

Australia's designation as 'domestic source' for US defence industry foreshadows further erosion of sovereignty

Presuming the United States Congress agrees with President Joe Biden's request to pass the requisite amendments, Australia will soon be classified as a "domestic source" of resources and materiel for the US military under the *Defence Production Act of 1950* (DPA). By the letter of the relevant Australian laws, including the Constitution, as well as of Australia's 2007 defence trade cooperation treaty with the USA, this would not in itself entail handing control over either locally developed military technologies or Australia's reserves of so-called critical minerals to Washington, as some have suggested. As their acquiescence to the US-directed persecution of Australian publisher Julian Assange and retired fighter pilot Daniel Duggan (p. 7) attest, however, both the Albanese Labor government and its Liberal predecessors—who between them comprise the overwhelming majority in both Houses of Parliament—have already proven subservient to Washington's imperial notion of so-called universal jurisdiction, which holds that its own laws should apply in every country on Earth upon demand, local and international laws be damned. Moreover, the High Court of Australia has consistently allowed the federal government to use its so-called "external affairs power" to supersede domestic laws in order to enforce the terms of international treaties it has entered into. When read in that context, the joint statements issued by Biden and Prime Minister Anthony Albanese during the latter's recent visit to the USA suggest that Albanese does indeed propose to turn over effective control of the nation's natural resources and industrial development to the American war machine, just as his predecessors have done with Australia's foreign and defence policies.

On 20 May (US Eastern time), Biden and Albanese announced in a joint statement that in pursuit of the trilateral AUKUS (Australia-UK-US) pact, under which Australia is supposed to acquire nuclear-powered submarines and other "advanced capabilities ... to deter aggression and sustain peace and stability across the Indo-Pacific [region]", the two governments are "prioritising improving information sharing and technology cooperation mechanisms required to advance our defence and security collaboration". Among these, the statement says, "The President plans to ask the United States Congress to add Australia as a 'domestic source' within the meaning of Title III of the [DPA]. Doing so would streamline technological and industrial base collaboration, accelerate and strengthen AUKUS implementation, and build new opportunities for United States investment in the production and purchase of Australian critical minerals, critical technologies, and other strategic sectors." Currently the only country outside the USA categorised in the DPA as a "domestic source" is Canada, and to add Australia would require that Congress pass an amendment to that effect.

Outsourcing development, militarising industry

The original purpose of Title III of the DPA was to enable the executive branch of the US government to help companies and projects it deems necessary to the national defence sidestep the extortionate demands of private finance, by letting them piggyback on its credit rating. It provides, very broadly, that "To reduce current or projected shortfalls of industrial resources, critical technology items, or essential materials needed for national defence purposes, subject to such regulations as the President may prescribe, the President may authorise a guaranteeing agency to provide guarantees of loans by private institutions for the purpose of financing any contractor, subcontractor, provider of critical infrastructure, or other person in support of production capabilities or supplies that are deemed by the guaranteeing agency to be necessary to create, maintain, expedite, expand, protect, or restore production and deliveries or services essential to the national defence." Before he may authorise such a loan guarantee, the President must first determine (among other things) that "without a loan guarantee, credit is not available to the loan applicant under reasonable terms or conditions sufficient to finance the activity"; but that "the prospective earning power of the loan applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed".

The first, though not the gravest, insult to Australian sovereignty (and Australians' intelligence) in Albanese's pretence that we need to outsource development finance to the US government and military-industrial complex, is that the Australian government itself has all these powers and more, and *may use them at any time for whatever purpose it sees fit*, but Albanese and Treasurer Jim Chalmers simply refuse to do so. Provisions of the Curtin/Chifley Labor government's Banking Act 1945, retained by Liberal PM Robert Menzies in the *Banking Act and Reserve Bank Act of 1959*, empower the Reserve Bank of Australia (RBA), as directed by the Treasurer, not only to control what proportion of the private banks' lending should be directed into different sectors to support the nation's economic needs, but also to issue loans itself for the same purpose, including for specific industrial and infrastructure projects.¹ So mired in neoliberal ideology is the modern Labor Party, however, that not only will it not use these powers, but it has agreed to give them away and make the RBA fully "independent" of government, and thus immune to democratic accountability.² Yet it is quite happy to let the US government extend its own analogous powers into Australia for the purpose of feeding the Anglo-American war machine.

Selling off the farm

In effect, what Albanese is doing is at best the reverse of the Whitlam Labor government's famous "buy back the farm" campaign in the 1970s, which sought to wrest control of Australia's mining and energy sectors back from British, US and other foreign corporations. At the very least, the US government, with Albanese's connivance, is obviously intent upon using its influence over Australian policy to shut foreign (especially Chinese) competitors gradually out of Australia's resource and technology sectors, so that its own corporations may fill the gap thus created, on their own terms. Depending in large part upon what new or expanded treaty arrangements Albanese makes with the USA to facilitate the deal, however—which, given his fawning obeisance to date, are likely to be whatever the Americans want them to be—it is legitimate to worry that a more explicit, extensive and immediate US takeover is in the offing.

The purpose of the *Defence Production Act*, by its own description, is to ensure "the ability of the domestic industrial base to supply for the national defence and to prepare for and respond to military conflicts, natural or man-caused disasters, or acts of terrorism *within the United States*" (emphasis added). Which is to say, the provisions made by and under the DPA are for the benefit of the USA, not any other country. As previous US and Australian government statements have made clear, especially since the Donald Trump administration began pushing the (unfeasible) idea of an "economic decoupling" from China in 2017-18, the list of Australian "critical minerals" to which the US war machine wants access includes Lanthanides, commonly known as rare-earth³ metals, which are essential to the production of various specialty steels used in military and high-end industrial components, and of which China currently makes some nine-tenths of the world's supply.

It also includes lithium, which has various industrial applications but is nowadays sought primarily for use in rechargeable batteries for everything from smartphones and other mobile communication devices to cars, drones and even diesel-electric submarines. As journalist Paul Gregoire noted in a 2 June post on the [Sydney Criminal Lawyers blog](#), "Australia supplies 53 percent of lithium globally, and this [Australia-US 'domestic source'] deal will have the knock-on effect of eroding China's dominance in acquiring and refining the mineral. After Australia carries out early refinement, China then further treats it for technological use. But the *New York Times* recently outlined that the Albanese government is purposely attempting to break Beijing's hold on processing and instead, conduct this at home and then sell it to allies like the US. ... The government has outlined that it wants to produce 20 percent of the world's refined lithium in this country by 2027". It is notable that on the same day Albanese and Biden announced their DPA deal, they also declared in a second joint statement that "Australia and the United States commit to enhance bilateral cooperation under a Climate, Critical Minerals and Clean Energy Transformation Compact (the Compact), establishing climate and clean energy as a central pillar of the Australia-United States Alliance ... [which will] serve as an enduring and evolving mechanism to deepen our cooperation on integrating diverse, responsible, and innovative supply chains, accelerating the net-zero transition, and driving climate ambition and action in the Indo-Pacific and beyond." Hinting at the Compact's true purpose, the statement adds that activities under its rubric will be coordinated by a "ministerial-level Australia-United States Taskforce on Critical Minerals ... to be led by principals from the US National Security Council [the US presidential administration's top coordinating body for security, military and foreign policy] and Australia's Department of Industry, Science and Resources".

Devil in the detail

Australian
Mining

Tianqi Lithium delivers first battery-grade product



RAY CHAN
May 20, 2022, 9:09 am



Tianqi Lithium Energy Australia, which runs this plant in Kwinana, WA, is 51 per cent owned by a

Chinese company, and is in partnership with an American company; the concern in Albanese's deal could give Biden power to stop this plant from exporting to China. Photo: Screenshot

As noted above, the States' constitutional control of mineral resources; federal property laws (including on intellectual property); as well as various free trade agreements (including with China) and agreed international laws regarding investor-state dispute mechanisms should, on their face, prevent the US government from simply seizing control of Australian resources and technologies, and the Australian government from simply expropriating Chinese investments at the USA's behest—like, say, the majority (51 per cent) Chinese-owned Tianqi Lithium Energy Australia (TLEA) plant near Fremantle, WA, the first facility in Australia to produce batterygrade lithium in commercial quantities. (TLEA in turn owns 51 per cent of the Greenbushes mine, the world's largest and highest quality deposit of hard-rock lithium ore, which it operates in joint venture with American mining company Albermarle.) There is also an existing Australia-US Defence Trade Cooperation Treaty, signed in 2007, which explicitly protects Australian technologies and intellectual property from being taken under US control by virtue of the latter's military having adopted them.

Legal experts consulted by the *Australian Alert Service*, however, point out that further steps in the formal process of designating Australia a "domestic" US defence source would presumably be pursuant to some new treaty arrangement Australia would enter into with the USA to bring it about. And once a treaty is signed, history shows that the federal government, enabled by a series of rulings by the High Court, can and will use it to ride roughshod over existing state and federal law, with the only real proviso being that in doing so it does not infringe upon either those few rights conferred on individuals by the federal Constitution, or the few express prohibitions found therein. As one source put it: "In effect, the Commonwealth can enter into a Treaty to exercise a power it does not expressly have under the Constitution; and by virtue of that Treaty, thereby acquires the power to exercise that jurisdiction domestically. This power then becomes relevant in terms of any Treaty arrangement the Australian Government enters into with the US Government to bring about Australia becoming a 'domestic source' under the provisions of the US *Defence Production Act*. Entering into such a Treaty would define the powers which the Commonwealth could then exercise domestically to implement it." Except in the unlikely event he were overruled by the High Court, therefore, should Albanese for example agree that Section 704 (a) of the DPA, under which "the President may prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out this Act", applies to "domestic sources" in Australia—then it does.

The terms of any such treaty will, of course, only be published after it is signed, whereupon the Australian public will find out too late what Albanese has agreed to on their behalf.

Footnotes

[1. "Take back the Reserve Bank to save Australian families NOW!"](#), Citizens Party media release, 7 June 2023.

[2. "Bankers' mate Jim Chalmers trashes Curtin and Chifley's greatest legacy"](#), Citizens Party media release, 21 Apr. 2023.

[3.](#) The term is somewhat misleading, as they are actually quite abundant in the Earth's crust. Concentrated ores, however, are very rare indeed, and Australia has some of the largest known deposits.

By Richard Bardon, Australian Alert Service, 22 June 2023