EUROPEAN COMMISSION

Directorate-General for Trade

EU-CHINA INVESTMENT RELATIONSHIP

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Consultation on the future investment relationship between the EU and China

This questionnaire is intended to gather stakeholders' views on the future of the EU's investment relationship with China; and on policy choices aimed at strengthening our relationship in future.

Given that the EU and China are among the world's largest originators and recipients of foreign investment, they have decided to explore more closely the possibilities for facilitation and protection of mutual investments. In the context of an Executive-to-Executive meeting on 29 April 2010, European Commission President Manuel Barroso and Premier Wen Jiabao instructed their respective teams to study the options for enhancing bilateral investment. To this end, a Joint EU-China Investment Task Force was launched in summer of 2010 to explore the scope for deeper cooperation on investment, including considerations of a possible standalone investment agreement.

Trade between China and the EU continues to increase, but investment flows between the two regions remain limited in comparison. European investors identify China repeatedly as a location that holds great untapped potential. However, China's growth, and the prospects that it offers for foreign investors, have been accompanied by growing concerns on the part of European investors about the lack of a level playing field in China because of persistent barriers and an uncertain business environment.

The share of European foreign direct investment (FDI) in China has been hovering around an average of 20% of total (global) FDI in China in recent years, making the EU as a whole the largest foreign investor before Taiwan, the US and Hong Kong. Yet this represents less than 3% of the EU's total overseas FDI – despite the interest that European investors express in China as an investment destination.

At the same time China is becoming a more active investor abroad and now ranks among the top 10 global outward investors. Although China's investment in the EU presently accounts for only 1% of overall inward FDI, ranking well behind the top 20 investor countries[1] (though adding investments routed via Hong Kong might lift China’s overall ranking), there are signs that this will increase in future. This is coupled with a growing public debate in the EU over investment by state-owned Chinese enterprises or sovereign wealth funds.

[1] The top 20 sources of FDI inflows into the EU in 2009 were: United States, Switzerland, Canada, Australia, Norway, Russia, Mexico, Singapore, Hong Kong, Turkey, Iceland, South Africa, India, Israel, Venezuela, Thailand, South Korea, Argentina, Brazil, Iran

In its 2010 Business Confidence Survey, the European Chamber of Commerce in China finds that "*optimism about growth does not automatically translate into confidence in China as a sustainable and predictable investment environment in the long term*" and that "*European companies' continued commitment to China as an investment location is not unconditional and would be further enhanced by a clearer and more predictable business environment*".[2]

Barriers to the Chinese market are a persistent concern. Several key sectors remain entirely closed to EU investors. Others are only partially open, and investors face numerous restrictions that include being prevented from setting up wholly owned foreign enterprises and having to fulfil local content requirements or overly burdensome licensing requirements. Investors' concerns about the requirements to establish joint ventures are aggravated by anxieties about the transfer of key technologies and the protection of intellectual property in China. Moreover, there are some concerns that China's merger review procedures and subsidies policy might act as a barrier to investment.

When it comes to the protection of European investments in China, we are currently looking at a patchwork of bilateral investment agreements. While all EU Member States but one (Ireland) have concluded bilateral investment treaties (BITs) with China, these differ in approach and scope. This could lead to an unlevel playing field for EU companies investing in China. A comprehensive negotiation of an investment agreement between the EU and China would offer the opportunity to create a single framework applicable to investors from all 27 EU Member States.

Given China's increasing importance as a market place and destination for European investors, there is a need to examine whether an EU-level agreement – combining both investment liberalisation through new market access and a uniform standard of protection – could help address European investors' needs vis-à-vis China in an increasingly competitive global investment environment, as well as broader European concerns about the benefits of more Chinese investment in Europe.

Several policy options present themselves in this respect:

Option 1: A comprehensive investment agreement which would cover both pre-establishment (i.e. access to the foreign market) and post-establishment (i.e. protection for an investment already realized in the foreign market and rules covering the treatment of existing investors). For a comprehensive agreement including both market access and protection, various degrees of coverage of sectors could be considered in differentiated sub-options (for example, whether to cover services sectors despite their being subject to existing WTO commitments)

Option 2: A standalone investment protection agreement to replace the 25 existing BITs with one single agreement for the EU covering investment protection, but not including elements regarding pre-establishment access to the Chinese market.

Option 3: Another policy option would be **not to negotiate any new investment agreement** with China but to continue to operate under the current framework of bilateral dialogues, of commitments on establishment for services sectors under the General Agreement for Trade in

[2] European Chamber Business Confidence Survey 2010, June 2010
http://www.europeanchamber.com.cn/view/static/?sid=7370

Services at multilateral level in the WTO, and of continued renegotiations of the Partnership and Cooperation Agreement.

In order to evaluate the options for our future investment relationship and the desirability and feasibility of possibly pursuing negotiations for a standalone EU-China investment agreement, a full impact assessment is being carried out.

The public consultation is a key step in this process in order to fully evaluate the EU's interests as well as the potential economic, social or environmental impacts that any future policy choice might have. The replies to the questionnaire will provide the impact assessment with data, information and views of stakeholders about the current barriers and protection standards affecting EU direct investment in China, and about the (possible) effects of an EU investment agreement in China.

Practical Information

The Commission would like to receive your reply to this questionnaire by **5 July 2011**. You can send your reply by e-mail to:

If you have any questions or comments on this questionnaire you can send them to the following e-mail-address.

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