Regulation of Foreign Investments and Acquisitions: China as a Case Study

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Over the past decade, Chinese state-owned enterprises (SOEs) and private companies have acquired Israeli companies and invested at a growing rate in various Israeli civilian industries such as transportation infrastructure, food, chemicals, mining resources, cellular technologies, cybersecurity, and medical technology. In Israel, companies are required to turn to the Israel Securities Authority and report any outside overtures to acquire their assets (or investments that would constitute control), starting from the negotiation stage.[1] The current regulatory process in Israel focuses on essentially financial aspects, and assesses the acquiring company's corporate structure and its degree of financial leverage.

In many countries, the acquisition of local resources by foreign companies is subject to regulation. Indeed, unlike in Israel, different industrialized Western countries have special regulatory agencies that also assess security and political risks that could result from the acquisition of local companies by foreign bodies, and from their possible control over what are defined as strategic assets. These countries see China's global purchasing campaign as a combined economic and political challenge.

Economically, China's fast progress toward becoming a technology and innovation superpower threatens the competitive advantages of developed countries with knowledge-intensive economies such as the United States, Germany, South Korea, and Japan. In 2016, China for the first time ranked 25 in the World Innovation Index (while Israel ranked 21),[2] and in 2017 it climbed to 22 (while Israel climbed to 17).[3] Thus, China's becoming an innovation superpower, combined with its enormous production capacity

and its political aspirations in the international arena, is seen as a threat to the economic future of developed countries. Politically, various countries are concerned that if companies owned or connected to the Chinese government control assets defined as strategic (such as ports, electricity and communication infrastructure, agricultural land, and civilian technologies with military applications), this in turn could enable the Chinese government to leverage its economic control into political influence or use its acquisitions for military buildup. These concerns have led certain countries to create special regulatory agencies to address China's increased penetration of their markets.

Israel faces similar risks in managing investments in its assets by foreign bodies in general and Chinese bodies in particular, whether they are owned by the Chinese government or by ostensibly private companies. In recent years, Israel has positioned itself as an international technological innovation giant, and Israel's flourishing hi tech industry is one of the pillars of Israel's economic growth, along with the defense industry, diamond processing, tourism, and metal and chemical processing. Israel is considered a knowledge-intensive economy; the costs of labor in Israel are high, and it lacks the manpower necessary for maintaining efficient production lines over time that would complement its developed services industry. China, in contrast, has extensive and proven production capabilities, as well as a large, attractive, and growing domestic market. On many occasions, Chinese leaders have described Israel and China's economies as complementary,[4] and in their view China can use its extensive capital to invest in Israeli companies, to benefit from their technological knowledge and open production plants and research and development (R&D) centers in China. China's dominant economic power, its unique political culture – characterized by close connections between party, government, and industry – and its national aspirations regarding technological development and innovation, along with its increasing investments in a variety of Israeli companies, are therefore an economic and political challenge for Israel.

This article compares the mechanisms for regulating foreign investments in the United States (CFIUS), Germany (BMWi), Australia (FIRB), and Canada (ICA), and the existing regulatory regime in Israel. It analyzes the risks and challenges to Israel in light of increasing Chinese acquisitions, and proposes policy recommendations. For the purpose of this study, official documents and protocols of the relevant countries were examined along

with secondary sources and media reports, and discussions were held with personnel at various Israeli governmental bodies.

China's Uniqueness and its Acquisitions in Israel

Supervision and monitoring of Chinese investments and acquisitions in Israel is necessary for four principal reasons. First, in China there are unique connections between commercial, government, and private companies and the ruling Communist Party and government. Many of the Chinese companies that have the financial capability to acquire foreign companies are completely or partly owned by the government. Chinese government ownership means that the Communist Party has access and is able to control various aspects of the companies' activity, such as the employment of workers and decision making – including with respect to export policy – as well as the transfer of knowledge and technologies as part of the company's activities. Private companies in China are also generally subject to the interests of the Communist Party, and their international activity is sometimes directed toward aims specified in the Chinese government's five-year plans.[5] According to official figures, in 2017 there were Communist Party cells in over 70 percent of private companies in China, and in most of them at least one member of the board of directors was a Party member.[6]

In addition, Chinese government companies have access to enormous capital resources and the possibility of investing outside of China with the help of layers of debt from different sources, including government-owned banks. China's commercial competitors usually do not have access to this scale of capital resources, which thus increases the risk of considerable concentration of foreign assets in the hands of Chinese government companies and local competitors ousted, especially in cases where the investing companies encounter financial difficulties and need lifelines from the Chinese government, in the form of loans from government-owned banks.[7] When it comes to Chinese companies, there is not a clear distinction between private and governmental. All companies are subject to the influence of the government and will likely act not only out of independent business considerations but also out of strategic considerations on the part of the Chinese government.

Second, China's ambitions regarding developing its economy and becoming a technological innovation superpower are an economic challenge for Israel in the medium to long term. In its twelfth five-year plan (2011-2015), China declared its intention to become a technological innovation superpower by

2025, as part of the "Made in China 2025" plan. One of the means to achieve this goal, as declared in the plan, is to acquire and adopt foreign technologies and adapt them to the Chinese market – which would enable developing a local Chinese knowledge base.[8] In this context, Israel is seen by China as an innovation hub that can contribute greatly to China's technological development, on its way to becoming an innovation superpower in its own right. Thus, it is clear that China is not merely a customer of Israeli technologies and partner in investments in Israel, but also a direct competitor of Israel in the field of technological innovation, adopting and improving upon technologies originally from Israel.

Third, China makes frequent use of its economic power to further its policy objectives, both in its immediate vicinity and around the world. One example is the support for China's position regarding the South China Sea dispute, on the part of countries that receive aid and investment from China;[9] another is Chinese economic pressure to convince countries to cut off relations with Taiwan and adopt the "One China" policy.[10] A specific example is Greece's decision to veto the European Union's decision to condemn China's human rights policy, after the two countries significantly expanded their economic relations, and COSCO, which belongs to the Chinese government, acquired control of the Greece port of Piraeus.[11]

Finally, from a broad perspective, there is room for considering the economic, political, and even military competition between China and the United States – Israel's irreplaceable superpower patron.

Regulatory Mechanisms: A Comparative Perspective

Many countries see their growing economic ties with China both as an important opportunity to develop their economy and as a phenomenon with unique economic, political, and national security risks. These countries must thus balance between making the most of the opportunity for development while managing the risks, and consequently created the mechanisms for regulating foreign investments and acquisitions. The discussion below presents four examples of noteworthy regulatory activity: Australia, the United States, Germany, and Canada.

Australia

Australia's regulatory activity regarding foreign acquisitions and investments was anchored in legislation in 1975 and updated regularly.[12] As in many

countries, the Finance Minister is directly responsible for regulation – in other words, the law sees the issue as primarily economic. Nonetheless, the Minister can block acquisition and investment deals for a variety of reasons, including due to "possible harm to national interests." This formulation is intentionally vague in order to cover a variety of issues such as possible harm to national security, Australia's strategic assets, internal competition within Australia, or Australia's competitiveness in the international arena; or for considerations of the community's attitude toward the investor; or due to the investor's connections or general character. In addition, when the investor is a governmental body, Australian regulation requires assessing whether the foreign government has political or strategic interests that are behind the acquisition or investment, which could harm Australia's national interest and create a situation of foreign control over its strategic assets.

In order to conduct a comprehensive and reliable assessment of investments in Australia, the Finance Ministry is aided by the Foreign Investment Review Board (FIRB),[13] which is made up of economists, senior industry figures, legal scholars, and senior figures from the Australian defense forces. According to the Australian regulatory rules, this committee examines any investment or acquisition of at least 20 percent of the value of an Australian company valued at over $252 million. One prominent exception is agricultural land; in this case, the Australian government decided that foreign companies must undergo a regulatory assessment for any acquisition over $15 million.[14] Even though there is a free trade agreement between Australia and China that allows for investments of up to 1 billion dollars without regulatory assessment, transactions in areas considered sensitive, such as media, transportation, defense, military, and nuclear development must still undergo regulatory assessment according to the regular criteria. Furthermore, foreign governmental companies are subject to stricter criteria in terms of the sectors that they can invest in, and for them the acquisition or investment amount that requires regulatory assessment is lower.

In 2016, Australia blocked two Chinese acquisitions within its territory, on the grounds of harming Australian security interests. The first was in April, when the acquisition of a private Australian-owned beef farm constituting 1 percent of the area of Australia and 2.5 percent of its agricultural land was blocked, due to potential harm to national security. According to reports, the main reason for blocking the acquisition was that part of the farm was located on land controlled by the Australian Defense Ministry used for missile

testing.[15] Four months later, Australian regulators blocked a company owned by the Chinese government and prevented the acquisition of an electrical transmission company owned by the Australian government (Ausgrid). Here too, the acquisition was reportedly blocked due to concerns of Australian national security interests.[16] The two transactions were blocked by FIRB after the sides had already signed sale contracts, and as a result received harsh responses from the Chinese, who claimed that Australia unfairly discriminates against Chinese companies.

United States

American regulation of foreign investments and acquisitions operates in accordance with the Foreign Investment and National Security Act (FINSA), passed in 2007.[17] This followed the creation in 1975 of the Committee on Foreign Investment in the United States (CFIUS), which advises the President on such issues. Following the committee's recommendations, the President is the deciding authority on mergers, investments, and acquisitions carried out by foreign companies in the United States. The committee is made up of the Secretary of State, the Attorney General, and senior officials from the Departments of Homeland Security, Defense, State, Commerce, and Energy. In addition, the Director of National Intelligence is an external advisor to the committee and is responsible for assessing the risks that these investments and acquisitions pose to US national security. Similar to Australia, here too the committee includes economists, industrialists, and defense officials.

The committee's main role is to assess each investment and acquisition carried out in the United States by foreign bodies, in order to decide if it threatens national security or creates a situation where a foreign person or entity controls strategic American assets. Furthermore, when the investing or acquiring entity is governmental and the transaction could create a situation where a foreign government controls infrastructure or assets that are essential to the United States, the committee conducts a longer, more comprehensive and more critical investigation.[18] Nonetheless, at the outset of the Trump presidency, figures in the administration directed considerable criticism at CFIUS. They claimed that it currently lacks a coherent strategy, and has become an anachronistic organization that is not able to address the current challenges that China poses to the American economy. Indeed, as one of a series of steps aimed at streamlining the committee, the administration intends to publish a list of key countries where transactions will be scrutinized

more deeply and comprehensively. This is in addition to legislative efforts to expand the authority of CFIUS and examine limiting the acquisition of American companies in certain sectors by companies owned by foreign governments (directed mainly at companies owned by the Russian and Chinese governments).[19]

In 2012, CFIUS blocked acquisitions that the Chinese media company Huawei was involved in, as it was claimed that it is connected to Chinese military intelligence.[20] The committee recommended to American companies not to do business with Huawei or with the Chinese company ZTE, and not to enable them to carry out acquisitions and mergers in the US, arguing that they constitute a threat to US national security, due to fears that their products are also used by China for espionage.[21] Similar suspicions led the government of Australia to prohibit Huawei from participating in a tender for operating Australia's national broadband network (NBN).[22] Huawei and ZTE were investigated again in 2016 by the US Department of Commerce due to suspicions that they violated the sanctions imposed on North Korea, Syria, Cuba, and Iran by selling them American technologies that can also be used to monitor cellular networks,[23] and in April 2018 the United States placed a prohibition on trading with ZTE for some seven years, after it was suspected of trading with North Korea and Iran and did not meet its commitment to punish senior employees who were involved in these deals.[24] However, approximately three months later, Trump canceled the trade prohibition and replaced it with a monetary fine and a demand to create an American committee that would supervise the company's activity in the US.

In early 2016, two Chinese-American deals were canceled due to concerns that they would not pass American regulatory assessment. Tsinghua Unigroup, a company owned by the Chinese government, withdrew its $3.8 billion offer to acquire Western Digital, which is involved in data storage, after the deal's details were submitted to CFIUS for assessment, due to concerns that the committee would not approve it. A second deal was canceled by the American company Fairchild Semiconductors, which had received a $2.6 billion acquisition offer from two corporations owned by the Chinese government. The Chinese offer was higher than offers it received from American companies in the field, but was rejected at the outset due to concerns that it would not pass the American assessment committee. In August 2016, the Obama administration, acting on a recommendation by CFIUS, blocked the acquisition of a German microchip company (Aixtron)

by a Chinese investment fund called China's Fujian Grand Chip Investment Fund, claiming that the German company, which has branches in the United States, produces semiconductors that can be used for military purposes, and are also used for upgrading the American Patriot missile system used by NATO forces.[25] The semiconductor industry receives special attention from the US administration in light of repeated attempts by China to upgrade its capabilities by subsidizing the local industry with $150 billion,[26] acquire companies that specialize in the field (for example the Israeli company Alma Lasers), employ foreign engineers and specialists (mainly from Taiwan), and engage in massive industrial espionage.[27]

Recently, China has taken an interest in additional technological fields such as artificial intelligence, robotics, cloud computing, big data, facial recognition technologies, and more. China is investing large amounts in funding local companies involved in these fields, and encouraging them to acquire companies outside of China in order to deepen and expand China's knowledge base. Some in the United States claim that China is adapting these technologies for military and security use – for example, using facial recognition technologies to track its citizens, using big data analyses to forecast political protests, and increasing use of robotics and artificial intelligence in order to develop unmanned military vehicles and aircraft.[28] Aside from the potential military use of these technologies, the United States is concerned about the loss of its standing as the world leader in the field of artificial intelligence. Senior figures in the American tech industry warn that China's fast progress in this field, along with its massive government investment as part of China's plan to become a leader in the field of artificial intelligence by 2030,[29] will enable it to surpass the United States in advanced artificial intelligence development within five years.[30]

Canada

Investments and acquisitions by foreign entities in Canada occur under the framework of the Invest in Canada Act (ICA). This law, in force since 1985, regulates the process whereby the government reviews the creation or acquisition of businesses in Canada by foreign entities. The government agency responsible for enforcing the law overall is the Canadian Department of Innovation, Science and Economic Development, which operates at the ministerial level. ICA replaced the Foreign Investment Review Agency (FIRA), established in 1973, and was updated in 2009, 2013, and 2015. In the

framework of FIRA, each foreign acquisition was subject to comprehensive review by the government regardless of size, and buyers were responsible for proving that Canada would significantly profit from the transaction. The new law reduced the range of transactions to be reviewed and lowered the threshold for the profitability test that foreign investors had to pass, in order to encourage additional foreign investments to Canada and make it an attractive destination for foreign investors.[31] Nonetheless, ICA allows for review of any investment, acquisition, or establishment of a business operating in Canada, even partially.[32]

The Canadian investment law distinguishes between two categories: reviewable investments and investments that only require notification. According to the law, reviewable investments are:

a. Investments in which the purchasing entity is government-owned (by a country that is a member of the World Trade Organization), the business in which it is investing is for profit, and its value is over $354 million;
b. Investments in which the purchasing entity is not government-owned and the value of the business in which it is investing is over $600 million;
c. Investments by entities from countries that are not members of the World Trade Organization in Canadian companies whose value is over $5 million;
d. Any investment by a foreign entity that the Canadian government defines as a transaction that could threaten national security.

Acquisitions according to criteria 1-3 are subject to review by the Canadian Industry Minister, who reviews their economic viability, consulting with other relevant governmental bodies.[33]

According to criterion 4, the Canadian government restricts acquisition of control by foreign entities in a number of fields that it defines as essential assets for the country, including civil aviation, fisheries, electricity, energy, financial services, mining, real estate, and telecommunication. Furthermore, in cases where the Canadian government sees a foreign investment or acquisition as a threat to national security, the ICA tasks the Canadian cabinet with reviewing it and approving or rejecting it. According to the law, if the relevant Minister has a reasonable basis for believing that a certain investment could harm Canada's national security, he is authorized to submit the transaction to the cabinet for review.[34] The law does not define what is considered "national security," and there is no minimum level of investment beneath which no review is carried out. This creates uncertainty for potential investors, but also expands the range of transactions that can

be reviewed in this framework.[35] Since ICA came into effect, the Canadian government has reviewed eight foreign investments in Canadian businesses according to the criterion of posing a possible threat to national security, and of these, it blocked three investments, without publicizing the names of the companies involved or their origins.[36]

Germany

The Foreign Trade Law, first presented in 2009, is the framework for Germany to implement the regulatory process regarding foreign investments and acquisitions within its territory. This law enables the German Ministry for Economic Affairs and Technology (BMWi) to prohibit or restrict foreign investments in German companies from outside of the territory of the European Union, in special circumstances that constitute a threat to public order or to Germany's security. In the framework of this law, Germany can prevent mergers or direct or indirect acquisitions amounting to over 25 percent of the total stock of domestic companies. This law is not limited to a specific sector, and is only activated when there is a reasonable concern that the acquisition or merger will lead to potential harm to social order or to Germany's security. The decision on acquisitions and mergers is subject to the government's approval, and the German Foreign Office and Interior Ministry often participate in the decision making process. The acquiring or acquired company is not required to report the transaction, but this can be reported by the German Financial Supervisory Authority, which receives registrations of all transactions made within the country. The simplest method for companies interested in carrying out acquisitions or mergers within Germany is to receive a non-objection letter in advance from BMWi, in order to prevent investigations at a later stage that could threaten the success of the deal.[37]

In early 2017, Germany expanded the authority of the Ministry of Economic Affairs and Technology regarding acquisitions and investments by foreign companies in German companies, in light of growing concerns about the increasing number of acquisitions of German tech companies by Chinese companies, and the lack of reciprocity in commercial relations and investments between China and the European Union. Ostensibly, the expansion of its authority was in response to the acquisition of the German robotics company Kuka by the Chinese company Midea, and increased concerns over the transfer of German technologies to foreign control. In

this context, the expansion of its authority in the framework of the law was done in way that allowed immediate investigation of any acquisitions in fields considered "essential infrastructure," including companies that produce software for power plants, energy, water supply infrastructure, electronic payments, hospitals, and transportation systems. Companies engaged in the development of defense equipment, including electronic surveillance and defense equipment, will also be covered by the law.[38]

In February 2017, Germany, France, and Italy requested that the European Commission review foreign investments and acquisitions in European Union countries, due to concerns that Europe is losing its technological advantages. These countries sought to block transactions in cases where the mother country of the purchasing company does not enable equal investments in its territory, and where the principle of reciprocity of investments is not upheld (this too is clearly directed at China).[39] Currently, only 13 of the 28 member states of the European Union have official supervisory systems for foreign acquisitions and investments, which are intended to determine whether the transaction threatens national security or public policy objectives. In September 2017 the President of the European Commission, Jean-Claude Juncker, announced steps to monitor and filter acquisitions of European companies by foreign entities more strictly, in order to narrow gaps in comparison with the regulations in place in the United States and other large economies when it comes to monitoring acquisitions by foreign companies in strategic sectors.[40]

Clearly, the governments of the United States, Australia, Canada, and Germany, and to a certain extent the European Union too, are interested in developing their economies through foreign resources. However, they also see foreign investments and acquisitions, mainly on the part of China, as a long term economic challenge, through possible harm to their competitiveness in the global economy and in their domestic economies. In addition, this activity constitutes a political and defense challenge – through the accumulation of economic-political leverage on the one hand, and possible Chinese takeover of strategic assets with the potential to contribute to military buildup on the other hand. In order to address this challenge, these countries operate special regulatory agencies that are responsible for supervising and monitoring foreign acquisitions and weighing economic benefits against other security and national interests (table 1).

Table 1: Chinese Acquisitions and Investments outside of China Blocked by Local Regulation (2016-2017 sample)[41]

Year	Chinese Company	Local Company	Estimated amount ($ millions)	Country / Sector
2016	Dakang Australia Holdings	S. Kidman & Co Ltd.	280	Australia / Farming lands
2016	State Grid Corp. of China	Ausgrid	7600 (50.4%)	Australia / Electricity grid
2016	Tsinghua Unigroup	ChipMOS Technologies Inc.	373	Taiwan / Microchips
2016	Tsinghua Unigroup	Siliconware Precision Industries Co.	1760	Taiwan / Microchips
2016	China's Fujian Grand Chip Investment	Aixtron	670	Germany and United States / Microchips
2016	Tsinghua Unigroup	Western Digital	3800	United States / Data Storage
2017	Tsinghua Unigroup	PowerTech Technology Inc.	600 (25%)	Taiwan / Microchips

Against this background, it is worth examining how Israel addresses the challenge of Chinese acquisitions and investments within its territory and considerable Chinese penetration of its economy.

Israeli Regulation

China and Israel established diplomatic relations in 1992, and signed a trade agreement in which China granted Israel a "most favored nation" (MFN) status. Subsequently, standardization, shipping, and aviation agreements were also signed. In 1995, Israel and China signed a mutual agreement for advancing and protecting investments, in which they agreed to create favorable conditions for individuals, companies, or corporations interested in investing in them.[42] The agreement enables Chinese companies to receive long term loans from Chinese government banks when doing business with Israeli exporters in the fields of capital products and infrastructure construction, and provides Israeli companies with the possibility of participating in projects and transactions with Chinese governmental bodies and companies. This agreement was renewed and expanded in 2004 and 2010. In addition, in 2010 a research and development agreement was signed between the Israeli Ministry of Industry, Trade, and Labor and the Chinese Ministry of Science

and Technology, which was intended to assist in diversifying cooperation with China and advance partnership based on knowledge and innovation.

In recent years, many Chinese companies have invested and acquired Israeli tech companies – a kind of acquisition that has become more complicated in other developed countries, especially in the West.[43] According to figures by Deloitte, the total sum of Chinese investments in venture capital funds in the Israeli tech sector in 2016 was approximately $1 billion, while it was $700 million in 2015 and $500 million in 2014.[44] But despite increased acquisitions and investments and in contrast to Australia, the United States, Canada, and Germany, in which there are integrative agencies for reviewing foreign investments, in Israel there is no central regulatory agency for this, and Israeli regulation on foreign investments and acquisitions in civilian fields is decentralized, with each government ministry or body operating an independent regulator in its field.

In Israel there are three central supervisory bodies that regulate domestic and foreign investments: the Commissioner for Capital Markets, who is also responsible for insurance and savings, which operates within the Ministry of Finance and supervises insurance companies and investment firms, among others;[45] the Israel Securities Authority, which operates under the authority of the Securities Law and also supervises mutual funds and investments in the stock market;[46] and the Bank of Israel, which includes the Banking Supervisor, who sets and operates regulation regarding investments in commercial banks in Israel.[47] Each regulator has its own procedures and regulations that are determined in accordance with its needs and with the nature of the bodies that it supervises.

In the field of investments or the acquisition of stocks by government companies (as opposed to private and public companies, regarding which there is no similar legislation), the State of Israel is authorized to enforce the Government Companies Law,[48] which is the main directive that regulates various issues related to the privatization of government companies. The law and its various provisions are meant to balance "between the desire to allow government companies flexibility to achieve their business objectives and the desire to supervise these companies, in view of their involvement in national and economic issues, and in view of the monetary resources invested in them."[49] According to this law, any significant investment in a government company by a foreign or Israeli entity requires the approval of the government and of the Government Companies Authority (GCA)

within the Ministry of Finance. Section 59h in chapter H2 of the law relates to protecting essential national interests. The Ministerial Committee on Privatization, in consultation with GCA and with the minister responsible for the government company's affairs, has the authority to declare that Israel has vital interests regarding the government company that is about to be privatized, whether by merging with a private company or its shares being acquired by a private entity, Israeli or foreign. "Vital interest" is defined thus by the law:

a. Ensuring the continued existence of activities that are vital to Israeli security or foreign relations, or ensuring the continuity of the adequate supply of vital services to the public;
b. Maintaining the character of the company as an Israeli company, whose affairs and management are in Israel, as determined by the ministers;
c. Supervising the control of quarries or natural resources, their use, and development;
d. Encouraging competition or preventing economic monopolization;
e. Preventing the development of a position of influence over the company on the part of hostile entities or entities that could harm national security or foreign affairs;
f. Preventing the exposure or discovery of confidential information, due to considerations of national security or foreign affairs.

For the purpose of protecting any of these vital interests, the government has the authority to issue an order restricting external control through various means over the government company being privatized.[50]

In addition to these bodies and to the Government Companies Law, foreign acquisitions in the field of military and defense technology is supervised and controlled by the Defense Export Controls Agency (DECA) in the Ministry of Defense, which began its activity in 2007 based on the lessons from the 2001 Phalcon crisis.[51] According to the Defense Export Control Law, "Authorization of defense exports is a two-stage process, which requires receiving a marketing license for activities for promoting defense exports as defined by law, and afterwards, prior to exporting the equipment, knowledge or service, requires receiving an export license." The law further stipulates that "registration in the defense export registry constitutes a condition for receiving a marketing license or export license." Lists of equipment, knowledge, and services that are supervised by law were defined and published as orders, divided into combat equipment, ballistic equipment, and dual-use

equipment.[52] However, in Israel there is no central agency for supervision of the export of civilian technology, or one entrusted with examining investments in and acquisitions of Israeli companies by various foreign bodies, and in particular companies that deal with civilian technology – a central field that constitutes a prominent and growing segment of Israel's economy. Moreover, the distinction between civilian technology and its military applications is less sharp than in the past.

One example of activity by an independent regulator in Israel can be seen in the case of the Commissioner of Capital Markets, Insurance, and Savings, Dorit Salinger. In recent years Chinese government companies have sought to acquire Israeli insurance companies, such as Phoenix and Clal Insurance, but these deals were blocked (table 2). The Chinese Macrolink group was willing to pay a sum 50 percent higher than the market value of Clal Insurance, but ultimately the deal was voided by the Commissioner in the wake of an examination of corporate governance in the acquiring company.

The best known example for distributed regulatory activity in Israel relates to the attempt to acquire the Israeli insurance company Phoenix. The principal debate took place in the office of the Insurance Commissioner. This acquisition, like the attempt acquisition of Clal, was blocked by the Insurance Commissioner based on claims relating to the financial abilities of the acquiring companies and their corporate structure. During the proceedings for the acquisition of the Phoenix, a hearing was held with Knesset members from across the political spectrum in the Finance Committee, where the MKs demanded that Salinger not approve the deal, stating that a Chinese corporation would not act on behalf of the interests of those investing their savings, and that such a sale could endanger the pensions of the Israeli public.[53] Such claims indeed clearly demonstrate public concern regarding damage to the national interest of Israel and its citizens.

The sale of Tnuva to the Chinese Bright Food company is another example of a deal that generated public criticism due to its possible consequences for the Israeli public. In March 2015 the deal for the acquisition of Tnuva (which since 2008 was partially held by the British Apex Fund) was completed by Bright Food, which is controlled entirely by the Chinese government, for a sum of 8.6 billion NIS. After the deal was signed, former senior officials in the Israel defense establishment, Knesset members, and officeholders voiced their opposition to the deal. For example, former Mossad chief Efraim Halevy claimed that "the fact that the largest food company in

Israel is owned by the government of China will create a situation where the policy that determines this company's economic conduct will be the policy that serves China," and that "today food is one of the fields included in the framework of national security." Furthermore, Halevy claimed that companies whose holdings include national lands should not be sold to companies controlled by foreign governments.[54] Then-Chairman of the Knesset Finance Committee MK Avishay Braverman opposed the deal, and claimed that the ministerial committee on legislation rejected a bill that he introduced and was supposed to "create a ministerial committee like that in the United States, which would forbid the sale of large companies to foreign parties." Braverman's opposition stemmed from the concern that in a future political-security crisis, foreign companies that hold strategic Israeli knowledge and assets will transfer their capital, research, and development to another location, or prefer to promote their interests with enemy states such as Iran, while transferring Israeli knowledge to them.[55]

Table 2: Chinese Acquisitions and Investments in Israel Blocked by Israeli Regulation (2015-2017)[56]

Year	Chinese Company	Israeli Company	Estimated Amount ($ million)	Reason for Cancellation
2015	Macrolink Group (privately owned)	Clal Insurance	678 (55%)	Regulatory barrier (insurance)
2016	Fosun Ltd. (state owned)	Phoenix Insurance	462	Regulatory barrier (insurance)
2017	Luxembourg Space Telecommunications (backed by Beijing Xinwei Technology) (privately owned)	Spacecom	285	Regulatory barrier (security)
2017	XIO (40% owned by Chinese)	Meitav-Dash	1600	Bureaucracy / non-compliance with deal terms (insurance)

Another noteworthy example of substantial Chinese investment in Israel is the concession to operate the container terminal at the Haifa Port for 25 years, granted to Shanghai International Port Group (SIPG), which in practice belongs to the Chinese government. In 2015, SIPG won the international tender held by the government of Israel for operating the port, after joining at the last moment and being the sole contender. The company is expected to

invest some 1 billion NIS in developing the port infrastructure and purchasing operational equipment by 2021, when the port is expected to begin operation. Furthermore, in 2014, China Harbour Engineering, a subsidiary of the Chinese infrastructure giant CCCC, also owned by the Chinese government, won a tender to build a private port in Ashdod, after submitting a significantly cheaper offer than that of its European competitors. It is claimed that China Harbour has extensive ties with Iran, and that it owns a large agency there. The company provides consulting services to various Iranian entities and large commercial centers in Iran in the framework of funding agreements between China and Iran. Israel's ports are of supreme importance to it, since most of Israel's foreign trade passes through seaports, which transport 99 percent of export and import cargo. Thus, a prior regulatory discussion should take place in order to assess the strategic implications of operating or building a private port in Israel by a foreign company, while assessing the risks in the case of a war or large scale military operation.

Furthermore, despite the extensive investigations underway against Huawei in the United States, some that pertain to prohibited relations with Iran and others that pertain to its involvement in technological espionage, in Israel the implications of the investigation are not discussed. The Israeli company Toga Networks, which develops innovative communications microchips, was secretly acquired by Huawei in 2010 – a year after it was established,[57] but the company only admitted this six years later. According to Huawei, the secrecy stemmed from its desire to maintain its good relations with customers in Arab countries.[58] Huawei turned Toga Networks into its development center in Israel, and to this end recruited dozens of talented engineers and especially experienced software architects, who receive especially good conditions, even by the standards of the tech industry, which is known for its generous benefits. The company currently employs over 200 Israeli and Chinese at its offices in Hod Hasharon. Indeed, various Israeli tech companies have claimed that Toga Networks focuses on hunting senior architects and engineers from among experienced engineers at Israeli companies, thus harming their competitive advantage for developing intellectual property, which in the end is received by China and developed there by local engineers. This is in contrast with Western companies that often commit to their development centers remaining in Israel.[59] In addition, in the past concerns have been raised that at tech companies such as Toga Networks, many employees formerly served in army intelligence units and were exposed to the IDF's

technological tools during their service, and now are adapting the knowledge they acquired to the civilian sector.[60]

The issue of cyber regulation has likewise arisen in this context. In recent years, the Defense Export Control Agency at the Ministry of Defense began to focus on the possible consequences of cyber companies being sold to foreign entities. A draft written in January 2016 by an inter-ministerial committee headed by DECA stated that cyber products could include technologies that if in the wrong hands could severely threaten Israel's security political and defense interests, and thus it was suggested that a directive be promoted for special supervision of acquisitions of companies in the cyber industry in Israel.[61] The exposure of this draft sparked a storm among Israeli cyber companies, and as a result, Prime Minister Benjamin Netanyahu created a committee to examine aspects of the draft directive and its impact on the Israeli cyber industry. The committee was led by the head of the National Cyber Bureau, Dr. Eviatar Matania, and included members from the Ministries of Defense, Economy and Industry, and Foreign Affairs, and the National Cyber Bureau. Netanyahu decided to adopt the committee's recommendations, to cancel the process of the directive, and maintain the Wassenaar Agreement, which regulates the export of dual use technologies. Thus, it was decided that DECA would supervise the export of cyber systems for military use, while supervision of the export of cyber systems of a civilian nature would be through a new mechanism developed by the Ministry of Economy and Industry.[62] Currently, the Ministry of Economy and Industry's existing mechanism deals with the export of dual use goods, services, and technologies, and regulates their supervision in accordance with the Wassenaar Agreement. The Ministry of Economy cooperates with the Ministry of Foreign Affairs, which presents political aspects, including Israel's relations with the target countries, as well as the Ministry of Defense, which presents technical aspects related to the equipment and its operation, and intelligence information to enable alerts regarding export to certain destinations, especially regarding entities operating in those countries, and checks on the end user.[63] In contrast, when it comes to acquisitions or investment in cyber companies or goods and technologies that are civilian or potentially dual use, Israel has no designated policy or supervisory body.

Conclusion and Policy Recommendations

The regulatory challenges that the United States, Australia, Canada, and Germany confront are partly similar to those facing the State of Israel. The supervision and monitoring processes examined in this article are the response by these economies – which are considered the strongest in the developed world – to the economic, strategic, and security challenges posed by China with its penetration of their markets, while in the background it continues to develop as an economic-political superpower in the fields of investment in infrastructure and technology. The differences in dimensions between the Western economies examined in this article and the Israeli economy emphasize Israel's need for Chinese funding of public projects and private investment, and thus place Israel in a more fragile position relative to these countries. In addition, the countries examined are not directly threatened by the leakage of Chinese information and technologies, or that acquired by Chinese companies, to countries like Iran and its proxies, though the economic risks of such leakage are similar. Israeli government policy, as seen in government decisions and their implementation, places a central emphasis on promoting economic relations with China. However, risk management is limited to reference to the responsibility of the Ministry of Defense in the field of supervising military exports regarding military and dual use products, services, and technologies.[64]

In view of the complexities of foreign investments and acquisitions in general and on the part of China in particular, and in light of the steps taken by other developed countries, the absence of an integrative regulatory process in Israel is significant. Such a process would enable comprehensive assessment of economic benefit considerations vis-à-vis the extent of possible risks. This raises concern that Israel's national security and national interest are not taken into consideration when monitoring foreign acquisitions and investments in assets that are vital to the State of Israel, its security, and its economy. Therefore, in light of the free trade agreement between Israel and China, it is necessary to ensure that a number of areas remain under supervision of relevant Israeli governmental bodies, due to their relative sensitivity in terms of state security and Israel's national and economic interests.

Creating such a body or committee in Israel could, however, raise concerns among foreign companies and especially Chinese companies about investing or acquiring commercial entities in various industries in Israel. Blocking deals that private or government Chinese companies were involved in has

led to harsh responses by the Chinese government, and on more than one occasion it has accused the blocking countries of having a protectionist policy or of discriminating against Chinese companies,[65] which led to tense relations. Therefore, in order to avoid harming diplomatic relations with China, if and when it is decided to create such a body, it is important that it operate in the same manner toward all countries and place conditions and criteria that are as clear and transparent as possible, while minimizing such companies' concerns about Israel's liberal investment policy. In this way Israel can reduce uncertainty that could harm the desire of Chinese companies, who are known for preferring to invest in politically and economically stable countries,[66] from launching in Israel. The Israeli government must make clear that it is interested in continued investment in various areas of the economy, while defining areas in which foreign companies will have to undergo careful scrutiny according to predefined criteria, before receiving the relevant approvals for carrying out transactions in Israel, as is the case in other advanced countries.

Defining the criteria to be reviewed by an Israeli government body or committee is of central importance, as foreign companies will decide on this basis whether to invest or acquire Israeli companies or assets. The Israeli government can present criteria that define the scope of the transaction (setting a minimum amount for requiring review), the nature of the investing company (private, public, government, or a combination), the percentage of the investment in the given sector (in order to prevent the development of monopolies), and the percentage of control of the foreign company in additional sectors of the Israeli economy. As part of this process, it would be best at present to use the definition of the Government Companies Authority, which determines which interests are vital to the State of Israel, and to update it accordingly.

Israeli regulation of foreign investments and acquisitions does not necessarily require creating a central body similar to CFIUS. Rather, it is possible to create an inter-ministerial discussion committee with a mandate based on a government decision. Its decision would not necessarily be legally binding, and it would be received by the regulator at the relevant ministry. Another possibility that pertains mainly to assets that belong to the Israeli government is to include the relevant security considerations and special conditions in tenders in investment areas defined as important to national security that are offered to foreign companies, thus preventing companies

with a problematic profile from competing. Whether a central body or an ad hoc inter-ministerial committee is established, security considerations must be presented alongside economic and commercial ones, thus creating a system of checks and balances enshrined in legislation.

Israel's relations with the United States must also be included in the framework of strategic considerations that relate to investments and acquisitions in various areas by Chinese companies in Israel. In order to prevent diplomatic incidents with the United States and/or with China, Israel must formulate a policy document or create a committee – as it did in creating DECA after the Phalcon crisis – that would review the consequences of selling Israeli companies to China for relations with the United States. The United States is still Israel's most important trade partner, and is an unparalleled strategic ally. Therefore, Israel must act carefully and responsibly when allowing foreign companies, especially those from China – which is in direct competition with the United States – to acquire Israeli companies that are involved in advanced and dual use technologies, such as cyber technologies and the semiconductor industry. Potential harm to American interests must be included in the considerations that Israel weighs when allowing Chinese companies to make acquisitions in Israel. Nonetheless, Israel must not close off its markets to China, but assess more comprehensively the consequences of penetration into certain areas of Israel's economy.

In conclusion, the Israeli government should consider creating a mechanism for reviewing foreign investments in Israel with a broad and integrative perspective, which could reduce foreign government influence in sensitive areas and maintain strategic assets in the hands of the state. The mechanisms of other countries can serve as a model. In addition, the government must consider how to manage sensitive areas vis-à-vis the United States in the fields of technology exports, including dual use goods, and monitor US relations with China as a sign of possible sensitivity in this area.

Appendix. Investments and Acquisitions by Chinese Companies in Israel, 2007-2017[67]

Year	Chinese Company	Israeli Company	Investment ($ million	Field
2007	China Civil Engineering Construction Corporation (CCECC) (state owned)	Carmel Tunnels	104 (400 NIS) (Partnership)	Infrastructure
2010	ChemChina (state owned)	Makhteshim-Agan (Adama)	2400 (60%)	Agriculture and Natural Resources
2011	Horizons Ventures Ltd. (privately owned)	Waze	30	Technology (GPS Mapping)
2011-2012	Horizons Ventures Ltd. (privately owned)	Magisto	21 (two rounds)	Technology (Video Creative)
2011-2012	Horizons Ventures Ltd. (privately owned)	Desti	2 (two rounds)	Technology (Online Travel Apps)
2012	Horizons Ventures Ltd. (privately owned)	Onavo	10	Technology (Mobile Applications)
2012	Horizons Ventures Ltd. (privately owned)	Wibbitz	2.3	Technology (Text-to-Video)
2012	Horizons Ventures Ltd. (privately owned)	Ginger Software	5.4	Technology (Mobile Keyboards)
2012	Horizons Ventures Ltd. (privately owned)	Shine	3.3	Technology (Mobile)
2012	Horizons Ventures Ltd. (privately owned)	Preen.me	0.8	Technology (Marketing)
2012	Horizons Ventures Ltd. (privately owned)	Invi	3	Technology (Messaging)
2012	Horizons Ventures Ltd. (privately owned)	Stevie	1.5	Technology (Social)
2012	Tencent Holdings (privately owned)	Contacts+	1	Technology (mobile apps)
2012-2013	Horizons Ventures Ltd. (privately owned)	EverythingMe	28.5 (two rounds)	Technology (Mobile Applications)
2012-2014	Horizons Ventures Ltd. (privately owned)	Cortica	33.4 (three rounds)	Technology (Visual Search)
2013	Horizons Ventures Ltd. (privately owned)	Nipendo	8	Technology (Cloud computing)
2013	Horizons Ventures Ltd. (privately owned)	Kaiima	65	Agro-Biotech
2013	Horizons Ventures Ltd. (privately owned)	Meteo-Logic	3	Technology (Data Analytics)
2013	Fosun International Ltd. (hybrid)	Alma Lasers Ltd.	240 (96.6%)	Medical Tech (semiconductors)

Year	Chinese Company	Israeli Company	Investment ($ million	Field
2013	Xiaomi (privately owned)	Pebbles Interfaces	11	Technology (hardware and software)
2013-2015	Horizons Ventures Ltd. (privately owned)	Core Photonics	23 (two rounds)	Technology (Phone Cameras)
2014	Horizons Ventures Ltd. (privately owned)	Tipa	10	Industrial (biodegradable packaging)
2014	Horizons Ventures Ltd. (privately owned)	FeeX	6.5	Technology (Finance)
2014	Horizons Ventures Ltd. (privately owned)	Meekan	0.870	Technology (Digital Calendars)
2014	Ping-An Insurance (public)	eToro	27	Technology (Forex)
2014	Lenovo (public)	Canaan Partners Israel	10	Venture Capital Fund
2014	Baidu, Ping-An, Qihoo (privately owned / public)	Carmel Ventures	194 (total sum, including other investors)	Venture Capital Fund
2014	Baidu (privately owned)	Pixellot	3	Technology (Video Capturing)
2014	China Communications Construction Co. (CCCC) (state owned)	Eilat rail project	950 (estimated)	Infrastructure
2014	Yongjin Group (privately owned)	Pitango Venture Capital	20	Venture Capital Fund
2014	Yuanda Group (privately owned)	AutoAgronom	(undisclosed) 54%	Agro-Tech
2014	HTIT (privately owned / public)	Oramed	50	Pharmaceutical
2014	Sunpower (privately owned)	Nataly	70	Medical Services
2014-2015	Horizons Ventures Ltd. (privately owned)	Crosswise	5 (two rounds)	Technology (Cross-Device Identification Mapping)
2014-2015	Ping-An Insurance (public)	Payoneer	50+ (two rounds)	Technology (e-commerce)
2015	Bright Food (state owned)	Tnuva	1243 (76%)	Agriculture (dairy)
2015	China CNR Corporation Ltd. (state owned)	Tel Aviv Light Railway (Red Line)	2000 (estimated)	Infrastructure
2015	Baidu (privately owned)	Tonara	5	Technology (Mobile Applications)

Year	Chinese Company	Israeli Company	Investment ($ million	Field
2015	Baidu (privately owned)	Taboola	20-30	Technology (Internet Advertising)
2015	Li Ka Shing Foundation (privately owned)	Technion	130	Academy
2015	Horizons Ventures Ltd. (privately owned)	Windward	10.8	Technology (maritime data and analytics)
2015	Alibaba (privately owned)	Visualead	5	Technology (QR Codes)
2015	Alibaba (privately owned)	Quixey	60	Technology (mobile apps)
2015	Alibaba (privately owned)	Thetaray	15	Technology (threat detection solutions)
2015	Alibaba (privately owned)	JVP (owns Cyberark and CyActive)	Undisclosed	Venture Capital Fund
2015	ZTE, Ping-An (public)	Rainbow Medical	25	Med-Tech
2015	Xizang Haisco Pharmaceutical Group Co. (privately owned)	Endospan	10	Pharma-Tech
2015	GoCapital (privately owned)	Cnoga Medical	12	Med-Tech
2015	Tencent Holdings, RenRen (privately owned)	Singulariteam	102	Technology (AI and robotics)
2015	Shanghai International Port Group (state owned)	Haifa Port	1990	Infrastructure (deep water port)
2015	China Harbour (state owned)	Ashdod Port	936 (estimated)	Infrastructure (port expanding)
2015	XIO Group (privately owned)	Lumenis	510	Medical Laser Equipment
2015	Ctrip (privately owned)	TravelFusion	160	Technology (online travel service)
2015	Hefei Tianhui Incubator of Technologies (HTIT)	Oramed Pharmaceuticals Inc.	50	Pharmaceutical
2015	Hebang Group (privately owned)	Stockton	90 (51%)	Agro-Chem
2015-2016	Pando Group (privately owned)	Brighttonix Medical	Undisclosed	Med-Tech
2015-2016	Pando Group (privately owned)	InnoGen	Undisclosed	Medi-Aesthetic

Year	Chinese Company	Israeli Company	Investment ($ million	Field
2016	Pando Group (privately owned)	The Floor	2	Tech Incubator
2016	Fosun Ltd. (state owned)	Ahava	300	Cosmetics
2016	China Broadband Capital Partners (CBC) (privately owned)	IronSource Ltd.	85 (total amount)	Technology (Adware)
2016	Shengjing 360 (privately owned)	Carmel Ventures	Undisclosed	Venture Capital Fund
2016	Shengjing 360 (privately owned)	JVP	Undisclosed	Venture Capital Fund
2016	Alibaba (privately owned)	Twiggle	5-10	Technology (e-commerce)
2016	Baidu (privately owned)	Dynamic Yield	22	Technology (personalization)
2016	Lenovo (public)	Neura	11	Technology (IOT)
2016	Huawei (hybrid)	Toga Networks	Undisclosed	Technology (IT and Telecom)
2016	Huawei (hybrid)	HexaTier	42 (terms undisclosed)	Technology (database security)
2016	Giant Interactive Group (privately owned)	Playtika	4500 (estimated)	Technology (mobile gaming)
2016	Zhejiang Crystal-Optech Co.	Lumus	15	Technology (LOE wearable display)
2016	Huawei (hybrid)	Elastifile	Undisclosed	Technology (data storage)
2017	Alibaba (privately owned)	Lumus	6	Technology (LOE wearable display)
2017	Vincent Medical	Inovytec	3	Med-Tech
2017	MIDEA	Servotronix Motion Control	170	Technology (motion electronics)
2017	Zhejiang Drore Technology	Acoustiguide	4	Technology (Multimedia)

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