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THE BELT AND ROAD INITIATIVE AND INTERNATIONAL TRADE GOVERNANCE

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## Actors In Chinese State Capitalism

### Introduction

China's industrial and economic policy of developing large SOEs has put its largest trading partners ill at ease. China's opponents argue that SOEs benefit from a "state-orchestrated size and scale" that is all but "beyond the reach of foreign firms that focus on quarterly results and answer solely to shareholders",<sup>1</sup> resulting in "large market-distorting subsidies" and "unfair competitive conditions".<sup>2</sup>

The DSB's efforts to interpret the SCM Agreement, which aims to govern the use of government subsidies and implement remedies for subsidised trade, appear to have polarised the respective parties' positions on the issue of SOEs. Critics like the US argue that the existing regime of interpretation has been used "to shield China's non-market economic practices and undermine fair, market-oriented competition".<sup>3</sup> In particular, they contend that the Appellate Body interprets "public body" in a manner that is ambiguous and ill-suited to address the blurred lines between state and enterprise in China.<sup>4</sup>

On the other hand, it has been argued that with China being the leading target of antidumping measures since the founding of the WTO,<sup>5</sup> "the Chinese feel as though they are singled out for harsher treatment",<sup>6</sup> especially in light of the WTO-plus obligations imposed upon it on its accession to the WTO in 2006. In any event, China appears to be doubling down on its approach to economic and industrial planning. Further consolidation of the state-owned sector is to be expected in the near future, with the number of SASAC-managed SOEs falling projected to fall further even as the total value of their assets increases.<sup>7</sup>

### Literature Review

With China (apparently) committed to its policy of consolidating and strengthening SOEs, much discourse has taken place pertaining to how China's opponents at the WTO should respond. Gao<sup>8</sup> has summarised the main options available to the WTO, chief of which have been the attempts to build supranational or mega-regional agreements – a "coalition of the willing"<sup>9</sup> – to "define new rules in areas where the WTO has been [perceived as being] unable or unwilling to act".<sup>10</sup>

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<sup>1</sup> Baltz, M., 2022. What lies beneath the 'tariff man'? The Trump administration's response to China's 'state capitalism'. *Contemporary Politics*, 28(3), p.330.

<sup>2</sup> Gao, H., 2021. WTO Reform and China: Defining or Defiling the Multilateral Trading System?. *Harvard International Law Journal*, 62, p.19.

<sup>3</sup> Office of the United States Trade Representative, 2022. *Statement from USTR Spokesperson Adam Hodge on the WTO Arbitration Award Announcement in United States – Countervailing Duty Measures on Certain Products from China*. [online] Available at: <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/january/statement-ustr-spokesperson-adam-hodge-wto-arbitration-award-announcement-united-states>>.

<sup>4</sup> Blanchette, J., 2021. From "China Inc." to "CCP Inc.": A new paradigm for Chinese state capitalism. *China Leadership Monitor*, p.10; Yang, Y. and Lee, P., 2018. State capitalism, state-owned banks, and WTO's subsidy regime: Proposing an institution theory. *Stanford Journal of International Law*, 54(2), pp.119-120; Du, M., 2014. China's State Capitalism and World Trade Law. *International and Comparative Law Quarterly*, 63(2), p.437.

<sup>5</sup> Wu, M., 2016. The "China, Inc." Challenge to Global Trade Governance. *Harvard International Law Journal*, 57(2), p.308.

<sup>6</sup> Wu, *supra* note 5.

<sup>7</sup> Li, C., 2012. China's Midterm Jockeying: Gearing Up for 2012. *China Leadership Monitor*, 31, p.4.

<sup>8</sup> Gao, *supra* note 2.

<sup>9</sup> Gao, *supra* note 2, p. 28.

<sup>10</sup> Wu, *supra* note 5, p. 315.

It is notable that this body of discourse tends to refer to China as a single, unitary actor. Wu exemplifies the literature with his elegant shorthand reference to “China, Inc.” when referring to the Chinese state-economic complex.<sup>11</sup> When referring to China *qua* WTO member, such an approach is appropriate, since China is represented on the country level at the WTO.

With that said, it must be noted that the above “monolithic” approach of “China, Inc.” makes a number of assumptions as to how Chinese economic and industrial policies are implemented *in practice*:

- First, that “China, Inc.” can effectively be represented as a single, internally coherent state actor;
- Second, that such an agent has had the ability and authority to successfully formulate and execute economic and industrial policies within China;
- Third, that there exists some identifiable economic policy that has been (largely) uniformly implemented throughout all provinces and administrative areas within China, which can be recognised as originating from that centralised planning authority.

These assumptions deserve scrutiny and attention in light of Hall and Krolkowski’s observation that the PRC is not an autocracy with complete control over its commercial and regional actors.<sup>12</sup> In matters of international trade and investment and especially in regard to the Belt and Road Initiative (BRI), Freymann, Ye, Reilly, and others have argued<sup>13</sup> that power (to formulate and implement trade policy and the BRI) is divided and distributed along various regional and administrative lines, with Liou in particular noting that the literature has not sufficiently addressed how “domestic politics” and “changing state/enterprise relationships” become the “central determinant of China’s foreign economic policy”,<sup>14</sup> as opposed to external influences such as those arising from its WTO obligations.

### *Analytical Approach*

In light of the above, this paper aims to contribute to the discourse by increasing the resolution with which “China, Inc.” is examined. Key state actors will be identified and differentiated by their relative levels of agency and involvement in executing the state capitalist agenda that ultimately makes up “China, Inc.”. They are:

- (1) The central government and its ministries;
- (2) provincial governments;
- (3) SOEs, and
- (4) the Communist Party of China (CPC).

This paper will examine the unique characteristics and interests of each actor and how they are consequently empowered (or disempowered) to implement state capitalism and conduct trade relations. It will be shown below that each of the four agents demonstrate markedly different practical and institutional capacities in this respect. As a result, they all significantly differ in their attitudes toward SOEs and world trade reform. This finding has practical implications for China’s WTO counterparties

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<sup>11</sup> Wu, *supra* note 5, p. 264.

<sup>12</sup> Hall, T. and Krolkowski, A., 2022. Making Sense of China's Belt and Road Initiative: A Review Essay. *International Studies Review*, 24(3), p.9.

<sup>13</sup> *Ibid.*

<sup>14</sup> Liou, C., 2009. Bureaucratic Politics and Overseas Investment by Chinese State-Owned Oil Companies: Illusory Champions. *Asian Survey*, 49(4), p.671.

as they seek to secure *effective* changes and compromises with the various actors involved in the labyrinthine bureaucracy that is “China, Inc.”.

### *Methodology*

The paper will systematically analyse how each of the four actors implements China’s state capitalist economic model and influences trade policy.

When examining the central government, provincial government, and the CPC, attention will be paid to how each actor (1) participates in trade and (2) influences (or is unable to influence) SOEs. In turn, SOEs will be examined for their ability to exert influence in the opposite direction (on the government actors). Where appropriate, the analysis will differentiate between SASAC-controlled SOEs and smaller (provincial) SOEs.

### *Findings*

#### **Central Government**

The central government and its ministries have the highest formal authority over the practical implementation of China’s economic policies, with supervisory control over SOEs and powers to enact regulations and policies governing trade and the conduct of SOEs. In practice, however, its flexibility to implement changes to trade policies is limited by the need to retain control over key sectors of the economy. Bureaucratic structures also limit its formal authority vis-à-vis SOEs and even other agencies in the central government. They also depend heavily on provincial governments to implement policies.

#### **The central government has the power to implement regulations that affect the trade position of SOEs**

Ministries in the central government have the power to draft regulations and policies directly addressing trade relations and SOE competitiveness, and are thus have the formal authority to implement any potential economic or trade reforms (for example, after a possible adverse ruling against China by the DSU, or after successful negotiations with a WTO counterpart). The source of this power is their “decisive tactical influence over policy by virtue of their role in drafting laws and regulations and implementing the sometimes ambiguous national policy goals set by top leaders”.<sup>15</sup> For instance, the implementation of international trade policies falls under the purview of the State Council’s Legislative Affairs Office (SCLAO), which plays a “frequently decisive role” in the implementation of international treaties.<sup>16</sup> “Super-ministries” like the Ministry of Industry and Information Technology (MIIT) are also decisive in developing controversial industrial policies that bring support to domestic firms at the expense of foreign competitors. In the Information Technology industry – a key area of fierce contestation amongst China’s WTO opponents, Lawrence and Martin document the potency of MIIT in aggressively implementing CPC General Secretary Hu Jintao’s otherwise vague call for “indigenous innovation”. The MIIT promptly attempted to favour domestic telecommunications companies by making them the default 3G mobile telecommunications providers in China, and tilted government

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<sup>15</sup> Lawrence, S. and Martin, M., 2013. *Understanding China’s Political System*. R41007. United States Congressional Research Service (CRS), p.31.

<sup>16</sup> *Ibid.*

procurement rules in their favour, entrenching the dominance of domestic telecommunications companies over foreign competitors.<sup>17</sup>

Ministries in the central government also exercise supervisory control over SOEs. This is especially in the case of large national SOEs which fall under the purview of the State-Owned Assets Supervision and Administration Commission of the State Council (SASAC), which directly owns a major portion of their assets.<sup>18</sup> SOEs have many concurrent formal accountabilities to various government ministries overseeing various aspects of their operations. The influential National Oil Companies (NOCs) for example have several supervisors including the National Energy Administration (NEA), SASAC, and the National Development and Reform Commission (NDRC),<sup>19</sup> with Wang thusly noting that they are “not on equal footing with the state in the established political structure”.

Meckling, Kong, and Madan note that the central government also exercises a “soft”, tacit influence over SOEs. By virtue of the state capitalist system administered and executed by ministries such as MIIT (as exemplified above by Lawrence and Martin), SOEs depend on government policy for monopolistic rent, preferential credit, and diplomatic support in ensuring their competitiveness in world markets.<sup>20</sup>

#### The extent to which the central government can unilaterally implement pro-trade reforms or control SOEs is limited in practice

With regard to the implementation of any potential economic or trade reforms, the central government is, in practice, severely constrained as doing so would almost certainly create insurmountable conflict amongst central government agencies. Hameiri and Jones outline unsuccessful efforts by the People’s Bank of China (PBC) to promote compliance with WTO rules by exposing domestic banks to foreign ownership and competition.<sup>21</sup> Its efforts to promote compliance with WTO rules “sparked massive conflict” with the Ministry of Commerce (MOFCOM) and ultimately saw the PBC being stripped of regulatory control over commercial banking. The decision to halt liberalisation of the commercial banking sector (in violation of Beijing’s WTO commitments) was legitimised by the need to retain control over credit allocation and to maintain bank asset values,<sup>22</sup> thus demonstrating the difficulties that inter-agency conflicts will bring about for central government agencies that attempt to bring China in compliance with the spirit of WTO commitments.

The conflict between central government bodies is not to be underestimated as an obstacle. These conflicts run deeper than specific trade-related policies and are rooted in fundamental differences in internationalisation and vested interests. Consequently, the central government’s ability to develop a coherent strategy toward foreign trade policy or SOEs is impaired. Zweig notes that the uneven involvement of state agencies in foreign affairs<sup>23</sup> creates pronounced differences in their fundamental

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<sup>17</sup> Lawrence and Martin, *supra* note 15, p. 30.

<sup>18</sup> Li, *supra* note 7, p. 3.

<sup>19</sup> Wang, X., 2019. Does the Structural Power of Business Matter in State Capitalism?: Evidence from China's Oil Politics under Xi Jinping. *Pacific Focus*, 34(2), pp.289-290.

<sup>20</sup> Meckling, J., Kong, B. and Madan, T., 2015. Oil and state capitalism: government-firm cooperation in China and India. *Review of International Political Economy*, 22(6), p.1163.

<sup>21</sup> Hameiri, S. and Jones, L., 2015. Rising powers and state transformation: The case of China. *European Journal of International Relations*, 22(1), p.83.

<sup>22</sup> *Ibid.*

<sup>23</sup> Zweig, D., 2002. *Internationalizing China*. Cornell University Press; originally cited by Hameiri and Jones (*Ibid.*)

attitudes toward international norms, resulting in a lack of coherence as to the central government's receptivity to trade reform proposals. Lawrence and Martin further note that the ministries "are a fractious, highly competitive group of institutions with sometimes overlapping jurisdictions"; for instance, the MIIT promotes industrial production and places itself in direct conflict with the Ministry of Environment which seeks to manage industrial pollution.<sup>24</sup> With respect to SOEs, Liou notes that the assessment of their performance concerns both the NDRC (which measures managers' support for national objectives) and SASAC (which measures managers' financial performance), thus directly creating conflicting incentives for SOE managers.<sup>25</sup>

Furthermore, while central government ministries enjoy supervisory powers over SOEs, they may not always have direct control over them. Lawrence and Martin note that SOEs sometimes share the same rank as central government regulators, making it impossible for regulators to issue binding orders.<sup>26</sup> Informal power dynamics also limit the direct control central government ministries have over SOEs, for example where information asymmetries in highly technical industries limit regulators' understanding of the firm's activities,<sup>27</sup> or where SOEs operate outside of China's borders (Liou notes that SASAC has been a weak agency in overseeing state assets abroad)<sup>28</sup>. SOEs may also simply choose not to comply with the central government. Liou further notes that "it is increasingly hard for the central government to force corporatized NOCs to engage in deals without considering their economic gains"<sup>29</sup> and it often finds itself "plagued by protracted negotiation, especially in the energy sector".<sup>30</sup> Economic competition between SOEs has created incentives to create policy deadlock.<sup>31</sup> Liou's examination of the conflict between Sinopec and the China National Petroleum Corporation (CNPC)<sup>32</sup> is a suitable case study. Without authority to issue binding orders, MOFCOM was unable to prevent Sinopec from competing with CNPC to obtain rights to a pipeline project in Sudan, resulting in heavy financial losses for CNPC and an embarrassment for MOFCOM.

Central government agencies struggle to implement policies on nationwide basis as they rely heavily on local authorities to execute policies

Lieberthal notes that decisions of the central government "are often too general to provide real operational guidance" with the result that "regulations often take months or even years... as they are passed down the party-state hierarchy".<sup>33</sup> Where provincial authorities are unwilling or unable to implement regulations set down by the central government, Lawrence and Martin note that "Beijing sometimes seems to struggle to impose its will on the provinces".<sup>34</sup> There are structural and informal factors contributing to this observation. Structurally, "no national minister can issue a binding order to a provincial governor, even though ministries appear on organization charts to sit above provinces in the national hierarchy".<sup>35</sup> Informal power also lies in the hands of provincial governors. Even though

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<sup>24</sup> Lawrence and Martin, *supra* note 15, p. 17.

<sup>25</sup> Liou, *supra* note 14, pp. 683-684.

<sup>26</sup> Lawrence and Martin, *supra* note 15, pp. 15-16; Wang, *supra* note 19, p. 291.

<sup>27</sup> Wang, *supra* note 19, p. 290.

<sup>28</sup> *Supra* note 25.

<sup>29</sup> *Ibid.*

<sup>30</sup> Liou, *supra* note 14, p. 686.

<sup>31</sup> Li, *supra* note 7, p. 27.

<sup>32</sup> Liou, *supra* note 14, pp. 680-682

<sup>33</sup> Lieberthal, K., 2011. *Managing the China Challenge: How to Achieve Corporate Success in the People's Republic*. Brookings Institution Press, p.56.

<sup>34</sup> Lawrence and Martin, *supra* note 15, p. 10; see also Hameiri and Jones, *supra* note 21, p. 83.

<sup>35</sup> Lieberthal, *supra* note 32, p. 51.

central government ministries have bureaus in the provinces, local bureau officials support local agendas over the central government's since it is the provincial leadership and not the central government that controls the personnel assignments of these local officials.<sup>36</sup>

### **Provincial Governments**

In practice, provincial governments have far greater formal and informal influence over the operations and overseas activities of SOEs than central government. This is because provincial governments enjoy fiscal and legislative independence in implementing objectives set by the central government. The informal power they exercise over SOEs arises by virtue of their support for SOE's day-to-day operations and the financial and diplomatic support they provide for SOEs' overseas activities.

With that said, their heavy involvement in political patronage is likely to incline them to maintaining an economic and industrial status quo, rendering them unwilling to enact any major trade reforms. Furthermore, provincial governments, like the central government, can find it challenging to exert control over large, national SOEs (especially those falling under the ambit of SASAC). Fresh political reforms laid down by the CPC in 2022 also have the potential to curb the independence of provincial governments through the implementation of greater Party oversight over fiscal and political decision-making in the provinces.

#### **Provincial leaders have the formal capacity to implement central government policies, including trade policies**

Provincial leaders have a high degree of legislative and regulatory independence.<sup>37</sup> This arises from the latitude they are given to interpret the objectives set by the central government and set policies and regulations in support of those objectives.<sup>38</sup> This is complemented by an “extremely high”<sup>39</sup> degree of fiscal independence. Hess argues that the relative autonomy of provincial governments “has extended into China's foreign relations” with provincial authorities demonstrating a capacity to assist SOEs in securing overseas resources and market access, facilitating foreign investment and pursuing diplomatic ties in furtherance of increased trade between overseas markets and those of the respective provinces.<sup>40</sup> Given that the vast majority of China's 100,000 SOEs are provincial SOEs<sup>41</sup> (in comparison to the 97 national SOEs overseen by SASAC), and given further that an estimated 88 per cent of all Chinese firms operating abroad are provincial SOEs,<sup>42</sup> it is arguable that the influences exerted by provincial government on this class of SOEs affects a large segment of trade activity between China and its trading partners. Indeed, Hess points out that “provincial governments played an exceptionally important role in” China's trade relations with Southeast Asia.<sup>43</sup>

#### **Provincial leaders have the formal capacity to determine their own trade relations under the BRI**

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<sup>36</sup> *Supra* note 34.

<sup>37</sup> *Supra* note 33.

<sup>38</sup> Lawrence and Martin, *supra* note 15.

<sup>39</sup> Hess, S., 2020. Plunder and Paradiplomacy: The Corruption of China's Decentralised State in Yunnan Province. *China: An International Journal*, 18(2), p.80.

<sup>40</sup> Hess, *supra* note 39, p. 78.

<sup>41</sup> Li, *supra* note 7, p. 3.

<sup>42</sup> Hess, *supra* note 39, pp. 92, 98.

<sup>43</sup> *Supra* note 42.

The depth of influence that provincial governments have in assisting provincial SOEs is meaningful and extensive. In his case study of Yunnan province, Hess demonstrates the crucial role that the local government played in expanding trade with neighbouring trade partners under the BRI. They included interacting with foreign counterparts in securing contracts, forming joint ventures with provincial SOEs, and coordinating cross-border infrastructure development.<sup>44</sup> In a display of autonomy in determining foreign trade relations, the Yunnan government negotiated and assisted in the Greater Mekong Subregion (GMS) economic development bloc (formed by the Asian Development Bank) and secured the province's formal inclusion as a participant.<sup>45</sup> Notably, "even as central officials in Beijing directly managed foreign policy on the GMS in pursuit of national interests, leaving Yunnan in a consultative role, Yunnan province has nevertheless... instrumentalise[d] its participation in the GMS to pursue its own interests."<sup>46</sup> In light of the heavy involvement of provincial governments in securing trade links and diplomatic support, it is evident that SOEs depend heavily on government support to conduct overseas trade. This dependence generates a significant level of informal influence which (theoretically) gives provincial governments to develop their trade relations (and with them, a meaningful segment of outbound Chinese trade) in compliance with the WTO.

#### Provincial governments rely on patronage and are thus unlikely to pursue reforms in their trade regime

Despite the great power that provincial governments exhibit, it has been observed that they do not always prioritise economic efficiency, with provincial governments demonstrating a tendency to support loss-making SOEs and preferring to implement the preferred policies of their patrons.<sup>47</sup> While the reasons for this are not immediately clear, Hess documents the role that patronage and corruption play in creating reluctance to spur innovation and economic efficiency. He notes that several provincial officials accepted bribes in exchange for policy changes, construction contracts, and appointments.<sup>48</sup> In the context of the BRI and Chinese trade relations, at least one recorded instance demonstrates that provincial officials used their diplomatic leverage and networks to control appointments in an SOE "that received major contracts related to the construction of power transmission lines in Laos and Vietnam as well as hydropower operations in Myanmar".<sup>49</sup> For the avoidance of doubt, it is not the intent of this paper to characterise Chinese outward investment and trade in a corrupt light. However, the presence of corruption is indicative of political patronage. This lowers the possibility that provincial governments would favour significant trade reforms especially if they affect personnel arrangements and the economic performance of SOEs in their power networks.

#### Influence of provincial governments is limited to provincial SOEs with limited control over large national SOEs

Provincial governments are not excepted from the rank system of governance and the influence that they have over SOEs depends in turn on the ranks of the SOEs themselves. Given that SOEs can actually be of any rank within the Chinese bureaucracy,<sup>50</sup> the relative influence of provincial authorities in issuing directives is highly rank- and context-dependent. Evidence has shown that larger and more

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<sup>44</sup> *Supra* note 42.

<sup>45</sup> Hess, *supra* note 39, p. 90.

<sup>46</sup> *Supra* note 45.

<sup>47</sup> Hess, *supra* note 39, p. 82.

<sup>48</sup> Hess, *supra* note 39, p. 95.

<sup>49</sup> *Supra* note 48.

<sup>50</sup> *Supra* note 35.



powerful SOEs, such as the NOCs and other SOEs (that sometimes even outrank the municipalities in which they are located),<sup>51</sup> can exert overriding influences at the provincial level like they do at the central government level.<sup>52</sup>

Furthermore, although numerous<sup>53</sup> and important in external trade, provincial SOEs only represent 10% of all assets in pillar industries,<sup>54</sup> limiting provincial governments' ability to implement economic reforms or take on policy positions in a manner that represents the bulk of state assets in key industries.

#### Recent political reforms have increased CPC oversight of provinces and placed limits on their fiscal and legislative independence

The March 2022 revision of the "Local Government and People's Congresses Organic Law" saw the addition of the doctrine of supreme CPC leadership over the provinces. Higher levels of provincial leadership now have a duty to "adhere to the leadership of the [CPC]", a change that has "huge implications" for provincial officials who are now subject to disciplinary sanctions for perceived non-compliance with their new constitutional obligations to "adhere to Communist Party principles such as Marxism-Leninism and the newer 'Xi Jinping Thought'".<sup>55</sup> Local CPC Standing Committees have also been given the duty to review and supervise public budgets.<sup>56</sup> Tan notes that these reforms represent a "stark order to execute all Party directives with no questions asked",<sup>57</sup> thus putting into question the independence of provincial governments over their SOEs and their external trade relations.

#### SOEs

At present, SOEs as a class are unlikely to participate in reforms despite their key role in bringing allegedly subsidised investments and exports to global markets. On the contrary, Hameiri and Jones observe that SOEs actively exploit their disputed links to Chinese state apparatuses to achieve commercial success.<sup>58</sup> Given the natural advantages that are available to SOEs by virtue of state-orchestrated consolidation and market access, it should not come as a surprise that "profit-driven"<sup>59</sup> SOEs may find it in their commercial interests to preserve the existing model of state support.

Despite this, it is arguable that SOEs exhibit a surprising degree of capacity to contribute to reforms in the Chinese trade regime should they choose to do so in the future. This capacity is derived from two sources: First, their autonomy as commercial actors in deciding the terms on which they trade and invest in international markets; second, the increasing political influence they enjoy within the elite levels of the CPC. Realistically, however, tight CPC control over the appointment and promotion of SOE managers and recent political reforms mean that the political influence of SOEs is unlikely to precipitate major changes to the CPC's state capitalist agenda

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<sup>51</sup> *Supra* note 35.

<sup>52</sup> Hess, *supra* note 39, p. 83.

<sup>53</sup> *Supra* note 41.

<sup>54</sup> Li, *supra* note 7, p. 13.

<sup>55</sup> Tan, V., 2022. *The Party cements central control over China's regional and local administrations*. [online] Mercator Institute for China Studies (MERICS). Available at: <<https://merics.org/en/short-analysis/party-cements-central-control-over-chinas-regional-and-local-administrations>> [Accessed 30 September 2022].

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> Hameiri and Jones, *supra* note 21, p. 84.

<sup>59</sup> *Ibid.*

### SOEs are relatively autonomous in their overseas activities

It has been observed above that the overseas activities of SOEs often elude SASAC supervision.<sup>60</sup> They are thus empowered to act as “de facto foreign policy actors”<sup>61</sup> that “frequently operate abroad without regard for national priorities” and have the capacity to “adapt, modify and even subvert government directives” in the pursuit of their own profit-driven agendas.<sup>62</sup> In light of these capacities, it is open to SOEs to consider whether they may (under the right conditions) bring themselves into voluntary compliance with standards set by authorities in overseas markets. This is especially the case if regulators or other participants in foreign markets can provide commercial incentives to SOEs for trading or investing in a WTO-compliant manner, this giving rise to better WTO compliance without having to impose blanket regulations on China at the WTO.

### SOEs have increasing political influence and may drive the economic agenda in the direction of greater efficiency

Li notes the “remarkable presence of CEOs of SOEs among the young cohorts of the CPC”<sup>63</sup> and the fact that it reflects an important trend in Chinese elite politics – one where business leaders have increasing influence over the national industrial and economic agenda. Lawrence, Martin, and Li observe that this new class of CPC leaders is more likely to have technical expertise and backgrounds<sup>64</sup> than conventional CPC elites, and thus have the potential to bring technocratic influences into the CPC elite. Given further that these SOE leaders have been profit-driven throughout their careers,<sup>65</sup> a real possibility arises as to whether this new cohort of CPC technocrats may steer the economic agenda in favour of marketisation and efficiency amidst the existing state of “waste and overcapacity”.<sup>66</sup> This potential influence may address a major pain point for China’s WTO opponents in relation to their allegations of industrial dumping.

### CPC is consolidating and tightening control over SOEs, reversing the trend toward greater commercial autonomy

Realistically, tightening CPC oversight over SOEs will serve as an obstacle SOE leaders may face in acting unilaterally with regard to their trade relations. Blanchette observes an unprecedented increase in party oversight of SOEs reversing the trend toward commercial autonomy, with a “raft of new official documents stepping-up the Party’s oversight and involvement in SOEs”.<sup>67</sup> For example, the Party Constitution was revised to provide that Party representatives in SOEs “shall... keep in mind the big picture [and] ensure the implementation of Party policies and principles”.<sup>68</sup> The effect of these reforms has allowed the CPC to consolidate its power over SOES and bring them into closer alignment with their economic and industrial agendas even while they operate beyond Chinese borders.<sup>69</sup> The swift and effective anti-corruption campaign against former leaders of NOCs also demonstrates the CPC’s

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<sup>60</sup> Liou, *supra* note 14, p. 688.

<sup>61</sup> Hameiri and Jones, *supra* note 21, p. 85.

<sup>62</sup> *Ibid.*; see also abovementioned case study on NOC investments in Sudan

<sup>63</sup> Li, *supra* note 7, pp. 1, 3.

<sup>64</sup> Lawrence and Martin, *supra* note 15, p. 35; Li, *supra* note 7, p. 13.

<sup>65</sup> Meckling, Kong, and Madan, *supra* note 20, p. 1161.

<sup>66</sup> Blanchette, *supra* note 4, p. 6.

<sup>67</sup> Blanchette, *supra* note 4, p. 8.

<sup>68</sup> *Ibid.*

<sup>69</sup> Wang, *supra* note 19, p. 288.

willingness and ability to harshly punish SOE managers who cross “political red lines”<sup>70</sup> or misapply state assets,<sup>71</sup> highlighting the real and meaningful effect that CPC directives have in keeping SOEs on side with its policies. Finally, tight Party control over appointments and promotions of SOE managers<sup>72</sup> and a high leadership turnover rate<sup>73</sup> under the *Nomenklatura* rotation system<sup>74</sup> cement its control over SOEs while preventing SOE managers from accumulating their own power bases.

### **Communist Party of China**

As alluded to in the above sections, the CPC wields the most real influence over the actions of domestic economic actors (SOEs) as well as political actors (central and provincial authorities). More pertinently, the CPC is the key practical and ideological architect behind industrial and economic policies that WTO opponents viewed as “[undermining] fair market competition”.<sup>75</sup> Central institutions like the National People’s Congress, in comparison, have only perfunctory influence.<sup>76</sup>

#### **The CPC is the central force behind China’s commitment to state capitalist policies**

Party platforms such as Party Congresses are the exclusive forum at which key industrial policies are announced and decided. In the context of China’s state capitalist policies, this was demonstrated during the Third Plenum of the Eighteenth Party Congress in 2013<sup>77</sup> which saw the unveiling of the “intellectual and policy architecture” through “a series of documents that developed into a new chapter for China’s hybrid economy”.<sup>78</sup> Pertinently, the Third Plenum Decision set out new objectives by calling for the creation of state-owned capital investment companies with the purpose of “invest[ing] more in key industries... that are vital to national security and are the lifeblood of the economy”.<sup>79</sup> Tellingly, Blanchette observes a marked change in the CPC’s industrial architecture under President Xi, where the lines between state-owned and private enterprises being “obscured to the point of irrelevancy by a concerted effort to expand the role of the [CPC] throughout the economy”.<sup>80</sup> To this effect, SASAC Party Chair Hao Peng stated that “Regardless of whether state-owned or private enterprises, they are all Chinese enterprises”.<sup>81</sup>

#### **The CPC is the institutional centre for state capitalist ideology**

The Party is the bastion of ideological influences that ultimately entrench state capitalist thought in the state’s economic and industrial architecture. The idea of state support for “zhizhu” (pillar) industries is deeply ingrained into party philosophy. Notably, the CPC’s ideological goals of providing “domestic monopoly advantages; industrial, informational, financial, and fiscal support for Chinese companies’ overseas expansion efforts” were expressly laid down by the CPC leadership in 2006,<sup>82</sup> the very same

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<sup>70</sup> Wang, *supra* note 19, p. 301.

<sup>71</sup> Wang, *supra* note 19, p. 302.

<sup>72</sup> Li, *supra* note 7, p. 20.; Lawrence and Martin, *supra* note 15, p. 35.

<sup>73</sup> Li, *supra* note 7, p. 19.

<sup>74</sup> Brødsgaard, K. and Beck, K., 2021. Big Business and Cadre Management in China. *The Copenhagen Journal of Asian Studies*, 39(2), pp.55, 57.

<sup>75</sup> Office of the United States Trade Representative, *supra* note 3.

<sup>76</sup> Lawrence and Martin, *supra* note 15, p. 7.

<sup>77</sup> Blanchette, *supra* note 4, p. 6.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> Blanchette, *supra* note 4, p. 3.

<sup>81</sup> *Ibid.*

<sup>82</sup> Li, *supra* note 7, p. 13.

year of China's accession to the WTO (perhaps foreshadowing the ineffectiveness of the WTO-plus obligations in addressing the present-day concerns held by China's WTO opponents).

Unsurprisingly, the CPC exhibits a low propensity for significant ideological reforms in the foreseeable future. The CPC constitution enshrines its duty to "uphold and improve the basic economic system, with public ownership playing a dominant role".<sup>83</sup> Ideological factions persist within the CPC and their capacity for "vocal criticism"<sup>84</sup> will serve to pre-empt changes to this "basic economic system". Lawrence and Martin observe that Marxist factions of the CPC are particularly vocal in insisting on preferential treatment for SOEs,<sup>85</sup> which means that China's opponents in the WTO are will continue to be "caught up in this ideological debate" in the foreseeable future.<sup>86</sup>

### *Discussion*

It has been shown that in practice, "China, Inc." is not a monolithic political entity as commonly assumed in the literature. Instead, the industrial and economic architecture that characterises "China, Inc." is designed and administered by an amalgamation of various actors with varying levels of control and practical importance in orchestrating the CPC's economic vision. Pertinently, variations in each actor's levels of control and importance influence its vested interests and attitudes toward ideas of directing SOEs and implementing trade reforms.

It appears as though each of the actors appears to tilt against openness toward trade reform, even if their specific reasons for doing so may differ. As discussed above, the fractious central government struggles to implement any coherent response on the matter, while political patronage renders provincial governments unwilling to "rock the boat". Although SOEs have a degree of autonomy to determine the terms on which they trade in external markets, their ability to do so in a WTO-consistent manner is curtailed by commercial interests to rely on state support. Finally, the CPC as the main ideological architect of "China, Inc." has tightened its own oversight and control over SOEs and provincial governments, entrenching the authority of a state-led economic architecture for the foreseeable future. These findings demonstrate that Chinese state actors are unlikely to participate in internal or external (WTO) reforms, and thus support Wu's view that "without major change China's rise... will contribute to a gradual weakening of the WTO legal order".

With that said, this paper has also demonstrated that there are important and meaningful differences between each actor's attitudes and policies toward external trade. They also relate to the controversial SOEs in different ways. In light of these differences, this paper recommends that the discourse begins to adopt a differentiated approach toward "China, Inc.". Further study is needed on the individual competencies and capacities (or lack thereof) of each state actor to reveal areas where some reforms are possible within the bounds of each actor's authority and practical capacities. Such an approach is valuable in a period where it increasingly appears as though the only other alternative is to form a "coalition of the willing"<sup>87</sup> and break away from the multilateral trade order.

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<sup>83</sup> Lawrence and Martin, *supra* note 15.

<sup>84</sup> *Ibid.*

<sup>85</sup> Lawrence and Martin, *supra* note 15, p. 11.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Supra* note 9.

## *Limitations*

### Analysis of provincial governments

1. Further research could have been done to ascertain that Hess's case example of Yunnan province was representative of the political incentives of other provincial governments.

### Analysis of central government

2. The paper could have provided more current examples with regard to the competition between various central government ministries, and, in light of Lawrence and Martin's allusion to "super-ministries", it could have gone further in depth by identifying ministries with more (and less) real influence.

### General limitations

3. Recent political reforms, such as those discussed by Tan in bringing greater Party oversight to the provinces, have yet to demonstrate their full impact.
4. The paper was completed before the 20<sup>th</sup> National Congress of the CPC (in October 2022), where further economic policy changes are expected to be implemented under President Xi's "comprehensive national security"<sup>88</sup> concept.

These changes are anticipated to alter institutional trade and investment practices at all levels of government (as well as SOEs).<sup>89</sup> It is therefore uncertain as to how these upcoming policies will impact China's compliance with its WTO obligations and how China's opponents at the WTO will respond.

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<sup>88</sup> Tan, V., 2022. *"Comprehensive National Security" unleashed: How Xi's approach shapes China's policies at home and abroad*. [online] Mercator Institute for China Studies (MERICS). Available at: <<https://merics.org/en/report/comprehensive-national-security-unleashed-how-xis-approach-shapes-chinas-policies-home-and>> [Accessed 30 September 2022].

<sup>89</sup> *Ibid.*