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Policy Brief

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China and geopolitical considerations for investment screening in the Netherlands

This policy brief analyses whether there are grounds for the Dutch government to conduct critical assessments of direct investments, particularly from China, from a geopolitical perspective. The economic consequences of the COVID-19 pandemic warrant continued critical oversight of Chinese foreign investments and screening of such investments. In particular, the challenging times for the Dutch economy caused by the COVID-19 pandemic, and the need for new capital inflow may translate into opportunities for Chinese investors on the Dutch market. This policy brief argues that from a geopolitical perspective there are two grounds for the Dutch government to screen investments: the Netherlands' need to keep pace with changes in the geopolitical stance of the US and other Western countries towards China; and the risk of greatly diminished capacity for autonomous action in a geopolitical context for the Netherlands and the EU. Hence there are two criteria that investment screening must fulfil. Firstly, it must take account of the security and geopolitical implications of investments in high-tech companies. Secondly, it must be aimed at preventing a high degree of strategic dependence on a single operator.

1 Introduction

Since several years, geopolitical developments have fuelled a debate on the extent to which the European Union (EU) should be open to foreign direct investment. The EU is the world's foremost destination for foreign direct investment.[1] From a regulatory perspective, almost all EU countries are more open to foreign direct investment than the United States (US) and considerably more open than China, globally the two largest

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1 Expertisecentrum Europees Recht, 2019. 'Nieuw EU-kader screening buitenlandse investeringen van kracht', Ministry of Foreign Affairs, https://ecer.minbuza.nl/-/nieuw-eu-kader-screening-buitenlandse-investeringen-van-kracht (retrieved on 23 July 2020).

economies apart from the EU.[2] The rise of China as a new global power, and the United States' response to that rise, have raised the importance of investment screening in the EU as a means of curbing undesirable effects of foreign direct investment.[3] This development also affects the Netherlands, which the OECD rates as one of the most open economies in the EU.[4] The Dutch government has initiated various changes with regard to investment screening. This paper focuses on the question of whether there are grounds for the Dutch government to conduct critical assessments of direct investments, particularly from China, from a geopolitical perspective.

2 The rise of China and reactions in the US and the EU

China's very rapid development since the start of the economic reforms in 1979, which since 2010 has made the country the world's second-largest economy, has led to a shift in the international balance of power. China is a strong proponent of the Westphalian model of sovereignty as a basis for international relations and of the central role of the UN in the international system.[5] Increasingly, the Chinese government is overtly pursuing a world order in which the US and its Western partners are no longer the dominant countries.[6] China's increasingly prominent position on the world stage coincides with changes in transatlantic cooperation, partly due to the US retreat from the multilateral system.[7] The West's ability to mount a concerted response to China's growing influence has been diminished. Another important factor is the shift from the Western dominated status quo towards a power balance in which non-Western powers also increasingly have more influence, amid which the rise of China is now taking place. The Chinese government is enjoying more success than its Western opponents in winning support from developing countries in multilateral bodies, of which the General Assembly of the United Nations is the prime example.

The geopolitical rivalry between China and the US has grown increasingly intense in recent years. In June 2016 Donald Trump, then still a presidential candidate, announced that as president he would raise import tariffs on Chinese products to bring about a shift in the trade balance that for decades had been

2 European Court of Auditors, 'The EU's response to China's state-driven investment strategy', 10 September 2020, p. 18, https://www.eca.europa.eu/Lists/ECADocuments/RW20_03/RW_EU_response_to_China_EN.pdf (retrieved on 23 July 2020).

3 Joshua Kirschenbaum et al., 'EU Foreign Investment Screening – at last, a start', GMFUS, 26 September 2019, https://www.gmfus.org/blog/2019/09/26/eu-foreign-investment-screening-%E2%80%93-last-start (retrieved on 23 July 2020).

4 European Court of Auditors, 'The EU's response to China's state-driven investment strategy', 10 September 2020, p. 18, https://www.eca.europa.eu/Lists/ECADocuments/RW20_03/RW_EU_response_to_China_EN.pdf (retrieved on 23 July 2020).

5 The cornerstones of the Westphalian model of international relations are state sovereignty and the principle of non-intervention. Vincent Chang & Frank Pieke, 'China, de EU en Nederland – een Chinees perspectief', LeidenAsiaCentre, 14 June 2017, https://leidenasiacentre.nl/wp-content/uploads/2017/06/LAC-rapport-CN-EUNL-2017.07-finaal.pdf (retrieved on 23 July 2020).

6 Charles Grant & Tomas Valasek 'Preparing for the multipolar world: European foreign and security policy in 2020', Centre for European Reform, 2007, https://www.cer.eu/sites/default/files/publications/attachments/pdf/2011/e783_18dec07-1376.pdf (retrieved on 23 July 2020).

7 Adája Stoetman et al., 'Economic Security with Chinese Characteristics', Clingendael Strategic Monitor, 2019. https://www.clingendael.org/pub/2019/strategic-monitor-2019-2020/economic-security-with-chinese-characteristics/ (retrieved on 27 July 2020).

strongly in China's favour.[8] The heralded trade war began in March 2018, on the initiative of the Trump administration. Whenever the US government raised import duties on Chinese products, China retaliated with increased levies on imported American products.[9]

As the trade war intensified, the US also introduced measures in the field of technology transfers. Attention was focused partly on Chinese direct investment into the US. In the summer of 2018 President Trump signed the Foreign Investment Risk Review Modernization Act (FIRRMA) into law. This legislation is aimed at tightening and expanding the national security assessments by the Committee on Foreign Investment in the United States (CFIUS) and came into force on 13 February 2020.[10] CFIUS, a committee made up of representatives of various parts of the US government, assesses foreign investments in terms of their relevance to national security. The new act, FIRRMA, is a response to three concerns of the US government: i) foreign acquisitions could jeopardise America's technological lead and national security; ii) foreign operators could gain access to sensitive personal data through acquisitions;[11] and iii) by acquiring real estate (for example around airports or seaports) foreign operators could more easily conduct espionage activities against US government facilities.

In order to address these concerns, the jurisdiction of CFIUS has been expanded and now also covers foreign minority stakes in companies associated with critical technology, critical infrastructure or companies with sensitive personal data, as well as certain types of real estate transactions.[12] FIRRMA is driven largely, although not exclusively, by concerns about investments from China.[13] The same applies to the reform of the American export control regime under the 2018 Export Control Reform Act (ECRA). In that regard the tightening of investment screening and export controls, like the trade conflict with China, reflects a China strategy in which economic instruments are deployed to curb the rise of China as a power factor and redirect it in a way that is less threatening to US interests. This policy has been intensified under President Trump but continues the policy line maintained by his predecessor President Obama and enjoys broad support from both the Republican and Democratic parties.

In the EU, as in the rest of the world, the proportion of Chinese investors has grown rapidly in the wake of the global financial crisis. The value of China's outward direct investments exceeded the value of inward investments for the first time in 2015.[14] The European credit crisis led to growing demand for Chinese direct investments from 2008. The inflow of Chinese investments to the EU grew very rapidly from 2012. But 2016 saw a reversal in what had hitherto been a mainly open attitude towards investments. That was the year in which China's ambitions in advanced manufacturing (known as Made in China 2025) became evident worldwide. The acquisition of the renowned German robotics firm Kuka by a Chinese air conditioner manufacturer in that year marked a turning point in German attitudes towards Chinese

8 'Twaalf fases in de handelsoorlog tussen de VS en China', *De Volkskrant*, 6 August 2019, https://www.volkskrant.nl/nieuws-achtergrond/twaalf-fases-in-de-handelsoorlog-tussen-de-vs-en-china~b2abaf66/ (retrieved on 23 July 2020).

9 Ibid.

10 Farhad Jalinous et al., 'CFIUS finalizes new FIRRMA regulations', *White & Case*, 22 January 2020, https://www.whitecase.com/publications/alert/cfius-finalizes-new-firrma-regulations (retrieved on 23 July 2020).

11 Skadden, 'CFIUS Final Rules: Broader Reach, Narrow Exceptions and Foretelling Future Change', Skadden, 16 January 2020, https://www.skadden.com/insights/publications/2020/01/cfius-final-rules (retrieved on 23 July 2020)

12 Davig Fagan, 'CFIUS and China: The FIRRMA factor', 17 October 2018, https://thediplomat.com/2018/10/cfius-and-china-the-firrma-factor/ (retrieved on 23 July 2020).

13 Source: informal discussion with a member of CFIUS, 2019.

14 AIV, 'China en de strategische opdracht voor Nederland in Europa', Adviesraad Internationale Vraagstukken, June 2019, https://www.adviesraadinternationalevraagstukken.nl/binaries/adviesraadinternationalevraagstukken/documenten/publicaties/2019/06/26/china-en-de-strategische-opdracht-voor-nederland-in-europa/China_en_de_strategische_opdracht_voor_Nederland_in_Europa_AIV-advies-111_201906.pdf (retrieved on 26 July 2020).

investments.[15] Kuka supplies robots for the manufacturing of vehicles and other German export products. Whereas the German government previously considered China mainly as a strategically important export market (i.e. as an opportunity), there was now a prevailing view that China was on its way to replacing Germany as an exporter of vehicles and precision machinery (and hence posed a threat). The shift in the German government's attitude was prompted particularly by the now more prominent belief that Chinese investors, encouraged by strong backing from the Chinese state, were systematically buying up German family businesses with key technologies.[16]

After a political and public debate on the Kuka acquisition, against which the government took no action due to a lack of relevant instruments,[17] followed by a number of other high-tech acquisitions in Germany, the German government tightened its policy on foreign investments. In order to prevent Chinese investors playing Germany off against other EU countries, the German government joined with France and Italy in publicly calling for investment screening at EU level in 2017. In September 2017, the European Commission heeded this call with a proposal for a coordination mechanism, which, with some amendments, was adopted by the European Council and the European Parliament in 2019.[18]

The resulting screening framework comprises a mechanism for coordinating the screening of foreign direct investments at EU level if they pose a threat to national security or public order in the Union and one or more of its member states.[19] Member states must provide information on request, report the screening of an actual or potential acquisition and can request feedback from other member states or the European Commission in order to take an informed decision.[20]
The mechanism came fully into force on 11 October 2020. As in the case of FIRRMA, the new regulations are not formally linked to China but were motivated primarily by concerns about Chinese investments. In addition, the 2016 China strategy,[21] combined with the EU-China Strategic Outlook 2019, remains the cornerstone of the European Commission's China policy.[22] The latter document clearly shows the EU's ambivalent view of China, with the country being seen as both a partner and a rival: '[China is simultaneously] an economic competitor in the pursuit of technological leadership, and a systemic rival promoting alternative models

15 John Seaman et al., 'Chinese investment in Europe', the European Think-tank Network on China, December 2017, https://www.ifri.org/sites/default/files/atoms/files/etnc_reports_2017_final_20dec2017.pdf (retrieved on 26 July 2020).
16 It is likely that regional governments and German businesses themselves nevertheless continued to see China primarily as an opportunity, not as a threat.
17 The government had tried in vain to elicit a counter-bid from German industry.
18 AIV, 'China en de strategische opdracht voor Nederland in Europa', Adviesraad Internationale Vraagstukken, June 2019, https://www.adviesraadinternationalevraagstukken.nl/binaries/adviesraadinternationalevraagstukken/documenten/publicaties/2019/06/26/china-en-de-strategische-opdracht-voor-nederland-in-europa/China_en_de_strategische_opdracht_voor_Nederland_in_Europa_AIV-advies-111_201906.pdf (retrieved on 26 July 2020).
19 European Commission, 'Guidance to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe's strategic assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation)', European Commission, Brussels, 25 March 2020, https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158676.pdf (retrieved on 27 July 2020).
20 European Commission, 'Screening of Foreign Direct Investment – an EU framework', Brussels, European Commission, 2019, http://trade.ec.europa.eu/doclib/docs/2019/february/tradoc_157683.pdf (retrieved on 27 July 2020).
21 European Commission, 'Elements for a new EU strategy on China', European Commission, 22 June 2016, http://eeas.europa.eu/archives/docs/china/docs/joint_communication_to_the_european_parliament_and_the_council_-_elements_for_a_new_eu_strategy_on_china.pdf (retrieved on 30 July 2020).
22 European Commission, 'Joint Communication to the European Parliament, the European Council and the Council, EU-China – A strategic outlook', European Commission, 12 March 2019, https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf (retrieved on 30 July 2020).

of governance.'[23] The European Commission does not precisely explicate the concept of 'alternative models of governance', but it appears to be referring to China's political-economic system. This is characterised by the combination of a permanent monopoly for the Communist Party in the exercise of political power and a highly influential role for the government in business. The English version of the EU document states that China is a *systemic* rival, by which the Commission indicates, more explicitly than in the Dutch version, that China's model is incompatible with the European model.[24]

3 China as a source of foreign direct investments

As a source of direct investments, China differs in significant ways from other source countries. China has a unique position as the largest competitor and challenger of the West, and promotes a world view that clashes with the European view in various respects.[25] The Chinese government also plays a dominant role in the Chinese economy and economic relations with other countries. Foreign investments usually take place as part of a targeted government policy to enable Chinese businesses to secure a dominant position in global value chains. Whereas Chinese investors have a high level of access to the European investment market, European direct investments into China face numerous barriers. The limited reciprocity in terms of market access and the uneven playing field for foreign businesses compared to their Chinese competitors (as a result of state aid) weakens Europe's competitive position with regard to China, with consequences for the balance of power in the international system.

China's role as a global investor has increased rapidly. This was partly triggered by a targeted strategy of the Chinese government to encourage Chinese foreign investments under the Go Out (also known as Go Global) policy deployed from the end of the 1990s.[26] Foreign investments increased partly due to the exponential growth of the Chinese domestic market. In order to win tenders in China, Chinese companies had to supply evidence of their track record to demonstrate their knowledge and expertise. Local Chinese players met the requirements by acquiring experienced foreign players.[27] The expansion of China's international economic presence received fresh impetus in 2012 when Xi Jinping entered office as China's paramount leader. This was reflected particularly in the Belt and Road Initiative (BRI) launched in 2013 as a continuation of Go Out. The BRI is focused on promoting intercontinental 'connectivity', among other things by building and improving transport, energy and communication infrastructure, for which the Chinese government grants large loans to foreign governments. With this worldwide initiative China meets the strong demand for infrastructure loans in developing countries.[28] Against the background of BRI, the Chinese government also created the Asian Infrastructure Investment Bank (AIIB), a multilateral development bank established in 2015 of which the Netherlands will also

23 European Commission, 'Joint Communication to the European Parliament, the European Council and the Council', European Commission, Strasbourg, 12 March 2019, p. 1, https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf (retrieved on 26 July 2020).
24 It is unclear why the Dutch and English versions differ on this point.
25 ETNC, 2017. 'Chinese Investment in Europe: A Country-Level Approach', https://www.clingendael.org/sites/default/files/2017-12/ETNC_Report_2017.PDF (retrieved on 10 August 2020).
26 Zhiqun Zhu, 'Going Global 2.0: China's Growing Investment in the West and its Impact', Asian Perspective, 2018, 42(2), pp. 159-182, https://muse.jhu.edu/article/713817 (retrieved on 27 July 2020).
27 Joris Kooiman, 'De geestdrift voor het Chinese geld is alweer voorbij', *NRC Handelsblad*, 26 April 2019, https://www.nrc.nl/nieuws/2019/04/26/de-geestdrift-voor-het-chinese-geld-is-alweer-voorbij-a3958294 (retrieved on 24 July 2020).
28 Asia Europe People's Forum, 'The Belt and Road Initiative (BRI): an AEPF Framing Paper', November 2019, https://www.tni.org/files/publication-downloads/bri_framing_web_en.pdf (retrieved on 23 July 2020).

be a member.[29] The Chinese government's ambition with the Made in China 2025 policy is also to enable Chinese companies to become world leaders in technologically advanced sectors such as IT, artificial intelligence and robotics.[30] This is part of the reform of Chinese industry from a dominant secondary industrial sector to a leading tertiary high-tech sector. The strategy influences Chinese foreign direct investments, particularly in Europe and North America, with acquisitions of high-tech businesses playing a major role.

4 Chinese direct investments in the Netherlands

The Netherlands is one of the world's largest recipients of direct investments, with the United States, Luxembourg and the United Kingdom being the main countries to invest in the Netherlands in 2018.[31] According to Statistics Netherlands, the cumulative value of Chinese investments in the Netherlands in that year was only 0.1% of total foreign investments. By value, China is therefore by no means dominant as a source of investments in the Netherlands. It is important to keep in mind, however, that China has only just begun building up foreign investments and may be much more prominent in the future as a source country of direct investment. Since 2008, more than 380 Chinese investment projects have come to the Netherlands through the Invest in Holland network.[32] Chinese direct investments in the Netherlands rose rapidly particularly between 2013 and 2017.[33] As can be seen in Table 1, Chinese investments peaked in 2017, after which they gradually decreased. China invested a total of €10.2 billion in the Netherlands between 2000 and 2019 according to Rhodium Group. Only Finland (€12 billion), France (€14.4 billion), Italy (€15.9 billion), Germany (€22.7 billion) and the United Kingdom (€50.3 billion) cumulatively received more direct investments from China in Europe.[34]

The total value of Chinese direct investments in the Netherlands is largely the result of acquisitions rather than the formation of new businesses (greenfield investments). The nature of the largest company aquistions in table 2 shows that Chinese investments in the Netherlands were motivated by a Chinese desire to enter the European market as a new sales market, and by an increasing need to access specialist experience, networks and knowledge in areas such as agriculture and horticulture, logistics, the environment, the automotive industry. Acquiring advanced technologies as part of these transactions was a factor in the increase in Chinese investments in the Netherlands. This can be seen from the terms of the acquisition agreements, which in some cases included

29 Tania Branigan, 'Support for China-led development bank grows despite US opposition', *The Guardian*, 14 March 2015, https://www.theguardian.com/world/2015/mar/13/support-china-led-development-bank-grows-despite-us-opposition-australia-uk-new-zealand-asia (retrieved on 23 July 2020).

30 Scott Kennedy, 'Made in China 2025', CSIS, 1 June 2015. https://www.csis.org/analysis/made-china-2025 (retrieved on 30 July 2020).

31 Loe Franssen & Marjolein Jaarsma, 'Buitenlandse investeringen en multinationals', CBS, 2019, https://longreads.cbs.nl/nederland-handelsland-2019/buitenlandse-investeringen-en-multinationals/ (retrieved on 24 July 2020).

32 Eric Wiebes, 'Beantwoording vragen bijdrage buitenlandse bedrijven aan Nederlandse economie', Ministry of Economic Affairs and Climate Policy, 14 March 2019, https://www.rijksoverheid.nl/documenten/kamerstukken/2019/05/14/beantwoording-kamervragen-over-de-bijdragen-van-buitenlandse-bedrijven-aan-de-nederlandse-economie (retrieved on 24 July 2020).

33 Joris Kooiman, 'De geestdrift voor het Chinese geld is alweer voorbij', *NRC Handelsblad*, 26 April 2019, https://www.nrc.nl/nieuws/2019/04/26/de-geestdrift-voor-het-chinese-geld-is-alweer-voorbij-a3958294 (retrieved on 24 July 2020).

34 Agatha Kratz et al., 'Chinese FDI in Europe: 2019 update', Rhodium Group/MERICS, April 2020, https://rhg.com/wp-content/uploads/2020/04/MERICS-Rhodium-Group_COFDI-Update-2020-2.pdf (retrieved on 24 July 2020).

a requirement that the technology must be transferred to China.[35]

The most widely discussed Chinese investments in the Netherlands are three acquisitions of units of NXP, the former semiconductor division of Philips and now a major player in the automotive industry.[36] In 2015 the RF Power division (specialising in high-frequency power technology) was sold to China's JAC Capital. In 2016, the same Chinese investor and Wiseroad Capital spent €2.4 billion to gain control of NXP's Standard Products division. In 2018 it acquired a majority stake in Nexperia – which was established as a separate entity in 2017 – by investing €2.3 billion in Nexperia.[37] This acquisition was also strategically relevant for the Chinese government, which increasingly sees autonomy in semiconductor technology as a vital national security interest. Finally, the Chinese industry peer Goodix acquired NXP's audio division in 2019.[38] The Chinese company, which specializes in fingerprint scanners, can now also supply audio products to its customers as a result of this acquisition.[39]

Table 1 Value of Chinese direct investments in the Netherlands per year (2000-2019), excluding investments in real estate and financial institutions (mailbox firms)

Year	Values (EUR millions)
2000	0
2001	89
2002	0
2003	0
2004	0
2005	36
2006	8
2007	127
2008	15
2009	91
2010	79
2011	453
2012	55
2013	298
2014	1750
2015	2279
2016	318
2017	3402
2018	900
2019	300
Total	10200

Source: Rhodium Group in: Chinese Direct Investments in the Netherlands, and Rhodium Group / Merics: Chinese FDI in Europe 2018 and 2019.

35 Caroline de Gruyter, 'China krijgt meer grip op Europa', *NRC Handelsblad*, 5 July 2018, https://www.nrc.nl/nieuws/2018/07/05/china-krijgt-meer-grip-op-europa-a1609076 (retrieved on 30 July 2020).

36 With regard to the first two Chinese investments in NXP units and the acquisition of Nidera see: Matt Ferchen, Frank N. Pieke, Frans-Paul van der Putten, Tianmu Hong & Jurriaan de Blécourt, 'Assessing China's Influence in Europe through Investments in Technology and Infrastructure. Four Cases', Leiden: LeidenAsiaCentre 2018.

37 David van der Heeden, 'Nederlandse chipbouwer Nexperia nu van Chinezen', *Algemeen Dagblad*, 26 October 2018, https://www.ad.nl/economie/nederlandse-chipbouwer-nexperia-nu-van-chinezen~a104ba04/ (retrieved on 9 August 2020).

38 Stijn van Gils, 'NXP verkoopt audiodivisie aan Chinese branchegenoot Goodix', *Het Financieele Dagblad*, 16 August 2019, https://fd.nl/ondernemen/1312883/nxp-verkoopt-audiodivisie-aan-het-chinese-goodix (retrieved on 10 August 2020).

39 'NPX verkoopt audiodivisie voor 165 miljoen dollar', *NRC Handelsblad*, 17 August 2019, https://www.nrc.nl/nieuws/2019/08/17/chiptechnologie-nxp-verkoopt-audiodivisie-voor-165-miljoen-dollar-a3970340 (retrieved on 10 August 2020).

Table 2 Major Chinese acquisitions in the Netherlands from 2000 to 2019*

Year	Company	Acquirer	State enterprise	Transaction value (EUR millions)
2017	NXP Standard Products division	JAC Capital, Wiseroad Capital	Yes (JAC)	2450
2014	Nidera BV	COFCO	Yes	2050
2015	NXP RF Power division	JAC Capital	Yes	1600
2015	Reaal NV	Anbang	No	702
2019	KLG Europe	Sinotrans	Yes	386
2014	Royal Nedschroef Holding BV	Shanghai Electric	Yes	325
2011	DSM Anti-Infectives BV	Sinochem	Yes	210
2011	Inalfa Roof Systems Group BV	BAIC	Yes	190
2014	TP Vision Holding BV	CEC	Yes	180
2020	NXP Voice and Audio Solutions	Goodix Technology	No	161
2013	Vesta Terminals BV	Sinopec	Yes	129
2007	Burg Industries BV	CIMC	Yes	108
2016	Tanatex Chemicals group	Transfar	No	100

* Frans-Paul van der Putten, 'Chinese Direct Investments in the Netherlands, Clingendael, 22 December 2017; Stijn van Gils, 'NXP verkoopt audiodivisie aan Chinese branchegenoot Goodix', *Het Financieele Dagblad*, 16 August 2019; 'Agreement to transfer ownership of KLG Europe to Sinotrans Limited, 2019.

In 2018, partly in response to the coordination framework proposed by the European Commission, the Dutch government shifted from its previous view that tighter investment screening at national and EU level was not desirable. The Netherlands followed the more China-critical European line in June 2019 with a reorientation of the Dutch China strategy, published in the China memorandum entitled 'Een Nieuwe Balans'.[40] This marked a shift in the Dutch focus from a primarily trade-oriented relationship to a combination of economic and security interests.[41] The Dutch government thus took a step towards a more geopolitically oriented China policy.

At the same time the inflow of Chinese investments decreased. That was only partly the result of growing European mistrust towards China and geopolitical tensions between the US and China.[42] The Chinese government tightened its supervision of Chinese outward investments in 2017 due to concerns about the risk of Chinese companies buckling under the weight of acquisition-driven debt, and about the growing power of expanding private businesses.[43] The Chinese government was also attempting to stabilise the renminbi and

40 'Nederland-China: een nieuwe balans', Government of the Netherlands, 15 May 2019, https://www.rijksoverheid.nl/documenten/rapporten/2019/05/15/nederland-china-een-nieuwe-balans (retrieved on 24 July 2020).

41 'China en de strategische opdracht voor Nederland in Europa', AIV, June 2019, p. 32, https://www.eerstekamer.nl/bijlage/20190626/aiv_advies_china_en_de/document3/f%3D/vkzole6onkdr.pdf (retrieved on 24 July 2020).

42 Baker McKenzie, 'No wave of Chinese buyers as investors stay home in 2020', 17 June 2020, https://www.bakermckenzie.com/en/newsroom/2020/06/china-outbound-manda (retrieved on 10 August 2020).

43 Joris Kooiman, 'De geestdrift voor het Chinese geld is alweer voorbij', *NRC Handelsblad*, 26 April 2019, https://www.nrc.nl/nieuws/2019/04/26/de-geestdrift-voor-het-chinese-geld-is-alweer-voorbij-a3958294 (retrieved on 24 July 2020).

boost economic growth with this policy.[44] This new policy led to a decrease in Chinese foreign direct investments in the Netherlands and elsewhere. The coronavirus pandemic and the European downturn in China in the first half of 2020 put a halt on acquisitions and other direct investments.

5 Geopolitical factors as grounds for screening

Due to the recent decrease in Chinese direct investments, the Dutch focus on China's economic influence has shifted to the possible role of Chinese companies and technology in the construction of 5G telecommunication networks in the Netherlands, export licences for advanced equipment (ASML chip machines), access to health products from China (face masks and medicines) and scientific cooperation with China. The economic consequences of the COVID-19 pandemic, however, warrant continued critical oversight of Chinese foreign investments and screening of such investments. In particular, the challenging times for the Dutch economy caused by the COVID-19 pandemic, and the need for new capital inflow may translate into opportunities for Chinese investors on the Dutch market. The Chinese government has a permanent and accelerating strategic need to develop the country technologically in order to reduce its susceptibility to US sanctions. At the same time, the US government is increasing efforts to curb the transfer of advanced technology from Europe to China. In 2016 CFIUS blocked the sale of a Philips unit to a consortium of Chinese and other investors and in 2019 the Dutch government banned the export of certain ASML machines to China following pressure from the US government.

From a geopolitical perspective there are two grounds for the Dutch government to screen investments. The first is to keep pace with changes in the geopolitical stance of the US and other Western countries (Germany, France, United Kingdom) towards China. That is particularly important in the case of the US. The US government sees the transfer of (many forms of) advanced technology as directly affecting the power balance between the US and China, and US national security. The same applies to technology transfers to China from non-US sources. A stabilisation of the geopolitical relation between the US and China is not expected, regardless of the changing presidency in Washington. It is therefore likely that the Netherlands will come under increasing pressure from the United States to curb certain technology transfers to China.

A second ground is the risk that the Netherlands, like the EU as a whole, could lose a large part of its capacity for autonomous action in a geopolitical context. The more dependent Dutch businesses become for their operation and continued existence on access to the Chinese market and access to capital, technology, trade flows and third markets, the greater will be the Netherlands' strategic dependence on China if that access is controlled by Chinese companies. The Chinese government has the resources (including a large market, extensive currency reserves and influence on Chinese business) and the motive (strengthening its own position relative to that of the US) to gradually increase the strategic dependence of smaller countries, such as the Netherlands. Direct investments are only one component of China's economic influence, but they can play a major role (especially cumulatively) in combination with other areas (such as trade). In view of the growing tensions between major powers such as the US, China and Russia, it is important for the EU and its member states to retain geopolitical room for manoeuvre and to limit the strategic dependence on China.

Based on these geopolitical considerations there are two criteria that investment screening must fulfil. Firstly, it must take account of the security and geopolitical implications of investments in high-tech

44 Sue-Lin Wong, 'China steps up capital controls, tightens investment rules for state firms', Reuters, 18 January 2017, https://www.reuters.com/article/us-china-economy-foreigninvestment-state/china-steps-up-capital-controls-tightens-investment-rules-for-state-firms-idUSKBN1520U1 (retrieved on 7 August 2020).

companies. Secondly, it must be aimed at preventing a high degree of strategic dependence on a single operator. To that end due account must be taken of the consequences of individual investments for the balance of power in international supply and transport chains that are of strategic importance for the Netherlands and/or the European Union. In the case of China, investment assessments must also consider the extent to which the investor is controlled by the Chinese government and the Chinese Communist Party (CCP). The concentration of political power through direct investments must be assessed on a cross-sectoral basis, because the roles of the government and the CCP in China's external economic relations are similarly cross-sectoral.

It remains unclear whether the Dutch government's current tightening of investment screening is sufficient to fulfil the above geopolitical criteria. The geopolitical environment continues to develop rapidly. The Dutch government has recently taken steps to prepare for any further shifts in the relationship between economic openness and economic security, particularly through the publication of the report entitled 'Brede Maatschappelijke Heroverweging 16: Speelbal of spelverdeler' of April 2020.[45] The report presents various policy options that are relevant to preventing undesirable control of Dutch companies, including the further tightening of investment screening.

Striking a balance between openness and security is a political consideration. As a result of the increasingly critical stance towards China on the part of European governments, including the Dutch government, and increasing American pressure on European-Chinese economic cooperation, it is not possible to make a conclusive judgement. At the same time, access to the Chinese market, capital and technology is of great and growing importance to Dutch business. Investment screening must therefore be organised in such a way that the mechanism takes account of changing political insights and views, but without causing a high degree of uncertainty among potential Chinese and other investors.

45 Government of the Netherlands, 2020. 'Speelbal of speelverdeler? Concurrentiekracht en nationale veiligheid in een open economie.', Brede maatschappelijke heroverweging, 20 April 2020, https://www.rijksoverheid.nl/documenten/rapporten/2020/04/20/bmh-16-speelbal-of-spelverdeler#:~:text=binnen%20Rijksoverheid.nl-,BMH%2016%20Speelbal%20of%20spelverdeler,Nederland%20op%20de%20langere%20termijn (retrieved on 14 July 2020); Maaike Okano-Heijmans, 'Nederland met industriepolitiek 2.0 eindelijk bij de tijd', Clingendael Spectator, 4 June 2020, https://spectator.clingendael.org/nl/publicatie/nederland-met-industriepolitiek-20-eindelijk-bij-de-tijd (retrieved on 14 July 2020).

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