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Outbound Investment Screening in the EU: Catching Up to the Big Players?

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General Note about the Content

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Abstract

Shortly before the Covid-19 pandemic took the world by storm, inbound as well as outbound international Foreign Direct Investment movements were at an all-time high. The pandemic, however, besides significantly reducing investment net in- and outflows, also proved to be a testing time for the resilience of global supply and value chains. It also exposed the scarcity of certain critical technologies and raw materials, which prompted global economic players, most notably the European Union, to re-evaluate their economic strategy and assess how certain economic practices affect their national security. Both the European Union and the United States identified significant security risks as a result of outbound investments with respect to three critical technologies: semiconductors, artificial intelligence, and quantum. The United States responded to these economic risks in January 2025 by introducing the Final Rule on Outbound Investment, effectively establishing its own screening mechanism. Meanwhile, the European Union finds itself currently monitoring and assessing the risks of outbound investments transactions as mandated by Commission Recommendation (EU) 2025/63. Upon the conclusion of this exercise, the Union will be in a better position to debate and develop possible policy responses. Its own screening mechanism, thus, appears to be on the horizon. However, the European Union and the United States are far from being the first to consider introducing such mechanisms. In the latter half of the 20th century, Japan and China were already actively screening outbound investments based on their degree of sensitivity or effect on national security and public order. Thus, while the Union's monitoring and risk assessment is under way, this paper aims to compare the screening mechanisms of the United States, Japan and China, and draw lessons from this comparative analysis to outline possible approaches the European Union could take, if it decides to develop its own outbound investment screening mechanism.

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Table of Abbreviations

Accession Protocol	–	Protocol on the Accession of the People's Republic of China to the WTO
AI	–	Artificial Intelligence
Art.	–	Article
CCP	–	Common Commercial Policy
CFIL	–	Chinese Foreign Investment Law
CFIUS	–	Committee on Foreign Investment in the United States
CFR	–	Code of Federal Regulations
CLPRC	–	Criminal Law of the People's Republic of China
Commission	–	European Commission
CRH3C	–	China Railway High-speed 3C
CR 2025/63	–	Commission Recommendation (EU) 2025/63
CSI	–	Catalogue of Sensitive Industries for Overseas Investments
DSS	–	WTO Dispute Settlement System
DSU	–	Understanding on Rules and Procedures Governing the Settlement of Disputes
DUR	–	Dual Use Regulation
EESS	–	European Economic Security Strategy
EO 14105	–	Executive Order 14105
EP	–	European Parliament
EU	–	European Union
EV	–	Electric Vehicle
EUR	–	Euro
FAQ	–	Frequently Asked Questions
FDI	–	Foreign Direct Investment
FDI Regulation	–	Foreign Direct Investment Regulation (EU) 2019/452
FEFTA	–	Foreign Exchange and Foreign Trade Act
Final Rule	–	Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern
FIRRMA	–	Foreign Investment Risk Review Modernization Act
FLOPS	–	Floating-point Operations Per Second

FTT	–	Forced Technology Transfer
GATS	–	General Agreement on Trade in Services
GATT	–	General Agreement on Tariffs and Trade
GDP	–	Gross Domestic Product
GM	–	General Motors Corporation
GPS	–	Global Positioning System
GPU	–	Graphics Processing Unit
HSR	–	High-Speed Rail
IEEPA	–	International Emergency Economic Powers Act
IMFIL	–	Implementation Measures for the (Chinese) Foreign Investment Law
IP	–	Intellectual Property
JPY	–	Japanese Yen
JV	–	Joint Venture
JV Law	–	Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures
JV Regulation	–	Regulations for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures
LLP	–	Limited Liability Partnership
MFN	–	Most Favoured Nation
MoF	–	Minister of Finance
MS	–	Member State
MSRA	–	Microsoft Research Asia
M&A	–	Mergers and Acquisitions
NDRC	–	Chinese National Development and Reform Commission
OLP	–	Ordinary Legislative Procedure
Order No. 11	–	Administrative Measures for Overseas Investment by Enterprises
PM	–	Prime Minister
R&D	–	Research and Development
SAIC	–	Shanghai Automotive Industry Corporation
SAM	–	Special Administrative Measures for Foreign Investment Access
SCG	–	State Council Guidance on Overseas Investments

SCP	–	Single Contact Point
SMIC	–	Semiconductor Manufacturing International Corporation
SOE	–	State-Owned Entity
SPV	–	Special Purpose Vehicle
TEU	–	Treaty on the European Union
TFEU	–	Treaty on the Functioning of the European Union
Treasury	–	U.S. Department of Treasury
TRIPS	–	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCTAD	–	United Nations Conference on Trade and Development
USTR	–	U.S. Trade Representative's Office
U.S.	–	United States (of America)
U.S.C.	–	U.S. Code
USD	–	U.S. Dollar
WP	–	White Paper (of the EU on Outbound Investment)
WPR	–	Working Party on the Accession of the People's Republic of China to the WTO
WTO	–	World Trade Organisation
WTO Agreement	–	Agreement Establishing the World Trade Organization

1. Introduction

Foreign Direct Investment ('**FDI**') screening can be generally defined as a procedure allowing a State to assess, investigate, authorise, condition or prohibit FDI based on a variety of national security and public order criteria.[1] Investment screening has thus far mostly been spoken of and regulated in the context of inbound investments.[2] Very often when an FDI transaction is being negotiated, a State will wish to conduct a screening procedure so that it knows exactly what kind of national security and public order risks accompany the investment.[3] Examples of such risks include: the foreign investor being owned or controlled by a state or persons subject to the destination country's sanction lists,[4] the foreign investor having previously engaged in illegal or criminal activities,[5] the FDI transaction taking over supply of critical inputs such as food or raw materials,[6] etc. The goal of identifying these risks is to give the State the possibility to prevent or mitigate them before any associated threats materialise.[7]

[1] European Commission, '*Foreign Direct Investments: EU screening framework*' (*CIRCABC*, 4 July 2022) https://circabc.europa.eu/ui/group/be8b568f-73f3-409c-b4a4-30acfcec5283/library/5975e8f0-7679-47a2-9770-a49aedd5cef9/details accessed 15 September 2025; *see also* UNCTAD, 'The Evolution of FDI Screening Mechanisms' [2023] issue no 25 Investment Policy Monitor https://unctad.org/system/files/official-document/diaepcbinf2023d2_en.pdf accessed 15 September 2025 1-4; Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union [2019] OJ L 79I 1 art 2(4).

[2] Georgios Dimitropoulos, 'National Security: The Role of Investment Screening Mechanisms' in Julien Chaisse, Leïla Choukroune and Sufian Jusoh (eds), *Handbook of International Investment Law and Policy* (vol 1, Springer 2021) 11; *see also* Jonas Fechter, 'Next-level Screening? The Case of Outbound Investment Screening' in Jens Hillebrand Pohl, Joanna Warchol, Thomas Papadopoulos and Janosch Wiesenthal (eds), *Weaponising Investments* (vol 2, Springer 2023) 79; *For the existence of a vacuum on the topic of outbound investments see* Victor Crochet and Weihuan Zhou, 'The Rise of Outbound Investment Screening: A Vacuum in International Economic Law' (*Blog of the European Journal of International Law,* 27 December 2024) https://www.ejiltalk.org/the-rise-of-outbound-investment-screening-a-vacuum-in-international-economic-law/ accessed 15 September 2025.

[3] European Commission, 'EU Foreign Direct Investment Screening 2024 Revision' (*European Economic Security Strategy*, 24 January 2024) https://ec.europa.eu/commission/presscorner/api/files/attachment/877349/Factsheet%20Economic%20Security%20-%20FDI%20Screening.pdf accessed 15 September 2025 1.

[4] ibid.

[5] FDI Regulation, 4(2)(c).

[6] ibid art 4(1)(c).

[7] ibid.

A topic which only recently started getting more attention is outbound investment screening.[8] As opposed to inbound investment screening, this concept refers to the process whereby the State reviews investments made by domestic enterprises which have a foreign country as their destination with a view to identifying potential national security, economic, geopolitical or risks to the public order.[9]

What exactly prompted this attention to screening investments? It is no secret that even after the Cold War, States are still engaged in competition with each other over creating and possessing the most advanced technology.[10] Nowadays, technological sovereignty seems to be the main driver of state innovation policy.[11] Looking at the Annex to Commission Recommendation (EU) 2023/2113,[12] the European Union ('**EU**') precisely outlined technology areas it considers critical to its economic security. In the past several years, global superpowers have been allocating substantial funds into developing the first three critical technologies listed

[8] *See for example Crochet and Zhou* (n 2).; *see also* Andrea Pomana, Alejandro Guerrero, Jonathan Saké, 'EU Commission's New Outbound Investment Recommendation: The Embryo of a New Screening Regime?' (*Kluwer Competition Law Blog*, 24 January 2025) https://competitionlawblog.kluwercompetitionlaw.com/2025/01/24/eu-commissions-new-outbound-investment-recommendation-the-embryo-of-a-new-screening-regime/ accessed 15 September 2025.

[9] UNCTAD, 'Outward FDI policies: Promotion and facilitation - regulation and screening' [2024] issue no 27 Investment Policy Monitor https://unctad.org/publication/outward-fdi-policies-promotion-and-facilitation-regulation-and-screening accessed 15 September 2025 13-16; *see also Crochet and Zhou* (n 2); *for an example see also* European Parliament, 'US approach to outbound investment screening' (*At a Glance*, 13 September 2023) https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2023)751470 accessed 15 September 2025.
https://ec.europa.eu/commission/presscorner/detail/en/ip_25_261.

[10] David Charles Gompert, 'Winning the US–China Technology Race' (2024) vol 66 issue 4 Survival Global Politics and Strategy 77; *see also* Aurélien Duthoit and Famke Krumbmüller, 'Tech wars: US vs China rivalry for electronics out to 2035' (*Coface for Trade*, 13 March 2025) https://www.coface.com/news-economy-and-insights/tech-wars-us-vs-china-rivalry-for-electronics-out-to-2035 accessed 15 September 2025; Pieter Haeck, 'A new tech race is on. Can Europe learn from the ones it lost?' (*Politico*, 2 July 2025) https://www.politico.eu/article/europe-china-us-artificial-intelligence-ai-governments/ accessed 15 September 2025.

[11] Jakob Edler, Knut Blind, Henning Kroll and Torben Schubert, 'Technology sovereignty as an emerging frame for innovation policy. Defining rationales, ends and means' in Knut Blind, Martin Kenney, Aija Leiponen and Timothy Simcoe (eds), *Research Policy* (vol 52 issue 6 Elsevier 2023); *see also* Christoph March and Ina Schieferdecker, 'Technological Sovereignty as Ability, Not Autarky' (2021) CESifo Working Paper, No. 9139, 1 https://www.econstor.eu/bitstream/10419/236681/1/cesifo1_wp9139.pdf accessed 15 September 2025.

[12] Commission Recommendation (EU) 2023/2113 of 3 October 2023 on critical technology areas for the EU's economic security for further risk assessment with Member States [2023] OJ L, 2023/2113 Annex.

in the aforementioned Annex: Artificial Intelligence ('**AI**')[13], semiconductor[14] and quantum.[15] In light of all these factors, it is increasingly evident that access to and development of cutting-edge technologies in these areas is becoming indispensable.

If a country is behind in the advancement of a particular technology, it has several courses of action to 'catch up'. These include importing the relevant technology from abroad; making an outbound investment through a State-Owned Entity ('**SOE**') into a foreign company that possesses the relevant technology; or inviting investment from a foreign company possessing the relevant technology and compelling it to share it with the domestic SOE.[16]

The last course of action has become a source of particular concern for several States in recent years. For example, the United States ('**U.S.**') would face significant risks if one of its companies possessing significant know-how in a critical technology were to invest in a manufacturing plant in China. While such a plant could manufacture goods incorporating the critical technology at a lower cost than in the U.S., the U.S. company may be compelled to share its know-how and Intellectual Property ('**IP**') with its Chinese partners to enable the effective functioning of the plant. There is a risk that the manufacturing plant employees could be legally obliged to disclose this shared information to government officials, who might subsequently enable other SOEs to replicate the technology domestically. It is precisely

[13] *See for example* European Commission, 'EU launches Invest AI initiative to mobilise €200 billion of investment in artificial intelligence' (Press corner, 11 February 2025) https://ec.europa.eu/commission/presscorner/detail/en/ip_25_467 accessed 15 September 2025; *see also* Steve Holland, 'Trump announces private-sector $500 billion investment in AI infrastructure' (Reuters, 22 January 2025) https://www.reuters.com/technology/artificial-intelligence/trump-announce-private-sector-ai-infrastructure-investment-cbs-reports-2025-01-21/ accessed 15 September 2025.

[14] *See for example* European Commission, 'European Chips Act' (Strategy and policy) https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-chips-act_en accessed 15 September 2025; *see also* Laura He, 'China is pumping another $47.5 billion into its chip industry' (CNN Business, 28 May 2024) https://edition.cnn.com/2024/05/27/tech/china-semiconductor-investment-fund-intl-hnk/index.html accessed 15 September 2025.

[15] *See for example* Jian-Wei Pan, 'Quantum technologies need big investments to deliver on their big promises' (Nature, 25 February 2025) https://thequantuminsider.com/2025/03/07/china-launches-138-billion-government-backed-venture-fund-includes-quantum-startups/ accessed 15 September 2025.

[16] *Crochet and Zhou* (n 2).

scenarios involving these kinds of outbound investments that have raised concern among major global actors. Subjecting outbound investments in critical technologies to a screening mechanism prior to their execution is increasingly considered as the appropriate approach to identify, mitigate and prevent the associated risks to national security and public order.

It is against this background that the present thesis seeks to answer the following academic hypothesis: *'To what extent is the European Union currently regulating outbound investment in critical technologies adequately, compared to the regulatory frameworks of the United States, Japan and China, and what lessons can it draw from these jurisdictions to improve its outbound investment regime?*'

In providing an answer to this hypothesis, the following sub-questions will be tackled: *firstly*, what are the most important policy considerations the EU must taken into account when developing a potential outbound investment screening mechanism regarding outbound investment transactions in critical technologies? *Secondly*, how is the EU currently regulating outbound investments in critical technologies and to what extent is there space for improvement? *Thirdly,* does the EU have the power to enact an outbound investment screening mechanism and what form should such a legislative instrument take? *Finally*, what lessons could the EU draw from the U.S., Japanese and Chinese outbound investment frameworks?

The aforementioned questions will be answered by conducting qualitative doctrinal and comparative analysis. Doctrinal analysis will be used to discuss outbound investments and their regulation in general, including how they are defined; their inherent risks; the shift in how they are perceived; and the policy considerations behind their regulation. It will also be used to examine the development of the legislative train of the EU on outbound investments. This segment will focus in particular on policy documents, such as: the Joint Communication on the

European Economic Security Strategy,[17] the White Paper on Outbound Investment,[18] and Commission Recommendation (EU) 2025/63 ('**CR 2025/63**').[19] Furthermore, the Dual Use Regulation ('**DUR**')[20] and the relevant instruments and case law of the World Trade Organisation ('**WTO**') will be assessed to evaluate whether, and to what extent, they already address the issues that a potential EU outbound investment screening mechanism would be designed to resolve. Conversely, comparative legal analysis will be used to identify the key lessons the EU could learn from the outbound investment screening mechanisms of the U.S., Japan and China. The following legal instruments will take centre stage here: Executive Order 14105 ('**EO 14105**')[21] and the Final Rule on Outbound Investment ('**Final Rule**')[22] for the U.S.; the Foreign Exchange and Foreign Trade Act ('**FEFTA**')[23] for Japan; and the Measures for the Administration of Overseas Investment of Enterprises ('**Order No. 11**),[24] the State Council Guidance on Overseas Investments ('**SCG**')[25] and the Catalogue of Sensitive Industries for Overseas Investments ('**CSI**')[26] for China. The goal of this comparative analysis is to determine the strengths of each jurisdiction's outbound investment mechanism and to assess if and how the EU could implement these strengths in its own framework. Apart from the aforementioned primary legal instruments, secondary legal sources such as scholarly

[17] Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament, the European Council and the Council on "European Economic Security Strategy"' (2023) JOIN 20 final https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023JC0020 accessed 15 September 2025.
[18] Commission, 'White Paper on Outbound Investments' COM (2024) 24 final.
[19] Commission Recommendation (EU) 2025/63 of 15 January 2025 on reviewing outbound investments in technology areas critical for the economic security of the Union [2025] OJ L, 2025/63.
[20] Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) [2021] OJ L 206.
[21] Executive Order 14105 of August 9, 2023 Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern (2023).
[22] Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 89 FR 90398, November 15, 2025 (to be codified at 31 CFR part 850).
[23] Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949).
[24] Administrative Measures for Overseas Investment by Enterprises, by the National Development and Reform Commission (2017, No. 11).
[25] Guidelines on Overseas Investments (2017).
[26] Catalogue of Sensitive Industries for Overseas Investments (2018 Edition) Notice.

publications, white papers, press releases, and news articles, will be made use of throughout the paper to substantiate the analysis of the relevant content.

The present essay will be structured in the following way: Chapter 2 will discuss outbound investments in general, with particular focus on the attitude shift in how they are perceived, the topic of forced technology transfers ('**FTT**') and similar concerning practices, and the role of critical technologies, namely, semiconductors, AI and quantum. Chapter 3 will address the development of an outbound investment framework in the EU: the legislative train thus far, the *status quo* and the potential to address the issues a potential outbound investment screening mechanism would be designed to resolve through existing instruments. A comparative outlook of the outbound investment screening mechanisms of the U.S., Japan and China will be provided in Chapter 4. Chapter 5 will analyse the findings of the previous chapters, consider the potential for binding EU outbound investment screening legislation and how such legislation might look like. Chapter 6 will provide the final conclusion, answering the research question and its accompanying sub-questions.

Concerning the research gap, the current essay is being written amidst the increasing discussion within the European Commission ('**Commission**'), across other EU institutions and the Member States ('**MS**') on how to regulate outbound investments in critical technologies made by EU companies.[27] Currently, the EU is in a monitoring phase initiated by CR 2025/63 which expects MSs to compile reports on outbound investments in three critical technologies by mid-2026.[28] After this exercise, the Commission and other institutions will analyse how to proceed. A possible binding instrument regulating such outbound investments by imposing a screening

[27] European Commission, 'Commission calls on Member States to review outbound investments and assess risks to economic security' (*Press Release*, 15 January 2025) https://ec.europa.eu/commission/presscorner/detail/en/ip_25_261 accessed 15 September 2025.
[28] *About further information on the monitoring phase see* sec 3.4 44-49.

mechanism appears to be a strong possibility.[29] To date, few academic or policy studies have comparatively examined the differences, similarities and strengths of existing outbound investment screening mechanisms, such as those of the U.S., Japan and China. The present paper aims to close this research gap by analysing which design features of these mechanisms could be adopted in a binding EU instrument.

2. Outbound Investment Screening: Contemporary Policy Considerations

Outbound investment screening is currently one of the hotly trending topics within the EU institutions and MSs, as the Union prepares itself to possibly introduce such a mechanism as a pre-requisite for outbound investment transactions. Before comparing design features of such mechanisms in other jurisdictions and assessing which of them the EU could adopt, it is necessary to provide an introduction into the concept of outbound investments and to lay down policy considerations relevant for the introduction of such a mechanism in the EU. The present chapter will, thus, be structured in the following manner: section 2.1 will discuss the concept of FDI in general and establish the differentiation between 'outbound' and 'inbound' investments. Section 2.2 will discuss the shift in how FDI in general and outbound investments in particular have been perceived by major global actors. The central concept of 'forced technology transfers' will be discussed in section 2.3, whereas section 2.4 will analyse a selection of case studies involving FTTs and similar problematic practices to which EU and U.S. companies were subjected. Finally, section 2.5 will discuss the three 'critical technologies' the Union legislators are particularly concerned about and aim to protect in the context of outbound investments.

[29] ibid.

2.1 'Outbound' and 'Inbound' Investment: Importance and Differentiation

FDI is a type of cross-border investment whereby an entity resident in one economy seeks to obtain lasting interest in another entity resident in another economy.[30] The 'lasting interest' implies a long-term relationship between the investor and the targeted undertaking and the investor's significant influence over the target undertaking's management.[31] This is in direct contrast to 'portfolio investments' which are characteristically short-term and sometimes also of speculative nature.[32] Because capital flows from portfolio investments are primarily financial and typically do not involve know-how or technology, they generally pose lower risks and do not require screening. By contrast, FDI transactions can create risks to national security and public order because they entail obtaining a lasting interest in the target company abroad and may involve cross-border know-how and technology transfers. They are, thus, more likely to warrant screening.

Oftentimes a differentiation is made between 'inbound' and 'outbound' FDI, depending on the direction of the net flow from a State's perspective.[33] Put simply, inbound FDI refers to foreign investments 'entering' the country of the target company, whereas outbound FDI refers to domestic investments 'exiting' the country of the investing company.[34] The latter approach and its promotion is mostly common for 'developed' countries[35] which reflects their role as traditional sources of inbound investments.[36] Nevertheless, 'developing' countries are also

[30] Eurostat, 'Glossary: Foreign direct investment (FDI)' (*Statistics Explained*, 6 July 2021) https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Foreign_direct_investment_(FDI) accessed 15 September 2025; *see also* C-446/04 *Test Claimants in the FII Group Litigation* [2006] ECR p. I-11753 para 181.
[31] ibid.
[32] Joined Cases C-282/4 and C-283/04 *Commission/Netherlands* [2008] ECR p. I-9141 para 19.
[33] *For example see UNCTAD* (n 1); *see also Crochet and Zhou* (n 2).
[34] The World Bank, ' What is the difference between Foreign Direct Investment (FDI) net inflows and net outflows?' (*Foreign Direct Investment*) https://datahelpdesk.worldbank.org/knowledgebase/articles/114954-what-is-the-difference-between-foreign-direct-inve accessed 15 September 2025.
[35] *UNCTAD* (n 9) 1; *see also Crochet and Zhou* (n 2).
[36] ibid.

increasingly supporting the outbound investment efforts of domestic companies to support their internationalisation and securing access to new markets, resources and technologies.[37]

The importance of both inbound and outbound FDI in today's highly globalised society cannot be emphasised enough. Besides increasing productivity, creating jobs and driving innovation,[38] FDI flows account for a significant part of the global economy. According to the United Nations Conference on Trade and Development ('**UNCTAD**'), global FDI flows amounted to EUR 1.1 trillion in 2023 in total.[39] Numerous empirical studies have found that outbound investments have a positive impact on the 'host country' of an FDI investment, such as: facilitating technology transfer, stimulating economic growth, job creation, economic diversification, achieving higher productivity, etc.[40] Simultaneously, however, some negative effects on the national security and public order of the country of 'origin' are currently reshaping how outbound investments are being perceived.

[37] ibid; *see also* Sineenat Sermcheep, 'The Rise of Outward Foreign Direct Investment from ASEAN' in Casey Lee and Sineenat Sermcheep (eds), *Outward Foreign Direct Investment in ASEAN* (Lectures, Workshops, and Proceedings of International Conferences ISEAS–Yusof Ishak Institute 2017) 5-29.

[38] Federico Carril-Caccia and Elena Pavlova, 'Foreign direct investment and its drivers: a global and EU perspective' in European Central Bank (ed), *Economic Bulletin* (Issue 4 European Central Bank 2018) 61, 76-78; *see also* Christine Qiang, ' How can we maximize the benefits of FDI?' (*World Economic Forum: Financial and Monetary Systems*, 27 November 2015) https://www.weforum.org/stories/2015/11/how-can-we-maximize-the-benefits-of-fdi/ accessed 15 September 2025.

[39] UNCTAD, 'World Investment Report' (2024) UNCTAD/WR 1 XI.

[40] Rui Moura and Rosa Forte, ' The effects of foreign direct investment on the host country's economic growth: Theory and empirical evidence' (2013) vol 58 no 3 Singapore Economic Review 1; *see also* Marjan Petreski and Magdalena Olczyk, 'Foreign Direct Investment and Job Creation in EU Regions' (2025); Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Towards a comprehensive European international investment policy' COM (2010) 0343 final 3.

2.2 Shift in Perception: From Unwavering Enthusiasm to Growing Concern

After the Second World War, a new reality was introduced in global economic relations.[41] Various geopolitical developments, such as 'Post-colonial' period,[42] became the driving force behind FDI protection, especially for the majority of the Allied victors.[43] New tools, such as the 'Bretton-Woods System'[44] and the General Agreement on Tariffs and Trade ('**GATT**')[45] sought to liberalise global trade.[46] However, newly independent nations, particularly in South America were not the biggest supporters of this development. For them, FDI protection was nothing more than a tool to encroach on their sovereignty by imposing foreign rules on their territory, control the means of production and influence domestic affairs.[47] Furthermore, the Soviet Union and other socialist states also strongly opposed FDI as an oppressive tool of capitalism.[48]

However, the end of the Cold war, the collapse of the Soviet Union, the adoption of the General Agreement on Trade in Services ('**GATS**') and the creation of the WTO, saw the world enter into an era of 'true economic liberalism' and economic globalisation.[49] This period saw the rise of the trend of free international trade and unrestricted FDI.[50] A cornerstone of FDI

[41] Leon Trakman and Nicola William Ranieri, 'Foreign Direct Investment: A Historical Perspective' in Leon Trakman and Nicola William Ranieri (eds), *Regionalism in International Investment Law* (Oxforc University Press 2013) 16.
[42] David Collins, *An Introduction to International Investment Law* (2nd edition Cambridge University Press 2023) 10-16.
[43] *Trakman and Ranieri* (n 41) 17.
[44] Forrest Capie, 'Development and Evolution of International Financial Architecture' in Gerard Caprio, Philippe Bacchetta, James R. Barth, Takeo Hoshi, Philip R. Lane, David G. Mayes, Atif R. Mian, Michael Taylor (eds) *Handbook of Safeguarding Global Financial Stability* (Elsevier 2012) 397-399.
[45] General Agreement on Tariffs and Trade (GATT 1947).
[46] *Trakman and Ranieri* (n 41) 17.
[47] ibid; *see also Collins* (n 42) 10.
[48] ibid.
[49] Najib Zamani, 'A Legal Comparative Approach towards the Screening of Outbound FDI. What Can the EU and Its Member States Learn from the US National Critical Capabilities and Defense Act Proposal?' (2022) 15 Erasmus L Rev 299, 300.
[50] ibid.

liberalisation was the introduction of the international trade rules under the WTO such as the Most Favoured Nation ('**MFN**') and national-treatment principles under Arts. I and III of the GATT.[51] Not only did these principles discourage Contracting States from introducing measures restricting investment, but they also offered investors a high degree of legal certainty, security and investment protection.[52] From the mid-1990s until the mid-2010s, FDI net inflows as a percentage of GDP surged significantly on a global scale as a consequence of this development.[53]

During that period, the EU institutions had a very positive attitude towards both outbound and inbound FDI. In a 2010 Communication the Commission stated that, 'both inward and outward investment have a positive impact on growth and employment in and outside the EU, including in developing countries.'[54] The European Parliament ('**EP**') also noted that investment can have a positive impact on economic growth and jobs, not only in the EU but also in developing countries, provided that investors support the local economy through technology transfers and by making use of local labour and inputs.[55] The same enthusiasm was shared by other major players in the global economy, such as the U.S.[56] U.S. President Barrack Obama strongly reaffirmed the importance and positive impacts of foreign investments on the U.S. and particularly of inbound FDI in a 2011 press release: 'Inbound investment has long been an important component of our overall economy. Today, United States subsidiaries of foreign-

[51] ibid; *for more on the MFN and the national treatment principles see* WTO, 'Principles of the trading system' (*About WTO*) https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm accessed 15 September 2025.
[52] *Zamani* (n 49) 300.
[53] World Bank Group, 'Foreign direct investment, net inflows (% of GDP)' (*Indicator*) https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS accessed 15 September 2025.
[54] *Commission* (n 40) 3.
[55] European Parliament resolution of 6 April 2011 on the future European international investment policy (2010/2203(INI)) 3, point 7.
[56] Congressional Research Service, '*Foreign Direct Investment: Background and Issues*' (*CRS Report No IF10636*, 19 February 2025) https://www.congress.gov/crsreports/if10636 accessed 15 September 2025.

domiciled companies employ more than 5 million Americans and provide above-average compensation.'[57]

However, in the mid-2010s, a shift in perception towards FDI became increasingly noticeable. The driving factor behind this shift can be attributed to the rise of Chinese investments in industries with high innovative and technological potential.[58] In 2010, less than 10 Chinese cross-border merger and acquisition ('**M&A**') transactions took place in the EU, with a total value of around EUR 2 billion. By 2016 this had increased to nearly 120 M&A transactions, reaching a total value of around EUR 12 billion.[59] When carrying out M&A transactions and other investment activities outside of their domestic market, Chinese companies enjoy significant financial backing from their government, either directly, through capital injections or indirectly, through government guidance funds or similar means.[60] In 2019, the Commission, thus, noted that it '(...) acknowledges the possible distortive effects of foreign state ownership and state financing in the internal market.'[61] The sentiment was further confirmed by the White Paper on Foreign Subsidies[62] on 17 June 2020, which lead to the eventual enactment of the Foreign Subsidies Regulation[63] in 2022, introducing a review mechanism for, among others, subsidised foreign investments.[64]

A similar sentiment could also be observed in the U.S. at the time. When discussing the modernisation of the U.S. inbound FDI review mechanism in 2017, Senator John Cornyn noted

[57] The White House, 'Statement by the President on United States Commitment to Open Investment Policy' (*Statements and Releases*, 20 June 2011) https://obamawhitehouse.archives.gov/the-press-office/2011/06/20/statement-president-united-states-commitment-open-investment-policy accessed 15 September 2025.
[58] Pedro Alves Dias *et al, China: Challenges and Prospects from an Industrial and Innovation Powerhouse* (EUR 29737 EN, 2019) 13.
[59] ibid.
[60] ibid 19https://publications.jrc.ec.europa.eu/repository/handle/JRC116516 p. 19.
[61] ibid.
[62] Commission, 'White Paper on levelling the playing field as regards foreign subsidies' COM (2020) 253 final.
[63] Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market [2022] OJ L 330 1.
[64] ibid arts 1 and 7.

that, 'By exploiting gaps in the existing Committee on Foreign Investment in the United States ('**CFIUS**')[65] review process, potential adversaries, such as China, have been effectively degrading our country's military technological edge by acquiring, and otherwise investing in, U.S. companies.'[66] Shortly thereafter, the Foreign Investment Risk Review Modernization Act ('**FIRRMA**')[67] was enacted by Congress and implemented by CFIUS, leading to a significant decrease in Chinese FDI to the U.S.[68]

Effectively, the end of the 2010s marked a shift in the attitude towards FDI for both, the EU and the U.S., though at that time the shift pertained almost exclusively to inbound FDI. From 2020 onwards, a shift in attitude towards outbound investment also emerged, with China becoming one of the key investment destinations of concern for EU and U.S. companies. Once regarded as a valuable tool for helping domestic companies enter new markets and reduce manufacturing costs, outbound investment increasingly became associated with distrust and technology theft. This new sentiment prompted the EU and U.S. to re-evaluate their relaxed approach to outbound investments.

The Commission in cooperation with other EU Institutions started considering whether it would be necessary to adopt additional tools to control outbound strategic investments.[69] Commission President Von der Leyen also reaffirmed this approach in a speech to the Mercator

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[65] *For more about CFIUS see* U.S. Department of Treasury, 'The Committee on Foreign Investment in the United States (CFIUS)' (*Policy Issues*) https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius accessed 15 September 2025.

[66] John Cornyn, 'Cornyn, Feinstein, Burr Introduce Bill to Strengthen the CFIUS Review Process, Safeguard National Security' (*VoteSmart*, 8 November 2017) https://justfacts.votesmart.org/public-statement/1204881/cornyn-feinstein-burr-introduce-bill-to-strengthen-the-cfius-review-process-safeguard-national-security#.WgNM-BNSz-Q accessed 15 September 2025.

[67] Foreign Investment Risk Review Modernization Act of 2018, § 31 CFR Part 801.

[68] CFIUS, 'Annual Report to Congress' (2019) https://home.treasury.gov/system/files/206/CFIUS-Public-Annual-Report-CY-2019.pdf accessed 15 September 2025 30; *see also*
Zhao Huanxin, 'Chinese FDI in US plunges as obstacles rise' (*China Daily*, 17 January 2019) https://www.chinadaily.com.cn/a/201901/17/WS5c3f5c98a3106c65c34e4e0f.html accessed 15 September 2025.

[69] Commission, 'European Commission work programme for 2023 Overview for parliamentary committees' COM (2022) 548 final 8.

Institute for China Studies.[70] Stakeholders and policy makers noted that there EU legislation did not adequately address the gap allowing outbound investment destinations, such as China, to exploit the capital, know-how and expertise of EU companies, thus gaining an unfair competitive advantage.[71]

A similar development unfolded across the Atlantic, albeit at an earlier point in time. Already in 2016, some members of Congress advocated for the imposition of a screening mechanism for U.S. outbound investments.[72] Their efforts extended to debates on the inclusion of outbound investment provisions in the FIRRMA, but Congress eventually decided not to include them in the final act.[73] Nevertheless, on 9 August 2023, U.S. President Joe Biden issued Executive Order ('**EO**') 14105 Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern.[74] The idea behind EO 14105 is that capital flows from U.S. outbound investments 'must not be used to help countries of concern develop their military, intelligence, and cyber capabilities.'[75]

An examination of the aforementioned developments reveals a significant shift in not only how inbound FDI, but also outbound investments in particular started to be perceived from the point of view of the EU and the U.S. Once regarded as a key driver of expansion into new markets,

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[70] Commission, 'Speech by President von der Leyen on EU-China relations to the Mercator Institute for China Studies and the European Policy Centre' (*Presscorner*, 30 March 2023) https://ec.europa.eu/commission/presscorner/detail/en/speech_23_2063 accessed 15 September 2025.
[71] European Parliament, 'Outbound Investment Screening' (*Legislative Train 06. 2025*, 20 June 2025) https://www.europarl.europa.eu/legislative-train/theme-a-new-plan-for-europe-s-sustainable-prosperity-and-competitiveness/file-outbound-investment-screening accessed 15 September 2025 1.
[72] Congress, 'Regulation of U.S. Outbound Investment to China' (*Congressional Research Service*, 10 December 2024) https://www.congress.gov/crs-product/IF12629 accessed 15 September 2025 1.
[73] ibid; *see also* Christian C. Davis, Jingli Jiang, Kevin J. Wolf, Katherine Penberthy Padgett, Cameron Peek, John A. Gurtunca 'President Biden Signs Executive Order on Outbound Investment' (*Akin*, 14 August 2023) https://www.akingump.com/en/insights/alerts/president-biden-signs-executive-order-on-outbound-investment accessed 15 September 2025.
[74] *Executive Order 14105* (n 21).
[75] ibid; *see also* U.S. Department of Treasury, 'Treasury Issues Regulations to Implement Executive Order Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern' (*Press Releases*, 28 October 2024) https://home.treasury.gov/news/press-releases/jy2687 accessed 15 September 2025.

internationalisation and increased efficiency, outbound investments have increasingly come to be seen as a threat to national security. However, this shift in perception did not occur spontaneously. Rather, it has consistently been attributed to specific practices and policies carries out by destination countries of EU and U.S. outbound investments. The following section will analyse these policies and practices in further detail.

2.3 Forced Technology Transfers

One of the main goals of pursuing outbound investment from an undertaking's perspective is to gain access to a new market.[76] This carries various benefits, such as: attracting a new customer base, leveraging lower productions costs, and accessing other resources.[77] However, accessing new markets often comes at a price. In some jurisdictions, particularly those with state-directed economies, entry into the market is often conditioned on a *quid pro quo* arrangement. For example, EU and U.S. undertakings have a well-documented history of being subjected to 'forced technology transfers' ('**FTT**') when entering the Chinese market.[78]

In 1994, prior to its accession to the WTO, China's State Planning Commission announced its 'Foreign Investment Utilization Policy' under Chapter 6. of its 'Automotive Industry Industrial Policy'.[79] Sino-Automotive industry enterprises were encouraged to make use of foreign capital, but only on the condition that the foreign company enters into a joint venture ('**JV**')

[76] André Almeida et al., *Global Players from Emerging Markets: Strengthening Enterprise Competitiveness through Outward Investment* (UNCTAD/ITE/TEB/2006/9, United Nations 2007) 4, 41, 52-56; *see also* John H. Dunning, *'The Eclectic Paradigm of International Production' (1988) vol 19 no 1* Journal of International Business Studies 1.

[77] ibid.

[78] European Union External Action, 'EU steps up WTO action against China's forced technology transfers, 20 December 2018' (*EEAS Archive,* 20 December 2018) https://www.eeas.europa.eu/node/55837_en accessed 15 September 2025; *see also* Alan O. Sykes, 'The Law and Economics of "Forced" Technology Transfer and Its Implications for Trade and Investment Policy (and the U.S.–China Trade War)' (2021) vol 13, issue 1 Journal of Legal Analysis 127.

[79] Anonymous, 'China: Automotive industry industrial policy' [1994] vol 16, issue 9 East Asian Executive Reports https://www.proquest.com/docview/204128136?sourcetype=Trade%20Journals accessed 15 September 2025 23-27.

partnerships with the domestic company.[80] In addition, the 'Sino-foreign' investor would be subjected to numerous pre-conditions to enter the Chinese market, such as: setting up a 'technology institute' within the JV partnership,[81] having to manufacturing state-of-the-art technology,[82] and giving way to local products when selecting manufacturing components.[83] Furthermore, the foreign investor was prohibited from holding more than 50% of the JV's equity share.[84] Such requirements created an investment environment highly conducive to facilitating FTTs. The 50% ownership cap limited the foreign investor's ability to protect its technology, whereas the 'technology institute' requirement facilitated direct access to government and company officials to the foreign technology.

When negotiating China's accession to the WTO, the WTO Working Party raised concerns about practices and policies that condition foreign investment approvals upon accepting environments conducive to FTTs.[85] The Party emphasised that technology transfers in the context of approving foreign investments should exclusively be a matter of party consent without any government interference.[86] In response, the Representative for China reaffirmed its Government's commitment not to interfere in such matters and would leave the issue exclusively up to party consent.[87] These commitments were explicitly reaffirmed under point 7.3 of China's WTO Accession Protocol,[88] with the binding nature of this provision reflected under point 1.2, recognising that the Protocol shall be an integral part of the China WTO

[80] ibid 26, ch 6.
[81] ibid 26, points 27 and 28.
[82] ibid 26, point 28.
[83] ibid 26, point. 31.
[84] ibid 26, point 32.
[85] Working Party on the Accession of China, 'Report of the Working Party on the Accession of China' (2001) WT/ACC/CHN/49 https://www.worldtradelaw.net/document.php?id=misc/ChinaWorkingPartyReport.pdf&mode=download#page=3 accessed 15 September 2025 9, para 48.
[86] ibid.
[87] ibid 9-10, para 49 and 40, para 203.
[88] Ministerial Conference, 'Accession of the People's Republic of China: Decision of 10 November 2001' (2001) WT/L/432 16, point 8(a).

Agreement, and in the Working Party Report.[89] However, several indicators point to the fact that FTT's remain an ongoing concern in the context of EU or U.S. outbound investments to China.

Firstly, many elements of the 1994 'Foreign Investment Utilization Policy' are still present in contemporary Chinese laws. For instance, under Art. 4 of its Foreign Investment Law ('**CFIL**')[90], China employs a 'negative list' system which '(...) refers to the special administrative measures on access that are implemented in certain fields for foreign investment as prescribed by the State.' Essentially, sectors beyond the negative list are made 'open access', whereas foreign investors for negative list sectors are subjected to special administrative measures to gain investment access.[91] The currently applicable administrative hurdles are more precisely set out in the 2024 Special Administrative Measures for Foreign Investment Access ('**SAM**').[92] For example, Art. 2 SAM prohibits foreign investors from engaging in investment and business activities as an individual entrepreneur. The only alternative option for the foreign investor in restricted investment areas of the negative list is to establish a JV partnership with a local entity, which then creates structural conditions that facilitate FTTs and similar practices. For instance, for foreign investors in the 'value-added telecommunications services' sector, point 4 of the negative list caps their shareholding equity at a maximum of 50%. Similarly, under point 5 of the negative list foreign investor's shareholding equity in public air transport companies is capped at a maximum of 25%. Effectively, although not in all investment areas, outbound investments to China in some restricted investment areas are still subjected to laws and administrative hurdles similar to those of the 1994 'Foreign Investment Utilization Policy'.

[89] *Working Party on the Accession of China* (n 85) 9-10, para 49 and 56, para 269.
[90] Foreign Investment Law of the People's Republic of China (Adopted at the Second Session of the 13th National People's Congress on March 15, 2019).
[91] Special Administrative Measures (Negative List) for Foreign Investment Access (2024 Edition) Notes recital 1.
[92] ibid.

Secondly, while China formally reaffirms its commitment to prohibiting its administrative organs from carrying out or facilitating FTTs through administrative measures under Art. 22 CFIL, many EU and U.S. investors still claim to be subjected to such practices. According to the Clingendael Institute[93] every fourth Sino-European JV maintains that technology transfer is 'considered to be a likely element of the JVs activities.'[94] In addition, the Business Confidence Survey 2019 by the European Chamber of Commerce in China reports that 20% of surveyed European investor undertakings felt compelled to transfer technology to maintain market access.[95] Worryingly, the trend increased from the 2017 survey, where the sentiment was shared by only around 10% of surveyed undertakings.[96]

Similar reports have been made by U.S. investors. On 24 August 2017 the U.S. Trade Representative's Office ('**USTR**') initiated a 'section 301' investigation[97] against China, alleging that China's laws, policies and practices forcing American technology transfers in the context of outbound investments discriminate against U.S. commerce.[98] The final report concluded that China uses foreign ownership restrictions, including forced JV partnerships with domestic entities, to pressure technology transfer from U.S. investors.[99] It also concluded

[93] *For more about the Institute see* Cligendael Institute, 'About us' (2025) https://www.clingendael.org/about-us accessed 15 September 2025.
[94] Rem Korteweg, Vera Kranenburg, Frans-Paul van der Putten, 'Sino-European joint ventures and the risk of technology transfers' (*Publications,* 29 August 2022) https://www.clingendael.org/publication/sino-european-joint-ventures-and-risk-technology-transfers accessed 15 September 2025 3-5.
[95] European Chamber of Commerce in China, 'Business Confidence Survey 2019' (*Business Confidence Survey*, 2019) https://www.rolandberger.com/publications/publication_pdf/Business-Confidence-Survey-2019.pdf accessed 15 September 2025 8.
[96] ibid.
[97] *For more about section 301 investigations see* Trade Act of 1974 (U.S.).
[98] Office of the United States Trade Representative, 'Initiation of Section 301 Investigation; China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation' (*82 Federal Register 40213*, 24 August 2017) https://ustr.gov/sites/default/files/enforcement/301Investigations/FRN%20China%301.pdf accessed 15 September 2025 1 and 2.
[99] Office of the United States Trade Representative 'Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974: Executive Summary' (*USTR*, 22 March 2018) https://ustr.gov/sites/default/files/enforcement/301Investigations/301%20Draft%20Exec%20Summary%203.22.ustrfinal.pdf accessed 15 September 2025 iii-iv.

that China uses its administrative licensing system for FTT in exchange for approvals needed to establish businesses in China.[100] These practices were considered to be furthered by the discretionary nature of the regime, carrying out requirements through oral instructions and 'behind closed doors', the lack of legal recourse against such conduct in China, and the corresponding pressures for fear of retaliation and potential loss of business opportunities.[101]

In light of the above, it is evident that EU and U.S. investors in the Chinese market remain concerned about its legal and administrative framework, due to the associated risk of being forced to transfer technologies in return for market access. It appears that the pressure exerted by the EU and the U.S. through their WTO complaints[102] and other measures taken against China[103] has compelled it to amend its foreign investment framework.[104] However, recent ongoing complaints and reports are telling of the discrepancy between the 'letter of law' of the Chinese foreign investment framework compared to its implementation in practice.[105] Effectively, FTTs remain a commercial reality 'Sino-foreign' undertakings are faced with when competing for access to the Chinese market. Several examples of such instances will be examined in the following section.

[100] ibid iii.
[101] ibid.
[102] *China—Certain Measures Concerning the Protection of Intellectual Property Rights, Request for Consultations by the United States* (1 June 2018) WT/DS542/1; *see also European Union External Action* (n 78).
[103] *Executive Order 14105* (n 21); *and CR 2025/63* (n 19).
[104] UNCTAD, 'Issued new Negative List for Foreign Direct Investment' (*Investment Policy Monitor*, 1 January 2022) https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3792/issued-new-negative-list-for-foreign-direct-investment accessed 15 September 2025; *see also* Qian Yin, 'Forced technology transfer performance requirement in international investment agreements—a Chinese perspective' (2022) vol 17, no 2 Journal of Intellectual Property Law & Practice 114 115.
[105] World Trade Organization, 'EU initiates dispute complaint regarding Chinese patent licensing measures' (*Dispute Settlement*, 22 January 2025) https://www.wto.org/english/news_e/news25_e/ds632rfc_22jan25_e.htm accessed 15 September 2025.

2.4 Case Studies: Forced Technology Transfers and Similar Practices

The reports on FTTs and similar practices in China mostly rely on questionnaires answered anonymously by EU and U.S. undertakings.[106] Naturally, companies may feel uncomfortable sharing information about how they were compelled to enter agreements which led to transfers of sensitive technologies. They may fear the legal and reputational repercussions their business could sustain if such information is made public. These considerations underline the question of how many more instances of FTT and similar practices remain unreported. In addition, the existing body of well-documented cases involving both EU and U.S. companies suggests that such practices occur systemically and persistently. In sub-section 2.3.1 attention will be paid to such cases involving EU companies, whereas sub-section 2.3.2 will be dedicated to cases involving companies from the U.S.

2.4.1 European Union Companies

Currently, China is the world leader in the deployment of high-speed rail ('**HSR**') infrastructure.[107] This may be surprising considering that the first plans for the development of its HSR network only began in December 1990 when the Chinese Ministry of Railways proposed to connect Beijing and Shanghai through an HSR.[108] It was broadly acknowledged that for foreign companies to engage with the development of the Chinese HSR, they would need to transfer their technology to Chinese domestic partners.[109] Nevertheless, Sino-foreign companies were willing to accept this bargain, because the profit incentive from working on

[106] *European Chamber of Commerce in China* (n 95) 8.
[107] World Population Review, 'High Speed Rail by Country 2025' (*Infrastructure/Energy*, 2025) https://www.railway-technology.com/features/featurethe-importance-of-chinas-high-speed-tech-transfer-policy-5748075/ accessed 15 September 2025.
[108] Bejing Review, 'High-Speed Rail Timeline' (*Cover Stories Series 2011*, 14 June 2011) https://www.bjreview.com/Cover_Stories_Series_2011/2011-06/14/content_367195.htm accessed 15 September 2025.
[109] Henry Lu, ,'How Did China Become Strong in High-Speed Rail?' (*Economic Development*, 26 December 2019) https://www.gov1.com/economic-development/articles/how-did-china-become-strong-in-high-speed-rail-MvZhPYgfL9d6eDX6/ accessed 15 September 2025.

the project would be significant.[110] For the Beijing-Shanghai HSR project, China invested approximately EUR 26.5 billion of which a substantial amount went to foreign companies participating in the execution of the project.[111] At a time when economic sovereignty did not prevent companies from sharing technology abroad, companies from around the world were effectively persuaded to participate.

In 2005, Siemens AG, a German technology company, won a USD 788 million contract to build 60 high-speed trains for the broader Chinese HSR project.[112] The company indicated it would work with its Chinese partner company, 'Tangshan Locomotive & Rolling Stock Works' in the manufacturing process.[113] 57 of the high-speed trains were manufactured in China, whereas only three were built in Germany.[114] In line with the policy to use domestic companies for the supply of necessary material, Siemens agreed to produce key components for the locomotives by cooperating with local companies.[115] For this purpose, JV partnerships were concluded by Siemens and local entities in three different cities: Xi'an, Zhuzhou and Nanjing.[116] Compared to other examples, the FTT in the Siemens case was made with full public awareness. Even Siemens' president, Klaus Kleinfeld, openly stated that: 'This contract

[110] ibid.
[111] UIC, 'China: Beijing-Shanghai high speed rail link has carried 100 million passengers' (*High Speed Rail*, 5 March 2013) https://uic.org/com/enews/nr/335/article/china-beijing-shanghai-high-speed-3517 accessed 15 September 2025; *see also* Our China Story, '30 June 2011: Beijing-Shanghai High-speed Railway officially launched' (*Today in History*, 30 June 2024) https://www.ourchinastory.com/en/12093/Beijing-Shanghai-High-speed-Railway-officially-launched accessed 15 September 2025.
[112] David Lague, 'Siemens' China deal could be just the first' (*New York Times*, 22 November 2005) https://www.nytimes.com/2005/11/22/business/worldbusiness/siemens-china-deal-could-be-just-the-first.html accessed 15 September 2025.
[113] ibid.
[114] *Lu* (n 109); *see also* Siemens, 'Across borders: Siemens and China – Milestones in a successful partnership' (*Siemens: Company*) https://www.siemens.com/global/en/company/about/history/stories/siemens-in-china.html accessed 15 September 2025.
[115] Siemens Ltd., China Transportation Systems Group, 'Siemens Transportation Systems Group opens its high-speed train project office in Tangshan' (*Siemens Press Content*, 27 July 2006) https://web.archive.org/web/20090616110725/http://cn.siemens.com/cms/cn/english/ts/press/presscontent/Pages/2006_07_27.aspx accessed 15 September 2025.
[116] ibid.

means that China will be supplied with the most up-to-date technology for high-speed trains.'[117]

After concluding the necessary agreements, Siemens transferred the technology for the development of the China Railway High-speed 3C ('**CRH3C**') train model which was largely based on the German Intercity-Express 3.[118] Furthermore, as part of the technology transfer agreement, Siemens brought around 1000 Chinese technicians to Germany for training.[119]

Although China at the time was already a Contracting Party to the WTO[120] and neither Germany nor the EU complained about the agreement, the rapid development and deployment of China's HSR took many by surprise.[121] As observed in a 2010 article by the Yale Center for the Study of Globalization, 'When the Japanese and European companies that pioneered high-speed rail agreed to build trains for China, they thought they'd be getting access to a booming new market, billions of dollars' worth of contracts and the cachet of creating the most ambitious rapid rail system in history. What they didn't count on was having to compete with Chinese firms who adapted their technology and turned it against them just a few years later.'[122]

While it is debatable to what degree the technology transfer by Siemens to China was 'forced', it remains questionable whether Siemens' bid would have won the 2005 HSR contract, had it insisted that: the CRH3C be produced in Germany, there would be no large-scale training

[117] *Lague* (n 112).
[118] Trains Worldexpresses, 'Go China' (*China*) https://www.trains-worldexpresses.com/500/517.htm accessed 15 September 2025.
[119] *Lu* (n 109).
[120] *See* sec 2.3 20 and 21.
[121] Tom Yam, 'China's high-speed-rail programme a case of too far, too fast' (*South China Morning Post*, 25 August 2013) https://www.scmp.com/lifestyle/technology/article/1299188/chinas-high-speed-rail-programme-case-too-far-too-fast accessed 15 September 2025.
[122] Norihiko Shirouzu, 'Train Makers Rail Against China's High-Speed Designs' (*YaleGlobal Online*, 2 December 2010) https://archive-yaleglobal.yale.edu/content/train-makers-rail-against-chinas-high-speed-designs accessed 15 September 2025.

programme for Chinese technicians in Germany or there would be no JV partnerships entered into by Siemens.

2.4.2 United States Companies

In the late 1990s, General Motors ('**GM**') sought to enter the Chinese market as a car manufacturer[123] and to do so, they concluded several JV partnerships with the Chinese car manufacturer Shanghai Automotive Industry Corporation ('**SAIC**').[124] GM revealed its electric car ('**EV**'), the 'Chevrolet Volt' at the Shanghai World Expo on 31 August 2010[125] and announced they would start manufacturing the Volt locally in China if demand picks up.[126] This turned out to be the case and GM started its production shortly thereafter.[127]

However, in September 2011, it was reported that the Chinese government would refuse the Volt to qualify for 'green subsidies' unless GM agreed to transfer to a their existing or to a new Chinese JV information pertaining to their three core technologies: electric motors, electronic controls, and power storage.[128] The green subsidies amounting to USD 19,300 per EV bought would be crucial for allowing the model to put up significant sales numbers.[129] Thus, in late September 2011, GM announced its JV partnership with SAIC Motor, a Shanghai-based

[123] Heritage Center, '1982 -1999, Globalization, One Company, One Team' (*Generations of GM Hisotry*) https://web.archive.org/web/20110817224536/http://history.gmheritagecenter.com/wiki/index.php/1982_-1999,_Globalization,_One_Company,_One_Team accessed 15 September 2025.
[124] ibid.
[125] 'GM unveils Chevy EV at the Expo' (*China Daily*, 1 September 2010) https://www.chinadaily.com.cn/business/greenchina/2010-09/01/content_11302060.htm accessed 15 September 2025.
[126] 'GM to localize Volt if demand picks up' (*China Daily,* 1 Septembet 2010) https://www.chinadaily.com.cn/bizchina/2010-09/01/content_11241720.htm accessed 15 September 2025.
[127] General Motors, ' General Motors celebrates arrival of Chevrolet Volt in China' (*Reliable Plant*) https://www.reliableplant.com/Read/26336/General-Motors-Volt-China accessed 15 September 2025.
[128] *USTR* (n 99) 32, footnote 170; *see also* Keith Bradsher, 'Hybrid in a Trade Squeeze' (*New York Times*, 5 September 2011) https://archive.ph/hm15C#selection-463.208-463.255 accessed 15 September 2025.
[129] ibid; *see also* Congress, 'China's Auto Sector Development and Policies: Issues and Implications' (*Congressional Research Service*, 25 June 2012) https://www.congress.gov/crs-product/R40924 accessed 15 September 2025 31.

company.[130] GM was expected to bring to the table its 'technical expertise', whereas SAIC Motor would contribute its 'knowledge of the domestic market and distribution channels'.[131] In the end, the Chevrolet Volt was neither manufactured nor sold 'as is' in China. However, SAIC Motor went on to develop the 'Buick Velite 5' EV model which launched in 2017 and contained much of the Chevrolet Volt's technology.[132] In sum, while GM was able to enter the Chinese EV market, its effort to do so under fair market conditions was obstructed by state interference and demands for technology transfer.

Another more recent example involves the Chinese AI start-up 'DeepSeek' and the U.S. software company Microsoft and more specifically its 'Microsoft Research Asia' ('**MSRA**') laboratories in Beijing and Shanghai. Here, Microsoft did not have to forcefully transfer technology, but a similar issue occurred, which has been cited by the EU and the U.S. as a source of concern in the context of outbound investments to China.[133] Namely, in early 2025 it was reported that DeepSeek had recruited multiple employees who previously worked at the MSRA laboratories, sparking concerns that the transfer of such highly specialised personnel could result in the transfer of sensitive know-how or potential technology leaks.[134] DeepSeek's hirings included the head of MSRA's 'alignment team',[135] who spent 10 years at the company and possessed significant know-how and experience in large-scale language AI model training

[130] China Briefing, 'China's SAIC Motors and GM Complete Electric Car JV' (*News*, 27 September 2011) https://www.china-briefing.com/news/chinas-saic-motors-and-u-s-gm-complete-electric-car-joint-venture/ accessed 15 September 2025.
[131] ibid.
[132] John Voelcker, 'China's Buick Velite 5 is a Volt with a Nose Job' (*Green Car Reports*, 24 April 2017) https://www.greencarreports.com/news/1110078_chinas-buick-velite-5-is-a-volt-with-a-nose-job accessed 15 September 2025.
[133] *Joint Communication* (n 17) 7.
[134] Thomas Barrabi, 'DeepSeek hired talent from Microsoft's controversial AI research lab in China' (*New York Post*, 10 February 2025) https://nypost.com/2025/02/10/business/deepseek-hired-talent-from-microsofts-controversial-ai-research-lab-in-china/ accessed 15 September 2025.
[135] *A person who ensures that the AI models follow a specific set of social values.*

key, dating all the way back to 2013.[136] Another significant hire was a former MSRA research intern for the 'natural language computing group' from 2017 to 2023.[137] Notably, both hires were listed as 'core contributors' on the research paper detailing DeepSeek's ground-breaking R1 reasoning model[138] which disrupted the AI sector in January 2025.[139] One of the key criticisms here is that MSRA essentially serves as a 'training ground' for China's top tech talent, which allows their domestic companies to circumvent FTT restrictions by hiring MSRA talent to replicate or disclose sought-after sensitive technologies.[140]

Besides inviting MSs to monitor outbound investments, the Commission suggested MSs to also monitor research and development ('**R&D**') cooperation and other practices used to recruit highly specialised personnel.[141] Such personnel possess valuable know-how and familiarity with key IP which could lead to indirect technology leakage, thus, achieving the same end-effect as FTT practices. In addition, R&D cooperation or specialised personnel recruitment does not squarely qualify as FTT, meaning that some restrictions applying to FTT for China arguably do not apply to their recruitment practices.[142]

2.5 Critical Technologies

In examining the case studies from the previous section, as well as the proposals for outbound investment screening mechanisms by EU and U.S. policymakers, a key shared concern

[136] *Barrabi* (n 134).
[137] ibid.
[138] ibid.
[139] *For more about the success and 'disruption' of DeepSeek-R1 see* Eduardo Baptista, 'What is DeepSeek and why is it disrupting the AI sector?' (*Reuters*, 28 January 2025) https://www.reuters.com/technology/artificial-intelligence/what-is-deepseek-why-is-it-disrupting-ai-sector-2025-01-27/ accessed 15 September 2025; *see also* Dara Kerr, 'DeepSeek hit with 'large-scale' cyber-attack after AI chatbot tops app stores' (*The Guardian*, 27 January 2025) https://www.theguardian.com/technology/2025/jan/27/deepseek-cyberattack-ai accessed 15 September 2025.
[140] ibid.
[141] *Joint Communication* (n 17) 7.
[142] *For the exact restrictions applicable to China see* sec 2.3 20 and 21.

emerges: the quality and strategic importance of the technology being transferred.[143] The majority of the policy documents and legislation published, both in the EU and the U.S. thus far focuses on two key considerations: *firstly*, there is a shared concern that the majority of technology which is forcefully transferred in the context of outbound investments to countries of concern, is dual-use, i.e. that it enables a broad military application which could harm national security interests.[144] *Secondly*, there is a shared concern about supply chain security,[145] in that outsourcing critical production capacity and offshoring to countries of concern could harm the ability of the EU and the U.S. to ensure access to critical goods and services in the event of shortages.[146]

When looking at the policy debates and enacted legislation on outbound investment in the EU and the U.S., the former is currently seeking, whereas the latter had already imposed a screening regime for outbound investments in three sensitive technology areas: semi-conductors, quantum technologies and advanced AI.[147] Products belonging to these three categories were found to have enabling potential and had dual-use status. Under the DUR a plethora of semi-conductor goods and quantum technologies are categorised as dual use.[148] Similarly, the preamble to the U.S. EO 14105 points to the fact that the aforementioned three technology categories and their related products '*are critical to* (...) *countries' military, intelligence, surveillance, or cyber-enabled capabilities.*'[149] Moreover, both the EU and the

[143] *Joint Communication* (n 17) 7; *Executive Order 14105* (n 21).
[144] National Committee on U.S.-China Relations, 'An Outbound Investment Screening Regime for the United States? Background and Implications' (*Youtube*, 4 February 2022) https://www.youtube.com/watch?v=5bTIYrdeyIE&list=LL&index=1 accessed 15 September 2025 min 5:27-9:52.
[145] ibid.
[146] ibid; *see also Joint Communication* (n 17); *for an example of how China used its supply chain leverage over critical goods see* Natalie Wang, 'WTO to investigate China tariffs on Australian wine' (*Vino-Joy*, 27 October 2021) https://vino-joy.com/2021/10/27/wto-to-investigate-china-tariffs-on-australian-wine/ accessed 15 September 2025.
[147] *For the EU under CR 2025/63* (n 19); *for the U.S. under Executive Order 14105* (n 21); *and* Final Rule on Outbound Investment.
[148] ibid Annex I.
[149] *Executive Order 14105* (n 21) 640.

U.S. have addressed the necessity to invest in R&D and production of such technologies in order to strengthen their supply chain security and decrease their dependence on other countries for those resources.[150]

In the present section, a closer look will be taken at the three sensitive technology areas from the perspective of the EU.[151] For each category, the analysis will be conducted as follows: firstly, the technology area will be defined; secondly, its importance in the contemporary global economy will be discussed; thirdly, its dual-use potential will be looked at; and finally, the risks posed by insufficient supply chain security in respect of the technology will be discussed.

2.5.1 Semiconductors

Semiconductors are materials usually made from elements such as silicon or germanium, to which small amounts of impurities are added, which then give the semiconductors their characteristic electric conductivity.[152] Given their role in enabling the functioning of virtually all electronic devices, semiconductors are a critical product without which contemporary life would be unimaginable.[153] In 2022 alone, annual semiconductor sales exceeded half a trillion

[150] *CR 2025/63* (n 19) point 5; *see also* Thilo Hanemann, Mark Witzke, Charlie Vest, Lauren Dudley, Ryan Featherston, 'An Outbound Investment Screening Regime for the United States?' (2022) A Report by the US-China Investment Project 1 https://rhg.com/wp-content/uploads/2022/01/RHG_TWS_2022_US-Outbound-Investment.pdf accessed 15 September 2025.

[151] *Due to the focus of the present paper on the EU, a detailed analysis from the U.S. perspective will not be discussed extensively.*

[152] Erik Gregersen, 'Semiconductor' (*Encyclopedia Britannica*, 25 July 2025) https://www.britannica.com/science/semiconductor accessed 15 September 2025; *see also* Semiconductor Industry Association, 'Building America's Innovation Economy' (*Industry Impact*, 2025) https://www.semiconductors.org/industry-impact/ accessed 15 September 2025.

[153] Liv McMahon and Shiona McCallum, 'What are semiconductors and why is Trump targeting them?' (*BBC*, 14 April 2025) https://www.bbc.com/news/technology-66394406 accessed 15 September 2025; *see also* Grid, 'Why Are Semiconductors So Important?' (*No Dumb Questions*, 11 October 2022) https://www.youtube.com/watch?v=ESXPfdXCEeE accessed 15 September 2025.

dollars.[154] Their use extends to virtually every field, including: communications, computing, health care, military systems, transportation and clean energy.[155]

Currently, there is a shortage of semiconductors globally.[156] This is not because of the lack of raw material, which can be found in abundance in regular bodies of sand, but rather due to the shortage of factories which manufacture semiconductors from the raw material.[157] Besides it being necessary to make a substantial financial investment into constructing and setting up a factory, the actual semiconductor manufacturing process is extremely delicate.[158] Essentially, photographic processes are used to imprint nanometer-scale circuit networks on small wafers of silicone.[159] This takes a lot of financial resources to set up correctly and even more to produce high-quality semiconductors which are currently preferred.[160] In addition, such factories leave behind a serious ecological footprint. They consume vast amounts of energy and water, they emit substantial amounts of greenhouse gasses and generate a lot of toxic waste.[161] This makes it additionally difficult to set up such factories in jurisdictions where environmental impact is highly regulated, such as the EU or the U.S.[162] Accordingly, it is clear

[154] Akhil Thadani and Gregory C. Allen, 'Mapping the Semiconductor Supply Chain: The Critical Role of the Indo-Pacific Region' (*CSIS*, 30 May 2023) https://www.csis.org/analysis/mapping-semiconductor-supply-chain-critical-role-indo-pacific-region accessed 15 September 2025.
[155] *Semiconductor Industry Association* (n 152).
[156] *Grid* (n 153).
[157] ibid.
[158] ibid.
[159] ibid.
[160] ibid.
[161] *On the impacts of semiconductor factories on the environment see* Marcello Ruberti, 'The chip manufacturing industry: Environmental impacts and eco-efficiency analysis' (2023) vol 858, part 2 Science of The Total Environment https://www.sciencedirect.com/science/article/abs/pii/S004896972206973X accessed 15 September 2025.
[162] Mané Djizmedjian, 'Regulatory Requirements Across Industries: A Comparative Analysis of the United States and Europe' (*Infomineo*, 30 December 2024) https://infomineo.com/blog/regulatory-requirements-key-us-vs-europe-standards/ accessed 15 September 2025.

that semiconductors are a very valuable good and it is not surprising that their availability is increasingly becoming a matter of national or economic security.[163]

It is widely recognised that semiconductor products have wide dual-use applications.[164] For example, systems in cruise missiles, tanks, aircraft and other advanced weaponry, are steered by semiconductors.[165] Under category 3A001 of Annex I to the DUR, the EU recognises 'general purpose integrated circuits' as 'dual use items'[166] and, thus, subjects such items to an export control notification obligation.[167] Similarly, the U.S. Department of State considers semiconductors as 'dual-use'.[168] Furthermore, semiconductor products, such as 'Compound semiconductor integrated circuits' under export control classification number 3A001.a.11, are also subjected to additional export controls as per 15 §730.8 Code of Federal Regulations ('**CFR**')[169] of the Export Administration Regulations,[170] which usually applies to dual-use and other important goods.[171]

Concerning the global semiconductor supply chain, its importance is increasingly compared to that of oil and gas.[172] The Indo-Pacific region, in particular: China, Japan, South Korea and Taiwan, play a pivotal role in the global semiconductor landscape.[173] These countries are home to key players across the entire semiconductor supply and value chain, including raw material

[163] *Joint Communication* (n 17) 7; *see also* David Sacks and Seaton Huang, 'Onshoring Semiconductor Production: National Security Versus Economic Efficiency' (*Council on Foreign Relations*, 17 April 2024) https://www.cfr.org/article/onshoring-semiconductor-production-national-security-versus-economic-efficiency accessed 15 September 2025.
[164] ibid.
[165] *Grid* (n 153).
[166] Dual Use Regulation, art 2(1).
[167] ibid art 3.
[168] U.S. Department of State, 'Military-Civil Fusion and the People's Republic of China' (*WP Content*, 2020) https://www.state.gov/wp-content/uploads/2020/05/What-is-MCF-One-Pager.pdf accessed 15 September 2025.
[169] Code of Federal Regulations.
[170] Export Administration Regulations, 15 CFR Parts 730-774.
[171] ibid 15 CFR Part 730.8.
[172] Thadani and Allen (n 154).
[173] ibid.

supply, design, manufacturing, packaging and testing.[174] For example, the Taiwan Semiconductor Manufacturing Company hosts the world's largest chip foundry,[175] South Korean companies such as Samsung and SK Hynix are global powerhouses in memory chip production,[176] and China dominates the production of various key raw materials used in semiconductor manufacturing, such as silicon, gallium and germanium.[177] In the European Economic Security Strategy ('**EESS**'),[178] the EU listed as one of its priorities to make its supply and value chains in sensitive technologies more resilient by diversifying sources of supply and export markets and fostering R&D in these technology.[179]

Furthermore, the EU highlighted several supply chain concerns for semiconductors in its current preparation of a 'Chips Act'.[180] One such concern was the disruption in the semiconductor chips supply chain during Covid-19, caused by widespread shortages.[181] Structural vulnerabilities of supply and value chains became a particular issue during that period, as they brought to light European dependency on semiconductor supply from a limited number of companies and 'geographies'.[182] The Union's vulnerability to third country export restrictions further exacerbated the issue.[183] The current trend is, thus, moving towards

[174] ibid.
[175] TSMC, 'Manufacturing' (*Overview*) https://www.tsmc.com/english/dedicatedFoundry/manufacturing accessed 15 September 2025.
[176] International Trade Administration, 'South Korea Semiconductors' (*Market Intelligence*, 9 May 2023) https://www.trade.gov/market-intelligence/south-korea-semiconductors accessed 15 September 2025.
[177] Kan Ji and Lize Nauta, 'Mapping Global Supply Chains – The Case of Semiconductors' (*Rabobank*, 14 June 2023) https://www.rabobank.com/knowledge/d011371771-mapping-global-supply-chains-the-case-of-semiconductors accessed 15 September 2025.
[178] *Joint Communication* (n 17).
[179] ibid.
[180] Commission Proposal for a Regulation of the European Parliament and of the Council establishing a framework of measures for strengthening Europe's semiconductor ecosystem (Chips Act) (2022) COM 46 final.
[181] ibid 1.
[182] ibid.
[183] ibid.

'insourcing production' after the aforementioned supply disruptions made chip production a national security concern.[184]

Effectively, if the EU advances in any stage of the semiconductor supply chain, it will need to guard any advantage it can obtain. For example, the EU holds a strong position in producing semiconductor manufacturing equipment, coupled with top R&D capabilities and a stable political environment.[185] To protect its position, the Union would have to prevent competitors from forcing any FTTs and similar practices in the context of outbound investments involving semiconductor technology.

2.5.2 Artificial Intelligence

Under point 1(b) CR 2025/63 the term 'AI technologies' encompasses any technology or know-how related to a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that infers from the input it received how to generate certain outputs. This broad definition encompasses 'everyday' technologies such as: chatbots or translation tools, facial recognition systems, forecasting tools etc.[186] Popular examples of such tools include: ChatGPT, Google Translate, FaceID, Tesla Autopilot, etc. The importance of AI technologies cannot be overstated. It is a quickly evolving family of technologies that are applicable to almost every facet of contemporary life, including: healthcare, agriculture, energy, education, transport and logistics, and many others.[187] The

[184] Isabella Cerutti and Michaela Nardo, 'Semiconductors in the EU' (2023).JRC Technical Report https://publications.jrc.ec.europa.eu/repository/handle/JRC133850 accessed 15 September 2025 5-6, 42-43.
[185] ibid; *see also* Chips Act.
[186] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (2024) OJ L, 2024/1689, recitals 43, 119.
[187] ibid recital 4.

UNCTAD report 2024 valued the global AI market at USD 189 billion for the year 2023 and estimated the value to drastically increase by 2033, to USD 4.8 trillion.[188]

AI technologies have been firmly recognised as a technology of risk to economic security.[189] While they are not subject to export controls in the EU compared to semiconductor products, EU Institutions widely recognised the 'dual-use' potential AI technologies have.[190] The most pertinent example of such use is the current war of aggression against Ukraine, where various applications of AI for military purposes have been developed.[191] Examples include: autonomous navigation of 'unmanned vehicles', mine and ammunition detection, flagging and preventing disinformation, increasing cybersecurity and tapping into enemy communications networks.[192]

As previously stated, one of the central goals of the current outbound investment monitoring system for EU MSs is to 'identify, assess, and manage' risks affecting the resilience of supply chains.[193] To understand the global AI technology supply chain it is important to recognise that AI does not only encompass cloud software, but that its core component is also hardware which is built by and depends on a handful of key players.[194] Commonly, the AI supply chain is divided into six stages: raw material extraction, semiconductor and microchip manufacturing,

[188] UNCTAD, 'AI market projected to hit $4.8 trillion by 2033, emerging as dominant frontier technology' (*News*, 7 April 2025) https://unctad.org/news/ai-market-projected-hit-48-trillion-2033-emerging-dominant-frontier-technology accessed 15 September 2025.
[189] *Joint Communication* (n 17) 4 and 5.
[190] *For example see* Commission, 'Dual-use technologies' (*Research and Innovation*) https://research-and-innovation.ec.europa.eu/research-area/industrial-research-and-innovation/dual-use-technologies_en accessed 15 September 2025; *see also* European Parliament resolution of 20 January 2021 on artificial intelligence: questions of interpretation and application of international law in so far as the EU is affected in the areas of civil and military uses and of state authority outside the scope of criminal justice (2020/2013(INI)) (2021) OJ C 456 34, para 57.
[191] Vitaliy Goncharuk, 'Artificial Intelligence in Defence of Ukraine' (2024) series 2, no 6 Russia's War in Ukraine https://icds.ee/wp-content/uploads/dlm_uploads/2024/09/Layout-AI-in-Defence-of-Ukraine.pdf accessed 15 September 2025.
[192] ibid.
[193] *Joint Communication* (n 17).
[194] LSE, 'AI's hidden supply chain explained: why it's more fragile than you think | LSE Research' (*Youtube,* 13 May 2025) https://www.youtube.com/watch?v=6mxoTWHytkg&t=2s accessed 15 September 2025.

Graphics Processing Units ('**GPU**') production, data centres and cloud infrastructure, AI model training and engineering, and end-user application.[195]

Vertical integration in the global supply chain of AI technology is rare and different countries or regions are dominant in a particular stage of the supply chain. For instance, the U.S., Taiwan and China are the most dominant GPU producers and in particular their companies: Nvidia, AMD, ASUS, GIGABYTE, etc.[196] Conversely, the EU is much more present in the AI model training and engineering and the end-user application stage of AI. The EU possesses advanced research institutions such as the Max Planck Institute or the European Laboratory for Learning and Intelligent Systems,[197] developing significant human resources and know-how.[198] Furthermore, with the introduction of the recent AI Act,[199] the EU is the first global mover in AI regulation.[200] This approach which addresses transparency and accountability concerns shared by 68% of EU citizens could position the EU as a global leader in ethical AI, similarly to the General Data Protection Regulation[201] approach, and thus attract businesses and users seeking responsible innovation.[202] Effectively, if the EU allows domestic AI undertakings to subject themselves to forced know-how and technology transfers, it could lose its competitive advantage in the AI race, in which it is arguably already trailing.

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[195] ibid; *see also* Leonardo Gambacorta and Vatsala Shreeti, 'The AI supply chain' (2025) no 154 BIS Papers Monetary and Economic Department https://www.bis.org/publ/bppdf/bispap154.pdf accessed 15 September 2025 2.
[196] Kumar Priyadarshi, '10 Largest GPU Companies in the World' (*Techovedas*, 18 January 2024) https://techovedas.com/10-largest-gpu-companies-in-the-world/ accessed 15 September 2025.
[197] Ellis (2025) https://ellis.eu/ accessed 15 September 2025.
[198] ibid.
[199] *AI Act* (n 185).
[200] Anndy Lian, 'Is the EU Leading the Charge or Losing the Race in Regulating AI?' (*International Policy Digest,* 26 March 2025) https://intpolicydigest.org/is-the-eu-leading-the-charge-or-losing-the-race-in-regulating-ai/ accessed 15 September 2025.
[201] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) [2016] OJ L 119.
[202] ibid.

2.5.3 Quantum Technologies

According to point 1(c)(i)-(iii) CR 2025/63, the term 'quantum technologies' refers to three categories: quantum computing, quantum communications and quantum sensing. Generally, the adjective 'quantum' in the context of technology refers to technology which functions based on or benefits from the laws of quantum mechanics, i.e., the physics of sub-atomic particles.[203] By leveraging the unique properties of quantum systems, such as superposition[204] and entanglement,[205] quantum systems are able to perform complex calculations and other operations beyond the capabilities of classical computers.[206]

Unbeknownst to many, quantum technology is already widely in use today with examples including: Global Positioning System navigation, Magnetic Resonance Imaging for medical imaging and computer chip semiconductors.[207] Many experts and institutions predict that developments in quantum technologies will lead to ground-breaking inventions and allow breakthrough in areas where this would be impossible with current technology.[208] Specifically in the area of computing, large-scale quantum computers would be able to solve complex problems many times faster than modern classical machines.[209] In practical terms, quantum

[203] David Wineland, 'Quantum computer' (*Encyclopedia Britannica*, 13 June 2025) https://www.britannica.com/technology/quantum-computer accessed 15 September 2025; *see also* Paul Martin, 'What is quantum technology?' (*PA Consulting*, 2025) https://www.paconsulting.com/insights/what-is-quantum-technology accessed 15 September 2025.
[204] *For more about superposition see* Microsoft, 'Explore Quantum: Superposition' (*Microsoft*, 2025) https://quantum.microsoft.com/en-us/insights/education/concepts/superposition#:~:text=Superposition%20is%20a%20fundamental%20concept,0%22%20and%20%221%22 accessed 15 September 2025.
[205] ibid.
[206] *Wineland* (n 203).
[207] Communication from the Commission to the European Parliament and the Council, Quantum Europe Strategy: Quantum Europe in a Changing World (2025) COM 363 final 1-2; *see also* Quantum Gov, 'About the National Quantum Initiative: Overview' (*Quantum Gov,* 2025) https://www.quantum.gov/about/#QIS accessed 15 September 2025.
[208] Commission, 'Quantum' (*Shaping Europe's Digital Future*, 2 July 2025) https://digital-strategy.ec.europa.eu/en/policies/quantum#:~:text=With%20quantum%2C%20we%20will%20be,powerful%20supercomputers%20cannot%20currently%20manage accessed 15 September 2025.
[209] Josh Schneider and Ian Smalley, 'What is quantum computing?' (*IBM Blog*, 10 June 2025) https://www.ibm.com/think/topics/quantum-computing accessed 15 September 2025.

computers are expected to be broadly useful in modelling physical systems such as biomolecular and chemical reactions.[210] The potential dual-use of quantum technologies has also long been recognised,[211] with its military use potential extending to: cybersecurity reinforcement and cyberattack capabilities, intelligence, surveillance, target acquisition and reconnaissance, chemical detection of explosives and many other areas.[212]

One of the main advantages of the EU in the quantum technology field is its remarkable advance in quantum scientific excellence: the EU boasts the world's largest concentration of quantum talent and ranks first globally in the number of scientific publications in the area.[213] It also possesses one of the largest quantum start-up ecosystems, with approximately one third of all quantum technology companies worldwide being based in the EU. In addition, Union vendors supply nearly half of the hardware and software components used in quantum computers globally.[214]

As opposed to its challenging position in semiconductor and AI technology global supply chains, the EU holds a leading position in the quantum space. To protect its competitive edge, it would be in the Union's interest to adopt a screening mechanism for outbound investments in quantum technologies. If the latest know-how or cutting-edge quantum technology is leaked in the course of an outbound investment transaction, the Union's vendor share in supplying hardware and software components used in quantum computers and lead to potential economic security threats to the internal market.

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[210] ibid; *see also Quantum Europe Strategy* (n 205) 1-2.
[211] *Quantum Europe Strategy* (n 207) 7-8.
[212] *For a comprehensive overview see* Michal Krelina, 'Quantum technology for military applications' (2021) no 8 *EPJ Quantum Technology* https://epjquantumtechnology.springeropen.com/articles/10.1140/epjqt/s40507-021-00113-y accessed 15 September 2025 sec 5.5.
[213] *Quantum Europe Strategy* (n 207) 1-2.
[214] ibid.

In sum, the need to screen outbound investments in the three aforementioned categories of critical technologies becomes increasingly evident because of their dual-use nature and the sensitivity of their supply chains. Notably, the EU recognises the importance of other categories such as: biotechnology, net-zero industries, clean energy or critical raw materials to its economic security.[215] However, it identified semiconductors, AI and quantum as the technology areas with the highest risk of technology leakage to parties threatening its economic security. The following chapter will discuss where the Union currently stands in mitigating this risk and what its potential plans of action may entail.

3. Outbound Investment Screening in the European Union

Outbound investment screening is a relatively new concept within the EU. As will be shown in subsequent chapters, some countries already put in place such mechanisms in the past century.[216] Because the Union benefited from its technological advantage and strong commitment to free trade and open market access,[217] the necessity to implement a screening mechanism to control technology transfers was simply not considered at the time. As could be seen in the example of the Chinese HSR,[218] EU companies were compensated generously for transferring their know-how and cutting-edge technology to their Chinese partners. However, several years later it became clear that such transactions could have adverse effects on not only the competitive advantage of Union companies[219] but also on the economic security of the internal market.

[215] *Joint Communication* (n 145) 2-3; *see also Mercator Speech* (n 70); Annex to the Commission Recommendation on critical technology areas for the EU's economic security for further risk assessment with Member States (2023) COM 6689 final 1.
[216] *See* secs 4.2 and 4.3 67-75.
[217] *See* TEU art 3(5); *see also* TFEU arts 206 and 207.
[218] *See* sec 2.4.1 24-29.
[219] *Shirouzu* (n 122).

The present chapter will thus address the development and current state of outbound investment screening in the EU. Section 3.1 will address the EU 'legislative train'[220] on outbound investment screening and early calls for action to introduce such a screening mechanism. Section 3.2 will then dive deeper into the Joint Communication on European Economic Security Strategy with particular focus on outbound investment screening. The Commission White Paper on Outbound Investments will then be discussed in depth in section 3.3. Section 3.4 will focus on the resulting CR 2025/63 and analyse its key provisions. Finally, section 3.4 will evaluate whether it is possible to address the concerns of critical technology leakage in the context of outbound investments through existing applicable instruments.

3.1 The European Union Outbound Investment Legislative Train

In general, the 'Legislative Train' is a tracking system designed by the European Parliament to follow the legislative progress of the Commission's main priorities.[221] The current 'Von der Leyen' Commission put in place a total of six priorities in 2019,[222] with the first one focusing on developing a 'A New Plan for Europe's Sustainable Prosperity and Competitiveness'.[223] To introduce 'Outbound Investment Screening' within the Union is one of the initiatives forming part of this priority.[224] The initiative currently has the status of being 'Announced' which means that a concrete legislative proposal which will contribute to the implementation of the priority is expected from the Commission.[225] Most such initiatives are announced in the

[220] *For more on the notion of EU legislative trains see* European Parliament, 'Legislative Train Schedule' (*European Parliament*, 2025) https://www.europarl.europa.eu/legislative-train/schedule accessed 15 September 2025 Glossary – Terminology – 'TRAIN'.
[221] European Parliament, 'What is the Legislative Train?' (*Jargon Jungle*, 16 December 2024) https://en.audio.europarl.europa.eu/main/pub/podcast/1006420-What-is-the-Legislative-Train accessed 15 September 2025.
[222] European Parliament, 'Legislative Train Schedule' (*European Parliament,* 2024) https://www.europarl.europa.eu/legislative-train/schedule accessed 15 September 2025.
[223] ibid.
[224] ibid.
[225] *European Parliament* (n 221) Glossary – Status – 'Announced – forthcoming initiatives'.

Commission's Political Guidelines, in the Commission President's yearly State of the Union speech and accompanying letter of intent, or in the annual Commission work programme.[226]

Before the initiative would formally attain its 'Announced' status, several notable developments could be observed. Namely, concerns about FTT and highly specialised personnel transfers in the context of outbound investments were strongly being discussed by U.S. policymakers.[227] Suggestions to address this issue by introducing a 'reverse CFIUS' were already being made in 2019.[228] However, at the time, the EU was primarily concerned with screening inbound FDI, as several high-profile transactions with Chinese companies in the 2010s, caused concern for national security and public order.[229] For instance: COSCO Shipping's acquisition of Piraeus, Greece's largest port; Midea Group's acquisition of KUKA,[230] Germany's leading robotics and automation company; and ChemChina's acquisition of Pirelli, Italy's primary manufacturer of high-performance tires.[231] Consequently, the EU enacted FDI Regulation 2019/452 ('**FDI Regulation**')[232] on 19 March 2019, forming its primary focus at the time.[233] Notably, recital 3 of the FDI Regulation briefly addresses outbound investment, stating that, 'Outward investment and access to third country markets are dealt with under other trade and investment policy instruments.' Although, as it will be

[226] ibid.
[227] Dan Primack, 'Anti-China rhetoric could cause trouble for U.S. tech investors' (*Axios*, 9 April 2019) https://www.axios.com/2019/04/09/anti-china-rhetoric-tech-investors-silicon-valley accessed 15 September 2025.
[228] ibid.
[229] FDI Regulation, recital 5; *see also Commission* (n 3).
[230] Paweł Mateusz Gadocha, 'Assessing the EU Framework Regulation for the Screening of Foreign Direct Investment—What Is the Effect on Chinese Investors?' (2020) vol 6 *The Chinese Journal of Global Governance* 36 https://doi.org/10.1163/23525207-12340046 accessed 15 September 2025.
[231] Pirelli Press Office, 'Press Release' (*Pirelli*, 18 June 2023) https://press.pirelli.com/press-release-18-june-2023/ accessed 15 September 2025; *see also* Agatha Kratz, Max J. Zenglein, Alexander Brown, Gregor Sebastian and Armand Meyer, 'Dwindling investments become more concentrated - Chinese FDI in Europe: 2023 Update' (2024) *Report by Rhodium Group and MERICS* https://merics.org/en/report/dwindling-investments-become-more-concentrated-chinese-fdi-europe-2023-update accessed 15 September 2025 18-19.
[232] FDI Regulation.
[233] ibid.

examined in section 3.5, these 'other' instruments are unable to sufficiently address FTT and specialised personnel transfers in the context of outbound investments.

Furthermore, the scholarly publication 'A Legal Comparative Approach towards the Screening of Outbound FDI' of 2022 by Najib Zamani, came to be one of the first instances explicitly highlighting the necessity for the Union to introduce an outbound investment screening mechanism.[234] This sentiment was reaffirmed by the Commission in its Working Programme for 2023, stating that it will 'examine whether additional tools are necessary in respect of outbound strategic investments controls.'[235] On 30 March 2023, Commission President Von der Leyen further noted that the Institution will need to draw a clear line on whether certain investments [and exports] are in the EU's own security interests and that the Union would need to develop a targeted instrument on outbound investment.[236] With these developments leading to the publication of the Joint Communication on a European Economic Security Strategy and the establishment of a Commission Expert Group on outbound investment screening in June and July 2023,[237] the way was paved for an official 'Announcement' of the 'Outbound Investment Screening' initiative in the Union's Legislative Train in August 2023. [238]

3.2 Joint Communication on European Economic Security Strategy

The first concrete steps on how to deal with technology leakage in the context of EU outbound investments were outlined by the Commission and the High Representative of the Union for

[234] *Zamani* (n 49) 299.
[235] *Working Paper 2023* (n 69) 7-8.
[236] *Mercator Speech* (n 70).
[237] European Parliament, 'Outbound investment screening in "A new plan for Europe's sustainable prosperity and competitiveness"' (*Legislative Train Schedule*, 15 August 2025) https://www.europarl.europa.eu/legislative-train/theme-a-new-plan-for-europe-s-sustainable-prosperity-and-competitiveness/file-outbound-investment-screening accessed 15 September 2025; *see also White Paper on Outbound Investment* (n 18) 4.
[238] European Parliament, 'A New Plan for Europe's Sustainable Prosperity and Competitiveness' (*Legislative Train Schedule*) https://www.europarl.europa.eu/legislative-train/theme-a-new-plan-for-europe-s-sustainable-prosperity-and-competitiveness accessed 15 September 2025.

Foreign Affairs and Security Policy in their Joint Communication on European Economic Security Strategy on 20 June 2023. [239] The Joint Communication came about as a result of a new geopolitical and technological reality, furthered by Russia's illegal and unprovoked war in Ukraine, bans of EU exports, foreign interference and disinformation, Covid-19 and a general global increase in geopolitical tensions.[240] Its purpose is to bring the Union on course of implementing a comprehensive approach to economic security, de-risking and promoting its technological edge in critical sectors.[241] The EU wants to continue relying on the Single Market to spur competition and ensure access to raw materials, technologies and other critical inputs to boost competitiveness, resilience and sustaining employment and growth.[242] Simultaneously, it wants its partners to continue benefitting from access to the European markets, capital and technologies for their transition to a clean and resilient economy.[243] To achieve these interests, the Union identified three strategic priorities: (1) to promote its competitiveness, (2) to protect itself from economic security risks and (3) to partner with the broadest possible range of countries that share the same concerns and interests in economic security.[244] Outbound investment screening falls under the second priority, which stresses the necessity to assess the effectiveness of the EU toolkit and expand it as necessary to tackle risks linked to outbound investments critical and enabling technologies with military application, such as: quantum, advanced semiconductors and AI.[245]

Another aspect of the strategy is to precisely identify the risks to European economic security related to: (1) the resilience of supply chains, (2) physical and cyber security of critical infrastructure, (3) technology security and technology leakage and (4) weaponisation of

[239] *Joint Communication* (n 17) 11.
[240] *Joint Communication* (n 17) 1.
[241] ibid.
[242] ibid 2.
[243] ibid.
[244] ibid 2 and 3.
[245] ibid 3.

economic dependencies or economic coercion.[246] Notably, the strategy already points to outbound investment in critical technologies, such as quantum, advanced semiconductors and AI, as one of the particularly concerning risks, due to their inherent capability to enhance military and intelligence capacities of actors who may use these capabilities to threaten international peace and security.[247] On this basis, the Commission proposes to further identify and assess, collectively with EU MSs and inputs from private stakeholders, the risks to the Union's economic security.[248]

Finally, the EU seeks to mitigate the economic security risks by putting into action the three aforementioned priorities of 'promoting, protecting and partnering.[249] Outbound Investment Screening is discussed explicitly under the second priority of 'Protecting against economic security risks.'[250] The primary common interest of the EU and its MSs here is to prevent the advances in critical technologies that are core to enhancing military and intelligence capabilities of actors who may use them to undermine international peace and security from being fuelled by the capital, expertise and knowledge of EU companies.[251] The strategy here is to employ a holistic approach that would not only look at exports, but also subject outbound investments to controls that would counter the risk of technology and know-how leaking as part of that investment.[252] Its intention is to prevent the leakage of critical technologies and related dual-use items to 'destinations of concern' that operate civil-military fusion strategies.[253] Accordingly, four proposed steps can be discerned here: (1) the Commission in cooperation with MSs will examine what security risks can result from outbound investments,

[246] ibid 4.
[247] ibid 5.
[248] ibid.
[249] ibid 6.
[250] ibid 7 and 11.
[251] ibid 11.
[252] ibid.
[253] ibid; *U.S. Department of State* (n 168).

(2) it will set up an Expert Group on outbound investments comprised of MS experts, (3) with input from the Expert Group, it will conduct research and consultation activities with partner countries and business and other stakeholders and (4) on the basis of the previous steps, it will examine possible measures to address the security risks related to outbound investments, with a view to proposing a concrete initiative.[254]

3.3 White Paper on Outbound Investments

As part of the rollout of the European Economic Security Strategy, the Commission published its Communication to the European Parliament and the Council 'Advancing European Economic Security: An Introduction to five new initiatives' on 24 January 2024.[255] The five initiatives aimed to enhance the EESS while taking stock of progress on other work strands.[256] Among the five initiatives, the third concerned outbound investments, for which the Commission published its White Paper on the same day.[257]

The publication marks the first official policy measure the Commission took in the field of outbound investments.[258] The White Paper describes the state of play of the Union's initial work on the topic and outline a way forward.[259] Its main purpose is to launch a public consultation process which would invite comments and input from interested stakeholders that to help the Commission define the scope of a future Commission Recommendation on outbound investment, in close cooperation with the MSs.[260] In particular, the White Paper underlines the need to assess the risk of technology and know-how leakage as a result of

[254] ibid 11.
[255] Commission, 'Advancing European Economic Security: An Introduction to Five New Initiatives' COM (2024) 22 final.
[256] ibid 1.
[257] *White Paper on Outbound Investments* (n 18).
[258] ibid 3 and 12.
[259] ibid 3 and 12.
[260] ibid 3.

outbound investments to understand: what kind of investments in critical technologies are made from the EU; whether such investments may effectively put EU or MSs security at risk; and to what extent such risks can be mitigated by existing tools or would justify additional proportionate policy action at EU or national level?[261]

The initial findings of the Commission's work with the MSs in the Expert Group were published in the White Paper. These findings highlighted: the existence of a substantial knowledge gap and a limited picture of outbound investments made by EU parties; that MSs do not systematically review and assess outbound investments for security purposes; that the matter is sensitive and complex; that policy action must be effective, proportionate, targeted and enforceable; and that before designing any new policy responses full use of existing instruments needs to be made.[262]

In light of these findings, the Commission proposed several next steps to be taken, some of which were already executed or are currently taking place: firstly, with the publication of the White Paper, the public consultation stage on the topic was launched.[263] The targeted consultation took place from 24 January 2024 until 17 April 2024 and its goal was to gather stakeholders' input and views on the possibility of monitoring certain outbound investment transactions and of a subsequent risk assessment.[264] It resulted in a total of 52 responses, with 35 coming from businesses, five from academic or research institutions, three from public authorities and 10 from EU citizens, non-governmental organisations or others.[265] In brief, the

[261] ibid 2.
[262] ibid 5.
[263] ibid.
[264] Commission, 'Targeted consultation on the White Paper on Outbound Investment of 24 January 2024' (Summary of responses, 2024) 1.
[265] ibid.

overwhelming majority of the stakeholders supported the need to monitor certain outbound investments in critical technologies to understand better their extent and nature.[266]

Secondly, the Commission proposed a monitoring stage, which is where outbound investment screening presently stands in the EU.[267] The monitoring would draw on the results of the targeted public consultation and culminate in a Commission Recommendation to the MSs to monitor and review outbound investment transactions in critical technologies over a certain period of time.[268] The goal of the monitoring exercise is to review certain aspects of EU outbound investments and prepare readily available data in cooperation with the MSs which could be used to conduct a risk assessment linked to the topic.[269] The Commission proposed eight features for the monitoring exercise, covering: (i) the types of outbound investment transactions to be monitored; (ii) the optional inclusion of other critical activities; (iii) the relevant critical technologies; (iv) the geographical scope; (v) the monitoring period; (vi) the type of information to be collected; (vii) the designation of responsible authorities; and (viii) the monitoring tools and stakeholder exchanges.[270] These are currently reflected in CR 2025/63 and will be discussed in detail in the following section.[271]

Thirdly, the Commission suggested a risk assessment stage.[272] On the basis of the public consultation and the monitoring of outbound investment transactions, MSs would perform the initial risk assessment to identify whether there are risks to the economic security of the Union.[273] As part of this stage, the MSs would report their risk assessment to the Commission

[266] EU Survey, 'Published Results: TC Monitoring Outbound Investments in Technology' (*Results*, 22 July 2025) https://ec.europa.eu/eusurvey/publication/TC_Monitoring_Outbound_Investments_in_Technology accessed 15 September 2025.
[267] *White Paper on Outbound Investments* (n 18) 5 and 6.
[268] ibid 6.
[269] ibid.
[270] ibid 6-10.
[271] *See* sec 3.4 44-49.
[272] ibid 6.
[273] ibid 10.

and other MSs.[274] The Expert Group would then discuss the outcome of the monitoring and risk assessment to consolidate the overall results and help the Commission prepare a final comprehensive risk assessment.[275] This comprehensive outcome would serve as a reference point for future debates on policy choices and on the possible need for mitigating measures or other responses.[276]

3.4 Commission Recommendation (EU) 2025/63

Overall, the consultation, monitoring, and risk assessment stages outlined in the White Paper thus provided the basis for the adoption of CR 2025/63 on 15 January 2025.[277] Its adoption marked the formal launch of the monitoring and risk assessment phases of EU outbound investment transactions.[278] This process is currently ongoing and is scheduled to continue until 30 June 2026, when the MSs are due to submit a comprehensive report to the Commission and to one another on the implementation of the Recommendation and the results of the monitoring exercise.[279] The purpose of this Recommendation is thus to enable a coordinated monitoring and risk assessment of outbound investments in critical technologies, to develop a common understanding of the potential security risks they pose and to prepare the ground for any further policy responses that may prove necessary.[280]

Point 1 CR 2025/63 outlines the scope of technologies MSs should monitor in the context of outbound investment transactions. The scope covers three critical technology areas: (i) 'semiconductor technologies', encompassing know-how related to the design of integrated circuits and other semiconductors, software for designing semiconductors, front-end

[274] ibid 10 and 11.
[275] ibid 11.
[276] ibid.
[277] *CR 2025/63* (n 19).
[278] *White Paper on Outbound Investments* (n 18) 5 and 6.
[279] *CR 2025/63* (n 19) point 6.
[280] ibid recitals 15 and 15.

fabrication of semiconductors, semiconductor manufacturing equipment, core components or software of such equipment and materials used in the fabrication of semiconductors;[281] (ii) 'AI technologies', referring to any know-how related to autonomous machine-based systems that may exhibit adaptiveness after deployment and that infer from the input they receive, how to generate outputs, such as predictions, content, recommendations or decisions that can influence physical or virtual environments used for two applications: (i) generative AI systems trained using more than 10^25 FLOPS[282] or (ii) generative AI systems trained in a significant part on biological/genomic data, or designed to be used in a biotechnological, space or defence context;[283] and (3) 'quantum technologies', meaning any technology or know-how related to quantum computing, communications or sensing.[284]

Point 2 CR 2025/63 sets out the scope of transactions the MSs should review. It covers outbound investments by natural or legal persons resident or established in the EU to carry out economic activity related to semiconductor, AI or quantum technology.[285] Such investments include, but are not limited to: M&A transactions, asset transfers, greenfield investments, JVs, and venture capital transactions.[286] Included are also indirect investments, made through third-country Special-Purpose Vehicles ('**SPV**'), subsidiaries or JVs, and those involving gradual transfers of assets over time, but made during the review period, and investments aimed at breaching or circumventing existing security-related trade and investment controls.[287] Non-controlling investment transactions, such as portfolio investments, are excluded.[288] Notably, the time period of the covered transactions differs slightly from what was initially envisioned

[281] ibid point 1(a)(i)-(vii).
[282] *For a better understanding of FLOPS see* Deep Data Space, 'Floating Point Operations Per Second' (2025) https://deepdataspace.com/en/glossary/180/ accessed 15 September 2025.
[283] *CR 2025/63* (n 19) point 1(b)(i) and (ii).
[284] ibid point 1(c)(i)-(iii).
[285] ibid point 2.
[286] ibid point 2(a)-(f).
[287] ibid point 2, 3rd sentence.
[288] ibid point 2, 2nd sentence; *see also White Paper on Outbound Investments* (n 18) 6.

in the White Paper. According to the CR 2025/63 MSs should monitor new and ongoing transactions as well as those completed since 1 January 2021, whereas the White Paper suggested assessing extending this temporal scope to transactions completed since 1 January 2019.[289] Nevertheless, where MSs identify transactions to be of particular concern, they may also monitor cover activities prior to that date.[290]

Point 3 CR 2025/63 mandates MSs to establish an adequate system for provision of information on EU outbound investment transactions on a voluntary or mandatory basis. MSs are here advised to consider adjusting or building upon existing mechanisms, such as the FDI Regulation or the DUR, for the purpose of monitoring the relevant outbound investment transactions.[291] Moreover, the Recommendation encourages MSs to also consult relevant stakeholders, including business, academia and civil society as part of the monitoring exercise, as was done in the public consultation stage.[292]

Under point 4 CR 2025/63, MSs should gather sufficient information to assess the risks potentially arising from outbound investments, including: the parties to the investment, their ultimate owner and their country, the investment's type and value, the goods, services and technologies involved, contractual R&D arrangements, IP licensing and key personnel movement, the date of the investment completion, information about previous and announced transactions, and information on public funding provided by the EU or a MS.[293] The Recommendation recalls that MSs must ensure appropriate data protection measures when gathering and classifying this information as per point 4(c) CR 2025/63. Notably, information gathering linked to the categories of R&D cooperation and highly specialised personnel, which

[289] ibid point 2 4th sentence; *see also White Paper on Outbound Investments* (n 18) 8.
[290] ibid point 2 4th sentence.
[291] ibid point 3(a).
[292] ibid point 3(b); *see also White Paper on Outbound Investments* (n 18) 12.
[293] ibid point 4(a) and (b)(i)-(vii).

were labelled as 'optional monitoring' in the White Paper, is now integrated into the regular monitoring framework.[294]

Point 5 CR 2025/63 sets out the risk assessment framework as a continuation of the monitoring exercise. For each transaction under review, MSs should perform a risk assessment with the support of the Commission to identify whether the relevant outbound investment transaction presents a risk to the Union's economic security.[295] Points 5(a)-(b) CR 2025/63 set out the specific contents the MSs should include in their risk assessment. These include: (i) a qualitative, case-by-case assessment giving priority to transactions with the largest and most likely potential impact on economic security; and (ii) an examination of risk factors and potential vulnerabilities, in particular with regard to technology leakage, such as the main types of threats and actors, as well as geopolitical factors relevant to assessing the likelihood of negative impacts on economic security. Under point 5(c) CR 2025/63 the risk assessment must take into account: the transaction context, the technology maturity level, the technology availability in the target country, the technology value and supply chain, the evolution of risks and technological developments and use cases, the global interconnectivity of the technology ecosystem and research activities and the participation of the company in EU projects or programmes. To conduct the risk assessment, MSs should follow a common methodology which will be developed with the Commission and the Expert Group.[296] To date, the common methodology has not been published. However, the Report of the Tenth meeting of the Commission Expert Group on Outbound Investment indicates that several Member States have

[294] *White Paper on Outbound Investments* (n 18) 7.
[295] *CR 2025/63* (n 19) point 5 1st sentence.
[296] ibid point 5(d).

already begun implementing the Recommendation, suggesting that a certain process is already being followed.[297]

The reporting framework to the Commission and other MSs is laid out in point 6 CR 2025/63. MSs are encouraged to exchange on the progress of the monitoring regularly, with the 15 July 2025 set as the first deadline for the MSs to report on their progress to the Commission.[298] A comprehensive report on the implementation of the Recommendation and the outcome of the monitoring and risk assessment exercises needs to be submitted to the Commission and other MSs by 30 June 2026.[299] Where risks are identified, Member States are to provide the Commission with details concerning the relevant risk factors of outbound investments that may affect the Union's economic security.[300] During this period, MSs and the Commission are to exchange information within the Expert Group, including on individual transactions relevant for the risk assessment, while ensuring compliance with applicable data protection and security rules.[301]

Under point 7 CR 2025/63 based on the information shared in the MSs comprehensive report, the MSs and Commission should discuss the outcome of the monitoring and risk assessment exercise to achieve an improved and shared understanding of the risks.

Under point 8, MSs must designate a Single Contact Point ('**SCP**') for communications concerning follow-up actions to the Recommendation, with one or more national authorities to be appointed to review outbound investment transactions. These authorities should where

[297] Commission, 'Tenth meeting of the Commission Expert Group on Outbound Investment' (DG Trade, 1 July 2025).
[298] *CR 2025/63* (n 19) point 6 1st sentence.
[299] ibid.
[300] ibid point 6, 2nd sentence.
[301] Council Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) [2016] OJ L119/1; *see also* Commission Decision (*EU, Euratom*) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information [2015] OJ L72/53.

possible, apply existing instruments such as dual-export controls to counter any risks identified.[302] The SCP and other designated authorities need to be communicated to the Commission by 15 March 2025.[303]

As previously mentioned, the implementation of the Recommendation which initiated the monitoring and risk assessment exercises is currently underway. As per the 9th and 10th Meetings of the Commission Expert Group on Outbound Investment which took place on 27 February and 1 July 2025, respectively, progress has been made in designating MSs SCPs.[304] In addition, MSs also provided their first updates on the monitoring and risk assessment of outbound investment transactions. Several common challenges have been put forward here: data collection has proven to be somewhat challenging because of the legal constraints on information sharing between Central Banks and other parts of government.[305] Moreover, in some instances the data obtained is too general, preventing MS from identifying whether the three critical technologies are involved.[306] Although Point 4 CR 2025/63 allows MSs to gather information on either a voluntary or mandatory basis, several MSs have reported difficulties in gathering information from industry stakeholders due to the absence of a sufficient legal basis in national law to oblige companies to provide the necessary data.[307] Consequently, they are forced to rely on voluntary cooperation, rendering the risk assessment exercise more difficult.

In sum, the Recommendation outlines a comprehensive action plan consisting of a monitoring and risk assessment phase. Its outcome will allow for a shared understanding of risks, serve as a useful reference point for any further policy choices and help determine the possible need for

[302] *CR 2025/63* (n 19) point 8.
[303] ibid.
[304] Commission, 'Ninth meeting of the Commission Expert Group on Outbound Investment' (DG Trade, 27 February 2025); *see also 10th Meeting* (n 297).
[305] 2nd one.
[306] ibid.
[307] ibid.

mitigating measures. While the Recommendation does not prejudge the outcome of the risk assessment, there is a strong possibility that the exercise could pave the way for the development of an EU outbound investment screening mechanism. At a minimum, this view is widely shared by numerous research institutes, industry advisors and academic commentators.[308] As observed in the previous chapter, there have already been several instances where outbound investment transactions have led to transfers of critical technologies or movements of highly specialised personnel which lead to adverse effects.[309] It is therefore conceivable that the monitoring and risk assessment exercise will conclude that certain outbound investment transactions pose risks to the Union's economic security, thereby supporting a mitigating measure in the form of an EU outbound investment screening mechanism.

3.5 Mitigating Risks through Existing Instruments

As mentioned in the previous section, point 8 CR 2025/63 emphasises the need for the MSs' designated national authorities to ensure that, where possible, they apply existing instruments, such as dual-use export controls, to counter any risks identified in the monitoring phase.[310]

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[308] *Pomana et. al* (n 8); *see also* Reed Smith LLP, 'EU is getting one step closer to outbound investment control' (*Reed Smith Client Alerts*, 21 January 2025) https://www.reedsmith.com/en/perspectives/2025/01/eu-is-getting-one-step-closer-to-outbound-investment-control accessed 15 September 2025; Anahita Thoms, 'European Union: European Commission issues Recommendation (EU) 2025/63 on the implementation of outbound investment screening mechanisms' (*International Commercial & Trade*, 3 February 2025) https://insightplus.bakermckenzie.com/bm/international-commercial-trade/europeean-union-european-commission-issues-recommendation-eu-202563-on-the-implementation-of-outbound-investment-screening-mechanisms accessed 15 September 2025; Orion Berg, Kate Kelliher, Timothy Sensenig and Louis Roussier, 'EU Commission Recommends Review of Outbound Investments in Advanced Semiconductors, AI, and Quantum Technologies' (*Insight Alert*, 28 February 2025) https://www.whitecase.com/insight-alert/eu-commission-recommends-review-outbound-investments-advanced-semiconductors-ai-and accessed 15 September 2025; Andrea Pomana, Alejandro Guerrero and Jonathan Saké, 'EU Commission's New Outbound Investment Recommendation: The Embryo of a New Screening Regime?' (*Kluwer Competition Law Blog*, 24 January 2025) https://legalblogs.wolterskluwer.com/competition-blog/eu-commissions-new-outbound-investment-recommendation-the-embryo-of-a-new-screening-regime/ accessed 15 September 2025.

[309] *See* sec 2.4.1 23-27; *While not at the time being considered of economic security concern, these were instances where EU companies lost out on their unique technological advantage in the context of conducting out an outbound investment.*

[310] *See* sec 3.4.1 48.

Already in the White Paper, the Commission noted that there is a close link between dual-use export controls and outbound investments[311] and it suggested that when reviewing licence applications for exports of dual-use items, MSs should pay particular attention where such applications are linked to outbound investments.[312] It also invited the MS's export control authorities to consult with each other and the Commission, when reviewing dual-use export licence applications in the context of outbound investments in the critical technologies.[313] Furthermore, as previously mentioned recital 3 of the FDI Regulation suggests that 'Outward investment... [is] dealt with under other trade and investment policy instruments.'[314] Thus, before embarking on any comparative analysis and drawing conclusions from other jurisdictions, this section will examine whether the Union's existing instruments could address its concerns over critical technology leakage in the course of outbound investments.

A priori, some instruments can already be excluded from this exercise. For instance, while the FDI Regulation establishes an investment screening mechanism, its scope covers 'inbound' investment transactions.[315] Similarly, the European Chips Act addresses semiconductor production and supply chain resilience, but remains primarily a capacity-building instrument without designated provisions on outbound investment screening.[316] Conversely, other instruments, such as the DUR, have been identified by the Commission as tools that MSs should employ as much as possible to address the risks of technology leakage to economic security as a result of outbound investments. In addition, the WTO Dispute Settlement System ('**DSS**') *prima facie* seems to provide a possible course of action to address these risks as well.

[311] *White Paper on Outbound Investments* (n 18) 2 and 11-12.
[312] ibid 11.
[313] ibid 11 and 12.
[314] *See* sec 3.5 49.
[315] FDI Regulation, art 1.
[316] Chips Act, recitals 3 and 4.

Thus, sub-section 3.5.1 will analyse the coverage offered by the DUR, whereas sub-section 3.5.2 will analyse possible solutions of the WTO mechanisms.

3.5.1 The Dual Use Regulation and Outbound Investments

The DUR establishes a Union regime for the control of exports, brokering, technical assistance and transit of dual-use items.[317] Under the relevant part of Art. 2(1) DUR the term 'dual-use items' refers to items, including software and technology, which can be used for both civil and military purposes. As per Art. 3(1) DUR an authorisation is required for the export of dual-use items listed in Annex I, whereas per Art. 3(2) DUR sets out the 'catch-all' export controls, whereby a MS may also require authorisation for exports to certain destinations of specific dual-use items not listed in Annex I.

In light of this framework, for the DUR export control regime to apply to outbound investment transactions in critical technologies to destinations of concern, two cumulative conditions must be fulfilled: firstly, the critical technologies would need to be fall under the scope of 'dual-use items' and, secondly, transfer of the critical technology as a result of an outbound investment transaction would need to fall under the scope of an 'export'.

As to the first condition, the scope of critical technologies under review in Art. 1(a)-(c) CR 2025/63 covers: semiconductors, AI and quantum. Part V – Category 3 'Electronics' of the DUR Annex I classifies a wide array of semiconductor technologies as 'dual-use items'.[318] For instance, as previously mentioned,[319] 'general purpose integrated circuits' under category 3A001.[320] Part VI – Category 4 'Computers' of the Dur Annex I classifies some AI related

[317] Dual Use Regulation, art 1.
[318] Dual Use Regulation, 209 et seq.
[319] *See* sec 2.4.1 24-29.
[320] Dual Use Regulation, 209.

technologies as 'dual-use items', such as 'Neural computers' under category 4A004b.[321] While not AI systems themselves, these computers are a key hardware component enabling the functioning of an artificial neural network.[322] Part VII – Category 5 'Telecommunications and "information security"' covers some quantum technologies, such as 'Magnetometers' using Superconducting Quantum Interference Device technology' under category 6A006a.1.[323]

Furthermore, Art. 9(1) DUR provides MSs the possibility to prohibit and impose an authorisation requirement on the export of dual-use items not listed in Annex I for reasons of public security. Several MSs have made use of this provision to explicitly impose such a requirement on the critical technologies of CR 2025/63. For example, on 2 February 2024, France adopted the 'Export Controls Order 02-2024'[324] which includes a list of '*ordinateurs quantiques*' and several semiconductor technologies, such as 'Equipment designed for dry etching.' The same course of action was taken by Germany which also introduced a list of '*Quantencomputer*' and other semiconductor technologies. In conclusion, the critical technologies of CR 2025/63 are largely covered by the DUR, while additional related elements of these technologies may be added by MSs through the Regulation's 'catch-all' provisions. The first cumulative condition is, thus, fulfilled.

As to the second condition, the term 'export' under Art. 2(2) DUR refers to four types of activities: (i) 'export procedures', meaning the exit of Union goods from the EU customs territory whereby the goods change their status to non-Union goods; (ii) 're-exports', meaning the exit of non-Union goods from the EU customs territory that previously entered through

[321] ibid 265.
[322] Rina Diane Caballar and Cole Stryker, 'What is neuromorphic computing?' (*IBM*, 27 June 2024) https://www.ibm.com/think/topics/neuromorphic-computing accessed 15 September 2025.
[323] ibid 344.
[324] Arrêté du 2 février 2024 relatif aux exportations vers les pays tiers de biens et technologies associés à l'ordinateur quantique et à ses technologies habilitantes et d'équipements de conception, développement, production, test et inspection de composants électroniques avancés.

procedures, such as transits; (iii) 'outward processing procedures', meaning the temporary exit of Union goods from the EU customs territory for the purpose of undergoing processing operations, whereby the resulting processed product may be released into free circulation with total or partial relief from import duty; and (iv) 'transmissions of software or technology by electronic media' which includes: (a) transmission by fax, telephone, e-mail or any other electronic means to a destination outside of the customs territory of the Union, (b) making available such software and technology in electronic form to natural or legal persons or to partnerships outside the Union customs territory and (c) oral transmission of technology when it is described over a voice transmission medium. Conversely and, as previously mentioned,[325] point 2 of CR 2025/63 sets out the scope of 'outbound investment transactions' MSs shall review as part of the monitoring exercise, which include: (i and ii) M&A transactions, (iii) asset transfers, (iv) greenfield investments, (v) JVs, (vi) venture capital transactions and (vii) indirect investments, such as those made through third-country SPVs, subsidiaries or JVs; those involving gradual transfers of assets over time, but made during the review period; and investments aimed at breaching or circumventing existing security-related trade and investment controls.

When comparing definitions of 'exports' under Art. 2(2) DUR and 'outbound investment transactions' under point 2 CR 2025/63, only a limited overlap is revealed. In general, in the case of exports, it is the goods themselves that leave the Union and are transferred abroad, whereas in outbound investment transactions, it is the company that moves abroad, by establishing a presence in a third country and potentially bringing goods or technology with it. More concretely, the first three types of exports under Art. 2(2) DUR involve customs acts by which actual goods leave the Union's customs territory, whereas outbound investment

[325] *See* sec 3.4 45 and 46.

transactions under point 2 CR 2025/63 entail corporate law operations that in themselves do not trigger customs formalities.

Nevertheless, a potential point of convergence lies in the fourth category of exports under Art. 2(2) DUR, 'transmissions of software or technology by electronic media'. Namely, certain outbound investment transactions could be covered by this category if they entail an obligatory transfer of critical technology by electronic means. For example, if an EU company concludes an outbound investment transaction with a company from a third country in the form of a JV partnership, as part of which the EU company agrees to transfer technical specifications of semiconductor, AI or quantum technology. Any such transfer by electronic means would be covered under the definition of 'exports' under Art. 2(2)(iv) DUR and would, thus, be subjected to an export authorisation as per Art. 3(1) DUR. However, this scenario can be circumvented fairly easily. If representatives of the target company visit the EU company's premises and the technology is disclosed in person, by handing over documentation or explaining it orally, such a transfer would not be covered by the export controls. In conclusion, the term 'export' under Art. 2(2) DUR does not sufficiently cover the transfers of technologies as a result of outbound investment transactions. The second cumulative condition is, thus, not fulfilled.

In light of this analysis, the DUR export control regime does not adequately cover outbound investment transactions in critical technologies to destinations of concern. While it captures a very specific scenario of technology transfer by electronic means and could potentially complement an EU outbound investment screening mechanism, its current coverage is simply insufficient to address the risks of technology leakage as a result of outbound investments.

3.5.2 The World Trade Organisation and Outbound Investment

Practices like FTTs have recently come under the scrutiny of the WTO in the *China — Certain Measures on the Transfer of Technology* case, which remains the only instance in which they

were addressed to date.[326] They were subject to alleged infringement not only of provision based on the WTO Agreements, but also based on certain contracting parties' 'WTO-Plus' obligations.[327] Effectively, the WTO DSS provides a possibility to address the risks of technology leakage as a result of outbound investment transactions which will be examined in the present sub-section.

The WTO DSS is embodied in the Understanding on Rules and Procedures Governing the Settlement of Disputes ('**DSU**')[328] which constitutes Annex 2 of the Agreement Establishing the World Trade Organization ('**WTO Agreement'**)'.[329] Under the relevant part of Art. 1 DSU, the rules and procedures of the Understanding apply to disputes brought pursuant to the consultation provisions of, amongst others, the WTO Agreement. Art. 4 DSU further elaborates the elements of the consultations procedure. The EU filed its initial request for consultations before the WTO against China on 1 June 2018[330] based on these provisions, as well as based on Art. XXII GATT and Art. 64 Agreement on Trade-Related Aspects of Intellectual Property Rights ('**TRIPS**') according to which contracting parties must accord consideration to and afford adequate opportunity for consultation regarding possible infringements based on the relevant agreement.

The Union's complaint is twofold: firstly, the Union claimed that by virtue of its laws and practices China is infringing Art. 3 TRIPS solely, or in conjunction with Arts. 28.1(a) and (b), 28.2 and 39.1 and 39.2.[331] Art. 3 TRIPS sets out the national treatment principle with respect

[326] WTO, *China: Certain Measures on the Transfer of Technology* (1 June 2018) WT/DS549.
[327] *For more about the term see* Julia Ya Quin, '"WTO-Plus" Obligations and Their Implications for the World Trade Organization Legal System: An Appraisal of the China Accession Protocol' (2003) 37(3) Journal of World Trade 483.
[328] Understanding on Rules and Procedures Governing the Settlement of Disputes.
[329] Agreement establishing the World Trade Organization.
[330] WTO, *China: Certain Measures on the Transfer of Technology* – Request for Consultations by the European Union (6 June 2018) WT/DS549/1.
[331] ibid 3.

to intellectual property, whereas Arts. 28.1(a) and (b) and 28.2 TRIPS set out the rights conferred on patent holders and Arts. 39.1 and 39.2 TRIPS set out the rights conferred on holders of trade secrets. Concretely, the Union alleged that China imposes restrictions on the ability of foreign IP right holders to freely negotiate and agree on market-based contractual terms in licensing and technology-related contracts concerning the import of technology to China, whereas domestic IP right holders are not subject to the same restrictions.[332] Concerning outbound investment transactions specifically, Art. 43 of the Regulations for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures ('**JV Regulation**') required: (a) an approval requirement for any technology transfer agreements entered into by JVs; (b) the duration of the technology transfer agreement not to be longer than 10 years; and (c) that the importing party retains the right to use the transferred technology continuously, after the expiration of the transfer agreement.[333] Such mandatory contract terms afford less favourable treatment to foreign IP rights holders compared to domestic ones and, thus, infringe Art. 3 TRIPS.

Secondly, the Union also claimed that China applies and administers its laws governing the transfer of technology into China with a view to inducing such a transfer contrary to Art. X.3(a) GATT.[334] The provision stipulates that contracting parties must administer its laws in a uniform, impartial and reasonable manner. Here, the EU claimed that China's measures appear to adversely affect exports to China of technology by EU undertakings and appear to impair the benefits under the aforementioned WTO Agreements.[335]

[332] ibid.
[333] ibid 4.
[334] ibid.
[335] ibid.

The EU went on to revise its request for consultations which it communicated on 20 December 2018.[336] In the revised request the Union put more emphasis on the fact that China restricts the access and operation of foreign investment in its territory, by conditioning their approval on performance requirements, such as mandatory technology transfers and R&D conduct.[337] One of the notable revisions was that the Union claimed that the rights of EU investors were infringed based on China's infringement of its WTO-Plus obligations.[338] Namely: under the relevant part of Paragraph 7.3 of the Protocol on the Accession of the People's Republic of China ('**Accession Protocol'**),[339] China committed to ensuring that the right of investment is not conditioned on performance requirements, such as the transfer of technology or the conduct of R&D in China.[340] Furthermore, Paragraph 1.2 of its Accession Protocol incorporates two of its commitments: (i) under Paragraph 49 of the Working Party on the Accession of the People's Republic of China to the WTO ('**WPR**') China agreed that the terms and conditions of technology transfer in the context of an investment would only require agreement between the parties;[341] and (ii) under Paragraph 203 WPR the allocation, permission or rights for investment would not be conditional upon performance requirements, such as the conduct of R&D or transfer of technology.[342]

Conversely, Art. 5 Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures ('**JV Law**')[343] required that the technology and equipment contributed by a foreign partner to a JV be advanced and suitable to the needs of China. In addition, the foreign partner would be liable to pay compensation if losses occur due to the intentional supply of outdated

[336] WTO, *China: Certain Measures on the Transfer of Technology* – Request for Consultations by the European Union (Revision) (8 January 2019) WT/DS549/1/Rev.1.
[337] ibid 1.
[338] ibid 5 and 6.
[339] Protocol on the Accession of the People's Republic of China (23 November 2001) WT/L/432.
[340] ibid 5.
[341] Report of the Working Party on the Accession of China (10 November 2001) WT/MIN(01)/3 15 and 16.
[342] ibid 46.
[343] Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures.

technology.[344] Similarly, Art. 4(3) JV Law precluded the approval of a JV by the authorities if the project is not in conformity with the development of China's national economy. Effectively, these laws imposed performance requirements in the form of technology transfers as a condition for obtaining the necessary investment approval by Chinese authorities.

Several other contracting parties filed requests to join the consultations based on the same or similar claims against China's laws and practices. These include: Japan,[345] the U.S.,[346] the territories of Taiwan, Penghu, Kinmen and Matsu[347] and Chinese Taipei.[348] The outcome of the consultations resulted in the EU and the U.S. engaging in negotiations with China in an attempt to eliminate FTT and similar practices to national treatment and performance requirements.[349] In response, China enacted the CFIL on 15 March 2019 which entered into force on 1 January 2020.[350] The CFIL replaced previous problematic laws such as: the JV Law and JV Regulation or the Law on Foreign-Capital Enterprises.[351] Particularly ground-breaking was Art. 22 CFIL, which reaffirmed China's commitment to protect foreign investor's IP rights, ensured accountability for any infringement of such rights, maintained that technology transfers must be voluntary and based on business norms, and prohibited government officials

[344] ibid art 5.
[345] WTO, *'China: Certain Measures on the Transfer of Technology* – Request to Join Consultations – Communication from Japan (11 June 2018) WT/DS549/2.
[346] WTO, *'China: Certain Measures on the Transfer of Technology* – Request to Join Consultations – Communication from the United States' (15 June 2018) WT/DS549/3.
[347] WTO, *'China: Certain Measures on the Transfer of Technology* – Request to Join Consultations – Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu' (20 June 2018) WT/DS549/4.
[348] WTO, 'China: *Certain Measures on the Transfer of Technology* – Request to Join Consultations – Communication from the Chinese Taipei' (18 January 2019) WT/DS549/5.
[349] European Commission, 'EU–China Comprehensive Agreement on Investment' (*Briefing: International Agreements in Progress*, 22 January 2021) https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/679103/EPRS_BRI(2021)679103_EN.pdf accessed 15 September 2025; *see also* Office of the United States Trade Representative, 'Economic And Trade Agreement Between The Government Of The United States Of America And The Government Of The People's Republic Of China' (*USTR,* 15 January 2020) https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf accessed 15 September 2025.
[350] *CFIL* (n 90).
[351] Law of the People's Republic of China on Foreign-Capital Enterprises.

from facilitating FTTs through administrative measures. Furthermore, Art. 4 CFIL implemented the new 'management scheme of pre-establishment national treatment plus negative list' system with respect to foreign investment, which now guarantees that there will be no national treatment at the entry stage of foreign investments, except for the restrictions entered in the Negative Lists.[352]

Evidently, the WTO DSS and in particular its consultation stage have proven to be effective in forcing legislative change in the case of China and its technology transfer practices. However, despite this change, concerns persist about the adequacy of China's reforms as expressed in the U.S.-EU-Japan joint statement released on 23 May 2019.[353] Two issues stand out as particularly significant.

Firstly, the implementation of the CFIL remains questionable. China's administrative system is characterised by legal uncertainty, arbitrariness and non-transparency,[354] making it reasonable for the EU, the U.S. and Japan to remain doubtful about the Law's implementation in practice. While implementing regulations were enacted on 26 December 2019,[355] some provisions still remain vague. For example, Art. 35 CFIL establishes a security review system for foreign investment and conducts review of investments that may affect national security.

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[352] *For the new Negative List system see CFIL* (n 90) art 28; *for other positive changes see* Weihuian Zhou, Huiqin Jiang and Qingjiang Kong, 'Technology Transfer under China's Foreign Investment Regime: Does the WTO Provide a Solution?' [2019] 54(3) *Journal of World Trade 455* https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/54.3/TRAD2020021 accessed 15 September 2025 467-468.

[353] Office of the United States Trade Representative, 'Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union' (*USTR*, 14 January 2020) https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/january/joint-statement-trilateral-meeting-trade-ministers-japan-united-states-and-european-union accessed 15 September 2025.

[354] *Zhou, Jiang and Kong* (n 352) 470 and 471.

[355] Regulations on the Implementation of the Foreign Investment Law of the People's Republic of China; *see also* UNCTAD, 'Regulations for the Implementation of the Foreign Investment Law of the People's Republic of China has been issued' (*Investment Policy Monitor*, 26 December 2019) https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3488/regulations-for-the-implementation-of-the-foreign-investment-law-of-the-people-s-republic-of-china-has-been-issued accessed 15 September 2025.

Here, the State's decisions made in accordance with the law are final. Art. 40 of the Implementing Regulations of the CFIL ('**IMFIL**')[356] merely copies the first sentence of the CFIL and does not provide clarity on: the procedure, the relevant authority, the possibility to seek redress or any other details on the review system.[357] Any governmental discretion resulting from these uncertainties could influence the results of technology transfer negotiations and undermine the consensual nature of their execution. Thus, the CFIL review mechanism remains vulnerable to discretional abuse for the purpose of forcing technology transfers under the guise of national security in exchange for investment approval.

Secondly, retaliation remains a key concern. Under Art. 40 CFIL where any country takes discriminatory or similar measures against China with respect to investment, China may take corresponding measures against such country based on the actual circumstances. This provision is not elaborated on in the IMFIL and similarly to the security review system, the competent authority appears to have broad discretion as terms, such as 'discriminatory measures' and 'corresponding measures' are not clearly defined. Moreover, it is argued that the retaliation mechanism encompasses a 'tit-for-tat' system as a response to foreign restrictions against China's technology-related investments which could result in FTT through the State's retaliatory measures.[358] For instance, on 15 June 2025 Taiwan's Ministry of Economic Affairs updated its Strategic High-Tech Commodities list to include Huawei and SMIC, requiring domestic companies to obtain government approval before exporting technologies to those

[356] China Law Translate, 'Implementation Measures for the Foreign Investment Law ' (*State Council*, 26 December 2019) https://www.chinalawtranslate.com/en/implementation-regulations-for-the-foreign-investment-law/ accessed 15 September 2025.
[357] *Arguably two older instruments apply here, but they predate the implementation regulation by almost 10 years and are limited in scope, see* Xu Ping, Yao Lijuan, Feng Caihong, Yao Ping and Zhu Jiancheng, 'Implementing Regulation for Foreign Investment Law heralding a New Era of Foreign Investment Regime in China' (*China Law Insight*, 8 January 2020) https://www.chinalawinsight.com/2020/01/articles/foreign-investment/implementing-regulation-for-foreign-investment-law-heralding-a-new-era-of-foreign-investment-regime-in-china/#_ftn5 accessed 15 September 2025.
[358] *Zhou, Jiang and Kong* (n 352) 478.

companies.[359] In response, Zhu Fenglian, spokesperson for the Chinese State Council's Taiwan Affairs Office, stated that firm measures will be taken in return.[360] The vagueness of this statement and of China's laws leave the door open for a wide array of retaliatory measures against Taiwanese companies investing in China, with FTT being one possible option. Thus, retaliatory measures remain a key concern for foreign investors.

Apart from the significant changes brought about by the Union's consultations request, further recourse to the WTO appears difficult. The current DSS is 'paralysed' due to the 'Appellate Body Crisis'.[361] In brief, since December 2019, the U.S. have blocked the appointment of new Appellate Body members, arguing that the Appellate Body previously overstepped its mandate.[362] Thus, while contracting parties could initiate Panel procedures if China continues its FTT practices, the losing party could appeal a panel report and since there is no functioning Appellate Body, the report could not be adopted. As matters stand, further redress through the WTO requires a functional DSS in the first place, which in turn requires the U.S. to withdraw its blockage.[363] While the matter is being hotly debated, a fast solution to the crisis does not appear on the horizon.[364]

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[359] The Nation, 'China vows retaliation over Taiwan's tech export blacklist targeting Huawei, SMIC' (*The Nation,* 25 June 2025) https://www.nationthailand.com/blogs/news/world/40051747 accessed 15 September 2025; *see also* Dylan Butts, 'Taiwan blacklists China's Huawei and SMIC, further aligning with U.S. trade policy' (*CNBC*, 16 June 2025) https://www.cnbc.com/2025/06/16/taiwan-blacklists-china-huawei-smic-further-aligning-with-us-trade-policy-.html accessed 15 September 2025.

[360] ibid.

[361] *For details about the appelate body crisis see* Think Tank European Parliament, 'International trade dispute settlement: World Trade Organisation Appellate Body crisis and the multi-party interim appeal arbitration arrangement' (*European Parliament*, 17 June 2024) https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762342 accessed 15 September 2025.

[362] *For why the U.S. is responsible for the crisis of the WTO DSU see* *https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762342/EPRS_BRI(2024)762342_EN.pdf* accessed 15 September 2025.

[363] *Zhou, Jiang and Kong* (n 352) 475.

[364] ibid.

In light of the above, it is evident that consultation stage of the WTO DSS proved effective in pushing China to reinvent its foreign investment policy by adopting the CFIL. However, the limits of the WTO DSS also need to be recognised. Not only is further action by means of the panel procedure currently blocked, but the system itself is not designed to reverse the effects of potential infringements. Art. 22.2 DSU provides for the possibility to suspend concessions in the event of non-compliance with a potential panel report condemning China's practices, but by that time the technology would already have been transferred. Consequently, while reliance on the WTO DSS to address technology leakages as a result of outbound investment transactions proved to be a good first step, it does not provide the same *a priori* guarantees of technology protection an outbound investment screening mechanism could.

4. Comparative Outlook: Outbound Investment Regulation in Other Jurisdictions

As established in the previous chapter, the EU currently finds itself in a monitoring and risk assessment phase regarding outbound investment screening, initiated by CR 2025/63. MSs are currently closely monitoring outbound investment transactions in three critical technology areas and are expected to conduct a risk assessment based on the results of the monitoring.[365] On 30 June 2026 they will then submit a comprehensive report to the Commission and other MSs on the implementation of the Recommendation, including the outcome of the monitoring and risk assessment exercises. After the Expert Group consolidates the findings and prepares a final comprehensive risk assessment, the Commission will have a well-founded reference point for further debate on possible policy responses and mitigating measures.[366]

Based on the numerous already identified risks of technology leakage as a result of outbound investment transactions, it is prudent to explore possible design features for a prospective EU

[365] *See* sec 3.4 44-49.
[366] *White Paper on Outbound Investments* (n 18) 11.

outbound investment screening mechanism. The Union is not entering uncharted territory. Other jurisdictions, most notably, the U.S., Japan and China, have already established comparable systems. Analysing them will provide insights for determining which elements could be incorporated into an EU mechanism. Against this background, section 4.1 will focus on the U.S., section 4.2 on Japan and section 4.3 on China.

4.1 Outbound Investment Regulation in the United States

The U.S. outbound investment screening mechanism has been in force for approximately six months, thus allowing an initial assessment of its effectiveness. Accordingly, this section will be divided in two parts: sub-section 4.1.1 will outline the main elements of the mechanism, while sub-section 4.1.2 will focus on the preliminary criticisms, findings on its effectiveness and success in carrying out the relevant policy goals.

4.1.1 The Executive Order 14105 and the Final Rule on Outbound Investment

In the U.S., the initiative to regulate U.S. outbound investments was started by former U.S. President Joe Biden's EO 14105 of 9 August 2023 Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern.[367] While EOs are not laws compared to those which Congress passes,[368] they are a means by which U.S. presidents ensure that '*the laws be executed faithfully*.'[369] When EO's are founded on the authority of the President derived from the Constitution or statute, they have the force and effect of law.[370] For the EO 14105, former President Biden derived his authority from the International Emergency

[367] *Executive Order 14105* (n 21).
[368] Legal Information Institute, 'Executive Orders' (*Cornell Law School*) https://www.law.cornell.edu/executive-orders accessed 15 September 2025.
[369] The Constitution of the United States art II(1).
[370] Vanessa K. Burrows, 'Executive Orders: Issuance and Revocation' (2010) *CRS Report RS20846* https://onlinelibrary-wiley-com.uaccess.univie.ac.at/doi/epdf/10.1111/j.1741-5705.2012.03945.x accessed 15 September 2025 8 and 23.

Economic Powers Act ('**IEEPA**').[371] In particular U.S. Code ('**U.S.C.**') §1701(a) gives the President the power to deal with national security threats having its source outside of the U.S. provided that a national emergency is declared with respect to that threat. President Biden made such a declaration in accordance with the National Emergency Act,[372] U.S.C. §1601 et seq. and empowered the Department of Treasury ('**Treasury**') in accordance with U.S.C. §301 to administer rules that implement the EO 14105.[373]

Against this background, the Treasury and more specifically the Office of Investment Security, issued the Final Rule[374] on 28 October 2024. The Final Rule is currently listed under Title 31, Part 850 CFR, setting out the binding implementation guidelines for EO 14105.[375]

The Final Rule is in effect since 2 January 2025 and it applies to transactions entered into after that date.[376] §850.501(d) CFR further specifies that a transaction made after that date, but entered into 'pursuant to a binding, uncalled capital commitment entered into before' it, is an excepted transaction, to which the screening mechanism of the Final Rule does not apply. The Final Rule is centred around U.S. outbound investments which are referred to in the CFR as 'covered transactions'. §850.210 CFR defines such transactions as a U.S. person's[377] direct or indirect investment in a 'covered foreign person', i.e. a person of a 'country of concern'.[378] Examples thereof include: an acquisition of an equity interest, provision of a loan or debt financing arrangement, conversion of contingent equity interest, acquisition of land or property, entrance into a JV, or acquisition of interest in a venture capital fund.[379] One of the

[371] The International Emergency Economic Powers Act.
[372] National Emergencies Act.
[373] *Executive Order 14105* (n 21) preamble.
[374] Final Rule on Outbound Investment.
[375] 31 CFR §850.101(a).
[376] Final Rule on Outbound Investment 1.
[377] *For the definition of a 'U.S. person' see* 31 CFR §850.229.
[378] *For the definition of 'covered foreign persons' see* 31 CFR §850.209.
[379] *For the definition of 'covered transactions' see* 31 CFR §850.210.

key concepts here is 'country of concern' which §850.207 CFR defines simply as any country which has been given this meaning under the Annex to the EO 14105. Currently, the Annex only designates the People's Republic of China, including its Special Administrative Regions of Hong Kong and Macau, as such countries.[380]

There are two key obligations under the Final Rule: firstly, under §850.301 CFR a U.S. persons may not engage in a 'prohibited transaction', unless an exemption has been granted. §850.224 CFR provides an extensive definition of 'prohibited transactions', which refers to a type of 'covered transaction' in which the relevant 'covered foreign person', or the relevant JV[381] carries out certain activities with respect to three 'national security technology' areas: semiconductors and microelectronics, quantum information technologies, and advanced AI.[382] Examples of such activities include: designing any integrated circuit that meets certain performance parameters,[383] developing a quantum computer or related critical components,[384] and developing any AI system that is designed to be exclusively used for military or mass-surveillance use.[385] In short, if a covered foreign person performs any of these activities, a U.S. person is prohibited from entering into an outbound investment transaction with them.

Secondly, under §850.401 CFR a U.S. person that undertakes a notifiable transaction shall file a notification of that transaction with the Treasury pursuant to §850.404 CFR. Notifiable transactions as per §850.217 CFR refer to covered transactions in which the relevant covered foreign person carries out certain activities with respect to the three 'national security technology' areas, provided that these activities are not included under the definition of

[380] *Executive Order 14105* (n 21) Annex.
[381] *In the event of a JV transaction, as described under* 31 CFR §850.210(a)(5).
[382] 31 CFR §850.301-406.
[383] 31 CFR §850.224(c).
[384] 31 CFR §850.224(g).
[385] 31 CFR §850.224(j)(1) and (2); *For a complete overview of activities the covered foreign person or the JV need to conduct in order for a transaction to be 'prohibited' see* 31 CFR §850.224(a)-(m).

'prohibited transactions.' For example: designing, fabricating, or packaging any integrated circuit not described in §850.224(c)(d) and (e) CFR, or developing any AI system not described in §850.224(j) or (k) CFR, but that is still intended for military or similar use.[386] Pursuant to §850.402 CFR this notification obligation extends to notifiable transactions by a controlled foreign entity of a U.S. person. In addition, under §850.403 CFR, a U.S. person that, after the completion of a transaction, acquires knowledge of a fact or circumstance which would make the transaction a covered one, is subject to the notification requirement regarding such knowledge within 30 calendar days of acquiring it. A detailed overview of the notification procedure and the contents of the notification is found under §§850.404 and 850.405 CFR. In brief, U.S. persons engaging in outbound investment transactions with covered foreign persons must notify such transactions, if the latter engages in certain activities that appear to be less severe than those for prohibited transactions.

An important component of the Final Rule are the exceptions and exemptions. Three types thereof are recognised: excepted transactions, national interest exemptions and IEEPA statutory exceptions. Under §850.501 CFR excepted transactions are transactions that would normally either be prohibited or subject to notification but are not because certain conditions were fulfilled. Such transactions include: certain passive and regulated investments,[387] buyouts of covered foreign interests,[388] intragroup transfers for activities not covered,[389] loan default acquisitions,[390] employment compensation,[391] and allied countries transactions.[392] Under §850.502 CFR the Treasury, in consultation with other government agencies has the authority to exempt covered transactions from being prohibited or being subjected to a notification

[386] 31 CFR §850.217.
[387] 31 CFR §850.501(a).
[388] 31 CFR §850.501(b).
[389] 31 CFR §850.501(c).
[390] 31 CFR §850.501(e).
[391] 31 CFR §850.501(f)
[392] 31 CFR §850.501(g)

requirement if the transaction is determined to be in the interest of the U.S. This exemption must be requested by the relevant U.S. person and is evaluated based on several factors, such as: the transaction's effect on critical U.S. supply chain needs, domestic production needs for projected national defense requirements, U.S. technological leadership globally in areas affecting U.S. national security, and impact on U.S. national security if the transaction is prohibited.[393] Furthermore, the request must follow specific procedures outlined by Treasury and may result in an exemption subject to binding conditions, but it is only valid if granted in writing by senior Treasury officials.[394] Another category of excepted transaction as per §850.503 CFR involves certain transactions that the U.S. President, by nature of his mandate, cannot regulate or prohibit as per 50 U.S.C. § 1702(b), which include: personal communications, humanitarian donations, the free flow of information or media and travel-related transactions.

A final important aspect of the Final Rule are the legal consequences of non-compliance. Three types of violations are recognised thereunder: (i) as per §850.601 CFR taking any prohibited action under the Final Rule, such as entering into prohibited transactions; (ii) as per §850.602 CFR the failure to take any action required under the Final Rule, in the required time span and in the required manner. For example, sending in a required notification to the Treasury; and (iii) as per §850.603 CFR the misrepresentation of any information submitted or communicated to the Treasury as required by provisions of the Final Rule, making any false representations, or falsifying material facts.

Concerning the penalty system, §850.701 CFR sets out that any person subject to U.S. jurisdiction in violation of the Final Rule becomes subject to civil or criminal penalties under S. 206 IEEPA. Civil penalties for violations shall not exceed USD 250,000, adjusted annually

[393] 31 CFR §850.502(b).
[394] 31 CFR §850.502(c), (d) and (e).

for inflation, or twice the value of the underlying transaction.[395] Criminal penalties, for wilfully committing, attempting to or conspiring to commit violations can result in fines of not more than USD 1,000,000 or, in the event the violation was committed by a natural person, in imprisonment for not more than 20 years, or both.[396] Furthermore, false statements or misrepresentations related to the Final Rule can lead to fines under title 18 U.S.C. §1001 or imprisonment of up to 5 years, or both.[397]

4.1.2 Criticisms, Lessons, and Takeaways

At the time of writing, approximately seven months passed since the Final Rule entered into effect. As expected, the Final Rule brought about significant changes in the approach of U.S. companies towards investing in 'countries of concern', i.e., China and its administrative territories. For instance, the impact of the Final Rule on loan transactions and documentation in China is already extensively being highlighted.[398] In more general terms, some commentators note that the Final Rule arguably had its intended effect of reducing U.S. outbound investment in technology areas of national security interest.[399]

Others, such as Congressman Roger Williams of the 25th Texas District recently commented that the Final Rule hinders U.S. investors from positioning their capital where it matters most and creates legal uncertainty, compliance difficulties and drives up the risk of doing business

[395] 31 CFR §850.701(a)(1).
[396] 31 CFR §850.701(a)(2).
[397] 31 CFR §850.701(f).
[398] Olivia Ngan and James Mendenhall, 'Impact of U.S. Outbound Investment Rules on Loan Transactions in China and Practical Considerations' (*Sidley,* 18 March 2025) https://datamatters.sidley.com/2025/03/18/impact-of-u-s-outbound-investment-rules-on-loan-transactions-in-china-and-practical-considerations/; *see also* Adam S. Coto and Katherine L. Craig, ' Outbound Investment Rules and Implications on U.S. Loan Documentation' (*McGuire Woods*, 28 April 2025) https://www.mcguirewoods.com/client-resources/alerts/2025/4/outbound-investment-rules-and-implications-on-u-s-loan-documentation/ accessed 15 September 2025.
[399] James Mendenhall, Carys Golesworthy and Lloyd Lyall, 'U.S. Outbound Investment Regulations: Lessons and Takeaways Six Months In' (*Sidley,* 14 July 2025) https://www.sidley.com/en/insights/newsupdates/2025/07/us-outbound-investment-regulations-lessons-and-takeaways-six-months-in accessed 15 September 2025.

abroad.[400] The lack of legal certainty has more than once been cited as a matter of particular concern. International law firm, Sidley Austin LLP found that ambiguities in the definitions of key terms in the Final Rule have an adverse effect on investors.[401] For example, the distinction between prohibited and notifiable AI system 'covered activities' already created some confusion, with the Treasury having to step in by issuing a FAQ to address these concerns.[402]

Despite this intervention, it remains uncertain if the covered activity of developing an AI system for non-governmental mass-surveillance[403] includes e-commerce or social media companies which feed created profiles to their algorithms.[404] In its 2024 Report on Examining the Data Practices of Social Media and Video Streaming Services, the U.S. Federal Trade Commission found various such services to be at the forefront of building the infrastructure for mass-surveillance.[405] The social media platform 'TikTok', owned by Chinese internet technology company ByteDance Ltd., was among the main services appearing in this Report.[406] Whether this would make investments by U.S. persons to ByteDance Ltd. a notifiable transaction subject to §850.401 CFR or even prohibited in the sense of §850.501 CFR, if a sufficient link between the mass-surveillance and the Chinese Government is established, remains unclear.

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[400] French Hill Chairman, 'National Security Subcommittee Highlights Importance of CFIUS' (*United States House Committee on Financial Services*, 17 July 2025) https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=410811 accessed 15 September 2025.
[401] *Mendenhall, Golesworthy and Lyall* (n 399).
[402] *Mendenhall, Golesworthy and Lyall* (n 399); *see also* Department of Treasury, 'Outbound Investment Security Program: Frequently Asked Questions' (*Washington*, 23 May 2025) https://home.treasury.gov/system/files/206/Outbound-Investment-Security-Program-FAQs.pdf accessed 15 September 2025.
[403] 31 CFR §850.208.
[404] *Mendenhall, Golesworthy and Lyall* (n 399).
[405] FTC, 'A Look Behind the Screens Examining the Data Practices of Social Media and Video Streaming Services' (*FTC Staff Report,* September 2024) https://www.ftc.gov/system/files/ftc_gov/pdf/Social-Media-6b-Report-9-11-2024.pdf accessed 15 September 2025 9.
[406] ibid 9 and 13.

Another related problematic aspect is the preparedness of U.S. persons to actually notify transactions to the Treasury. Many investors are reluctant to undertake notifiable transactions for several reasons: the administrative burden, attracting attention of the Treasury, fear of political, reputational or regulatory consequences and fear of enforcement action.[407] While these concerns effectively reduce the amount of outbound investments in technology areas of national security interest to countries of concern,[408] potential investors may be deterred from entering into transactions that are not necessarily notifiable, but *prima facie* appear to be, thus creating loss of valuable business opportunity.

Furthermore, some compliance challenges have been noted. Under §850.403 CFR a U.S. person that acquires 'knowledge' after the completion of a transaction of circumstances such that the transaction would have been notifiable or prohibited, he shall within 30 calendar days of acquiring such knowledge notify the Treasury. The assessment of whether the U.S. person had the knowledge is according to §850.104(b) CFR made based on information a U.S. person had or could have had through a reasonable and diligent inquiry.[409] Consequently, U.S. investors must undertake a significant amount of due diligence prior to every investment they undertake. In addition, because there is no exhaustive list of 'covered foreign persons' it is difficult for investors to flag or block transactions through filtering software.[410] The same problem applies to determining whether a certain investment would fall under one of the exceptions or exemptions.[411] Since investors, thus, need to assess each transaction individually, ensuring compliance with the Final Rule appears to put quite a burden on them.

[407] *Mendenhall, Golesworthy and Lyall* (n 399).
[408] Final Rule on Outbound Investment.
[409] *For more about the knowledge standard see* 31 CFR §850.216.
[410] *Mendenhall, Golesworthy and Lyall* (n 399).
[411] ibid.

In conclusion, the Final Rule appears to have gone in the right direction with respect to reducing U.S. outbound investments in technology areas of national security interest to China and its administrative territories of Macau and Hong Kong. However, it remains to be seen how the Treasury will deal with the aforementioned ambiguities and legal uncertainty to ensure that their adverse impact on U.S. investors does not outweigh the protection of national security.

4.2 Outbound Investment Regulation in Japan

In 1949, Japan introduced the Foreign Exchange and Foreign Trade Act. At the time, the country was going through a period of post-war rebuilding and foreign transactions were prohibited due to centralised management of foreign currencies and the reconstruction of domestic industries.[412] After several phases of liberalisation and opening-up, the current FEFTA serves as a legal framework for open market foreign transactions.[413] As per Art. 1 FEFTA, the act aims at 'conducting the minimum necessary control or coordination of foreign transactions' to ensure the maintenance of 'peace and security in Japan or international society.'

While the majority of the FEFTA provisions deal with inbound FDI,[414] cross-border payments,[415] and imports and exports,[416] Art. 23 FEFTA specifically addresses outbound investments. Under Art. 23(1) FEFTA before carrying out an 'outward investment' a Japanese resident must file a notification with the Minister of Finance ('**MoF'**) if: (i) the investment would have a 'significant adverse effect' on the smooth operation of the Japanese economy, or

[412] Ministry of Finance, 'Foreign Exchange and Foreign Trade Act Foreign Investment Screening System' (2023) *FY2023* 1 https://www.mof.go.jp/english/policy/international_policy/fdi/Data/annual_report2023_en.pdf accessed 15 September 2025 5.
[413] ibid.
[414] FEFTA arts 26-46.
[415] FEFTA arts 16-19.
[416] FEFTA arts 47-54.

(ii) it would compromise international peace and security or interfere with the public order.[417] The exact contents of this notification are specified under Art. 12(3) of Cabinet Order No. 260.[418] As per Art. 23(3) FEFTA, the resident can carry out the outbound investment only after 20 days lapse from the day the notification is sent to the MoF or in any case after receiving his approval. As per Art. 23(4) FEFTA the MoF can also issue a recommendation instructing the resident to modify the substance of the outbound investment or to discontinue it if he finds that the investment would have a 'significant adverse effect' or would interfere with the public order, or if a 'Cabinet Decision' has been issued to that effect. Cabinet decisions, as defined by Art. 10(1) FEFTA refer to responsive measures to be implemented, set out in a Cabinet Meeting in the event they are necessary to maintain peace and security in Japan or in the event of another necessity.

Moreover, Art. 23(2) FEFTA defines 'outward direct investment' as one of the following three activities: (a) a resident's acquisition of securities issued by a foreign company, (b) lending money to a company that is prescribed by Cabinet Order as being done for the purpose of establishing a permanent economic relationship with the domestic company, or (c) a resident's payment of funds for the establishment or expansion of a branch office, factory or other such place of business in a foreign country.

Looking at the purpose of the FEFTA, it does not appear that FTT's were the primary concern of the Act, but rather the protection of Japan's national security and public order.[419] As such, there are no specific technologies of 'national security interest' listed in the Act, compared to 31 CFR §850.224. However, Cabinet Order No. 261 of 1980[420] clarifies that under Art. X

[417] FEFTA art 23(1) in conjunction with (4).
[418] Foreign Exchange Cabinet Order No. 260 of October 11, (1980) https://www.cas.go.jp/jp/seisaku/hourei/data/FEO.pdf accessed 15 September 2025.
[419] FEFTA art 1.
[420] Cabinet Order on Inward Direct Investment, etc. No. 261 of October 11 (1980) https://www.cas.go.jp/jp/seisaku/hourei/data/idi.pdf accessed 15 September 2025.

outbound investments related to the following industries require prior notification in accordance with Art. 23 FEFTA: fisheries, manufacturing of leather or leather products, weapons manufacturing, manufacturing equipment related to weapon production, and drug manufacturing.[421] Effectively, while not narrowly focused on semiconductors, quantum technologies and AI systems, the FEFTA appears to direct some attention to dual-use goods. It is not unimaginable that outbound investments related to semiconductors could fall under the category of 'manufacturing equipment related to weapon production' and thereby be subject to a notification requirement. In addition, it focuses on additional industries, such as fisheries and leather goods, which appear to be of specific national interest to Japan.

Finally, the legal consequences of violations related to Art. 23 FEFTA are outlined under Art. 70(1) FEFTA. Violations under the Act are punishable by imprisonment for up to three years, a fine up to JPY 1,000,000, or both. If the value of the transaction exceeds JPY 1,000,000, the fine can be increased to up to three times the value of the transaction. A person commits a violation if they: (i) carry out an outbound investment without filing a notification pursuant to Art. 23(1) FEFTA or if they file a false notification;[422] (ii) carry out an outbound investment prior to receiving authorisation from the MoF or within 20 days of filing a notification or receiving a recommendation;[423] (iii) fail to carry out an outbound investment in accordance with the instructions issued in a MoF recommendation;[424] or (iv) they fail to notify the MoF whether they will comply with a recommendation issued.[425]

[421] JETRO, 'Notifications or reports required for foreign direct investment: Japan' (*Trade and Investment Consultation Q&A*) https://www.jetro.go.jp/world/qa/04A-010802.html accessed 15 September 2025 (Translated from Japanese).
[422] FEFTA art 70(1)(x).
[423] FEFTA art 70(1)(xi).
[424] FEFTA art 70(1)(xii).
[425] FEFTA art 70(1)(xiii).

In conclusion, Japan appears to have implemented an outbound investment screening mechanism way before the U.S., contrary to the statements of others that the Finale Rule is 'the first of its kind'.[426] While Japan requested to join consultations in *China – Certain Measures on the Transfer of Technology*,[427] FEFTA and the accompanying Cabinet Orders do not yet appear to focus on critical technology leakage as a result of outbound investment transactions in the same manner the EU or the U.S. do. However, Japan's screening mechanism appears to demonstrate a degree of flexibility. For instance, the requirement to notify transactions related to weapons manufacturing could potentially extend to outbound investment transactions in semiconductors, AI, and quantum technologies, provided a sufficient link to weapons manufacturing can be established.

4.3 Outbound Investment Regulation in China

China established its outbound investment mechanism several decades after Japan introduced the FEFTA, but still well before the United States enacted the Final Rule. Its first laws regulating outbound investment can be traced back to 1979, when the State Council issued the 'Fifteen Measures for Economic Reform' which for the first time explored the possibility for Chinese companies to direct investment outside its borders.[428] From that point onwards, the development of Chinese outbound investment regulation can be divided into three phases: (i) the 'nascent phase' from 1979-1999 where China went from having no investments outside its borders to a new era of international engagement;[429] (ii) the 'rapid growth' phase from 1999-2016 accompanied by a policy of encouraging, supporting and actively guiding outbound

[426] FEFTA; *see also Mendenhall, Golesworthy and Lyall* (n 399).
[427] *See* sec 3.5.2 56.
[428] Juan Du and Xueliang Ji, 'Assessing the outward foreign investment regulatory regime in China: a unified outward foreign investment law on the horizon?' (2024) vol 31, issue 1 *Asia Pacific Law Review* https://www.tandfonline.com/doi/full/10.1080/10192557.2024.2397639 accessed 15 September 2025 125.
[429] ibid 127.

investment;[430] and (iii) the 'fluctuation and adjustment' phase from 2017 to the present, where outbound investments from China faced increasing foreign restrictions and domestic regulatory tightening.[431] Because of these different phases of policy development, China's outbound investment screening framework is not consolidated in a single instrument, but is rather fragmented across several legislative acts.[432]

Accordingly, three main instruments will be discussed here in the following order: Order No. 11 will be addressed in section 4.3.1, the SCG in section 4.3.2 and the CSI in 4.3.3.

4.3.1 State Council Order No. 11

Order No. 11 was issued on 26 December 2017 by the National Development and Reform Commission ('**NDRC**') and entered into effect on 1 March 2018.[433] Art. 1 of the Order sets out its purpose which is to strengthen macroeconomic guidance, optimise comprehensive services and improve supervision of outbound investment and to safeguard China's national interests and security. Arts. 3-5 of the Order set out the main principles which are: to provide full autonomy and independence to outbound investors in accordance with the law, to set out an 'approval and filing' mechanism for outbound investments and to oblige investors not to violate China's laws or its national interests and national security when making outbound investments.

The core of the outbound investment screening mechanism is set out in Arts. 13 and 14 Order No. 11. Under Art. 13, sensitive projects carried out by a Chinese outbound investor need to be subjected to approval given by the NDRC. Paragraphs (1) and (2) distinguish two categories of 'sensitive projects': those involving 'sensitive countries and regions' and those involving 'sensitive industries'. In particular, 'sensitive countries and regions' are: (i) those with which

[430] ibid 127 and 128.
[431] ibid.
[432] *Du and Ji* (n 428) 129.
[433] *Order No. 11* (n 24).

China has not established diplomatic ties; (ii) those at war or in civil unrest; (iii) those to which Chinese outbound investment needs to be restricted according to international agreements with China; and (iv) 'other' sensitive countries and regions.[434] Conversely, 'sensitive industries' are: (i) R&D, production and maintenance of weapons and related equipment; (ii) development and use of cross-border water resources; (iii) news media; and (iv) industries in which Chinese outbound investment needs to be restricted according to domestic laws and other regulations.[435] Art. 13 Order No. 11 finally mandates the NDRC to publish the Catalogue of Sensitive Industries in the last sentence.

Conversely, under Art. 14(1) Order No. 11 'non-sensitive projects' carried out by a Chinese outbound investor, involving direct investment of assets, equity or provision of financing or guarantees, merely need to be filed. Under Art. 14(2) Order No. 11 outbound investment transactions where the investor is a SOE or if the investor is a private domestic entity, but the investment amount is USD 300 million or more need to be filed with the NDRC. Conversely, if the investor is a private domestic entity and the investment amount is less than USD 300 million then it needs to be filed with the development and reform department of the provincial government where the investor is registered.[436]

Art. 23 Order No. 11 sets out that after accepting the investment application for sensitive projects, the approving authority shall entrust a consulting agency to conduct an evaluation within four working days. If the 'project situation is complicated' the evaluation can be extended to 30 working days and again to a maximum of 60 working days if the approving authority permits so.[437] Furthermore, under Art. 24 Order No. 11 the approving authority has the possibility to require adjustments to the substance of the application report for the outbound

[434] *Order No. 11* (n 24) art 13(1)(i)-(iv).
[435] ibid art 13(2)(i)-(iv).
[436] *Order No. 11* (n 24) art 14(2).
[437] ibid art 23.

investment project or to require further clarifications and supplementing documents. As per Art. 26 Order No. 11 an outbound investment transaction can be approved provided it does not: (i) violate any domestic laws; (ii) violate domestic development plans, macroeconomic control, industrial and opening-up policies; (iii) violate international treaties concluded by China; and (iv) threaten to undermine national interests and national security.

Another interesting provision is Art. 34 Order No. 11 which requires a new approval of an outbound investment transaction if one of the following changes of circumstances occur in an already approved or filed project: (i) the number of investment entities increases or decreases; (ii) there is an investment location change; (iii) the content or scale of the investment changes; (iv) the amount exceeds 20% of the original amount or the change amounts to USD 100 million or more; and (v) other circumstances requiring major adjustments occur. If one of these circumstances occur, the approving authority must then make a written decision to on the approval of the change within 20 working days from the date of receiving an amended application from the investor.

Furthermore, a unique feature of the Order is its 'Outbound Investment Supervision' system. Art. 40 Order No. 11 mandates the NDRC and the provincial development and reform departments to supervise outbound investment transactions through: online monitoring, interviews, inspections, and enforcement action against illegal or irregular activities. Under Art. 45 Order No. 11 the supervising authorities can send 'sensitive matter inquiry' letters to the investors which may be publicly disclosed. Furthermore, under Art. 47 Order No. 11 they can issue risk warnings based on the assessment of economic, social or geopolitical risks related to the investment transaction. Under Art. 43 Order No. 11 the investors are obligated to report 'major adverse events', such as casualties, asset losses and diplomatic incidents within five working days to the supervising authorities.

Finally, Order No. 11 prescribes a broad liability system for violations in the context of outbound investment transactions. Under Art. 53 Order No. 11 if an investor starts carrying out an investment transaction without the necessary approval or registration, or where he is due to implement changes to the investment as prescribed in Art. 34, but does not do so, the authorising authority shall suspend the investment, stop its implementation and order corrections, and give a warning to the investor. If a crime is committed, the investor shall be liable in accordance with the relevant criminal law.[438] Under Art. 54 Order No. 11 the same legal consequences apply if the investor failed to report relevant information as per Arts. 42-45 Order No. 11 or provided unauthentic materials and documentation when submitting the investment report. Art. 56(1) Order No. 11 prescribes that if an outbound investment transaction threatens to damage China's 'national interests' and 'national security' the NDRC or the provincial development and reform departments can suspend the investment and make the necessary corrections within a specified period of time. However, under Art. 56(2) Order No. 11 if the investment already has damaged China's 'national interests' and 'national security', then in addition to stopping the implementation of the investment and making the necessary corrections, the relevant authority can take remedial measures, issue a warning to the investor and pursue criminal liability if a crime was committed. Arts. 102-113 of the Criminal Law of the People's Republic of China ('**CLPRC**') prescribe the punishment for violations of national security. For example, under Art. 102 CLPRC if within an outbound investment transaction a Chinese citizen '...colludes with a foreign State to endanger the (...) security of the People's Republic of China', he should be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years.

[438] ibid art. 53.

4.3.2 State Council Guidance on Overseas Investments

On 4 August 2017 NDRC, the Ministry of Commerce, the People's Bank of China, and Ministry of Foreign Affairs issued the SCG which was then approved by the SC.[439] The SCG was enacted at a time of major global geopolitical changes which for Chinese enterprises presented both a great opportunity for outbound investment and a great risk factor.[440] Its purpose was to further guide and regulate the direction of outbound investment, promote its continuous and orderly development, prevent risks and adapt to the needs of national economic and social development.[441]

The key provisions of the SCG are Arts. 3-5, setting out three categories of outbound investments: encouraged, restricted and prohibited. Under Art. 3 SCG, encouraged outbound investments include: (i) those focusing on promoting infrastructure abroad, conducive to the 'Belt and Road Initiative';[442] (ii) those driving exports of superior production capacity and high-quality equipment; (iii) investment cooperation with high-tech and advanced manufacturing enterprises abroad, including involving the establishment of R&D centres abroad; (iv) those involving exploration and development of energy resources abroad, such as oil, gas and minerals; (v) foreign agricultural cooperation and (vi) those in service sectors such as commerce, culture and logistics.

Under Art. 4 SCG restricted outbound investments refer to all investments inconsistent with China's opening-up and macroeconomic control policies. Such outbound investments include those: (i) in sensitive countries in regions; (ii) in real estate, hotels, cinemas, entertainment,

[439] State Council Guidance on Overseas Investments.
[440] ibid 1.
[441] ibid.
[442] *For more on the Belt and Road initiative see* James McBride, Noah Berman, and Andrew Chatzky, 'China's Massive Belt and Road Initiative' (*Council on Foreign Relations*, 2 February 2023) https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative accessed 15 September 2025.

sports clubs, etc.; (iii) establishing an equity investment fund or investment platform overseas without any specific industrial project; (iv) using production equipment that does not meet the technical standards of the destination country; and (v) not complying with the environmental protection, energy consumption and safety standards of the destination country.[443] Investments in categories (i)-(iii), in particular, need to be authorised by the destination countries authorities.[444]

Under Art. 5 SCG prohibited outbound investments are those that may or endanger national interests and national security. Those include outbound investment transactions: (i) involving export of core military industrial technologies and products without state approval; (ii) using technologies, processes, or products that are prohibited from export; (iii) in gambling, pornography, etc.; (iv) prohibited by international treaties concluded by China; and (v) other outbound investment transactions that may or endanger national interests and security.[445]

4.3.3 Catalogue of Sensitive Industries for Outbound Investments

The CSI was issued by the NDRC on 31 January 2018 and entered into effect the same year on 1 March.[446] Its purpose was to further define 'sensitive industries' for which related outbound investment transactions have to obtain authorisation from the NDRC as set out in Art. 13 Order No. 11.[447] The following 'sensitive industries' are encompassed thereunder: (i) Research, development, production and maintenance of weapons and related equipment; (ii) development and use of cross-border water resources; (iii) media; (iv) real estate; (v) hotels; (vi) cinemas;

[443] State Council Guidance on Overseas Investments, art 4.
[444] ibid.
[445] ibid art 5.
[446] Catalogue of Sensitive Industries for Overseas Investments.
[447] *See* sec 4.3.1 70.

(vii) the entertainment industry; (viii) sports clubs; and (xi) the establishment of offshore equity investment funds or platforms without clearly defined industrial projects.

5. Analysis: Towards a European Outbound Investment Screening Mechanism

Thus far, Chapter 2 set out the contemporary policy considerations relevant to outbound investment screening mechanisms, focusing in particular on the importance of outbound investment transactions in general, the shift in their perception in the late 2010s, forced technology transfers and similar practices, as well as the relevant critical technologies: semiconductors, AI and quantum.[448] Chapter 3 examined the *status quo* of outbound investment screening in the EU by discussing the outbound investment legislative train and examining in detail the Joint Communication on European Economic Security Strategy, the White Paper on Outbound Investments and Commission Recommendation (EU) 2025/63. In addition, the chapter assessed whether it is possible to mitigate the risks of technology leakage as a result of outbound investment transactions through the Union's existing instruments. Finally, Chapter 4 provided a comparative outlook of the outbound investment screening mechanisms in force in the U.S., Japan and China.

Building on this groundwork, the present chapter turns to analysis and will be structured as follows: Section 5.1 will recap the current status of the Union's legislative process on outbound investment screening and place the present research within this context. Section 5.2 will analyse some preconditions to the Union's next possible steps regarding outbound investment screening, such as: its competence to act, the form of a possible corresponding legislative instrument and its compliance with the necessary EU law principles. Section 5.3 will comparatively analyse the common elements of the outbound investment screening

[448] *See* sec 2.5 30-37.

mechanisms of the U.S., Japan, and China. Finally, Section 5.4 will set out a proposal for the Commission, indicating which elements from the comparative analysis could be considered for incorporation into a potential EU outbound investment screening mechanism.

5.1 The Current Status of Outbound Investment Regulation in the European Union

At the time of writing, the monitoring and risk assessment exercise initiated by CR 2025/63 is entering its 9th month since starting on 15 January 2025.[449] The MSs are thus actively reviewing outbound investments in critical technologies and assessing risks potentially arising from such transactions.[450] Since the Recommendation's entry into force, the Expert Group on Outbound Investment had met two times, on 27 February and 1 July 2025 in their 9th and 10th Meetings.[451] The former focused on the MSs designating SCPs and the latter on data and information gathering difficulties.[452] As matters stand, the monitoring and risk assessments are scheduled to continue until 30 June 2026, when MSs are due to submit a comprehensive report on the implementation of the Recommendation and the results of the monitoring and risk assessment to the Commission and to one another.[453]

As set out by the White Paper on Outbound Investment, after the monitoring phase, the Commission foresees a separate risk assessment.[454] Here, the Expert Group will compile the comprehensive MS reports due on 30 June 2026 and prepare a final comprehensive risk assessment which will serve as a reference point for future debates on the necessity for and content of possible policy responses or mitigating measures.[455] The present paper seeks to

[449] *See* sec 3.4 44 and 45.
[450] ibid 44-46.
[451] ibid 48 and 49.
[452] ibid.
[453] ibid 48.
[454] ibid 44.
[455] ibid.

contribute to this forthcoming discussion by outlining the most suitable elements a potential EU outbound investment screening mechanism could adopt, drawing on a comparative analysis of the screening mechanisms in the U.S., Japan, and China.

5.2 The Next Steps: Towards an EU Outbound Investment Screening Framework

However, before suggesting design features of a potential EU outbound investment screening mechanism, it is necessary to assess its legal feasibility. This entails a substantive analysis of the Union's competence to act, the appropriate type of legal act and the compliance of such an act with the relevant principles of EU law.[456] Thus sub-section 5.2.1 will analyse the Union's competence to act, sub-section 5.2.2 will suggest the appropriate legislate form of the act and sub-section 5.2.3 will analyse the compliance of such an act with the relevant EU principles.

5.2.1 The European Union's Competence to Act

The Union's exclusive competence to act, under Article 2(1) of the Treaty on the Functioning of the European Union ('**TFEU**'),[457] is limited by the principle of conferral to those areas in which the Treaties expressly confer exclusive competence. Under Art. 5(2) of the Treaty on the European Union ('**TEU**')[458] the EU Union shall act only within the limits of the competences conferred upon it my the MSs in the Treaties to attain the objectives set out therein, whereas competences not conferred in the Treaties remain with the MSs.

Under Art. 3(1)(e) TFEU, the EU has an exclusive competence to act with respect to its the Common Commercial Policy ('**CCP**'). Under Art. 207(1) TFEU '[t]he CCP shall be based on unform principles, particularly...' with regard to several areas including foreign direct

[456] *Procedural elements, such as the EU institution which can initiate the corresponding legislative proposal or the relevant legislative procedure will not be discussed extensively here, as the focus of this section lies in the the feasibility of an outbound investment screening legislative act.*
[457] Treaty on European Union.
[458] Treaty on the Functioning of the European Union.

investment. While 'outbound investment' was not explicitly listed as one of these areas, in *International Agreement on Natural Rubber*[459] the Court of Justice of the European Union ('**CJEU**') held that: 'The enumeration in Article [207] of the subjects covered by Commercial Policy (...) is conceived as a non-exhaustive enumeration which must not, as such, close the door to the application in a Community context of any other process intended to regulate external trade.'[460] Furthermore, in *Avis*[461] the CJEU held that Art. 207(1) TFEU encompasses 'investments made by natural or legal persons of [a] third State in the European Union and *vice versa* which enable effective participation in the management or control of a company carrying out an economic activity.'[462] Accordingly, the Union has exclusive competence pursuant to the CCP under Art. 207 TFEU to adopt binding acts concerning outbound investments, such as an EU outbound investment screening mechanism and, in light of the above, such a proposal would also comply with the principle of conferral.

5.2.2 The Appropriate Legislative Form

Art. 207(2) TFEU sets out that the EP and the Council, acting by means of regulations in accordance with the ordinary legislative procedure ('**OLP**'), shall adopt measures defining the framework for implementing the CCP. Pursuant to Art. 294(2) TFEU the OLP is initiated by the Commission submitting a proposal to the EP and the Council. Effectively, once the Commission and the Expert Group finish compiling a final risk assessment on EU outbound investment transactions in critical technologies based on the MS reports due on 30 June 2026,[463] the Commission will be able to prepare a concrete legislative proposal to the EP and the Council. In light of the above, such a proposal will have to be prepared with the goal of

[459] ECJ, 'Opinion given pursuant to the second subparagraph of Article 228(1) of the EEC Treaty - *International Agreement on Natural Rubber*' (1979) ECR 1979-02871.
[460] ibid para 45.
[461] Opinion 2/15 of the Court (2017) ECLI:EU:C:2017:376.
[462] ibid paras 81-84.
[463] *See* secs 3.4 44-49 and 5.1 75.

adopting a regulation as prescribed by Art. 207(2) TFEU establishing an EU outbound investment screening mechanism.

5.2.3 Compliance with Union Law Principles

Pursuant to Art. 5 of Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality[464] draft legislative acts shall be justified with regard to these two principles. However, under Art. 5(3) TEU the principle of subsidiarity is only relevant in areas which do not fall within the Union's exclusive competence. Because a potential EU legislative act establishing an outbound investment screening mechanism falls under the scope of the CCP, an area of the Union's exclusive competence under Art. 3(1)(e) TFEU, the principle of subsidiarity is not applicable.

Conversely, the principle of proportionality remains applicable. Art. 5(4) TEU sets out that under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. Effectively, EU measures must be suitable and necessary to achieve the desired end and they must not impose a burden on the individual that is excessive in relation to the objective sought to be achieved.[465]

The objective of introducing an EU outbound investment screening mechanism would primarily be to mitigate the risks of technology leakage as a result of outbound investments in critical technologies.[466] A regulation establishing such a mechanism would enable the Union to evaluate these transactions according to the degree of risk of technology leakage and, where

[464] Consolidated version of the Treaty on the Functioning of the European Union - PROTOCOLS - Protocol (No 2) on the application of the principles of subsidiarity and proportionality [2008] OJ C 115 206.
[465] EUR-Lex, 'Principle of proportionality' (*Glossary*, 2025) https://eur-lex.europa.eu/EN/legal-content/glossary/principle-of-proportionality.html accessed 15 September 2025.
[466] *CR 2025/63* (n 19) recital 4.

appropriate, to authorise, modify, or prohibit them in order to prevent such risks from materialising. Such a regulation would therefore be suitable to achieve this objective.[467]

Furthermore, such a regulation is necessary because there are no other, less restrictive means available to achieve the same objective. For example, an *ex-post* notification system would lack have the same effectiveness, compared to a screening mechanism, because the risks of technology leakage as a result of an outbound investment transaction would likely have materialised by the time the transaction would have been carried out, leaving the screening authorities with too little time to react.[468] Alternatively, a general ban or blanket restriction on outbound investments in critical technologies could have significant adverse effects on investing undertakings by excessively limiting their outsourcing and economic cooperation opportunities. Such measures would also be far more inconsistent with the Union's commitment to free trade than a screening mechanism. Effectively, a regulation establishing an EU outbound investment screening mechanism would be the 'least restrictive means' available to achieve the objective of mitigating risks of technology leakage as a result of outbound investments transactions.

Finally, such a regulation would not impose an excessive burden on individuals in relation to the objective pursued. EU investors would likely be required to: notify their outbound investment transactions to the relevant national competition authorities or the Commission, compile the necessary paperwork, conducti due diligence and risk assessments and communicate this to their business partners. However, this burden would fall only on EU investors engaged in outbound investment transactions involving the three critical technologies posing risks to European economic security.[469] If this risk is not prevented, the Union could

[467] *For how this is done in the jurisdictions compared so far see* ch 4 60-74.
[468] *For insights in technology transfers see* Sec 2.4 24-29.
[469] *See* secs 2.5 29-37 and 3.2-3.3 40-44.

lose its competitive advantage in critical technology areas and undermine the resilience of its supply chains. For example, if in the long term the Union were to rely on only a few external sources for semiconductor production, this could jeopardise the everyday functioning of vital electronics and significantly endanger the quality of life of Union citizens. Therefore, the administrative burden imposed on EU investors by a regulation establishing an outbound investment screening mechanism would not be excessive in relation to the objective of mitigating risks of technology leakage as a result of outbound investment transactions.

5.3 Outbound Investment Screening Mechanisms Compared

In Chapter 4 the outbound investment screening mechanisms of the U.S., Japan and China were outlined. While different policy considerations shaped the development and configuration of these frameworks, a number of reoccurring structural features can be identified. These features can be grouped under three categories which will be comparatively analysed in the following order: scope of application features in sub-section 5.3.1, procedural design features in sub-section 5.3.2 and enforcement features in sub-section 5.3.3.

5.3.1 Scope of Application Features

The outbound investment screening mechanisms of the three jurisdictions compared cover five features related to the mechanism's scope of application: (i) the scope of transactions covered by type; (ii) the technologies or industries triggering screening; (iii) covered 'destinations of concern'; (iv) the temporal scope of transactions covered; and (v) exceptions.

The 'scope of covered transactions by type' refers to the types of outbound investment transactions that require screening. The U.S. and Japan provide a clear outline of those subject to their screening mechanism. The U.S. Final Rule covers direct or indirect investments, such as: an acquisition of an equity interest, provision of a loan or debt financing arrangement,

conversion of contingent equity interest, acquisition of land or property, entrance into a JV, or acquisition of interest in a venture capital fund.[470] The material scope of Japan's FEFTA covers: an acquisition of securities issued by a foreign company, lending money to a company that is prescribed by Cabinet Order as being done for the purpose of establishing a permanent economic relationship with the domestic company, or a payment of funds for the establishment or expansion of a branch office, factory or other such place of business in a foreign country.[471] Conversely, China's framework does not clarify what kinds of investments need to be screened, but rather focuses on the degree of sensitivity of the relevant investment transaction.[472] While this approach provides the Chinese authorities a greater degree of flexibility to impose screening obligations, it leaves domestic investors with little legal certainty and points to a discretion-based approach. For example, a Chinese domestic investor could be left wondering whether his planned stock purchase in a foreign company would be covered by the screening mechanism. On the contrary, the U.S. and Japanese approach clearly indicates to domestic investors what types of outbound investment transactions will be covered, providing a greater degree of foreseeability.

'Technologies or industries triggering screening' refers to the scope of technologies or industries that, if being subject of an outbound investment transaction, that transaction will have to be screened. The U.S. Final Rule mechanism subjects outbound investment transactions with respect to the three 'national security technology' areas of semiconductors and microelectronics, quantum information technologies, and advanced AI.[473] In Japan, Cabinet Order No. 261 of 1980 clarifies that outbound investment transactions related to: fisheries, manufacturing of leather or leather products, weapons manufacturing, manufacturing

[470] *See* sec 4.1.1 61.
[471] *See* sec 4.2 68.
[472] *See* sec 4.3.1 70 and 71 and sec 4.3.2 73 and 74.
[473] *See* sec 4.1.1 62 and 63.

equipment related to weapon production, and drug manufacturing, require prior notification in accordance with Art. 23 FEFTA.[474] China's screening mechanism as per Order No. 11 differentiates between 'sensitive projects' and 'non-sensitive projects'.[475] The former need to be approved and cover the following industries: (i) R&D, production and maintenance of weapons and related equipment; (ii) development and use of cross-border water resources; (iii) news media; and (iv) industries in which Chinese outbound investment needs to be restricted according to domestic laws and other regulations.[476] The latter need to be merely notified and cover all other outbound investment transactions.[477] In addition, the CSI adds further 'sensitive industries' to complement Order No. 11, including: real estate, hotels, cinemas, the entertainment industry, sports clubs and the establishment of offshore equity investment funds or platforms without clearly defined industrial projects.[478] Against this background, it is clear that different policies shaped the designated industries and technologies triggering the countries' screening mechanisms. While all three jurisdictions aim to screen outbound investment transactions in dual-use and enabling technologies, other covered categories substantially differ. The U.S. closely aligns with the EU's own concern for semiconductors, AI, and quantum.[479] Japan focuses particularly on the fisheries and leather industries, reflecting their importance for the country's economic security and national interest. Conversely, China appears to cover a very broad scope of industries, signalling a strong focus on industrial policy and macroeconomic control.

'Destinations of concern' refers to the scope of countries to which if an outbound investment is directed, that investment will have to be screened. The U.S. Final Rule currently designates

[474] *See* sec 4.2 68.
[475] *See* sec 4.3.1 70 and 71.
[476] *See* sec 4.3.1 70.
[477] *See* sec 4.3.1 71.
[478] *See* sec 4.3.3 74.
[479] *See* sec 3.4 45 and sec 4.1.1 62-63.

only China and its Special Administrative Regions of Hong Kong and Macau as such countries.[480] Outbound investment transactions to other territories appear not to fall under the scope of the screening mechanism. By contrast, Japan's FEFTA does not have any such territorial limitation and appears transactions irrespective of their country of destination. Under Order No. 11, China applies its screening mechanism to 'sensitive countries and regions' defined as: (i) those with which China has not established diplomatic ties; (ii) those at war or in civil unrest; (iii) those to which Chinese outbound investment needs to be restricted according to international agreements with China; and (iv) 'other' sensitive countries and regions.[481] In sum, the U.S. applies a highly targeted territorial scope, Japan applies no territorial limitation at all and China reserves broad discretion to designate a wide range of destinations as sensitive.

The 'temporal scope of transactions' covered refers to the point in time from which an outbound investment transaction is considered to be within the scope of the screening mechanism. The U.S. Final Rule applies to transactions entered into after 2 January 2025, the date of its entry into force.[482] Transactions made after that date but entered into pursuant to a capital commitment prior to that date is excepted from the temporal scope.[483] By contrast, the Japanese and Chinese outbound investment screening mechanisms do not indicate a specific temporal scope. This is likely due to the fact that they were enacted several decades prior to the U.S. mechanism. Nevertheless, in light of its recency, the U.S. Final Rule provides investors a considerable degree of legal certainty in this regard.

Finally, exceptions refer to the circumstances under which an outbound investment transaction that would normally be subjected to the screening mechanism is excluded from its scope. The

[480] *See* sec 4.1.1 62.
[481] *See* sec 4.3.1 70.
[482] *See* sec 4.1.1 61.
[483] *See* sec 4.1.1 61.

U.S. Final Rule provides for three exceptions: (i) excepted transactions, such as certain passive and regulated investments, buyouts of covered foreign interests or allied countries transactions; (ii) transactions determined to be in the interest of the U.S.; and (iii) transactions which the President, by virtue of his mandate, cannot exclude, such as personal communications or humanitarian donations.[484] By contrast, Japan's FEFTA and China's Order No. 11 do not provide for such exceptions. This is likely because neither regime defines outright prohibited transactions, whereas the U.S. Final Rule does. Without exceptions, the blanket prohibition system could risk being over-inclusive and lead to loss of business opportunity.

5.3.2 Procedural Design Features

Three reoccurring procedural design features can also be identified in the outbound investment screening mechanisms of the three jurisdictions: (i) the type of screening mechanism; (ii) information requirements; (iii) change of circumstances and (iv) post-transaction supervision.

The 'type of screening mechanism' refers to the distinction between the relevant screening requirement the mechanism applies to different categories of outbound investment transactions, such as: mandatory approval or formal notification. The U.S. Final Rule distinguishes between 'prohibited transactions' and 'notifiable transactions'.[485] The former refers to an exhaustive list of outbound investment transactions involving the three critical technologies that U.S. investors are prohibited from undertaking, unless an exemption is granted by the Treasury if the transaction is determined to be in the national interest.[486] The latter refers to transactions involving the same critical technologies but not included under the exhaustive list of 'prohibited transactions'.[487] Conversely, Japan's FEFTA applies a

[484] *See* sec 4.1.1 63.
[485] *See* sec 4.1.1 61 and 62.
[486] *See* sec 4.1.1 61-63.
[487] *See* sec 4.1.1 62.

notification and authorisation screening mechanism to outbound investment transaction that would have a 'significant adverse effect' on the smooth operation of the Japanese economy or that would compromise international peace and security or interfere with the public order.[488] All outbound investment transactions covered by the relevant scopes need to be notified to the MoF which subsequently approves, modifies or discontinues them if: they are found to have a 'significant adverse effect', would interfere with the public order or if a 'Cabinet Decision' has been issued to that effect.[489] China applies a mixed system via Order No. 11. It distinguishes between 'sensitive' and 'non-sensitive' projects with the former needing to be subjected to approval by the NDRC or the relevant regional authority and the latter needing merely to be filed.[490] If the project is sensitive or a threat to China's 'national interests' or 'national security', the NDRC may also issue adjustment requirements to the substance of the project.[491] Furthermore, China clearly defines terms such as 'sensitive projects' or projects endangering national interest or security in additional instruments, such as the SCG and the CSI.[492] Between the three mechanisms, the Japanese type seems to impose the highest administrative burden on its authorities and offer the least amount of legal certainty to domestic investors. The possible broad interpretation of terms such as 'significant adverse effect' and the absence of a list of merely notifiable or prohibited transactions likely encourage investors to notify their outbound investment transactions just to be 'on the safe side'. China reduces this burden and increases legal certainty by providing clearer definitions of sensitive projects and those affecting national interests and security, though discretion remains with the NDRC and regional authorities to approve, modify, or discontinue projects. Finally, the U.S. minimises the administrative burden while maximising legal certainty: it does not provide for an approval mechanism, but instead

[488] *See* sec 4.2 67.
[489] *See* sec 4.2 67.
[490] *See* sec 4.3.1 70 and 71.
[491] *See* sec 4.3.1 71.
[492] *See* sec 4.3.2 73 and 74.

clearly distinguishes between notifiable and prohibited transactions. This avoids a complex administrative decision-making process, while giving investors clear guidance on when a transaction must be notified or cannot be undertaken. However, in comparison to China, the U.S. screening mechanism does not provide for any review possibilities other than if an outbound investor claims an exception in a very limited set of circumstances.

The term 'Information requirements' refers to the information that must be submitted by investors to the competent authority when a notification requirement is applicable. The U.S. Final Rule requires notifications to include the following information: contact person and their details; description of the investor; organisational chart; purpose of transaction; transaction classification explanation; transaction status; transaction value; post-transaction equity and voting interest; covered foreign person information; covered activities explanation; attributes making the foreign person covered; relevant technology involvement; and post-transaction knowledge.[493] Japan's FEFTA and Cabinet Order No. 260 require significantly less information to be included in the notification, such as: name and domicile of notifier; transaction content; time of transaction; purpose of transaction; and other matters specified by the Ordinance of the Ministry of Finance.[494] China's Order No. 11 refers to the Outbound Investment Project Record-Filing Form[495] for the exact information needing to be provided in a notification which requires the following: project name; investor information; information on the 'overseas enterprise' controlled by the investor (if any); investment location; industry sector of investment; background of the project; main content and scale of the project; total investment amount; investment amount contributed by the Chinese Party and its breakdown;

[493] CFR §850.405 (b)(1)-(12).
[494] *See* sec 4.2 67.
[495] *See* NDRC, 'Notice of the National Development and Reform Commission on the Release of the Format Text of the Measures for the Administration of Overseas Investment by Enterprises (2018 Edition)'(NDRC Foreign Investment [2018] No. 252, issued on February 9, 2018) NDRC, 'Overseas Investment Project Filing Form' https://zfxxgk.ndrc.gov.cn/web/iteminfo.jsp?id=19492& accessed 15 September 2025. (Translated from Mandarin).

statement of intent for the use of the Chinese Party's investment amount; contributions by other enterprises; main risks; impact assessment on Chinese national interest and security; work plan; and other matters investors considers necessary to explain.[496] In sum, all three jurisdictions require the provision of extensive information about notifiable outbound investment transactions, pointing to the necessity to assess such transaction against national interest and national security considerations.

'Change of circumstances' refers to the requirement to notify any material changes in the outbound investment transaction after it has either been approved or completed. The U.S. Final Rule requires an investor who acquires 'knowledge' after the completion of a transaction of circumstances such that the transaction would have been notifiable or prohibited, to notify the Treasury within 30 calendar days of acquiring such knowledge.[497] Whether the person had knowledge is determined based on the information the investor had or could have had through a reasonable and diligent inquiry.[498] The Japanese FEFTA does not explicitly include a 'change of circumstances' notification obligation, but it is possible for the MoF to rescind its approval at any time, including possibly when a change of circumstances has taken place. The Chinese Order No. 11 requires a new approval of an outbound investment transaction in five instances: (i) the number of investment entities increases or decreases; (ii) there is an investment location change; (iii) the content or scale of the investment changes; (iv) the amount exceeds 20% of the original amount or the change amounts to USD 100 million or more; and (v) other circumstances requiring major adjustments occur.[499] Effectively, the U.S. and China provide investors with clear guidance on when a change of circumstances triggers a new notification, since their laws specify or refer, respectively, to such defined conditions. By contrast, Japan

[496] ibid points (1)-(19).
[497] *See* sec 4.1.2 66.
[498] *See* sec 4.1.2 66.
[499] *See* sec 4.3.1 71 and 72.

leaves the matter implicit with approvals being tied to the transaction as notified, meaning that a material change to the transaction would likely place it outside of the scope of the original approval.

Finally, 'post-transaction supervision' refers to a system of monitoring an outbound investment transaction throughout its lifecycle after it was approved or initiated. The U.S. Final Rule does not explicitly provide for such a system but requires the investor to notify acquired knowledge of a change in circumstances after the completion of the outbound investment transaction.[500] Conversely, China's Order No. 11 mandates the NDRC and the relevant regional authorities to continuously supervise transactions through: online monitoring, interviews, inspections and enforcement action against illegal or irregular activities. In addition, these authorities can also send 'sensitive matter inquiry' and issue risk warnings based on the assessment of economic, social or geopolitical risks related to the investment transaction.[501] Furthermore, investors are obligated to report 'major adverse events', such as casualties, asset losses and diplomatic incidents.[502] Japan's FEFTA outlines a general supervision possibility that applies to all transactions entered into pursuant to the Act, including outbound investments.[503] The provision authorises the MoF to conduct on-site inspections, to the extent necessary for enforcing the Act, which includes: entering the offices, factories or other facilities; inspecting books, documents and other materials; and questioning relevant individuals.[504] Effectively, the U.S. places considerable reliance on the investors to report relevant changes during the lifecycle of the transaction themselves. However, the Treasury indicated that it plans to monitor compliance with the Final Rule, indicating that possible supervision after notification is not

[500] *See* sec 4.1.1 66.
[501] *See* sec 4.3.1 72.
[502] *See* sec 4.3.1 72.
[503] FEFTA, art. 68.
[504] ibid.

excluded.[505] Conversely, Japan provides the basis for stringent investigatory measures while the transaction is taking place. Despite these measures are applicable for other transactions covered by FEFTA, significant clarity is provided to the investor regarding what kind of supervision they can expect. Finally, China employs the strictest and most detailed supervision system, providing for measures even more intrusive than those under FEFTA. The possibility of issuing risk warnings on a broad variety of matters indicates that national interest is closely linked to outbound investment transactions, and that the State reserves broad discretion to discontinue an investment if deemed necessary.

5.3.3 Enforcement Features

Finally, a reoccurring enforcement feature can be identified in the three jurisdictions' outbound investment screening mechanisms: (i) how violations are defined and (ii) the corresponding applicable penalties. Since they in most cases directly liked to one another, they will be analysed together.

The 'definition of violations' refers to how the different mechanisms determine when there is a violation of their framework. The U.S. Final Rule recognises three types of violations: (i) taking any prohibited action under the Final Rule; (ii) failure to take any action required under the Final Rule; and (iii) misrepresentation of any information submitted or communicated to the Treasury.[506] Any person subject to U.S. jurisdiction in violation of the Final Rule becomes subject to civil or criminal penalties.[507] Civil penalties do not exceed USD 250,000 or twice the value of the underlying transaction, while criminal penalties, for wilfully committing, attempting to or conspiring to commit violations can result in fines of not more than USD 1,000,000 or, in the event the violation was committed by a natural person, in imprisonment

[505] Final Rule on Outbound Investment, 62.
[506] *See* sec 4.1.1 63.
[507] *See* sec 4.1.1 64.

for not more than 20 years, or both.[508] Furthermore, false statements or misrepresentations related to the Final Rule can lead to additional fines or imprisonment of up to 5 years, or both.[509] Japan's FEFTA recognises four types of violations in the context of outbound investment transactions: (i) carrying out an outbound investment without filing a notification or filing a false notification; (ii) carrying out an outbound investment prior to receiving authorisation; (iii) failing to carry out an outbound investment in accordance with the instructions issued in a MoF recommendation; or (iv) failing to notify the MoF whether they will comply with a recommendation issued.[510] Violations under the FEFTA are punishable by imprisonment for up to three years, a fine up to JPY 1,000,000, or both.[511] If the if the value of the transaction exceeds JPY 1,000,000, the fine can be increased to up to three times the value of the transaction.[512] Under China's Order No. 11, a violation occurs if an investor carries out an investment transaction without the required approval or registration, or fails to implement necessary changes to the investment.[513] In addition, a violation is also committed if an investor does not report required information or submits false materials when a notification obligation arises, such as in the case of a sensitive project, a major adverse event, the completion of a project, or a major event inquiry letter.[514] If any of these events occur the authorising authority shall suspend the investment, stop its implementation and order corrections, and give a warning to the investor.[515] If the investment already has damaged China's national interest and national security, then the relevant authority can take remedial measures, issue a warning to the investor and pursue criminal liability, if a crime was committed.[516] The punishment for violations of

[508] *See* sec 4.1.1 64.
[509] *See* sec 4.1.1 64.
[510] *See* sec 4.2 68 and 69.
[511] *See* sec 4.2 68.
[512] *See* sec 4.2 68.
[513] *See* sec 4.3.1 72.
[514] *See* sec 4.3.1 72.
[515] *See* sec 4.3.1 72.
[516] *See* sec 4.3.1 72.

national security can include life imprisonment or fixed-term imprisonment of not less than 10 years.[517] In sum, all three jurisdictions define violations broadly to include both substantive and procedural breaches, e.g. carrying out a prohibited transaction or failure to notify. China here appears to employ significantly harsh penalties for acts with an adverse effect on national security in the context of outbound investment transactions. Similar provisions are not included in the U.S. or Japanese framework, at least not explicitly.

5.4 A Proposal for the Commission

In the previous section, the commonly reoccurring features of the outbound investment screening mechanisms of the U.S., Japan and China were comparatively analysed, with the purpose of identifying insights that could inform and potentially shape an EU outbound investment screening mechanism. Although the Commission is still in the monitoring stage and will only evaluate the necessity and scope of possible measures once the Expert Group delivers its final comprehensive risk assessment in 2026, this paper aims to anticipate that debate. Against this background, the present section will make suggestions on the possible approaches the Commission could take based on the comparative analysis from the previous section, with respect to the features of scope in sub-section 5.4.1, procedural design in sub-section 5.4.2 and enforcement in sub-section 5.4.3, based on the comparative analysis from the previous section.

5.4.1 Suggestions on Scope of Application Features

Regarding the scope of covered transactions, CR 2025/63 already identifies outbound investment transactions MSs must monitor and subject to risk assessment.[518] Although fairly broad, the Union's scope of coverage does not explicitly include certain types of transactions. For instance, the U.S. screening mechanism covers the provision of loans and debt financing

[517] *See* sec 4.3.1 72.
[518] *See* sec 3.4 45 and 46.

arrangements, where this will afford the investor an interest in profits, the right to appoint board members or comparable financial or governance rights.[519] Similarly, Japan's screening mechanism covers lending money to a company that is prescribed by Cabinet Order as being done for the purpose of establishing a permanent economic relationship with the domestic company.[520] Such loan and debt financing arrangements provide the investor with the same influence or access as an equity investor.[521] Thus, if an outbound investor structures its transaction as a loan with conversion rights, instead of an equity purchase, the transaction could circumvent the screening mechanism, while still posing risks of technology leakage. For example, if a loan arrangement is converted to board representation in the target company, the outbound investor's highly specialised personnel could end up on with board seats. This would entail their participation in board discussion, thus, creating a possible channel where sensitive information about critical technologies could possibly be leaked. Possibly, such loans could be covered by a clause similar to 'investments aimed at breaching or circumventing existing security-related trade and investment controls.'[522] However, it could prove beneficial for an EU outbound investment screening mechanism to extend its scope of coverage to such atypical loan arrangements explicitly.

Regarding the technologies or industries triggering screening, CR 2025/63 aligns closely with the U.S. approach by focusing on the risks of leakage in three critical technology areas: semiconductors, AI and quantum. Conversely, Japan and China extend their scope of coverage to entire industry sectors, indicating a stronger element of state control. Due to the Union's strong commitment to free trade, it may not be necessary at this stage for the EU to adopt a broad scope of technologies covered in a potential outbound investment screening framework.

[519] § 850.210(a)(2).
[520] *See* sec 4.2 68.
[521] *For why such an investor would be 'covered' see* CR 2025/63 M&A or § 850.210(a)(2).
[522] *See* point 2 CR 2025/63.

Focusing on a narrow set of critical technologies will allow it to manage risks in a targeted manner, while avoiding overarching interference with other outbound investments. Furthermore, EU investors currently operate in a dense regulatory environment.[523] While not every transaction necessarily triggers all other regulatory mechanisms, the total burden placed on investors remains significant. Thus, limiting the scope of technologies to be potentially screened to semiconductors, AI, and quantum suffices as a starting point. Although the Commission's Annex on Critical Technology Areas[524] lists a broad set of ten technologies, immediately extending coverage to all of them risks overburdening both the investors and the screening authorities. Nevertheless, similarly to Art. 16 of the FDI Regulation, it would appear advisable for a potential EU outbound investment screening mechanism to include a provision mandating the Commission to adopt delegated acts to extend the scope of technologies screened.

Regarding covered 'destinations of concern', the White Paper on Outbound Investment repeatedly uses this term but abstains from further defining it. Admittedly, a substantial amount of cases of FTT and similar practices pertain to China. The U.S. screening mechanism so far, thus, explicitly lists China and its Special Administrative Territories of Hong Kong and Macau as 'destinations of concern'.[525] This approach, however, appears to be too blatant and under-inclusive, as it discards the possibility of other destinations posing risk to its economic security. Conversely, Japan's approach of screening all outbound investment transactions, regardless of destination, appears over-inclusive, possibly leading to significant administrative burden on screening authorities and outbound investors. Notably, recital (14) CR 2025/63 emphasises that

[523] *See for example* Dual Use Regulation; *Foreign Subsidies Regulation* (n 63); Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (Text with EEA relevance) [2004] OJ L 24.
[524] Commission, 'Annex to the Commission Recommendation on critical technology areas for the EU's economic security for further risk assessment with Member States' [2023] C(2023) 6689 final.
[525] *See* sec 4.1.1 62.

its prescribed monitoring should be 'country-neutral', while simultaneously providing the MSs and the Commission with discretion to focus on individual countries based on their risk profile. This approach more closely resembles China's 'sensitive country or region' system, which grants the state broad discretion in designating destinations that fall under this category.[526] Adopting a similar logic could help strike a balance between limiting administrative burdens and effectively mitigating risks of critical technology leakage as a result of outbound investment transactions. As a safeguard, and in line with the earlier discussion on the scope of technologies, this is another reason to empower the Commission to adopt delegated acts establishing a system of 'destinations of concern'. For example, a risk-based classification could be introduced with low-, moderate-, and high-risk destinations.

Regarding the temporal scope of transactions covered, as previously established, only the U.S. screening mechanism sets out a precise temporal scope of application, applying to transactions entered into as of the date of the mechanism's entry into force.[527] Similarly, CR 2025/63 obliges Member States to monitor new and ongoing transactions, as well as those completed since 1 January 2021. While a retroactive scope appears acceptable for monitoring, it would cause challenges for outbound investors in the context of screening. If a transaction was initiated prior to the Union mechanism's entry into force and is still ongoing, outbound investors could unexpectedly face additional due diligence and notification obligations that they could not have anticipated at the planning phase. Accordingly, adopting the U.S. approach of limiting screening to transactions entered into on or shortly before the entry into force of the mechanism appears to be the most adequate solution.

[526] *See* Order No. 11, art 13.
[527] *See* sec 4.1.1 61.

Finally, regarding exceptions, if the EU were to consider adopting a list of 'prohibited transactions' similar to the U.S. screening mechanism,[528] it would equally need to consider introducing a system of exceptions. This would allow certain transactions to receive authorisation where they serve the 'Union interest', thereby avoiding an over-inclusive regime. An essential component of such a regime would be to designate the Commission as the competent authority to conduct a case-by-case assessment of outbound investment transaction in the Union interest based on relevant criteria. By contract, if the Commission were to decide against mirroring the U.S. approach, it would not be necessary to introduce exceptions. However, this may result in an additional administrative burden because every transaction would then have to be reviewed under a notification or approval procedure, even in cases where the risk of technology leakage is evident and a prohibition could have been imposed directly.

5.4.2 Suggestions on Procedural Design Features

Regarding the type of screening mechanism, the Union could mitigate the risk of technology leakage as a result of outbound investment transactions best by considering a mixed screening system. Compared to the U.S., which only mandate the Treasury to screen outbound investment transactions, the EU has at its disposal 27 MS authorities, as well as the Commission. Thus, while the U.S. had to be careful not to overburden the Treasury by introducing a 'notification and approval' framework,[529] the EU has considerably more administrative capacity to handle such a mechanism. However, requiring a notification and approval for every outbound investment seems redundant, as it will likely be clear at the outset that some transactions could result in significant technology leakage, while others will clearly involve no such risk at all. This could be remedied by introducing three categories of transactions based on their degree of risk: (i) a list of 'merely' notifiable transactions of low risk; (ii) a list of prohibited

[528] *See* sec 4.1.1 62.
[529] Final Rule on Outbound Investment, 34.

transactions of high risk; and (iii) a category of 'all other covered transactions' needing to be notified and approved of moderate risk. In nature, this system would be very similar to Chinese screening mechanism which distinguishes between sensitive and non-sensitive transactions,[530] but would add the component of prohibited transactions to minimise the administrative burden, similar to the U.S. framework.[531] Another aspect that would be beneficial to consider is to introduce an option for the relevant authority to modify a transaction following the example of the Japanese and Chinese screening mechanism. For instance, where a notified transaction is otherwise approvable but raises concerns about potential critical technology leakage, the authority could issue an approval subject to specific modifications or safeguards.

Regarding information requirements, the Union must focus on requiring information that would help it identify the degree of risk of critical technology leakage as a result of outbound investment transactions. It would also be essential to determine the ultimate destination of the critical technology involved. Accordingly, besides requiring basic details about the outbound investor and its contact person, it would be particularly useful to gather data on: the involvement of critical technology in the transaction; the ultimate owner and other relevant details of the target company; the purpose of the transaction; the degree of risk of technology leakage; as well as the transaction's value, timeline, and the equity and voting rights to be acquired. Moreover, the relevant MS authority or the Commission should be able to enter into a dialogue with the outbound investor and request additional information as necessary before granting approval.

Regarding changes of circumstances, given the proposal for the Union to implement a three-tier system, it would be necessary to require outbound investors to notify the relevant MS authority or the Commission when a change occurs that alters the classification of a transaction.

[530] *See* sec 4.3.1 70 and 71.
[531] *See* sec 4.1.1 62.

For example, if a transaction is initially categorised as low-risk and merely notifiable, but in the course of its execution a risk of critical technology leakage emerges, this change should trigger a duty to notify. Thus, a mixed approach, drawing on elements of both the Chinese and U.S. screening mechanisms, would be appropriate. This would comprise two elements: (i) introducing a 'knowledge requirement', under which an investor who becomes aware, during or after completion of a transaction, of circumstances that would have led to a different categorisation must notify the authority within a specified number of days; and (ii) setting out specific circumstances, such as the change in the number of investment entities or investment location changes, that would require a new evaluation of the transaction. Such a system would ensure, on one hand, that changes affecting the substance of a transaction, but not its overall structure, are duly notified to the relevant authority and assessed by the outbound investor, and, on the other hand, that investors are obliged to reassess and re-categorise a transaction if a change in circumstances renders it fundamentally different in structure or amounts to the creation of a new, separate transaction.

Finally, regarding post-transaction supervision, the Union's approach could draw inspiration from the Chinese screening mechanism.[532] Given the availability of administrative capacity involving 27 MS authorities and the Commission and the relatively limited number of outbound transactions involving the three critical technologies, the Union could consider introducing proportionate post-transaction monitoring. Specifically, it would be advisable to maintain a 'finger on the pulse' of moderate-risk transactions that were notified and approved by providing for annual or bi-annual reviews of the risks involved, or by granting the relevant MS authority or the Commission the power to issue a risk warning. By contrast, certain elements of the Chinese approach, such as mandatory reporting of 'major adverse events' could be disregarded,

[532] *See* sec 4.3.1 71 and 72.

as these would already be covered by the proposed 'change of circumstances' obligation. If a supervision mechanism is adopted, it should remain a discretionary tool for the relevant authorities and avoid becoming an additional reporting burden on outbound investors.

5.4.3 Suggestions on Enforcement Features

Regarding the definition of violations and corresponding penalties, the EU should outline a clear system of enforcement to ensure the effectiveness of its screening mechanism and to make outbound investors conscious of the legal consequences involved in endangering the Union's economic security. Violations should be defined broadly, taking inspiration from the three jurisdictions compared and encompassing both substantive and procedural breaches, such as: (i) carrying out a prohibited transaction; (ii) failing to notify a transaction or obtain approval; (iii) misrepresentation or omission of information; and (iv) non-compliance with modification or post-transaction obligations. Taking inspiration from Art. 25 DUR, the Union should define these violations in the potential outbound investment screening regulation, while leaving the determination of penalties to the MSs, provided they are effective, proportionate and dissuasive. The Union could also consider setting minimum thresholds for pecuniary fines or imprisonment terms directly in the regulation to ensure consistency. To avoid fragmentation, an 'enforcement coordination mechanism' between MS and the Commission should be established, enabling the exchange of information on enforcement practices and detected infringements. Penalties should be differentiated based on the gravity of the breach: while procedural violations could be subject to administrative fines, substantive breaches should permit more severe consequences, including the suspension of transactions and possible criminal penalties.

6. Conclusion

The present paper sought to answer the question '*To what extent is the European Union currently regulating outbound investment in critical technologies adequately, compared to the regulatory frameworks of the United States, Japan and China, and what lessons can it draw from these jurisdictions to improve its outbound investment regime?*'

To comprehensively answer this question, four sub-questions need to be tackled: *firstly*, what are the most important policy considerations the EU must take into account when developing a potential outbound investment screening mechanism regarding outbound investment transactions in critical technologies? *Secondly*, how is the EU currently regulating outbound investments in critical technologies and to what extent is there space for improvement? *Thirdly*, does the EU have the power to enact an outbound investment screening mechanism and what form should such a legislative instrument take? *Finally*, what lessons could the EU draw from the U.S., Japanese and Chinese outbound investment frameworks?

As to the first question, in its numerous policy papers forming part of the Legislative Train on Outbound Investment Screening, the EU has reaffirmed its awareness of the importance of outbound investment transactions and of their potential to endanger economic security. Thus, developing an adequate Union screening mechanism that prevents outbound investment transactions from being weaponised is therefore crucial. A key consideration here is to preserve the benefits of outbound investments, such as: access to new markets, cooperative innovation and lower manufacturing costs, while minimising the risks of critical technology leakage as a result of such investments. The Union also previously acknowledged that other jurisdictions have established outbound investment screening mechanisms, signalling that these concerns are not unique to the EU and that that some pressure to act exists. Furthermore, the central concern and primary driver behind a potential screening mechanism are forced technology

transfers and related practices, including the recruitment of highly specialised personnel. China stands at the centre of these concerns, as numerous documented cases identify it as the main jurisdiction implicated in such practices. While this issue ultimately relates to the design of the mechanism, the Union must subject certain jurisdictions to heightened scrutiny and be more alert when assessing outbound investment transactions involving target companies located in such jurisdictions. Finally, the increasing importance of critical technologies, such as: semiconductors, AI and quantum, must be observed. The framework must remain open to include other critical technologies that the Union is currently monitoring and assessing. Most importantly, it will be necessary for the EU to continuously reinforce its commitment to free trade, despite the restrictive nature of a screening mechanism, while actively standing in defense of its economic security.

As to the second question, the EU currently does not regulate outbound investments in critical technologies. While the DUR addresses technology leakage in one particular outbound investment scenario and the WTO DSU has contributed to adjustments in China's domestic legal framework on forced technology transfers and similar practices, a clear regulatory gap remains. Effectively, a need for a dedicated mechanism exists but a corresponding EU instrument is simply not in place. However, the Union is not 'starting from scratch'. As early as 2023 it set the Legislative Train on Outbound Investment Screening in motion and developed an action plan. With the adoption of the White Paper on Outbound Investments in January 2024, a public consultation on a proposed monitoring and review of outbound investments in critical technologies was launched. The consultation was finalised in April 2024 and a comprehensive report was published. This report helped the Commission set out the scope of a monitoring and risk assessment exercise, resulting in the adoption of CR 2025/63. Currently, this monitoring and risk assessment is ongoing and the Expert Group will compile the comprehensive MS reports due on 30 June 2026 and prepare a final comprehensive risk

assessment which will serve as a reference point for future debates on the necessity for and content of possible policy responses or mitigating measures. In effect, the 'space for improvement' could likely be filled effectively by the enactment of an outbound investment screening mechanism.

As to the third question, the EU has the power to enact an outbound investment screening mechanism. This competence arises from Article 207(1) TFEU, which mandates the Union to establish a Common Commercial Policy covering, *inter alia*, outbound investment. Pursuant to Article 207(2) TFEU, for the purpose of establishing the CCP, the EP and the Council may adopt regulations in accordance with the ordinary legislative procedure, on the initiative of the Commission. Moreover, an EU outbound investment screening mechanism would comply with the principle of proportionality.

As to the fourth question, this paper comparatively analysed the outbound investment screening mechanisms of the U.S., Japan, and China to draw insights from their practices for a potential Union screening mechanism. A total of 11 commonly recurring features were identified across these jurisdictions and placed into three categories: (i) scope of application features, (ii) procedural design features, and (iii) enforcement features. Section 5.4 then provided a targeted set of suggestions for a possible EU outbound investment screening mechanism based on this comparative analysis. The suggestions are intended to provide informed guidance to the Commission shall it consider proposing a possible policy response to the EP and the Council based on the monitoring exercise and the final risk assessment in accordance with CR 2025/63. Beyond these specific takeaways on how an EU outbound investment screening mechanism could potentially be designed, some broader insights can also be drawn. Most prominently, the U.S. has emerged as the Union's closest point of reference for a potential screening mechanism. Its framework targets the same three critical technology areas of semiconductors, AI and

quantum, and it repeatedly emphasises the need to screen outbound investments in these areas to prevent the risk of technology leakage. By contrast, the screening mechanisms of Japan and China offer different insights. Their mechanisms, although rooted in 'opening up' policies and shaped by a more political and state-control economy have been in operation for decades. Similar to the U.S. and potentially the EU, they also seek to address transactions involving military, dual-use, and enabling technologies. Another underlying commonality is that the screening frameworks aim to reduce the administrative burden on both outbound investors and the competent screening authorities. For the Commission and the Union institutions, this will translate into the challenge of striking a balance of ensuring the mitigation of technology leakage risks, while minimising the aforementioned administrative burden. The Union nevertheless will hopefully be able to rely on the resources of the 27 MS authorities, as well as the Commission. Ultimately, the necessity to act is clear. The EU is a step behind other major jurisdictions in protecting its critical technologies and safeguarding supply chain resilience. And although the risks involved will be much clearer upon the conclusion of the monitoring and risk assessment phase, the development of a screening mechanism or at least a comparable system appears to be the next logical step in safeguarding its economic security.

In conclusion, the European Union does not yet have a comprehensive framework for regulating outbound investments in the critical technologies of semiconductors, AI and quantum at present, compared to the regulatory frameworks of the U.S., Japan and China. When assessing whether to improve its own outbound investment regime, it should draw on the structure and approaches of these jurisdiction and possibly outline its own outbound investment screening mechanism. Its central task here will be to balance the effective mitigation of risks of technology leakage as a result of outbound investments, while simultaneously minimising the administrative burden.

Bibliography

Alves Dias P *et al, China: Challenges and Prospects from an Industrial and Innovation Powerhouse* (EUR 29737 EN, 2019) 13.

Almeida A et al., *Global Players from Emerging Markets: Strengthening Enterprise Competitiveness through Outward Investment* (UNCTAD/ITE/TEB/2006/9, United Nations 2007) 4, 41, 52-56; *see also* John H. Dunning, '*The Eclectic Paradigm of International Production' (1988) vol 19 no 1* Journal of International Business Studies 1.

Anonymous, 'China: Automotive industry industrial policy' [1994] vol 16, issue 9 East Asian Executive Reports https://www.proquest.com/docview/204128136?sourcetype=Trade%20Journals.

Baptista E, 'What is DeepSeek and why is it disrupting the AI sector?' (*Reuters*, 28 January 2025) https://www.reuters.com/technology/artificial-intelligence/what-is-deepseek-why-is-it-disrupting-ai-sector-2025-01-27/.

Barrabi T, 'DeepSeek hired talent from Microsoft's controversial AI research lab in China' https://nypost.com/2025/02/10/business/deepseek-hired-talent-from-microsofts-controversial-ai-research-lab-in-china/.

Bejing Review, 'High-Speed Rail Timeline' (*Cover Stories Series 2011*, 14 June 2011) https://www.bjreview.com/Cover_Stories_Series_2011/2011-06/14/content_367195.htm.

Berg O, Kelliher K, Sensenig T and Roussier L, 'EU Commission Recommends Review of Outbound Investments in Advanced Semiconductors, AI, and Quantum Technologies' (*Insight Alert*, 28 February 2025) https://www.whitecase.com/insight-alert/eu-commission-recommends-review-outbound-investments-advanced-semiconductors-ai-and.

Bradsher K, 'Hybrid in a Trade Squeeze' (*New York Times*, 5 September 2011) https://archive.ph/hm15C#selection-463.208-463.255.

Burrows VK, 'Executive Orders: Issuance and Revocation' (2010) *CRS Report RS20846* https://onlinelibrary-wiley-com.uaccess.univie.ac.at/doi/epdf/10.1111/j.1741-5705.2012.03945.x.

Butts D, 'Taiwan blacklists China's Huawei and SMIC, further aligning with U.S. trade policy' (*CNBC*, 16 June 2025) https://www.cnbc.com/2025/06/16/taiwan-blacklists-china-huawei-smic-further-aligning-with-us-trade-policy-.html.

Caballar RD and Stryker C, 'What is neuromorphic computing?'(IBM, 27 June 2024) https://www.ibm.com/think/topics/neuromorphic-computing.

Capie F, 'Development and Evolution of International Financial Architecture' in Gerard Caprio, Philippe Bacchetta, James R. Barth, Takeo Hoshi, Philip R. Lane, David G. Mayes, Atif R. Mian, Michael Taylor (eds) *Handbook of Safeguarding Global Financial Stability* (Elsevier 2012).

Carril-Caccia F and Pavlova E, 'Foreign direct investment and its drivers: a global and EU perspective' in European Central Bank (ed), *Economic Bulletin* (Issue 4 European Central Bank 2018) 61.

Cerutti I and Nardo M, 'Semiconductors in the EU' (2023).JRC Technical Report https://publications.jrc.ec.europa.eu/repository/handle/JRC133850.

CFIUS, 'Annual Report to Congress' (2019) https://home.treasury.gov/system/files/206/CFIUS-Public-Annual-Report-CY-2019.pdf.

China Briefing, 'China's SAIC Motors and GM Complete Electric Car JV' (*News*, 27 September 2011) https://www.china-briefing.com/news/chinas-saic-motors-and-u-s-gm-complete-electric-car-joint-venture/.

China Law Translate, 'Implementation Measures for the Foreign Investment Law ' (*State Council*, 26 December 2019) https://www.chinalawtranslate.com/en/implementation-regulations-for-the-foreign-investment-law/.

Cligendael Institute, 'About us' (2025) https://www.clingendael.org/about-us.

Collins D, *An Introduction to International Investment Law* (2nd edition Cambridge University Press 2023).

Congress, 'Regulation of U.S. Outbound Investment to China' (*Congressional Research Service*, 10 December 2024) https://www.congress.gov/crs-product/IF12629.

—— 'China's Auto Sector Development and Policies: Issues and Implications' (*Congressional Research Service*, 25 June 2012) https://www.congress.gov/crs-product/R40924.

Congressional Research Service, '*Foreign Direct Investment: Background and Issues'* (*CRS Report No IF10636*, 19 February 2025) https://www.congress.gov/crsreports/if10636.

Cornyn J, 'Cornyn, Feinstein, Burr Introduce Bill to Strengthen the CFIUS Review Process, Safeguard National Security' (*VoteSmart*, 8 November 2017) https://justfacts.votesmart.org/public-statement/1204881/cornyn-feinstein-burr-introduce-bill-to-strengthen-the-cfius-review-process-safeguard-national-security#.WgNM-BNSz-Q.

Coto AS and Craig KL, ' Outbound Investment Rules and Implications on U.S. Loan Documentation' (*McGuire Woods*, 28 April 2025) https://www.mcguirewoods.com/client-resources/alerts/2025/4/outbound-investment-rules-and-implications-on-u-s-loan-documentation/.

Crochet V and Zhou W, 'The Rise of Outbound Investment Screening: A Vacuum in International Economic Law' (*Blog of the European Journal of International Law,* 27 December 2024) https://www.ejiltalk.org/the-rise-of-outbound-investment-screening-a-vacuum-in-international-economic-law/.

Davis CC, Jiang J, Wolf KJ, Penberthy Padgett K, Peek C, Gurtunca JA, 'President Biden Signs Executive Order on Outbound Investment' (*Akin*, 14 August 2023) https://www.akingump.com/en/insights/alerts/president-biden-signs-executive-order-on-outbound-investment.

Deep Data Space, 'Floating Point Operations Per Second' (2025) https://deepdataspace.com/en/glossary/180/.

Djizmedjian M, 'Regulatory Requirements Across Industries: A Comparative Analysis of the United States and Europe' (*Infomineo*, 30 December 2024) https://infomineo.com/blog/regulatory-requirements-key-us-vs-europe-standards/.

Dimitropoulos G, 'National Security: The Role of Investment Screening Mechanisms' in Julien Chaisse, Leïla Choukroune and Sufian Jusoh (eds), *Handbook of International Investment Law and Policy* (vol 1, Springer 2021) 11.

Du J and Ji X, ‘Assessing the outward foreign investment regulatory regime in China: a unified outward foreign investment law on the horizon?’ (2024) vol 31, issue 1 *Asia Pacific Law Review* https://www.tandfonline.com/doi/full/10.1080/10192557.2024.2397639.

Duthoit A and Krumbmüller F, ‘Tech wars: US vs China rivalry for electronics out to 2035’ (*Coface for Trade*, 13 March 2025) https://www.coface.com/news-economy-and-insights/tech-wars-us-vs-china-rivalry-for-electronics-out-to-2035 accessed 15 September2025.

Edler J, Blind K, Kroll H and Schubert T, ‘Technology sovereignty as an emerging frame for innovation policy. Defining rationales, ends and means‘ in Knut Blind, Martin Kenney, Aija Leiponen and Timothy Simcoe (eds), *Research Policy* (vol 52 issue 6 Elsevier 2023).

Ellis (2025) https://ellis.eu/.

EUR-Lex, 'Principle of proportionality' (*Glossary*, 2025) https://eur-lex.europa.eu/EN/legal-content/glossary/principle-of-proportionality.html.

European Chamber of Commerce in China, ‘Business Confidence Survey 2019’ (*Business Confidence Survey*, 2019) https://www.rolandberger.com/publications/publication_pdf/Business-Confidence-Survey-2019.pdf.

European Commission, ‘*Foreign Direct Investments: EU screening framework*’ (*CIRCABC*, 4 July 2022) https://circabc.europa.eu/ui/group/be8b568f-73f3-409c-b4a4-30acfcec5283/library/5975e8f0-7679-47a2-9770-a49aedd5cef9/details.

—— ‘Dual-use technologies’ (*Research and Innovation*) https://research-and-innovation.ec.europa.eu/research-area/industrial-research-and-innovation/dual-use-technologies_en.

—— 'European Chips Act' (Strategy and policy) https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-chips-act_en.

—— ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions -

Towards a comprehensive European international investment policy' COM (2010) 0343 final 3.

—— 'White Paper on levelling the playing field as regards foreign subsidies' COM (2020) 253 final.

—— 'EU–China Comprehensive Agreement on Investment' (*Briefing: International Agreements in Progress*, 22 January 2021) https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/679103/EPRS_BRI(2021)679103_EN.pdf.

—— 'European Commission work programme for 2023 Overview for parliamentary committees' COM (2022) 548 final 8.

—— and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament, the European Council and the Council on "European Economic Security Strategy"' (2023) JOIN 20 final https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023JC0020.

—— 'Speech by President von der Leyen on EU-China relations to the Mercator Institute for China Studies and the European Policy Centre' (*Presscorner*, 30 March 2023) https://ec.europa.eu/commission/presscorner/detail/en/speech_23_2063.

—— 'Advancing European Economic Security: An Introduction to Five New Initiatives' COM (2024) 22 final.

—— 'EU Foreign Direct Investment Screening 2024 Revision' (*European Economic Security Strategy*, 24 January 2024) https://ec.europa.eu/commission/presscorner/api/files/attachment/877349/Factsheet%20Economic%20Security%20-%20FDI%20Screening.pdf.

—— 'Targeted consultation on the White Paper on Outbound Investment of 24 January 2024' (Summary of responses, 2024).

—— 'White Paper on Outbound Investments' COM (2024) 24 final.

—— Commission calls on Member States to review outbound investments and assess risks to economic security' (*Press Release*, 15 January 2025) https://ec.europa.eu/commission/presscorner/detail/en/ip_25_261.

—— 'EU launches Invest AI initiative to mobilise €200 billion of investment in artificial intelligence' (Press corner, 11 February 2025) https://ec.europa.eu/commission/presscorner/detail/en/ip_25_467.

—— 'Ninth meeting of the Commission Expert Group on Outbound Investment' (DG Trade, 27 February 2025).

—— 'Tenth meeting of the Commission Expert Group on Outbound Investment' (DG Trade, 1 July 2025).

—— 'Quantum' (*Shaping Europe's Digital Future*, 2 July 2025) https://digital-strategy.ec.europa.eu/en/policies/quantum#:~:text=With%20quantum%2C%20we%20will%20be,powerful%20supercomputers%20cannot%20currently%20manage.

European Parliament, 'US approach to outbound investment screening' (*At a Glance*, 13 September 2023) https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2023)751470.

—— Resolution of 6 April 2011 on the future European international investment policy (2010/2203(INI)).

—— A New Plan for Europe's Sustainable Prosperity and Competitiveness' (*Legislative Train Schedule*) https://www.europarl.europa.eu/legislative-train/theme-a-new-plan-for-europe-s-sustainable-prosperity-and-competitiveness.

—— 'What is the Legislative Train?' (*Jargon Jungle*, 16 December 2024) https://en.audio.europarl.europa.eu/main/pub/podcast/1006420-What-is-the-Legislative-Train.

—— 'Legislative Train Schedule' (*European Parliament*, 2024) https://www.europarl.europa.eu/legislative- train/schedule.

—— ‘Legislative Train Schedule’ (*European Parliament*, 2025) https://www.europarl.europa.eu/legislative-train/schedule accessed 15 September2025 Glossary – Terminology – ‘TRAIN’.

—— ‘Outbound Investment Screening’ (*Legislative Train 06. 2025*, 20 June 2025) https://www.europarl.europa.eu/legislative-train/theme-a-new-plan-for-europe-s-sustainable-prosperity-and-competitiveness/file-outbound-investment-screening.

European Union External Action, ‘EU steps up WTO action against China's forced technology transfers, 20 December 2018’ (*EEAS Archive,* 20 December 2018) https://www.eeas.europa.eu/node/55837_en.

Eurostat, 'Glossary:Foreign direct investment (FDI)' (*Statistics Explained*, 6 July 2021) https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Foreign_direct_investment_(FDI).

EU Survey, ‘Published Results: TC Monitoring Outbound Investments in Technology’ (*Results*, 22 July 2025) https://ec.europa.eu/eusurvey/publication/TC_Monitoring_Outbound_Investments_in_Technology.

Fechter J, ‘Next-level Screening? The Case of Outbound Investment Screening’ in Jens Hillebrand Pohl, Joanna Warchol, Thomas Papadopoulos and Janosch Wiesenthal (eds), Weaponising Investments (vol 2, Springer 2023) 79 Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union [2019] OJ L 79I.

French Hill Chairman, 'National Security Subcommittee Highlights Importance of CFIUS' (*United States House Committee on Financial Services*, 17 July 2025) https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=410811.

FTC, 'A Look Behind the Screens Examining the Data Practices of Social Media and Video Streaming Services' (*FTC Staff Report,* September 2024) https://www.ftc.gov/system/files/ftc_gov/pdf/Social-Media-6b-Report-9-11-2024.pdf.

PM, ‘Assessing the EU Framework Regulation for the Screening of Foreign Direct Investment—What Is the Effect on Chinese Investors?’ (2020) vol 6 *The Chinese Journal of Global Governance* 36 https://doi.org/10.1163/23525207-12340046.

Gambacorta L and Shreeti V, ‘The AI supply chain’ (2025) no 154 BIS Papers Monetary and Economic Department https://www.bis.org/publ/bppdf/bispap154.pdf.

General Motors, ' General Motors celebrates arrival of Chevrolet Volt in China' (*Reliable Plant*) https://www.reliableplant.com/Read/26336/General-Motors-Volt-China.

'GM unveils Chevy EV at the Expo' (*China Daily*, 1 September 2010) https://www.chinadaily.com.cn/business/greenchina/2010-09/01/content_11302060.htm.

'GM to localize Volt if demand picks up' (*China Daily,* 1 Septembet 2010) https://www.chinadaily.com.cn/bizchina/2010-09/01/content_11241720.htm.

Gompert DC, ‘Winning the US–China Technology Race’ (2024) vol 66 issue 4 Survival Global Politics and Strategy.

Goncharuk V, ‘Artificial Intelligence in Defence of Ukraine’ (2024) series 2, no 6 Russia’s War in Ukraine https://icds.ee/wp-content/uploads/dlm_uploads/2024/09/Layout-AI-in-Defence-of-Ukraine.pdf.

Gregersen E, ‘Semiconductor’ (*Encyclopedia Britannica*, 25 July 2025) https://www.britannica.com/science/semiconductor.

Grid, ‘Why Are Semiconductors So Important?’ (*No Dumb Questions*, 11 October 2022) https://www.youtube.com/watch?v=ESXPfdXCEeE.

Grieger G and Chahri S, ‘International trade dispute settlement World Trade Organisation Appellate Body crisis and the multi-party interim appeal arbitration arrangement’ (European Parliamentary Research Service, June 2024) https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762342/EPRS_BRI(2024)762342_EN.pdf.

Haeck P, ‘A new tech race is on. Can Europe learn from the ones it lost?’ (*Politico*, 2 July 2025) https://www.politico.eu/article/europe-china-us-artificial-intelligence-ai-governments/.

Hanemann T, Witzke M, Vest C, Dudley L, Featherston R, ‘An Outbound Investment Screening Regime for the United States?’ (2022) A Report by the US-China Investment Project 1 https://rhg.com/wp-content/uploads/2022/01/RHG_TWS_2022_US-Outbound-Investment.pdf.

He L, 'China is pumping another $47.5 billion into its chip industry' (CNN Business, 28 May 2024) https://edition.cnn.com/2024/05/27/tech/china-semiconductor-investment-fund-intl-hnk/index.html.

Heritage Center, '1982 -1999, Globalization, One Company, One Team' (*Generations of GM Hisotry*) https://web.archive.org/web/20110817224536/http://history.gmheritagecenter.com/wiki/index.php/1982_-1999,_Globalization,_One_Company,_One_Team.

Holland S, 'Trump announces private-sector $500 billion investment in AI infrastructure' (Reuters, 22 January 2025) https://www.reuters.com/technology/artificial-intelligence/trump-announce-private-sector-ai-infrastructure-investment-cbs-reports-2025-01-21/.

Huanxin Z, ‘Chinese FDI in US plunges as obstacles rise’ (*China Daily*, 17 January 2019) https://www.chinadaily.com.cn/a/201901/17/WS5c3f5c98a3106c65c34e4e0f.html.

International Trade Administration, ‘South Korea Semiconductors’ (*Market Intelligence*, 9 May 2023) https://www.trade.gov/market-intelligence/south-korea-semiconductors.

JETRO, ‘Notifications or reports required for foreign direct investment: Japan' (*Trade and Investment Consultation Q&A*) https://www.jetro.go.jp/world/qa/04A-010802.html.

Ji K and Nauta L, ‘Mapping Global Supply Chains – The Case of Semiconductors’ (*Rabobank*, 14 June 2023) https://www.rabobank.com/knowledge/d011371771-mapping-global-supply-chains-the-case-of-semiconductors.

Kerr D, ‘DeepSeek hit with ‘large-scale’ cyber-attack after AI chatbot tops app stores’ (*The Guardian*, 27 January 2025) https://www.theguardian.com/technology/2025/jan/27/deepseek-cyberattack-ai.

Korteweg R, Kranenburg V, Van der Putten FP, ‘Sino-European joint ventures and the risk of technology transfers‘ (*Publications,* 29 August 2022)

https://www.clingendael.org/publication/sino-european-joint-ventures-and-risk-technology-transfers.

Kratz A, Zenglein MJ, Brown A, Sebastian G and Meyer A, 'Dwindling investments become more concentrated - Chinese FDI in Europe: 2023 Update' (2024) *Report by Rhodium Group and MERICS* https://merics.org/en/report/dwindling-investments-become-more-concentrated-chinese-fdi-europe-2023-update.

Krelina M, 'Quantum technology for military applications' (2021) no 8 *EPJ Quantum Technology* https://epjquantumtechnology.springeropen.com/articles/10.1140/epjqt/s40507-021-00113-y.

Legal Information Institute, 'Executive Orders' (*Cornell Law School*) https://www.law.cornell.edu/executive-orders.

Lian A, 'Is the EU Leading the Charge or Losing the Race in Regulating AI?' (International Policy Digest, 26 March 2025) https://intpolicydigest.org/is-the-eu-leading-the-charge-or-losing-the-race-in-regulating-ai/.

LSE, 'AI's hidden supply chain explained: why it's more fragile than you think | LSE Research' (*Youtube,* 13 May 2025) https://www.youtube.com/watch?v=6mxoTWHytkg&t=2s.

Lu H, ,'How Did China Become Strong in High-Speed Rail?' (*Economic Development*, 26 December 2019) https://www.gov1.com/economic-development/articles/how-did-china-become-strong-in-high-speed-rail-MvZhPYgfL9d6eDX6/.

March C and Schieferdecker I, 'Technological Sovereignty as Ability, Not Autarky' (2021) CESifo Working Paper, No. 9139, 1 https://www.econstor.eu/bitstream/10419/236681/1/cesifo1_wp9139.pdf.

Martin P, 'What is quantum technology?' (*PA Consulting*, 2025) https://www.paconsulting.com/insights/what-is-quantum-technology.

McBride J, Berman N, and Chatzky A, 'China's Massive Belt and Road Initiative' (*Council on Foreign Relations*, 2 February 2023) https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative.

McMahon L and McCallum S, ‘What are semiconductors and why is Trump targeting them?’ (*BBC*, 14 April 2025) https://www.bbc.com/news/technology-66394406.

Mendenhall J, Golesworthy C and Lyall L, 'U.S. Outbound Investment Regulations: Lessons and Takeaways Six Months In' (*Sidley,* 14 July 2025) https://www.sidley.com/en/insights/newsupdates/2025/07/us-outbound-investment-regulations-lessons-and-takeaways-six-months-in.

Microsoft, 'Explore Quantum: Superposition' (*Microsoft*, 2025) https://quantum.microsoft.com/en-us/insights/education/concepts/superposition#:~:text=Superposition%20is%20a%20fundamental%20concept,0%22%20and%20%221%22.

Ministerial Conference, ‘Accession of the People’s Republic of China: Decision of 10 November 2001’ (2001) WT/L/432 16, point 8(a).

Ministry of Finance, ‘Foreign Exchange and Foreign Trade Act Foreign Investment Screening System’ (2023) *FY2023* 1 https://www.mof.go.jp/english/policy/international_policy/fdi/Data/annual_report2023_en.pdf.

Moura R and Forte R, ' The effects of foreign direct investment on the host country's economic growth: Theory and empirical evidence' (2013) vol 58 no 3 Singapore Economic Review 1.

National Committee on U.S.-China Relations, 'An Outbound Investment Screening Regime for the United States? Background and Implications' (*Youtube*, 4 February 2022) https://www.youtube.com/watch?v=5bTIYrdeyIE&list=LL&index=1.

NDRC, ‘Notice of the National Development and Reform Commission on the Release of the Format Text of the Measures for the Administration of Overseas Investment by Enterprises (2018 Edition)’(NDRC Foreign Investment [2018] No. 252, issued on February 9, 2018) NDRC, ‘Overseas Investment Project Filing Form’ https://zfxxgk.ndrc.gov.cn/web/iteminfo.jsp?id=19492&.

Ngan O and Mendenhall J, 'Impact of U.S. Outbound Investment Rules on Loan Transactions in China and Practical Considerations' (*Sidley,* 18 March 2025)

https://datamatters.sidley.com/2025/03/18/impact-of-u-s-outbound-investment-rules-on-loan-transactions-in-china-and-practical-considerations/.

Office of the United States Trade Representative, 'Initiation of Section 301 Investigation; China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation' (*82 Federal Register 40213*, 24 August 2017) https://ustr.gov/sites/default/files/enforcement/301Investigations/FRN%20China%301.pdf.

—— 'Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974: Executive Summary' (*USTR*, 22 March 2018) https://ustr.gov/sites/default/files/enforcement/301Investigations/301%20Draft%20Exec%20Summary%203.22.ustrfinal.pdf.

—— 'Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union' (*USTR*, 14 January 2020) https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/january/joint-statement-trilateral-meeting-trade-ministers-japan-united-states-and-european-union.

—— 'Economic And Trade Agreement Between The Government Of The United States Of America And The Government Of The People's Republic Of China' (*USTR,* 15 January 2020) https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf.

Our China Story, '30 June 2011: Beijing-Shanghai High-speed Railway officially launched' (*Today in History*, 30 June 2024) https://www.ourchinastory.com/en/12093/Beijing-Shanghai-High-speed-Railway-officially-launched.

Pan JW, 'Quantum technologies need big investments to deliver on their big promises' (Nature, 25 February 2025) https://thequantuminsider.com/2025/03/07/china-launches-138-billion-government-backed-venture-fund-includes-quantum-startups/.

Petreski M and Olczyk M, 'Foreign Direct Investment and Job Creation in EU Regions' (2025).

Ping X, Lijuan Y, Caihong F, Ping Y and Jiancheng Z, 'Implementing Regulation for Foreign Investment Law heralding a New Era of Foreign Investment Regime in China' (*China Law*

Insight, 8 January 2020) https://www.chinalawinsight.com/2020/01/articles/foreign-investment/implementing-regulation-for-foreign-investment-law-heralding-a-new-era-of-foreign-investment-regime-in-china/#_ftn5.

Pirelli Press Office, 'Press Release' (*Pirelli*, 18 June 2023) https://press.pirelli.com/press-release-18-june-2023/.

Pomana A, Guerrero A, Saké J, 'EU Commission's New Outbound Investment Recommendation: The Embryo of a New Screening Regime?' (*Kluwer Competition Law Blog*, 24 January 2025) https://competitionlawblog.kluwercompetitionlaw.com/2025/01/24/eu-commissions-new-outbound-investment-recommendation-the-embryo-of-a-new-screening-regime/.

Primack D, 'Anti-China rhetoric could cause trouble for U.S. tech investors' (*Axios*, 9 April 2019) https://www.axios.com/2019/04/09/anti-china-rhetoric-tech-investors-silicon-valley.

Priyadarshi K, '10 Largest GPU Companies in the World' (*Techovedas*, 18 January 2024) https://techovedas.com/10-largest-gpu-companies-in-the-world/.

Qiang C, ' How can we maximize the benefits of FDI?' (*World Economic Forum: Financial and Monetary Systems*, 27 November 2015) https://www.weforum.org/stories/2015/11/how-can-we-maximize-the-benefits-of-fdi/.

Quantum Gov, 'About the National Quantum Initiative: Overview' (*Quantum Gov,* 2025) https://www.quantum.gov/about/#QIS.

Quin JY, '"WTO-Plus" Obligations and Their Implications for the World Trade Organization Legal System: An Appraisal of the China Accession Protocol' (2003) 37(3) Journal of World Trade 483.

Reed Smith LLP, 'EU is getting one step closer to outbound investment control' (*Reed Smith Client Alerts*, 21 January 2025) https://www.reedsmith.com/en/perspectives/2025/01/eu-is-getting-one-step-closer-to-outbound-investment-control.

Ruberti M, 'The chip manufacturing industry: Environmental impacts and eco-efficiency analysis' (2023) vol 858, part 2 Science of The Total Environment https://www.sciencedirect.com/science/article/abs/pii/S004896972206973X.

Sacks D and Huang S, 'Onshoring Semiconductor Production: National Security Versus Economic Efficiency' (*Council on Foreign Relations*, 17 April 2024) https://www.cfr.org/article/onshoring-semiconductor-production-national-security-versus-economic-efficiency.

Schneider J and Smalley I, 'What is quantum computing?' (*IBM Blog*, 10 June 2025) https://www.ibm.com/think/topics/quantum-computing.

Semiconductor Industry Association, 'Building America's Innovation Economy' (*Industry Impact*, 2025) https://www.semiconductors.org/industry-impact/.

Sermcheep S, 'The Rise of Outward Foreign Direct Investment from ASEAN' in Casey Lee and Sineenat Sermcheep (eds), *Outward Foreign Direct Investment in ASEAN* (Lectures, Workshops, and Proceedings of International Conferences ISEAS–Yusof Ishak Institute 2017).

Shirouzu N, 'Train Makers Rail Against China's High-Speed Designs' (*YaleGlobal Online*, 2 December 2010) https://archive-yaleglobal.yale.edu/content/train-makers-rail-against-chinas-high-speed-designs.

Siemens, 'Across borders: Siemens and China – Milestones in a successful partnership' (*Siemens: Company*) https://www.siemens.com/global/en/company/about/history/stories/siemens-in-china.html.

Siemens Ltd., China Transportation Systems Group, 'Siemens Transportation Systems Group opens its high-speed train project office in Tangshan' (*Siemens Press Content*, 27 July 2006) https://web.archive.org/web/20090616110725/http://cn.siemens.com/cms/cn/english/ts/press/presscontent/Pages/2006_07_27.aspx.

Sykes AO, 'The Law and Economics of "Forced" Technology Transfer and Its Implications for Trade and Investment Policy (and the U.S.–China Trade War)' (2021) vol 13, issue 1 Journal of Legal Analysis 127.

Thadani A and Allen GC, 'Mapping the Semiconductor Supply Chain: The Critical Role of the Indo-Pacific Region' (*CSIS*, 30 May 2023) https://www.csis.org/analysis/mapping-semiconductor-supply-chain-critical-role-indo-pacific-region.

The Nation, 'China vows retaliation over Taiwan's tech export blacklist targeting Huawei, SMIC' (*The Nation,* 25 June 2025) https://www.nationthailand.com/blogs/news/world/40051747.

The White House, 'Statement by the President on United States Commitment to Open Investment Policy' (*Statements and Releases*, 20 June 2011) https://obamawhitehouse.archives.gov/the-press-office/2011/06/20/statement-president-united-states-commitment-open-investment-policy.

The World Bank, ' What is the difference between Foreign Direct Investment (FDI) net inflows and net outflows?' (*Foreign Direct Investment*) https://datahelpdesk.worldbank.org/knowledgebase/articles/114954-what-is-the-difference-between-foreign-direct-inve.

Think Tank European Parliament, 'International trade dispute settlement: World Trade Organisation Appellate Body crisis and the multi-party interim appeal arbitration arrangement' (*European Parliament*, 17 June 2024) https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762342.

Thoms A, 'European Union: European Commission issues Recommendation (EU) 2025/63 on the implementation of outbound investment screening mechanisms' (*International Commercial & Trade*, 3 February 2025) https://insightplus.bakermckenzie.com/bm/international-commercial-trade/europeean-union-european-commission-issues-recommendation-eu-202563-on-the-implementation-of-outbound-investment-screening-mechanisms.

Trakman L and Ranieri NW, 'Foreign Direct Investment: A Historical Perspective' in Leon Trakman and Nicola William Ranieri (eds), *Regionalism in International Investment Law* (Oxforc University Press 2013) 16.

Trains Worldexpresses, 'Go China' (*China*) https://www.trains-worldexpresses.com/500/517.htm.

TSMC, 'Manufacturing' (*Overview*) https://www.tsmc.com/english/dedicatedFoundry/manufacturing.

UIC, ‘China: Beijing-Shanghai high speed rail link has carried 100 million passengers’ (*High Speed Rail*, 5 March 2013) https://uic.org/com/enews/nr/335/article/china-beijing-shanghai-high-speed-3517.

UNCTAD, ‘The Evolution of FDI Screening Mechanisms’ [2023] issue no 25 Investment Policy Monitor https://unctad.org/system/files/official-document/diaepcbinf2023d2_en.pdf.

—— 'Regulations for the Implementation of the Foreign Investment Law of the People's Republic of China has been issued' (*Investment Policy Monitor*, 26 December 2019) https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3488/regulations-for-the-implementation-of-the-foreign-investment-law-of-the-people-s-republic-of-china-has-been-issued.

—— ‘Issued new Negative List for Foreign Direct Investment’ (*Investment Policy Monitor*, 1 January 2022) https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3792/issued-new-negative-list-for-foreign-direct-investment.

—— Outward FDI policies: Promotion and facilitation - regulation and screening’ [2024] issue no 27 Investment Policy Monitor https://unctad.org/publication/outward-fdi-policies-promotion-and-facilitation-regulation-and-screening.

—— 'World Investment Report' (2024) UNCTAD/WR 1 XI.

—— ‘AI market projected to hit $4.8 trillion by 2033, emerging as dominant frontier technology’ (*News*, 7 April 2025) https://unctad.org/news/ai-market-projected-hit-48-trillion-2033-emerging-dominant-frontier-technology.

U.S. Department of Treasury, ‘The Committee on Foreign Investment in the United States (CFIUS)’ (*Policy Issues*) https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.

—— 'Treasury Issues Regulations to Implement Executive Order Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern' (*Press Releases*, 28 October 2024) https://home.treasury.gov/news/press-releases/jy2687.

—— 'Outbound Investment Security Program: Frequently Asked Questions' (*Washington*, 23 May 2025) https://home.treasury.gov/system/files/206/Outbound-Investment-Security-Program-FAQs.pdf.

U.S. Department of State, 'Military-Civil Fusion and the People's Republic of China' (*WP Content*, 2020) https://www.state.gov/wp-content/uploads/2020/05/What-is-MCF-One-Pager.pdf.

Voelcker J, 'China's Buick Velite 5 is a Volt with a Nose Job' (*Green Car Reports*, 24 April 2017) https://www.greencarreports.com/news/1110078_chinas-buick-velite-5-is-a-volt-with-a-nose-job.

Wang N, 'WTO to investigate China tariffs on Australian wine' (*Vino-Joy*, 27 October 2021) https://vino-joy.com/2021/10/27/wto-to-investigate-china-tariffs-on-australian-wine/.

Wineland D, 'Quantum computer' (*Encyclopedia Britannica*, 13 June 2025) https://www.britannica.com/technology/quantum-computer.

Working Party on the Accession of China, 'Report of the Working Party on the Accession of China' (2001) WT/ACC/CHN/49 https://www.worldtradelaw.net/document.php?id=misc/ChinaWorkingPartyReport.pdf&mode=download#page=3.

World Bank Group, 'Foreign direct investment, net inflows (% of GDP)' (*Indicator*) https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS.

World Population Review, 'High Speed Rail by Country 2025' (*Infrastructure/Energy*, 2025) https://www.railway-technology.com/features/featurethe-importance-of-chinas-high-speed-tech-transfer-policy-5748075/.

WTO, 'Principles of the trading system' (*About WTO*) https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm.

—— EU initiates dispute complaint regarding Chinese patent licensing measures' (*Dispute Settlement*, 22 January 2025) https://www.wto.org/english/news_e/news25_e/ds632rfc_22jan25_e.htm.

Yam T, ‘China's high-speed-rail programme a case of too far, too fast’ (*South China Morning Post*, 25 August 2013) https://www.scmp.com/lifestyle/technology/article/1299188/chinas-high-speed-rail-programme-case-too-far-too-fast.

Yin Q, ‘Forced technology transfer performance requirement in international investment agreements—a Chinese perspective’ (2022) vol 17, no 2 Journal of Intellectual Property Law & Practice 114.

Zamani N, 'A Legal Comparative Approach towards the Screening of Outbound FDI. What Can the EU and Its Member States Learn from the US National Critical Capabilities and Defense Act Proposal?' (2022) 15 Erasmus L Rev 299.

Zhou W, Jiang H and Kong Q, ‘Technology Transfer under China’s Foreign Investment Regime: Does the WTO Provide a Solution?’ [2019] 54(3) *Journal of World Trade 455* https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/54.3/TRAD2020021.

Table of Cases

C-446/04 Test Claimants in the FII Group Litigation [2006] ECR p. I-11753.

ECJ, 'Opinion given pursuant to the second subparagraph of Article 228(1) of the EEC Treaty - International Agreement on Natural Rubber' (1979) ECR 1979-02871.Joined Cases C-282/4 and C-283/04 Commission/Netherlands [2008] ECR p. I-9141.

Opinion 2/15 of the Court (2017) ECLI:EU:C:2017:376.

WTO, China: Certain Measures Concerning the Protection of Intellectual Property Rights, (1 June 2018) WT/DS542.

WTO, China: Certain Measures on the Transfer of Technology – Request for Consultations by the European Union (6 June 2018) WT/DS549/1.

WTO, China: Certain Measures on the Transfer of Technology – Request for Consultations by the European Union (Revision) (8 January 2019) WT/DS549/1/Rev.1.

WTO, 'China: Certain Measures on the Transfer of Technology – Request to Join Consultations – Communication from Japan (11 June 2018) WT/DS549/2.

WTO, 'China: Certain Measures on the Transfer of Technology – Request to Join Consultations – Communication from the United States' (15 June 2018) WT/DS549/3.

WTO, 'China: Certain Measures on the Transfer of Technology – Request to Join Consultations – Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu' (20 June 2018) WT/DS549/4.

WTO, 'China: Certain Measures on the Transfer of Technology – Request to Join Consultations – Communication from the Chinese Taipei' (18 January 2019) WT/DS549/5.

Table of Legislation

Administrative Measures for Overseas Investment by Enterprises, by the National Development and Reform Commission (2017, No. 11).

Agreement establishing the World Trade Organization.

'Annex to the Commission Recommendation on critical technology areas for the EU's economic security for further risk assessment with Member States' (2023) COM 6689 final.

Arrêté du 2 février 2024 relatif aux exportations vers les pays tiers de biens et technologies associés à l'ordinateur quantique et à ses technologies habilitantes et d'équipements de conception, développement, production, test et inspection de composants électroniques avancés.

Cabinet Order on Inward Direct Investment, etc. No. 261 of October 11 (1980) https://www.cas.go.jp/jp/seisaku/hourei/data/idi.pdf.

Catalogue of Sensitive Industries for Overseas Investments (2018 Edition) Notice.

Code of Federal Regulations.

Commission, 'Annex to the Commission Recommendation on critical technology areas for the EU's economic security for further risk assessment with Member States' [2023] C(2023) 6689 final.

Commission Proposal for a Regulation of the European Parliament and of the Council establishing a framework of measures for strengthening Europe's semiconductor ecosystem (Chips Act) (2022) COM 46 final.

Communication from the Commission to the European Parliament and the Council, Quantum Europe Strategy: Quantum Europe in a Changing World' (2025) COM 363 final.

Commission Recommendation (EU) 2023/2113 of 3 October 2023 on critical technology areas for the EU's economic security for further risk assessment with Member States [2023] OJ L, 2023/2113.

Commission Recommendation (EU) 2025/63 of 15 January 2025 on reviewing outbound investments in technology areas critical for the economic security of the Union [2025] OJ L, 2025/63.

Consolidated version of the Treaty on the Functioning of the European Union - PROTOCOLS - Protocol (No 2) on the application of the principles of subsidiarity and proportionality [2008] OJ C 115 206.

Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (Text with EEA relevance) [2004] OJ L 24.

European Parliament resolution of 20 January 2021 on artificial intelligence: questions of interpretation and application of international law in so far as the EU is affected in the areas of civil and military uses and of state authority outside the scope of criminal justice (2020/2013(INI)) (2021) OJ C 456 34.

Executive Order 14105 of August 9, 2023 Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern (2023).

Export Administration Regulations, 15 CFR Parts 730-774.

Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949).

Foreign Exchange Cabinet Order No. 260 of October 11, (1980) https://www.cas.go.jp/jp/seisaku/hourei/data/FEO.pdf.

Foreign Investment Law of the People's Republic of China (Adopted at the Second Session of the 13th National People's Congress on March 15, 2019).

Foreign Investment Risk Review Modernization Act of 2018, § 31 CFR Part 801.

General Agreement on Tariffs and Trade (GATT 1947).

Guidelines on Overseas Investments (2017).

Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures.

Law of the People’s Republic of China on Foreign-Capital Enterprises.

National Emergencies Act.

Protocol on the Accession of the People's Republic of China (23 November 2001) WT/L/432.

Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 89 FR 90398, November 15, 2025 (to be codified at 31 CFR part 850).

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) [2016] OJ L 119.

Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (2019) OJ L 79I 1.

Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) [2021] OJ L 206.

Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market [2022] OJ L 330 1.

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (2024) OJ L, 2024/1689.

Regulations on the Implementation of the Foreign Investment Law of the People's Republic of China.

Report of the Working Party on the Accession of China (10 November 2001) WT/MIN(01)/3.

Special Administrative Measures (Negative List) for Foreign Investment Access (2024 Edition) Notes.

The Constitution of the United States.

The International Emergency Economic Powers Act.

Trade Act of 1974 (U.S.).

Treaty on European Union.

Treaty on the Functioning of the European Union.