



LOYENS  LOEFF

INTERNATIONAL TRADE

Chinese investments in the EU: How global change impacts on the rules of play

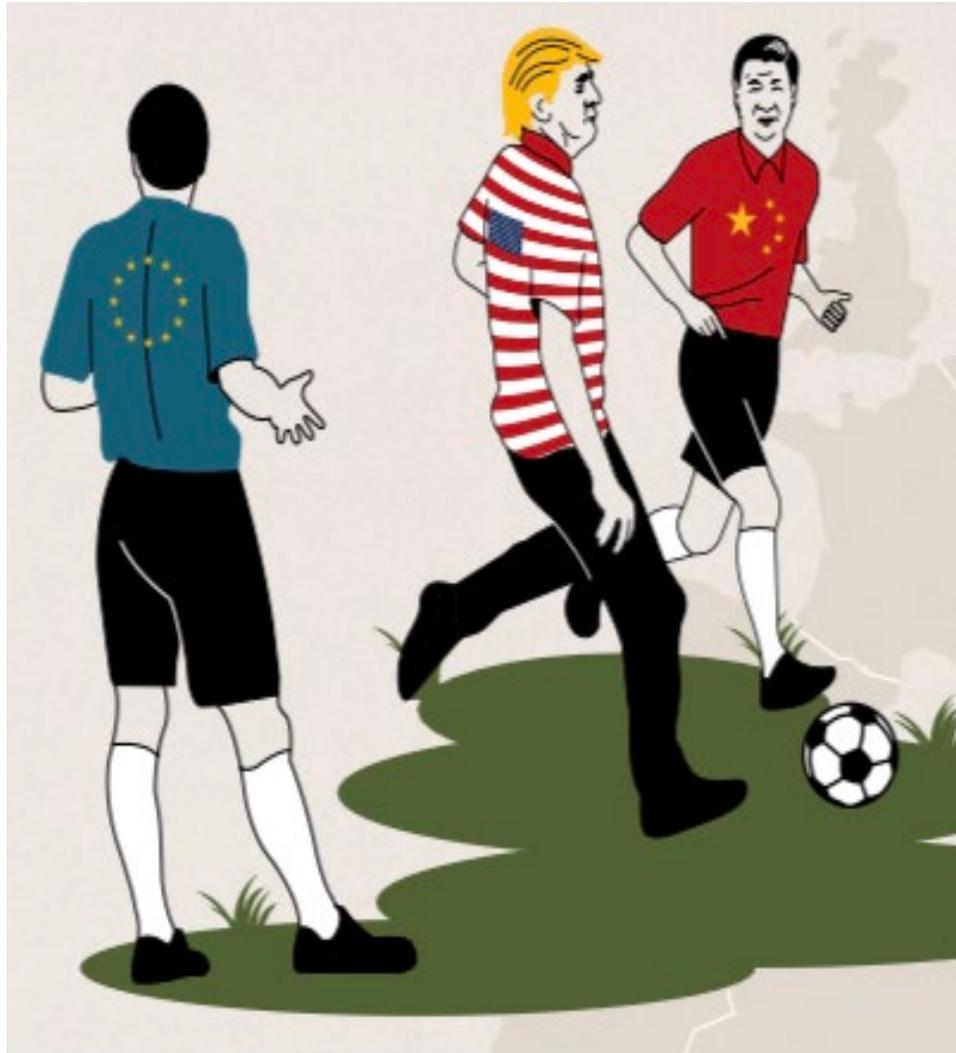
The legal view: a snapshot of the overall game-change in Europe
From liberal markets to regulated strategic thinking

30 June 2021: NHKBA event
Bert Gevers (Partner, Loyens & Loeff Brussels)

Some takeaways from the mission letter(s) to Commissioner Dombrovskis (°13 September 2020)

- “To support our economic sovereignty, I want you to develop proposals to ensure Europe is more resilient to **extraterritorial sanctions by third countries**. I want you to ensure that the sanctions imposed by the EU are properly enforced, notably throughout its financial system”.
- “I would like you to lead the work on strengthening Europe’s ability to protect itself from unfair trade practices. This means making better use of our trade defense instruments, seeking a level playing field in procurement and **implementing the new system for screening Foreign Direct Investment**”
- “In addition, I want you to look at how we can strengthen our trade toolbox (...) You should work with the Executive Vice-President for a Europe fit for the Digital Age to address **the distortive effects of foreign subsidies** in the internal market”





© MERICS: Export Controls & the US-CHINA tech war

How does the EU plan to become/remain a player ?

- FDI Screening Regulation (EU) 2019/452 (fast-tracked and effective as from 11 October 2020).
 - 18 EU MS have adopted/upgraded national FDI screening regimes & many more have concrete proposals (including 'open' economies BE, NL, DK, S, ...)
 - General notification + approval requirements
 - See also www.at-ica.com for country specific info.
- New Regulation to address distortions caused by foreign subsidies in the Single Market (°Proposal 5 May 2021)
 - Notification based & ex officio investigative tool
 - apply to all sectors and to a wide variety of situations
 - enforcement solely by Commission (remedies + penalties).
- EU Global Human Rights Sanctions regime (fast tracked & effective as from December 2020 + extension to cover AC/AB under discussion)
 - Currently listing several designated persons & entities from Russia, China, N-Korea, S-Sudan, ...



Charles Michel
@eucopresident

Europe is a **player**, not a playing field.

Today we took another step in forging a more balanced relationship with **China**.

A relationship that delivers on our mutual commitments & generates concrete results for both sides. 🇪🇺 🇨🇳

[#EUChina](#)

Vertaal Tweet



How does the EU plan to become/remain a player ?

- Recast of the EU Dual Use Regulation (°Effective September 2021)
 - Human security concept
 - Broader catch-all provisions targeting hardware & technology transfers
- Mandatory human rights due diligence legislation (EU Parliament Directive proposal Jan 21' – Commission Proposal expected soon)
 - Mandatory supply chain DD on compliance with human rights, environment & good governance
 - Several Member States have already implemented national legislation (German Supply Chain Act, French Duty of Vigilance Act, ...) or have proposals (Belgium)
- Proposal for a regulation on a mechanism to deter & counteract coercive action by non-EU countries (Public Consultation ended 15 June 21' – Proposal expected Q4 2021)
 - Seeks to address issues like extraterritorial sanctions (cfr. US secondary-sanctions)

Impact for investment & trade

- Significant increase the regulatory risk and burden for companies operating or investing in the EU;
- Regulatory clearance path for M&A involving EU targets, as companies may potentially have to file notifications under the new foreign subsidy mandatory procedures, "regular" merger control at EU or national level, AND pursuant to national FDI regimes prior to closing their transactions.
- There will also be increased regulatory uncertainty for international operators in the EU, even absent a transaction (especially on subsidies received from foreign states)
- Companies investing in the EU should – even if they passed the various tests- be aware of further (trade) restrictions (such as DU regulations, sanctions,...) which might impact the value of their investment