

# **Governance and Regulation of China's Overseas Economic Activities and the Belt and Road Initiative: Managing the Impacts**

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## **Governance and Regulation of China's Overseas Economic Activities and the Belt and Road Initiative: Managing the Impacts**

- China's Overseas Economic Cooperation Project Overview
  - Going Out Strategy
  - Belt and Road Initiative (BRI)
- Overseas Economic Regulatory Framework
- BRI Regulatory and Governance Framework
  - Domestic
  - International
- Infrastructure Governance Challenges
- Responses to Date
- Next Steps

### China's Overseas Economic Cooperation Project

- China's "Going Out" - sometimes referred to as "Going Global" - strategy to promote overseas investment, finance, project contracting, labor services and two-way trade officially launched in 2000
- Reform-era PRC initially focused on attracting foreign investment and technology
- Outward investment and contracting started to take off 1997
  - Goals were to:
    - promote internationally competitive firms
    - provide better access to markets and resources

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### China's Overseas Economic Cooperation Project

- The Belt and Road Initiative (BRI) launched in 2013 is a subset and refinement of "Going Out" strategy
  - Goal to promote hard and soft connectivity among Asia, Africa, Europe – and now the entire globe, export overcapacity of materials, services
  - Funded with low-interest loans vs grants – not a foreign aid project
  - Core is infrastructure
  - Majority of economic activity is contracted projects, not foreign direct investment (FDI)
- As of November 2019, China had signed **197 bilateral MOUs** and cooperative documents relating to BRI, with **137 countries** and **30 international organizations**
- China reports cumulative BRI investment exceeding \$100 billion, with construction projects valued at \$720 billion and Chinese financing of more than \$440 billion

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### China's Overseas Economic Cooperation Project

- In spite of hype and concerns over geostrategic implications of BRI, “BRI projects” appear to represent only a fraction of China’s total overseas economic activity, comprised of investment, project contracting, financing, labor and services
- AEI’s Derek Scissors writes that in 2019 Chinese investment returned to a “local rather than a global phenomenon,” at about 2011 level
  - Contractions by some 40% in both 2018 and 2019 in investment and project contracting transactions of \$100 million and greater
  - Recent reports from Boston University’s Global Development Policy Center similarly show China’s energy finance lowest since 2008 and down 71% from 2018 levels
- BRI activity - other than trade - is contracting due to perceived financial risks; Chinese funding constraints, slowing economy; recipient/partner country pushback and re-negotiation, etc.

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### China's Overseas Economic Cooperation Project

#### MOFCOM Statistics on Chinese ODI overall:

➢ 2016, Chinese ODI peaked to-date at	\$196.1 billion
➢ 2017	\$158.3 billion
➢ 2018	\$129.8 billion
➢ 2019 down 9.8% year on year	\$117.12 billion

- **Non-financial ODI** in 6,535 overseas enterprises of 167 countries and regions reaching \$110.6 billion, **down 8.2%** year on year
- But value of **newly-signed foreign contracted contracts** was \$260.25 billion, **up 7.6%** year on year (more projects < \$100 million?)
- **Workers dispatched** abroad 2019 = 487,000, **down 5,000** year on year
  - Total number of dispatched labor overseas reached 992,000, down 4,000 year on year, as of end-2019

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### China's Overseas Economic Cooperation Project

#### MOFCOM 2019 statistics on BRI:

- Chinese companies' **non-financial ODI in 56 countries** along "Belt and Road" = \$15.04 billion
  - year-on-year **decrease of 3.8%**
  - accounting for **13.6% of total** China ODI same period
  - mainly invested in Singapore, Vietnam, Laos, Indonesia, Pakistan, Thailand, Malaysia, UAE, Cambodia and Kazakhstan
- Chinese companies' newly signed **foreign contracted projects** = 6,944 **in 62 countries** along "Belt and Road" with contract value \$154.89 billion
  - year-on-year **increase of 23.1%**
  - accounting for **59.5% total** newly contracted value during same period
- 2019 **trade with BRI countries** = \$1.34 trillion, up 10.8% year on year and nearly 30% China's total trade, up 2% over share in 2018

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### China's Overseas Economic Cooperation Project

- COVID-19 impacting BRI as well
- Challenges to overseas project completion
  - MOFCOM working with trade associations to issue *force majeure* certificates
  - Instructions to delay return of workers, take precautions in overseas plants
  - Concerns that China's overseas activity creating new channels to spread pandemic
- Other concerns arising with increased connectivity bedevil BRI as well
  - Transnational crime - trafficking in drugs, wildlife, arms and people
    - Bride-trafficking, due to China's gender imbalance, increased connectivity: reports relating to women from Cambodia, Indonesia, Laos, Myanmar, Nepal, Pakistan, Vietnam and Central Asia
  - Chinese labor influx
  - Chinese emigration accelerated
    - Chinese enclaves

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### **China's Overseas Economic Cooperation Project: Regulatory Framework**

- General principles increasingly require Chinese companies to:
  - Pay attention to financial, environmental, social, integrity and other risk factors;
  - Utilize Chinese and host country legal, tax and other professional consultants;
  - Comply (especially where relevant local legal requirements are underdeveloped) not only with local laws and regulations, but also more recently:
    - Chinese law and regulations
    - International treaties and conventions,
    - United Nations resolutions
    - Industry best practices
- Not threaten or damage the national interests and national security of China

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### **China's Overseas Economic Cooperation Project: Regulatory Framework**

- “Going Out” strategy has been governed by array of central party-state laws, regulations and policies on overseas economic activity, with responsibility spread among different regulators and at central and local levels
- Legal framework clarifies procedures for
  - Approval, registration
  - Financing
  - Compliance with Chinese and host country requirements
  - Oversight – site visits, reporting
- Various databases established by NDRC, MOFCOM, etc.

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### **China's Overseas Economic Cooperation Project: Regulatory Framework**

- 1994 Foreign Trade Law (last revised 2016): covers import and export of goods, technology and services
- 2005 MOFCOM, etc. Opinions on Protecting Safety of Overseas Chinese-funded enterprises, institutions and dispatched personnel
  - Established Inter-Ministerial Joint Meeting to Protect Safety of Chinese Citizens and Entities Overseas November 2005
- 2008 State Council Foreign Project Contracting Regulations (revised 2017)
  - Foreign project contractor to abide by local law where construction project located, respect local customs and habits, protect ecological environment and promote the local economic and social development
- 2010 MOFCOM, etc. Provisions on Managing Safety of Overseas Chinese-funded Enterprises, Institutions and Dispatched Personnel
  - Stipulates institutional responsibilities SASAC, ACFIC Embassies and consulates, overseas Chambers of Commerce
- 2012 State Council Foreign Labor Cooperation Regulations
  - Foreign labor cooperation enterprises & contract workers shall abide by host country laws and respect local religious beliefs, customs and cultural traditions

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### **China's Overseas Economic Cooperation Project: Regulatory Framework**

- 2013 Overseas Safety Incident Emergency Response Provisions:
  - Overseas entities must register with and periodically report to embassy, consulate in host country where active
- 2013 MOFCOM, etc. Measures for Bad Credit Records in the Fields of Foreign Investment Cooperation and Foreign Trade
- 2013 MOFCOM Standardizing Foreign Investment Cooperation Competition Provisions
- 2014 MOFCOM Overseas Investment Measures
  - Chinese companies must require their overseas invested enterprises to be law-abiding, respect the local customs, honor social responsibilities, do a good job of environmental protection, labor protection, etc.
- 2017 NDRC Managing Enterprise Overseas Investment Measures
- 2017 SASAC Managing Central Enterprise Overseas Investment Measures
- 2018 MOFCOM-PBOC-SASAC-ETC. Interim Measures for Recordation (or Confirmation) and Reporting of Outbound Investment
- Other reporting regulations as well

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### **China's Overseas Economic Cooperation Project: Regulatory Framework**

- Regulators have also issued series of *policies* to govern overseas economic cooperation, *e.g.*,
- 2012 China Banking Regulatory Commission Green Credit Guidelines
- 2013 MOFCOM-MEP Guide on Environmental Protection in Foreign Investment and Cooperation
- 2015 MOFCOM Notice on Enhancing Environmental Protection Work of Foreign Investment and Cooperation Enterprises
- 2017 NDRC-MEP-MFA-MOFCOM Guidance on Promoting Green Belt & Road
- 2017 NDRC, MOFCOM, PBOC Overseas Investment Code of Conduct
- 2017 NDRC-MOFCOM-PBOC-MFA Further Guiding and Regulating the Outbound Investment Direction Opinions
- 2018 NDRC-MOFCOM-PBOC-MFA-SASAC-ACFIC-SAFE Overseas Operations Corporate Compliance Guidelines
- 2019 MOFCOM-MFA-NDRC, etc. High-Quality Foreign Project Contracting Opinions call for 2d Belt and Road Forum improvements
- 2020-2 MOFCOM Actively Assisting "Go Global" Enterprises COVID-19 Epidemic Response Notice

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### **China's Overseas Economic Cooperation Project: Regulatory Framework**

- BRI itself not institutionalized domestically, although mentioned in Party Charter as of 2017
- Is overseen by State Council Advancing "Belt and Road" Construction Leadership Small Group (LSG) established 2015, to promote BRI, formulate and issue policy
  - Headed by Politburo Standing Committee Member and Vice Premier Han Zheng
  - National Development and Reform Commission (NDRC) hosts working office directed by NDRC Chair He Lifeng
  - Central departmental, provincial and municipal level BRI LSGs as well
- NDRC, MOFCOM and MOF most active policy regulators
- Policy banks, sovereign funds, Big Four state-owned banks provide financing – with some co-financing from MDBs, foreign banks

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### **China's Overseas Economic Cooperation Project: Regulatory Framework**

- No overarching BRI regulatory policy, law, approval procedure or legal framework in place, at least not publicly
- 2015 BRI Vision and Actions White Paper – NDRC, MOFCOM, MFA
  - Provides general outline of policy goals
- Other action plans and documents issued by various authorities:
  - 2015: standards connectivity
  - 2016: education, culture, metrology
  - 2017: maritime cooperation; agricultural cooperation; energy; environment; financing principles
  - 2019: debt sustainability framework; anti-corruption initiative
- National and local governments, other authorities have issued many policies on BRI specifically, *e.g.*, on BRI Lawyers
- But still no official standards or central database for “BRI projects”

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### **China's Overseas Economic Cooperation Project: Regulatory Framework**

- BRI also not institutionalized internationally
  - No multilateral agreement governing BRI like WTO
- BRI developed primarily through bilateral MOUs and cooperative documents
- Supplemented by a large number of subject-specific multilateral agreements of various kinds, with China the common partner
- Generally a network-based, multi-actor, multi-level approach – BRI referred to as a “platform”
- China has adhered to relevant international law such as International Covenant on Economic, Social and Cultural Rights, UN Declaration on Rights of Indigenous Peoples, UN Convention Against Corruption that supplement China's overseas economic cooperation generally

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### BRI Governance Challenges

- Xi Jinping envisions BRI as contributing to global governance:
  - With “equal consultation, cooperation, joint contribution, shared benefits between countries”
  - No strict rules and standards
  - Building a “community of shared future for mankind”
- While BRI involves numerous initiatives, major governance issues arise particularly in the context of BRI’s core infrastructure projects
- As China has learned in its own domestic development, infrastructure is complex
- Poor governance is a major reason why infrastructure projects often fail to meet timeframe, budget and service delivery and may be cancelled altogether – as has happened domestically and overseas

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### BRI Infrastructure Governance Challenges

- Infrastructure projects along Belt and Road promise real benefits, but raise concerns internationally regarding governance:
  - **Fiscal sustainability**, with charges of “predatory lending” and “debt traps”
  - Lack of open and competitive **procurement** process
  - Not applying Chinese and internationally-accepted **environmental and social standards**
  - Lack of local **stakeholder participation** and voice, often leading to local opposition to Chinese projects and investments
    - Also insufficient attention to local **job creation** and training, **local impacts and benefits** generally
  - **Corruption** issues
  - General lack of **transparency** about BRI, processes and results: still do not know what is “BRI country” or “BRI Project”

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## BRI 2.0 Governance Goals

By BRI 5<sup>th</sup> anniversary observance August 2018 and as articulated at 2nd Belt and Road Forum in April 2019, multiple governance goals recognized:

- **“High standard” BRI** to be:
  - “In line with each participating country’s national legislation, regulatory frameworks and international obligations”
  - As well as applicable international norms and standards (Paris Agreement, UN Sustainable Development Goals, WTO, etc.)
- **Open BRI**: inclusive, voluntary, non-discriminatory
  - But “open” different from “transparent”
- **Sustainable BRI**: promoting economic, social, fiscal, financial and environmental sustainability of projects that strike balance among economic growth, social progress and environmental protection
- **Green BRI**: green infrastructure projects, investment and financing
- **People-centered BRI**: prioritizing poverty alleviation, job creation, delivering true benefits to the people of participating countries
  - But no references to local engagement
- **Clean Silk Road**: transparent in everything and zero tolerance for corruption

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## BRI Governance Responses

- **High standard**: Rumors that NDRC working on BRI standards but nothing publicly discussed thus far
  - UNDP partnered with China Development Bank to recommend framework for harmonizing investment and financing standards for BRI (published October 2019)
- **Fiscal sustainability**: While evidence to date suggests China has not been engaged in deliberate ‘debt trap’ diplomacy, fiscal risks are real
  - 2019 MOF non-mandatory Debt Sustainability Framework for BRI Participating Countries (low income countries)
  - Policy Banks have done some co-financing to date, leaders talk of “multilateralizing” BRI and introducing more private capital, which would require “bankable” projects
- **Green BRI**: China promises to align projects with UN 2030 Agenda for Sustainable Development goals
  - China’s SPC to strengthen environmental public interest and tort litigation to “stop environmental violation” and “enforce liability for damages” in connection with BRI = extraterritorial jurisdiction?
  - Others will discuss, but environmental sustainability tied to social and economic sustainability as well

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## BRI Governance Responses

- **People-centered BRI:** China now emphasizing job creation, poverty alleviation, education and training, etc. more in its propaganda
- **Transparency** about BRI, financing, processes and results still lagging
  - Some databases reportedly established, e.g., BRI Environmental Big Data Platform officially launched April 2019
  - No progress toward China joining Paris Club
- **Open Procurement:**
  - 2019 PRC Foreign Investment Law and regulations promise equal access to procurement for foreign-invested enterprises
  - PRC submitted in Dec. 2019 its 6<sup>th</sup> revised offer to join WTO Government Procurement Agreement, which would provide legal guarantee of non-discrimination for products, services and suppliers of GPA parties in covered procurement activities and make process more transparent

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## BRI Governance Responses

- **Stakeholder participation:**
  - 2019 Foreign Project Contracting Opinions do mention local consultations and communication, but not much emphasis
  - Policy banks reportedly improving ESS policies and practices, e.g., 2019 energy loans, but still lack transparency, strong consultation and grievance mechanisms, etc.
- **Chinese NGOs** also researching/assisting Chinese company interactions with communities in other countries
  - GONGOs like China Foundation for Poverty Alleviation
  - Environmental NGOs like Global Environmental Institute founded 2004 with aim to secure sustainable development within China and abroad, especially SE Asia and Africa
  - Community development NGOs like Social Resources Institute
  - Individuals like environmental lawyer Zhang Jingjing, founder of China Accountability Watch

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## BRI Governance Responses

- **Corruption:**
  - Clean Silk Road Initiative agreed at 2d Belt and Road Forum 2019, to make Belt and Road a “road of integrity”
  - Led by Party discipline inspection-supervision authorities
    - Embedding discipline inspectors in overseas projects?
  - Pledged to work with other countries to strengthen legal systems and punish bribery, implement UN Convention Against Corruption (UNCAC) which China ratified 2006
    - October 2019 MOU with United Nations to implement UNCAC, build Clean Silk Road
    - China’s SPC to strengthen judicial cooperation on criminal matters, combat corruption, jointly promote Clean Silk Road = extraterritorial application of PRC law?
  - Training enterprises going global in anti-corruption practices and compliance in their business operations overseas
  - Training anti-corruption officials from BRI countries
  - But still no prosecutions or public accountability in China for overseas bribery, corruption

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## BRI Governance: Enforcement of Standards?

- While China’s domestic law in many respects comports with international governance standards, China reluctant to apply own laws extra-territorially, interfere in other country’s internal affairs
  - MOFCOM published list of several companies blacklisted for overseas business behavior, and Chinese companies have been debarred by MDBs
  - MOFCOM guidance, 2019 Foreign Contracting Opinions promise to punish noncompliance by Chinese enterprises with host country environmental protection laws and regulations “in accordance with laws and regulations,” but not clear if ever enforced
  - China criminalized overseas bribery but not yet publicly enforced
- Strengthened **reporting requirements for overseas projects** being implemented by NDRC, MOF and MOFCOM
- But most governance requirements for overseas economic activity are voluntary, difficult to enforce in China unless specified in project contracts
- Stricter governance standards could be imposed as condition of access to Chinese policy and SOE bank finance

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### BRI Governance: Enforcement?

- China has introduced dispute resolution services targeted at overseas economic activity, including under BRI
  - New international commercial “courts” within Supreme People’s Court to hear major cross-border disputes, specifically including BRI disputes, and eventually over Internet
  - Chinese and international mediation, arbitration services available
- PRC among first nations to join 2019 United Nations Convention on International Settlement Agreements Resulting from Mediation (the “Singapore Convention on Mediation”), intended to enhance the cross-border enforceability of mediated settlements
- Many overseas economic and BRI disputes have been arbitrated outside China to date
- All-China Lawyers Federation established BRI Lawyers program to cultivate experienced professionals to advise Chinese companies on overseas/BRI matters

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### BRI Governance: Enforcement?

- Encouraged corporate good overseas behavior now also backed by **social credit blacklist** system, with publicity and joint punishment by 28 Communist Party and State authorities of specified “seriously dishonest conduct” in foreign economic cooperation, adopted in October 2017
  - Covers fraud, unfair competition, non-compliance with relevant law or regulation of China or the host country, international convention, or United Nations resolution
  - Relating to overseas investment and foreign contracting, finance and trade
  - Specifically covers conduct relating to BRI or that has a seriously adverse impact on implementing BRI
  - Consequences can include debarment from participating in domestic and overseas projects, negative impacts on financing, government procurement, public-private partnership and other corporate and professional endeavors
- No reports on this list thus far; may be incorporated into general Credit China database

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### **Concluding Thoughts**

- A truly “high-quality” BRI can deliver much-needed physical and soft infrastructure to foster connectivity and sustainable economic development around the globe
- Making BRI projects more open, transparent, green, clean and inclusive of local impacted communities would help build trust within the international community and in host countries and help ensure project success
- Moreover, China could enhance its soft power by drawing on its own rich developmental and legislative experience to help lead global efforts to promote good infrastructure governance standards that seek to harmonize international, regional and country-specific standards and best practices
- But to bring the BRI under control and ensure high quality going forward, more organized, centralized set of requirements to qualify as a “BRI” endeavor seem warranted
- It’s my hope that the United States will find ways to partner with China to foster high-standard governance mechanisms –good governance infrastructure – along the Belt and Road, and elsewhere

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