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**ON SIGNIFICANT DISTORTIONS IN THE ECONOMY OF THE PEOPLE'S
REPUBLIC OF CHINA FOR THE PURPOSES OF TRADE DEFENCE
INVESTIGATIONS**

The investigations furthermore indicated that the State also intervenes with the price setting mechanisms in the SHFE as it is both a seller and a purchaser of primary aluminium via the NFSRA¹⁵⁸⁶. As described in Section 12.5.1, stockpiling by the NFSRA has an immediate effect on prices, which is then reflected in price fluctuations on the SHFE, and thus benefits the Chinese purchasers who can purchase raw materials cheaper than their foreign counterparts can.

12.7. PRESENCE OF SOES

The SOEs active in the commodities sector have a dual structure: on the one hand there are large SOEs with high productivity and leading positions in world markets and on the other hand a large number of smaller, cooperatively owned companies with small output and low productivity.

The most prominent examples of SOEs include CHALCO (aluminium), Baowu Steel and Hebei Iron & Steel (steel), Jinduicheng (molybdenum), Baotou Steel & Rare Earth (rare earth elements), Yunnan Tin (tin), Zijin Mining (gold, copper, zinc) and China Minmetals (metal trading)¹⁵⁸⁷.

China's SOEs represent a majority in the following raw material industries: professional and support activities for mining (SOEs own 90% of assets in this industry), mining and washing of coal (88%), production and supply of gas (82%), mining and processing of ferrous metal ores (77%), mining and processing of non-ferrous metal ores (73%), mining and processing of non-metal ores (57%), smelting and processing of non-ferrous metals (55%), smelting and processing of ferrous metals (54%), and manufacturing of raw chemical materials and chemical products (49%)¹⁵⁸⁸.

12.8. RARE EARTHS

Through the use of quotas China is able to control the supply of metals on the market and hence influence their prices. Twice per year MIIT sets quotas for rare earths: a mining quota and a quota for the smelting and separation. The mining quota is further subdivided into quotas for light rare earths and heavy rare earths.

In January 2021, MIIT released draft Regulations on Rare Earth Management that aim “to strengthen oversight of the entire industry chain of rare earth metals, from mining to exports, including refining, product transport, and sales”. The proposed regulations extend beyond the current regulations that focus primarily on the production stage of the rare earth industry¹⁵⁸⁹. The draft regulations specify that a quota shall be established by government agencies¹⁵⁹⁰, considering elements such as regional economic policy, industrial capacity and the quota

¹⁵⁸⁶ *Ibid.*

¹⁵⁸⁷ Hilpert H.G. and Mildner S.A. (2013). *Fragmentation or Cooperation in Global Resource Governance? A Comparative Analysis of the Raw Materials Strategies of the G20*, German Institute for International and Security Affairs.

¹⁵⁸⁸ By total assets, on the basis of main indicators of enterprises by industrial sector in 2021 from the China Statistical Yearbook 2022, National Bureau of Statistics of China, available at: <http://www.stats.gov.cn/sj/ndsj/2022/indexeh.htm> (accessed on 24 August 2023).

¹⁵⁸⁹ See at: <https://repository.mines.edu/bitstream/handle/11124/176887/Payne-Institute-Student-Commentary-Chinas-Consolidation-of-Rare-Earth-Elements-Sector.pdf> (accessed on 24 August 2023).

¹⁵⁹⁰ Likely MIIT, NDRC, and Ministry of Natural Resources.

are in line with the rules of the World Trade Organisation and China's commitments to the international community, and gradually standardise other preferential policies.

The following activities are strictly prohibited: reducing, waiving or deferring the levy of administrative and institutional fees and contributions to government funds to be paid by enterprises, or transferring land parcels to enterprises at discounted prices or zero land price in violation of applicable provisions.

However, a subsequent State Council notice issued in 2015 refers to the 2014 notice and indicates that it should be “*carried out subject to separate future arrangements*”, thus effectively postponing this effort to prohibit preferential land pricing¹⁰⁹⁵.

9.6. RURAL LAND

In addition to the non-transparent and often inadequately implemented rules concerning use of non-agricultural land described in the previous two sections, the specific regulations governing the ownership, use and conversion of farmland add another layer of complexity to the administration of land-related rights in China.

Farmland is owned by the village collectives and an overall principle of protecting farmland is in place: “[t]he State protects cultivated land and strictly restricts conversion of cultivated land to non-cultivated land”¹⁰⁹⁶. The village collectives enter into land-use agreements with individuals. The duration of such contracts ranges from 30 to 70 years depending on the type of farmland and they can be renewed upon expiry¹⁰⁹⁷. The permitted uses include crop cultivation, forestry or animal husbandry¹⁰⁹⁸.

By contrast, the collectives cannot contract the land out for non-agricultural purposes, as only state-owned urban land can be assigned for non-agricultural use and, correspondingly, non-agricultural use of rural land is prohibited unless there is a governmental approval¹⁰⁹⁹. Thus, collectively owned land first has to be converted to state-owned land before the LUR can be granted for non-agricultural purposes.

A specific expropriation procedure is foreseen for such land-use conversion. Pursuant to Article 2 of the Land Administration Law, “[t]he State may, in the interest of the public, lawfully expropriate or requisition land and give compensation accordingly.” The ‘*interest of the public*’ was initially not defined in the law and was introduced only in the 2019 amendment, specifying public interest as government infrastructure, public services, affordable housing and similar¹¹⁰⁰. The compensation for the expropriated land “*shall be paid in full in a timely manner in accordance with law*”¹¹⁰¹. Further provisions regulating the expropriation and compensation can be found in the Civil Code, the Law on Urban Real Estate Administration, and the Land

¹⁰⁹⁵ State Council Notice on Issues concerning Taxation and Other Preferential Policies (2015).

¹⁰⁹⁶ Article 30 of the Land Administration Law, as amended.

¹⁰⁹⁷ Article 332 of the Civil Code.

¹⁰⁹⁸ Article 331 of the Civil Code and Article 13 of the Land Administration Law.

¹⁰⁹⁹ Article 13, as well as Chapter IV of the Land Administration Law and Article 334 of the Civil Code.

¹¹⁰⁰ See Amendment to the Land Administration Law 2019, available at: <https://perma.cc/V5SS-KJHP> (accessed on 7 December 2022).

¹¹⁰¹ Article 243 of the Civil Code.

Administration Law. However, in the past, the application of the rules on expropriation and compensation has been riddled with problems and, rather than providing a clear-cut framework for conversion between categories of land, contributed to widely reported social tensions and financial irregularities, in particular at the provincial administration level.

To begin with, the largest part of the compensation, the land compensation fee, was set in the Land Administration Law at 6-10 times the average annual agricultural output value of the expropriated land¹¹⁰², which in many cases was far below the market value that the private developers are willing to pay for the plot. Also, the compensation has reportedly been minimal in many cases, leading at times to land grabs and forced evictions causing social unrest. For example, the majority of ‘*mass incidents*’ that occurred in China in the early 2000s were due to land disputes with the local governments¹¹⁰³, in particular expropriation of farmland¹¹⁰⁴. According to some estimates, 6-7 million hectares of farmland were expropriated for urban or commercial use, and 50-60 million rural residents were affected by land expropriation. A large proportion of farmers were not receiving any compensation and the rest receiving just a small percentage (2.5%) of the market value of the land¹¹⁰⁵. The 2019 Land Administration Law no longer contains such provision. The Civil Code just generally requires that “*the compensations for the land expropriated, subsidies for resettlement and compensations for rural villagers’ residence, other attachments, young crops on land, etc. shall be paid in full and in time according to law*”¹¹⁰⁶.

Moreover, the restrictions in LUR led to the development of the so-called ‘*minor property rights*’. This term is used to describe situations when the rural land-use owners sell their LUR to private developers, even though formally this is not legal, or construct buildings on their land in order to rent out units (doing this on their own or in conjunction with a private developer)¹¹⁰⁷. Since sale of rural LUR for construction of rental property violates the restriction on the use of rural land as explained above, the agreements are legally void. The buyers of those rights risk that at any moment the land might be taken away from them or the buildings demolished. However, it seems that the economic incentive of revenues from rental still outweighs the legal risks, as there are a large number of such semi-legal transfers of LUR. According to an estimate from 2014, this type of housing remained common, especially around major cities such as Beijing, Shanghai and Shenzhen, going even up to half of all housing around some of the larger cities in China¹¹⁰⁸. In 2017, the housing area of all cities and towns in the country, including minor property rights houses, was 29.8 billion square meters, of which the area of minor property rights houses was estimated at 7.3 billion square meters, accounting for 24%, second

¹¹⁰² Article 47 of the Land Administration Law, See further Article 338 of the Civil Code.

¹¹⁰³ Wong, V. (2014), *Land Policy Reform in China: Dealing with Forced Expropriation and the Dual Land Tenure System*, Centre for Comparative and Public Law Faculty of Law The University of Hong Kong, Occasional Paper No. 25, May 2014, page 3.

¹¹⁰⁴ Ping L. (7 October 2021), How China’s landmark law changes help protect farmland and farmers’ rights, available at: <https://www.scmp.com/comment/opinion/article/3151321/how-chinas-landmark-law-changes-help-protect-farmland-and-farmers> (accessed on 7 December 2022).

¹¹⁰⁵ Wong, V., page 3

¹¹⁰⁶ See Article 234 of the Civil Code.

¹¹⁰⁷ Wong, V., page 41.

¹¹⁰⁸ *Ibid.*, page 3, p. 43.