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## ABSTRACT

We discuss recent cases of Chinese buyout activity in the OECD (especially in the US and the EU) in resource and manufacturing sectors. While most of the buyout attempts have been unsuccessful, they can serve as a catalyst for a wider discussion on the implications for global arrangements over cross border acquisitions. Three specific issues are discussed. The first is the subsidization of purchase raised in the OECD in response to the advancing of low- or no-interest loans by the Chinese Central Bank to companies investing abroad. The second is the transparency of entities involved in the buyout attempt. Most Chinese companies have close ties to the multiple levels of government and are not subject to the standard reporting requirements as required of OECD companies. The third involves national security concerns in the OECD and the possibility of acquiring sensitive technology by Chinese companies when they purchase companies abroad. These issues have not been addressed in the existing OECD/WTO investment policy initiatives and have yet to be discussed in the global fora.

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## 1. Introduction

This paper discusses the recent wave of (both actual and proposed) buyouts by Chinese companies of entities outside China. While the majority of these have not resulted in completed transactions, we discuss whether these can be a catalyst for a wider discussion of the implications for global arrangements over cross border acquisitions. Chinese outward foreign direct investment (FDI) for some years has been relatively small (in the US$3-4 billion range in 2004) and heavily concentrated on both greenfield and joint venture activity, much of it occurring in Hong Kong. In the last year, a change which has occurred is both a focus on direct acquisition and the emergence of potentially large transactions, some in the US$15-20 billion range, and with a focus well beyond Hong Kong. Examples include: the Lenovo buyout of IBM's PC business, CNOOC's (China National Offshore Oil Company) bid for Unocal, prospective bids by MinMetals for Noranda, the Haier Group bid for Maytag, and others. No direct World Trade Organization (WTO) issues are raised by these, but questions of subsidization, lack of transparency, and national security have all been raised. National security issues regarding foreign acquisitions are not new and go back to the Exon-Florio provisions of the American Defence Production Act of 1998 following concerns in the US in the late 1980's over Japanese buyouts. However, issues of subsidization of foreign acquisitions through low interest loans from central banks and the transparency of organizational form of acquiring entities (State-Owned Enterprises, (SOEs)) are new.

The overarching feature that we stress and which goes well beyond China is the apparent absence of globally agreed disciplines covering not only cross border acquisitions, but more broadly all cross border factor flows. This situation stands in contrast to the goods and services flows covered by the WTO. Both the failed multilateral agreement on investment (MAI) and WTO competition policy negotiations did not touch directly on the newer issues in recent debate on Chinese buyouts, and neither do earlier bilateral trade and investment treaties.

At first glance this upsurge of new outward Chinese FDI strikes outside observers as odd. China is after all, still a relatively capital scarce economy with a large pool of low wage labour, and development policy there remains focused on attracting inward platform FDI to combine with low wage labour to fuel further export and GDP growth. To begin exporting large amounts of capital through large foreign acquisitions when this broad stance of development policy towards inward FDI remains unchanged seemingly calls for an explanation.

A number of factors underlie this recent upsurge in Chinese cross border acquisition activity. One is large accumulated Central Bank reserves in China (close to US$700 billion), and a seeming change in policy stance by the Central Bank of advancing low interest loans to SOEs for foreign acquisitions rather than continued accumulation of US treasury notes. Chinese concerns over security for supply of resource inputs (especially oil) for Chinese manufacturing enterprises also motivate the change in activity. And for private manufacturing groups in China, the use of foreign acquisitions as a way of obtaining distribution networks in the Organisation of Economic Co-operation and Development (OECD) for domestic manufacturing production (insourcing for want of a better term) seems to be a factor. The picture is one of macro imbalances combining with pragmatic niche driven foreign acquisition activity in which factors behind both Chinese SOEs and private groups, and resource and manufacturing acquisitions differ.

With both Chinese trade surpluses and inward FDI continuing to grow, and most likely outward Chinese FDI growing correspondingly, broader systemic implications are likely to factor in discussion of buyout situations. Mundell (1957) years ago noted the formal equivalence between goods flows and factor flows suggesting an equivalent organizational form for GATT/WTO for goods flows. Given the recent failures first of the MAI negotiation in the OECD, and then of the competition policy negotiations in the WTO, no global rules apply to interventions by governments regulating these forms of factor flow. Issues of subsidization, mutually agreed bindings on barriers to acquisitions, and transparency of organizational form of acquiring firms are thus newly raised.

We discuss existing policy initiatives both in the OECD and the WTO with respect to investment and competition policy in light of the new issues raised by Chinese acquisitions. Thus far, central banks around the world have not engaged in extending low interest loans for foreign acquisitions, but the policy structure in China with large communally owned production units (by national, provincial and municipal governments) makes this logical from a Chinese standpoint.

A issue is whether other countries should now seek to link approval of individual transactions to negotiations (or renegotiations) of bilateral investment treaties. A broader approach is to seek a global regulatory framework covering purchases by prospective foreign parent entities, a matter rarely touched on by previous WTO and OECD investment discussions which have largely focused on translating existing system of trade rules (National Treatment and MFN) into investment rules.

## 2. Chinese Outward FDI and Factors Behind It

Existing literature discussing FDI in China is dominated by evaluation of the impact of FDI inflows on the Chinese economy, and specifically how central they are to continued growth performance.[1] FDI inflows in recent years have been running at US$60 billion/year and exports from foreign invested enterprises now account for half of manufactured exports, which in turn equal 80% of value added in manufacturing. If a downturn in inward FDI occurred in China, it is feared this could adversely impact Chinese growth performance.

Until recently, Chinese outward FDI was relatively small, and largely greenfield or joint venture, with much of it focused on inward flows from Hong Kong.[2] But the recent widely publicized proposed buyouts of North American companies, have turned attention to China as a foreign investor. Chinese FDI is global but has been concentrated outside of the OECD. In 2003, 80% was in Asia, 14.3% in Latin America, 1.7% in North America, 1.5% each in Europe and Africa, and 1.4% in Oceania.[3] The top five destinations for Chinese investment in 2003 were Hong Kong, the Cayman Islands, the Virgin Islands, the United States, and Macao, followed by Australia, the Republic of Korea and Singapore and was concentrated in three sectors: information technology, computers and software (33% in 2003), distribution, wholesale and retail (20%), and

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1 See for example: Graham, Wada (2001), Liu, Burridge, Sinclair (2002), Berthélemy, Démurger (2000), Ng, Tuan (2001); Tian, Lin, Lo (2004).

2 Chinese Academy of International Trade and Economic Cooperation (CAITEC) and Welsh Development Agency (WDA) (2005), Chinese Enterprises' Expansion Into European and North American Markets

3 CAITEC, WDA (2005).

mining (18%).[4] In 2004, Chinese outward investment was only US$3.62 billion, with only 5% of FDI flowing into China, despite the growth rate of outward FDI that had been twice that of inward FDI in prior years (in 2004, 27% and 13% respectively, year on year).

Existing literature discussing both the motivation for and strategies used in Chinese outward FDI[5] emphasize access to resources, foreign distribution systems, foreign technology, markets abroad, and the strategic aims and perceived needs for diversification of individual enterprises. These reasons for enterprises investing abroad are not substantially different from those of other countries.

A recent joint study undertaken by the Chinese Academy of International Trade and Economic Cooperation (CAITEC) and the Welsh Development Agency (WDA) used a questionnaire to investigate key factors involved in Chinese outward FDI and found that the most influential to the decision were: market expansion, implementation of long-term development strategies for firms, access to technology, learning advanced management methods, avoiding trade barriers, taking advantage of foreign preferential investment policies, achieving cost reductions, acquisition of material inputs (resources), and transferring excess production capacity abroad.[6] Other studies point to non-economic reasons for Chinese enterprises investing abroad, such as the possibility of gaining residency rights and other benefits in the host country for managerial staff (such as health

4 CAITEC, WDA (2005).

5 See for example: Hong and Sun (2004), Deng (2004 and 2003), Wall (1997), Wong and Chan (2003), Yang (2003), Young, Huang and McDermott (1996), Wu and Chen (2001), UNCTAD (2003), Wang (2002) and others.

6 CAITEC, WDA (2005).

services, social security, and access to education). The use of overseas investments as a way to circumvent official Chinese restrictions on access to foreign exchange and foreign capital markets is also raised as potential factor.[7]

The decision by Chinese companies to buy foreign companies is also often linked to an intent to relocate manufacturing activity to China to benefit from lower labour costs while keeping existing distribution networks in the host country of the acquired business.[8] Recent widely publicized Chinese bids for large firms in the OECD are also portrayed in the media as involving a 'prestige factor', viewed as an incentive for Chinese companies to go abroad to either buy a recognizable foreign brand (Lenovo's takeover of IBM's PC business) or build their own brand's awareness by establishing manufacturing plants in the target country (such as Haier's factory in South Carolina, US).

In 2003, SOEs accounted for only 43% of total Chinese investments abroad with limited liability, shareholding and private companies taken together accounting for another 43%.[9] With recent large scale acquisition activity these proportions seems poised to change. Chinese government policy is now to use outward oriented investments to secure access to resources and raw materials (especially iron ore, coal, oil and natural gas), acquire new technology for transfer back to China, expand Chinese export markets, strengthen international relationships with and gain more influence in other countries.

Chinese outward FDI thus also reflects official Chinese government policy to

7 Deng (2004).
8 Such as recently with Nanjing and MG Rover.
9 CAITEC, WDA (2005)

encourage domestic enterprises to invest abroad. This is to be supported by the use of low interest loans made available to Chinese SOEs and financed by China's large and growing foreign reserves. These reserves were around US$15 billion in 1998 and today stand at close to US$700 billion reflecting both Chinese trade surpluses in recent years and inward foreign investment. With concerns in China over security of supply of resource inputs, and the impact of recent falls in the US dollar on the US treasuries in the reserve portfolio, deploying Chinese reserves in this way is seen as a reasonable policy. The government regulatory approval process for overseas investment projects have also been significantly simplified in the recent years[10], further fuelling outward FDI flows.[11] Chinese companies are now supported by low interest loans if their overseas activity involves, among others, resource exploration, acquiring foreign advanced technology, developing global competitiveness of the company and expanding its markets.[12]

The changes taking place in Chinese outward oriented foreign investment are well illustrated by recent takeover attempts by Chinese companies. We summarize them in Table 1, and then discuss each in more detail. The circumstances of each episode vary, and firm information on the terms of the arrangements entered into in each case is not

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10 For example, the threshold for seeking state approval for a planned foreign investment has been increased from US$1 million to US$20 million. Investments not bigger than US$30 million need to be approved only by the provincial government. See http://news.sina.com.cn/c/2004-12-03/08404420072s.shtml

11 "Provisions on matters related to the examination and approval of establishment of enterprises for overseas investment" announced by the Chinese Ministry of Commerce and "Interim measures on the administration of examination and approval of overseas investment" by State Development and Reform Commission (SDRC).

12 "Notice on the policy of giving credit support to the state encouraged key overseas investment projects" announced by the State Development and Reform Commission (SDRC) and the China Import and Export Bank in 2004.

always readily available, but the factors involved in each case seem clear.

**Table 1. Characteristics of Chinese Buyouts**

| Company | Target | Field | Form of Company | Date of Bid | Status |
|---|---|---|---|---|---|
| CNOOC | Unocal (US) | Resource (oil) | SOE | 2005 July | Terminated |
| CNPC | PetroKazakhstan (Canada) | Resource (oil) | SOE | 2005 August | Completed |
| | Yukos (Russia) | Resource (oil) | | 2004 December | Terminated |
| Haier | Maytag (US) | Manufacturing (home appliances) | Private | 2005 June | Terminated |
| Lenovo | IBM (US) | Manufacturing (computer hardware) | Private | 2004 December | Completed |
| MinMetals | Noranda (Canada) | Resource (copper/zinc) | SOE | 2004 September | Terminated |
| Nanjing | MG Rover (UK) | Manufacturing (automotive) | SOE | 2005 spring | Completed |

## 2.1. Resource Company Situations

### CNPC/Yukos

The involvement of China's National Petroleum Corporation (CNPC) in the Russian oil company Yukos, following its tax problems, illustrates well how Chinese concerns with security of resource supplies are fuelling foreign acquisitions of resource companies. In September 2004, facing financial problems due to back taxes, Yukos announced that it was suspending close to 60% of its total oil exports to China due to high shipping costs.[13] CNPC then entered into talks with Yukos about restarting rail deliveries of crude oil to China. In December 2004, Russia's Energy Minister V. Khristenko indicated that CNPC might take a 20% stake in Yukos's former oil production

13 People's Daily Online, September 22, 2004, CNPC seeks to resume Yukos oil shipments, http://english.people.com.cn/200409/22/eng20040922_157934.html

unit, Yuganskneftegas, as part of a new strategic partnership to be entered into by the Russian and Chinese governments in the energy sector.[14] Later, in February 2005, news agencies reported that a Chinese bank group led by China Export-Import Bank (EXIM Bank) had agreed to lend US$6 billion to Rosneft (the new owner of Yuganskneftegas). The loan was believed to be a pre-payment for future crude oil deliveries from Rosneft estimated at 50 million tones over a five year period.[15] Even though the Russian Foreign Ministry downplayed Chinese involvement in the Yuganskneftegas take-over the next day, the involvement of CNPC in Yukos activities has continued. To illustrate, Yukos and CNPC lobbied for a new pipeline from Angarsk in Siberia to a Chinese refinery site in Daqing, although it now appears that Russia is more likely to build a pipeline to their Nakhodka port on the Russian Pacific and not ship directly to China.

## MinMetals/Noranda

Activity of Chinese SOEs on the resource acquisition front has been a factor in news reports linking China's MinMetals Corporation (a Chinese SOE) to Noranda, Canada's largest mining company. In September 2004, China MinMetals Corporation announced it had entered into exclusive negotiations to purchase Noranda Inc. (the leading Canadian copper and zinc miner). Their offer was reported to comprise cash

14 BBC News, Chinese may get Yukos oil stake, December 20, 2004 http://news.bbc.co.uk/go/pr/fr/-/2/hi/business/4134769.stm

15 Carl Mortished, Yukos deal backed by $6bn loan from China, Times Online, February 2, 2005 http://business.timesonline.co.uk/article/0,,17549-1466798,00.html

(about US$5 billion) and the distribution to shareholders of some of Noranda holdings (i.e. Noranda's aluminium business).[16] In March 2005, the talks broke down when Noranda bought 41% share of its subsidiary, Falconbridge, to increase its market capitalization.

It was believed that MinMetals would no longer be able to afford to bid for a joint Noranda-Flaconbridge company. Instead, MinMetals and Falconbridge pledged to discuss a possible strategic alliance. The proposed buyout spurred much discussion in Canadian media of China's human rights and fair trade record as well as strategic aspects of foreign ownership of Canadian resources. David Kilgour, an independent MP, stated that because MinMetals was an SOE the takeover would be, in effect, a nationalization of a private Canadian company by a branch of the Chinese government.[17] In June 2005, the Canadian government introduced a bill that would allow the federal government to block any foreign takeover of a Canadian company on national security grounds giving the government the right to review buy-outs even if the value was less than C$250 million (the then current threshold). The industry minister said the changes were not a result of Chinese interest in Canadian natural resource companies.[18]

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16 http://news.moneycentral.msn.com September 24, 2004.
17 The Wall Street Journal, July 15, 2005, accessed through http://www.post-gazette.com
18 The Wall Street Journal, July 15, 2005, accessed through http://www.post-gazette.com

## CNOOC/Unocal

China's National Offshore Oil Corporation (CNOOC) unsolicited cash bid of US$18.5 billion for the American oil firm, Unocal, is a further illustration both of foreign resource acquisition activity and the political response in larger OECD countries to such bids. The CNOOC offer topped an earlier (cash and shares) Chevron bid for Unocal by US$2 billion, and in July Chevron raised its offer to US$17.1 billion and won the backing of Unocal's Board. At the onset of August, CNOOC withdrew its bid for Unocal due to strong political opposition in the US.

The CNOOC bid spurred concerns in the US over national security issues connected to foreign buyouts and also started discussion of government-supported activities of Chinese firms in the US. The House of Representatives voted in favour of a resolution stating that allowing CNOOC to buy Unocal would "threaten to impair the national security of the United States".[19] American commentary also suggested that CNOOC's bid was unfair because $13 billion out of the US$18.5 billion offer for Unocal came directly from low- or no-interest loans from the Chinese government (via CNOOC's state owned parent company and the Industrial and Commercial Bank of China). Chevron's vice-chairman, Peter Robertson, called for the bid to be referred to the WTO

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19 Steve Lohr, The Big Tug of War Over Unocal, The New York Times, July 6, 2005, http://www.nytimes.com

on the grounds that China was buying “a critical resource like energy with free money”.[20] CNOOC's response was to call for a review of the bid by the Committee of Foreign Investments in the US (CFIUS) arguing the controversy over the bid was purely political. CNOOC's representatives pointed out that 70% of Unocal's oil and gas reserves were located in Asia, and that only 1% of American consumption was secured by Unocal's American production.[21]

Several American commentators argued that as long as there was a worldwide market for oil, controlling oil and gas reserves was not vital for national security.[22] Other analysts emphasised that China's foreign reserves were held mostly in US treasury bills, suggesting that if the Chinese stopped buying these, interest rates in the US could rise which could then increase inflation and decrease consumer spending.[23] But it was also argued this could happen if the Chinese decided to retaliate against any politically driven blockage of Chinese takeovers. In addition to treating oil as a national security product, concerns were also expressed over Chinese access to industrial technology that could be used for military purposes. The issue was Unocal's underwater terrain-mapping technology which, it was argued, could also be used for military submarine navigation.

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20 Dow Jones Newswires, Chevron Executive Calls for WTO Review of CNOOC Unocal Bid, July 1, 2005, http://money.cnn.com
21 BBC News, China Calls for Calm on Oil Deal, June 28, 2005, http://newsvote.bbc.co.uk
22 Steve Lohr, Unocal Bid Opens Up New Issues of Security, The New York Times, July 13, 2005, http://www.nytimes.com
23 Buttonwood, China Syndrome, The Economist, http://economist.com and Steve Lohr, The Big Tug of War Over Unocal

## CNPC/PetroKazakhstan

A further resource related acquisition involves the China National Petroleum Corporation (CNPC) buyout of the Canadian-listed company PetroKazakhstan (PetroKaz) for US$4.2 billion. When the bid was announced on August 22, 2005, it had already been approved by the PetroKazakhstan Board of Directors and recommended to shareholders.[24] The Chinese bid was subsequently challenged by the Indian Oil and Natural Gas Corporation (ONGC) who were also interested in PetroKaz. ONGC claimed that CNPC was given unfair chance to revise their bid after ONGC bid had been submitted.[25]

The CNPC bid raised a series of legal issues since under Kazakh law the state may exercise its rights to block any sale of assets in the country.[26] Also, Lukoil (Russia's biggest oil company) filed a claim with an arbitration court in Stockholm arguing that a shareholders agreement gave them the right to buy PetroKazakhstan's interest in an existing petroleum venture (the Turgai project) if there were any changes in the control over PetroKaz.[27] In Canada, Lukoil filed a claim with the Alberta Court requesting the arrangement to be deferred until the Stockholm Arbitration Institute makes its decision. The Canadian court has approved the deal and CNPC bought PetroKaz on October 26th for US$55 per share or US$4.2 billion total. The CNPC offer was backed by the Kazakh

24 PetroKazakhstan Inc. Press Release, PetroKazakhstan Announces Sale to CNPC International Ltd. For Approximately US$4.18 Billion, August 22, 2005, http://www.petrokazakhstan.com/news
25 The Hindu. Business, India Alleges Foul Play in PetroKazakhstan Bid, October 18, 2005, http://www.thehindu.com
26 EIU ViewsWire, Kazakhstan Energy: Turning to the East, August 17, 2005, http://www.viewswire.com
27 Bloomberg. 2005. Lukoil Files in Stockholm to Stop Kazakh Venture Sale (Update 3), October 5. accessed through www.bloomberg.com/apps/news?pid=10000080&sid=aoVIm7DNQB9k&refer=asia#

government who would pay US$1.4 billion for a 33% stake in PetroKaz.[28]

## 2.2. Manufacturing Company Situations

### Lenovo/IBM

The acquisition of IBM's PC hardware division by the Chinese Lenovo Group (the leader in PC sales in China) illustrates the foreign acquisition activities of Chinese manufacturing based groups. In December 2004, Lenovo agreed to pay US$1.75 billion for the IBM PC unit (including US$0.5 billion of the unit's debt assumed by Lenovo), with the sale giving IBM US$650 million in cash, US$600 million in securities and an 18.9% stake in Lenovo. The arrangement makes Lenovo the world's third-largest PC maker behind Dell and Hewlett-Packard. Lenovo will be permitted to use the IBM brand for five years and IBM will support Lenovo with marketing and corporate sales.[29]

In January 2005, CFIUS discussed concerns that the deal could compromise national security and decided to review the merger. Concerns raised included the possibility of industrial espionage and the transfer of sensitive technology from IBM to Lenovo.[30] In March 2005, CFIUS ruled that the acquisition posed no threat to national security and the sale was completed in May.

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28 BBC News, CNPC Secures PetroKazakhstan Bid, October 26, 2005, http://news.bbc.co.uk
29 Michael Kanellos, IBM sells PC group to Lenovo, News.com http://news.com.com/IBM+sells+PC+group+to+Lenovo/2100-1042_3-5482284.html
30 Jeffrey Burt, IBM-Lenovo deal raises concerns, eWeek, January 31, 2005, http://www.eweek.com/print_article2/0,1217,a=143565,00.asp

## Haier/Maytag

The bid by the Chinese private group Haier for the US appliance producer Maytag reflects potential Chinese insourcing and access to OECD distribution networks. In June 2005, Haier Group (a major Chinese fridge and washing-machine manufacturer) announced it was interested in purchasing Maytag. The Chinese offer of US$1.28 billion started a bidding war with US Ripplewood and Whirpool who in turn offered to pay US$1.13 billion and US$1.3 billion respectively. Whirpool's offer of US$17 per share included cash and stock options and was higher than Ripplewood's $14 per share and Haier's $16 (cash only).[31] Haier's bid was made subject to a review of Maytag's confidential records, and on July 20, Haier announced it was withdrawing its bid. Some analysts suggest that Haier dropped out of the bidding due to difficulties in integrating Maytag's business with their own[32]. Maytag was eventually bought by Whirlpool in August of 2005.

## SAIC and Nanjing/MG Rover

Further Chinese FDI acquisition activities have involved two bids made by rival

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31 Andrew Ross Sorkin, Timothy L. O'Brien, Whirlpool Makes Unsolicited Bid for Maytag, Creating 3-Way Race, The New York Times, July 18, 2005, http://www.nytimes.com

32 Eric Bosshard, FTN Midwest Securities, cited in China's Haier out of Hoover Race, BBC News, July 20, 2005, http://news.bbc.co.uk

Chinese SOEs for control of the UK car group MG Rover. In spring 2005, offers to buy MG Rover came from two Chinese companies: Shanghai Automotive Industry Corporation (SAIC) and Nanjing Automobile Corporation. Rover had been placed in receivership following bankruptcy, and negotiations involved both the receiver and the UK government since local employment issues were raised. Earlier in the year, after a first failed attempt to take over Rover's assets, SAIC bought the rights to sell two Rover models in China. It was believed that each of the two bids would result in the relocation of some of Rover's activity to China, but each also proposed to keep part of the production in the UK, specifically MG sports cars and high value saloons. SAIC planned to relocate engine design and production to China while Nanjing would move Rover's small- and medium-sized cars production lines. Rover was later sold to Nanjing Automotive Corporation for an undisclosed sum.

## 2.3. Other Recent Chinese Foreign Mergers and Acquisitions

Additional Chinese merger and acquisition (M&A) activities further illustrate the trend of growing Chinese involvement in global FDI. These vary in size, form, and extent of Chinese participation. These are typically smaller, but are diverse by activity and country.

By way of illustration, in 2004, Chinese TCL International Holding Ltd. (TCL) bought a majority stake in French Thomson television and DVD business, and Schneider Electronics (a bankrupt German television manufacturer, €8.2 million). TCL also initiated a mobile telephone acquisition from Alcatel but this failed due to rising losses and tough market conditions. In 2004, China National Bluestar launched an unsuccessful bid to buy South Korean Ssangyong Motors (the value of the bid estimated at US$600 million). In February 2004, Shanghai Baosteel Group announced a US$1.4 billion joint-venture steel mill in Brazil with Companhia Vale do Rio Doce. In October 2004, Yanzhou Coal Mining Co. agreed to buy Australian Southland Coal Mine for US$23.4 million. Later, in December 2004, Huaneng Group (power producer) agreed to pay US$226.9 million for half of OzGen (the Australian subsidiary of American InterGen).

In March 2005, Beijing PetroChina Co. Ltd. and Enbridge Inc. announced a planned partnership to build a new pipeline from Alberta's oil-sands to the Canadian West Coast where the oil would be shipped to Chinese ports (valued at US$2-2.5 billion). In May, Sinopec (China Petroleum & Chemical Corp.) paid CDN$150 million for a part of another oil-sand project in Alberta.[33] In April 2005, Harbin Measuring & Cutting Tool Group bought a German measuring equipment manufacturer for €9.5 million. In April 2005, CNOOC purchased a 17% stake in MEG Energy Corp. (CDN$150 million), a Calgary, Alberta, energy firm with an oil-sands project. In June 2005, Huffy Corp. (a US bicycle maker) covered its debts issuing new shares and offering them to its creditor – Sinosure Group, who now possesses a 30% stake and has the option of acquiring a further 21% over the next five years.

This list of Chinese FDI activities is by no means complete; the examples merely

33 The Wall Street Journal, July 15, 2005, accessed through http://www.post-gazette.com

show that China is deepening its involvement in mergers and acquisitions abroad in many fields and the value of transactions (either proposed or actual) is increasing.

## 3. Systemic Considerations Prompted by China's Buyouts

Proposed or actual buyouts of OECD companies by Chinese SOEs and private groups have inevitably prompted discussion outside of China of a suitable policy response. It is acknowledged that competitive and open capital markets imply no special issues should arise if purchasers of companies in the OECD are located in China as against elsewhere. Alternatively, concerns over national security considerations, subsidization, lack of transparency, combined with the absence of clear international rules over cross border acquisitions has caused unease in the OECD.

Concerns focus on alleged fairness of transactions (whether subsidization is involved), the transparency of corporate organization and form on the buying side, and alleged national security considerations. The first two concerns appear to be new to a discussion of cross border acquisitions, and also seem far reaching in their implications. The preoccupation with national security has arisen previously with acquisitions originating from other countries outside of China, for example Japanese investments in the US. These issues have also not been central to recent efforts to move towards multilaterally negotiated international rules in the investment and competition policy (the Multilateral Agreement on Investment (MAI) and WTO competition policy negotiations), and neither are they covered by existing bilateral investment treaties.

## 3.1. Subsidization

A central issue raised by recent Chinese buyouts, regardless of their outcome, is that of subsidization of purchase; whether and how subsidies are involved, and whether their presence justifies a policy response. This issue was recently raised by the Chief Executive Officer of Chevron in connection with the CNOOC bid for Unocal, who in turn suggested that there may be reasons to consider a WTO action in connection with subsidization.[34] The issue of subsidizing low- or no-interest loans made by China's Central Bank to SOEs for foreign acquisitions is in question. WTO disciplines do not apply as there are no issues raised by buyouts regarding barriers to goods trade[35]; the issue instead concerns subsidization of cross border acquisitions, a matter not addressed by WTO arrangements.

Thus, if a central bank (in this case the Chinese Central Bank) makes low interest loans to state owned enterprises for the acquisition of companies abroad there are no internationally agreed disciplines restraining them. Such instances have not seemingly arisen in the past since it is both the size of Chinese reserves and the closeness of the Chinese state (through SOEs) to the Central Bank that has resulted in these loans. This policy direction may thus appear sensible and logical to Chinese eyes, but to those versed in international trade law, trade remedy, and subsidization, it raises the issue of whether international disciplines should now be negotiated restraining their use in this way. The

34 CNN Money, Chevron Executive Calls for WTO Review of CNOOC Unocal Bid, July 1, 2005, http://money.cnn.com

35 This puts on one side, for now, limited elements of the WTO, such as Trade Related Investment Measures (TRIMs) which do discipline the ways in which approvals of cross border acquisitions can be related to trade performance.

allegation is unfairness of acquisition activity, just as subsidization of production or exports targets unfairness of trade which the WTO deals through disciplines in the GATT 1994.

The obvious analogues are a ban on the use of export subsidies in Article 16 of GATT 1994 (but with conditional use allowed in agriculture), and the allowed use of countervailing duties only where both subsidization and injury are established by domestic tribunal process (with constraints on transparency of process) under Article 6 of GATT 1994.

The WTO GATT ban on export subsidies on the goods side is usually rationalized by the global efficiency considerations involved in removing distortions of trade, including both those that restrain trade (tariffs) and those that promote trade (export subsidies). An additional argument usually made is that the GATT negotiating process in 1947 was envisaged as converting all existing interventions in trade into tariff form, thereby allowing tariffs as the sole negotiable instrument for bindings and tariff reductions in subsequent negotiations. In the case of capital flows and foreign acquisitions, similar global efficiency arguments follow given the equivalence between goods and factor flows, but as no tariff equivalent (a single negotiable barrier instrument) applies the second of these arguments appears less relevant.

The analogous arguments to these used to justify countervailing duties as measures to offset subsidization of goods flows seem more difficult to make in the foreign acquisition case. Generalized arguments in favour of trade remedy laws often centre on concerns over predatory pricing by foreign suppliers in domestic markets, acknowledgement of the seeming unfairness of preferential foreign suppliers treatment, and arguments that without a trade remedy safety net in place domestic political coalitions of home producers would be even less willing to accept the outcomes of internationally agreed negotiations which lower tariff barriers.

In discussing their application to subsidization of cross border acquisition, we note that a preponderance of the arguments made in favour of trade remedy laws are discounted by academic economists. Many argue the illogicality on national (as distinct from narrower producer) interest grounds of limiting the opportunities available to buy goods from abroad more cheaply if they are being dumped or subsidized into local markets. They often dispute the presence of predatory pricing since new entrants would return to domestic markets and undercut any foreign competitors if they attempted to raise prices above competitive levels after engaging in pricing behaviour to drive out domestic competition. Also, many dispute arguments applying notions of fairness to pricing behaviour, arguing that fairness considerations more appropriately apply to the evaluation of market outcomes on distributional grounds, such as who gains and who loses in income or economic welfare, not to the setting of prices per se.

Applied to cross border investment and acquisition issues, it is difficult to assert arguments of predation since asset acquisitions are one time transactions. Indeed, concerning national (and shareholder) interests, the argument would seem to be that foreign subsidization of acquisitions is welcomed since domestic sellers of assets will typically receive a higher price. Also, generalized arguments of fairness would receive a similar treatment to those made on the goods side. And arguments about safety nets and the political acceptability of negotiated liberalization affecting other instruments would seem not to apply since liberalization of other instruments does not arise.

In short, generalized arguments about fairness and subsidization of foreign acquisitions of domestic firms will likely continue to be made as Chinese buyouts occur; however, but these seem to apply largely to the management of acquired firms whose managerial positions may suffer. While the subsidy issue could be a lead issue for a new international negotiation covering global barriers to factors flows, in dealing with issues of foreign acquisitions, new arguments rather than analogies to dumping and subsidization of goods flows would seemingly need to surface.

## 3.2. Transparency

A second issue at stake is the transparency of structure and organizational form of the entities involved.[36] The concern in the OECD is that many Chinese SOEs accrue losses and do not comply with codes of corporate governance and transparency to which OECD companies largely adhere. Acquiring firms may experience financial difficulties causing later adjustment problems, and be motivated by politically appointed management seeking non profit motives.

Understanding in Western literature of how Chinese SOEs operate is not that well developed and there are many diverse forms such enterprises take, with national,

36 And not the transparency of how asset transactions occur in these cases (such as any insider trading in stock purchase.

provincial and municipal governments involved, and also joint ventures. Recently, Whalley and Zhang (2005) have suggested a model of Chinese SOEs as entities with politically appointed management whose losses are typically recapitalized by the banking system and who often operate so as to maximize size rather than profit. This is largely attributed to the personal networking benefits that accrue to management from size. As such, a concern for OECD policy makers is the involvement of large viable OECD companies with entities whose financial security is intertwined with domestic political structure in China. The fear underscores possible bankruptcies, adjustment costs, and disruption from shifting political tides in China.

The precise form that ownership and corporate control over collectively-owned and controlled enterprises in China takes is both complicated and puzzling. The complexity of organizational forms that Chinese SOEs assume can make it difficult to distinguish between a privately and publicly-owned company. Lenovo (the Chinese computer manufacturer) who received much media attention with their successful purchase of IBM's PC business serves as an example. Lenovo was originally established in 1984 and then incorporated in Hong Kong four years later. As of 1994, it has been listed on the Hong Kong Stock Exchange and since 1995 it has also been trading in the US through the American Depositary Receipt Level I Programme. These listing arrangements can be taken to suggest that Lenovo is a privately-owned company. However, the ownership structure of Lenovo's stock implies that a 42.5% controlling stake is held by Legend Holdings who in turn are controlled by the Chinese Academy of Natural Sciences (who own 65% of stock) which, in turn, assume further agency control through its financing and appointment structure.[37]

Recent literature on Chinese SOEs[38] estimates that, as of 2001, of the 1,134 listed companies in China, 61.4% are under local government control, 12.6% are under central government control, 3.4% are collectively controlled and 12.8% are privately owned (5.2% are unaccounted for).[39] Privately-owned companies are still a minority among listed companies, but their share is steadily growing. In 1999, according to Broadman (2001), Chinese SOEs accounted for 63% of gross value added of all enterprises, and 70% of employment in the industrial sector.

Hence, allowing large OECD entities to come under control of Chinese SOEs which themselves are potentially financially insecure and opaque in management structure and accountability raises OECD concerns. The policy issue at stake is whether firms engaged in international acquisitions should also subjected to internationally agreed standards of governance and accountability, much like listing requirements on the New York and other stock exchanges. Many of the Chinese SOEs involved in these transactions have no listing requirements to meet.

An additional question is whether existing codes of conduct relating to corporate governance provide sufficient resolution. The central code is represented by the OECD Principles of Corporate Governance originally developed in 1998 and revised in 2004. The principles aim to "assist OECD and non-OECD governments in their efforts to

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37 Investor Fact Sheet available through www.pc.ibm.com/ww/lenovo/investor_factsheet.html
38 Bigsten, Liu and Zheng (2002), Cull and Xu (2000 and 2003).
39 Fan and Wang (2004) and Tan, Wang and Zhang (2005) cited in Liu (2005).

evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance".[40] These principles characterize transparency as the timely and accurate disclosure of all information relating to a corporation, including financial and operating results of companies (balance sheets, profit and loss statements, cash flow statements), objectives, major share ownership and voting rights, the selection process and remuneration policy of the board and key executives. It also includes any foreseeable risk factors, the content of any internal corporate governance code and human resources policies, and information on related party[41] transactions that may impact the performance of the company are all to be disclosed. Observance of these guidelines is however at the discretion of national regulators.

Most stock exchanges in the world adopt similar requirements for publicly listed companies. Most are rigid and detailed, especially in relation to accounting statements and audits. For instance, the London Stock Exchange requires at least three-year record of independent revenue earning business and a normal, commercial based relationship with any 30% or more shareholder such that the listed company is capable of operating and making decisions independently of the shareholder at all times.[42] Hong Kong Stock Exchange requirements are at least HK$50 million profit in the last three years and

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40 OECD (2004), OECD Principles of Corporate Governance available through www.oecd.org.

41 A related party is defined includes entities that control or are under common control with the company, significant shareholders, members of their families and key management personnel.

42 London Stock Exchange Listing Rules accessed through www.globalfinanceonline.com/london-stock-exchange-listing-rules.html.

require that a company's accounts be prepared in accordance with Hong Kong or International Financial Reporting Standards or generally accepted accounting principles in the US.[43] The New York Stock Exchange (NYSE) listing standards require aggregate three years pretax earnings of US$10 million as per domestic listing standards or US$100 million as per worldwide standards.[44] NYSE rules also stress the importance of independent directors and an audit committee. The issue is whether these requirements and any additional standards should be set for foreign acquisitions by non-listed entities in light of concerns over the Chinese buyout situation.

## 3.3. National Security

Most countries exhibit laws and regulations that restrict foreign investments in industries considered sensitive to national security or sovereignty. Some regulations provide state authorities the right to review proposed foreign investment. Industries in question usually include: telecommunications, air transport, public utilities, research, production and trade in arms, ammunition, and explosives. Some countries also restrict and review foreign investments due to their potential impact on public safety and health, public order, national economy or fledgling national industries. Chinese buyouts seemingly raise no particular security concerns.

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43 Hong Kong Stock Exchange Basic Listing Requirements for Equities accessible through www.hkex.com.hk/issuer/listhk/equities.htm.

44 New York Stock Exchange Listing Standards accessible through www.nyse.com/Frameset.html?displayPage=/listed/1022540125610.html.

In the 1980s, similar concerns were raised over US acquisitions by Japanese companies. As a result, in 1988 the American Congress approved the Exon-Florio Provision of the Defence Production Act which gave the President the authority to block any foreign acquisitions, mergers, or takeovers of American companies deemed threatening to US national security. The legislation did not define national security leaving this term to be broadly interpreted and administered by the Committee on Foreign Investment in the United States (CFIUS).[45]

The Exon-Florio provision, amended in 1993 (called the Byrd Amendment), required that CFIUS investigate proposed foreign acquisitions if the acquiring company was controlled by or acted on behalf of a foreign government.[46] The considerations which guide CFIUS include among others: how the potential foreign acquisition might affect the technological leadership of the US in areas related to national security, domestic production needed for national defence projects, capacity and capability of domestic industries related to national security, and weapons sales to countries supporting terrorism.

CFIUS proceedings are confidential and official information on the reviews is whitheld. According to Jackson (2005), CFIUS has investigated 25 cases out of 1,500 notifications. 13 transactions were withdrawn upon notice of a full CFIUS review, twelve were sent to the President for final decision and only one was prohibited. The prohibited

45 Jackson J.K. (2005), The Exon-Florio National Security Test for Foreign Investments, Congressional Research Service Report for Congress, Order Code RS22197, July 15.
46 Department of Treasury, Committee on Foreign Investments in the United States, Exon-Florio Provision, http://www.treas.gov/offices/international-affairs/exon-florio/

takeover involved Mamco Manufacturing Company (aerospace parts manufacturer) and the China National Aero-Technology Import and Export Corporation (CATIC) who acted as a purchasing agent for the Chinese Ministry of Defence. CATIC was ordered to sell Mamco by President Reagan in 1990.

National security concerns where a proposed foreign acquisition involves key natural resources or technology with a military usage potential have been largely centred on the US (rather than the EU) and have also largely attracted media attention in connection with the recent wave of Chinese buyouts. Among the recent proposed Chinese buyouts the key cases which generated national security concerns are Lenovo's IBM PC takeover and CNOOC's unsuccessful bid for Unocal. The MinMetals potential bid for Noranda in Canada generated a new requirement for government approval of foreign acquisitions on national security grounds. The Lenovo case generated concerns over the possible transfer of sensitive technology and possible corporate espionage issues and was evaluated both by members of the CFIUS and the Departments of Justice and Homeland Security.[47] The transaction was subsequently reviewed positively by CFIUS and approved as non-threatening to national security. A similar case was raised in 2003, when the CFIUS refused to approve a merger of Global Crossing's telecommunications business and the Hong Kong-based Hutchison-Whampoa on security grounds.[48]

Concerns again arose over national security with CNOOC in connection with the

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47 See Michael Singer, Security Objections to IBM-Lenovo Deal?, eSecurity, January 24, 2005, http://www.esecurityplanet.com/trends/article.php/3463471 accessed August 30, 2005

48 The Hutchinson-Whampoa bid was subsequently withdrawn and Global Crossing was then taken over by the Singapore Technologies Telemedia (STT). STT's offer did not raise national security concerns as Singapore was regarded as a US ally.

threat to the national supply of oil and underwater terrain-mapping technology which could be used for military purposes. Facing the investigation and strong political opposition CNOOC withdrew its bid for Unocal.

Similarly, concerns over national security were raised in Canada when MinMetals negotiated Noranda's takeover but had more to do with the efficiency of the Canadian economy and possible political pressure from the Chinese government versus an immediate threat to the national resource supply.[49]

## 3.4. Multilateral Negotiations and Foreign Acquisitions

It is relevant to any discussion of possible new initiatives in the global trade negotiations (prompted by the Chinese buyout situation) to assess prior negotiating efforts on investment and related foreign acquisitions to see if the central issues raised by the Chinese situation have received attention.

The first of these is the Multilateral Agreement on Investment (MAI).[50] The MAI negotiations were launched at the Annual Meeting of the OECD Council at the Ministerial level in May 1995 and expected to lead to a proposed international treaty covering all aspects of investment. The key objectives were to establish a multilateral framework for international investment with liberalization of investment regimes,

49 Anne Golden, Do Our Foreign Investment Laws Still Have Legs?, Globe and Mail, December 1, 2004, accessed through http://www.conferenceboard.ca/press/2005/OpEds/041201_FDI_Op-ed.asp, accessed August 30, 2005.

50 Unless otherwise specified, this section is based on MAI documentation available through OECD website http://www1.oecd.org/daf/mai

investment protection, effective dispute settlement procedures, and to enhance international co-operation with respect to investment and the development of world-wide rules on foreign direct investment.

According to the draft text, government-owned or controlled entities were considered investors along with other natural or legal persons (Part II, paragraph 1), and no explicit objectives were stated for restraints of government actions towards cross border acquisitions. The agreement was to be comprehensive, focused on all forms of investment including enterprises and individuals, to apply to all sectors and to all levels of government, and to centre on the key WTO principles of national treatment and non-discrimination/most favoured nation (MFN). It was also intended to avoid conflict with other multilateral agreements such as General Agreement on Trade in Services (GATS), Agreement on Trade Related Investment Measures (TRIMs), and Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) under WTO.

Issues of subsidization, transparency, and national security discussed here were not raised in the draft text of the MAI. The 1998 Draft Agreement, however, contained many provisions regarding the treatment of investors and investments, such as MFN, national treatment, temporary entry and stay rules for investors and key personnel, employment and performance requirements, rules covering monopolies, privatization, and state enterprises, recognition and authorization procedures, clauses on intellectual property, corporate practices, labour and environment, investment protection (including expropriation and compensation, transfers, subrogation and others), dispute settlement mechanism on state-state level and investor-state level, exceptions and safeguards, financial services, and taxation.

Transparency in the MAI was characterized as transparency of the rule regime and did not cover transparency of actors involved in conducting investment. The exceptions and safeguards section contained only general provisions on the protection of national interests relating to times of war, production of arms and disclosure of sensitive information. Subsidization of state-owned companies involved in overseas investment was not explicitly discussed. Negotiations ended in December 1998 after conflicts occurred within the OECD over national sovereignty and protection of national cultural industries and opposition from civil society groups, Non-Governmental Organizations (NGOs) and developing countries. In 2001, discussions on a MAI resumed in the WTO's Working Group on the Relationship between Trade and Investment. A WTO agreement was to only cover FDI excluding portfolio investment and other short term capital flows[51], and as of yet, no formal negotiations on a MAI have been launched in the WTO.[52]

Additional negotiations which are potentially related to issues covering Chinese cross border acquisitions involves competition policy. Elements of competition policy discussions can be found in various parts of the WTO including the GATT 1994, TRIPs and the GATS.

In 1980, United Nations Conference on Trade and Development (UNCTAD)

51 Singh (2001)

52 See for example: Hoekman and Saggi (1999), Singh (2001), Braunstein and Epstein (1999), Walter (2001), Kurtz (2002), Hoekman and Saggi (2000).

adopted a Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Procedures; however, a full scale discussion of competition policy and its relations to trade was not raised in the WTO until the mid-1990s. This occurred in 1996 at the Singapore Ministerial where a Working Group on Trade and Competition Policy (WGTCP) was established to “study issues raised by Members relating to the interaction between trade and competition policy, including anticompetitive practices in order to identify any areas that may merit further consideration in the WTO framework”.[53] In contrast to the MAI, there have been no official negotiations on a Multilateral Agreement on Competition Policy (MAC).[54]

There were five pillars on which the case for MAC was first built in the WTO.[55] The need to harmonize different national competition laws (especially in mergers review procedures), promoting market access for imports, preventing abuse of anti-dumping procedures, preventing abuse of intellectual property rights, and cross-border cartels.[56] Subsequent discussions within the Working Group on Trade and Competition Policy revealed a gap not only between the OECD and the developing countries on most of these issues but also among the developed countries. Faced with a lack of consensus, the WTO Working Group limited further discussion to: 'hard core' cartels, principles of non-

53 WT/MIN(96)/DEC
54 Bilal and Olarreaga (1998), Tarullo (2000), Woolcock (2003), Hoekman and Mavroidis (2003), Bhattacharjea (2004), Evenett (2005)
55 Bhattacharjea (2004).
56 The discussion involved the difficulty in the extraterritorial application of national competition policy laws in regards to damages caused by cross-border cartels in the domestic markets. A multilateral agreement on competition policy that would include anti-cartel laws was hoped to help in solving this problem.

discrimination, transparency[57] and procedural fairness, voluntary co-operation between countries, and capacity building in developing countries.[58] Again the issues of subsidization, transparency and national security raised by the Chinese buyouts case did not arise.

## 3.5. Bilateral Investment Treaties

Independent of the multilateral negotiations on MAI and MAC, countries are committed to further disciplines through bilateral investment treaties and the issue here is how these relate to Chinese buyouts. The first Bilateral Investment Treaty (BIT) was signed in 1959 between Germany and Pakistan, and since that time, the number of concluded BITs has increased steadily. There are currently 2,392 BITs in existence (about 30% of these have not been ratified and have not entered into force).[59]

BITs usually typically cover scope and definition of investment, reciprocal promotion and protection of investments, rules governing the establishment and admission of investments, national and MFN treatment, expropriation and compensation, transfer of funds and dispute settlement mechanism on both state-state and investor-state

57 WTO defines the concept of transparency as having two component parts: publication of the relevant regulations by governments and notification to the WTO.

58 WTO (2001), Declaration, Ministerial Conference, Doha, WT/MIN(01)/DEC/1, http://www.wto.org

59 UNCTAD (2005), Recent developments in international investment agreements Research Note August 30, 2005, UNCTAD/WEB/ITE/IIT/2005/1. UNCTAD provides a comprehensive database of more than 1,800 BITs' texts. See http://www.unctadxi.org/templates/DocSearch____779.aspx

level[60]. They do not cover the key issues discussed here: subsidization, transparency of actors involved in investment or national security issues.

UNCTAD sources indicate that China has signed approx. to 120 BITs since the first BIT concluded with Sweden in March 1982. With 69 BITs concluded between 1990 and 1999, China is currently ranked the second most common signatory country in the world with Germany being the first.[61] Most of China's BITs are with other developing economies and about one third of these have not yet entered into force.

60 For a discussion of BITs see for example Peterson (2004), Neumayer (2004), Guzman (2004).

61 See www.unctad.org/iia

## 4. Concluding Remarks

In light of recent Chinese proposed purchases of OECD companies, we argue whether there should be globally negotiated rules covering cross border acquisitions, perhaps similar to those governing international goods and services trade under WTO and GATT.

The recent growth of Chinese outward FDI is related not only to growing Chinese foreign reserves due to trade surpluses and inward FDI, but also to recent changes in official Chinese policy, now encouraging domestic companies to invest abroad. The approval process for foreign investment has been simplified and companies (especially state-owned enterprises) investing abroad in projects related to securing domestic energy demand, acquiring advanced technology and new markets, are given credit support at preferential interest rates.

The recent, widely publicized, cases of Chinese buyout attempts of companies in other countries suggest that the main motives for outward FDI are access to resources (CNOOC, CNPC and Minmetals cases), new technology (Lenovo case) and distribution networks in the target country (Lenovo, Haier and Nanjing cases). The Chinese bids we document comprised mostly of cash (between US$1.3 billion and 17.5 billion with the higher end offers being in the oil industry) and most are also based on low interest loans from the Chinese state controlled banks.

Subsidization of attempted foreign acquisitions may be argued as an unfair business practice, but simple analogies between goods and factors flows seemingly do not fully support the need for a new international negotiation covering global factor flows. The issue of transparency of entities involved, especially the opaqueness and financial insecurity of Chinese SOEs, raises concerns whether they are able to manage the purchased businesses in such a way that it sustains the security and stability of local workforce, avoids the disruption of local markets and does not fuel suspicion of corruption. Whether they should be subjected to internationally agreed corporate disclosure standards, comply with standard accountability requirements, and be the subject of restraint where potential adjustment issues are posed by financial weakness are issues. China's emergence as a global investor may serve not only as a catalyst for a wider discussion covering not only cross border acquisitions, but also more broadly for cross border flows of factors.

The paper also highlights the discussion of Chinese buyouts and national security concerns involving the transfer of sensitive technologies, efficiency of the economy in the target country and finally the security of resource supply. These issues are most often subject to domestic regulations including an approval process and are heavily dependent on political reasoning.

It can be argued that the Chinese FDI should not be treated differently that those of any other country and that Chinese companies cannot be subject to any special rules otherwise not applicable to other entities; however, the closeness of the Chinese government and Chinese companies as well as financial structure of the Chinese economy, prompt questions on fairness and transparency of transactions. Given China's surging economic growth, trade surpluses, accumulation of foreign reserves, and changes in the official policy stance one can expect growing involvement of Chinese companies abroad. The Chinese buyout attempts can thus serve as a catalyst to a broader, systemic discussion on global factor flows rules and policy response to governmental interventions in cross border acquisitions.

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