National public policy and bureaucratic responses to internationalising pressures: the case of foreign direct investment and the FIRB under the Rudd and Gillard governments

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Abstract:

Exploring patterns of conflict and adaption in governance this paper examines the reshaping of the role and function of the Australian government's Foreign Investment Review Board (FIRB) in response to the latest flows of investment. Using a case study approach this research draws on insights from both business and government to show how such experience played out under both the Rudd and Gillard governments, particularly in response to engagement with investment from China.

In doing so this research sheds light on how internationalising pressures along political and administrative dimensions in both in the private sector and national government contribute to shaping public policy. This work seeks to extend work on the interaction between the concept of internationalisation in disciplines such as political science, public administration and international business, and reflects on the nature of changing capacity within government to engage and harness, or be harnessed by, such pressures.

Two questions shape this analysis. First, what does the experience of the Rudd and Gillard governments tell us about how the well-established national foreign direct investment (FDI) regulatory capacity is adapting to changing circumstances? The second, and more fundamental question, is what does this experience tell us about public policy and public administration when pressured to adapt to stronger international linkages as vehicles for greater economic interdependence. Challenges in governing foreign investment reflect a broader challenge for governance as an academic discipline of accommodating domestic and international pressures and actors in a coherent and succinct narrative to enable analysis and broader reflection on contemporary public policy. The distinction between the domestic and international public policy (Farrell and Newman forthcoming; Koenig-Archburgi 2010) while useful as an analytical construct to explore public policy is under challenge because this is a necessarily artificial division – we can see this in situations where the domestic and the international interact such as in the area of cross border flows of people and of capital.

As background Australia has a well established policy favourable to inflows of foreign investment capital. Prior to the 1960s this was only broadly covered through general regulations on currency administered through the Reserve Bank, effectively keeping decisions on foreign investment in Australian industries outside the purview of Cabinet. Under pressures of greater international integration and currency deregulation the Australian government instituted a series of gradual and ad hoc interventions to formalise the role of the national government in the screening of this activity. This policy works to accommodate both concerns within the domestic polity around levels of foreign ownership in specific industries and of natural resources, and the practices of multinational firms as good corporate citizens. However, on the whole the approach largely enables the inflow of capital for investment (although there remains an unmeasured deterrent effect).

The Australian economy has been the beneficiary of regular and sustained interest from foreign investors seeking access to mineral resources, agriculture, real estate, financial services and manufacturing. While year on year results for inwards investment appear volatile, inflows to Australia over the period 1960 to 2012 tend to be maintained within a band of 1 to 3 per cent per of GDP per annum (UNCTAD 2012). Over time these flows have contributed to a growing stock of foreign investment in Australia. For example, in 2000 foreign direct investment in terms of total equity on issue in Australian businesses amounted to 14 per cent of equity on issue (Faeth 2005, p.4). Further indicators (Faeth 2005, p.4) show that in 2007 inward flows accounted for 9 per cent of gross fixed capital formation and inward FDI stock was 34 per cent of GDP compared to 40 per cent for the EU (UNCTAD 2008, p.262). Thus inflows of capital to the Australian economy via foreign investors is an important element in financing domestic business activity and development; and such flows into the Australian economy is consistent with levels flowing into other advanced economies.

In the Australian context the political economy of foreign investment is a recurring focus for political scientists. Wheelwright (1963, 1967) emphasising the concern over the level of foreign ownership of Australian industry and the emergence of a distinct client economy vulnerable to the whims of international capital. Alternatively Kasper (1984) and Arndt (1977) identify and argue against the emergence of more restrictive practices in public policy on FDI. Pokarier (2000) places subsequent public policy on FDI in the context of a wider political economy with distinct interests. Looking within the practice of government, the interaction between public policy and public administrative structure has been explored (Sadleir 2007). More recently Springell (2013) has completed an insightful thesis exploring points of change and inflection in national government promotion of FDI under the Howard government. Each of these research efforts have sought to reach an understanding of the nature of domestic public policy under conditions of greater international economic interdependence and the effects of this on domestic public policy and the wider polity.

Both a domestic intent and geopolitical or at least geo-economic focus have set the context for the gradual, often incremental steps public policy to enable an acceptable national public policy on FDI. In doing so such policy is a settlement between a range of competing interests. In simple terms, emphasising the role of that state as mediator and one key set of actors in such decision-making is to emphasis the international realm occupied by potential, foreign investors as only another arena in which significant, domestic actors such as prime ministers and leaders of government continue the domestic struggle rather than creating or enabling any form of supranational (Gourevitch, 1978). In turn, there is some disappointment with the potential of international actors, even international business, to significantly alter domestic developmental trajectories. The contest is over control of the benefits of resources as well as national identity now and into the future. More recent, theorising establishes the idea of a 'new interdependence' where balance is struck between state autonomy and engagement both domestically and internationally allowing for a multiplicity of actors to contest likely or possible national trajectories (Farrell and Newman forthcoming; Koenig-Archburgi 2010). In polycentric contests such trajectories may be determined by both the protean efforts of national leaders, but also the work of parliamentary committees, or even sufficiently organised and mobilised non-state actors.

Farrel and Abrahams (forthcoming), in crafting the idea of new interdependence as a distinct frame for understanding political struggle, argue that this is in exercise in not simply exercises in national sovereignty or even autonomy. New, often internationalised coalitions of interests are fundamentally important as actors directed at changing national regulatory capacities. In turn the extant regulatory frameworks and capacities are resistant or reluctant to pursue extensive rapid change, being more cautious in trading and adding to existing mechanisms enabling them to exert authority in complex environments. It is an interesting thesis and because the wider regulatory capacity of the Australian state in concerning foreign inwards investment has been regularly researched this can be tested against experience.

At the same time, a balance must be struck between recognising the policy impetus of government (a statist view) with the broader societal interests (a stronger governance view) (Koenig-Archburgi 2010). The Koenig-Archburgi view enables more contemporary, polycentric approaches to policy development and execution. Also, this approach leads to increased complexity in practice and academic assessment because the polity analysed is not limited to the state "in principle it can be any entity that is able to produce governance and formulate and implement policy" (Koenig-Archbugi 2010 p. 15). That is the unit of the analysis becomes much broader in scope to include a myriad of actors and equally varied national and international arrangements contesting primacy in governance.

Method and Results

The method applied in this study is to examine two themes apparent in both the Rudd and Gillard governments: those of the engagement with FDI policy and practices around the degree of accommodation of investment via state owned enterprises from China and investment from China in general as well as those to concerning the acquisition of farm land and rural industries by foreign investors. These themes show both consistency and contrast between the Rudd and Gillard governments as each government responded to differing political and economic circumstances, and each sought to reach a new settlement on domestic FDI policy. The prevalence of this themes are illustrated in the two tables below using data from the FIRB's list of significant policy developments and announcements over the period of the Rudd and Gillard governments.

(Note that two significant announcements – one on the signing of an investment protocol between Australia and New Zealand and the announcement on the rejection of the Singapore Stock Exchange's proposed merger with the Australian Stock Exchange (ASX) – have been excluded. Though significant these fall outside the two major themes being explored in this analysis.)

Table 1 Rudd Government (December 2007 to June 2010)

	2008	2009	2010
Themes Investment by SOEs and other investors from China	<u>Announcements</u> 17 Feb. 2008 Government improves transparency of foreign investment screening process Statement by the Treasurer, the Hon Wayne Swan MP "Proposed investments by foreign governments and their agencies (e.g. state-owned enterprises and sovereign wealth funds (SWF)) are assessed on the same basis as private sector proposals. National interest implications are determined on a case-by-case basis." Others: • Approval of Chinalco pursuit of shares in Rio Tinto (24.08.2008) • Approval of Sinosteel Corporation to acquire up to 49.9 per cent of Murchison Metals Ltd (21.09.2008)	<u>Announcements</u> • Conditional approval of Yanzhou Coal Mining Company Limited acquisition of Felix Resources Limited • Approval of Anshan Iron and Steel Group Corporation — Acquisition of up to a 36.28 per cent interest in Gindalbie Metals Ltd (8.05.2009) • Conditional approval China Minmetals Non ferrous Metals Co Ltd — Acquisition of certain mining assets of OZ Minerals Ltd, exculding the Prominent Hill mine at Woomera (23/04/2009) • Conditional approval of Hunan Valin Iron and Steel Group — Acquisition of up to a 17.55 per cent interest in Fortescue Metals Group (31/03/2009) • Decision to exclude Prominent Hill mine from China Minmetals Non ferrous Metals Co Ltd's proposed acquisition of OZ Minerals Ltd (27/03/2009)	<u>Announcements</u> 24 4 2010 new regulations on the acquisition of residential property by temporary residents.
	<u>Policy</u> Reiteration of existing policy	<u>Policy</u> Applying existing policy	<u>Policy</u> Tighter, more regular monitoring of small, short term residential real estate investment by temporary residents
Ownership of rural land and rural investment			<u>Policy</u> Reiteration of existing policy

Sources: Foreign Investment Review Board (online)at http://www.firb.gov.au/content/policy.asp?NavID=1

Table 2 Gillard Government (June 2010 to July 2013)

	2010	2011	2012
Themes Investment by SOEs and other investors from China	<u>Announcements</u> Approval of Taifeng Yuanchuang International Development Co Ltd's acquisition of up to 19.9 per cent of IMX Resources Limited and 49 per cent of Outback Iron Pty Ltd (9.7.2010)	<u>Announcements</u> Speech at the China Overseas Investment Fair by Frank di Giorgio, General Manager, Foreign Investment and Trade Policy Division Australian Treasury and Executive Member, Foreign Investment Review Board (9.11.2011)	<u>Announcements</u> Conditional approval for Shandong RuYi Scientific & Technological Group Co. Ltd's and Lempriere Pty Ltd's acquisition of the assets of Cubbie Group Limited (31.8.2012) Conditional approval of Yancoal Australia Limited's merger with Gloucester Coal Limited (8.3.2012)
	<u>Policy</u> Continuing policy	<u>Policy</u> Continuing policy	<u>Policy</u> Continuing Policy
Ownership of rural land and rural investments	<u>Announcement</u> Conditional Approval of Wilmar International Limited to acquire Sucrogen Limited from CSR Limited (8.11.2010) Government Welcomes Multi-Billion Dollar Coal Seam Gas Export Investment in Gladstone (31.10.10) <u>Policy</u> Increasingly contentious issues for rural voters		<u>Announcement</u> Government to Boost Transparency of Foreign Investment in Agriculture (18.1.2012) <u>Policy</u> Tightening of scrutiny an controls on FDI in rural areas

Sources: Foreign Investment Review Board (online)at http://www.firb.gov.au/content/policy.asp?NavID=1

The examples from the Rudd period show an evolution from surprise as the new government seeks to maintain regulatory control, and eventually a more combative stance. The period from 2008 to 20010 show surprise at the apparent extensiveness of investment, or at least the desire from China's SOEs to expand to take direct ownership of the supply chains especially in the areas of natural resources and agriculture (Zweig and Jianhai 2005; Larum and Qian 2012). Also surprise in dealing with both a resources boom and a wider, global economic downturn (Garnett and Lewis 2010). In the face of continuing opposition from potential state owned enterprises and their legal advisers the Rudd government found it difficult to successfully project an approach of business as usual – despite such investments forming only a small part of the wider FDI activity. Gradually the government sought to establish a stronger stance, through very direct review processes for state owned enterprises and controls on residential real estate. These reforms couples with the attempt to establish a resources rent tax established a much more combative stance for the Rudd government on FDI by mid-2010.

Whereas the experience for the Gillard period of government shows a gradual diffusion of the SOE investment issue, but a ramping up of controls on foreign investment in rural areas and rural industry. In part this reflects the weakened status of the government as a minority government. For example, while the Rudd government was successful in mobilising a Senate review of foreign investment by SOEs the Gillard government faced the success of possibility of a private members Bill sponsored by Senators Nick Xenophon and the then Greens' Deputy Leader Christine Milne to amend the Foreign Takeover Act of 1975 to place greater restrictions on the acquisition of farm land by foreign investor (Mahony 2012). As well while Chinese business interests felt specifically targeted by the more combative regime that emerged under the Rudd government, the period of the Gillard government also saw the a winding back of policies in China promoting the vigorous outwards investment of the mid-2000s (Larum and Qian, 2012).

Discussion of Results

The experiences set out in Tables 1 and 2 make apparent the challenges both governments faced in ensuring the continuation of a well-established regime for at least scrutinising, if not overly regulating, inflows of FDI. More significantly the experiences established the basis for analysis emphasising a polycentric rather than purely statist approach to understanding policy change. For example, it would be easy to dismiss the confrontation between a domestic investment screening regime and multinational firms, albeit state owned, as simply demonstrating a naivety or lack of understanding on both sides. However, this experience shows a more realistic challenge occurring in the engagement across different regulatory systems and the norms embodied in accepted practices.

Both the Rudd and Gillard governments illustrate, at least in this context, a surprisingly high degree of international integration, while also maintaining a regime enabling autonomy of action. There is a technocratic aspect to this: policy instruments are the rules that the FIRB advises on and these evolve fairly rapidly in this period. At the same time there are significant adaptations taking place outside the working of the FIRB, particularly in the business climate in China with first a strong impetus of expansion of interests into Australia, and then a scaling back as conditions at home and in Australian prove more difficult.

To accommodate this posture by the national government there is likely to have been considerable adaptation within the FIRB. This can be tracked through public documents released through or authored by the FIRB. However, it is important to maintain a degree of scepticism when looking at such adaptations because such review processes involve a network of interests across the different portfolios of the national government (Sadleir 2007). Adjustment and adaptation takes place within and across this network depending on the degree or severity of external or internal pressures for change. It is ultimately a process of hierarchical decision making vested in the Treasurer of the day on advice from the FRIB, but the negotiation within and across the bureaucracy facilitates and shapes specific outcomes. Most are straight forward but there is a capacity for the FIRB to seek conditions on the type of investment, and in doing so deter other forms of investment. Similar changes in rules, practices and norms are likely to be occurring in the activities and patterns of organisation demonstrated by other actors involved in this process. For example, how might SOEs from Chine be adapting to operate more successfully in challenging outward investment markets?

Conclusion

One of the insights from the development of governance as an area for academic investigation is the strong emphasis on government as only one actor. As the above case shows this is useful in understanding how government functions under time of stress, what limits its actions, and the behaviours and actions of other actors. In turn this reinforces – in the case of FDI regulation – a mixing of different kinds of patterns of organisation: from hierarchy, to networks, to markets and to hybrid governance arrangements to reach acceptable compromises ranging from non-state actor compliance to adjustments in rulemaking; to non-state actors bypassing government; reluctant or clumsy attempts by a state to exert authority to reach to other authoritative actors or focusing on other possible markets.

Rudd and Gillard introduce and offer part of a new dynamic: how best to deal with FDI from China in the form of private investors and SOEs. This new dynamic is captured and reworked as an older problem: access to farm land for non-farming uses such as mining. The challenge here is less the volume of the investment, it is the significance in China-Australia trade relations and broader geo-political relationship. This is despite warnings, from as early as 1990 in the form of Garnaut's assessment identifying the likely ascendency of North East Asia, of the dramatic economic growth and willingness of China to engage with the world trading and investment community.

A key learning from this experience is the time taken for a polity to adjust. Within the Australian context there is the role played by the media in enabling views to form within the wider polity. More importantly in both the Rudd and Gillard governments is the influence of parliamentary committees in airing concerns and seeking to establish more widely acceptable policy positions.

Why is this important? The capacity of domestic polities to successfully respond are challenged by rapidly evolving international contexts and such committees provide the opportunity for contested views to be harnessed and more closely tested. But also there is the capacity of bureaucracies to respond and adjust to change. In the case of Australia and the Rudd and Gillard governments an established orderly was definitely tested while demonstrating the ability of the state to maintain its autonomy in decision making over the use of resources. The claim is "as globalization continues, it will be ever more difficult to examine national trajectories of institutional change in isolation from each other" (Farrell and Newman forthcoming, p.1). In approaching this assumption it is worth being sceptical of the degree of convergence likely in national approaches. Certainly there appears to be a convergence on norms, but there are underlying histories and trajectories which suggest a continuing divergence and re-interpretation of norms and practices across states.

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