

The EU's International Investment Policy and the Negotiations for EU

Investment Agreements with China and Burma/Myanmar

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Outline of the Paper

New Competence of the EU on Investments
Negotiations between EU and Burma /
Myanmar

Launching EU/China Negotiations for a
stand-alone investment agreement

EU principles of the EU global investment
policy

Possible content of the future EU/China
Investment Agreement –first rumors on
the Chinese negotiating text



New EU FDI Competence

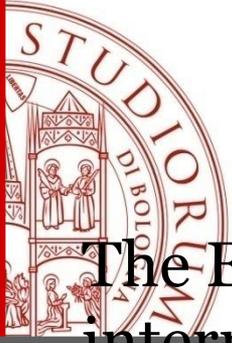
Article 207 TFEU provides that “[t]he common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, *foreign direct investment*, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies”



New EU FDI Competence

Article 207 TFEU also stresses that the EU common commercial policy has to be

conducted “in the context of the principles and objectives of the Union’s external action,” principles and objectives encompassing the promotion of human rights, sustainable development, the protection of the environment and natural resources, thus a model of internal and international trade that must be not only free, but also fair (see Articles 3, para. 5, and 21 TEU).



New EU FDI Competence

The European Commission intends to realize an EU international investment policy concerning both foreign DIRECT investments and foreign INDIRECT investments

Article 207 TFEU formally contemplates only **foreign direct investments (FDIs)**, i.e. «**investments of any kind undertaken by natural or legal persons and which serve to establish or maintain lasting and direct links between the persons providing the capital and the undertakings to which that capital is made available in order to carry out an economic activity**» (judgment of the EU Court of Justice of 12 December 2006, case C-446/04, *Test Claimants in the FII Group Litigation*, para. 181)

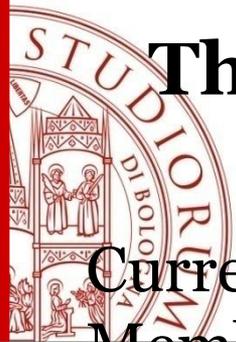
New EU FDI Competence



The Commission claims that the EU has exclusive competence to conclude international agreements also for foreign INDIRECT investments, i.e. the so called portfolio investments

Foreign indirect investments are the «the acquisition of shares on the capital market solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking» (judgment of the EU Court of Justice of 8 July 2010, case C-171/08, *Commission v. Portuguese Republic*, para. 49).

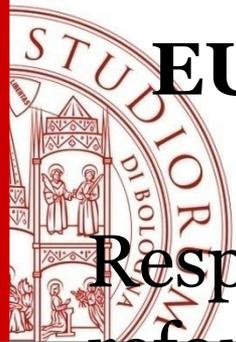
It is highly likely that future EU International Investment Agreements (IIAs) will be concluded according to the **mixed formula (EU+ EU Member States and the third country)**



The Treatment to Reserve to EU Member States BITs

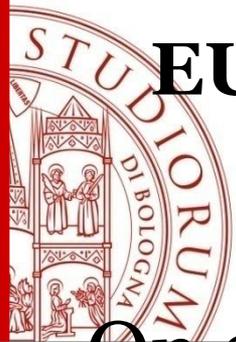
Currently, more than 1300 BITs concluded by the EU Member States are in force in Europe, with the strong prevalence of Germany, that concluded, alone, 137 BITs
EU Regulation No 1219/2012 of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries

Member States are allowed to maintain under certain conditions their bilateral investment treaties; they may have to amend investment agreements with a view to bringing them in compliance with EU law obligations;
Member States may be allowed under certain conditions the opening of new investment negotiations



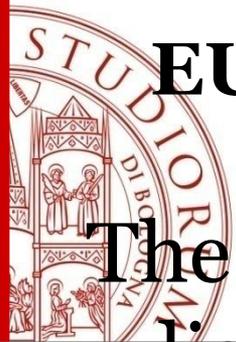
EU and Myanmar/Burma to negotiate an investment protection agreement

Responding to Myanmar's political and economic reform process begun in 2011 and after the June 2012 decision by the Conference of the International Labour Organisation (ILO) to suspend its restrictive resolution on Myanmar/Burma, the European Union reinstated the "Generalised Scheme of Preferences" (GSP) tariff preferences on 19 July 2013, with retroactive application as of 13 June 2012. The EU had temporarily withdrawn these preferences since 1997 due to violations of the principles of the ILO convention on forced labour.



EU and Myanmar/Burma to negotiate an investment protection agreement

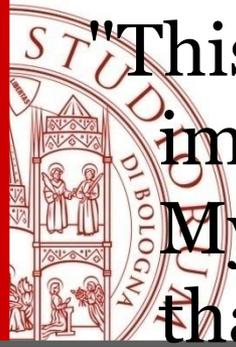
On 20 March 2014, the EU Trade Commissioner Karel De Gucht launched negotiations for an investment protection agreement between the European Union and Myanmar/Burma with Dr. Kan Zaw, Union Minister of National Planning and Economic Development of the Republic of the Union of Myanmar, in Nay Pyi Taw.



EU and Myanmar/Burma to negotiate an investment protection agreement

The EU Member States gave their green light on the negotiation mandate on 18 March 2014.

According to the European Commission and the Asian Government, the investment agreement will improve the protection and fair treatment of investors from both sides and will thus contribute to attracting investments to Myanmar/Burma and the EU.



"This investment agreement could become an important accelerator for the reform process in Myanmar/Burma ... said "Experience has shown that improving legal certainty and predictability for investments is key in providing business opportunities and much-needed development for this growing economy. I hope we can conclude negotiations swiftly to open the door to an increased flow of mutually beneficial investments. The European Union fully supports Myanmar's reform process and is ready to support further efforts in this direction." (EU Trade Commissioner De Gucht)



Currently, there is no bilateral investment treaty in place between Myanmar and any EU Member States. An EU-Myanmar/Burma Investment Protection Agreement would offer EU investors key guarantees in their relationship with Myanmar such as:

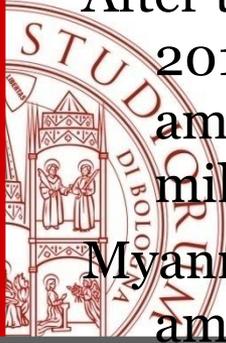
- Protection against discrimination;
- Protection against expropriation without compensation;
- Protection against unfair and inequitable treatment;
- Protection for the possibility to transfer capital.

(These provisions provide guarantees to companies that their investments will be treated fairly and on an equal footing to other investors. Creating legal certainty and predictability for companies will help to attract and maintain foreign direct investment (FDI) to underpin Myanmar/Burma's development)



At the same time, the investment agreement will not interfere with the **right of the state to regulate to pursue public policy objectives and to work for the development of the country and its people**, as a balance between the **right to regulate and to pursue legitimate public policy objectives** and the need to protect investors will be ensured.

The agreement will also offer an opportunity for the EU and Myanmar/Burma to continue to pursue their strong commitment to **sustainable development** and **to promote responsible corporate conduct**, in line with **internationally recognised principles and guidelines**.

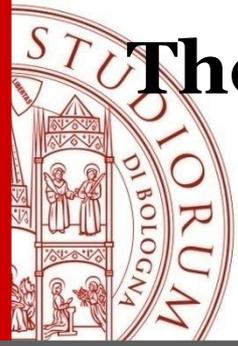


After the EU reinstated trade preferences to Myanmar/Burma in July 2013, in 2013 bilateral trade in goods with Myanmar/Burma amounted to €569 million, a 41% increase compared to 2012 (€403 million).

Myanmar/Burma exports to the EU increased by 35% in 2013 to amount to €223 million (compared to €165 million in 2012). While previously limited to garments (66,9%), fisheries products (8%), rice (4,4%) and beans (4.3%), exports of Myanmar in 2013 saw the share of garments decrease to 58,2%, but the re-entry in the export base of precious stones (11,7%) and wood products (7,8%).

EU exports to the country increased by 45% in 2013 reaching €346 million (compared to €239 million in 2012). Key EU exports were powered aircrafts, pharmaceuticals, electrical machinery and equipment.

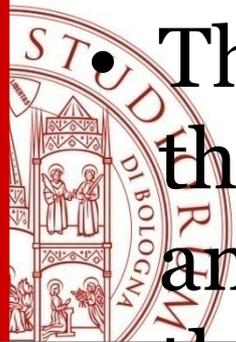
EU investment in Myanmar/Burma has so far been limited as a result of previous EU sanctions. According to Myanmar/Burma's official figures, cumulated existing investments of the EU amounted to some USD 3.1 billion in 2013 (9% of FDI in Myanmar/Burma)



The Seattle to Brussels (S2B) network and the perspective for an EU /Burma-Myanmar Investment Agreement

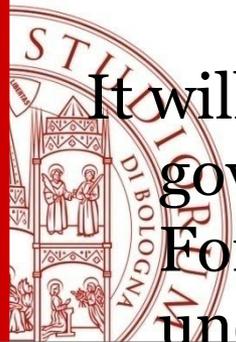
9 February 2015: first round of negotiations between the EU and Myanmar over the investment treaty.

“An investment treaty will block democratic transition”



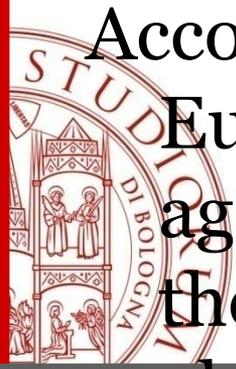
• The members of S2B are of the opinion that an investment treaty between the EU and Myanmar will be very dangerous for the following reasons:

- Myanmar is in a process of political transition, which will involve the revision of a range of policies and laws affecting foreign investors. This process will involve regulatory changes in the areas we normally think of as public policies - for example, new public health and environmental regulation.

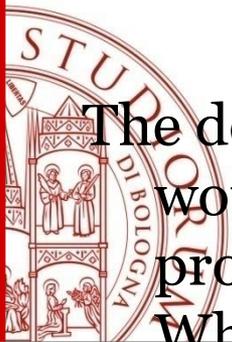


It will also involve fundamental changes in economic governance and the fiscal regime governing investments. For example, existing contracts and licenses awarded under the military regime will need to be renegotiated to put them on an arms' length basis. There are many examples of this process starting and everywhere in Myanmar there are conflicts over land and natural resources, the Leptadaung copper mine (where protests led to arrests and killings) being only one of them.

An investment treaty is particularly dangerous at this moment in time, as the investment treaty will constrain the government's ability to make the needed legal and policy changes in Myanmar.



According to press-statement brought out by the European Commission (EC) the investment agreement will "not interfere with the right of the state to regulate to pursue public policy objectives". This is impossible to verify because **negotiations are held in secret and no access to the negotiation texts is provided.** What we do know is that none of the EU treaties currently being negotiated preserve a state's ability to undertake 'legitimate public policies'. In fact, in the text put forward by the EC in the consultation on ISDS in TTIP, any exception relating to public policies does not apply to the investor-protection provisions.

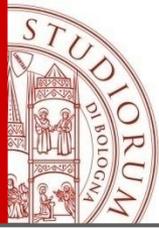


The decision of whether a measure is a 'legitimate public policy' would still be left to the arbitrators – a triumvirate of for-profit lawyers - at the international arbitration tribunals.

What an arbitrator with background in commercial litigation thinks is 'legitimate' may be very different from what is required in a poor country, going through a rapid process of political and economic reform, with a bureaucracy weakened by five decades of authoritarian rule.

The standard provisions in investment treaties will significantly reduce the policy space required to give shape to the new Myanmar and as such run counter to the EU's long term support to democratic transition in Myanmar.

We call upon the European Commission not to push through with the negotiations for an investment treaty with Myanmar. It will not help but hurt democratic transition.

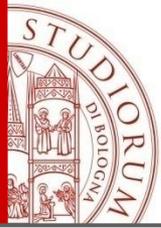


2003 EU-China Framework Agreement Establishing Industrial Policy Dialogue

In 2003, the EU and China concluded a Framework Agreement for Establishing an Industrial Policy Dialogue in order to “strengthen and consolidate ties between the two Parties, promote and enhance mutual understanding and awareness of current and forthcoming policy approaches, legislation and related issues in the industrial sector”.

According to the Framework Agreement, the parties aim to “contribute to the improvement of the competitiveness of businesses from both sides, by ensuring a business-friendly level playing field for industry operators”

Framework Agreement Establishing Industrial Policy Dialogue between the Commission of the European Community and the Government of the People's Republic of China, signed in Beijing, on 30 October 2003



2006 Commission Communication COM(2006) 632 final

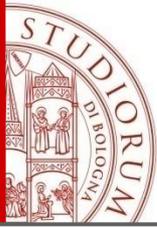
COM(2006) 631 final, *EU – China: Closer Partners, Growing Responsibilities*, Brussels, 24.10.2006

Identification of China as major economic and political power

Identification of the EU as enjoying world leadership in key technologies and skills, and playing a key role in the search for sustainable solutions relating to today's challenges, the environment and energy

Need to establish a dynamic relationship between the EU and China, with the objective of offering joint solutions to global problems

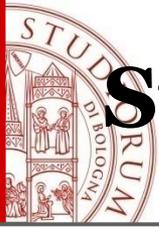
China has to open its market and ensure fair market competition; the EU has to adjust to the competitive challenge and to drive a fair bargain with China



Jointly Stating the Importance of an EU-China Investment Agreement

In its 2010 Communication “Towards a Comprehensive European International Investment Policy” (COM(2010) 343 final), **the European Commission identified China as a prominent candidate for a stand-alone investment agreement with the EU**

Both the EU and China stated the importance to launch negotiations on a bilateral investment agreement during the 14th EU-China Summit held in February 2012 in Beijing, confirming their joint willingness at the 15th EU-China Summit in September 2012.

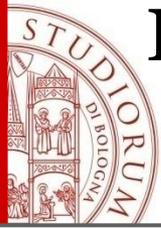


Steps towards the launch of EU-China Investment Negotiations

April 2010: executive-to-executive meeting between the European Commission President Manuel Barroso and the Chinese Premier Wen Jiabao – decision to set up two teams (EU + China) to examine the options for improving bilateral relations between the EU and China

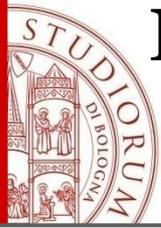
Establishment in the summer of 2010 of a “Joint EU-China Investment Task Force”

May-July 2011: launch by the European Commission of a **public consultation** on the future EU-China investment relationship opened to interested stakeholders within and outside the EU



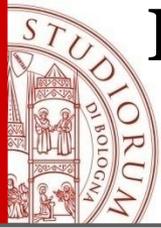
Proposal of the European Commission to Open Negotiations for an Investment Agreement with China

On 23 May 2013, the European Commission decided to ask the EU Member States for their agreement on a mandate to open negotiations on an investment agreement with the powerful Asian country, marking “the first ever proposal for a **stand-alone investment agreement** since foreign direct investment became the exclusive competence of the EU under the Lisbon Treaty” (European Commission – Directorate-General for Trade, *Commission Proposes to Open Negotiations for an Investment Agreement with China*, Brussels, 23 May 2013)



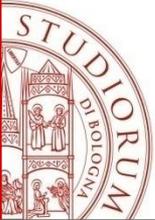
Proposal of the European Commission to Open Negotiations for an Investment Agreement with China

While trade flows between China and the EU are impressive, with **goods and services traded** between both partners for a **value of € 1 billion every day**, the current investment flows are really below the potential of both the economic blocks: in **2011** European companies invested € 17.5 billion in China (i.e. 2% of total FDI abroad), whereas China invested € 2.8 billion in Europe (i.e. 0,4% of total FDI in Europe)



Proposal of the European Commission to Open Negotiations for an Investment Agreement with China

The European Commission is promoting a single, coherent, treaty text, that should replace the currently in force 26 BITs of the EU Member States with clear rules to improve access and protection of EU investment in China, as well as Chinese investments in the EU –but the *EU stakeholders point out that Beijing investors already enjoy ample access to the EU market, not, until now, reciprocated by the Chinese authorities*

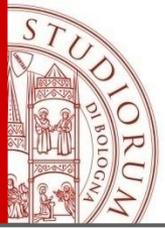


Results of the 2011 EU Public Consultations

China identified as an increasingly strategic market for EU investors

80% of the respondents: no confidence in the Chinese legal system to protect their rights as investors because of the lack of transparency and consistency of the system which is subject to political pressure

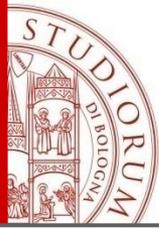
Barriers identified by EU investors before and after investing in China: licensing and regulatory approval procedures, foreign ownership limitations, prohibition to invest/restricted scope of business, joint ventures and technology transfer requirements, subsidies given to Chinese companies by the Chinese Government



Results of the 2011 EU Public Consultations

Strong support in favour of a bilateral EU-China investment agreement – need to increase clarity and predictability of the investment environment in China, implementation of appropriate laws protecting foreign investments, respect of the commitments undertaken

Chinese stakeholders: great interest in an EU-China IIA because it provides for a unified legal framework replace to existing 26 BITs of the EU Member States (Ireland traditionally does not subscribe BITs; while Belgium and Luxembourg, as Belgium-Luxembourg Economic Union (BLEU), have concluded one single BIT with China on 6 June 2005, which entered into force on 1 December 2009 - this is the reason of the apparent discrepancy, i.e. 28 Member States but 26 BITs.



Results of the 2011 EU Public Consultations

Possible Content of the Future EU-China IIA

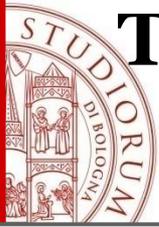
Caution on the issue of Investor-State Dispute Settlement (ISDS)

Means of last resort – fear of retaliation by China

Divided opinions on whether social and environmental standards should be included in the EU-China IIA

Some stakeholders promoted the need to cover the enforcement of international standards regarding child labour, environment, and anti-corruption

Others claimed that unrelated investment issues (human rights, labour conditions, etc.) should not be introduced into the negotiations – parallel with already existing EU Member States' BITs, which do not deal with non-commercial issues

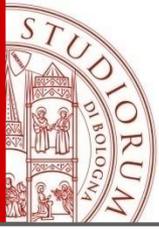


Thorny Issues for the Future EU-China IIA SOEs

EU stakeholders express concerns about unfair competition caused by Chinese subsidies to Chinese State-owned enterprises (SOEs)

Chinese SOEs subsidies do not face the same strict competition/state aid rules as EU companies

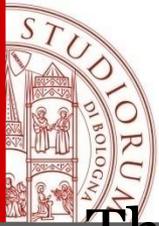
State-owned enterprises receive financial support from the state and therefore are placed in a position of competitive advantage compared to other investors, including local enterprises, and can create disadvantageous economic conditions – **need to guarantee in the future IA “competitive neutrality”**



COVEC Case in Poland

Chinese SOE COVEC (China Overseas Engineering Group) is a subsidiary of China Railway Engineering Corp (CREC), one of Asia's largest construction and engineering companies

The highway construction contract awarded to the Chinese SOE COVEC by the Polish government in 2009 raised a debate about unlawful dumping practices due to its bid of less than half of what the Polish Government had budgeted

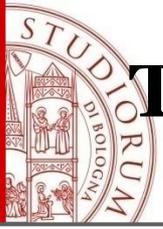


COVEC Case in Poland

The project was withdrawn by COVEC in 2011 after incurring heavy losses: COVEC said the actual cost of the A2 highway project has far exceeded its expectations. The company said the total cost of the A2 highway construction will reach \$786 million, 76 percent higher than the original estimate, as its Polish partner imposed a higher construction standard and the price of building materials soared unexpectedly.

"Chinese enterprises should adopt stringent measures to safeguard **State-owned assets**, as overseas investment has a large asset risk," said Chen Huanzhong, a partner at the Beijing-based Global Law Office.

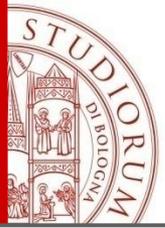
COVEC stops Polish highway construction, By Bao Chang (China Daily), 18 June 2011



Thorny issues for the future EU-China IIA SWFs

Sovereign Wealth Funds (SWFs) - China owns one of the biggest SWFs, **China Investment Corporation**

SWFs can be covered by a BIT – see Opinion of 20 November 2007 from the Swiss Federal Department of Foreign Affairs: there is no *a priori* reason for a distinction between a private and a public investor where a state acts as an economic actor; it is only in the rare cases where a state would act as a sovereign (*iure imperii*) that a distinction could be drawn – what do to in the future EU-China IA? (Saudi Arabian BITs regularly contain a provision in their definition of investment to the effect that the country's sovereign wealth fund is protected under the provisions)



DG Trade – European Commission

2012 Roadmap of EU-China Investment Relations

3 policy options:

- a) to leave the existing BITs between China and EU Member States untouched, but only to continue the negotiations of the EU-China Partnership and Cooperation Agreement (PCA)
- b) to negotiate a standalone investment protection agreement to replace the existing 26 EU MS BITs, but not to include pre-establishment elements in such an agreement
- c) to negotiate a **comprehensive investment agreement** covering **both pre- and post-establishment investment**



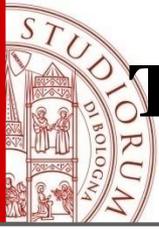
DG Trade – European Commission

Roadmap of EU-China Investment Relations

Third option – investment liberalisation, i.e. pre-establishment protection of foreign investments, liberalisation of existing restrictions on entry and admission

a **comprehensive investment agreement** would have considerable impact on investment flows, provide higher protection of European investors, **guarantee market access** and, most importantly, provide one single framework for the protection of FDI

The EU has been pushing on market access and investment liberalisation through both multilateral and bilateral agreements at EU level



Thorny issues for the future EU-China IIA Market Access

China enjoys open market access for investment in the EU – EU countries are eager to attract Chinese investments

But for China *investment liberalisation* –i.e. the guarantee of *market access* - remains a highly debated and uneasy issue

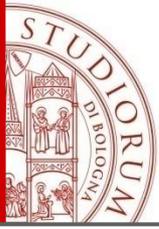
Market access will be one of the hot topics in the EU-China negotiations. Possible solutions: **built-in agenda** comparable to the GATS with a **positive-list** approach on market access – **reciprocal list** approach on market access



Principles and Objectives of the EU External Action in the Future EU-China IA

The EU common commercial policy –and thus the EU international investment policy- has to be conducted “in the context of the principles and objectives of the Union’s external action,” principles and objectives encompassing the promotion of human rights, sustainable development, the protection of the environment and natural resources, thus a model of international trade that must be not only free, but also fair (see Articles 3, para. 5, and 21 TEU)

Such principles and objectives have therefore to be included in the future EU-China IA

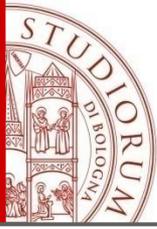


Which Content for the Future EU-China IIA?

The EU Council has approved the EU negotiating mandate on 18 October 2013

Highly relevant role for the content of the future EU-China IIA of the European Parliament

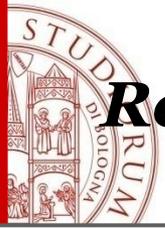
With the Lisbon Treaty the European Parliament has acquired a veto power in the conclusion of almost all the EU international Agreements (see Article 218 TFEU)



European Parliament and Human Rights in International Relations

P6_TA(2006)0056, European Parliament Resolution on the human rights and democracy clause in European Union agreements, 14 February 2006

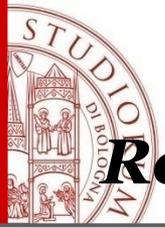
“The European Parliament ... emphasises that it is no longer prepared to give its assent to new international agreements that do not contain a human rights and democracy clause” (para. 10)



P7_TA(2011)014, *European Parliament Resolution of 6 April 2011 on the Future European International Investment Policy*

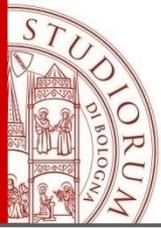
European Parliament great fighter for the protection and promotion of fundamental rights

2011 EP Resolution on the **EU International Investment Policy**: the future EU IIAs have to protect the **right to regulate** of the involved contracting parties, asking the European Commission “to include in all future agreements specific clauses laying down the **right of parties to the agreement to regulate**, inter alia, in the areas of **protection of national security**, the **environment**, **public health**, **workers’ and consumers’ rights**, **industrial policy** and **cultural diversity**”



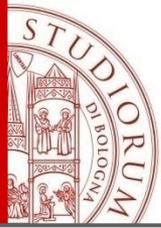
P7_TA(2011)014, *European Parliament Resolution of 6 April 2011 on the Future European International Investment Policy*

2011 EP Resolution on the EU International Investment Policy underlines “the EU’s future policy must also promote investment which is sustainable, respects the environment (particularly in the area of extractive industries) and encourages good quality working conditions in the enterprises targeted by the investment,” so that “in all future agreements, a reference to the updated OECD Guidelines for Multinational Enterprises” has to be inserted



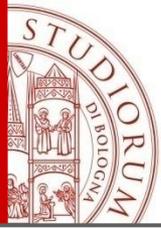
The European Parliament and the Opening of Negotiations on an EU-China Investment Agreement

The EU Parliamentary Committee on International Trade (INTA) has declared on 17 September 2013 that, once opened, EU-China negotiations have to be conducted with **the highest possible level of transparency**, and subject to **constant parliamentary oversight**, qualifying these modalities as “a precondition for the European Parliament’s consent to the deal” (see EP Press Release, *EU-China Investment Talks: no EP Consent without Transparency, Trade MEPs Warn*, 17 September 2013)



The European Parliament and the Opening of Negotiations on an EU-China Investment Agreement

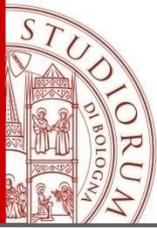
INTA stated without ambiguity that “any deal should ... include binding corporate social responsibility, social and environmental clauses,” while, on the contrary, “goods produced in China’s Laogai forced labour camps should not benefit from investments made under [the EU-China planned] international agreement” (see EP Press Release, *EU-China Investment Talks: no EP Consent without Transparency, Trade MEPs Warn*, 17 September 2013)



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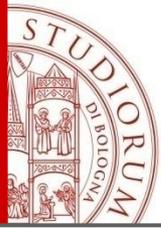
EP Motion for a Resolution on the EU-China negotiations for a bilateral investment agreement, 2 Oct. 2013 (B/-0439/2013)

«The European Parliament ... Calls for a clause providing that **investors** shall be subject to **national legislation and civil actions for liability in the judicial process of either their home or host state**, in particular for acts or decisions made in relation to their investment where such acts or decisions lead to significant environmental damage, personal injuries or loss of life in the host state” (para. 16)



The European Parliament and the Opening of Negotiations on an EU-China Investment Agreement

«The European Parliament ... Requests the inclusion of an **international obligations clause** in the agreement, providing that **obligations regarding the protection of investments must be read subject to all parties' obligations under international treaties and customary international law, in particular concerning human rights, labour rights and protection of the environment**; requests, therefore, that the investment agreement should not curtail progress with regard to the ratification and full implementation of international human rights, International Labour Organisation (ILO) conventions and multilateral environmental agreements by both parties» (EP Motion for a Resolution on the EU-China negotiations for a bilateral investment agreement,

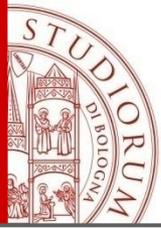


The European Parliament and the Opening of Negotiations on an EU-China Investment Agreement

European Parliament Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement ([2013/2674\(RSP\)](#))

«3. Notes that European enterprises deplore the existence of numerous tariff and non-tariff barriers to the Chinese market, such as certain forms of discrimination against foreign operators, as well as the complexity of the tariff structure and the technical barriers to trade;

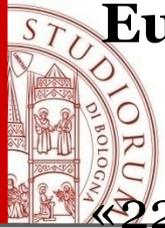
4. Welcomes the **inclusion of market access** in the negotiating mandate; believes that a reassurance on the part of China that market access will be included in the **negotiations** should constitute a **precondition for launching them**”



The European Parliament and the Opening of Negotiations on an EU-China Investment Agreement

European Parliament Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement ([2013/2674\(RSP\)](#))

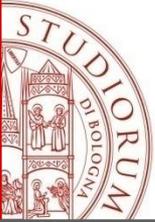
«12. Underlines the importance of establishing, through this agreement, the **preconditions for fair competition between the EU and China**; recommends, to this end, that the Commission negotiate strong and binding provisions on **transparency and fair competition** so that a level playing-field also applies to **state-owned enterprises and sovereign wealth funds' investment practices**»



European Parliament Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement

«22. Stresses that a **precondition for the conclusion of the agreement** should be the inclusion of a **strong commitment by the parties to sustainable and inclusive development, in its economic, social and environmental dimensions and in relation to investment**, in order to build up a more balanced trade and investment relationship between the EU and China that is not based mainly on low labour costs and poor environmental standards in China;

23. Stresses that investment agreements concluded by the EU must not be in contradiction with the **fundamental values that the EU wishes to promote through its external policies** and must not undermine the **capacity for public intervention**, in particular when pursuing **public policy objectives such as social and environmental criteria, human rights, the fight against counterfeiting, security, workers' and consumers' rights, public health and safety, industrial policy and cultural diversity**; calls for the inclusion of the respective specific and binding clauses in the agreement»



Standards of Protection in the Post-Establishment Phase and Public Policy Considerations

Possible content of the EU negotiating mandate similar to the draft text of the **EU-Canada Comprehensive Economic and Trade Agreement** of 7 February 2013

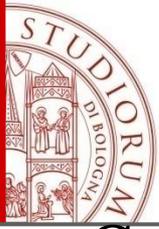
Fair and equitable treatment for foreign investments

Full protection and security for foreign investments

Indirect expropriation: EU suggestions for a provision establishing that general non-discriminatory **regulatory measures** taken in the **public interest** do not constitute an indirect expropriation, *subject to the principle of proportionality* (the EU proposes the use of general exceptions modeled after Article XX GATT)

See Article 33 of the Canada-China BIT: a general exceptions clause modelled after Article XX GATT

Annex B.10 Canada-China BIT: except in rare circumstances, non-discriminatory measures designed and applied to protect legitimate public objectives do not constitute **indirect expropriation**



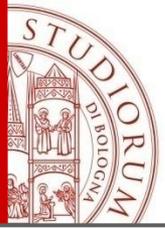
Transparency

General transparency obligation for all stakeholders, i.e. the host states, the home states and the foreign investors

Contracting parties could be required to make information publicly available, provide a reasonable interval if introducing or changing laws or regulations, respond to specific questions and provide information, provide an opportunity for public comments

Foreign investors can be required to provide information concerning investments

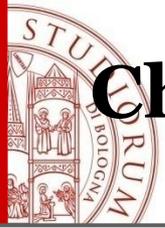
Investor-state arbitral tribunal awards could be required to be made publicly available



China Proposal at the EU/China Negotiating Table – June 2014

End of June 2014 – China presented its first proposal at the negotiating table

The Chinese submitted text is not public; rumors say that it is basically inspired to the 2012 US BIT Model, just a copy-paste from such a Model-with some important exceptions, i.e.



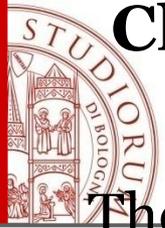
China Proposal at the EU/China Negotiating Table – June 2014

An appellate body in the ISDS system

Weak text with reference to environmental protection

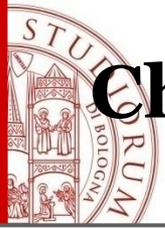
Weak text with reference to labour rights

Weak text with reference to transparency



China Proposal at the EU/China Negotiating Table – June 2014

The Chinese Proposal merges into a single provision (i.e. Article 11 – Transparency) two Articles of the 2012 US Model BIT, i.e. Article 10 (Publication of Laws and Decisions Respecting Investment), and Article 11 (Transparency). The commitments proposed by China are very limited if compared with the US Model BIT. In particular, in the Chinese text there is no hint on the US proposed **obligation for the Parties to “agree to consult periodically on ways to improve the transparency practices” concerning the publications of relevant measures, the same rules on transparency, and transparency with specific reference to arbitration proceedings**. Furthermore, in the Chinese proposal there are no articulated rules on **the way in which to publish proposals and adopted measures, on the possibility of making comments by all the stakeholders, and the publication of such comments**

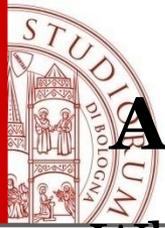


China Proposal at the EU/China Negotiating Table – June 2014

No proposals on market access: this has sparked considerable disappointment in the EU Council and the European Parliament

The European Commission did not present any text in June 2014

What could be the influence of an EU/China agreement –as well of the China/US agreement- on the process of internationalization?

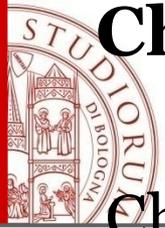


China – EU – US: A New Multilateral Approach in International Investment Law

While discussing an IIA with China, the EU is also negotiating a Transatlantic Trade and Investment Partnership with the USA; and China is negotiating a IIA with the United States (US-China BIT, negotiations started in 2010, resumed in 2012)

If properly managed, the current negotiations among the three economic superpowers may be a stepping stone for **a new multilateral approach in international investment law**

China's interest to participate in shaping global investment rules, as China is becoming a prominent foreign investor at world level (Africa, Latin America, Asia, and now more and more Europe) – this explains China's opening and efforts towards sustainability issues in recent China BITs – see the already quoted example of Canada-China BIT



China – EU – US: A New Multilateral Approach in International Investment Law

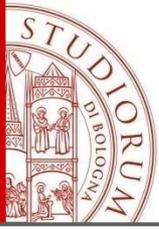
China, the US and the EU could agree on identical wording of the IIAs currently under negotiations

Important option: negotiation of a **trilateral investment treaty** open for accession by third countries: creation of a **new multilateralism in international investment law**, even if outside the WTO

Importance of transparency while conducting international negotiations

From the **BITs spaghetti bowl** to **an advanced, fair, multilateral law for international investments**, contemplating the right to regulate and social and environmental concerns: really a ...

SMART DEVELOPMENT!!!



Thank You for Your Attention!



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