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A comparative analysis of the foreign investment policies of the United States and China

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NYILATKOZAT

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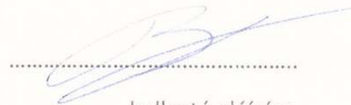

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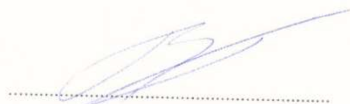

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1.Introduction

China's economic development and growth have been outstanding since the late 1970s. Among the world's most powerful economies and emerging markets, China has moved up several places in recent years, causing the economic status quo of the United States of America to be challenged. The rise of China has brought the country and its relations with several other nations to the forefront in the Asian region, where China has strengthened its position as the largest and most influential economic power and a top destination for foreign direct investment.

On the other hand, the United States was the largest recipient of foreign investment long before the Asian country. The US already had a developed legal framework for foreign investment and a well-functioning economic institutional environment in the late 1970s. The biggest difference, then, is in the development of the legal background and attitudes towards FDI. However, 2001 was a turning point for both countries. China joined the WTO, which led to further reforms, while in the United States, the terrorist attacks of 11 September 2001 made it clear that being a major FDI destination also posed a major national security risk.

I will use institutional analysis to show how economic institutions have influenced foreign investment policies in the US and China between 1978 and 2022. Institutional analysis looks at a wide range of economic institutions, including property rights, contracts, legal systems, regulatory frameworks and social norms. It examines how these institutions influence economic behaviour, such as investment decisions, labour market participation and trade patterns. It also examines how institutions affect economic outcomes such as growth, inequality and stability.

My main task is first to describe the role of institutions in attracting foreign direct investment in China and the United States. It is very important to define the term institution because it is a common mistake to confuse it with organisations. Institutions are the rules of the game. In every country, social, political and economic relations are governed by formal or informal rules, laws and regulations. While formal institutions are usually in written form, informal institutions are unwritten and shaped by the history and culture of a country. Norms and traditions are very strong in Asian cultures. In the United States, the US Department of Commerce is responsible for investment policy and the legal environment for investment in the US. On the other hand, the Ministry of Commerce of the People's Republic of China (MOFCOM) is responsible for implementing the newly developed investment policy.

MOFCOM was also responsible for implementing the open-door policy and the decentralisation process in China that started in 1978.

Foreign direct investment is at the heart of sustainable economic development, especially in emerging economies such as Brazil, India or China. According to the existing literature, both China and the United States have been the largest recipients of FDI since the turn of the millennium. I will examine the period between 1978 and 2022, because the reform package, rules and regulations introduced by the Chinese government in 1978 (the so-called open-door policy) completely changed the country's image among foreign investors. They introduced investment policies, reformed economic institutions that attracted foreign direct investment, and led to significant growth of the Chinese economy and rapid expansion of its market.

National security and foreign direct investment are closely linked, with both countries paying increasing attention to national security policy, which also affects investment policy. In the United States, the Committee on Foreign Investment (CFIUS) has been amended several times since its inception, especially after the 2001 terrorist attacks, and foreign direct investment is closely scrutinised, especially in critical infrastructure and industries.

In China, meanwhile, a licencing system has been introduced that allows foreign-invested enterprises (FIEs) to invest in China only after being vetted. The foreign investment policy was first tested in the Special Economic Zones, which served as testing grounds for improving the country's legal and institutional environment. China also established the National Security Clearance and Information Reporting System to maintain the stability of the country's financial system and economy.

The main objective of my study is to compare the two largest and most competitive economies. I will highlight the main differences and similarities in terms of their investment policies and their structure of economic institutions. There is no longer any question that China has successfully caught up with the United States and is currently challenging its economic dominance. Many experts argue whether the Chinese can maintain their economic performance and achieve sustainable economic growth in the long run or whether their economic expansion and growth will eventually slow down due to the lack of well-functioning economic institutions.

2. Research Strategy

I will use the qualitative method and explain the theoretical background of institutional analysis. The research strategy will be carried out through various case studies, researches and reports.

I will compare the main stages of investment policy development in China and the United States. As a first step, I will examine the investment environment in the United States since 1978. I will analyse the investment promotion strategy, the restrictions on foreign direct investment and the development of the Committee on Foreign Investment. In doing so, I will draw on studies and research by the Congressional Research Service provided by the US Department of Commerce. In a second step, I will examine the development and strategies of Chinese investment policy in the same way. I will use information from the Chinese Ministry of Commerce and the Guide to Foreign Investment of the People's Republic of China

Finally, I will compare the two strategies and find out the main differences and similarities of the processes and approaches in foreign investment policy. It is important to find out these similarities and differences because the two countries are very different in terms of the history of economic development. China challenges the United States to be the most powerful economy in the world. I compare foreign direct investment laws and regulations because they affect this competition.

3. Economic Institutions

Institutions are the rules of the game. In every country, social, political and economic relations are governed by formal or informal rules, laws and regulations. (Douglass C. North, 1991) *According to Hodgson (2006, p. 2), "they are a system of established and widely shared social rules that structure social interactions. Organisations function on the basis of rules and laws established and shaped by institutions."* Leftwich & Sen (2010, p. 16) explain that "*formal institutions are the laws, regulations, legal agreements, contracts and constitutions enforced by third parties."* While formal institutions are usually in written form, informal institutions are unwritten and shaped by a country's history and culture. Norms and traditions are very strong in Asian cultures.

In most cases, even formal written rules are difficult to follow, especially today when there are complex legal systems all over the world. Therefore, I will summarise the reforms, laws and regulations related to foreign investment policies in both countries. The development of formal economic institutions was of great importance in both cases.

According to the United Nations (2009, p. 8), *"an intervention enhances or weakens the capacity of a country or region to use its human, financial and natural resources more efficiently, equitably and sustainably, for example, by improving the definition, stability, transparency, enforceability and predictability of institutional arrangements and/or by better aligning the mission and capacity of an organisation with its mandate arising from those institutional arrangements. Such impacts may include intended and unintended effects of an action."*

The development of economic institutions has determined the economic development of both the United States and China. If we examine the period from 1978 to the present, we can see overall that the US had already developed economic institutions by then. For example, the Federal Reserve System was established in 1913, the Securities and Exchange Commission in 1934, and one of the oldest economic institutions, the Treasury Department, was established in 1789. The United States Department of Commerce was established in 1913. In the case of China, however, we can see that the establishment of proper, well-functioning economic institutions began with the implementation of the open-door policy. The China Securities Regulatory Commission (CSRC) was established in 1992, the National Development and Reform Commission (NDRC) in 2003 and the China Banking and Insurance Regulatory Commission in 2018. However, MOFCOM's predecessor, the Ministry of Trade of the People's Republic of China was established in 1949. (MOFCOM, 2010).

3.1 Ministry of Commerce of China

The Ministry of Trade of the People's Republic of China was established on 2 November 1949. The institution existed in this form for three years and was then reformed for several years. The original aim of the Ministry was to draw up the general plan for trade in cooperation with the Government Administrative Council of the Central People's Government. The institution also set the economic path of state-owned enterprises, supervised the implementation of the financial plan and the business environment. It sets the wholesale prices of SOEs in China's major markets and provides guidance for enterprises operating in China. (MOFCOM, 2010).

The ministry has been renamed and reformed. The Ministry of Foreign Trade of the Central People's Government was established and became operational in 1952. *"At the 15th meeting of the Central People's Government Committee, the Ministry of Foreign Trade of the Central People's Government was established to unify the management of foreign trade, and the*

Ministry of Commerce of the Central People's Government was dissolved". (MOFCOM, 2010) The functions of the Ministry were also reformed. The main objectives were to draw up the country's import and export plans and implement measures to develop the business environment. In addition, the ministry was to find and approach trading partners and cooperate with other countries to improve the economic development of the Asian country. To this end, the ministry implemented regulations and measures to strengthen China's foreign trade capacity. The ministry also monitored the implementation of these measures. "The issuance of licences for import, export and transit trade". in 1964, China introduced the basis of trade promotion and the Ministry of Foreign Trade of the Central People's Government was responsible for overseeing the process. Although the lack of stability and the inadequate environment for foreign investment seriously hindered the inflow of foreign direct investment. (MOFCOM, 2010).

Under the open-door policy, the 1979 Zhongfa Document created two very important institutions, the State Import and Export Administration Commission and the State Foreign Investment Administration Commission. The two institutions worked closely with the Economic Planning Commission to monitor and develop existing laws and regulations to promote China's economic development. They introduced several important policies and measures to further improve the investment environment. The reform of SOEs and Sino-foreign joint ventures with equity participation led to a restructuring of their statutes to operate more efficiently. This institutional reform forms the basis of the reform package and introduced the open door policy to create a more transparent investment environment through a decentralisation process. (MOFCOM, 2010).

The Ministry of Foreign Economic Cooperation and Trade was established in 1982. It was a merger of two institutions, the Ministry of Foreign Trade, the State Commission for the Regulation of Import and Export, and the State Commission for the Regulation of Foreign Investment, the Ministry of Foreign Economic Relations. It played an important role in the decentralisation process initiated in China by the provisions of the Open Door Policy. The main objective was still to create a more transparent legal system by carrying out reforms at the provincial and municipal levels. Basically, these regions were given more powers by the Central Committee and the State Council (CPC). The reforms developed foreign trade, strengthened China's economic position in the region and led to several economic cooperation agreements between China and other countries. They also encouraged foreign investment by focusing on implementing policies to improve the investment environment. For China,

"socialist modernisation and the development of international relations" were very important. (MOFCOM, 2010).

The Ministry of Economic Cooperation and Foreign Trade was given a new name in 1993 (Ministry of Foreign Trade and Economic Cooperation). As foreign investors targeted the Chinese market and the inflow of foreign direct investment increased significantly, the institution's remit had to be expanded. The ministry constantly monitored foreign investments made in the country and implemented measures to protect investors and FIEs. It also provided guidance to foreign investors to increase their confidence and reduce risks. (MOFCOM, 2010)

The Ministry of Commerce of the People's Republic of China was established in 2003. The achievements of its predecessors led to China's significant economic growth and the country's accession to the WTO in 2001. In 2003, the Ministry formulated a mandate to further develop China's investment environment by introducing new policies and guidelines, modernising the legal system and strengthening policy-making at the provincial level. MOFCOM is responsible for implementing the newly introduced foreign investment policy and investment promotion strategies. (MOFCOM, 2023).

In my opinion, the economic institutional changes that have taken place in China have contributed to making the country one of the most competitive economies in the world. Even though the Ministry of Commerce has been restructured several times, this only shows that the open-door policy reforms have completely changed the legal and business environment of the Asian country.

The Ministry of Commerce introduced investment policies to attract FDI, and develop and export-oriented industrial structure. According to the ministry, three institutions are playing an important role in investment and technology promotion, "*the National Development and Reform Commission (NDRC), the Ministry of Commerce (MOFCOM) and the Ministry of Science and Technology (MOST)".* (UNIDO, 2009, P.14). The NRDC's main objective is to develop investment policies and to ensure the planning strategy of China for the long-run. NRDC established the Guiding Directory on Industries, which are open for foreign direct investments. This also plays and important part of the transparency project of the country. On the other hand, the Ministry of Commerce is responsible for developing new refroms, policies, strategies, and established the China Investment Promotion Agency (CIPA). (UNIDO, 2009).

The China Investment Promotion Agency, along with China Council of Investment Promotion (CCIP) are responsible fore developing investment promotion strategies under the Supervision of MOFCOM. As part of the decentralization process, every province and region can establish investment promotion agencies and strategies to maintain the competition and to boost the confidence of foreign investors. The modernization of industries for example is part of every promotion strategies, planning to attract high-technology investment projects. (UNIDO , 2009).

3.2.U.S. Department of Commerce

The Department of Commerce was established in 1903, but the name was changed from the Ministry of Commerce and Labour to the present name. The first Secretary of Commerce was appointed by President Woodrow Wilson in 1913 and was named William C. Redfield. The offices of the Department were spread over all the states of the United States of America. There is a big difference between the Department of Commerce of the U.S. and the Chinese Ministry of Commerce. The United States established its ministry much earlier than China, which means it has much more experience. In fact, the Department of Commerce assisted the US military in both world wars by analysing the infrastructure, strategic materials and equipment capabilities of the enemy country. "*Even before the war, the Department of Commerce had initiated a campaign to recycle paper, beginning the first national salvage effort. Such campaigns became crusades with President Warren Harding's appointment of Herbert Hoover to head the Department in 1921. Known as the "great engineer," Hoover accepted the job determined to expand foreign commerce through greater productivity and better business methods."* (U.S. Department of Commerce, 2023).

The United States recognised as early as 1922 that finding and working with export partners could greatly improve economic stability. In fact, Hoover emphasised that the Department should have begun promoting export activities. In the period between 1920 and 1940, the Department participated in programs such as balance of payments protection, Department security programs and transfer monitoring. After the end of the World War II, the United States actively worked to improve trade agreements between countries, but also imposed export controls against Soviet bloc countries. The U.S. feared that these countries, especially the Soviet Union, would acquire important technical knowledge. (U.S. Department of Commerce, 2023).

Currently the Department has thirteen Bureaus promoting stable conditions for economic development and growth for all communities. *"Department works to drive U.S. economic competitiveness, strengthen domestic industry, and spur the growth of quality jobs in all communities across the country. The Department serves as the voice of business in the Federal Government, and at the same time, the Department touches and serves every American every day*". (U.S. Department of Commerce, 2023)

The most important goal is to improve and further develop the economy of the United States of America, by constantly reforming and improving the exiting laws and regulations. According to the Department, "*there are also certain goals like: rive U.S. Innovation and Global Competitiveness, Foster Inclusive Capitalism and Equitable Economic Growth, Address the Climate Crisis Through Mitigation, Adaptation, and Resilience Efforts, Expand, Opportunity and Discovery Through Data, Provide 21st Century Service with 21st Century Capabilities".* (U.S. Department of Commerce, 2023).

4.China investment policy development

After the World War II China was in a very bad economic and social situation. Soviet influence determined political and economic life in the country. But in 1978, the Chinese central government introduced the open-door policy, which set the political and economic course for the Asian country and determined its development path for decades. After opening its markets to foreign investors, the economy grew at a rapid pace and the Asian country strengthened its economic and political power and became a regional superpower. (OECD, 2000).

Although China became a major economic power, it joined the WTO in 2001, further reducing trade barriers and opening up its economy even more. With the establishment of Special Economic Zones (SEZs), the central government decentralised the management of investment policy and gave more power to local authorities. There are similarities between the United States and China in that both countries have moved from the federal/central to the state/provincial level in investment policy. (OECD, 2000).

Until 2019, three laws on foreign investment determined the legal environment for foreign direct investment: The Law on Foreign-Owned Enterprises, the Law on Sino-Foreign Joint Ventures with Equity Participation, and the Law on Wholly Foreign-Owned Enterprises. In addition to these laws, there are also regulations relating to foreign investment in specific sectors, such as the Regulations on the Administration of Foreign Investment in Commercial

Sectors and the Catalogue of Industries for Guiding Foreign Investment. These regulations set out the conditions and procedures for foreign investment in specific industries and provide guidance on the types of investment that will be encouraged or restricted. (OECD, 2000).

In 2019, China introduced the Foreign Investment Law of the People's Republic of China. It was an amalgamation of the three laws on foreign investment. The country's main goal is to further promote foreign direct investment and create a strong but transparent legal environment consisting of modern foreign investment policies. However, national security screening has become an important part of foreign investment screening. The law introduces a national security review system for foreign investments, which enables the Chinese government to review investments that may have national security implications. Overall, China's Foreign Investment Law represents a significant step forward in China's efforts to attract foreign investment and create a more transparent and predictable regulatory environment for foreign investors. (OECD, 2000).

The introduction of economic and technological development zones gave the country a competitive advantage to attract foreign direct investment with high-tech investment projects and R&D capacity. These special zones provided incentives for this type of project. China's main goal was to develop high technology industries to be more competitive with the United States. On the other hand, the pilot free trade zones serve as test zones for China to try out their newly developed investment policies. (OECD, 2000).

The overarching goal of China's investment policy development has been to create a more transparent business environment through a process of decentralisation. Provincial administrations and governments were given more powers and freedom to set their own investment policies and promotion strategies to engage with foreign investors and foreign-invested enterprises. Just like in the case of the United States, the decentralization process created a more transparent investment environment, which boosted the confidence of foreign investors to invest in China. These investments provided an outstanding economic development for China, becoming one of the most competitive economies of the world. (OECD, 2000).

4.1 Foreign Investment policy development 1978-2001

The institutional reforms carried out between 1983 and 1999 created an institutional environment that allowed the establishment of new enterprises such as joint ventures and foreign corporations. This was a very important moment in the development of the Chinese

economic model. Joint ventures played an important role in FDI, accounting for 61.3% of contracts and 46% of contract amounts. On the other hand, 24.7% of FDI in China was accounted for by enterprises established by foreigners and whose ownership was fully controlled by foreign investors and partners. As part of the newly developed institutional reforms of the Open Door Policy, market orientation was a very important element of economic development. Accordingly, it was a great success when China joined the WTO in 2001, taking a step towards market orientation. (OECD, 2000, P. 14).

In order to get an overall view of China's achievements during the reform period, I would like to single out and summarise some of the most important steps. First, I have already mentioned institutional reforms and framework conditions a few times. In order to attract FDI, or any investment at all, the Chinese had to transform their economic institutions to make them attractive to FDI. State-owned enterprises played a particularly important role in this process. As far as we know, in the period from 1978 to 1998, the Chinese had skilled and cheap labour, but they lacked skilled managers to run the enterprises. They started to reform and downsize the state-owned enterprises in order to convince foreign companies with a lot of money to come to China and set up businesses because the state did not want to take them in hand. To achieve this, China took the proposed measures and modernised its economic institutions. That is, new laws and regulations were introduced to create a more harmonised legal environment that would attract Western investment. The country has streamlined its legal system for foreign direct investment. China has amended a number of laws, regulations and rules, such as the Equity Joint-Venture Law and the Contract Law. As the country lacked qualified managers, it was very important to attract this kind of FDI investment, which also brings management knowledge to the country. (OECD, 2000, P. 14).

Investment promotion is a crucial aspect of attracting foreign direct investment (FDI). In my opinion, it is essential to study the current business and legal environment of a country if one wants to invest in that country. The Chinese government's investment promotion during the reform period was exceptional. As I mentioned earlier, it introduced two important laws that harmonised the institutional environment in the first four special economic regions, and then almost all Chinese provinces followed suit. Most notable was the Joint Venture Law, introduced in 1979. It banned nationalisation and showed that China was serious about attracting foreign direct investment. The law favoured negotiation over the use of force, but also allowed local authorities to act when necessary. While the Joint Venture Law initiated the reform process, the Contract Law was meant to continue it. Both laws aim to protect FDI

investments. The Contract Law is designed to protect the rights of all parties involved while allowing them to determine their own remedies for resolving disputes and breaches of contract and to encourage foreign investment (OECD, 2000).

The open-door policy was a crucial turning point for China. It was introduced in 1978 and completely changed the country's image among foreign investors. The reform package contributed to the rapid growth of the Chinese economy and the expansion of the Chinese market. It accelerated the urbanisation process, especially in the so-called special economic zones (SEZs). The overarching goals were to increase foreign investor confidence, expand foreign trade and restructure and reduce the number of State-Owned Enterprises (SOEs). To modernise the country's financial system, the Chinese introduced financial reforms and aimed to protect intellectual property rights. (Shang-Jin Wei, 1995).

The open-door policy set the path of China's economic development for decades, and the country became one of the fastest growing economies in the world. Between 1980 and 1990, China's GDP grew by 9.5% annually. The Asian country became part of the so-called BRIC countries, which refer to the emerging economies of Brazil, Russia, India and China (Shang-Jin Wei, 1995).

China's foreign policy dilemma has been the focus of discussion among economists, politicians and policy makers since the founding of the People's Republic of China. The country was isolated for decades, but reforms in the 1980s and the adoption of the open-door policy led to outstanding economic development as the government opened the market to foreign investors. Adopting policies that attract foreign investors' attention and increase their confidence in China enhanced their ability to integrate their economy into the global market and promoted their economic development. Among developing and emerging economies, China has been the largest recipient of foreign direct investment since 1993. Even more remarkably, 90 per cent of it has been greenfield investment, creating thousands of jobs and bringing modern technologies to the Asian country (Long, 2005).

As a result, China started to develop more FDI policies such as tax incentives and the Guiding Catalogue on Industries Open to Foreign Investment. These efforts resulted in the institutional reform of economic and trade development. "*For the last 25 years, China has aggressively shaped a relatively complete range of laws and regulations governing foreign investment. They include the Law of the People's Republic of China on Foreign Wholly Owned Enterprises, the Law of the People's Republic of China on Sino-Foreign Joint Ventures, the*

Law of the People's Republic of China on Sino-Foreign Cooperative Enterprises, and the Catalogue for Guiding Foreign Investment. China's laws and regulations on FDI also include related preferential policies and provisions for special economic zones in the country" (Long, 2005, p. 318).

The Chinese government introduced certain incentives in certain industries to increase the confidence of foreign investors to invest in those industries. The Guiding Catalogue contained laws and regulations to provide industrial guidance to foreign investors or foreign-owned enterprises. The catalogue was first published in 1997 and then revised in 2002. Four different groups were created for foreign direct investment projects. The first group contains investments that have been encouraged by the government or local authorities, the second refers to projects that have been permitted, and the third level are enterprises that have been restricted for national security reasons. The last group refers to prohibited projects (Long, 2005).

There were certain areas and sectors where the central government and local authorities offered incentives to encourage foreign investors to invest their money and technology. The agricultural sector was strongly favoured during this period. The main objective was to bring in foreign direct investment and transform the traditional agricultural system into a more developed, modern system while promoting the industrialisation of the sector. The next big step was to modernise China's infrastructure. To attract the attention of large foreign companies, China needed to upgrade its transport infrastructure. Incentives were aimed at foreign investors who wanted to invest in the infrastructure system, and the goal was to improve the Asian country's transport system. (Long, 2005).

High-tech industries began to receive more attention in China, and encouraging investors to build R&D facilities became a priority for the Chinese leadership. However, this required a highly skilled workforce and a solid education system with top universities. At that time, China lagged behind the United States in the development of educational facilities. With its accession to the WTO in 2001, China lifted performance requirements for foreign direct investment, such as export share, local share rules, foreign exchange balance, technology transfer and the establishment of research and development centres (Long, 2005).

The core of China's outstanding economic development has been the inflow of foreign direct investment into the country. The changes and reforms in the institutional environment in the Asian country resulted in attracting a large amount of FDI. In 1978, before the reforms and

Open Door Policy, the country was ranked 32nd in the world for international trade, but in 2003 China was ranked 4th, which was a significant improvement. The reform of the legal system, especially FDI-related policies and regulations, improved the export and import performance of foreign-invested enterprises. To put it in figures, in the late 1980s, FIEs accounted for 1.94% of the country's total export value, while in 2003 this improved and accounted for 58.8%. (Long, 2005, p. 322).

The results show that the reforms have worked, the institutional business environment has improved significantly. However, despite the reforms, the very low labour costs also played a key role and were an important factor for foreign investors to invest in China, especially in the manufacturing sector. However, the Chinese categorised investments into two groups. The first included investments that produced for the Chinese consumer market and the second included companies that produced for export. It is important to note that the Chinese consumer market was relatively small before WTO accession. Wages were significantly lower than in the United States. To put it in numbers: Wages in the US were 48 times higher than in the Asian country. Investors recognised this and it was a big competitive advantage for China, but the government had to take into account the small consumer market. In the past, China's domestic market was small and the country's restrictive FDI policy, which prohibited foreign companies from selling locally, made sense. (Long, 2005).

Low labour costs have proved to be very important, with 70 per cent of Japanese companies investing in China in 2002 because of low labour wages, according to the Japan Bank for International Cooperation. The steady inflow of foreign direct investment into China has strengthened the country's ability to be a manufacturing base for export industries. With many companies investing in Chinese manufacturing, this has significantly boosted competition and also the development of supporting industries, resulting in some regions of the country improving significantly, "*for example, China's Pearl River Delta and Yangtze River Delta regions have emerged as world-class information technology (IT) clusters. Thus, it is unsurprising to find that a 2003 American Chamber of Commerce in China survey of its members found that 56 percent chose to invest in the country because of its ideal location as a production base for global exports and its growing domestic market"*. (Long, 2005, p324).

Emerging economies are trying to set up research and development centres. China has designed its FDI policy to attract foreign investors and foreign-owned enterprises operating in high-tech industries. This is also a good opportunity to transform their own industries through advanced and applicable technology. In the late 2000s, China had several technological gaps

that needed to be filled through the recruitment and development of technological skills, as well as the introduction of new technologies. Since the 1990s, China has focused on improving its institutional environment in conjunction with FDI policies to attract high-tech capacity into the country. For example, a scheme was introduced that gave companies a tax exemption on imported equipment and supporting technology that was limited to the laboratory of FIE and used for pilot experiments, as well as a sales tax exemption for companies that earned revenue from technology transfer that they had developed themselves, "*an FIE with technological development expenses at least 10 percent over its previous year is entitled to a 50 percent discount of its total technological development expenses in the current year's corporate income tax, and FIEs with R&D centers in China are allowed to import and sell a small quantity of high-tech products on a trial basis in the local market, if they are goods produced as a result of the R&D by their parent companies.* (Long, 2005, p330).

Not only did the central government offer incentives to foreign investors and FIEs to develop high-tech capacity, but regional authorities at the provincial level were also allowed to offer certain benefits to enterprises, such as reduced land use fees or assistance in hiring employees. The results of advanced reforms in laws and regulations have been excellent. Companies such as Microsoft, Intel, Honda and over 400 foreign-owned companies established research and development centres in the country. The establishment of these centres developed and facilitated China's connection to the global value chain. (Long, 2005).

The Chinese government also focused on improving the quality of education in the country's universities. This was an important step, because foreign companies are more willing to invest and set up R&D centres in regions where renowned research universities are located. They can recruit talent there more easily and at lower cost. R&D and manufacturing are increasingly intertwined. Since China had cheap but skilled labour during the millennium, foreign investors have invested heavily in manufacturing and, in most cases, set up R&D centres due to the Chinese government's friendly policies on foreign direct investment. Chinese scientific research institutions have developed strongly in recent decades. The reason is that FIEs with R&D activities cooperate with these research institutions in China and share important information and technologies. (Long, 2005).

For example, the Swiss Novartis Company works with the Shanghai Institute of Materia Medica under the Chinese Academy of Sciences to study and develop new types of drugs made of natural ingredients. The incentives given to FIEs establishing R&D facilities contributed to a win-win situation between the Chinese government and these foreign-owned enterprises.

The country developed industries using high-tech capabilities while, for FIEs, investing in China is highly beneficial. (Long, 2005, p.331).

R&D and manufacturing go hand in hand, especially nowadays. After China's accession to the WTO, Chinese industry has developed at a rapid pace. Before the turn of the millennium, China lagged behind developed countries in new product development. The reason was the lack of R&D facilities in the country. To develop new products, a high level of technological skills is required. To catch up with developed countries, the Chinese government introduced laws and regulations that attracted foreign direct investment from companies with high-tech capabilities. As a result, R&D facilities were set up in China to work hand in hand with domestic companies, leading to outstanding development of the manufacturing industry and especially the communications market. Most mobile phones were imported or manufactured by foreign companies in China, but in recent decades the country became the largest market for mobile communications and China became the largest exporter of mobile phones with a turnover of 128 billion USD in 2021. The cooperation between foreign and domestic companies led to enormous competition in R&D on a global scale. Therefore, investors came not only from the Asian region, but also from Europe or the United States. (Long, 2005).

The reform of the institutional environment made China a top destination for foreign direct investment. However, when a country's market becomes extremely popular for foreign investors, the so-called crowding-out effect can hinder the sustainable economic development of certain industries, especially manufacturing. Foreign-invested companies enjoyed the Chinese market environment from the late 1980s onwards, as they were able to recruit talented, cheap labour due to the inefficiency of rigid state-owned enterprises. However, in the late 1990s, SOEs were restructured so that they could compete with foreign companies and aggressively recruit young talent. On the other hand, private domestic companies set up joint ventures with FIEs, resulting in tense competition in certain industries while the market grew rapidly (Long, 2005).

In addition, Chinese culture is unique and the Chinese place a lot of value on their country, which led to young talents who had studied abroad returning home and starting their own companies or working for large technology companies. I have already mentioned that the development of R&D and the establishment of relevant centres is the key to sustainable economic development in the long run. Therefore, R&D investment has also expanded China's domestic market, leading to growth in production in almost all industries. Attracting the attention of foreign investors with serious high-tech capabilities in specific industries is

considered a difficult challenge. However, the Chinese have come up with excellent policies. If we look at the automotive industry, for example, the Chinese government introduced several important FDI policies between 1990 and 2005. It had the advantage of making the Chinese market extremely attractive for FDI, and it only allowed foreign investors into the country if they operated joint ventures with domestic automotive companies. It was again a win-win situation. Although the FDI limited the technological development of their domestic partners whose capabilities were underdeveloped, these domestic companies could learn from their foreign partner companies because the FDI was obliged to share their technology with their Chinese partners. To put it in numbers: In 2003, 2.069 million cars were produced in China, while the number of cars produced in 2021 will be 21.41 million, an outstanding growth. (Long, 2005).

4.1.1 Special Economic Zones (SEZ)

In the late 1970s, China introduced the so-called Open Door Policy, which led to a series of economic, social and political reforms. This policy enabled China to receive a huge influx of foreign direct investment from the late 1980s onwards, which completely changed the economic structure of the country. As we can clearly see, the call for FDI by Chinese economic decision-makers was successful, as the Asian country became the second largest recipient of FDI in the world after the United States. China was already challenging the US economy at the turn of the millennium (OECD, 2000).

There were three phases of China's open-door policy. What really happened was that the Chinese made some very important decisions that targeted economic institutions. In other words, they created a legal environment in four different economic zones, the so-called special economic zones (SEZs), which attracted a huge inflow of foreign direct investment. Although FDI inflows to China were heavily concentrated in these SEZs, their scale was rather limited. The total inflow of realised FDI during these five years was only US$ 1.8 billion, an average of 360 million annually (OECD, 2000).

"Document No. 50" provided for allocating certain areas in Shenzhen, Zhuhai, Shantou of Guangdong Province, and Xiamen of Fujian Province to establish special zones as "a special form of attracting foreign investment" (Henry R. Zheng, 1987, p196). Why has China set up these special economic zones? China has a huge territory and at the beginning of the 1978 reforms, the central government had to deal with the huge gap between the different regions of the country. Implementing a unified investment policy was a bold idea that led to the

establishment of special economic zones in regions where the government believed the reform package could work. In fact, the provisions of the open-door policy proved to be a game-changer and boosted China's economic development. But the introduction of special economic zones doubled the already existing gap between the different provinces of the country (Henry R. Zheng, 1987).

This disparity was due to the open-door policy reforms that targeted the economic institutions of the coastal provinces in the east of the country. The Chinese government announced a broader package of economic reforms aimed at developing the economic institutions of other regions in the west and centre of the country. With the adoption of broader economic reforms and an open-door policy for foreign direct investment in the 1990s, the influx of foreign direct investment into China began to spread to other provinces. The adoption of this policy was successful. At the beginning of the reform period (1983), the most important eastern province was Guangdong, which attracted about 46 per cent of the total capital inflow, while this share declined to about 28 per cent in 1998. This shows that the broad-based economic reforms worked. The western and central regions of the country began to catch up with the eastern regions. The share of the central provinces in the country's total cumulative foreign direct investment increased from 5.3 per cent in the 1980s to 9.2 per cent in the 1990s (OECD, 2000, p. 9).

The central government faced several problems when it developed and introduced a new investment policy. The SEZs served as test zones, but the relationship between the SEZs and the inland regions strongly influenced the Chinese government's policy. The economic disparity between the SEZs and other regions in China weighed heavily on the Asian country's economic development. Foreign direct investment was mainly concentrated in the newly developed test zones. To oversee the development of the special economic zones, the central government established the Office of Special Economic Zones to monitor investment policy. The investment policy development mechanisms were shifted from the central level to the provincial level. This decentralisation process was key to a more transparent model of policy development. Guangdong, for example, established the Special Economic Zone Management Committee in 1980 to support the administrative and policy development environment in the special economic zones. "The Guangdong provincial government established the "People's Government of Shenzhen Special Economic Zone of Guangdong Province" as the administrative authority for the Shenzhen Special Economic Zone." (Henry

R. Zheng, 1987, p. 211). This move gave the provincial government much more power than the administrative committees in other provinces.

The legal structure of SEZs changed and improved significantly since its introduction. In the late 1980s, Guangdong SEZ dominated the policy making among SEZs. Moving from central governmental regulations to provincial level, there were three important laws that governed the SEZs. The central government regulated "*Provincial Regulations on Re-duction and Exemption of Enterprise Income Tax and Consolidated Industrial and Commercial Tax for the Fourteen Coastal Cities and the Special Economic Zones, Regulations of the General Administration of Customs of the People's Republic of China Governing the Control of Goods, Means of Conveyance, Luggage and Postal Articles Entering or Leaving the Special Economic Zones, and Regulations of the People's Republic of China Concerning the Administration of Foreign Banks and Sino-Foreign Joint Venture Banks".* (Henry R. Zheng, 1987, p212).

According to the decision made by the Standing Committee in 1981, provincial government and administrative authorities received the right to issue laws and regulation on a provincial level. This decision boosted the decentralization process and improved the business and legal environment in SEZs. These laws were applicable to all Special Economic Zones. However, provincial governments and administrative authorities in each SEZs were allowed to introduce and adopt laws and regulations applicable only for their SEZ. *"The laws and regulations of the Xiamen SEZ are mostly modeled after those of Shenzhen. Major regulations in this area include the Bankruptcy Regulations of Foreign Related Corporations in the Shenzhen Special Economic Zone 3 which is the only bankruptcy law in the PRC applicable to foreign investment enterprises, the Interim Provisions of the Shenzhen Special Economic Zone on Foreign Economic Contracts 4 which is the first Chinese contract law governing foreign economic relations, and Provisions for Administration of Mortgage Loans in the Shenzhen Special Economic Zone"*. (Zheng, 1987, p214).

Another testing ground for special economic zones was tax incentives. The SEZs influenced foreign investors and encouraged the inflow of foreign direct investment into China. The income tax rate in all special economic zones was fifteen percent for Sino-foreign equity joint ventures and contractual joint ventures. However, for equity joint ventures and wholly foreign-owned enterprises, the tax rate was thirty percent. However, the government recognised that cutting-edge technology projects were crucial for China, so it introduced other reductions, including tax rates. "Second, the five-year tax exemptions provided by the

National Tax Law for equity joint ventures,99 i.e. two years of tax exemption followed by three years of fifty per cent reduction, apply to all foreign-invested enterprises,100 including wholly foreign-owned enterprises that would otherwise be subject to only a three-year tax exemption." (Henry R. Zheng, 1987, p. 217).

Entering a market as a foreign investor involves high risks and much uncertainty, which is true for both sides. As a guarantee, the Chinese government introduced a licencing procedure and tested it in the special economic zones. In the 1980s, the law gave the administrative authorities of the special economic zones the power to approve or reject projects of enterprises with foreign investment. The law also described that the relevant administrative authority or provincial government must examine these projects before approving or rejecting them. This was an important element, certainly similar to CFIUS, the Committee on Foreign Investment in the United States, whose main role in the 1980s was to investigate projects and investments in critical infrastructure or industry in the United States. Although there are about ten years between CFIUS and the investigation of foreign direct investment by Chinese administrative authorities. However, the powers of the provincial governments and administrative agencies only applied to investments below $ 30 million. Any project that exceeded this figure was examined by the central government. (Henry R. Zheng, 1987).

4.1.2 Economic and Technological Development Zones

To even out the disparity between the provinces, the central government continued to expand the Special Economic Zones and introduced Economic and Technological Development Zones in 1985. in 1987, thirteen more ETDZs were established. These zones helped to improve and test the new investment policy developed by the central government. They also played an important role in creating transparency by shifting central investment policy to the provincial level. China's existing large, advanced cities developed due to the excellent economic results of the special economic zones. The attractiveness of the special economic zones provided access to advanced technologies, which drove the country's economic development (Henry R. Zheng, 1987).

The Economic and Technological Development Zones (ETDZs) were an evolution of the Special Economic Zones (SEZs). Their main objective was to attract R&D projects, "enterprises or scientific and technological research institutions with the aim of researching new technologies, manufacturing new products and developing new industries." (Henry R. Zheng, 1987, p. 262). The Economic and Technological Development Zones were established in 1984. The Chinese government recognised that industrial upgrading was crucial for the

sustainable economic development of the country. The establishment of the ETDZs created a business environment in various regions of the country that attracted foreign investors with R&D capabilities. ETDZs have shaped the legal environment of foreign investment policy and various other areas such as taxation, technology transfer and economic contract law. ETDZs operate under three sets of rules: government regulations, ETDZ constitutions and provincial regulations in specific areas of ETDZs. (Henry R. Zheng, 1987).

The institutional structure of the Economic and Technology Development Zones consists of two major institutions: The Management Committee and the Business Support Institutions. The Administrative Committee acts as the regulatory authority for the ETDZs and issues new laws and regulations to improve the business environment. The Committee is divided into several departments to create a more transparent working environment. *"These include the Tax Bureau, the Bureau of Administration of Industry and Commerce, the Finance Bureau, the Bureau of Policy Studies, the Personnel Bureau, the Bureau of Budget and Accounting, the Bureau of Enterprise Management, the Planning Bureau, and the Committee for Arbitration of Economic Contracts."* (Henry R. Zheng, 1987, p. 268).

Business Supporting Institutions were crucial players in the development of ETDZs in the late 1990s. They usually take the form of corporations operating in the infrastructure sector of certain provinces, and the main goal was to provide consultation services for both domestic and foreign owned enterprises. *"The organizational structure of these business-supporting institutions takes one of two forms. The ETDZs have established either: (1) a general corporation with several supporting subsidiaries providing service in each specific area; or (2) a few independent supporting corporations each specializing in a particular field.* (Henry R. Zheng, 1987, p. 269).

After the turn of the millennium, the Chinese government introduced several other special zones, such as: Free Trade Zones, Export Processing Zones and High-Tech Industrial Development Zones. The establishment of these special zones helped the country achieve outstanding economic development. Year after year, the government reforms and develops the institutional and business environment of these special economic zones.

Both the special economic zones and the economic and technological development zones played an important role in China's economic development. They were test zones where the Asian country could try out the newly developed laws and regulations for foreign investment. As in the case of the United States, both countries moved from the federal/central government

level to the state/provincial level in terms of investment policy. However, businesses and economic institutions at both levels worked closely together to achieve better results and create a sound business environment for foreign investors.

4.2 The foreign Investment policy development between 2013-2022

Chinese economic development has been excellent since the introduction of the Open Door Policy in 1978. The provisions of this policy opened the doors for foreign investors to invest in China, leading to rapid expansion of their market and miraculous economic growth. Special economic zones were responsible for these successes as the country became the centre of the Asian region and a leading economic power on a global scale. To sustain this strong economic development, China introduced the Foreign Investment Law in 2019, which will shape the next decades of China's economic development.

A well-developed legal system is essential for a country to attract foreign direct investment. The reforms and opening up of China's economy to foreign investors began in 1978, which means this year marks the 40th anniversary. The reform of the institutional system, the changes made by local authorities, the development of international relations, the influence on other Asian countries and the opening up to foreign companies and investors have been key features of this process. The concept of the rule of law has changed and improved significantly as a result. Joining the WTO in 2001 was a significant step for China, as it committed the country to promoting trade, multilateral economic relations, transparency and world development and openness, as stated by the Chinese Ministry of Commerce in 2022.

Since then, China has joined several multilateral trade agreements and strengthened compliance with multilateral trade rules, making the Chinese economic system more predictable. However, various events can have a negative impact on an economic system, such as the 2008 financial crisis, but predictability is still crucial for foreign investors. The predictability of the US market has been very good, making it the most important recipient of foreign direct investment. Chinese economic decisions and policies are geared towards similar success. *"The Chinese central government has checked more than 2,300 pieces of laws and regulations, while local governments have checked over 190,000 pieces, to establish a system of laws, regulations, and policies in line with WTO rules."* (Ministry of Commerce of China, 2022 P46).

China has actively participated in the development of e-commerce and investment facilitation, which are part of the WTO agreements for these new areas. China has made great efforts to

build multilateral economic relations under WTO rules. As a result, the country has managed to sign 19 free trade agreements with 26 countries and regions. These agreements remove trade barriers to promote trade and investment among participating countries and regions. These FTAs were signed with partners from Asia, Oceania, Europe, Africa and Latin America. The Regional Comprehensive Economic Partnership (RCEP) entered into force on 1 January 2022. The agreement was concluded between several of China's partners, including ASEAN countries, Australia, Japan, New Zealand and the Republic of Korea. According to the Chinese Ministry of Commerce report, this FTA is by far the largest in the world, accounting for 30% of the global total. The Chinese government's efforts have contributed to the country's economic growth being the most competitive in recent years. (Ministry of Commerce of China, 2022, p. 48).

China also wants to be part of another major free trade agreement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). It came into force in 2018 between eleven countries, including Japan, Australia and Singapore. Recognising the importance of this agreement, the UK has already applied for 2021. China is willing to provide market access to CPTTP member countries and adapt to the institutional environment of the agreement to achieve the set goals. On 1 November 2021, China formally applied to join the Digital Economy Partnership Agreement (DEPA). China is willing to provide cooperation opportunities and a broad market for the enterprises of the members of DEPA and strengthen cooperation in the digital economy among themselves, so as to contribute to innovation and sustainable development among the members. Participation in these agreements is important to attract foreign direct investment more efficiently. This reduces barriers to the inflow of foreign capital, shares technological innovation and market opportunities. China lags behind in R&D investment development, this is a great opportunity to catch up with the US. (Ministry of Commerce of China, 2022, p. 48).

Since the 1983 reforms, China has encouraged foreign investors to invest in the country in accordance with the laws. The Asian country has worked hard to transform the institutional system to attract foreign direct investment, with basic principles such as protecting the rights of foreign investors and companies. During the first part of the reforms, China focused on creating the institutional background for Sino-foreign equity joint ventures, wholly foreign-owned enterprises and Sino-foreign contractual joint ventures to create a business environment that would enable FDI inflows and make China a top destination for FDI. The Asian country further developed this institutional system, which helped to boost the

confidence of foreign investors and businesses. The so-called "Three Laws on Foreign Investment" were replaced by the Foreign Investment Law of the People's Republic of China in 2019 at the second session of the 13th National People's Congress. The law was replaced by the 13th National People's Congress. This law sets a new direction and creates a new institutional framework aimed at further developing foreign investment in the country. It strengthens the Asian country's national investment promotion strategy and came into force on 1 January 2022. It aims to promote foreign investment based on the four pillars of stability, predictability, fair competition and transparency (Ministry of Commerce of China, 2022).

4.2.1 Foreign Investment Law

Since the introduction of the Foreign Investment Law, China has expanded the management of FDI investment. On 27 December 2021, the Special Administrative Measures for Access to Foreign Investment and the Special Administrative Measures for Access to Pilot Free Trade Zones for Foreign Investment were introduced, modernising the institutional environment for both foreign and domestic investors. Although China had already introduced important laws and regulations at the provincial administrative level in the 1980s, the constant changes in the global economy encouraged the Asian country to further reform its economic institutions. (Ministry of Commerce of China, 2022).

This administrative system introduced a negative list for foreign investors, listing various industries where investment is prohibited or subject to strict rules on how a foreigner may invest. This system also sets the rules between domestic and foreign investors, creating competition, but at the investment access stage, the same rules apply to both parties. The main goal is to reduce the negatively listed areas in order to increase access to foreign investment for China and "*pilot free trade zones are further reduced to 31 and 27 entries, down 6.1 per cent and 10 per cent",* respectively. The main industries including these achievements are the manufacturing industry and the service sectors of China. (Ministry of Commerce of China, 2022. P49).

The opening up of markets and industries for foreign investors and encouraging them to participate in pilot free trade zones is driving the development of the newly created administration system. The negative list is applicable to everyone, and local governments have adopted suitable law-based administrative measures. The local governments of the regions and provinces must follow the two categories of the negative list created by the Chinese leadership. The first category is simple and contains industries and fields where

foreign investors and companies are not allowed to invest. The second category is strictly related to licensing. To gain access to these fields and industries, foreigners must obtain a license from local authorities to operate. Companies must apply early and in accordance with the laws implemented by the government. Local authorities have the right to decide on the applicant and whether it meets the requirements or not. The access conditions determine precisely how a company can invest, providing the applicable laws and regulations. These rules only apply to the negative-listed fields and industries. China is working year by year on reducing the negative-listed sectors (Ministry of Commerce of China, 2022).

China also opened-up its financial sector for FDI. "*The Measures for the Administration of Securities and Futures Investment Made in China by Qualified Foreign Institutional Investors (QFII) and RMB Qualified Foreign Institutional Investors (RQFII) and its supporting rules, which were implemented on November 1, 2020, allow QFII and RQFII to invest in securities listed on the National Equities Exchange and Quotations, private investment funds, financial futures, commodity futures, options, etc. and to participate in bond repurchase, securities margin trading in stock exchanges, and refinancing securities lending transactions*." (Ministry of Commerce of China, 2022. P49).

China's economic development and opening-up policy have not only attracted the inflow of foreign direct investment into certain industries such as manufacturing, but also attracted the attention of financial institutions and insurance companies from abroad. To regulate the entry of these institutions, the Chinese created *"the Decision to Amend the Detailed Rules for the Implementation of the Regulation of the People's Republic of China on the Administration of Foreign-Funded Insurance Companies in 2021"*. (Ministry of Commerce of China, 2022. P49).

The aim was to create a business environment that would allow these institutions to join. It introduces the conditions, rules and regulations and removes the existing restrictions on foreign ownership, which, according to the Chinese Ministry of Commerce, has greatly improved the opportunities for foreign financial institutions. China has opened up the market for insurance brokerage firms with the relevant experience to operate and run insurance brokerage businesses in China. The China Banking and Regulatory Commission also decided to reform the rules for insurance asset management companies. The main reason for this was the differences between the rules and regulations that apply to domestic and foreign insurance companies. In 2021, China focused on reducing the differences in the institutional environment in relation to foreign and domestic investors. Healthy competition is one of the

most important market elements. The reform of the institutional environment has led to competition between foreign and domestic investors (Chinese Ministry of Commerce, 2022).

Encouraging and guiding foreign investors is crucial for China's economic development. The Asian country has adopted several FDI policies to improve the business environment. Investment promotion has become very popular in recent years not only in China but also in the United States. There are certain incentives that the Chinese government uses for qualified foreign investors and enterprises. For example, in the western regions of the country, companies can get lower tax rates, such as the corporate profit tax, which has been reduced to 15% for qualified companies in the western provinces. For production projects, local authorities offer industrial land at a price lower than the lowest national standard price, but not cheaper than 70% of the lowest price. (Ministry of Commerce of China, 2022, p. 50).

In 2022, China published the Catalogue of Industries for Encouraging Foreign Investment, which greatly expands the scope and opportunities for investors in advanced manufacturing and services. The government is focusing on the central and western provinces of the country. *"The draft 2022 edition contains 1,435 entries, an increase of 200 entries or more than 15% from the 2020 edition. Of the 200 new entries, 36 apply nationwide and 164 apply to the central and western regions."* Equality in the investment environment is important to the Chinese government. According to them, foreign investors, foreign companies and domestic investors are treated equally in China's institutional environment. Even though government funding might be limited. They have the same right to access licences, land, tax reductions and rebates, and human capital. (Ministry of Commerce of China, 2022, p. 50).

During the procurement process, domestic and foreign investors are treated equally and have similar opportunities and incentives to engage in government procurement activities. This policy applies to both central and local government, resulting in a decentralised investment policy. Organisations are prohibited from treating products manufactured by foreign-owned or foreign-invested enterprises differently. This policy also applies to the work of local authorities. Any kind of discrimination is prohibited and any foreign investor should have access to licencing procedures, land and human capital like their domestic competitors. These laws and regulations create an investment environment in which foreigners are protected by the institutions of the Chinese government. These reforms have created healthy competition between investors and companies, which plays a major role in China's economic development. (Ministry of Commerce of China, 2022).

In 2021, China's Ministry of Finance began implementing the Law on the Treatment of Domestic and Foreign Enterprises in Government Procurement. It requires all departments relevant to this process to actively participate in shaping the policy. Local authorities are currently in the process of adopting these rules and regulations in all regions of China to eliminate the differences between domestic and foreign-invested enterprises. Basic standards such as industry-specific, local and national standards are the same for foreign and domestic investors. They can equally participate in the drafting and revision of these rules and regulations for standards. Foreign-invested enterprises can even develop standards themselves or with other enterprises. (Ministry of Commerce of China, 2022).

The area of expropriation is somewhat complicated in China. There are several rules and laws in accordance with the Foreign Investment Law that cover this area. Expropriation is only allowed in exceptional cases. If it serves the public interest, the state can seize the investment in accordance with the law. Such expropriation or confiscation must be carried out in accordance with legal procedures and fair and adequate compensation must be provided in a timely manner. Market value should always be considered and if the state decides to expropriate, legal procedures should be followed. If foreign investors are not satisfied with the treatment or compensation, they can file an administrative complaint in accordance with the law. Freedom of technical cooperation is an important component of investment. Technology advancement is particularly important these days, and competition between the US and China is tense. If we look at the relevant institutional environment in the Asian country, we can see that technical cooperation is regulated. I have already mentioned China's administrative licencing system, which means that there are certain fields and industries for which a licence is required. However, according to Article 31 of the Administrative Licencing Law of the People's Republic of China, local authorities and administrative organs may not consider technology transfer as a condition for issuing an administrative licence. (Ministry of Commerce of China, 2022).

The United States has a well-functioning, decentralised economic system. China has managed to reduce regional disparities and follow a more balanced and sustainable economic path. The most important step was to strengthen local authorities and build a more transparent institutional system, especially with regard to foreign direct investment, through the introduction of the Foreign Investment Law. It is true that China took the right path by introducing the open-door policy, but further reforms were needed to improve the institutional environment. The central government could not take care of foreign investors and foreign-

funded enterprises alone, so the creation of a more decentralised system was necessary. Local authorities were given the power to negotiate with foreign investors, in accordance with the Foreign Investment Law. Contract negotiations between the local government and foreign investors should strictly adhere to the policy commitments made to these investors by the country's Foreign Investment Law. Ministries and local authorities should support these policies and regulations and not undermine the attraction of foreign investment. This attitude has been instrumental in making China one of the best destinations for foreign direct investment. The central and most important objective of this research is to demonstrate that a country's institutional framework plays an important role in its economic development and that the amount of FDI it can attract is considered a crucial factor in that development. (Ministry of Commerce of China, 2022).

The Chinese government has ensured that the Foreign Investment Law protects investors when local authorities have to make changes and breach of contract is prohibited due to the adjustment of the administrative region. But. The law states that the companies that have run into difficulties due to changes made by local authorities should receive fair compensation for the losses suffered during the process. However, the process is much more complicated than that. There have been, and will continue to be, complaints from investors and businesses that have run into difficulties because of government changes. In order to deal with these complaints appropriately, Chinese policymakers have created an official channel for complaints to make the process more transparent. This mechanism is available not only to companies or foreign investors that have gone bankrupt because of government changes, but to all foreign-funded companies and projects that have a problem with the authorities or do not understand something about the regulations. This is a win-win situation, as the companies can also make recommendations that can greatly improve the policy-making mechanism for foreign direct investment. (Ministry of Commerce of China, 2022).

The rules for handling complaints were revised in 2020. An inter-ministerial meeting system was established within the Ministry of Commerce and its relevant departments. The complaint handling process starts at the Ministry of Commerce, where the various departments follow the mechanism in accordance with the law. The first step is to determine which department is responsible for discussing a possible problem if the matter involves the relevant departments of the State Council, the people's governments of the provinces, autonomous regions and municipalities. *"The Ministry of Commerce establishes the National Center for Complaints of Foreign-Invested Enterprises, which is responsible for handling the complaints referred to.*

Local people's government at and above the county level shall designate a department or institution for handling complaints in their respective jurisdictions and according to their due responsibilities". (Ministry of Commerce of China,2022, p53).

The role of complaints agencies is to protect foreign investors or foreign-invested companies during the process. Business information, personal information and trade secrets must be protected by the complaint agency, as laws and regulations are designed to protect the business of foreign investors even during litigation. This is an important part of attracting foreign direct investment. Business people and multinational companies are willing to take risks, but it is crucial to minimise these risks. Globalisation has made the business environment fragile and it is difficult to plan for the long term. Any business project involves major risks when entering foreign territories and markets. A well-developed institutional environment that protects foreign investors can be very attractive to multinational companies. The Chinese government, ministries and economic institutions have worked hard to create a business environment that is very attractive to foreign direct investment and have introduced laws and regulations that reduce the risk of potential foreign investment. (Ministry of Commerce of China, 2022).

According to the Ministry of Commerce of China, more than 2,500 agencies have been established to deal with foreign investor complaints by 2021. These agencies have established systems in 26 provinces in China, with well-resourced local foreign investment complaint networks established in 19 provinces and 17 provinces publishing their lists of complaint agencies in their respective jurisdictions. These agencies not only deal with complaints, but also provide support, guidelines and information to foreign investors and foreign-invested enterprises. This is a crucial part of the investment promotion process and helps to reduce the risk of investment projects. A well-organised legal environment is the first pillar to attract foreigners to invest in China and also creates competition on a regional and global level. As I mentioned earlier, China became a top destination for foreign direct investment thanks to the reforms and revisions of the institutional system that started in the 1980s. The above-mentioned efforts have created a framework in which foreign-owned businesses and enterprises are protected by laws and regulations. They have the opportunity to complain and go through a process to help and support these companies in defending their projects and investments. The business environment has improved significantly over the past 40 years, and foreign direct investment is undoubtedly at the heart of China's economic development. (Ministry of Commerce of China, 2022, p.53).

4.2.2 Investment Promotion strategy of China

Since the introduction of the open-door policy, the Chinese central government has developed investment promotion measures and policies to boost foreign investor confidence. The Foreign Investment Law of the People's Republic of China contains several important provisions on investment promotion. It specified the responsibilities of the Ministry of Commerce and the relationship between the National Development and Reporting Commission. (MOFCOM, 2022).

It is very interesting to see that the central government and MOFCOM have continued and maintained the decentralisation process and developed a transparent centre for investment promotion in China. The main focus is on local authorities at provincial and regional levels. They are encouraged to set up their own investment promotion agencies to further develop the business environment in the provinces. However, the investment promotion agency of the Ministry of Commerce is responsible for setting the newly introduced investment policy in China. This is the national level. The main objectives are to develop the investment environment in China and to improve the industrial environment through the use of high technology. There are several very important investment promotion organisations such as the China Association of Enterprises, the China Council for International Investment Promotion or the China Council for the Promotion of International Trade. (MOFCOM, 2022).

On the other hand, several important investment promotion agencies were established on a provincial level. These agencies also promoting investments and strengthening the business environment locally. "*Investment promotion agencies around China continue to optimize their setup with increasingly stable and expanded teams, and greater emphasis has been placed on promoting investment in a distinctive way that takes into account regional advantages".* (MOFCOM, 2022, p32).

After Covid-19, MOFCOM set up a special team for major foreign investment projects to maintain foreign investors' confidence and willingness to invest in China. The pandemic strained engagement between Chinese officials and foreign investors as China implemented a total lockdown. The special team helps FIEs and foreign investors to carry out their investment projects and solve their difficulties to strengthen their position in the Chinese market. The special team provides guidance and key business and infrastructure information to help the foreign companies achieve their set goals. (MOFCOM, 2022).

At the local or regional level, Chinese authorities constantly hold trade exhibitions and fairs where FDI and foreign investors can interact with local governments and domestic enterprises and learn about certain restrictions and investment policies before investing. China has recognised that foreign direct investment in special economic zones has contributed significantly to the rapid economic development of Chinese regions. Therefore, more and more provinces are holding individual trade fairs to attract foreign direct investment. On the other hand, MOFCOM also organises investment promotion fairs at the national level, such as the China International Fair for Investment and Trade and the Central China Investment & Trade Exposition. These events are important for China as foreign investors can learn and understand the business and investment environment of the Asian country. This enables them to reduce the risks of their investments, which can boost investors' confidence in China. (MOFCOM, 2022).

China has modernised its investment promotion strategy and launched the Invest in China website as a public service to inform foreign investors to improve their chances of investing in China. The United States has also developed a website for foreign investors to provide information online, leading to competition in promoting foreign investment. "*Serving domestic and foreign governments, institutions, and enterprises, it aims to provide more efficient and convenient online services for foreign investors to invest in China and Chinese enterprises to go global".* These websites usually contain information about the country' legal system, business environment, provincial governments and economic institutions, project database and investment environment. (MOFCOM, 2022, p35).

The Investment Project Information Database is a very useful aid for central and local provincial governments to promote investment in China. This database serves as an information system for foreign investors to track the current investment projects in the Asian country. In this way, FIEs and foreign investors can more easily gather information and participate in the country's investment promotion strategies. Investment promotion agencies, development zones, domestic and foreign companies are constantly uploading information about the ongoing projects. These useful details are also available in English. (MOFCOM, 2022).

As part of the investment promotion strategy, the Pilot Free Trade Zones (PFTZs) take the reforms and opening-up policies to another level to further develop the investment environment in China. There are currently 21 PFTZs in the country, the first of which was established in 2013. The main objective of introducing these PFTZs is to develop free trade

and investment zones and renew China's institutional systems towards financial services. These PFTZs aim to improve China's competitiveness in global trade and make the country's business environment more transparent and modern. These special economic zones often carry out pilot projects approved by the State Council to initiate high-level opening-up reforms. These special zones constantly receive special and newly developed investment policies and in turn serve as test zones to improve the investment environment and implement investment promotion strategies. (MOFCOM, 2022, P. 37).

4.2.3 National Security review, Information Reporting System

However, national security has immense importance in any country, and the situation is the same in China. The procedure for approving foreign direct investment is very complex, but it serves to protect the rights of both parties. As I mentioned earlier, the regulations protect the rights of investors, while the Foreign Investment Law has created a security process that serves the interests and protection of the public. The process is in line with China's laws and regulations and investigates projects and companies that could pose a potential threat to the country's national security. The process and system were approved by the State Council, an administrative branch of the Chinese government, in 2021. The mechanism's main task is to list the projects and enterprises that invest in the military industry, the agricultural sector or other enterprises related to national security. If foreign investors have control over military-related enterprises or enterprises producing certain agricultural products, this could pose a threat to national security. (Ministry of Commerce of China, 2022).

The sole purpose of the procedure is to ensure that these foreign-invested companies and their businesses do not harm the Chinese people. In 2020, the Asian country introduced a regulation on reporting measures by foreign investors or foreign-invested enterprises. The aim of the regulation is to make the business environment for foreign direct investment more transparent. Companies are required to report on their economic performance to the relevant departments of local authorities. This includes investment and trade information that must be submitted to the enterprise registration and credit information disclosure system. The regulation also states that the reported information must be accurate and complete. The requirements also apply to the annual business report of enterprises with foreign capital and foreign investors. (Ministry of Commerce of China, 2022).

In 2020, the business environment in China had changed significantly. According to the provisions of the Foreign Investment Law, enterprises can form two types of organisational

structures: Enterprises or partnerships. The provisions of the Enterprise Law have made the business environment more transparent and simpler. *"Foreign-invested enterprises are no longer divided into Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures, and wholly foreign-owned enterprises".* (Ministry of Commerce of China, 2022, p. 55) According to the Chinese Ministry and relevant departments, foreigners can set up limited liability companies or joint stock companies. The former refers to companies established and financed by 50 or fewer shareholders, where the shareholders are liable for the company with their pre-negotiated capital contribution and also assume liability for assets and debts. A public limited company is usually registered with a capital consisting of equal shares created and realised through the issue of shares, and the shareholders are liable to the company with their negotiated share limit for the debts with all their assets. However, the registration process is mandatory for both forms of organisation, in accordance with the Regulations of the People's Republic of China on the Registration and Administration of Market Enterprises (Ministry of Commerce of China, 2022).

China has allowed foreign-invested enterprises to determine their own institutional environment and build their specific portfolio for recruiting and hiring labour in China. The details of employment contracts are transparent and obvious, they should include information on the possible working hours and specify whether the contract is permanent or fixed. The regulation of working hours is based on western cultural aspects, 40 hours per week with a standard eight-hour working day. In China there are 11 paid public holidays every year. Taking this information into account is important because the foundation of a successful company is its workforce (Ministry of Commerce of China, 2022).

5. USA Investment Policy Development of the United States

The United States has been the largest recipient of foreign direct investment for several decades and has dominated the global economy. Between 1978 and 2022, however, the legal environment has changed significantly, reflecting the emergence of economies such as Japan in the 1980s or China today. In general, the US has always welcomed foreign investment and encouraged free trade between countries. However, in the 1980s, fear of Japanese investors buying up America led to political debates. This series of debates led to several new policies and changes with a goal to improve the investment environment and defend the economy of the United States on the long-run. President Ford initiated the creation of a Committee on Foreign Investment (CFIUS) to investigate and monitor foreign investment in critical infrastructure and industries on American soil. This step determined the investment policy

developing processes, and it was a key decision which influenced the investment environment and the national security of the United States. (Elliot L. Richardson, 1989).

Although CFIUS has been reformed several times since its inception, it still operates as an inter-agency body and monitors any foreign investment in critical industries and infrastructure in the US. It can initiate investigations when foreign direct investment could potentially pose a threat to national security. When it comes to national security, the terrorist attacks of 11 September 2001 completely changed the attitude towards foreign direct investment. The US increased its efforts to investigate and monitor foreign direct investment. The introduction of the SelectUSA program was a crucial step in attracting foreign direct investment while ensuring national security. (Elliot L. Richardson, 1989).

If we examine the development of foreign investment over the past 30-40 years, we can see that both the United States and China have prioritised strengthening agencies or committees responsible for monitoring and investigating foreign direct investment. As the inflow of foreign investment increased, national security concerns about FDI grew in both countries. In addition, decentralisation and transparency became important factors in both countries, leading to the implementation of various investment policies that strengthened the states and provinces. (Elliot L. Richardson, 1989).

In the United States, investment policies shifted from the federal to the state level over the course of about 30 years. Although certain policies remain the responsibility of the federal government, the decentralisation of foreign direct investment management played a crucial role in the economic development of the country. In my opinion, the decentralization process made the legal system more transparent and understandable for foreign investors. This boosted the confidence of foreign investors to invest in the United States. A transparent investment environment can lower the risk of investment projects and serves as a competitive advantage. (Elliot L. Richardson, 1989).

5.1 Foreign investment policies in the U.S. before 2001

Before the turn of the millennium, there were major political debates in the United States about foreign investment policy. Several economists argued that the US should take protectionist measures against foreign investors because they would undermine the business of domestic companies. According to Elliot L. Richardson, the United States cannot have it both ways. In his 1989 study, he said the US could not advocate open doors for American investors abroad and at the same time introduce protectionist measures against foreign

companies and foreign investors. Foreign direct investment boosted US economic development, created thousands of jobs and helped expand American markets. The transfer of technology made possible by foreign direct investment set in motion the modernisation process of US industry. Even before the turn of the millennium, it was clear that foreign direct investment could be the core of sustainable economic development. (Elliot L. Richardson, 1989).

The economic hegemony of the United States, especially after the World War II, was undisputed. To maintain this hegemony, the United States had to recognise the importance of foreign direct investment. As a market-oriented economic power, the openness of markets to investors was crucial. Investment promotion became popular in both emerging and developed economies. As recently as the 1990s, the US government's basic policy towards foreign investment was to neither encourage nor discourage foreign direct investment. Today, however, China and the US even offer incentives such as tax breaks or regional advice to foreign investors to boost their confidence. Trends in attracting FDI have changed significantly since the 1990s. (Elliot L. Richardson, 1989).

When comparing investment policies and economic institutions between the United States and China, it is important to keep in mind that the United States has a longer historical experience with foreign investment. Foreign direct investment was at the heart of rapid expansion and economic development in the US in the 19th century and remains crucial to economic development in both the US and China. The debate over political and economic independence existed in the 19th century and still exists today, although according to Elliot L. Richardson, foreign investment has never led to the loss of economic or political independence for the United States. After World War II, US investors invested heavily in Europe, which boosted economic development in the region and brought profits to US investors, proving the positive nature of foreign investment. However, national security concerns about FDI are becoming increasingly popular with politicians, leading to increased restrictions on FDI in both the US and China. (Elliot L. Richardson, 1989).

In the 1980s, fear towards foreigners buying up the U.S. became even more popular, and emerging countries such as China have challenged the economic status quo of the U.S. since the turn of the millennium. Although economic experts argue that the attractiveness and overall growth of investments in the United States are the consequences of the recovery of industrialized countries, the influence of the USA has significantly contributed to the expansion and growth of the international economy. Traditionally, the U.S. has always

welcomed foreign direct investments. Nowadays, the SelectUSA program provides several incentives for foreign investors and economic and legal guidance for foreign-owned enterprises, which significantly improves the willingness to invest in the United States. Before the turn of the millennium, no incentives were offered to attract FDI, but domestic and foreign companies were treated equally in U.S. markets. According to the U.S. government, investments result in the most efficient allocation of resources, which has always been a debate among economists. (Elliot L. Richardson, 1989).

As a market-governed economy, the market allocates money, workforce, and other valuable resources in the United States, and the government prefers not to intervene in the international process because it could have adverse consequences on the U.S. economy. The U.S. has been benefiting from maintaining open investment policies since the 19th century, and it remains the core of economic development. *"It is, therefore, beneficial to enhance the constructive engagement of foreign-owned corporations in the American communities in which they operate through programs of dialogue, education, and community assistance. In fact, it is encouraging to see how positively foreign investors are taking up these traditional American activities and their associated values"* (Elliot L. Richardson, 1989, p.291).

In sum, foreign direct investment has long been crucial to the United States. It has helped to expand domestic markets in the US, create positive competition among the labour force in the country, introduce new technologies and develop the most important sector in the US, manufacturing. The importance of foreign direct investment has led to important investment policies in both China and the United States today. Not only do they view foreign direct investment as the centrepiece of economic development, but they also create programs, incentive packages and economic institutions that provide economic and policy guidance to foreign investors and foreign-invested enterprises. (Elliot L. Richardson, 1989).

In the 1990s, there was great concern about Japanese investors investing in the United States. Many felt that the US government was failing to realise that foreign investors would eventually buy up and control the United States. On the other hand, it was clear that the US was extremely attractive to foreign investors thanks to its large consumer market, legal environment and political stability. Manufacturers could access technologies that would have been impossible in their own countries. The resources of the trade, financial and labour markets were available to foreign investors. The expansion of foreign investment presented a challenge to the US government. It was not always clear whether a transaction was compatible with US law or not. What was clear, however, was that foreign investment was

driving the US economy, creating thousands of jobs, introducing important technologies and expanding US markets. National security concerns about foreign direct investment were present in policy debates, especially after the 2001 terrorist attacks, which changed US attitudes and legal regime towards foreign direct investment. The Commerce Clause had been in place for several decades, which prevented decision-making at the state level in the United States regarding foreign trade. The Commerce Clause was a tool for the federal government to regulate state activities in assessing foreign investment. However, it was unable to enact adequate legislation, which led to the abolition of the clause in 1995. (Jacqueline J. Ferber, 1993).

The United States has been focusing on the implementation of free trade policies since the start of the 20th century. They have developed a legislative system, well-functioning economic institutions, which led to the fact that the United States is the largest recipient of foreign direct investment in the world. According to Ronald Reagan, who was the president of the U.S. between 1981 and 1989, emphasized that the U.S. was treating every foreign investor equally, within the laws and regulations of the country. It was and still is a two-way street. For fair treatment, the United States demands for fair and equitable treatment for their investors abroad. George Bush followed this trend and claimed that he would resist calls for protectionist measures and would fight against managed trade and any barrier that burdens the free flow of investments that contribute to the economic development of the United States. The fight between protectionists and free trade supporters rooted in the fact that Japanese businesses flooded the U.S. market. The Asian investors and their companies invested serious amounts of capital and took over businesses on the U.S. market. There were concerns about these investments between politicians and economic experts. In fact, President Clinton had been criticized by Americans that he could not choose between protectionism and free trade policies. Economic experts in favor of foreign investments claimed that the United States needed FDI to be able to expand and fight against the ongoing financial crisis of foreign markets. Proponents of FDI emphasise job creation, the introduction of new technologies and the benefits to consumers from the increased competition that accompanies FDI. In addition to the quantitative impact on US employment and income, FDI can act as a "catalyst" and, as a result, "foreign multinationals can revitalize American industry by introducing new technologies, management skills and labour practices. (Jacqueline J. Ferber , 1993).

To prove my statement that the United States has had a good market environment for a long time, I will mention some very important laws and regulations that have contributed to this

fact. Antitrust laws are important legislative forces that keep up market competition, attracting foreign investors. The Clayton Act, which was introduced in 1914, targeted businesses, foreign investors, and enterprises that operated in a way that created anti-competitive trends in the U.S. market. It applied to transactions involving acquisitions made by both domestic and foreign companies. A Section 7 violation occurs when an acquisition of all or part of the stock or assets of a person engaged in commerce by another such person substantially lessens competition or tends to create a monopoly. The process is even more complicated at the level of multinational companies. The seeking of a monopoly and introducing anti-competition measures were strictly prohibited and were under the supervision of the Department of Justice and the Federal Trade Commission of the United States. However, to prevent these allegations, the Antitrust Division and the Department of Justice had already developed procedures that proved the fact that the United States was well ahead of other developed countries in terms of the capabilities of the legislative system. The relevant institutions offered crucial information to foreign investors and multinational companies about possible business opportunities. (Jacqueline J. Ferber , 1993).

The extraction and possession of raw materials is a crucial component of a country's social and economic prosperity. During the 20th century, demand for these materials was high in Japan, but the Japanese lacked raw materials. They found the US markets very attractive, especially for acquiring these raw materials. The Mineral Leasing Act was introduced in 1920 and signed by President Woodrow Wilson. The Act authorized the federal government to issue permits for the exploration of minerals on public lands and to lease the rights to those minerals. However, the provision that prohibited the Secretary of the Interior from granting mining rights to foreigners and multinational corporations whose lands did not allow similar or equivalent privileges to US citizens or companies was repealed. Therefore, any industry that in any way provided resources to the military industry became a national security priority, and federal restrictions became more stringent. The Atomic Energy Act of 1954 provided that while a foreign company could not obtain a controlling interest in a nuclear facility, the Nuclear Regulatory Commission allowed a foreign company to hold substantial interests in such facilities. (Jacqueline J. Ferber , 1993).

However, this law proved to be insufficient and was significantly changed. Today, we can see that the decision-making process in the United States has shifted from the federal level to the state level. State governments have been given more legislative and decision-making powers, especially in relation to the development of foreign policy. However, the SelectUSA program

and CFIUS still monitor and negotiate terms, so both federal and state governments benefit (Jacqueline J. Ferber , 1993).

5.1.1 CFIUS reforms before the 9/11 attacks

Table 1: Amendments of the Committee on Foreign Investments before 2001

CFIUS amendments before 2001
Establishment of CFIUS, 1975
Exon-Florio amendment, 1988
Byrd Amendment, 1992

Source: Congressional Research Service, 2020[1]

The investment environment was reformed several times in the 1970s. In particular, President Gerald Ford authorised the Department of Commerce to conduct surveys and collect data on foreign investment and created the Committee on Foreign Investment in the United States (CFIUS) in 1975. We now know that the creation of this agency was the cornerstone of the foreign investment advisory system that exists in the United States. As I mentioned earlier, the US not only oversaw foreign investment, but also began to collect data with the Foreign Investment Study Act of 1974, offering key business information as one of the first incentives to foreign investors and foreign-owned companies. (Jacqueline J. Ferber, 1993).

The adaptation of the Foreign Investment Study Act changed the attitude of the United States towards foreign investment monitoring. As a result, the International Investment Survey Act of 1976 granted special powers to the President of the United States. This allowed the president to set in motion data collection mechanisms on specific trends and investment flows in both domestic and foreign markets. This was important because it allowed the US to study foreign investment trends and capital flows in order to develop its own agenda and regulations. CFIUS was responsible for conducting these studies. However, in the 1980s, several foreign-owned companies attempted illegal takeovers or bought up important companies in the United States (Jacqueline J. Ferber, 1993).

In the meantime, the inflow of foreign direct investment increased significantly and strained the problem-solving mechanism of CFIUS. This concern led to the introduction of the Trade Act, now known as the Exon-Florio Amendment (EFA or "Amendment"). The EFA, passed on 23 August 1988 as Section 5021 of the Omnibus Trade Act of 1988, provides a process for the federal government to investigte mergers and acquisitions of US companies by foreign

[1] The Committee on Foreign Investment in the United States (CFIUS). Congressional Research Service, 2020 https://crsreports.congress.gov/product/pdf/RL/RL33388 Accessed: 2023.04.12

companies when national security is at stake. The legislative background states that future trade administrations should develop and seek more limits on transactions and acquisitions that could potentially harm the national security of the United States. In the 1980s, most attention focused on Japanese companies and their activities in the semiconductor industry. There was much concern that these companies were not sharing important technologies with their US partners or that the process was too slow (Jacqueline J. Ferber, 1993).

The United States Supreme Court has stated that states should not interfere in the making of the country's foreign policy. However, this assertion is outdated and false. US state governments have proven that they can shape the investment environment and lead policies that attract foreign direct investment. They have implemented reforms that Congress had failed to do for decades. But what were the most important achievements? They organised incentive agencies and developed individual foreign direct investment schemes. Offering incentives became a popular trend among states, including tax breaks, loans, labour training centres, access to land and low-interest bonds. (Jacqueline J. Ferber, 1993).

In some cases, however, domestic and foreign companies were not treated equally. Often, foreign companies received more incentives, which placed a burden on domestic companies. As the federal government was unable to enact sufficient laws and regulations, state governments went beyond their limits and proposed laws and policies that were harmful to both domestic and foreign companies. The Supreme Court stepped in and drew a distinction between purely protectionist laws and burdens on the free flow of commerce that could withstand constitutional scrutiny. (Jacqueline J. Ferber, 1993).

According to Jacqueline J. Ferber, "*To determine valid interstate regulations, several criteria had been provided by the Supreme Court. The proposed regulation must have a "substantial nexus" with the regulating state, be substantially apportioned so that it does not discriminate against interstate commerce, and be fairly related to the services provided by the state"* (Jacqueline J. Ferber, 1993, p.827).

Thus, as intergovernmental regulations developed, the only restrictions that could burden foreign investors were entry restrictions. The most common example, even today, is the property rights policy governing the ownership of agricultural land in the country. A uniform national policy was necessary to further improve the business environment in the United States. Within ten years, the United States had implemented several very important reforms in the area of foreign direct investment policy. At the beginning of the 1970s, it was not clear to

everyone whether or not foreign direct investment was so critical to the US economy, but as the millennium progressed, a kind of uniformity had emerged. Although the main concerns were national security and incentives for foreigners. (Jacqueline J. Ferber, 1993).

Due to the provisions of the EFA, foreign companies had to report their activities to CFIUS, but this complicated transactions and burdened the business activities of foreign investors and foreign-owned companies. Foreign countries demanded clarification of the US standard because it was not okay that even investors who had nothing to do with transactions that could affect the country's national security had to report their activities. This delayed several important transactions, which weighed on foreign investor confidence. The Technology Preservation Act of 1991 was introduced in Congress to identify certain transactions in various areas and sectors of the United States that could potentially pose a threat to national security. It was important that this legislation would have made changes to the ExonFlorio Amendment that would have authorised CFIUS and the President to ask the parties involved to suspend their transactions until the investigations were completed. Unfortunately, the legislation was not passed by the 102nd Congress. Although it was a crucial step for the United States to define national security interests. The expansion of global and national markets led to national security reforms as several countries had taken a step forward to introduce laws and regulations that addressed foreign direct investment and national security interests. The Stevenson-Wydler Act of 1986 has been amended several times since its introduction, but the main purpose of the Act was to develop R&D activities in US markets. In parallel with the National Competitiveness Technology Transfer Act of 1989, it enabled cooperation between federal research laboratories and private research institutions (CARDAs agreements) to develop high-value research and development capabilities. *"The Federal laboratory contributes personnel, property, and services (but not funds) to a CRADA, while the research institution and private partners can contribute personnel, property, services, and funds"* (Jacqueline J. Ferber, 1993, p.827). It demonstrates the fact that R&D capabilities and high-technology industries were crucial already in the 1990s and certainly crucial nowadays. The United States and China are basically playing a technology war with each other, so the protection of these industries is a national security concern. (Jacqueline J. Ferber, 1993).

The Exon-Florio Act was reformed in 1992 by the Byrd Amendment, named after Senator Byrd, who initiated the reform process. The United States recognised that certain state-directed economies could pose a threat to the country's national security through their investments. Therefore, CFIUS was empowered to investigate takeovers, acquisitions or

mergers if the acquirer is controlled by a foreign government or *"the acquisition results in control of a person engaged in interstate commerce in the United States that could affect the national security of the United States"* (Congressional Research Service, 2020, p. 13). However, many countries and foreign investors argue that this amendment contains protectionist measures and gives CFIUS the power to reopen an investigation and revise its decision at any time. Nevertheless, the amendment was not successful and the WTO ruled that the Byrd Amendment was illegal, after which Congress replaced it in 2006 (Congressional Research Service, 2020).

5.2. Foreign policy development after the 9/11 attacks

National security concerns about foreign investment existed in the United States long before the attacks of September 11, 2001. In the late 1980s, fear of Japanese investors appropriating American assets influenced the country's investment policy. To investigate suspicious investments in the United States, the Interagency Committee on Foreign Investment in the United States (CFIUS) was established. After the 2001 attacks, the Committee underwent several reforms that broadened its powers and expanded its operations to increase its effectiveness. (U.S. Department of Commerce, 2018).

The 2001 terrorist attacks highlighted the need for the United States to strengthen its investigative and surveillance capabilities for foreign direct investment in critical infrastructure and industries. As CFIUS has been amended and reformed several times since 2001, the body's investigations have become more rigorous. The United States government has emphasised that FDI restrictions and trade barriers are not part of its agenda, but investigating and monitoring FDI serves the stability of the country's national security. (U.S. Department of Commerce, 2018).

5.2.1CFIUS reforms after the 9/11 attacks

Table 2: Amendments of the Committee on Foreign Investments after 2001

CFIUS amendments after 2001
FINSA, 2007-codified CFIUS
FIRMA, 2018-refrom of CFIUS process
Executive Order 14083

Source: Congressional Research Service, 2020[2]

[2] The Committee on Foreign Investment in the United States (CFIUS). Congressional Research Service, 2020 https://crsreports.congress.gov/product/pdf/RL/RL33388 Accessed: 2023.04.12

National security became the centrepiece of foreign policy, especially after the 2001 terrorist attacks in the United States. In 2007, Congress passed the Foreign Investment and National Security Act (FINSA). Congress required even more reports from CFIUS and expanded the operational activities of the committee. As a result, Congress fundamentally changed the meaning of national security in the Exxon-Florio provision to include critical infrastructure and homeland security as areas comparable to national security. The reforms to the foreign investment and national security legal system required the Director of National Intelligence to conduct reports and reviews and investigate foreign investments that could pose a threat to national security. (U.S. Department of Commerce, 2018).

Another interesting aspect of this law was the expansion of CFIUS activities related to the business activities of foreign companies (owned by foreign governments) in the United States. The main role of CFIUS was to ensure that these companies and the governments behind them did not intend to harm the US economy. There have been many occasions when the Chinese government has been accused of espionage through state-owned enterprises operating in the interests of the United States. (U.S. Department of Commerce, 2018).

FINSA codified the committee and gave the agency statutory authority, i.e. legislative power. Congress required highly confidential information on approved transactions and reports. FINSA *"made CFIUS membership permanent, adding the Secretary of Energy, the Director of National Intelligence (DNI), and the Secretary of Labor as ex officio members, with the DNI providing intelligence analysis; it also gave the President the authority to add members on a case-by-case basis. The Secretary of the Treasury was required to designate an agency to take the lead in reviewing an affected transaction".* (Congressional Research Service, 2020, p. 14).

In 2017, several members of Congress expressed concern about rising Chinese investment in the United States' technology sector. President Trump even declared a trade war against China and accused the Asian country of spying. Many US politicians stated that the Chinese were using investments to cover espionage activities and to obtain critical information about the US. These events led to the Foreign Investment Risk Review Modernisation Act of 2018. *"The Senate version of FIRRMA was added as Subtitle A of Title 17 of the Senate version of the National Defense Authorization Act for Fiscal Year 2019 (S. 2987, incorporated into the Senate amendments to H.R. 5515), which passed the Senate on June 18, 2018. The House version of FIRRMA, H.R. 5841, was passed as a standalone bill under suspension vote on*

June 26, 2018. On August 13, 2018, President Trump signed FIRRMA, identified as P.L. 115-232" (Congressional Research Service, 2020, p. 15).

FIRRMA expanded the authority of CFIUS, as it since 2020 has had the authority to review any transactions realized by foreign investors in the real estate sector or investments made by foreign-invested enterprises to determine if they result in foreign control of any businesses operating in the United States. There are three important fields where CFIUS also has authority to review, *"but only if such investments afford a foreign person specified access to information in the possession of, board membership or observer rights in, or involvement in the substantive decision-making of certain U.S. businesses, such as critical technologies, critical infrastructure, and sensitive personal data* (U.S. Department of Commerce, 2018, p81).

In the case of critical technologies, the rules are clear and simple. CFIUS only reviews companies that manufacture or test one or more critical technologies. In this case, CFIUS is acting under the Export Control Reform Act of 2018. Critical infrastructure describes U.S. assets, physical and cyber systems that, if destroyed, would cause severe harm to the economic and social well-being of the United States. CFIUS can access data on transactions in critical infrastructure subsectors such as telecommunications, utilities, transportation and energy. There are several companies in the US that collect personal data from US citizens, and CFIUS reviews the transactions of these companies. The main goal is to determine a possible threat to national security, such as leaks of sensitive personal information of US citizens. This is important because there are several companies that are in possession of personal data of military personnel and employees of federal agencies with national security responsibilities. If you invest in any of the three areas, you usually have to go through a pre-screening process to allow transactions. There are cases where filing a declaration is mandatory. On the other hand, the process remains largely voluntary. In the real estate sector, for example, there are no mandatory reporting requirements, but transactions are still monitored and regulated by CFIUS (U.S. Department of Commerce, 2018).

In 2018, the Trump administration introduced changes to foreign investment policy and developed regulations specifically for transactions that could affect the national security of the United States. CFIUS had already covered this area, but the Foreign Investment Risk Review Modernization Act of 2018 (FIRMA) expanded the scope and objective of CFIUS to include these transactions and established a pilot program based on Treasury Department regulations. The scope of transactions covered by CFIUS was expanded to include non-controlling

investments by foreign nationals in US companies targeting critical technologies, infrastructure and industries related to personal data. The pilot program came into effect in 2020 and implemented FIRRMA's provision on mandatory declarations for all transactions that fell within the specific scope of the pilot program. (Cathleen D. Cimino-Isaacs, 2020).

FIRMA redefined the meaning of covered transactions and critical technologies and expanded the scope of CFIUS' authority. It added provisions and methodologies to investigations conducted by the agency and required mitigation measures for national security threat agreements. FIRMA restructured the decision-making process to allow for immediate implementation of certain provisions. Under the innovations of FIRMA, CFIUS now reviews potential real estate investments near military or government facilities or near properties that are sensitive to national security. CFIUS investigates and monitors transactions by companies owned by or in contact with foreign governments, and also focuses on investments that attempt to circumvent the Committee on Foreign Investment. (Cathleen D. Cimino-Isaacs, 2020).

A key provision of the NDAA for FY 2021 is a reform of the Committee on Foreign Investment in the United States (CFIUS). The reform expands CFIUS's jurisdiction to include certain investments in US companies involved in critical technologies or critical infrastructure. It also increases the number of transactions subject to CFIUS filing requirements and introduces new fees for filing with CFIUS. (Cathleen D. Cimino-Isaacs, 2020).

President Joe Biden issued Executive Order 14083 on 15 September 2022, expanding CFIUS's remit to include the investigation of foreign investment projects. The main objective is to give the Committee more powers and authority to ensure the national security of the United States. As we can clearly see, the stability of the social, economic and political system is crucial for the US, and CFIUS, as an interagency plays a key role in achieving these goals. Executive Order 14083 aims to modernise CFIUS so that it is able to act and adapt to the new challenges and emerging threats related to foreign direct investment. (U.S. Department of Treasury, 2023).

5.2.2 SelectUSA program

The United States of America has dominated the business world around the globe for several decades. According to economic data on foreign investment inflows, the US is a top destination for foreign direct investment. But why is the US so attractive to investors? The

answer is a little complex. They have a huge consumer market, a well-organised and developed legal system, free-market conditions and a modern infrastructure with millions of kilometres of roads, several major airports, ports and railways. The laws regulating foreign direct investment were created to attract investment from around the world, resulting in a strong and transparent institutional business environment. The mechanism for attracting FDI operates at both the federal and state levels. Economic Development Organisations (EDOs) work with foreign investors to provide them with the information and advice they need to invest in the United States. Economic institutions at the federal level safeguard the activities of EDOs at the state level, although the desire to attract foreign direct investment also exists at the federal level. (Congressional Research Service, 2022).

The Department of Commerce launched a program called SelectUSA in 2011 with the aim of making the business environment more regulated and transparent and supporting investors throughout the investment process. This has significantly reduced the risk for investors, leading to an increase in foreign direct investment in the US. The program is responsible for attracting foreign direct investment in companies that create jobs for US citizens on US soil. The aim is to attract investment from other parts of the world and to strengthen businesses in the US. The opportunities presented by the establishment of SelectUSA illustrate its potential impact on the country's economic development. The program has attracted several greenfield investments, with investors acquiring new territories and sites, establishing factories and research facilities, and several mergers and acquisitions have also taken place. The operation of foreign-owned enterprises plays an important role in the economic development of the United States. *"In 2019, majority-owned affiliates of foreign firms in the United States contributed $1.1 trillion in value-added to the US gross domestic product (GDP) (7.0% of total US business sector value-added), and they employed 7.95 million workers (6.0% of total US private-industry employment), with the largest employment sectors being manufacturing and retail (latest available data, BEA)"*. (Congressional Research Service, 2022, p. 2).

I have already mentioned the basic functions of the program. It was created to encourage the inflow of foreign direct investment into the US. The program helps with communication between businesses and Economic Development Organizations, navigating the institutional system of the United States, and acts like an ombudsman. It provides foreign investors with incentives, information, analysis and available data to help reduce risk and create safeguards. It connects states, cities and regional economic development offices. Similar to China, the program has created a mechanism to address complaints and problems with investments and

business projects. It can also act as a mediator between federal agencies and clients. The program seeks to identify and monitor policy makers and regulations that can potentially undermine the competitiveness of the U.S. business climate. (U.S. Department of Commerce, 2018).

I have already analysed Chinese investment policies, taking into account the fact that the Asian country has proposed and introduced several important regulations and laws that protect foreigners' businesses and investments and create a competitive advantage in the region. The structure of the SelectUSA program is unique in that the program is implemented and overseen by the International Trade Administration of the Department of Commerce. The goal is the same as in the case of China: transparency. The US legal system is one of the most developed in the world, but it can be difficult for foreign investors to navigate. SelectUSA assists these investment projects and companies by offering information and acting as an ombudsman to provide a better understanding of the laws and regulations related to these projects. The program also provides information on foreign direct investment to business organisations and companies and connects them with federal resources. It also organises road shows abroad to promote the US and the opportunities the country offers for foreign companies and businesses. It is a key factor for the country to attract the attention of start-up companies to invest in the US, especially in the technology sector. Therefore, the program offers incentives such as technology programs to connect with these companies. They often bring in top-tier research universities to show that the U.S. can provide a well-educated workforce to companies that operate in the high-tech industry. (U.S. Department of Commerce, 2018).

SelectUSA does not distinguish between the different states in the country, but only provides information on potential investment locations. It is important to emphasise that the program does not support market access for SOEs from non-market economies. In 2021, the program organized a virtual summit for nearly 80 international markets and 3,400 potential investors to promote the US. According to the Congressional Research Service, the program delivered very good results, facilitating $102 billion in investments that created 132,000 jobs in the United States. *"The FY2022 Congressional Budget Justification states at TA that SelectUSA supported more than 115 investment deals worth nearly $17.7 billion in FY2020 and created approximately 14,000 jobs in the United States"* (Congressional Research Service, 2022, P2). The achievements of the program show that investment promotion plays a key role in economic development. We can observe that more and more countries are developing their

own investment promotion structures and programs for investment promotion, leading to great competition in attracting foreign direct investment (Congressional Research Service, 2022).

However, it does not distinguish between the individual states of the USA. It provides information on the infrastructure of the different states, including road maps, airports, ports and costs. If an investor manages to select the right state for their business, the program also provides data on the consumer market in the selected state. The ACE, Assess Costs Everywhere, allows companies to calculate the cost of the investment, which significantly reduces risk and provides the basis for predictability, a key factor in the business environment. TCO, Total Cost of Ownership, is a tool that allows companies to calculate the potential costs and risks of production in the US. It has a unique feature that allows companies to compare these costs with expenses in other countries. This gives the US a very special competitive advantage. SelectUSA also looks at details such as electricity costs in different states and helps navigate wage laws in all 51 states of the United States. The SBA, the Small Business Administration, provides businesses with resources and guidance needed to register their business with state agencies. It also provides information on licences and permits needed for any type of new business. *"The United States offers the largest consumer market on earth with a GDP of $18 trillion and 325 million people. Household spending is the highest in the world, accounting for nearly a third of global household consumption. At the same time, free trade agreements with 20 other countries provide enhanced access to hundreds of millions of additional consumers – and the United States continues to work with foreign partners to increase opportunities for U.S. exporters"* (U.S. Department of Commerce, 2018, p.22).

The United States recognises that foreign direct investment is key to sustainable economic development. Emerging economies are challenging the US in attracting FDI, for example China is a top destination for FDI along with the US. In order to compete in the global arena, the country has introduced the SelectUSA program, which offers various incentives for the economic development of foreign companies. However, these incentives are tied to projects and not all can receive this support. It is better to think of these incentives as packages that come through negotiation. A successful negotiation leads to better opportunities for foreign-invested companies in the dynamic US market. In other words: Economic development organisations, government agencies and other organisations authorised to promote investment use financial tools to motivate and support foreign investors and navigate them through the US legal system. This is a very good opportunity for both sides, because foreign direct

investment not only brings money and helps expand the U.S. market, but also introduces new technologies and greenfield investments and creates thousands of jobs for Americans. (U.S. Department of Commerce, 2018).

Business organisations can offer exemptions from various tax obligations, loans, information, funds for job training and programs such as green technologies and sustainable projects. *“Economic development incentives in the United States are typically delivered through the creation of public-private partnerships that create bilateral or multilateral legal relationships between the recipient business and other prospective stakeholders”* (David and Jason Hickey, 2021, p.121).

Economic development organisations (EDOs) are usually made up of state agencies and local jurisdictions. A state government can be seen as a frequent partner for businesses, especially when it comes to the benefits of significant economic development, as the government usually provides tax incentives, cash and financial support (David and Jason Hickey, 2021).

State governments play a greater role than the federal government in providing incentives. Foreign direct investment can potentially have a greater impact on communities and counties where investment and job creation are critical. Choosing the right location for a business is challenging, although local governments can help by offering information on potential sites. Incentives offered at the county and municipal level typically include excise tax exemptions, property tax relief, tax increases and training funding. Industrial, logistics and data centre projects may receive incentives from energy providers, such as direct infrastructure assistance or rebates on energy, and reduced electricity rates for certain businesses (David and Jason Hickey, 2021).

The federal government monitors the incentives offered by state governments and utilities and helps with funding and economic development. After the relevant organisation has developed the best package of incentives, it could include corporate tax incentives, excise tax incentives, labour tax incentives, grants, infrastructure information, utility and energy incentives, lending and financing, job training and complex incentives. There are many options and different packages that a foreign-invested company can apply for. Approaches to business tax incentives can vary widely between federal and local governments. However, the company that wants to invest in the US must make relevant investments that also create jobs. Both are necessary to receive tax incentives. The assessment mechanism is well worked out. During the process, the tax liabilities incurred by the company's operations in the tax jurisdiction are

assessed, as well as the period of the benefit, the portability of the tax credit and the refundability of the benefit. If a tax is deemed refundable and the company's tax liability is greater than the tax credit, the difference is usually paid to the company in some other form, usually cash. The US tax system can sometimes be difficult to navigate, especially when it comes to excise taxes. Sales and use taxes can be different in each state, not only in terms of the tax rate, but also the products and services that are taxed. In this case, it is important for a business to know the specifics and details of its projects in advance in order to have the opportunity to take advantage of incentives that local economic development organisations might offer. SelectUSA provides information on the details of excise tax incentives. For example, in most states, industrial machinery is exempt from tax (David and Jason Hickey, 2021).

Federal and state governments in the US collect taxes from workers through the payroll tax. In most cases, when a new foreign-owned company opens a business in the US, they are willing to consider project commitments that will help them obtain labour tax incentives. If they fail to obtain them upfront, the payroll tax incentives may be refundable. Thus, a company can receive a refund after it has fulfilled the upfront obligations. Grants are usually offered to businesses to reduce upfront costs. They can come from the federal government, state governments, economic development organisations, local authorities or state agencies. Grants were offered to attract foreign direct investment, but they have changed somewhat to those mentioned above. A well-developed infrastructural background can be a key factor in attracting FDI. (David and Jason Hickey, 2021).

Infrastructural incentives are not direct financial support, but rather assurances of the availability of vital infrastructure for newly opened businesses. Community Development Block Grants and the Economic Development Administration are the two main agencies responsible for the funds available at the federal and state levels. Utility and Energy Incentives: The US institutional framework has allowed utilities to establish their facilities for economic development programs. The term Rate Rider is the name of an initiative launched by both federaland state governments and utilities to provide incentives for new businesses. This program consists of reduced energy prices for projects in which foreign investors invest in order to attract more foreign direct investment. As a result, these incentives lead to significant cost savings in the short and long term. On the other hand, it is becoming increasingly popular for state agencies and governments to support green, sustainable investments on American soil. These programs can include rebates for energy efficiency

investments, such as lighting upgrades, and incentives for the use of renewable energy technologies. A foreign-invested business project or company may also apply for assistance for workforce training. Businesses can receive financial assistance to train and upskill their employees, which benefits both the business and the community. (David and Jason Hickey, 2021).

A skilled workforce can make a business very competitive and successful in its respective field. As I mentioned earlier, academic institutions in the US are among the best in the world. Vocational training programs are often run at these universities, which benefits both sides and makes it easier for young students to build a career while studying. Through the intermediary of federal and state governments, SelectUSA enables foreign-invested companies to apply for no- to low-interest loans while entering the market. The program is called Lending and Finance. It is important for businesses to consider their chances of receiving financial assistance from different channels, as terms and obligations may vary by location and project. Small, large and medium-sized businesses can apply for finance and loan incentives. (David and Jason Hickey, 2021).

Complex incentives are a group of incentives that require additional due diligence and legal structuring to be effective. There are two important programs within SelectUSA: the Opportunity Zone and the New Markets Tax Credits. These programs were designed to attract foreign direct investment in relatively new areas or zones that offer opportunities for new businesses. Foreign investors who invest in the fields or zones offered by the programs can receive financial assistance and tax savings for their projects. Development of these fields and zones can lead to rapid economic development, which is the main reason for the program. "*Another complex incentive used for economic development purposes, commonly found at the municipal level, is tax increment financing (TIF). This development tool leverages anticipated future property tax revenues to support the financing of a project. Depending on the location, these monies can be deployed in a variety of ways for project assistance, including financing, site and infrastructure support, and even workforce development training"*. (David and Jason Hickey, 2021, P.124).

The investor guide of the SelectUSA program helps in the evaluation of foreign companies. To make a successful site selection for the project, the company should consider every possible location and expand the variety of factors. The SelectUSA program provides information on the legal background of each state in relation to foreign direct investment. Once the site selection has been narrowed down, the program acts as an intermediary between

the foreign-invested company and local authorities to negotiate the best possible deal for both parties. Economic development organisations and foreign investors usually conduct several negotiations to obtain all relevant information about the potential project. After both parties have reached an agreement, the process of legal documentation begins, formalising the agreements and commitments. According to David and Jason Hickey (2021), it is important for both parties to have adequate legal representation.

5.2.3. FDI restrictions

Although foreign direct investment became popular and an important tool for economic development in the 1990s, the US government, particularly President Ronald Reagan, developed a policy for companies in which foreign investors invest. The policy was intended to ensure that domestic and foreign companies were treated equally in the United States. The policy laid out the cornerstones of US foreign direct policy initiatives and regulations for the future. The policy explained the importance of protecting intellectual property rights and urged further trade liberalisation. The policy established the legal environment for foreign trade around the world and the importance of national treatment as a principle. However, despite the fact that the United States has the most open market environment in the world, there are some important restrictions on foreign direct investment that foreign investors and foreign-owned enterprises must consider before investing in the US. The restrictions include the following sectors: energy, transportation and financial services. (Edward S. Rivera, 2021).

Investments in nuclear energy in the United States are subject to restrictions and oversight by CFIUS and the NRC-Nuclear Regulatory Commission. Commercial nuclear power and atomic energy are regulated by the Atomic Energy Act of 1954. I have already mentioned that a licence is required to invest in certain areas in the United States. Any company, person wishing to transfer, manufacture, import/export or produce nuclear "use or production" facilities for commercial or industrial purposes requires a licence issued by the NRC. It is important to note that the Commission would immediately block access to this area if there is a possibility that a foreign state-owned company would want to invest in the nuclear field. A licence is also required for research and development projects and for medical therapies, when in both cases the use of nuclear energy is essential. There are two important mechanisms that the NRC has created, the FOCD (Foreign Owned, Controlled or Dominated) test and the process - Final Standard Review Plan (SRP) - that determines the details of a project's difficulty in the civil nuclear field before participating in the FOCD test. "*For example, in some situations a license can be granted where there is 100 percent indirect ownership by a*

foreign parent company if that foreign parent company's stock in turn is "largely" owned by U.S. citizens. 15 15 Id. (This treatment may reflect a view that in such case the firm is not really foreign owned since it is ultimately, albeit very indirectly, owned by U.S. citizens). On the other hand, the analysis under the "domination" principle may render an applicant ineligible for the license if its corporate structure makes a foreign company or foreign citizen appear to be dominant" (Edward S. Rivera, 2021, P3).

Another important sector for the US economy is the oil and gas industry, particularly mineral rights. The Mineral Leasing Act of 1920 established the laws, regulations and restrictions on foreign investors and foreign-owned companies investing in the oil and gas sector. This law is proof that the United States has had a well-developed and strong institutional system for decades. Many countries have tried to copy the legal system of the United States, as the recent case in China shows. The law established certain rights and regulations for the acquisition of oil and gas pipelines that transport oil and gas derived materials across federal lands offshore (Edward S. Rivera, 2021).

An operating license (LTO) from the Ministry of Transport is required to operate cross-border bus or lorry services (DOT). The best example of restrictions on foreign direct investment in the United States is the Military Cargo Preference Act of 1904, which states that military cargo may only be carried on US flagged vessels. Another important provision states that 50 per cent of government-generated cargo tonnage may only be carried by US flag vessels. The situation is similar with air transport. The law requires that air carriers be citizens of the United States in order to operate international air services as US air carriers. Again, a licence is a requirement (DOT) for foreign civil aircraft to operate in the country. Foreign nationals also need a licence to operate indirect aviation activities such as air freight forwarding and passenger charters. The Department of Transportation is responsible for issuing these licences, taking into account, among other things, the reciprocity granted to US investors by the foreign investor's home country. The United States Aviation Program asserts that *a U.S. citizen is defined as an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; or a U.S. corporation where at least two thirds of the board of directors are U.S. citizens, the president and other managing officers are U.S. citizens, and at least 75 percent of voting interests are owned or controlled by U.S. citizens. A foreign company may therefore own up to a 25 percent voting interest in a U.S. air carrier or a company engaged in indirect air transportation activities without a DOT grant of authority.* (Edward S. Rivera, 2021, P4).

Mergers and acquisitions (M&A) and greenfield investments are regulated in the United States, which falls under the restrictions that apply in the US financial and service sectors. Foreign banks are treated differently in every state in the country, and the regulations imposed on these financial services providers create complexity at the sub-federal level. These restrictions limit the ability of these banks to enter the US financial sector. In most cases, the law even prohibits legal discrimination against projects with foreign participation, but the case is relatively different in the financial sector. Some American states refuse to grant licences to foreign banks to operate. The same applies to insurance companies, whose operating licence is assessed at the state level. In both cases, the state may even set citizenship requirements for board members. The establishment of financial institutions in the United States is also restricted for companies whose corporate structure has been organised under the laws of another country. Under the Federal Reserve Act, foreign non-banks are not allowed to own businesses that invest in foreign companies or lend to companies that undertake international projects (Edward S. Rivera, 2021).

However, the regulations and restrictions do not apply to foreign-owned banks and their US subsidiaries. The Investment Advisers Act of 1940 states that a foreign bank may only provide investment advisory and investment services if it first registers as an investment adviser under the above Act. Reciprocity conditions restrict certain financial services and activities in the United States. In addition, there are state-level regulations in the real estate sector that restrict investments or the purchase of agricultural properties. In many cases, states have prohibited the purchase of agricultural land by a foreign investor or company. However, there are also examples of restrictions on how many hectares of agricultural land a foreign company can own. (Edward S. Rivera, 2021).

6.0 Comparison of the institutional environment of China and the United States

At first glance, China's investment policies and economic institutions seem to resemble those of the United States. Yet there are differences in the details. I examined the period between 1978 and 2022 because China introduced the open-door policy in the late 1970s, which was a turning point for the Asian country in attracting foreign direct investment. In the United States, on the other hand, there was a lack of uniformity at the time and the Committee on Foreign Investment was established, which completely changed the nature of the policy and the restrictions on foreign direct investment. I think it is interesting to look at the main differences and similarities between the evolution of the investment policies of the two

countries, because there is currently an ongoing trade and political war between the two sides. China is challenging the current world order, which has been dominated by the United States for several decades.

Both countries have enacted foreign direct investment laws that determine the investment environment and set the type of legal framework and rules for investment in both countries. In China, the Ministry of Commerce is responsible for maintaining and operating economic institutions in each province and region of the country, while in the United States, laws, regulations, economic organisations, CFIUS and the Select USA program are under the supervision of the US Department of Commerce. After studying the issue, it is very important to mention that the US has much more experience in dealing with foreign investors and setting foreign investment policies than China. This is mainly because the Asian country lacked economic, social and political stability in the first half of the 20th century, while the United States won the First and Second World Wars II and was stable in all respects. Foreign investors had their sights set on the country long before they began investing in China. The economic institutions of the United States have much more experience than the Chinese Ministry of Commerce.

It is interesting to see that 2001 was an extraordinary year for both countries. First of all, China joined the WTO and managed to break down important barriers that had burdened trade for decades and experienced an economic boom. As a result, China opened its markets even more to foreign investors. On the other hand, the United States experienced one of the worst events with 11 September 2001. The terrorist attack in New York completely changed the nature and attitude of the US towards foreign direct investment. They realised that these investments could pose a great threat to the national security of the country. The Committee on Foreign Investment has therefore been changed several times since then and investigates any investment in important infrastructure or industry in the United States.millennium. The policy and decision-making process moved from Federal/Central to State/Provincial level. Although, there are certain fields and sectors, usually critical to these countries, where the central and federal government are supervising the decision making process through the relevant Committees and Authorities, like CFIUS in the USA or the National Security Review and Information System in China.

6.1 Economic Institutional differences

Looking at the historical development of the departments and ministries overseeing foreign investment policies and organisations in both countries, there are important differences and similarities. The structure of the U.S. Department of Commerce (DOC) and China's Ministry of Commerce (MOFCOM). The Asian country has restructured and renamed the ministry several times since its creation in 1949. The United States established its ministry much earlier than China, in 1903, and therefore has much more experience. In fact, the Department of Commerce assisted the US military in both world wars by analysing the infrastructure, strategic materials and equipment capabilities of the enemy country. This provided DOC with the knowledge and experience that led to a competitive advantage in today's ever-changing nature of geopolitics and trade. DOC was already looking at developing productivity and expanding the markets of the United States and promoting foreign trade with other nations. On the other hand, the main objective of MOFCOM's predecessor was to build the structure of institutions, organisations and plans for foreign trade. They struggled with the lack of important laws and regulations and with the provincial differences that existed in the country.

As I mentioned earlier, the Open Door Policy reforms in 1978 established the cornerstones of the investment environment for China. The regulations of the Ministry of Foreign Economic Cooperation and Trade, a predecessor of MOFCOM, initiated the decentralisation process by giving local and provincial governments more powers in what were called special economic zones (SEZs). The SEZs were an interesting reform of the ministry and still serve as test zones today. They were able to try out the newly developed investment policies and reforms in these economic zones. However, this initially led to a very poor regional distribution of foreign direct investment in China, which also triggered the organisational process of creating huge cities with millions of people. On the other hand, as part of the decentralisation process, the US Department of Commerce increased the power of state governments and established economic development organisations. Their goal was to engage with foreign investors, navigate them through the complex US legal system and enable them to reduce risk by learning about the investment environment in the United States. They work within the SelectUSA program, and are also part of the investment promotion activities.

After the turn of the millennium, both institutions worked on decentralization programs to make the business and investment environment more transparent. They developed organisations and strengthened the authority of local governments to attract foreign direct

investment. In my opinion, the Chinese are trying to copy the legal structure of the United States to attract foreign direct investment

6.2 Differences and similarities in investment policies

Before the turn of the millennium, China's main goal was to create transparency through the decentralisation process and the reduction of state-owned enterprises (SOEs) operating in the country. Therefore, provinces in the Asian country were given more powers by the Central Committee and the State Council (CPC) and reduced the number of SOEs. On the other hand, there was a lack of uniformity in the United States towards foreign investment. There was a fear that Japanese investors would buy up American companies and thus gain too much control over the investment environment in the US. Therefore, policymakers advocated protectionist measures, which became real policy in the form of restrictions on foreign direct investment. CFIUS is now responsible for monitoring foreign direct investment in specific sectors and industries in the country.

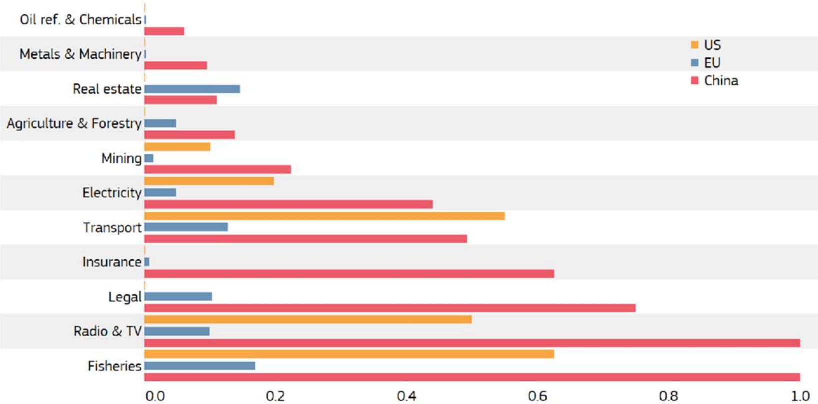
Building R&D facilities and capacity was critical for both countries, and they were wise enough to recognise the potential that R&D represents. Foreign direct investment associated with R&D is difficult to attract, but there are certain incentives that can boost investor confidence. For example, the United States has always had a strong higher education system, with universities ranking among the top on the global scale. Among the top twenty research universities, fifteen US universities specialise in industry-related educational opportunities. This gives the US a competitive advantage as foreign companies look for locations where they can train their workforce or find skilled workers. These universities often work closely with investors to develop R&D capabilities. It is important to see that while the United States has long had a strong economic position and an open market environment, China has developed its capabilities following open-door policy reforms. This also means that the Asian country is much more dependent on the inflow of foreign direct investment than the United States.

On the other hand, China lagged behind the US in terms of highly skilled labour, but on the other hand, the Chinese had relatively low-cost labour, which was definitely a pull factor and attracted FDI. Especially in the so-called special economic zones, which later led to the establishment of economic and technological development zones to attract investment and R&D projects. The Chinese government focused on improving the educational quality of universities in the country. This was an important step because FIEs are more willing to invest

and set up R&D centres in regions where top-class research universities operate. They can recruit talent there more easily and at lower cost. R&D and manufacturing are increasingly intertwined. As China had cheap but skilled labour during the turn of the millennium, foreign investors have invested heavily in manufacturing and, in most cases, set up R&D centres due to the Chinese government's friendly policies on foreign direct investment. Chinese scientific research institutions have developed greatly in recent decades, and the reason for this is that foreign companies with R&D activities cooperate with these research institutions in China and share important information and technologies. (Guoqiang Long, 2005)

6.3 Differences and Similarities in restricting FDI

Figure 1 FDI restrictions introduced by China in certain industries of the country compared to the United States and The European Union



Source: European Commission, 2023. [3]

Ensuring national security is a top priority for every nation around the world. Leading economies such as the United States and China soon realised that the large influx of foreign direct investment could potentially pose a threat to a country's economic, political and social stability. The study of foreign direct investment became extremely important after the 2001 terrorist attack in the United States. Since the events of 11 September 2001, the US has changed the objectives and institutional background of the Foreign Investment Committee several times, giving the agency even more powers to investigate and prosecute suspicious investment projects targeting the United States. China has also developed the institutional

[3] European Commission, China's restrictions on FDI are much stronger than in the EU and US, 2023, Available at: https://joint-research-centre.ec.europa.eu/jrc-mission-statement-work-programme/facts4eufuture/china-challenges-and-prospects-industrial-and-innovation-powerhouse/chinas-restrictions-fdi-are-much-stronger-eu-and-us_en, [Accessed: 2023.04.10]

environment for ensuring the country's national security and, in accordance with China's newly introduced Foreign Investment Law, established the National Security Review and Information Reporting System in 2021 and 2022.

The United States restricts investment in the country's nuclear energy sector. They are subject to CFIUS and NRC-Nuclear Regulatory Commission restrictions and oversight. Commercial nuclear power and atomic energy are regulated by the Atomic Energy Act of 1954. On the other hand, the Chinese government strongly opposes nuclear terrorism and restricts certain investments in related fields. The National Security Law and the Atomic Energy Law define the main regulations and guidelines According to a European Commission report, restrictions on foreign direct investment in all industries are much stricter than in the European Union or the United States. In most cases, China imposes tighter restrictions on foreign direct investment than the United States. This makes it harder for US companies to make mergers or acquisitions. They are more likely to partner with Chinese companies in joint ventures to transfer technology and intellectual property. (European Commission, 2023).

6.4 Differences and Similarities in investment promotion strategies

China and the United States have recognised that incentives can significantly encourage investors and attract foreign direct investment. Both countries have developed and introduced investment promotion strategies to guide foreign investors. They provide important information on specific areas and an overall view of the investment environment, laws and restrictions. The United States has introduced the SelectUSA program, while the Asian country has established the China International Investment Promotion Agency (CIPA).

A key difference lies in the way both countries approach investment promotion. Both countries are major recipients of foreign direct investment, which means they have both developed investment promotion policies. The United States organised a trade summit in 2005 that led to the establishment of the SelectUSA program by the US Department of Commerce. The program is responsible for the US investment promotion strategy. On the other hand, China has also developed incentives for foreign investors, but the Foreign Investment Law introduced the PRC's investment promotion guide through the Ministry of Commerce.

The objective is the same for both countries, to attract more FDI, although the two strategies differ. For CIPA, the main objectives are: To develop strategies that attract foreign investment to China, to develop Chinese industries with modern and high-tech FDI (MOFCOM, 2023). On the other hand, the main objective of the SelectUSA program is to create job-creating

business investment to develop the economy of the United States and to highlight the fact that FDI is a key factor for sustainable economic development. (SelectUSA, 2023)

However, there are also important similarities. Both countries are keen to attract FDI that also enables technology transfer. R&D capacity building is critical for the US and China, which has led to competition between the two countries in recent years. In addition, both strategies include guidance for foreign investors as incentives to increase their confidence. In this way, foreign investors can engage with business organisations or local governments more easily than before, which significantly reduces the risk of potential investment. However, Chinese provincial governments hold their own trade fairs, and MOFCOM also sets up investment promotion events, such as the Central China Investment & Trade Exposition. Both countries have developed websites for foreign investors to provide advice and information online, creating competition in investment promotion. These online databases became very popular during the 2020 pandemic.

7.0 Conclusion

The period between 1978 and 2022 was challenging for both the United States and China. In the United States, a lack of uniformity determined investment policy-making processes before the turn of the millennium. Although the country always advocated free trade and an open market environment, the fear of Japanese investors buying up the US led to several important laws and regulations. One of these is the establishment of an interagency body by the US Department of Commerce, Congress and President Ford in 1975, the Committee on Foreign Investment of the United States (CFIUS). The amendment of the Foreign Investment Study Act changed the attitude of the United States towards foreign investment monitoring. Subsequently, the International Investment Survey Act of 1976 granted special powers to the President of the United States. This allowed the President to initiate data collection mechanisms on specific trends and investment flows in both domestic and foreign markets.

CFIUS has been amended several times since its inception: Executive Order. 1988 "Exon-Florio," 1992 "Byrd Amendment" to the Defence Production Act. 2007 Foreign Investment and National Security Act of 2007, Foreign Investment Risk Review Modernisation Act of 2018, Export Control Reform Act of 2018. In most cases, CFIUS has expanded its authority and has been required to conduct in-depth reviews of certain investments in key infrastructure or critical industries in the United States.

To gain and strengthen the confidence of foreign investors and remain competitive in the global economy, the United States established the SelectUSA program, which is overseen by the Committee on Foreign Investment and the US Department of Commerce. The program acts as an investment promotion agency. It provides guidance and key business information on the legal system, states and infrastructure of the United States. It helps reduce investment risks for foreign investors and makes the US a top destination for foreign direct investment. Economic Development Organisations (EDOs) work closely with potential investors and state governments to further improve the investment environment in the United States. They provide guidance so that foreign investors can much more easily choose the destination state for their investment.

The 2001 terrorist attack in the United States changed the nature of investment policy. Under the CFIUS reforms, the US focused on safeguarding the country's national security. They introduced several restrictions to prevent the events of 9/11 from happening again. The United States has recognised that with the huge influx of foreign direct investment come several risks that pose a direct threat to the national security of American businesses and citizens. To maintain US competitiveness, investment in nuclear power in the United States is subject to CFIUS and NRC-Nuclear Regulatory Commission restrictions and oversight. Commercial nuclear power and atomic energy are regulated by the Atomic Energy Act of 1954. There are two major mechanisms that the NRC has created, the FOCD (Foreign Owned, Controlled or Dominated) test and the process - Final Standard Review Plan (SRP) - that determines the details of a project's difficulty in civil nuclear power prior to participation in the FOCD test. An operating licence (LTO) from the Ministry of Transport (DOT) is required for cross-border bus or lorry services. Mergers and acquisitions (M&A) and greenfield investments are regulated in the US.

On the other hand, the People's Republic of China developed an important investment policy much later than the United States. The reason for this is that the social, political and economic conditions were very poor until the late 1970s, when China introduced the open-door policy, which meant a complete change for the country. The opening of markets to foreign investors led to rapid growth of the economy and expansion of the Chinese market.

Before the turn of the millennium, the Asian country focused on the goal of creating and developing a well-functioning legal system to attract foreign direct investment. They introduced the so-called Special Economic Zones (SEZs), where the Asian country essentially tested the newly developed investment policy. In a very short time, these special zones gained

competitive advantages and burdened the development of other regions. Therefore, the central government introduced more zones to address the poor regional distribution of FDI. To further develop the economy, the government introduced the Economic and Technological Development Zones (ETDZs) to build research and development capacity.

After China joined the WTO, the Asian country started to build a more transparent legal system. Since the introduction of the Foreign Investment Law, China has strengthened the administration of FDI investments. The Special Administrative Measures for Access to Foreign Investment and the Special Administrative Measures for Access to Pilot Free Trade Zones for Foreign Investment were introduced on 27 December 2021, modernising the institutional environment for both foreign and domestic investors.

China has strengthened its investment promotion activities through the Investment Promotion Agency (CIPA) under the supervision of the Chinese Ministry of Commerce in charge of Investment Policy and International Trade (MOFCOM). The Foreign Investment Law strengthens the Asian country's national investment promotion strategy and came into force on 1 January 2022. It aims to promote foreign investment based on the four pillars of stability, predictability, fair competition and transparency. Investment promotion agencies already exist at both central and provincial levels. To achieve transparency, local governments can develop their own investment promotion strategies as part of the decentralisation process. The State Council has established Pilot Free Trade Zones (PFTZs) with the aim of testing and developing new promotion strategies and investment policies to further develop the business and investment environment in the Asian country. These zones are not the same as the Economic Development Organisations (EDOs) in the United States, but both are part of the two countries' investment promotion strategies.

In general, China has introduced more restrictions in the majority of industries, unlike the United States. The National Security Clearance and Information Reporting System are designed to safeguard the economic, social and political stability of the People's Republic of China.

When we compare the United States and China in terms of investment policy development, there are some important differences and similarities that need to be mentioned. Both countries have moved from the federal/central to the state/provincial level since the 1970s to create a more decentralised and transparent investment environment. Local authorities and business organisations have been reformed and restructured to operate more efficiently and

achieve specific goals. Cooperation with foreign investors at the local level is an important part of attracting foreign direct investment.

On the other hand, both countries have developed investment promotion activities to remain competitive in the global economy. Both China and the United States host international trade forums for investors. In the United States, the SelectUSA program is responsible for investment promotion, and in the Asian country, the China Investment Promotion Agency (CIPA). Restrictions on foreign direct investment and screening procedures have also been put in place to constantly monitor and investigate certain investments in critical industries and infrastructure.

In summary, China has managed to catch up with the United States and challenge its economic status qou, but economists argue whether China can maintain this rapid economic growth and take the lead in the global economy. Recently, the two got into a trade war with each other, which put a strain on the economic development of both countries. The United States constantly blames China and accuses the country of spying through its investments in the US.

In my opinion, the United States has a better developed investment environment because of the country's economic history. The US adopted an investment policy long before China and had an open investment policy. Foreign investors have more confidence in US markets than in Chinese markets because of the activities of the central government and state-owned enterprises in China.

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