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OPENING A NEW CHAPTER IN CHINA-EU COMPREHENSIVE STRATEGIC PARTNERSHIP

H.E. Mr. WU Hailong *

The 16th China-EU Summit held in Beijing marked the 10th anniversary of China-EU Comprehensive Strategic Partnership. In the past decade, China and the EU set up more than 60 mechanisms of cooperation, with an annual trade volume of over US$500 billion and traffic between the two partners growing to over five million passengers per year.

In the next decade, China and the EU will have even greater opportunities for cooperation. The third Plenum of the 18th CPC Central Committee will launch a new round of reform and opening-up and lead the Chinese people to realise the Chinese Dream. At the same time, the EU economy is gradually recovering from the crisis as a result of better economic governance. This will give new impetus to China-EU mutually beneficial cooperation.

The Summit outlined the future of the bilateral ties and developed a strategic plan of cooperation for 2020 to maximise synergies between China's 12th Five-Year Plan and the "Europe 2020" strategy. The priorities include:

Politically, the two sides will advance strategic mutual trust. The summit mechanism, established 15 years ago, has served as a strategic anchor for bilateral relations and together with other dialogues, deepened our collaborations. China supports EU's integration process and its efforts to overcome the crisis. We hope the EU will respect China's development path and core interests. China and the EU – two important poles in a multi-polar world – are essential to ensuring world peace and development and should work together to address challenges like climate change, terrorism, nuclear proliferation and piracy to set an example of international cooperation.

Economically, China and the EU will work together to find ways to achieve shared prosperity. China and the EU make up one third of world's GDP, leaving enormous potential of cooperation. Trade between the two partners quadrupled in the past decade and can double again by 2020 to reach one trillion dollars. Mutual investment is becoming more important. In recent years, Chinese investment in the EU has soared, making Europe China's largest investment destination among developed economies. To provide better protection for investors, China and the EU will launch negotiations on an investment agreement – the first of its kind that the EU will negotiate on behalf of its 28 Member States. The two partners should also explore the path toward a free trade agreement, so that our economic ties will be driven by both trade and investment.

Cooperation in science, technology and innovation will be another highlight. The EU leads the world in ST and innovation, while China has

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tremendous demand. There has already been sound basis for future cooperation. China has participated in over 400 programs under the EU framework of science and technology cooperation, covering bio-technology, health and medicine, information technology and nanotechnology. Airbus and many other European companies have established research centres in China. On the sidelines of the Summit, China and the EU launched the first Innovation Cooperation Dialogue. The two sides would continue to strengthen cooperation in energy conservation, environmental protection, modern agriculture, space and aerospace.

Urbanisation will be a new engine of bilateral cooperation. China is making rapid progress in urbanisation, which represents great business opportunities, while the EU has achieved a high-level of urbanisation and accumulated great expertise. The two sides have launched some flagship initiatives in China, including the low-carbon city program in Shenzhen and Europe-China *Clean Energy Centre* (EC2) in Urumqi. In support of the summit, the two sides also held the Forum on Urbanisation and the Exhibition on Urban Development.

The thriving people-to-people exchanges will expand public support for bilateral relations. Last year, China and the EU established the third pillar of the partnership – the High-Level People-to-People Dialogue – and launched many cultural activities to promote mutual understanding. China and the EU, as important tourist destinations for each other, will tap the great potential in this regard, as they recently did in reaching an agreement on sustainable tourism. In addition, both are determined to continue to expand exchanges between students and scholars.

The ambitious blueprint is a testament to our great expectations for future cooperation. As long as China and the EU work together in a unity of purpose and handle trade frictions properly, the China-EU relationship will embark on an even more spectacular journey in the next decade.

EU-CHINA INVESTMENT AGREEMENT NEGOTIATIONS: SIGNIFICANCE AND PROSPECTS

HONG Yan*

Introduction

At the 16th China-EU Summit in November 2013, which was aimed at formulating the roadmap for China-EU cooperation in the next decade, both sides announced their decision to launch negotiations of a comprehensive bilateral investment agreement. The first round of talks was realised in January 2014. If concluded successfully, the agreement will replace the existing bilateral investment treaties (BITs) between China and 27 out of the current 28 EU Member States.

Why are China and the EU interested in signing such an investment agreement? What are the negotiations trying to achieve and how likely are they to be successful? This paper intends to briefly address both these questions.

Discrepancy between bilateral trade and investment

The EU has been China's biggest trading partner for nine consecutive years while China remains the EU's second biggest trading partner (after the United States) for the 10th year running. The bilateral trade volume rose from US$125.2 billion in 2003 to US$546 billion in 2012.[1] At the 2013 Summit the two sides made a commitment to further increase their trade to one trillion US dollars by 2020.[2]

The mutual investment between the EU and China lags far behind their burgeoning trade relations. Although European investments in China have grown considerably over the past two decades, foreign direct investment (FDI) from EU countries only accounts for approximately 5 percent of total FDI inflows into China.[3] Out of the US$111.7 billion worth of FDI inflow into China in 2012, only US$6.1 billion came from the EU.[4] Despite the remarkable growth in Chinese investments in the EU in the past decade, in 2012 only 2.2 percent

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1 "Ministry of Commerce talking about deficit in China-EU trade: caused by structural factors and to be solved step-by-step", *China News*, 9 December 2013, retrieved 10 Dec 2013, http://www.chinanews.com/gn/2013/12-09/5598423.shtml,

2 "China, EU pledge stronger trade links at leaders' summit", *Xinhua News Agency*, 22 November 2013, retrieved 6 December 2013, http://news.xinhuanet.com/english/china/2013-11/22/c_125749598.htm.

3 European Commission, "Commission Staff Working Document: Impact assessment report on the EU-China investment", SWD(2013) 185, 23 May 2013, Brussels, pp. 6-8, retrieved 6 December 2013, http://ec.europa.eu/smartregulation/impact/ia_carried_out/docs/ia_2013/swd_2013_0185_en.pdf.

4 "China 2012 FDI Suffers First Annual Fall in 3 Years", *Reuters,* 15 January 2013, retrieved 8 Dec 2013, http://www.cnbc.com/id/100382634.

(€3.5 billion) of the total FDI inflow into Europe was from China, and Chinese FDI only amounted to 0.4 percent of the total FDI stock in the EU.[5]

Both the EU and China hope that a comprehensive bilateral investment agreement will help address the huge discrepancy between their levels of trade and investment. Apart from this general purpose, there are particular incentives for both China and the EU to sign a new bilateral investment treaty.

The EU's internal and external need for a BIT with China

The EU's main objective in negotiating a new investment treaty with China is to improve the protection and treatment of European investors and secure better access to the investment market in China.[6] A recent European Commission report finds that "despite the growing attraction and strategic importance of China as an FDI destination, the lack of a predictable and secure environment both for prospective and existing investors negatively affects EU outwards FDI flows to China."[7]

The report notes that in China barriers to European investments exist at various levels and under different forms, such as: preventing foreign investors from establishing wholly foreign-owned companies and obliging them to set up joint ventures with local enterprises; imposing local content requirements and burdensome administrative procedures; forced transfer of key technologies and insufficient protection of intellectual property; discriminatory treatment related to the lack of judicial transparency and consistency; subsidies for Chinese enterprises; and unfair competition in public procurement and biddings.[8]

These problems cannot be solved by the existing BITs between EU Member States and China. Those signed before 1998 provide relatively low standards of protection, whereas those concluded after 1998, despite the inclusion of high-standard protection provisions, are not uniform, with some treaties missing important elements such as principles of national treatment and the clause on the 'Most Favoured Nation' treatment. Also absent are clauses concerning the attraction of FDI without lowering environmental and labour standards, corporate social responsibility, government subsidies and forced technology transfers, all of which are advocated by the European Parliament and the civil society in Europe.[9] Furthermore, current BITs between European countries and China only deal with investment protection after the investment has been made, i.e. the post-establishment phase, without

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[5] European Commission, "Facts and figures on EU-China trade", p.2, retrieved 6 December 2013, ttp://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144591.pdf. It is worth noting that the data presented by Eurostat are different from the statistics of the Chinese Ministry of Commerce, and that part of the Chinese outward investment may be routed via Hong Kong, as acknowledged by the European Commission.

[6] European Commission, "Commission proposes to open negotiations for an investment agreement with China", retrieved 6 December 2013,

[7] European Commission, "Commission Staff Working Document: Impact assessment report on the EU-China investment", *op. cit.*, p.11.

[8] *Ibid.*, p.14.

[9] *Ibid.*, p.17.

touching upon the market access for prospective investors, i.e. the pre-establishment phase.[10]

In the meantime, the EU feels international pressure to conclude a comprehensive investment treaty with China. The United States and China have been negotiating a BIT since 2008. China has concluded BIT negotiations with Canada, Japan and South Korea in 2012. While the BITs between China and Japan and South Korea only deal with post-establishment investment protection, the BITs pursued by the US and Canada with China cover both investment protection and market access. The EU is worried that China might grant better protection and preferential access to other trading partners, thus putting the EU at a disadvantage in terms of competition.[11]

Whether the EU can reach an investment agreement with China will depend on the Union's ability to exercise its exclusive competency on FDI granted by the Lisbon Treaty.

China's international and domestic motivations to negotiate a BIT with the EU

China, like the EU, has both international and domestic motivations for signing a new investment treaty. There has been an unprecedented prevalence of bilateral and regional investment treaties in the international system in recent years. Among them the Trans-Pacific Partnership (TPP) that the US is actively pushing for and the Transatlantic Trade and Investment Partnership (TTIP) that the US and the EU are negotiating have triggered particular concern in China.[12] As the world's largest trading country China can hardly remain indifferent to the formation of major trade and investment groups that exclude Chinese participation.[13] Many Chinese observers believe that by initiating the TPP and TTIP, the developed countries that traditionally dominated the world economy are attempting to reshape the international trade and investment rules to further align them with their own interests. These experts recommend that China should actively engage in the reconstruction of global investment governance system so as to expand its influence, secure the power of discourse, and voice its own interests in the process. As such negotiating an investment agreement with the EU would enable China to participate in the new round of international investment rule-making.[14]

In addition to this external pressure, China has a growing domestic need for an investment agreement with the EU. Most of the BITs between China and EU Member States were signed in the 1980s and the 1990s when China was desperately seeking FDI to boost its economic development.[15]

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[10] *Ibid.*, p.16.
[11] *Ibid.*, p.18.
[12] "How to Understand the China-EU Bilateral Investment Treaty Negotiation", Informal Roundtable, Institute of European Studies of Chinese Academy of Social Sciences, 8 July 2013, retrieved 6 December 2013, http://ies.cass.cn/en/cer/ChinaEUIES/201309/7405.asp.
[13] M. Xu, "The launch of China-EU negotiations on the Investment agreement came at a right time", *People's Daily*, 21 November 2013, retrieved 8 Dec 2013, http://world.people.com.cn/n/2013/1121/c157278-23609503.html.
[14] "How to Understand the China-EU Bilateral Investment Treaty Negotiation", Informal Roundtable, *op.cit*.
[15] Xu, *op. cit.*

Therefore, these BITs, from a Chinese perspective, reflect mainly the interests of European investors and do not provide proper measures to protect China's own investment in Europe.[16] Since the late 1990s, thanks to the implementation of the 'going global' strategy and the rapid economic growth of China, Chinese enterprises are increasingly motivated to invest abroad. Nowadays, China has become the country with the fastest growth in overseas investment. Its overseas direct investment (ODI) rose by 30 percent to US$77.2 billion in 2012. As part of the 12th Five-Year Plan (2011-2015), the Chinese government encourages domestic companies to expand investment abroad through mergers and acquisitions. Its goal is to match China's ODI with its FDI inflow by the end of 2015.[17] Against this background, Chinese investment in Europe has been growing rapidly. According to the data compiled by the EU-China Observatory, EU-27 as a whole was the primary destination for Chinese investors during the period 2005-2011.[18] By the end of 2012, Chinese investments in the EU totalled 31.5 EUR billion, covering all EU Member States, and there were, at this time, nearly 2000 Chinese enterprises in the EU.[19] The rapid increase of Chinese FDI to the EU is expected to continue. As more and more Chinese enterprises are 'going out' to invest in the EU, China is increasingly concerned about the growing protectionist sentiment against Chinese investment in Europe. As a European analyst has argued, the EU is not as open to FDI as it prides itself on being.[20] According to a survey conducted by the EU Chamber of Commerce in China, 78 percent of the Chinese investors in the EU have encountered various barriers, such as difficulties in obtaining visas and work permits for Chinese employees, the "security review" on Chinese investment practised by some EU Member States, and indirect taxation on some Chinese firms.[21] Consequently, China desires to secure the EU's commitments to enhancing its openness to Chinese investors through an updated bilateral agreement on investment.

Moreover, China considers the current BITs with EU Member States to be incomplete and lacking in coordination at the overall EU level. Furthermore, there is still no BIT between China and Ireland. The BITs between China and other EU Member States, despite their similarities, differ in certain specific content such as standards of treatment, currency exchange and provisions on dispute settlement, which may result in differences in practice,

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[16] "How to Understand the China-EU Bilateral Investment Treaty Negotiation", Informal Roundtable, *op.cit*.

[17] Q. Ding, "Rising trend of overseas investment 'to continue", *China Daily*, 5 March 2013, retrieved 6 December 2013, http://www.chinadaily.com.cn/business/2013-03/05/content_16276842.htm.

[18] European Commission, "Commission Staff Working Document", pp. 9-10.

[19] Y. Wu and Z. X. You, "Chinese investments in the EU exceeds EU investments in China for three consecutive years", 11 October 2013, retrieved 6 December 2013, http://finance.china.com.cn/roll/20131011/1865531.shtml.

[20] K. Michał, "Point of View: The Case of an EU-China investment agreement", 5 November 2013, retrieved 6 December 2013, http://britishinfluence.org/point-of-view-case-eu-china-investment-agreement/.

[21] "How to Understand the China-EU Bilateral Investment Treaty Negotiation", Informal Roundtable, *op.cit*.

and confound Chinese investors.[22] It is, therefore, in China's interest to have a uniform investment agreement with the EU as a whole.

Prospects of the BIT

The BIT negotiations between the EU and China are often compared with those between the US and China which began in 2008. By the end of 2013 the US and China had held ten rounds of BIT talks. There have been two major impediments to the negotiations. The first is the insistence of the US on using its own model for BIT as the template for the US BIT with China. This barrier has almost been removed as the US issued its revised version of Model BIT in April 2012. The second impediment is the pronounced differences between the US and China on market access and the treatment of investment. The US seeks to extend national treatment to cover the pre-establishment phase of its investment in China, while China has been limiting national treatment to the post-establishment stage of foreign investments in China. In addition, the US demands that China presents it with a 'negative list' that enumerates industrial sectors prohibiting or restricting American investments, with all the sectors not mentioned in this list being open to American investments. What China has been practising, however, is drafting a 'mixed list' – the "Catalogue of Industrial Guidance for Foreign Investment" that specifies the industries encouraging, restricting, or prohibiting foreign investments. The 'negative list' will likely lead to the opening of many more sectors for foreign investment in China than would the latter. At the Fifth China-US Strategic and Economic Dialogue held in 2013, China agreed to grant pre-establishment national treatment to US investments and adopt the 'negative list' approach. This significant compromise has led to important breakthroughs in the bilateral negotiations and is interpreted as a clear signal of the Chinese leaders' determination to deepen economic reforms.[23]

Although the EU does not hold a Model BIT like the US, it intends to follow suit to seek pre-establishment national treatment and a 'negative list' in the potential investment treaty with China. Judging from China's position adjustment in its negotiations with the US, one may expect that the EU's demands will be accommodated by China as well. Indeed, the Chinese government has recently demonstrated a more open attitude towards issues related to foreign investments. Apart from the BIT negotiations with the US, China is experimenting with a 'negative list' approach in the newly established Shanghai free-trade zone. This list covers 18 widely-ranging economic and industrial sectors.[24] The resolution passed by the third Plenum of the 18th Central Committee of the Communist Party of China (CPC), concluded in November 2013, explicitly states that China will explore the model of pre-establishment national treatment for foreign investments

[22] *Ibid.*
[23] B. Wang, "Significant breakthroughs in China-US BIT negotiations, further releasing signals of reform", 18 July 2013, retrieved 6 December 2013, http://intl.ce.cn/sjjj/qy/201307/18/t20130718_24583397.shtml.
[24] "Difficult start of China-EU Investment Agreement Talks, the EU Expects Pre-Establishment National Treatment", *Caijing Journal*, 2 December 2013, retrieved 6 December 2013, http://finance.sina.com.cn/world/20131202/152117501379.shtml.

combined with a 'negative list' in order to widen market access for foreign investors and accelerate the signing of investment agreements with relevant countries and regions.

China is, nonetheless, unlikely to make any compromise that it deems harmful for its own economic development. Commenting on the necessity of BITs for attracting FDI in an inter-governmental meeting in 1997, an official from the Chinese Ministry of Foreign Trade and Economic Cooperation (now the Ministry of Commerce) said that:

> To fulfil economic development goals, the host country has to retain sovereign rights to decide when and which sectors are to be opened to foreign investments and the conditions for access to the domestic market, according to its own development strategy…Otherwise, foreign investments may be detrimental to economic and social development.[25]

These words may still partially represent the principles guiding Chinese decision-makers today.

Likewise, considering the EU's desperate need for better market access in China and the critical importance of Chinese investments for Europe's economic growth and employment prospects,[26] it would be reasonable to assume that the EU should favourably consider China's desire for improved protection and openness for Chinese investors in Europe. Yet, the extent to which the EU would accept Chinese proposals largely depends on the Union's balanced considerations of different interests and preferences of the 28 Member States as well as on the reciprocity from the Chinese side. Furthermore, European leaders have repeatedly emphasised that the EU has no interest in a BIT with China that is limited to investment protection and omits market-opening. Only if market access for European companies is granted will the EU sign an investment pact with China.[27] Since this would be the first BIT that the EU signs on behalf of all its Member States and thus sets a model for subsequent BITs between the Union and other countries, the European negotiators may not easily give in on any principle issues.

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[25] "Bilateral investment agreements play only a minor role in attracting FDI", *Third World Network*, June 1997, retrieved 6 December 2013, http://www.twnside.org.sg/title/bil-cn.htm.

[26] According to the statistics of China's Ministry of Commerce, by the end of 2012, Chinese enterprises in the EU had created more than 42 thousand job opportunities for Europeans. For further information, please see Wu and You, "Chinese investments in the EU exceeds EU investments in China for three consecutive years", *op. cit.*

[27] European Commission, "Investment deal with China: 'Only under the condition that market access for European companies is granted' (De Gucht)", 18 October 2013, http://trade.ec.europa.eu/doclib/press/index.cfm?id=976; M. Martina, "EU trade chief says China investment pact must open markets", *Reuters*, 22 November 2013, retrieved 6 December 2013, http://www.reuters.com/article/2013/11/22/us-china-eu-trade-idUSBRE9AL0IL20131122.

Conclusion

Both the EU and China have apparent external and internal interests in concluding a bilateral investment agreement. Yet it is hard to predict how long the negotiations will take and what the eventual outcome will be. While both sides have strong incentives to give favourable considerations to each other's concerns and demands, neither will be willing to compromise on issues that are vital to their economic interests. The progress of the future negotiations will also be subject to the impact of the general climate of the bilateral relationship.