors: first, that traditional areas of investment concern for SOEs include energy and resources;¹⁶¹ and secondly, Australia has a relative abundance of natural

¹⁵⁹ Figures derived from multiple sources: The Heritage Foundation, above n 114; KPMG and University of Sydney 2012, above n 30, 14; KPMG and University of Sydney 2013, above n 114, 23; individual company websites.

¹⁶⁰ The accumulated value for 'Citic' is an aggregated total of investments by different subsidiaries of the CITIC group, namely CITIC Pacific, CITIC Resources, CITIC Construction, and CITIC Group.

¹⁶¹ John Lee, 'The Re-emergence of China: Economic and Strategic Implications for Australia' (2012) 45(4) *The Australian Economic Review* 484, 484. Lee also documents that Chinese SOEs now operate in all major sectors except export manufacturing.

resources, which has given it a comparative advantage as an investment destination in these sectors to date.

IV. CONCLUSION

Data detailed and discussed throughout this paper show that: China is an increasingly significant investor in Australia but not the largest investor; Chinese investments are occurring predominantly in mining/natural resources with emerging diversification toward energy and agriculture; and corporate control of acquired Australian companies tends to remain with local actors. Thus, one can make a compelling argument that China is behaving like a nation that seeks to secure resources, energy, and food for growing domestic demand that will soon far exceed domestic supply.

The data evidence that SOEs are the primary modality of Chinese investment in Australia and that the largest Chinese investors are central government-controlled; yet these SOEs appear to be pursuing commercial opportunities in a source-rich foreign jurisdiction in much the same way as Western multinational corporations have done abroad and continue to do so.

The going global policy of China has animated Chinese corporations, particularly SOEs, to move beyond trading relationships to asset and equity acquisition. In so doing, China has become a pervasive investment actor in nearly all markets and is developing ever-deepening international linkages. Concerns about the increasing prevalence and potentially political nature of China's SOEs may reflect (and perhaps mask) deeper concerns about the increasing significance of China on the world stage.

Nonetheless, international predictions regarding global food security and China's changing domestic demand-supply make clear that China's significance as a global foreign investor as well as a recipient of global soft commodities will only continue to rise.

Arguably, these developments are consistent with China's long-standing traditions of trade and ODI, albeit with different emphases over different decades as evidenced in the Five-Year Plans and documented throughout this paper. From the economic advancement of the 12th Century to the post-war boom of the 1930s, from the relative isolation under Mao Zedong to the 'open door' FDI policy under Deng Xiaoping to the most recent 'going global' ODI strategy initiated under Jiang Zeming, it is clear that China's international market significance is a remarkable and ever-evolving story.

APPENDIX

Five Year Plan (FYP)	Leader	Inward FDI	Outward FDI (ODI)
<p style="text-align: center;">12th (2011-2015)¹⁶²</p> <p>A ‘very green’ plan; Focused on drawing value from local consumers rather than investment.¹⁶³</p>	<p style="text-align: center;"><u>Presidents</u> Xi Jinping (2013 -)</p> <p>Hu Jintao (2003-2013)</p> <p style="text-align: center;"><u>Premiers</u> Li Keqiang (2013 -)</p> <p>Wen Jiabao (2003-2013)</p>	<ul style="list-style-type: none"> • Continue dual strategies ‘bringing in’ and ‘going out’. Equal attention to both FDI in China and Chinese ODI. • Guide foreign investment towards modern agriculture, high-end technology, advanced manufacturing, energy conservation, new energy, modern service industry, esp. in middle and western parts of China. • Encourage different means to acquire domestic enterprises. E.g. Buying shares, joint ventures. • Bring in senior talent and advanced technology from overseas and encourage foreign enterprises to set up R&D centres in China for China to learn advanced international management concepts and systems. 	<ul style="list-style-type: none"> • Continue dual strategies ‘bringing in’ and ‘going out’. Equal attention to both foreign investment in China and Chinese investments abroad. • Speed up the implementation of the ‘go out’ strategy → Speed up formulation of laws and regulations concerning overseas investments. • Deepen development of international energy resources and mutually beneficial processing cooperation. • Support technology R&D investments abroad. • Encourage leading manufacturing industry enterprises to conduct foreign investment to create internationalised marketing and sales channels and brands. • Enlarge international cooperation in the agricultural sector and develop overseas engineering contracts. • Engage in labour cooperation and cooperation projects that can improve living standards in local areas.

¹⁶² KPMG, *China’s 12th Five Year Plan: Overview (2011-2015)* (March 2011)

<<http://www.kpmg.com/cn/en/issuesandinsights/articlespublications/publicationseries/5-years-plan/pages/default.aspx>>.

¹⁶³ Stephen S. Roach, ‘A giant step towards solutions’, *China Daily USA* (online), 22 March 2011 <http://usa.chinadaily.com.cn/opinion/2011-03/22/content_12207694.htm>.

			<ul style="list-style-type: none"> • Gradually develop own cross-country corporations and cross-country financial institutions to increase level of international operations. • Conduct research in relation to overseas investments, including enhancement of scientific evaluation methods. • Actively discuss and sign mutual agreements on investment protection and agreements to avoid double taxation. • Increase facilitation for enterprises to invest overseas while protecting China's reputation abroad and minimising investment risks. • 'Going out' enterprises should comply with standards of corporate social responsibility.
11 th (2006-2010) ¹⁶⁴	<p><u>President</u> Hu Jintao (2003-2013)</p> <p><u>Premier</u> Wen Jiabao (2003-2013)</p>	<ul style="list-style-type: none"> • Improving the quality of foreign capital by guiding foreign investment direction and diversifying the modes of foreign capital utilisation. • Focus on the import of foreign advanced technologies, managerial know-how and high quality talents. • Integrating foreign capital utilization through the upgrading of domestic industrial structure and technology. 	<ul style="list-style-type: none"> • Promote international economic cooperation by implementing the 'Go Global' strategy and promoting regional economic cooperation. • Improve mechanisms and policies to promote the cross-border flow and optimised allocation of production factors (labour, land, etc.) • Actively develop economic and technological cooperation with neighbouring countries and economies for mutual benefit.

¹⁶⁴ National Development and Reform Commission of the People's Republic of China, *The Outline of the Eleventh Five-Year Plan: For National Economic and Social Development of the People's Republic of China* <http://en.ndrc.gov.cn/hot/t20060529_71334.htm>.

<p>10th (2001-2005)¹⁶⁵</p> <p>Implemented strategies for outward FDI</p>	<p><u>Presidents</u> Hu Jintao (2003-2013)</p> <p>Jiang Zemin (1993-2003)</p> <p><u>Premiers</u> Wen Jiabao (2003-2013)</p> <p>Zhu Rongji (1998-2003)</p>	<ul style="list-style-type: none"> • ‘Reform of the Investment System’ (2004). • Gradually open up the service sector to foreign-investment. • Encourage foreign investment in high-tech industries and infrastructures, and encourage setting up of R&D centres in China to participate in restructuring and renovation of SOEs. • The ‘Western development strategy’: encourage more investment in central and western regions, which otherwise are least likely to attract aid on their own.¹⁶⁶ 	<ul style="list-style-type: none"> • Implement ‘going out’ strategy (2001), encouraging enterprises with comparative advantages to make investments abroad, to establish processing operations, to exploit foreign resources with local partners, contract for international engineering projects, and increase the export of labour. • Support the listing of eligible enterprises on overseas stock markets. • Provide supportive policy framework to create favourable conditions for enterprises to establish overseas operations. • Strengthen supervision and prevent loss of state assets.
<p>9th (1996-2000)¹⁶⁷</p> <p>Transition to greater levels of private</p>	<p><u>President</u> Jiang Zemin (1993-2003)</p> <p><u>Premiers</u> Zhu Rongji (1998-2003)</p>	<ul style="list-style-type: none"> • State’s special policy regarding SEZs and the Shanghai Pudong New Area will remain unchanged. • Gradually open the domestic market including finance, commercial outlets and tourism. 	<ul style="list-style-type: none"> • Establish a unified and standardized system of foreign economic affairs in line with generally accepted international practices. • Develop economic and trade relationships with other countries (noting that some western countries are determined to exclude China from WTO).

¹⁶⁵ Zhu Rongji, *Report on the Outline of the Tenth Five-Year Plan for National Economic and Social Development (2001)* (5 March 2001) Chinese Government’s Official Web Portal <http://english.gov.cn/official/2005-07/29/content_18334.htm>.

¹⁶⁶ Markus Taube and Mehmet Ogutcu, ‘Main Issues on Foreign Investment in China’s Regional Development: Prospects and Policy Challenges’ (Report, OECD 2002) 2, available at <<http://www.oecd.org/daf/inv/investmentfordevelopment/1939560.pdf>>.

¹⁶⁷ Li Peng, *Report on the Outline of the Ninth Five-Year Plan (1996-2000) for National Economic and Social Development and the Long-range Objectives to the Year 2010 (Excerpts)* (5 March 1996) China.org.cn <<http://www.china.org.cn/95e/95-english1/2.htm>>.

ownership and corporatisation in increasingly market economy. ¹⁶⁸	Li Peng (1988-1998)	<ul style="list-style-type: none"> Recruit overseas intelligence. Gradually give foreign-funded enterprises the same treatment as Chinese counterparts; standardize taxation system and levy taxes fair and reasonable to both Chinese and foreign enterprises. 	
8 th (1991-1995)	<u>President</u> Jiang Zemin (1993-2003) Yang Shangkun (1988-1993) <u>Premier</u> Li Peng (1988-1998)	<ul style="list-style-type: none"> Advanced technology and managerial expertise from abroad to help improve production technology and management. Rapid growth in international tourism.¹⁶⁹ 	
7 th (1986 – 1990)	<u>Presidents</u> Yang Shangkun (1988-1993) Li Xiannian (1983-1988) <u>Premiers</u> Li Peng (1988-1998)	<ul style="list-style-type: none"> Open up further to the outside world, combining domestic economic growth with expanding external economic and technologic exchanges.¹⁷⁰ Continued emphasis on innovation and economic expansion. Foreign loans declined as result of Tiananmen incident. 	

¹⁶⁸ Troy Galloway, 'Chinese Five Year Plans: An Economic Catalyst?' (Issue paper 11-11, Center for Strategic Leadership, U.S. Army War College, July 2011), available at <http://www.csl.army.mil/usacsl/publications/IP11_11.pdf>.

¹⁶⁹ Peng, above n 167.

¹⁷⁰ Gov.cn, *The 7th Five Year Plan (1986-1990)* (5 April 2006) <http://www.gov.cn/english/2006-04/05/content_245695.htm>.

	Zhao Ziyang (1980-1988)		
6 th (1981-1985) ¹⁷¹ Central government opened China's economy to FDI for the first time. ¹⁷²	<u>President</u> Li Xiannian (1983 – 1988) <u>Acting President</u> Ye Jianying (1981-1983) <u>Premier</u> Zhao Ziyang (1980-1998)	<ul style="list-style-type: none"> • Continue to expand trade and economic and technological exchanges with the outside world in accordance with the principles of equality and mutual benefit, of unified plan and policy and of concerted action toward foreign counterparts. • Use foreign loans efficiently, encourage FDI via joint ventures in order to increase the use of foreign funds to a suitable extent. • Overarching goal to raise capacity for self-reliance, not impair development of national economy. • ‘Government placed large numbers of key projects in the coastal areas, causing 47% of total investment to gravitate to those areas.’¹⁷³ • From 1980, SEZs created in Southern coastal areas. 	
5 th (1976 – 1980) Introduced opening up of the communist	<u>Acting President</u> Ye Jianying (1976- 1981) <u>Premier</u> Hua Guofeng	<ul style="list-style-type: none"> • Opening up of the communist economic system. • Moving away from Soviet-style command economy and gradual introduction of market reforms. 	

¹⁷¹ Zhao Ziyang, ‘Report on the Sixth Five-Year Plan for National Economic and Social Development’ (1985) 18(4) *Chinese Economy* 3.

¹⁷² Australian Government, Bureau of Resources and Energy Economics, Tourism Research Australia, *Resources, Energy and Tourism China Review: June 2012* (Commonwealth of Australia, 2012) 12.

¹⁷³ Xiaojuan Jiang, *FDI in China: Contributions to Growth, Restructuring, and Competitiveness* (Nova Science Publishers, 2004) 90.

economic system	(1976 – 1980)		
4 th (1971-1975)	<u>Acting President</u> Dong Biwu (1968-1975) <u>Premier</u> Zhou Enlai (1949-1976)	<ul style="list-style-type: none"> Focus on internal economic strengthening in industry and agriculture (rather than FDI). 	
3 rd (1966-1970)	<u>Acting President</u> Song Qingling (1968-1972) <u>Premier</u> Zhou Enlai (1949-1976)	<ul style="list-style-type: none"> Focus on internal economic strengthening (rather than FDI). 	
2 nd (1958 – 1962) Abandoned almost immediately after inauguration ¹⁷⁴	<u>Presidents</u> Liu Shaoqi (1955-1968) Mao Zedong (1954-1959) <u>Premier</u> Zhou Enlai (1949-1976)	<ul style="list-style-type: none"> Focus on internal economic strengthening (rather than FDI). Continued industrial construction with focus on heavy industry as foundation for socialist industrialisation.¹⁷⁵ 	
1 st (1953 – 1957)	<u>President</u> Mao Zedong (1954-1959)	<ul style="list-style-type: none"> Aimed to develop state-directed growth of heavy industry, particularly coal, steel and petrochemicals.¹⁷⁶ 	

¹⁷⁴ W.K., 'China's Third Five-Year Plan' (1966) 25 *The China Quarterly* 171.

¹⁷⁵ China.org.cn, *The 2nd Five-Year Plan (1958-1962)* <<http://www.china.org.cn/english/MATERIAL/157606.htm>>.

<p>Perfecting Soviet Style Marxist Communism</p>	<p><u>Acting President</u> Mao Zedong (1949 – 1954)</p> <p><u>Premier</u> Zhou Enlai (1949-1976)</p>	<ul style="list-style-type: none"> • Many plants and equipment purchased from Soviet Union.¹⁷⁷ • Increase of government control over industry. E.g. Nationalisation of banking system; no privately owned companies in China by 1956. 	
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¹⁷⁶ Michael Lynch, *The People's Republic of China, 1949-76* (Hodder Education Group, 2008) 34–35, available at <http://nisis.weebly.com/uploads/1/0/2/9/10295486/first_5_year_plan_and_100_flowers_campaign.pdf>.

¹⁷⁷ Mongabay.com, *China- The First Five-Year Plan, 1953-57* (July 1987) <http://www.mongabay.com/history/china/china-the_first_five-year_plan,_1953-57.html>.