Chinese Outbound Direct Investment and the European Union

§ 1.01 THE EUROPEAN UNION AND CHINA: A MATURING PARTNERSHIP

Before discussing the policies for Chinese outbound direct investment (ODI) and their implications for Europe it is necessary to emphasize that the European Union (EU) and China are currently two of the biggest traders in the world. China is now the EU's second-largest trading partner (behind the United States), and the EU is China's largest trading partner. The two blocks are working together to fully exploit the opportunities created by their strengthened relationship, and to further open their respective markets. The EU is committed to open trade relations with China. However, the EU wants to ensure that China trades fairly, respects intellectual property rights, and meets its World Trade Organization (WTO) obligations.

Chapter One discusses the Chinese policies concerning the structure of Chinese outbound direct investments in the EU. New instruments have been announced which will be implemented soon to build a more solid relationship. In particular, during the sixteenth EU–China Summit held in November 2013 both sides announced the launch of negotiations for a comprehensive EU–China Investment Agreement (see Chapter Two, § 2.02[A] and § 2.03[B][1]). The Agreement will provide for progressive liberalization of investment and the elimination of restrictions for investors for each other's markets. It will provide a simpler and more secure legal framework to investors from both sides by securing predictable long-term access first to the EU and then to Chinese markets. The aim of the Agreement also is to provide for strong protection for investors and their investments.

China has undergone dramatic change since it opened itself to the outside world in 1978. It has become a major trading nation thanks to a rapid internal transformation

that shifted it from a centrally planned economy to a market-driven economy engaged in global commerce. Notably, China’s accession to the World Trade Organization has accelerated this process.

China is now a power that is increasingly engaged in world affairs, seeking political status commensurate with its economic weight. Chinese foreign policy is now also engaged in issues of global concern (e.g., the environment, the fight against terrorism, and world trade liberalization).

The EU’s main objective for China is to support it in the position it deserves according to its size and geo-strategic importance in the international community, both political and economic. (This subject is discussed in detail in Chapter Three.) Reforms should move China toward becoming an open society that is based upon the rule of law and respect for human rights.

In order to establish a more significant and fruitful relationship with this emerging economic power, the EU has created and implemented a specific “China policy,” which includes the following tenets:

- To engage China further, both bilaterally and on the world stage, through an upgraded political dialogue.
- To support China’s transition to an open society based upon the rule of law and respect for human rights.
- To encourage the integration of China in the world economy through bringing it fully into the world trading system, and supporting the process of economic and social reform that is continuing in China.
- To raise the EU’s profile in China.\(^2\)

It is in the interest of both blocks to intensify trade and business relations. As already highlighted in the text, the EU, being one of China’s two largest export markets, needs to find more points of contact to continue to develop smooth synergies. The two economies are undeniably increasingly interdependent, and obstacles to their collaboration need to be removed. The EU and China cooperate closely on a wide range of economic and financial issues. It is necessary to continue this cooperation, and, in fact, a framework exists to strengthen this mutual development.

The remainder of the chapter describes briefly how the two blocks are working together, and describes in detail Chinese outbound direct investment.

[A] Strengthening business relationships with the EU

The vital cooperation between the EU and China requires close and regular contact between the relevant EU institutions such as the Directorate-General for Trade

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\(^2\) The EU has established delegations all around the globe to strengthen relationships with third countries. The Delegation of the European Union to China is aimed at implementing these policies to enhance relationships between the two blocks. See http://eeas.europa.eu/delegations/china/eu_china/political_relations/index_en.htm.
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(DG TRADE) of the European Commission, or the other Commission’s Directorates General for Economic and Financial Affairs (DG ECFIN), and for the Internal Market and Services (DG MARKT), and their Chinese counterparts.

This short paragraph is not intended to present in detail the complicated structure of the different institutions. It is only intended to introduce the reader to this sophisticated framework.

[1] Trade picture: outline

The EU–China High Level Economic and Trade Dialogue (HED) was launched in Beijing in April 2008. The HED strengthens the dialogue between the European Commission and the State Council of China, at the vice-premier level. It deals with issues of strategic importance to EU–China trade and economic relations and provides impetus to progress, substantially in sectoral dialogues.

Investment flows show vast untapped potential, especially when taking into account the size of the respective economies. China accounts for just 2 to 3 percent of overall European investments abroad, whereas Chinese investments in Europe are rising, but from an even lower base.  

[2] Other areas of cooperation: an introduction

Cooperation between the EU and China exists in other areas. Some of the most important sectors in which both the EU and China are investing and cooperating are (1) science and innovation, (2) the environment, and (3) energy. These are interconnected areas that will play an essential role in shaping the future of EU–China relations. Objectives for cooperation in these areas are set in the respective agendas and political program documents, that is, Europe 2020 Strategy (addressed in Chapter Two, § 2.03[A][1]) and the Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform (see Chapter Three, § 3.01[A] and § 3.02).

China and the European Union have a longstanding relationship in science and technology (S&T). Engaging together in the fields of research, innovation, and science offers many benefits and opportunities. China places strong emphasis on S&T and innovation (also mentioned in the latest Five-Year Plan, 2011–2015), backed up by significant financial resources. It has seen an increase in the number of scientific papers and the amount of research, and offers increasingly favorable conditions for foreign direct investment (FDI).

Environmental issues are becoming one of the predominant dialogues in the EU–China relationship, thanks to the new importance Chinese authorities are giving to environmental aspects in China’s future development model (also emphasized in the decision concerning the new reforms, discussed in Chapter Three, § 3.02[L]).

3. EU trade policy sets the direction for trade and investment in and out of the EU. The Directorate-General for Trade of the European Commission helps to develop and implement EU trade and investment policy. See http://ec.europa.eu/trade/.

Finally, the area of energy cooperation has been high on the political agendas of both the EU and China for some years now. China, in particular, is facing phenomenal challenges to cope with a booming energy demand and coal, which is one of the most polluting energy sources available, and plays a major role in China’s future strategy (for energy). Beijing is also conscious of the importance of developing a more environment-friendly energy mix and regards the European Union as a privileged partner; one that is sharing the same concerns and facing similar problems.

The previous discussion is designed to make you aware of the fact that China and the EU are working on a series of projects,\(^5\) and that they are on the right path to develop further policies to help each other with growing their respective economies in a sustainable way, and attracting new investors.

Next we will explain what we are talking about when referring to Chinese outbound direct investment in order to understand its impact on the European market.

§ 1.02 CHINESE OUTBOUND DIRECT INVESTMENTS

Chinese outbound direct investments need to be put in context before analyzing the legal environment and the actions taken by both the European Union to welcome such investments, and by the Chinese government to sustain the going out policy. It has become evident from the recent political moves that the new Chinese leadership is clearly willing to reinforce the EU–China strategic business relationship, and that it recognizes the importance of the EU in the global economy. On the other hand, it is also evident that the EU is serious about deepening its political and economic ties with China. However, it seems that the existing legal instruments are not sufficient to strengthen and enhance cooperation between the two blocks. This is why talks have been initiated to facilitate the realization of new investments through the proposed bilateral agreement, which will better organize the existing framework.

Since market reforms began in the late 1970s, and particularly since the 1990s with the expansion of the Chinese economy, there has been a large and fairly constant stream of FDI from other countries into China, which contributed to its extraordinary economic growth, confirmed by its mounting influence on international matters. Chinese ODI, on the other hand, remained relatively small for much of this period, because big players, that is, State-owned Enterprises (SOEs), were not ready or were reluctant to go abroad (now it has become a “must,” and this policy is supported warmly by the central government). Yet, in recent years there has been a notable increase, both in terms of quality and value, and ODI has become a prominent component of Chinese government strategy toward a better integration of China at the international level. (Although it also seems now that China is awakening and about to colonize the rest of the world, in economical terms.) This new approach was stressed in China’s 12th Five-Year Plan: “China must adapt to a more balanced growth model, in which we place

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equal stress on imports, exports, attracting foreign capital and promoting \textit{outbound investments}, instead of the current dependence on exports and foreign capital."\textsuperscript{6} The new 13th Five-Year Plan (2016–2020) seems to be on the same track.

[A] \textbf{China’s quest for outside business opportunities}

One of the primary reasons why China is expanding its presence abroad, especially in the EU, is because it has enormous resources to be allocated, and because China needs to secure more business ties in the West to further fuel its economy.

However, there is another important reason in terms of what motivates Chinese enterprises to look outside of their home market, and that is increased domestic competition. This competition led them to seek new markets for sales and to become more competitive by acquiring new technologies, brands, or expertise.

Internationalization is yet another factor for Chinese enterprise expanding outside its boundaries. Internationalization may help them to differentiate themselves from other domestic market players and therefore avoid forced industry consolidations driven by the Chinese government. There are also large variances between different sectors, and this results in substantially different strategies. Chinese enterprises in industries such as the automotive or fashion industries do not necessarily feel the pressure to invest overseas because they are selling to a large and growing market at home. They may also feel that they are unable to compete with European companies in these sectors in Europe, for example fashion brands in Italy or car manufacturing in Bulgaria.

According to a report from the European Chamber of Commerce in China:

\begin{quote}
China has a number of leading IT & Telecommunications enterprises that are capable of competing in the European market on the strength of their products. However, this is not the case for Chinese auto-components enterprises where they need to start small and gradually build up the capacity to compete in overseas markets.\textsuperscript{7}
\end{quote}

Specific motivations expressed directly by Chinese enterprises are as follows:

\begin{itemize}
  \item To gain market share in Europe and to provide goods and services within the EU market;
  \item To provide goods and services to the Chinese market (second-leading response);
  \item To service markets other than China or Europe (one-quarter have invested for this reason);
  \item The attraction of intellectual and R&D resources (more than one-third cited this reason)\textsuperscript{8}
\end{itemize}

\textsuperscript{6} \textsc{The National People’s Congress}, \textit{12th Five-Year Plan, Part XII: Mutual beneficial and win-win, improving the opening up}, 2011.


\textsuperscript{8} \textit{Id.}
It is evident that there are different motivations for Chinese enterprises to invest in the EU, but it is worth emphasizing that the majority of Chinese enterprises are entering the Europe market with sales-driven motivations, that is, to sell their goods and services in a region with over 500 million relatively affluent consumers. This marks an important shift. In Europe now, many local Chinese companies have gained in popularity and their products are conquering new portions of the EU market (e.g., Haier). In other words, they are in Europe to conquer Europe.

Larger investments will occur (and particularly M&A investments) when a Chinese entity wants to acquire advanced foreign technologies, brands, or expertise, or wants to establish manufacturing or R&D capabilities. This is confirmed by the fact that nearly one-half of Chinese companies report that they are in Europe to support their sales in the Chinese market, and with one-third motivated by the intellectual and R&D resources available.\textsuperscript{9}

\textbf{[1] Acquisition in Europe: an introduction}

In particular, with regard to M&A, it seems China’s participation in acquisitions in Europe has been attracting greater attention. In fact, recent data confirm that there has been a sudden increase in Chinese acquisitions in the EU. Europe became China’s largest acquisition investment destination. In particular, Chinese acquisitions in the EU in 2012 grew by 20 percent and the amount spent was, for the first time, bigger than that of European acquisition in China.\textsuperscript{10} Again this is a sign of the changing attitude of Chinese companies, which are eager to expand their presence in this market. Thus, from 2012 the EU was already the region with the largest acquisition activity for China, and in the near future this trend will be emphasized even more considering the enormous resources at the disposal of the big SOEs, which are only waiting to be approached by possible European targets. Sometimes these big companies do not act proactively and it is up to skilled and well-connected professionals (on both sides) to stimulate the interest of these State Owned Enterprises in buying the biggest European companies.

\textbf{[2] Chinese attraction to European acquisition market}

The forms of Chinese ODI are most diverse and dependent upon where and how the Chinese investor wants to invest. However, acquiring a foreign enterprise through a M&A transaction represents a smart way to penetrate a foreign market while limiting unknown dangers.

Usually a M&A transaction allows an investor to establish a presence in a desired market very quickly, and allows the investor to exploit the acquired company’s existing distribution network, making it possible for the investor to make use of the “experience” and information of the acquired company to adapt his or her strategies to the new market. However, these are not the only reasons for ODI.

\textsuperscript{9} Id.

\textsuperscript{10} Chinese overseas mergers and acquisitions reached a new high in the first half of 2013, with deals getting bigger in size and higher up on the value. Deloitte Touche Tohmatsu, Oct. 2013.
Chinese enterprises are attracted to the European acquisition market mainly for two reasons:

(i) European enterprises are walking out of the shadow of the sovereign debt crisis, but the prices of their equities are still low, which makes the stock market attractive for foreign investments. Studies have also shown that the earnings of European corporations are mostly 0.5 to 1.5 percentage points better than the global average. Some Chinese investors think European assets are 30 percent cheaper than similar American assets.\textsuperscript{11}

(ii) European acquisitions are particularly important for Chinese enterprises to enable them to transform and upgrade. Chinese companies have enjoyed rapid economic growth over the past few decades. While the entire growth model is facing a change, they find themselves with plenty of cash but less investment opportunities in China—and with their competitive advantages nullified by rising costs and outdated technology.\textsuperscript{12}

The vision and conclusions of this expert are to be shared, however, these are not the only reasons why Chinese corporations are expanding into the European market. Other motivations have previously been expressed, and, in any case, China is now becoming a global player in the international trade context and needs new markets where it can expand its presence.

It must be emphasized that the bulk of M&A activity by Chinese investors is located in the most developed economies, which have relatively liberalized markets (see Figure 1.1). This reflects the availability of suitable investment targets and the expertise, in the form of business services, to conduct merger and acquisition transactions. The studies utilized for this work have shown that Chinese M&A activity in the leading EU host states indicates that they acquire firms for their technology, international brands, international networks of subsidiaries, and international distribution channels.\textsuperscript{13} It is also interesting to note that according to the research conducted by Europe China Research and Advice Network “State Owned Chinese investors reveal a strong record of acquisition that has varied somewhat over the years. It declined dramatically in 2008 but recovered in 2009 and 2010, probably as a result of the increased availability of acquisition targets in the EU after the financial and economic crisis.”\textsuperscript{14} Again it is interesting to underline that the least stable is the category of public investor, whose instability may be in part a result of variable access to finance with which to leverage M&A deals. The data show that a majority of acquisitions are not made by SOEs.\textsuperscript{15}


\textsuperscript{12} According to Wu Jiangang many private Chinese companies are encountering bottlenecks in innovation and with government regulation. Many State-owned enterprises are suffering excess capacity. Both need to find better technology and new markets. \textit{Id.}


\textsuperscript{14} \textit{Id.}

\textsuperscript{15} \textit{Id.}
However, Chinese acquisitions in the EU may be motivated by other factors not necessary related to the EU economy. For example, it has emerged from the research considered\textsuperscript{16} that Chinese enterprises are acquiring international networks of affiliates and that by acquiring these international networks of affiliates of EU multinationals, they (i.e., Chinese investors, both SOEs and smaller private enterprises) may rapidly become highly multinational and diversified. The research by ECRAN\textsuperscript{17} affirms that the implication of this Chinese activity in the EU is that the European economy inevitably becomes subject to international linkages of more extensive complexity, and, as a consequence, there emerges the need for EU policies that encourage internationally linked multinational groups (whether EU or Chinese owned) to retain and grow their productive activity within the European Union. Probably, taking into consideration these circumstances and on this basis, the EU and China initiated the negotiation for the comprehensive investment agreement, which is addressed in Chapter Two, § 2.02[A] and § 2.03[B][1].

**[B] China going global with ODI**

The Chinese government has embarked on a “go global” strategy recently to allocate the enormous resources Chinese enterprises (SOE or not) accumulated in recent years when they were focused on manufacturing and export (this, in fact, has resulted in a significant foreign exchange reserve for China). This particular situation has permitted China to push their “going out policy” to funnel their foreign exchange resources

\textsuperscript{16} \textit{Id.}

\textsuperscript{17} \textit{Id.}
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to international investments not only in Asia Pacific, but also in the Americas, Europe, and Africa.

More precisely, according to Chinese government data, 72 percent of Chinese ODI during the period of 2004–2010 went to Asia and the vast majority of this (87 percent) went to Hong Kong.\(^\text{18}\) It is likely that a significant proportion of this is in fact being routed from China through Hong Kong for structural reasons, with the final destination being elsewhere. According to these data, just 5 percent went to Europe.\(^\text{19}\)

The economic slowdown in the United States has shifted the focus of Chinese companies toward Europe, and the EU market has turned out to be one of the fastest-growing investment destinations for China for a myriad of reasons, some of which have been already briefly discussed. It is evident from the amount of the investments, both in terms of numbers and value, that due to the recent Eurozone crisis, European assets (i.e., target companies) became more affordable and this opened up lucrative opportunities for Chinese enterprises (SOE or privately owned) to invest and expand overseas.\(^\text{20}\)

One of the main reasons why the central government is favoring this new policy, that is, “going global,” is because the old Chinese growth model based on an export-oriented economy has become unsustainable. This was evident to the Chinese leaders before the adoption of the 12th Five-Year Plan (2011–2015). Although China has made great progress under such an economic structure, the worldwide economic crisis clearly showed that lagging demand for Chinese goods can put China at the mercy of external factors that are hard to plan for. Therefore, this model was no longer valid: before the adoption of the plan and policy in 2011, Chinese leadership stressed “China’s export-driven economic growth is unsustainable.”\(^\text{21}\) Chinese government, from the adoption of the new plan, is focused and committed on making domestic consumption a larger driver in Chinese gross domestic product (GDP) growth. (This theme is covered in the next chapter where the current situation is examined in depth and the new reforms adopted by the Chinese government to better integrate China into the globalized world and economy are introduced.) However, here it is important to stress that the old Chinese model was hugely successful and produced three decades of double-digit growth. The next stage of economic development, as already announced and being implemented, is the current structural adjustment process which will shift outward direct investments to become the new driver in Chinese GDP growth, and it will also shuffle the country’s global investment position.

It is worth noting that with their growing confidence in participating in the global economy, many Chinese enterprises started more than ten years ago making significant

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\(^\text{18}\) **National Bureau of Statistics of China, Annual Report 2011.** (“Europe” from this source includes Russia and other non-EU27 countries (28 in 2013) from the Greater Europe area.)

\(^\text{19}\) **Chinese Outbound Investment, supra** note 7.


\(^\text{21}\) This was affirmed by the Chinese government since the adoption of the previous Five-Year Plan (2011).
investments abroad. In the beginning, namely before the entry to the WTO (2001), investing was done in a timid and even reluctant way, but more recently investors have acted more aggressively, and, in fact, now stimulated by the government, Chinese enterprises are literally invading the West, thereby ensuring important resources for their future growth and conquering new markets that will contribute to sustaining China’s economy.

More precisely, in 1999, the Chinese government, having noted this new trend, bolstered these initiatives and started implementing this “go global” policy to encourage Chinese enterprises to invest overseas (primarily SOEs). Even during the time of the global financial crisis between 2008 and 2009, while worldwide foreign direct investment (FDI) activity was weak, China’s outbound investment grew considerably. Just to give an idea of the fast pace of China’s development, in 2010 the “Middle Kingdom” overtook Japan and the United Kingdom to become the fifth largest global investor, and it retained this position in 2011. Another impressive fact is that Chinese investments in Europe tripled in 2011, and could reach as much as US$250 to $500 billion by 2020. Considering these astonishing numbers, it seems possible to argue that a Chinese invasion is currently taking place in Europe. However, if we examine them more closely, even if Chinese companies invest US$250 to $500 billion in European companies by 2020, they still will be far from dominant in the European corporate landscape, considering that the amount of EU inward FDI stock stands at over US$11 trillion (and US$500 billion is only 5 percent of that). Therefore, China is not (yet) taking over Europe despite its exponential investments. In any case, if we compare the previously mentioned data to ten years ago, in 2003 Chinese investments in both Europe and the United States were still insignificant. At that time China bought a mere US$200 million in companies’ stock of the world’s two leading economies. In recent years, there has been an explosion in investments in both regions, up to the point where China has invested US$10 billion in Europe and US$5 billion in the United States in 2011 alone.

22. On December 11, 2011, China marked its tenth year as part of the WTO. China’s entry into the WTO has changed the face of China and especially its business environment. In ten years, China’s GDP rose by some 365 percent, and it moved from the sixth biggest economy in the world to the second. During the same time, its per capita GDP rose 342 percent and set off a new wave of consumption that changed the lives of average Chinese citizens. When China finally officially joined the WTO, it marked an important milestone for China. Not only was it a symbol of its growing importance in worldwide economic affairs but it also showed China’s willingness to change its legal framework. As a WTO news flash announced at the time, “China has agreed to undertake a series of important commitments to open and liberalize its regime in order to better integrate in the world economy and offer a more predictable environment for trade and foreign investment in accordance with WTO rules.” WTO Press Release, World Trade Organization, WTO Successfully Concludes Negotiations on China’s Entry (Sept. 17, 2001) available at http://www.wto.org/english/news_e/pres01_e/pr243_e.htm.

23. Rhodium Group, supra note 20.


26. Id.
Realistically, if China really wants to become a relevant shareholder in European companies, it still has a long way to go. Of the total company stock in foreign hands in the 28 EU countries, two-thirds is owned by companies in other EU countries. Asia, on the other hand, owns only about 4 percent of the European foreign-owned stock, with Singapore and Japan accounting for the bulk of that number. China ranks sixth among Asian investors, with just 0.1 percent of European FDI stock in portfolio.

According to the Ministry of Commerce (MOFCOM) of the People’s Republic of China, China’s net outward investment was US$74.65 billion in 2011, up 8.5 percent year-on-year. So, by the end of 2011, China’s Outward Direct Investment (ODI) had increased to US$424.78 billion and Chinese investors had set up about 18,000 enterprises overseas, employing 888,000 foreigners with a total asset value of nearly US$2 trillion.

**[C] Destination of Chinese ODI to the EU**

Chinese ODI to the EU is unevenly distributed among the 28 member states but there are considerable differences between relevant data from official EU sources and Chinese government sources. For example, a disproportionately large amount is recorded by Chinese government sources as going to Luxembourg (US$5.8 billion in 2010; three to four times as much as to Germany), due to the business environment that encourages the establishment of holding companies there, with the actual investment going to a different country.

Unofficial data for the period of 2000–2011 ranks France, the United Kingdom, Germany, and Sweden (in that order) as the largest recipients of Chinese ODI in terms of investment value, and Germany, the United Kingdom, France, and the Netherlands (in that order) the largest in terms of number of deals.

This is only an introduction; § 1.05 provides more details on the distribution of Chinese investment in the EU.

**[D] ODI diversity**

According to the global consulting firm Ernst & Young, China’s outbound direct investment will diversify further in terms of both target markets and fields in the future. The article states that Chinese international expansion is necessary to create more sustainable development for Chinese companies.

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27. Id.
28. Id.
China’s outbound (foreign) direct investments (ODI) hit a historic high in 2012 to become the world’s third largest investor after the United States and Japan. In 2013, China’s outbound direct investment achieved a 34% year-on-year growth from USD 31.34 billion in 1H 2012 to USD 42.12 billion in 1H 2013.\textsuperscript{33}

It is also noteworthy to report another part of this study:

By 1H 2013, North America, Europe and Asia are the top destinations for China’s outbound investments. In terms of sectors, energy and metals are the largest ones valued at USD 301.1 billion, accounting for 70% of the total value of China’s outbound FDI during 2005-1H 2013. Outbound FDI in the agriculture and technology sectors saw a drastic increase, now representing 15% of total value of outbound FDI in 1H 2013 vs 4% in 2009.\textsuperscript{34}

Loletta Chow, Ernst & Young Global China Overseas Investment Network (COIN) Leader, affirmed that “outbound investments from China’s private companies are accelerating; private companies are looking overseas for more opportunities of sales channels and brand investments, as well as for opportunities to expand core businesses. On a global scale, agriculture, technology, and consumer products sectors are likely to see an unprecedented surge of Chinese investment in the next few years.”\textsuperscript{35}

Looking at M&A activities in 2013, mining and utilities have experienced significant increases in value for the first 8 months of 2013 compared with last year, having recorded nine mega deals above US$100 million.

According to Ernst & Young, as China’s domestic economy reflects a slight recovery (compared to the stellar performance of the previous years), Chinese capital inflows to developed and developing economies will increase steadily.

According to another study by Ernst & Young,\textsuperscript{36} in 2011, China’s ODI in Europe rose 22.1 percent year-on-year to US$8.25 billion. In July 2012, the National Development and Reform Commission (NDRC)\textsuperscript{37} issued the Plan for Utilizing Foreign Investment

\textsuperscript{33} Id.

\textsuperscript{34} Id.


\textsuperscript{37} National Development and Reform Commission People’s Republic of China (NDRC). 国家发展与改革委员会, is the authority in charge of formulating and implementing strategies of national economic and social development, annual plans, medium- and long-term development plans; of coordinating economic and social development; carrying out research and analysis on domestic and international economic situation; putting forward targets and policies concerning the development of the national economy, the regulation of the overall price level and the optimization of major economic structures, and of making recommendations on the employment of various economic instruments and policies; submitting the plan for national economic and social development to the National People’s Congress on behalf of the State Council. To see the other main functions of the NDRC, visit http://en.ndrc.gov.cn//mfndrc/(last visited Dec. 23, 2013).
and Making Outbound Investment during the 12th Five-Year Plan. The following key objectives for China’s investment abroad were based on this plan:

(i) To participate proactively in international exploration of natural resources
China has a huge demand for natural resources and sources them from across the world. The government encourages investment in overseas infrastructure projects related to natural resources, by strengthening investment ties with neighboring countries on cross-border transportation, and encourages qualified enterprises to engage in downstream processing of resources.

(ii) To accelerate technology advancement through overseas investment
China actively uses foreign investment to accelerate technological advancement, by promoting qualified enterprises to set up overseas acquisition of know-how.

38. This theme is delicate and it is necessary to specify it as follows: The technology import and export as referred to in the Regulations on Technology Import and Export (2002) as “acts of transferring technology from outside the territory of the People’s Republic of China into the territory of the People’s Republic of China or vice versa by way of trade, investment, or economic and technical cooperation.” It seems appropriate to specify that the Regulations of 2002 have a rather broad concept of technology, and in particular refer to technology transfer as the assignment or use of patents or models in China by a third party helping the foreign owner of these rights to achieve certain goals; or also refer to the supply of know-how in the form of technical information, drawings, or other material containing information on manufacturing processes, formulas, designs of products; or even as the supply of facilities or production lines, when it involves the sale or the right to use patents. In other words, the “technology” essentially refers to the complex technical knowledge, experiences, formulas, designs, of which the company owns and uses in a given production process or other industrial process. In general these are intangible assets protected as industrial property rights (a category of IP rights), which naturally belong to the company’s assets. Under the Technology Transfer Regulations 2002, technology is divided into three categories: (i) freely transferable, (ii) restricted, and (iii) prohibited technology. The category under which a particular technology falls depends on whether it is for import or export; therefore, a technology that might be prohibited from import might at the same time be free for export. Technology classified as prohibited from import may not be imported; restricted technologies require approval from the Ministry of Commerce (MOFCOM) and the Ministry of Science and Technology before the technology transfer contract is enforceable; and freely transferable technology transfer contracts require registration (rather than approval) with MOFCOM (or its local branch) but are still effective upon proper execution. Contracts involving technology transfer, when the transfer is seen and considered as a “capital contribution” in the case of the creation of a FIE, must always be approved in accordance with the procedure for authorizing the investment made, regardless of the type or category of technology involved. The registration authority (the MOFCOM) may require an agreement to be amended before registration, if certain restrictive clauses are included. The contract law stipulates that a technology-related contract, which illegally monopolizes technology, impedes technological advancement, or infringes another’s technology is invalid. Terms that restrict one party from obtaining from other origins technology similar to or in competition with the technology transferred are prohibited. Terms must not require the transferee to accept conditions that are dispensable to the technology import, such as purchasing unnecessary technology, raw materials, products, equipment, or services. Requiring the transferee to pay royalties or assume certain obligations for using technologies of expired or invalid patents is prohibited. In addition, the transfer can take place according to different types of contract, often through licensing agreements, with which the owner of these intangible assets (e.g., patents, know-how) grants the right to use them. The registration of the contract or of the license of technology is a common practice and is used not only to carry out a formal control on the content of the contracts, but also in order to “standardize” the administration of contracts for import and export of technologies. If during the audit, the authority finds that the technology to be
It provides guidance to domestic investors to invest in high-tech and advanced manufacturing projects abroad, and encourages enterprises to invest in the telecommunication, logistic, and culture and tourism sectors.

(iii) To explore overseas markets vigorously

China encourages companies in a range of sectors (e.g., textile, consumer electronics, automotive equipment, chemical, metallurgy, and construction materials) to expand their operations abroad. It also supports downstream processing of steel, non-ferrous metals, oil, and timber in resource-rich countries with high market potential. In addition, the country encourages qualified enterprises to invest in “creative” industries abroad. (The Commission does not clearly specify the term “creative.”)

(iv) To enhance the competitiveness of Chinese companies through outbound investment

To enhance the competitiveness of Chinese companies, the government encourages qualified enterprises to expand their overseas marketing networks and to acquire internationally renowned brands. Furthermore, it stimulates small, medium-sized, and private companies to cooperate with big SOEs in making outbound investments.

§ 1.03 THE REALIZATION OF THE ODI

China has put in place a number of policies concerning ODI to encourage its enterprises to invest overseas. Chinese enterprises looking to invest in the EU or elsewhere may be required to seek certain approvals from government regulatory bodies. The following paragraphs explain, in sequence, the structure of China’s political power structure and highlight the decision units involved in the approval of the ODI. Then follows a description of the procedures for the approval of ODI. In fact, if the investment exceeds certain thresholds, the approval from the Chinese central authority is required in order to structure the proposed investment abroad.

China’s political power structure and ODI

To understand the policies and the functions of the agencies involved in the approval of Chinese ODI, it is necessary to describe the structure of China’s political power in order to have a clearer understanding of the position and functions of Chinese “decision bodies.” Because these institutions influence the direction of China’s development, they have a major impact on the outbound investments.

The first session of the 12th National People’s Congress in March 2013 produced new leaders for the legislature, the State, the judiciary, the prosecutor’s office, the State military commission, and other bodies. All such leaders were appointed to five-year terms ending in 2018. On this occasion, Xi Jinping assumed an additional post, as State president. A parallel meeting produced a new leadership for a high-profile political advisory body, the State Council. Li Keqiang is Party secretary of this organization and prime minister.

As it will be set out in Chapter Three, Chinese leadership has a clear idea of how to develop its local economy. In fact, Prime Minister Keqiang delivered a speech addressing the current situation. But it is impossible to completely understand the policies adopted if we do not have in mind how China’s political power and state organizations are interrelated, because every decision flows from these state institutions, and the policies to be followed stem from these decision bodies. Therefore, the structure of China’s centers of power is briefly described as follows.

The Constitution, in its third chapter titled “Structure of the State,” describes China’s unicameral legislature, the National People’s Congress (NPC), as the “highest body of State power.” According to the constitution, the NPC’s role includes “supervising” the work of four other political bodies:

(i) **State Council.** The State constitution describes the State Council as “the highest organ of state administration.” It oversees the State bureaucracy and manages day-to-day administration of the country.

(ii) **State Central Military Commission.** The constitution says the State Central Military Commission “directs the armed forces of the country.”

(iii) **Supreme People’s Court.** According to the constitution, the Supreme People’s Court is the “highest judicial organ.”

(iv) **Supreme People’s Procuratorate.** This is China’s top prosecutor’s office. The Communist Party’s own constitution provides more detail about Party leadership of the political system, the economy, and society at large, stating that “the Party commands the overall situation and coordinates the efforts of all quarters, and the Party must play the role as the core of leadership among all other organizations at corresponding levels.” The Party constitution explicitly states that

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the Communist Party persists in its leadership over the People’s Liberation Army and other armed forces of the people.” The Party exercises that leadership through a Party Central Military Commission.

Figure 1.2 provides an approximate illustration of China’s power structure as currently implemented, with the Communist Party in charge.

The State Council, also known as the Central People’s Government, is the highest entity of State administration and it is officially responsible for implementing policies formulated by the Communist Party and laws passed by the National People’s Congress, and for overseeing the day-to-day work of the State bureaucracy. The State Council has the

40. With about 85 million members, the Communist Party of China (CPC) is the largest political party in the world. It is China’s dominant political institution, exercising leadership over the entire political system. The Communist Party constitution requires the Party to hold a national congress every five years. The most recent congress, the 18th, was held in November 2012. At each Congress, delegates elect a new Central Committee in a modestly competitive process: the Party leadership nominates approximately 10 percent more candidates than available positions. The current Central Committee is composed of 205 full members and 171 alternate members. They include 33 women (8.8 percent of the full 376-member Central Committee) and 39 ethnic minorities (10.4 percent). For details of the election of the 18th Central Committee in November 2012, see Zhang Sutang, Qin Jie, Huo Xiaoguang, and Li Yajie, “The Ratio of Competitiveness for the 18th Central Committee Election was 9.3%,” Xinhua News Agency, 15 November 2013, http://politics.people.com.cn/n/2012/1115/c1001-19584526.html.


42. Susan V. Lawrence, China’s Political Institution and Leaders in Charts (Congressional Research Service, Nov. 12, 2013).
power to pass its own regulations and to draft legislation or authorize ministries to draft legislation, which it forwards to the National People’s Congress for passage into law.\textsuperscript{43}

The Communist Party’s Politburo Standing Committee (PSC) serves as China’s most senior decision-making body. The Party constitution requires that Party committees at all levels of the Chinese political system operate according to the principle of combining collective leadership with individual responsibility based on division of work.\textsuperscript{44}

\section*{B Regulatory approval processes for Chinese ODIs}

As it emerged onto the world stage, China put in place a number of policies to encourage its enterprises to invest overseas, and Chinese enterprises, which are looking with mounting interest to invest in the EU, may be required to seek certain approval from government regulatory bodies. The following text provides a brief outline of the first step in the processes needed to obtain the necessary authorization. Only the first step is provided because further authorizations are necessary to structure the investment in the country of destination (see Chapter Two: Investments in the EU: strategies and policies to attract Chinese Investors in Europe, focus on Italy).

The approval process for Chinese outbound investments differs depending on whether the enterprise is privately owned or State owned. Whether it is approved at a local, provincial, or national level depends on the size of the investment. Typically, there are four Chinese governmental bodies involved in approving the outbound investments of Chinese enterprises:

- State-owned Assets Supervision & Administration Commission (SASAC) (for SOEs only)\textsuperscript{45}
- National Development and Reform Commission (NDRC)\textsuperscript{46}

\textsuperscript{43} The State Council is headed by a premier that serves concurrently as the Communist Party’s no. 2-ranked official. He is appointed to his post by the State President, a position held by the Communist Party’s top-ranked official. The premier is assisted by four vice premiers, one of whom sits with him on the Party’s Politburo Standing Committee, and the remaining three of whom are regular members of the Party’s 25-person Politburo. Susan V. Lawrence, China’s Political Institution and Leaders in Charts, \textit{Congressional Research Service}, Nov. 12, 2013).

\textsuperscript{44} The full text of the Constitution of Communist Party of China is available at http://news.xinhuanet.com/english/special/18cpcnc/2012-11/18/c_131982575.htm. The principle of collective leadership is presented in ch. 2, art. 10 (5) of the Constitution.

\textsuperscript{45} In 2003, the PRC government decided to strengthen the regulatory regime governing State-owned assets by creating the State-owned Assets Supervision & Administration Commission (SASAC), a commission directly under the State Council, which is charged with supervising the assets of State-owned enterprises at the national level directly subordinate to the Party Central Commission. SASAC guides and pushes forward the reform and restructuring of State-owned enterprises, advances the establishment of modern enterprise systems in SOEs, improves corporate governance, and propels the strategic adjustment of the layout and structure of the state economy. SASAC is also responsible for the fundamental management of the State-owned assets of enterprises moreover it works out draft laws and regulations on the management of the State-owned assets, then it establishes related rules and regulations and directs and supervises the management work of local State-owned assets according to law. More information about the main functions of this organization is available at http://www.sasac.gov.cn/ (last visited Dec. 23, 2013).

For an SOE, the first step is SASAC approval. If an overseas investment is to be made by a central SOE (and therefore directly controlled by the SASAC) and it has a value of less than that required to receive central NDRC approval, then provincial NDRC approval can be bypassed by the SOE. National NDRC approval is required for investments over US$300 million in resources sectors or over US$100 million in non-resources sectors. For investments below these levels, provincial-level NDRC approval is sufficient. When the NDRC receives an application it takes five business days to decide whether or not to accept the application. If it is accepted, it will be approved or rejected within 20 business days. The Chinese investor will then need to seek the approval of the MOFCOM, which is the body responsible for administering and supervising overseas investments. Central-level MOFCOM approval is required for investments

(i) of USD 100 million or more;

(ii) in a country which has not established a diplomatic relationship with China, or in certain other countries or regions specified by MOFCOM;

47. MOFCOM is the Ministry of Commerce. Its main function is to formulate the strategies, guidelines, and policies of developing domestic and foreign trade and international economic cooperation; draft the laws and regulations governing domestic and foreign trade, foreign investment in China, foreign assistance, overseas investment, and foreign economic cooperation; devise relevant departmental rules and regulations; to study and put forward proposals on harmonizing domestic legislations on trade and economic affairs, as well as bringing Chinese economic and trade laws into conformity with multilateral and bilateral treaties and agreements; to study the development trends of economic globalization, regional economic cooperation, and modern distribution patterns and give proposals. The MOFCOM is the main body to decide about the entry of foreign investments in Mainland China and its approval is always necessary for any type of FDI, but this body has many other functions which are related to not only inward FDI but may also have an influence on onward Chinese investments. MOFCOM formulates multilateral and bilateral (including regional and free trade area) trade and economic cooperation strategies and policies, is responsible for multilateral and bilateral negotiations on trade and economic issues, coordinates domestic positions in negotiating with foreign parties and in signing the relevant documents and monitoring their implementation. The MOFCOM establishes multilateral and bilateral intergovernmental liaison mechanisms for economic and trade affairs and organizes the related work, handles major issues in country (region)-specific economic and trade relationships, and regulates trade and economic activities with countries without diplomatic relations with China. In line with the mandate, the MOFCOM handles the relationship with the World Trade Organization on behalf of the Chinese government; undertakes such responsibilities under the framework of the WTO as multilateral and bilateral negotiations, trade policy reviews, dispute settlement, and notifications and inquires, and coordinates trade and economic activities with foreign parties. MOFCOM other functions are described at http://english.mofcom.gov.cn/ (last visited Dec. 23, 2013).

48. SAFE (State Administration for Foreign Exchange), http://www.safe.gov.cn/wps/portal/english/ (last visited Dec. 23, 2013). One of the main functions of SAFE is to study and propose policy suggestions on the reform of the foreign exchange administration system, prevention of the balance of payments risks, and promotion of the balance of payments equilibrium; to study and implement policy measures for the gradual advancement of the convertibility of the RMB under the capital account and the cultivation and development of the foreign exchange market; to provide suggestions and a foundation for the People’s Bank of China to formulate policy on RMB exchange rate. However, the SAFE plays an important role in influencing the direction of Chinese investments abroad and this body has several major functions. For more information visit http://www.safe.gov.cn/wps/portal/english/AboutSAFE/Major (last visited Dec. 23, 2013).
(iii) which are spread over multiple countries or regions;
(iv) involving the establishment of an overseas *special purpose company*.

Provincial-level MOFCOM approval is required for investments between US$10 million and US$100 million or specifically in the energy, minerals, or other strategic sectors. MOFCOM will also consult with the relevant overseas Chinese consulate. MOFCOM takes five business days to determine whether or not to accept an application. After accepting an application, it must approve or reject the investment within a further 15 business days. Some applications requiring central-level MOFCOM approval will also be subject to a preliminary examination by provincial-level MOFCOM, taking an additional ten business days.

After obtaining NDRC and MOFCOM approval, an application is made to SAFE for the transfer of foreign currency funds overseas.\(^49\) This is usually the last step in the approval process and takes up to two weeks. Additional approval from the State Council is also required where investment is in countries or regions that do not have a formal diplomatic relationship with China, are on a list of international sanctions or where a war or riot is taking place, or in an industry of a sensitive nature. If the enterprise making the investment is from an industry with its own specific regulator then it is possible that an additional approval will also need to be required from that body.\(^50\)

[C] **The call for free market’s bigger role**

Premier Li Keqiang delivered a speech at the 16th National Congress of Chinese Trade Unions in Beijing on October 21, 2013, addressing the Chinese current economic situation and analyzing the growth trend, which is explained in Chapter Three. Here we highlight the outcome and the content of the statement issued after the Third Plenum (finished on November 12, 2013) in order to point out how serious the leadership was about the new reform so important for the future development of the country. The recently adopted FYP (2016–2020) confirms the targets of the government.

Chinese policy makers are trying to develop their country and transform it into a prominent investor on the international scene, and, at the same time, make it more attractive for foreign investors. Decision bodies are all involved in this process. In the middle of November 2013 the Third Plenary Session, decided to commission a Central Reform Leading Group to design and coordinate the country’s next round of reforms. This was ten years after the previous ministry-level economic reform commission was merged into the present NDRC. The Commission is to continue its functions after the new, higher-level group is established.

The Third Plenum of the Communist Party finished on November 12, 2013. From the statement issued after this important event not only for China’s Communist Party but

\(^{49}\) SAFE lifted restrictions on the amount of foreign exchange available annually to domestic investors’ outbound investments and announced in 2009 that Chinese firms can seek financing from multiple sources. MOFCOM simplified and shortened the approval procedures in 2009, and the NDRC reiterated in 2011 its desire to decentralize the outward investment approval decision process.

\(^{50}\) *Chinese Outbound Investment*, supra note 7.
also for the entire nation, it is possible to affirm that China was ready to revolutionize
(again) its model of growth, paying more attention to the dynamics of a market econ-
omy (but always within the borders decided by the Communist Party). There were at
least four breakthroughs in the statements that should change the course of China’s
economic growth.51

(i) First, one of the concepts the political leadership has introduced—big
market, small government—will serve as the centerpiece of economic reform.
The statement proclaimed that “the core issue is to straighten out the relation-
ship between government and the market, allowing the market to play a decisive
role in allocating resources and improving the government’s role.”52 The role of
the market is, for the first time, defined as “decisive”; earlier it was described as
“basic.”

(ii) Second, in line with the concept “big market, small government” the state-
ment elevates the role of the private sector. Despite stressing that public owner-
ship plays a fundamental role, for the first time there is a declaration that both
public and non-public sectors are “important components of the socialist market
economy and significant bases for economic and social development,”53 (literally
a strong endorsement for private economy).

(iii) Third, the rural–urban divide has been singled out as a problem that the
Party needs to tackle. The statement calls for a unified trading market for land
construction, ensuring equal exchange of production elements and balancing the
distribution of public resources. This implies that authorities may touch on the
reform of the household registration system (hukou) and land transfer system, a
move that is expected to pave the way for sound urbanization and free, fair flow
of resources between rural and urban areas.

(iv) Fourth, the statement vows to further open up by “widening investment
access, accelerating the building of free trade zones and expanding the opening
up of inland and border regions.”54

Considering that the new leadership has quickened the pace of striking free trade
and investment deals on both bilateral and multilateral fronts, with the latest negoti-
ations launched on a bilateral investment treaty with the European Union, it is clear that

51. One of the sources used for their synthesis and clarity is the article by Luo Jie Xin & Xue He, Call for
Free Market’s Bigger Role, CHINA DAILY, Nov. 18, 2013, at 20.
52. Communiqué of the Third Plenary Session of the 18th Central Committee of the Communist Party
_session/2014-01/15/content_31203056.htm.
53. Id.
54. The launch of the Shanghai free trade zone (SPFTZ) in the end of September 2013, was the third
round of opening-up initiatives, after the establishment of the Shenzhen Special Economic Zone in 1980
and China’s entry into the World Trade Organization in 2001. The focus of the SPFTZ is the opening-up to
foreign capital, especially in service. The existing approval system for foreign investment is replaced by the
negative-list system. Foreign investors are to obtain pre-entry national treatment in the SPFTZ. The zone
serves as a testing ground for China’s multilateral trade negotiations such as the Trans-Pacific Partnership.
the Chinese government wants also to accelerate on internal reforms by also promoting integration with the global economy. Coupling these two factors should help China integrate itself at an international level. More details and an in-depth analysis of the European moves and policy toward Chinese investment are given in the next chapter, however to conclude this paragraph, we stress that the new reforms are shaped by the historical leader Mao’s vision of “continuous revolution” to reach China’s goals, which currently can be summarized as sustainable development in a harmonious society.

§ 1.04 CHINESE POLICIES TO ENCOURAGE OUTBOUND INVESTMENTS AND FOCUS ON OUTWARD FDI IN THE EU

As it was emphasized at the beginning of this chapter, the Chinese government today generally supports cross-border investments by Chinese enterprises for a series of reasons already discussed (see § 1.01[A][2]). Recently the “go global strategy” has accelerated in order to allocate the enormous resources China has at its disposal and also to rebalance its exposure in the financial sector in the United States. As already mentioned, national government organizations and their provincial equivalents are still very much involved in the setting of policy and in the approval process. The need for China not only to secure new resources but also to find new markets to maintain the pace of its development is evident. The increasing number of China’s acquisitions, and the value of its investments, indicate that China, in its approach to outward investments, can now be included among the other industrialized countries as a major player, especially in consideration of the actions undertaken by China’s key governmental bodies. However, it seems that China, in order to reach its goals and meet the directions also contained in the new Five-Year Plan, has to increase and upgrade outbound investment, and investors need to broaden their global prospective and orient it toward the high end of the global value chains.

[A] China’s ODI policies and the functions of the main governmental bodies

China’s growth model is changing rapidly, and for an increasing number of Chinese enterprises, continued growth and prosperity is becoming inexorably tied to overseas investment in developed economies. This new trend, the “go global policy,” has led to the establishment of new organizations (e.g., CIPA, China Investment Promoting Agency of MOFCOM)55 and regulations specifically to encourage outward investments.

55. One of the agencies derived from the Ministry of Commerce is the China Investment Promotion Agency or CIPA (商务部投资促进事务局), the investment promotion agency that is an off-shoot of the Ministry of Commerce. It is in charge of “inviting in” (FDI in China) and “going global” policies (outbound investment) two-way investment promotion work in line with China’s economic strategies, and it is engaged in cooperation with international economic organizations, foreign investment promotion agencies, various chambers of commerce (e.g., European Chamber), and business associations on behalf of the Ministry of Commerce. Some of its main functions include (i) CIPA provides service for foreign investment absorption and outbound investment of Chinese enterprises, promotes two-way exchange and cooperation among
Supportive measures include workshops and conferences on ODI organized not only by the official bodies devoted to give a boost to the Chinese economy, like the MOFCOM, also by the China Council for the Promotion of International Trade (CCPIT) which is following the directives of the Chinese decision makers (e.g., NDRC) and the other governmental organizations. The NDRC stated in 2005 (more than a decade ago) that its objective was, and still is, to promote the establishment of conditional production bases and marketing networks in sectors such as light industry, textiles, home appliances, and other manufacturing, and to actively encourage key service sector industries (e.g., trade, distribution, banking, insurance, and telecommunication). Recently, financial services have received special attention from MOFCOM, which intends to promote the globalization of China’s commercial banking. MOFCOM supports firms

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56. China Council for the Promotion of International Trade (CCPIT) comprises VIPS, enterprises, and organizations representing the economic and trade sectors in China. It is the most important—and the largest—institution for the promotion of foreign trade in China. The aims of the CCPIT are to operate and promote foreign trade, to use foreign investment, to introduce advanced foreign technologies, to conduct activities of Sino-foreign economic and technological cooperation in various forms, to promote the development of economic and trade relations between China and other countries and regions around the world, and to promote the mutual understanding and friendship between China and peoples and economic and trade circles of all nations around the world, in line with law and government policies of the People’s Republic of China. In 1988, with the approval of the Chinese government, the CCPIT started to adopt a separate name, namely China Chamber of International Commerce (CCOIC), which is used simultaneously with the CCPIT. More information is available at http://english.ccpit.org/aboutccpit/aboutccpit.htm (last visited December 28, 2013).
that invest in world-renowned brands, advanced technology, marketing networks, and research institutions. The Ministry of Finance (MOF) and MOFCOM issued financing guidelines in 2010 to clarify when direct subsidies to outward investment are available. These subsidies would be for the upfront costs of professional services, investigation costs, fees for project feasibility, study reports and the preparation of safety assessments, and also transportation fees for the import of resources and fees for the registration of foreign patents.  

Notably the Chinese government owns the sovereign wealth fund CIC (China Investment Corporation, established in 2007); and through SAFE, it also owns the Hong Kong-based subsidiary SAFE Investment Company (namely the “State Administration of Foreign Exchange Investment Company,” established in 1997), which invests much like a SWF (Sovereign Wealth Fund). The objective of both funds is to secure good returns on investments. The CIC is heavily involved in domestic Chinese investments but was also employed to acquire 9.9 percent of the American private equity firm Blackstone Group in 2007, along with other American financial institutions that have interests in natural resources-related investments abroad.

[1] China’s Outbound Investment Catalogue

China’s ODI are not completely free in the sense that Chinese enterprises when planning to invest abroad have to consider the catalogue for outbound investment which substantially is the expression of the governmental bodies (in particular of MOFCOM and NDRC) toward outbound investment. The Ministry of Commerce and the Ministry of Foreign Affairs published the first Outbound Foreign Investment Catalogue (OFIC) in 2004 mirroring the structure of the Foreign Investment Catalogue (i.e., for inward FDI). The OFIC indicates in which sectors and countries Chinese enterprises should invest. Noteworthy, the country coverage of the catalogue was expanded in 2005 and 2007 to include 128 countries and no further updates or amendments were released until December 2, 2013. This was the first revision

57. Clegg & Voss, supra note 13.
58. Foreign investments from 1995 have been regulated or “directed” by the “Catalogue for the Guidance of Foreign Investment.” The “Catalogue” was first published in 1995 and has since been updated from time to time to reflect China’s changing focus on enhancing the quality of foreign investments. Indeed, it is a very precise policy of the Chinese government that foreign investments must be implemented in a manner that is consistent with Chinese policy and in a way that will promote China’s development. On December 24, 2011, the NDRC and the MOFCOM jointly issued the revised catalogue, which become effective on January 30, 2012 to replace its previous version issued in 2007. Changes under the 2011 Catalogue are evidently driven by China’s new shift of focus to the quality of foreign investment in particular, concerning new technologies and environmental protection. Foreign investors are encouraged under the 2011 Catalogue to invest in projects that call for energy-saving and environmental protection, or engage in new-generation Information Technology, high-end equipment manufacturing, new energy, new materials, and new-energy automobiles. Furthermore, for the first time, foreign investment in Venture Capital (VC) enterprises is recognized as “encouraged” under the revised Catalogue. This change should facilitate the establishment of VC investment enterprises or funds in China. Cristiano Rizzi, Li Guo, Joseph Christian, Merger and Acquisitions and Takeovers in China—A Legal and Cultural Guide to New Forms of Investment, 190 (Wolters Kluwer Law & Business, July 2012).
59. In the strong spirit of reform as enshrined in those key policy documents promulgated at the close of the Third Plenary Session of the 18th Congress of the Communist Party of China’s Central Committee, the
made to the previous catalogue released by the State Council in 2004; the pillar policy, which established the very verification regime which has been in force since then. The 2013 catalogue primarily covers investments which require governmental verifications (as opposed to a simple process of filing for records). Broadly speaking, there are three types of investments:

- Projects subject to government verifications in 11 major sectors, including agricultural water conservation, energy, transportation, the information industry, raw materials, machinery manufacturing, light industry, new technology, urban construction, other social undertakings, and finance
- Foreign-invested projects
- Overseas investments by Chinese enterprises

It may be useful at this point to set forth the view of a local law firm in order to better understand the procedures and significance of these changes in the approval of Chinese ODI:

“The significance of those changes is that for investments (projects) not listed in the “verification” category of the Catalogue, or “核准”, is in substance no different from “approval” in China’s context whereby the investors must obtain verification before being allowed to execute their investment, they are only required to file records of their investment (post transaction).

Chinese investors must seek verifications from three key regulatory bodies for their outbound investments, including (i) the National Development and Reform Commission (NDRC), (ii) the Ministry of Commerce (MOFCOM), and (iii) the State Administration of Foreign Exchange (SAFE). NDRC verification is considered to be the most important approval and is essential to obtaining other approvals.

Factors such as investor identity, investment amount, the invested industry and destination country dictate the applicable verification levels of those regulatory bodies.

The 2013 Catalogue excites the market because it proposes to remove a substantial number of investments from the verification jurisdictions of NDRC and MOFCOM, as further elaborated in the following excerpt by the “old versus new.”


60. Depending on factors such as investor identity and assets (industry) to be invested in, those investments may further require approvals and consents from the State-owned Assets Supervision and Administration Commission of the State Council (SASAC), China Securities Regulatory Commission (CSRC), China Banking Regulatory Commission (CBRC), and China Insurance Regulatory Commission (CIRC).

61. This is the content of an article available at http://www.thelawyer.com/catalogue-of-investment-projects-subject-to-government-verifications-overhauls-chinese-outbound-investment-regulatory-regime/. It
Description of the new regime for Chinese ODI

The current NDRC regime (document)

The outbound investment project verification regime administered by NDRC (which is essentially the legacy of the planned economy) has two broad aspects: the “preliminary review” regime and the final “project verification” regime:

(1) Preliminary review regime: Under NDRC’s “preliminary review” regime, Chinese investors proposing to make an investment over USD 100 million through competitive biddings or acquisitions must submit a “project information report” to the regulator before undertaking “substantive work” on such an investment. “Substantive work” is generally taken to include signing binding documentation, making binding offers and commencing foreign investment review processes in the relevant jurisdiction. NDRC will then issue a confirmation letter (commonly known as a “road pass” on the market) if the proposed investment is approved in principle.

This preliminary approval regime is designed to manage project risk and prevent Chinese investors from competing against one another for the same assets, ultimately at a cost to the Chinese state. For these reasons, while not expressly stated by NDRC, the market’s perception is that NDRC will only issue one road pass at a time for any given deal.

(2) Project verification regime: While a “road pass” is contingent, all China outbound investments must first be approved by NDRC before the investor can be assured that they can go ahead with such investments. A “special project” must be verified by NDRC or by the State Council following NDRC’s initial review, which generally include: investment in countries without diplomatic relationships, investment in countries under international sanctions, investment in countries and regions that are embroiled in ongoing wars or riots, and outbound investment on basic telecommunication operations, cross-border water resource development and utilization, large-scale land development, key power grids, news and media, and other sensitive industries.

Importantly, the NDRC verification regime distinguishes resources projects and non-resources projects: investments over USD 300 million on the former and over USD 100 million on the latter, must be verified by NDRC. The rest of the investments shall then be approved by NDRC’s provincial counterparts.

As an exception, centrally-administered state-owned enterprises (“CASOEs”) are given the same verification power as NDRC’s provincial counterparts are. They are only required to make a filing to NDRC for investments which are less than USD 300 million (resources projects) or less than USD 100 million (non-resources projects). As such, a filing certificate is required for the MOFCOM
verification and the SAFE registration purpose and our experience tells us that it is not materially different from a verification process.

The new NDRC regime under 2013 Catalogue

The focus of the 2013 Catalogue is to distinguish “special projects” from “general projects”:

1. For special projects (namely, those projects to be invested in “sensitive countries and regions” or “sensitive industries” – as further explained below), or projects over USD 1 billion, they must be verified by the State Council’s investment department (or “国务院投资主管部门” in Chinese, which is generally understood as the equivalent reference to NDRC at the central level); and

2. Save for those investments, all other investments by the CASOEs and provincial enterprises (SOEs or otherwise) at or over USD 300 million (up to USD 1 billion) are only subject to the after-the-event filing to the State Council’s investment department for records.

The 2013 Catalogue does not clearly define what “sensitive countries and regions” or “sensitive industries” are. These references were first used in “The Measures for Verification of Overseas Investment Projects” (Discussion Draft, issued by NDRC in August 2012 for public consultation, or “2012 Measures”). These should still be valid for the purposes of the 2013 Catalogue, save that the 2012 Measures provides NDRC with extra powers to what could be considered as “sensitive countries and regions” or “sensitive industries.”

Interestingly, the 2013 Catalogue is silent on the verification jurisdiction of NDRC’s provincial counterparts, although it does have a reference to “provincial governments” which is not quite clear on which department of the provincial governments it refers to.

The current MOFCOM regime

The MOFCOM regime essentially approves the establishment of offshore business vehicles, which may be undertaken as part of the outbound investment process (meaning with specific projects or assets to invest) or as a stand-alone process. MOFCOM verification generally follows NDRC verification, both as a matter of Chinese law (in terms of sequence) and of market practice (as a matter of empirical experience—we have never seen a case where MOFCOM approval wasn’t given when NDRC approval was granted).

The current verification regime administered by MOFCOM consists by a “substantive process” and a “summary process.” In line with NDRC approval levels (save for the investor identity factor), the approval levels of MOFCOM regimes are dictated by factors from investment size, investment destination and asset (industry) type:

- Projects verified by MOFCOM: investments in countries without a diplomatic relationship with China, or in a specific country or region involving multi-national (multi-territorial) interest; establishment of offshore special purpose
vehicles (for China round-trip investment purposes); investment over USD 100 million;

- Project verified by the provincial counterparts of MOFCOM: an investment over USD 10 million but less than USD 100 million; energy and mining investment; investment requiring domestic financing

Investments less than USD 10 million (without any of the above conditions) can go through the summary process, meaning Chinese investors are only required to submit an “Outbound Investment Application Form” online, which will be reviewed by the relevant MOFCOM provincial counterpart and the verifications shall be given within three days.

**The new MOFCOM regime under the 2013 Catalogue**

Under the 2013 Catalogue, to establish offshore enterprises (except for financial enterprises) requires MOFCOM verification if such offshore enterprises are to be established in “sensitive countries/regions,” or concern “sensitive industries.”

The rest of the offshore enterprises are subject to filing for records regime. In that respect, CASOEs shall file with MOFCOM, while local enterprises shall file with provincial governments.

The above views are from local experts describing the changes brought about by the new Outbound Foreign Investment Catalogue (OFIC). What is important to stress here is that Chinese regulators are now interested in monitoring Chinese outward investments in those special projects or exceeding a determined value (1 billion). However, it seems that a lack of guidance still exists in spite of the efforts made by these governmental bodies to “direct” Chinese outbound investments.

In any case, it is possible to affirm that “most Chinese investors have long felt that their cross-border M&A activities and their competitiveness in the global market have been considerably restrained by China’s opaque and difficult regulatory processes. Foreign counterparts, on the other hand, generally tend to show less interest in Chinese bidders, citing among other things, the perceived uncertainties associated with China’s cumbersome regulatory process. Or, as a result, foreigners would otherwise insist that “sellers’ protective measures” (such as reverse break fees) be included in the transaction documents, or a “China premium” be added on top of the standard evaluations. Thanks to the new regime, Chinese investors will now be able to compete in the global capital and M&A markets with much more freedom and flexibility, and their transaction costs are likely to be reduced as a result.62

Chinese ODI includes other types of investments and it would seem necessary to upgrade some of them. In fact, though the number of these transactions and the value of Chinese outbound investments are constantly growing, Chinese investors need to “adjust” their targets if they wish to better integrate themselves into this globalized market and realize a prominent position and influence for themselves at an international level.

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62. *Id.*
The need to upgrade outbound investments

Though Chinese outbound investments have grown impressively in only 10 years, that is, from roughly US$2.7 billion in 2002 to a record high of US$87.8 billion in 2012, and the previsions for subsequent years are impressive, and despite the fact that China has emerged as the world’s third-largest outward investor, the Middle Kingdom is in urgent need of broadening its global prospective on outbound direct investments.

In the initial stages, China’s ODI and its “go global policy” were basically aimed at setting up small trading companies or offices to establish overseas contacts or provide supporting services for the country’s export and import trade. Recently the trend has changed and now China is investing to secure the resources needed to further develop and sustain its economy and internal market. However, it is interesting to note that statistics from the Chinese Ministry of Commerce show that about 65 percent of China’s ODI in 2012 went to the leasing, commercial service, and mining sectors. This indicates an investment structure that is not completely in line with the directives of the central government, which is more oriented in favor of investments in advanced technologies. Further, this does not necessarily address the circumstances that have emerged in the post-financial crisis era. “The international investment climate has been undergoing profound changes since the onset of the global financial crisis. First and foremost, international investment has become an important means for developing countries to integrate into the global economy,” and this is particularly true for China. However, in order to participate more in global value chains and reach its targets, China needs to focus on “industrial” investments and needs to invest in technological fields. This move will help to upgrade Chinese outbound investments, and at the same time it will attract the technology China needs to improve its industries.

In this context, Chinese leadership, through these new policies, paid particular attention to advancement in technology: the new industrial revolution is based on the development of Internet technologies and new applications to encourage consumption via, for example, the use of smartphones and renewable energies. Therefore, investments in these sectors are particularly favored by the Chinese authorities in charge

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64. Xian Guoyi, Upgrade Outbound Investment, China Daily, Nov. 8 2013, at 8.
65. Internet technologies are of particular interest for China. In fact, the use of the Internet and all the applications available to the public are contributing in the expansion of internal consumption through e-commerce. The Chinese government is paying particular attention to e-commerce because it represents one of the means to sustaining the development of the Chinese economy. To give you an idea of the dimension of e-commerce in China, the MOFCOM, on May 31, 2013, held a conference in Beijing addressing the importance of e-commerce for China, and the Vice Minister of Commerce Mr. Jiang Yaoping delivered a speech at the opening ceremony expressing the following amazing and impressive information and data:

(i) Mr. Jiang said that China’s e-commerce has maintained a rapid development momentum in recent years, and the market continues to be expanded, application of e-commerce has been promoted rapidly in enterprises, and online shopping continues to expand. E-commerce has an increasing impact on traditional service industry and circulation industry. China’s e-commerce trading volume exceeded 8 trillion yuan in 2012, up by 31.7 percent as compared with that of 2011, with a growth rate of more than 4 times that of China’s GDP. China’s online retail sales kept an explosive growth rate, and exceeded 1.3 trillion yuan in 2012, soared by 67.5 percent year-on-year, with a growth rate of about 4.7 times that of the total retail sales of social consumer goods. The role of e-commerce has
of the approval process for ODI. Currently the global investment system is undergoing profound changes, and the main initiatives are represented by bilateral, and more recently, by multilateral investment agreements which in the future will cover more areas, including providing a high level of protection for investors (both corporate and private), and ensure wider market access for foreign investors in both directions (China→EU and EU→China). This situation, and the need to enhance the respective business environment with the formulation and execution of these agreements, will further facilitate trans-national direct investments.

Chinese investors need to grasp the opportunities derived from the growing demand of developed economies for foreign investment, and to the acquisition of the technologies needed to enter the developed markets through mergers and acquisitions. However, other factors exist which also drive Chinese outbound investments, and they are summarized in the next section.

[C] NDRC lists benefits deriving from increased ODI

A 2012 release from the NDRC listed some of the benefits that they see arising from increased Chinese ODI. These benefits are outlined in the sections that follow.66

[1] Improving international relations

One of the most important effects of ODI is the improvement of cooperation with the countries hosting Chinese investments. ODI is seen as an instrument not only to advance the (Chinese) domestic economic development, but also as a tool to enhance international integration.

[2] Acquiring more advanced technologies and management experience

As stressed in the previous section, it is evident that investments in overseas high-tech and other advanced industries favor the growth of the Chinese economy. Therefore, these investments have increased and progressed well. By acquiring intensive scientific and technological resources overseas, setting up R&D centers, investing in

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become increasingly important in stabilizing trade growth, expanding consumption, restructuring and promoting transformation of economic development mode amid the world economic downturn.

(ii) Mr. Jiang said that China’s e-commerce is still in the preliminary stage of development despite the rapid growth, and it is necessary to analyze and grasp its development rules and trends. He hopes all local commerce departments will attach greater importance to the role of e-commerce in promoting economic transformation and upgrading of the real economy, strengthening communication and coordination to promote the implementation of e-commerce, so as to continue to improve the benefits of e-commerce applications. It is necessary to adapt to the new challenges brought by the rapid development of E-commerce to relevant regulations and policies, infrastructure facilities and market regulatory system, and to strengthen policy guidance and personnel training, to give play to the role of E-commerce in exploring international markets, and to provide support to micro, small, and medium enterprises so as to enhance their competitiveness in E-commerce.


electronic information, biological medicine, new materials and new energy, as well as advanced equipment manufacturing projects, Chinese domestic enterprises gain access to more international advanced technology and management experience, and improve their innovative abilities and long-term competitive advantages.  

[3] Acquiring certain resources that China lacks

Through the acquisition of foreign companies controlling important portions of other nations’ natural resources, China is ensuring its future development and influence at the international level. According to the findings of NDRC, Chinese enterprises acquired oil, gas and mineral resources and reserves through overseas investments and some of these enterprises now have better production capacities to adapt to the industrialization and modernization trend in China’s development and these investment projects have played positive roles in energy supplies in China. In any case this is the general sentiment among Chinese officials and the bodies directing these investments.

[4] Reaching overseas markets for sales and moving lower-end manufacturing to other developing markets

Chinese ODI have allowed local enterprises to access international markets previously reserved for developed economies. Chinese outbound direct investments have expanded in different sectors, helping the industry in China to modernize production and promote industrial restructuring. In addition, well-known domestic Chinese brands are also looking at Europe to expand their markets. The development of Chinese brands in other markets would be a source of pride within China, and be seen as a requirement for a nation of China’s size and influence. Further, this development would have a very positive effect on the international image of China. As Chinese brands become trusted and valued in foreign markets, this will have a very beneficial effect on China’s overall image internationally. It should be noted that this positive perception of China and its government also favorably impacts the European Chamber of Commerce. NDRC expressed its satisfaction in these terms:

Traditional competitive industries have developed their outbound market systematically. Chinese enterprises in textile, machinery, automobile and other industries have been exploring global markets by establishing their manufacturing factories overseas. These actions drive the development of domestic equipment, labor and technical export, and have also played important roles in promoting the industrial restructuring in China.  

[D] Chinese ODI policies: Conclusion

As discussed earlier, Chinese outbound direct investment policies have effectively facilitated a large increase in outbound investment to the EU and other regions in recent

67. Id.
68. Chinese Outbound Investment, supra note 7.
years. It is also evident that the central government sees this as a key tool for developing its domestic economy. China’s ODI preferences in Europe have come to resemble the outward investment patterns of other commercially driven nations, with the three biggest European economies, that is, France, the United Kingdom, and Germany, receiving the most Chinese investment. This pattern supports the notion that China is not investing (like any other commercially motivated investor) in some odd or random way, but to the contrary, China forms its decisions by considering the business and legal environments of the recipients before it structures any investments abroad.

For some Chinese enterprises the acquisition of well-known world brands and the acquisition of technology is proving to be a crucial element for gaining a competitive edge in its local market. For other companies it is often proving more economical to situate higher value-added activities in advanced and more developed economies (like Europe) to develop further their own business and gain experiences to be re-imported into China. Chinese ODI produce other impacts, not only economically speaking, but also politically, on the recipients (i.e., the hosting countries), which are better identified in the next section.

§ 1.05 DISTRIBUTION AND CURRENT STATE OF CHINESE ODI INTO THE EUROPEAN MARKET: THE CASE OF ITALY

The economic slowdown experienced in the West, and the weakened situation and uncertainties in the financial sector in the United States, have shifted the focus of Chinese companies, both SOEs and privately owned, toward Europe in recent years, especially in the industrial sectors. Europe has become one of the fastest-growing investment destinations for China. Furthermore, due to the recent crisis, European assets became more affordable, and this opened up lucrative opportunities for Chinese enterprises to invest in and to expand their presence in the EU market.

Mr. Wong, a partner in E&Y’s China overseas investment department, confirmed that Chinese investors continued to reaffirm their interest in the European markets (i.e., in 2013). He said “that is especially true of the nation’s State Owned Enterprises, which have become the driving force in investment. Private sector companies also have a strong appetite for fast-appreciating assets in the region, but they lack a clear focus in terms of strategy and execution.” However, now it seems that big Chinese investors are also targeting different regions. Australia is, in fact, another attractive market for Chinese investors, with private sector companies taking a more active role in that market: “Although resource-related transactions still dominate Chinese investment,

69. China Going Global, supra note 36. In the year 2011 alone, Chinese enterprises poured over US$10 billion in investments into Europe. As emphasized in the text, one of the reasons for the shift to Europe was China’s focus on obtaining advanced technology, as well as on accessing new customers and distribution channels.

70. According to a study conducted by the Rhodium Group, China Invests in Europe—Patterns, Impacts and Policy Implications (June 2012) total Chinese investment in Europe will touch US$ 500 billion by 2020.

Chinese investors have broadly expanded into sectors such as agriculture, real estate, renewable energy, power, and utilities in Australia,” confirmed another partner, John Li, at Ernst & Young’s China business group Oceania.72

Additionally, the view of another visionary expert coincides with those just discussed and confirms this new trend among Chinese investors. Peng Yali, director and head of research at KPMG Global China Practice, said that the major destinations of China’s overseas direct investment are shifting among different regions because Chinese companies are increasingly interested in infrastructure investment and other sectors. According to Peng, “Agribusiness and food processing will be a highlight in China’s future overseas direct investment”73 This new trend is very interesting, and it cannot be a coincidence that the theme of Expo Milano 2015 (held in Italy, May–October 2015) was food—a theme of great interest to the whole world.74

China’s outbound investment is diversifying beyond the energy sector. For the first half of the year 2013, the energy and metal sectors accounted for 64 percent of such investment, down from 78 percent in 2009. Meanwhile, overseas investment in agriculture and technology saw a dramatic increase, representing 15 percent of total value, compared with 4 percent in 2009.75

[A] EU member states, recipients of Chinese ODI
The European Union, as a whole, has been the world’s biggest recipient of foreign direct investment, especially in the last ten years.76 Geographically, China’s ODI preferences in Europe look similar to the “troika” comprising France, the United Kingdom, and Germany (in the lead), followed by the other EU member states.77
By the end of 2010, member states had an accumulated inward FDI stock of US$11.8 trillion, which was 36 percent of the word’s total (at that time).\(^78\) The great majority of those flows originated from other European countries; extra-EU investment accounted for just one-third of Europe’s total, with North America firms being preponderant.\(^79\)

[1] Some particular aspects concerning Chinese investments in Europe

The strategy China has adopted is to explore new markets and opportunities, especially in Western Europe with its advanced technology innovations, new customers, and distribution channels. Chinese enterprises have made a series of high-profile acquisitions in Europe. According to data gathered by Ernst & Young\(^80\) the total number of M&A transactions increased from 4,084 in 2010 to 10,429 in 2011. It is noteworthy that Chinese investment in the European Union nearly tripled in 2014.\(^81\) This increase in investment is mainly due to the objectives of China’s 12th Five-Year Plan (which included eco-friendly cars and renewable energy).\(^82\) European research and manufacturing technology is highly relevant to meeting those objectives. The following information might be surprising, but, in terms of numbers, the majority of Chinese enterprises investing in Europe are private, though SOEs account for two-thirds of the American and Central Asia. In 3rd is Germany, which attracted more than one-third of all European deals (146) totalling $2.5 billion. Germany attracted not only the most Chinese investments, but also the most diverse mix of investments by sector, ranging from machinery to telecommunications and consumer goods.”

79. See Rhodium Group, supra note 20.
80. China Going Global, supra note 36.
82. The 12th Five-Year Plan is consistent with Chinese policy to promote China’s development, and in order to give more precise guidelines the NDRC and the MOFCOM jointly issued the revised Catalogue directing foreign investments, which become effective the 30th of January 2012, replacing its previous version issued in 2007. Although the Catalogue serves as guidance for FDI in China, it reflects the policies and goals of China to be pursued abroad also. Promotion of strategic new industries is one of the key points of the policies indicated by the NDRC, and this can be accomplished not only by attracting to China investments which can help China reach its target, but also by stimulating Chinese enterprises investing in these sectors abroad. Consistent with the 12th Five-Year Plan and in a move to push China toward strategic new industries, the following seven strategic industries have been identified: (i) Alternative-fuel cars—hybrid cars and electric cars as well as better fuel-cell batteries; (ii) Biotechnology—biomedicines, new vaccines, and advanced medical equipment; (iii) Environmental and energy-saving technologies—energy efficiency, pollution control, clean coal, waste-matter recycling, and seawater usage; (iv) Alternative energy—next-generation nuclear power plants, solar power, wind power, smart grids, and bio-energy; (v) Advanced materials—rare earths, special-usage glass, high-performance steel, high-performance fibers and composites, engineering plastic, nano and superconducting materials; (vi) New-generation information technology—cloud computing technology, high-end software, virtual technology and new display systems; and (vii) High-end equipment manufacturing—aircraft, high-speed rail, satellites, and offshore oil/gas equipment. The development of new strategic industries is of great importance and significance for China not only to realize foreign trade and upgrade its market, but also for sustainable development of the country. China has taken the development of the above-mentioned industries as an important task in the course of its modernization. At the same time, in applying these new strategies, China is also reinforcing its internal market and its influence on the international level. China is also pushing local enterprises to invest abroad in these sectors (through M&As) because it is a way to acquire “expertise” and know-how, which can be imported. This will help local enterprises acquiring those technologies and intangible assets that are needed to enhance Chinese industries, and to advance toward a more modern society and a more competitive economy.
investment value, as they dominate in capital-intensive sectors. Again, the study by Rhodium Group, estimates that, by the year 2020, the global total of outbound Chinese investment will reach US$2 trillion, of which investment in Europe, both for acquiring established businesses and setting up new operations, could rise as high as US$500 billion. Large Chinese companies are eager to invest in the EU, but some of them do not know how to approach prospective targets. In order to attract large amounts of investment to Europe, and to Italy in particular, the work of local professionals is to promote their services as connectors or interfaces, rather than to sit in their offices waiting to be contacted by Chinese investors to structure transactions for them. Usually proactive initiatives are taken by small or even micro realities because big law firms or other advisors do not act as “deal providers.”

Among the European sub-regions, Western Europe demonstrates a strong, perhaps surprising, level of attraction in terms of foreign investment. Western European countries have a wealthy consumer market, advanced technologies and know-how, a solid infrastructure, a skilled workforce, and an environment that is conductive to business. Italy secured a ninth position only in terms of investment value, and shared the fourth position, along with the Netherlands, in terms of number of deals. This shows that, even in the face of continuing economic concerns in Europe, Italy remained a stable, highly competitive, and increasingly attractive destination for Chinese enterprises to allocate their resources, and to establish operations or expand their presence. Italy represents fashion and innovation, and it is well know for its unique products, especially fashion and luxury products, not to mention the fine cuisine and food. As mentioned earlier, food was the theme of the Expo held in Milan in May 2015. This specific sector (food and beverage) presents many opportunities for Chinese investors. More on this subject follows in the next section.

[2] Italy, Expo Milano 2015, and the food industry
If we consider the myriad of business opportunities suggested by the theme of Expo Milano 2015, namely “Feeding the Planet—Energy for Life,” it is easy to see the connection between the interest of China in developing a safer food industry and in learning or enhancing its capacity to produce food. The participants involved in the Expo have created attractive business opportunities to entice more Chinese investors and help them to acquire more investment capital from China.

Expo Milano 2015 addressed the universal and complex theme of nutrition from an environmental, historical, cultural, anthropological, medical, technical, scientific, and economic point of view. This multidisciplinary approach created interesting plots, correlations, and connections: the Expo addressed the theme according to a very wide-ranging overview, able to question and stimulate all levels of society, allowing the awareness of the vastness and complexity of the factors that affect each of us to emerge. To this end, the Bidding Dossier, the general theme of Expo Milano 2015 was divided into the following sub-themes: (i) Science and technology for food safety,

83. Rhodium Group, supra note 20.
security, and quality; (ii) Science and technology for agriculture and biodiversity; (iii) Innovation in the agro-food supply chain; (iv) Dietary education; (v) Food for better lifestyles; (vi) Food and culture; (vii) Cooperation and development on food.\(^\text{84}\)

As the interdisciplinary nature of each of the sub-themes and how they interact and complement each other is quite clear, in addressing the development of the sub-themes, it is useful to highlight these interactions, grouping the sub-themes together into three macro groups. The first focuses on issues of a more technical and scientific nature, paying close attention to production processes and models, as well as market policies and mechanisms to ensure food security and quality.\(^\text{85}\) The second group develops the social and cultural relationships between mankind and food.\(^\text{86}\)

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\(^{85}\) As for this first sub-theme, it is necessary to stress that this includes (i) Science and technology for food safety, security, and quality (i.e., new production and trade measures to ensure food security for all—quantity and quality—and sustainable development), (ii) Science and technology for agriculture and biodiversity (i.e., finding a balance between agro-forestry, livestock farming, fishing, fish farming and natural resources and investigating the scientific, technological, and ethical issues of sustainable development); and (iii) Innovation in the agro-food supply chain (i.e., science, technology, traditional knowledge and new consumer needs for production processes and food products of the future). At Expo 2015, humankind’s ability to transform nature in order to get food was placed at the center of the attention of participants and visitors. Through recounting, displaying, and interpreting the history of civilization and techniques and processing, visitors are able to (i) reflect on the most delicate issues of the relationship between transforming nature and using environmental resources; (ii) meet institutions, businesses, and associations in their efforts to increase the quality, security, and abundance of food; (iii) meet and find out more about the most diverse solutions adopted by humankind to make land fertile and express a symbolic dimension of nature. The basic theme of this reflection will therefore be sustainability, understood as a balance in the process of food production between natural resources availability and mankind’s production ability. Expo Milano 2015 took visitors on a journey through the most varied aspects of the food supply chains to discover an amazing variety of products, means, and processes. Each of these demonstrates its relationship with the territories, with the identities from which it arises, with the values that the food communicates, as well as with the most advanced processing and distribution systems. From this starting point, Expo Milano 2015 presented itself as a projection into the future: an appointment where the paths of development and innovative solutions which society’s best energies, the most vibrant and fertile minds of the scientific community are addressing, can cross. “Still to come” spaces invited the visitor to experience visions of the future of food, of new tastes as unpredictable products of the supply chain, new trends as unexpected directions of social practices, new tools as the development of human potential. Expo Milano 2015 recognized that innovation plays a strategic role in adapting all the factors revolving around nutrition and identified within it a specific object of investment in terms of human capital, economic resources, and legal framework. Once again, the prerequisite of the future is sustainability. The representation of possible environmental disasters resulting from the abuse of nature will contribute to greater awareness of human responsibility—and consequently also the responsibility of the individual visitors in terms of their future choices. The future, therefore, should be imagined with awareness of this human responsibility, in which political decisions, strategy, but also the choices of individual citizens play a decisive role. In these terms, innovation is primarily a strategy. A joint strategy in innovation policy can become the true element of partnership between countries and between large and small businesses. Development and the capacity for innovation come together and can generate surprising results, more in terms of the ability to sense and support new elements when they appear than in terms of the amount of financial resources.

\(^{86}\) Social/cultural sub-themes include (i) Dietary education—i.e., families, schools and universities, companies, associations, and the scientific community working to improve communication on proper nutrition and on making conscious choices; (ii) food for better lifestyles—i.e., the relationship between food and health, both in terms of social systems and personal needs, aimed toward complete wellness; (iii) food and culture—i.e., encounters and dialogues among the various cultural and social identities of the world regarding their food traditions. Starting from an increased focus on agricultural systems, but then also on food
Cooperation and development, the third, represents the compulsory plan to be followed by all areas of the agro-food supply chain and their governance: This involves making the imperative of cooperation an imperative for human action regarding food and therefore permeates all of the other sub-themes. In this way, sustainability and innovation represent the main factors of human responsibility: The concept of sustainability must be the rule of thumb that pervades both the processes related to food and the other areas of human development, and innovation is the tool, the mental approach to finding new solutions to problems relating to each sub-theme.

[B] Chinese investors and the four Fs: Fashion, Food, Furniture, and Ferrari

Italy is one of the most favored recipients of Chinese investments. Italy is known for the four Fs: Fashion, Furniture, Food and Ferrari, but Italian excellence is recognized in other areas as well. In fact, the interest of Chinese investors ranges from these fashion and luxury sectors to other industries. From the start of 2009 to the end of 2010 Italy attracted about $30 billion in foreign direct investment according the data reported by the OECD. This amount jumped to $50 billion in 2011 and 2012 boosted by takeovers of Italian brands like Bulgari and Parmalat by French groups. This was due to a decline in bank lending during the euro crisis, which forced Italian companies to sell their equity to raise new capital.

[1] Examples of Chinese investment in Italian goods

From cars and shoes to fine food, the “Made in Italy” brand is trusted around the entire world as a mark of quality and craftsmanship. When Italian products, especially those processing and distribution in all its dimensions, especially industrial ones. Expo Milano 2015 drew attention to the specific professional skills necessary to best meet the challenges involving hunger and malnutrition on one hand, and overeating or poor eating habits on the other. Unhealthy lifestyles and behaviour, such as the abuse of food or artificial substances, can cause serious damage to human health. Education about more harmonious lifestyles and consumption models, which are better balanced to meet our actual needs, thus became a declination of the educational mission of Expo Milano 2015.

87. Cooperation and development is the third sub-theme. Development of methods and instruments for partnership cooperation, respective of the roles and characteristics of the various players and attentive to all innovation processes. Developing methods and tools for cooperation from a partnership point of view, respecting the roles and distinctive characteristics of the various players and taking into account all the innovation processes. Food security, understood as universal access to healthy, good, and culturally appropriate food, becomes the central theme of this reflection: finding a balance between all the economic, social, and environmental dimensions of food production and distribution processes that can fully meet the food demand of human beings. The great stage of Expo Milano 2015 invited all stakeholders to tell their stories, to be discovered, to suggest opportunities for cooperation and innovation, to exhibit their best results—from national and local governments to non-governmental organizations, to research institutes, from rural communities to large farmers, from the system of craft businesses to large industry entities, from the most complex players in distribution to small-scale retailers.

88. Ferrari is a well-known Italian name; it represents the sum of Italian fashion, technology, manufacturing, and style expressed in the form of a sportive super car. This name symbolizes success, related to Italy, exported to every part of the world.
related to fashion and luxury are seen around the globe, this is a source of national pride for Italians. However, a growing number of Italian famous names, in the context of Italy’s current economic woes, are falling into foreign hands, victims of the critical financial situation. Chinese investment is currently targeting the “Made in Italy” brand, not only because of what was previously discussed, but also because Chinese investors need to associate their production with a well-known Italian name in order to increase sales in China. And with the injection of new capital these companies are able to continue to promote their brands again all around the world. This is a win-win situation. Companies in need of new financial resources to reinvent and re-launch themselves can now rely on a new breed of investors that provide the company with new resources, contributing to their rebirth. These investors are also betting on a sure result, and a return on their investment is assured, because these fashionable products have a bright future in China.

An emblematic example of this is that of a Chinese manager and businessman named Patrick Zhong, Fusun’s head of global investment, who, after having ordered a suit from a famous northern Italian menswear maker, bought a 35 percent stake in the Italian luxury menswear manufacturer and retailer, namely Caruso. This example is significant and it expresses clearly the interest of Chinese investors that appreciate Italian style and fashion, always an example of elegance. The sale of Caruso for an undisclosed sum, understood to be in the low millions of euros, is just one of the latest examples of Chinese investors snapping up Italian assets.

The following acquisitions demonstrate the great interest that Chinese investors have shown in the Italian fashion and luxury sectors:

- In January 2012, Ferretti was bought by Chinese State-owned Weichai Holding Group Co., Ltd., a subsidiary of Shandong Heavy Industry Co., Ltd., China’s largest maker of bulldozers. The Ferretti Group, producer of luxury yachts, controls eight other brands: Ferretti Yachts; Pershing; Itama; Bertram Yacht, Inc.; Riva S.p.A.; Mochi Craft; CRN; and Custom Line.

- Majority stock in luxury carmaker De Tomaso Automobili SpA was sold in February 2012 to Italian firm Car Luxury Investment, a firm owned by Chinese investment group Hotork.

- Fiorucci Foods, leading producer of Italian pork products, including Prosciutto di Parma, Prosciutto di San Daniele, and Mortadella Bologna, was bought by Madrid-based Campofrio Food Group in January 2011. Three years prior, Campofrio merged with U.S. meat producer Smithfield, which Shuanghui International Holdings (Chinese) then purchased. Smithfield shareholders voted for the US$7.1 billion takeover, which made it the largest takeover ever of an American company by a Chinese firm. The takeover was completed on September 26, 2013

- Italian fashion brand Miss Sixty, which includes in its brand portfolio, Energie, Killah, Reffrigiwear, and Murphy & Nye, was purchased in 2012 by
Trendy International Group. Trendy is headquartered in Guangzhou, southern China.

- Italian luxury fashion house **Cerruti**, best known for men’s woolen suits and 1881 perfume, was purchased in December 2010 by Li & Fung Group’s Trinity. The Hong Kong-based company bought Cerruti for US$70 million.
- **Desmo**, Tuscan maker of fine leather purses is now owned by Chinese national Sara Lin, formerly Suping Lin.
- **Benelli**, makers of fine motorcycles for nearly 100 years is now owned by Qianjiang Group, based in Wenling, China.
- In a cash transaction in September 2008, 100 percent of Milan-based concrete equipment manufacturer, **CIFA S.p.A**, was bought by a consortium formed by Changsha Zoomlion Heavy Industry Science and Technology Development Co.

These are only examples, however. Chinese buyers (wealthy private investors) are not only looking to penetrate the manufacturing sector, they also covet more tasty, more fashionable, and very Italian style. Private individuals are in fact diversifying their investments and literally buying pieces of Italian traditions such as the farm in Gallo Nero, in the traditional Chianti area of Tuscany, famous for wine and olive oil and considered to be a symbol of Italian agricultural.

Italian luxury real estate is also of interest to a growing number of Chinese investors that are eager to invest in this sector.

Chinese investors rely on their personal connections, and they feel more confident negotiating with professionals who have dedicated and invested their time to knowing about China and its traditions, and made some effort to study the language so that they can better interact with investors. Learning some Mandarin can be an important asset for doing business with Chinese investors. In fact, if professionals all around the globe wish to work with Chinese investors at all levels, they should invest a significant amount of time learning something more about China and learn some Mandarin rather than only concentrating on the legal aspects of business deals.

**[3] The acquisition of Pirelli**

The latest move by a Chinese SOE is the acquisition of another Italian icon and piece of industrial history—the Bel Paese. The third weekend of March 2015, China National Chemical Corporation (ChemChina) agreed to buy Italy’s Pirelli, the world’s fifth-largest tire manufacturer, in a deal valued at €7.1 billion (US$7.7 billion), one of the largest overseas acquisitions by a Chinese State firm in recent years.

ChemChina initially paid about €1.8 billion (US$1.9 billion) to buy a 26 percent stake in Pirelli, once owned by Camfin, an investment vehicle indirectly controlled by Pirelli Chief Executive and Chairman Marco Tronchetti Provera.

China National Tire & Rubber Co. was the vehicle ChemChina used for the acquisition and it is one of China’s largest tire makers. Gaining control of Pirelli—which invested hundreds of millions of dollars in a large tire factory in Yanzhou, China—allows the Chinese State-owned company to upgrade its technology and build its
market share at home. With this deal, ChemChina is gaining greater access to the European market while boosting global sales. Tire exports from China have been a source of friction in U.S.–China trade negotiations. The partnership is also aimed at strengthen Pirelli’s presence in China and double the company’s volume of industrial tire sales, which is about 12 million tires a year. Pirelli’s industrial tire business is to be gradually integrated with some assets of China National Tire & Rubber and Aeolus Tyre Co., a Shanghai-listed company partially owned by ChemChina.

The Pirelli acquisition is the latest in a line of Chinese investments in Italy, with recent acquisitions by People’s Bank of China including stakes of about 2 percent in some of Italy’s biggest and most iconic companies, including Fiat Chrysler Automobiles SpA and oil giant Eni SpA.89

This latest move clearly illustrates the interest of Chinese companies for European assets; in this case, for outstanding Italian industrial realities. There is no doubt that more resources accumulated by giant Chinese SOEs will be allocated in the EU thanks to new investment agreements.

Private Chinese enterprises also play a significant role. They have been among the main Chinese buyers of European businesses. As discussed earlier, acquiring well-known brand names is a way for Chinese companies to access new markets to obtain new technology and broaden their expertise.

[4] The surge of visa requests

The growing presence of Chinese entrepreneurs and businesspeople in the EU has caused a collateral connected effect, namely, a rapid increase in requests for visas from Chinese citizens. Some governments in the EU took this as a positive sign and changed their procedures to allow Chinese citizens to enter their countries more easily. The U.K. is an extraordinary example: Chinese tourists currently contribute £500 million annually to the U.K. economy with record numbers visiting to make the most of the retail opportunities and visitor attractions on offer—up 35 percent between April and June (2015) compared to the same period in 2014. Overall, visit visas issued to Chinese nationals have almost tripled over the past five years from 115,000 in 2009 to 336,000 in 2014, with spending increased by 326 percent. With every Chinese visitor spending on average £2,688 per visit, visitor visa extensions will enable them to maximize their spending power even further.

Overall inbound tourism, one of its fastest growing services, was worth more than £26 billion to the U.K. economy in 2013, so the benefits of increasing Chinese visitors can also be seen in job creation where, for example, every 22 additional Chinese visitors create an additional job in the sector.90

§ 1.06  IMPACT OF CHINESE INVESTMENTS ON THE EU ECONOMY

The amount of Chinese ODI at a global level, as well as at the EU level, combined with the introduction of proposed investment agreements, means the EU will play a greater role with investors (see Chapter Two, § 2.03[B][1]), and it is having a profound impact on the economy of all 28 EU recipients not only economically speaking but also politically (the change in the investment policy introduced by the EU is only an example). Europe’s historical openness to foreign investment is based on the assumption that FDI (or in this case Chinese ODI) is overwhelming advantageous for the host economy. From a macroeconomic perspective, FDI increases the welfare of both producers and consumers. Foreign direct investments allows enterprises to explore new markets and operate more efficiently across borders, increasing economies of scale, promoting specialization, and usually reducing production costs. At the local level, foreign investments bring tax revenue, knowledge spillovers from worker training, technology transfer and R&D activities, and new jobs. Some of these benefits from increased Chinese investments are already tangible in Europe.91 Chinese ODI can also have positive political spillover effects improving international cooperation and favoring new initiatives, such as, for example, the proposed new bilateral investment agreement. Keeping Europe open to Chinese investors (both private and State investors, i.e., SOEs) leaves Beijing with no reasons to make China more restrictive for European counterparts to invest in China. This policy and the new reforms are of extreme importance for China. China is, in fact, in the process of opening further its market with the introduction of new reforms (discussed in Chapter Three), which are of fundamental importance for its internal market and to transforming the Chinese economy, helping the country to move toward a consumer-driven economy.

Allowing Chinese enterprises to operate freely in Europe also exposes them to a regulatory environment with standards much higher than those found within China, although sometimes it can result in difficulties with interpretation, which sometimes create impediments to the establishment of a new entrepreneurial initiative. Experiences matured overseas and business practices learned in developed economies like Europe’s will be taken back to China and may be of inspiration for a better regulatory environment in China. As Chinese enterprises gain a greater foothold in the European market, China may also become more sensitive to how its foreign policies affect Chinese nationals with European interests, which will likely lead to a more nuanced approach to Chinese–European political relations.92

92. Id.
Most important benefits of investment from China

Foreign direct investment has been one of the most important drivers of economic growth and integration in the European Union. Infra European FDI and external investments have both contributed to the creation of “European multinationals” with operations stretching from design in Italy, to research in Germany and production in Eastern Europe. Generally, FDIs are welcome because they contribute to the creation of new jobs and they stimulate consumer demand. Investment from China brings the same positive effects, though sometimes it is difficult to integrate the Chinese mentality with the European way of doing business. This is one of the reasons why professionals and facilitators of transactions should be more familiar with the respective culture and ways of thinking. This aspect is often undervalued, but it is of extreme importance for the smooth development of a business initiative.

Inflow of new capitals: M&A transactions

It is a fact that China is looking to Europe for acquisition opportunities, but China first needs to see European regulators open their doors to it. This part of the book is not intended to deal with the complicated regulatory environment at the EU level regulating M&A transactions, but only to highlight some information about it. A more detailed analysis of these transactions is given in Chapter Five, which discusses the dynamics and reasons behind these investments, namely the expansion of Chinese presence in the EU.

Chinese banks have tended to expand into markets where their domestic customers are investing. This inevitably has caused an increase of the availability of Chinese capital. However, sometimes investors need to be directed or guided because the opportunities, though abundant, are not so easy to take advantage of, and also because local investors do not act proactively.

An extraordinary fact is that if Europe maintains its average intake of global FDI flow in the 2000s (around 25 percent), then by 2020 Europe would look for a cumulative amount of US$250–500 billion in new Chinese M&A and green field investment. According to the study of Rhodium Group, even if China underperforms the global average takeoff in OFDI, and Europe underperforms its past track record in attracting new global flows, a 2012–2020 annual average of at least US$20–30 billion would be expected.

Consequences for European sellers

It is an incontrovertible fact that a greater interest from China for European companies increases competition for EU assets, and thus raises prices for European sellers. This is one of the most evident benefits deriving from Chinese ODI, and this is exactly

94. *Id*. 
what Europe needs now to definitively beat the crisis. Rhodium Group\textsuperscript{95} has stated that “much has been speculated about whether Chinese investors are willing to ‘overpay’ for direct investment assets, but far less is understood.” In fact, “while China’s enterprises are certainly not as experienced at factoring global pricing variables into their deal making, they often enjoy some positive information asymmetries to offset that.”\textsuperscript{96}

In any case, there is no doubt that Chinese investors are looking with greater interest at the EU, and the prospected investment agreement (see § 2.02[A] and § 2.03[B][1]) should render Chinese investments (and acquisitions) an opportunity for European enterprises. They should present themselves to Chinese investors with plans to access and serve the Middle Kingdom also, to expand further their presence in this promising market. This will benefit both the EU target companies and the Chinese investors. In fact, with private consumption in China projected to grow by US$8–10 trillion over the next decade, China will overtake the United States as the world’s largest consumer market by around 2025\textsuperscript{97} (and the effects for the European target companies will be more than positive (if Europe remains open to Chinese investments).

\[3\] \textbf{Productivity effects}

Chinese acquisitions in the EU should stimulate production and innovation, not only because, according to the “directives” of the Chinese leadership, investment should enhance technologies (or at least focus on this), but also because products produced in the EU should be also exported in China to satisfy internal demand. In fact, the new policy is to stimulate internal consumption to further sustain local economy (China economy). Thus, production in the EU is expected to change pace, not only with evident benefits for the European targets, but also for the European economy as a whole. (But this is only the “vision” and opinion of the author of this chapter, a lawyer studying Chinese laws that assist both European/Italian and Chinese investors in realizing their operations in the respective markets, and not an economist.)

\[4\] \textbf{Keeping China’s market open}

Evidently, if Europe adopts an accommodating policy toward Chinese ODI, the benefits will be huge for both blocks. Indirect positive impacts associated with growing Chinese FDI in Europe are numerous. For instance by keeping its doors open to Chinese investment, Europe encourages China to keep its doors open to European investment. It is not difficult to imagine that trade and business opportunities between China and the EU will surge, especially with the implementation of the proposed investment agreement. China is experiencing an incredible transformation and the nomenclature needs to find ways to maintain the pace of this development toward a more market-oriented economy not only by introducing new reforms but also by satisfying the needs of its

\textsuperscript{95} Rhodium Group, \textit{supra} note 20.

\textsuperscript{96} \textit{Id.} This study also underlines that Chinese firms are often much better briefed on market conditions in China, and since Chinese marginal demand growth has become a huge share of total global growth, they are often in a strong position to value productive assets.

\textsuperscript{97} Data from the World Bank, 2012.
consumers and citizen. And Europe seems to be the perfect business partner because it represents not only a basin where to find investment opportunities but also partners to work with to reach shared goals, namely sustainable development and a stable society.

[5] Further consequences
Chinese enterprises allocating their resources abroad have already developed strong global positions in several industries (see § 1.05[A]). The sectors in which Chinese are investing are briefly discussed in the next paragraph.

[B] Political impacts of Chinese ODI
It is evident that the rise of Chinese outward direct investment brings political implications along with their benefits. In primis, ODI serves as a tool to develop long-term cooperation with its recipients. It is an incontrovertible fact that ODI's enhance international relationships by stabilizing both business and political ties between China and the countries where Chinese ODI is allocated. This is particularly true where the respective FDI (inward and outward) is intended to be a strategic and not a short-term adventure. Another basic factor to consider is that countries with a significant FDI abroad tend to have a greater interest in political stability in recipient countries in order not to put at risk their future development and ensure a good return on investment for the enterprises involved. If China sees Europe as a destination for its ODI rather than a market for export, this is something unique, which will benefit both. It is, in fact, simple to imagine that Chinese ODI in Europe will stimulate the European economy and should help in accelerating the recovery, creating new opportunities for Chinese investors and European enterprises and entrepreneurs willing to take a chance to open their businesses to China.

Furthermore, the positive reaction from the EU should convince the Chinese leadership to open further their local markets to European initiatives, and it will stimulate the implementation of bilateral relations with the EU itself and its members to further help their respective economies.

As it was justly and smartly discussed in research by Thilio Hanemann and Daniel H. Rosen,

Having assets worth hundreds of billions of dollars in foreign jurisdictions for the first time should affect firms’ appreciation of the merits of law-based limits on political power. Greater levels of Chinese investment also have the potential to further align foreign policy interest and make Beijing a more responsible stakeholder in the global arena.98

It is evident that China’s ODI implies a certain degree of “interference” in other states’ internal affairs and gaining more influence at the international level. This

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98. Hanemann & Rosen, supra note 71.
appears to be inevitable. However, new business agreements and talks should also reinforce political ties and friendship between China and Europe.

[C] Final considerations on ODI
It is necessary to emphasize that ODI from China has increased markedly over the past decade, despite attempts to restrict Chinese investment in some markets. The Chinese government has supported outbound investment through bilateral investment treaties that provide for domestic investor treatment of Chinese investors already established in the host country. Future efforts to protect overseas investment could shift toward gaining pre-entry domestic investor treatment, essentially ensuring that Chinese investors are allowed access to host-country markets on the same basis as domestic investors. Even this more liberal approach to investment guarantees could not overcome obstacles to investment based on national security concerns, which have been an argument used to block some deals. Such agreements however, could support less controversial investments in developing countries where the legal system may not be reliable to protect investors’ rights. Achieving pre-entry national treatment may be necessary to maintain the competitiveness of Chinese investors if such agreements proliferate in coming years.

In the next chapter we will analyze the European policies and strategies to attract more Chinese ODI and European plans (i.e., Europe 2020 Strategy) for its own future. In fact, some of the European political targets coincide with China’s objectives as will be discussed in Chapter Three, which also addresses the new reforms China has put in place to better integrate itself into this globalized world.